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federal register

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Wednesday, January 13, 1982

Highlights

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FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

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Highlights

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Presidential Documents

Title 3—

The President

Executive Order 12337 of January 11, 1982

Basic Allowance for Subsistence for Uniformed Services

By the authority vested in me as President of the United States of America by Section 402(e) of Title 37, United States Code, and in order to define "field duty" and "sea duty" as they affect basic allowances for subsistence, it is hereby ordered as follows:

Section 1. Section 303(e) of Executive Order No. 11157, as amended, is further amended to read as follows:

"(e) the term "field duty" for purposes of the third sentence of subsection (b) of Section 402 of Title 37, United States Code, shall mean service by a member when the member is subsisted in a Government mess or with an organization drawing field rations, and—

"(1) the member is under orders with troops operating against an enemy, actual or potential; or

"(2) the member is serving with troops on maneuvers, war games, field exercises, or similar types of operations.".

Sec. 2. Section 303 of Executive Order No. 11157, as amended, is further amended by adding thereto the following new subsection:

"(f) the term "sea duty" for purposes of the third sentence of subsection (b) of Section 402 of Title 37, United States Code, shall mean service performed by a member in a self-propelled vessel that is in an active status, in commission or in service and is equipped with berthing and messing facilities.".

Sec. 3. This Order shall be effective as of September 15, 1981.

Ronald Reagan

THE WHITE HOUSE,
January 11, 1982.

[FR Doc. 82-1043
Filed 1-12-82; 10:15 am]
Billing code 3195-01-M

Presidential Documents

Executive Order 12338 of January 11, 1982

Exclusions From the Federal Labor-Management Relations Program

By the authority vested in me as President by the Constitution and statutes of the United States of America, including Section 7103(b) of Title 5 of the United States Code, and in order to exempt certain agencies or subdivisions thereof from coverage of the Federal Labor-Management Relations Program, and in order to reflect organizational changes in the Department of Energy, it is hereby ordered as follows:

Section 1. Section 1–206 of Executive Order No. 12171 of November 19, 1979, is amended by adding thereto the following new subsections:

"(p) Office of the Assistant Chief of Staff, Intelligence.

"(q) Air Force Intelligence Service.".

Sec. 2. Executive Order No. 12171 is further amended by adding thereto the following new Section:

"1–212. Agencies or subdivisions under the operational jurisdiction of the Joint Chiefs of Staff (JCS).

"(a) Intelligence Division (J–2), Headquarters Atlantic Command (LANTCOM).

"(b) Atlantic Command Electronic Intelligence Center.

"(c) Intelligence Directorate (J–2), Headquarters U.S. European Command (USEUCOM).

"(d) Special Security Office (SSO), Headquarters U.S. European Command (USEUCOM).

"(e) European Defense Analysis Center (EUDAC).

"(f) Intelligence Directorate (J–2), Headquarters Pacific Command (PACOM).

"(g) Intelligence Center Pacific (IPAC).

"(h) Intelligence Directorate (J–2), Headquarters U.S. Southern Command (USSOUTHCOM).

"(i) Intelligence Directorate (J–2), Headquarters U.S. Readiness Command (USREDCOM)/Joint Deployment Agency.

"(j) Deputy Chief of Staff/Intelligence, Headquarters Strategic Air Command (SAC).

"(k) 544th Strategic Intelligence Wing, Strategic Air Command (SAC).

"(l) Deputy Chief of Staff/Intelligence, Headquarters 15th Air Force, Strategic Air Command (SAC).

"(m) Deputy Chief of Staff/Intelligence, Headquarters 8th Air Force, Strategic Air Command (SAC).

"(n) Strategic Reconnaissance Center, Headquarters Strategic Air Command (SAC).

"(o) 6th Strategic Wing, Strategic Air Command (SAC).

"(p) 9th Strategic Reconnaissance Wing, Strategic Air Command (SAC).

"(q) 55th Strategic Reconnaissance Wing, Strategic Air Command (SAC).

"(r) 306th Strategic Wing, Strategic Air Command (SAC).

"(s) 376th Strategic Wing, Strategic Air Command (SAC).

"(t) Deputy Chief of Staff/Operations Plans, Headquarters Strategic Air Command (SAC).

"(u) The Joint Strategic Target Planning Staff (JSTPS).".

Sec. 3. Section 1–210 of Executive Order No. 12171 is amended to read as follows:

"1–210. Agencies or subdivisions of the Department of Energy.

"(a) The Albuquerque, Nevada and Savannah River operations offices under the Under Secretary of Energy.

"(b) Offices of the Assistant Secretary for Defense Programs.".

Ronald Reagan

THE WHITE HOUSE,
January 11, 1982.

[FR Doc. 82–1044
Filed 1–12–82; 10:16 am]
Billing code 3195–01–M

Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Ch. VII

Office of Management and Budget (OMB) Control Numbers for Information Collection Requirements

AGENCY: National Credit Union Administration (NCUA).

ACTION: Technical amendments.

SUMMARY: This document amends National Credit Union Administration regulations and forms to include OMB control numbers at the places in the regulations and forms where current information collection requirements are described.

DATE: Effective December 31, 1981.

ADDRESS: National Credit Union Administration, 1776 G Street NW., Washington, D.C. 20456.

FOR FURTHER INFORMATION CONTACT:

D. Lynn Gordon, Director, Division of Management Analysis, National Credit Union Administration, 1776 G Street NW., Washington, D.C. 20456, Telephone: (202) 357–1202.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The information collection requirements contained in the regulatory sections and forms listed below have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and assigned the control numbers contained in the listing.

1. *Text of the Amendments.* The following OMB control numbers are hereby added at the end of each paragraph of Title 12 of the Code of Federal Regulations:

Control No.	Title
3133–0019	12 CFR 701.2(d)(3), 12 CFR 701.14(c) Data Processing Guidelines for Federal Credit Unions, NCUA 8009.
3133–0023	12 CFR Part 707, NCUA 4221, 4506, and 4505 Conversion from State to Federal Credit Union.
3133–0024	12 CFR Part 708, NCUA 4302, 4303, 4304, 4305, 4306, 4307, and 4308 Mergers of Credit Unions.
3133–0026	12 CFR 741.6 Notice of Voluntary Termination of Insured Status.
3133–0027	12 CFR Part 706 Conversion from Federal to State Credit Union.
3133–0028	12 CFR Part 745 Clarification and Definition of Account Insurance Coverage.
3133–0029	12 CFR 704.4 Annual Audit of a Corporate Central Federal Credit Union.
3133–0030	12 CFR 704.3 Management of a Corporate Central Federal Credit Union.
3133–0032	12 CFR 749.3 Vital Records to be Stored.
3133–0033	12 CFR 748.5 Filing of Reports.
3133–0034	12 CFR 748.4 Minimum Security Devices and Procedures.
3133–0035	12 CFR 721.4 Trustees and Custodians of Pension Plans.
3133–0036	12 CFR 703.2 Investment in Loans to Nonmember Credit Unions.
3133–0037	12 CFR 702.3 Full and Fair Disclosure Required.
3133–0040	12 CFR 701.36 FCU Ownership of Fixed Assets.
3133–0041	12 CFR 701.35 Share, Share Draft and Share Certificate Accounts.
3133–0042	12 CFR 701.28 Joint Operations and Activities.
3133–0043	12 CFR 701.27–1 Purchase and Sale of Accounting Services.
3133–0044	12 CFR 701.26 Credit Union Service Center.
3133–0045	12 CFR 701.24 Refund of Interest.
3133–0046	12 CFR 701.21–8 Purchase, Sale and Pledge of Eligible Obligations.
3133–0047	12 CFR 701.21–7 Loan Participation.
3133–0048	12 CFR 701.21–6 Real Estate Lending.
3133–0049	12 CFR 701.21–3 Lines of Credit to Members, 12 U.S.C. 1761(C), Bylaw XII7.
3133–0050	12 CFR 701.21–1 Lending Policies.
3133–0060	12 CFR 725.5 Annual Stock Subscription Statement.
3133–0063	12 CFR 725.3, 12 CFR 725.4 Membership Applications for CLF: Regular Member, Agent Membership.
3133–0064	12 CFR 725.17 Forms and Instructions for CLF Loans; Request for Funds; Statement of Cash Receipts and Disbursements; Cash Flow Protection; Seasonal Flow Computation, 7001, 7002, 7003, and 7004.
3133–0069	Consumer Programs, IRPS 80–7.
3133–0072	12 CFR 702.2 Regular Reserve.
3133–0075	12 CFR 701.12, Bylaw X, IRPS 80–12, 12 U.S.C. 1761(D) Supervisory Committee Manual for Federal Credit Unions, NCUA 8023.
3133–0076	12 CFR Part 710 Voluntary Liquidation of Federal Credit Unions, NCUA 8040.
3133–0078	12 CFR 701.27–2 Credit Union Service Corporation.

2. *NCUA Forms.* Because the agency's existing stock of forms do not contain OMB control numbers, this notice is being published in the **Federal Register** to inform the public of the control number assigned to each form. When forms are reprinted, the OMB control numbers will be included on them.

Control No.	Title
3133–0001	Monthly Sample (Federal) Monthly Sample (State), NCUA 5301 and 5303.
3133–0003	Annual Statistics for State-Chartered Credit Unions, NCUA 5306.
3133–0004	Financial and Statistical Report, NCUA 5300.
3133–0007	12 U.S.C. 1784 Continued Insurability Status Report, NCUA 9653.
3133–0009	Certification (State Supervision Authority), NCUA 9602.
3133–0010	Instructions for Applying for Insurance of Account of Newly Chartered State Credit Unions, NCUA 9600–1.
3133–0011	Application for Insurance of Accounts State Chartered Credit Unions, NCUA 9600.
3133–0012	Application and Agreement for Insurance of Accounts, NCUA 9500.
3133–0015	12 U.S.C. 1754 Investigation Report, Report of Officials, Management Report for New Federal Credit Unions, NCUA 4001, 4002, 4003, 4012, and 4014.
3133–0016	12 U.S.C. 1756 and 1782 Letter of Understanding and Agreement for Special Assistance.
3133–0017	Confidential Administrative Credit Union Financial Report, NCUA 1125.
3133–0018	Accounting Manual for Federal Credit Unions, NCUA 8022.
3133–0020	Special Accounting and Operating Procedures for Federal Credit Unions Maintaining Offices Overseas, NCUA 8039.
3133–0022	12 U.S.C. 1784 Areas of Non-Compliance and Examiner's Comments Report (Federally Insured State-Chartered Credit Unions), NCUA 9654.
3133–0025	12 U.S.C. 1786 Termination of Insured Status.
3133–0052	12 U.S.C. 1761(B) and Article II Section 2 of FCU Bylaws Board of Directors.
3133–0053	12 U.S.C. 1761 Management, Board of Directors, Committees, NCUA 4501, NCUA 9610.
3133–0054	12 U.S.C. 1770 Allotment of Space in Federal Buildings.
3133–0055	Article III Section 5(C), Bylaw III5C.
3133–0056	Article III Section 5(D), Bylaw III5D.
3133–0057	Article VIII Section 8, Bylaw VIII8.
3133–0058	Article IX Section 3, Bylaw IX3.
3133–0059	Article X Section 2, Bylaw X2.
3133–0061	CLF Repayment, Security, and Credit Reporting Agreements; Regular Member; Agent Member; Agent Loan; Agent Group Representative Loan 7005, 7005A, 7005AL, and 7005AGRL.
3133–0066	12 U.S.C. 1755 Operating Fee, NCUA 1308.
3133–0067	Monthly Corporate Central Credit Union Report, NCUA 5310.
3133–0070	Article VII Section 1, Bylaw VIII.
3133–0071	12 U.S.C. 1788 Special Assistance to Federally Insured Credit Unions.
3133–0073	12 U.S.C. 1782 Premiums for Share Insurance, NCUA 1300.
3133–0077	12 U.S.C. 1787 Payment of Share Insurance Claims, NCUA 9701.
3133–0080	Article VII Section 4, Bylaw VII4.
3133–0081	Article XIX Section 5, Bylaw XIX5.
3133–0082	Article IX Section 1, Bylaw IX1.
3133–0083	Insurance and Group Purchasing Activities, FCU 2000.
3133–0084	Consumer Compliance Questionnaire.
3133–0031	Investment Activities, IRPS 79–4.
3133–0038	Liquidity Reserves, IRPS 79–7.
3133–0069	Consumer Programs, IRPS 80–7.

Dated: December 30, 1981.

Rosemary Brady,

Secretary of the Board.

[FR Doc. 82–888 Filed 1–12–82; 8:45 am]

BILLING CODE 7535–01–M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. C-3066]

Godfrey Co.; Prohibited Trade Practices, and Affirmative Corrective Actions

Correction

In FR Doc. 81-36878 appearing at page 62438 in the issue for Thursday, December 24, 1981, please make the following corrections:

(1) On page 62438, in the "For Further Information Contact" paragraph, the telephone number should be "(202) 376-2891".

(2) On page 62439, in the first column, in paragraph "3.", the address should read "3939 S. 76th St., Milwaukee, WI.".

(3) On the same page and column, in paragraph "5.", the address should read "719 S. Layton Blvd., Milwaukee, WI.".

BILLING CODE 1505-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Rel. No. 34-18395; File No. S7-902]

Self-Underwriting by Nonmember Brokers or Dealers

AGENCY: Securities and Exchange Commission.

ACTION: Final rule amendment.

SUMMARY: The Commission is amending its rule imposing certain requirements on brokers or dealers that are not members of a registered securities association and that underwrite or otherwise participate in the distribution of their own securities or those of an affiliate. The amendment creates a conditional exception to that rule for nonmember brokers or dealers that limit their business to participation in the offer and sale of securities issued by an affiliate that is not a broker or dealer.

EFFECTIVE DATE: February 15, 1982.

FOR FURTHER INFORMATION CONTACT: Colleen Curran Harvey, Esq., Division of Market Regulation, Securities and Exchange Commission, Washington, D.C. 20549, (202) 272-2826.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today announced the adoption of an amendment to Rule 15b10-9 under the Securities Exchange Act of 1934 (the "Act").[1] In an August 1981 release (the "Proposal Release"),[2] the Commission announced the proposal, adopted today, to amend Rule 15b10-9 to create a conditional exception to that rule for SECO broker-dealers[3] that limit their business to participation in the offer and sale of securities issued by an affiliate that is not a broker-dealer ("Special Purpose Broker-Dealers"). The amendment is intended both to alleviate the problems that Special Purpose Broker-Dealers have encountered in complying with Rule 15b10-9 and to promote the purposes of the rule. The Commission is adopting the amendment as proposed.

The Commission's actions are discussed in the following sections of this release:[4]

I. Background

Rule 15b10-9, the SECO "self-underwriting" rule, prohibits a SECO broker-dealer from underwriting or otherwise participating in any public offering of its own securities or the securities of an affiliate, unless several conditions are met. If the SECO broker-dealer wishes to participate in a distribution of its own or an affiliate's securities, two independent underwriters must perform several functions in connection with the offering. The price of the issue must not be higher than the price jointly recommended by the two independent underwriters. The independent underwriters must also participate in the preparation of the registration statement and the prospectus, offering circular, or other comparable document, must exercise due diligence with respect to the preparation of those documents, and must assume full legal responsibilities and liabilities of an underwriter under the Securities Act of 1933. Independent legal counsel for the underwriters must review the applicable documents and issue an opinion that the documents conform to the requirements of the federal securities laws. The rule also requires that the broker-dealer issuer or broker-dealer affiliate have been actively engaged in the investment banking or securities business for five years and have shown a profit for three of those years.[5]

Rule 15b10-9 was adopted on December 4, 1972,[6] following the adoption of a comparable rule by the National Association of Securities Dealers, Inc. (the "NASD").[7] The Commission stated that two policy objectives prompted proposal of the rule: first, the avoidance of conflicts of interest that may cause abusive practices by underwriters that distribute their own or an affiliate's securities to the public, and, second, the desirability of arm's length bargaining between underwriters and issuers.[8]

When the Commission adopted Rule 15b10-9 in 1972, it recognized that it might not be necessary to require that all self-underwritten offerings be conducted in accordance with the terms of the rule. Accordingly, the Commission provided an opportunity for SECO broker-dealers to apply for exemptions on a case-by-case basis. Since adoption of the rule, the Commission has granted numerous conditional exemptions for Special Purpose Broker-Dealers. On the basis of that experience, the Commission proposed to amend Rule 15b10-9 to create an exception from the rule's requirements for Special Purpose Broker-Dealers.[9] The proposed amendment essentially codifies the conditions imposed by the commission in granting exemptive requests of Special Purpose Broker-Dealers.

The National Association of Securities Dealers, Inc. (the "NASD") submitted comments on the proposed amendment to Rule 15b10-9. The NASD suggested that the exceptions from the self-underwriting rule should be based on

[1] 17 CFR 240.15b10-9.

[2] Securities Exchange Act Release No. 18046 (August 20, 1981), 46 FR 43457 (August 28, 1981).

[3] Rule 15b10-9 applies only to broker-dealers that are not members of the National Association of Securities Dealers, Inc. ("SECO broker-dealers").

[4] *See* the Proposal Release for a more detailed explanation of Rule 15b10-9.

[5] Additional conditions are imposed when the securities of a non-broker-dealer issuer are being distributed. The issuer must provide in the prospectus, offering circular, or other comparable document financial statements for the immediately preceding three years and a certified balance sheet for the last fiscal year. The issuer must also represent that after the distribution it will send certain periodic financial and operational reports to its security holders.

[6] Securities Exchange Act Release No. 9883 (Dec. 4, 1972), 37 FR 26297 (1972).

[7] NASD By-laws, Article IV, Section 2, Schedule E; NASD Manual (CCH) ¶ 1402.

[8] Securities Exchange Act Release No. 9555 (April 12, 1972), 37 FR 7709 (1972).

[9] The Commission has granted some requests for exemptions from the rule by Special Purpose Broker-Dealers for future offerings of securities that are offered and sold in a substantially similar manner and under substantially similar terms and conditions as the offering for which an exemption has been granted to such Special Purpose Broker-Dealers. These Special Purpose Broker-Dealers would be required to comply with the amendment to Rule 15b10-9. The Commission has determined to revoke the exemptions previously granted to these Special Purpose Broker-Dealers effective February 15.

the nature of the security being offered, rather than on the nature of the business of the broker-dealer. Rule 15b10–9 does exclude offerings of various classes of securities from its provisions.[10] The Commission does not believe, however, that the NASD's suggested approach would alleviate the problems that Special Purpose Broker-Dealers have encountered in complying with Rule 15b10–9 and continues to believe those problems warrant relief.

II. Discussion of the Amendment to the Rule

As noted above, the amendment provides a conditional exception from Rule 15b10–9 for Special Purpose Broker-Dealers. To qualify for the exception, the Special Purpose Broker-Dealer must deliver to its customer a prospectus, offering circular, or other comparable document that contains certain facts of significance in a self-underwritten offering. The disclosure document would have to disclose in a prominent place: (1) That the Special Purpose Broker-Dealer is an affiliate of the issuer of the securities being offered and that its business is limted to the offer and sale of the nonbroker or dealer affiliate's securities, (2) the amount of commissions or other compensation to be paid to the Special Purpose Broker-Dealer or the formula for determining such compensation, and (3) whether or not persons other than associated persons of the issuer or of the Special Purpose Broker-Dealer[11] participated in determining the price and other terms of the offering and, if so, such persons' names and a brief account of their business experience during the past five years.

The disclosure requirements of the amendment are intended primarily to inform investors of facts that would appear to be pertinent to an investor's understanding of the nature of a self-underwritten offering. Disclosure of facts relating to the affiliation of the issuer and the Special Purpose Broker-Dealer and to the commissions or other compensation it will be paid should alert investors to the conflicts of interest inherent in that affiliation. The requirement to disclose who participated in the determination of the price and other terms of the offering is also intended to inform investors of facts that appear to be pertinent in the context of a self-underwritten offering. That disclosure requirement would not, however, apply to lawyers, accountants, indenture trustees and others advising the issuer in the course of performing their customary services in connection with the offering.

[10] *See* paragraph (e)(3)(c) of Rule 15b10–9 which defines the term "affiliate" to exclude from the rule certain offerings of investment company and tax shelter securities.

[11] The term "associated person" would include an officer, director, or employee of an issuer or of a SECO broker-dealer (or any person occupying a similar status or performing similar functions), or a person directly or indirectly controlling, controlled by, or under common control with an issuer or a SECO broker-dealer.

Regulatory Flexibility Act Considerations

The Chairman of the Commission has certified that the amendment to Rule 15b10–9, if adopted, will not have a significant economic impact on a substantial number of small entities. The Commission did not receive any comments concerning the Chairman's certification.

III. Statutory Basis

On the basis of the foregoing analysis and discussion, the Commission finds that the amendment to Rule 15b10–9 is consistent with the public interest, the protection of investors, and the purposes of the Act. The Commission, pursuant to section 23(a)(2) of the Act, finds that the amendment to the rule adopted herein does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The amendment will eliminate burdens encountered by Special Purpose Broker-Dealers in complying with Rule 15b10–9.

The amendment to Rule 15b10–9 is promulgated under the Act, and particularly Sections 3, 10, 15, and 23 thereof (15 U.S.C. 78c, 78j, 78*o*, and 78w).

IV. Text of Rule

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

The Commission is amending Part 240 of Chapter II of Title 17 of the Code of Federal Regulations by adding paragraph (c)(3) to § 240.15b10–9 to read as follows:

§ 240.15b10–9 Standards for the underwriting or participation by nonmember broker-dealers in the public distribution of their own or affiliate's securities.

* * * * *

(c) * * *

(3) The provisions of this rule shall not apply to a nonmember broker or dealer that limits its business to participating in the offer and sale of securities issued by an affiliate that is not a broker or dealer; *Provided, however,* That the nonmember broker or dealer delivers to its customers a prospectus, offering circular, or other comparable document that discloses in a prominent place (i) that the nonmember broker or dealer is an affiliate of the issuer of the securities being offered and that its business is limited to the offer and sale of securities issued by a nonbroker or dealer affiliate, (ii) the amount of commissions or other compensation to be paid to the nonmember broker or dealer or the formula for determining such compensation, and (iii) whether or not persons other than associated persons of the issuer or of the nonmember broker or dealer participated in determining the price and other terms of the offering and such persons' names and a brief account of their business experience during the past five years.

* * * * *

By the Commission.

Shirley E. Hollis,

Assistant Secretary.

January 7, 1982.

[FR Doc. 82–915 Filed 1–12–82; 8:45 am]

BILLING CODE 8010–01–M

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17 CFR Part 240

[Release No. 34–18396]

Rescission of Obsolete Rule

AGENCY: Securities and Exchange Commission.

ACTION: Rule rescission.

SUMMARY: The Commission today is rescinding, as obsolete, a Commission rule under the Securities Exchange Act of 1934 (the "Act") relating to the registration of certain broker-dealers. The rule has been rendered obsolete by the cessation of business by the entity to which it was applicable.

EFFECTIVE DATE: February 12, 1982.

FOR FURTHER INFORMATION CONTACT: Thomas G. Lovett, (202) 272–2415, Division of Market Regulation, Securities and Exchange Commission, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: On November 28, 1975, the Commission adopted Rule 15b2B–1 [17 CFR 240.15b2B–1] (the "Rule") under the Act.[1] The Rule provides a procedure for the registration of a broker-dealer which is a separately identifiable department or division of a person as set forth in Section 15(b)(2)(B) of the Act, 15 U.S.C. 78*o*(b)(2)(B). That section provides that

[a]ny person who is a broker or dealer solely by reason of acting as a municipal securities dealer or municipal securities broker, who so acts through a separately identifiable department or division, and who so acted [on

[1] Securities Exchange Act Release No. 11881 (November 28, 1975).

June 5, 1975], may, in accordance with such terms and conditions as the Commission, by rule, prescribes as necessary and appropriate in the public interest and for the protection of investors, register such separately identifiable department or division in accordance with this subsection [15(b)].

Only one broker-dealer, W. H. Morton & Co. ("Morton"), has registered pursuant to Rule 15b2B–1 since the Rule was adopted by the Commission. Morton registered as a division of American Express Company.

On June 29, 1981, Shearson Loeb Rhoades, Inc., a broker-dealer registered with the Commission pursuant to Section 15(b) of the Act, merged with a wholly-owned subsidiary of American Express Company. Subsequent to that merger, Morton filed a notice of withdrawal from registration as a broker-dealer on Form BDW, and it no longer conducts business as a separate division of American Express Company. Morton's withdrawal became effective on September 15, 1981.

Since there are no other broker-dealers that have registered pursuant to Rule 15b2B–1, or that are eligible to so register, the Commission has determined to rescind the Rule.

The Commission for good cause finds, in accordance with the Administrative Procedure Act, 5 U.S.C. 553(b)(B), that since the rule no longer has any practical application or effect, notice and opportunity for public comment are unnecessary.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

§ 240.15b2B–1 [Removed]

Accordingly, Part 240 of Chapter II of Title 17 of the Code of Federal Regulations is amended by removing § 240.15b2B–1.

(Secs. 15(b)(2)(B) and 23(a), 89 Stat. 122 and 48 Stat. 901, 15 U.S.C. 78*o*(b)(2)(B) and 78w(a))

By the Commission.

George A. Fitzsimmons,

Secretary.

January 7, 1982.

[FR Doc. 82–890 Filed 1–12–82; 8:45 am]

BILLING CODE 8010–01–M

ENVIRONMENTAL PROTECTION AGENCY

21 CFR Part 193

[FAP 1H5296/R95; PH–FRL–2029–4]

Tolerances for Pesticides in Food Administered by the Environmental Protection Agency; Oxyfluorfen

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a food additive regulation to permit the combined residues of the herbicide oxyfluorfen and its metabolites in cottonseed oil and mint oil (peppermint and spearmint). This regulation to establish the maximum permissible level for the combined residues of the herbicide in the commodities was requested by Rohm and Hass Co.

EFFECTIVE DATE: Effective on: January 13, 1982.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A–110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Richard F. Mountfort, Product Manager (PM) 23, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 237, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–1830).

SUPPLEMENTARY INFORMATION: EPA issued a notice published in the **Federal Register** of June 10, 1981 [46 FR 30692] that Rohm and Haas Co., Philadelphia, PA 19105, had filed a food additive petition (FAP 1H5296) proposing that 21 CFR 193.325 be amended by establishing a regulation permitting the combined residues of the herbicide oxyfluorfen [2-chloro-1-(3-ethoxy-4-nitrophenoxy)-4-(trifluoromethyl)benzene] and its metabolites containing the diphenyl ether linkage in or on the food items cottonseed oil at 0.2 ppm and mint oil (peppermint and spearmint) at 0.25 ppm. Subsequently the petitioner amended the proposal for cottonseed oil increasing the tolerance to 0.25 ppm.

There were no comments received in response to this notice of filing.

The data submitted in the petition and other relevant material have been evaluated. For background information, refer to documents establishing tolerances for residues of oxyfluorfen in various commodities published in the **Federal Register** of December 24, 1980 (45 FR 85021) and April 24, 1981 (46 FR 23238). The toxicology data considered in support of these tolerance proposals included: A rat oral lethal dose (LD_{50}) with an LD_{50} greater than 5.0 grams (g) per kilogram (Kg) of body weight (bw): a rat cytogenetic test (purified oxyfluorfen) (negative); two Ames tests (one positive (technical oxyfluorfen) one negative (purified oxyfluorfen)); a host-mediated assay (purified oxyfluorfen) (negative) a rec. *assay* (technical oxyfluorfen) (positive); a rat teratology study with no terata at 1,000 mg/kg of bw (highest dose) and a no-observed-effect level (NOEL) of 100 mg/kg of bw; a three-generation rat reproduction study with a NOEL of 10 ppm; a two-year dog feeding study with a NOEL of 100 ppm; a 24-month rat feeding study (chronic toxicity/oncogenicity) with a NOEL of 40 ppm; and a 20-month mouse feeding study (chronic toxicity/oncogenicity) with a NOEL of 2 ppm. Additional data to be submitted by the petitioner include a rabbit teratology study with post-natal evaluation; additional mutagenicity data and 90-day range finding studies for rat and mouse strains tested in the chronic toxicity studies listed above.

Based on a NOEL of 2 ppm in the chronic mouse feeding study and a safety factor of 100, the acceptable daily intake (ADI) is 0.003 mg/kg/day. For a 60-kg person, the maximum permissible intake (MPI) is 0.18 mg/day. These tolerances and previously established tolerances utilize 21.01 percent of the ADI.

The nature of the residue of the pesticide is adequately delineated and an adequate analytical method (a gas-liquid chromatographic procedure using an electron-capture detector) is available for enforcement purposes.

Related documents establishing tolerances on oxyfluorfen in other commodities appear elsewhere in this issue of the **Federal Register.**

It is concluded that the pesticide may be safely used in accordance with the prescribed manner when such uses are in accordance with the label and labeling registered pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, [86 Stat. 973; 89 Stat. 973; 89 Stat. 751; U.S.C. 135(a) *et seq.*]. The pesticide is considered useful for the purposes for which a food additive regulation is sought. Therefore, 21 CFR 193.325 is amended as set forth below.

Any person adversely affected by this regulation may, on or before February 12, 1982, file written objections with the Hearing Clerk, at the address given above. Such objections should be submitted in quintuplicate and specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

As required by Executive Order 12291, the EPA has determined that this rule is not a "Major" rule and therefore does not require a Regulatory Impact Analysis. In addition, the Office of Management and Budget (OMB) has

exempted this proposed regulation from the OMB review requirements of Executive Order 12291, pursuant to section 8(b) of that Order.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–534, 94 Stat. 1164 (5 U.S.C. 601–612)), the Administrator has determined that regulations establishing new food and feed additive levels, or conditions for safe use of additives, or raising such food and feed additive levels do not have significant impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

Effective on: January 13, 1982.

(Sec. 409(c)(1), 72 Stat. 1786 (21 U.S.C. 346(c)(1)))

Dated: December 30, 1981.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

PART 193—TOLERANCES FOR PESTICIDES IN FOOD ADMINISTERED BY THE ENVIRONMENTAL PROTECTION AGENCY

Therefore 21 CFR 193.325 is revised to read as follows:

§ 193.325 Oxyfluorfen.

A regulation is established permitting the combined residues of the herbicide oxyfluorfen [2-chloro-1-(3-ethoxy-4-nitrophenoxy)-4-(trifluoromethyl)benzene] and its metabolities containing the diphenyl ether linkage in the following processed food when present therein as a result of application of the herbicide to growing crops:

Food commodity	Part per million (ppm)
Cottonseed oil	0.25
Mint oil (peppermint and spearmint)	0.25
Soybean oil	0.25

[FR Doc. 82-875 Filed 1-12-82; 8:45 am]

BILLING CODE 6560-32-M

21 CFR Part 561

[FAP 6H5102/R93; PH-FRL-2028-2]

Tolerances for Pesticides in Animal Feeds; Carbofuran

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule.

SUMMARY: This rule establishes a feed additive regulation to permit the combined residues of the insecticide carbofuran and its metabolites in or on the fatty acids of soybean soapstock. This regulation to establish the maximum permissible level for the combined residues of the insecticide in or on the commodity was requested by FMC Corp.

EFFECTIVE DATE: Effective on January 13, 1982.

ADDRESS: Written objections may be submitted to the Hearing Clerk (A–110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Jay Ellenberger, Product Manager (PM) 12, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 202, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–2386).

SUPPLEMENTARY INFORMATION: EPA issued a notice published in the Federal Register of April 1, 1976 (41 FR 13984) which announced that FMC Corp., 2000 Market St., Philadelphia, PA 19103, submitted a feed additive petition (FAP 6H5102) proposing that 21 CFR 561.67 be amended by the establishment of a regulation permitting the combined residues of the insecticide carbofuran (2,3-dihydro-2,2-dimethyl-7-benzofuranyl-*N*-methylcarbamate), its carbamate metabolite 2,3-dihydro-2,2-dimethyl-3-hydroxy-7-benzofuranyl-*N*-methylcarbamate, and the phenolic metabolites 2,3-dihydro-2,2-dimethyl-7-benzofuranol, 2,3-dihydro-2,2-dimethyl-3-oxo-7-benzofuranol and 2,3-dihydro-2,2-dimethyl-3,7-benzofurandiol in or on the feed commodity fatty acids of soybean soapstock at 6.0 parts per million (ppm), of which not more than 1.0 ppm is carbamates, reflecting residues of 2 ppm phenolic metabolites and 0.33 ppm carbamates in alkaline soapstock.

There were no comments received in response to this notice of filing.

The data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the tolerance included a 2-year chronic feeding/oncogenicity study in the rat and mouse with a no-observable-effect level (NOEL) of 20 ppm for cholinesterase-inhibition and a systemic NOEL of 20 ppm and 125 ppm, respectively; a 3-generation rat reproduction study with a NOEL of 20 ppm; two teratology studies which were negative up to 160 ppm and 1.2 milligrams (mg)/kilogram (kg) of body weight (bw)/day and had a NOEL for fetotoxicity of 20 ppm and 1.2 mg/kg bw/day; a rabbit teratology study which was negative for terata and fetotoxicity at 2.0 mg/kg bw/day; and mutagenicity testing which showed carbofuran not to be mutagenic. Based on the 2-year chronic rat feeding/oncogenicity study with a NOEL of 20 ppm for systemic effects and cholinesterase-inhibition and using a 200-fold safety factor, the acceptable daily intake (ADI) for man is 0.005 mg/kg bw/day.

Desirable data that are lacking from the petition is a 6-month (or longer) dog feeding study. In a letter of August 7, 1981, the petitioner agreed to conduct the study and to voluntarily remove soybeans from the label should the results of the study be found to exceed the risk criteria for adverse effects. The study is expected to be submitted to the Agency by December 1982. The metabolism of carbofuran is adequately understood, and an adequate analytical method (gas chromatography using a nitrogen specific microcoulometric detector) is available for enforcement purposes. No actions are currently pending against continued registration of carbofuran, nor are there any other relevant considerations involved in establishing the tolerance.

The pesticide is considered useful for the purpose for which the tolerance is sought, and it is concluded that the tolerance for the combined residues of carbofuran and the metabolites in or on the raw agricultural commodity will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, on or before February 12, 1982, file written objections with the Hearing Clerk at the address given above. Such objections should be submitted in quintuplicate and specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

As required by Executive Order 12291, EPA has determined that this rule is not a "Major" rule and therefore does not require a Regulatory Impact Analysis. In addition, the Office of Management and Budget (OMB) has exempted this rule from the OMB review requirements of Executive Order 12291, pursuant to section 8(b) of that Order.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–534, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new food or

feed additive levels, or conditions for safe use of additives, or raising such food or feed additive levels do not have a significant impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Effective on: January 13, 1982.

(Sec. 409(c)(1), 72 Stat. 1786 (21 U.S.C. 346(c)(1)))

Dated: December 29, 1981.

James M. Conlon,

Acting Director, Office of Pesticide Programs.

PART 561—TOLERANCES FOR PESTICIDES IN ANIMAL FEEDS ADMINISTERED BY THE ENVIRONMENTAL PROTECTION AGENCY

Therefore, 21 CFR 561.67 is amended by adding the commodity fatty acids of soybean soapstock to paragraph (a) to read as follows:

§ 561.67 Carbofuran.

(a) * * *

Commodity	Part(s) per million (ppm)
* * * * *	
Fatty acids of soybean soapstock (of which not more than 1.0 ppm is carbamates reflecting residues of 2.0 ppm phenolic metabolites and 0.33 ppm carbamates in alkaline soapstock)	6.0
* * * * *	

[FR Doc. 82-861 Filed 1-12-82; 8:45 am]

BILLING CODE 6560-32-M

21 CFR Part 561

[FAP OH5276/T78; PH-FRL-2028-3]

Tolerances for Pesticides in Animal Feeds; Carbofuran

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes feed additive regulation related to the experimental use of the insecticide carbofuran and its metabolites in or on sunflower seed hulls and meal (FAP OH5276). The regulation to permit the marketing of the commodities, while further data are collected on carbofuran, was requested by FMC Corporation.

EFFECTIVE DATE: Effective on January 13, 1982.

ADDRESS: Written objections may be submitted to the: Hearing Clerk, Environmental Protection Agency, Rm. 3708 (A-110), 401 M St., SW., Washington, DC 204650.

FOR FURTHER INFORMATION CONTACT: Jay S. Ellenberger, Product Manager (PM) 12, Environmental Protection Agency, Registration Division (TS-767), Office of Pesticide Programs, Rm. 202, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-2386).

SUPPLEMENTARY INFORMATION: EPA issued a notice published in the **Federal Register** of December 11, 1980 (45 FR 81650) that FMC Corp., 2000 Market St., Philadelphia, PA 19103, had filed a petition (FAP OH5276) proposing that 21 CFR 561.67 be amended by the establishment of a regulation permitting residues of the insecticide carbofuran, (2,3-dihydro-2,2-dimethyl-7-benzofuranyl-*N*-methylcarbamate); its carbamate metabolite 2,3-dihydro-2,2-dimethyl-3-hydroxy-7-benzofuranyl-*N*-methylcarbamate, and the phenolic metabolites 2,3-dihydro-2,2-dimethyl-7-benzofuranol; 2,3-dihydro-2,2-dimethyl-3-oxo-7-benzofuranol, and 2,3-dihydro-2,2-dimethyl-3,7-benzofurandiol in connection with an experimental program involving the application of carbofuran in the growing of sunflower with tolerance limitations of 1.0 part per million (ppm) in or on sunflower seed hulls and meal, of which not more than 0.5 ppm is carbamates.

There were no comments received by the Agency in response to the notice of filing.

The data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the proposed tolerances include a 2-year rat feeding/oncogenicity study and a 2-year mouse feeding/oncogenicity study with a no-observable-effect level (NOEL) of 20 ppm and 125 ppm, respectively, for systemic effects; a 3-generation rat reproduction study with a NOEL of 20 ppm; two rat teratology studies which were negative up to 160 ppm and 1.2 mg/kg/day; and had a NOEL for fetotoxicity of 20 ppm and 1.2 mg/kg bw/day; a rabbit teratology study which was negative for terata and fetotoxicity at 2.0 mg/kg bw/day; and mutagenicity testing which demonstrated that carbofuran is negative for mutagenic effects. Based on the 2-year rat feeding/oncogenicity study with a NOEL of 20 ppm and using a safety factor of 200, the acceptable daily intake (ADI) for man is 0.005 milligrams (mg)/kilograms (kg) of body weight (bw)/day.

The metabolism of carbofuran is adequately understood, and an adequate analytical method (gas-liquid chromatography using a nitrogen detector system) is available for enforcement purposes. No actions are currently pending against continued registration of this chemical nor are there any other relevant considerations involved in establishing these tolerances.

The pesticide is considered useful for the purpose for which the regulation is sought. It is concluded that the pesticide will be safely used in the prescribed manner when such uses are in accordance with the label and labeling registered pursuant to FIFRA, as amended. Therefore, 21 CFR 561.67 is amended as set forth below.

Any person adversely affected by this regulation may, on or before February 12, 1982, file written objections to the Hearing Clerk, Environmental Protection Agency, Rm. 3708 (A-110), 401 M St., SW., Washington, DC 20460. Such objections should be submitted in quintuplicate and specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issue for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

As required by Executive Order 12291, EPA has determined that this rule is not a "Major" rule and therefore does not require a Regulatory Impact Analysis. In addition, the Office of Management and Budget (OMB) has exempted this rule from the OMB review requirements of Executive Order 12291, pursuant to Section 8(b) of that Order.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new food and feed additive levels, or conditions for safe use of additives, or raising such food and feed additive levels, do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24945). Effective on: January 13, 1982.

(Sec. 409(c)(1), 72 stat. 1786; (21 U.S.C. 346(c)(1)))

Dated: December 29, 1981.

James M. Conlon,

Acting Director, Office of Pesticide Programs.

PART 561—TOLERANCES FOR PESTICIDES IN ANIMAL FEEDS ADMINISTERED BY THE ENVIRONMENTAL PROTECTION AGENCY

Therefore 21 CFR 561.67 is amended by designating the existing text as paragraph (a) and adding paragraph (b) to read as follows:

§ 561.67 Carbofuran.

* * * * *

(b) A regulation is established permitting the combined residues of carbofuran and its metabolites in or on the following feed commodities in connection with an experimental program involving the application of carbofuran in the growing of sunflower.

Commodity	Part(s) per million (ppm)
Sunflower seed hulls and meal (of which not more than 0.5 ppm is carbamates)	1.0

[FR Doc. 82-880 Filed 1-12-82; 8:45 am]

BILLING CODE 6560-32-M

POSTAL SERVICE

39 CFR Part 601

Procurement of Property and Services; Amendments to Postal Contracting Manual

AGENCY: Postal Service.

ACTION: Amendments to the Postal Contracting Manual.

SUMMARY: The Postal Service hereby announces amendments that incorporate new requirements prohibiting contracting for architect-engineer services with persons or firms that employ others for a fee contingent on success in securing the contract. Also, a form dealing with representations and certifications is revised.

EFFECTIVE DATE: December 18, 1981.

FOR FURTHER INFORMATION CONTACT: Eugene A. Keller, (202) 245-4818.

SUPPLEMENTARY INFORMATION: The Postal Contracting Manual, which has been incorporated by reference in the Code of Federal Regulations (See 39 CFR 601.100) has been amended by the issuance of PCM Circular 81-8, dated December 18, 1981.

In accordance with 39 CFR 601.105, notice of these changes is hereby published in the Federal Register and the text of the changes is filed with the Director, Office of the Federal Register. Subscribers to the basic manual will receive these amendments from the Postal Service. (For other availability of the Postal Contracting Manual, see 39 CFR 601.104).

Explanation of these amendments to the Postal Contracting Manual follows:

Explanation

—Section 1, Part 5, and Section 18, Part 6, are revised to incorporate new requirements which prohibit contracting for architect-engineer services with persons or firms that employ others for a fee contingent on success in securing the contract. The changes make inapplicable to architect-engineer contracting the exception from contingent fee prohibitions provided in Section 1, Part 5, and 7-103.20 for "bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business." The changes will be incorporated in the architect-engineer services contract form (Form 7490) at the next opportunity. Until then contracting officers must substitute the special covenant against contingent fees provided below for the covenant contained in paragraph 9 of Form 7490 (Aug 1974).

—Use the following revised form included in Section 16 immediately when applicable:

Form 7319-B, *Representations and Certifications*, July 1981.

(5 U.S.C. 552(a) (39 U.S.C. 401, 404, 410, 411))

W. Allen Sanders,

Associate General Counsel, General Law and Administration.

[FR Doc. 82-914 Filed 1-12-82; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[A-8-FRL 2011-7]

Colorado: Redesignation of Portions of Adams and Arapahoe Counties for Air Quality Planning Purposes

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: The purpose of this notice is to approve Colorado's request for revision of the nonattainment area boundaries for carbon monoxide and ozone in Adams and Arapahoe Counties. The eastern portions of these counties are redesignated from nonattainment to "cannot be classified or better than national standards" for carbon monoxide and ozone. This action will be effective on March 15, 1982 unless notice is received on or before February 12, 1982 that someone wishes to submit adverse or critical comments.

DATE: This action is effective March 15, 1982.

ADDRESSES: Copies of the revision are available for public inspection between 8:00 a.m. and 4:00 p.m. Monday through Friday at the following offices:

Environmental Protection Agency, Region VIII, Air Programs Branch, 1860 Lincoln Street, Denver, Colorado 80295

Environmental Protection Agency, Public Information Reference Unit, Waterside Mall, 401 M Street, SW., Washington, D.C. 20460

FOR FURTHER INFORMATION CONTACT:

Eliot Cooper, Air Programs Branch, Environmental Protection Agency, 1860 Lincoln Street, Denver, Colorado 80295 (303) 837-6131.

SUPPLEMENTARY INFORMATION: On September 10, 1981, following a public hearing on July 23, 1981, the Governor of Colorado submitted a request to EPA to reclassify portions of the Denver Metropolitan nonattainment areas for carbon monoxide and ozone. The specific boundary changes requested by the State are as follows:

"The portions of Adams and Arapahoe Counties east and north of the following line are hereby redesignated from nonattainment to attainment for carbon monoxide and from nonattainment to unclassifiable for photochemical oxidants: beginning at the northern boundary of Adams County proceeding southerly on the 519000 meter east Universal Transverse Mercator (UTM) grid line, zone 13, to the 4392000 meter north UTM grid line, zone 13, then easterly to the 524500 meter east UTM grid line, zone 13, then southerly along the latter grid line to the southern boundary of Arapahoe County."

This action was taken by the State following a request by Colorado Interstate Gas Company (CIG) for redesignation of portions of the carbon monoxide and ozone nonattainment areas of Adams and Arapahoe Counties The State indicated that these entire counties had been designated nonattainment for these pollutants in 1978 (43 FR 8962) because of "administrtative convenience", without any monitoring data indicating nonattainment in the area proposed for redesignation to attainment by CIG. The State provided several modeling studies which indicate that the area in question does not violate the National Ambient Air Quality Standards for carbon monoxide and ozone. Since existing data show no violations of the applicable standards in the area proposed for redesignation, and are supported by independent modeling studies, EPA is granting the State's request for a change in the nonattainment boundaries for carbon monoxide and ozone in Adams and Arapahoe Counties.

Since the Agency views as noncontroversial redesignation requests from the States which are supported by

monitoring and/or modeling studies, EPA is today changing the nonattainment boundaries of Adams and Arapahoe Counties for carbon monoxide and ozone as indicated above without prior proposal.

The public should be advised that this action will be effective March 15, 1982. However, if notice is received on or before February 12, 1982 that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), I hereby certify that this action will not have a significant economic impact on a substantial number of small entities since it imposes no burden on sources.

Under section 307(b)(1) of the Clean Air Act, judicial review of this action is available only by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of today. Under section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may *not* be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not Major because it merely approves nonattainment boundary revisions adopted by the State.

(Sec. 107 of the Clean Air Act (42 U.S.C. 7407))

Dated: December 28, 1981.

Anne M. Gorsuch,

Administrator.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

Part 81 of Chapter I, Title 40, Code of Federal Regulations is amended as follows:

§ 81.306 [Amended]

1. In § 81.306, the attainment status designation tables for CO and O_x are amended by revising the entry entitled "AQCR 3" to read as follows:

COLORADO—O_x

Designated area	Does not meet primary standards	Cannot be classified or better than national standards
* * * * *		
AQCR 3—Counties of Boulder, Denver, Jefferson, and Douglas; Western portions of Adams and Arapahoe Counties.	X	
* * * * *		

COLORADO—CO

Designated area	Does not meet primary standards	Cannot be classified or better than national standards
* * * * *		
AQCR 3—Counties of Denver, Jefferson, Boulder, and Douglas; Western portions of Adams and Arapahoe Counties.	X	
* * * * *		

[FR Doc. 82-654 Filed 1-12-82; 8:45 am]

BILLING CODE 6560-38-M

40 CFR Part 180

[PP 1F2466/R379; PH-FRL-2028-4]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Potassium Oleate and Related C_{12}–C_{18} Fatty Acid Potassium Salts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes an exemption from the requirement of a tolerance for residues of the insecticide potassium oleate and related C_{12}–C_{18} fatty acids potassium salts in or on all raw agricultural commodities when applied in accordance with good agricultural practices. This regulation was requested by Safer Agro-Chem., Inc.

EFFECTIVE DATE: January 13, 1982.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: William Miller, Product Manager (PM) 16, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 211, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-2600).

SUPPLEMENTARY INFORMATION: EPA issued a notice published in the **Federal Register** of April 22, 1981 (46 FR 22983) which announced that Safer Agro-Chem., Inc., 3233 Vista Diego Rd., Jamul, CA 92035, had submitted a pesticide petition (PP 1F2466) proposing that 40 CFR 180 be amended by the establishment of an exemption from the requirement of a tolerance for residues of the insecticide potassium salts of fatty acids in or on all raw agricultural commodities when applied in accordance with good agricultural practice. These potassium salts are more clearly defined as potassium oleate and related C_{12}–C_{18} fatty acid potassium salts.

There were no comments received in response to this notice of filing.

The data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the proposed exemption from the requirement of a tolerance included an acute rabbit dermal LD_{50} study, a primary dermal irritation study in rabbits, and an eye irritation study in rabbits. Chronic toxicity studies for potassium oleate and related C_{12}–C_{18} fatty acid potassium salts are not required for the following reasons.

Potassium oleate and related fatty acid salts are naturally occurring substances found in commonly eaten oily foods such as corn and peanuts and are considered nontoxic to humans. Based on the residue data submitted in support of the petition, residues from the proposed use are not likely to exceed levels of naturally occurring fatty acids in commonly eaten foods such as corn and peanuts. Residues, if transferred to meat and milk, are not likely to exceed levels of naturally occurring oleic acid in animal food products. Oleic acid is the chief fatty acid in milk, fats, lard, and tallows and it occurs in considerable quantity in virtually all animal fats.

Salts of fatty acids are cleared, under 21 CFR 172.863, for use as a direct food additive used in food as a binder, emulsifier, and anticaking agent in accordance with good manufacturing practice. In addition, sodium or potassium salts of fatty acids are exempted from the requirement of a tolerance on all raw agricultural commodities when used in accordance with good agricultural practices as a surfactant, emulsifier, and wetting agent under 40 CFR 180.1001(c).

No actions are pending against the registration of the insecticide and no

other considerations are involved in establishing this exemption from the requirement of a tolerance.

The insecticide is considered useful for the purpose for which the exemption is sought, and it is concluded that the exemption will protect the public health. Therefore, the exemption is established as set forth below.

Any person adversely affected by this regulation may, on or before February 12, 1982, file written objections with the Hearing Clerk, at the address given above. Such objections should be submitted in quintuplicate and specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

As required by Executive Order 12291, the EPA has determined that this rule is not a "Major" rule and therefore does not require a Regulatory Impact Analysis. In addition, the Office of Management and Budget (OMB) has exempted this proposed regulation from the OMB review requirements of Executive Order 12291, pursuant to section 8(b) of that Order.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164 (5 U.S.C. 601-612)), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Effective on: January 13, 1982.

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346(a)(e)))

Dated: December 31, 1981.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Therefore, 40 CFR Part 180 is amended by establishing a new § 180.1068 to read as follows:

§ 180.1068 Potassium oleate and related C_{12}-C_{18} fatty acid potassium salts; exemption from the requirement of a tolerance.

Potassium oleate and related C_{12}-C_{18} fatty acid potassium salts are exempted from the requirement of a tolerance for residues in or on all raw agricultural commodities when used in accordance with good agricultural practice.

[FR Doc. 82-855 Filed 1-12-82; 8:45 am]

BILLING CODE 6560-32-M

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40 CFR Part 180

[PP 5F1557/R378; PH-FRL-2028-1]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Carbofuran

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for the combined residues of the insecticide carbofuran in or on certain raw agricultural commodities. This regulation to establish the maximum permissible level for the combined residues of the insecticide in or on the commodities was requested by FMC Corp.

EFFECTIVE DATE: Effective on January 13, 1982.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Jay Ellenberger, Product Manager (PM) 12, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 202, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-2386).

SUPPLEMENTARY INFORMATION: EPA issued a notice published in the **Federal Register** of November 27, 1974 (39 FR 41401) which announced that FMC Corp., 2000 Market St., Philadelphia, PA 19103, submitted a pesticide petition (PP 5F1557) proposing that 40 CFR 180.254 be amended by the establishment of tolerances for the combined residues of the insecticide carbofuran (2,3-dihydro-2,2-dimethyl-7-benzofuranyl-*N*-methylcarbamate), its carbamate metabolite 2,3-dihydro-2,2-dimethyl-3-hydroxy-7-benzofuranyl-*N*-methylcarbamate, and the phenolic metabolites 2,3-dihydro-2,2-dimethyl-7-benzofuranol, 2,3-dihydro-2,2-dimethyl-3-oxo-7-benzofuranol and 2,3-dihydro-2,2-dimethyl-3,7-benzofurandiol in or on the raw agricultural commodities soybean forage and hay at 35.0 parts per million (ppm), of which not more than 20.0 ppm are carbamates and soybeans at 1.0 ppm, of which not more than 0.2 ppm is carbamates.

There were no comments received in response to this notice of filing.

The data submitted in the petition and other relevant materials have been evaluated. The toxicological data considered in support of the tolerances included a 2-year chronic feeding/oncogenicity study in the rat and the mouse with a no-observable-effect level (NOEL) of 20 ppm for cholinesterase-inhibition and a systemic NOEL of 20 ppm and 125 ppm, respectively; a 3-generation, rat reproduction study with a NOEL of 20 ppm; two rat teratology studies which were negative up to 160 ppm and 1.2 milligrams (mg)/kilogram (kg) of body weight (bw)/day, and had a NOEL for fetotoxicity of 20 ppm and 1.2 mg/kg bw/day; a rabbit teratology study which was negative for terata and fetotoxicity at 2.0 mg/kg bw/day; and mutagenicity testing which showed carbofuran not to be mutagenic. Based on the 2-year chronic rat feeding/oncogenicity study with a NOEL of 20 ppm for systemic effects and cholinesterase-inhibition and using a 200-fold safety factor, the acceptable daily intake (ADI) for man is 0.005 mg/kg bw/day.

Desirable data that are lacking from the petition is a 6-month (or longer) dog feeding study. In a letter of August 7, 1981, the petitioner agreed to conduct the study and to voluntarily remove soybeans from the label should the results of the study be found to exceed the risk criteria for adverse effects. The study is expected to be submitted to the Agency by December 1982. The metabolism of carbofuran is adequately understood, and an adequate analytical method (gas chromatography using a nitrogen specific microcoulometric detector) is available for enforcement purposes. No actions are currently pending against the continued registration of carbofuran, nor are there any other relevant considerations involved in establishing the tolerances. The existing meat and milk tolerances are adequate to cover any residues resulting from the proposed use.

The pesticide is considered useful for the purpose for which tolerances are sought, and it is concluded that the tolerances for the combined residues of carbofuran and the metabolites in or on the raw agricultural commodities will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, on or before February 12, 1982, file written objections with the Hearing Clerk at the address given

above. Such objections should be submitted in quintuplicate and specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

As required by Executive Order 12291, EPA has determined that this rule is not a "Major" rule and therefore does not require a Regulatory Impact Analysis. In addition, the Office of Management and Budget (OMB) has exempted this rule from the OMB review requirements of Executive Order 12291, pursuant to section 8(b) of that Order.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–534, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Effective on: January 13, 1982.

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346(a)(e)))

Dated: December 29, 1981.

James M. Conlon,

Acting Director, Office of Pesticide Programs.

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Therefore, 40 CFR 180.254 is amended by alphabetically inserting the commodities soybeans and soybean forage and hay to read as follows:

§ 180.254 Carbofuran; tolerances for residues.

* * * * *

Commodity	Part(s) per million (ppm)
* * * * *	
Soybeans (of which not more than 0.2 ppm is carbamates)	1.0
Soybean, forage (of which not more than 20.0 ppm are carbamates)	35.0
Soybean, hay (of which not more than 20.0 ppm are carbamates)	35.0
* * * * *	

[FR Doc. 82-862 Filed 1-12-82; 8:45 am]

BILLING CODE 6560-32-M

40 CFR Part 180

[PP 1F2488/R382; PH-FRL-2029-2]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Oxyfluorfen

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for the combined residues of the herbicide oxyfluorfen and its metabolites in or on certain raw agricultural commodities. This regulation to establish the maximum permissible level for the combined residues of the herbicide in or on the commodities was requested by Rohm and Haas Co.

EFFECTIVE DATE: Effective on January 13, 1982.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A–110), Environmental Protection Agency, Rm. 3708, 401 M. St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Richard Mountfort, Product Manager (PM) 23, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 237, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202. (703–557–1830).

SUPPLEMENTARY INFORMATION: EPA issued a notice published in the **Federal Register** of June 10, 1981 [46 FR 30692] that Rohm and Haas Co., Philadelphia, PA 19105, had filed a pesticide petition (PP 1F2488) proposing that 40 CFR 180.381 be amended by establishing tolerances for residues of the herbicide oxyfluorfen [2-chloro-1-(3-ethoxy-4-nitrophenoxy)-4-(trifluoromethyl)benzene] and its metabolites containing the diphenyl ether linkage in or on the raw agricultural commodities cotton at 0.05 part per million (ppm); fresh mint hay (peppermint and spearmint) at 0.1 ppm; pistachio (nut) at 0.05 ppm; and walnut (nut) at 0.05 ppm. The tolerances for cotton are expressed as cottonseed.

There were no comments received in response to this notice of filing.

The data submitted in the petition and other relevant material have been evaluated. For background information, refer to documents establishing tolerances for residues of oxyfluorfen in various commodities published in the **Federal Register** of December 24, 1980 (45 FR 85021) and April 24, 1981 (46 FR 23238). The toxicology data considered in support of these tolerances included: A rat oral lethal dose (LD_{50}) with an LD_{50} greater than 5.0 grams (g) per kilogram (kg) of body weight (bw); a rat cytogenetic test (purified oxyfluorfen) (negative); two Ames tests (one positive (technical oxyfluorfen) one negative (purified oxyfluorfen)); a host-mediated assay (purfied oxyfluorfen) (negative) a rec. *assay* (technical oxyfluorfen) (positive); a rat teratology study with no terata at 1,000 mg/kg of bw (highest dose) and a no-observed-effect level (NOEL) of 100 mg/kg of bw; a 3-generation rat reproduction study with a NOEL of 10 ppm, a 2-year dog feeding study with a NOEL of 100 ppm; a 24-month rat feeding study (chronic toxicity/oncogenicity) with a NOEL of 40 ppm; and a 20-month mouse feeding study (chronic toxicity/oncogenicity) with a NOEL of 2 ppm. Additional data to be submitted by the petitioner include a rabbit teratology study with postnatal evaluation; additional mutagenicity data and 90-day range finding studies for rat and mouse strains tested in the chronic toxicity studies listed above.

Based on a NOEL of 2 ppm in the chronic mouse feeding study and a safety factor of 100, the acceptable daily intake (ADI) is 0.003 mg/kg/day. For a 60-kg person the maximum permissible intake (MPI) is 0.18 mg/day. These tolerances and previously established tolerances utilize 21.01 percent of the ADI.

The nature of the residue of the pesticide is adequately delineated and an adequate analytical method (a gas-liquid chromatographic procedure using an electron-capture detector) is available for enforcement purposes.

Related documents establishing regulations and tolerances on oxyfluorfen in other commodities appear elsewhere in this issue of the **Federal Register.**

The herbicide is considered useful for the purpose for which the tolerances are sought, and it is concluded that the tolerances will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this notice in the **Federal Register,** file written objections with the Hearing Clerk, at the address given above. Such objections should be submitted in quintuplicate and specify the provisions of the regulation deemed

objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

As required by Executive Order 12291, the EPA has determined that this rule is not a "Major" rule and therefore does not require a Regulatory Impact Analysis. In addition, the Office of Management and Budget (OMB) has exempted this proposed regulation from the OMB review requirements of Executive Order 12291, pursuant to section 8(b) of that Order.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164 (5 U.S.C. 601-612)), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Effective on: January 13, 1982.

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346(a)(e)))

Dated: December 30, 1981.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Therefore, 40 CFR 180.381 is amended by adding and alphabetically inserting the commodities cottonseed, mint hay (peppermint and spearmint), pistachios, and walnuts to read as follows:

§ 180.381 Oxyfluorfen; tolerances for residues.

* * * * *

Commodity	Part per million (ppm)
* * * * *	
Cottonseed	0.05
* * * * *	
Mint hay (peppermint and spearmint)	0.1
* * * * *	
Pistachios	0.05
* * * * *	
Walnuts	0.05
* * * * *	

[FR Doc. 82-878 Filed 1-12-82; 8:45 am]

BILLING CODE 6560-32-M

40 CFR Part 180

[OPP-00000/R384; PH-FRL-2028-6]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Raw Agricultural Commodities Definitions and Interpretations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation amends 40 CFR 180.1(j)(5) to include dry bulb onions. This revision will subject dry onion bulbs to be examined for pesticide residues. The amendment was submitted by the Interregional Research Project No. 4 (IR-4).

EFFECTIVE DATE: Effective on January 13, 1982.

ADDRESS: Written objections may be submitted to the Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Donald Stubbs, Emergency Response Section, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 514B, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703-557-1723).

SUPPLEMENTARY INFORMATION: EPA issued a notice of proposed rule published in the **Federal Register** of October 27, 1981 (46 FR 52398) which announced that the IR-4, New Jersey Experiment Station, PO Box 231, Rutgers University, New Brunswick, NJ 08903, on behalf of the Technical Committee, proposed amending 40 CFR 180.1(j)(5) to indicate that onion bulbs shall be examined for pesticide residues in the same manner as garlic bulbs

There were no comments of referral received in response to this notice of proposed rulemaking.

The rationale for the amendment and other relevant material have been evaluated. The regulation is considered useful for the purpose for which it is sought. Therefore, the regulation is established by amending 40 CFR 180.1(j)(5) as set forth below.

Any person adversely affected by this regulation may, on or before February 12, 1982, file written objections with the Hearing Clerk, at the address given above. Such objections should be submitted in quintuplicate and specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

As required by Executive Order 12291, the EPA has determined that this rule is not a "Major" rule and therefore does not require a Regulatory Impact Analysis. In addition, the Office of Management and Budget (OMB) has exempted this proposed regulation from the OMB review requirements of Executive Order 12291, pursuant to section 8(b) of that Order.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels, or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Effective on: January 13, 1982.

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346(a)(e)))

Dated: December 29, 1981.

James M. Conlon,

Acting Director, Office of Pesticide Programs.

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Therefore, 40 CFR 180.1(j)(5) is revised to insert the item "dry bulb onions" and the words "onion bulbs" to read as follows:

§ 180.1 Definitions and interpretations.

* * * * * *

(j) * * *

(5) roots, stems, and outer sheaths (or husks) shall be removed and discarded from garlic bulbs and dry bulb onions, and only the garlic cloves and onion bulbs shall be examined for pesticide residues.

* * * * *

[FR Doc. 82-917 Filed 1-12-82; 8:45 am]

BILLING CODE 6560-32-M

40 CFR Part 180

[PP 1F2549/R381; PH-FRL-2029-3]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Oxyfluorfen

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for the combined residues of the herbicide oxyfluorfen and its metabolites in or on the raw agricultural commodities cherries, figs, and pears. This regulation to establish the maximum permissible level for the combined residues of the herbicide in or on the commodities was requested by the Rohm and Haas Co.

EFFECTIVE DATE: Effective on January 13, 1982.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A–110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Richard F. Mountfort, Product Manager (PM) 23, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 237, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703–557–1830).

SUPPLEMENTARY INFORMATION: EPA issued a notice published in the **Federal Register** of September 23, 1981 (46 FR 47007) which announced that Rohm and Haas Co., Independence Mall West, Philadelphia, PA 19105, had filed a pesticide petition (PP 1F2549) proposing that 40 CFR 180.381 be amended by the establishment of tolerances for the combined residues of the herbicide oxyfluorfen [2-chloro-1-(3-ethoxy-4-nitrophenoxy)-4-(trifluoromethyl)benzene] and its metabolites containing the diphenyl ether linkage in or on the raw agricultural commodities cherries, figs, and pears at 0.05 part per million (ppm).

There were no comments received in response to this notice.

The data submitted in the petition and other relevant material have been evaluated. For background information, refer to documents establishing tolerances for residues of oxyfluorfen in various commodities published in the **Federal Register** of December 24, 1980 (45 FR 85021) and April 24, 1981 (46 FR 23238). The toxicology data considered in support of these tolerances included: A rat oral lethal dose (LD_{50}) with an LD_{50} greater than 5.0 grams (g) per kilogram (kg) of body weight (bw); a rat cytogenetic test (purified oxyfluorfen) (negative); two Ames tests (one positive) (technical oxyfluorfen) one negative (purified oxyfluorfen); a host-mediated assay (purified oxyfluorfen) (negative); a rec. *assay* (technical oxyfluorfen) (positive); a rat teratology study with no terata at 1,000 mg/kg of bw (highest dose) and a no-observed-effect level (NOEL) of 100 mg/kg of bw; a three-generation rat reproduction study with a NOEL of 10 ppm; a 2-year dog feeding study with a NOEL of 100 ppm; a 24-month rat feeding study (chronic toxicity/oncogenicity) with a NOEL of 40 ppm; and a 20-month mouse feeding study (chronic toxicity/oncogenicity) with a NOEL of 2 ppm. Additional data to be submitted by the petitioner include a rabbit teratology study with post-natal evaluation; additional mutagenicity data, and 90-day range finding studies for rat and mouse strains tested in the chronic toxicity studies listed above.

Based on a NOEL of 2 ppm in the chronic mouse feeding study and a safety factor of 100, the acceptable daily intake (ADI) is 0.003 mg/kg/day. For a 60-kg person, the maximum permissible intake (MPI) is 0.18 mg/day. These tolerances and previously established tolerances utilize 21.01 percent of the ADI.

The nature of the residue of the pesticide is adequately delineated and an adequate analytical method (a gas-liquid chromatographic procedure using an electron-capture detector) is available for enforcement purposes.

Related documents establishing regulations and tolerances on oxyfluorfen in other commodities appear elsewhere in this issue of the **Federal Register.**

The herbicide is considered useful for the purpose for which the tolerances are sought, and it is concluded that the tolerances will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this notice in the **Federal Register,** file written objections with the Hearing Clerk, at the address given above. Such objections should be submitted in quintuplicate and specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

As required by Executive Order 12291, the EPA has determined that this rule is not a "Major" rule and therefore does not require a Regulatory Impact Analysis. In addition, the Office of Management and Budget (OMB) has exempted this proposed regulation from the OMB review requirements of Executive Order 12291, pursuant to section 8(b) of that Order.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–534, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Effective on: January 13, 1982.

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346(a)(e)))

Dated: December 30, 1981.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Therefore, 40 CFR 180.381 is amended by adding and alphabetically inserting the commodities cherries, figs, and pears to read as follows:

§ 180.381 Oxyfluorfen; tolerances for residues.

* * * * *

Commodity	Part per million
* * * * *	
Cherries	0.05
* * * * *	
Figs	.05
* * * * *	
Pears	.05
* * * * *	

[FR Doc. 82–877 Filed 1–12–82; 8:45 am]

BILLING CODE 6560–32–M

40 CFR Part 180

[PP IF2534/R387; PH–FRL–2029–5]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Propanil

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for the combined residues of the herbicide propanil and its metabolites in or on certain raw agricultural commodities. This regulation to establish the maximum permissible level for the combined residues of the herbicide in or on the commodities was requested by the Rohm and Haas Co.

EFFECTIVE DATE: Effective January 13, 1982.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A–110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Robert Taylor, Product Manager (PM) 25, Registration Division (TS–767C),, Office of Pesticide Programs, Environmental Protection Agency, Rm. 245, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703–557–1800).

SUPPLEMENTARY INFORMATION: EPA issued a notice published in the Federal Register of September 23, 1981 (46 FR 47006) which announced that the Rohm and Haas Co., Independence Mall West, Philadelphia, PA 19105, had submitted a pesticide petition (PP 1F2534) proposing that 40 CFR 180.274 be amended by the establishment of tolerances for the combined residues of the herbicide propanil (3', 4'-dichloropionanilide) in or on the raw agricultural commodities barley and oats grain at 0.2 part per million (ppm); barley and oats straw at 0.75 ppm.

There were no comments received in response to this notice of filing.

The data submitted in the petition and other relevant material have been evaluated. The toxicology data evaluated included an acute oral LD 50 (rats) with a LD 50 of 2,270 milligrams (mg)/kilorgram (kg); an acute dermal LD 50 (rabbits) with a LD 50 of 7,080 mg/kg; an acute inhalation LC 50 (rats) with a LC 50 of 18.6 mg/liter (1); primary dermal irritation (rabbits) with a toxicity category of IV; a primary eye irritation (rabbits) with a toxicity category of II; a skin sensitization test (negative); a 3-generation rat reproduction study with a no-observable-effect level (NOEL) of 1,000 ppm (highest dose tested); a 2-year dog feeding study with a NOEL of 15 mg/kg/day; a 2-year chronic/oncogenic (rat) study with negative oncogenic potential and a NOEL of 20 mg/kg/day; a rat teratology study with a fetotoxic NOEL of 20 mg/kg and negative up to 100 mg/kg; and a rabbit teratology study (negative up to 100 mg/kg and a fetotoxic NOEL of 20 mg/kg). Data desirable but currently lacking include an oncogenicity study on a second species and mutagenicity data. The company has been notified of the deficiencies and has agreed to perform the studies and to remove the uses from the label should the results of the above studies exceed the risk criteria for chronic toxicity as stated in section 162.11 of the regulations.

The provisional acceptable daily intake (PADI) is calculated to be 0.15 mg/kg/day based on a NOEL of 15 mg/kg/day using a 100-fold safety factor. For a 60-kg person, the maximum permissible intake (MPI) is 9.0 mg/day. The theoretical maximum residue contribution (TMRC) from existing tolerances (rice at 2.0 ppm; meat, fat, and meat byproducts of cattle, goats, hogs, horses, poultry, and sheep at 0.1 ppm; eggs at 0.05 ppm; milk and dairy products at 0.05 ppm; and wheat at 0.2 ppm) is 0.092 mg/day for a 1.5 kg diet. The tolerances on barley and oats will utilize 0.01 percent of the ADI and add 0.0011 percent of the TMRC to give a total TMRC of 0.0931 mg/day (1.5 kg diet), which represents 1.03 percent of the ADI.

There are no regulatory actions pending against the herbicide and no Rebuttable Presumption Against Registration (RPAR) criteria have been exceeded. The nature of the residues are adequately understood. An adequate analytical method (gas chromatography using electron capture detector) is available for enforcement purposes. Residues of propanil which could occur in eggs, milk, and meat of livestock will be covered under existing tolerances (§ 180.6(a)(2)).

The herbicide is considered useful for the purpose for which the tolerances are sought, and it is concluded that the tolerances will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, on or before February 12, 1982, file written objections with the Hearing Clerk, at the address given above. Such objections should be submitted in quintuplicate and specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

As required by Executive Order 12291, the EPA has determined that this rule is not a "Major" rule and therefore does not require a Regulatory Impact Analysis. In addition, the Office of Management and Budget (OMB) has exempted this proposed regulation from the OMB review requirements of Executive Order 12291, pursuant to section 8(b) of that Order.

Pursuant to the requirements of the regulatory Flexibility Act (Pub. L. 96–534, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

Effective on: January 13, 1982.

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346(a)(e)))

Dated: December 31, 1981.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Therefore, 40 CFR 180.274 is amended by adding and alphabetically inserting the commodities barley and oats grain and barley and oats straw to read as follows:

§ 180.274 Propanil; tolerances for residues.

* * * * *

Commodity	Part per million (ppm)
*	
Barley, grain	.2
Barley, straw	.75
* * * * *	
Oats, grain	.2
Oats, straw	.75
* * * * *	

[FR Doc. 82–874 Filed 1–12–82; 8:45 am]

BILLING CODE 6560–32–M

40 CFR Part 180

[PP 8F2058/R301A; PH–FRL–2028–7]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Oxyfluorfen; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Correction.

SUMMARY: This notice corrects production information on the herbicide oxyfluorfen contained in the regulation establishing tolerances for the pesticide on various raw agricultural commodities.

FOR FURTHER INFORMATION CONTACT: Richard F. Mountfort, Product Manager (PM) 23, Registration Division, Office of Pesticide Programs, Room 237, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703–557–1830).

SUPPLEMENTARY INFORMATION: EPA issued a regulation published in the **Federal Register** of April 24, 1981 (46 FR 23238, [PP 8F2058/R301]) establishing tolerances for residues of the herbicide oxyfluorfen [2-chloro-1-(3-ethoxy-4-nitrophenoxy)-4-(trifluoromethyl)benzene] in or on various raw agricultural commodities. The reference to the petitioner's production of oxyfluorfen as stated in the document was in error.

In the FR Doc. 81–12378, appearing at page 23238 under the heading "Supplementary Information:", the first sentence, second paragraph, second column on page 23239 which reads "The petitioner produces technical oxyfluorfen containing less than 200 ppm perchloroethylene." is corrected to read "The petitioner produces the formulated oxyfluorfen product containing less than 200 ppm perchloroethylene."

Dated: December 31, 1981.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 82–881 Filed 1–12–82; 8:45 am]

BILLING CODE 6560–32–M

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40 CFR Part 180

[9F2197/R283A; PH–FRL–2029–1]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Oxyfluorfen; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Correction.

SUMMARY: This notice corrects production information on the herbicide oxyfluorfen contained in the regulation establishing tolerances for the pesticide on various raw agricultural commodities.

FOR FURTHER INFORMATION CONTACT: Richard F. Mountfort, Product Manager (PM) 23, Registration Division, Office of Pesticide Programs, Room 237 CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–1830).

SUPPLEMENTARY INFORMATION: EPA issued a regulation published in the **Federal Register** of December 24, 1980 (45 FR 85021, [PP 9F2197/R283]) establishing tolerances for residues of the herbicide oxyfluorfen [2-chloro-1-(3-ethoxy-4-nitrophenoxy)-4-trifluoromethyl)benzene] in or on various raw agricultural commodities. The reference to the petitioner's production of oxyfluorfen as stated in the document was in error.

In the FR Doc. 80–40118, appearing at page 85021 under the heading "Supplementary Information:", the first sentence, second paragraph, first column on page 85022 which reads "The petitioner produces technical oxyfluorfen containing less than 200 ppm perchloroethylene." is corrected to read "The petitioner produces the formulated oxyfluorfen product containing less than 200 ppm perchloroethylene."

Dated: December 31, 1981.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 82–879 Filed 1–12–82; 8:45 am]

BILLING CODE 6560–32–M

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40 CFR Part 180

[PP OF2381/R386; PH–FRL–2028–5]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Aqueous Extract of Seaweed Meal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes an exemption from the requirement of a tolerance for residues of the plant growth regulator aqueous extract of seaweed meal derived from *Ascophyllum Nodosum* when used in or on the raw agricultural commodity rice. This regulation was requested by the Dawn Corp.

EFFECTIVE DATE: Effective on January 13, 1982.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A–110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Robert Taylor, Product Manager (PM) 25, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 245, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–1800).

SUPPLEMENTARY INFORMATION: EPA issued a notice published in the **Federal Register** of September 2, 1980 (45 FR 58193) which announced that the Dawn Corp., 924 Fourth Ave. South, PO Box 100, Dension IO 51442, had submitted a pesticide petiton (PP OF2381) proposing that 40 CFR 180.1042 be amended by the establishment of an exemption from the requirement of a tolerance for residues of the plant growth regulator aqueous extract of seaweed meal derived from *Ascophyllum Nodosum* when used on the raw agricultural commodities corn (maize), rice, soybeans, and wheat. The petition was subsequently amended deleting corn (maize), soybeans, and wheat as these commodities are already exempted under 40 CFR 180.1042.

There were no comments received in response to this notice of filing.

The data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the proposed exemption from the requirement of a tolerance included an acute oral LD50 (rat) with a LD50 greater than 10 milliliters (ml)/kilogram (kg), an eye irritation study (rabbit) with a score of "mildly irritating", and a dermal irritation study. All other toxicology studies and requirements, including long and short-term feeding studies and a 3-generation reproduction study, were waived by the Director, Office of Pesticide Programs in accordance with the provisions of 40 CFR 162.8 as communicated in a memorandum of January 19, 1978. The requirement of an adequate analytical method for enforcement purposes was also waived because aqueous extract of seaweed meal is a derivative of a human food. The marine algae species *Ascophyllum Nodosum* from which the product is derived are identical to, or closely related to, species used for human consumption and livestock and poultry feeds. The product, then, which is derived from these species, would not appear to present an unacceptable hazard to humans and fish and wildlife since the algae are used as a normal dietary item. It is reasonable to assume that no adverse environmental effects may result from an extract of a nontoxic plant material containing only natural materials of a nature common to members of the plant kingdom and subject to the usual known routes of natural degradative processes.

An exemption from the requirement of a tolerance has previously been established for residues of the extract when used on apples, carrots, celery, corn, grapes, oranges, peaches, peanuts, peppers, potatoes, soybeans, strawberries, sugarbeets, tomatoes, and wheat. There are no data considered desirable but lacking; thus no steps are being taken to obtain additional data. No regulations are pending against continued registration of the product nor are there any other considerations for establishment of the proposed exemption.

The subject material is considered useful for the purpose for which the exemption from the requirement of a

tolerance is sought, and it is concluded that the exemption will protect the public health. Therefore, the exemption from the requirement of a tolerance is established as set forth below.

Any person adversely affected by this regulation may, on or before February 12, 1982, file written objections with the Hearing Clerk, at the address given above. Such objections should be submitted in quintuplicate and specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

As required by Executive Order 12291, the EPA has determined that this rule is not a "Major" rule and therefore does not require a Regulatory Impact Analysis. In addition, the Office of Management and Budget (OMB) has exempted this proposed regulation from the OMB review requirements of Executive Order 12291, pursuant to section 8(b) of that Order.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

Effective on: January 13, 1982.

(Sec. 408(e), 68 Stat 514 (21 U.S.C. 346(a)(e)))

Dated: December 31, 1981.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Therefore, 40 CFR 180.1042 is revised by reformatting the commodities in an alphabetical listing and inserting the commodity rice to read as follows:

§180.1042 Aqueous extract of seaweed meal; exemption from the requirement of a tolerance.

Aqueous extract of seaweed meal derived from *Laminaria digitata, Laminaria hyperborea, Fucus serratus,* and *Ascophyllum Nodosum* is exempted from the requirement of a tolerance when used as a plant growth regulator in or on the following raw agricultural commodities:

Commodity
Apples
Carrots
Celery
Corn
Grapes
Oranges
Peaches
Peanuts
Peppers
Potatoes
Rice
Soybeans
Strawberries
Sugarbeets
Tomatoes
Wheat

[FR Doc. 82-859 Filed 1-12-82; 8:45 am]

BILLING CODE 6560-32-M

40 CFR Part 193

[FAP 9H5230/R70A; PH-FRL-2028-8]

Tolerances for Pesticides in Food Administered by the Environmental Protection Agency; Oxyfluorfen; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Correction.

SUMMARY: This notice corrects production information on the regulation permitting residues of the herbicide oxyfluorfen and its metabolite in refined soybean oil.

FOR FURTHER INFORMATION CONTACT: Richard F. Mountfort, Product Manager (PM) 23, Registration Division, Office of Pesticide Programs, Rm. 237, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-1830).

SUPPLEMENTARY INFORMATION: EPA issued a food additive regulation published in the Federal Register of April 24, 1981 (46 FR 23228, [FAP 9H5230/R70]) permitting the combined residues of the herbicide oxyfluorfen [2-chloro-1-(3-ethoxy-4-nitrophenoxy)-4-(trifluoromethyl)benzene] and its metabolites containing the diphenyl ether linkage in refined soybean oil. The reference to the petitioner's production of oxyfluorfen was in error.

In the FR Doc. 81-12406, appearing at page 23228 under the heading "Supplementary Information" the first sentence, fourth paragraph, third column on page 23228 which read "The petitioner produces technical oxyfluorfen containing less than 200 ppm perchloroethylene." is corrected to read "The petitioner produces the formulated oxyfluorfen product containing less than 200 ppm perchloroethylene."

Dated: December 31, 1981.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 82-880 Filed 1-12-82; 8:45 am]

BILLING CODE 6560-32-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 5-12

[APD 2800.2 CHGE 17]

Service Contracts—Reporting Taxpayer Identification Numbers

AGENCY: General Services Administration.

ACTION: Final rule.

SUMMARY: The General Services Administration Procurement Regulations, Chapter 5, are amended to prescribe procedures for contracting officers to obtain and report service contractors' taxpayer identification numbers to the Office of Finance. The taxpayer identification number is required by the Internal Revenue Service (IRS) for reporting income. The intended effect of this order is to ensure compliance with IRS policy.

EFFECTIVE DATE: January 22, 1982.

FOR FURTHER INFORMATION CONTACT: Philip G. Read, Director, Federal Procurement Regulations Directorate, Office of Acquisition Policy (703-557-8947).

1. The Table of Parts for Chapter 5 is amended by adding the following entry:

Part	
5-12	*Labor*

2. Part 5-12 is added as follows:

PART 5-12—LABOR

Subpart 5-12.9—Service Contract Act of 1965

Sec.

5-12.950 Service contracts—reporting taxpayer identification numbers.

Subpart 5-12.9—Service Contract Act of 1965

§ 5-12.950 Service contracts—reporting taxpayer identification numbers.

(a) *General.* This section requires GSA contracting officers to obtain and report service contractors' taxpayer identification numbers (employer identification number or social security number) to the Office of Finance. The Office of Finance in turn will record and report this information on Internal Revenue Service Form NEC 1099 in

compliance with IRS directives regarding the reporting of income.

(b) *Procedures.* (1) This procedure pertains only to service contractors who are (i) not incorporated and who (ii) receive payments from GSA totaling $600 or more in any calendar year. If the contracting officer anticipates that payments to the contractor will equal or exceed the $600 amount for the year, he shall report the taxpayer identification number (TIN).

(2) GSA contracting officers shall obtain and report service contractors' taxpayer identification numbers to their designated Office of Finance.

(3) The taxpayer identification number is either the employer identification number of social security number.

(4) Contracting officers shall make the request for the TIN a part of the solicitation package. A copy of the contract (containing the TIN) shall be forwarded to the Office of Finance.

(5) The TIN shall also appear on the face of any orders placed against a contract, copies of which are forwarded to the Office of Finance for payment.

(6) If written solicitations/orders are not used, the TIN should appear on the invoice certified by an authorized Government official and forwarded to the Office of Finance for payment.

(7) When a prospective service contractor fails to provide the TIN in an offer, it shall be handled as a minor informality.

(8) If a contractor refuses to furnish the TIN to the contracting officer, the contracting officer shall so notify the Office of Finance.

(Sec. 205(c), 63 Stat. 390; (40 U.S.C. 486(c)))

Dated: December 21, 1981.

Gerald McBride,

Assistant Administrator for Acquisition Policy.

[FR Doc. 82-868 Filed 1-12-82; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405 and 441

Medicare and Medicaid Programs, Less Than Effective Drugs

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of legislation affecting implementation and enforcement of interim final rule.

SUMMARY: We are notifying affected parties that, in accordance with recent legislation, HCFA will continue reimbursement for expenses incurred for drugs identified in section 2103 of the Omnibus Budget Reconciliation Act of 1981 through March 31, 1982.

FOR FURTHER INFORMATION CONTACT: Henry J. Hehir, 301-594-8561.

SUPPLEMENTARY INFORMATION: Regulations were published in the **Federal Register** on October 1, 1981 (46 FR 48550), to implement section 2103 of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35). That section prohibits the use of Federal funds under the Medicare Part B and Medicaid programs for drugs that the Food and Drug Administration has proposed, in a notice of opportunity for hearing, to withdraw from the market because they are less than effective, as well as identical, related, or similar drugs. In the **Federal Register** notice, the Department advised that it would grant a grace period until January 1, 1982, before we would begin enforcement of this provision.

In a lawsuit brought in the United States District Court for the District of Columbia *National Council of Senior Citizens* v. *Schweiker* (Civ. Action No. 81-2462), the Court on October 23, 1981, held that the Secretary was not authorized to grant a grace period and ordered the Secretary to discontinue reimbursement under Medicare Part B and Medicaid for expenses incurred on or after October 30, 1981, for the drugs identified in section 2103. Notice of the Court's order was published in the **Federal Register** on October 30, 1981 (46 FR 53664).

On December 15, 1981, the President signed H.J. Res. 370, a resolution continuing appropriations for the government through March 31, 1982. Section 131 of that resolution provides that section 210 of the Department's appropriations bill (H.R. 4560), as passed by the House of Representatives on October 6, 1981 (and as also incorporated as section 209 in the bill reported by the Senate Committee on Appropriations on November 9, 1981), shall be applicable with respect to sums appropriated pursuant to the continuing resolution. The provision incorporated by reference requires that "None of the funds appropriated or otherwise made available in this title may be used to pay the salaries of officers and employees for implementation or enforcement of section 2103 of the Omnibus Budget Reconciliation Act of 1981, or for the implementation or enforcement of rules or regulations pursuant to such section."

The legislative history of this section indicates that the section was intended to require the Department to continue reimbursement for drugs subject to section 2103 of the Omnibus Budget Reconciliation Act. See 127 Cong. Rec. H 7067-73 (October 6, 1981); 127 Cong. Rec. S 13762-65 (November 19, 1981). Accordingly, the Department will continue reimbursement for drugs subject to section 2103 with respect to expenses incurred during the period governed by the continuing resolution—December 16, 1981, through March 31, 1982. In addition, during the same period the Department will not enforce or implement section 2103 with respect to expenses incurred prior to December 16, 1981.

Dated: January 8, 1982.

Carolyne K. Davis,

Administrator.

[FR Doc. 82-959 Filed 1-12-82; 8:45 am]

BILLING CODE 4120-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 73

[BC Docket No. 81-352; FCC 81-584]

Frequency Allocation and Radio Treaty Matters; General Rules and Regulations and Radio Broadcast Services; Amendment of the Commission's Rules Concerning Use of the Subsidiary Communications Authorization for Utility Load Management

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein resolves the issue raised in the Commission's Notice of Proposed Rule Making adopted May 21, 1981 proposing to permit a commercial FM Subsidiary Communication Authorization (SCA) to be used to transmit signals for utility load management purposes. This is a non-broadcast use presently prohibited. The Commission is amending its rules to permit this use, finding it to be in the public interest.

DATE: Effective February 16, 1982.

FOR FURTHER INFORMATION CONTACT: Norman Plotkin, Broadcast Bureau, (202) 632-6302.

SUPPLEMENTARY INFORMATION:

Adopted: December 17, 1981.

Released: January 8, 1982.

By the Commission.

In the matter of amendment of §§ 73.293 and 2.106 of the Commission's rules concerning use of the subsidiary communications authorization for utility

load management. BC Docket No. 81-352. Report and Order (Proceeding Terminated).

Introduction

1. On May 21, 1981, the Commission adopted a Notice of Proposed Rule Making (NPRM) proposing an amendment to its FM Subsidiary Communication Authorization (SCA) rule (46 FR 31290; June 15, 1981). The amendment proposed permitting a specific energy conserving technique, utility load management, to be used on the FM subcarrier signal of commercial FM radio stations. The authorization would be effected by exempting such use from the "non-broadcast" prohibition contained in the Commission's SCA rules (§ 73.293). This authorization would allow utilities to use SCA signals as an additional means to alleviate peak period energy demands and to make possible other energy conserving measures. The Commission felt that authorizing load management use of SCA's was clearly in the public interest. Our tentative view has been strongly confirmed by the comments received. Therefore, the Commission is adopting the proposal with this Report and Order.[1]

2. The Commission proposed this rule change because it felt that energy conservation is of critical importance to our nation. Great amounts of effort and funds are being expended toward its attainment. Managing utility loads has been given strong Congressional endorsement in the Public Utilities Regulatory Policies Act of 1978 (PURPA), and a number of states require positive utility action in its use. Load management aids materially in conserving energy by causing it to be used more efficiently. Its use also helps to damp rising energy prices by: (1) encouraging customers to shift their energy demands to off-peak periods; (2) eliminating the capital costs of generating plants that are required solely to meet such peak demand; and (3) reducing the higher fuel and operating costs associated with bringing standby equipment into use during periods of peak energy demand.

3. There are three known ways that an FM SCA subcarrier signal, "piggy-backed" on the main channel signal, could be used for utility load management purposes. It can be used: (1) to turn off certain users' equipment that consumes a particular fuel;[2] (2) to transfer users from one type of equipment to another in order to redistribute fuel demand from one fuel to another; and (3) to implement time-of-day metering. Switching the metering of a particular fuel during periods of higher fuel demand allows the charging of higher rates to reflect the increased operating cost conditions during those periods.[3] The present "non-broadcast" limitations on SCA use were developed in 1960 in the Commission's Report and Order, Docket No. 12517 (19 FR 1619 (1960)). Their basis was the fear that availability of such uses would: (1) tend to block future development of the infant FM stereophonic broadcasting service; (2) cause serious competitive hardship to Domestic Public Radio Services licensees; and (3) amount to a *de facto* reallocation of broadcast frequencies. In the notice in the present proceeding, the Commission stated its firm belief that these reasons were either no longer relevant in today's environment or were strongly overshadowed by the beneficial effects this permission would have on the national welfare. In soliciting comments on its proposal, the Commission also requested comments on any impact that possible future additions to permissible SCA uses might have on the complexity of administration of the Table of Frequency Allocations.

The Comments

4. Despite the limited scope of this amendment, the Commission received more than 80 comments and 11 reply comments covering a wide spectrum of opinion. The predominant views expressed by these comments can be classified into five basic groupings.

A. More than 50 commenters unqualifiedly favored the action. These were mainly utilities and energy related organizations, both private and government, who represent a substantial number of consumers.[4]

B. Some commenters wanted to broaden the proceeding to permit: (a) the specific inclusion of AM carrier use for load managment purposes; or (b) complete deregulation of FM SCA and AM carrier use to permit licensees to exercise complete freedom in their use as long as such use was consistent with primary broadcast responsibilities. The eight comments and six reply comments received in this group were mainly from broadcasting organizations and equipment producers.

C. A few commenters wanted the inclusion of public broadcasting FM SCA's in the proceeding with their compensation either: (1) on a cost-reimbursable basis in conformity with present rules; or (2) on a for-profit basis just as commercial FM stations are allowed. The four commenters were all public broadcasting organizations.

D. One commenter, a common carrier, felt that the authorization should be subject to common carrier rule treatment.

E. Finally, some commenters wanted the Commission either not to authorize the use of SCA's for such a purpose, or, at least, to relegate it to a secondary position relative to broadcast-type activities. The 16 comments of this type were predominantly from nonprofit radio reading service (RRS) groups currently using SCA's to broadcast to sight-impaired people, and from MUZAK, a commercial firm that uses FM SCA's for background music.

5. In the first group, the need for utility load management was perhaps best summarized by the California Energy Commission in citing evidence from previous load management experiments. They stated that, because of conservation efforts and the downward effect of price increases on consumer energy demand, utilities are faced with a declining average demand relative to peak demand. Nevertheless, it is the peak demand they must plan to serve since that is the maximum they might have to provide. To do so, they must have surplus generation capability, the cost of which is paid for by the consumer. Their comments go on to state that it typically costs a utility less than $30.00 a year to shift a kw of peak load compared to over $100.00 to produce it with a gas turbine. As the demand for electricity increases during a peak period less efficient peaking plants are brought into service. These inefficient plants use as much as 4500 Btu/kwh more energy than base plants and ordinarily use petroleum distillate fuels. Thus, they comment, direct utility control of customer energy load, by decreasing the level of peak demands, allows more efficient use of generating systems.

6. The most common need expressed in the comments as a critical component

[1] In conjunction with this action, the Commission is also considering approval of a related energy conserving proposal in the form of a notice of proposed rule making to authorize AM licensees to use their AM carriers for utility load management purposes.

[2] The potential saving here could be substantial simply in terms of the largely untapped 93 million residential units—primarily water heaters and air conditioners—capable of being remotely controlled by agreement between the utility and user.

[3] This price pressure serves as an effective means of discouraging energy demand of a less important nature during heavy use periods or during severe shortage periods.

[4] This group of commenters included utilities serving about 16 million customers, utility trade associations whose membership included about 4000 electric and gas utilities, and eight state regulatory energy commissions representing the views of states containing about one-third of the U.S. population.

to effective load management was the need for many communication alternatives to meet the diversified situations and cost capabilities of utilities. This argument and the importance of FM SCA availability as a cost effective solution can be lucidly demonstrated by drawing from the statements of various commenters. For example, Vedette Energy Research, Inc. stated:

> Despite the demonstrated and proven benefits to the nation generally and the consumer individually, despite the Federal mandate, the state imperatives and the utilities' own desire to realize the relief capable through ULM (utility load management) there has been no widespread introduction of ULM across the nation * * * (a principal underlying reason is) lack of a reliable cost-effective delivery technology. Indeed, operators of many of the ULM experimental projects or small scale permanent installations confirm that the single major weakness in such systems is the communications link whose function it is to deliver the command from the utility to the load or end user.

Joseph Blackburn of H. Zinder Associates stated:

> No single direct load management technique can be optimal for all electric utility systems. Each individual utility must tailor a load management program to fit the utility's specific needs, taking into consideration the utility's operating characteristics, demographic profile and regulatory climate. Every utility system needs to have a full range of telecommunication options available to it in making economic evaluations between alternative direct control techniques * * *. Enactment of this rule amendment will promote an increase in telecommunications options available for load management and "foster the development of equal opportunities in the selection of a load management technique best suited to the particular requirement of all utilities, regardless of their size, location or type of ownership.

7. The potential users of the SCA technology, users to which such a system would be available, are substantial. Any utility whose customers come within the broadcast range of an FM station would be a potential user. In its comments, the American Public Power Association (APPA) estimated that at least fifty percent of its more than 1700 public power system members, containing eighty percent of the customers served by its members, would have access to FM SCA use.[5]

8. Many utilities appear to be at an important decision point with reference to load management techniques. The National Rural Electric Cooperative Association asserted that its members had projects for the next decade in the planning stages,[6] and Entec Consulting stated: "Since the utility industry is just beginning the demonstration/implementation of load management, it is important that the reliable, cost-effective systems are demonstrated and implemented. Unless the Commission acts positively now, the reliable cost-effective FM subcarrier systems will never be a serious consideration and many proposed load management systems will not be implemented for lack of a proper carrier system." The Burlington Electric Department, for example, is currently investigating numerous strategies but is very cost constrained due to its limited size. "Should transmission service become available to use through a contract to 'rent' a small portion of the FM band from commercial operators, the feasibility of our load management project would be virtually guaranteed."[7]

9. Comments were received from two FM SCA equipment system developers[8] emphasizing the technical sophistication and bandwidth efficiency of techniques available that would permit the use of SCA for utility load management without interfering with present SCA users. As stated by Vedette, its transmission could "simultaneously occupy the same subcarrier being used for such things as background music, physican's medical programs, radio reading services for the blind and other aural SCA programs, without any deleterious effects on those programs, the main channel programming or ULM system functions."

10. The second group, while agreeing with utility load management use of SCA, rejected the present proposal as too limited in scope and urged the further expansion of the docket. Two commenters,[9] urged expansion of the proceeding to encompass AM load management radio techniques as well. They urged the Commission to include and authorize in this docket an AM carrier technique developed by Altran Electronics, Inc. In its comments, Altran stated that such AM technical ability had been tested and is now available.[10] Altran claimed that its AM system offers a number of advantages which should promptly be made available. They urge the Commission to approve both systems at the same time "so that the two technologies may compete together in the market place."[11] The other commenters in this group predominantly urged that the docket be expanded to allow all uses of FM SCA and AM carriers consistent with licensees primary broadcast responsibilities. General Electric's statement appears to capture the general viewpoint of these commenters when it asked the Commission "to recognize, as a matter of policy, the variety of ways in which the broadcast carrier may be utilized. The Commission should expeditiously broaden this proceeding to consider at one time the removal of regulatory restraints on the licensee's authority to provide any such services over either its FM subcarrier or AM carrier."[12] The reply comments received in this group urged the Commission, should it decide not to authorize the AM carrier use in this action, to conduct an expedited proceeding on its behalf.

11. The third group recommended that the Commission expand this procedure to include the SCA's of public broadcasting FM stations, as well, because the energy-efficiency reasons given in support of commercial FM SCA's were equally applicable to public broadcasting FM stations. Such expansion would permit the more than 1100 public radio stations to assist in energy conservation efforts with the use of their SCA's, adding to the benefits of the proposal by making SCA utility load management available in more remote areas where commercial stations are not present, and offering an additional source of needed revenue to these stations.[13] However, the commenters took different stands with reference to the remunerative aspects for public

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[5] APPA's estimate was developed by using four representative states of its membership (Minnesota, Ohio, Nebraska and California).

[6] The National Rural Electric Cooperative Association claims that its nearly one thousand nonprofit rural electric system members have been leaders in load management. They serve nine million rural member/customers in 46 states or ten percent of the nation's customers.

[7] Vermont's largest municipal utility.

[8] These were Vedette Energy Research, Inc. and the Blaupunkt Division of Robert Bosch Sales Corporation. Blaupunkt stated that a station employing its SCA technique "does not have to reduce its main or subchannel modulations to accommodate these signals."

[9] CBS, Inc. and Altran Electronics, Inc.

[10] For the report of this test see: Broadcast Radio System for Distribution Communications, Electric Power Research Institute ("EPRI"), EPRI EL-1868, Project 1535-1, Final Report, June 1981.

[11] As noted in Footnote 1 and discussed in the next section of this proceeding, the Commission has decided to take positive action on this request by initiating a separate proceeding.

[12] General Electric also states: "Clearly the time has come to explore on a broader scale the numerous and varied beneficial uses to the public which would be made of the FM SCA * * * as well as the AM carrier."

[13] NPR felt the Commission's notice was ambiguous as to whether the proposed change would apply to public FM stations due to an inadvertent use in the Flexibility Act portion of the proposal of the total number of FM stations rather than just the number of commercial stations.

broadcasters. NPR's proposal was to maintain a strictly noncommercial stance in keeping with present rules (Section 73.593(a)). CPB and other commenters urged that this service be permitted to be sold or leased at the going market rate. In urging a for-profit basis, CPB stated that in so doing, "the Commission, in this proceeding, can serve the public's interest in a financially healthy non-commercial educational FM broadcast service, competition in the rendering of a new service to the public, and in the conservation of energy resources and the reduction of overhead in business * * *."

12. The fourth category consists of only one commenter, Microband Corporation of America, a licensed common carrier in the Multipoint Distribution Service (MDS). While supporting the goals sought in the proceeding, this commenter called upon the Commission to subject such SCA uses that are in competition with common carriers to "equivalent regulatory treatment" to prevent unfair competition as a result of differing Commission requirements.

13. The last group of commenters opposed the proposed action altogether. They preferred outright rejection of the proposal, or if necessary, approval only if such "nonbroadcast" SCA use were made subject to definite limitations that would assure priorities to current and potential broadcast-type uses of SCA and/or guarantee their full protection. It would appear that the strongest opposition to the Commission's proposal is from the major present users of FM SCA's. In summary, the basis for this opposition by RRS and MUZAK is their fear that approval of SCA for load management use will increase competition and the price of SCA rentals (already on the rise because of increased competition from new broadcast-type users). They fear that allowing a new user, such as load management, will force RRS and small MUZAK franchisees, both with limited funds, to bid against "monopoly" utility companies which they assert could easily outbid them and, thereby, endanger their very existence. They feel it also would ultimately result in a reallocation of broadcast frequencies to non-broadcast use.

14. RRS states that SCA facilities are currently the only practical means of providing radio reading services and, they assert, squeezing them off SCA's could jeopardize a "vitally needed service to the handicapped population of the nation."[14] This, they declare, is contrary to the public interest. They conclude that "The courts have found that the public interest standard includes consideration of the needs of the blind and handicapped * * * (and) that the Commission has an obligation to consider the needs of the handicapped under the rubric of the public interest."[15] Various options were offered by the RRS commenters which would allay their concerns. The preferred option was outright rejection of the present proposal. However, should the Commission decide to proceed, the following other options were offered to accommodate utilities but assure relatively unimpaired functioning of RRS's operations.

(1) A priority for broadcast-type uses of SCA could be given before their use for utility load management would be allowed; or the utility could be required to ensure continuation of RRS while fulfilling its own need.

(2) Use of SCA's for utility load management purposes could be restricted to subaudible or superaudible tones or to short transmissions of only a few seconds duration to minimize interference with RRS programming.[16]

MUZAK, in its comments and again in its reply comments, set forth its preferred rule alternatives in a somewhat different order than RRS, positing as follows: Outright rejection of this FM SCA proposal; deferral of this action as an inadequate "piecemeal approach" until completion of a comprehensive study on SCA's; and, lastly, should the Commission still decide to authorize SCA's to be used for load management purposes, require a "double accommodation" by confining that function to subaudible tones to protect existing and potential broadcast SCA services.

Discussion

15. A number of comments questioned the Commission's "piecemeal approach" in treating utility load management separately from a large, general study of FM SCA uses. The Commission recognizes the importance and impact of FM SCA's generally and its decision to separate the load managment aspect from other possible uses has been a deliberate one. From its initial study of the SCA area, the Commission concluded that the loaded management use of SCA's would be an important and relatively clear-cut rule change that warranted swift treatment since it was clearly in the public interest. It offers substantial national energy conservation and cost reduction opportunities and is anticipated to have little if any negative effects since it is possible to transmit a load management signal on a very narrow band which would permit sharing of the SCA band with other users. Since a general rule making considering all FM SCA uses would require a substantially larger amount of time to resolve, it would result in an unnecessary postponement of this simple and straightforward, yet highly important, aspect.

16. First, we consider those requests to expand this proceeding to include certain specific additions; namely, authorization of utility load management use by modulating an AM station's carrier, and allowing public broadcasting FM stations to get such authorization. With reference to adding AM to the proceeding, the Commission is persuaded by the evidence supplied by the various commenters that the addition of the AM carrier method should be considered since it appears to offer a worthwhile expansion of the choices utilities are seeking in their energy conservation efforts. Its treatment, however, is outside the scope of this notice and would require issuance of another expanded notice. Therefore, rather than delay the present proceeding by expanding it to include this AM carrier method, the Commission is opening an expedited separate proceeding proposing AM carrier authorization for load management purposes.

17. The Commission also agrees with the view expressed by public broadcasting commenters that the same energy-saving case advanced for commercial FM SCA use for utility load management is applicable to public broadcaster's FM SCA's as well. However, recent Congressional changes in the Public Broadcasting Amendment Act of 1981 as to permissible activities of public broadcasting raise questions of interpretation with reference to the Commission's current rules. We are now considering this impact as well as other possible actions that would relate to public broadcasting activities. Because of this and to avoid delay of the present

[14] Association of Radio Reading Services comment.

[15] From Chicagoland Radio Information Service comment. The court case referred to was *Gottfried* v *FCC* (D.C. Cir. April 17, 1981) (49 RR 2d 449).

[16] Washington Ear, Inc., one of the commenters who proposed option 2, saw very positive possibilities in this option, stating that if "power companies are restricted in their uses of SCA channels, the additional income they could provide, particularly to public radio stations, could help to finance the availability of SCA facilities for other groups who are performing socially desirable functions for their communities, but which are only able to pay very modest fees for the use of a subcarrier channel."

proceeding, the Commission has decided against issuing a new notice encompassing public broadcasters. Instead, we will treat public broadcasting separately regarding this authorization.

18. The commission also rejects the view of Microband Corporation of America that SCA use for load management, because it is similar to services provided by common carriers, should have the same regulatory requirement as imposed on common carriers. The Commission agrees with the statement in a number of reply comments that the Microband comment misunderstands the nature of this rulemaking, that its "proposal to impose title II (Common Carrier) regulation on SCA uses fails to recognize that the title III (Broadcasting) licensing issues in this docket stand separate and apart from any title II regulatory questions that may arise in the context of specific, individual SCA applications." [17] We do recognize that determining what activities constitute common carriage is often difficult and we are reviewing this complex matter in other Commission proceedings.[18]

19. Finally, we consider the concerns of those generally opposed to allowing this non-broadcast use of FM SCA's. These concerns seem basically rooted not so much in the fact that non-broadcast users would be allowed to participate as in the fact that the new users would represent additional competition for the existing SCA capacity. Although there will likely be some impact on existing users, this effect may not be particularly great. Two factors operate to reduce the expected impact of the new authorization. First, the narrow band capability of the techniques available for load management use of SCA's permits the simultaneous use of many SCA's for load management signals and aural use with no apparent detrimental effects. Secondly, it seems that economic incentives are generally present both to utilities and FM stations to mutually share the SCA spectrum.[19]

20. The utility company demand for an SCA is based on its economical use. The comments indicate that utilities are very interested in managing their loads because of the cost saving it offers them. It follows then that they will be interested in the specific FM SCA approach only if it provides load management at a lower cost than other techniques. Therefore, it seems reasonable to expect utilities to act in a rational manner and seek to share SCA's with other users in many cases in order to minimize their cost. This is particularly true since a majority of the utility companies are small and, as stated in their comments, are faced with strong cost constraints themselves. On the SCA supply side, commercial FM stations would have the same economic incentives to increase their net revenue from SCA's by establishing policies that make such sharing worthwhile.

21. We believe the arguments against granting this authorization by RRS and MUZAK are not valid. The evidence in this docket has made clear that dual use of the SCA by utility load managers and aural users is available and practical and there is a strong economic incentive for sharing where possible, as discussed above. In fact, a reduction in SCA cost per user (or smaller increases) may result from this expanded use of SCA's due to (1) the spreading of SCA prevailing rental rates over two users, (2) the possible reduction in the cost of SCA receivers from any resulting economies of volume production to meet load management demands, and (3) the possible opening up of additional SCA's not presently being used.

22. A substantial number of FM stations do not currently operate SCA's. The additional financial incentive offered by utilities may well entice them to do so, making additional SCA's available to other users as well. In addition to SCA's available under current rules, the FM Quadraphonic Broadcasting proceeding (Docket No. 21310) proposes to expand subcarrier capability by permitting subcarriers on the FM baseband up to and including 99 KHz (from 75 KHz currently). Also, some of the TV stereo systems now being tested would add the possibility of substantially increasing the number of SCA's. As an example of the possible effect such expansion may have on RRS services, the Commission has already received one request for an experimental authorization to use the subcarrier of a TV aural FM transmitter to provide expanded reading service for the visual handicapped.

23. Failing outright rejection of the Notice, RRS and MUZAK wanted load management uses to be secondary to those of a traditional broadcast nature. Such a priority system could: (a) be one in which broadcast-type uses of SCA's would have first choice before an SCA would be made available for load management; (b) specifically establish a priority for RRS and other noncommercial or non-profit users; (c) restrict load management techniques to the use of subaudible tones to assure non-interference with broadcast-type users; or (d) grant the authorization but require Commission review of individual RRS endangering situations.

24. In the case of for-profit users of SCA's, like MUZAK, there would seem to be no reason why the Commission should protect such users from the normal forces of competition, since they do not differ from any other business venture. SCA's are used because they offer a least-cost opportunity for profit. As with the users of any resource, if one party values it more highly than another, it will be bid over to that use. Since we do not wish to unnecessarily interfere with such normal business practices, the Commission does not adopt a priority system for broadcast-type users.

25. In the case of RRS, the Commission recognizes the value of the service to the audience which it serves and applauds its effort on behalf of the sight-impaired. At this point, the Commission has no requirement that its licensees engage in special services of this type and, indeed, would be in a difficult position if it attempted to determine the relative social value of providing reading service for the blind at the possible cost of higher utility bills for the poor. Moreover, the serious problem facing RRS groups is the rising cost of SCA rentals that are already a fact of life because of the increased recognition of the value of an SCA by new broadcast-type users such as stock, commodity, agricultural, and business information services. This is a fact clearly acknowledged by RRS commenters. This trend can be expected to continue. Therefore, RRS is simply faced with a situation common to most organizations today, namely, the rising cost of the resources they require relative to their income. A priority system might assure that an SCA would be available to broadcast-type users but there is no assurance it would continue to be at a price the RRS can afford.

26. The American Foundation for the Blind noted that 110 SCA's are in use for RRS purposes, 95 on public broadcasting stations and only 15 on commercial stations. To assure guaranteed

[17] From American Broadcasting Companies, Inc. reply comment.

[18] See Further Notice of Proposed Rule Making, Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations therefor, 84 FCC 2d 445 (1981); and Notice of Proposed Rule Making, BC Docket No. 81-792, 46 FR 60024, published Dec. 8, 1981.

[19] While the sharing of subcarrier use may be the general effect of these factors, we do not wish to exclude load management from SCA broadband use. Situations may arise where broadband use might be best suited for utility load management. The ability to transmit at higher data rates or to accomplish a variety of related load management purposes in concert on an SCA may be required by new technologies or by the variety of existing needs of the large number of utilities in current operation.

protection to these 15 RRS users on commercial stations, the Commission is asked to restrict load management use on all 3300 commercial FM stations to subaudible use only. Such guaranteed protection for the 0.5 percent usage of commercial FM stations by RRS would impose an unreasonable penalty on those stations. Such a restriction clearly seems uncalled for and contrary to the public interest.

27. In light of the above, the Commission does not feel that the various requests to restrict SCA use to guarantee protection of aural SCA users is warranted in this rulemaking. The Commission does not believe it should impose more stringent rules than the situation demands and, thereby, foreclose the flexibility of the parties to handle the great variety of possible situations which may arise in a manner most suitable to the circumstances. The Commission would rather let market incentives, by acting on SCA users to minimize cost and on FM station licensees to maximize revenues, decide what is best for a particular situation. In sum, we do not wish to circumscribe the normally healthy market forces at work nor limit the degree of freedom of choice available unless we are assured the results would otherwise be contrary to the public interest. The Commission is confident that the change being made by this proceeding will not have that contrary effect.

28. With reference to the Commission's additional request in the notice, few comments were received on the implications that future expanded alterations might have on the administration of the Table of Frequency Allocations. Those few, in turn, all felt the impact would be relatively unimportant compared with the public good obtained.

29. Pursuant to the Regulatory Flexibility Act of 1980, the Commission's final regulatory flexibility analysis finds as follows:

I. Need for and Purpose of the Rule.

The Commission has concluded that the national energy conservation effort in the U.S. could be enhanced by permitting the use of FM SCA subcarrier signals as an additional utility load management technique. This use, currently prohibited because it is a "non-broadcast" type use, would be exempted by this rule change, thereby opening another choice available to utilities in their energy conservation efforts.

II. Summary of issues raised by public comment in response to the initial regulatory flexibility analysis, Commission assessment, and changes made as a result.

A. Issues raised: 1. Two present SCA user groups containing small entities feared that the addition of utility load management use of commercial FM SCA would increase competition, raise the price of SCA rentals, force them to bid against "monopoly" utilities who could outbid them and endanger their existence unless they were guaranteed protection of their SCA use.[20]

B. Assessment: 1. The Commission concluded that these fears were not warranted with reference to the effects of this limited rule change because the evidence clearly showed that (a) the simultaneous transmission of both aural and utility load management signals without deleterious effects were feasible and practical, and (b) economic incentives were present for both utilities and FM licensees to put the SCA to dual use which might actually work to the economic benefit of these present users through rental price sharing and expansion of SCA use by FM stations.

C. Changes made as a result of such comments: None.

Significant alternatives considered and rejected

1. Change the present rule to authorized utility load management use by guaranteeing protection of aural users through a priority system or through restriction of such use to the subaudible portion of the SCA. This was rejected because the Commission felt it was unjustified by the situation and could be costly to other small organizations. It would unnecessarily foreclose the flexibility of utilities and FM stations (most of which are small) throughout the country to make arrangements most suitable to their particular situation, irrespective of whether aural SCA demand was present in their area.

30. Authority for adoption of the rules herein is contained in Sections 2, 4(i) and 303 of the Communications Act of 1934, as amended.

31. Accordingly, It is ordered, that § 73.293 and § 2.106 of the Commission's rules are amended as set forth in the attached Appendix.[21] The amendments will become effective February 16, 1982.

32. It is further ordered, that this proceeding is terminated.

[20] These were not-for-profit Radio Reading Services for the Sight Handicapped, and for-profit MUZAK on behalf of its small functional music franchisees.

[21] Stations with Subsidiary Communications Authorization that wish to add utility load management use may do so by following the procedures set forth in § 73.293 (b) and (d) of the Commission's Rules. The Commission is currently reviewing form 318, the application form for the SCA.

33. For further information concerning this proceeding, contact Norman Plotkin, Broadcast Bureau, (202) 632–6302.

(Secs. 4, 303, 307, 48 Stat., as amended, 1066, 1082, 1083; 47 U.S.C. 154, 303, 307)

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

Parts 2 and 73 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. In § 2.106, the National Table of Frequency Allocations is revised by adding footnote designator NG128 in column 7 in the band 88–108 MHz, and in the list of footnotes which follow the Table.

§ 2.106 Table of frequency allocations.

United States		Federal Communications Commission		
Band (MHz)	Allocation	Band (MHz)	Services	Class of station
5	6	7	8	9
*	*	*	*	*
88–108	NG	88–108	Broadcasting	FM Broadcasting.
(US23)		(NG21)		(NG2).
(US93)		(NG128)		
*	*	*	*	*

Note.—NG128 In the band 88–108 MHz, FM broadcast licensees or permittees may be granted a Subsidiary Communications Authorization (SCA) to transmit signals intended for utility load management.

* * * * *

PART 73—RADIO BROADCAST SERVICES

2. Section 73.293, Subsidiary Communications Authorizations, is revised by adding the following paragraph (a)(3):

§ 73.293 Subsidiary communications authorizations.

(a) An FM broadcast licensee or permittee may apply for a Subsidiary Communications Authorization (SCA) to provide limited types of subsidiary services on multiplex basis. Permissible uses fall within one or more of the following categories:

* * * * *

(3) Transmission of signals intended for utility load management.

* * * * *

[FR Doc. 82-827 Filed 1-12-82; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Parts 0 and 74

[BC Docket No. 81-394; FCC 81-472]

Experimental, Auxiliary, and Special Broadcast and Other Program Distributional Services; Provision for Elimination of Harmful Interference to Radio Communications Involving Safety to Life and Protection of Property

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: By this action, the Commission amends its rules by adding a new section which prohibits the operation of equipment licensed under Part 74 from interfering with other radio communications involving safety of life or protection of property. If harmful interference in not expeditiously eliminated by the operator of the equipment, and the Commission foresees an eminent threat to life or property, the rules give the Commission the power to shut down the offending equipment until the threat to life or property has passed. Section 0.311 is also amended to give the Chief of the Field Operations Bureau delegated authority to administer the rule. The rules are adopted in response to the occurrence of such harmful interference during the first flight of the space shuttle last April.

DATE: Effective December 29, 1981.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Michael A. McGregor, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

Report and Order

(Proceeding Terminated)

Adopted: October 1, 1981.

Released: December 29, 1981.

By the Commission: Commissioners Jones, Dawson and Rivera concurring.

In the matter of amendment of Part 74 of the Commission's rules to provide for the elimination of harmful interference to radio communications involving safety to life and protection of property.

1. Before the Commission is a notice of proposed rule making, 46 FR 35532, published July 9, 1981, to provide for the temporary shutdown of facilities licensed pursuant to Part 74 of our rules, where the operation of such a facility is causing interference to the operation of other communications facilities and that interference poses a threat to the safety of life or property.

2. The notice was issued on the Commission's own motion following the completion of the first space shuttle flight, during which National Aeronautics and Space Administration (NASA) officials complained of severe interference to the shuttle tracking and communications equipment. The interference was caused by spurious radiations emanating from television electronic news gathering equipment operating near the shuttle's landing site. The interference was eliminated through voluntary cooperation among the licensees utilizing the offending equipment, but absent such cooperation, the Commission had little power to effectively remedy the situation. Thus, the Commission proposed amending the rules by adding a new Section 74.23 which would oblige licensees causing interference which jeopardizes safety of life or protection of property to promptly eliminate that interference. If the interference were not expeditiously eliminated, the rule would give the Commission the authority to suspend temporarily the operation of the interference-causing equipment until the threat to safety of life or protection of property has passed. Authority to implement the rules would be delegated to the Chief of the Field Operations Bureau.

3. Comments in response to the notice were submitted by American Broadcasting Companies, Inc. ("ABC"); CBS, Inc. ("CBS"); Doubleday Broadcasting Company, Inc. ("Doubleday"); the National Association of Broadcasters ("NAB"); and National Broadcasting Company, Inc. ("NBC"). No reply comments have been received. An informal comment was submitted by the Southern California Frequency Coordinating Committee Board of Directors ("SCFCC").

4. In general, the commenters argue that the rules proposed are unnecessary and that the existing record does not justify the adoption of such far-reaching regulations. Doubleday asserts that a rulemaking ordinarily proceeds from a factual basis which suggests a need for regulation. Given the broadcasters' voluntary cooperation during the previous emergency, Doubleday states that no rule is necessary. Doubleday opines that "* * * in every case of interference which threatens safety of life, the responsibility which accompanies the right to operate a licensed transmitter will yield results such as occured in the space shuttle instance." NAB agrees that the industry's voluntary compliance during the past space shuttle mission underscores the fact that future problems can best be resolved through a voluntary policy. ABC states that, to its knowledge, there has never been an instance involving a licensee's refusal to suspend operations in emergency situations. Further, NBC states, the notice cites no other similar occurrences in which auxiliary equipment interfered with safety of life or property communications. Several commenters point out that the Southern California Frequency Coordinating Committee, an industry group comprised of many southern California broadcasters, had scheduled a conference with NASA officials. SCFCC asserts that the purpose of this meeting is to review the previous problem and prevent it from occurring again. Thus, the commenters argue that an adequate factual basis for the proposed rules has not been demonstrated and the rules should therefore not be adopted.

5. Moreover, both Doubleday and NAB contend that the rule is unnecessary because, according to NAB, "the rule * * * would not improve the ability of the FCC to deal with situations involving danger to life or destruction of property." Doubleday expands on this theme by stating "if the Commission were faced with a life-threatening interference situation in which minutes and seconds counted, the existence or absence of a rule on the subject would not alter the course of action which the Commission would be obligated to take. It would still be required to analyze the situation and to order shutdown if necessary." CBS adds "the problem of dealing quickly with radio interference, if indeed such a problem exists, should be dealt with on an *ad hoc* basis consistent with the existing requirements of the APA."

6. CBS also argues that the proposed rule is overbroad. It reads the proposed rules as placing in the hands of select Commission employees an absolute authority, the exercise of which would be most tempting during the confusion of breaking news stories. CBS foresees the possibility of the Commission ordering shutdowns on unpersuasive or intentionally inaccurate information provided by outside sources. This same concern is voiced by Doubleday and NAB. CBS notes that the notice used the term "ENG" equipment when explaining the cause of the interference. CBS states that "ENG" refers to a variety of equipment, but the only equipment causing a problem during the shuttle incident were microwave transmitters. CBS asks that any rule adopted be worded such that it would not apply to ENG equipment operating independently of a microwave transmitter.

7. Several parties note that the proposed rule would permit the shutdown of equipment when the protection of property is threatened. Doubleday asserts that the protection of property ordinarily occupies a comparably lower priority than the protection of life. NBC opines that if the protection of property is included in the rule, "* * * the Commission's staff may well be urged to make use of it in situations that do not approach the sensitivity of the shuttle landing." Doubleday urges that if the Commission adopts a provision in favor of protection of property, a more detailed explanation should be included of the circumstances in which shutdown may be deemed necessary. Doubleday also expresses the fear that this action may be considered precedent for further expanding the rules to make them applicable to television and radio stations operating pursuant to Part 73 of the Commission's Rules. NBC objects that there is no explicit prohibition against employment of the rules for content-related reasons, and several parties mention that the enforcement of the rules could affect broadcasters' First Amendment protections. Also, NBC points out that in the notice the Commission refers to the shared use of frequencies and the opportunities for interference between users sharing the same or related frequencies. NBC concludes from this that the proposed rule is designed to avoid interference where there is frequency sharing or use of nearby frequencies. NBC notes, however, that "the rule itself seems to be broader in scope as it is not confined to shared use or nearby frequencies, which have the greatest potential for interference-related problems."

8. The commenting parties also found procedural problems with the proposed rule. According to CBS, it is "* * * the very essence of due process for government agencies and officials to give notice and an opportunity for a hearing prior to taking any action affecting life, liberty or property." CBS complains that the proposed rules do not require the Commission to make a determination that notice and an opportunity for hearing are impracticable, nor do they require the Commission first to seek voluntary shutoff. NBC suggests that the rule be modified to make it clear that the Commission will not order the cessation of operations unless and until all voluntary efforts have failed to remedy the problem, and technical interference could result in the imminent loss of, or danger to, personal safety or life. Several parties note that the rules do not establish a right to an immediate review of the suspension order by higher officials within the Commission. CBS suggests that any rule adopted should require prompt written confirmation of the shutdown order and should allow the appeal process to begin immediately. In this regard, NBC advocates that any action taken by the Chief of the Field Operations Bureau should be reviewable within 72 hours by the full Commission.

Discussion

9. *Demonstrated need for regulation.* The commenters assert that because only one instance of life-threatening interference has ever been documented, and voluntary cooperation solved the interference in that one case, the factual record does not support implementation of the proposed rules. While we are certainly aware that "regulation perfectly reasonable and appropriate in the face of a given problem may be highly capricious if that problem doesn't exist," [1] we do not believe, in situations where life and property are seriously threatened, that we must wait for more documentation of interference before enacting preventative measures. Rather, we believe that the record to date sufficiently justifies the narrow and limited regulations which we are adopting. We know that microwave transmitters, even when operating in accordance with our rules, can cause serious interference to the very sensitive equipment used by NASA. As space shuttle flights become more frequent and the shuttle landing sites become more numerous, the opportunities for harmful interference are certain to increase. We feel it is incumbent upon this Commission to be fully prepared for such occurrences if and when they arise.

10. NAB and Doubleday further argued that the proposed rules add nothing to the existing power of the Commission to issue cease and desist orders when necessary. We disagree. The statutory provision which allows the Commission to take expedited action when warranted by exigent circumstances is Section 9(b) of the Administrative Procedure Act ("APA"), 5 U.S.C. 558. The express language of that section applies only to "* * * the withdrawal, suspension, revocation, or annulment of a license * * *." However, Section 312(e) of the Communications Act of 1934, as amended, 47 U.S.C. 312(e), states that section 9(b) of the APA also applies to the issuance of a cease and desist order. Cease and desist orders, in turn, can be issued only when a person has failed to operate substantially as set forth in a license, has violated the Communications Act or various sections of the United States Code, or has violated or failed to observe any rule or regulation of the Commission. 47 U.S.C. 312(b). However, no such violation occurred during the first shuttle landing. Thus, the proposed rules would give the Commission the device necessary to invoke the cease and desist mechanisms of Section 9(b) of the APA. Without the rules adopted herein, the Commission would be obliged to rely on voluntary cooperation by licensees causing harmful interference, or, absent such cooperation, embark upon some course of action of questionable legality to shut down the offending transmitters. Given this choice, we prefer to follow the regulation route, where all parties know in advance their rights and responsibilities.

11. This same reasoning applies to the suggestion of CBS that the Commission should not act by rulemaking but should react to each situation on an *ad hoc* basis. We note, and CBS apparently does not dispute, that the choice made between proceeding by a general rule or by individual *ad hoc* determinations is one that lies primarily in the informed discretion of the administrative agency.[2] In this situation, we feel that the better procedure is the one which we are following, which apprises all parties of the Commission's authority to issue cease and desist orders when necessary to prevent interference which jeopardizes personal safety and protection of property. Parenthetically, we note that by the very nature of the rules being adopted, enforcement of the provisions will have to be accomplished on an individual, *ad hoc*, basis.

12. *The Necessary Breadth of the Rules.* The commenters argue that the rules are overbroad in that the Commission could order the cessation of operations on the basis of unpersuasive or inaccurate information in the heat and confusion of a fast-breaking news story. However, under the specific wording of the new § 0.311(e), the Chief of the Field Operations Bureau is authorized to make determinations * * * of the presence of interference * * *". Thus, only when the Chief of FOB makes a determination that interference is present and that interference is jeopardizing life or property does the provisions of § 74.23 come into effect. Generally, being

[1] *City of Chicago* v. *Federal Power Commission*, 458 F. 2d 731, 742 (D.C. Cir. 1971), *cert. denied*, 405 U.S. 1074 (1972).

[2] *British Caledonian Airways, Ltd.* v. *Civil Aeronautics Board*, 584 F. 2d 982 (D.C. Cir. 1978).

informed by some other source that interference is present is not enough for the Chief of FOB to act.[3] In this regard, we have the utmost trust and confidence in the judgment of the FOB Chief to issue cease and desist orders only when absolutely necessary. The responsibilities placed on the Chief of FOB by these rules are great, and we have no reason to doubt that those responsibilities will be carried out with prudence and professionalism.

13. The commenters also contend the proposed rules are overbroad in that they treat the protection of life and property equally. As Doubleday correctly points out, the protection of property generally occupies a comparatively lower priority than safety of life, and different procedures may be appropriate when only property is threatened. In response to this concern, we have added a sentence to paragraph (b) of § 74.23 which requires the Chief of FOB, before taking any action under the rule, to balance the competing interests when only the protection of property is jeopardized. Under the terms of the rule, the Chief of FOB must balance the "nature and extent" of the possible property damage against the harm caused by ordering a licensee to cease its microwave transmissions. For instance, if the interference were threatening the operation of an unmanned space shuttle, the potential property loss might justify Commission action, where a threat to a less expensive piece of equipment might not cause concern. We believe this balancing approach adequately protects the legitimate interest of licensees while giving the Commission the discretion to act when the situation so demands.

14. Several additional concerns of the broadcasters regarding the potentially overbroad construction of the regulations deserve some discussion. It must be remembered that the rules being adopted relate solely to the elimination of harmful interference. Thus, the concerns of CBS that the rule might be applied to ENG equipment other than a transmitter, or NBC's fear that the equipment might be ordered shut down for content reasons, are unfounded.[4] Unless there is harmful interference, the new rules do not apply. Similarly, confinement of the rule to interference on frequencies which are shared by the auxiliary stations or frequencies which are near to those used under Part 74, as suggested by NBC, seems illogical. As stated above, the operative factor is interference to communications systems affecting life and property. If harmful interference is being caused by equipment licensed under Part 74, we see little reason to make any distinctions based on the frequencies being used by the parties experiencing the interference.

15. *Procedural matters.* CBS contends that, before ordering a licensee to cease operations, the Commission should have to make a determination that notice and an opportunity for hearing are impracticable. NBC states that all voluntary efforts to resolve the interference should be exhausted before the Commission takes any action. We believe both of these concerns are already implicitly addressed in the wording of the new rules. Section 74.23(a) puts the burden on the licensee causing interference to "promptly take appropriate measures to eliminate the interference". Thus, it is in the licensee's power to avoid Commission intervention by "voluntarily" solving the problem. Only if the interference cannot be eliminated by the licensee *and* the Commission finds an *imminent* danger to life or property will the Commission take action under this rule. If there is no imminent danger to life or property, then the rule is not applicable and the normal cease and desist provisions would govern. To rely on the cease and desist provisions of this rule, the Commission must make a determination that notice and an opportunity for hearing are impracticable. With regard to the suggestion of CBS that any oral cease and desist order be followed by written confirmation, § 0.204(d) of the Commission's rules provides that orders issued orally, shall, if practicable, be confirmed promptly in writing.

16. A right of immediate review of any action taken by the Chief of the Field Operations Bureau is urged by CBS and NBC. We fully realize that any actions taken by the Commission under these rules may have an impact on a licensee's operating flexibility. Therefore, we intend to act upon any application for review expeditiously.[5] Furthermore, we are adding a provision to § 0.311(e) which requires the Chief of FOB to inform the Chairman of the Commission whenever the provisions of § 74.23 are invoked. In this way the Chairman will at all times be fully apprised of any emergency actions which may require expedited review. We also note that a type of review mechanism is built into rules already. Section 74.23(b) provides that short test operations may be made during the period of suspended operation to check whether the harmful interference is still present. This provision should allow licensee expeditiously to resume operations once the harmful interference has been eliminated.

17. It is important, we think, to repeat that the regulations we are adopting today are limited to the rarest and most extreme of circumstances. Several events must converge before the emergency cease and desist powers of the Commission can be exercised. First, a determination must be made that a station operating under Part 74 of our rules is causing interference to other radio communications involving the safety of life or protection of property. Second, the licensee must be unable to eliminate the interference. Third, the Commission must find that the interference poses an imminent danger to safety of life or protection of property. Only after all three of these findings have been made (plus an additional finding when only the protection of property is threatened) may the Commission order a licensee to cease operations of the offending equipment. Hopefully, these rules will never have to be utilized; however, if the cease and desist provisions must be invoked, we believe that the potential disruption which may be caused to broadcasters is a small price to pay for the protections that these regulations provide.

18. We have made several other minor changes in the wording of the new rules. Section 74.23(a) of the proposed rules requires a licensee to "* * * promptly take appropriate measures to eliminate the interference." We have deleted the words "take appropriate measures to" as superfluous. Similarly, § 74.23(b) states that if the interference cannot be eliminated "by the application of suitable techniques," the Commission can take action. The phrase "by the application of suitable techniques" has also been struck from the final rule as unnecessary. Further, we have changed all references of "interference" to "harmful interference," and we have added a cross-reference in the rule to a definition of "harmful interference." Finally, we have cross-referenced the statutory cease and desist provisions found in the Communications Act of 1934, as amended, and the Administrative procedure Act.

19. We believe good cause exists to make these rule changes effective as

[3] We do not imply by this that the Chief of FOB will always personally make test measurements under this section. Certainly, in most cases, he will have to rely on measurements and information provided him by field office staff.

[4] The First Amendment concerns expressed by several commenters seem misplaced. The rules we are adopting are truly content-neutral; only the mode of transmitting material is affected.

[5] Upon presentation of a application for review, if the full Commission cannot be assembled for an emergency meeting, then a committee of the Commission might be required to take action.

soon as possible. The rule revisions directly relate to the protection of life and property, and it would be contrary to the public interest not to take such action at the earliest possible date. Emergency Broadcast operating Requirements, 12 FCC 2d 877 (1968). Therefore, good cause having been shown, these rule changes shall become effectively immediately. *See* 4 U.S.C. 553(d)(3) and 1.427(b) of the Commission's rules.

20. Accordingly it is ordered, That pursuant to the authority contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, Parts 0 and 74 of the Commission's rules are amended, effective December 29, 1981, as set forth in the attached Appendix.

21. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to the rules adopted herein. *See* Notice of Proposed Rule Making, 46 FR 35532, para. 8, published July 9, 1981.

22. It is further ordered, That this proceeding is terminated.

(Secs. 4, 303, 307, 48 Stat., as amended, 1066, 1082, 1083; 47 U.S.C. 154, 303, 307)

Federal Communications Commission.

William J. Tricarico,

Secretary.

APPENDIX

PART 0—COMMISSION ORGANIZATION

1. Part 0 of Chapter I of Title 47 of the Code of Federal Regulations is amended by adding a new paragraph (e) to § 0.311, which reads as follows:

§ 0.311 Authority delegated.

* * * * *

(e) The Chief of the Field Operations Bureau is authorized to make determinations and notifications of the presence of harmful interference to radio communications involving safety of life or protection of property which requires temporary suspension of operation under Section 74.23 of this Chapter. Upon invoking the authority granted pursuant to this section, the Chief of the Field Operations Bureau shall immediately inform the Chairman of the Commission.

PART 74—EXPERIMENTAL, AUXILIARY, AND SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

2. Part 74 of Chapter I of Title 47 of the Code of Federal Regulations is amended by adding a new § 74.23 which reads as follows:

§ 74.23 Interference jeopardizing safety of life or protection of property.

(a) The licensee of any station authorized under this Part that causes harmful interference, as defined in § 2.1 of the Commission's rules, to radio communications involving the safety of life or protection of property shall promptly eliminate the interference.

(b) If harmful interference to radio communications involving the safety of life or protection of property cannot be promptly eliminated and the Commission finds that there exists an imminent danger to safety of life or protection of property, pursuant to 47 U.S.C. 312 (b) and (e) and 5 U.S.C. 558, operation of the offending equipment shall temporarily be suspended and shall not be resumed until the harmful interference has been eliminated or the threat to the safety of life or property has passed. In situations where the protection of property alone is jeopardized, before taking any action under this paragraph, the Commission shall balance the nature and extent of the possible property damage against the potential harm to a licensee or the public caused by suspending Part 74 operations. When specifically authorized, short test operations may be made during the period of suspended operation to check the efficacy of remedial measures.

[FR Doc. 82-800 Filed 1-12-82; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 47, No. 8
Wednesday, January 13, 1982

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 3

[AG Order No. 965-82]

Board of Immigration Appeals; Oral Argument; Summary Dismissal of Appeals

AGENCY: Department of Justice.

ACTION: Proposed regulation.

SUMMARY: The proposed regulation is designed to grant to the Board of Immigration Appeals the authority to deny oral argument whenever the Board in its discretion determines that such oral argument would serve no useful purpose. Presently under 8 CFR 3.1(e), the right to request oral argument lies with the party appealing the decision rendered below. In certain cases under which the Board acquires jurisdiction by appeal or certification, requested oral argument is mandatory unless the appeal is summarily dismissed under the provisions of 8 CFR 3.1(d)(1-a). This has resulted in the Board being required to schedule cases for oral argument even though such argument would serve no useful purpose. The amendment would give to the Board the authority to deny the request for oral argument in the exercise of its discretion. This amendment would make the provisions of 8 CFR 3.1(d)(1-a) in part superfluous. Additionally, the proposed revision would modify 8 CFR 3.1(d)(1-a) to permit in appropriate circumstances the summary dismissal of any appeal before the Board, not solely the summary dismissal of appeals in deportation cases as is presently the case.

DATE: Written comments must be received by February 12, 1982.

ADDRESS: All written comments should be addressed to the Chairman, Board of Immigration Appeals, Department of Justice, 2 Skyline Place, 5203 Leesburg Pike, Falls Church, Virginia 22041.

FOR FURTHER INFORMATION CONTACT:

David B. Holmes, Executive Assistant, Board of Immigration Appeals (703/756-6170).

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 605(d), the Attorney General certifies that the proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. Further, the rule is not a major rule within the definition of section 1(b) of E.O. 12291 and is not subject to a regulatory impact analysis.

PART 3—BOARD OF IMMIGRATION APPEALS

Accordingly, it is proposed to revise paragraphs (d)(1-a) and (e) of 8 CFR 3.1 to read as follows:

§ 3.1 Board of Immigration Appeals

* * * * *

(d) * * *

(1-a) *Summary dismissal of appeals.* The Board may summarily dismiss any appeal in any case in which (i) the party concerned fails to specify the reasons for his appeal on Form I-290A (Notice of Appeal); (ii) the only reason specified by the party concerned for his appeal involves a finding of fact or a conclusion of law which was previously conceded by him; (iii) the appeal is from an order that granted the party concerned the relief which he requested, or (iv) the Board is satisfied, from a review of the record, that the appeal is frivolous or filed solely for the purpose of delay.

* * * * *

(e) *Oral Argument.* When an appeal has been taken, request for oral argument if desired shall be included in the Notice of Appeal. Oral argument shall be heard at the discretion of the Board at such date and time as the Board shall fix. The Service may be represented before the Board by an officer of the Service designated by the Service.

* * * * *

Dated: January 4, 1982.

William French Smith,

Attorney General.

[FR Doc. 82-887 Filed 1-12-82; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 111

Proposed Amendments to the Customs Regulations Relating to Customhouse Broker Licenses

AGENCY: Customs Service, Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations relating to the licensing procedure for customhouse brokers to eliminate the requirement that Customs conduct another investigation each time a broker, previously licensed to transact business (after investigation) in one or more Customs districts, applies for a license in an additional district. This action is proposed to reduce delays in processing broker applications and costs to both brokers and Customs.

DATE: Comments must be received on or before March 15, 1982.

ADDRESS: Comments (preferably in triplicate) may be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue NW., Room 2426, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT:

James F. Bartley, Entry Procedures and Penalties Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229 (202-566-5765).

SUPPLEMENTARY INFORMATION:

Background

A customhouse broker ("broker") is a person who is licensed by the Customs Service ("Customs") to transact Customs business on behalf of importers and other persons. The regulations governing the licensing of brokers, and their duties and responsibilities, are found in Part 111, Customs Regulations (19 CFR Part 111).

Under section 111.19, Customs Regulations (19 CFR 111.19), a broker's license authorizes the transaction of Customs business only in the district for which issued. If a licensed broker desires to obtain a license for an additional district, an application must be filed with the district director of the district for which a license is desired, and Customs conducts an investigation

to determine if the applicant is prepared and qualified to furnish efficient service in the additional district.

The requirement for another investigation of an applicant desiring to obtain a license for an additional district delays the processing of the application. Furthermore, Customs incurs the additional expense of conducting an investigation each time a broker applies for a license in a new district.

It has been determined that instead of another investigation each time a broker applies for a license in an additional district, the district director of the district where the application is filed immediately could notify the district director of the district in which the applicant is licensed and request his comments as to the applicant's qualifications in providing efficient service to importers and in complying with the duties and responsibilities of a broker. The district director in the district in which the applicant is licensed would submit his comments and recommendations timely to the district director making the request. The district director of the district where the application is filed then would forward the recommendations of the other district director, his recommendations for action on the application, and the application to Customs Headquarters for a determination as to whether to issue the license in the new district.

This change in procedure would expedite the processing of applications for a license in additional districts, and thus eliminate the cost to the applicant of maintaining qualified employees and an office in the new district pending action on his application to be licensed in that district. In addition, Customs would save the costs of conducting what usually is found to be an unnecessary investigation. However, if any information is developed which would raise any question as to the fitness of the applicant, the Commissioner would be authorized to require that an investigation be conducted.

Accordingly, it is proposed to amend Part 111, Customs Regulations, to eliminate the re-investigation requirement for brokers who apply for a license in more than one district.

Proposed Amendments to The Regulations

PART 111—CUSTOMHOUSE BROKERS

It is proposed to amend Part 111, Customs Regulations (19 CFR Part 111), in the following manner:

1. Section 111.14(a), Customs Regulations (19 CFR 111.14(a)), would be revised to read as follows:

§ 111.14 Investigation of the applicant.

(a) *Individual license.* If the applicant passes the examination, the district director shall refer the application to the special agent in charge for an investigation and report

* * * * *

2. Section 111.14(b), Customs Regulations (19 CFR 111.14(b)), would be revised to read as follows:

§ 111.14 Investigation of the applicant.

* * * * *

(b) *Partnership, association, or corporation license.* The district director shall immediately refer an initial application for a partnership, association, or corporation license to the special agent in charge for investigation and report.

* * * * *

3. Section 111.19(c), Customs Regulations (19 CFR 111.19(c)), would be amended by removing the words "upon investigation" from the first sentence of that section.

4. Add new paragraphs (d) and (e) to § 111.19, Customs Regulations (19 CFR 111.19), to read as follows:

§ 111.19 Licenses for additional districts.

* * * * *

(d) *Recommendation and return of the application by the district director.* Upon receipt of the application, the district director shall immediately notify the district director(s) in the other district(s) in which the applicant is licensed and request comments as to the applicant's qualifications in rendering valuable service to importers and as to the applicant's compliance with the duties and responsibilities of a broker in the other district(s). The district director in the other district(s) shall timely submit his comments and recommendation(s) to the district director making the request(s). The district director for the district where the application is made shall forward the recommendations of other district director(s), his recommendations for action on the application, and originals of the application to the Commissioner. The district director's recommendations of approval or disapproval of the application shall indicate if an individual applicant resides or has an established office in the additional district or, in the case of a partnership, association, or corporation application, if the requirements of § 111.11 (b) or (c) have been met.

(e) *Investigation.* The Commissioner may require an investigation to be conducted if additional facts are deemed necessary to pass upon the application.

Authority

These amendments are proposed under the authority of R.S. 251, as amended, sections 624, 641, 46 Stat. 759, as amended (19 U.S.C. 66, 1624, 1641).

Comments

Before adopting this proposal, consideration will be given to any written comments timely submitted to the Commissioner of Customs. Comments submitted will be available for public inspection in accordance with § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. to 4:30 p.m. at the Regulations Control Branch, Room 2426, Headquarters, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229.

Executive Order 12291

Because this document will not result in a regulation which would be a "major" rule as defined by section 1(b) of E.O. 12291, a regulatory impact analysis and review as prescribed by section 3 of the E.O. is not required.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this proposal because the proposed amendments will not have a significant economic impact on a substantial number of small entities. The proposed amendments merely involve a procedural change in the Customs Regulations intended to expedite the processing of broker applications for licenses in additional districts. The only discernible economic impact would be to lessen the cost of the process for brokers and Customs. In addition, the proposal is not expected to have significant secondary or incidental effects on a substantial number of small entities or impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Accordingly, the Secretary of the Treasury certifies under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that the proposed amendments will not have a significant economic impact on a substantial number of small entities.

Drafting Information

The principal author of this document was Todd J. Schneider, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service.

However, personnel from other Customs offices participated in its development.

William T. Archey,
Acting Commissioner of Customs.
Approved:
John P. Simpson,
Acting Assistant Secretary of the Treasury.
December 30, 1981.
[FR Doc. 82-864 Filed 1-12-82; 8:45 am]
BILLING CODE 4820-02-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL-2009-4]

Approval and Promulgation of Implementation Plans; Wisconsin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: This notice proposes to approve the request of the Wisconsin Department of Natural Resources (DNR) for a revision of the Wisconsin State Implementation Plan (SIP) for sulfur dioxide. The proposed revision is a variance from Section NR 154.12(5)(b) and NR 154.12(5)(a) 2.b.2), Wisconsin Administrative Code, for the Oscar Mayer and Company plant located in Madison, Wisconsin. The purpose of this notice is to discuss EPA's evaluation of the revision and to solicit public comments on the revision and on EPA's proposed approval.

DATE: Comments on this revision and on the proposed EPA action must be received by February 12, 1982.

ADDRESSES: Copies of the SIP revision are available at the following addresses for review. (It is recommended that you telephone the contact person given below before visiting the Region V office).

Environmental Protection Agency, Region V, Air Programs Branch, 230 South Dearborn Street, Chicago, Illinois 60604.
Environmental Protection Agency, Public Information Reference Unit, 401 M Street, S.W., Washington, D.C. 20480.
Wisconsin Department of Natural Resources, Bureau of Air Management, 101 South Webster, Madison, Wisconsin 53707.

Comments on this proposed rule should be addressed to: (Please submit an original and five copies if possible): Gary Gulezian, Chief, Regulatory Analysis Section, Air Programs Branch, USEPA, Region V, 230 South Dearborn, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Debra Marcantonio, Air Programs Branch, Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 886-6088.

SUPPLEMENTARY INFORMATION: On April 9, 1981, EPA approved the sulfur dioxide regulations for the City of Madison in Dane County (46 FR 21165). These regulations are contained in Section NR 154.12(5) of the Wisconsin Administrative Code.

Wisconsin DNR has authority to grant source—specific variances from the SIP under Section NR 154.02(3) of the Wisconsin Administrative Code. Such variances, however, do not become effective until submitted to and approved by EPA. On August 13, 1980, Wisconsin DNR received from the Oscar Mayer and Company a request for a variance from Section NR 154.12(5)(b) and NR 154.12(5)(a)2.b.2), Wisconsin Administrative Code, for its plant located in Madison, Wisconsin. On August 19, 1981, Wisconsin DNR granted to Oscar Mayer and Company the requested variance for an alternate compliance schedule and an alternate form of the emission limitation specified in Section NR 154.12(5).

On August 31, 1981, Wisconsin DNR submitted the variance to EPA as a SIP revision. The SIP revision consists of a variance request from the compliance schedule contained in NR 154.12(5)(b), Wisconsin Administrative Code. Since the alternate compliance schedule only affects the interim dates of progress and does not affect the final compliance date of November 15, 1982, the alternate schedule is acceptable. Additionally, the SIP revision request consisted of a variance from NR 154.12(5)(a)2.b.2), Wisconsin Administrative Code. This section provided Oscar Mayer and Company with an emission limit of 4.69 lbs./MMBTU based on a stack of 208 feet. The variance, however, provides an alternate total emission limit for Boilers Nos. 5 and 6, each rated at 171.5 MMBTU/hr of 38,600 pounds of SO_2 per twenty-four hours. The alternate limit will not result in any increase in SO_2 emissions. Based on the dispersion modeling used to set the sulfur dioxide regulations for the Madison nonattainment area, the alternate emission limit will protect the constraining 24-hour standard. The alternate form of the emission limit will therefore provide for the attainment and maintenance of the sulfur dioxide ambient air quality standards.

The nearest state border is 70 km from the Oscar Mayer plant. EPA reference models are only valid out to 50 km. No reference techniques have been established for accurately evaluating impacts beyond this distance, the "state-of-the-art" of long-range transport models is not sufficiently advanced to be used for regulatory purposes. Thus, since there are no EPA-approved regulatory tools currently available to assess impacts beyond 50 km, no interstate impact analysis is possible. However, since this revision will not result in an increase in SO_2 emission, it is not expected to interfere with the attainment and maintenance of SO_2 standards in other states.

Therefore, EPA proposes to approve the variance from the provisions of Section NR 154.12(5)(b), and NR 154.12(5)(a)2.b.2), Wisconsin Administrative Code, for the Oscar Mayer and Company located in Madison, Wisconsin as a revision to the Wisconsin sulfur dioxide SIP.

Pursuant to the provisions of 5 U.S.C. section 605(b) the Administrator has certified on January 27, 1981 (46 FR 8709) that the attached rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This action, if promulgated, only approves a variance initiated by the one source affected.

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and therefore subject to the requirement of a Regulatory Impact analysis. This regulation, if promulgated, is not Major because it merely approves a variance from NR 154.12(5)2.b., Wisconsin Administrative Code.

(Sec. 110, 172, 301(a), Clean Air Act, as amended (42 U.S.C. 7410, 7502, and 7601(a))).

Dated: December 7, 1981.

Valdas V. Adamkus,
Regional Administrator.
[FR Doc. 82-863 Filed 1-12-82; 8:45 am]
BILLING CODE 6560-38-M

40 CFR Part 52

[A-5-FRL-2004-1]

Approval and Promulgation of Implementation Plan; Ohio

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: EPA is today reproposing action on the Ohio State Implementation Plan (SIP) for Lucas County. On May 4, 1981 (46 FR 24966) EPA proposed to disapprove the sulfur dioxide (SO_2) emission limitations for Lucas County. After further modeling analysis, however, EPA has determined that the Ohio SO_2 plan for Lucas County, which includes the State's commitment to

revise the emission limits of four sources, is adequate to protect the primary and secondary National Ambient Air Quality Standards (NAAQS) for SO_2.

The Ohio Environmental Protection Agency (Ohio EPA) has committed itself to adopt the existing federal emission limitations for the Gulf Oil Company, Coulton Chemical Company, Phillips Chemical Company, and the Sun Oil Company. However, final action will not be taken on the emission limitations for the four sources mentioned above until all State procedural requirements are satisfied and the regulatory and nonregulatory portions of this SIP revision are formally submitted to the Agency.

DATE: Comments should be received on or before February 12, 1982. If possible, please submit an original and five copies of all comments.

ADDRESSES: Copies of SIP revision are available at the following addresses for inspection:

United States Environmental Protection Agency, Region V, Air and Hazardous Materials Division—Air Programs Branch, 230 South Dearborn Street, Chicago, Illinois 60604.

United States Environmental Protection Agency, Public Information Reference Unit, 401 M Street, S.W., Washington, D.C. 20460.

Copies of the Docket #5A–80–3 are on file for copying and inspection during normal business hours at EPA, Region V, and at U.S. Environmental Protection Agency, Central Docket Section, West Tower Lobby, Gallery 1, 401 M Street, S.W., Washington, D.C. 20460.

Written comments should be sent to: Gary Gulezian, Regulatory Analysis Section, U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604 (312) 886–6088.

SUPPLEMENTARY INFORMATION: On September 12, 1979, the Governor of Ohio submitted a SO_2 control plan to EPA for inclusion in the SIP for Ohio. On February 25, 1980 (45 FR 12266), EPA proposed action on the plan and on January 27, 1981, EPA took final action on portions of the plan (46 FR 8481) and reproposed action on other portions of the plan (46 FR 8575). On May 4, 1981 (46 FR 24966), EPA reproposed to disapprove the Ohio SO_2 SIP for Lucas County based on a modeling analysis of Lucas County submitted by the Toledo Edison Company in support of a petition to revise the federal regulations for three Toledo Edison facilities. This analysis predicted violations of the 24-hour and 3-hour NAAQS under the federal SIP in Lucas County, since the State SO_2 plan and the existing federal plan for Lucas County are the same for many sources, it was believed that the State plan for Lucas County was also deficient. In the May 4, 1981 notice, EPA also called upon the State to correct the deficiencies in the Lucas County plan.

After the May 4, 1981 notice of proposed rulemaking, Ohio EPA provided updated emissions data for sources in Lucas County. The corrections to the inventory included revised emission and stack exit parameters for several sources. In addition, EPA obtained corrected stack coordinates for some sources. As a result of the new data, EPA initiated another modeling analysis. The purpose of the new analysis was to evaluate the effect of the corrected emissions inventory on the previously predicted violations. EPA's analysis did not predict any violations of either the 24-hour or 3-hour standard: A detailed discussion of the modeling analysis is contained in the technical support document which is available in the docket.

The current State emission limitations for the Gulf Oil Company, Coulton Chemical Company, Phillips Chemical Company, and Sun Oil Company differ from those in the existing federal SO_2 plan. The State, however, has committed itself to revise these emission limitations to be identical to those in the existing federal plan. Therefore, today's action includes the approval of the proposed emission limitations for those four sources as committed to by the State.

The current Lucas County emission limitations in the Ohio SO_2 plan, in conjunction with the State's commitment to revise the emission limits for the four sources previously mentioned, and the existing federal SO_2 plan are adequate to protect the primary and secondary NAAQS for SO_2. Therefore, EPA reproposes to approve the State of Ohio's SO_2 plan for Lucas County and withdraws the notice of proposed rulemaking dated May 4, 1981 (46 FR 24966). Final action will not however, be taken on the emission limitations for the four sources mentioned above until all State procedural requirements are satisfied and the regulatory and nonregulatory portions of this SIP revision are formally submitted to the Agency.

Sources in Lucas County have suggested that the air quality dispersion model used by the Agency for Lucas County may be overly conservative because portions of the county possibly can be classified as rural instead of urban. Since the original modeling of the County by USEPA in 1976, more definitive information has become available on land use classification (April 1981—Regional Workshop on Air Quality Modeling: A Summary Report). Any individual source which so desires can further investigate the relevant site parameters. With a proper demonstration, an application can be made to the Agency for a change in area description and modeling methodology.

Pursuant to Section 110(a)(2)(E) of the Clean Air Act, EPA has reviewed this action for potential interstate impacts. Present limitations on EPA's reference dispersion models restrict their application to points within 50 km of Lucas County, Ohio. Michigan is the only state within 50 km. There is a single PSD area in Michigan within Modeling range. However, no PSD increment consumption can occur in that area as a result of this SIP revision since there will be no increase in actual emissions. There are no nonattainment areas in Michigan within 50 km.

The largest source in Lucas County is Toledo Edison's Bayshore power plant located 4.5 km south of the Michigan state border. Modeling performed for a recent revision of the federal emission limits for this source showed that the plant's maximum impact (238 $\mu g/m^3$) closest to Michigan occurred at a receptor located 1 km to the north and approximately 3.5 km from the Michigan border. The Bayshore dominated receptor located closest to Michigan is 1.5 km from the border, and it showed a maximum air quality impact of 166 $\mu g/m^3$ in a 24-hour period. Because the pollutant concentrations decrease markedly close to the border and are well below the 24-hour standard for SO_2 (365 $\mu g/m^3$), no violations are expected to occur in Michigan due to the Bayshore plant.

As for other sources in Lucas County, the effect of a corrected county emission inventory must be considered. The source closest to the state line is Chevrolet in western Lucas County. The revised total concentrations near this source show a high, second high concentration of 149 $\mu g/m^3$ at a receptor 1 km south of Michigan. The next group of receptors, located about 2 km south of Michigan and between the Chevrolet plant and all other Lucas County sources, show a high second high concentration of 247 $\mu g/m^3$. Again, the maximum concentration closest to state border is well below the SO_2 standard, and is significantly less than concentrations near the Lucas County sources. Consequently Ohio's plan for Lucas County is expected to protect the NAAQS in Michigan.

Pursuant to the provisions of 5 U.S.C. Section 605(b), the Administrator has

certified on January 27, 1981 (46 FR 8709) that the attached rule will not if promulgated have a significant economic impact on a substantial number of small entities. This action if promulgated only approves State actions. It will impose no new requirements.

Under Executive Order 12291, EPA must also judge whether a regulation is "Major" and therefore subject to the requirements of a Regulatory Impact Analysis. This regulation, if promulgated, is not Major because it merely approves regulations in the Ohio SO_2 SIP which are already part of the currently effective Federal Ohio SO_2 SIP.

Dated: October 21, 1981.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 82-873 Filed 1-12-82; 8:45 am]

BILLING CODE 6560-38-M

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

48 CFR Parts 13 and 17

Small Purchase and Other Simplified Purchase Procedures, Management and Operating Contracts

AGENCY: Office of Federal Procurement Policy, Office of Management and Budget.

ACTION: Notice of availability and request for comment on draft Federal acquisition regulations.

SUMMARY: The Office of Federal Procurement Policy is making available for public and Government agency review and comment a segment of the draft Federal Acquisition Regulation (FAR).[1] Availability of additional segments for comment will be announced on later dates. The FAR is being developed to replace the current system of procurement regulations.

DATE: Comments must be received on or before March 3, 1982.

ADDRESS: Obtain copies of the draft regulation from and submit comments to William Maraist, Assistant Administrator for Regulations, Office of Federal Procurement Policy, 726 Jackson Place, N.W., Room 9025, Washington, D.C. 20503. Federal agency requests must be directed to the FAR Agency Contact Point (see **Federal Register**, Vol. 46, No. 50, March 16, 1981, p. 16818 for list).

FOR FURTHER INFORMATION CONTACT: William Maraist, (202) 395-3300.

SUPPLEMENTARY INFORMATION: The fundamental purposes of the FAR are to reduce proliferation of regulations; to eliminate conflicts and redundancies; and to provide an acquisition regulation that is simple, clear and understandable. The intent is not to create new policy. However, because new policies may arise concurrently with the FAR project, the notice of availability of draft regulations will summarize the section or part available for review and describe any new policies therein.

The following parts of the draft Federal Acquisition Regulation are available upon request for public and Government agency review and comment.

PART 13—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

This part prescribes policies and procedures for the acquisition of supplies, nonpersonal services, or construction, from commercial sources, the aggregate amount of which does not exceed $10,000. It includes small business-small purchase set-asides, blanket purchase agreements, fast payment procedures, imprest funds, and purchase orders.

PART 17—SPECIAL CONTRACTING METHODS

Subpart 17.6—Management and Operating Contracts

This subpart prescribes policies and procedures for management and operating contracts in accordance with OMB Circular No. A-49. A management and operating contract is an agreement under which the Government contracts for the operation, maintenance, or support, on its behalf, of a Government-owned or controlled research, development, special production, or testing establishment wholly or principally devoted to one or more major programs of the contracting Federal agency. It provides a government-wide procedure for (1) Exempting management and operating contracts from the FAR and (2) a procedure for agency authorization to use this special contracting method. This subpart does not cover the nonregulatory portions of A-49, nor is it intended to supersede A-49.

Dated: January 8, 1982.

LeRoy J. Haugh,

Associate Administrator for Regulatory Policies and Practices.

[FR Doc. 82-893 Filed 1-12-82; 8:45 am]

BILLING CODE 3110-01-M

[1] Filed as a part of original document.

Notices

Federal Register
Vol. 47, No. 8
Wednesday, January 13, 1982

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

COMMISSION ON CIVIL RIGHTS

Utah Advisory Committee; Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Utah Advisory Committee to the Commission will convene at 7:30 p.m., and will end at 10:00 p.m., on January 27, 1982, at the Howard Johnson's Motor Lodge, 122 W. South Temple Street, Lisa Room, Salt Lake City, Utah 84101. The purpose of this meeting is to discuss the Committee's current project; and a briefing on hate group activities.

Persons desiring additional information or planning a presentation to the Committee, should contact the Chairperson, Ms. Linda M. Dupont-Johnson, 2377 East Boyes, Salt Lake City, Utah 84117, (801) 533–4061; or the Rocky Mountain Regional Office, 3660 Brooks Towers, 1020 Fifteenth Street, Suite 2235, Denver, Colorado 80202, (303) 327–2211.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., January 8, 1982.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 82–882 Filed 1–12–82; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 2–82]

Proposed Foreign-Trade Zone—Tampa, Florida; Application and Public Hearing

Notice is hereby given that an application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of Tampa, Florida, requesting authority to establish a foreign-trade zone project in Tampa, within the Tampa Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on January 7, 1981. The applicant is authorized to make this proposal under Chapter 288.36 of the Florida Statutes (1979).

The applicant proposes to develop a general-purpose zone in three phases, with sites in the port area, at the airport and in an industrial park. The first phase will involve a 29-acre site at the Tampa International Center (Site 1) at Adamo Drive and 22nd Street, adjacent to the Port of Tampa. Operated by the Elmer J. Krauss Organization, this facility will offer 600,000 square feet of warehouse and processing space for initial zone users. The second phase involves an undeveloped 33-acre site at Tampa International Airport at Tampa Bay Boulevard and Lauber Way (Site 2).

This site will be developed primarily to accommodate air cargo-related operations and firms requiring separate facilities, including light industrial operations. The third phase involves a 50-acre standby site at the 127-acre Tampa Industrial Park at M. McKinley Drive and Fowler Avenue. This site will be marketed as an area for future zone development involving larger scale, heavy industrial operations.

The application contains evidence of the need for zone services in the Tampa area. Prospective tenants have indicated an interest in using the zone for warehousing, distribution, exhibition, assembly and processing of food service equipment, plastic pipe and fittings, laser and computer components, electronic products, woodworking tools, and paper and glass products.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: John J. Da Ponte, Jr. (Chairman), Director, Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, D.C. 20230; Charles W. Winwood, Director (Inspection and Control), U.S.Customs Service, Region IV, 99 S.E. 5th Street, Miami, Florida 33131; and Colonel Alfred B. Devereaux, Jr., District Engineer, U.S. Army Engineer District Jacksonville, P.O. Box 4970, Jacksonville, Florida 32232.

As part of its investigation, the Examiners Committee will hold a public hearing on February 12, 1982, beginning at 9:00 a.m., in the City Council Chambers, 3rd Floor, Old City Hall, 315 E. Kennedy Blvd., Tampa. The purpose of the hearing is to help inform interested persons about the proposal, to provide an opportunity for their expression of views, and to obtain information useful to the examiners.

Interested parties are invited to present their views at the hearing. They should notify the Board's Executive Secretary of their desire to be heard in writing at the address below or by phone (202/377–2862) by February 3. Instead of an oral presentation, written statements may be submitted in accordance with the Board's regulations to the examiners committee, care of the Executive Secretary, at any time from the date of this notice through March 16, 1982. Evidence submitted during the post-hearing period is not desired unless it is clearly shown that the matter is new and material and that there are good reasons why it could not be presented at the hearing. A copy of the application and accompanying exhibits will be available during this time for public inspection at each of the following locations:

U.S. Customs District Office, 301 S. Ashley Drive, Tampa, Florida 33602

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3721, 14th and E Street, NW., Washington, D.C. 20230

Dated: January 7, 1982.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 82–836 Filed 1–12–82; 8:45 am]

BILLING CODE 3510–25–M

International Trade Administration

Barley From France; Final Results of Administrative Review of Countervailing Duty Order

AGENCY: International Trade Administration Department of Commerce.

ACTION: Notice of final results of administrative review of countervailing duty order.

SUMMARY: On October 27, 1981, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on barley from France. The review covered the period January 1, 1980 through June 30, 1981. Interested parties were given an opportunity to submit written or oral comments. We received no comments. Therefore, as described in our preliminary results, we have determined that barley from France benefitted from net subsidies of $0.04 per bushel during the period of review.

EFFECTIVE DATE: January 13, 1982.

FOR FURTHER INFORMATION CONTACT: Josephine A. Russo or Joseph A. Black, Office of Compliance, Room 2802, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230 (202–377–1168 or 377–1774).

SUPPLEMENTARY INFORMATION:

Procedural Background

On May 5, 1971, the Department of the Treasury published in the **Federal Register** a countervailing duty order, T.D. 71–117 (36 FR 8365), on barley from France. This order became effective on June 19, 1971. The order stated that exports of this merchandise benefitted from bounties or grants within the meaning of section 303 of the Tariff Act of 1930 (19 U.S.C. 1303) ("the Tariff Act"). Accordingly, imports into the United States of this merchandise were subject to countervailing duties.

On October 27, 1981, the Department of Commerce ("the Department") published in the **Federal Register** a notice of the preliminary results of its administrative review of that countervailing duty order (46 FR 52406). In the notice, we stated that barley from France benefitted from net subsidies of $0.04 per bushel during the period of review and that a cash deposit of estimated countervailing duties of $0.04 per bushel would be required on any entries until completion of the next administrative review. Interested parties were invited to comment.

Scope of the Review

Imports covered by this review are barley imported directly or indirectly from France. These imports are currently classifiable under item numbers 130.08 and 130.11 of the Tariff Schedules of the United States. The review covers the period January 1, 1980 through June 30, 1981, and was limited to the program of restitution payments made through the Guidance and Guarantee Fund operated under the Common Agricultural Policy of the European Communities ("the EC"). This was the only program found countervailable in the final determination.

Final Results of the Review

Since we have received no comments, the final results of our review are the same as those presented in the preliminary results of the review. There are no known unliquidated entries of this merchandise.

Therefore, as provided by section 751(a)(1) of the Tariff Act, the Department will instruct the Customs Service to collect a cash deposit of estimated countervailing duties of $0.04 per bushel on any shipments entered, or withdrawn from warehouses, for consumption on or after the date of publication of these final results. This requirement shall remain in effect until publication of the final results of the next administrative review. The Department intends to conduct the next review by the end of June 1982.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.41 of the Commerce Regulations (19 CFR 355.41).

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

January 7, 1982.

[FR Doc. 82–897 Filed 1–12–82; 8:45 am]

BILLING CODE 3510–25–M

The President's Export Council, Subcommittee on Export Administration; Partially Closed Meeting

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1976), notice is hereby given that a meeting of the Subcommittee on Export Administration of the President's Export Council (PEC) will be held on Wednesday, January 27, 1982. The meeting is being held on short notice because the members need to be briefed on export administration matters to allow them to offer industry views on the Military Critical Technologies List and on ways to strenghten the present system on multilateral controls.

The Subcommittee on Export Administration was initially established on June 1, 1976. Executive Order 12258 of December 31, 1980, continued the Subcommittee until December 31, 1982.

The Subcommittee provides advice on matters pertinent to those portions of the Export Administration Act of 1979, that deal with United States policies of encouraging trade with all countries with which the United States has diplomatic or trading relations and of controlling trade for national security and foreign policy reasons. The agenda for the meeting is as follows:

Public Session

a. Welcome and Introduction of Subcommittee Members

b. Briefing and Status of Previous Recommendations

c. Discussion of Current Issues and Subcommittee Members Issue-Interest Areas

d. Comments and Questions from the Public (written comments will be accepted)

Executive Session

a. Briefing on Export Administration Act—What Items Controlled and Why

b. Briefing on High-Level COCOM Meeting

TIME AND PLACE: The meeting will take place at 9:30 a.m., in Room 4830 of the Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C. The public session will be from 9:30 a.m. to 11:30 a.m. An Executive session, closed to the public, will be held from 1:30 p.m. to 5:00 p.m.

From 1:30 p.m. to 5:00 p.m. the Subcommittee will meet only in Executive Session to discuss matters properly classified under Executive Order 12065, dealing with the U.S. and COCOM export control program developments and their related strategic criteria.

SUPPLEMENTARY INFORMATION: The Assistant Secretary of Commerce for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 8, 1982, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended by Section 5(c) of the Government in the Sunshine Act, Pub. L. 94–409, that the matters to be discussed in Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552(b)(1) and properly classified under Executive Order 12065.

A copy of the Notice of Determination to close the Subcommittee's meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 5317, U.S. Department of Commerce, telephone: (202) 377–4217.

For further information or copies of minutes contact: Ms. Debbie Kappler, Office of the Assistant Secretary for

Trade Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230 (202/377–1455) or Mr. Jeffrey Jackson, President's Export Council, Room 1215 (202/377–1125).

Dated: January 8, 1982.

Lawrence J. Brady,

Assistant Secretary for Trade Administration.

[FR Doc. 82-954 Filed 1-12-82; 8:45 am]

BILLING CODE 3510-25-M

National Oceanic and Atmospheric Administration

Mid-Atlantic Fishery Management Council's Scientific and Statistical Committee; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

SUMMARY: The Mid-Atlantic Fishery Management Council, established by Section 302 of the Magnuson Fishery Conservation and Management Act (Public Law 94–265), has established a Scientific and Statistical Committee which will meet to discuss the Council's existing data collection systems and data needs.

DATES: The public meeting will convene on Wednesday, February 3, 1982, at approximately 10 a.m. and will adjourn at approximately 3:30 p.m. The meeting agenda may be rearranged or changed depending upon progress of the same.

ADDRESS: The meeting will take place at the Best Western Airport Motel, Philadelphia International Airport, Route 291, Philadelphia, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Mid-Atlantic Fishery Management Council, Federal Building, Room 2115, North and New Streets, Dover, Delaware 19901, Telephone: (302) 674–2331.

Dated: January 8, 1982.

Jack L. Falls,

Chief, Administrative Support Staff, National Marine Fisheries Service.

[FR Doc. 82-892 Filed 1-12-82; 8:45 am]

BILLING CODE 3510-22-M

COMMODITY FUTURES TRADING COMMISSION

The New York Futures Exchange: Proposed Amendments Relating to the Treasury Bond Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the proposed contract market rule changes.

SUMMARY: The New York Futures Exchange ("NYFE" or "Exchange") has submitted a proposal to amend its Treasury bond futures contract. These amendments constitute major revisions to the delivery standards and delivery procedures of the contract. The Commodity Futures Trading Commission (the "Commission") had determined that the proposal is of major economic significance and that, accordingly, making the proposal available for public inspection and comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before February 3, 1982.

ADDRESS: Interested persons should submit their views and comments to Jane K. Stuckey, Secretary, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581. Reference should be made to the New York Futures Exchange Chapter 8.

FOR FURTHER INFORMATION CONTACT: Ronald Hobson, Division of Economics and Education, 2033 K Street, N.W., Washington, D.C. 20581, (202) 254–7303.

SUPPLEMENTARY INFORMATION: The New York Futures Exchange is proposing to revise Chapter 8 of its Treasury bond futures contract. The major revisions proposed include changing the invoicing method from yield maintenance to fixed-factor pricing, with a factor based on a 10 percent coupon, permitting delivery throughout the delivery month rather than only on three days, and changing the delivery unit so that deliverable bonds may now have 15 years to maturity of first call date. Previously, a deliverable bond had to have at least 20 years to maturity.

In accordance with Section 5a(12) of the Commodity Exchange Act (the "Act"), 7 U.S.C. 7a(12) (Supp. III 1979), the Commission has determined that the proposal submitted by the NYFE concerning its Treasury bond futures contract is of major economic significance. Accordingly, the NYFE's proposed amendments to Chapter 8 will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581. Copies can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

Other materials submitted by the NYFE in support of the proposed rule amendment may be available upon request pursuant to the Freedom on Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1981)). Requests for copies of such materials should be made to the FOIA, Privacy and Sunshine Acts Compliance staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the proposed amendments should send such comments to Jane K. Stuckey, Secretary, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581, by [twenty-one (21) days after publication]. Such comment letters will be publicly available except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9.

Issued in Washington, D.C., on January 7, 1982.

Jane K. Stuckey,

Secretary of the Commission.

[FR Doc. 82-794 Filed 1-12-82; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF ENERGY

Office of Assistant Secretary for International Affairs

International Atomic Energy Agreements; Australia; Proposed Subsequent Arrangements

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of proposed "subsequent arrangements" under the Agreement for Cooperation Between the Government of the United States of America and the Government of Australia Concerning Peaceful Uses of Atomic Energy, and the Agreement for Cooperation Between the Government of the United States of America and the Government of Canada Concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangements to be carried out under the above mentioned agreements involve approval for the following sales:

Contract Number S–AU–112, to Selbys Scientific Ltd., Australia, 42.4 grams of natural uranium for use as standard reference material.

Contract Number S–CA–314, to Atomic Energy of Canada, Ltd., Canada, 1 gram of uranium enriched to 1.0037% in U–235, and 1 gram of uranium enriched to 2.038% in U–235, for use as standard reference materials.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the furnishing of these nuclear materials will not be inimical to the common defense and security.

These subsequent arrangements will take effect no sooner than January 28, 1982.

For the Department of Energy.

Dated: January 7, 1982.

Harold D. Bengelsdorf,

Director, Office of International Nuclear and Non-Proliferation Policy.

[FR Doc. 82-885 Filed 1-12-82; 8:45 am]

BILLING CODE 6450-01-M

International Atomic Energy Agreements; European Atomic Energy Community; Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation Between the Government of the United States of America and the Government of Norway Concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreements involves approval of the following retransfer: RTD/N0 (EU)-49, from the Federal Republic of Germany to Norway, 87 kilograms of uranium, containing 4.3 kilograms of U-235 (4.94% enrichment) for fabrication of fuel pellets for irradiation in the Halden reactor.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that approval of this retransfer will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: January 7, 1982.

Harold D. Bengelsdorf,

Director, Office of International Nuclear and Non-Proliferation Policy.

[FR Doc. 82-884 Filed 1-12-82; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[ERA Docket Nos. IE-80-1 and IE-77-6]

Niagara Mohawk Power Corp. and New York Power Pool; Amendment to Supplemental Order Authorizing Transmission of Electric Energy to Canada and Accepting for Filing Export Rate Schedule

Issued: January 5, 1982.

On August 26, 1980, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) issued a supplemental order authorizing the transmission of electric energy to Canada and accepting for filing the export rate schedule in ERA dockets IE-80-1 and IE-77-6. On September 22, 1980, Niagara Mohawk Power Corporation (Niagara Mohawk) filed a request for clarification of the August 26, 1980 Order. Niagara Mohawk stated its belief that the Order was somewhat ambiguous with respect to the continuity of Niagara Mohawk's longstanding authority to export energy to Canada. Accordingly, Niagara Mohawk requested a change in the language of the third line of Ordering Paragraph B, which presently reads as follows: "as the agreement governing any exports from the New York. * * *"; it asked that this language be changed to read "as an agreement governing certain exports as detailed therein from the New York. * * *"

Niagara Mohawk further requested that it be specified that the term "NYPP" includes Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation.

Finally, Niagara Mohawk requested that, because Niagara Mohawk is the company that physically monitors export under this authorization, Ordering Paragraph F be modified to delete "NYPP" and substitute "Niagara Mohawk" as the responsible party under this Order to ensure that the existing export limits are not exceeded.

DOE Finds:

(1) The changes requested by Niagara Mohawk will not impair the sufficiency of electric supply within the United States and will not impede or tend to impede the coordination in the public interest of facilities subject to the jurisdiction of DOE.

(2) The changes requested by Niagara Mohawk should be permitted.

DOE Orders:

(A) The language of the third and fourth lines of Paragraph B of the Order issued on August 26, 1980, in ERA Docket No. IE-80-1 and IE-77-6 shall be changed to read ". . .as an agreement governing certain exports from New York Power Pool to Ontario Hydro, as detailed therein. Such agreement shall be effective. . . ."

(B) The findings made in the Order of August 26, 1980, shall be amended to include the following paragraph:

(4) For purposes of the Order, the term "NYPP" shall be defined to include the following member corporations which also are signatories to the Interconnection Agreement with Ontario Hydro: Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc. and Rochester Gas and Electric Corporation.

(C) Ordering Paragraph F hereby is modified to delete "NYPP" by substituting "Niagara Mohawk Power Corporation" as the responsible party under the Order.

Issued in Washington, D.C. on January 5, 1982.

Rayburn Hanzlik,[1]

Administrator, Economic Regulatory Administration.

[FR Doc. 82-883 Filed 1-12-82; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Objection to Proposed Remedial Order Filed; Period November 30 Through December 18, 1981

During the period November 30 through December 18, 1981, the notice of objection to a proposed remedial order listed in the Appendix to this Notice was filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who wishes to participate in the proceeding the Department of Energy will conduct concerning the proposed remedial order described in the Appendix to this Notice must file a request to participate pursuant to 10 CFR 205.194 on or before February 2, 1982. The Office of Hearings and Appeals will then determine those persons who may participate on an

[1] In the recent reorganization of DOE, responsibility for Presidential Permits was transferred from ERA to the Office of Environmental Protection, Safety, and Emergency Preparedness. DOE is in the process of redelegating authority.

active basis in the proceeding and will prepare an official service list, which it will mail to all persons who filed requests to participate. Persons may also be placed on the official service list as non-participants for good cause shown.

All requests to participate in this proceeding should be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20461.

January 6, 1982.

George B. Breznay,

Director, Office of Hearings and Appeals.

Mobil Oil Corporation, Fairfax, Virginia HRO-0023

On December 17, 1981, Mobil Oil Corp., 3225 Gallows Road, Fairfax, Virginia 22037 filed a Notice of Objection to a Proposed Remedial Order that the DOE Office of Special Counsel issued to the firm on October 2, 1981. In the Proposed Remedial Order the Office of Special Counsel found that during the period August 1973 through December 1976 Mobil committed pricing violations in its sales of refined petroleum products. According to the Proposed Remedial Order, the Mobil violations resulted in $12,094,000 of overcharges to its customers.

[FR Doc. 82-821 Filed 1-12-82; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[PF-209A: PH-FRL-2023-8]

American Cyanamid Co.; Amendment to Pesticide Petition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: American Cyanamid Co. has amended a pesticide petition (PP 1F2433) to increase the proposed tolerances for the combined residues of the insecticide terbufos in or on the raw agricultural commodities cabbage, broccoli, and cauliflower.

ADDRESS: Written comments to: William Miller, Product Manager (PM) 16, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: William Miller (703-557-2600).

SUPPLEMENTARY INFORMATION: EPA issued a notice published in the **Federal Register** of December 23, 1980 (45 FR 84849), announcing that American Cyanamid, Agricultural Research Div., PO Box 400, Princeton, NJ 08540, had submitted a pesticide petition (PP 1F2433) proposing that 40 CFR 180.352 be amended by establishing tolerances for the combined residues of the insecticide terbufos [*S*-[(1,1-dimethylethyl)thio]methyl] *O,O*-diethyl phosphorodithioate and its cholinesterase-inhibiting metabolites in or on the harvestable portions of the following raw agricultural commodities cabbage, broccoli, and cauliflower at 0.05 part per million (ppm).

American Cyanamid Co. has submitted an amendment proposing to increase the tolerance levels for cabbage, broccoli, and cauliflower from 0.05 ppm to 0.20 ppm. The proposed analytical method for determining residues is a gas chromatographic procedure equipped with a phosphorus-sensitive, alkali flame ionization detector.

(Sec. 408(d)(1), 68 Stat. 512, (7 U.S.C. 136))

Dated: December 29, 1981.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 82-485 Filed 1-12-82; 8:45 am]

BILLING CODE 6560-32-M

[OPP-C31049A; PH-FRL-2023-5]

Approval of Applications To Conditionally Register Pesticide Products Involving a Changed Use Pattern

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has approved the applications by Aqua Brom/Tesco to amend registration of pesticide products Spa Brom Feeder Sticks and Spa Brom Mini Pak, involving a changed use pattern pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: Arturo Castillo, Product Manager (PM) 32, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, CM#2 Rm. 305, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703-557-7170).

SUPPLEMENTARY INFORMATION: EPA issued a notice published in the **Federal Register** of July 1, 1981 (46 FR 34406) that Aqua Brom/Tesco, PO Box 65449, Marietta, GA 30065, had submitted applications to conditionally register pesticide products Spa Brom Feeder Sticks (1729-REG) and Spa Brom Mini Pak (1729-REE) both, containing 96% of the active ingredient 1-bromo-3-chloro-5,5-dimethylhydantoin. The applications proposed a changed use pattern of the products.

The applications were approved on October 20, 1981. Spa Brom Feeder Sticks (1729-123) and Spa Brom Mini Pak (1729-122) are approved for general use in spas and hot tubs in addition to its presently registered uses in swimming pools.

A copy of the approved label and the list of data references used to support registration are available for public inspection in the office of the product manager. The data and other scientific information used to support registration, except for the material specifically protected by section 10 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (92 Stat. 819; 7 U.S.C. 136), will be available for public inspection in accordance with section 3(c)(2) of FIFRA within 30 days after registration date. Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A-101), EPA, 401 M St., SW., Washington, DC 20460. Such requests should: (1) identify the product name and registration number and (2) specify the data or information desired.

(Sec. 3(c)(2) FIFRA, as amended)

Dated: December 22, 1981.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

[FR Doc. 82-489 Filed 1-12-82; 8:45 am]

BILLING CODE 6560-32-M

[PP 8G2118/T339; PH-FRL-2024-1]

Ethalfluralin Extension of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has extended temporary tolerances for residues of the herbicide ethalfluralin *N*-ethyl-*N*-(2-methyl-2-propenyl)-2,6-dinitro-4-(trifluoromethyl) benzenamine in or on the raw agricultural commodity groupings seed and pod vegetables, cucurbits, and forage legumes at 0.05 part per million (ppm).

DATE: These temporary tolerances expire April 16, 1984.

FOR FURTHER INFORMATION CONTACT: Richard F. Mountfort, Product Manger (PM 23, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 237, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703-557-1830).

SUPPLEMENTARY INFORMATION: EPA issued a notice, that was published in

the Federal Register of June 10, 1981 (46 FR 30693), extending temporary tolerances established for residues of the herbicide ethalfluralin, *N*-ethyl-*N*-(2-methyl-2-propenyl)-2,6-dinitro-4-(trifluoromethyl) benzenamine, in or on the raw agricultural commodity groupings seed and pod vegetables, cucurbits, and forage legumes at 0.05 ppm. These temporary tolerances have been re-extended in response to pesticide petition (PP 8G2118), submitted by Elanco Products Co., P.O. Box 1750, Indianapolis, IN 46206.

The company requested a one-year extension of the temporary tolerances to permit the continued marketing of the remaining raw agricultural commodities named above when treated in accordance with the provisions of experimental use permit 1471-EUP-63, which is being re-extended under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, (92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and all other relevant material were evaluated, and it was determined that the extension of these temporary tolerances will protect the public health. Therefore, the temporary tolerances have been extended on the condition that the herbicide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. Elanco Products Co. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire April 16, 1984. Residues not in excess of this amount remaining in or on the raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any scientific data or experience with this pesticide indicates that such revocation is necessary to protect the public health.

As required by Executive Order 12291, EPA has determined that this temporary tolerance is not a "Major" rule and therefore does not require a Regulatory Impact Analysis. In addition, the Office of Management and Budget (OMB) has exempted temporary tolerances from the OMB review requirements of Executive Order 12291, pursuant to section 8(b) of that Order.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

(Sec. 408(j), 68 Stat. 561, (21 U.S.C. 346A(j)))

Dated: December 21, 1981.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 82-484 Filed 1-12-82; 8:45 am]

BILLING CODE 6560-32-M

[OPP-C31053; PH-FRL-2026-1]

Applications to Conditionally Register Pesticide Products Involving Changed Use Pattern; Certain Companies

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to conditionally register, or amend registration of, pesticide products involving changed use pattern pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended.

DATE: Comments by Feburary 12, 1982.

ADDRESS: Written comments, identified by the document control number [OPP-C31053] and the file or registration number, should be submitted to the product manager (PM) cited at the address below: Registration Division (TS-767C, Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: The product manager at the telephone number cited.

SUPPLEMENTARY INFORMATION: EPA received applications as follows to conditionally register, or amend registration of, pesticide products involving changed use pattern pursuant to the provisions of section 3(c)(4) of FIFRA. Notice of receipt of applications does not imply a decision by the Agency on the applications.

Applications Received

1. EPA File Symbol: 7401-GRE.

Applicant: Voluntary Purchasing Groups, Inc., PO Box 460, Bonham, TX 75418.

Product Name: Hi-Yield Killer.

Active Ingredient: Toxaphene 10%.

Proposed new use: Toxaphene is already registered as an insecticide for use in agricultural crops, on fruits and nut trees, and for animal dips. The proposed use of toxaphene is as a snake toxicant around homes, gardens, lawns, and other sites.

Proposed use classification: General.

Product manager (PM) 16: William Miller (703-557-2600).

2. EPA File Symbol: 3125-GGO.

Applicant: Mobay Chemical Corp., 1140 Connecticut Ave., Suite 604, Washington, DC 20036.

Product Name: Oftanol 6 Emulsifiable Insecticide.

Active Ingredient: 1-Methyl 2-[[ethoxy[(1-methylethyl)-amino]phosphinothioyl]oxy]benzoate 66%.

Proposed new use: Presently registered for restricted non-domestic use. New use will include domestic use.

Proposed use classification: Restricted.

Product manager (PM) 16: William Miller, (703-557-2600).

3. EPA File Symbol: 359-INU.

Applicant: Rhone-Poulenc Chemical Co., Agrochemical Division, PO Box 125, Black Horse Lane, Monmouth Junction, NJ 08852.

Product Name: Rovral.

Active Ingredient: Isoprodine 3-(3,5-dichlorophenyl)-*N*-(1-methylethyl-2,4-dioxo-1-imidazolidinecarboxamide 50%.

Proposed new use: Presently registered for general use on turf. New use will include the control of blossom and fruit monilinia brown rot on cherries and peaches.

Proposed use classification: General.

Product manager (PM) 21: Henry Jacoby, (703-557-1900).

Notice of approval or denial of an application to register, or amend registration of, a pesticide product will be announced in the Federal Register. Except for such material protected by section 10 of FIFRA, the test data and other scientific information deemed relevant to the registration decision may be made available after approval under the provisions of the Freedom of Information Act. The procedure for requesting such data will be given in the Federal Register if an application is approved.

Comments received within the specified time period will be considered

before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

The label furnished by the applicant, as well as all written comments filed pursuant to this notice, will be available in the product manager's office between 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays. It is suggested that persons interested in reviewing the application file, telephone the product manager's office to ensure that the file is available on the date of intended visit.

(Sec. 3(c)(4) of FIFRA, as amended)

Dated: December 22, 1981.

Douglas D. Campt,

Director, Registration Division Office of Pesticide Programs.

[FR Doc. 82-813 Filed 1-12-82; 8:45 am]

BILLING CODE 6560-32-M

[AEN-FRL-2026-7]

Fuels and Fuel Additives; Waiver Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On November 20, 1981, Dr. Eugene H. Bay, Sr., President, Fuel Research Laboratories, and Dr. Ernest F. Powers, President, S & E Associates, Consultants, Inc., on behalf of Synco 76 Fuel Corporation, submitted an application for a waiver of the section 211(f) prohibition on certain fuels and fuel additives set forth in the Clean Air Act (Act). This application is for a fuel additive composed of a proprietary stabilizer mixed with anhydrous ethanol and denatured by Methly Isobutyl Ketone (MIK). The fuel additive, mixed in a ration of one-fourth (¼) gallon stabilizer to five (5) gallons ethanol, will be used with forty-five (45) gallons of finished unleaded gasoline. The Administrator of EPA has until May 18, 1982 (180 days from the date of receipt of the application) to grant or deny a waiver.

ADDRESS: Copies of the non-confidential business information relative to this application are available for inspection in public docket EN-81-20 at the Central Docket Section (A-130) of the EPA, Gallery I—West Tower, 401 M Street, SW., Washington, D.C. 20460, (202) 755-0245, between the hours of 8:00 a.m. and 4:00 p.m. Any comments from interested parties should be addressed to this docket with a copy forwarded to Richard G. Kozlowski, Director, Field Operations and Support Division (EN-397), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services. Comments should be submitted on or before March 1, 1982.

FOR FURTHER INFORMATION CONTACT: Janet Golup, Attorney-Advisor, Field Operations and Support Division (EN-397), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, (202) 382-2656.

SUPPLEMENTARY INFORMATION: Section 211(f)(1) of the Act makes it unlawful, effective March 31, 1977, for any manufacturer of a fuel of fuel additive to first introduce into commerce, or to increase the concentration in use of, any fuel or fuel additive for use in light duty motor vehicles manufactured after model year 1974 which is not substantially similar to any fuel or fuel additive utilized in the certification of any model year 1975, or subsequent model year, vehicle or engine under section 206 of the Act. Section 211(f)(4) of the Act provides that the Administrator of EPA may waive the prohibitions of section 211(f)(1) upon application of any fuel or fuel additive manufacturer if the Administrator determines that the applicant has established that such fuel or fuel additive will not cause or contribute to a failure of any emission control device or system (over the useful life of any vehicle in which such device or system is used) to achieve compliance by the vehicle with the emission standards to which it has been certified pursuant to section 206 of the Act. If the Administrator does not act to grant or deny a waiver within 180 days of receipt of the application, the waiver shall be treated as granted.

Synco 76 Fuel Corporation submitted an application for a waiver for a fuel additive composed of a proprietary stabilizer mixed with anhydrous ethanol and denatured by MIK. The fuel additive, mixed in a ratio of ¼ gallon stabilizer to 5 gallons ethanol, will be used with 45 gallons of finished unleaded gasoline. The 180 day review period expires on May 18, 1982.

Because of the proprietary nature of the stabilizer, and because of EPA's desire to render a determination on the maximum amount of data, Synco 76 Fuel Corporation will provide a reasonable amount of the pre-mixed fuel additive (ethanol plus stabilizer) for test purposes provided the prospective tester executes a confidentiality agreement with Synco 76 Fuel Corporation.

For more information on obtaining the test fuel additive contact: Dr. Eugene H. Bay, Sr., President, Fuel Research Laboratories, c/o Synco 76 Fuel Corporation, 3101 West Highway 98, Panama City, Florida 32401, (904) 769-3594; or Dr. Ernest F. Powers, President, S & E Associates, Consultants, Inc., 7409 Radcliffe Drive, College Park, Md. 20740, (301) 441-9007.

Dated: December 29, 1981.

Kathleen M. Bennett,

Assistant Administrator for Air, Noise, and Radiation.

[FR Doc. 82-809 Filed 1-12-82; 8:45 am]

BILLING CODE 6560-26-M

[PF-241A; PH-FRL-2025-8]

Pesticide Petition; Correction; Ciba-Geigy Corp.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice corrects a pesticide petition (PP 1E2563) proposing the establishment of tolerances for the combined residues of the herbicide metolachlor and its metabolites in or on the raw agricultural commodities rotational grain crop forage and fodder.

ADDRESS: Written comments to : Richard Mountfort, Product Manager (PM) 23, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Richard Mountfort (703-557-1830).

SUPPLEMENTARY INFORMATION: EPA issued a notice published in the Federal Register of October 19, 1981 (46 FR 51282) that Ciba-Geigy Corporation, Agricultural Division, PO Box 11422, Greensboro, NC 27409, had submitted a pesticide petition (PP 1E2563) proposing the establishment of tolerances for the combined residues of the herbicide metolachlor [2-chloro-*N*-(2-ethyl-6-methylphenyl)-*N*-(2-methoxy-1-methylethyl) acetamide and its metabolites determined as 2-[(ethyl-6-methylphenyl)-amino]-1-propanol and 4-(2-ethyl-6-methylphenyl)-2-hydroxy-5-methyl-3-morpholinone, each expressed as parent compound in or on the raw agricultural commodities rotational grain crop forage and fodder at 0.5 ppm.

In FR Doc. 81-30137, appearing at page 51282 under "SUPPLEMENTARY INFORMATION" the reference to commodities in petition number PP 1E2563, on page 51283, second column, lines 14 through 15, that portion of the sentence which reads "rotational grain, crop forage, and fodder at 0.5 ppm" is corrected to read "rotational grain crop forage and fodder at 0.5 ppm."

(Sec. 408(d)(1), 68 Stat. 512, (7 U.S.C. 135))

Dated: December 30, 1981.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 82-810 Filed 1-12-82; 8:45 am]

BILLING CODE 6560-32-M

[PF-255; PH-FRL-2025-7]

Pesticide Petitions; Certain Companies

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that certain companies have filed petitions proposing to establish tolerances for certain pesticide chemicals in or on certain agricultural commodities.

ADDRESS: Written comments to the product manager (PM) cited in each specific petition at the address below: Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Written comments may be submitted while the petitions are pending before the agency. The comments are to be identified by the document control number "[PF-255]" and the specific petition number. All written comments filed in response to this notice will be available for public inspection in the product manager's office from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: The product manager cited in each petition at the telephone number provided.

SUPPLEMENTARY INFORMATION: EPA gives notice that the following pesticide petitions have been submitted to the agency requesting establishment of tolerances for certain pesticide chemicals in or on certain raw agricultural commodities in accordance with the Federal Food, Drug, and Cosmetic Act. The analytical method for determining residues, where required, is given in each petition.

PP 2F2589. BASF Wyandotte Corp., 100 Cherry Hill Road, PO Box 181, Parsippany, NJ 07054. Proposes amending 40 CFR 180.363 by establishing tolerances for residues of the herbicide fluchloralin [*N*-(2-chloroethyl)-alpha,alpha,alpha,-trifluoro-2,6-dinitro-*N*-propyl-*p*-toluidine] in or on the raw agricultural commodities seed and pod vegetables and sunflower seed at 0.05 part per million (ppm), and forage and hay of seed and pod vegetables at 0.1 ppm. The proposed analytical method for determining residues is gas chromatography using an electrolytic conductivity detector (nitrogen specific). (PM-25, Robert Taylor, 703-557-1800).

PP 2F2604. E. I. du Pont de Nemours and Co., Wilmington, DE 19898. Proposes amending 40 CFR 180 by establishing tolerances for residues of the herbicide chlorsulfuron (2-chloro-*N*-[(4-methoxy-6-methyl-1,3,5-triazin-2-yl)aminocarbonyl]-benzenesulfonamide) in or on the raw agricultural commodities barley, grain at 0.02 ppm; barley straw at 0.1 ppm; kidney and liver of cattle, goats, hogs, horses, and sheep at 0.03 ppm; meat, fat, and meat byproducts (except kidney and liver) of cattle, goats, hogs, horses, and sheep at 0.02 ppm; milk at 0.02 ppm; oat, grain at 0.05 ppm; oat, straw at 0.1 ppm; wheat, grain at 0.02 ppm; wheat, green forage at 6 ppm; and wheat straw at 0.1 ppm. The proposed analytical method for determining residues is high performance liquid chromatography. (PM-25, Robert Taylor, 703-557-1800).

PP 2F2582. Kalo Agricultural Chemicals, Inc., 9233 Ward Parkway, Suite 150, Kansas City, MO 64114. Proposes amending 40 CFR 180.302 by establishing tolerances for the combined residues of the fungicide hexachlorophene (2,2'-methylenebis (3,4,6-trichlorophenol) or its mono sodium salt in or on the raw agricultural commodities peanut (nut and shell) at 0.05 ppm; soybeans at 0.5 ppm; lima beans (dry) and pinto beans at 0.2 ppm; tomatoes, peppers, and cucurbits at 0.1 ppm. The proposed analytical method for determining residues is gas chromatography with an electron capture detector. (PM-21, Henry Jacoby, 703-557-1900).

PP 2F2596. Rhone-Poulenc Chemical Co, Agrochemical Div., PO Box 125 Black Horse Lane, Monmouth Junction, NJ 08852. Proposes amending 40 CFR 180 by establishing tolerances for the combined residues of the fungicide [3-(3,5-dichlorophenyl)-*N*-(1-methylethyl)-2,4-dioxo-1-imidazolidinecarboximide], its isomer [3-(1-methylethyl)-*N*-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboximide], and its metabolite [3-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboximide] in or on the raw agricultural commodities apricots, cherries (sweet and sour), nectarines, peaches, and plums (fresh prunes) at 10 ppm. The proposed analytical method for determining residues is gas layer chromatography. (PM-21, Henry Jacoby, 703-557-1900).

PP 2F2602. Diamond Shamrock Corp., Agricultural Chemicals Div., 1100 Superior Ave., Cleveland, OH 44114. Proposes amending 40 CFR 180.275 by establishing tolerances for residues of the fungicide chlorothalonil (tetrachloroisophthalonitrile) and its metabolite (4-hydroxy-2,5,6-trichloroisophthalonitrile) in or on the raw agricultural commodities stone fruits (apricots, cherries (sweet and sour)), damsons, nectarines, pawpaws, peaches, plums, and prunes) at 0.2 ppm. The proposed analytical method for determining residues is gas chromatography by electron capture. (PM-21, Henry Jacoby, 703-557-1900).

PP 2E2594. Merck and Co. Inc., PO Box 2000, Rahway, NJ 07065. Proposes amending 40 CFR 180.242 by establishing tolerances for residues of the fungicide thiabendazole (2-(4-thiazolyl)benzimidazole) in or on the raw agricultural commodities avocado and mango at 10.0 ppm. The proposed analytical method for determining residues is spectrophotometrical analysis. (PM-21, Henry Jacoby, 703-557-1900).

PP 2F2595. BASF Wyandotte Corp., 100 Cherry Hill Road, PO Box 181 Parsippany, NJ 07054. Proposes amending 40 CFR 180.380 by establishing tolerances for the combined residues of the fungicide 3-(3,5-dichlorophenyl)-5-methyl-2,4-oxazolidinedione and its metabilites containing the 3,5-dichloroaniline moiety in or on the raw agricultural commodity lettuce at 5.0 ppm. The proposed analytical method for determining residues is gas chromatography with electron capture detector. (PM-21, Henry Jacoby, 703-557-1900).

PP 2F2599. Shell Oil Co., Suite 200, 1025 Connecticut Ave., NW Washington, DC 20036. Proposes amending 40 CFR 180.379 by establishing tolerances for residues of the insecticide cyano (3-phenoxyphenyl)methyl-4-chloro-alpha-(1-methylethyl)benzeneacetate in or on the raw agricultural commodity head lettuce at 10.0 ppm. The proposed analytical method for determining residues is gas chromatography. (PM-17, Franklin Gee, 703-557-2690).

PP 2F2598. Shall Oil Co. Proposes amending 40 CFR 180.379 by establishing tolerances for residues of the insecticide cyano in or on the raw agricultural commodity field corn grain at 0.2 ppm. The proposed analytical method for determining residues is gas chromatography. (PM-17, Franklin Gee, 703-557-2690).

PP 2F2601. Ciba-Geigy Corp., Agricultural Division, PO Box 18300, Greensboro, NC 27419. Proposes amending 40 CFR 180.120 by establishing tolerances for the combined residues of the herbicide metolachlor [2-chloro-*N*-(2-ethyl-6-methylphenyl)-*N*-(2-methoxy-1-methylethyl) acetamide] and

its metabolites determined as 2-[(2-ethlyl-6-methylphenyl)-amino]-1-propanol and 4-(2-ethyl-6-methylphenyl)-2-hydroxy-5-methyl-3-morphonlinone, each expressed as a parent metolachlor, in or on the raw agricultural commodity safflower seed at 0.1 ppm. The proposed analytical method for determining residues is gas chromatography. (PM-23, Richard Mountfort, 703-557-1830).

(Sec. 408(d)(1), 68 Stat. 512 (7 U.S.C. 136))

Dated: December 30, 1981.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 82-811 Filed 1-12-82; 8:45 am]

BILLING CODE 6560-32-M

[PW-29; PH-FRL-2025-6]

Pesticide Petition; Diamond Shamrock Corp.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Diamond Shamrock Corp. has withdrawn a pesticide petition (PP 6F1789) for residues of the fungicide chlorothalonil and its metabolite in or on the raw agricultural commodities peaches and cherries.

FOR FURTHER INFORMATION CONTACT: Henry Jacoby, Product Manager (PM) 21, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, RM. 227, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1900).

SUPPLEMENTARY INFORMATION: In the Federal Register of April 1, 1976 (41 FR 13984), Diamond Shamrock Corp., Cleveland, OH 44114, submitted a pesticide petition (PP 6F1789) proposing the establishment of tolerances for residues of the fungicide chlorothalonil (tetrachloroisophthalonitrile) and its metabolite (4-hydroxy-2,5,6-trichloroisophthalonitrile) in or on the raw agricultural commodities peaches at 25 parts per million (ppm) and cherries (tart and sweet) at 15 ppm.

Diamond Shamrock Corp. has withdrawn this petition without prejudice to further filing in accordance with the regulations.

(Sec. 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(d)))

Dated: December 30, 1981.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 82-812 Filed 1-12-82; 8:45 am]

BILLING CODE 6560-32-M

[OPTS-51380; TSH-FRL-2027-2]

Premanufacture Notices; Certain Chemicals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of interim policy published in the Federal Register of May 15, 1979 (44 FR 28558) and November 7, 1980 (45 FR 74378). This notice announces receipt of four PMNs and provides a summary of each.

DATES: Written comments by: PMN 82-1, 82-2, 82-3, 82-4, March 5, 1982.

ADDRESS: Written comments, identified by the document control number "[OPTS-51380]" and the specific PMN number should be sent to: Document Control Officer (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-409, 401 M St., SW., Washington, D.C. 20460, (202-382-3532).

FOR FURTHER INFORMATION CONTACT: David Dull, Acting Chief, Notice Review Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-216, 401 M St., SW., Washington, D.C. 20460, (202-426-2601).

SUPPLEMENTARY INFORMATION: The following are summaries of information provided by the manufacturer on the PMNs received by EPA:

PMN 82-1

Close of Review Period. April 4, 1982.

Manufacturer's Identity. The Minnesota Mining and Manufacturing Company, 3M Center, St. Paul, MN 55144.

Specific Chemical Identity. Claimed confidential business information. Generic name provided: Halogenated derivative of polyethylene glycol.

Use. The manufacturer states that the PMN substance will be used as a process intermediate.

Production Estimates. Claimed confidential business information.

Physical/Chemical Properties

pH—2.7.

Boiling point @ 0.5% distilled—63.2°C.

Solubility:

Water—Miscible with slight turbidity at some concentrations.

Density—1.133 g/ml @ 25°C.

Toxicity Data

Acute dermal toxicity LD_{50} (rat)—<3 g/kg.

Skin irritation (rabbit)—Non-irritating.

Primary eye irritation (rabbit)—Minimally irritating.

Skin sensitization (guinea pig)—Weak sensitizer.

Environmental Test Data

COD—1.7 g/g.

BOD_5—0.003 g/g.

BOD_{20}—0.0047 g/g.

LC_{50} 96 hr. (fathead minnow)—<2,000 mg/l.

Exposure. The manufacturer states that during manufacture and processing 16 workers may experience dermal exposure 12 hrs/day, 15 days/yr during filtration and drumming.

Environmental Release/Disposal. The manufacturer states that 1,000-10,000 kg/yr will be released to water. Disposal is by incineration and wastewater treatment.

PMN 82-2

Close of Review Period. April 5, 1982.

Manufacturer's Identity. Claimed confidential business information.

Specific Chemical Identity. Claimed confidential business information. Generic named provided: Propionic acid, 1-methyl-2 (amino functional) substituted ester.

Use. The manufacturer states that the PMN substance will be used in a consumer use.

Production Estimates. Claimed confidential business information.

Physical/Chemical Properties

Appearance—Clear, yellow liquid.

Flash point—139°F.

Viscosity—Approx. 3 ctsks. @ 20°C.

Solubility: water—Slightly soluble.

Density—1.1 gm/ml @ 20°C.

Toxicity Data

Acute oral toxicity LD_{50} (rat)—4,900 mg/kg.

Acute dermal toxicity LD_{50} (rat)—>2,000 mg/kg.

Skin irritation (rabbit)—Irritating.

Eye irritation (rabbit)—Severe irritating.

Ames salmonella—Non-mutagenic.

Exposure. The manufacturer states that during manufacture, processing, use, and QC testing workers may experience dermal exposure.

Environmental Release/Disposal. Claimed confidential business information.

PMN 82-3

Close of Review Period. April 5, 1982.
Manufacturer's Identity. Claimed confidential business information.
Specific Chemical Identify. Claimed confidential business information. Generic name provided: Polydimethylsiloxane, copolymer with (substituted alkyl) trimethoxy silane.
Use. The manufacturer states that the PMN substance will be used in a consumer use.
Production Estimates. Claimed confidential business information.

Physical/Chemical Properties

Appearance—Clear, amine-smelling liquid.
Specific gravity—0.95–1.0.
Boiling point—>300°C.
Flash point—104–150°F.
Solubility:
Water—Generally regarded as immiscible.
Vapor pressure—2 mm Hg @ 25°C (estimated).
Toxicity Data. No data were submitted.
Exposure. The manufacturer states that during manufacture and QC testing workers may experience dermal and inhalation and occular exposure.
Environmental Release/Disposal. Claimed confidential business information.

PMN 82-4

Close of Review Period. April 5, 1982.
Manufacturer's Identity. Claimed confidential business information.
Specific Chemical Identify. Claimed confidential business information. Generic name provided: Polydimethylsiloxane, polymer with amino substituted and methyl silsesquioxanes.
Use. The manufacturer states that the PMN substance will be used in a consumer use.
Production Estimates. Claimed confidential business information.

Physical/Chemical Properties

Appearance—Clear, amine-smelling liquid.
Specific gravity—0.95–1.0.
Boiling point—>300°C.
Flash point—104°F. by Pensky Marten Closed Cup.
Melting point—<45°C.
Solubility:
Water—Insoluble.
Vapor pressure—2 mm Hg @ 25°C (estimated).
Generates methanol on exposure to water vapor.
Toxicity Data. No data were submitted.
Exposure. The manufacturer states that during manufacture and QC testing workers may experience dermal exposure.
Environmental Release/Disposal. Claimed confidential business information.

Dated: January 6, 1982.

Woodson W. Bercaw,

Acting Director, Management Support Division.

[FR Doc. 82-820 Filed 1-12-82; 8:45 am]
BILLING CODE 6560-31-M

[OPTS-51378; TSH-FRL-2027-6]

Premanufacture Notices; Certain Chemicals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of interim policy published in the **Federal Register** of May 15, 1979 (44 FR 28558) and November 7, 1980 (45 FR 74378). This notice announces receipt of three PMNs and provides a summary of each.

DATES: Written comments by: PMN 81-680, 81-681, & 81-682, February 28, 1982.

ADDRESS: Written comments, identified by the document control number "[OPTS-51378]" and the specific PMN number should be sent to: Document Control Officer (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-409, 401 M St., SW., Washington, DC 20460, (202-382-3532).

FOR FURTHER INFORMATION CONTACT: David Dull, Acting Chief, Notice Review Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-216, 401 M St., SW., Washington, DC 20460, (202-426-2601).

SUPPLEMENTARY INFORMATION: The following are summaries of information provided by the manufacturer on the PMNs received by EPA:

PMN 81-680

Close of Review Period. March 30, 1982.
Manufacturer's Identity. Naarden International USA, Inc., 919 Third Avenue, New York, NY 10022.
Specific Chemical Identity. 3,3-dimethylbicyclo (2.2.1) heptane-2-carboxylic acid.
Use. The manufacturer states that the PMN substance will be used in fragrance compounds.
Production Estimates. Claimed confidential business information.
Physical/Chemical Properties.
Boiling point—140°C/6 mm Hg.
Flash point closed cup method Pensky Martens—143.5°C.
Melting point—92°C.
Solubility:
Water—<1 g/l.
Alcohol 60% 20°C—1:4.5 and more.

Toxicity Data

Acute oral toxicity LD_{50} (rat)—>5 g/kg.
Primary skin irritation (rabbit)—Moderate.
Primary eye irritation (rabbit)—Irritating.
Ames salmonella—No mutagenic activity.
Skin sensitization (guinea pig)—No sensitization.
Exposure. Further clarification needed before information may be released to the public files.
Environmental Release/Disposal. The manufacturer states that release to land and water will only result from an accidental spill. Disposal is by incineration.

PMN 81-681

Close of Review Period. March 30, 1982.
Manufacturer's Identity. Minnesota Mining and Manufacturing Company, 3M Center, St. Paul, MN 55144.
Specific chemical Identity. Decanoic acid, octyl ester.
Use. The manufacturer states that the PMN substance will be used as an industrial and commercial temperature indicating device.

PRODUCTION ESTIMATES

	Maximum (kilograms per year)
1st year	3
2d year	5
3d year	5

Physical/Chemical Properties. No data were submitted.

Toxicity Data

Acute oral toxicity LD_{50} (rat)—Non-toxic.
Exposure. The manufacturer states that during manufacture and use a total of 2 workers may experience dermal

exposure up to 0.5 hr/day, up to 20 days/yr during transfer and clean up.

Environmental Release/Disposal. The manufacturer states that less than 10 kg/yr will be released to land and water. Disposal is by landfill and publicly owned treatment works (POTW).

PMN 81-682

Close of Review Period. March 30, 1982.

Manufacturer's Identity. Minnesota Mining and Manufacturing Company, 3M Center, St. Paul, MN 55144.

Specific Chemical Identity. Octanoic acid, heptyl ester.

Use. The manufacturer states that the PMN substance will be used as an industrial and commercial temperature indicating device.

PRODUCTION ESTIMATES

	Maximum (kilograms per year)
1st year	3
2d year	5
3d year	5

Physical/Chemical Properties. No data were submitted.

Toxicity Data

Acute oral toxicity LD_{50} (rat)—Non-toxic.

Exposure. The manufacturer states that during manufacture and use a total of 2 workers may experience dermal exposure up to 0.5 hr/day, up to 20 days/yr during transfer and clean up.

Environmental Release/Disposal. The manufacturer states that less than 10 kg/yr will be released to land and water. Disposal is by landfill and POTW.

Dated: January 4, 1982.

Woodson W. Bercaw,

Acting Director, Management Support Division.

[FR Doc. 82-818 Filed 1-12-82; 8:45 am]

BILLING CODE 6560-31-M

[OPTS-51377; TSH-FRL-2027-4]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of interim policy published in the **Federal Register** of May 15, 1979 (44 FR 28558) and November 7,1980 (45 FR 74378). This notice announces receipt of fourteen PMNs and provides a summary of each.

DATES: Written comments by: PMN 81-666, 81-667, 81-668, 81-669, 81-670, 81-671, 81-672, 81-673, 81-674, 81-675, 81-676, 81-677, 81-678, and 81-679 February 27, 1982.

ADDRESS: Written comments, identified by the document control number "[OPTS-51377]" and the specific PMN number should be sent to: Document Control Officer (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-409, 401 M St., SW., Washington, DC 20460, (202-382-3532).

FOR FURTHER INFORMATION CONTACT: David Dull, Acting Chief, Notice Review Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-216, 401 M St., SW., Washington, DC 20460, (202-426-2601).

SUPPLEMENTARY INFORMATION: The following are summaries of information provided by the manufacturer on the PMNs received by EPA:

PMN 81-666

Closed of Review Period. March 29, 1982.

Manufacturer's Identity. Claimed confidential business information. Organization information provided:

Annual sales—Between $100 and $500 million.

Manufacturing site—Mid-Atlantic region.

Standard Industrial Classification Code—286.

Specific Chemical Identity. Claimed confidential business information. Generic name provided: Cycloalkyl aralkyl ether.

Use. Claimed confidential business information. Generic use information provided: The manufacturer states that the PMN substance will be used in an open use.

Production Estimates. Claimed confidential business information.

Physical/Chemical Properties

Boiling point @ 25 mm—114°C.

Flash point—>200°C.

Solubility:

Water—Insoluble.

Organic solvents—Soluble.

Color—Colorless.

Toxicity Data

Skin sensitization (guinea pig—Slight to minimal sensitization.

Repeated insult patch test/photosensitization study in human subjects—Non-sensitizer.

Primary irritation patch test (human)—Non-irritant.

Exposure. The manufacturer states that during manufacture, processing, use and disposal workers may experience accidental dermal and inhalation exposure during transfer, washing, drumming, blending, and packaging.

Environmental Release/Disposal. The manufacturer states that less than 10 kg/yr will be released to air, land, and water. Disposal is to an on-site effluent treatment plant.

PMN 81-667

Close of Review Period. March 29, 1982.

Importer's Identity. Claimed confidential business information.

Specific Chemical Identity. Claimed confidential business information. Generic name provided: Substituted furan.

Use. Claimed confidential business information.

IMPORT ESTIMATES

	Kilograms per year	
	Minimum	Maximum
1st year	10	100
2d year	10	1,000
3d year	100	2,000

Physical/Chemical Properties

Appearance—Liquid.

Specific gravity @ 25°C—0.938-0.958.

Flash point—Above 100°F.

Refractive index @ 25°C—1.486-1.494.

Color—Pale to light yellow.

Toxicity Data

Acute oral toxicity LD_{50} (rat)—>5.0 g/kg.

Acute dermal toxicity LD_{50} (rat)—>5.0 g/kg.

Primary skin irritation (rabbit)—Slightly irritating.

Primary eye irritation (rabbit)—Non-irritating.

Repeated insult patch test/photosensitization study in human subjects—Non-irritating.

Exposure. The importer states that during use 2 workers may experience inhalation exposure less that 1 hr/day, less than 20 days/yr.

Environmental Release/Disposal. The importer states that less than 10 kg/yr will be released to air less than 1 hr/day, less than 20 days/yr.

PMN 81-668

Close of Review Period. March 29, 1982.

Manufacturer's Identity. Claimed confidential business information. Organization information provided:

Manufacturing site—East North Central region.

Standard Industrial Classification Code—286.

Specific Chemical Identity. Claimed confidential business information. Generic name provided: Ester-diol.

Use. The manufacturer states that the PMN substance will be used as a chemical intermediate.

Production Estimates. Claimed confidential business information.

Physical/Chemical Properties. Claimed confidential business information.

Toxicity Data. No data were submitted.

Exposure. Claimed confidential business information.

Environmental Release/Disposal. The manufacturer states that less that 10 kg/yr will be released to water 1 hr/day, 25 days/yr. Disposal is to a plant site waste water treatment.

PMN 81-669

Close of Review Period. March 29, 1982.

Importer's Identity. Duolite International, Inc., 800 Chestnut Street, Redwood City, CA 94063.

Specific Chemical Identity. Benzene, ar-bromoethenyl-, polymer with diethenylbenzene.

Use. The importer states that the PMN substance will be used as an industrial use to improve reliability in water treatment equipment.

IMPORT ESTIMATES

	Kilograms per year	
	Minimum	Maximum
1st year	10,000	50,000
2d year	20,000	60,000
3d year	30,000	70,000

Physical/Chemical Properties

Physical form—Spherical beads.

Particle size (mm)—0.6–0.8.

Specific gravity ($H_20=1$)—1.18.

Matrix—Crosslinked polystyrene.

Functional groups—Non-ionic (inert).

Particle size—

Millimeter	Percent
+0.84	10
−0.84+0.80	30
−0.80+0.71	30
−0.71+0.63	25
−0.63	5

Chemical resistance—Insoluble in water, dilute acids and bases, and common solvents.

Toxicity Data. No data were known to be available on the chemical.

Exposure. The importer states that during processing disposal 3–6 workers may experience dermal exposure less than 8 hrs/day, less than 1 day/yr during loading and unloading.

Environmental Release/Disposal. The importer states that no release to the environment is anticipated. Disposal is to a sanitary landfill site.

PMN 81-670

Close of Review Period. March 29, 1982.

Manufacturer's Identity. Claimed confidential business information. Organization information provided:

Manufacturing site—Middle Atlantic region.

Standard Industrial Classification Code—285;e.

Specific Chemical Identity. Claimed confidential business information. Generic name provided: Modified polymer of styrene, alkenoic acid, alkenoic ester and substituted alkenoic esters.

Use. Claim confidential business information. Generic use information provided: The manufacturer states that the PMN substance will be used in an open use.

PRODUCTION ESTIMATES

	Kilograms per year	
	Minimum	Maximum
1st year	0	40,000
2d year	40,000	200,000
3d year	200,000	400,000

Physical/Chemical Properties

Viscosity—15 to 50 cps.

Acid values—5.0 to 8.0 Mg KOH/g.

Percent total solids @ (105°C)—44 to 46.

Toxicity Data. No data were submitted.

Exposure. The manufacturer states that during manufacture and processing a total of 105 workers may experience dermal and occular exposure up to 6 hrs/day, up to 200 days/yr during procuring, analyzing, drumming, cleaning, sampling, testing, and filling.

Environmental Release/Disposal. The manufacturer states that less than 10 kg/yr will be released to air and water and 10–10,000 kg/yr to land. Disposal is by incineration.

PMN 81-671

Close of Review Period. March 29, 1982.

Importer's Identity. Woodmont Products, Inc., P.O. Box 8, Huntingdon Valley, PA 19006.

Specific Chemical Identity. Phenyl mercury neodecanoate.

Use. The importer states that the PMN substance will be used as an industrial catalyst polyurethane sealant.

IMPORT ESTIMATES

	Kilograms per year	
	Minimum	Maximum
1st year	1,000	2,000
2d year	1,000	4,000
3d year	1,000	8,000

Physical/Chemical Properties

Appearance—Clear, yellow viscous liquid.

Specific gravity (25/4°C)—1.412.

Boiling point>200°C.

Flash point (open cup)>50°C.

Freezing point—<−15°C.

Odor—Characteristic.

Metal content (% Hg)—35.0.

Solubility—Fully miscible with most polyols, glycols, and glycol ethers.

Volatility—Low.

Toxicity Data. No data were submitted.

Exposure. The importer states that during processing 1 worker may experience absorption exposure 0.25 hr/day, 261 days/yr during weighing and transfer.

Environmental Release/Disposal. The importer states that less than 10 kg/yr will be released to air 0.25 hr/day, 261 days/yr.

PMN 81-672

Close of Review Period. March 29, 1982.

Manufacturer's Identity. Helix Associates, Inc., P.O. Box 4694, Newark, DE 19711.

Special Chemical Identity. Pheny acetic acid hydrazide.

Use. The manufacturer states that the PMN substance will be used as an industrial dye intermediate.

PRODUCTION ESTIMATES

	Kilograms per year	
	Minimum	Maximum
1st year	100	500
2nd year	500	1,000
3d year	1,000	2,000

Physical/Chemical Properties

Appearance—Light yellow crystals.

Specific gravity ($H_2O=1$)—0.9 (20°/4°C).
Boiling point—>400°F.
Solubility:
Water—Very slight.
Vapor pressure @ 25°C—0.1 mm.
Toxicity Data. No data were submitted.
Exposure. The manufacturer states that during manufacture 2 workers may experience vapor/solution exposure 8 hrs/day, 20 days/yr during filtration and drying.
Environmental Release/Disposal. The manufacturer states that less than 10 kg/yr will be released to air and 10–100 kg/yr to water 8 hrs/day, 20 days/yr. Disposal is to a publicly owned treatment works (POTW).

PMN 81–673

Close of Review Period. March 29, 1982.
Manufacturer's Identity. Claimed confidential business information.
Organization information provided:
Manufacturing site—Middle Atlantic region.
Standard Industrial Classification Code—285;e.
Specific Chemical Identity. Claimed confidential business information.
Generic name provided: Polyester from vegetable oil acids, alkanetriol, carbomonocyclic anhydride and carbomonocyclic acid.
Use. Claimed confidential business information. Generic use information provided: The manufacturer states that the PMN substance will be used in an open use.

PRODUCTION ESTIMATES

	Kilograms per year	
	Minimum	Maximum
1st year	7,000	45,000
2d year	13,200	90,000
3d year	33,000	225,000

Physical/Chemical Properties

Acidity—0.24 (Meg/g)
Basicity—0.15 (Meg/g)
Flash point—135°F
Viscosity—100 stokes
Color, Gardner—8
Percent solids—29.5
Toxicity Data. No data were submitted.
Exposure. The manufacturer states that during manufacture and processing a total of 111 workers may experience dermal and occular exposure up to 6 hrs/day, up to 84 days/yr during procuring, analyzing, drumming, cleaning, sampling, testing, and filing.
Environmental Release/Disposal. The manufacturer states that less then 10 kg/yr will be released to air and water and 10–10,000 kg/yr to land. Disposal is to an approved landfill and by distillation.

PMN 81–674

Close of Review Period. March 29, 1982.
Manufacturer's Identity. Claimed confidential business information.
Specific Chemical Identity. Claimed confidential business information.
Generic name provided: Metal containing 2-hydroxy alkyl benzoate.
Use. Claimed confidential business information. Generic use information provided: The manufacturers states that the PMN substance will be used as a lubricant additive.
Production Estimates. Claimed confidential business information.
Physical/Chemical Properties. Claimed confidential business information.
Toxicity Data. No data were submitted.
Exposure. Claimed confidential business information.
Environmental Release/Disposal. Claimed confidential business information.

PMN 81–675

Close of Review Period. March 29, 1982.
Manufacturer's Identity. E. I. du Pont de Nemours and Company, Inc., 1007 Market Street, Wilmington, DE 19898.
Specific Chemical Identity. Claimed confidential business information.
Generic name provided: Acrylic copolymer.
Use. The manufacturer states that the PMN substance will be used as an isolated intermediate.
Production Estimates. Claimed confidential business information.
Physical/Chemical Properties. Claimed confidential business information.

Toxicity Data

Primary skin irritation (rabbit)—
Moderate and mild irritant
Exposure. The manufacturer states that during manufacture and dispersion 2 shift workers may experience dermal exposure 2 shifts/day 8 hrs/shift, 9 days/yr during transfer.
Environmental Release/Disposal. The manufacturer states that no release to the environment is anticipated. Disposal is by incineration.

PMN 81–676

Close of Review Period. March 29, 1982.
Manufacturer's Identity. E. I. du Pont de Nemours and Company, Inc., 1007 Market Street, Wilmington, DE 19898.
Specific Chemical Identity. Claimed confidential business information.
Generic name provided: Acrylic copolymer.
Use. The manufacturer states that the PMN substance will be used as an isolated intermediate.
Production Estimates. Claimed confidential business information.
Physical/Chemical Properties. Claimed confidential business information.

Toxicity Data

Oral toxicity LD_{50} (rat)—<11,000 mg/kg
Exposure. The manufacturer states that during manufacture 2 shift workers may experience inhalation exposure 2 shifts/day, 8 hrs/shift, 31 days/yr during handling.
Environmental Release/Disposal. The manufacturer states that no release to the environment is anticipated. Disposal is to an approved landfill.

PMN 81–677

Close of Review Period. March 29, 1982.
Manufacturer's Identity. E. I. du Pont de Nemours and Company, Inc., 1007 Market Street, Wilmington, DE 19898.
Specific Chemical Identity. Claimed confidential business information.
Generic name provided: Acrylic copolymer.
Use. The manufacturer states that the PMN substance will be used as an isolated intermediate.
Production estimates. Claimed confidential business information.
Physical/Chemical Properties. Claimed confidential business information.

Toxicity Data

Skin irritation (rabbit)—Moderately irritating.
Exposure. The manufacturer states that during manufacture 4 workers may experience dermal exposure up to 16 hrs/day, up to 16 days/yr..
Environmental Release/Disposal. Disposal is by incineration.

PMN 81–678

Close of Review Period. March 29, 1982.
Manufacturer's Identity. E.I. du Pont de Nemours and Company, Inc., 1007 Market Street, Wilmington, DE 19898.
Specific Chemical Identity. Claimed confidential business information.
Generic name provided: Acrylic copolymer.
Use. The manufacturer states that the PMN substance will be used as an isolated intermediate.

Production Estimates. Claimed confidential business information.

Physical/Chemical Properties. Claimed confidential business information.

Toxicity Data. No data were submitted.

Esposure. The manufacturer states that during manufacture 4 workers may experience dermal exposure up to 16 hrs/day, up to 4 days/yr.

Environmental Release/Disposal. Disposal is by incineration.

PMN 81-679

Close of Review Period. March 29, 1982.

Manufacturer's Identity. E.I. du Pont de Nemours and Company, Inc., 1007 Market Street, Wilmington, DE 19898.

Specific Chemical Identity. Claimed confidential business information. Generic name provided: Acrylic copolymer.

Use. The manufacturer states that the PMN substance will be used as an isolated intermediate.

Production Estimates. Claimed confidential business information.

Physical/Chemical Properties. Claimed confidential business information.

Toxicity Data

Acute oral toxicity LD_{50}—>11,000 mg/kg.

Exposure. The manufacturer states that during manufacture 4 workers may experience dermal exposure up to 16 hrs/day, up to 41 days/yr.

Environmental Release/Disposal. Disposal is by incineration.

Dated: January 4, 1982.

Woodson W. Bercaw,

Acting Director, Management Support Division.

[FR Doc. 82-817 Filed 1-12-82; 8:45 am]

BILLING CODE 6560-31-M

[OPTS-51379; TSH-FRL-2027-8]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of interim policy published in the **Federal Register** of May 15, 1979 (44 FR 28558) and November 7, 1980 (45 FR 74378). This notice announces receipt of two PMNs and provides a summary of each.

DATE: Written comments by: PMN 81-683 and 81-684, February 28, 1982.

ADDRESS: Written comments, identified by the document control number "[OPTS-51379]" and the specific PMN number should be sent to: Document Control Officer (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-409, 401 M St., SW., Washington, DC 20460, (202-382-3532).

FOR FURTHER INFORMATION CONTACT: David Dull, Acting Chief, Notice Review Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-216, 401 M St., SW., Washington, DC 20460 (202-426-2601).

SUPPLEMENTARY INFORMATION: The following are summaries of information provided by the manufacturer on the PMNs received by EPA:

PMN 81-683

Close of Review Period. March 31, 1982.

Manufacturer's Identity. Claimed confidential business information.

Specific Chemical Identity. Claimed confidential business information. Generic name provided: Polymer of 1,1'-methylene bis (4-isocyanatocyclohexane); a polymer of e-caprolactone and an ethylene glycol derivative; 2-butanone oxime; and a polyalkylhydroxy substituted heterocycle.

Use. Claimed confidential business information.

Production Estimates. Claimed confidential business information.

Physical/Chemical Properties

Specific gravity—1.0943 g/cc
Flash point—147°F
Color—Straw to amber

Toxicity Data

Acute dermal toxicity LD_{50} (rat)—>2,800 mg/kg
Skin irritation (rabbit)—Slightly irritating
Eye irritation (rabbit)—Minimally irritating
Ames salmonella—Non-mutagenic
Skin sensitization (guinea pig)—No positive responses

Exposure. The manufacturer states that during processing workers may experience dermal and ingestion exposure during cleaning, sampling, and packaging.

Environmental Release/Disposal. The manufacturer states that no release to the environment is anticipated. Disposal is to an approved landfill and by solvent recovery on liquids.

PMN 81-684

Close of Review Period. March 31, 1982.

Manufacturer's Identity. Claimed confidential business information.

Specific Chemical Identity. Claimed confidential business information. Generic name provided: Polymer of 1,1'-methylene bis (4-isocyanatocyclohexane); a polymer of e-caprolactone and an ethylene glycol derivative; and a substituted alkane.

Use. Claimed confidential business information.

Production Estimates. Claimed confidential business information.

Physical/Chemical Properties

Specific gravity—1.068 g/cc
Flash point—152°F
Color—Straw to amber

Toxicity Data

Acute dermal toxicity LD_{50} (rat)—>2,800 mg/kg
Skin irritation (rabbit)—Slightly irritating
Eye irritation (rabbit)—Minimally irritating
Ames salmonella—Non-mutagenic
Skin sensitization (guinea pig)—No positive responses

Exposure. The manufacturer states that during processing workers may experience dermal and ingestion exposure during cleaning, sampling, and packaging.

Environmental Release/Disposal. The manufacturer states that no release to the environment is anticipated. Disposal is to an approved landfill and by solvent recovery on liquids.

Dated: January 5, 1982.

Woodson W. Bercaw,

Acting Director, Management Support Division.

[FR Doc. 82-815 Filed 1-12-82; 8:45 am]

BILLING CODE 6560-31-M

[OPTS-59077; TSH-FRL-2027-7]

Premanufacture Exemption Application; 2,7-Naphthalenedisulfonic Acid, 4-Amino-3-((4-(2-Sulfooxyethyl)Sulfonyl)Phenyl)Azo)-5-Hydroxy-6-((Substituted Phenyl)Azo-, Sodium Salts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5 (a) or (b) of the Toxic Substances Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt, are discussed in EPA's revised statement of interim policy published in the **Federal Register** of November 7, 1980 (45 FR 74378). This notice, issued under section 5(h)(6) of TSCA, announces receipt of one application for an exemption, provides a summary, and requests comments on the appropriateness of granting the exemption.

DATE: Written comments by: January 28, 1982.

ADDRESS: Written comments, identified by the document control 82T–5 number "[OPTS–59077]" and the specific TME number should be sent to: Document Control Officer (TS–793), Office of Pesticides and Toxic Substances, Management Support Division, Environmental Protection Agency, Rm. E–401, 401 M Street, SE, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: David Dull, Acting Chief, Notice Review Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–216, 401 M Street, SW, Washington, DC 20460.

SUPPLEMENTARY INFORMATION: The following is a summary of information provided by the manufacturer on the TME received by the EPA:

TME 81–56

Close of Review Period. February 14, 1982.

Manufacturer's Identity. American Hoechst Corporation, Route 202/206 North, Sommerville, NJ 08876.

Specific Chemical Identity. Claimed confidential business information. Generic name provided: 2,7-naphthalenedisulfonic acid, 4-amino-3-[(4-[2-sulfooxyethyl)sulfonyl]phenyl]azo)-5-hydroxy-6-[(substituted phenyl)azo-, sodium salts.

Use. The manufacturer states that the TME substance will be used as a textile dye.

Production Estimates. Claimed confidential business information.

Physical/Chemical Properties

Solubility water—100 g/l.

Purity—Product as isolated is about 50% pure with mostly inorganic salts other constituents.

Other impurities:

Vinyl component—<1%.

Nonesterfied component—<1%.

Mono azo component—2–8%.

Toxicity Data. No data were submitted.

Exposure. The manufacturer states that during manufacture 1 worker may experience inhalation exposure less than 30 man hours per year during drumming.

Environmental Release/Disposal. Disposal is to an on-site National Pollution Discharge Elimination System (NPDES).

Dated: January 4, 1982.

Woodson W. Bercaw,

Acting Director, Management Support Division

[FR Doc. 82–814 Filed 1–12–82; 8:45 am]

BILLING CODE 6560–31–M

[OPTS–59076; TSH–FRL–2027–5]

Premanufacture Exemption Application; Polysulfide Polymer With Formal and Alcohol Moiety

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5 (a) or (b) of the Toxic Substances Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt, are discussed in EPA's revised statement of interim policy published in the **Federal Register** of November 7, 1980 (45 FR 74378). This notice, issued under section 5(h)(6) of TSCA, announces receipt of one application for an exemption, provides a summary, and requests comments on the appropriateness of granting the exemption.

DATE: Written comments by: January 28, 1982.

ADDRESS: Written comments, identified by the document control number "[OPTS–59076]" and the specific TME number should be sent to: Document Control Officer (TS–793), Office of Pesticides and Toxic Substances, Management Support Division, Environmental Protection Agency, Rm. E–401, 401 M Street, SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: David Dull, Acting Chief, Notice Review Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–216, 401 M Street, SW, Washington, DC 20460.

SUPPLEMENTARY INFORMATION: The following is a summary of information provided by the manufacturer on TME received by the EPA.

TME 81–55

Close of Review Period. February 13, 1982.

Manufacturer's Identity. Thiokol, Specialty Chemicals Division, P.O. Box 8296, Trenton, NJ 08650.

Specific Chemical Identity. Claimed confidential business information. Generic name provided: Polysulfide polymer with formal and alcohol moiety.

Use. The manufacturer states that the PMN substance will be used for industrial printing rollers and commercial paint spray hose liner.

PRODUCTION ESTIMATES

	Maximum (pounds)
1st year	5,000

Physical/Chemical Properties

Appearance—Millable light brown rubber.

Specific gravity ($H_2O=1$)—1.34.

Percent volatile by volume—0.5 max.

Toxicity Data

Acute oral toxicity LD_{50} (rat)—Non-toxic.

Skin irritation (rabbit)—Non-irritant.

Eye irritation (rabbit)—Non-irritant.

Exposure. The manufacturer states that during manufacture and disposal 8 workers may experience dermal exposure 8 hrs/day, 7 days/yr during sampling, cutting, bagging, and cleanout operations.

Environmental Release/Disposal. The manufacturer states that less than 10 kg/yr will be released to land. Disposal is by landfill.

Dated: January 4, 1982.

Woodson W. Bercaw,

Acting Director, Management Support Division.

[FR Doc. 82–816 Filed 1–12–82; 8:45 am]

BILLING CODE 6560–31–M

[OPTS-59075; TSH-FRL-2027-3]

Premanufacture Exemption Applications; Certain Chemicals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5(a) or (b) of the Toxic Substances Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt, are discussed in EPA's revised statement of interim policy published in the **Federal Register** of November 7, 1980 (45 FR 74378). This notice, issued under section 5(h)(6) of TSCA, announces receipt of four applications for exemptions, provides a summary, and requests comments on the appropriateness of granting each of the exemptions.

DATE: Written comments by: January 28, 1982.

ADDRESS: Written comments, identified by the document control number "[OPTS-59075]" and the specific TME number should be sent to: Document Control Officer (TS-793), Office of Pesticides and Toxic Substances, Management Support Division, Environmental Protection Agency, Rm. E-401, 401 M Street, SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: David Dull, Acting Chief, Notice Review Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-216, 401 M Street, SW, Washington, DC 20460.

SUPPLEMENTARY INFORMATION: The following are summaries of information provided by the manufacturer on TMEs received by the EPA:

TME 81-51

Close of Review Period. February 11, 1982.

Manufacturer's Identity. Claimed confidential business information.

Specific Chemical Identity. Claimed confidential business information. Generic name provided: Arylamine substituted polyalkoxy silane.

Use. Claimed confidential business information.

Production Estimates. Claimed confidential business information.

Physical/Chemical Properties. Claimed confidential business information.

Toxicity Data

Oral toxicity LD_{50} (rat)—>5.0 g/kg.

Acute dermal toxicity LD_{50} (rabbits)—>2.0 g/kg.

Primary skin irritation (rabbit)—Non-irritant.

Eye irritation (irritant)—Non-irritant.

Exposure. Claimed confidential business information.

Environmental Release/Disposal. Claimed confidential business information.

TME 81-52

Close of Review Period. February 12, 1982.

Importer's Identity. Mobay Chemical Corporation, Penn Lincoln Parkway West, Pittsburgh, PA 15205.

Specific Chemical Identity. Claimed confidential business information. Generic name provided: Polymer of diphenylmethane diisocyanate and hydroxy alkyl ethers.

Use. The importer states that the TME substance will be used by one processor to manufacture a synthetic running surface.

IMPORT ESTIMATES

	Maximum (pounds)
6 months	22,000

Physical/Chemical Properties

Appearance—Clear, yellowish liquid.

Specific gravity @ 20° C—1.11 g/cm³.

Boiling point—115° C @ 1013 mbar.

Freezing point—−28° C.

Solubility: water—Reacts slowly to form CO_2 gas.

Vapor density (Air=1)—8.5

Vapor pressure @ 25° C—$<10^{-4}$ mbar.

Odor—Slight musty odor.

Toxicity Data. No data were available on the specific chemical.

Exposure. The importer states that during manufacture 10 workers may experience dermal, inhalation, and occular exposure 10 hrs/day, 2 days/yr during handling.

Environmental Release/Disposal. The importer states that no release to the environment is anticipated.

TME 81-53

Close of Review Period. February 12, 1982.

Importer's Identity. Mobay Chemical Corporation, Penn Lincoln Parkway West, Pittsburgh, PA 15205.

Specific Chemical Identity. Claimed confidential business information. Generic name provided: Polymer of diphenylmethane diisocyanate and hydroxy alkyl ethers.

Use. The importer states that the TME substance will be used by one processor to manufacture a synthetic running surface.

IMPORT ESTIMATES

	Maximum (pounds)
6 months	55,000

Physical/Chemical Properties

Appearance—Clear, yellowish liquid.

Specific gravity @ 25° C—1.04 g/cm³.

Boiling point—230° C @ 1013 mbar.

Freezing point—−13° C.

Solubility: water—Reacts slowly to form CO_2 gas.

Vapor density (Air=1)—8.5.

Vapor pressure—$<10^{-4}$ mbar @ 25° C.

Odor—Slightly musty odor.

Toxicity Data. No data were available on the specific chemical.

Exposure. The importer states that during manufacture 10 workers may experience inhalation and occular exposure 10 hrs/day, 10 days/yr during handling.

Environmental Release/Disposal. The importer states that no release to the environment is anticipated.

TME 81-54

Close of Review Period. February 12, 1982.

Manufacturer's Identity. Ashland Chemical Company, P.O. Box 2219, Columbus, OH 43216.

Specific Chemical Identity. Claimed confidential business information. Generic name provided: Polymer of aromatic and aliphatic diacids and aliphatic diol.

Use. Claimed confidential business information. Generic use information provided. The manufacturer states that the TME substance will be used to form a cured, cross linked, protective and decorative coating for commercial articles.

PRODUCTION ESTIMATES

	Maximum (pounds)
180 days	30,000

Physical/Chemical Properties

Viscosity @ 70% in ethoxyethanol acetate—2,000-5,000 cps.

Toxicity Data. No data were submitted.

Exposure. The manufacturer states that during manufacture workers may be exposed for a few minutes approximately once an hour during sampling and drumming.

Environmental Release/Disposal. Disposal is by landfill and by incineration.

Dated: December 30, 1981.

Woodson W. Bercaw,

Acting Director, Management Support Division.

[FR Doc. 82-819 Filed 1-12-82; 8:45 am]

BILLING CODE 6560-31-M

FEDERAL MARITIME COMMISSION

List of Independent Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as independent ocean freight forwarders pursuant to section 44(a) of the Shipping Act, 1916 (75 Stat. 522 and 46 U.S.C. 841(c)).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to communicate with the Director, Bureau of Certification and Licensing, Federal Maritime Commission, Washington, D.C., 20573.

North American Distribution Systems, Inc. d.b.a. NAVTRANS International Freight Forwarding, 5001 U.S. Highway 30 West, Fort Wayne, IN 46818
Officers: Kenneth W. Maxfield, President/Director; Martin A. Weissert, Director; B. Wade Monroe, Treasurer/Director; Margaret S. Vegeler, Secretary; Richard W. Curry, Vice President; William R. Welsh, Vice President; David L. Vanderbosch, Vice President;

KOG Transport, Inc., 21 West Street, Suite 3010, New York, NY 1006
Officers: Wolfgang Klebe, President; Juergen Osmers, Executive Vice President; Rolf Gubler, Executive Vice President

TRI Technical Corporation, d.b.a. TRI Techncial Corporation, Professional Services Division, Brentwood Professional Plaza, 785 Old Hickory Blvd., Brentwood, TN 37027
Officers: John L. Mikovits, President; Barbara K. Mikovits, Secretary; Hamid Hamadanian

Richard Diaz, d.b.a. C. A. Mar Freight Forwarding, 7332 S.W. 45th Street, Miami, FL 33155

Trans International Group Inc., 2850 Metro Drive, Suite 417, Bloomington, MN 55420
Officers: Thomas M. Habermann, Vice President International Traffic; Alice K. Westrud, Vice President Operations; Robert A. Miller, President

Pacific Express Cargo Inc., 12715 S. 44th Terrace, Miami, FL 33175
Officer: Herbert E. Barroso, President

World Transportation Services, Inc., d.b.a. WTS, Inc., P.O. Box 22309, 229 Wright Bros. Drive, Salt Lake City, Utah 94122
Officers: Lawrence L. Coats, President; Dan E. Fahndrich, Vice President; Michael A. Williams, Asst. Secretary

Maritime Connections Corporation, 7277 N.W. 32nd Street, Suite C, Miami, FL 33122
Officer: Conchita Diaz, Sole Officer and Stockholder

Dated: January 7, 1982.

By the Federal Maritime Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 82-791 Filed 1-12-82; 8:45 am]

BILLING CODE 6730-01-M

[Independent Ocean Freight Forwarder License No. 1121]

Chicago International Customs Service, Inc.; Order of Revocation

On December 9, 1981, Chicago International Customs Service, Inc., 4001 Fleetwood Avenue, Franklin Park, IL 60131 surrendered its Independent Ocean Freight Forwarder License No. 1121 for revocation effective January 1, 1982.

Therefore, by virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 1 (revised), section 10.01(e) dated November 12, 1981;

It is ordered, that Independent Ocean Freight Forwarder License No. 1121 issued to Chicago International Customs Service, Inc. be revoked effective January 1, 1982, without prejudice to reapplication for a license in the future.

It is further ordered, that a copy of this Order be published in the **Federal Register** and served upon Chicago International Customs Service, Inc.

Albert J. Klingel, Jr.,

Director, Bureau of Certification and Licensing.

[FR Doc. 82-789 Filed 1-12-82; 8:45 am]

BILLING CODE 6730-01-M

[Independent Ocean Freight Forwarder License No. 1244]

New York International Customs Service, Inc.; Order of Revocation

On December 9, 1981, New York International Customs Service, Inc., 175-11 148th Avenue, Jamaica, NY 11434 surrendered its Independent Ocean Freight Forwarder License No. 1244 for revocation effective January 1, 1982.

Therefore, by virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 1 (revised), section 10.01(e) dated November 12, 1981;

It is ordered, that Independent Ocean Freight Forwarder License No. 1244 issued to New York International Customs Service, Inc. be revoked effective January 1, 1982, without prejudice to reapplication for a license in the future.

It is further ordered, that a copy of this Order be published in the **Federal Register** and served upon New York International Customs Service, Inc.

Albert J. Klingel Jr.,

Director, Bureau of Certification and Licensing.

[FR Doc. 82-788 Filed 1-12-82; 8:45 am]

BILLING CODE 6730-01-M

[Independent Ocean Freight Forwarder License No. 2069]

Ocean Traffic Services, Inc.; Order of Revocation

Section 44(c), Shipping Act, 1916, provides that no independent ocean freight forwarder license shall remain in force unless a valid bond is in effect and on file with the Commission. Rule 510.15(d) of Federal Maritime Commission General Order 4 further provides that a license shall be automatically revoked for failure of a licensee to maintain a valid bond on file.

The bond issued in favor of Ocean Traffic Services, Inc., 3908 East Airlane, Phoenix, AZ 85034 was cancelled effective January 3, 1982.

By letter dated December 21, 1981, Ocean Traffic Services, Inc. was advised by the Federal Maritime Commission that Independent Ocean Freight Forwarder License No. 2069 would be automatically revoked unless a valid surety bond was filed with the Commission.

Ocean Traffic Services, Inc. has failed to furnish a valid bond.

By virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 1 (revised), section 10.01(f) dated November 12, 1981;

Notice is hereby given, that Independent Ocean Freight Forwarder License No. 2069 be and is hereby revoked effective January 3, 1982.

It is ordered, that Independent Ocean Freight Forwarder License No. 2069 issued to Ocean Traffic Services, Inc. be returned to the Commission for cancellation.

It is further ordered, that a copy of this Order be published in the **Federal**

Register and served upon Ocean Traffic Services, Inc.

Albert J. Klingel, Jr.,

Director Bureau of Certification and Licensing.

[FR Doc. 82-790 Filed 1-12-82; 8:45 am]

BILLING CODE 6730-01-M

[Independent Ocean Freight Forwarder License No. 1451]

San Francisco International Customs Service, Inc.; Order of Revocation

On December 9, 1981, San Francisco International Customs Service, Inc., 500 South Airport Blvd., South San Francisco, CA 94080 surrendered its Independent Ocean Freight Forwarder License No. 1451 for revocation effective January 1, 1982.

Therefore, by virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 1 (revised), section 10.01(e) dated November 12, 1981;

It is ordered, that Independent Ocean Freight Forwarder License No. 1451 issued to San Francisco International Customs Service, Inc. be revoked effective January 1, 1982, without prejudice to reapplication for a license in the future.

It is further ordered, that a copy of this Order be published in the **Federal Register** and served upon San Francisco International Customs Service, Inc.

Albert J. Klingel, Jr.,

Director, Bureau of Certification and Licensing.

[FR Doc. 82-792 Filed 1-12-82; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 82-2; Agreement No. 10416]

Trailer Marine Transport Corporation and Puerto Rico Maritime Shipping Authority; Order of Investigation and Hearing

Agreement No. 10416, an agreement entered into by Trailer Marine Transport Corporation (TMT) and the Puerto Rico Maritime Shipping Authority (PRMSA) (Proponents), has been filed for approval pursuant to section 15 of the Shipping Act, 1916, (46 U.S.C. 814).

Agreement No. 10416 would authorize its parties to discuss, establish and maintain uniform tariff rules, regulations, provisions and charges, including terminal and accessorial charges, but excluding ocean freight rates, in connection with their carriage of property between ports in the United States and ports in Puerto Rico and the U.S. Virgin Islands, as well as between ports in Puerto Rico and ports in the U.S. Virgin Islands (Trades). Under this arrangement, the parties could, among other things, establish (1) uniform rules and practices relating to terminal services, privileges, and facilities; (2) uniform rules and practices relating to the issuance and substance of bills of lading, and the manner and method of presenting, marking, packing, delivering, receiving, handling, and storing of property; (3) uniform rules and practices relating to the extension of credit, the payment of claims for cargo loss or damage, and free time and demurrage on cargoes and container/trailers; (4) uniform rules and practices designed to avoid preferences and prejudices; and (5) uniform terminal and accessorial charges related to or connected with the receiving, handling, pick-up and delivery, and storing of property. The agreement, if approved, would remain in effect for thirty-six months.

Notice of the filing of agreement No. 10416 was published in the **Federal Register** on April 28, 1981. A protest was filed on behalf of the Government of the Virgin Islands and the Puerto Rico Manufacturers Association (Combined Protestants). Responses thereto were submitted by Proponents.

Position of Proponents

In a justification statement submitted in support of Agreement No. 10416, Proponents emphasize unstable conditions in the Trades and the similarity between the proposed agreement and a previously approved agreement between carriers serving the Trades that was in effect between 1969 and 1975.

Proponents allege that the unstable conditions that necessitate approval of Agreement No. 10416 arise from the ability of shippers in the Trades to exact concessions from carriers, particularly in the credit and trailer demurrage areas. It is suggested by Proponents that Agreement No. 10416, by authorizing the establishment and enforcement of uniform tariff rules, would enable carriers to eliminate malpractices in the Trades and allow for the fair and equal treatment of shippers.

Proponents note the similarity between Agreement No. 10416 and Agreements Nos. DC-38 and DC-38-1, which were granted continued approval by the Commission in *Agreements Nos. DC-38 And DC-38-1 Association, Puerto Rico Trades—1968*, 17 FMC 251 (1974). Proponents argue that these earlier agreements, were highly successful in eliminating malpractices in the trades. Proponents contend that the proposed agreement would be equally effective in eliminating the alleged malpractices that currently plague the Trades.

Comments of Protestants

The Combined Protestants argue that agreement No. 10416 should be disapproved on the grounds that it is *per se* violative of the antitrust laws, is contrary to the public interest standard set forth in section 15 of the Shipping Act, 1916, lacks demonstrated redeeming virtue that would counterbalance its anticompetitive aspects, and involves activities beyond the ambit of the Commission's jurisdiction.

Specifically, the Combined Protestants note that the establishment of uniform credit practices among competitors is a *per se* violation of section 1 of the Sherman Act (15 U.S.C. 1) and, therefore, must be justified under stringent standards. The Combined Protestants further argue that Proponents have failed to substantiate their allegations of widespread malpractices in the Trades. Finally, Agreement No. 10416 extends, the Combined Protestants assert, to cargo movements involving intermodal rail-water or truck-water tranportation over which the Commission has no jurisdiction, and, therefore, is unapprovable.

Response of Proponents

In response to the issues raised by the Combined Protestants, Proponents argue that their affidavits submitted in support of Agreement No. 10416 constitute substantial evidence of widespread malpractices in the Trades. Proponents further emphasize the Commission's discussion of such malpractices in *Agreements Nos. DC-38 and DC-38-1 Association, Puerto Rico Trades—1968, supra*, and suggest that the problems discussed therein still plague the Trades.

In reply to the Combined Protestants' jurisdictional challenge, Proponents assert that Agreement No. 10416 is explicitly limited to port-to-port movements over which the Commission possesses jurisdiction. Further, Proponents argue that even if combined Protestants were correct in their assessment of the potential scope of Agreement No. 10416, the mere fact that the agreement might extend beyond the ambit of the Commission's jurisdiction would not render it unapprovable.

Discussion

Agreement No. 10416 is sufficiently anticompetitive to require justification pursuant to the standards set forth in *Federal Maritime Commission v. Svenska Amerika Linien*, 390 U.S. 238

(1968). Further, as the Commission noted in *Agreements Nos. DC–38 and DC–38–1 Association, Puerto Rico Trades—1968, supra* at 256, the Commission's more extensive rate and other regulatory authority in the domestic offshore trades requires that Proponents of an anticompetitive agreement in these trades "must clearly demonstrate a greater need or justification for such concerted activity than would normally be the case were the agreement in the foreign trades."

The Commission has recognized that the elimination of malpractices may justify the approval of anticompetitive agreements. In *Agreements Nos. DC–38 and DC–38–1 Association, Puerto Rico Trades—1968, supra* at 256–60, the Commission found considerable evidence of serious abuses in the trades related to demurrage practices, detention of trailers, credit and claims, congestion and related matters and the resultant preferences and prejudices. However, the material submitted by Proponents in justification of Agreement No. 10416 lacks specific evidence of the reemergence of such malpractices or relate instability in the Trades. Evidence of Malpractices in the Trades in the early 1970's, upon which the Proponents' justification relies heavily, is insufficient to establish the current widespread existence of such malpractices. Proponents have submitted little material to support their claim that the Trades are plagued by malpractices, no economic data to support their allegations of instability in the Trades and little to substantiate their contention that the current conditions in the Trade reflect those that prevailed in the early 1970's

As the Commission noted in describing Agreement No. DC–38, an agreement such as Agreement No. 10416 "represents an all but absolute elimination of competition between the member lines." 17 FMC at 255. The Trades are currently served by a limited number of carriers. The bulk of the cargo moving in the Trades is transported by the Proponents. Given this degree of economic concentration, the Commission is reluctant to approve an agreement providing for cooperation among these competitors without substantial and persuasive justification.

It is possible that malpractices in the Trades and the instability such malpractices can occasion might require some form of remedial action. It is further conceivable that an agreement with as broad a scope of authority as Agreement No. 10416 may be necessary to correct such malpractices. However, the Commission does not have before it sufficient evidence of malpractices in the Trades to warrant approval of Agreement No. 10416. It therefore is incumbent upon Proponents to submit, during the course of the present investigation, substantial evidence of abuses to support their allegations that malpractices currently plague the Trades. Further, in order for the Commission to determine whether Agreement No. 10416 is approvable, it will be necessary for Proponents to establish why approval of Agreement No. 10416 is the specific vehicle necessary to correct the prevailing abuses, and whether the broad range of activities contemplated under the proposed Agreement is necessary to effect such a remedy or warranted by any other compelling reason.

A further matter of concern to the Commission is the jurisdictional issue raised by the Combined Protestants. While the Commission's jurisdiction over those aspects of Agreement No. 10416 that deal with port-to-port movements in the Trades is beyond dispute, Protestants have alleged that the scope of the proposed agreement may extend beyond these movements. All parties to the present investigation should specifically address whether Proponents' proposed activities extend beyond the scope of port-to-port transportation.

Accordingly, the Commission believes that Agreement No. 10416 should be set down for investigation and hearing.

Now, therefore, it is ordered, That pursuant to sections 15 and 22 of the Shipping Act, 1916, 46 U.S.C. 814 and 821, a proceeding is hereby instituted to determine whether Agreement No. 10416 should be approved, disapproved, or modified in accordance with the provisions of section 15;

It is further ordered, That the parties, in addressing the issue of the approvability of Agreement No. 10416, shall specifically address, *inter alia*, the following questions:

1. What types of malpractices are occasioning instability in the Trades?
2. How prevalent are these malpractices?
3. What efforts have been undertaken to eliminate such abuses?
4. How successful have these efforts been?
5. Why is Agreement No. 10416 necessary to combat malpractices in the Trades?
6. Does Agreement No. 10416 extend beyond the ambit of port-to-port operations, is it possible to effectively limit the scope of the Agreement to such activities, and is it necessary to so limit the scope of the Agreement?

It is further ordered, That Trailer Marine Transport Corporation and the Puerto Rico Maritime Shipping Corporation are designated as Proponents;

It is further ordered, That the Government of the Virgin Islands and the Puerto Rico Manufacturers Association are designated Protestants;

It is further ordered, That pursuant to Rule 42 of the Commission's Rules of Practice and Procedure, 46 CFR 502.42, the Commission's Bureau of Hearings and Field Operations (Hearing Counsel) shall be a party to this proceeding;

It is further ordered, That any person(s) other than Proponents, Protestants, and the Bureau of Hearings and Field Operations having an interest and desiring to participate in this proceeding shall file a petition for leave to intervene in accordance with Rule 72 of the Commission's Rules of Practice and Procedure, 46 CFR 502.72;

It is further ordered, That this matter be assigned for public hearing and decision by an Administrative Law Judge of the Commission's Office of Administrative Law Judges at a date and place to be hereafter determined by the presiding Administrative Law Judge, within the time limits prescribed in Rule 61 of the Commission's Rules of Practice and Procedure, 46 CFR 502.61. This hearing shall include oral testimony and cross-examination in the discretion of the presiding Judge only upon a proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents, or that the nature of the matters in issue otherwise requires an oral hearing and cross-examination for the development of an adequate record;

It is further ordered, That this order be published in the **Federal Register** and a copy thereof be served upon Proponents, Protestants and the Bureau of Hearings and Field Operations;

It is further ordered, That all future notices, orders, and decisions issued by or on behalf of the Commission in this proceeding, including notice of the time and place of hearing(s) or prehearing conference(s) be mailed directly to all parties of record; and

It is further ordered, That all documents submitted by any party of record shall be filed in accordance with Rule 118 of the Commission's Rules of Practice and Procedure, 46 CFR 502.118, as well as mailed directly to all other parties of record.

By the Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 82-793 Filed 1-12-82; 8:45 am]

BILLING CODE 6730-01-M

Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for review and approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement and the justification offered therefor at the Washington office of the Federal Maritime Commission, 1100 L Street, N.W., Room 10427; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, Louisiana, San Francisco, California, Chicago, Illinois, and San Juan, Puerto Rico. Interested parties may submit comments on the agreement, including request for hearing, to the Secretary, Federal Maritime Commission, Washington, D.C., 20573, within *10* days after the date of the **Federal Register** in which this notice appears. Comments should include facts and arguments concerning the approval, modification, or disapproval of the proposed agreement. Comments shall discuss with particularity allegations that the agreement is unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or operates to the detriment of the commerce of the United States, or is contrary to the public interest, or is in violation of the Act.

A copy of any comments should also be forwarded to the party filing the agreement and the statement should indicate that this has been done.

Agreement No. T-3363-2.

Filing party: Frank Wagner, Deputy City Attorney, Office of City Attorney, Harbor Division, P.O. Box 151, San Pedro, California 90733.

Summary: Agreement No. T-3363-2, between the City of Los Angles (City) and Matson Terminals, Inc. (Matson), modifies the basic agreement between the parties which provides for the preferential assignment of Berths 206-209 and adjacent land areas at the Port of Los Angles. The purpose of the modification is to: (1) amend the penalty on late wharfage charges and the time in which Matson will have to make such payments; (2) revise the revenue sharing under the basic agreement whereby the percentage of wharfage to be assessed is 50 percent for up to 2,000,000 revenue tons of merchandise, 45 percent from 2,000,000 to 3,000,000 tons, and 40 percent thereafter, with minimum of 1,700,000 tons; and (3) revise Matson's obligation to pay wharfage due to strikes or other labor disputes.

By order of the Federal Maritime Commission.

Dated: January 8, 1982.

Francis C. Hurney,

Secretary.

[FR Doc. 82-872 Filed 1-12-82; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL TRADE COMMISSION

Early Termination of the Waiting Period of the Premerger Notification Rules; Armco, Inc.

AGENCY: Federal Trade Commission.

ACTION: Granting of request for early termination of the waiting period of the premerger notification rules.

SUMMARY: Armco, Inc. is granted early termination of the waiting period provided by law and the premerger notification rules with respect to the proposed acquisition of certain assets of Allied Corp. The grant was made by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice in response to a request for early termination submitted by both parties. Neither agency intends to take any action with respect to this acquisition during the waiting period.

EFFECTIVE DATE: December 23, 1981.

FOR FURTHER INFORMATION CONTACT: Roberta Baruch, Senior Attorney, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, D.C. 20580, (202) 523-3894.

SUPPLEMENTARY INFORMATION: Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Commission and Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

By direction of the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 82-907 Filed 1-12-82; 8:45 am]

BILLING CODE 6750-01-M

Early Termination of the Waiting Period of the Premerger Notification Rules; Brae Corp.

AGENCY: Federal Trade Commission.

ACTION: Granting of request for early termination of the waiting period of the premerger notification rules.

SUMMARY: Brae Corporation is granted early termination of the waiting period provided by law and the premerger notification rules with respect to the proposed acquisitions of all voting securities of Point Express Ltd., Point Marine, Inc. and Point Venture, Ltd. The grant was made by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice in response to a request for early termination submitted by Arthur I. Levy, Jr. Neither agency intends to take any action with respect to these acquisitions during the waiting period.

EFFECTIVE DATE: December 28, 1981.

FOR FURTHER INFORMATION CONTACT: Roberta Baruch, Senior Attorney, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, D.C. 20580, (202) 523-3894.

SUPPLEMENTARY INFORMATION: Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Commission and Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

By direction of the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 82-908 Filed 1-12-82; 8:45 am]

BILLING CODE 6750-01-M

Early Termination of the Waiting Period of the Premerger Notification Rules; Brunswick Corp.

AGENCY: Federal Trade Commission.

ACTION: Granting of request for early termination of the waiting period of the premerger notification rules.

SUMMARY: Brunswick Corporation is granted early termination of the waiting period provided by law and premerger notification rules with respect to the proposed acquisition of certain assets of G.D. Searle & Co. and all voting securities of Kelsar S.A. The grant was made by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice in response to a request for early termination submitted by both parties. Neither agency intends to take any action with respect to this acquisition during the waiting period.

EFFECTIVE DATE: December 23, 1981.

FOR FURTHER INFORMATION CONTACT: Roberta Baruch, Senior Attorney, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, D.C. 20580, (202) 523–3894.

SUPPLEMENTARY INFORMATION: Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Commission and Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

By direction of the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 82–909 Filed 1–12–82; 8:45 am]

BILLING CODE 6750–01–M

Early Termination of the Waiting Period of the Premerger Notification Rules; Frank B. Hall & Co., Inc.

AGENCY: Federal Trade Commission.

ACTION: Granting of request for early termination of the waiting period of the premerger notification rules.

SUMMARY: Frank B. Hall & Co., Inc. is granted early termination of the waiting period provided by law and the premerger notification rules with respect to the proposed acquisition of all voting securities of Jartran Inc. the grant was made by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice in response to a request for early termination submitted by both parties. Neither agency intends to take any action with respect to this acquisition during the waiting period.

EFFECTIVE DATE: DECEMBER 23, 1981.

FOR FURTHER INFORMATION CONTACT: Roberta Baruch, Senior Attorney, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, D.C. 20580, (202) 523–3894.

SUPPLEMENTARY INFORMATION: Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Commission and Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

By direction of the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 82–904 Filed 1–12–82; 8:45 am]

BILLING CODE 6750–01–M

Early Termination of the Waiting Period of the Premerger Notification Rules; Norman Lear

AGENCY: Federal Trade Commission.

ACTION: Granting of request for early termination of the waiting period of the premerger notification rules.

SUMMARY: Norman Lear is granted early termination of the waiting period provided by law and the premerger notification rules with respect to the proposed acquisition of certain assets of Avco Embassy Pictures, Inc. The grant was made by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice in response to a request for early termination submitted by both parties. Neither agency intends to take any action with respect to this acquisition during the waiting period.

EFFECTIVE DATE: December 16, 1981.

FOR FURTHER INFORMATION CONTACT: Roberta Baruch, Senior Attorney, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, D.C. 20580, (202) 523–3894.

SUPPLEMENTARY INFORMATION: Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Commission and Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(a)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

By direction of the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 82–902 Filed 1–12–82; 8:45 am]

BILLING CODE 6750–01–M

Early Termination of the Waiting Period of the Premerger Notification Rules; A. Jerrold Perenchio

AGENCY: Federal Trade Commission.

ACTION: Granting of request for early termination of the waiting period of the premerger notification rules.

SUMMARY: A. Jerrold Perenchio is granted early termination of the waiting period provided by law and the premerger notification rules with respect to the proposed acquisition of certain assets of Avco Embassy Pictures, Inc. The grant was made by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice in response to a request for early termination submitted by both parties. Neither agency intends to take any action with respect to this acquisition during the waiting period.

EFFECTIVE DATE: December 16, 1981.

FOR FURTHER INFORMATION CONTACT: Roberta Baruch, Senior Attorney, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, D.C. 20580, (202) 523–3894.

SUPPLEMENTARY INFORMATION: Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Radino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Commission and Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

By direction of the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 82-906 Filed 1-12-82; 8:45 am]

BILLING CODE 6750-01-M

Early Termination of the Waiting Period of the Premerger Notification Rules; Swire Pacific Limited

AGENCY: Federal Trade Commission.

ACTION: Granting of request for early termination of the waiting period of the premerger notification rules.

SUMMARY: Swire Pacific Limited is granted early termination of the waiting period provided by law and the premerger notification rules with respect to the proposed acquisition of all voting securities of Magnolia Coca-Cola Bottling Company. The grant was made by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice in response to a request for early termination submitted by Great Western Coca-Cola Bottling Company. Neither agency intends to take any action with respect to this acquisition during the waiting period.

EFFECTIVE DATE: December 30, 1981.

FOR FURTHER INFORMATION CONTACT: Roberta Baruch, Senior Attorney, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, D.C. 20580, (202) 523-3894.

SUPPLEMENTARY INFORMATION: Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Commission and Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

By direction of the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 82-905 Filed 1-12-82; 8:45 am]

BILLING CODE 6750-01-M

Early Termination of the Waiting Period of the Premerger Notification Rules; WEDGE International Holdings B.V.

AGENCY: Federal Trade Commission.

ACTION: Granting of request for early termination of the waiting period of the premerger notification rules.

SUMMARY: WEDGE International Holdings is granted early termination of the waiting period provided by law and the premerger notification rules with respect to the proposed acquisition of all voting securities of Kent-Nowlin Construction Inc. The grant was made by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice in response to a request for early termination submitted by both parties. Neither agency intends to take any action with respect to this acquisition during the waiting period.

EFFECTIVE DATE: December 15, 1981.

FOR FURTHER INFORMATION CONTACT: Roberta Baruch, Senior Attorney, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, D.C. 20580, (202) 523-3894.

SUPPLEMENTARY INFORMATION: Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Commission and Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

By direction of the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 82-903 Filed 1-12-82; 8:45 am]

BILLING CODE 6750-01-M

GENERAL SERVICES ADMINISTRATION

[Intervention Notice 144]

The Chesapeake & Potomac Telephone Co. and Public Service Commission of the District of Columbia; Proposed Intervention in Telecommunications Rate Increase Proceeding

The General Services Administration seeks to intervene in a proceeding before the Public Service Commission of the District of Columbia concerning the application of The Chesapeake and Potomac Telephone Company for an increase in telecommunications services. GSA represents the interests of the executive agencies of the U.S. Government as users of telecommunications services.

Persons desiring to make inquiries to GSA concerning this case should submit them in writing to Charles V. Curcio, Assistant General Counsel, Automated Data & Telecommunications Division, General Services Administration, Washington, D.C. (mailing address: General Services Administration (LX), 18th & F Streets N.W., Washington, D.C. 20405, telephone 202-566-1156), on or before February 12, 1982, and refer to this notice number.

Persons making inquiries are put on notice that the making of an inquiry shall not serve to make any persons parties of record in the proceeding.

(Sec. 201(a)(4), Federal Property and Administrative Services Act, 40 U.S.C. 481(a)(4))

Dated: January 6, 1982.

Ray Kline,

Deputy Administrator of General Services.

[FR Doc. 82-912 Filed 1-12-82; 8:45 am]

BILLING CODE 6820-25-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration Interagency Committee on Federal Activities for Alcohol Abuse and Alcoholism; Notice of Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix I), announcement is made of the following national advisory body scheduled to assemble during the month of February 1982.

Interagency Committee on Federal Activities for Alcohol Abuse and Alcoholism

February 11; 9:30 a.m.—OPEN
Conference Room 403A, Humphrey Building, Department of Health and Human Services, 200 Independence Avenue, S.W., Washington, D.C.
Contact: Mr. Lee Towle, Room 16C-03, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-2593

Purpose: The Interagency Committee (1) evaluates the adequacy and technical soundness of all Federal programs and activities which relate to alcohol abuse and alcoholism and provides for the communication and exchange of information necessary to maintain the coordination and effectiveness of such programs and activities, and (2) seeks to coordinate efforts undertaken to deal with alcohol abuse and alcoholism in carrying out

Federal health, welfare, rehabilitation, highway safety, law enforcement, and economic opportunity laws.

Agenda: The meeting will consist of reports and a presentation by the Department of Defense on its survey of alcohol abuse.

Substantive program information may be obtained from the contact person listed above. Mr. Towle's office will also furnish, upon request, summaries of the meeting and a roster of Committee members. Contact Mrs. Nancy Judd, International and Intergovernmental Affairs, Office of the Director, NIAAA, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–3885.

Dated: January 7, 1982.

Elizabeth A. Connolly,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 82–826 Filed 1–12–82; 8:45 am]

BILLING CODE 4160–20–M

Mental Health Small Grant Review Committee; Meetings

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix I), announcement is made of the following national advisory bodies scheduled to assemble during the month of February 1982.

Mental Health Small Grant Review Committee

February 4–6; 1:30 p.m.
The Canterbury, Rooms 208, 209 and 201, 1733 N Street, N.W., Washington, D.C. 20036
OPEN—February 4; 1:30–2:30 p.m.
CLOSED—Otherwise
Contact: LaVerl P. Klein, Room 9–104, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4843

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research activities in all disciplines pertaining to alcohol, drug abuse, and mental health, including psychiatry, sociology, anthropology, psychological sciences, biological sciences, and epidemiology. Makes recommendations to the National Advisory Councils of the respective Institutes for final review.

Agenda: From 1:30–2:30 p.m, February 4, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(c)(6), and Section 10(d) of Public Law 92–463 (5 U.S.C. Appendix I).

Alcohol Biomedical Research Review Committee

February 10–12; 1:45 p.m,
Danish Inn, The Windmill Road, 1547 Mission Drive, Solvang, California 93463
OPEN—February 10; 1:45–3:00 p.m.
CLOSED—Otherwise
Contact: Harvey P. Stein, Ph.D., Room 16C–26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–6106

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Alcohol Abuse and Alcoholism for support of research activities and makes recommendations to the National Advisory Council on Alcohol Abuse and Alcoholism for final review.

Agenda: From 1:45–3:00 p.m, February 10, the meeting will be open for discussion of administrative reports, announcements, and program developments. Otherwise, the Committee will be performing initial review of applications for assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(c)(6), and Section 10(d) of Public Law 92–463 (5 U.S.C. Appendix I).

Treatment Development and Assissment Research Review Committee

February 10–12; 9:00 a.m.
Shoreham Americana, 2500 Calvert Street, N.W., Washington, D.C. 20008
OPEN—February 10; 9:00–10:00 a.m.
CLOSED—Otherwise
Contact: Pamela J. Mitchell, Room 4–68, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–6470

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research activities in the fields of treatment development and assessment, and makes recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00–10:00 a.m., February 10, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of applications for assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(c)(6), and Section 10(d) of Public Law 92–463 (5 U.S.C. Appendix I).

Criminal and Violent Behavior Review Committee

February 17–19; 9:00 a.m.
Gramercy Inn, Parkview and Westview Rooms, 1616 Rhode Island Avenue, N.W., Washington, D.C. 20036
OPEN—February 17; 9:00–10:30 a.m.
CLOSED—Otherwise
Contact: Phyllis Pinzow, Room 9C–14, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4868

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and training activities and makes recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00–10:30 a.m, February 17, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of applications for assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(c)(6), and Section 10(d) of Public Law 92–463 (5 U.S.C. Appendix I).

Substantive information may be obtained form the contact persons listed above. Summaries of the meetings and rosters of Committee members may be obtained as follows: NIAAA: Mrs. Diana Widner, Committee Management Office, Room 16C–21, Parklawn Building, 5600 Fishers Lane, Rockville, Md. 20857, (301) 443–2860; NIMH: Mrs. Helen Garrett, Committee Management Office, Room 9–95, Parklawn Building, 5600 Fishers Lane, Rockville, Md. 20857, (301) 443–4333.

Dated: January 7, 1982.

Elizabeth A. Connolly,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 82–828 Filed 1–12–82; 8:45 am]

BILLING CODE 4160–20–M

National Institutes of Health

General Clinical Research Centers Committee; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the General Clinical Research Centers Committee, Division of Research Resources, February 22–23, 1982, Pine Inn, Carmel, California.

The meeting will be open to the public on February 22, 1982, from 9:00 a.m. to approximately 12:00 noon, to discuss administrative matters and program plans. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in Sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on February 22, 1982, from approximately 1:00 p.m. to recess, and on February 23, from 8:30 a.m. to adjournment for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. James Augustine, Information Officer, Division of Research Resources, Bldg. 31, Rm. 5B–10, National Institutes of Health, Bethesda, Maryland 20205, (301) 496–5545, will provide summaries of the meeting and rosters of the Committee members. Dr. Ephraim Y. Levin, Executive Secretary of the General Clinical Research Centers Review Committee, Bldg. 31, Room 5B51, National Institutes of Health, Bethesda, Maryland 20205, (301) 496–6595, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.333, Clinical Research, National Institutes of Health)

Note.—NIH programs are not covered by OMP Circular A–95 because they fit the description of "programs not considered appropriate" in section 8(b) (4) and (5) of the Circular.

Dated: January 7, 1982.

Thomas E. Malone,

Acting Director, National Institutes of Health.

[FR Doc. 82–829 Filed 1–12–82; 8:45 am]

BILLING CODE 4140–01–M

National Advisory Eye Council; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory Eye Council, National Eye Institute, February 1 and 2, 1982, Building 31, Conference Room 8, National Institutes of Health, Bethesda, Maryland.

This meeting will be open to the public from 9:00 a.m. until approximately 3:00 p.m. on Monday, February 1, for opening remarks by the Director, National Eye Institute, a discussion of *Vision Research, A National Plan: 1983–87,* presentations on the National Eye Institute's intramural program, discussions of procedural matters, and presentations by the extramural staff of the Institute.

In accordance with provisions set forth in Sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Public Law 92–463, the meeting will be closed to the public from approximately 3:00 p.m. for the remainder of the day on Monday, February 1, and all day on Tuesday, February 2, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Mary Carter, Committee Management Officer, National Eye Institute, Building 31, Room 6A04, National Institutes of Health, Bethesda, Maryland 20205 (301) 496–4903, will provide summaries of meetings and rosters of committee members.

Dr. Ronald G. Geller, Associate Director for Extramural and Collaborative Programs, National Eye Institute, Building 31, Room 6A04, National Institutes of Health, Bethesda, Maryland 20205 (301) 496–4903, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.867, Retinal and Choroidal Diseases Research; 13.868, Corneal Diseases Research; 13.869, Cataract Research; 13.870, Glaucoma Research; and 13.871, Sensory and Motor Disorders of Visual Research; National Institutes of Health)

Note.—NIH programs are not covered by OMB Circular A–95 because they fit the description of "programs not considered appropriate" in section 8(b) (4) and (5) of that Circular.

Dated: January 7, 1982.

Thomas E. Malone,

Deputy Director, National Institutes of Health.

[FR Doc. 82–833 Filed 1–12–82; 8:45 am]

BILLING CODE 4140–01–M

National High Blood Pressure Education Program Coordinating Committee; Meeting

Notice is hereby given of the meeting of the National High Blood Pressure Education Program Coordinating Committee, sponsored by the National Heart, Lung, and Blood Institute, on March 26, 1982, from 9:00 a.m. to 4:00 p.m., Building 31, C Wing, Conference Room 6 at the National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20205.

The entire meeting will be open to the public. The Coordinating Committee is meeting to define the priorities, activities, and needs of the participating groups in the National High Blood Pressure Education Program. Attendance by the public will be limited to space available.

For detailed program information, a list of meeting participants, and a meeting summary contact: Mr. Graham W. Ward, Chief, Health Education Branch, National High Blood Pressure Education Program, National Heart, Lung, and Blood Institute, National Institutes of Health, Building 31, Room 4A18, 9000 Rockville Pike, Bethesda, MD 20205, 301–496–1051.

Dated: January 7, 1982.

Thomas E. Malone,

Deputy Director, National Institutes of Health.

[FR Doc. 82–831 Filed 1–12–82; 8:45 am]

BILLING CODE 4110–08–M

National Heart, Lung, and Blood Advisory Council and its Manpower Subcommittee and Research Subcommittee; Meetings

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Heart, Lung, and Blood Advisory Council, National Heart, Lung, and Blood Institute, February 11, 12, 13, 1982, National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 10, Bethesda, Maryland 20205. In addition, meetings of the Manpower Subcommittee and the Research Subcommitteee of the above Council will be February 10, 1982 at 8 p.m. in Building 31, Conference Rooms 9 and 10 respectively.

This meeting will be open to the public on February 11 from 9 a.m. to approximately 3 p.m., to discuss program policies and issues. Attendance by the public is limited to space available.

In accordance with the provisions set forth in Section 552b(c)(4) and 552b(c)(6), title 5, U.S. Code, and Section 10(d) of Pub. L. 92–463, the meeting of

the Council will be closed to the public from 3 p.m. on February 11 to adjournment on February 13 for the review, discussion, and evaluation of individual grant applications. The meetings of the Manpower Subcommittee and the Research Subcommittee of the above Council will be closed from 8 p.m. to adjournment on February 10, also for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. York Onnen, Chief, Public Inquiries and Reports Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20205, (301) 496–4236, will provide summaries of the meetings and rosters of the Council members.

Dr. Jerome G. Green, Executive Secretary of the Council, Westwood Building, Room 7A–17, National Institutes of Health, Bethesda, Maryland 20205, phone (301) 496–7416, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.837, Heart and Vascular Diseases Research; 13.838, Lung Diseases Research; and 13.839, Blood Diseases and Resources Research, National Institutes of Health)

Note.—NIH programs are not covered by OMB Circular A–95 because they fit the description of "programs not considered appropriate" in Section 8(b) (4) and (5) of that Circular.

Dated: January 7, 1982.

Thomas E. Malone,

Deputy Director, National Institutes of Health.

[FR Doc. 82–830 Filed 1–12–82; 8:45 am]

BILLING CODE 4140–01–M

Board of Scientific Counselors; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute of Allergy and Infectious Diseases, on Febuary 3, 4, and 5, 1982. On February 3 and 4 the meeting will be held in Conference Room 216, Building 5, National Institutes of Health, Bethesda, Maryland. On February 5 the meeting will be held in Conference Room 7A–24, Building 31, National Institutes of Health, Bethesda, Maryland. The meeting will be open to the public on February 3 and 4 from 8:30 a.m. until adjournment. During this open session, the permanent staff of the Laboratory of Biology of Viruses and the Laboratory of Viral Diseases will present and discuss their immediate past and present research activities.

In accordance with the provisions set forth in Sections 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92–463, the meeting of the Board will be closed to the public on February 5 from 8:30 a.m. until adjournment for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Allergy and Infectious Diseases, including consideration of personal qualifications and performance, and the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. Robert L. Schreiber, Chief, Office of Research Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, Room 7A–32, National Institutes of Health, Bethesda, Maryland 20205, telephone (301) 496–5717, will provide summaries of the meeting and rosters of the Board members.

Dr. Kenneth W. Sell, Executive Secretary, Board of Scientific Counselors, NIAID, National Institutes of Health, Building 5, Room 137, telephone (301) 496–2144, will provide substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.301, National Institutes of Health)

Dated: January 7, 1982.

Thomas E. Malone,

Deputy Director, National Institutes of Health.

[FR Doc. 82–832 Filed 1–12–82; 8:45 am]

BILLING CODE 4140–01–M

Communicative Disorders Review Committee; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Communicative Disorders Review Committee, National Institutes of Health, February 25–26, 1982, at the Pooks Hill Hotel and Racquet Club, 5400 Pooks Hill Road, Bethesda, Maryland 20014.

The meeting will be open to the public from 7:30 p.m. until 8:30 p.m. February 25th, to discuss program planning and program accomplishments. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in Section 552b(c)(4), and 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on February 25th from 8:30 p.m. to adjournment on that day and all day on February 26th for the review, discussion and evaluation of individual grant applications. The applications and the discussion could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Sylvia Shaffer, Chief, Office of Scientific and Health Reports, Building 31, Room 8A03, NIH, NINCDS, Bethesda, MD 20205, telephone 301/496–5751, will furnish summaries of the meeting and roster of committee members.

Dr. Marilyn B. Semmes, Executive Secretary, NINCDS, NIH, Federal Building, Room 9C14, Bethesda, MD 20205, telephone 301/496–9223, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.851, Communicative Disorders Program, National Institute of Health)

Note.—NIH programs are not covered by OMB Circular A–95 because they fit the description of "programs not considered appropriate" in section 8(b) (4) and (5) of that Circular.

Dated: January 7, 1982.

Thomas E. Malone,

Deputy Director, National Institutes of Health.

[FR Doc. 82–834 Filed 1–12–82; 8:45 am]

BILLING CODE 4140–01–M

Reproductive Biology Study Section; Workshop

Notice is hereby given of a Workshop on Roll of Proteins and Peptides in Control of Reproduction by the Reproductive Biology Study Section at the National Institutes of Health, Building 1, Masur Auditorium, Bethesda, MD, February 15, 1982, from 8:30 a.m. to adjournment and February 16, 1982, from 8:30 a.m. to adjournment.

Further information may be obtained from Dr. Dharam S. Dhindsa, Executive Secretary, Reproductive Biology Study Section, Westwood Building, Room 307, telephone 301–496–7318.

This workshop will be open to the public. Attendance by the public will be limited to space available.

Dated: January 7, 1982.

Thomas E. Malone,

Deputy Director, National Institutes of Health.

[FR Doc. 82-836 Filed 1-12-82; 8:45 am]

BILLING CODE 4140-01-M

Office of the Secretary; Statement of Organization, Functions and Delegations of Authority

Part A of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services, Office of the Secretary, is amended to reflect certain changes in Chapter AG, Office of the General Counsel (28 FR 17032, June 28, 1973, as amended by 43 FR 27245, June 23, 1978).

The description of the Immediate Office of the General Counsel is amended to reflect changes in responsibilities for the three Deputy General Counsels and the Associate General Counsel, and the inclusion of a Legal Counsel in the Immediate Office of the General Counsel. The description of the Organization of the Office of General Counsel is amended to show the abolition of the Office of Legal Counsel and the Office of Regulation Review.

These changes are reflected in revisions of Section AG.10 *Organization;* Section AG.12 *The General Counsel;* Section AG.14 *Immediate Office of the General Counsel;* and Section AG.21 *Immediate Office of the General Counsel.* The revisions are as follows:

Delete current Section AG.10 and add revised section as follows:

Section AG.10 *Organization.*

The Office of the General Counsel under the supervision of a General Counsel consists of:

1. Immediate Office of the General Counsel.
2. Divisions in the Office of the General Counsel.
3. Offices of the Regional Attorneys.

Delete current Section AG.12 and add revised section as follows:

Section AG.12 *The General Counsel.*

A. The General Counsel is directly responsible to the Secretary.

B. In the event of the General Counsel's absence or disability, he shall designate a member of the office to act in his place. In the event of a vacancy in the position of General Counsel, the Secretary shall designate an Acting General Counsel.

C. Each division is under the general supervision of the General Counsel and, to the extent that matters pertain to their areas of specialization, the Deputy General Counsels. Each division is under the immediate supervision of an Assistant General Counsel.

Delete current Section AG.14 and add revised section as follows:

Section AG.14 *Immediate Office of the General Counsel.*

A. The Immediate Office of the General Counsel consists of:

1. General Counsel.
2. Deputy General Counsel, Program Review.
3. Deputy General Counsel, Litigation.
4. Deputy General Counsel, Regulations.
5. Associate General Counsel.
6. Legal Counsel.
7. Special Assistants to the General Counsel.
8. Executive Assistant to the General Counsel.

Delete current Section AG.21 and add revised section as follows:

A. The General Counsel:

1. Is responsible to and serves as Special Advisor to the Secretary on legal matters in connection with the administration of the Department.
2. Exercises general direction and supervision over all legal activities carried on by the Department.

B. The Deputy General Counsel, Program Review, assists the General Counsel in developing formal and informal legal advice issued by the Office of General Counsel and supervises the Assistant General Counsels in the issuance of legal advice.

C. The Deputy General Counsel, Litigation, assists the General Counsel in coordinating the Department's litigation efforts and supervises the Assistant General Counsels in the area of the development and execution of Departmental litigation efforts.

D. The Deputy General Counsel, Regulations, assists the General Counsel in providing legal support necessary to development and review of regulations and supervises the Assistant General Counsels in the area of regulation development and review.

E. The Associate General Counsel assists the General Counsel in coordinating efforts by the ten Offices of the Regional Attorney, by supervising operations in the Administrative Office in the Immediate Office of the General Counsel and by performing such other duties as the General Counsel prescribes.

F. The Legal Counsel assists the General Counsel in providing legal advice and opinions relating to major new policy directions, innovative programs not clearly delineated by statutory authority, and Departmental programs and initiatives involving more than one component of the Department.

G. The Special Assistants to the General Counsel assist the General Counsel in carrying out his professional and managerial responsibilities.

H. The Executive Assistant performs such administrative tasks in accordance with established procedures as are necessary to maintain routine operation of the Office of General Counsel.

Dated: January 5, 1982.

Richard S. Schweiker,

Secretary.

[FR Doc. 82-838 Filed 1-12-82; 8:45 am]

BILLING CODE 4150-04-M

Office of the Secretary

Policies Implementing Executive Orders on Federal Regulation

AGENCY: Office of the Secretary, HHS.

ACTION: Notice regarding policies on Federal regulation.

SUMMARY: This notice announces new policies and procedures adopted by the Department with respect to issuing and revising regulations. We are also withdrawing a previous notice of such policies, which is no longer applicable.

FOR FURTHER INFORMATION CONTACT: John Phelan, Executive Secretariat, Department of Health and Human Services, 200 Independence Avenue, S.W., Washington, D.C. 20201, 202-245-6111.

SUPPLEMENTARY INFORMATION: Executive Order 12291, issued February 17, 1981 (published in the **Federal Register** on February 19, 46 FR 13193), established new requirements and procedures applicable to Federal departments to reduce the burdens of existing and future regulations, increase agency accountability for regulatory actions, provide for Presidential oversight of the regulatory process, minimize duplication and conflict of regulations, and ensure well-reasoned regulations.

To carry out the new policies on regulatory reform, Executive Order 12291 establishes procedures regarding the preparation and publication of regulatory impact snalyses; the publication of the semi-annual Regulatory Agenda; the review of all regulations that had not yet become effective as of February 17, 1981; and an opportunity for the Director of the Office of Management and Budget to comment on most regulations in development.

The Secretary has established new procedures for development of regulations by the Department of Health and Human Services and for the review, revision, or elimination of existing rules.

The new procedures are intended to comply fully with Executive Order 12291; to hold new regulatory initiatives to a minimum; to provide for the prompt and systematic elimination of unnecessary or overly burdensome rules; to replace a "bottom-up," piecemeal approach to regulation with a framework for management by heads of operating divisions and the Secretary; and to integrate compliance with Executive Order 12291 with requirements of the Regulatory Flexibility Act the the Paperwork Reduction Act of 1980. These procedures are in addition to applicable requirements of the Administrative Procedures Act, such as the provisions regarding notice and the opportunity for public comment.

The Secretary has also established six rulemaking principles to be applied when new regulations are being contemplated or existing rules are being reviewed:

1. Insure that all regulations are clearly within the authority delegated by law and consistent with Congressional intent.

2. Emphasize private market forces whenever feasible, rather than government mandate, when developing policies to reach desired objectives.

3. Provide maximum flexibility to State and local governments.

4. Minimize Federal, State, local, and private costs.

5. Prevent fraud, abuse, waste, and inefficiency.

6. Eliminate regulations not serving a compelling Federal interest or reform those not implemented in the least intrusive means available.

These principles and procedures are intended only to improve the internal management of the Department and are not intended to create any right or benefit, substantive or procedural, enforceable by a party against the Department of its officers.

Executive Order 12291 revoked Executive Order 12044, which had required Federal departments to review their processes for developing regulations and to revise the processes to comply with that Order. On October 16, 1979, the Department published a notice of policies implementing Executive Order 12044 (44 FR 59662). Since that Order has been revoked and many of the announced policies are either inconsistent with or not required by Executive Order 12291, we are hereby withdrawing the October 16, 1979 notice in its entirety. The policies stated in that notice will not necessarily be followed by the Department.

Dated: January 6, 1982.

Richard S. Schweiker,

Secretary.

[FR Doc. 82-901 Filed 1-12-82; 8:45 am]

BILLING CODE 4150-04-M

Social Security Administration

Social Security Administration; Statement of Organization, Functions and Delegations of Authority

Part S of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services covers the Social Security Administration (SSA). Sections SP.00, SP.10 and SP.20 of the SSA statement, as published in the **Federal Register** on August 7, 1979 (44 FR 46321–23), describe the mission, organization and functions of SSA's Office of Central Operations (OCO).

Notice is given that sections SP.10 and DP.20 are amended to reflect the establishment of two identical Divisions of Certification and Coverage in OCO's Office of Central Records Operations (OCRO) (pages 46321 and 46322) and the abolishment of OCRO's Division of Adjustment Operations and Division of Claims Operations (pages 46321 and 46322).

The OCO material is amended as follows:

Section SP.10—*The Office of Central Operations* (Organization).

E. *The Office of Central Records Operations* (SPP):

2. The Division of Adjustment Operations (SPPA)— Delete all material.

3. The Division of Claims Operations (SPPB)—Delete all material.

Add:

2. The Division of Certification and Coverage (SPPG, H) Renumber the following:

3. The Division of Earnings Operations (SPPC).

4. The Division of Registration Operations (SPPE).

5. The Data Operations Centers (SPPF 6, 8, 9).

Section SP.20—*The Office of Central Operations* (Functions).

E. *The Office of Central Records Operations*—(SPP).

2. *The Division of Adjustment Operations (SPPA)*—Delete all material.

Add: 2. *The Division of Certification and Coverage*$_1$ (SPPG).

3. *The Division of Claims Operations* (SPPB)—Delete all material.

The Division of Certification and Coverage$_2$ (SPPH).

a. Makes determinations as to coverage under the Social Security Act, as amended, of services performed by employees or self-employed individuals in earnings discrepancy cases if a claim for benefits has not been filed.

b. Reviews determinations on correctness of earnings data; coverage; increment years; total earnings; closing dates; primary insurance amounts; and, in disability cases, determinations as to whether work requirements are met. Makes these determinations when needed.

c. Answers inquiries about earnings records, including earnings discrepancies; investigates and adjusts incorrectly reported earnings items; and resolves discrepancies where SSA's records disagree with individual allegations of services rendered or remuneration received.

d. Certifies earnings record data to district offices and program service centers for use in the adjudication of retirement and survivors insurance and disability insurance cases.

e. Combines and certifies earnings data from Railroad Retirement Board (RRB) and SSA records.

f. Certifies earnings data from SSA to RRB, indicating eligibility under both systems, and makes preliminary findings of jurisdiction on handling claims.

g. Maintains files of microfilmed employer wage reports; self-employed income reports; detailed earnings listings; and a file of earnings reported incorrectly or incompletely by employers or by self-employed individuals.

Renumber the following:

3. The Division of Earnings Operations (SPPC).

4. The Division of Registration Operations (SPPE).

5. The Data Operations Centers (SPPF 6, 8, 9).

Dated: January 5, 1982.

Richard S. Schweiker,

Secretary.

[FR Doc. 82-837 Filed 1-12-82; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Idaho; Wilderness Protest Decision; St. Anthony Sand Dune Area

The October 8, 1981, **Federal Register** contained a notice of decision on wilderness inventory on BLM lands in the St. Anthony Sand Dune area in Idaho. This October 8 notice was corrected in the October 29, 1981, issue.

The decision identified one Wilderness Study Area (WSA), Sand Mountain, 35–3, containing 21,100 acres,

and dropped additional acreage in the Sand Mountain Unit and in Units 35–4 and 35–5, totaling 23,562 acres dropped.

The decision also marked the beginning of a 30-day protest period on the inventory decision. A total of 19 protest letters were received during the specified time.

After analysis of the information on wilderness characteristics contained in these 19 letters, it was determined that no new information was surfaced that would warrant a change in the decision as announced. Therefore, the decision to identify a WSA, Sand Mountain, Unit 35–3, 21,100 acres, and to drop the remaining acreage from further wilderness consideration, remains in effect.

As of January 13, 1982, (upon publication in the **Federal Register**) this decision on the protests will be subject to appeal. Any person adversely affected by the decision may appeal the decision under the provisions of Title 43, Code of Federal Regulations (CFR), Part 4, and as amended in 45 FR 5713.

For further information contact: Bureau of Land Management, Idaho State Office, Box 042, Federal Building, 550 W. Fort Street, Boise, Idaho 83724.

Dated: January 6, 1982.

Theodore G. Bingham,

Acting State Director, Idaho BLM.

[FR Doc. 82-715 Filed 1-12-82; 8:45 am]

BILLING CODE 4310-84-M

Grazing Advisory Board; Boise District, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTIONS: Notice of Boise district, Idaho, Grazing Advisory Board meeting.

SUMMARY: In accordance with Public Law 92–463, the Federal Advisory Committee Act, and Public Law 94–579, Federal Land Policy and Management Act, notice is given that the Boise District Grazing Advisory Board will meet on February 11 and 12, 1982. The meeting will begin at 9:00 a.m. on the 11th and 8:00 a.m. on the 12th in the conference room at the Boise District Office at 3948 Development Avenue, Boise, Idaho.

The agenda for the meeting will include:

1. Election of officers.
2. Financial report on advisory Board fund.
3. Progress report on 1982 fiscal year 8100 program.
4. Finalization of District policy on distribution of 8100 funds.

The meeting is open to the public. Interested persons may make oral statements to the Board between 2:00 p.m. and 4:00 p.m. on the 11th or file written statements for the Board's consideration. Statements must be on agenda topics only. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 3948 Development Avenue, Boise, Idaho 83705, prior to the meeting. Depending on the number of persons wishing to make oral statements, a per-person time limit may be established by the District Manager.

Minutes of the Board meeting will be maintained in the District Office. They will be available for public inspection during regular business hours within thirty (30) days following the meeting.

Martin J. Zimmer,

District Manager.

January 4, 1982.

[FR Doc. 82-798 Filed 1-12-82; 8:45 am]

BILLING CODE 4310-84-M

Carson City District Advisory Council; Cancellation of Meeting

The Council will *not* meet January 15, 1982, as announced in the **Federal Register** December 10, 1981 (Vol. 46, No. 237, P. 60508).

For further information contact: Stephen A. Weiss, Public Affairs Officer, Carson City District Office, 1050 E. William St., Suite 335 Carson City, Nevada 89701, (702) 882–1631.

Dated: January 5, 1982.

Thomas J. Owen,

District Manager.

[FR Doc. 82-799 Filed 1-12-82; 8:45 am]

BILLING CODE 4310-84-M

[C-33325]

Realty Action—Exchange Public Lands in Montrose County, Colorado

January 5, 1982.

The following described public lands have been determined to be suitable for disposal by exchange under Section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

New Mexico Principal Meridian

T. 50 N., R. 9 W.,
Sec. 22, SW¼SE¼;
*Sec. 23, NW¼SW¼;
Sec. 27, NE¼, S½NW¼ and SW¼;
*Sec. 28, NE¼SE¼;
*Sec. 34, NE¼NW¼;
Sec. 34, NW¼NW¼.
Containing 600 acres.

In exchange for these lands, the Federal government will obtain non-federal lands in Montrose County from the Nicolas Brothers, c/o Paul Nicolas, 64313 Holly Road, Montrose, Colorado 81401, described as follows:

New Mexico Principal Meridian,

T. 50 N., R. 9 W.,
Sec. 12, SE¼SW¼;
Sec. 13, E½NW¼ and N½SW¼;
Sec. 14, E½SE¼;
Sec. 23, NE¼;
Sec. 24, SW¼NW¼.
Containing 480 acres.

The purpose of the exchange is to obtain non-federal lands for use in Federal recreation programs in the vicinity of the Bureau's Gunnison Gorge Recreations Lands and to obtain physical and legal access to the trailhead for the Chukar Trail into the Black Canyon of the Gunnison River below the National Monument. The exchange is consistent with the Bureau's planning for the lands involved. The public interest will be well served by making the exchange. The values of the lands to be exchanged are approximately equal and the acreage will be adjusted or money will be used to equalize values upon completion of the final appraisal of the lands.

The terms and conditions applicable to the exchange are:

1. The exchange involves only the surface estate; all minerals in the public lands to be conveyed to non-federal ownership will be reserved to the United States. The United States owns the mineral estate in the private lands that would be conveyed to Federal ownership.

Additional information about the exchange, including the environmental assessment, is available for review at the Bureau of Land Management District Office, 2465 South Townsend Street, P.O. Box 1269, Montrose, Colorado 81402.

For a period of 45 days from the date of this notice, interested parties may submit comments to the State Director, Bureau of Land Management, 1037 20th Street, Denver, Colorado 80202. Any adverse comments will be evaluated by the State Director who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination of the Department of the Interior.

Marlyn V. Jones,

District Manager, Montrose District.

[FR Doc. 82-796 Filed 1-12-82; 8:45 am]

BILLING CODE 4310-84-M

*These lands will be exchanged only if required to equalize values.

Utah: Notice of Proposed Withdrawal and Continuation

The Bureau of Land Management proposes to continue the following listed existing Public Water Reserve Withdrawals. This action would be made pursuant to the authority contained in Section 204 of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2754; 43 U.S.C. 1714). The lands affected by this proposed action are described as follows:

Salt Lake Meridian, Utah

U-0136798 Public Water Reserve No. 10

T. 35 S., R. 4 E.,
Sec. 33, SW¼.
T. 36 S., R. 4 E.,
Sec. 16, S½NE¼, SW¼NW¼, and S½;
Sec. 17, W½NE¼, SE¼NE¼, and NE¼NW¼.
T. 36 S., R. 5 E.,
Secs. 25 and 31.
T. 37 S., R. 5 E.,
Sec. 5.
T. 37 S., R. 6 E.,
Secs. 1, 13, 25, and 27.
T. 38 S., R. 6 E.,
Sec. 13.
T. 39 S., R. 6 E.,
Sec. 25.
T. 40 S., R. 6 E.,
Sec. 13.
T. 38 S., R. 7 E.,
Secs. 14 and 20.
T. 39 S., R. 7 E.,
Sec. 16, SW¼;
Sec. 17, SE¼SE¼.
T. 40 S., R. 7 E.,
Sec. 9, SW¼NW¼;
Sec. 28, NW¼NW¼;
Sec. 33, SW¼NE¼;
Sec. 35, NW¼SW¼.
T. 41 S., R. 7 E.,
Secs. 1, 17 and 18.

U-41547 Public Water Reserve No. 4

T. 10 S., R. 4 W.,
Sec. 4, W½SW¼;
Sec. 5, E½SE¼.
T. 3 S., R. 7 W.,
Sec. 7, N½NE¼, SW¼NE¼, NE¼NW¼;
Sec. 31, SW¼.
T. 2 S., R. 8 W.,
Sec. 26, E½NE¼, SW¼NE¼, SE¼NW¼.
T. 2 S., R. 9 W.,
Sec. 7, lot 2, SE¼NW¼, NE¼SW¼;
Sec. 9, NE¼.

U-41549 Public Water Reserve No. 6

T. 26 S., R. 11 W.,
Sec. 19, lots 5, 6, S½SE¼;
Sec. 28, W½NW¼.
T. 27 S., R. 13 W.,
Sec. 26, lot 8.
T. 36 S., R. 13 W.,
Sec. 30, part of SE¼SE¼;
Sec. 31, part of lot 12.
T. 37 S., R. 14 W.,
Sec. 1, lot 1.

U-41550 Public Water Reserve No. 11

T. 6 S., R. 6 W.,
Sec. 21, SE¼SW¼.

U-41551 Public Water Reserve No. 16

T. 36 S., R. 13 W.,
Sec. 26, S½SW¼;
Sec. 33, SW¼SE¼.
T. 32 S., R. 16 W.,
Sec. 12, SW¼NW¼, NW¼SW¼.

U-41551-A Public Water Reserve No. 16

T. 14 S., R. 11 W.,
Sec. 23, SW¼SW¼.

U-41551-B Public Water Reserve No. 16

T. 21 S., R. 7 E.,
Sec. 24, lot 7.
T. 22 S., R. 8 E.,
Sec. 10, SW¼.
T. 21 S., R. 9 E.,
Sec. 14, SW¼NW¼SW¼, W½SW¼;
Sec. 15, S½NE¼SE¼, SE¼NW¼ SE¼, E½SW¼SE¼, SE¼SE¼;
Sec. 22, N½NE¼NE¼, NE¼NW¼NE¼;
Sec. 23, NW¼NW¼NW¼.
T. 18 S., R. 10 E.,
Sec. 20, NE¼, N½SE¼.
T. 12 S., R. 13 E.,
Sec. 26, W½W½;
Sec. 34, lots 3, 4, N½NE¼;
Sec. 35, NW¼NW¼.
T. 13 S., R. 13 E.,
Sec. 1, lot 4;
Sec. 4, lot 2, SW¼SE¼;
Sec. 9, NW¼NE¼, E½SW¼.
T. 14 S., R. 13 E.,
Sec. 1, lots 4, 7, S½NW¼, NE¼SW¼, W½SE¼;
Sec. 3, NE¼SE¼, S½SE¼;
Sec. 9, E½NE¼.
T. 15 S., R. 13 E.,
Sec. 11, N½SE¼, SW¼SE¼;
Sec. 15, SE¼SW¼, W½SE¼;
Sec. 22, W½W½.
T. 13 S., R. 14 E.,
Sec. 12, SE¼SE¼;
Sec. 13, N½N½;
Sec. 14, N½NE¼, E½NW¼, SW¼NW¼;
Sec. 15, NE¼SE¼, SW¼SE¼.
T. 14 S., R. 14 E.,
Sec. 5, lots 1-4, SE¼NE¼, NW¼SE¼;
Sec. 11, E½E½, NW¼NE¼, NE¼NW¼;
Sec. 12, W½W½;
Sec. 13, W½W½;
Sec. 14, E½NE¼, S½S½, NE¼SE¼.
T. 15 S., R. 14 E.,
Sec. 14, N½NE¼.
T. 13 S., R. 15 E.,
Sec. 5, lots 2, 3, S½SW¼;
Sec. 7, lots 3, 4, NE¼SW¼, N½SE¼;
Sec. 8, W½NW¼, NW¼SW¼;
Sec. 19, S½NE¼;
Sec. 29, SE¼NE¼, S½SW¼, NE¼SE¼, SW¼SE¼;
Sec. 30, S½SE¼;
Sec. 31, NE¼SW¼, NW¼SE¼.

U-41551-C Public Water Reserve No. 16

T. 2 N., R. 22 E.,
Sec. 1, NW¼;
Sec. 3, SW¼NW¼.
T. 2 N., R. 23 E.,
Sec. 3, lots 1, 2, 7, 8.
T. 3 N., R. 23 E.,
Sec. 20, SE¼NE¼;
Sec. 23, W½SE¼;
Sec. 29, S½SW¼;
Sec. 31, S½NE¼.
T. 1 N., R. 24 E.,
Sec. 20, SE¼NW¼, NE¼SW¼.
T. 3 S., R. 20 E.,
Sec. 33, lot 9.

U-41552 Public Water Reserve No. 26

T. 27 S., R. 9 W.,
Sec. 12, SE¼SE¼.
T. 28 S., R. 9 W.,
Sec. 1, lot 1, SE¼NE¼, E½SE¼;
Sec. 11, E½NE¼, NW¼NE¼, SE¼SE¼;
Sec. 12, N½SW¼, SW¼SW¼;
Sec. 13, N½SW¼;
Sec. 14, NE¼, S½NW¼, NE¼SE¼;
Sec. 15, SE¼NE¼;
Sec. 22, S½NE¼, NE¼SE¼;
Sec. 23, NW¼SW¼;
Sec. 26, SW¼NW¼;
Sec. 27, SE¼NE¼;
Sec. 33, SW¼SW¼.
T. 32 S., R. 18 W.,
Sec. 15, N½SE¼, SE¼SE¼;
Sec. 28, SE¼NW¼.
T. 33 S., R. 18 W.,
Sec. 31, SW¼NE¼.

U-41553 Public Water Reserve No. 54

T. 9 S., R. 4 W.,
Sec. 31, NW¼NW¼.

U-41553-A Public Water Reserve No. 54

T. 40 S., R. 5 W.,
Sec. 4, W½SE¼.
T. 31 S., R. 16 W.,
Sec. 33, S½SE¼.

U-41553-B Public Water Reserve No. 54

T. 28 S., R. 22 E.,
Sec. 1, W½SW¼;
Sec. 3, lot 2, SW¼NE¼, W½SE¼;
Sec. 10, S½NE¼, E½NW¼;
Sec. 11, NE¼, S½NW¼, NE¼SE¼;
Sec. 12, NW¼SW¼;
Sec. 35, lots 1-3.

U-41554 Public Water Reserve No. 63

T. 39 S., R. 6 W.,
Sec. 28, SW¼SE¼;
Sec. 33, SW¼SE¼.
T. 40 S., R. 9 W.,
Sec. 3, SW¼NW¼.

U-41554-A Public Water Reserve No. 63

T. 35 S., R. 23 E.,
Sec. 12, NW¼NE¼.

U-41555-A Public Water Reserve No. 66

T. 31 S., R. 15 W.,
Sec. 12, NW¼SW¼.

U-41555-B Public Water Reserve No. 66

T. 14 S., R. 1 W.,
Sec. 4, SW¼SW¼.

U-41555-C Public Water Reserve No. 66

T. 35 S., R. 23 E.,
Sec. 14, SW¼NE¼.
T. 30 S., R. 25 E.,
Sec. 24, S½NW¼, N½SW¼.

U-41556 Public Water Reserve No. 77

T. 40 S., R. 4 W.,
Sec. 9, NW¼NW¼.
T. 32 S., R. 18 W.,
Sec. 24, SW¼SW¼;
Sec. 25, NW¼NW¼.

U–41557 Public Water Reserve No. 78

T. 10 S., R. 16 W.,
Sec. 30, NE¼SW¼.

U–41557–A Public Water Reserve No. 78

T. 11 S., R. 16 W.,
Sec. 6, lots 3, 4.

U–41558 Public Water Reserve No. 81

T. 14 S., R. 22 E.,
Sec. 13, NW¼SE¼.
T. 15 S., R. 22 E.,
Sec. 15, SE¼SW¼;
Sec. 23, SE¼SW¼.
T. 15 S., R. 23 E.,
Sec. 15, NW¼NE¼;
Sec. 16, NW¼NW¼;
Sec. 27, SW¼NW¼;
Sec. 36, SE¼SE¼.

U–41559 Public Water Reserve No. 82

T. 18 S., R. 21 E.,
Sec. 1, lot 4;
Sec. 11, SE¼NE¼, SW¼SE¼;
Sec. 14, NW¼NE¼.

U–41560 Public Water Reserve No. 91

T. 22 S., R. 8 E.,
Sec. 26, SW¼NW¼, NW¼SE¼.
T. 15 S., R. 12 E.,
Sec. 13, NW¼SW¼.
T. 24 S., R. 19 E.,
Sec. 10, SW¼SE¼;
Sec. 14, NW¼SW¼.

U–41561 Public Water Reserve No. 103

T. 8 S., R. 13 W.,
Sec. 9, NW¼.

U–41562 Public Water Reserve No. 121

T. 39 S., R. 18 W.,
Sec. 3, SW¼SW¼;
Sec. 4, SE¼SE¼;
Sec. 9, NE¼NE¼, S½NE¼, E½SW¼, W½SE¼;
Sec. 10, N½N½;
Sec. 16, NE¼NW¼.

U–41563 Public Water Reserve No. 127

T. 39 S., R. 4 W.,
Sec. 31, lots 21, 22.

U–41564 Public Water Reserve No. 131

T. 43 S., R. 10 W.,
Sec. 10, SE¼;
Sec. 13, S½NE¼, SW¼, N½SE¼;
Sec. 14, SW¼NW¼, W½SW¼;
Sec. 15, E½NE¼;
Sec. 23, NW¼, E½SW¼;
Sec. 24, W½NW¼, NW¼SW¼.
T. 37 S., R. 13 W.,
Sec. 1, all;
Sec. 10, all;
Sec. 11, all;
Sec. 15, all.

U–41566 Public Water Reserve No. 152

T. 3 S., R. 25 E.,
Sec. 1, lots 2, 3, SW¼NE¼, SE¼NW¼, W½SE¼;
Sec. 12, W½NE¼.

U–41567 Public Water Reserve No. 153

T. 18 S., R. 16 E.,
Sec. 31, lot 2, SW¼NE¼, SE¼NW¼, NE¼SW¼, N½SE¼, SE¼SE¼.

U–41568 Public Water Reserve No. 155

T. 32 S., R. 23 E.,
Sec. 27, SE¼SW¼.

U–41663 Public Water Reserve No. 1

T. 12 S., R. 12 W.,
Sec. 10, all.
T. 16 S., R. 12 W.,
Sec. 19, all.
T. 11 S., R. 13 W.,
Sec. 10, all.
T. 17 S., R. 13 W.,
Sec. 11, all.
T. 11 S., R. 14 W.,
Sec. 3, W½SE¼;
Sec. 23, E½SW¼, SW¼SW¼.
T. 12 S., R. 14 W.,
Sec. 23, SE¼;
Sec. 24, SW¼.
T. 16 S., R. 14 W.,
Sec. 28, W½.
T. 16 S., R. 15 W.,
Sec. 34, all;
Sec. 35, all.
T. 17 S., R. 15 W.,
Sec. 2, all;
Sec. 3, all;
Sec. 11, all;
Sec. 14, all.
T. 11 S., R. 17 W.,
Sec. 18 lots 1–4, E½W½, SE¼;
Sec. 19, NE¼;
Sec. 20, N½;
Sec. 30, NE¼;
Sec. 31, W½SE¼.
T. 12 S., R. 17 W.,
Sec. 5, lots 3–6, 11, 12;
Sec. 6, lots 1–15.
T. 12 S., R. 18 W.,
Sec. 5, lots 13, 14, 18, N½SW¼, W½SE¼;
Sec. 6, lots 10–16;
Sec. 8, lot 1;
Sec. 9, lots 2–8, E½SE¼;
Sec. 10, SW¼SW¼;
Sec. 14, N½SW¼;
Sec. 15, S½NE¼, N½NW¼, SE¼NW¼, NE¼SE¼;
Sec. 19, S½N½, NW¼NW¼, NE¼SE¼;
Sec. 20, SW¼NW¼, N½SW¼, SW¼SW¼, W½SE¼;
Sec. 28, N½SW¼, SE¼SW¼;
Sec. 29, lot 3, W½NE¼, NW¼SE¼;
Sec. 33, lot 1, NE¼SE¼.
T. 13 S., R. 18 W.,
Sec. 4, lots 1, 2, S½NE¼, SE¼;
Sec. 5, SW¼;
Sec. 6, lots 1–7, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 8, N½;
Sec. 9, N½.
T. 16 S., R. 18 W.,
Sec. 8, SE¼NE¼, NE¼SE¼;
Sec. 9, W½SE¼;
Sec. 15, all;
Sec. 22, all.
T. 18 S., R. 18 W.,
Sec. 10, NW¼SE¼.
T. 11 S., R. 19 W.,
Sec. 26, W½SW¼;
Sec. 27, all;
Sec. 28, E½;
Sec. 34, NE¼;
Sec. 35, NW¼.
T. 15 S., R. 19 W.,
Sec. 31, lots 3, 4, E½SW¼, SE¼.
T. 17 S., R. 19 W.,
Sec. 7, lots 1, 2, NE¼, E½NW¼;
Sec. 8, NW¼;
Sec. 21, all;
Sec. 29, NW¼SE¼.
T. 18 S., R. 19 W.,
Sec. 8, S½NE¼;
Sec. 9, SW¼NW¼, NW¼SW¼.
T. 20 S., R. 19 W.,
Sec. 3, lots 1, 2, 7–10, SE¼.

U–41663–A Public Water Reserve No. 1

T. 10 S., R. 17 W.,
Sec. 15, SW¼NW¼;
Sec. 32, NW¼.

Notice is hereby given that an opportunity for a public hearing is afforded in connection with the proposed withdrawal continuation. All interested persons who desire to be heard on the proposal must submit a written request for a hearing to the undersigned officer on or before April 13, 1932. Upon determination by the State Director, Bureau of Land Management, that a public hearing will be held, a notice will be published in the **Federal Register** giving the time and place of such hearing. In lieu of or in addition to attendance at a scheduled public hearing, written comments or objections to the proposed withdrawal continuation may be filed with the undersigned officer on or before March 25, 1982.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. He will review the withdrawal justification to insure that continuation would be consistent with the statutory objectives of the programs for which the land is dedicated, the area involved is the minimum essential to meet the desired needs, the maximum concurrent utilization of the land is provided for, and an agreement is reached on the concurrent management of the land and its resources. He will also prepare a report for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawal will be continued and, if so, for how long. The final determination on continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

All communication in connection with this proposed withdrawal continuation should be addressed to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, University Club Building, 136 East South Temple, Salt Lake City, Utah 84111.

Dated: January 4, 1982.

Darrell Barnes,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 82797 Filed 1-12-82; 8:45 am]

BILLING CODE 4310-84-M

Vale District Grazing Advisory Board; Correction of Meeting Notice

A meeting of the Vale District Grazing Advisory Board originally scheduled for January 5 and 6, 1982, and published in the **Federal Register** December 18, 1981, has been rescheduled for January 25 and 26, 1982. All other conditions of the notice remain as published.

Dated: January 4, 1982.

Robert D. Hostetter,

Chief, Office of Public Affairs, Oregon State Office.

[FR Doc. 82-802 Filed 1-12-82; 8:45 am]

BILLING CODE 4310-84-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-167 (Sub-24N)]

Rail Carriers; Conrail Abandonment Between West Harrod and Lima, OH; Notice of Findings

Notice is hereby given pursuant to Section 308(e) of the Regional Rail Reorganization Act of 1973 that the Commission, Review Board Number 3 has issued a certificate authorizing the Consolidated Rail Corporation to abandon its rail line between West Harrod and Lima in the Counties of Allen and Hardin, OH, a total distance of 8.0 miles effective on December 16, 1981.

The net liquidation value of this line is $381,247. If, within 120 days from the date of this publication, Conrail receives a bona fide offer for the sale, for 75 percent of the net liquidation value, of this line it shall sell such line and the Commission shall, unless the parties otherwise agree, establish an equitable division of joint rates for through routes over such lines.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-865 Filed 1-12-82; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-167 (Sub-No. 16N)]

Rail Carriers; Conrail Abandonment Between Sharpsville and Transfer, PA; Notice of Findings

Notice is hereby given pursuant to Section 308(e) of the Regional Rail Reorganization Act of 1973 that the Commission, Review Board Number 3 has issued a certificate authorizing the Consolidated Rail Corporation to abandon its rail line between Sharpsville and Transfer in the County of Mercer, PA, a total distance of 8.4 miles effective on December 10, 1981.

The net liquidation value of this line is $391,154. If, within 120 days from the date of this publication, Conrail receives a bona fide offer for the sale, for 75 percent of the net liquidation value, of this line it shall sell such line and the Commission shall, unless the parties otherwise agree, establish an equitable division of joint rates for through routes over such lines.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-845 Filed 1-12-82; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-167 (Sub-No. 19N)]

Rail Carriers; Conrail Abandonment Between Stowe and Birdsboro, Pa.; Notice of Findings

Notice is hereby given pursuant to Section 308(e) of the Regional Rail Reorganization Act of 1973 that the Commission, Review Board Number 3 has issued a certificate authorizing the Consolidated Rail Corporatioan to abandon its rail line between Stowe and Birdsboro in the County of Berks, PA, a total distance of 4.7 miles effective on December 16, 1981.

The net liquidation value of this line is $394,383. If, within 120 days from the date of this publication, Conrail receives a bona fide offer for the sale, for 75 percent of the net liquidation value, of this line it shall sell such line and the Commission shall, unless the parties otherwise agree, establish an equitable division of joint rates for through routes over such lines.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-849 Filed 1-12-82; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-167 (Sub-No. 15N)]

Rail Carriers; Conrail Abandonment Between Woodmansie and Winslow Junction, NJ; Notice of Findings

Notice is hereby given pursuant to Section 308(e) of the Regional Rail Reorganization Act of 1973 that the Commission, Review Board Number 3 has issued a certificate authorizing the Consolidated Rail Corporation to abandon its rail line between Woodmansie and Winslow Junction in the Counties of Camden and Burlington, NJ, a total distance of 24.6 miles effective on December 10, 1981.

The net liquidation value of this line is $210,728. If, within 120 days from the date of this publication, Conrail receives a bona fide offer for the sale, for 75 percent of the net liquidation value, of this line it shall sell such line and the Commission shall, unless the parties otherwise agree, establish an equitable division of joint rates for through routes over such lines.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-844 Filed 1-12-82; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 311]

Motor Carriers; Expedited Procedures for Recovery of Fuel Costs

Decided: January 6, 1982.

In our recent decisions an 18.0-percent surcharge was authorized on all owner-operator traffic, and on all truckload traffic whether or not owner-operators were employed. We ordered that all owner-operators were to receive compensation at this level.

The weekly figure set forth in the appendix for transportation performed by owner-operators and for truckload traffic is 18.1-percent. Accordingly, we are authorizing that the surcharge for this traffic remain at 18.0 percent. All owner-operators are to receive compensation at this level.

No change is authorized in the 6.7 percent surcharge for bus carriers, or the 3.1 percent surcharge on less-than-truckload (LTL) traffic performed by carriers not using owner-operators. However, the UPS surcharge is authorized to be increased to 2.1 percent.

Notice shall be given to the general public by mailing a copy of this decision to the Governor of each State having jurisdiction over transportation by depositing a copy in the Office of the Secretary, Interstate Commerce Commission, Washington, D.C. for public inspection and by depositing a copy to the Director, Office of the Federal Register, for publication therein.

It is ordered:

This decision shall become effective Friday, 12:01 a.m., January 8, 1982.

By the Commission, Chairman Taylor, Vice Chairman Gilliam, Commissioners Gresham and Clapp. Commissioner

Gresham dissented to any increase at this time in the UPS surcharge.

Agatha L. Mergenovich,

Secretary.

January 4, 1982.

APPENDIX.—FUEL SURCHARGE

Base Date and Price Per Gallon (including tax)

Jan. 4, 1979 ..... 63.5¢

Date of current price measurement and price per gallon (including tax)

Jan. 4, 1982 ..... 131.4¢

	Transportation performed by—			
	Owner-operator [1]	Other [2]	Bus carrier	UPS
Average percent fuel expenses (including taxes) of total revenue	16.9	2.9	6.3	3.3
Percent surcharge developed	18.1	3.1	6.7	[3] 2.9
Percent surcharge allowed	18.0	3.1	6.7	[4] 2.1

[1] Apply to all truckload rated traffic.
[2] Including less-than-truckload traffic.
[3] The percentage surcharge developed for UPS is calculated by applying 81 percent of the percentage increase in the current price per gallon over the base price per gallon to UPS average percent of fuel expense to revenue figure as of January 4, 1979 (3.3 percent).
[4] The developed surcharge is reduced 0.8 percent to reflect fuel-related increases already included in UPS rates.

[FR Doc. 82-842 Filed 1-12-82; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Finance Applications; Decision-Notice

The following applications, filed on or after July 3, 1980, seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by Special Rule 240 of the Commission's Rules of Practice (49 CFR 1100.240). See Ex Parte 55 (Sub-No. 44), *Rules Governing Applications Filed By Motor Carriers Under 49 U.S.C. 11344 and 11349*, 363 I.C.C. 740 (1981). These rules provide among other things, that opposition to the granting of an application must be filed with the Commission in the form of verified statements within 45 days after the date of notice of filing of the application is published in the **Federal Register**. Failure seasonably to oppose will be construed as a waiver of opposition and participation in the proceeding. If the protest includes a request for oral hearing, the request shall meet the requirements of Rule 242 of the special rules and shall include the certification required.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.241. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00, in accordance with 49 CFR 1100.241(d).

Amendments to the request for authority will not be accepted after the date of this publication. However, the Commission may modify the operating authority involved in the application to conform to the Commission's policy of simplifying grants of operating authority.

We find, with the exception of those applications involving impediments (e.g., jurisdictional problems, unresolved fitness questions, questions involving possible unlawful control, or improper divisions of operating rights) that each applicant has demonstrated, in accordance with the applicable provisions of 49 U.S.C. 11301, 11302, 11343, 11344, and 11349, and with the Commission's rules and regulations, that the proposed transaction should be authorized as stated below. Except where specifically noted this decision is neither a major Federal action significantly affecting the quality of the human environment nor does it appear to qualify as a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests as to the finance application *or* to any application directly related thereto filed within 45 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, the duplication shall not be construed as conferring more than a single operating right.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

Dated: January 4, 1982.

By the Commission, Review Board Number 3, Members Krock, Joyce and Dowell.

Agatha L. Mergenovich,

Secretary.

MCF 14702, filed December 16, 1981. Transferee: L. G. DeWitt, Inc. (LGD), P.O. Box 70, Ellerbe, NC 28338. Transferor: Textile Motor Freight, Inc. (TMF) (same address as transferee). Repesentative: R. Fred Daugherty (same address). Authority sought to merge TMF Into LGD. Applicants are commonly controlled by L.G. DeWitt pursuant to MC–F–13847F. LGD operates under permits in MC –144740 and subs transporting general commodities throughout the U.S. TMF operates under Certificate No. MC–7555 and subs transporting various named commodities between various points in the Northeast, Southeast, and Midwest. Waiver of question D–4, Appendix D was granted by the Commission.

Correction MC–F–14744, filed November 30, 1981 S.R.T. MOTOR FREIGHT, INC. (S.R.T.) (1801 South Pennsylvania Avenue, Morrisville, PA 19067)—CONTROL—AMERICAN TRANS-FREIGHT, INC. (American) (P.O. Box 796, Manville, NJ 08335). Representative: Alan Kahn, 1430 Land Title Building, Philadelphia, PA 19110–1097. S.R.T. seeks authority to acquire control of American Capital the purchase by S.R.T. of all the issued and outstanding capital stock of American. Stephen R. Tranovich, major stockholder of S.R.T., seeks authority to acquire control of the operating rights and property of American through the transaction. American holds authority under Docket No. MC–140768 to transport specified commodities as a contract carrier over irregular routes, between points in the United States, for a number of named shippers. American also holds authority under MC–140768 as a common carrier, to transport specified commodities over irregular routes, between points in the United States. S.R.T. Holds authority as a common carrier under Docket No. 84450 to transport (a) *machinery and articles* which because of size or weight require special equipment between Philadelphia, PA and points in NJ, DE, and PA within 30 miles of Philadelphia on the one hand, and, on the other, points in NJ, DE, MD, PA, CT, and DC and those in NY within 75 miles of New York, NY, and (b) *metal products*, between points in the United States, and (c) various specified commodities between points in the eastern United States.

Note.—An application for temporary authority has been filed.

MC–F–14747, filed December 4, 1981. Applicant: AGGREGATE HAULERS, INC., Route 2, Box 559–A, West Columbia, SC 29169, Merger, The Holland Company, Inc., 319 Clark Street, Cayce, SC 29033. Representative: Eric

Meierhoefer, Meierhoefer, Steinfeld & Mohr, Suite 1000, 1029 Vermont Avenue NW., Washington, DC. 20005, 202–347–9332. Aggregate Haulers, Inc., seeks authority to merge with The Holland Company, Inc. Aggregate Haulers, Inc., will be the surviving corporate entity and will assume all of the assets and liabilities of The Holland Company, Inc. Vernon F. Epting, who controls aggregate, seeks authority to control the merged rights. The operating rights to be merged are contained in certificates issued to The Holland Company, Inc. authorizing in No. MC–144985 (Sub-No. 1) the transportation of *glazed structural masonry products,* from Mt. Holly, SC, to points in GA, AL, MS, FL, NC, TN and KY; and No. MC–144985 (Sub-No. 2F), authorizing the transportation of *glazed structural masonry products,* from Mt. Holly, SC, to points in AR, LA, VA, PA, MD, DE, NJ, NY, OH, VT, NH, MA, ME, CT, RI, WV, and DC; and certificates issued to Aggregate Haulers, Inc., in No. MC–134531 (Sub-No. 1), authorizing the transportation of *Cement and Mortar Mix,* in bags from points in Richland County, S.C., and points in Lexington County, S.C., located in the commercial zone of Columbia, S.C., as defined by the Commission, to points in Georgia and North Carolina, *Crushed stone, sand, and sand clay,* in bulk, from points in Columbia (except clay from Hephzibah and points within its commercial zone as defined by the Commission) Countie, Ga., to points in Aiken, Allendale, Bamberg, Barnwell, Beaufort, Colleton, Dorchester, Hampton, Jasper, and Orangeburg Counties, S.C., *Crushed stone,* in bulk, from Mecklenburg County, N.C., to points in York and Chester Counties, S.C.; No. MC–134531 (Sub–No. 3), authorizing the transportation of (1) *Aggregates, unprocessed sand, processed dry sand, gravel, and crushed stone,* in dump vehicles, from points in Georgia and North Carolina to points in South Carolina, (except crushed stone from points in Mecklenburg County, N.C., to points in York and Chester Counties, S.C., and except crushed stone, sand, and sand-clay from points in Columbia and Richmond Counties, Ga., to points in Aiken, Allendale, Bamberg, Barnwell, Beaufort, Colleton, Dorcester, Hampton, Jasper, and Orangeburg Counties, S.C.); (2) *Plant mix asphalt,* in dump vehicles, between points in South Carolina, on the one hand, and, on the other, points in Georgia and North Carolina. (3) *Dry fertilizer and fertilizer materials,* in bags, from point in Chatham and Richmond Counties, Ga., to points in South Carolina; and (4) *Prestressed and precast concrete products,* from points in Lexington, Richland, Sumter, and Florence Counties, S.C., to points in Georgia and North Carolina (except pipe from points in Richland County), No. MC–134531 (Sub-No. 6), authorizing the transportation of (1) *Agricultural limestone,* in bulk, in dump trucks, from points in Blount, Jefferson, and Knox Counties, Tenn., to points in North Carolina, South Carolina, and points in Bullock and Candler Counties, Ga.; and (2) *Dry fertilizer and fertilizer materials,* in dump trucks, (1) from Acme, Columbus County, S.C., to points in South Carolina, (2) from points in Chatham and Richmond Counties, Ga. (except Savannah and Augusta, to points in South Carolina, and (3) *Agricultural lime,* in bulk, in dump trucks, from points in Berkeley County, S.C., to points in Georgia; No. MC–134531 (Sub-No. 9) authorizing the transportation of *Dry fertilizer and dry fertilizer materials* (except in bulk, in tank or hopper-type vehicles), (a) Between points in Wayne, Iredell, New Hanover, and Columbus Counties, NC, on the one hand, and, on the other, points in South Carolina, and (b) from Columbia, SC, to Augusta, GA, and Charlotte, NC; No. MC–134531 (Sub-No. 12), authorizing the transportation of (1) *aggregates, sand, gravel, and crushed stone* from points in Lexington, Marlboro, Chesterfield, and Sumter Counties, and Columbia and Hardeeville, SC, to points in North Carolina, Georgia, and Tennessee, and (2) *concrete products,* from Spartanburg, Greenville, and Columbia, SC, to points in North Carolina, Georgia, and Tennessee; and No. MC–134531 (Sub-No. 16F), authorizing the *dry fertilizer and fertilizer materials* (except in tank and hopper-type vehicles), between points in South Carolina, Georgia, Tennessee, and North Carolina. Application has been filed for temporary control under 49 U.S.C. 11349. Condition: Although Vernon F. Epting has signed the application, as president of Aggregate Haulers, Inc., he has not signed, in his own stead, as the party in control of Aggregate. Consequently, approval of the transaction is conditioned upon Vernon F. Epting joining in the application as the party in control of Aggregate Haulers, Inc.

MC–F–14749, filed December 7, 1981. Applicants: GENCOM, INC. (GENCOM) (R.R. 4, P.O. Box 697, Marshall, MO 65340)—purchase (portion) T.F.S., INC. (TFS), South Highway 281, R.R. 2, Box 126, Grand Island, NE 68801). Representative: Thomas P. Rose, Attorney At Law, P.O. Box 205, Jefferson City, MO 65102. Gencom, seeks to purchase a portion of TSF's rights. Larry Morgan and Robert Walker, who control Gencom through stock ownership, seek to acquire control of said rights through the transaction. Gencom is purchasing portions of (1) Certificate MC–F–145743 (Sub 7F) authorizing *animal feed* and *animal feed ingredients* (except commodities in bulk) from facilities of Kal Kan Foods, Inc., at Terre Haute and Indianapolis, IN, and Columbus, OH, to points in FL, GA, LA, MD, MS, NJ, OH, TN and TX, and (2) Certificate MC–145743 (Sub 9) authorizing *fluorescent lighting fixtures* from facilities of Gibson-Matalaux Corporation at Americus, GA to points in KA, MN, MO, MT, ND, OK, SD, TX, WI and WY, and (3) Certificate MC–141575 (Sub 23) authorizing (A) *electrical appliances, equipment and parts,* from facilities of Gibson-Matalaux Corporation at Americus, GA to points in AZ, CA, CO, ID, IA, NE, NV, NM, OR, UT and WA, and (B) *canned goods, not frozen,* from Belledeau and St. Francisville, LA to points in AZ, CA, CO, ID, IL, MT, NM, OR, UT, WA, WY, WI and NV; (4) Certificate MC–145743 (Sub 20) (entire) authorizing *meats,* and similar commodities between points in NE and Pottawattamie, Clay, O'Brein and Webster Counties, IA, on the one hand, and, on the other, points in the U.S. and (5) Certificate 145743 (Sub 26) (portion) authorizing *animal feed,* and similar commodities (except commodities in bulk) between facilities of Kal Kan Foods, Inc. at Matton, IL on the one hand, and, on the other, points in the U.S. Gencom is a contract carrier in 25 states under MC 138926 (Sub-Nos. 2 and 5) and a common carrier throughout the U.S. under MC–138926 (Sub-No. 6). No application for temporary authority has been filed. Impediment: Applicants state that duplications exist between the authority being sold and that being retained. Applicants are required to submit a statement (1) specifying all duplications arising from the transaction and (2) requesting cancellation of all duplicating authority or establishing a public need for both services.

MC–F–14766, filed December 29, 1981. CENTRAL TRUCK LINES, INC. (CTL) (3825 Henderson Blvd., P.O. Box 18464, Peninsula Station, Tampa, FL 33609)—merger—MERCURY FREIGHT LINES, INC. (MFL) (67 Midtown Park East, P.O. Box 1247, Mobile, AL 36601. Representative: John C. Bradley, Suite 1301, 1600 Wilson Blvd., Arlington, VA 22209. Central Truck Lines, Inc. [CTL] and Mercury Freight Lines, Inc. [MFL], both motor common carriers, seek to merge MFL into CTL for ownership,

management and operation, and to have CTL assume all of the assets and liabilities of MFL. U.S. Truck Lines, Inc. of Delaware [USTL], a publicly held corporation and the 99.845% stockholder of CTL and the sole stockholder of MFL, seeks authority to continue in control of the merged operating rights through this transaction. In addition to having control of the two companies involved in this application, USTL controls Be-Mac Transport Company, Inc. (MC–10872, brown Express, Inc. (MC–46054), The Cleveland, Columbus & Cincinnati Highway, Inc. (MC–3419 and MC–3420), Kanawha Cartage Company (MC–150148), Motor Express, Inc. of Indiana (MC–28813), Motor Express, Inc. (NJ) (MC–1778), National Tank Truck Delivery, Inc. (MC–116132), Ohio Delivery, Inc. (MC–142758), and other non-carrier subsidiaries. Central Truck Lines, Inc. holds authority under Docket No. MC–36473 to transport *general commodities* over regular and irregular routes between specified points in GA, FL, AL, LA, OH, KY, MS, and TN; certain *specified commodities* over regular routes between certain points in GA and FL, and other commodities over irregular routes between Palatka and Yulee, FL, on the one hand, and, on the other, certain points in LA and AL. Mercury Freight Lines, Inc. holds authority under Docket No. MC–113528 (Sub-No. 55X) to transport *general commodities* over regular and irregular routes between specified points in AL, FL, TX, MS, GA, LA, NC, and SC; and certain *specified commodities* over irregular routes between designated points in NC, SC, AL, FL, TX, LA, AR, GA, MS, NM, TN, VA, KS, MO, and OK. The merger is for purposes of corporate simplification. A concurrent application has been filed for temporary authority allowing CTL to lease the properties and operating rights of MFL.

MC–F–14754, filed December 11, 1981. LEASEWAY TRANSPORTATION CORP., (Leaseway) 3700 Park East Dr., Cleveland, OH 44122, seeks authority to acquire control of FLEET TRANSPORT COMPANY, INC., (Fleet) through purchases of stock. Applicant's Attorney: J. A. Kundtz, 1100 National City Bank Bldg., Cleveland, OH 44114. Operating rights sought to be controlled: Fleet holds Certificate No. MC–103051 and Subs which authorize commodities, in bulk, irregular routes nationwide; Certificate No. MC–114106 and Subs purchased from Maybelle Transport Co. in MC–F–11001; this and a portion of the authority of George A. Rheman Co. purchased in MC–F–14544 authorize commodites, in bulk, to and from points in the Southeastern part of the U.S. Leaseway Transportation Corp. is a publicly held corporation that controls, with Commission approval, the following motor carriers: Anchor Motor Freight, Inc. (MC–808); Gypsum Haulage, Inc. (MC 112113); Signal Delivery Service, Inc. (MC 108393); Sugar Transport, Inc. (MC 115924); Dedicated Freight Systems, Inc. (MC 139583); Custom Deliveries, Inc. (MC 142693); LDF, Inc. (MC 147101); Stam-Win, Inc. (MC 147294 and MC 150185); Pep Lines Trucking Co. (MC 120184 and MC 135280); Mitchell Transport, Inc. (MC 124212 and MC 152085); General Trucking Service, Inc. (MC 143308); Charlton Transport (Quebec) limited (MC 141250); Vernon Equipment, Inc. (MC 150412); Amac Trucking, Inc. (MC 140619); Better Home Deliveries, Inc. (MC 150511); Geo. McNeil Teaming Company (MC 153315); Leaseway Trucking, Inc. (MC 153610); United Home Delivery, Inc. (MC 153685); Max Binswanger Trucking (MC 116314); and Refiners Transport & Terminal Corporation (MC 50069). Max Binswanger Trucking controls Balser Truck Co. (MC 96630), and Bulk Freightways (MC 125417). Refiners Transport & Terminal Corporation controls A. R. Gundry, Inc. (MC 25562). Application has not been filed for temporary control under 49 U.S.C. 11349. Condition: Leaseway proposes to issue promissory notes totalling $1,000,000 in part payment for Fleet's stock. Approval of this application is conditioned upon Leaseway either (1) filing a securities application under 49 U.S.C. 11302 seeking approval for issuance of the notes; or (2) submitting a statement establishing the issuance to be exempt from section 11302.

MC–F–14758, filed December 14, 1981. MURPHY & SONS TRUCKING COMPANY, INC. (MURPHY) (Rt. 2, Box 139, Spring City, TN 37381)—PURCHASE—CELERYVALE TRANSPORT, INC., (RICHARD P. JAHN, JR., TRUSTEE IN BANKRUPTCY) (Celeryvale) (12th Fl., Volunteer State Life Bldg., Chattanooga, TN 37402). Applicants Representative: Stan Guthrie, Suite 500, Dome Bldg., Chattanooga, TN 37402. Murphy seeks authority to purchase the interstate operating rights of Celeryvale. Eddy Murphy and Paul Murphy, who are major stockholders and officers and directors, and Sandy Murphy, who is an officer and director of Murphy seek authority to acquire control of said rights through the transaction. Murphy is purchasing those rights contained in Celeryvale's certificate in MC–134105 and sub-numbers thereunder, transporting general commodities (except articles of unusual value, classes A and B explosives and commodities in bulk) between points in the United States, restricted to traffic originating at or destined to the facilities of the Kroger Company and its subsidiaries; transporting (1) paper, paper products, plastics, plastic articles, and pulpwood, and (2) materials, equipment and supplies used in the manufacture and distribution of the commodities in (1) above (except commodities in bulk) between the facilities of International Paper Company, on the one hand, and, on the other, points in the United States; transporting such commodities as are dealt in or used by chain and grocery houses (except commodities in bulk) between the facilities of Hudson Industries, Inc., at or near Troy and Brundidge, AL, on the one hand, and, on the other, points in the United States (except AK and HI); transporting such commodities as are dealt in or used by frozen food processors, between the facilities or Morton Frozen Foods, at (a) Russelville and Searcy, AR, and (b) Crozet, VA, on the one hand, and, on the other, those points in the United States in and east of North Dakota, South Dakota, Nebraska, Colorado, Oklahoma and Texas; transporting meats, meat products and meat by-products, and articles distributed by meat packing houses (except commodities in bulk) from the facilities of Vernon Calhoun Packing Co., at or near Palestine, TX, to points in the United States; transporting food stuffs, from the facilities used by Globe Products Company, Inc. at or near Clifton, NJ, to points in the United States (except Alaska and Hawaii); transporting general commodities (except classes A and B explosives), between the facilities of Tennessee Donut Corporation, at Nashville, TN, on the one hand, and, on the other, points in Alabama, and numerous other states; transporting malt beverages between points in Jefferson County, CO, on the one hand, and, on the other, points in Tennessee, Louisiana and Mississippi; transporting food and related products between the facilities of American Pantry, Inc., in the United States, on the one hand, and, on the other, points in the United States; transporting textile mill products, between points in Alabama, Arizona, Delaware, Georgia, Tennessee and South Carolina, on the one hand, and, on the other, points in the United States; transporting food and related products between points in Nash County, NC, on the one hand, and, on the other, points in the United States; transporting general commodities (except classes A and B explosives), between the facilities of W. R. Grace

and Co., Construction Products Division located at points in the United States, on the one hand, and, on the other, points in the United States; transporting meats, meat products, meat by-products, and articles distributed by meat packing houses, between points in Bell County, KY, on the one hand, and, on the other, points in the United States; transporting meat, meat products and meat by-products, between points in Ford County, KS, on the one hand, and, on the other, points in the United States; transporting household appliances, between points in Alabama, Illinois and Tennessee, on the one hand, and, on the other, points in the United States. This does not purport to be a complete description of the authority being purchased. Condition: Approval and authorization of this transaction is conditioned upon the prior receipt by the Commission of affidavits, signed by Paul Murphy and Sandy Murphy, stating that they join in this application.

Note.—Application for TA has been filed.

MC-F-14763, filed December 21, 1981. Applicants: GARY L. SHORT, 459 South River Road, Bay City, MI 48706; ROBERT R. SHORT, 459 South River Road, Bay City, MI 48706. Representative: Rex Eames, 900 Guardian Building, Detroit, MI 48226. Gary L. Short and Robert R. Short of Bay City, MI seek approval to continue their control through stock ownership of Saginaw Valley Marine Terminal and Warehouse, Inc. of Bay City, MI. In MC-153402 (Sub-No. 1) an administratively final order has been served granting common carrier authority to Saginaw Valley Marine Terminal and Warehouse, Inc. to transport such commodities as are dealt in or used by manufacturers and distributors of doors between points in Genessee and Ogemaw Counties, MI and Polk County, FL, on the one hand, and, on the other, points in the United States. Applicants now control through stock ownership Short Freight Lines, Inc. of Bay City, MI, a common carrier holding authorities issued in Docket MC-108382.

MC-F-14673, filed December 18, 1981. Applicants: PRECISION BULK TRANSPORT, INC., 1330 West Seventh Street, Cincinnati, OH 45203 (Precision); C.S. TRANSPORT, INC., 4001 Overdale Road, Winston-Salem, NC 27107 (C.S.); BULKMATIC TRANSPORT COMPANY, 12000 S. Doty Avenue, Chicago, IL 60628 (Bulkamatic). Representative: E. Stephen Heisley, 805 McLachlen Bank Building, 666 Eleventh Street, NW., Washington, D.C. 20001. Bulkmatic, a common and contract carrier under MC-128205 and subs, seeks approval for transfer of its Sub-No. 104F Certificate commodities in bulk between points in IL, IN, OH and MI, on the one hand, and, on the other, points in the U.S. to Precision a non-carrier. C.S. has been granted authority in MC-156484 as a contract carrier of food and related products but issuance of its permit has been conditioned on Commission approval of a control relationship. Bulkmatic, Precision and C.S. are wholly-owned subsidiaries of Omnimatic, Inc., a non-carrier, controlled by A. Y. Bingham, Jr. and A. D. Pringle III. All parties seek approval of this common control. Waiver of the following portions of Form OP-F-44 has been granted: A-2 through A-8, B-1 through B-5, C-2 through C-7, amd D-4. Certain duplications exist between the authority transferred in Sub-No. 104F and that retained by Bolkmatic. The Board finds that a prima facie showing for the sale and retention of duplicating authority has been made under the entry standards of 49 U.S.C. 10922. Application for TA lease has not been filed.

MC-F-14753, filed December 11, 1981, ASHLAND AND SHAMOKIN AUTO BUS COMPANY, (A&S), (Route 61 (P.O. Box 446) Mount Carmel, PA 17851)—Purchase (Portion)—TRAILWAYS EDWARDS, INC. (Trailways). (56 East Third Street, Williamsport, PA 17701). Representatives: William A. Chesnutt, Suite 960, 1333 New Hampshire Ave., NW., Washington, D.C. 20036, Attorney for Transferee; George W. Hanthorn, Room 415, 1500 Jackson Street, Dallas, TX 75201, Attorney for Transferor. A&S seeks authority to purchase a portion of the interstate operating rights of Trailways. Robert E. Else, Jr. and Robert E. Else, III join in the applications as the individuals in control of A&S and seek authority to acquire control of said rights through the transaction. A&S is purchasing portions of Trailways PA intrastate authority in PUC Docket A. 6484 and that portion of Trailways' Certificate No. MC-2866 which authorizes the transportation of passengers and their baggage, and express, mail, and newspapers, in the same vehicle with passengers, over regular routes: (a) between junction PA Hwy 93 and U.S. Hwy 209 near Nesquehoning, PA and Williamsport, PA, serving all intermediate points; (b) between junction PA Hwy 248 and PA Hwy 145 at or near Lehigh Gap, PA, and Philadelphia, PA; (c) between Sunburg, PA and Milton, PA, serving all intermediate points; (d) between Shamokin, PA and Allentown, PA, serving all intermediate points; (e) between Nesquehoning, PA and Hometown, PA, serving no intermediate points; (f) between Leighton, PA and Tamaqua, PA, serving no intermediate points; (g) between junction PA Hwy 54 and Legislative Route 209 (east of Gilberton, PA) and junction PA Hwy 54 and Legislative Route 161 (east of Ashland, PA) serving no intermediate points. A&S is authorized to operate as a motor common carrier under MC-14951 (Sub-No. 1). A&S has filed a directly related extension application, Docket No. MC-149451 (Sub-No. 2), published in this same **Federal Register** issue.

Note.—Application for TA has been filed.

Decision-Notice

The following operating applications, filed on or after July 3, 1980, are filed in connection with pending finance applications under 49 U.S.C. 10926, 11343 or 11344. The applications are governed by Special Rule 252 of the Commission's General Rules of Practice (49 CFR 1100.252).

Persons wishing to oppose an application must follow the rules under 49 C.F.R. 1100.252. Persons submitting protests to applications filed in connection with pending finance applications are requested to indicate across the front page of all documents and letters submitted that the involved proceeding is directly related to a finance application and the finance docket number should be provided. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the request for authority are not allowed. However, the Commission may have modified the application to conform to the Commission's policy of simplifying grants of operating authority.

Findings: With the exceptions of those applications involving duly noted problems (e.g., unresolved common control, unresolved fitness questions, and jurisdictional problems) we find, preliminarily, that each applicant has demonstrated that its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able properly to perform the service proposed and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where specifically noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests in the form of verified

statements as to the finance application *or* to the following operating rights applications directly related thereto filed within 45 days of publication of this decision-notice (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (except where the application involves duly noted problems) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice by effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

By the Commission, Review Board Number 3, Members Krock, Joyce, and Dowell.

MC 149451 (Sub-2), filed December 11, 1981. Applicant: ASHLAND AND SHAMOKIN AUTO BUS COMPANY, Route 61, P.O. Box 446, Mount Carmel, PA 17851. Representative: William A. Chesnutt, Suite 960, 1333 New Hampshire Ave., NW, Washington, DC 10036. Over regular routes transporting *passengers and their baggage, and express mail and newspapers,* in the same vehicle with passengers between junction PA Hwy 93 and U.S. Hwy 209 near Nesquehoning, PA, and junction PA Hwy 248 (formerly PA Hwy 45) and PA Hwy 145 at or near Lehigh Gap, PA; from junction PA Hwy 93 and U.S. Hwy 209 near Nesquehoning, PA, then over U.S. Hwy 209 to its junction with PA Hwy 248 (formerly PA Hwy 45), then over PA Hwy 248, to its junction with PA Hwy 145 at or near Lehigh Gap, PA, and return over the same route.

Note.—This extension application is directly related to finance application MC-F-14753 published in this same **Federal Register** issue.

[FR Doc. 82-841 Filed 1-12-82; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Finance Applications; Decision Notice

As indicated by the findings below, the Commission has approved the following applications filed under 49 U.S.C. 10924, 10926, 10931 and 10932.

We find:

Each transaction is exempt from section 11343 (formerly section 5) of the Interstate Commerce Act, and complies with the appropriate transfer rules.

This decision is neither a major Federal action significantly affecting the quality of the human evnironment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

Petitions seeking reconsideration must be filed within 20 days from the date of this publication. Replies must be filed within 20 days after the final date for filing petitions for reconsiderations; any interested person may file and serve a reply upon the parties to the proceeding. Petitions which do not comply with the relevant transfer rules at 49 CFR 1132.4 may be rejected.

If petitions for reconsideration are not timely filed, and applicants satisfy the conditions, if any, which have been imposed, the application is granted and they will receive an effective notice. The notice will indicate that consummation of the transfer will be presumed to occur on the 20th day following service of the notice, unless either applicant has advised the Commission that the transfer will not be consummated or that an extension of time for consummation is needed. The notice will also recite the compliance requirements which must be met before the transferee may commence operations.

Applicants must comply with any conditions set forth in the following decision-notices within 30 days after publication, or within any approved extension period. Otherwise, the decision-notice shall have no further effect.

It is Ordered:

The following applications are approved, subject to the conditions stated in the publication, and further subject to the administrative requirements stated in the effective notice to be issued hereafter.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC-FC-79508. By decision of December 10, 1981 issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.C. 1132 Review Board Number 3 approved the transfer to Terry Seigel dba C-Gull Express of Mineral Wells, TX, of Certificate No. MC-145743 issued January 16, 1980 to T.F.S., Inc. of Grand Island, NE authorizing the transportation by irregular routes of (1) *containers and container ends* from Oil City, PA to Weatherford, TX and (2) *liquid anti-freezing compounds* from the facilitates of Power Service Products, Inc. at Weatherford, TX, to points in the U.S. (except AK and HI). Representative is: Lloyd Scurlock, 623 South Henderson, 2nd Floor, Fort Worth, TX 76104.

MC-FC-79512. By decision of 12/14/81 issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1132 Review Board Number 3 approved the transfer to MARIANO MOTOR EXPRESS, INC., of Morrisville, PA of Certificate Nos. MC-84450 and Subs-Nos. 2, 3, 4, 5, 6, 7, 8, 9 and 10 issued to S.R.T. MOTOR FREIGHT, INC. of Morrisville, PA authorizing the transportation by irregular routes of certain specified commodities between various points, facilitites, and territories generally in the eastern half of the U.S. Applicant's representative is: Alan Kahn, 1430 Land Title Building, Philadelphia, PA 19110.

Note.—MC 84450 (Sub-2-1TA) is not a certificate and is not susceptable to transfer.

MC-FC-79521. By decision of December 18, 1981, issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1132, Review Board Number 3 approved the transfer to Mercury Truck Lines, Inc. of Fort Dodge, IA of Certificate No. MC-153822 Sub Nos. 1, 2, 3, and 4F issued to Jones Truck Line, Inc. of Fort Dodge, IA authorizing operations over irregular routes, transporting in Sub 1 *malt beverages,* between Peoria, IL, on the one hand, and, on the other, points in Webster County, IA, in Sub 2 (1) *such commodities* as are used in the manufacture and canning of pet foods, between points in IL, MO, NE, KS, MN, and WI, on the one hand, and, on the other, points in Webster County, IA, and (2) *food and related products* between points in Webster County, IA, on the one hand, and, on the other, points in WI, MO, and OH, in Sub 3 *malt beverages,* from Milwaukee, WI, to Algona, IA, *empty malt beverage containers,* from Algona, IA, to Milwaukee, WI, *beer,* from Milwaukee, WI, to Fort Dodge, IA, and *empty beer containers,* from Fort Dodge, IA, to Milwaukee, WI, and in Sub 4 *transportation equipment,* between Chicago, IL, on the one hand, and, on the other, points, in IA. Representative is: Larry D. Knox, 600 Hubbell Bldg., Des Moines, IA 50309.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-852 Filed 1-12-82; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. MC-43]

Motor Carriers; Lease and Interchange of Vehicles

Decided: December 21, 1981.

Interstate Express, Inc. (MC-108973), Nitehawk Express, Inc. MC-128294), and Hines Transfer, Inc. (MC-36165) have filed a petition for waiver of Subpart B

(§§ 1057.11 and 1057.12) of the Lease and Interchange of Vehicles Regulations (49 CFR Part 1057), with respect to equipment augmented between them.

Findings

1. Petitioners are commonly controlled and administer a common safety program.

2. Petitioners have acceptable fitness records.

3. Greater economy and efficiency would result if the waiver were granted in part.

It is ordered:

1. The petiton of Interstate Express, Inc., Nitehawk Express, Inc., and Hines Transfer, Inc., for waiver of Subpart B (§§ 1057.11 and 1057.12), is granted, except for paragraph (b) of § 1057.11, with respect to equipment augmented between them, provided petitioners or their authorized representatives agree in writing that the lessee shall have control and responsibility for the operation of the equipment from the time possession is taken by the lessee and the receipt required under paragraph (b) § 1057.11 is given to the lessor until possession of the equipment is returned to the lessor and the receipt required under paragraph (b) of § 1057.11 is received by the lessee or possession of the equipment is returned to the lessor or given to another authorized carrier in an interchange of equipment. A copy of the agreement must be carried in the equipment while it is in the possession of the lessee.

2. The waiver granted in this decision does not affect the application of the leasing regulations to a lease between an owner-operator and the lessor carrier.

By the Motor Carrier Leasing Board, Board Members J. Warren McFarland, Bernard Gaillard, and John H. O'Brien.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-853 Filed 1-12-82; 8:45 am]

BILLING CODE 7035-01-M

[Decision Volume No. OPY-3-005]

Motor Carriers; Republications of Grants of Operating Rights; Permanent Authority Prior to Certification

The following grants of operating rights authorities are republished by order of the Commission to indicate a broaden grant of authority over that previously noticed in the **Federal Register**.

An original and one copy of a petition for leave to intervene in the proceeding must be filed with the Commission within 30 days after the date of this **Federal Register** notice. Such pleading shall comply with Special Rule 247(e) of the Commission's General Rules of Practice (49 CFR 1100.247) addressing specifically the issue(s) indicated as the purpose for republication, and including copies of intervenor's conflecting authorities and a concise statement of intervenor's interest in the proceeding setting forth in detail the precise manner in which it has been prejudiced by lack of notice of the authority granted. A copy of the pleading shall be served concurrently upon the carrier's representative, or carrier if no representative is named.

MC 157195 (Sub-1) (republication), filed August 14, 1981, published in the **Federal Register** issue of September 1, 1981. Applicant: DANIEL E. GAGAIN, d.b.a. D & L TRUCKING, 5715 Angola Road, P.O. Box 7490, Toledo, OH 43615. Representative: Keith D. Warner, 5732 West Rowland Rd., Toledo, OH 43613. A decision of the Commission, Review Board 2, decided November 30, 1981, and served December 7, 1981, finds that the performance by applicant of the service described herein to operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *general commodities* (except classes A and B explosives, household goods as defined by the Commission, and commodities in bulk), between points in the United States; that applicant is fit, willing, and able properly to perform the granted service and to conform to statutory and administrative requirements. The purpose of this republication is to broaden the territory description.

By the Commission.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-843 Filed 1-12-82; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after February 9, 1981, are governed by Special Rule of the Commission's Rules of Practice, see 49 CFR 1100.251. Special Rule 251 was published in the **Federal Register** of December 31, 1980, at 45 FR 86771. For compliance procedures, refer to the **Federal Register** issue of December 3, 1980, at 45 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.252. A copy of any application, including all supporting evidence, can be obtained from applicant's representative upon request and payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated a public need for the proposed operations and that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication, (or, if the application later becomes unopposed) appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Please direct status inquiries to the Ombudsman's Office, (202) 275-7326.

Volume No. OP-4-04

Decided: January 7, 1982.

By the Commission, Review Board No. 2, Members Carleton, Werner, and Williams.

MC 151056 (Sub-5), filed December 29, 1981. Applicant: SUPER SERVICE, INC., 319 Auburn Ave., Somerset, KY 42501. Representative: William L. Willis, Suite 700–702, McClure Bldg., Frankfort, KY 40601, (502) 227–7384.Transporting *such commodities* as are dealt in or used by grocery and food business houses, hardware, discount, drug, variety, and department stores, between points in the U.S., under continuing contract(s) with Clorox Company, of Oakland, CA, and its subsidiaries.

MC 156316, filed December 29, 1981. Applicant: DS & L CHARTER SERVICE, INC., 3564 Marine Rd., Toledo, OH 43609. Representative: Michael M. Briley, P.O. Box 2089, Toledo, OH 43603, (419) 225–8220. Transporting *passengers and their baggage* in the same vehicle, in charter operations, between points in Defiance, Erie, Fulton, Hancock, Henry, Huron, Lorain, Lucas, Ottawa, Sandusky, Seneca, Williams, and Wood Counties, OH, on the one hand, and, on the other, points in the U.S.

MC 157396, filed December 29, 1981. Applicant: H. MELVIN WILLIAMSON, Route 1, Box 128, Hurlock, MD 21643. Representative: Chester A. Zyblut, 366 Executive Bldg., 1030 15th St., N.W., Washington, DC 20005, (202) 296–3555. Transporting *lumber and wood products,* between points in DE, MD, NC, SC, and VA, on the one hand, and, on the other, points in the U.S. in and east of MN, IA, MO, AR, and TX.

MC 157406 (Sub-1), filed December 28, 1981. Applicant: AUTAUGA TRANSPORT, INC., 1401 S. Memorial Dr., Prattville, AL 36067. Representative: Terry P. Wilson, 428 S. Lawrence St., Montgomery, AL 36104, (205) 262–2756. Transporting *scrap and waste paper,* between points in Wilcox County, AL, on the one hand, and, on the other, New Orleans, LA, and points in FL.

MC 159896, filed December 29, 1981. Applicant: METRO TRANSPORT, a division of METRO SHIPPERS, INC., 251 W. DeKalb Pike, Suite B–110, King of Prussia, PA 19406. Representative: Thomas F. X. Foley, P.O. Box F, Colts Neck, NJ 07722, (201) 780–0300. Transporting *general commodities* (except Classes A and B explosives), between points in the U.S. (except AK and HI), under continuing contract(s) with Metro Shippers, Inc., of King of Prussia, PA; Aberdeen Manufacturing Corp., of New York, NY; Acoustiflex Corp., of Hagerstown, MD; American Business Group, Inc., of Secaucus, NJ; American Can Company, of Easton, PA; Ameteklus Gauge Division, of Sellersville, PA; Antillean Marine Shipping Corp., of Miami, FL; Asbury Graphite Mills, Inc., of Asbury, NJ; Avtex Fibers, Inc., of Valley Forge, PA; Bacardi Imports, Inc., of Miami, FL; Billard Barbell Co., Div. of Manson-Billard Co., of Reading, PA; Blossom Farm Products Co., of Fairlawn, NJ; Bristol-Meyers Products Co., of Hillside, NJ; Burron Medical, Inc., of Bethlehem, PA; Caloric Corp., of Topton, PA; Canandaigua Wine Company, Inc., of Canandaigua, NY; Caribmar Shipping Ltd., of Miami, FL; Charles of the Ritz Group Ltd., of Holmdel, NJ; Comfort Design, Inc., of Kingston, PA; Commercial Metals Co., of Atlanta, GA; Commercial Metals Co., of Jacksonville, FL; Conwed Corporation, of Riverside, NJ; Richard Coulston, Inc., of Bethlehem, PA; Dal-Worth Shippers Association, Inc., of Dallas, TX; D. Baskowitz Bottle Co., Inc., of Brooklyn, NY; Drico Industrial Inc., of Wallington, NJ; Duval Spirits, Inc., of Jacksonville, FL; Eastern Alloys, Inc., of Maybrook, NY; Eckerd Drug Company, of Clearwater, FL; English Greenhouse Products Corp., of Camden, NJ; Fedway Associates, Inc., of Kearny, NJ; Flexi-Mat Corporation, of Chicago, IL; Frigidaire International Co., of Dayton, OH; General Distributing Company, Inc., of Albany, GA; Glowatsky Piggyback Service, Inc., of Allentown, PA; Gulf Freight Association, of Tampa, FL; Hercules Chemical Co., Inc., of New York, NY; Ideal Toy Corporation, of Hollis, NY; Indesit Manufacturing Corp., of Harriman, NJ; Jencraft Corp., of Totowa, NJ; Jen Transportation Co., Inc., of South Kearny, NJ; Julian Engineering Co., of Chicago, IL; LCR International Division of Charles of the Ritz Group, Ltd., of Holmdel, NJ; Lewis of London, Inc., of Forest Hills, NJ; Mac Trucks, Inc., of Bridgewater, NJ; National Casein of New Jersey, of Riverton, NJ; Nelco Sewing Machine Co., of New York, NY; Petzold & Co., of Cockeysville, MD; Raynor Mfg. Co., of Dixon, IL; Rings for Drums, Inc., of Edison, NJ; Sediver Inc., of Carlstadt, NJ; Sipi Metals Corp., of Chicago, IL; Southern Railway Corporation, of Washington, DC; Standard Dry Wall Products, of Bristol, PA; Sukonik Barrel & Drum Company, of Camden, NJ; The Telescope Folding Furniture Co., Inc., of Granville, NY; Transconex, Inc., of Miami, FL; Truck Train Transfer, Inc., of Greenville, TN; Uni-Vinyl Corporation, of Hialeah, FL; U.S. Billiards, Inc., of Amityville, NY; World's Finest Chocolate, Inc., of Chicago, IL; and Xerox Corporation, of Atlanta, GA.

MC 159906, filed December 29, 1981. Applicant: WESTOVER CARTAGE, LTD., Box 422 Old Mayfield Rd., Danville, VA 24541. Representative: Archie W. Andrews, 617 F Lynrock Terrace, Eden, NC 27288, (919) 627–0555. Transporting *general commodities* (except classes A and B explosives), between points in Henry, Pittsylvania, Halifax and Franklin Counties, VA, on the one hand, and, on the other, points in NC.

Volume No. OP–4–05

Decided: January 7, 1982.

By the Commission, Review Board No. 2, Members Carleton, Werner, and Williams.

MC 42146 (Sub-33), filed December 28, 1981. Applicant: A. G. BOONE COMPANY, P.O. Box 668126, 1812 W. Morehead St., Charlotte, NC. 28266 Representative: Floyd C. Hartsell (same address as applicant), (704) 376–7533. Transporting *general commodities* (except classes A and B explosives), between points in the U.S., under continuing contract(s) with Campbell Soup Company, of Maxton, NC.

MC 118746 (Sub-6), filed December 29, 1981. Applicant: CULLMAN BANANA SUPPLY TRUCKING CORPORATION, Rt. 2, Box 411, Hanceville, AL 35077. Representative: Donald B. Sweenry, Jr., P.O. Box 2366, Birmingham, AL 35201, (205) 254–3880. Transporting (1) *food and food products,* between points in AL, on the one hand, and, on the other, points in the U.S., and (2) *furniture and fixtures,* between points in AL and GA, on the one hand, and, on the other, points in the U.S.

MC 138926 (Sub-7), filed December 28, 1981. Applicant: GENCOM, INC., R.R. No. 4, Box 697, Marshall, MO 65340. Representative: Thomas P. Rose, P.O. Box 205, Jefferson City, MO 65102, (314) 636–2321. Transporting *general commodities* except classes A and B explosives), between points in the U.S., under continuing contract(s) with Wilson Foods Corporation, of Oklahoma City, OK, and its subsidiaries.

MC 146176 (Sub-12), filed December 28, 1981. Applicant: J & L TRANSPORT, INC., Rt. No. 1, Box 306, Almond, WI 54909. Representative: Michael J. Wyngaard, 150 E. Gilman St., Madison, WI 53703, (608) 256–7444. Transporting *general commodities* (except classes A and B explosives), between points in WI, on the one hand, and, on the other, points in the U.S.

MC 150626 (Sub-6), filed December 24, 1981. Applicant: HAROLD IVES TRUCKING CO., P.O. Box 885, Hwy 79 East, Stuttgart, AR 72160. Representative: Thomas B. Staley, 1550 Tower Bldg., Little Rock, AR 72201, (501) 375–9151. Transporting *vegetable oil products and cooking oils, shortening*

and lecithin, between points in Arkansas County, AR, on the one hand, and, on the other, points in the U.S. (except AK and HI.)

MC 158996, filed December 28, 1981. Applicant: BEULAH M. SEALS, 12343 Oak Dr., Orient, OH 43146. Representative: Frank L. Calvary, 3066 North Star Rd., Columbus, OH 43221, (614) 459–4248. Transporting (1) *handball and racquetball courts, soccer ball game accessories and room partitions*, between points in the U.S., under continuing contract(s) with Wilson Courts, Inc., of Columbus, OH, (2) *such commodities* as are dealt in or used by manufacturers of racquetball and handball courts, between points in the U.S., under continuing contract(s) with Shelmark Industries, Inc., of Columbus, OH and (3) *such commodities* as are dealt in or used by manufacturers of fencing, between points in the U.S., under continuing contract(s) with Robertson Fence Company, of Mt. Sterling, OH.

MC 159836, filed December 23, 1981. Applicant: R. E. GREEN INC., Box 806, Three Forks, MT 59752. Representative: Ralph E. Green (same address as applicant), (406) 285–6949. Transporting *irrigation equipment and building materials*, (1) between points in Multnomah, Clackamas and Lane Counties, OR, and Gallatin, Madison, Park Counties, MT, on the one hand, and, on the other, points in Spokane County, WA.

MC 159866, filed December 21, 1981. Applicant: SOMERSET TRUCKING COMPANY, d.b.a. J & R TRUCKING, 814 W. Columbia, P.O. Box 637, Somerset, KY 42501. Representative: William L. Willis, Suite 700–702, McClure Bldg., Frankfort, KY 40601, (502) 227–7384. Transporting *fly ash*, between points in Pulaski County, KY, on the one hand, and, on the other, points in Anderson, Bledsoe, Blount, Clairborne, Campbell, Cannon, Carter, Clay, Cocke, Coffee, Cumberland, De Kalb, Fentress, Grainger, Green, Hancock, Jefferson, Knox, Loudon, Monroe, Montgomery, Morgan, Overton, Pickett, Polk, Putnam, Rhea, Roane, Robertson, Scott, Sevier, Summer, Union, Warren, and Wilson Counties, TN, and Lee, Scott and Dickenson Counties, VA.

Volume No. OP–5–03

Decided: January 5, 1982.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC 31389 (Sub-333), filed December 21, 1981. Applicant: McLEAN TRUCKING COMPANY, P.O. Box 213, Winston-Salem, NC 27154. Representative: Daniel R. Simmons (same address as applicant), (919) 721–2433. Over regular routes, transporting *general commodities* (except classes A and B explosives), household goods as defined by the Commission and commodities in bulk), (1) between Houston, TX and Laredo, TX, over U.S. Hwy 59, (2) between Victoria, TX and Brownsville TX, over U.S. Hwy 77, (3) between Van Horn, TX and Uvalde, TX, over U.S. Hwy 90, (4) between San Antonio, TX and McAllen, TX, from San Antonio over U.S. Hwy 90 to Uvalde, TX, thence over U.S. Hwy 83 to McAllen (also over U.S. Hwy 281), (5) between San Antonio, TX and Port Lavaca, TX, over U.S. Hwy 87, (6) between El Paso, TX and Ft. Worth, TX, from El Paso over Interstate Hwy 10 to junction Interstate Hwy 20, thence over Interstate Hwy 20 to Ft. Worth (also over U.S. Hwy 80), (7) between Lubbock, TX, and Temple, TX, from Lubbock over U.S. Hwy 87 to Brady, TX, thence over U.S. Hwy 190 to Temple, (8) between Abilene, TX and Carrizo Springs, TX, over US Hwy 277, (9) between Houston, TX and Port Lavaca, TX, over TX Hwy 35, (10) between Rosenberg, TX and Freeport, TX, over TX Hwy 36, (11) between Carlsbad, NM and the junction of U.S. Hwys 90 and 285 West of Sanderson, TX, over U.S. Hwy 285, (12) between Alexandria, LA and Bryan, TX, from Alexandria over LA Hwy 1 to Boyce, LA, thence over LA Hwy 8 to the LA/TX state line, thence over TX Hwy 63 to Jasper, TX, thence over U.S. Hwy 190 to Bryan, and (13) between Sayre, OK and Amarillo, TX, over Interstate Hwy 40 (also U.S. Hwy 66), serving points in TX as intermediate and off-route points in connection with Routes (1) through (13) above, in conjunction with carriers's regular route operations.

MC 56388 (Sub-44), filed December 21, 1981. Applicant: HAHN TRANSPORTATION, INC., New Market, MD 21774. Representative: Edward T. Love, 4401 East West Highway, Suite 404, Bethesda, MD 20814, 301–986–9030. Transporting *wrecked, disabled or replacement motor vehicles*, between points in NJ, DE, PA, MD, VA, WV, OH, NC, TN, KY and DC.

MC 87109 (Sub-26), filed December 22, 1981. Applicant: TIDEWATER INLAND EXPRESS, INC., 2450 Wright Ave., Auburn, NY 13021. Representative: Leonard A. Jaskiewicz, 1730 M St., NW, Washington, DC 20036, (202) 296–2900. Transporting *general commodities* (except household goods as defined by the Commission, commodities in bulk, and classes A and B explosives), between points in the United States in and east of MN, IA, MO, AR and TX.

MC 96699 (Sub-3), filed December 21, 1981. Applicant: MURPHY TRANSPORTATION, INC., Naugatuck Industrial Park, Naugatuck, CT 06770. Representative: Edward M. Taber, 64 Nottingham Terr., Waterbury, CT 06704, (203) 753–0939. Transporting *metal products* between points in New Haven County, CT, on the one hand, and, on the other, points in NY and NJ.

MC 97699 (Sub-54), filed December 18, 1981. Applicant: BARBER TRANSPORTATION CO., P.O. Drawer 1970, 1970 Deadwood Ave., Rapid City, SD 57709. Representative: Leslie R. Kehl, 1660 Lincoln St., Suite 1600, Denver, CO 80264, 303–861–4028. Transporting *general commodities* (except classes A and B explosives), serving points in CO, IA, IL, KS, MN, MO, MT, NE, ND, SD, WI, and WY, as off route points in connection with applicants regular-route authority.

MC 129059 (Sub-2), filed December 21, 1981. Applicant: WILSON DRIVEAWAY, INC., 32 West Randolph St., Suite 1800, Chicago, IL 60601. Representative: Anthony E. Young, 29 South LaSalle St., Suite 350, Chicago, IL 60603, (312) 782–8880. Transporting *motor vehicles, baggage, sporting equipment, and personal effects of owners thereof*, between points in IL and IN, on the one hand, and, on the other, points in the U.S.

MC 133189 (Sub-45), filed December 21, 1981. Applicant: VANT TRANSFER, INC., 1257 Osborne Road, Minneapolis, MN 55432. Representative: John B. Van de North, Jr., 2200 First National Bank Bldg., St. Paul, MN 55101, (612) 291–1215. Transporting *diesel engines and construction, mining and materials handling equipment*, between points in Delta County, MI, and points in MN and WI, on the one hand, and, on the other, points in the U.S.

MC 134439 (Sub-5), filed December 21, 1981. Applicant: JAMES G. FERNEYHOUGH, d.b.a. J.G.F. TRUCKING COMPANY, P.O. Box 2173, Lynchburg, VA 24501. Representative: Calvin F. Major, 200 W. Grace St., P.O. Box 5010, Richmond, VA 23220, (804) 649–7591. Transporting *general commodities*, (except classes A and B explosives), between points in the U.S., under continuing contract(s) with Richmond Cedar Works Mfg. Corp., of Danville, VA, and Lovelace Distributing Co., Inc., J. W. Wood & Co., Inc., C. B. Fleet Company, Inc., and Imperial Reading Corporation, all of Lynchburg, VA.

MC 134978 (Sub-28), filed December 21, 1981. Applicant: C. P. BELUE, d.b.a. BELUE'S TRUCKING, Route 3,

Campobello, SC 29322. Representative: Mitchell King, Jr., P.O. Box 5711, Greenville, SC 29606, (803) 288–6000. Transporting *metal products* (a) between points in NC, SC, and TN, and (b) between points in NC, SC, and TN, on the one hand, and, on the other, points in AL, FL, GA, IL, IN, KY, MI, MS, OH, PA, and VA.

MC 146329 (Sub-14), filed December 21, 1981. Applicant: W–H TRANSPORTATION CO., INC., P.O. Box 1222, Wausau, WI 54401. Representative: Wayne W. Wilson, 150 E. Gilman St., Madison, WI 53703, 608–256–7444. Transporting (1) *metal products*, (2) *clay, concrete, glass or stone products*, between points in Portage and Wood Counties, WI and Riverside County, CA, on the one hand, and, on the other, points in the U.S.

MC 149388 (Sub-9), filed December 24, 1981. Applicant: FEPCO TRUCKING, INC., 3458 Moreland Ave., Conley, GA 30027. Representative: Archie B. Culbreth, Suite 202–2200 Century Parkway, Atlanta, GA 30345, (404)321–1765. Transporting *such commodities* as are dealt in or used by food manufacturers, processors or distributors, between points in the U.S., under continuing contract(s) with Southern Tea Company, of Marietta, GA.

MC 157669, filed December 22, 1981. Applicant: JODAN TRANSPORT, INC., P.O. Box 7645, Richmond, VA 23231. Representative: Edward D. Greenberg, 1054 Thirty-first St., NW., Washington, D.C. 20007, (202) 342–5200. Transporting *general commodities* (except classes A and B explosives), between points in the U.S. under continuing contract(s) with Environmental Equipment, Inc., of Ashland, VA, and Deepwater Marine Systems, Inc., and The Continental Group, Inc., both of Richmond, VA.

MC 159718, filed December 15, 1981. Applicant: BULK TRANSPORT CO. OF ESSEXVILLE, INC., 1500 Pine St., Essexville, MI 48732. Representative: William B. Elmer, 615 E. Eighth St., Traverse City, MI 49684, (616) 941–5313. Transporting in foreign Commerce only, *ores and minerals* between points in MI on the one hand, and, on the other, points of entry on the international boundary line between the United States and Canada and points in IL, IN, and OH.

MC 159788, filed December 18, 1981. Applicant: ANDERSON TOURS, INC., 67 Valley View Lane, New Milford, CT 06776. Representative: Dennis D. Kirk, 915 Pennsylvania Bldg., 425–13th St., NW., Washington, D.C. 20004, (202) 737–1030. To operate as a *broker* at New Milford, CT, arranging for the transportation of *passengers and their baggage*, in the same vehicle with passengers, in special or charter operations, between points in the U.S.

MC 159818, filed December 21, 1981. Applicant: HAYWOOD TRANSIT, INC., Rt. 2, Box 331, Canton, NC 28716. Representative: Arthur F. Huber (same address as applicant), (704) 235–8038. Transporting *passengers and their baggage* in same vehicle with passengers, in special and charter operations, beginning and ending at points in Haywood, Swain, Buncomb, Transylvania, Jackson, Macon, and Henderson Counties, NC, and extending to points in the U.S.

MC 159819, filed December 21, 1981. Applicant: FAIRRINGTON TRANSPORTATION CORPORATION, 5545 Clarendon Hills Road, Clarendon Hills, IL 60514. Representative: Edward G. Bazelon, 29 South La Salle St., Chicago, IL 60603, (312) 236–9375. Transporting *printed matter*, between Chicago, IL, New York, NY, Atlanta, GA, and points in Hudson and Bergen Counties, NJ and Hampshire County, MA, on the one hand, and, on the other, points in the U.S.

MC 159828, filed December 22, 1981. Applicant: WESTAR TRANSPORT, 1612C Kent-Des Moines Road, Seattle, WA 98188. Representative: Henry C. Winters, 12600 S.E. 38th St., Suite 200, Bellevue, WA 98006, (206) 644–2100. Transporting *food and related products*, between points in AZ, CA, CO, ID, MT, NV, NM, OR, TX, UT, WA, and WY.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–654 Filed 1–12–82; 8:45 am]

BILLING CODE 7035–01–M

Motor Carriers; Permanent Authority, Decisions, Restriction Removals, Decision-Notice

Decided: January 8, 1982.

The following restriction removal applications, filed after December 28, 1980, are governed by 49 CFR 1137. Part 1137, Part 1137 was published in the **Federal Register** of December 31, 1980, at 45 FR 86747.

Persons wishing to file a comment to an application must follow the rules under 49 CFR 1137.12. A copy of any application can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the restriction removal applications are not allowed.

Some of the applications may have been modified prior to publication to conform to the special provisions applicable to restriction removal.

Findings

We find, preliminarily, that each applicant has demonstrated that its requested removal of restrictions or broadening of unduly narrow authority is consistent with 49 U.S.C. 10922(h).

In the absence of comments filed within 25 days of publication of this decision-notice, appropriate reformed authority will be issued to each applicant. Prior to beginning operations under the newly issued authority, compliance must be made with the normal statutory and regulatory requirements for commom and contract carriers.

By the Commission, Restriction Removal Board, Members Sporn, Ewing, and Shaffer.

Agatha L. Mergenovich,

Secretary.

MC 18037 (Sub-14)X, filed December 28, 1981. Applicant: CHAS LEVY TRANSPORTATION CO., INC., 1200 N. North Branch St., Chicago, IL 60622. Representative: Charles W. Lynch (address same as applicant). Sub-13 permit, broaden to between points in the U.S., under continuing contract(s) with specified shippers, and remove 15,000 pound weight limitation.

MC 22484 (Sub-8)X, filed December 31, 1981. Applicant: BROWN FROM WABASH, INC., P.O. Box 302, Wabash, IN 46992. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240. Lead: (1) broaden (a) wooden skids and wooden cores to "lumber and wood products"; (b) scrap paper, and waste paper to "waste of scrap materials not identified by industry producing"; (c) woodpulp, pulpwood, papermill supplies used in the manufacture of pulpboard, used paperboard machinery and used papermill machinery, boxboard, chip-board, strawboard, wood pulpboard, boxes and parts (knocked down), fiberboard and corrugated cartons, paper and burlap bags, paper makers' alum, and papermill machinery parts to "pulp, paper and related products"; (d) copper sulphate, fungicides, ferri-floc, dye, chemicals, fertilizer, and sizing to "chemicals and related products"; (e) green hides and green salted hides and tallow to "food and related products"; (f) insulating materials and mineral wood (rock, slag or glass) to "building materials"; and (g) new furniture and display cases to "furniture and fixtures"; (2) change one-way regular routes to two-way authority and allow service at all intermediate points and change one-way irregular routes to radial authority; (3) replace cities with counties (except on regular routes); Wabash, IN (Wabash County); St. Louis, MO (St. Louis, MO and St.

Louis County, except part 7); Louisville, KY (Jefferson County); Newport, KY (Campbell County); Covington, KY (Kenton County); Circleville, OH (Pickaway County); Carthage, IN (Rush County); Alexandria, IN (Madison County); Largo, IN (Wabash County); Lockland, OH (Hamilton County); Grand Rapids, MI (Kent County); Chicago Heights, IL (Cook County); Bourbon, IN (Marshall County); Columbia City, IN (Whitley County); Converse, IN (Miami County); Huntington, IN (Huntington County); Knox, IN (Starke County); Chicago, IL (Cook County, except parts 13, 14, 17, and 28); Logansport, IN (Cass County); Peru, IN (Miami County); Rochester, IN (Fulton County); Elwood, IN (Madison County); Grand Haven, MI (Ottowa County); Richmond, IN (Wayne County); Cleveland, OH (Cuyahoga County); Cincinnati, OH (Hamilton County); Columbus, OH (Franklin County); Joliet, IL (Will County); Aurora, IL (Kane County); Rockford, IL (Winnebago County); Peoria, IL (Peroria County); Toledo, OH (Lucas County); Detroit, MI (Wayne County); Ferndale, MI (Oakland County); Jackson, MI (Jackson County); Flint, MI (Genesse County); Battle Creek, MI (Calhoun County); Hamilton, OH (Butler County); Dayton, OH (Montgomery County); Lima, OH (Allen County); Springfield, OH (Clark County); Champaign, IL (Champaign County); Camp Knox, KY (Hardin County); and Cedar Rapids, IA (Linn County); and (4) remove in truckloads and in other than tank vehicles restrictions.

MC 77129 (Sub-13)X, filed December 23, 1981. Applicant: RAYMOND H. PUFFER, INC., Box 15, R.D. 1, Vernon, VT 05354. Representative: Morton E. Kiel, Suite 1832, Two World Trade Center, New York, NY 10048–0640. Lead, Subs 8, 9F, 10F, 12F: Lead, remove exceptions of lumber, commodities of unusual value, household goods, bulk commodities and those requiring special equipment from general commodity authority; Broaden: Subs 8 and 12F, malt beverages to "food and related products"; Sub 9F, wood chips in bulk, to "lumber and wood products"; Sub 10F, petroleum products in bulk, in tank vehicles, to "petroleum, natural gas and their products"; Sub 8, remove facilities restriction; Subs 8, 9F, 10F to radial authority; Sub 8, Brattleboro to Windham County, VT, from Lehigh to Lehigh County, PA, Latrobe to Westmoreland County, PA; Philadelphia to Philadelphia, PA, Montgomery, Chester, Delaware, and Bucks Counties, PA, Hunterdon, Mercer, Monmouth, Burlington, Camden, Gloucester and Salem Counties, NJ and New Castle County, DE; in Sub 9, Ticonderoga to Essex County, NY, from Berlin to Coos County, NH; Sub 10F, New Haven to New Haven County, CT; Springfield to Hampden County, MA.

MC 98436 (Sub-7)X, filed January 4, 1982. Applicant: EXPRESSCO, INC., OF KENTUCKY, 135 Lemuel Street, Nashville, TN 37207. Representative: Roland M. Lowell, 501 Union Street, Nashville, TN 37219. Sub 3 (1) broaden general commodities (with exceptions) to "general commodities (except Classes A & B explosives)" (2) authorize service to all intermediate points (3) remove restriction to shipments having a prior or subsequent movement by motor bus; (4) remove limitation against traffic between Louisville and Glasgow, KY.

MC 104675 (Sub-45)X, filed December 21, 1981. Applicant: FRONTIER DELIVERY, INC., 4238 Ridge Lea Rd., Amherst, NY 14226. Representative: Ronald W. Malin and Gregory, B. Fraser, Bankers Trust Bldg., 4th floor, Jamestown, NY 14701. Subs 2, 15, 18, 19, 22, 24, 25, 27, 28, 29, 30, 35, 37, 40, 42, (1) broaden to (a) "commodities in bulk" from various in bulk, in tank, etc. vehicle commodities such as petroleum products, liquid petroleum wax, asphalt, petrolatum, petroleum bright stock . . . , aviation gasoline, ink, dry or liquid chemicals, coal tar, soda ash, sodium chlorate, and talc in all subs, (b) "ores and minerals and clay, concrete, glass, or stone products" from sand in Sub 27; (2) change (a) Sub 2, points in New York bounded by a line beginning at Buffalo, NY, and extending along New York Highway 130 to junction US Highway 20, thence along US Highway 20 to junction New York Highway 5, thence along New York Highway 5 to Syracuse, thence along US Highway 11 to the New York-Pennsylvania State Line, thence west and north along the New York-Pennsylvania State Line to Lake Erie, and thence along the eastern shore of Lake Erie to Buffalo, including points in New York on and within five miles of the indicated portions of the highways specified to points in New York in, south and west of points in Erie, Genesee, Livingston, Ontario, Seneca, Cayuga, Onondaga, Cortland and Broome Counties, NY; Bayonne to Hudson County, NJ; Buffalo to Erie County, NY; parts of entry on the US-Canada Boundary Line at or near: Champlain and Rouses Point to Clinton County, NY, Alexandria Bay to Jefferson County, NY, Buffalo to Erie and Niagara Counties, NY, and Rooseveltown to Saint Lawrence County, NY; Cleveland to Cuyahoga County, OH; East Providence to Providence County, RI; Oriskany Falls to Oneida County, NY; Neville Island to Allegheny County, PA; Naval Air Station in Niagara Falls to Niagara County, NY; Buffalo and Dunkirk to Erie and Chautauqua Counties, NY; Wilkes-Barre to Luzerne County, PA; (b) Sub 15, Albany to Albany County, NY; (c) Sub 18, Caledonia to Livingston County, NY; (d) Subs 19, 24 and 25, Buffalo to Erie County, NY; (e) Sub 22, Cleveland to Cuyahoga County, OH; (f) Sub 24, Smithville to Ritchie County, WV; (g) Sub 25, Marietta to Lancaster County, PA; (h) Subs 27, 35, 37 and 40, Solvay to Onondaga County, NY; (i) Sub 27, Wellsboro to Tioga County, PA, and Town Annsville to Oneida County, NY; (j) Sub 28, facilities at Niagara Falls to Niagara County, NY; (k) Sub 29, Hailesboro and Emeryville to St. Lawrence County, NY, and Shelton to Fairfield County, CT; (l) Sub 30, facilities at Rochester to Monroe County, NY; (m) Sub 35, Henderson to Vance County, NC, and Laurens to Laurens County, SC; (n) Sub 42, Philadelphia to Delaware, Chester, Philadelphia, Bucks and Montgomery Counties, PA; (3) broaden to radial authority, all subs; (4) remove restrictions: (a) Sub 24, against transportation of traffic from facilities at Buffalo, NY; (b) Sub 27, originating at and/or destined to Canada restrictions; (c) Sub 30, cement and liquefied petroleum gas exception, and ex-rail restriction and (d) remove commodity exceptions wherever they appear.

MC 119794 (Sub-5X), filed December 17, 1981. Applicant: JOE WARREN and MERRICK WARREN, d.b.a. WARREN BROTHERS, RFD No. 2, Center Rd. Station, Linesville, PA 16424. Representative: Norman A. Cooper, 145 W. Wisconsin Ave., Neenah, WI 54956. Lead and Subs 2 and 3 broaden (1)(a) agricultural limestone to "ores and minerals"; fertilizer, fertilizer materials, ingredients, and spreading machines, animal and poultry feed and feed ingredients, inedible packinghouse products, agricultural insecticides, weed killing compounds, sprayers and dusters, bags and printed matter to "chemicals and related products; machinery; food and related products; miscellaneous products of manufacturing; printed matter; pulp, paper and related products; and rubber and plastic products;" and folding chairs to "furniture and fixtures", lead; (b) folding wooden chairs to "furniture and fixtures" and adjustable steel posts to "metal products", Sub 2 and (c) steel posts, steel flagpoles, steel picnic table legs, steel grip horse legs, steel area walls, steel farm gate kits, aluminum and glass laterns, and steel anchor bolts to "metal products and clay, concrete, glass or

stone products" Sub 3 (2) city to county-wide authority, (a) Conneaut, OH to Ashtabula County; Conneaut, Pine, North Shenango, West Fallowfield, South Shenanago, East Fallowfield, Sadusbury: Summit, Beaver, Cussewago, Greenwood, Hayfield, Spring, Summerhill, Vernon and Woodcock Townships, Crawford County, PA to Crawford, Forest and Venango Counties, lead (b) Conneautville, PA to Crawford County, Sub 2; and (c) Linesville, PA to Crawford County, Sub 2 and 3, (3) to radial authority.

MC 136285 (Sub-42X), filed January 4, 1982. Applicant: SOUTHERN INTERMODAL LOGISTICS, INC., P.O. Box 1375, Thomasville, GA 31792. Representative: William P. Jackson, Jr., P.O. Box 1240, Arlington, VA 22210. Sub 37, Remove: all exceptions from the general commodities description, except classes A and B explosives and household goods; and the "immediately prior or subsequent movement by water" restriction.

MC 139495 (Sub-541X), filed December 31, 1981. Applicant: NATIONAL CARRIERS, INC., P.O. Box 1358, Liberal, KS 67901. Representative: Herbert Alan Dubin, 818 Connecticut Ave. NW., Washington, DC 20006. Subs 404, 433, 473, 511, 514, 518, 531, and 533, broaden (1) to "rubber and plastic products, chemicals and related products, and food and related products" from candles, chemicals, chemical additives, foodstuffs, and plastic articles, Sub 433; "chemicals and related products" from fungicides, insecticides, and agricultural chemicals, Sub 518; "general commodities (except classes A and B explosives, and household goods as defined by the Commission)" from general commodities (with exceptions), Subs 511 and 531; (2) remove in bulk exceptions in all Subs and in tank vehicles in Sub 518F and (3) remove originating at or destined to facilities restrictions in all subs and change territorial description's to between the facilities of the named corporations at points in the United States, on the one hand, and, on the other, points in the United States.

MC 144855 (Sub-24X), filed January 4, 1982. Applicant: CALIFORNIA EASTERN XPRESS, INC., 1543 Calada St., Los Angeles, CA 90023. Representative: William J. Monheim, P.O. Box 1756, Whittier, CA 90609. Sub 21, acquired in MC-FC-78904, broaden, (1) foodstuffs other than used in retail department stores and retail drug stores and materials, equipment and supplies used in the manufacture of bread to "food and related products and materials, equipment, and supplies used in the manufacture of food and related products", (2) remove restriction limiting traffic to shipments originating at or destined to the facilities of a named shipper association.

MC 148351 (Sub-6)X, filed December 29, 1981. Applicant: MANKE TRUCK LINE, INC., 2550 Boynton Lane, Reno, NV 89502. Representative: Robert G. Harrison, 4299 James Drive, Carson City, NV 89701. Sub 3 certificate and No. MC-144355 Sub 1 permit, boraden (1) insulating materials to "building materials" in Sub 3; iron and steel articles, and building materials to "building and construction materials" in Sub 1; (2) to radial authority in Sub 3; and to between points in the U.S. under continuing contract(s) with named shippers in Sub 1.

MC 148576 (Sub-10)X, filed December 29, 1981. Applicant: DOTSON TRUCKING COMPANY, INC., 1220 Murphy Ave., SW, Atlanta, GA 30310. Representative: Brian S. Stern 75411-D Backlick Rd., Springfield, VA 22151. Lead and Subs 2F, 3F, and 4F; (1) broaden (a) glass, flat and automotive to "clay, concrete, glass or stone products", lead, (b) copper rods and empty cable reels to "metal products and empty cable reels", Sub 2F, (c) paper and paper products, and plastic and plastic products and materials, equipment, and supplies to "pulp, paper and related products, and rubber and plastic products, and materials, equipment, and supplies", Sub 3F, and (d) scrap materials and scrap metals to "waste or scrap materials not identified by industry producing", Sub 4F; (2) change one-way to radial authority, lead and Subs 2F and 4F; (3) replace cities with counties: Nashville, Tn (Davidson County) and Hazelwood, MO (St. Louis County), Lead; Gaston, SC (Lexington and Calhoun Counties) and Norcross, GA (Gwinnett County), Sub 2F; and Gaston, SC (Lexington and Calhoun Counties), Sub 4F; and (4) eliminate the facilities limitation, and except commodities in bulk restriction, Sub 3F.

MC 150006 (Sub-4)X, filed December 29, 1981. Applicant: RICHARD L. JENKINS and WARDELL E. JENKINS, d.b.a. JENKINS BUILDING SUPPLY, P.O. Box 6, Alpine, WY 83128. Representative: Timothy R. Stivers, P.O. Box 1576, Boise, ID 83701. Sub 3 permit broaden (1) bentonite, barite, drilling compounds, lost circulation materials and such commodities as are dealt in by mud companies to "Mercer commodities"; and (2) between points in the U.S.; under a continuing contract with a named shipper.

MC 151930 (Sub-3)X, filed January 4, 1982. Applicant: NEWCOMER TRUCKING, INC., 1200 Island Ave., McKee Rocks, PA 15136. Representative: John A. Pillar, 1500 Bank Tower, 307 4th Ave, Pittsburgh, PA 15222. Sub 2: (1) broaden general commodities (with the usual exceptions) to "general commodities (except classes A and B explosives)"; (2) remove the Pittsburgh, PA interchange restriction; (3) eliminate the PA Boroughs and Townships and replace with Armstrong Clarion, Forest, and Jefferson Counties, PA; and (4) remove the PA Hwy 28 exception to allow service to all points in the county.

[FR Doc. 82-857 Filed 1-12-82; 8:45 am]

BILLING CODE 7035-01-M

Motor Carrier Temporary Authority Application

The following are notices of filing of applications for temporary authority under section 10928 of the Interstate Commerce Act and in accordance with the provisions of 49 CFR 1131.3. These rules provide that an original and two (2) copies of protests to an application may be filed with the Regional Office named in the **Federal Register** publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the **Federal Register**. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which is is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the ICC Regional Office to which protests are to be transmitted.

Note.—All applications seek authority to operate as a common carrier over irregular routes except as otherwise noted.

Motor Carriers of Property

Notice No. F–181

The following applications were filed in Region I. Send protests to: Interstate Commerce Commission, Regional Authority Center, 150 Causeway Street, Room 501, Boston, MA 02114

MC 134806 (Sub-1–22TA), filed December 30, 1981. Applicant: B-D-R TRANSPORT, INC., Vernon Drive, P.O. Box 1277, Brattleboro, VT 05301. Representative: Edward T. Love, 4401 East West Highway, Suite 404, Bethesda, MD 20814. *Contract carrier:* irregular routes: *Books, on pallets,* from Brattleboro, VT to points in CA, under continuing contract(s) with The Book Press, Inc., Brattleboro, VT. Supporting shipper: The Book Press, Inc., Putney Road, Brattleboro, VT 05301.

MC 159677 (Sub-1–1TA), filed December 29, 1981. Applicant: RONALD W. RUONALA, 17 Niquette Drive, Nashua, NH 03062. Representative: Cynthia Ruonala (same as applicant). *Contract carrier:* irregular routes: *Prefabricated chimney products* from Redwood City, CA, to points throughout the U.S. under continuing contract(s) with Dura-Vent Corp., Redwood City, CA. Supporting shipper: Dura-Vent Corp., 2525 El Camino Real, Redwood City, CA 94064.

MC 139579 (Sub-1–2TA), filed December 28, 1981. Applicant: GEORGE H. COLDING, INC., 5879 Marion Drive, Lockport, NY 14094. Representative: Raymond A. Richards, 35 Curtice Park, Webster, NY 14580. *Contract carrier:* irregular routes: *Paperboard boxes and cartons, pulpboard and paperboard stock, and related products and materials,* between Lockport, (Niagara County), NY and Stroudsburg (Monroe County), PA, under continuing contract(s) with Corson Manufacturing Co., Lockport, NY. Supporting shipper: Corson Manufacturing Co., 20–24 Michigan Street, Lockport, NY 14094.

MC 159872 (Sub-1–1TA), filed December 28, 1981. Applicant: POLLUTION CONTROL UNLIMITED, INC., 24 Hichborn Street, P.O. Box 301, Brighton, MA 02135. Representative: Polly Kratman (same as applicant). *Hazardous and non-hazardous materials, in bulk, in tank vehicles and in drums* between states east of the Mississippi River. Supporting shipper: Munro Drydock, 1 Winnissimett Street, Chelsea, MA 02150.

MC 49849 (Sub-1–1TA), filed December 23, 1981. Applicant: TRI-BOROUGH TRANSPORTATION, INC., 68 Kent Avenue, Brooklyn, NY 11211. Representative: Bruce J. Robbins, Esq., Robbins & Newman, P.C. 18 East 48th Street, New York, NY 10017. *Contract carrier:* irregular routes: *Flour, in bulk,* between Jamaica, NY, on the one hand, and, on the other, Elkton, MD and Camp Hill and Treichlers, PA, under continuing contract(s) with Modern Maid Food Products, Inc., Jamaica, NY. Supporting shipper: Modern Maid Food Products, Inc., 110–60 Dunkirk Street, Jamaica, NY.

MC 159455 (Sub-1–1TA), filed December 23, 1981. Applicant: DeFELICE TRUCKING COMPANY, 15 North Avenue, Plaistow, NH 03865. Representative: Hughan R. H. Smith, 26 Kenwood Place, Lawrence, MA 01841. *Contract carrier:* irregular routes: *Coal* between points in the U.S. (except AK and HI) under continuing contract(s) with Solid Fuel Depot, Biddeford, ME. Supporting shipper: Solid Fuel Depot, 374 Main Street, Biddeford, ME 04005.

MC 159455 (Sub-1–2TA), filed December 23, 1981. Applicant: DeFELICE TRUCKING COMPANY, 15 North Avenue, Plaistow, NH 03865. Representative: Hughan R. H. Smith, 26 Kenwood Place, Lawrence, MA 01841. *Contract carrier:* irregular routes: *Crushed Glass,* between points in the U.S. (except AK and HI) under continuing contract(s) with Container Recovery Corporation, Nashua, NH. Supporting shipper: Container Recovery Corporation, 12 Celina Avenue, Nashua, NH 03061.

MC 159230 (Sub-1–1TA), filed December 23, 1981. Applicant: DEAN H. YEATON, INC., R.F.D. #2, Yeaton Road, Plymouth, NH 03264. Representative: Dean H. Yeaton (same as applicant). *Lumber, coal, fertilizer and lime* (1) from NY, CT, MA, ME, VT to NH; (2) from NH to CT and VT. Supporting shipper(s): Tilton Agway, 261–263 Main Street, Tilton, NH 03276; Ireland Lumber Co. Inc., R.F.D. #2, Plymouth, NH 03264; G. O. Agway, Inc., R.F.D. #3, Route 11A, Laconia, NH 03264.

MC 159812 (Sub-1–1TA), filed December 22, 1981. Applicant: JOHN W. PEARSON, INC., 194 11th Avenue, Hawthorne, NJ 07506. Representative: William J. Hanlon, Hanover Plaza, Morristown, NJ 07960. *Sand* from Dividing Creek, NJ and New Port, NJ to Orangeburg, NY. Supporting shipper: Glenshaw Glass Co., Inc., 1101 William Flinn Hwy., Glenshaw, PA 15116.

MC 159874 (Sub-1–1TA), filed December 28 , 1981. Applicant: TAPWOOD TRUCKING CO. INC., 3657 Naomi Street, Seaford, L.I., NY 11783. Representative: Derwood A. Fish (same as applicant). *Contract carrier:* irregular routes: *Swimming pools, swimming pool supplies and accessories to include barbecue grills and their related parts.* (1) From the facilities of Island Swimming Sales, Inc., located at Farmingdale, L.I., NY, to Dallas, TX and return of above described merchandise. (2) From Virginia Beach, VA to the facilities of Island Swimming Sales Inc. located at Farmingdale, L.I., NY, under continuing contract(s) with Island Swimming Sales, Inc., of Farmingdale, L.I., NY. Supporting shipper: Island Swimming Sales, Inc., 40 Gazza Blvd., Farmingdale, L.I., NY 11735.

MC 43724 (Sub-1–1TA), filed December 23, 1981. Applicant: PHILLIP'S EXPRESS, INC., 61 Merrimac Street, Lawrence, MA 01842. Representative: Hughan R. H. Smith, 26 Kenwood Place, Lawrence, MA 01841. *Contract carrier:* irregular routes: *Poly batting,* between points in MA and CT, under continuing contract(s) with Loren Products/Div. Purex, Lawrence, MA. Supporting shipper: Loren Products/Div. Purex, 250 Canal Street, Lawrence, MA 01840.

MC 154993 (Sub-1–5TA), filed December 23, 1981. Applicant: H & W ENTERPRISES, INC., South Witham Road, Auburn, ME 04210. Representative: Ignatius B. Trombetta, One Public Square, Suite 1001, Cleveland, OH 44113. *Contract carrier:* irregular routes: *Concrete products* from facilities in Androscoggin, ME to points in MA, RI, VT, CT, NH and NY under continuing contract(s) with Pre-Stressed Components Industries, Ltd. of Auburn, ME. Supporting shipper: Pre-Stressed Components Industries, Ltd., P.O. Box 1347, Auburn, ME 04210.

The following applications were filed in Region 2. Send protests to: ICC, Fed. Res. Bank Bldg., 101 North 7th St., Rm. 620, Philadelphia, PA 19106.

MC 119894 (Sub-II–5TA), filed January 4, 1982. Applicant: BOWARD TRUCK LINE, INC.,100 Roesler Rd., Suite 200, Glen Burnie, MD 21061. Representative: M. Bruce Morgan (same as applicant). *Contract; irregular: General commodities (except commodities in bulk, classes A and B explosives, commodities in bulk, and those requiring special equipment and household goods)* between pts. in GA, MD, NC, SC, TN, VA, and DC, under continuing contract(s) with Southern Bonded Warehouse, Morrow, GA, for 270 days. Supporting shipper: Southern Bonded Warehouse, 1491 Mt. Zion Road, Morrow, GA 30260.

MC 143522 (Sub-II–7TA), filed January 4, 1982. Applicant: Consolidated Carriers, Inc., P.O. Box D, Irwin, PA 15642. Representative: John T. Wirth, 717 17th Street, Ste. 2600, Denver, CO 80202. Such commodities as are dealt in or used by manufacturers and distributors

of accessories for recreational vehicles and transportation equipment. Between the facilities utilized by the Scott & Fetzer Co. at Broomfield, CO Waterloo, IA, and Booneville, MS, on the one hand, and, on the other points in IN, FL, GA, TX, CA, OH, AZ, KY, and WA, for 270 days. Supporting shipper: Scott & Fetzer Company, 2760 Industrial Lane, Broomfield, CO 80020.

MC 158793 (Sub-II–4TA), filed January 4, 1982. Applicant: DR. CULLY'S CARTAGE CO., INC., 332 Clubhouse Lane, Hunt Valley, MD 21031. Representative: Glenn M. Heagerty (same as applicant). *Contract; irregular: General commodities,* between Cockeysville, Hunt Valley and Baltimore, MD, on the one hand, and, on the other, TX and Points in states on and east of the Mississippi River except DE, MD, NJ, NY, PA, VA, and DC for 270 days, under continuing contract(s) with Dr. Cully's Depot, Inc., Hunt Valley, MD. An underlying ETA seeks 120 days authority. Supporting shipper(s): Dr. Cully's Depot, Inc., 332 Clubhouse Lane, Hunt Valley, MD 21031.

MC 154569 (Sub-II–3TA), filed January 4, 1982. Applicant: LEYDIG TRUCKING, INC., P.O. Box 217, Corriganville, MD 21524. Representative: Dixie C. Newhouse, 1329 Pennsylvania Ave., P.O. Box 1417, Hagerstown, MD 21740. *Coal* between pts. in VA on the one hand, and, on the other, pts. in PA, MD and WV for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Jones Coal, Inc., P.O. Box 1503, Cumberland, MD 21502 and Keystone Coal Co., 1 E. Market, P.O. Box 2027, York, PA 17405.

MC 159922 (Sub-II–1–TA), filed January 4, 1982. Applicant: MARJENN TRUCKING COMPANY, 600 Arch Street, Cresson, PA 16630. Representative: Thomas M. Mulroy, Esq., 1500 Bank Tower, 307 Fourth Avenue, Pittsburgh, PA 15222. *Irregular, Contract: General commodities* (except household goods as defined by the Commission and Classes A and B explosives) between points in IL, KY, PA and WV on the one hand, and on the other, points in AZ, CO, GA, IA, OH, OK, IN, IL, KY, MD, MO, MT, NJ, NE, TN, TZ, PA, WI, WV, VA, for 270 days, under continuing contract(s) with Jennmar Corporation, Keystone Bolt of Kentucky, Keystone Bolt Company, Frank Calandra of Kentucky, Inc., Jennmar Corporation of West Virginia, Inc., Jennmar Corporation of Illinois, Inc., Keystone Bolt Company of West Virginia, Inc., Keystone Bolt of Illinois, Frank Calandra of West Virginia, Inc., Frank Calandra of Illinois, Inc., Jennmar Corporation of Kentucky, Inc., Frank Calandra, Inc., address: PO Box 187 Cresson, PA 16630.

The following applications were filed in region 3. Send protests to ICC, Regional Authority Center, P.O. Box 7600, Atlanta, GA 30357.

MC 150865 (Sub-3–9TA), filed December 31, 1981. Applicant: ATLANTIC & WESTERN TRANSPORTATION CO., INC., 720 S. Lafayette Street, Post Office Box 144, Shelby 28150. Representative: Kim D. Mann, 7101 Wisconsin Avenue, Suite 1010, Washington, D.C. 20014. *Food and related products* between the facilities of or used by Banquet Foods Corporation at points in MO, on the one hand, and, on the other, points in AL, AR, FL, GA, IL, IN, IA, KS, KY, LA, MN, MS, NB, NC, OK, SC, TN, TX, and WI. Supporting shipper: Banquet Foods Corporation, One Banquet Place, Ballwin, MO 63011.

MC 150865 (Sub-3–10TA), filed December 31, 1981. Applicant: ATLANTIC & WESTERN TRANSPORTATION CO., INC., 720 S. Lafayette Street, Post Office Box 144, Shelby, NC 28150. Representative: Kim D. Mann, 7101 Wisconsin Avenue, Suite 1010, Washington, D.C. 20014. *Food and related products* from the facilities of or utilized by Armour Food Company at points in IA, MN, MO, NE, and SD to points in FL, GA, NC, SC, TN, and TX. Supporting shipper: Armour Food Company, Greyhound Tower, Station 1130, Phoenix, AZ 85077.

MC 125037 (Sub-3–18TA), filed December 31, 1981. Applicant: DIXIE MIDWEST EXPRESS, INC., P.O. Box 372, Greensboro, AL 36744. Representative: John R. Frawley, Jr., Suite 200, 120 Summit Parkway, Birmingham, AL 35209. *General Commodities (except Classes A and B explosives and hazardous wastes)* between points in the U.S. for the account of National Freight, Inc. Supporting shipper: National Freight, Inc., 1506 4th Avenue SW, Decatur, AL 35601.

MC 142655 (Sub-3–4TA), filed December 31, 1981. Applicant: BAKER TRANSPORT, INC., P.O. Box 668, Hartselle, AL 35640. Representative: Donald B. Sweeney, Jr., Esq., P.O. Box 2366, Birmingham, AL 35201. *Contract* Carrier; irregular *Retail store fixtures and materials and supplies used in the manufacture thereof* between the facilities of or used by The Lozier Corporation Scottsboro, AL to all points in and east of ND, SD, NE, KA, OK, and TX. Supporting Shipper: Lozier Store Fixtures, Inc., 4401 N. 21st St., Omaha, NE 68110.

MC 145738 (Sub-3–7TA), filed December 31, 1981. Applicant: EAST-WEST MOTOR FREIGHT, INC., Highway 45, South, P.O. Box 607, Selmer, TN 38375. Representative: Stephen L. Edwards, 806 Nashville Bank & Trust Building, 315 Union Street, Nashville, TN 37201. *Such commodities as are dealt in or used by retail and discount department stores and catalog showrooms* between Clay County, MS, on the one hand, and, on the other, points in the U.S. Supporting Shipper: Blazon-Flexible Flyer, Inc., 100 Tubb Avenue, West Point, Clay County, MS 39773.

MC 115654 (Sub-3–31TA), filed December 31, 1981. Applicant: TENNESSEE CARTAGE CO., INC., P.O. Box 23193, Nashville, TN 37202. Representative: Henry E. Seaton, 929 Pennsylvania Bldg., 425 13th Street NW., Washington, DC 20423. *Contract* Carrier: Irregular. *Frozen foods,* between points in the US under continuing contract(s) with Mrs. Smith's Frozen Food Company of Pottstown, PA. Supporting Shipper(s): Mrs. Smith's Frozen Food Company, P.O. Box 298, Pottstown, PA 19464.

MC 134681 (Sub-3–1TA), filed January 4, 1982. Applicant: VULCRAFT CARRIER CORPORATION, 4425 Randolph Road, Charlotte, NC 28211. Representative: Samuel Siegel, Vice President (same as above). *Contract* Carrier irregular route: *Scrap metals, iron and steel articles, and crushed auto bodies for recycling,* between points in the US under a continuing contract(s). Supporting shipper: The David J. Joseph Co., 300 Pike Street, P.O. Box 1078, Cincinnati, OH 45201.

MC 136123 (Sub-3–25TA), filed December 30, 1981. Applicant: MD TRANSPORT SYSTEMS, INC., P.O. Box 1058, Palmetto, Florida 33561. Representative: David M. Kuehl (same as above). *Air conditioning equipment, heat equipment and solar water heating* equipment between Hutchins, TX and points in the US. Supporting Shipper: Northrup, Inc., 302 Nichols Drive, Hutchins, TX 75141.

MC 140484 (Sub-3–27TA), filed December 30, 1981. Applicant: LESTER COGGINS TRUCKING, INC., P.O. Box 69, Fort Myers, FL 33902. Representative: Frank T. Day (same as applicant). *Rubber and plastic products and materials, equipment and supplies used in the manufacture, marketing, and distribution of rubber and plastic products* between Livingston County, MI and selected sub-contractors located throughout the U.S. on the one hand, and on the other, points in the U.S. Supporting shipper: Pinckney Molded

Plastics, Inc., 450 Howell St., Pinckney, MI 48169.

MC 146293 (Sub-3–35TA), filed January 5, 1982. Applicant: REGAL TRUCKING CO., INC., P.O. Box 829, Lawrenceville, GA 30246. Representative: Richard M. Tettelbaum, P.O. Box 720434, Atlanta, GA 30328. *Textile mill products (except commodities in bulk),* from facilities of Bayly Corp., at or near Norcross, GA, to facilities of Bayly Corp. and its subsidiaries at or near Greely, CO, Shelbyville, TN, and Waco, TX. Supporting shipper: Bayly Corp., P.O. Box 5148, Denver, CO 80218.

MC 159948 (Sub-3–1TA), filed January 5, 1982. Applicant: SOUTH TRANSPORT, INC., 4530 Mobile Highway, Montgomery, AL 36108. Representative: William K. Martin, Post Office Box 2069, Montgomery, AL 36197. *Meat, meat products, meat byproducts and articles distributed by meatpacking houses (except hides and skins and commodities in bulk),* (1) from the facilities of Missouri Beef Packers at or near Plainview, TX, to the facilities of Southern Foods at or near Columbus, GA, and (2) from the facilities of Southern Foods at or near Columbus, GA, to all points in FL. Supporting shipper: Southern Foods, P.O. Box 2037, Columbus, GA 31994.

MC 143792 (Sub-3–1TA), filed January 4, 1982. Applicant: KEN WATFORD, 2200 Locust Street, NE., St. Petersburg, FL 33704. Representative: Sol H. Proctor, 1101 Blackstone Building, Jacksonville, FL 32202. (1) *Containers* from Homerville, GA to points in FL and SC and (2) *Materials and Supplies* from points in FL and GA to Homerville, GA. Supporting shipper: Standard Container Co., Inc., Highway 84 West, Homerville, GA 31534.

MC 107002 (Sub-3–25TA), filed January 4, 1982. Applicant: MILLER TRANSPORTERS, INC., P.O. Box 1123, Jackson, MS 39205. Representative: Larry M. Ford (same address applicant). *Rice Hull Ash* from the facilities utilized by Uncle Ben's, Inc., and divisions thereof at or near Lake Village, AR to points in the U.S. (except AK and HI). Supporting shipper: Uncle Ben's, Inc., 1098 N. Broadway, Greenville, MS 39801.

MC 159518, (Sub-3–1TA), filed January 4, 1982. Applicant: K. & P. TRUCKING, INCORPORATED, Route 2 Box 143, Vale, NC 28168. Representive: Peggy Boyles (Same as applicant). *Contract Carrier,* Irregular routes, *cardboard boxes,* from points in Gaston County and Durham County in NC and Newton County in GA to FL. Supporting shipper: S Sales Co., Inc. 7710 NW 74th Avenue, Miami, FL 33166.

MC 31389 (Sub-3–12TA), filed January 4, 1982. Applicant: McLEAN TRUCKING COMPANY, P.O. Box 213, Winston-Salem, NC 27154. Representative: Daniel R. Simmons, P.O. Box 213, Winston-Salem, NC 27154. *Contract Carrier:* Irregular: *General Commodities (except Classes A and B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment,* between points in the US, under continuing contract or contracts with J. C. Penney Company, Inc., New York, NY. Supporting shipper: J. C. Penney Company, Inc., 1301 Avenue of the Americas, New York, NY 10019.

MC 147547 (Sub-3–6TA), filed January 4, 1982. Applicant: R & D TRUCKING COMPANY, INC., 4401 Mars Hill Road, Lauderdale Industrial Park, Florence, AL 35630. Representative: Roland M. Lowell, Fifth Floor, 501 Union Building, Nashville, TN 37219. *Floor coverings, wall coverings, material, supplies and equipment used in manufacturing or installation of the above,* between the facilities of Tarkett, Inc., at or near Vails Gate, NY, Whitehall, PA, and Long Beach, CA, on the one hand, and, on the other, points, in the U.S. Supporting shipper: Tarkett, Inc., P.O. Box 1142, Radio City Station, NY, NY 10101.

MC 11220 (Sub-3–17TA), filed January 5, 1982. Applicant: GORDONS TRANSPORTS, INC., 185 West McLemore Avenue, Memphis, TN 38101. Representative: James J. Emigh, P.O. Box 59, Memphis, TN 38101. *Contract Carrier:* Irregular: *General Commodities (except Classes A and B explosives, household goods as defined by the Commission, and commodities in bulk),* between points in the U.S. under continuing contract(s) with J. C. Penney Company, Incorporated, of New York, N.Y. Supporting shipper: J. C. Penny Company, Incorporated, 1301 Avenue of the Americas, New York, NY 10012.

MC 155822 (Sub-3–1TA), filed January 5, 1982. Applicant: BILL JAMES DEESE d.b.a. DEESE COACH LINES, Post Office Box 338, Pembroke, NC. Representative: E. Gregory Stott, Post Office Box 131, Raleigh, NC. *Passengers and their baggage, in charter operations,* between points in Robeson County, NC and points in AL, DC, GA, FL, SC, and VA. Supporting shippers: There are fourteen supporting shippers' statements which can be reviewed at the I.C.C. regional office, Atlanta, GA.

MC 159938 (Sub-3–1TA), filed January 5, 1982. Applicant: SPURGEON TRUCKING COMPANY, INC., Route 3, Leoma, TN 38468. Representative: Roland M. Lowell, 5th Floor, 501 Union Street, Nashville, TN 37219. *Contract, Irregular, food and related products* between Atlanta, GA, Lawrenceburg, TN, Green Bay, WI, and New Orleans, LA (and the commercial zones of each). Supporting shipper: Pauly Cheese Company, Division of Swift & Company, P.O. Box 1467, Green Bay, WI 54305.

MC 159959 (Sub-3–1TA), filed January 6, 1982. Applicant: ROWE & LONG TRANSPORT COMPANY, INC., P.O. Box 67, Nicholls, GA 31554. Representative: Kim G. Meyer, 235 Peachtree St., N.E., Ste. 1200, Atlanta, GA 30303. *Lumber,* between the facilities of Brunswick Pulp and Paper Company, Inc., at or near Pierson, GA and McCormick, SC on the one hand, and on the other, points in GA, FL and SC. Supporting shipper: Brunswick Pulp and Paper Company, Inc., P.O. Box 1733, Brunswick, GA 31521.

MC 141323 (Sub-3–1TA), filed January 6, 1982. Applicant: TMT INTERMODAL TRANSPORT, INC., 1163 Talleyrand Avenue, Jacksonville, FL 32203. Representative: Leo C. Franey, 918 16th Street, N.W., Washington, D.C. 20006. *General commodities (except classes A and B explosives, and household goods), between points in the Philadelphia, PA, commercial zone,* restricted to the transportation of traffic having a prior or subsequent movement by water. Supporting shipper: Trailer Marine Transport Corporation, 815 Haines Street, Jacksonville, FL, 32203.

MC 146646 (Sub-3–47TA), filed January 6, 1982. Applicant: BRISTOW TRUCKING CO., INC., 750 Clow Road, Birmingham, AL 35217. Representative: John R. Frawley, Jr., Suite 200, 120 Summit Parkway, Birmingham, AL 35209. *General Commodities (except classes A and B explosives and hazardous wastes)* Between points in the U.S. for the account of Distribution Technology, Inc. d/b/a International Freight Brokers, Inc. Supporting shipper: Distribution Technology, Inc. d/b/a International Freight Brokers, Inc., P.O. Box 7123, Charlotte, NC 28217–7123.

MC 126899 (Sub-3–5TA), filed January 5, 1982. Applicant: USHER TRANSPORT, INC., 3925 Old Benton Road, Paducah, KY 42001. Representative: George M. Catlett, Suite 700–702, McClure Building, Frankfort, KY 40601. *Wine and cordials* from Chicago, IL, Lawrenceburg, IN, and St. Louis, MO, to Toledo, OH. Supporting Shipper: Z & Z Distributing, 4401 Lagrange, Toledo, OH 43612.

MC 159932 (Sub-3–1TA), filed January 5, 1982. Applicant: CLARENCE KENNEDY, JR., d.b.a. KENNEDY & SON TRUCKING, Route 1, Box 81, Tryon, NC 28782. Representative: Eric Meierhoefer, Suite 1000, 1029 Vermont Avenue, N.W.,

Washington, DC 20005. *Textile mill products, and materials and supplies used in the manufacture and distribution thereof,* between the facilities of James Street Fashion and Match Master, Inc., at or near Los Angeles, CA, on the one hand, and, on the other, points in NC, SC, TN, GA, AL, VA, NJ, PA, DE, and TX. Supporting shipper(s): James Street Fashion and Match Master, Inc., 443 South San Pedro Street, Los Angeles, CA 90013.

The following applications were filed in region 5. Send Protests to: Consumer Assistance Center, Interstate Commerce Commission, Post Office Box 17150, Fort Worth, TX 76102.

MC 48221 (Sub-5–5TA), filed December 31, 1981. Applicant: W. N. MOREHOUSE TRUCK LINE, INC., 4010 Dahlman Avenue, Omaha, NE 68107. Representative: Donald L. Stern, Suite 610, 7171 Mercy Road, Omaha, NE 68106. *Hardware* from Des Plaines, IL to pts in NE, IA, MO, MN, and KS. Supporting shipper: Monogram World Fasteners, Inc., 1757 South Marshall, Des Plaines, IL 60018.

MC 121293 (Sub-5–1TA), filed December 31, 1981. Applicant: PHILLIP E. REEDY, d.b.a. VALLEY TRANSFER, Elkhorn, NE 68022. Representative: James F. Crosby, 7363 Pacific St., Oak Park Office Bldg., Suite 210B, Omaha, NE 68114. *Such commodities as are used or dealt in by manufacturers and distributors of (1) irrigation systems, (2) light poles, (3) heating and cooling systems, (4) sewage and waste treatment systems, (5) steel pipe or tubing, and (6) iron or steel articles,* between pts in Douglas county, NE, on the one hand, and, on the other, pts in MI, IN, WI, IL, MN, IA, MO, SD, KS, OK, WY, and CO. Supporting shipper: Valmont Industries, Inc., Valley, NE 68064.

MC 128075 (Sub-5–3), filed December 31, 1981. Applicant: JOHNSRUD TRANSPORT, INC., P.O. Box 447, Cresco, IA 52136. Representative: William L. Fairbank, 2400 Financial Center, Des Moines, IA 50309 Contract irregular *Soybean Oil (in Bulk),* from Manning and Mason City, IA, to Wichita, KS; Lincoln, NE; Chicago, IL and Mankato, MN, under contract with Agri Industries. Supporting shipper: Agri Industries, P.O. Box 4887, Des Moines, IA 50306.

MC 159792 (Sub-5–1TA), filed December 3, 1981. Applicant: MID-AMERICA DAIRYMEN, INC., P.O. Box 1837 S.S.S., Springfield, MO 65805. Representative: E. R. Grant (same address as applicant). Contract irregular *General commodities (except articles of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment)* between Evansville and Mt. Vernon, IN, Zeeland, MI, and Springfield, MO, on the one hand, and, on the other, points in the U.S. under continuing contract(s) with Mead Johnson & Company of Evansville, IN. Supporting shipper: Mead Johnson & Company, 2404 Pennsylvania Avenue, Evansville, IN 47721.

The following applications were filed in Region 6. Send protests to: Interstate Commerce Commission, Region 6 Motor Carrier Board, P.O. Box 7413, San Francisco, CA 94120.

MC 159829 (Sub-6–1TA), filed December 21, 1981. Applicant: A & D TRANSPORTATION, INC., 175 Vermont St., San Francisco, CA 94103. Representative: Daniel J. Custer, 260 Pine St., San Francisco, CA 94104. *General Commodities,* between points in CA in interstate and foreign commerce with prior or subsequent ex-rail or water movements, for 270 days. Supporting shippers: Ball Container Corp., 345 South High St., Muncie, IN; Shaklee Corp., 456–22nd St., Oakland, CA; Federated Foods, Inc., 520 Mercury Dr., Sunnyvale, CA.

MC 82965 (Sub-6–2TA), filed December 24, 1981. Applicant: AMADOR STAGE LINES, INC., P.O. Box 15707, Sacramento, CA 958520707. Representative: William D. Taylor, 100 Pine St., No. 2550, San Francisco, CA 94111. *Passengers and their baggage,* (1) in *special* operations beginning and ending at points in Nevada, Yuba, Sutter, Plumas and Butte counties, CA, and extending to points in Carson, Douglas, Washoe and Storey counties, NV; and (2) in *charter* operations beginning and ending at points in Nevada, Butte, Tehama, Glenn and Colusa counties, CA, and extending to points in Carson, Douglas, Washoe and Storey counties, NV, for 180 days. An underlying ETA seeks 90 days authority. Supporting shippers: There are eleven supporting appendices which may be inspected at the offices of Region 6 Motor Carrier Board, 211 Main St., San Francisco, CA.

MC 159902 (Sub-6–1TA), filed December 28, 1981. Applicant: FRANK BACA, 122 Los Ranchos Road, N.W., Albuquerque, NM 87107. Representative: Frank Baca, 122 Los Ranchos Road, NW., Albuquerque, NM 87107. *Contract carrier;* irregular routes, *copper concentrates in bulk, in dump vehicles* from San Pedro Mine, Santa Fe County, NM to Asarco Smelter, El Paso, TX for 270 days. Supporting shipper: St. Cloud Mining Company, P.O. Box 11398, Albuquerque, NM 87112.

MC 129219 (Sub-6–6TA), filed December 21, 1981. Applicant: CMD TRANSPORTATION, INC., 12340 S.E. Dumolt Rd., Clackamas, OR 97015. Representative: Philip G. Skofstad, 529 S.E. Grand Ave., Portland, OR 97214. *Contract Carrier,* Irregular routes: *Pulp, paper* and *related products* between Portland, OR on the one hand, and, on the other, Tacoma, Seattle, Walla Walla, Spokane, Yakima and Pasco, WA; Los Angeles, Redding, San Francisco, San Diego, Santa Cruz, Stockton, Fresno, Riverside and Anderson, CA; Blackfoot, Lewiston, Lewisville, Twin Falls, Boise, Nampa, Pocatello and Idaho Falls, ID; and Salt Lake City, UT for the account of Pacific Paperboard Products, Inc. for 270 days. Supporting shipper: Pacific Paperboard Products, Inc., 2424 S.E. Holgate Blvd., Portland, OR 97202.

MC 159877 (Sub-6–1TA), filed December 28, 1981. Applicant: CERTIFIED METALLURGICAL SYSTEMS CORPORATION, 3615 Pacific Blvd., Albany, OR 97321. Representative: Richard A. Polachek, 39692 Lacomb Dr., Lebanon, OR 97355. *Common carrier,* regular route; *General commodities,* (except household goods and Class A & B explosives) From Albany, OR to AK, CO, ID, IN, KS, MI, MO, MT, NE, NV, ND, WA, WY and CA for 270 days. Supporting shippers: Transistion Metals Corporation, 3615 Pacific Blvd., Albany, OR 97321.

MC 42487 (Sub-6–67TA), filed December 22, 1981. Applicant: CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE, 175 Linfield Dr., Menlo Park, CA 94025. Representative: V. R. Oldenburg, P.O.Box 3062, Portland, OR 97208. *Contract Carrier,* irregular routes: *General Commodities, (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment),* between points in the U.S., under continuing contract(s) with J. C. Penney Company, Inc., of New York, NY and its Subsidiaries and Divisions, for 270 days. Supporting shipper(s): J. C. Penney Company, Inc., 1301 Avenue of the Americas, New York, NY 10019.

MC 144756 (Sub-6–6TA), filed December 21, 1981. Applicant: DEDICATED TRUCKING CORP., P. O. Box 1383, Chehalis, WA 98532. Representative: Henry C. Winters, 12600 S. E. 38th St., Suite 200, Bellevue, WA 98006. *Flour, in bags,* from Ogden, UT to points in CA. For 270 days. Supporting

shipper: Peavey Company, 220 W. 30, Ogden, UT 84401.

MC 147351 (Sub-6–1TA), filed December 22,, 1981. Applicant: YORK ENTERPRISES, INC., d.b.a. DIAMOND Y HOT SHOT, 205 N. 1st Ave., Mills, WY 82644. Representative: Eric A. Distad, P. O. Box 2314, Casper, WY 82602. *Machinery, materials, equipment and supplies used in replacing, servicing and repairing machinery and equipment used in, or in connection with, the discovery, development, production, refining, manufacture, processing, storage, transmission and distribution of natural gas and petroleum and their products and by-products, including electrical and geothermal energy and ore.* From, to, or between: KS, OK, LA, TX, NM, AZ, CA, NV, OR, WA. For 270 days. Supporting shippers: There are fifteen (15) supporting shippers. Their statements may be examined at the Region 6 Office.

MC 159646 (Sub-6–1TA), filed December 29, 1981. Applicant: ENERGY TRUCKING, INC., 4100 S. 500 W., Salt Lake City, UT 84111. Representative: John T. Caine, 2568 Washington Blvd., Ogden, UT. 84401. Contract carrier, Irregular routes: *Uranium bearing ores* from Mojave County, AZ to San Juan County, UT., for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Energy Fuels Nuclear, Inc., Suite 900, Three Park Central, 1515 Arapahoe St., Denver, CO 80202.

MC 159770 (Sub-6–1TA), filed December 14, 1981. Applicant: GRAYWAYS, INC., P.O.B. 80841, Seattle, WA 98108. Representative: Rebecca Sievers (same as applicant). *Passengers and their baggage in charter and special operations* from points in WA and OR to Reno, NV for 180 days. Supporting shipper(s): International Travel, Inc., 1110½ Fourth Ave., Seattle, WA 98101; Creative Travel, 610 Crockett St., Seattle, WA 98119; Skagit Valley Travel, 829 Waldron St., Sedro Woolley, WA 98284; Bon Voyage Travel, 13752–104 Ave., Currey, BC, CD, V3T 1W5.

MC 146360 (Sub-6–14TA), filed December 21, 1981. Applicant: GREAT WEST TRANSPORTATION, INC., 110 N. Curtis, Boise, ID 83706. Representative: David E. Wishney, P.O.B. 837, Boise, ID 83701. *Food and related products,* between points in the U.S., except AK and HI. Restricted to traffic originating at or destined to facilities utilized by Ore-Ida Foods, Inc., for 270 days. An underlying EPA seeks 120 days authority. Supporting shipper: Ore-Ida Foods, Inc., 220 W. Parkcenter Blvd., Boise, ID 83706.

MC 158644 (Sub-6–1TA), filed December 30, 1981. Applicant: HIGH PLAINS TRANSPORTATION, INC., P.O.B. 26291, Lakewood, CO 80226. Representative: David E. Driggers, 1600 Lincoln Center Bldg., 1660 Lincoln St., Denver, CO 80264. *(1) food and related products and (2) empty used beverage containers and materials and supplies used in and dealt with by breweries* between Galveston, TX and points in Jefferson County, CO, on the one hand, and, on the other, points in CO, KS, MS, NE, and TX for 270 days. An underlying ETA seeks 120 days authority. Supporting shippers: Adolph Coors Company, Golden, CO 80401; Castle & Cooke Foods, 2900 Veterans Blvd., Metairie, LA 70002.

MC 145579 (Sub-6–4TA), filed December 24, 1981. Applicant: D. IRVIN TRANSPORT, LTD., Box 8, Station T, Calgary, Alberta, CD T2H 2G7. Representative: Charles E. Johnson, Box 2056, Bismarck, ND 58502. *Service and workover rigs and equipment, materials and supplies used in the manufacture and assembly thereof,* between the facilities of Knoll Rig and Equipment Manufacturing Co. Ltd., (KREMCO) near Ogden, UT, on the one hand and the other, points in the U.S., for 270 days. Underlying ETA seeks 120 days authority. Supporting shipper: Knoll Rig and Equipment Manufacturing Co. Ltd., 3620–93 St., Edmonton, Alberta, CA T6H 4N6.

MC 148877 (Sub-6–2TA), filed December 21, 1981. Applicant: LEON'S TRUCKING CO., P.O. Box 10124, Eugene, OR 97440. Representative: Frederick DeLeon (same as applicant). *Petroleum products, Iron & Steel articles, Paint & Abrasives* between Eugene, OR, and Spearfish, SD, Grayling, MI, Richmond, CA & Eagar, AZ for 270 days. Supporting shipper(s): Jones Oil & Supply Co., P.O.B. 933, 92238 Main, Marcola, OR 97454; Emerald Steel Fabricators, 29402 W. Enid Rd., Eugene, OR 97402; Blodgett Steel Fabricators, Inc., 30011 Leghorn Rd., Eugene, OR 97402; Oregon Sandblast and Coating, Inc., 90673 Link Rd., Eugene, OR 97402.

MC 153634 (Sub-6–3TA), filed December 28, 1981. Applicant: RAND E. LITTLE, d.b.a. LITTLE-MONTANA TRANSPORTATION, P.O. Box 3485, Bozeman, MT 59715. Representative: Rand E. Little (same as applicant). *Contract Carrier,* Irregular route *Furniture and Fixtures,* Between Los Angeles, CA and points in OR, WA, ID, MT, WY, UT, CO, AZ, NM, TX. Between San Francisco, CA and points in OR, WA, ID, MT, WY, UT, CO, AZ, NM, TX. Between Salt Lake City, UT and points in CA, OR, WA, ID, MT, WY, CO, AZ, NM, TX, for 270 days. For the accounts of Budget Furniture, Joslins Furniture, and Serv ur Self Furniture. Supporting shippers: Budget Furniture 1520 Custer St., San Francisco, CA 94124. Budget Furniture 3340 Ocean Park Blvd., Suite 3055. Marina Del Ray, CA 90405. Joslin Furniture, 301 Euclid Ave., Helena, MT 59601. Serv ur Self Furniture, 311 N. 7th Ave., Bozeman, MT 59715.

MC 138762 (Sub-6–6TA), filed December 17, 1981. Applicant: MUNICIPAL TANK LINES LIMITED, P.O.B. 3500, Calgary, Alberta, CN T2P 2P9. Representative: D. S. Vincent (same as applicant). *Agriculture Lime,* from points on the International boundary line between the U.S. and CD located in NY to Watertown, NY, Utica, NY, Canton, NY, and Waterville, VT for 270 days. Supporting shipper: J. R. Storey Construction Co. Ltd., R.R. #2, Bath, Ontario, CN KOH 1G0.

MC 159832 (Sub-6–1TA), filed December 21, 1981. Applicant: PAR TRUCKING, INC., 1008 E. Morven, Lancaster, CA 93535. Representative: Robert Fuller, 13215 E. Penn St., Ste. 310, Whittier, CA 90602. *Soda ash, in bulk,* from Trona, Argus or Westend, CA to Henderson, NV, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Timet Division, Titanium Metals Corp. of America, P.O.B. 2128, Henderson, NV 89015.

MC 158014 (Sub-6–1TA), filed December 28, 1981. Applicant: PAYLESS AUTO TOWING, LTD., 332 W. 23rd St., Vancouver, B.C., CD V7M 2B5. Representative: Michael D. Duppenthaler, 211 S. Washington St., Seattle, WA 98104. *Antique Automobiles,* between ports of entry on the international boundary line between the U.S. and CD located in WA, on the one hand, and, on the other, points in the Los Angeles commercial zone for 270 days. Supporting shippers: Kentish House Motors, 19370 Enterprise Way, Surrey, B.C., CD B3S 4N9; Octagon Motors, 159 W. 2nd Ave., Vancouver, B.C., CD V5Y 1Z8.

MC 159815 (Sub-6–11TA), filed December 21, 1981. Applicant: LAUREL PHILLIPS, 11570 Ponderosa Dr., Fontana, CA 92335. Representative: Richard C. Celio, 2300 Camino Del Sol, Fullerton, CA 92633. *Paper, printing other than newsprint,* from the plantsite and warehouse facilities of Simpson Paper Company located in Pomona, CA to points in AZ for 270 days. Supporting shipper: Simpson Paper Company, 100 Erie St., Pomona, CA.

MC 113271 (Sub-6–11TA), filed December 11, 1981. Applicant: ROLAND

I. NISEWANDER, Jr., d.b.a. R & E TRUCKING, P.O.B. 2214, Fullerton, CA 92633. Representative: Roland E. Weigold, P.O.B. 882, Garden Grove, CA 92642. *Contract carrier,* Irregular routes: *Paper products and new Furniture* between Buena Park, CA and Santa Fe Springs, CA to points in CA, AZ, NV, OR, WA, UT, ID, CO, NM, & TX, for the account of S.C.M. Walton Printing, Inc. and Roy E. Thomas Furniture Mgf., Inc. for 270 days. Supporting shipper: S.C.M. Walton Printing, Inc., 6400 Artesia Blvd., Buena Park, CA 90620; Roy E. Thomas Furniture Mgf., Inc. 13724 E. Borate St., Santa Fe Springs, CA 90670.

MC 113271 (Sub-6–11TA) filed December 18, 1981. Applicant: TRANSYSTEMS INC., P.O.B. 399, Black Eagle, MT 59414. Representative: Kenneth G. Thomas (same as applicant). *Petroleum, natural gas and related products,* between points in MT on the one hand and, on the other, points in WY for 270 days. An underlying ETA seeks 120 days auth. Supporting shipper: G.A. Enterprises, P.O. B. 350, Worland, WY 82401.

MC 113271 (Sub-6–12TA), filed December 28, 1981. Applicant: TRANSYSTEMS, INC., P.O. Box 399, Black Eagle, Montana 59414. Representative: Kenneth G. Thomas (same as applicant). *Petroleum, natural gas and related products,* between points in MT on the one hand and, on the other, Williston, ND for 270 days. Supporting shipper: Marketing International Ltd., Bainville, MT 59212. Applicant has filed an underlying ETA.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-858 Filed 1-12-82; 8:45 am]

BILLING CODE 7035-01-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-114]

Certain Miniature Plug-in Blade Fuses; Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on December 7, 1981, under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), on behalf of Littelfuse, Inc., 800 E. Northwest Highway, Des Plaines, Illinois 60016. The complaint alleges unfair methods of competition and unfair acts in the importation of miniature plug-in blade fuses into the United States, or in their sale, by reason of the alleged (a) infringement by said fuses of U.S. Letters Patent 3,909,767, U.S. Letters Patent 4,040,175, U.S. Letters Patent 4,056,884, and U.S. Letters Patent 4,131,869; (b) misrepresentation of source of origin and misappropriation of trade dress; (c) passing off; and (d) false advertising by Walter Electronic Co., Ltd. and Terng Nan Industrial Corp. The complaint further alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The complainant requests that, after a full investigation, the Commission issue an order excluding miniature plug-in blade fuses which infringe (a) claims 7 and 9 of U.S. Letters Patent 3,909,767, (b) claims 2, 3, 6, and 11 of U.S. Letters Patent 4,040,175, (c) claim 17 of U.S. Letters Patent 4,056,884, and (d) claims 1, 2, and 13 of U.S. Letters Patent 4,131,869 and an order excluding the miniature plug-in blade fuses which infringe the complainant's proprietary trademarks and trade dress. The complainant also seeks an order requiring the respondents to cease and desist from selling their existing inventories of infringing miniature plug-in blades fuses in the United States.

Authority

The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in § 210.12 of the Commission's rules of practice and procedure (19 CFR 210.12).

Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on January 4, 1982, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, an investigation be instituted to determine whether there is a violation of subsection (a) of section 337 in the unauthorized importation of certain miniature plug-in blade fuses, or in their sale, by reason of the (a) infringement by said fuses of claims 7 or 9 of U.S. Letters Patent 3,909,767, claims 2, 3, 6 or 11 of U.S. Letters Patent 4,040,175, claim 17 of U.S. Letters Patent 4,056,884, or claims 1, 2, or 13 of U.S. Letters Patent 4,131,869; (b) misrepresentation of source of origin and misappropriation of trade dress; (c) passing off; or (d) false advertising by Walter Electronic Co., Ltd. or Terng Nan Industrial Corp., the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States;

(2) For the purpose of this investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Littelfuse, Inc., 800 E. Northwest Highway, Des Plaines, Illinois 60016.

(b) The respondents are the following companies, alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Fuji Industries, Yang Tye Building, Third Floor, No. 50, Sung Chiang Road, Taipei, Taiwan
Leumark Industrial Co., Ltd., P.O. Box 38–113, Taipei, Taiwan
Walter Electronic Co., Ltd., P.O. Box 48–22, Taipei, Taiwan
Terng Nan Industrial Corp., P.O. Box 55–462, Taipei, Taiwan
Rite Industrial Corp., P.O. Box 59105, Taipei, Taiwan
Yueh Jyh Metal Industrial Co., Ltd., No. 257 Fu Hsin Road, Chung Ho City, Taipei Hsien, Taiwan
M & T Auto Parts, 3038 31st Street, Long Island City, New York 11102
Speedway, 4140 Eagle Rock Boulevard, Los Angeles, California 90065
David Art & Handicraft Co., Ltd., P.O. Box 16–133, Taipei, Taiwan
Tophole Trading Co., Ltd., P.O. Box 17–157, Taipei, Taiwan
Interchem Corp., 403 W. 8th Street, Suite 620, Los Angeles, California 90014
Zeeman Fuse Manufacturing Corp., 2F and 3F, No. 2, Lane 79, San Chang Road, Nankank District, Taipei, Taiwan

(c) Juan Cockburn, Esq., Unfair Import Investigations Division, U.S. International Trade Commission, 701 E Street NW., Room 128, Washington, D.C. 20436, shall be the Commission Investigative Attorney, a party to this investigation; and

(3) For the investigation so instituted, Donald K. Duvall, Chief Administrative Law Judge, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, shall designate the presiding officer.

Responses must be submitted by the named respondent in accordance with § 210.21 of the Commission's rules of practice and procedure (19 CFR 210.21). Pursuant to §§ 201.16(d) and 210.21(a) of the rules, such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting a response will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the

complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the presiding officer and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both a recommended determination and a final determination containing such findings.

The complaint, except for any confidential information contained therein, is available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Room 156, Washington, D.C. 20436, telephone 202–523–0471.

FOR FURTHER INFORMATION CONTACT: Juan Cockburn, Esq., Unfair Import Investigations Division, U.S. International Trade Commission, telephone 202–523–1272.

By order of the Commission.

Issued: January 7, 1982.

Kenneth R. Mason,

Secretary.

[FR Doc. 82–894 Filed 1–12–82; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 701–TA–80 (Final)]

Termination of Countervailing Duty Investigation Concerning Lamb Meat From New Zealand

AGENCY: United States International Trade Commission.

ACTION: Termination of countervailing duty investigation under section 704(a) of the Trade Agreement Act of 1979, with regard to lamb meat from New Zealand.

EFFECTIVE DATE: January 4, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Miller, Office of Investigations, telephone number (202) 523–0305.

SUPPLEMENTARY INFORMATION: On April 23, 1981, a petition was filed with the Department of Commerce by counsel for the National Wool Growers Association, Inc., Salt Lake City, Utah, alleging that imports of lamb meat from New Zealand are being subsidized within the meaning of section 303 of the Tariff Act of 1930 (19 U.S.C. 1303). The National Lamb Feeders Association, Inc., Menard, Texas, became a copetitioner on May 12, 1981. As New Zealand was not at that time a "country under the Agreement" within the meaning of section 701(b) of the Act (19 U.S.C. 1671(b)), there was no requirement for the petition to be filed with the Commission pursuant to section 702(b)(2) (19 U.S.C. 1671a(b)(2)) and no requirement for the Commission to conduct a preliminary material injury investigation pursuant to section 703(a) (19 U.S.C. 1671b(a)).

On September 17, 1981, however, the United States Trade Representative announced that New Zealand had become a "country under the Agreement" (46 FR 46263). Accordingly, Commerce terminated its investigation under section 303, initiated an investigation under section 702, and notified the Commission of its action on September 21, 1981.

Therefore, effective September 21, 1981, the Commission, pursuant to section 703(a) of the Act (19 U.S.C. 1671b(a)), instituted preliminary countervailing duty investigation No. 701–TA–80 (Preliminary). On November 8, 1981, the Commission determined by a 4–2 vote that there is a reasonable indication that industry in the United States is materially injured, or is threatened with material injury, by reason of imports from New Zealand of lamb meat, provided for in item 106.30 of the Tariff Schedules of the United States (TSUS), upon which bounties or grants are alleged to be paid.

The Department of Commerce published in the **Federal Register** of November 30, 1981 (46 FR 58128) its preliminary affirmative countervailing duty determination, estimating a net subsidy of 6.19 percent of the f.o.b. value of lamb meat exports to the United States. Accordingly, effective November 30, 1981, the Commission instituted investigation No. 701–TA–80 (Final) under section 705(b) of the Act to determine whether an industry in the United States is materially injured, or is threatened with material injury or the establishment of an industry in the United States is materially retarded, by reason of imports of the merchandise with respect to which the administering authority has made an affirmative determination.

On December 23, 1981, the Commission was notified by letter that the National Wool Growers Association, Inc., and the National Lamb Feeders Association, Inc. withdrew their petition which prompted the countervailing duty investigation concerning lamb meat from New Zealand. No reason was given in the letter for their withdrawal.

Since the National Wool Growers Association and the National Lamb Feeders Association were the sole petitioners and since these two organizations were the sole participants in the public hearing held in connection with the Commission's preliminary investigation on the subject, the Commission is terminating its investigation on lamb meat from New Zealand, Inv. No. 701–TA–80 (Final), pursuant to section 704(a) of the Trade Agreements Act of 1979.

By order of the Commission.

Issued: January 5, 1982.

Kenneth R. Mason,

Secretary.

[FR Doc. 82–8951 Filed 1–12–82; 8:45 am]

BILLING CODE 7020–02–M

Termination of Countervailing Duty Investigation Concerning Refrigerators, Freezers, Other Refrigerating Equipment, and Parts From Italy

AGENCY: U.S. International Trade Commission.

ACTION: Termination of countervailing duty investigation under section 104(b)(1) of the Trade Agreements Act of 1979, with regard to refrigerators, freezers, other refrigerating equipment, and parts from Italy.

EFFECTIVE DATE: January 6, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Reavis, Office of Investigations, telephone number (202) 523–0296.

SUPPLEMENTARY INFORMATION: The Trade Agreements Act of 1979, section 104(b)(1), requires the Commission in the case of a countervailing duty order issued under section 303 of the Tariff Act of 1930, upon the request of a government or group of exporters of merchandise covered by the order, to conduct an investigation to determine whether an industry in the United States would be materially injured, or threatened with material injury, or whether the establishment of such an industry would be materially retarded, if the order were to be revoked. On March 28, 1980, the Commission received a request from the Delegation of the Commission of the European Communities for the review of the outstanding countervailing duty order on refrigerators, freezers, other refrigerating equipment, and parts from Italy (T.D. 75–85).

On October 26, 1981, the Commission received a letter from counsel for White Consolidated Industries, Inc., the original petitioner for the countervailing duty order, stating that it was withdrawing its request for the imposition of countervailing duties

under the above referenced countervailing duty order.

While there is no provision in the Trade Agreements Act of 1979, or in its legislative history, permitting termination of a transition case investigation, termination of a properly instituted countervailing duty investigation is permitted under section 704(a) of the Tariff Act of 1930. Termination authority is explicit in cases based on newly filed countervailing duty petitions; it is implied with respect to existing countervailing duty orders. Before terminating a section 104 investigation the Commission solicits public comment, then approves the termination only if it is in the public interest.

On November 25, 1981, (45 FR 57786) the Commission published a notice in the **Federal Register** requesting public comment by December 28, 1981, on the proposed termination of the Commission investigation on refrigerators, freezers, other refrigerating equipment, and parts from Italy. No adverse comments were received in response to the Commission's notice.

The Commission is therefore terminating its investigation under section 104(b)(1) of the Trade Agreements Act of 1979 on refrigerators, freezers, other refrigerating equipment, and parts from Italy (T.D. 75–85). The termination of this investigation has the same effect as a determination that an industry in the United States would not be materially injured, or threatened with material injury, nor would the establishment of such an industry be materially retarded, if the countervailing duty order were to be revoked.

In addition to publishing this **Federal Register** notice, the Commission is serving a copy of this notice on all persons who have written the agency in connection with this investigation and is also notifying the Department of Commerce of its action in this case.

By order of the Commission.

Issued: January 7, 1982.

Kenneth R. Mason,

Secretary.

[FR Doc. 82–896 Filed 1–12–82; 8:45 am]

BILLING CODE 7020–02–M

DEPARTMENT OF JUSTICE

Amendment to Consent Decree in Action to Enforce Compliance With Provisions of the Clean Air Act

In accordance with Department policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that on December 23, 1981, a proposed consent decree in *United States* v. *United States Steel Corporation*, Civil Action No. 79–225 was lodged with the United States District Court for the Northern District of Ohio, Eastern Division. The proposed amendment allows the substitution of a different technology for control of emissions from the casthouses at the defendant's Lorain Works.

The Department of Justice will receive until February 12, 1982 written comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States of America* v. *United States Steel Corporation*, D.J. Ref. 90–5–2–3–880.

A proposed consent decree (minus a confidential appendix containing certain proprietary information) may be examined at the office of the United States Attorney, Northern District of Ohio, Eastern Division, Room 400, United States Courthouse, Cleveland, Ohio 44114; at the Region V office of the Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604; and the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1254, Ninth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20530. A copy of the proposed consent decree (minus the confidential appendix) may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.30 (10 cents per page reproduction charge) payable to the Treasurer of the United States.

Carol E. Dinkins,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 82–804 Filed 1–12–82; 8:45 am]

BILLING CODE 4410–01–M

Consent Decree in Action To Require Compliance With Requirements of Clean Air Act

In accordance with Departmental policy, 28 CFR § 50.7, 38 FR 19029, notice is hereby given that on December 22, 1981, a proposed consent decree in *United States of America* v. *Compania Sun Oil de Yabucoa*, Civil Action No. 81–2463, was lodged with the United States District Court for the District of Puerto Rico. The decree requires Compania Sun Oil de Yabucoa to operate its Yabucoa, Puerto Rico petroleum refinery in compliance with the Clean Air Act, 42 U.S.C. 7401, et seq., and Rule 403(A) of the Commonwealth of Puerto Rico Regulation for the Control of Atmospheric Pollution, Amended Version ("RCAP"), a part of the Puerto Rico State Implementation Plan ("PRSIP"), or any applicable amendment or revision thereof. The decree also provides for the payment of of a civil penalty in the amount of eight thousand dollars ($8,000.00).

The consent decree may be examined at (1) the office of the United States Attorney, District of Puerto Rico, 101 Federal Bldg., Carlos Chardon St., Hato Rey, Puerto Rico 00918, (2) the office of the Environmental Protection Agency, Region II, General Enforcement Branch, 26 Federal Plaza, New York, N.Y. 10278, and (3) the Environmental Enforcement Section, Land and Natural Resources Division, of the Department of Justice, Room 1254, Ninth St. and Pennsylvania Ave., N.W., Washington, D.C. 20530. A copy of the proposed decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, of the Department of Justice. The Department of Justice will receive comments relating to the consent decree for a period of thirty (30) days from the date of this notice. Comments should be directed to the Assistant Attorney General for the Land and Natural Resources Division of the Department of Justice, Ninth and Pennsylvania Avenue, N.W., Washington, D.C. 20530 and should refer to *United States of America* v. *Compania Sun Oil de Yabucoa*, DOJ Reference No. 90–5–2–1–511.

Carol E. Dinkins,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 82–806 Filed 1–12–82; 8:45 am]

BILLING CODE 4410–01–M

Proposed Consent Decree in Action to Require Compliance With Requirements of Clean Air Act

In accordance with Departmental policy, 28 CFR 50. 7, 38 FR 19029, notice is hereby given that on November 12, 1981, a proposed consent decree in *United States of America v. Silver Spring Taxi, Incorporated*, Civil Action No. R–81–154, was lodged with the United States District Court for the District of Maryland. The proposed decree requires *Silver Spring Taxi, Inc.* to pay a civil penalty for rendering inoperative vehicle emission control equipment on two taxis in violation of Section 203(a)(3)(B) of the Clean Air Act and requires the defendant to take specified actions to assure compliance

with Section 203(a)(3)(B) at defendant's taxi garage in Silver Spring, Maryland.

The proposed consent decree may be examined at (1) the Office of the United States Attorney, District of Maryland, United States Courthouse, Eighth Floor, 101 W. Lombard Street, Baltimore, Maryland 21201 (2) the Office of the Environmental Protection Agency, Enforcement Division, 6th and Walnut Streets, Philadelphia 19106 (3) and the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1254, Ninth and Pennsylvania Avenue, N.W., Washington, D.C. 20530. A copy of the proposed decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this notice. Comments should be directed to the Assistant Attorney General for the Land and Natural Resources Division of the Department of Justice, Ninth and Pennsylvania Avenue, N.W., Washington, D.C. 20530 and should refer to *United States of America v. Silver Spring Taxi, Incorporated,* DOJ Reference #90–5–2–1–416.

Carol E. Dinkins,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 82–805 Filed 1–12–82; 8:45 am]

BILLING CODE 4410–01–M

Proposed Consent Decree in Action to Obtain Injunctive Relief to Abate an Imminent and Substantial Endangerment Presented by Disposal of Hazardous Wastes

In accordance with Departmental policy, 28 CFR § 50.7, 38 FR 19029, notice is hereby given that on December 18, 1981, a proposed consent decree in United States v. Duracell International, Inc. et al. (Civil No. 80–1017) was lodged with the United States District Court for the Middle District of Tennessee, Columbia Division. The proposed decree would require Duracell International, Inc., Aurora Corporation of Illinois and Champion International Corporation to contribute five hundred thousand dollars to a Fund administered by the State of Tennessee and to be used to finance the development and implementation of a program for the closure and maintenance of a hazardous waste site located near Waynesboro, Tennessee and containing substantial quantities of polychlorinated biphenyls. The City of Waynesboro would be required by the decree to accept title to a substantial portion of the site and to commit up to one thousand dollars annually to the maintenance of the site. The Fund would also be used to financing a program of surface water and groundwater monitoring, a program of site maintenance, and the evaluation of any necessary measures for rehabilitation of Beech Creek. The decree would reserve the right of all parties, including the United States, to seek any necessary rehabilitation of Beech Creek by subsequent action.

The Department of Justice will receive until February 12, 1982, written comments relating to the proposed judgment. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530 and refer to United States v. Duracell International, Inc., et al., D.J. 90–7–1–15.

The proposed consent decree may be examined at the office of the United States Attorney, 879 U.S. Courthouse Nashville, Tennessee 37202, at the Region IV office of the Environmental Protection Agency, Office of Regional Counsel, 345 Courtland Street, Atlanta, Georgia 30308, and at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice (Room 1252), Tenth Street and Pennsylvania Avenue, N.W., Washington, D.C., 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice. In requesting a copy, please enclose a check in the amount of $1.50 (10 cents per page reproduction charge) payable to the Treasure of the United States.

Anthony C. Liotta,

Deputy Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 82–807 Filed 1–12–82; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

United States v. Hospital Affiliates International, Inc.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. section 16(b) through (h), that a proposed Final Judgment, Stipulation and Competitive Impact Statement (CIS), as set forth below, have been filed with the United States District Court for the Estern District of Louisiana in *United States of America* v. *Hospital Affiliates International, Inc.,* Civil Action No. 80–3672.

The complaint in this case alleged that the acquisition by Hospital Affiliates International, Inc. (HAI), of American Health Services, Inc. (AHS), would violate both Section 7 of the Clayton Act, 15 U.S.C. 18, and Section 2 of the Sherman Act, 15 U.S.C. 2, by substantially lessening competition in, and permitting HAI to monopolize inpatient psychiatric care provided by non-governmental hospitals in the New Orleans, Louisiana area. The acquisition was preliminarily enjoined on September 30, 1980; subsequently, HAI divested two psychiatric hospitals, and the preliminary injunction was dissolved on October 16, 1980. On August 26, 1981, HAI was acquired by Hospital Corporation of America (HCA).

The proposed Final Judgment dismisses AHS and adds HCA as a defendant. It enjoins HCA from acquiring, or entering into a management contract with, any psychiatric hospital or other hospital providing inpatient care, existing in Louisiana Health Services Area I (as designated by the state) on the date the Final Judgment is entered, without first notifying the United States. Such notification commences a 15-day waiting period. Within the 15-day period, United States may request documents or other information to allow it to assess the competitive impact of the acquisition or management contract. Should the United States make such a request, HCA may not consummate the acquisition or enter the management contract until 15 days after receipt of such documents and information by the United States.

Public comment is invited within the statutory 60-day comment period. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to John W. Poole, Jr., Chief, Special Litigation Section, Antitrust Division, United States Department of Justice, 10th Street and Pennsylvania Avenue, NW., Washington, D.C. 20530, Telephone: (202) 633–2425.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

United States District Court, Eastern District of Louisiana, New Orleans Division

United States of America, Plaintiff, v. *Hospital Affiliates International, Inc., and American Health Services, Inc.,* Defendants.

Civil No. 80–3672.
Sec. E, Mag. 5.
Filed: December 14, 1981.

Stipulation

The parties and Hospital Corporation of America ("HCA"), by their attorneys, stipulate that:

1. The parties and HCA consent that the attached Final Judgment may be filed and then entered by the Court, upon the motion of either party or HCA, or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, without further notice to any party or any other proceedings, provided that the plaintiff has not withdrawn its consent, which it may do at any time before entry of the Final Judgment by serving notice on the other parties and filing that notice with the Court.

2. If the plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

For the plaintiff: William F. Baxter, *Assistant Attorney General;* Mark Leddy, John W. Poole, Jr., *Attorneys, United States Department of Justice;* John J. Miles, Elizabeth M. O'Neill, *Attorneys, Antitrust Division, United States Department of Justice, Tenth & Pennsylvania Avenue, NW., Washington, D.C. 20530 Telephone: (202) 633-5621.*

For the defendants: Peter J. Nickles, *Covington & Burling, 1201 Pennsylvania Avenue, NW., Washington, D.C. 20044, Attorney for Hospital Affiliates International, Inc., and Hospital Corporation of America;* James C. Treadway, *Dickstein, Shapiro & Morin, 2101 L Street, NW., Washington, D.C. 20037, Attorney for American Health Services, Inc.*

United States District Court, Eastern District of Louisiana, New Orleans Division

United States of America, Plaintiff, v. *Hospital Affiliates International, Inc., and American Health Services,* Defendants.

Civil No. 80-3672.
Sec. E, Mag. 5.
Filed: December 14, 1981.

Final Judgment

The plaintiff, United States of America, having filed its complaint on September 25, 1980; and this Court, having preliminarily enjoined the acquisition of American Health Services, Inc. ("AHS"), by Hospital Affiliates International, Inc. ("HAI"), on September 30, 1980; and HAI having sold its interest in certain psychiatric hospitals in the New Orleans, Louisiana area; and this Court having vacated the preliminary injunction on October 16, 1980; and HAI having been subsequently acquired by Hospital Corporation of America ("HCA"); and the plaintiff, the defendants and HCA, by their attorneys, having consented to entry of this Final Judgment, without a plenary adjudication of any issue of fact or law related to this case, and without this Final Judgment constituting any evidence against, or an admission by, any party regarding any such issue;

Now therefore, based upon the consent of the parties and HCA, it is ordered, adjudged and decreed that:

I

This Court has jurisdiction of the subject matter of this action and of the parties and HCA. The complaint states a claim upon which relief may be granted under Section 2 of the Sherman Act, 15 U.S.C. 2, and Section 7 of the Clayton Act, 15 U.S.C. 18.

II

As used in this Final Judgment:

(A) "Hospital" means an institution which primarily provides to inpatients, by or under the supervision of physicians, diagnostic and therapeutic medical services; treatment and care of injured, disabled, or sick persons; or rehabilitation services for injured, disabled, or sick persons.

(B) "Psychiatric hospital" means an institution which primarily provides to inpatients, by or under the supervision of a physician, specialized services for the diagnosis, treatment and rehabilitation of mental illnesses and emotional disturbances.

(C) "Inpatient psychiatric services" means specialized services for the diagnosis, treatment and rehabilitation of mental illnesses and emotional disturbances provided to persons who are lodged, fed and treated in a hospital or psychiatric hospital.

(D) "HSA I" means Health Service Area I in Louisiana, as presently designated pursuant to Section 1511 of the National Health Planning and Resources Development Act of 1974, as amended, 42 U.S.C. section 300*l* , and includes the Parishes of Orleans, Jefferson, St. Bernard, St. Tammany, Assumption, LaFourche, Plaquemines, St. Charles, St. James, St. John the Baptist and Terrebonne.

(E) "Acquire," "acquiring," or "acquisition" means to obtain, or obtaining, by purchase or otherwise, a cumulative interest of twenty percent or more of any voting securities or assets of the entity being acquired.

(F) "Management contract" means an agreement entered into by HAI or HCA whereby either, for compensation, in any way manages, administers, or directs the operational, marketing, or financial functions of any hospital or psychiatric hospital.

III

AHS is dismissed as a defendant in this action, and HCA is added as a defendant in this action.

IV

The provisions of this Final Judgment applicable to HCA shall also apply to each of its officers, directors, agents, employees, subsidiaries, successors and assigns, and to all other persons in active concert or participating with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

V

(A) HCA is enjoined from acquiring, or entering into any management contract with, (1) any psychiatric hospital in HSA I existing on the date this Final Judgment is entered, or (2) any hospital in HSA I existing on the date this Final Judgment is entered that provides inpatient psychiatric services, without first notifying the plaintiff.

(B) Unless the plaintiff consents, HCA shall not consummate such an acquisition or enter into such a management contract before fifteen days after such notification. Within 15 days from its receipt of such notice from HCA, the plaintiff, in writing, may request from HCA, and HCA shall provide, such documents and other information as the plaintiff deems necessary to assess the competitive impact of the acquisition or management contract and to determine whether the acquisition or management contract should be challenged because it may lessen competition.

(C) If the plaintiff requests documents or information pursuant to paragraph V(B), HCA shall not consummate such acquisition or enter into such a management contract until 15 days after receipt of such documents or information by plaintiff.

(D) Unless HCA shall consent, no information or documents obtained pursuant to this paragraph V shall be divulged by any representative of the plaintiff to any persons other than employees of the plaintiff, except in the course of legal proceedings (including any appeals) to which the plaintiff is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

VI

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from tine to time;

(A) Duly authorized representatives of the plaintiff shall, upon written request to HCA by the Attorney General or by the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to HCA made to its principal office, be permitted:

(a) access during the office hours of HCA, which may have counsel present, to inspect and copy all documents in the possession or under the control of HCA relating to any matters contained in this Final Judgment; and

(b) subject to the reasonable convenience of HCA and without restraint or interference from it, to interview its officers and employees, who may have counsel present, regarding any such matters.

(B) Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to HCA's principal office, HCA shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

(C) No information or documents obtained by the means provided in this paragraph VI shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

(D) If, at the time imformation or documents are furnished by HCA to plaintiff

pursuant to paragraph V or VI, HCA identifies in writing any such information or documents of a type described in rule 26(c)(7) of the Federal Rules of Civil Procedure, and HCA marks each pertinent page of such matter, "subject to claim of protection under rule 26(c)(7) of the Federal Rules of Civil Procedure," then the plaintiff shall give HCA ten days' notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which HCA is not a party.

VII

HCA shall require, as a condition of the sale or other disposition of all, or substantially all, of (A) its assets, (B) its voting securities, or (C), its interest in DePaul Hospital in New Orleans, Louisiana, that the acquiring party agree to be bound by the provisions of this Final Judgment, and that such agreement be filed with the Court.

VIII

This Final Judgment will expire on the tenth anniversary of its date of entry.

IX

Jurisdiction is retained by this Court to enable the plaintiff or HCA to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification and enforcement of any of its provisions, and for the punishment of any violations.

X

Entry of this Final Judgment is in the public interest.

United States District Judge.

United States District Court, Eastern District of Louisiana, New Orleans Division

United States of America, Plaintiff, v. *Hospital Affiliates International, Inc., and American Health Services, Inc.*, Defendants.

Civil No. 80-3672.
Sec. E, Mag. 5.
Filed: December 14, 1981.

Competitive Impact Statement

Pursuant to section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)-(h), the United States of America submits this Competitive Impact Statement relating to the proposed final judgment submitted for entry in this civil antitrust proceeding.

I

Nature and Purpose of the Proceedings

The Complaint in this action, filed on September 25, 1980, alleges that the acquisition of American Health Services, Inc. ("AHS"), by Hospital Affiliates International, Inc. ("HAI"), would violate Section 7 of the Clayton Act, 15 U.S.C. 18, and section 2 of the Sherman Act, 15 U.S.C. 2. Count I alleges that the merger's effect may be substantially to lessen competition or tend to create a monopoly in the market for inpatient psychiatric care provided by psychiatric hospitals and general acute care hospitals not owned by the federal government or the State of Louisiana, and in a submarket of private psychiatric hospital inpatient care, all in the New Orleans, Louisiana area. Count II alleges that, by the acquisition, HAI would monopolize the market for inpatient psychiatric care provided by psychiatric hospitals and general acute care hospitals not owned by the federal government or State of Louisiana, and a sub-market of private psychiatric hospital inpatient care, all in the New Orleans area.

In its Complaint, the United States requested the Court to restrain temporarily and preliminarily enjoin the acquisition; to declare that the acquisition violates Section 7 of the Clayton Act and Section 2 of the Sherman Act; to enter a permanent injunction enjoining the acquisition; and to order any other just and proper relief.

II

Description of the Alleged Violation and Subsequent Proceedings

At the time the Complaint was filed, HAI and AHS were Delaware and Virginia corporations, respectively, engaged in, among other things, owning, operating, leasing and managing hospitals. At the time of the Complaint, HAI was leading national company in these markets. AHS was a substantially smaller firm which operated primarily in Virginia. In the New Orleans area, HAI owned 100% of Coliseum House Medical Center, and managed and owned 50% of River Oaks Hospital, both of which are private psychiatric hospitals. The only other private psychiatric hospital in the New Orleans area is DePaul Hospital, which was leased to and managed by AHS.

Count I of the Complaint alleges that the effect of the acquisition may be substantially to lessen competition or tend to create a monopoly, in violation of Section 7 of the Clayton Act, in the following ways, among others:

(a) Actual competition in the market for in-patient psychiatric care in the New Orleans area provided by private psychiatric hospitals and general acute-care hospitals not owned by the federal government or State of Louisiana will be reduced;

(b) Concentration in the market for in-patient psychiatric care in the New Orleans area provided by private psychiatric hospitals and general acute-care hospitals not owned by the federal government or State of Louisiana will be increased;

(c) Actual competition in the sub-market for private psychiatric hospital in-patient care in the New Orleans area will be reduced or eliminated; and

(d) Concentration in the sub-market for private psychiatric hospital in-patient care in the New Orleans area will be greatly increased.

Count II of the Complaint alleges that, if HAI were allowed to acquire AHS, HAI would monopolize, in violation of Section 2 of the Sherman Act, the market for in-patient psychiatric care delivered by private psychiatric hospitals and general acute-care hospitals not owned or operated by the federal government or the State of Louisiana, and the sub-market for in-patient psychiatric care delivered by private psychiatric hospitals. Monopolization would occur in the following ways and have the following effects, among others:

(a) AHS will be eliminated as a significant competitor in the aforementioned market and sub-market;

(b) concentration will be substantially increased and the potential for deconcentration will be substantially decreased;

(c) HAI's monopoly power will be substantially increased and the potential for it to be lessened will be substantially decreased; and

(d) actual competition in the aforementioned market and sub-market will be substantially lessened and eliminated.

On September 30, 1980, the Court preliminarily enjoined the acquisition. Subsequent to that date, HAI sold its interests in both Coliseum House Medical Center and River Oaks Hospital, and the Court dissolved the preliminary injunction on October 16, 1980. On August 26, 1981, HAI was acquired by Hospital Corporation of America ("HCA").

III

Explanation of the Proposed Final Judgment

The United States, the defendants, and HCA have stipulated that the Court may enter the proposed final judgment after compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)-(h). The proposed final judgment provides that its entry does not constitute any evidence against or admission by any party with respect to any issue of fact or law. Under the provisions of Section 2(e) of the Antitrust Procedures and Penalties Act, the proposed final judgment may not be entered until the Court finds that entry is in the public interest.

A. *Parties.* The decree dismisses AHS as a defendant and adds HCA as a defendant.

B. *Prohibitions and Obligations.* The proposed final judgment prohibits HCA, without first notifying the United States, from acquiring, or entering into a management contract with, any psychiatric hospital existing in Louisiana Health Service Area I on the date the proposed final judgment is entered, or with any hospital that provides inpatient psychiatric services existing in Louisiana Health Services Area I on the date the proposed final judgment is entered.

The United States has fifteen days after notification to either consent to the acquisition or management contract, or to request from HCA whatever documents or other information the United States deems necessary to assess the competitive impact of the acquisition or management contract. Should the United States request such information or documents, HCA cannot consummate its acquisition or enter the management contract until fifteen days after the United States receives such documents or information.

C. *Scope of the Proposed Judgment.* The proposed final judgment will remain in effect ten years from its date of entry and applies to HCA and to each of its officers, directors, agents, employees, subsidiaries, successors and assigns, and to all other persons in active

concert or participation with any of them who have received actual notice of the final judgment.

D. *Effect of the Proposed Judgment on Competition.* The relief in the proposed final judgment is designed to ensure that the United States receives notice, of, and is given a reasonable opportunity to investigate, any acquisition or management contract that HCA enters into involving hospitals providing inpatient psychiatric care in the New Orleans, Louisiana area. Such relief is necessary to assure that the aforementioned market remains as competitive as it was prior to HAI's acquisition of AHS.

Two methods for determining compliance with the terms of the final judgment are provided. First, upon reasonable notice, the Department of Justice shall be given access to any of HCA's records relating to matters contained in the final judgment and be permitted to interview any officers or employees of HCA. Second, upon written request, the Department of Justice may required HCA to submit written reports about any matters relating to the final judgment.

The Department of Justice believes that this final judgment contains adequate provisions to prevent further violations of the types upon which the Complaint is based.

IV

Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages suffered, as well as costs and reasonable attorney's fees. Entry of the proposed final judgment will neither impair nor assist the bringing of such actions. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the final judgment has no *prima facie* effect in any subsequent lawsuits that may be brought against the defendants or HCA.

V

Procedures Available for Modification of the Proposed Judgment

As provided by the Antitrust Procedures and Penalties Act, any person believing that the proposed final judgment should be modified may submit written comments to John W. Poole, Jr., Chief, Special Litigation Section, Antitrust Division, United States Department of Justice, 10th Street and Pennsylvania Avenue, NW., Washington, D.C. 20530, within the 60-day period provided by the Act. These comments, and the Department's responses, will be filed with the Court and published in the **Federal Register**. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed final judgment at any time prior to entry. The final judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for its modification, interpretation or enforcement.

VI

Alternative to the Proposed Final Judgment

As mentioned above, the acquisition was preliminarily enjoined until HAI sold its interests in two of the three private psychiatric hospitals in the New Orleans area. At present, the three private psychiatric hospitals are each owned and managed by different concerns, and thus the market is less concentrated than when the Complaint was filed. DePaul Hospital is managed by HCA; Coliseum House Medical Center is owned and managed by Community Psychyiatric Centers, Inc.; and River Oaks is owned and managed by Qualicare, Inc.

The Department of Justice considered three alternatives other than the proposed final judgment. First, it considered dismissal of the case. This alternative was rejected, however, because the Department believed it important that it be notified of any acquisition or management contract by HCA involving inpatient psychiatric care in the New Orleans area. Such transactions would not necessarily be reported under the premerger notification provisions of Section 7A of the Clayton Act, 15 U.S.C. 18a.

Second, the Department of Justice considered an injunction prohibiting HCA from acquiring, or entering into a management contract with, any private psychiatric hospital in the New Orleans area. This alternative was rejected because the Department believed it unnecessarily restrictive in light of the proposal finally agreed upon, which will allow the Department substantial notice and access to information to investigate any such acquisition or management contract.

Finally, the Department considered a full trial of the issues on the merits and on relief. The Department considers the substantive language of the proposed final judgment to be of sufficient scope and effectiveness to make litigation on the issues unnecessary, as the final judgment, together with the previous divestiture, provides appropriate relief against the violations alleged in the Complaint.

VII

Determinative Materials and Documents

No materials and documents of the type described in section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b), were considered in formulating the proposed final judgment.

Respectfully submitted,

John J. Miles,

Elizabeth M. O'Neill,

Attorneys, Department of Justice, Antitrust Division, 10th and Pennsylvania Avenue, NW., Washington, D.C. 20530, Telephone: (202) 633-5621.

[FR Doc. 82-808 Filed 1-12-82; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL ADVISORY COMMITTEE ON OCEANS AND ATMOSPHERE

Meeting Addendum

January 7, 1982.

Additional changes have been made to the Agenda for the January 18–20, 1982 meeting of the National Advisory Committee on Oceans and Atmosphere (NACOA) published in the **Federal Register** of December 29, 1981 (Page 62981). The agenda has been revised as follows:

Monday, January 18, 1982

11:15 a.m.–12:00 Noon
Plenary
- William Woodward, Staff Director, Subcommittee on Coast Guard and Navigation, Committee on Merchant Marine and Fisheries, U.S. House of Representatives

Topic: Oversight Report on Coast Guard

3:00 a.m.–4:00 p.m.
Panel Meetings
- Environment and Regulations, Co-Chairmen: Sylvia A. Earle, Michael R. Naess (Room B–100A)

Topic: Finalize Scientific Diving Regulations Statement

3:00 p.m.–5:00 p.m.
- Waste Management, Chairman: John A. Knauss (Room B–100)

Topic: Discussion of NACOA Report on "Role of the Oceans in a Waste Management Strategy" and related pending issues

Tuesday, January 19, 1982

8:30 a.m.–12:00 Noon
Panel Meeting
- Environment and Regulations, Co-Chairmen: Sylvia A. Earle, Michael R. Naess (Room 418)

Speaker: Department of the Army
Topic: Clean Water Act—Section 404 (Permits)
Speaker: Department of the Interior
Topic: Fish/Wildlife Coordination Act

Additional information concerning these portions of the meeting may be obtained through the Committee's Executive Director, Steven N. Anastasion, whose mailing address is: National Advisory Committee on Oceans and Atmosphere, 3300 Whitehaven Street, NW., (Page Building #1, Room 438), Washington, DC 20235. The telephone number is 202/653-7818. The other remaining parts of the meeting on January 18, 19, and 20 will be the same.

Dated: January 7, 1982.

Steven N. Anastasion,

Executive Director.

[FR Doc. 82-822 Filed 1-12-82; 8:45 am]

BILLING CODE 3510-12-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-167 (Sub-No. 23N)

Rail Carriers; Conrail Abandonment Between Castle and Wheatland, Pa.; Notice of Findings

Notice is hereby given pursuant to Section 308(e) of the Regional Rail Reorganization Act of 1973 that the Commission, Review Board Number 3 has issued a certificate authorizing the Consolidated Rail Corporation to abandon its rail line between Castle and Wheatland in the County of Lawrence, PA, a total distance of 14.7 miles effective on December 16, 1981.

The net liquidation value of this line is $816,707. If, within 120 days from the date of this publication, Conrail receives a bona fide offer for the sale, for 75 percent of the net liquidation value, of this line it shall sell such line and the Commission shall, unless the parties otherwise agree, establish an equitable division of joint rates for through routes over such lines.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-851 Filed 1-12-82; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-167 (Sub-No. 18N)]

Rail Carriers; Conrail Abandonment Between Derry and Berwick, PA; Notice of Findings

Notice is hereby given pursuant to Section 308(e) of the Regional Rail Reorganization Act of 1973 that the Commission, Review Board Number 3 has issued a certificate authorizing the Consolidated Rail Corporation to abandon its rail line between Derry and Berwick in the County of Columbus, PA, a total distance of 24.3 miles effective on December 10, 1981.

The net liquidation value of this line is $304,110. If, within 120 days from the date of this publication, Conrail receives a bona fide offer for the sale, for 75 percent of the net liquidation value, of this line it shall sell such line and the Commission shall, unless the parties otherwise agree, establish an equitable division of joint rates for through routes over such lines.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-847 Filed 1-12-82; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-167 (Sub-No. 20N)]

Rail Carriers; Conrail Abandonment Between Greenville and Jamestown, PA; Notice of Findings

Notice is hereby given pursuant to Section 308(e) of the Regional Rail Reorganization Act of 1973 that the Commission, Review Board Number 3 has issued a certificate authorizing the Consolidated Rail Corporation to abandon its rail line between Greenville and Jamestown in the County of Mercer, PA, a total distance of 5.6 miles effective on December 16, 1981.

The net liquidation value of this line is $69,948. If, within 120 days from the date of this publication, Conrail receives a bona fide offer for the sale, for 75 percent of the net liquidation value, of this line it shall sell such line and the Commission shall, unless the parties otherwise agree, establish an equitable division of joint rates for through routes over such lines.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-848 Filed 1-12-82; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-167 (Sub-No. 17N)]

Rail Carriers; Conrail Abandonment Between Niobe, NY and Columbus, PA; Notice of Findings

Notice is hereby given pursuant to Section 308(e) of the Regional Rail Reorganization Act of 1973 that the Commission, Review Board Number 3 has issued a certificate authorizing the Consolidated Rail Corporation to abandon its rail line between Niobe, NY and Columbus, PA, in the Counties of Chautauqua, NY, and Warren, PA, a total distance of 9.3 miles effective on December 10, 1981.

The net liquidation value of this line is $386,053. If, within 120 days from the date of this publication, Conrail receives a bona fide offer for the sale, for 75 percent of the net liquidation value, of this line it shall sell such line and the Commission shall, unless the parties otherwise agree, establish an equitable division of joint rates for through routes over such lines.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-846 Filed 1-12-82; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-167 (Sub-No. 22N]

Rail Carriers; Conrail Abandonment Between Penn Argyl Junction and Bellfast Junction, PA; Notice of Findings

Notice is hereby given pursuant to Section 308(e) of the Regional Rail Reorganization Act of 1973 that the Commission, Review Board Number 3 has issued a certificate authorizing the Consolidated Rail Corporation to abandon its rail line between Penn Argyl Junction and Bellfast Junction in the County of Northampton, PA, a total distance of 6.6 miles effective on December 16, 1981.

The net liquidation value of this line is $121,541. If, within 120 days from the date of this publication, Conrail receives a bona fide offer for the sale, for 75 percent of the net liquidation value, of this line it shall sell such line and the Commission shall, unless the parties otherwise agree, establish an equitable division of joint rates for through routes over such lines.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-850 Filed 1-12-82; 8:45 am]

BILLING CODE 7035-01-M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Behavioral and Neural Sciences; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Behavioral and Neural Sciences—Subcommittee for Systematic Collections

Date and time: January 29, 1982, 9:00-5:00 p.m.

Meeting place: National Science Foundation, 1800 G Street NW., Room 642

Type meeting: Closed.

Contact person: Mary W. Greene, Associate Program Director for Anthropology, Anthropology Program, Room 320, National Science Foundation, Washington, D.C. 20550, Telephone: (202) 357-7804

Purpose of subcommittee: To provide advice and recommendations concerning support for improvement of systematic anthropological collections.

Agenda: To review and evaluate proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial (salary) data, and personal information concerning individuals associated with the proposals. These matters are within

exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of P.L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, July 6, 1979.

M. Rebecca Winkler,

Committee Management Coordinator.

[FR Doc. 82–911 Filed 1–12–82; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–358–OL]

In the Matter of Cincinnati Gas & Electric Co. (William H. Zimmer Nuclear Power Station, Unit No. 1); Hearing

January 7, 1982.

Please take notice that the evidentiary hearing in the captioned matter will reconvene January 25 through 29, February 1 through 5, and February 22 through 26, 1982.

The week of January 25 the hearing will be held in Courtroom 805 in the U.S. Post Office and Courthouse, 5th and Walnut Streets, Cincinnati, Ohio, commencing on January 25 at 1:00 to 5:00 p.m. and thereafter at 9:00 a.m.

Arrangements for a hearing room for the week of February 1 are not final. Consequently, this session of the hearing will be the subject of a separate notice.

The week of February 22 the hearing will be held in Courtroom 1, Room 607, in the U.S. Post Office and Courthouse, 5th and Walnut Streets, Cincinnati, Ohio, commencing at 9:00 a.m. each day.

These hearing sessions will be concerned with emergency planning and monitoring with respect to the application to operate the Zimmer Nuclear Power Station. The Board will entertain oral limited appearance statements from members of the public the afternoon of January 25. Individuals who desire to make such statements are urged to notify the Secretary, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, as soon as possible. In the event that there are a large number of individuals who desire to make such statements, the Board will limit each statement to approximately five minutes. Written statements may be filed with the Board at any time.

It is so ordered.

Dated at Bethesda, Maryland, the 7th day of January, 1982.

For the Atomic Safety and Licensing Board.

John H. Frye III,

Chairman, Administrative Judge.

[FR Doc. 82–899 Filed 1–12–82; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–295 and 50–304]

Commonwealth Edison Co; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 72 to Facility Operating License No. DPR–39, and Amendment No. 66 to Facility Operating License No. DPR–48 issued to the Commonwealth Edison Company (the licensee), which revised Technical Specifications for operation of Zion Station, Units 1 and 2 (the facilities) located in Zion, Illinois. The amendments are effective as of the date of issuance.

The amendments revise the Technical Specifications to require two service water pumps during reactor operation and one standby pump per unit when the discharge header is separated for the units and one standby pump for both units when the discharge header is cross-tied for both units.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments. Prior public notice of these amendments was not required since the amendments do not involve a significant hazards consideration.

The Commission has determined that the issuance of these amendments will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of these amendments.

For further details with respect to this action, see (1) the application for amendments dated December 9 and 18, 1981, (2) Amendment Nos. 72 and 66 to License Nos. DPR–39 and DPR–48, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Zion-Benton Public Library District, 2600 Emmaus Avenue, Zion, Illinois 60099. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 31st day of December 1981.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Chief, Operating Reactors Branch No. 1, Division of Licensing.

[FR Doc. 82–898 Filed 1–12–82; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–389A]

Florida Power & Light Co., (St. Lucie Plant, Unit No. 2); Hearing

January 7, 1982.

On December 11, 1981 the Atomic Safety and Licensing Board issued an opinion in which it determined that the operation of St. Lucie Unit No. 2 without a license restriction would maintain a situation inconsistent with the antitrust laws. However, the Board decided that the parties should be permitted to file objections to this determination. It also scheduled a hearing to be held at 9:00 am on February 9, 1982, in Fort Lauderdale, Florida at the U.S. Court House and Federal Building, Room 203A (2nd Floor Central).

The hearng, which will be open to the public, will consider: (1) Objections to our December 11, 1981 order, (2) procedures to handle remaining issues in a fair and efficient manner.

Dated: January 7, 1982, Bethesda, Maryland.

For the Atomic Safety and Licensing Board.

Peter B. Bloch,

Chairman, Administrative Judge.

[FR Doc. 82–900 Filed 1–12–82; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Action on Extension Requests for Five Department of Energy Petroleum Price and Distribution Forms

AGENCY: Office of Management and Budget.

ACTION: Notice of approval of three forms and disapproval of two forms.

SUMMARY: In September, the Energy Information Administration (EIA) requested the Office of Management and Budget (OMB) to approve revisions of the following five forms collecting statistical data concerning the import, distribution, and price of various petroleum products: FEA–P–314–M–O,

"Monthly Survey of Distillate and Residual Fuel Oil Sales Volume to Ultimate Consumers"; FEA–P–306–M–O, "Refiner/Importers Monthly Report of Petroleum Products Distribution"; EIA–460, "Petroleum Industry Monthly Report on Product Prices"; EIA–14, "Refiners' Monthly Cost Allocation Report"; and EIA–25, "Prime Supplier's Monthly Report." OMB is approving the use of the EIA–460, the EIA–14, and the EIA–25. OMB is not approving the use of the FEA–P–314–M–O, nor the FEA–P–306–M–O.

Background

On January 28, 1981, President Reagan issued E.O. 12287, "Decontrol of Crude Oil and Refined Petroleum Products." In section 2(a), the Secretary of Energy was directed to review all reporting requirements and to eliminate those forms which were not necessary for emergency planning and energy information gathering purposes required by law. The EIA conducted a requirements review and, as a result, eliminated 23 data collection forms, reducing reporting burden by more than 700,000 hours.

Following up, EIA proposed a draft form EIA–740, "Monthly Petroleum Product Sales Report," to replace 17 petroleum product data collection forms, including four out of the five of which OMB has just completed review (46 FR 30174, June 5, 1981). The draft would collect State petroleum distribution and price data, in more general terms. In response to critical public comments, EIA decided it needed to restructure this effort at consolidation, and to conduct a thorough pretest of the revised version with the respondents before putting it into operation.

While developing this stripped down, more efficient statistical data system, EIA sought, on an interim basis, to extend these five existing forms, to maintain the existing statistical data series. EIA requested a two-year extension to permit development any debugging of the more efficient data system, and statistical integration of the new data series with the extensive historical statistical base.

On November 13, 1981 (46 FR 56011), EIA published a notice postponing the implementation of the proposed EIA–740, stating its plan to redesign and thoroughly pretest an improved version, and pointing out the status of the five forms under OMB review.

Action

The Energy Information Administration's request, under the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), for extension of the EIA–14, the EIA–25, and the EIA–460 is approved through December 31, 1982. We are withholding approval on the FEA–P–306–M–O, and the FEA–314–M–O, pending a full data requirements analysis by EIA and the results of the public hearings described below.

Discussion

During this extension period, it is the expectation of OMB that the Energy Information Administration will make every effort to eliminate the potential overlap and duplication between these five forms and other Federal reporting requirements. Moreover, it is the expectation of OMB that the Bureau of Labor Statistics and other Federal statistical agencies will work together with EIA in this effort. It is our further expectation that EIA, in coordination with the other Federal statistical agencies, will develop and implement an integrated petroleum pricing and distribution reporting system that will streamline these requirements to the fullest extent practicable, taking into consideration comments from respondents, potential users, and other interested parties. Until this effort has produced visible results, OMB does not intend to approve any extension of domestic petroleum pricing reporting systems, regardless of the agency that will undertake the collection.

While we are cognizant of the difficulties inherent in developing a reporting system that will meet the data needs of potential users, we do not think it unreasonable to expect EIA, in cooperation with the other agencies, to develop such a system by December 31, 1982.

It is our understanding that, following further developmental consultations, EIA will in March 1982 publish in the **Federal Register** a new proposed statistical data system for public review and comment. After considering all comments received (including those submitted in a proposed Spring 1982 public hearing in which OMB will participate) and making adjustments as necessary, EIA will submit a final version of the improved statistical data system for OMB review and approval no later than July 1, 1982. EIA will then develop, test, and debug software for the new system using data from a limited number of respondents, moving toward implementatation of the system in January 1983. We will request EIA to provide additional information concerning the development of the revised form as it becomes available.

When this final version is submitted to OMB for approval, we expect that EIA will justify the need for (1) State-level reporting, (2) downstream petroleum data, and (3) reporting of landed costs of products, and explain why existing data sources cannot be used to fulfill EIA's requirements. In addition, we expect a demonstration of how these data will serve statistical purposes as opposed to regulatory reporting requirements.

Comments

The purpose of this notice is to provide all interested parties with information on this clearance issue and to notify respondents of changes in reporting requirements. Further, we expect EIA to notify, in writing, respondents to these forms of this action.

Comments may be addressed to Christopher DeMuth, Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place, N.W., Washington, D.C. 20503.

Signed at Washington, D.C., this 23rd day of December 1981.

Christopher DeMuth,

Administrator, Office of Information and Regulatory Affairs.

[FR Doc. 82–795 Filed 1–12–82; 8:45 am]

BILLING CODE 3110–01–M

POSTAL RATE COMMISSION

[Order No. 415]

[Docket No. A82–4]

Donnan, Iowa 52139 (Mr. Earl West, Petitioner); Notice and Order of Filing of Appeal

Issued January 6, 1982.

On January 4, 1982, the Commission received a handwritten letter from Mr. Earl West (hereinafter "Petitioner") concerning the alleged United States Postal Service plans to close the Donnan, Iowa post office. The letter makes no explicit reference to the Postal Reorganization Act. Moreover, the letter refers to the "proposed closing" of the Donnan, Iowa post office. As such, the justiciability of this matter, before this Commission, is not certain.

Yet, despite the deficiencies of this letter, we believe that it should be liberally construed as a petition for review pursuant to section 404(b) of the Postal Reorganization Act [39 U.S.C. 404(b)], because the statute provides that petitions for review must be filed within 30 days of the Postal Service's determination to close the post office.[1] Since the petition was apparently not

[1] 39 U.S.C. 404(b)(5). 39 U.S.C. 404(b) was added to title 39 by Pub. L. 94–421 (September 24, 1976), 90 Stat.1310–1311. Our rules of practice governing these cases appear at 39 CFR § 3001.110 *et seq.*

written by an attorney, it does not conform perfectly with the Commission's rules of practice which also require a petitioner to attach a copy of the Postal Service's Final Determination to the petition.[2] However, section 1 of the Commission's rules of practice does call for a lilberal construction of the rules to secure just and speedy determination of issues.[3]

The Act requires that the Postal Service provide the affected community with at least 60 days' notice of a proposed post office closing so as to ". . . ensure that such persons will have an opportunity to present their views."[4] The petition appeals the decision to close the Donnan post office. From the face of the petition it is unclear whether the Postal Service provided 60 days' notice, whether any hearings were held, and whether a determination has been made under 39 U.S.C. 403(b)(3). (Petitioners failed to supply a copy of the Postal Service's Final Determination, if one is in existence.) The Commission's rules of practice require the Postal Service to file the administrative record of the case within 15 days after the date on which the petition for review is filed with the Commission.[5]

The Postal Reorganization Act states:

> The Postal Service shall provide a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining. No small post office shall be closed solely for operating at a deficit, it being the specific intent of the Congress that effective postal services be insured to residents of both urban and rural communities.[6]

Section 404(b)(2)(C) of the Act specifically includes consideration of this goal in determinations by the Postal Service to consolidate post offices. The effect on the community is also a mandatory consideration under section 404(b)(2)(A) of the Act.

The petition appears to set forth the Postal Service action complained of in sufficient detail to warrant further inquiry to determine whether the Postal Service complied with its regulations for the discontinuance of post offices.[7]

Upon preliminary inspection, the petitions appear to raise the following issues of law:

1. Is the Postal Service's proposed closing of this post office consistent with the "maximum degree of effective and regular postal services" standard of section 404(b)(2)(C)?

2. As part of its consideration of the effect on the community standard of section 404(b)(2)(A), did the Postal Service correctly gauge the size and growth of the community?

3. As part of the effect on the community standard of section 404(b)(2)(A), must the Postal Service consider the level of service given by the employees at the Donnan post office as compared to that given by employees at larger offices?

4. As part of the effect on the community standard of section 404(b)(2)(A), must the Postal Service consider that the post office provides employment for someone living in the community?

5. As part of the effect on the community standard of section 404(b)(2)(A), must the Postal Service consider the effect the consolidation of the Donnan post office would have on those doing business within the community?

6. Must the Postal Service consider that it is approximately a five mile round trip to the alternative post office as part of its treatment of the "maximum degree of effective and regular postal services" standard of section 404(b)(2)(C)?

Other issues of law may become apparent when the Commission has had the opportunity to examine the determination made by the Postal Service. Such additional issues may emerge when the parties and the Commission review the Service's determination for consistency with the principles announced in *Lone Grove, Texas, et al.*, Docket Nos. A79-1, *et al.* (May 7, 1979). Conversely, the determination may be found to resolve adequately one or more of the issues described above.

In view of the above, and in the interest of expedition of this proceeding under the 120-day decisional deadline imposed by section 404(b)(5), the Postal Service is advised that the Commission reserves the right to request a legal memorandum from the Service on one or more of the issues described above, and/or any further issues of law disclosed by the determination made in this case. In the event that the Commission finds such memorandum necessary to explain or clarify the Service's legal position or interpretation on any such issue, it will, within 20 days of receiving the determination and record pursuant to section 113 of the rules of practice (39 CFR 3001.113), make the request therefore by order, specifying the issues to be addressed.

When such a request is issued, the memorandum shall be due within 20 days of the issuance, and a copy of the memorandum shall be served on Petitioners by the Service.

In briefing the case, or in filing any motion to dismiss for want of prosecution, in appropriate circumstances, the Service may incorporate by reference all or any portion of a legal memorandum filed pursuant to such an order.

The Act does not contemplate appointment of an Officer of the Commission in section 404(b) cases, and none is being appointed.[8]

The Commission Orders:

(A) The letter of January 4, 1982, from Earl West shall be construed as a petition for review pursuant to section 404(b) of the Act [39 U.S.C. 404(b)].

(B) The Secretary of the Commission shall publish this Notice and Order in the **Federal Register.**

(C) The Postal Service shall file the administrative record in this case on or before January 19, 1982 pursuant to the Commission's rules of practice [39 CFR 3001.113(a)].

By the Commission.

David F. Harris,

Secretary.

APPENDIX

Jan. 4, 1982	Filing of Petition.
Jan. 6, 1982	Notice and Order of Filing of Appeal.
Jan. 19, 1982	Filing of record by Postal Service [*see* 39 CFR 3001.113(a)].
Jan. 24, 1982	Last day for filing of petitions to intervene [*see* 39 CFR 3001.111(b)].
Feb. 3, 1982	Petitioner's initial brief [*see* 39 CFR 3001.115(a)].
Feb. 18, 1982	Postal Service answering brief [*see* 39 CFR 3001.115(b)].
Mar. 5, 1982	(1) Petitioner's reply brief, if petitioner choses to file such brief [*see* 39 CFR 3001.115(c)].
	(2) Deadline for motions by any party requesting oral argument. The Commission will exercise its discretion, as the interests of prompt and just decision may require, in scheduling or dispensing with oral argument.
	Expiration of 120-day decisional schedule [*see* 39 U.S.C. 404(b)(5)].

May 4, 1982.

[FR Doc. 82-913 Filed 1-12-82; 8:45 am]

BILLING CODE 7715-01-M

[2] 39 CFR 3001.111(a).

[3] 39 CFR 3001.1.

[4] 39 U.S.C. 404(b)(1).

[5] 39 CFR 3001.113(a). The Postal Rate Commission informs the Postal Service of its receipt of such an appeal by issuing PRC Form No. 56 to the Postal Service upon receipt of each appeal.

[6] 39 U.S.C. 101(b).

[7] 42 FR 59079-59085 (11/17/77); the Commission's standard of review is set forth at 39 U.S.C. 404(b)(5).

[8] In the Matter of Gresham, S.C., Route #1, Docket No. A78-1 (May 11, 1978).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 22353; (70-6594)]

Consolidated Natural Gas Co.; Supplemental Notice of Extension of Period to Issue Debentures at Competitive Bidding

January 5, 1982.

Consolidated Natural Gas Company ("Consolidated"), 100 Broadway, New York, New York 10005, a registered holding company, has filed a declaration and amendments thereto with this Commission pursuant to Sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50 promulgated thereunder.

On may 13, 1981 (HCAR no. 22048) this Commission issued notice of a proposal by Consolidated to issue and sell up to $100,000,000 of sinking fund debentures at competitive bidding not later than December 31, 1981. Due to market conditions, Consolidated has not sold such debentures during 1981.

Consolidated has amended its declaration to extend the period for the issuance and sale of the debentures from December 31, 1981 to December 31, 1982. Consolidated has not amended its declaration in any other respect.

The declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by January 29, 1982, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the declarant at the address specified above. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the declaration, as amended or as it may be further amended, may be permitted to become effective.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-839 Filed 1-12-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 22357; (37-67)]

Eastern Utilities Associates, EUA Service Corp.; Proposed Issuance and Sale of Notes by Subsidiary Service Company to Banks and/or Holding Company

January 7, 1982.

Eastern Utilities Associates ("EUA"), P.O. Box 2333, Boston, Massachusetts 02107, a registered holding company, and its subsidiary service company, EUA Service Corporation ("Service Company") have filed with this Commission a post-effective amendment to the application-declaration in this proceeding pursuant to Sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 40(b) promulgated thereunder.

By order in this proceeding dated June 18, 1976 (HCAR No. 19579), Service Company was authorized to increase to $2,000,000 the previously authorized amount of its borrowing from EUA, such borrowing to be evidenced by notes maturing on January 5, 1991, and bearing interest at an effective rate derived from a commercial bank base rate together with an assumed compensating balance of 20%. The notes were to be prepayable at any time without premium.

It is stated that the means of determining interest on Service Company's notes held by EUA is no longer appropriate in view of the diversity of arrangements offered by the banks which make loans to companies in the EUA holding-company system. EUA's management believes that arrangements can be made whereby some of such banks will lend directly to Service Company. Some of such loans will be evidenced by notes bearing interest at the commercial bank base rate as adjusted from time to time; these notes will have maximum maturities of nine months and will be subject to prepayment at any time without premium. Other loans by banks to Service Company may be evidenced by notes bearing interest at available money market rates, which in all cases will be less than the prime rate at the time of issuance; such notes will have maximum maturities of sixty days and will not be prepayable. It is proposed that Service Company effect such bank borrowings, at the earliest precticable time, in an amount at least equal to the amount of Service Company's notes held at the time by EUA (the amount of such notes having been $1,605,000 at December 15, 1981).

In order to provide for unforseen circumstances, it is also proposed that Service Company retain authority to make borrowings from EUA and that any such future borrowings from EUA be evidenced by notes bearing interest at a rate not in excess of the commercial base rate at The First National Bank of Boston as adjusted from time to time. The aggregate amount of notes of service Company payable to banks and/or to EUA to be outstanding at any one time will not exceed $2,000,000.

The proceeds of the bank borrowings will be applied by Service Company, so far as necessary, to the prepayment of all notes then held by EUA. EUA intends to apply all or substantially all of the funds which it will receive upon Service Company's prepayment of its notes to the purchase of 30,000 shares of common stock of Blackstone Valley Electric Company ("Blackstone"), a subsidiary company, or the making of a capital contribution to Blackstone of not in excess of $1,500,000 (see File No. 70-6662).

The post-effective amendment and any further amendments are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by February 3, 1982, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicants-declarants at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application-declaration, as now amended or as it may be further amended, may be granted and permitted to become effective.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-840 Filed 1-12-82; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF THE TREASURY

Fiscal Service

Use of Bureau of the Public Debt Forms by the Public

AGENCY: Bureau of the Public Debt, Fiscal Service, Treasury.

ACTION: Notice.

SUMMARY: This notice lists Bureau of the Public Debt (PD) forms currently in use by the public that have recently been approved and assigned Office of Management and Budget (OMB) control numbers. This approval allows continued use of the forms after January 1, 1982 under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C.).

FOR FURTHER INFORMATION CONTACT: Michael Smiley, Management Analysis Officer, Bureau or the Public Debt, 1111 20th Street N.W., Washington, D.C. 20226, 202-634-5257.

SUPPLEMENTARY INFORMATION: The Bureau of the Public Debt has been requiring the public to complete forms when conducting transactions involving securities such as savings bonds and treasury bills, bonds and notes. These forms have been exempt from approval by OMB. Under the provisions of the Paperwork Reduction Act of 1980, PD forms used by the public are no longer exempt from OMB approval. Therefore, the Bureau of the Public Debt submitted a list of forms used by the public to OMB for approval. OMB has approved these forms for use and assigned each form a control number and expiration date. Existing supplies of present forms that do not include OMB control numbers and expiration dates will continue to be issued and used until supplies are exhausted, at which time a new supply will be printed that will include OMB control numbers and expiration dates. Specific OMB approved forms, control numbers, and expiration dates are as follows:

Public debt form No.	OMB control No.	OMB approval expiration date
PD 1522	1535-0004	9/30/84
PD 3253	1535-0005	11/30/82
PD 2458	1535-0006	9/30/84
PD 1946	1535-0007	9/30/84
PD 1938	1535-0008	9/30/84
PD 1851	1535-0009	9/30/84
PD 1782	1535-0010	11/30/82
PD 1668	1535-0011	9/30/84
PD 1455	1535-0012	9/30/84
PD 1048	1535-0013	11/30/82
PD 1025	1535-0014	11/30/82
PD 1022	1535-0015	11/30/82
PD 1022-1	1535-0016	11/30/82
PD 4883	1535-0017	9/30/84
PD 4882	1535-0018	11/30/82
PD 4733	1535-0019	12/31/82
PD 4733-1	1535-0019	12/31/82
PD 4633	1535-0020	11/30/82
PD 4633-1	1535-0020	11/30/82
PD 4633-2	1535-0020	11/30/82
PD 4632-1	1535-0021	11/30/82
PD 4632-2	1535-0021	11/30/82
PD 4632-3	1535-0021	11/30/82
PD 4144	1535-0022	9/30/84
PD 4000	1535-0023	11/30/82
PD 3905	1535-0024	11/30/82
PD 3360	1535-0025	9/30/84
PD 3800-1	1535-0026	11/30/82

Dated: January 7, 1982.

Eleanor J. Holsopple,

Assistant Commissioner (Administration).

[FR Doc. 82-691 Filed 1-12-82; 8:45 am]

BILLING CODE 4810-40-M

VETERANS ADMINISTRATION

Privacy Act of 1974; Amendment of Systems Notice; revised System of Records

Notice is hereby given that the Veterans Administration is considering changing four systems of records currently entitled "01VA024, Accredited Representatives and Claims Agents Records—VA;" "05VA024, Claimant Legal Precedent Files—VA;" "06VA024, Claimant Private Relief Legislative Name Files—VA;" and "16VA024, Litigant Name Files—VA." As set forth respectively on pages 49729, 49730, 49731 and 49735 of the **Federal Register** of September 27, 1977. These revisions are being made as part of an overall effort within the VA to administratively update its Privacy Act systems of records notices. These four systems of records have been rewritten in a clearer and more concise manner to better inform the public of the types of records being maintained by the VA and specifically and more accurately identify disclosures made under the authority of routine uses. In some instances, routine use notices have been eliminated (if deemed necessary), to conform to the requirements of VA confidentiality statutes. Also, the system name, system location, authority for maintenance of the system, the categories of individuals, the categories of records, storage practices, safeguards, retention and disposal, system manager and record source categories have generally all been updated and rewritten to be more specific.

In 16VA024, "Litigant Name Files—VA," which will be renumbered and renamed "16VA026—Litigant, Tort Claimant, EEO Claimant and Third Party Recovery Files—VA," there have been added five new routine uses. New routine uses Nos. 5 and 6 permit the VA to disclose pleadings, opinions, briefs, decisions and evidentiary and nonevidentiary matter to a Federal agency to enable a Federal agency or the VA to properly prepare a particular case or controversy regarding an administrative claim filed under the Federal Tort Claims Act or a debt collection proceeding under the Federal Medical Care Recovery Act. New routine use No. 9 generally permits the VA to disclose EEO complaint records, including the identifiers of the complainant and the witnesses, the complaints, investigation reports, General Counsel decisions, recommended findings by the EEOC, Agency (VA) comments and other support material to representatives of the complainant and the alleged discriminating official(s), and to the Department of Justice and other Federal agencies in order to inform them of the matters in the complaint and to apprise the parties of the identities of the complainant and witnesses. Lastly, new routine use Nos. 11 and 12 permit the VA to disclose any information in the system to a Federal, State or municipal grand jury, a Federal, State or municipal court or a party in litigation, a Federal agency or a State or municipal administrative agency functioning in a quasi-judicial capacity, or a party to a proceeding conducted by such an agency, in order for the VA to respond to and comply with the issuance of a subpoena from one of these institutions.

In accordance with 5 U.S.C. 552a(b)(3), the Veterans Administration has adopted and published routine uses for its systems of records. A routine use allows the agency to disclose Privacy Act records/information without the written consent of the individual to whom the record pertains. Within the VA, routine uses are principally used to permit disclosure of information from a Privacy Act system of records to a third party to enable the VA to carry out its programs in the most expeditious manner possible. Generally, a routine use identified in a VA system of records will either specifically identify information, or in the alternative, the general subject matter (i.e., a major group of information such as "identifying information" and "medical information") which is being disclosed. In those instances where a routine use identifies disclosure of a general subject matter, the general subject matter will be specifically described in the "Categories of records in the system" section of the system of records. Routine uses may be used in conjunction with one another. Each VA system of records contains the routine uses which are applicable for that system.

For purposes of these VA systems of records, the subsequent definitional terms or concepts are used as follows:

1. Veteran—A person who served in the active military, naval or air service, and who was discharged or released therefrom under conditions other than dishonorable and whose name and address and other information is maintained by the VA by virtue of the administration of veterans benefits under title 38, United States Code. For

purposes of these systems notices (unless specifically stated otherwise in the "Categories of individuals covered by this system" section of a system of records), the term "veteran" will also include the dependents of a veteran and any other individual who has been granted veteran status by virtue of a specific statutory authority. The name, address and other information regarding a veteran is protected by title 38, United States Code, sections 3301 and 4132 in addition to the Privacy Act. Accordingly, any disclosures of information concerning a veteran made from these Privacy Act systems of records under a routine use or other Privacy Act authority shall be consistent with the provisions of 38 U.S.C. 3301 and 4132.

2. Claimant—Any individual making a claim for a benefit under title 38, United States, Code, e.g., veteran, nonveteran life insurance beneficiaries.

3. Record—Any item, collection or grouping of information about an individual that is maintained by the agency. It is noted that the term "record" may be used with regard to as little as one descriptive item about an individual.

4. Information v. Data—"Information" is individually identifiable (e.g., record includes an individual's name or address or other identifying information) whereas "data" is not individually identifiable.

5. Subsidiary records—Subsidiary records contain information which is part of a more comprehensive, published VA system of records. Subsidiary records may be physically located separate and apart from the rest of the system of records. Any subsidiary records are maintained for the same general purposes as a published system of records and, therefore, are considered to be part of that published system of records. (OMB Circular A-108, p. 28962.)

6. Disclosures Made "At the Request of the Veteran"—In a few routine use notice, for purposes of section 3301 of title 38, United States Code, the VA has identified situations when the disclosure of a veteran's name and address by the VA to a third party is being made "at the request of the veteran." In these instances, an express or implied consent to disclose a veteran's name or address may be inferred by the VA when a veteran has submitted a claim for VA benefits, inquired into benefits provided by the VA, or has southt assistance from the VA in obtaining any other benefits (e.g., employment, State or local agency benefits programs) to which the veteran might be entitled and referral of the name and address of the veteran by the VA to a third party will reasonably be required for the VA to act on the request of the veteran for assistance.

Interested persons are invited to submit written comments, suggestions, or objections regarding the proposed systems of records to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420. All relevant material received before February 12, 1982 will be considered. All written comments received will be available for public inspection at the above address only between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays), until March 1, 1982. Any person visiting Central Office for the purposes of inspecting any such comments will be received by the Central Office Veterans Services Unit in Room 132. Visitors to any VA field station will be informed that the records are available for inspection only in Central Office and furnished the address and room number.

If no public comment is received during the 30-day review period allowed for public comment or unless otherwise published in the **Federal Register** by the Veterans Administration, the revised systems of records are effective January 4, 1982.

Approved: January 4, 1982.

By direction of the Administrator.

Charles T. Hagel,

Deputy Administrator.

1. The system of records currently identified as 01VA024, "Accredited Representatives and Claims Agents—VA", appearing at 42 FR 49728 is renumbered 01VA022 and is revised as follows:

01VA022

SYSTEM NAME:

Accredited Representatives, Claims Agents, and Rejected Claims Agent Applicant Records—VA

SYSTEM LOCATION:

Records are maintained in the Office of General Counsel (022), Veterans Administration Central Office, Washington, D.C. 20420

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The following categories of individuals will be covered by the system: (1) Members or employees of recognized service organizations accredited by the VA to represent claimants for benefits; (2) claims agents (not attorneys) independent of a service organization and recognized by the VA to represent claimants for benefits; and (3) individuals who have applied to the VA to become claims agents but who have not qualified therefor.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records (or information contained in records) in this system may include: (1) Name; (2) address; (3) service organization affiliations; (4) claims agent examination and grade; (5) correspondence concerning claims agent or accredited representative including claims agent recommendations from third parties; and (6) VA Form 2-21 (Application for Accreditation as Service Organization Representative).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 38, United States Code 210(c), 3402 and 3404.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. The record of an individual who is covered by this system may be disclosed to a member of Congress or staff person acting for the member when the member or staff person requests the record on behalf of and at the request of that individual.

2. Any information in this system, except for the name and address of a veteran, which is relevant to a suspected violation or reasonably imminent violation of law, whether civil criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, may be disclosed to a Federal, State, local or foreign agency charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation or order issued pursuant thereto.

3. The name and address of a veteran which is relevant to a suspected violation or reasonably imminent violation of law, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, may be disclosed to a Federal agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation or order issued pursuant thereto, in response to its official request.

4. The name and address of a veteran, which is relevant to a suspected violation or reasonably imminent violation of law concerning public health or safety, whether civil, criminal or regulatory in nature whether arising by general or program statute or by

regulation, rule or order issued pursuant thereto, may be disclosed to any foreign, State or local governmental agency or instrumentality charged under applicable law with the protection of the public health or safety if a qualified representative of such organization, agency or instrumentality has made a written request that such name and address be provided for a purpose authorized by law.

5. The name, business address and service organization affiliation(s) of accredited representatives and claims agents may be disclosed to requesting service organizations, claimants for benefits and the general public in order to aid the requestor in verifying the identity and service organization affiliation of the accredited representative.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Active records are maintained in individual folders stored in file cabinets. File cards with name and business addresses of indivisuals covered by this system are maintained in file cabinets.

RETRIEVABILITY:

Records and file cards are maintained in alphabetical order by last name of the individuals covered by this system.

SAFEGUARDS:

Records and file cards are maintained in a manned room during working hours. During nonworking hours, the building is protected from unauthorized access by the Federal Protective Service. Access to the records is only authorized to VA personnel on a "need to know" basis.

RETENTION AND DISPOSAL:

Records are maintained as long as the individual is an active accredited representative or claims agent. Once the representative or agent becomes inactive, the inactive records are maintained by the VACO Records Management Section for 3 years and then destroyed. Rejected claims agent applications and related correspondence are permanently maintained in the Office of General Counsel.

SYSTEM MANAGER AND ADDRESS:

Assistant General Counsel (022), VA Central Office, Washington, D.C. 20420.

NOTIFICATION PROCEDURE:

An individual who wishes to determine whether a record is being maintained by the Assistant General Counsel under his or her name or other personal identifier, or wants to determine the contents of such records should submit a written request or apply in person to the Assistant General Counsel (022).

RECORDS ACCESS PROCEDURES:

An individual who seeks access to or wishes to contest records maintained under his or her name in this system may write or call or visit the Assistant General Counsel (022).

CONTESTING RECORD PROCEDURES:

(See Records Access Procedures above.)

RECORD SOURCE CATEGORIES:

Application of individuals for accreditation or recognition and recommendations from service organizations and third parties.

2. The system currently identified as 05VA024, "Claimant Legal Precedent Files-VA", appearing at 42 FR 49730 is renumbered 05VA026 and is revised as follows:

05VA026

SYSTEM NAME:

Individual Correspondence Records-VA

SYSTEM LOCATION:

Records are maintained at the Office of the General Counsel (026), VA Central Office, Washington, D.C. 20420 and at the Offices of the District Counsels, addresses for which may be obtained from the above-mentioned General Counsel office address.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The following categories of individuals are covered by this system: (1) Veterans; (2) nonveterans; (3) attorneys; (4) employees; and (5) members of Congress who have made inquiries or sent correspondence to the VA and regarding whom some action was taken by the Office of General Counsel or an office of one or more District Counsels regarding the inquiries.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records (or information contained in records) may contain: (1) Name of individual; (2) inquiries or correspondence sent to the VA by an individual; (3) information pertinent to a legal opinion or response given by the Office of General Counsel or the District Counsel; and (4) the legal opinion or response.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 38, United States Code, 210(c).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. The record of an individual who is covered by this system may be disclosed to a member of Congress or staff person acting for the member when the member or staff person requests the record on behalf of and at the request of that individual.

2. Any information in this system, except for the name and address of a veteran, which is relevant to a suspected violation or reasonably imminent violation of law, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, may be disclosed to a Federal, State, local or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, rule, regulation or order issued pursuant thereto.

3. The name and address of a veteran, which is relevant to a suspected violation or reasonably imminent violation of law, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, may be disclosed to a Federal agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto, in response to its official request.

4. The name and address of a veteran, which is relevant to a suspected violation or reasonably imminent violation of law concerning public health or safety, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, may be disclosed to any foreign, State or local governmental agency or instrumentality charged under applicable law with the protection of the public health or safety if a qualified representative of such organization, agency or instrumentality has made a written request that such name and address be provided for a purpose authorized by law.

5. Any information in this system from correspondence or inquiries sent to the VA may be disclosed to State or Federal agencies at the request of the correspondent or inquirer in order for those agencies to help the correspondent with his or her problem. The information disclosed may include the name and address of the correspondent or inquirer

and detail concerning the nature of the problem specified in the correspondence.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

In the Office of the General Counsel and District Counsel offices, all inquiries and correspondence are placed in individual folders on storage shelves or place in file cabinets.

RETRIEVABILITY:

Records are maintained in alphabetical order by last name of the individual covered by the system.

SAFEGUARDS:

Records are maintained in a manned room during working hours. During nonworking hours, there is a limited access to the building with visitor control by security personnel, and the room where the records are kept is locked. Access to the records is only authorized to VA personnel on a "need to know" basis.

RETENTION AND DISPOSAL:

In the Office of the General Counsel, correspondence records prior to 1975, relating to a veteran, which result in a legal opinion have been placed on microfiche, and the paper records are currently stored in the Washington National Records Center. Reference copies on microfiche are available for use in the Law Library. In the future, as these records are microfiched, no paper records will be retained. All other system records concerning veterans are kept for two years in the Office of General Counsel. Thereafter, these records are maintained for 3 years by the VACO Record Management Section and then destroyed. All other records that deal with matter of legal opinions and precedent are maintained permanently. Records in District Counsel Offices are maintained for a period of 2 years and thereafter destroyed.

SYSTEM MANAGER AND ADDRESS:

Assistant General Counsel (026), Office of General Counsel, VA Central Office, Washington, D.C. 20420.

NOTIFICATION PROCEDURE:

An individual who wishes to determine whether a record is being maintained by the Assistant General Counsel (026) under his or her name or other personal identifier or wants to determine the contents of such records should submit a written request or apply in person to the Assistant General Counsel (026).

RECORD ACCESS PROCEDURES:

An individual who seeks access to or wishes to contest records maintained under his or her name or other personal identifier may write or call or visit the Assistant General Counsel (026).

CONTESTING RECORD PROCEDURES:

(See Record Access Procedures above.)

RECORD SOURCE CATEGORIES:

Individuals (veterans, nonveterans), attorneys, employees, members of Congress, VA officials requesting legal opinions and VA records.

3. The system currently identified as 06VA024, "Claimant Private Relief Legislative Files-VA", appearing at 42FR49731 is renumbered 06VA026 and is revised as follows:

SYSTEM NAME:

Claimant Private Relief Legislative Files-VA

SYSTEM LOCATION:

Records are maintained in the Office of General Counsel (026), VA Central Office, Washington, D.C. 20420.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The following categories of individuals are covered by this system: (1) Veterans; and (2) their beneficiaries and dependents, on behalf of whom private relief bills are introduced, or proposed for introduction, in Congress.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records (or information contained in records) may include information pertinent to private relief bills such as: (1) The bill for relief (which contains name, other identifying information, personal data and the claim for a particular type of legislative relief); (2) other Federal agency reports; (3) VA reports pertaining to the private relief bill; (4) Congressional committee reports and (5) the Congressional Record.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 38, United States Code, 210(c).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. The record of an individual who is covered by this system may be disclosed to a member of Congress or staff person acting for the member when the member or staff person requests the record on behalf of and at the request of that individual.

2. Any information in this system, except for the name and address of a veteran, which is relevant to a suspected violation or reasonably imminent violation of law, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, may be disclosed to a Federal, State, local or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, rule, regulation or order issued pursuant thereto.

3. The name and address of a veteran, which is relevant to a suspected violation or reasonably imminent violation of law, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, may be disclosed to a Federal agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto, in response to its official request.

4. The name and address of a veteran, which is relevant to a suspected violation or reasonably imminent violation of law concerning public health or safety, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, may be disclosed to any foreign, State of local governmental agency or instrumentality charged under applicable law with the protection of the public health or safety if a qualified representative of such organization, agency or instrumentality has made a written request that such name and address be provided for a purpose authorized by law.

5. Records pertinent to consideration of private relief bills such as VA and other Federal agency reports may be disclosed to Congressional members in their elected represented capacity and to other Federal agencies upon their official request to enable them to aid or to comment on whether the petitioning veteran should obtain the requested relief and to facilitate the preparation and release of reports by other Federal agencies regarding the matter.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Active records are maintained in individual file folders and synopsized on file cards, both of which are kept in metal storage cabinets.

RETRIEVABILITY:

Records and file cards are indexed by last name and bill number of the individuals covered by this system.

SAFEGUARDS:

Records and file cards are maintained in a manned room during working hours. During nonworking hours, the file area is locked, and the building is protected by the Federal Protective Service. Access to the records is only authorized to VA personnel on a "need to know" basis.

RETENTION AND DISPOSAL:

Index cards and record files which result in legislation are maintained permanently in the Office of General Counsel. The other record files and cards are maintained for a period of 10 years and then destroyed.

SYSTEM MANAGER AND ADDRESS:

Assistant General Counsel (026), Professional Staff Group VI, Office of General Counsel, VA Central Office, Washington, D.C. 20420.

NOTIFICATION PROCEDURE:

An individual who wishes to determine whether a record is being maintained by the Assistant General Counsel (026) under his or her name or other personal identifier or wishes to determine the contents of such records should submit a written request or apply in person to the Assistant General Counsel (026).

RECORD ACCESS PROCEDURES:

An individual who seeks access to or wishes to contest records maintained under his or her name or other personal identifier may write, call or visit the Assistant General Counsel (026).

CONTESTING RECORD PROCEDURES:

(See Record Access Procedures above.)

RECORD SOURCE CATEGORIES:

Courts, veterans, litigants and their attorneys, Federal agencies, insurance carriers, witnesses, or other interested participants to the proceedings and VA records.

4. The system of records currently identified as 16VA024, "Litigant, Tort Claimant, EEO Complainant and Third Party Recovery Files-VA", appearing at 42 FR 49735 is renumbered 16VA026 and is revised as follows:

16VA026

SYSTEM NAME:

Litigant, Tort Claimant, EEO Complainant and Third Party Recovery Files-VA

SYSTEM LOCATION:

Litigant, tort claimant and third party recovery files are maintained at the Office of General Counsel (026), VA Central Office, Washington, D.C. 20420, and Offices of the District Counsels. Addresses for District Counsel offices may be obtained by contacting the above-mentioned Office of General Counsel address. Equal Employment Opportunity (EEO) complaint files are maintained in the Office of General Counsel only.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The following categories of individuals are covered by this system: (1) Litigants; (2) claimants under the Federal Tort Claims Act, EEO complainants; and (3) veterans involved in third party recovery cases brought by or against the Government and affecting the VA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records (or information contained in records) may include: (1) Pleadings; (2) opinions; (3) briefs; (4) decisions; and (5) evidentiary and nonevidentiary matter relating to a case or controversy in an administrative or litigation proceeding (e.g., witness statements, agency reports, EEO Counselor's reports, recommending findings by the EEO Commission, and other supporting material).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 38, United States Code, 210(c), 29 CFR 1613.222 (EEO cases commenced under 42 U.S.C. 2000e–16).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. The record of an individual who is covered by this system may be disclosed to a member of Congress or staff person acting for the member or staff person requesting the record on behalf of and at the request of that individual.

2. Any information in this system, except for the name and address of a veteran, which is relevant to a suspected violation or reasonably imminent violation of law, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, may be disclosed to a Federal, State, local or foreign agency charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation or order issued pursuant thereto.

3. The name and address of a veteran, which is relevant to a suspected violation or reasonably imminent violation of law, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, may be disclosed to a Federal agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto, in response to its official request.

4. The name and address of a veteran, which is relevant to a suspected violation or reasonably imminent violation of law concerning public health or safety, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, may be disclosed to any foreign, State or local governmental agency or instrumentality charged under applicable law with the protection of the public health or safety if a qualified representative of such organization, agency of instrumentality has made a written request that such name and address be provided for a purpose authorized by law.

5. Pleadings, opinions, briefs, decisions and evidentiary and nonevidentiary matters may be disclosed to a Federal agency upon its official request to enable that agency to properly prepare a particular case or controversy regarding an administrative claim filed under the Federal Tort Claims Act or a debt collection proceeding under the Federal Medical Care Recovery Act.

6. Pleadings, opinions, briefs, decisions and evidentiary and nonevidentiary matter may be disclosed to a Federal agency to enable the VA to obtain records necessary for the VA to properly prepare a particular case or controversy under the Federal Tort Claims Act or a proceeding under the Federal Medical Care Recovery Act.

7. Pleadings, opinions, briefs, decisions and evidentiary and nonevidentiary matter may be disclosed to a Federal or a State court to enable the VA to file pleadings, comply with rules and procedures of the court, or to respond to a request from the court in any case or controversy.

8. Pleadings, opinions, briefs, decisions and matters of evidentiary and nonevidentiary matter may be disclosed to a Federal, State, local, or foreign agency, insurance carriers, other individuals from whom the VA is seeking reimbursement and other parties

litigant or having an interest in administrative, prelitigation, litigation and post-litigation phases of a case or controversy, Provided, that the name and address of a veteran can only be disclosed under this routine use if the release is for a VA debt collection proceeding, or if the name and address has been provided to the VA by the party seeking the information.

9. EEO complaint records, including the identities of the complainant and the witnesses, the complaints, investigation reports, General Counsel decisions, recommended findings by the EEOC, agency (VA) comments and other supporting material, may be disclosed to representatives of the complainant, and to Department of Justice and to other Federal agencies in order to inform them of the matters in the complaint and to apprise the parties if the identities of the complainant and witnesses.

10. Any information in this system may be disclosed to the Department of Justice (DOJ) including U.S. Attorneys upon its official request in order for the VA to respond to pleadings, interrogatories, orders or inquiries from the Department of Justice, and to supply the DOJ with information, to enable the DOJ to represent the U.S. Government in any phase of litigation or in any case or controversy involving the VA.

11. Any information in this system may be disclosed to a Federal grand jury. A Federal court or a party in litigation, or a Federal agency or party to an administrative proceeding being conducted by a Federal agency, in order for the VA to respond to and comply with the issuance of a Federal subpoena.

12. Any information in this system may be disclosed to a State or municipal grand jury, a State or municipal court or a party in litigation, or to a state or municipal administrative agency functioning in a quasi-judicial capacity or a party to a proceeding being conducted by such agency, in order for the VA to respond to and comply with the issuance of a State or municipal subpoena; provided, that any disclosure of claimant information made under this routine use must comply with the provisions of 38 CFR 1.511.

RETRIEVABILITY:

Records are maintained in alphabetical order by last name of an individual covered by the system.

SAFEGUARDS:

Records are maintained in a manned room during working hours. During nonworking hours, the file area is locked, and the building is protected by the Federal Protective Service. Access to the records is only authorized to VA personnel on a "need to know" basis.

RETENTION AND DISPOSAL:

Upon completion of a case, except for precedent-setting cases (which are maintained permanently), records are treated as follows:

In Central Office, litigation, tort claimant and third-party recovery files are maintained in the Office of General Counsel for two years, retired to the Washington National Federal Records Center for five years and then destroyed. EEO complainant records are maintained in the Office of General Counsel until the close of the complaint, sent to the VACO Records Management Section for four years, then destroyed.

In District Counsel Offices, civil litigation and third-party recovery files are maintained in the affected District Counsel Office for two years, then destroyed. Tort claimant files are maintained in the affected District Counsel Office for one year, retired to the appropriate Federal Records Center for five years, then destroyed. Criminal litigation prosecution files are maintained in the affected District Counsel Office for three years, then destroyed.

SYSTEM MANAGER AND ADDRESS:

Assistant General Counsel (026), Professional Staff Group VI, Office of General Counsel, VA Central Office, Washington, D.C. 20420.

NOTIFICATION PROCEDURE:

An individual who wishes to determine whether a record is being maintained by the Assistant General Counsel (026), under his or her name or other personal identifier or wants to determine the contents of such records should submit a written request or apply in person to the Assistant General Counsel (026).

RECORD ACCESS PROCEDURES:

An individual who seeks access to or wishes to contest records maintained under his or her name or other personal identifier may write, call or visit the Assistant General Counsel (026).

CONTESTING RECORD PROCEDURES:

(See Record Access Procedures above.)

RECORD SOURCE CATEGORIES:

Courts, claimants, litigants, complainants and their representatives or attorneys, other Federal agencies, insurance carriers, witnesses and other interested participants to the proceedings and VA records.

[FR Doc. 82-869 Filed 1-12-82; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 47, No. 8
Wednesday, January 13, 1982

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).

CONTENTS

1

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND PLACE: Commission Meeting, Thursday, January 14, 1982, 10 a.m.

LOCATION: Room 456, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: 1. Neiss report to Senate Appropriation Committee.

The staff will brief the Commission on a draft report to the Senate Appropriation Committee concerning the National Electronic Injury surveillance System (NEISS).

STATUS: Closed to the public.

MATTERS TO BE CONSIDERED: 2. Enforcement Matter OS #1085.

The staff will brief the Commission on issues concerning enforcement matter OS #1085.

CONTACT PERSON FOR ADDITIONAL INFORMATION:

Sheodon D. Butts, Deputy Secretary, Office of the Secretary, Room 342E, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

[S-40-82 Filed 1-8-82; 4:21 pm]

BILLING CODE 6355-01-M

2

FEDERAL COMMUNICATIONS COMMISSION.

Deletion of Agenda Item From January 13th Open Meeting

The following item has been deleted at the request of the Office of the General Counsel from the list of agenda items scheduled for consideration at the January 13, 1982 Open Meeting and previously listed in the Commission's Notice of January 6, 1982.

Agenda, Item No., and Subject

Private Radio—5—*Title:* Report and Order concerning the general exemption from the radiotelegraph requirements for cargo vessels of 1600 gross tons and upward engaged on coastwise voyages. *Summary:* The Commission will consider granting a general exemption from the radiotelegraph requirements of the Communications Act to cargo ships of 1600 gross tons and upward when navigated on domestic voyages along the coasts of the contiguous 48 states. The ships will be required to have specific radiotelephone equipment for both terrestrial and satellite communications and also meet additional operational requirements

Issued: January 8, 1982.

William J. Tricarico,

Secretary, Federal Communications Commission.

Deletion of Agenda Item From January 13th Closed Meeting

The following item has been deleted at the request of the Office of the General Counsel from the list of agenda items scheduled for consideration at the January 13, 1982 Closed Meeting and previously listed in the Commission's Notice of January 6, 1982.

Agenda, Item No., and Subject

Complaints and Compliance—1—Request by Curran Communications, Inc. for reconsideration of Commission's letter of admonition issued to Radio Station WPAM, Pottsville, Pennsylvania

[S-45-82 Filed 1-11-82; 1-15-82]

BILLING CODE 6712-01-M

3

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting.

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Monday, January 18, 1982, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Application for Federal deposit insurance:
Bank of Los Angeles, a proposed new bank, to be located at 8901 Santa Monica Boulevard, Los Angeles, California.

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:
Case No. 45,019-L—Northeast Bank of Houston, Houston, Texas
Case No. 45,048-L—American City Bank & Trust Company, National Association, Milwaukee, Wisconsin
Case No. 45,056-L—Banco de Ahorro de Puerto Rico, San Juan (Hato Rey), Puerto Rico
Case No. 45,061-L—The Drovers' National Bank of Chicago, Chicago, Illinois
Case No. 45,062-L—The Hamilton National Bank of Chattanooga, Chattanooga, Tennessee

Memorandum and Resolution re: The Mission State Bank & Trust Company, Mission, Kansas

Recommendations with respect to payment for legal services rendered and expenses incurred in connection with receivership and liquidation activities:
Feldstein, Gelpi, Hernandez & Castillo, Old San Juan, Puerto Rico, in connection with the liquidation of Banco Credito y Ahorro Ponceno, Ponce, Puerto Rico.
Francis, Doval, Munoz, Acevedo, Otero & Trias, San Juan, Puerto Rico, in connection with the liquidation of Banco Credito y Ahorro Ponceno, Ponce, Puerto Rico.

Memorandum and Resolution re: FDIC regulations selected for review during 1982.

Memorandum re: Mileage rates paid to Corporation employees.

Reports of committees and officers:
Minutes of the actions approved by the Committee on Liquidations, Loans and Purchases of Assets pursuant to authority delegated by the Board of Directors.
Reports of the Division of Bank Supervision with respect to applications or requests approved by the Director or Associate Director of the Division and the various Regional Directors pursuant to authority delegated by the Board of Directors.
Reports of the Director, Division of Liquidation:
Memorandum re: Reports Required Under Delegated Authority; Status of Approved Committee Cases.
Memorandum re: Reports Required Under Delegated Authority; Foreclosure Bids.

Discussion Agenda: No matters scheduled.

The Meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550-17th Street, NW., Washington, D.C.

Requests for information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389-4425.

Dated: January 11, 1982.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S-43-82 Filed 1-11-82; 12:34 pm]

BILLING CODE 6714-01-M

4

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting.

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Monday, January 18, 1982, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors pursuant to sections 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Request for modification of assistance agreement: Name and location of bank authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(4), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Requests for relief from adjustment for violations of Regulation Z:

Names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(8) and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8) and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents, or other persons participating in the conduct of the affairs thereof:

Names of persons and names of locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(9), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda:

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.: Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, N.W., Washington, D.C.

Requests for information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389-4425.

Dated: January 11, 1982.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S-44-82 Filed 1-11-82; 12:34 pm]

BILLING CODE 6714-01

5

FEDERAL MARITIME COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: January 7, 1982, 47 FR 887.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: January 13, 1982, 9 a.m.

CHANGES IN THE MEETING:

Withdrawal of the following item from the open session:

6. Docket No. 81-39: Agreement Nos. 10333, 10333-1 and 10333-2 Calcutta/Bangladesh/U.S.A. Pool Agreement—Referral of motion to stay, modify or terminate the order instituting the proceeding.

Addition of the following item to the closed session:

3. Docket No. 81-39: Agreement Nos. 10333, 10333-1 and 10333-2 Calcutta/Bangladesh/U.S.A. Pool Agreement—Referral of motion to stay, modify or terminate the order instituting the proceeding.

[S-47-82 Filed 1-11-82; 3:46 pm]

BILLING CODE 6730-01-M

6

NATIONAL SCIENCE BOARD.

DATE AND TIME:

January 21, 1982.

8:30 a.m.—Open Session.

January 22, 1982

8:30 a.m.—Open Session.
10:30 a.m.—Closed Session.

PLACE: National Science Foundation, 1800 G Street, N.W., Washington, D.C.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED AT THE OPEN SESSIONS:

Thursday, January 21, 8:30 a.m.

1. Minutes—Open Session—231st Meeting
2. Chairman's Items
3. Director's Report
   a. Report on Grant and Contract Activity—11/18/81-1/21/82
   b. Organizational and Staff Changes
   c. Congressional and Legislative Matters
   d. NSF Budget for Fiscal Year 1982
4. NSF Advisory Groups—Reports on Meetings
5. Program Review—Materials Research

Friday, January 22, 8:30 a.m. (Conclusion of Open Session)

6. Grants, Contracts, and Programs
7. Reports on Meetings of Board Committees
8. Other Business
9. Next Meeting—National Science Board—February 18-19, 1982

MATTERS TO BE CONSIDERED AT THE CLOSED SESSION:

Friday, January 22, 10:30 a.m.

A. Minutes—Closed Session—231st Meeting
B. Grants, Contracts, and Programs
C. NSF Budget Requests for Fiscal Year 1983 and Subsequent Years
D. NSB Annual Reports
E. NSB and NSF Staff Nominees

CONTACT PERSON FOR MORE INFORMATION: Miss Margaret L. Windus, Acting Executive Officer, NSB, 202/357-9582.

[S-46-82 Filed 1-11-82; 2:36 pm]

BILLING CODE 7555-01-M

federal register

Wednesday
January 13, 1982

Part II

Environmental Protection Agency

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Revised Gaseous Emmission Regulations for 1984 and Later Model Year Light-Duty Trucks and Heavy-Duty Engines

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[AMS-FRL 1934-2]

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Revised Gaseous Emission Regulations for 1984 and Later Model Year Light-Duty Trucks and Heavy-Duty Engines

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes revisions to the gaseous emission regulations promulgated for 1984 and later model year light-duty trucks (LDT's) and heavy-duty engines (HDEs). This rulemaking is in response to EPA's commitment to ease the regulatory burden on the automotive industry. These revisions include:

1. A three-year revision (1984–1986) of the HDE carbon monoxide (CO) emission standard to 35 g/BPH-hr, a level which heavy-duty gasoline-fueled engines (HDGE) can achieve without catalytic converter technology (our feasibility analysis indicates that the statutory hydrocarbon (HC) emission standard is feasible with non-catalyst technology).

2. A 2-year delay of the implementation of the HDE Selective Enforcement Audit (SEA) program (from 1984 to 1986).

3. Relaxation of the Acceptable Quality Level (AQL) applicable to LDT and HDE SEA (from 10 percent to 40 percent), and,

4. Minor amendments involving SEA, maintenance intervals, and test procedure.

Through these actions, we expect the HDE manufacturers will accrue substantial cash expenditure and cash flow savings. These in turn should be passed on directly to the purchasers of heavy-duty vehicles in the form of lower prices. Implementation of these actions is not expected to have a significant adverse effect on air quality.

DATES: EPA will hold a public hearing on this Notice on February 18, 1982. The hearing will convene at 9:00 a.m. and adjourn at 5:00 p.m., or at a later time if necessary to complete the business of the hearing. If necessary, the hearings may be continued to February 19, 1982. Comments will be accepted to the docket for a period of 30 days following the close of the hearing, and should be submitted on or before March 22, 1982. Those wishing to participate actively in the public hearing process should notify the public contact (shown below) not later than two weeks prior to the hearing.

ADDRESSES: The hearing will take place in the conference room at the EPA Motor Vehicle Emissions Laboratory, 2565 Plymouth Road, Ann Arbor, MI 48105.

Written comments, other than those submitted directly at the hearing, should be submitted (preferably 4 copies) to: Central Docket Section (A–130), Environmental Protection Agency, Attn: Docket No. A–81–11, 401 M. Street, S.W., Washington, D.C. 20460.

Docket No. A–81–11 is located in the U.S. EPA, Central Docket Section, West Tower Lobby, Gallery 1, 401 M Street, S.W., Washington, D.C. The dockets may be inspected between 8 a.m. and 4 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Glenn W. Passavant, Emission Control Technology Division, U.S. Environmental Protection Agency, 2665 Plymouth Road, Ann Arbor, MI 48105, Telephone: (313) 668–4408.

SUPPLEMENTARY INFORMATION:

I. Background

In December of 1979 EPA promulgated gaseous emission regulations for 1984 and later model year HDEs (45 FR 4136). A similar rulemaking affecting 1984 and later model year LDTs was promulgated in September 1980 (45 FR 63734). The public dockets for these rulemakings (OMSAPC 78–4 and 79–2, respectively) are herein incorporated by reference. The primary function of these rulemakings was to promulgate the statutory HC and CO emission standards called for in section 202(a)(3)(A)(ii) of the 1977 Clean Air Act Amendments. The statutory emission standards were to represent at least a 90 percent reduction from uncontrolled levels.

In addition to the statutory emission standards these rulemakings implemented a number of other provisions also to be effective for the 1984 model year. The major provisions common to both rulemakings included:

1. Revised useful life definition,

2. Revised certification requirements with respect to durability testing and allowable maintenance,

3. An idle test and an idle emission standard for gasoline-powered light-duty trucks and heavy-duty engines, and,

4. The implementation of a 10 percent Acceptable Quality Level (AQL) for Selective Enforcement Audit (SEA) testing.

The HDE final rulemaking also included a new emission test procedure and initiated an SEA program for HDEs.

These new requirements for LDTs and HDEs were promulgated simultaneously, effective for the same model year, to avoid the procedural disruption and waste associated with frequent changes in emission regulations. EPA chose this comprehensive approach to controlling emissions from LDTs and HDEs because it represented the most efficient approach in that it allows manufacturers to deal with the effects of several regulations at once, thus avoiding repeated financial outlays for research, development, retooling, and recertification.

The HDE final rulemaking would have caused the manufacturers and related industry to invest considerable capital to comply with the requirements, with most of the necessary capital investment required between 1981 and late 1983. In the economic analysis supporting the HDE final rulemaking EPA made the finding that "[m]ost manufacturers should have little trouble financing the required investment barring a post-1980 recession."

At the time the final rule was being prepared the heavy-duty engine industry had just finished a year of record sales (1978) and sales continued strong into 1979. However, in later 1979 and early 1980 a general economic downturn occurred. As 1980 progressed the recession became more severe, and LDT and HDE sales dropped dramatically. Over the past five to six financial reporting periods (quarters) most companies in the LDT and HDE markets have reported substantial operating losses. For many companies 1980 was a year of record losses.

EPA's belief in the technological feasibility of the 1984 HDE emission requirements and statutory HC and CO emission standards remains unchanged. However, the economic ability of the manufacturers to comply simultaneously with all of the applicable provisions is not as strong as when these provisions were promulgated in late 1979. The large sales drops in the motor vehicle industry have eroded the manufacturers' ability to underwrite all of the necessary capital investment. Considering the economic condition of the industry, compliance with all of these provisions no longer appears to be economically feasible in the short term.

In response to this economic crisis in the industry, and the need for short-term cash flow improvements, the Administration aimed at reducing the cost burden of Government regulations. Preliminary analyses by EPA indicated

that several provisions of the 1984 LDT/HDE final rulemakings which required substantial capital investment could be relaxed without causing a large loss in the emission reductions and air quality improvements expected from the original rulemakings. EPA has identified two major areas for relaxation and/or revision: 1) the heavty-duty engine emission standards and 2) the enforcement provisions related to SEA and the AQL.

In the case of the HDE emission standards, there is a clear cost breakpoint between catalyst and non-catalyst technology. To achieve compliance with the statutory CO emission standard, HDGEs require the use of catalytic converter technology. Although converters have been used for several years on both light-duty vehicles and light-duty trucks, their use in heavy-duty engine applications would require redesign, development and testing to meet the unique demands of the heavy-duty engine operating environment and the allowable maintenance interval. This would in most cases lead to the development and production of a catalyst designed, sized, and loaded specifically for heavy-duty applications.

By revising the emission standards to "non-catalyst" levels, the manufacturers (or vendors) would be able to forego all costs associated with developing heavy-duty catalysts. These savings would occur in areas such as redesign, development and testing, production tooling, and assembly tooling. And, of course, manufacturers would not need to make capital outlays in any other area related to the use of catalytic converter technology such as engine modifications, exhaust system changes, chassis heat shields, and filler neck restrictions.

There are two relaxations in the SEA provisions affecting LDTs and HDEs: (1) a two year deferral of HDE SEA and (2) a relaxation of the AQL required during formal SEA testing for both LDTs and HDEs.

Section 206(b) of the Clean Air Act provides the Administrator with broad authority and discretion in conducting production line compliance testing. EPA's production line testing program known as "Selective Enforcement Auditing" (SEA) was implemented in 1977 for light-duty vehicles and light-duty trucks. EPA presently conducts no SEA of heavy-duty engines, and had planned to initiate the program in the 1984 model year.

EPA has estimated that the HDE SEA program would require a capital investment of approximately $43.2 million (1981 dollars discounted to January 1984) spread over 1982 and 1983. This investment is necessary to purchase the facilities and equipment required to conduct formal SEA testing and to provide an adequate rate of voluntary testing if desired. Based on EPA's cost figures this investment represents 16 percent of the pre-1984 investment necessitated by the original 1984 heavy-duty engine regulations published January 21, 1980.

In recognition of the current economic condition of the industry, we have concluded that delaying the HDE SEA program for two model years would provide substantial cash flow savings to the HDE industry without significantly affecting air quality. Considering both the economic and environmental factors, the Agency announces a two-year deferral in the implementation of the SEA program for HDE.

The second part of the proposed SEA revisions affects the Acceptable Quality Level (AQL) applicable to LDT and HDE SEA beginning in the 1984 model year. This AQL is given as a percentage which represents the maximum noncompliance rate allowed during formal SEA testing before a manufacturer incurs a substantial (greater than 5 percent) risk of failing the SEA. EPA has promulgated a 10 percent AQL for both LDTs and HDEs beginning in 1984. Even though EPA continues to believe that LDT and HDE manufacturers currently possess the necessary technological capability and leadtime to comply with 1984 model year emission requirements with a 10 percent AQL, recent developments indicate that the economic feasibility of complying with all of these requirements simultaneously is far more difficult than when the provisions were first promulgated.

Recognizing this situation, EPA proposes to change the AQL for HDEs and LDTs from 10 percent to 40 percent. This change should help to decrease the industry's costs of complying with new emissions regulations. Manufacturers will accrue savings as a result of lower self audit costs and in some cases lower facility and equipment costs. Also, in some cases the higher target emission levels with the 40 percent AQL may reduce pre-production compliance costs for the industry.

As mentioned previously, a new HDE test procedure and revised useful life requirements for LDTs and HDEs are both effective beginning in the 1984 model year. As a part of the Administration's regulatory relief program, EPA has committed to a study of the issues pertinent to these provisions and has formally solicited public comment (46 FR 31677, June 17, 1981) (public docket A-81-20). The period to submit information and comment on these issues closed November 1, 1981 for the HDE test procedure and closed December 1, 1981 for the useful life provisions.

EPA recognizes that the transient test and useful life provisions play a key role in the overall emission control program. They directly affect both the manufacturers' compliance strategies and the feasibility of the emission standards. These issues are especially important in this rulemaking and cannot be completely separated from the proposed revised emission standards for HDEs. Given the importance of these provisions in this rulemaking, docket A-81-20 is herein incorporated by reference.

EPA is preserving the option to modify the HDE transient test and useful life provisions as an integral part of the final rulemaking process for this proposed rule. Commenters asserting that changes are needed to make the transient test more accurate or precise are urged to suggest specific amendments where possible. To the extent that issues raised in this rulemaking might elicit additional comment for either the transient test or useful life studies, EPA will accept that comment in conjunction with this rulemaking.

Specifically, concerning the useful life provision, affected manufacturers have contended that a shorter period than full life would be appropriate. This appears to be based in large part on manufacturers' concerns that required statements on the engine label giving the engine's average useful life would expose manufacturers to increased liability under commercial warranties. Comments are welcome on how best to change the wording on the label, or other appropriate measures to address these concerns. Manufacturers should also address whether such changes would ease the perceived burdens of the full life useful life provision, or whether they believe further changes are warranted based upon technical, economic, or other justifications.

Concerning the transient test, this procedure has been the subject of extensive discussion between EPA and the regulated industry since its promulgation in December of 1979. EPA has visited several transient test facilities and met with manufacturers to discuss their concerns about the transient test procedure. EPA has also received a great deal of correspondence on this topic primarily from the engine manufacturers and their trade associations. EPA remains open to additional substantive comment on the transient test procedure and will fully

consider any new information which identifies significant defects in either the method used to develop the transient test or the transient test procedure itself.

EPA has maintained that tighter standards under the steady state test would provide little assurance that appreciable further emission reductions would be achieved by engines in actual use. Those who assert that the transient test should be deferred should also address whether any significant emission reductions beyond current levels can be attained under the existing steady state test procedure, and if so, what standards would be appropriate during any period of deferral. If the need for deferral of the 1984 implementation date for the transient test is established during this rulemaking, EPA will consider all comments on the appropriateness of interim standards; EPA will then make a final determination of whether it would be more appropriate to adopt interim standards or to retain the pre-1984 standards with the steady state test procedure during any period of deferral.

II. Authority

Statutory authority for these actions is provided in sections 202, 206, and 301(a) of the Clean Air Act (42 U.S.C. 7521, 7525, and 7601(a)). Sections 202(a)(3)(B) and (C) of the Act provide that,

(B) During the period of June 1 through December 31, 1978, in the case of hydrocarbons and carbon monoxide, or during the period of June 1 through December 31, 1980, in the case of oxides of nitrogen, and during each period of June 1 through December 31 of each third year thereafter, the Administrator may, after notice and opportunity for a public hearing promulgate regulations revising any standard prescribed as provided in subparagraph (A)(ii) for any class or category of heavy-duty vehicles or engines. Such standards shall apply only for the period of three model years beginning four model years after the model year in which such revised standard is promulgated. In revising any standard under this subparagraph for any such three model year period, the Administrator shall determine the maximum degree of emission reduction which can be achieved by means reasonably expected to be available for production of such period and shall prescribe a revised emission standard in accordance with such determination. Such revised standard shall require a reduction of emissions from any standard which applies in the previous model year.

(C) Action revising any standard for any period may be taken by the Administrator under subparagraph (B) only if he finds—

(i) that compliance with the emission standards otherwise applicable for such model year cannot be achieved by technology, processes, operating methods, or other alternatives reasonably expected to be available for production for such model year without increasing cost or decreasing fuel economy to an excessive and unreasonable degree; and

(ii) the National Academy of Sciences has not, pursuant to its study and investigation under subsection (c) issued a report substantially contrary to the findings of the Administrator under clause (i).

As regards the SEA provisions, Section 206(b)(1) of the Act provides that, "In order to determine whether new motor vehicles or new motor vehicle engines being manufactured by a manufacturer do in fact conform with the regulations with respect to which the certificate of conformity was issued, the Administrator is authorized to test such vehicles or engines. Such tests may be conducted by the Administrator directly or, in accordance with conditions specified by the Administrator, by the manufacturers." Further, section 301(a) provides, in part, that "the Administrator is authorized to prescribe such regulations as are necessary to carry out his functions under this Act."

III. Components of the Proposal

This notice is comprised of five parts. Based on their impact, this proposal contains three primary and two secondary components. The primary components include the HDE emission standards, deferral of the HDE SEA program, and relaxation of the AQL. The secondary components include the proposal of a leaded fuel spark plug maintenance interval for HDGE and minor amendments related to SEA and the HDE test procedure.

A. HDE Emission Standards

1. *Introduction.* The Clean Air Act as amended in 1977 calls for HDE HC and CO emission standards which represent at least 90 percent reductions from an uncontrolled HDGE baseline. These standards were promulgated in late 1979 effective for the 1984 model year. A related section of the Act (cited above) permits EPA to revise for a three year period any of the statutory HDE emission standards if it can make either the technology, fuel economy, or cost findings necessary to support the revision. In the event that the HDE emission standards are revised, the Act requires that the revised standard(s) be set so as to achieve the maximum degree of emission reduction reasonably available.

This proposal to revise the HDE CO emission standard for a period of three model years is based on the cost-related protion of the revision provisions. EPA still believes that with the use of catalytic converter technology the statutory HDE NC and CO emission standards are technologically feasible for all HDGEs and the result of this technology will be a fuel economy improvement fore HDGEs. However with economic problems of the industry, the large capital outlays for the development, application, and production of catalytic converter systems on HDGEs appear to be excessive and unreasonable in the short term. Since our testing and analysis in support of the original 1984 final rulemaking indicated that the statutory CO standard is the factor forcing the use of catalytic converter technology on HDGEs, we propose to revise the CO emission standard to "non-catalyst" levels.

Under Section 202(a)(3)(B) of the Clean Air Act this revision is constrained to a maximum of three years. After that, the standard could be revised again (and would have to be more stringent) or the statutory standard could go into effect. Since we are limited here to a three year revision, the statutory CO emission standard (15.5 g/BHP–hr) remains in place for the 1987 model year. This does not necessarily imply that the statutory CO standard will automatically be implemented for the 1987 model year. In the appropriate time period as provided in the Act, EPA will reconsider whether an additional revision is necessary or if the statutory standard should be allowed to remain effective for 1987 model year engines. In any case EPA will provide adequate leadtime for both public participation and compliance.

2. *Revised HDE CO Emission Standard.* The level of the revised CO emission standard (proposed at 35 g/BHP-hr) is influenced by several factors. First is our intention to set a standard which is feasible using non-catalyst technology. Second, since the purpose of this action is to reduce excessive and unreasonable short-term costs, the technology used should be less expensive to develop and purchase than the catalyst system. Third, because of the limited time available for development, tooling, and certification, the technology used should not require substantial leadtime. And of course, fuel economy effects must be considered.

Given these technology, cost, leadtime, and fuel economy constraints, the technology available to gain greater emission reductions becomes limited to more conventional approaches such as have been used in the LDV and LDT fleet for several years. These approaches should be readily available for fleetwide use in HDGEs for 1984. Because of leadtime and cost we have excluded from consideration at this time the widespread adoption of technologies

such as closed-loop electronic controls, throttle body injection, thermal reactors, or turbocharging which if used would result in a lower feasible standard than proposed here. EPA believes that the HC and CO standards being considered here are achievable for the 1984 model year because the technology analysis incorporates only the conventional approaches which are commonly used in the current motor vehicle fleet. This should aid in greatly reducing leadtime requirements. It should also be noted that the use of conventional (non-catalyst) control technology should make full life compliance easier than with catalyst technology.

Our analysis (found in the Regulatory Support Document) describes in depth the strategies and components that we expect would be used to achieve the 1984 HC and CO emission standards. In summary, these include automatic chokes, heated air intake, and early fuel evaporation as well as air modulation and increased air injection. We also expect significant reductions can be gained through engine recalibrations and calibrations optimized to the transient test procedure. The conclusion of our analysis is that such techniques should allow manufacturers to meet the statutory 1.3 g/BHP-hr HC standard, and relaxed CO standard of 35 g/BHP-hr.

The relaxed CO standard represents more than a doubling of the 15.5 g/BHP-hr statutory standard. Even so, this still represents a substantial reduction in CO emissions when compared to those of current HDGEs. As part of our support and analysis of the 1984 HDE final rulemaking, we tested 12 1979 HDGEs on the transient test procedure. These engines represent current technology emission levels. The arithmetic mean HC and CO levels of these engines were 2.84 and 75.6 g/BHP-hr respectively. The median values were 2.5 g/BHS-hr and 65 g/BHP-hr respectively. So, as compared to current levels, the standards would represent average reductions of at least 54 percent for both HC and CO.

The Act also requires that any revised HDE emission standard be more stringent than that of the previous model year. Numerically the proposed revised CO emmission standard (35 g/BHP-hr) would appear less stringent than the current HDE CO emission standard (25 g/BHP-hr). As described above, the increase in stringency comes about as a result of the test procedure change.

It should be noted that even though the CO emission standard has been reproposed, this will have little or no impact on the compliance programs and strategies for heavy-duty diesel engines (HDDEs). The relaxation of the CO standard will not affect diesels due to their inherently low CO emission levels.

3. *HDE HC Emission Standard.* As was discussed previously, the revision provision of the Act requires that any revised standard be set to achieve the maximum degree of reduction reasonably available. The maximum degree of reduction reasonably available for HC is limited by the same technology, cost, leadtime, and fuel economy constraints as described above for CO.

However, even given these constraints, EPA believes that the statutory HDE HC emission standard (1.3 g/BHP-hr) is still achievable without catalyst technology. As is described more fully in the issues discussion which follows later, there are emission control strategies and components which would allow the HDGE manufacturers to achieve the necessary target emission levels. These include components such as automatic chokes, early fuel evaporation, and preheated air intake and calibration changes such as optimized spark timing, more precise fuel metering, and leaner carburetor calibrations.

Even though we are not actually revising the level of the HC emission standard, the move to non-catalyst standards and the SEA related changes would in fact lead to an increase in the target emission level and make the standard easier to achieve. EPA expects that for HDGEs the targets would rise from 0.50 g/BHP-hr to 1.10 g/BHP-hr (a 120 percent increase) for 1984 and 1985 and then drop back to 1.0 g/BHP-hr in 1986 (still a 100 percent increase).

The constraints affecting HDGE manufacturers do not affect HDDE manufacturers. The move to non-catalyst technology will not affect diesel engine compliance programs, so HDDE manufacturers' compliance programs should remain unchanged. Our technological feasibility analysis for diesels remains unchanged from that published in December 1979. The SEA-related changes described previously will lead to a 39 percent increase in the HC target level for 1984 and 1985 and an 18 percent increase in 1986. Therefore, the compliance difficulty for HDDE manufacturers would be eased somewhat by this proposal.

Considering the technologies and leadtime still available and the relaxations in the HC target emission levels, EPA believes that the statutory emission standard is feasible at a reasonable cost for 1984 model year HDEs. However, EPA remains open to comment and especially encourages submission of data regarding the feasibility of the statutory standard and alternative levels if the statutory levels are considered infeasible. We will promulgate a revised HC standard if the comments and data so warrant.

In the original HDE final rulemaking EPA promulgated an optional steady-state HC emission standard for HDDEs, to allow the manufacturers of these engines adequate additional time to investigate a cost saving means of implementing the transient test procedure. The 1983 (now 1984) California 13-mode HC standard (0.5 g/BHP-hr) was allowed as an option for 1984 model year Federal certification of HDDEs. This standard was chosen to provide agreement with the manufacturers' emission control development programs for California certification while at the same time minimizing any loss in emission reduction benefits which might occur under this option.

In recent conversations with the manufacturers the optional HC standard has been characterized as being too stringent to provide the short term alternative EPA orignially intended. EPA did not intend for the manufacturers to undertake major development programs in achieving the one year optional HC standard. EPA desires that the manufacturers aim their development programs and resources at meeting the statutory HC standard (1.3 g/BHP-hr) over the diesel transient test procedure.

In light of these concerns, EPA is requesting comments on the stringency of the optional 13-mode HC standard for HDDEs. The comments should address the stringency of the optional standard relative to EPA's intent that it not involve a major development program. Any commenter suggesting an alternative level to the current optional standard should provide justification as to why that level is appropriate. EPA will relax the optional steady-state HC standard if the comments, data, and justification submitted so warrant.

4. *HDE NO_x Emission Standard.* The currently promulgated 1984 and later model year NO_x emission standard was set at a level so as to insure that the change in the emission test procedure would not lead to an increase in the stringency of the NO_x standard. EPA is confident that the 1984 NO_x standard need not be revised as a result of the move to non-catalyst technology.

5. *Idle CO Emission Standard.* The 1984 model year is the first year in which HDGEs must comply with an idle emission standard. In this case the standard is 0.47 percent (by volume) for CO. Even applying non-catalyst

technology EPA believes that the idle CO standard is feasible for HDGEs. This could be accomplished through leaner carburetor calibrations and increased air injection. As is discussed further in the issues discussion, five of 12 current technology engines tested already meet the standard.

As before with HC, we welcome comment and data on the feasibility of the idle CO emission standard and alternative levels, and will promulgate a revised standard if the facts so warrant.

B. Deferral of the HDE SEA Program

Section 206(b) of the Clean Air Act provides the Administrator with broad discretion to implement and carry out production line testing programs. Considering all pertinent factors we have decided to delay for two years the initial implementation of an SEA program for HDEs. The primary thrust behind this action is to provide some short term relief in the form of cash flow savings and cash expenditure savings. We now expect that the total cash flow savings will sum to at least $43.2 million and the cash expenditure savings will sum to at least $24.9 million. As detailed in the Regulatory Support Document, the cash flow savings result primarily from deferred investment in facilities and equipment. Cash expenditure savings result from the elimination of formal SEA testing, self audit testing, and quality control improvements for the 1984 and 1985 model years.

The two year deferral of the HDE SEA program could, of course, result in higher per engine emission rates than would otherwise occur if the program were not delayed. Since the expected target levels without SEA are higher than those with SEA, the emission rate of the average HDE produced in 1984 or 1985 will be higher than in later model years. However, since SEA will begin in 1986, EPA expects some manufacturers may choose to certify in 1984 with the needs of the SEA program in mind, thus minimizing the negative impact.

Although this rulemaking announces EPA's intent not to require any formal SEA testing of 1984 and 1985 model year HDEs, the provisions of Subpart K will apply to SEA testing of LDTs beginning with the 1984 model year. In addition, Subpart K will be used to implement the nonconformance penalty (NCP) provisions of Section 206(g) of the Act.

In the publication of the final rules concerning 1984 emission requirements for LDTs and HDEs, EPA stated its intention to propose an NCP program to allow HDEs and LDTs above 6,000 pounds GVW ("heavy" LDTs) with emissions above applicable standards to be certified and produced. The Agency intends at a later date to formally propose the procedures governing an NCP program, which will reflect the changes being proposed in this rulemaking. For those HDE and LDT pollutants considered eligible for NCPs, the penalty will be assessed on the basis of the emission performance of production engines or vehicles. If a manufacturer elects to certify a 1984 or 1985 model year HDE or "heavy" LDT configuration above an eligible standard, but not above a designated "upper limit," the SEA procedures in Subpart K will be a part of the overall NCP system required to retain his certificate of conformity and assess the NCP. The NCP system will also be available in the event of a failure of the LDT SEA with respect to an eligible pollutant.

NCPs would continue to be provided for HDEs and "heavy" LDTs in 1986 and later model years. However, beginning with the 1986 model year, HDEs would be subject to the provisions of Subpart K for general surveillance SEA, as well as for any NCP assessments which HDE manufacturers may elect.

C. Relaxation of the AQL

The Clean Air Act authorizes the Administrator to establish emission standards for HDEs and LDTs and to test production vehicles and engines to determine compliance with these standards. As part of this test program, EPA established the AQL, or acceptable quality level approach for measuring compliance. The AQL refers to the highest acceptable noncompliance rate before a manufacturer has a signifcant chance of failing an SEA.

EPA has conducted SEAs of LDVs and LDTs since the 1977 model year using a 40 percent AQL. At a 40 percent noncompliance rate the failure probability is five percent. Results of these audits indicate that manufacturers have set emission target levels that result in failure rates (18 percent to 20 percent) that are substantially below that permitted by the 40 percent AQL, in part, to minimize the possibility of having a certificate of conformity suspended or revoked by failing an SEA. EPA, therefore, does not expect that revising the AQL for LDTs and HDEs to 40 percent will result in 40 percent noncompliance, but rather anticipates an average noncompliance level for production vehicles and engines of 20 percent or less.

We thus anticipate two effects of revising the AQL from 10 to 40 percent. First, the percentage of vehicles or engines in noncompliance with emission standards under a 40 percent AQL will be somewhat greater than the noncompliance rate permitted by a 10 percent AQL (the historical 18 to 20 percent noncompliance rate under a 40 percent AQL as compared to an expected noncompliance rate of five to eight percent under a 10 percent AQL). Secondly, because of the expected reduction in design target emission levels associated with a 10 percent AQL, emissions from complying vehicles or engines would average slightly lower with a 10 percent AQL than with a 40 percent AQL. The relaxation of the AQL from 10 to 40 percent will result in somewhat higher target emission levels and higher initial per vehicle emission rates. EPA does not believe that either of these differences will substantially increase mobile source emissions.

Relaxation of the AQL would provide substantial cash expenditure savings to the HDE industry. Primarily as a result of decreased self audit rates we expect the industry will save at least $3.6 million for the 1986–88 model years. In addition EPA expects that as a result of the higher target emission levels some per vehicle/engine consumer cost savings related to emission control hardware may also occur. These consumer cost savings will be summarized in the economic impact discussion which follows.

D. HDGE Spark Plug Maintenance Interval

In the 1984 HDE final rulemaking EPA promulgated a spark plug maintenance interval as part of its program to encourage the design of long-life emission-related components and provide the necessary building blocks for the HDE emissions warranty program. In determining these intervals, emission related maintenance was limited to that which was considered technologically necessary.

The allowable maintenance interval for spark plugs was promulgated at 25,000 miles. Although the original level proposed was 30,000 miles, after consideration of the public comments it was concluded that not all HDGE families in all applications would be able to comply with the requirement, even with the use of unleaded fuel. With the move back to non-catalyst technology, the improved spark plug wear benefits of unleaded fuel will also be lost. Therefore, we must reconsider the spark plug allowable maintenance interval when leaded fuel is used.

In the 1984 HDE regulation which implemented the allowable maintenance intervals for a number of components and subsystems, one key guide used to establish the technologically necessary interval was a review of the currently

recommended maintenance intervals. The current spark plug maintenance intervals for the four producers of HDGE's are shown below.

Manufacturer	Recommended interval (miles)
GM	12,000
IH	12,000
Chrysler	18,000
Ford	15,000–16,000

The recommended intervals are in general agreement, with the exception of those of Chrysler. One factor which influences the length of the prescribed interval is the application in which the engine is placed. This explains the longer interval for Chrysler, whose engines are used primarily in lower GVW trucks and motor homes. The closer agreement between Ford and IH/GM is because these manufacturers all offer complete product lines in the HDGE market, and build engines for vehicles of all GVWR. It is not likely that all manufacturers could increase their service interval to the 18,000 mile interval used by Chrysler, especially in some of the more rigorous applications. IH/GM would likely be able to increase their recommended maintenance intervals to 15,000 miles for a small cost.

Even though EPA will continue to encourage the design and use of longer life emission-related components and sub-systems, it is not clear that the potential benefits of an interval of 15,000 or 16,000 miles (3,000–4,000 miles over current minimums) would be large enough to justify the administrative burden and potential small cost associated with the requirement. Most certainly, no motivation presently exists for the engine manufacturers to decrease the recommended intervals from present levels. A 12,000 mile allowable spark plug maintenance interval for those HDGE's certified for use with leaded fuel would provide the necessary building blocks for the emissions warranty program while not levying any new requirement on the industry.

Therefore, we propose to amend the applicable regulations of Subpart A (86.084–25) to specify an allowable spark plug maintenance interval of 12,000 miles for those HDGEs certified for use with leaded fuel and to specify that the previously promulgated allowable spark plug maintenance interval of 25,000 miles is applicable only to those engines certified for use with unleaded fuel only.

E. Minor Amendments

EPA is also proposing several technical and procedural amendments to the regulations governing SEA of HDEs and LDTs contained in Subparts A and K a minor amendment to the heavy-duty engine test procedure of Subpart N. For HDEs, these regulations were originally published at 45 FR 4167 and 4170 (January 21, 1980), and were updated to include LDTs at 45 FR 63767 and 63772 (September 25, 1980).

These amendments are intended to clarify specific aspects of the existing regulations, to improve the efficiency with which the HDE/LDT SEA program will be conducted in the future, and to reduce the compliance burden on the affected manufacturers where practical. Each amendment and the reason for its proposal are described in the chart at the end of this preamble. Several of these changes (those with an asterisk) are more complex than the others. These particular amendments are described in more detail in a short document in the public docket entitled "Minor Amendments to the HDE/LDT SEA Procedures."

The minor amendment to the HDE test procedure arises from a manufacturer's inquiry, and would formally make the revision to which EPA agreed in a written response to the inquiry.

IV. Issues Affecting This Rulemaking

A. Feasibility of the HDE Emission Standards

As discussed previously, technology, cost, fuel economy, and leadtime restrictions must be considered in establishing the appropriate level for non-catalyst standards. Based upon our initial analysis of these factors the emission standards which we believe are feasible for 1984 and later model year HDGEs are:

HC	1.3 g/BHP-hr.
CO	35 g/BHP-hr.
NO_x	10.7 g/BHP-hr.
CO (idle)	0.47 percent (volume).

Our rationale for the proposed revised standard is thoroughly developed in the Regulatory Support Document available in the docket. The results of the analysis are summarized briefly below:

Hydrocarbons—Even applying non-catalyst technology, we believe that the statutory HC emission standard is achieveable for HDGEs. Although in some cases this represents a considerable reduction over the current levels, there are a number of control strategies available to the manufacturers. These strategies can be divided into three main groups: cold start reductions, calibration changes, and engine modifications.

Cold start emissions can be reduced significantly by using automatic chokes, preheated air intake, and early fuel evaporation. When properly calibrated these mechanisms can decrease warm-up time and improve fuel vaporization which would lead to both lower cold start emission levels and improved vehicle/engine performance.

Calibration changes will also provide substantial reductions in HC emission levels. These include optimized spark timing, EGR flow rates, and carburetor related calibrations such as air-fuel ratio, more precise metering, and others.

The third area of potential reductions is related to modifications and improvements in the intake manifold and combustion chamber. Manifold design improvements could provide improved air-fuel distribution to the cylinders. Reduction in the combustion chamber surface-to-volume ratio would also reduce HC emission levels. These types of modifications require more leadtime and are more expensive on a per engine basis, so we do not expect manufacturers will implement these modifications in all families

In addition it should be noted that both the relaxation of the AQL and the move to non-catalyst technology will act to increse the target emission levels over those previously expected. In dealing with the demands of the SEA program manufacturers must act to reduce the impact of emissions variability (engine to engine and test to test) as it relates to compliance with the emission standards. This variability adds a degree of uncertainty to the emission levels which could be expected from any given production engine. For example, the emission level of any given engine could be 10 percent higher or lower than the design target level and those engines emitting above the target level may not be in compliance with the standards. Based on the degree of confidence desired by manufacturers most choose to reduce their design target emission levels so that emission variability will not cause an unacceptable portion of the manufacturers' production engines to emit above the standard. Under a 40 percent AQL the allowable failure rate is higher than under a 10 percent AQL. As a result the 40 percent AQL will permit manufacturers to raise their target emission levels about 25 percent over what would have been necessary with a 10 percent AQL and yet still comply with the applicable AQL.

The other major factor which affects the level of the design target is the magnitude of the deterioration factor. The larger the deterioration factor the lower the design target must be. Historically non-catalyst deterioration factors have been substantially less than catalyst-based factors. Therefore

the design target levels can be higher with a non-catalyst system. For HDGE this could be as much as 50 to 60 percent higher.

Even with the restrictions described above (technology cost, fuel economy, and leadtime), we believe that the statutory HC standard is feasible for HDGEs and thus are not proposing a revised HDE HC emission standard. However, EPA remains open to comment on the feasibility of the statutory HC emission standard for HDGEs and will promulgate a revised HC standard if the comments and substantive data submitted by the public and manufacturers so warrant.

The change to non-catalyst technology will have no effect on feasibility of the statutory HC emission standard for heavy-duty diesel engines (HDDE). If anything, compliance with the standard should be easier as a result of the proposed change in the AQL. Our technological feasibility analysis for HDDEs basically remains unchanged from that presented in the analysis supporting the original 1984 final rulemaking.

In closing this discussion of the HDE HC emission standard one other area deserves brief mention. In the **Federal Register** notice of April 13, 1981 (46 FR 21628) we announced our intent to propose optional non-methane hydrocarbon (NMHC) standards for motor vehicles. When non-catalyst technology is used the need for NMHC is not as clear. Nevertheless, we fully intend to address a NMHC standard for HDEs in a proposal to be published later this year.

Carbon Monoxide—at the level of the statutory HDE CO emission standard was the prime factor in forcing the need for catalytic converter technology on HDGEs. With our decision to promulgate non-catalyst standards, the HDE CO emission standard must be revised.

To determine the proposed level for this revised standard we first reviewed the HDGE current technology baseline mentioned previously. The available data showed a wide range of CO emission levels, but clearly indicated that some engine families had superior CO emission characteristics on the transient test procedure. The range of these CO levels was 34.44–118.07 g/BHP-hr with a median of about 65 g/BHP-hr. It is our engineering judgment that the CO emission levels between 35 and 65 g/BHP-hr are more closely representative of the performance of the better designed current technology engines and thus represent the baseline level from which the initial reductions would have to be achieved. Those engines emitting above 65 g/BHP-hr tend to use excessive power enrichment and less precise fuel metering.

There are three primary means by which the required CO emission reductions can be achieved. These include general calibrations, improvements in the air injection system, and reductions in cold start emissions.

Some of the required CO reductions can be achieved through carburetor recalibrations. These would include changes related to the carburetor air-fuel ratio, power enrichment and other functions such as general fuel metering.

One of the other areas with the greatest potential for reductions is improvements in the air injection system. This would include increases in the amount of air injection, changes in the calibrations of the diverter and pressure relief valves, and possibly the use of a vacuum controlled air modulation system. All of these could provide substantial reductions in CO emission levels and perhaps small HC reductions also.

Although not as critical for CO as for HC, reductions in cold start CO emissions will aid in reaching the required target levels. These would follow as the components are added and calibration changes made to reduce cold start HC emissions.

Considering the CO emission levels of current technology HDG engines and the control techniques available, even with the technology, cost, fuel economy, and leadtime restrictions we believe a CO emission standard of 35 g/BHP-hr is feasible for all HDG engine families. Indeed one current technology engine has CO emission levels below this level. There is no question about the feasibility for HDDEs since all are already in compliance.

This 35 g/BHP-hr standard represents a substantial relaxation from the statutory standard (126 percent). On a percentage basis the relaxation in the CO target levels is even greater due to the move from catalyst to non-catalyst deterioration factors and the relaxations in the SEA program.

Oxides of Nitrogen—The currently promulgated 1984 and later model year HDE NO_x standard is 10.7 g/BHP-hr. This standard was promulgated at a level so as to insure that the change in emission test procedures would not cause an increase in the stringency of the NO_x standard over current levels. The 1984 NO_x standard is easily achievable by all manufacturers. In fact, we expect most manufacturers will be able to change spark timing to reduce HC emmissions (and perhaps increase NO_x) and yet still easily comply with the NO_x standard. No change to the HDE NO_x standard is being proposed.

Idle CO Standard—As part of the 1984 regulation related to HDEs, EPA promulgated an idle emission test procedure and idle CO emission standard for HDGEs. Just as with the statutory standards, the idle CO emission standard was derived by taking a 90 percent reduction from the uncontrolled baseline. Using the idle emission test procedure and the prescribed baseline, the idle CO emission standard was calculated to be 0.47 percent (by volume).

Our original technological feasibility testing and subsequent analysis indicated that compliance with the idle CO standard would come almost automatically as a by-product of the use of catalytic converter technology. With the move to non-catalytic converter technology the feasibility of the idle CO standard should once again be examined.

As part of the 1979 baseline program mentioned previously, EPA tested the same 12 engines on the idle emission test procedure. The idle CO emission levels for these 12 engines are shown below:

	Percent
GM 292	0.31
GM 454	0.60
GM 350	1.16
GM 366	0.91
GM 350	0.24
GM 454	0.89
Ford 370	0.52
Ford 400	1.85
IH 345	0.40
IH 446	0.30
Chrysler 360	0.23
Chrysler 440	1.28

Since five of these engines already meet the standard, this data would tend to indicate that the idle CO emission standard is feasible without catalyst technology. However, these emission results do not reflect the impact of the parameter adjustment provisions, the engine and component changes associated with the more stringent 1984 HC and CO emission standards, and any small deterioration which may occur.

Based on our knowledge of the anticipated engine and component modifications (e.g., leaner carburetor calibrations) and their effect on idle CO emission levels, EPA believes that the idle CO emission standard currently effective for the 1984 model year is achievable without catalytic converter technology. However, since both EPA and the manufacturers have limited experience with the idle test and idle CO standard we welcome comment on

the feasibility of the idle CO emission standard, and will consider promulgating a revised standard if the comments and facts so warrant.

B. Economic Impact

The implementation of the proposed revisions and relaxations would provide significant cash expenditure and cash flow savings to the industry and would also provide large cost savings to the nation's consumers. Industry cash flow savings would result primarily because the two year deferral of the HDE SEA program would allow the manufacturers to delay facility and equipment investment. Industry cash expenditure savings would result from lower R&D/tooling costs associated with non-catalyst technology for HDGEs and lower testing and quality control costs associated with the deferral of the HDE SEA program and the relaxation of the AQL. For HDGEs consumer savings would result from lower control system costs and lower SEA-related costs. Without catalysts HDGE vehicle operators would no longer need to use unleaded fuel, but will lose the lower operating cost benefits provided by unleaded fuel. LDT and HDDE consumer savings will result from the lower SEA related costs.

As part of our regulatory support document we conducted an economic impact analysis to quantify the savings which would occur. The period over which the savings were computed was different for each of the three primary components of the proposal. These periods were different because the number of years of impact for each of the three components was different. The HDE SEA delay covers the two years of the deferral period. The AQL relaxation covers five years, the period over which the impact of the original final rule was analyzed. The HDE CO standard revision was analyzed for three-year period for which the revised standard is proposed to apply. All of these analyses are summarized in the tables below. The figures shown are in 1981 dollars discounted to January 1984.

AGGREGATE SAVINGS TO THE INDUSTRY (MILLIONS)

	HD SEA delay 1984-85 (cash flow)	AQL relaxation 1984-88 (cash expenditure)	Standard revision 1984-86 (cash expenditure)
LDT	NA	$3.1M	NA
HDG	$18.9M	15.3M	$70.8M
HDD	24.3M	13.2M	
	43.2M	31.6M	70.8M

The aggregate savings to the nation are also quite large. These incorporate the savings from the table above in an amortized manner, as well as savings in hardware, overhead, profit, and costs of capital. The aggregate savings have been computed for the 1984–1988 model years using sales projections. The final figures are discounted at 10 percent to January 1984.

AGGREGATE SAVINGS TO THE NATION: 1984-1988

Group	Years	Sales	Average savings (first price)	Average savings (operating main.)	Discounted total
LDT	1984-88	17.37M	$3.87		$55.6M
HDGE	1984-85	727,879	339.40	$34	259.5M
	1986	354,287	302.50	34	98.5M
	1987-88	686,718	3.50		1.7M
HDD	1984-85	550,416	63.69		33.4M
	1986-88	996,403	7.33		0.7M
					449.4M

In summary, the proposed relaxations and revisions would provide LDT and HDE industries cash flow savings of $43.2 million and cash expenditure savings of $102.4 million. The aggregate savings to the nation over the 1984–1988 model years sums to almost $450 million.

Those desiring more detail on the derivation of these cost savings figures should consult Chapter IV of the Draft Regulatory Support Document.

C. Environmental Impact

As a result of the relaxations in the LDT and HDE SEA programs and the shift to non-catalyst emission standards we expect the per vehicle/engine HC and CO lifetime emissions to increase over that which was expected beginning in 1984. The increases over the originally anticipated lifetime emissions are shown below for each vehicle/engine group in tons.

Group	Model years	Lifetime HC increases (tons)	Lifetime CO increases (tons)
LDT	1984-88+	.006	0.2
HDGE	1984-85	.113	5.52
	1986+	.079	4.06
HDD	1984-85	.523	
	1986+	.246	

The increase in the lifetime emissions from 1984–85 HDEs may not be as large as shown above. To make the most efficient use of resources and avoid replicate expenditures we expect some manufacturers will design and certify their 1984 product lines considering the impacts of SEA at a 40 percent AQL beginning in 1986. So in some cases the 1986+ figures may be more representative for 1984–85 HDEs.

With the increase in lifetime HC and CO emissions from these vehicle groups the ozone and CO air quality improvements expected in the original rulemakings will be diminished. For the case of ozone, although there will be some decreases in the ozone air quality improvements, it is our initial judgment that the absolute increases in the HC emission levels are not large enough to produce any significant air quality impact. Therefore we have not conducted a detailed air quality analysis attempting to quantify the foregone ozone improvements.

On the other hand, even though the proposed HDE CO standard still yields about a 50 percent reduction from current levels, the absolute level of the CO emissions does increase substantially, and a full air quality analysis was conducted. The basic results of this analysis show an average CO air quality improvement foregone of approximately 1–3 percent at both low and high altitudes.

The catalyst technology originally expected for 1984 and later model year HDGEs would have required unleaded fuel, thus yielding an additional environmental benefit in the form of decreased tailpipe lead emissions. With the move back to non-catalyst technology the lost environmental benefit amounts to about 22 lbs. of lead per vehicle over its lifetime. Vehicles powered by HDGEs currently account for about 13 percent of the annual gasoline consumption and 4.2 percent of the annual vehicle miles travelled.

Chapter III of the Draft Regulatory Document contains more detail on the expected environmental impact of this proposal.

V. Comments and the Public Docket

During final rulemaking, EPA will consider all written comments received

on or before the 30th day following the public hearing. EPA requests that, to the extent possible, comments be submitted prior to the hearing. EPA will keep the record of the public hearing open for submission of rebuttal and other information following the close of the hearing until the above mentioned date.

It is EPA's intention to assure all interested parties an opportunity to study all information which may become the basis for EPA's final action in this proceeding. Accordingly, the Agency will not consider in this rulemaking any material which cannot be made publicly available. Parties who wish to submit information in response to this Notice of Proposed Rulemaking are cautioned that EPA will not consider, but will return to the commenter, any comments which are claimed to be confidential.

VI. Request for Comments

As before with other EPA rulemakings, we rely heavily on public participation as part of our final decisionmaking process. As part of this rulemaking action we must also prepare a report to Congress regarding the decision to revise the HDE CO emission standard. To aid us in making the necessary findings we have prepared a number of specific questions. We welcome comment on any aspects of this proposal, but specifically request comments in the following areas:

A. Technology Feasibility

For HDGE manufacturers:

1. What components, modifications and improvements would be used to meet the HC target level? (Assume NOx standard of 10.7 g/BHP-hr.)

2. What components, modifications and improvements would be used to meet the CO target level?

3. EPA believes the current idle CO emission standard can be met by all HDGE families without using catalysts. If you do not agree with our feasibility assessment, please state in detail why and provide an alternative level that you believe is feasible.

4. What deterioration rate would you expect in idle CO emission levels?

5. If you believe that there will be a significant fuel economy penalty at the HDE CO emission standard we are proposing, please provide data and a detailed analysis to support your position.

6. Please identify the needed production targets for the non-SEA and 40 percent AQL cases.

7. Please comment on the feasibility of meeting each standard without catalysts for the 1984 model year, with alternative suggested levels if you do not consider the current and proposed 1984 standards to be feasible.

8. What are the lowest achievable non-catalyst levels? Can you quantify the relationship between fuel consumption and the level of the standard?

B. Economic Impact

For HDGE manufacturers:

1. This rulemaking is based upon EPA's initial assessment that standards requiring catalysts in 1984 would increase costs to an excessive and unreasonable degree. Please evaluate this assessment.

2. Please provide a detailed listing of the capital costs associated with complying with the revised 1984 emission standards. If possible this should be provided in the same level of detail as found in the Draft Regulatory Support Document. These would include capital costs for tooling, development, certification, etc. Also, please identify the capital cost savings associated with non-catalyst standards.

3. Please provide a detailed listing of the first price costs associated with each component, modification, or improvement expected to be used to meet the 1984 emission standards (including idle CO).

4. Do you expect operating or maintenance costs would increase as a result of the anticipated technology? If so by how much?

5. How much will this rulemaking save you? Please separate out by year for non-catalyst emission standards, the HDE SEA deferral, and the AQL relaxation.

C. General

1. How many engine families do you now plan for 1984? 1986?

2. In the mid-eighties, what percent of your production below 10,000 lbs. GVWR would you expect to be certified as a light-duty truck, 0–8,500 lbs. GVWR?

3. What percent "dieselization" do you expect in 1985 in each of the eight major GVWR classes?

4. Section 86.079–1 (b) permits a manufacturer to request to certify any heavy-duty vehicle under 10,000 lbs. GVWR as a light-duty truck. Do you now plan to switch any of your 1984 certification from HDE to LDT under this provision? If so, approximately what percent of your current HDE sales and/or how many engine families?

5. Section 86.084–22(e) describes the parameters which may be subject to adjustment during normal SEA and certification testng. The provisions described in this section basically address the use of an automatic choke. Because one or more HDGE manufacturers may attempt to certify an engine family(ies) with manual chokes, how would you suggest EPA deal with manual chokes under the parameter adjustment provisions?

6. Given EPA's intent that the optional HDDE HC standard for 1984 model year certification should not require a major development program, please comment on the stringency of the 0.5 g/BHP-hr standard. Also, if desired, please provide alternative levels with justification for such levels.

Administrative Designation

Under Executive Order 12291 EPA must judge whether a regulation is "Major" and therefore, subject to the requirement of a Regulatory Impact Analysis. This regulation is not Major because it involves no negative cost impacts and has no significant effect on competition, productivity, investment, employment, or innovation. Therefore, EPA has not prepared a formal Regulatory Impact Analysis.

However, the Agency has prepared a Regulatory Support Document which contains analyses of the Technological Feasibility, Environmental Impact, and Economic Impact. This document is available for copying at the Public Docket cited previously. At this time the Agency is unable to provide free single copies as has been past policy.

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

Impacts on Recording Requirements

The information collection requirements in this proposed rule will be submitted to the Office of Management and Budget (OMB) for clearance under the Paperwork Reduction Act of 1980. The information requirements or recordkeeping in this proposed rule will not take place until it has been cleared by OMB. If OMB approves, the information collection requirements will take effect as set forth in this proposed rule. If not, EPA will revise the information requirements (and this rule, if appropriate) to comply with OMB's determination.

Effects on Small Entities

Section 605 of the Regulatory Flexibility Act (RFA) requires that the Administrator certify regulations that do not have a significant impact on a substantial number of small entities. I certify that this regulation does not have such an effect because it affects motor vehicle and engine manufacturers, and among this group there are not a

substantial number of small entities. Also, the primary effect of this regulation is the potential for a positive economic benefit to the industry, so no private parties should see any substantial adverse impact.

Dated: December 28, 1981.

Anne M. Gorsuch,

Administrator.

SEA HDE AND LDT AMENDMENTS

[Explanation of amendments and revisions]

Section	Paragraph	Changes	Reason
§ 86.084–30	(e)(8)	*New provision allowing for suspending audit activities when hearing is held due to procedural violations.	Temporary suspension of audit may save manufacturer and EPA resources under certain conditions.
	(e)(9)	*New provision allowing resumption of audit activities after hearing is held for procedural violations.	In the case of temporary suspensions under (e)(8) above, provides a mechanism to complete the audit.
§ 86.1002–84	(b)	Revised definition of LDT "configuration" to specify "axle ratio"	SEA test vehicles can have either front- or rear-wheel drive.
		Revised "Test Sample", added "Inspection Criteria", "Test Engine", and "Test Vehicle".	Clarification.
		Deleted "In the Hands of the Manufacturer"	Extraneous definition.
§ 86.1003–84	(b)	Revised Assistant Administrator that can sign test orders, from "Enforcement" to "Air, Noise, and Radiation".	Recent EPA reorganization.
	(c)(1)	*Added Administrator discretion to select alternate configuration if production of primary configuration is less than minimum daily testing requirements.	Expedites audit by ensuring that minimum number of tests per day can be performed.
§ 86.1003–84	(e)(1)(ii)	*Sales projections in the Fuel Economy Report will be used to determine annual limit on SEA test orders for light-duty trucks.	To provide relief from duplicating this information in the manufacturer's Application for Certification.
	(e)(1)(iii)	*New provision allowing manufacturers to update their annual sales projections	The manufacturer's annual limit would be based on most current production trends.
§ 86.1005–84	(g)	New provision allowing manufacturer to claim confidentiality on information submitted for SEA purposes.	EPA makes submitted information available for public review, except for "confidential" information.
§ 86.1007–84	(b)	*New provision that manufacuturer must inform EPA of any emissions related changes in production processes from notfication of test order until end of selection.	Enables EPA to ensure that appropriate vehicles are being selected for testing.
	(c)	Revised wording of paragraph	Clarification of intent: Test sample must be representative of all units produced.
§ 86.1008–84	(a)(4)(i)	New provision allowing manufacturers to use diesel emission test fuel for mileage accumulation.	Formalizes procedure that is currently in effect for diesel vehicles.
	(a)(5)	New provision allowing deviation from heavy-duty engine test procedures used for certification testing.	Permits flexibility in new SEA program as experience with testing of production heavy-duty engines is acquired.
§ 86.1008–84	(d), (f)	Deleted references to engine or vehicle substitution or replacement	Under sequential sampling plans, malfunctioning vehicles or engines are deleted from the test sequence.
	(g)	Clarify requirement for EPA notification of manufacturer's test facility	EPA test order issued under §86.1004–84(a) is not applicable.
§ 86.1009–84	(a)	Added requirement to round initial test results	Omitted from original promulgation; consistency with Subpart G calculation methodology.
	(d)(5)(v)	Revised "replacement engine or vehicle" provision to require reason for deletion of test unit.	Sequential sampling plans result in deletion of vehicles or engines from test sequence, not replacement.
	(d)(5)(vi)	Added requirement for submission of CO2 values for LDTs and brake-specific fuel consumption values for HDEs to audit reports.	This data is generated during emission tests. Enables EPA to monitor fuel economy of production vehicles and engines.
	(d)(6)	Revised wording of HDE audit report endorsement to state that all phases of audit were performed in accordance with applicable regulations.	Manufacturer must certify that all phases of audit, including testing, were performed in accordance with Subpart K. Consistency with LDT endorsement.
		*Added statement that no emission related changes on assembly line were made during audit.	To verify that SEA test vehicles or engines are representative of units to be introduced into commerce.
§ 86.1010–84	(c)	Sampling plan to be used for LDT SEA testing is based on sales projections from the LDT manufacturer's Fuel Economy report.	LDT sales projections will no longer be provided in the manufacturer's Application for Certification.
§ 86.1012–84	(k)(1)	Added statement that fuel economy testing may also be required in conjunction with approving a design change for a light-duty truck.	Consistency with amendments to Fuel Economy program.
	(k)(2)	Clarified testing requirements involved in obtaining certification following a revocation.	Incorrect paragraph reference in original promulgation.

*These amendments are described in more detail in a short document in the public docket entitled "Minor Amendments to the HDE/LDT SEA Procedures. (See "Addresses" paragraph at beginning of document.)

PART 86—CONTROL OF AIR POLLUTION FROM NEW MOTOR VEHICLES AND NEW MOTOR VEHICLE ENGINES: CERTIFICATION AND TEST PROCEDURES

Accordingly it is proposed that 40 CFR Part 86, Subparts A, K, and N be amended as follows:

1. Section 86.084–10 is amended by revising paragraph (a)(1)(ii)(A) to read as follows:

§ 86.084–10 Emission standards for 1984 and later model year gasoline-fueled heavy-duty engines.

(a) * * *

(1) * * *

(ii) *Carbon monoxide.* (A) 35 grams per brake horsepower hour, as measured under transient operating conditions [Subpart N].

* * * * *

2. Section 86.084–11 is amended by revising paragraph (a)(1)(ii) to read as follows:

§ 86.084–11 Emission standards for 1984 and later model year diesel heavy-duty engines.

(a) * * *

(ii) *Carbon monoxide.* 35 grams per brake horsepower hour, as measured under transient operating conditions (Subpart N) or under steady state operating conditions (Subpart D).

* * * * *

3. Section 86.084–25 is amended by revising paragraphs (b)(1)(ii)(A) to read as follows:

§ 86.084–25 Maintenance.

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(A)(1) The cleaning or replacement of light-duty truck spark plugs at 30,000 miles and at 30,000 miles thereafter.

(2) The cleaning or replacement of heavy-duty engine spark plugs at 12,000 miles and at 12,000-mile intervals thereafter, for gasoline-fueled engines certified for use with leaded fuel.

(3) The cleaning or replacement of heavy-duty engine spark plugs at 25,000 miles and at 25,000-mile intervals thereafter, for gasoline-fueled engines certified for use with unleaded fuel only.

* * * * *

4. Paragraphs (e) (8) and (9) of 86.084–30 are added to read as follows:

§ 86.084–30 Certification.

* * * * *

(e) * * *

(8) The Assistant Administrator for Air, Noise and Radiation or her designee may suspend audit activities pursuant to

a test order for a configuration whose certificate will be the subject of a hearing which the manufacturer has been offered under paragraph (e)(6) or (e)(7) of this section.

(9) If audit activities were suspended under paragraph (e)(8) of this section, the Assistant Administrator for Air, Noise and Radiation may, after the hearing, direct the manufacturer to resume audit activities on the configuration which was the subject of the hearing, or to begin audit activities on a modified version of that configuration, according to the conditions specified in the original test order. If a decision is reached according to § 86.1010–84, the Administrator shall reinstate the certificate of conformity covering the configuration if it had been previously suspended or voided.

5. Section 86.085–11 is amended by revising paragraph (a)(1)(ii) to read as follows:

§ 86.085–11 Emission standards for 1985 and later model year diesel heavy-duty engines.

(a) * * *

(1) * * *

(ii) *Carbon monoxide.* 35 grams per brake horsepower hour as measured under transient operating conditions (Subpart N).

* * * * *

6. A new § 86.087–10 is proposed to be added to read as follows:

§ 86.087–10 Emission standards for 1987 and later model year gasoline-fueled heavy-duty engines.

(a)(1) Exhaust emissions from new 1987 and later model year gasoline-fueld heavy-duty engines shall not exceed the following:

(i) *Hydrocarbons.* 1.3 grams per brake horsepower hour, as measured under transient operating conditions.

(ii) *Carbon monoxide.* (A) 15.5 grams per brake horsepower hour, as measured under transient operating conditions.

(B) 0.47 percent of the exhaust gas flow at curb idle.

(iii) *Oxides of nitrogen.* 10.7 grams per brake horsepower hour, as measured under transient operating conditions.

(2) The standards set forth in paragraph (a)(1) of this section refer to the exhaust emitted over operating schedules set forth in Subparts N or P and measured and calculated in accordance with those procedures.

(b) [Reserved]

(c) No crankcase emissions shall be discharged into the ambient atmosphere from any new 1987 model year gasoline-fueled heavy-duty engine.

(d) Every manufacturer of new motor vehicle engines subject to the standards prescribed in this section shall, prior to taking any of the actions specified in section 203(a)(1) of the Act, test or cause to be tested motor vehicle engines in accordance with applicable procedures in Subparts N and P of this part to ascertain that such test engines meet the requirements of paragraphs (a) and (c) of this section.

7. A new § 86.087–11 is proposed to be added to read as follows:

§ 86.087–11 Emission standards for 1987 and later model year diesel heavy-duty engines.

(a)(1) Exhaust emissions from new 1987 and later model year diesel heavy-duty engines shall not exceed the following:

(i) *Hydrocarbons.* 1.3 grams per brake horsepower hour, as measured under transient operating conditions.

(ii) *Carbon monoxide.* (A) 15.5 grams per brake horsepower hour, as measured under transient operating conditions.

(iii) *Oxides of nitrogen.* 10.7 grams per brake horsepower hour, as measured under transient operating conditions.

(2) The standards set forth in paragraph (a)(1) of this section refer to the exhaust emitted over operating schedules set forth in Subpart N and measured and calculated in accordance with those procedures.

(b)(1) The opacity of smoke emissions from new 1987 and later model year diesel heavy-duty engines shall not exceed:

(i) 20 percent during the engine acceleration mode.

(ii) 15 percent during the engine lugging mode.

(iii) 50 percent during the peaks in either mode.

(2) The standards set forth in paragraph (b)(1) of this section refer to exhaust smoke emissions generated under the conditions set forth in Subpart I of this part and measured and calculated in accordance with those procedures.

(c) No crankcase emissions shall be discharged into the ambient atmosphere from any new 1987 model year naturally-aspirated diesel heavy-duty engine. This provision does not apply to turbocharged engines.

(d) Every manufacturer of new motor vehicle engines subject to the standards prescribed in this section shall, prior to taking any of the actions specified in section 203(a)(1) of the Act, test or cause to be tested motor vehicle engines in accordance with applicable procedures in Subparts I, or N of this part to ascertain that such test engines meet the requirements of paragraphs (a), (b) and (c) of this section.

8. Paragraph (b) of § 86.1002–84 is to be revised as follows:

§ 86.1002–84 Definitions.

* * * * *

(b) As used in this subpart, all terms not defined herein have the meaning given them in the Act.

"Acceptable Quality Level" (AQL) means the maximum precentage of failing engines or vehicles, that for purposes of sampling inspection, can be considered satisfactory as a process average.

"Configuration" means a subclassification, if any, of a heavy-duty engine family for which a separate projected sales figure is listed in the manufacturer's Application for Certification and which can be described on the basis of emission control system, governed speed, injector size, engine calibration, and other parameters which may be designated by the administrator, or a subclassification of a light-duty truck engine family-emission control system combination on the basis of engine code, inertia weight class, transmission type and gear ratios, axle ratio, and other parameters which may be designated by the Administrator.

"Test Sample" means the collection of vehicles or engines of the same configuration which have been drawn from the population of engines or vehicles of that configuration and which will receive exhaust emission testing.

"Inspection Criteria" means the pass and fail numbers associated with a particular sampling plan.

"Test Engine" means an engine in a test sample.

"Test Vehicle" means a vehicle in a test sample.

9. § 86.1003–84 is amended by revising paragraphs (b), (c) and (e) (1)(ii) and adding (e)(1)(iii) to read as follows:

§ 86.1003–84 Test orders.

* * * * *

(b) The test order will be signed by the Assistant Administrator for Air, Noise and Radiation or her designee. The test order will be delivered in person by an EPA Enforcement Offier to a company representative or sent by registered mail, return receipt requested, to the manufacturer's representative who signs the Application for Certification submitted by the manufacturer pursuant to the requirements of the applicable sections of Subpart A of this part. Upon receipt of a test order, the manufacturer shall comply with all of the provisions of this subpart and instructions in the test order.

(c)(1) The test order will specify the engine configuration selected for testing, the manufacturer's vehicle or engine assembly plant or associated storage facility from which the engines must be selected, the time and location at which engines must be selected, and the procedure by which engines of the specified configuration must be selected. The test order may include alternative configurations to be selected for testing in the event that engines of the first specified configuration are not available for testing because such engines are not being manufactured during the specified time, or not being stored at the specified assembly plant or associated storage facilities. If the first specified configuration is not being manufactured at a rate of at least four vehicles per day, in the case of light-duty truck manufacturers, two engines per day, in the case of heavy-duty engine manufacturers specified in paragraph (g)(1) of § 86.1008–84, or one engine per day, in the case of heavy-duty engine manufacturers specified in paragraph (g)(2) of § 86.1008–84, over the expected duration of the audit, the Administrator or her designated representative may select engines or vehicles of the alternate configuration for testing. In addition the test order may include other directions or information essential to the administration of the required testing.

* * * * *

(e) * * *

(1) * * *

(ii) For manufacturers of gasoline-fueled or diesel light-duty trucks, the number determined by dividing the projected light-duty truck sales bound for the United States market for that model year, as made by the manufacturer in its report submitted under paragraph (a)(2) of § 600.207–80 of the Automobile Fuel Economy Regulations, by 300,000 and rounding to the nearest whole number, unless the projected sales are less than 150,000, in which case the number is one.

(iii) If a manufacturer submits to EPA in writing prior to or during the model year a reliable sales projection update, that update will be used for recalculating the manufacturer's annual limit of SEA test orders.

* * * * *

10. Subpart 86.1005–84 is to be amended by adding paragraph (g) as follows:

§ 86.1005–84 Maintenance of records; submittal of information.

* * * * *

(g) Whenever a manufacturer submits information pursuant to the requirements of this subpart, the manufacturer shall clearly identify over which information it wishes to assert a business confidentiality claim and shall specify the time period for which that confidentiality claim will apply. If no claim accompanies business information when it is received by EPA, it may be made available to the public by EPA without further notice to the manufacturer. If a claim is received, the information covered by the claim will be disclosed by EPA only to the extent, and by means of the procedures, specified in 40 CFR Part 2.

11. Paragraphs (b) and (c) of § 86.1007–84 are revised as follows:

§ 86.1007–84 Sample selection

* * * * *

(b) The manufacturer shall have assembled the test engines or vehicles of the configuration selected for testing using its normal mass production processes for engines or vehicles to be distributed into commerce. During the audit, the manufacturer shall inform the Administrator of any change(s) implemented in its production processes, including quality control, which may be reasonably expected to affect the emissions of the vehicles or engines selected, between the time the manufacturer is notified of a test order and the time the manufacturer finishes selecting test vehicles or engines. In the case of heavy-duty engines, if the test engines are selected at a location where they do not have their operational and emission control systems installed, the test order will specify the manner and location for selection of components to complete assembly of the engines. The manufacturer shall assemble these components onto the test engines using normal assembly and quality control procedures as documented by the manufacturer.

(c) No quality control, testing, or assembly procedures will be used on the completed test engine or vehicle or any portion thereof, including parts and subassemblies, that has not been or will not be used during the production and assembly of all other engines or vehicles of that configuration.

* * * * *

12. Subpart 86.1008–84 is to be amended by revising paragraphs (a)(4)(i), (d), (f) and (g) and by adding a new (a)(5) as follows:

§ 86.1008–84 Test procedures.

(a) * * *

(4) * * *

(i) The manufacturer may use test fuel meeting the specifications of paragraph (a)(1) or (b)(2) of § 86.113–79 for mileage accumulation. Otherwise the manufacturer may use fuels other than those specified in this section only with advance approval of the Administrator.

* * * * *

(5) The administrator may, on the basis of a written application by a manufactuere, prescribe minor test procedure variations from those set forth in paragraphs (a)(1) and (a)(2) of this section for any heavy-duty engine.

* * * * *

(d) The manufacturer shall not perform any maintenance on test vehicles or engines after selection for testing, nor shall the Administrator allow deletion of any test vehicle or engine from the test sequence, unless requested by the manufacturer and approved by the Administrator before any test vehicle or engine maintenance or deletion.

* * * * *

(f) If an engine or vehicle cannot complete the service or mileage accumulation or emission test because of a malfunction, the manufacturer may request that the Administrator authorize the repair of that engine or vehicle or its deletion from the test sequence.

(g) Whenever a manufacturer conducts testing pursuant to a test order issued under this subpart, the manufacturer shall notify the Administrator within one working day of receipt of the test order which test facility will be used to comply with the test order. If no test cells are available at a desired facility, the manufacturer must provide alternate testing capability satisfactory to the Administrator.

* * * * *

13. § 86.1009–84 is to be amended by revising paragraphs (a) and (d) (5)(v) and (vi) and (6) and by adding a new paragraph (d)(5)(vii) as follows:

§ 86.1009–84 Calculation and reporting of test results.

(a) Initial test results are calculated following the Federal Test Procedure specified in paragraph (a) of § 86.1008–84. Round these results, in accordance with ASTM E29–67, to the number of decimal places contained in the applicable emission standard expressed to one additional significant figure.

* * * * *

(d) * * *

(5) * * *

(v) Where an engine or vehicle was deleted from the test sequence by authorization of the Administrator, the reason for the deletion;

(vi) For all valid and invalid exhaust emission tests, carbon dioxide emission values for LDTs and brake-specific fuel consumption values for HDEs; and

(vii) Any other information the Administrator may request relevant to the determination as to whether the new heavy-duty engines or light-duty trucks being manufactured by the manufacturer do in fact conform with the regulations with respect to which the certificate of conformity was issued; and

(6) The following statement and endorsement: This report is submitted pursuant to sections 206 and 208 of the Clean Air Act. This Selective Enforcement Audit was conducted in complete conformance with all applicable reguations under 40 CFR Part 86, *et seq.*, and the conditions of the test order. No emission-related changes to production processes or quality control procedures for the vehicle or engine configuration tested have been made between receipt of the test order and conclusion of the audit. All data and information reported herein is to the best of

---

(Company Name)

knowledge, true and accurate. I am aware of the penalties associated with violations of the Clean Air Act and the regulations thereunder.

(Authorized company representative)

14. Section 86.1010–84 is amended by revising paragraphs (a), (c), and (d) to read as follows:

§ 86.1010–84 Compliance with acceptable quality level and passing and failing criteria for Selective Enforcement Audits.

(a) The prescribed acceptable quality level is 40 percent.

* * * * *

(c) The manufacturer shall test heavy-duty engines or light-duty trucks comprising the test sample until a pass decision is reached for all pollutants, or a fail decision is reached for one pollutant. A pass decision is reached when the cumulative number of failed engines or vehicles, as defined in paragraph (b) of this section, for each pollutant is less than or equal to the pass decision number appropriate to the cumulative number of engines or vehicles tested. A fail decision is reached when the cumulative number of failed engines or vehicles for one or more pollutants is greater than or equal to the fail decision number appropriate to the cumulative number of engines or vehicles tested. The pass and fail decision numbers associated with the cumulative number of engines or vehicles tested are determined by using the tables in Appendix X of this part appropriate to the projected sales as made by the heavy-duty engine manufacturer in its Application for Certification or as made by the light-duty truck manufacturer in its report submitted under paragraph (a)(2) of § 600.207–80 of the Automobile Fuel Economy Regulations. In the tables in Appendix X sampling plan "stage" refers to the cumulative number of engines or vehicles tested. Once a pass or fail decision has been made for a particular pollutant, the number of engines or vehicles whose final deteriorated test results exceed the emission standard for that pollutant shall not be considered any further for the purposes of the audit.

(d) Passing or failing of an SEA occurs when the decision is made on the last engine or vehicle required to make a decision under paragraph (c) of this section.

* * * * *

15. Paragraph (k) (1) and (2) of § 86.1012–84 is revised as follows:

§ 86.1012–14 Suspension and revocation of certificates of conformity.

* * * * *

(k) * * *

(1) If the Administrator determines that the proposed change(s) in engine or vehicle design may have an effect on emission performance deterioration or, in the case of light-duty trucks, on fuel economy, he shall notify the manufacturer, within five (5) working days after receipt of the report in paragraph (h) of this section, whether subsequent testing under this subpart will be sufficient to evaluate the proposed change or changes or whether additional testing will be required, and

(2) After implementing the change or changes intended to remedy the nonconformity, the manufacturer shall demonstrate that the modified engine or vehicle configuration does in fact conform with these regulations by testing the engine or vehicle configuration in accordance with the conditions specified in the initial test order. This testing will be considered by the Administrator to satisfy the testing requirements of § 86.078–32 or § 86.079–33 if the Administrator had so notified the manufacturer. If the subsequent audit results in passing of the audit at the level of the standards, the Administrator shall reissue or amend the certificate, as the case may be, to include the configuration: *Provided,* That the manufacturer has satisfied the testing requirements of paragraph (k)(1) of this section. If the subsequent audit is failed, the revocation remains in effect. Any design change approvals under this subpart are limited to the configuration affected by the test order.

* * * * *

16. Appendix X is revised to read as follows:

Appendix X.—Sampling Plans for Selective Enforcement Auditing of Heavy-Duty Engines and Light-Duty Trucks

TABLE 1.—SAMPLING PLAN CODE LETTER

Annual sales	Code letter
50 to 99	A.
100 to 299	B.
300 to 499	C.
500 or greater	D.

TABLE 2.—SAMPLING PLAN FOR CODE LETTER "A"

[Sample inspection criteria]

Stage	Pass No.	Fail No.
1	(1)	(2)
2	(1)	(2)
3	(1)	(2)
4	0	(2)
5	0	(2)
6	1	6
7	1	7
8	2	7
9	2	8
10	3	8
11	3	9
12	4	9
13	5	10
14	5	10
15	6	11
16	6	11
17	7	12
18	7	12
19	8	13
20	8	13
21	9	14
22	10	14
23	10	15
24	11	15
25	11	16
26	12	16
27	12	17
28	13	17
29	14	17
30	15	17

[1] Test sample passing not permitted at this stage.
[2] Test sample failure not permitted at this stage.

TABLE 3.—SAMPLING PLAN FOR CODE LETTER "B"

[Sample inspection criteria]

Stage	Pass No.	Fail No.
1	(1)	(2)
2	(1)	(2)
3	(1)	(2)
4	(1)	(2)
5	0	(2)
6	1	6
7	1	7
8	2	7
9	2	8
10	3	8
11	3	9
12	4	9
13	4	10
14	5	10
15	5	11
16	6	12
17	6	12
18	7	13
19	8	13
20	8	14
21	9	14
22	9	15
23	10	15
24	10	16
25	11	16

TABLE 3.—SAMPLING PLAN FOR CODE LETTER "B"—Continued

[Sample inspection criteria]

Stage	Pass No.	Fail No.
26	11	17
27	12	17
28	12	18
29	13	18
30	13	19
31	14	19
32	14	20
33	15	20
34	16	21
35	16	21
36	17	22
37	17	22
38	18	22
39	18	22
40	21	22

[1] Test sample passing not permitted at this stage.
[2] Test sample failure not permitted at this stage.

TABLE 4.—SAMPLING PLAN FOR CODE LETTER "C"

[Sample inspection criteria]

Stage	Pass No.	Fail No.
1	([1])	([2])
2	([1])	([2])
3	([1])	([2])
4	([1])	([2])
5	0	([2])
6	0	6
7	1	7
8	2	7
9	2	8
10	3	9
11	3	9
12	4	10
13	4	10
14	5	11
15	5	11
16	6	12
17	6	12
18	7	13
19	7	13
20	8	14
21	8	14
22	9	15
23	10	15
24	10	16
25	11	16
26	11	17
27	12	17
28	12	18
29	13	18
30	13	19
31	14	19
32	14	20
33	15	20
34	15	21

TABLE 4.—SAMPLING PLAN FOR CODE LETTER "C"—Continued

[Sample inspection criteria]

Stage	Pass No.	Fail No.
35	16	21
36	16	22
37	17	22
38	18	23
39	18	23
40	19	24
41	19	24
42	20	25
43	20	25
44	21	26
45	21	27
46	22	27
47	22	27
48	23	27
49	23	27
50	26	27

[1] Test sample passing not permitted at this stage.
[2] Test sample failure not permitted at this stage.

TABLE 5.—SAMPLING PLAN FOR CODE LETTER "D"

[Sample inspection criteria]

Stage	Pass No.	Fail No.
1	([1])	([2])
2	([1])	([2])
3	([1])	([2])
4	([1])	([2])
5	0	([2])
6	0	6
7	1	7
8	2	8
9	2	8
10	3	9
11	3	9
12	4	10
13	4	10
14	5	11
15	5	11
16	6	12
17	6	12
18	7	13
19	7	13
20	8	14
21	8	14
22	9	15
23	9	15
24	10	16
25	11	16
26	11	17
27	12	17
28	12	18
29	13	19
30	13	19
31	14	20
32	14	20
33	15	21

TABLE 5.—SAMPLING PLAN FOR CODE LETTER "D"—Continued

[Sample inspection criteria]

Stage	Pass No.	Fail No.
34	15	21
35	16	22
36	16	22
37	17	23
38	17	23
39	18	24
40	18	24
41	19	25
42	19	26
43	20	26
44	21	27
45	21	27
46	22	28
47	22	28
48	23	29
49	23	29
50	24	30
51	24	30
52	25	31
53	25	31
54	26	32
55	26	32
56	27	33
57	27	33
58	28	33
59	28	33
60	32	33

[1] Test sample passing not permitted at this stage.
[2] Test sample failure not permitted at this stage.

17. Paragraphs (e)(1)(iv) and (2)(iii) of § 86.1332–84 are revised as follows:

§ 86.1332–84 Engine mapping procedures

* * * * *

(e) * * *

(1) * * *

(iv) For all engines, all speed points below the minimum speed shall be assigned a maximum torque value equal to that observed at the minimum speed for purposes of cycle generation.

* * * * *

(2) * * *

(iii) For all engines, all speed points below the minimum speed shall be assigned a maximum torque value equal to that observed at the minimum speed for the purposes of cycle generation.

[FR Doc. 82–683 Filed 1–12–82; 8:45 am]

BILLING CODE 6560–26–M

federal register

Wednesday
January 13, 1982

Part III

Department of Health and Human Services

Office of Human Development Services

Discretionary Funds Programs

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

[Program Announcement No. HDS-82-2]

Discretionary Funds Programs

AGENCY: Office of Human Development Services, HHS.

SUBJECT: Supplemental Information Regarding Announcement of Availability of funds and request for preapplications for the Office of Human Development Services Discretionary Funds Grant Program and solicitation of comments on proposed priorities which pertain to the National Center on Child Abuse and Neglect.

SUMMARY: The Office of Human Development Services (HDS including the Administration for Children, Youth and Families (ACYF), Administration on Developmental Disabilities (ADD), Administration on Aging (AoA), Administration for Native Americans (ANA), Office of Policy Development (OPD), and the Office of Policy Coordination and Review (OPCR) announced November 16, 1981, 46 FR 56364 that competing preapplications would be accepted for new research, demonstration, evaluation and training and technology transfer grants and cooperative agreements authorized by its multiple discretionary funding program legislation. This announcement provides supplemental information regarding the November 16 announcement, and requests comments on proposed priorities which pertain to the National Center on Child Abuse and Neglect.

DATE: January 13, 1982.

Scope of This Program Announcement

This program announcement (a) provides information on the statutory authorities under which grants announced in 46FR 56364 will be awarded; (b) requests comments on proposed priorities contained in 46 FR 56364 which pertain to the Child Abuse Prevention and Treatment Act, Section 2(b); (c) clarifies information in 46 FR 56364 regarding available funds; and (d) provides additional directions regarding Preapplication Submission Procedures to be followed by *all* preapplicants, not just those responding to the Child Abuse and Neglect priorities.

Statutory Authorities

The individual statutory authorities under which grants would be awarded for the Office of Human Development Services Discretionary Funds Grant Program published on November 16, 1981, 46 FR 56364 are as follows:

13.600	Head Start	P.L. 97-35.
13.608 and 13.640.	Child Welfare Services	Section 426 of Social Security Act as amended.
13.623	Runaway Youth Program.	P.L. 93-415 as amended.
13.628	Child Abuse	P.L. 93-247 as amended.
13.652	Adoption Opportunities	P.L. 95-266 as amended.
13.612	Native Americans	P.L. 93-644 as amended.
13.633	DD Special Projects	P.L. 91-517 as amended.
13.647	Social Services Research.	Section 1110 of Social Security Act as amended.
13.634	AoA Model Projects	P.L. 93-29 as amended.
13.636	AoA Research and Demonstration.	P.L. 89-73 as amended.
13.637	AoA Training	P.L. 89-73 as amended.

In implementing the coordinated announcement and application process adopted in the November 16 announcement, we will comply fully with the statutory requirements of each of these categorical authorities. In particular, activities under the Child Abuse Prevention and Treatment Act will be carried out through the National Center on Child Abuse and Neglect, and approval of awards under the Older Americans Act will be made by the Commissioner on Aging.

Request for Comments Under the Child Abuse Prevention and Treatment Act

Section 2(b) of the Child Abuse Prevention and Treatment Act, 42 U.S.C. 5101(b), requires that research priorities for research funded under it be proposed through the National Center on Child Abuse and Neglect and published in the **Federal Register** for public comment at least 60 days prior to their establishment. The research priorities proposed through the Center for new awards in the area of child abuse and neglect are those described under Priority Areas 1.3, 2.1, 3.2, 4.1, 6.1, 6.2, 8.1, 9.1, 9.2, 9.3, 10.7, and 11.1

We solicit comment on these proposed priorities. Comments may either be submitted separately or incorporated in preapplications submitted in response to the November 16 notice. As has been our past practice, we will not separately respond to all comments received, but all comments received within sixty days of the date of this notice will be considered in determining the appropriateness of proposed priorities and in preparing the final program announcement for child abuse and neglect research. All comments should be sent to: Mr. Clarence Hodges, Commissioner, Administration for Children, Youth and Families, Room 5030 Donohoe Building, 400—6th Street, S.W., Washington, D.C. 20201.

Awards in the priority areas listed above may also be made with funds other than child abuse and neglect research funds. This sixty day comment period does *not* change the due date for preapplications contained in 46 FR 56364 for those funds.

Applicants for child abuse and neglect research funds may either submit preapplications in response to the November 16 announcement or wait until final priorities are announced. Failure to submit a preapplication will not affect an applicant's chances for funding under the final child abuse and neglect announcement.

We will not solicit final applications for awards using child abuse research funds until final priorities are established, and no child abuse research funds will be awarded for projects which do not fall within one of the established priorities.

Available Funds

Preapplicants should be advised that Congress has not yet appropriated the funds HDS announced for award during Fiscal Year 1982 and the first quarter of Fiscal Year 1983, and actual amounts awarded may vary substantially from the announced levels.

Submission Procedures

In addition to procedures described in 46 FR 56364, preapplicants are requested to submit eight copies of their preapplications to: Division of Grants and Contracts Management, HHS/ Office of Human Development Services, Room 1740, HHS Building, 330 Independence Avenue, S.W., Washington, DC 20201.

Preapplicants are reminded to select and specify *one and only one* Priority Area for each concept paper submitted. Different concept papers may be submitted to the same or different Priority Areas. Substantially similar concept papers submitted to different Priority Areas will be considered to be nonresponsive.

Dated: January 7, 1982.

Dorcas R. Hardy,

Assistant Secretary for Human Development Services.

Clarence E. Hodges,

Commissioner, Administration for Children, Youth and Families.

Francis X. Lynch,

Acting Commissioner, Administration on Developmental Disabilities.

Lennie-Marie P. Tolliver,

Commissioner, Administration on Aging.

Casimer R. Wichlacz,

Acting Commissioner, Administration for Native Americans.

[FR Doc. 82-567 Filed 1-12-82; 8:45 am]

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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 41 FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/SECRETARY	USDA/ASCS		DOT/SECRETARY	USDA/ASCS
DOT/COAST GUARD	USDA/FNS		DOT/COAST GUARD	USDA/FNS
DOT/FAA	USDA/REA		DOT/FAA	USDA/REA
DOT/FHWA	USDA/SCS		DOT/FHWA	USDA/SCS
DOT/FRA	MSPB/OPM		DOT/FRA	MSPB/OPM
DOT/MA	LABOR		DOT/MA	LABOR
DOT/NHTSA	HHS/FDA		DOT/NHTSA	HHS/FDA
DOT/RSPA			DOT/RSPA	
DOT/SLSDC			DOT/SLSDC	
DOT/UMTA			DOT/UMTA	

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.

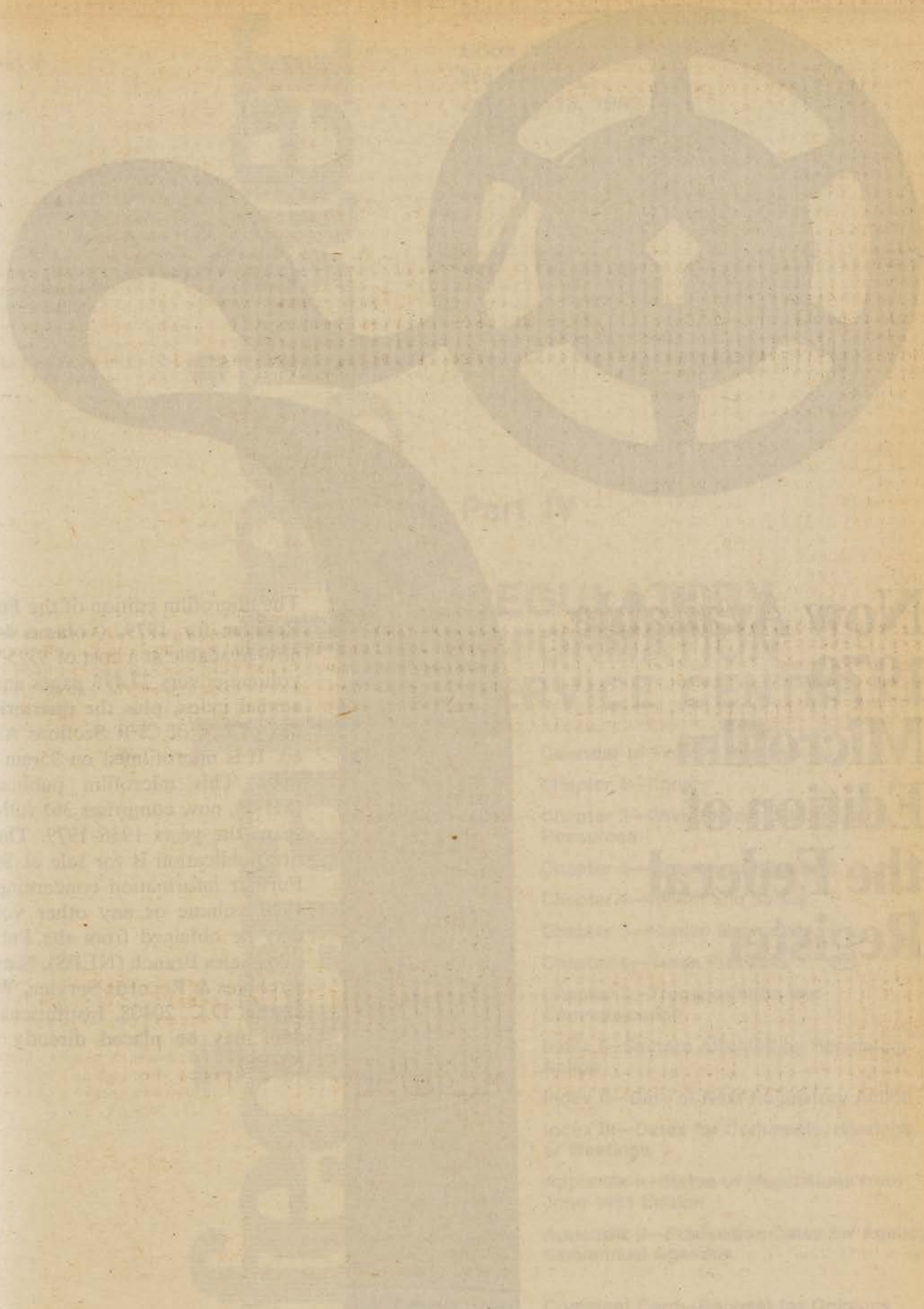
Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408.

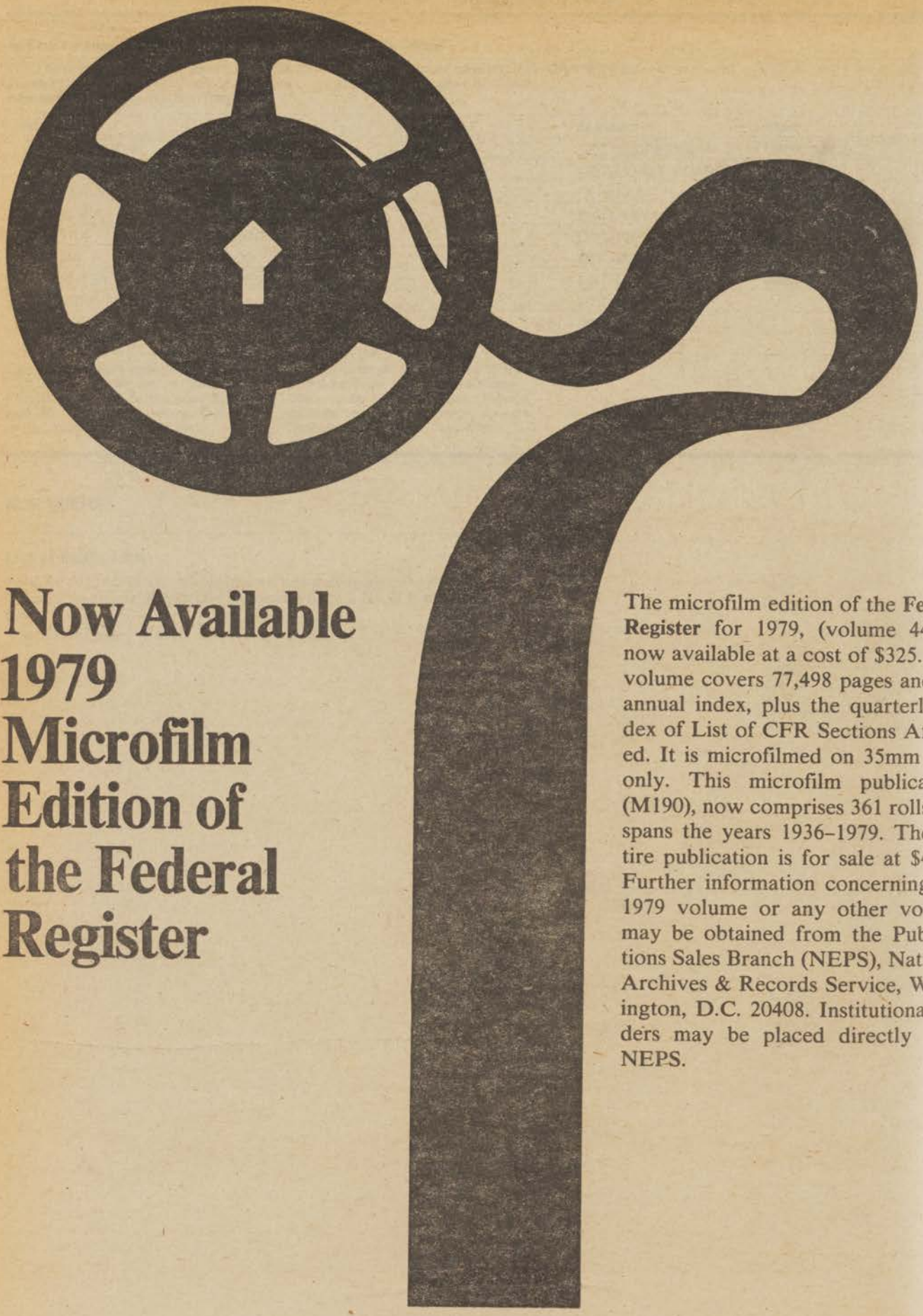
REMINDERS

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 January 6, 1982





Now Available 1979 Microfilm Edition of the Federal Register

The microfilm edition of the **Federal Register** for 1979, (volume 44), is now available at a cost of $325. This volume covers 77,498 pages and the annual index, plus the quarterly index of List of CFR Sections Affected. It is microfilmed on 35mm rolls only. This microfilm publication, (M190), now comprises 361 rolls and spans the years 1936–1979. The entire publication is for sale at $4693. Further information concerning the 1979 volume or any other volume may be obtained from the Publications Sales Branch (NEPS), National Archives & Records Service, Washington, D.C. 20408. Institutional orders may be placed directly with NEPS.

1-13-82
Vol. 47—No. 8
Book 2:
Pages:
1661-2072

federal register

Book 2 of 2 Books
Wednesday,
January 13, 1982

Part IV

REGULATORY INFORMATION SERVICE CENTER

1-13-82
Vol. 47—No. 8
Book 2:
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1661-2072

federal register

Book 2 of 2 Books
Wednesday,
January 13, 1982

Part IV

REGULATORY INFORMATION SERVICE CENTER

REGULATORY INFORMATION SERVICE CENTER

AGENCY: The Regulatory Information Service Center.

ACTION: Calendar of Federal Regulations.

SUMMARY: The Regulatory Information Service Center publishes the **Calendar of Federal Regulations** in order to provide the President, the Congress, agency managers, and the public with a tool to better understand and help shape the Federal regulatory process. The Calendar provides analytic summaries of the most important regulations under development in Federal agencies. Special indices to the material help readers identify quickly items that might be of most interest.

ADDRESS: Regulatory Information Service Center, 2100 M Street, N.W., Suite 700, Washington, DC 20037.

FOR FURTHER INFORMATION: For further information about specific regulations, please refer to the "Agency Contact" listed at the end of each entry.

For further information about the work of the Regulatory Information Service Center, contact:

Mark G. Schoenberg, Executive Director
Regulatory Information Service Center
2100 M Street, N.W., Suite 700
Washington, DC 20037
(202) 653–7246.

For further information about the Calendar project, contact:

Elizabeth Jester, Project Director
Calendar of Federal Regulations
Regulatory Information Service Center
2100 M Street, N.W., Suite 700
Washington, DC 20037
(202) 653–7240.

SUPPLEMENTARY INFORMATION:

Letter from the Executive Director of the Regulatory Information Service Center

The Regulatory Information Service Center is responsible for providing regulatory information to the President, the Congress, agency managers, and the public so they can better understand and help shape Federal regulatory policy. The Center publishes the **Calendar of Federal Regulations** twice a year as a part of its responsibility. The **Calendar of Federal Regulations** provides a comprehensive overview of important regulations that agencies are developing and a summary of the analytical bases for them. Agencies submit entries describing their regulatory activities to Center staff, who review the material to make sure it is in a consistent format and provides the reader as much information as is available. The Center is not, however, responsible for the accuracy or completeness of agency materials.

The Calendar is designed to help improve the regulatory process, to identify areas of multiple regulatory impact, and to assist the regulators in developing well-reasoned, cost-effective, and consistent regulatory policies.

The Center also is working to make semiannual agendas (required by Executive Order 12291) more accessible and easier to produce by developing a computerized, standard format that all agencies can follow. The result will be an easily accessible, government-wide base of information on Federal regulations.

These Center projects complement other efforts by President Reagan's Administration, such as Executive Order 12291, "Federal Regulation," which seeks to reduce the regulatory burden on our economy and our citizens. These projects also provide information to the Presidential Task Force on Regulatory Relief about the burdens and benefits of important regulatory activities under development. The Calendar and the semiannual agendas required under Executive Order 12291 allow interested parties to track most of the regulatory activity under development in the Federal Government.

We solicit your comments on what regulatory information you need and in what forms that information would be most valuable. You can provide this information by completing the comment card we have provided on the back of this volume or by writing to us at the above address. We look forward to hearing from you.

Dated: December 22, 1981.

Mark G. Schoenberg

Executive Director.

TABLE OF CONTENTS

AGENCY PARTICIPATION IN THE CALENDAR PROJECT

Thirty-three Federal departments and agencies with significant regulatory responsibilities have submitted information about regulations under development for this edition of the Calendar. Of these 33, 19 are executive departments and agencies and 14 are independent regulatory agencies. The extent of an independent regulatory agency's activity in the Calendar project is determined by the independent agency. Below is a list of the 33 agencies that contributed to this edition:

Executive Agencies

Department of Agriculture
Department of Commerce
Department of Defense
Department of Education
Department of Energy
Department of Health and Human Services
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

INFORMATION ABOUT ADDITIONAL COPIES

Additional copies of this edition of the Calendar are available from:
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Washington, DC 20402
(202) 783-3238

HOW TO USE THE CALENDAR

The Calendar is organized to help users locate information about regulations of interest to them. The Calendar contains a letter from Mark G. Schoenberg, Executive Director of the Regulatory Information Service Center; a table of contents; a section on how to use the Calendar; a list of abbreviations; a list of regulations covered in this edition; seven chapters describing these regulations; three indices; and two appendices.

The section on how to use the Calendar explains the basic organization of the Calendar, how to use its individual components, the criteria the agencies used to select the regulations reported, the type of information available in each entry, and the limitations on the data presented.

We have divided the entries describing regulations into seven chapters; each covers a major area of Federal regulatory activity. The chapters are:

(1) *Energy*
(2) *Environment and Natural Resources*
(3) *Finance and Banking*
(4) *Health and Safety*
(5) *Human Resources*
(6) *Trade Practices*
(7) *Transportation and Communication*

Within each chapter, entries are presented in alphabetical order, first by executive and then by independent agencies. The entries are further alphabetized by issuing office, if any, and then by the title of the entry.

We have created five indices and appendices to aid Calendar readers to locate easily information that may be important to them.

Separate indices identify sectors affected by each proposal; the estimated date of the next regulatory action; and dates for comments, hearings, and meetings on the regulations under development, when applicable.

The appendices describe the status of the regulations that were reported in the last edition of the Calendar but are absent from this edition and publication dates for each agency's semiannual agenda.

Each index and appendix begins with a brief description of its contents and how to use it.

ABOUT THE ENTRIES

Agencies submitted entries for the Calendar that describe their regulations under development. These entries comprise the body of the Calendar.

Criteria for Selection

This edition of the Calendar provides an overview of important regulations *under development* by 33 Federal agencies. Each agency submitted 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 Impact Analyses under the general guidelines in Executive Order 12291, "Federal Regulation" (46 FR 13193, February 17, 1981), namely:

- Regulations under development that might have an annual effect on the economy of $100 million or more.
- Regulations under development that might impose a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions.
- Regulations that might have significant adverse effects on competition, employment, investment, productivity, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In addition to entries that meet these criteria, agencies have submitted reports on regulations for this Calendar that concern:

- Regulations that appeared on the lists of regulations to be reviewed that were issued by the Presidential Task Force on Regulatory Relief on March 25 and August 12, 1981, and that the agency did not expect to finalize before mid-December.
- Precedent-setting rules.
- Issues of great public interest or controversy.
- A set of related rules that together could be considered a major rule.
- Grants and income transfer program regulations that may impose annual compliance costs of $100 million or more.
- Regulations that the agency is reproposing after review according to the requirements of Executive Order 12291 or its own internal review procedures, if the proposed change will have important consequences.

Any regulation that the agency reported in the last edition of the Calendar is also reported in this edition unless it has been issued as a Final Rule, is "on hold" for various reasons, or has been withdrawn. If so, we have noted such actions in Appendix I: Status of Regulations from June 1981 Edition.

The regulations covered in the Calendar are those for which an agency is reasonably likely to issue an Advance Notice of Proposed Rulemaking (ANPRM), a Notice of Proposed Rulemaking (NPRM), or a Final Rule, or to take other significant action within the next 12 months.

For clarity and consistency, the Calendar staff asked all agencies in writing their Calendar entries to follow a set of guidelines we developed in consultation with the agencies, the Office of Management and Budget, and others in the Executive Office of the President. The guidelines used by agencies in preparing submissions to this edition of the Calendar are available from the Regulatory Information Service Center.

Contents of Entries

Each Calendar entry describes a regulation and contains the following information:

Title and Code of Federal Regulations Citation	Title of the regulation under development and the CFR citation for the regulation. The word "New" or "Revision" after the CFR citation indicates whether the regulation will be a revision to an existing regulation that has been codified in the CFR or will occupy a new CFR section. If the title of the regulation has changed since the last Calendar entry, the old title follows the new title in parentheses. If there is no CFR citation, the regulation has not yet been assigned a CFR section.
Legal Authority	A citation of the statutory authority under which the agency plans to take the regulatory action.
Reason for Including This Entry	A brief statement indicating under which criteria the agency includes the entry in the Calendar.
Statement of Problem	A brief discussion of the problem that the regulation will address.
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 important indirect benefits of the regulatory action to the sectors of the economy, population, government, etc., that may be affected.
Sectors Affected	A listing of those sectors that may benefit as a result of the proposal. Where possible, we use Standard Industrial Classification (SIC) terminology in listing the sectors.
Summary of Costs	A discussion of the expected direct and important indirect costs of this action to the sectors of the economy, population, government, etc., that may be affected.
Sectors Affected	A listing of the sectors that may bear costs as a result of the proposal. Where possible, we use SIC terminology in listing the sectors.
Summary of Net Benefits	A description of the aggregate net benefits of the regulation, taking into account its costs.
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.
Government Collaboration	The steps the agency is taking to coordinate the regulatory action with any other Federal, State, or local agencies.
Timetable	A chronological listing of the major steps in the development of the regulation.
Available Documents	A list of major background documents related to the 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 entries for this edition of the Calendar to give the public the earliest possible notice of their plans to propose and promulgate regulations. They have tried to predict their future activities accurately, but dates and schedules are still tentative. Agencies may withdraw some of the regulations under development that they have described, or they may promulgate or propose other regulations not included in this edition. Agency actions in the rulemaking process may occur before or after the dates they have listed in the Calendar. The 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 December 1, 1981 in the judgment of the submitting agencies.

LIST OF ABBREVIATIONS

The following abbreviations appear throughout this edition of the Calendar.

ANPRM—The Advance Notice of Proposed Rulemaking is a preliminary notice that an agency is considering a regulatory action. The agency issues an ANPRM before it develops a detailed proposed rule. The ANPRM usually describes the general area that will be subject to the regulation, lists the alternatives that the agency is considering, and asks for public comment on the proposed regulation.

CFR—The Code of Federal Regulations is a codification of the general and permanent rules published in the **Federal Register** by the departments and agencies of the Federal Government. The Code is divided into 50 titles representing broad areas subject to Federal regulation. The Office of the Federal Register revises the CFR annually.

E.O.—Executive Orders are Presidential directives to executive agencies that the President issues under Constitutional or statutory authority. For certain of them, independent agencies may voluntarily comply. They are published in the **Federal Register** and in Title 3 of the Code of Federal Regulations.

FR—The **Federal Register** is a daily Federal government publication that announces all proposed and final Federal regulations. It also contains notices of public meetings and other events Federal agencies may schedule.

FY—Fiscal year is a budgetary term. The Federal fiscal year runs from October 1 to September 30, as opposed to the calendar year, which runs from Jaunuary 1 to December 31.

NTIS—The National Technical Information Service of the Department of Commerce is the central point in the United States for the public sale of government-funded research and development reports and other analyses prepared by Federal agencies, their contractors, or grantees. The NTIS address is: 5285 Port Royal Road, Springfield, VA 22161; telephone (703) 487–4600.

NPRM—The Notice of Proposed Rulemaking is the document an agency issues and publishes in the **Federal Register** that solicits public comments on a proposed regulatory action. Under the Administrative Procedure Act, it must include, at a minimum:

- Statement of the time, place, and nature of the public rulemaking proceeding.
- Reference to the legal authority under which the rule is proposed.
- Either the terms or substance of the regulation under development or a description of the subjects and issues involved.

SIC—The Standard Industrial Classification Manual defines industries in accordance with the composition and structure of the economy and covers the entire field of economic activities. The **Calendar of Federal Regulations** uses SIC terminology, whenever possible, in the "Sectors Affected" sections. Please see the introduction to Index I for a detailed description of SIC terminology and for information on how to obtain the SIC Manual.

U.S.C.—The United States Code contains a consolidation and codification of all general and permanent laws of the United States. The U.S.C. is divided into 50 titles, which represent broad areas of Federal law.

LIST OF AGENCY ACRONYMS

Executive Agencies

USDA—U.S. Department of Agriculture
- AMS—Agricultural Marketing Service
- FSIS—Food Safety and Inspection Service

DOC—Department of Commerce
- NMFS—National Marine Fisheries Service
- NOAA—National Oceanic and Atmospheric Administration
- OCZM—Office of Coastal Zone Management

DOD—Department of Defense
- DOA—Department of the Army

ED—Department of Education
- OCR—Office for Civil Rights
- OESE—Office of Elementary and Secondary Education
- OPE—Office of Post-Secondary Education
- OSERS—Office of Special Education

LIST OF REGULATIONS

Alphabetically by Agency

Executive Agencies

Department of Agriculture

Department of Commerce

Department of Defense

Department of Education

Department of Energy

Department of Health and Human Services

Department of Transportation

Department of the Treasury

Environmental Protection Agency

Equal Employment Opportunity Commission

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PLEASE SEE COMMENT CARD ON BACK COVER OF CALENDAR.

CHAPTER 1—ENERGY

DEPARTMENT OF ENERGY

Conservation and Renewable Energy

Commercial and Apartment Conservation Service Program (10 CFR Part 458; New)

Legal Authority

National Energy Conservation Policy Act (NECPA), 42 U.S.C. 8211, as amended by Energy Security Act (ESA), P.L. 96-294, 94 Stat. 611.

Reason for Including This Entry

The Department of Energy (DOE) includes this entry because the regulations could impose costs in excess of $100 million per year.

Statement of Problem

The Energy Security Act of 1980 (ESA) amended the National Energy Conservation Policy Act (NECPA) to require DOE to develop rules on the content and implementation of the Commercial and Apartment Conservation Service (CACS) Program. This program requires large gas and electric utilities to offer, and to provide upon request, energy audits of multi-family dwellings and small commercial buildings. Home heating suppliers may provide these services at their discretion.

States may submit plans to DOE for approval to administer and enforce utility compliance with State programs, but, if they do not, NECPA requires DOE to prepare a Federal plan and to order covered investor-owned utilities to comply with it. Covered utilities include those that during the second preceding year had sales (for purposes other than resale) that exceeded 10 billion cubic feet of natural gas or exceeded 750 million kilowatt hours of electricity. Participating Governors must decide whether or not to include non-regulated, municipally owned utilities and interested home heating suppliers in State plans. Non-regulated utilities not included in State plans but meeting the above size criteria must prepare and submit their own plans for DOE approval.

The Department was required to issue an NPRM, which it did January 16, 1981 (46 FR 4482). The Department believes however, that this program is unnecessary and not cost effective. Private firms and utilities now have, through the workings of the free market, adequate incentive to provide the services consumers need to save energy without the imposition of Federal regulations. Reflecting this belief, the Administration requested no funds to continue to implement or enforce this program, beginning with fiscal year 1982. In addition, DOE supported a proposed amendment to its 1982 appropriation that would have prohibited the expenditure of any funds on this program. However, until the CACS Program is discontinued or further amended by Congress, DOE cannot terminate this rulemaking.

Alternatives Under Consideration

In the absence of further legislative action, DOE is required to proceed with this rulemaking, and no alternatives under the requirements of the current statute would significantly reduce the costs and burdens of the program. However, the Department is exploring alternative ways of designing the rules so as to minimize their potential adverse effects.

Summary of Benefits

Sectors Affected: The Federal Government; State governments; investor-owned and municipally owned electric and gas utilities; participating building heating suppliers; tenants and owners of eligible commercial buildings and multi-family residential dwellings of five or more units that are centrally heated or centrally cooled; and the general public.

DOE defines the benefits of the CACS program as the cost-effective savings in non-renewable fuels that would not have occurred but for the CACS program. The net savings in non-renewable fuels would benefit the entire economy because the amount of such savings would be available for spending or investments. Federal and State governments would have greater revenue, consumers would have more to spend or invest, and utilities would save the amount otherwise needed for investment in new capacity. The CACS program does not actually involve the installation of energy conservation measures or the adoption of energy efficiency procedures. Rather, the program, as legislated, is principally an information program that does not require any specific actions that will conserve energy. The program requires large utilities to offer to all eligible customers an on-site energy audit that will inform them of specific information relating to the energy consumption, energy conservation measures, and energy efficiency improvements applicable to their building. Eligible customers are the owners or tenants of small commercial buildings and the owners of multi-family dwellings with five or more units that are centrally heated or controlled.

The impact of the CACS Program depends largely upon the extent to which owners and tenants are made aware of potential energy savings and of the cost effectiveness of conservation measures and procedures. The media, private firms, architectural and engineering journals, and utilities generally have, with higher energy prices, achieved this awareness by publicizing the benefits of various energy conservation measures and energy efficiency improvements. Thus, the added benefit of the CACS Program in terms of stimulating implementation of conservation measures and procedures would appear to be small.

The CACS program is also plagued with constraints that render the program impractical to implement. For example, under the statute, only the smallest commercial energy users must be offered an audit. Additionally, the level of sophistication required to perform commercial audits for the various types of equipment and processes that may be involved often exceeds the current capability of most utilities. Moreover, because these audits are not subsidized, they are likely to be priced at market levels, thereby not providing any added economic incentive that would not otherwise be available in the absence of the program. In the case of multi-family dwellings, the availability of an audit to the owner is conditional upon the owner agreeing to provide unit-specific information to the occupants of the building. Thus, the landlord can effectively preclude the occupants from receiving the benefits of this program by refusing to accept this condition. Furthermore, even when the tenant receives audit results from the owner, it is questionable whether such tenants would either have the incentive to make any of the recommended conservation investments themselves or be successful in forcing the owner to make recommended investments.

Because this program generally applies to persons involved in the operation of a business, DOE believes that an awareness exists, even without the CACS program, of the financial benefits of obtaining a private energy audit and installing commercial energy conservation measures in those cases where they are cost effective. In this regard, DOE believes the Draft Regulatory Analysis (DOE/CS–0194, November 1980) for the CACS program was invalid in its estimation of benefits because it assumed that *none* of the customers receiving CACS audits would have installed measures absent the CACS program.

For these reasons, DOE believes the benefits of the CACS program are minimal.

Summary of Costs

Sectors Affected: The Federal Government; State governments; investor-owned and municipally owned electric and gas utilities; participating building heating suppliers; tenants and owners of eligible commercial buildings and multi-family residential dwellings of five or more units that are centrally heated or centrally cooled; and the general public.

The costs of this regulation include those incurred by the Federal Government to develop, implement, and monitor the CACS program, as well as the costs incurred by the State governments and non-regulated utilities to develop, implement, and enforce individual plans. These costs will be borne by the taxpayers and the economy as a whole. They also include the costs to utilities and participating building heating suppliers to perform subsidized multi-family dwelling energy audits and provide additional program services. These are the largest direct financial costs of the program. We expect that these costs will be passed along to utility customers in higher utility rates. Also, the program will have an adverse effect upon competition by forcing small independent auditors to compete with large and sometimes subsidized (in the case of multi-family dwellings) utility audit programs.

It is the Department's conviction that the services required to conserve energy will be provided by private firms, utilities, or non-governmental institutions, and the benefits generally will be realized regardless of the presence of Federal statute or regulation. Moreover, the existing statute and proposed regulations would impose unnecessary costs.

Summary of Net Benefits

For the reasons given above, the Department believes that the costs of the CACS program, as currently mandated by the statute and as contemplated in the proposed rule, exceed the benefits resulting from the program.

Related Regulations and Actions

Internal: Residential Conservation Service Program (10 CFR Part 456); Low Income Weatherization Assistance Program (10 CFR Part 440).

External: Existing State laws and regulations.

Government Collaboration

None.

Timetable

NPRM—46 FR 4482, January 18, 1981.
Revised NPRM—DOE will issue as soon as possible.
Final Rule—Date to be determined.
Public Hearing—Date to be determined.
Public Comment Period—Dates to be determined.
Regulatory Analysis—Draft, November 1980; final, date to be determined.
Regulatory Flexibility Analysis—Date to be determined.

Available Documents

Draft Regulatory Analysis.
Comments in response to NPRM.
All documents are available for review in the DOE Freedom of Information Reading Room, Forrestal Building, Room 1E–190, 1000 Independence Avenue S.W., Washington DC 20585.

Agency Contact

John P. Millhone, Director
Buildings Energy Research and Development
Office of Conservation and Renewable Energy
U.S. Department of Energy
1000 Independence Avenue, S.W.
Washington, DC 20585
(202) 252–9444

DOE–CE

Energy Conservation Program for Consumer Products Other Than Automobiles (10 CFR Part 430; Revision)

Legal Authority

Energy Policy and Conservation Act, Title III, as amended by the National Energy Conservation Policy Act, 42 U.S.C. 6315.

Reason for Including This Entry

The Department of Energy (DOE) includes this entry because the proposed rule would impose substantial costs on the home appliance industry and increase the cost of appliances.

Statement of Problem

The Energy Policy and Conservation Act (EPCA) requires DOE to establish energy efficiency standards for 13 product categories if such standards are technologically feasible and economically justified and result in significant energy conservation. These standards would establish the minimum

level of energy efficiency that the manufacturer of the covered product would have to achieve, but would not prescribe the methods, designs, processes, or materials to be used to achieve the particular efficiency level. Manufacturers would be required to certify that their products conform to the standards by testing them in accordance with DOE-specified test procedures before they could place such products on the market. 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. Nine of these categories were given priority under EPCA, and standards for these products (or a determination that standards are not technologically feasible and economically justified) were required by January 2, 1981. The statutory deadline for the other four categories was November 1981. A fifth product category, heat pumps, has been split off from the central air conditioner category. The public comments following the publication of the NPRM relating to the standards for the first nine product categories (45 FR 43976, June 30, 1980) raised substantial issues with regard to the economic justification of the standards as well as other issues. Consequently, on December 17, 1980, the Department stated that it would not be able to meet the statutory deadline for rules for the first nine products. Later, in February 1981, DOE gave notice of its intent not to issue standards until further study (46 FR 13517, February 23, 1981).

As announced in February, DOE is currently reviewing the methodology and analysis upon which the standards would be based. Furthermore, additional assessment of the underlying data is necessary. Moreover, the Administration has requested no funds for this program in fiscal year 1982. This request reflects the Administration's view that with rising energy prices consumers are demanding and manufacturers are producing more energy efficient products without mandatory Federal standards.

Alternatives Under Consideration

Under EPCA the alternatives are either to adopt standards or to make a finding that standards would not be technologically feasible, economically justified, or would not result in significant conservation of energy.

Summary of Benefits

Sectors Affected: Manufacturers and users of major household appliances and the general public.

The Department is reviewing its detailed estimate of the benefits that would result from implementing mandatory energy efficiency standards for consumer products. The results of this review will be included in the upcoming NPRM.

Summary of Costs

Sectors Affected: Manufacturers of major household appliances and users of these appliances.

The Department is reviewing its detailed estimate of the costs that would result from implementing mandatory energy efficiency standards for consumer products. The results of this review will be including in the upcoming NPRM.

Summary of Net Benefits

Because DOE is still in the process of reviewing its detailed estimate of the costs and benefits of this regulation, a summary of the net benefits is not available at this time.

Related Regulations and Actions

Internal: None.
External: Federal Trade Commission Appliance Labeling Program.

Government Collaboration

The Department is working with the Federal Trade Commission and National Bureau of Standards.

Timetable

Revised NPRM for Standards for Nine Products—As soon as practicable.
Public Hearing—Dates to be determined.
Public Comment Period—Dates to be determined.
Final Rule—As soon as practicable.
Statutory Deadline—January 1981.
Revised Regulatory Impact Analysis—Will accompany NPRM and Final Rule.
Regulatory Flexibility Analysis—Will accompany NPRM and Final Rule.
NPRM for Standards for Five Products—As soon as practicable.
Public Hearing—Dates to be determined.
Public Comment Period—Dates to be determined.
Final Rule—As soon as practicable.
Draft Regulatory Impact Analysis—Date to be determined.
Statutory Deadline—November 1981.
Regulatory Flexibility Analysis—Will accompany NPRM and Final Rule.

Available Documents

Draft Regulatory Analysis.
Test Procedures:
Refrigerators, Refrigerator/Freezers and Freezers—42 FR 46140, September 14, 1977; 45 FR 47396, July 14, 1980.
Dishwashers—42 FR 39964, August 8, 1977.
Clothes Dryers—42 FR 46140, September 14, 1977; 45 FR 46762, July 10, 1980.
Water Heaters—42 FR 54110, October 4, 1977; 43 FR 48986, October 19, 1978; 44 FR 52632, September 7, 1979.
Room Air Conditioners—42 FR 27896, June 1, 1977; 45 FR 43362, June 26, 1980.
Furnaces and Home Heating Equipment—43 FR 20108, May 10, 1978; 44 FR 1970, January 9, 1979; 45 FR 53714, August 12, 1980.
Television Sets—42 FR 46140, September 14, 1977.
Kitchen Ranges and Ovens—42 FR 20106, May 10, 1978.
Clothes Washers—42 FR 49802, September 28, 1977.
Humidifiers and Dehumidifiers—42 FR 55599, October 18, 1977.
Central Air Conditioners, including Heat Pumps—42 FR 60150, November 25, 1977; 44 FR 76700, December 27, 1979.
NPRM Regarding Provisions for the Waiver of Consumer Product Test Procedures—45 FR 14188, March 4, 1980.
Sampling Requirements of Consumer Products Test Procedures—44 FR 22410, April 13, 1979.
Public comments (including comments from public hearing held August 1980).
Representative Average Unit Cost of Electricity, Natural Gas, No. 2 Heating Oil, and Propane—44 FR 37534, June 27, 1979.
Standards:
ANPRM Regarding Energy Efficiency Standards for Nine Types of Consumer Products—44 FR 49, January 2, 1979.
ANPRM Regarding Energy Efficiency Standards for Four Types of Consumer Products—44 FR 72276, December 13, 1979.
NPRM Regarding Energy Efficiency Standards for Nine Types of Consumer Products—45 FR 43976, June 30, 1980.
Notice of Intent Not to Issue Energy Efficiency Standards Until Further Study—46 FR 13517, February 23, 1981.
All documents are available for review in the Freedom of Information Reading Room, Forrestal Building, Room 1E–190, 1000 Independence Avenue, S.W., Washington, DC 20585.

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DOE–CE

Residential Conservation Service Program (10 CFR Part 456; Revision)

Legal Authority

National Energy Conservation Policy Act (NECPA), 42 U.S.C. 8211, as amended by Energy Security Act (ESA), P.L. 96–294, 94 Stat. 611 *et seq.*

Reason for Including This Entry

The Department of Energy (DOE) includes this entry because the Presidential Task Force on Regulatory Relief has designated these regulations for review.

Statement of Problem

The National Energy Conservation Policy Act (NECPA) amendment required DOE to develop rules on the content and implementation of the Residential Conservation Service (RCS) program. The existing RCS program regulations were originally published in the **Federal Register** on November 7, 1979. This program requires large gas and electric utilities to provide general information to all their residential customers as to the cost and savings involved in installing conservation and renewable resource measures, to offer to all its residential customers low-cost, on-site energy audits, and to provide other program services.

States may submit plans to DOE for approval to administer and enforce utility compliance with State programs, but, if they do not, NECPA requires DOE to prepare a Federal plan and to order covered investor-owned utilities to comply with it. Covered utilities include those that during the second preceding year had sales (for purposes other than resale) that exceeded 10 billion cubic feet of natural gas, or exceeded 750 million kilowatt hours of electricity. Participating Governors must decide whether or not to include non-regulated, municipally owned utilities and interested home heating suppliers in State plans. Non-regulated utilities not included in State plans but meeting the above size criteria must prepare and submit their own plans for DOE approval.

DOE's review of the RCS Program regulations indicates that the regulations impose significant burdens on States, utilities, and participating home heating suppliers. DOE believes that private firms and utilities now have, through the workings of the free market, adequate incentive to provide the services consumers need to save energy without the imposition of Federal regulations. Reflecting this belief, the Administration requested no funds to continue to implement or enforce this program, beginning with fiscal year 1982. In addition, DOE supported a proposed amendment to its 1982 appropriation that would have prohibited the expenditure of any funds on the RCS Program. However, until the RCS Program is discontinued or further amended by Congress, DOE cannot rescind the regulations.

Alternatives Under Consideration

In the absence of further legislation, DOE is required to proceed with implementation of the RCS program. Due to the nature of the RCS statutory requirements, any scheme of implementation will of necessity be burdensome. In order to alleviate the burden to the extent legally permissible, DOE has just proposed a new rule to minimize the RCS program's adverse effects by deleting regulatory requirements not mandated by statute (46 FR 55836, November 12, 1981).

Summary of Benefits

Sectors Affected: The Federal Government; State governments; investor-owned and municipally owned electric and gas utilities; participating home heating suppliers; manufacturers, lenders, sellers, and installers of energy conserving and renewable resource products; tenants and owners of eligible residential buildings; and the general public.

DOE defines the benefits of the RCS program as the cost-effective savings in non-renewable fuels that would not have occurred but for the RCS program. The net savings in non-renewable fuels would benefit the entire economy because the amount of such savings would be available for spending or investments. Federal and State governments would have greater revenue, consumers would have more to spend or invest, and utilities would save the amount otherwise needed for investment in new capacity. The RCS program does not actually involve the installation of conservation or renewable resource measures. Rather it is essentially an informational program, requiring large utilities both to provide general information to all its residential customers as to the costs and savings involved in installing conservation and renewable resource measures and to offer to all its residential customers a low-cost, on-site energy audit that is intended to provide specific information. Thus, the benefits of the RCS program would result from the installation of cost-effective measures that would not have occurred without either the general information or the on-site audit.

However, the general information the statute requires to be provided by utilities is not unique or otherwise not publicly available. The media, private businesses, and utilities generally have, with higher energy prices, publicized the benefits of various conservation and renewable resource measures. Consequently, DOE believes little if any benefit is derived from the RCS program's generalized informational function.

Despite their low cost, the RCS energy audits require some commitment and initiative from the homeowner—to make the request, schedule the appointment, be present at the time of the audit. Historical results indicate that only 3 to 5 percent of eligible households will request and receive such audits each year, compared to the 7-percent annual audit rate predicted in the orignial Regulatory Analysis (DOE/CS–00104/1, October 1, 1979). Moreover, DOE believes that persons who do request audits are likely to be those that are generally most interested in installing conservation and renewable resource measures. Consequently, many, if not most, of those request audits would have installed measures even in the absence of the RCS program. In this regard, DOE believes the original Regulatory Analysis for the RCS program was invalid in its estimation of benefits because it assumed that *none* of the customers receiving RCS audits would have installed measures absent the program. Therefore, DOE believes the benefits of the RCS program are minimal.

Summary of Costs.

Sectors Affected: The Federal Government; State governments; investor-owned and municipally owned electric and gas utilities; participating home heating suppliers; manufacturers, lenders, sellers, and installers of energy conserving and renewable resource products; tenants and owners of eligible residential buildings; and the general public.

The costs of this program include those incurred by the Federal government to develop, implement, and monitor the RCS program, as well as the costs incurred by State governments and non-regulated utilities to develop, implement, and enforce their individual plans. These costs will be borne by taxpayers and the economy as a whole.

They also include the costs to utilities and participating home heating suppliers to perform subsidized energy audits and provide additional program services. These are the largest direct financial costs of the program. DOE expects that these costs will be passed along to utility customers in higher utility rates. Also, the program will have an adverse effect upon competition by forcing small independent auditors to compete with large subsidized utility audit programs. Energy Security Act amendments to the RCS program could further adversely affect competition by, in effect, allowing utilities, as part of the RCS program, to offer the supply or installation of conservation and renewable resource measures through subcontracts with some independent suppliers or contractors selected by the utilities in competition with all other small independent suppliers and contractors. Finally, suppliers, contractors, and lenders will incur costs to comply with applicable RCS requirements, particularly listing requirements. DOE expects that these costs will result in increased prices for energy conservation and renewable resource goods and services.

Since the original Regulatory Analysis was completed, experience indicates that some of the assumptions made in the analysis had the effect of underestimating the total costs of the program. For example, the cost of performing an on-site audit is higher than the cost assumed in the analysis.

Summary of Net Benefits

For the reasons stated above, the Department believes that the benefits originally projected for the RCS program have been overstated and the costs of the program understated. Furthermore, it is the Department's conviction that the services required by homeowners to conserve energy will be provided by private firms, utilities, or non-governmental institutions, and the benefits generally will be realized regardless of the presence of Federal statute or regulation. Moreover, the existing statute and regulations impose unnecessary costs. For these reasons, the Department believes that the costs of the RCS program, as currently mandated, exceed the benefits resulting from the program.

Related Regulations and Actions

Internal: Commercial and Apartment Conservation Service Program (proposed 10 CFR Part 458); Low Income Weatherization Assistance Program (10 CFR Part 440).

External: Existing State laws and regulations.

Government Collaboration

None.

Timetable

NPRM—44 FR 16546, March 19, 1979.
Final Rule—44 FR 64602, November 7, 1979.
NPRM—46 FR 2522, January 9, 1981 (Final RCS Plan).
NPRM—46 FR 8996, January 27, 1981 (Urea Formaldehyde Foam Insulation).
Revised NPRM—46 FR 55836, November 12, 1981.
Final Rule—DOE plans to issue the Final Rule as soon as practicable after the expiration of the 60-day comment period.
Public Hearings—December 7 and 8, 1981, Chicago; December 10 and 11, 1981, San Francisco; January 11 and 12, 1981, Washington, DC.
Public Comment Period—Closes January 20, 1982.
Regulatory Analysis—Final, November 1979.
Regulatory Impact Analysis—Date to be determined.
Regulatory Flexibility Analysis—None.

Available Documents

All documents are available for review in the DOE Freedom of Information Reading Room, Forrestal Building, Room 1E-190, 1000 Independence Avenue S.W., Washington, DC 20585.

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FEDERAL ENERGY REGULATORY COMMISSION

Blanket Certificates for Interstate Pipelines and Local Distribution Companies (18 CFR Part 157, New; 18 CFR Part 284, Revision; 18 CFR Part 375, Revision)

Legal Authority

Natural Gas Act, as amended, 15 U.S.C. 717 *et seq.*; Natural Gas Policy Act of 1978, 15 U.S.C. 3301 *et seq.*

Reason for Including This Entry

These rulemakings are part of the Federal Energy Regulatory Commission's (FERC) regulatory reform program and will provide integrated and streamlined procedures for approval of certain activities performed by interstate pipelines and local distribution companies served by interstate pipelines. The rulemakings are important because they propose to substantially reduce the regulatory burdens interstate pipelines and local distribution companies encounter in seeking Commission approval of certain activities.

Statement of Problem

Section 7 of the Natural Gas Act, 15 U.S.C. 717f, provides that no natural gas company may engage in (1) the transportation and sale of natural gas in interstate commerce for resale, (2) the construction of facilities to be used in those activities, or (3) the abandonment of any jurisdictional service or facilities without Commission approval. To carry out this statutory responsibility, the Commission issues certificates, and it has a number of different programs to do so. Some of these programs involve streamlined procedures for the issuance of so-called "blanket certificates" or "budget-type certificates." Those programs authorize, under streamlined procedures, interstate pipelines to undertake specific types of activities (e.g., construction and operation of gas supply facilities, miscellaneous rearrangement of facilities, and transportation of natural gas on behalf of another interstate pipeline) subject to certain conditions, such as conditions relating to the cost of the activity and the type of facility certificated to do the activity. Those actions that do not qualify for the blanket or budget-type certificate programs are handled individually, case-by-case. For projects authorized on a case-by-case basis (which, in terms of dollar amounts, are most of the projects), FERC's regulations require the applicant to file extensive information with the Commission; staff must carefully review such information and the Commission must issue a specific order authorizing these projects.

In an effort to make the case-specific approval process more efficient, the Commission has delegated a number of activities to the Director of the Office of Producer and Pipeline Regulation (18 CFR 375.307). These delegations include authority to decide on certain uncontested applications and amendments to applications, to reject tariff or rate schedule filings if they patently fail to comply with the applicable requirements, and other activities that are so routine that direct Commission review is not necessary. The Commission has also provided (18 CFR 1.32 and 157.11) for expedited

hearings by the full Commission of uncontested, routine applications. In addition, § 157.7(a) of the Commission regulations provides for abbreviated applications if detailed information is either not required or already has been filed by the applicant with the Commission.

Despite the Commission's efforts (such as the existing blanket certificate program or authorizing delegations to the director of the Office of Producer and Pipeline Regulation) to expedite the process of considering and disposing of applications for certificates, many routine activities are still authorized under costly and time-consuming procedures. A substantial portion of the Commission staff's time is devoted to processing applications under the case-specific process. It is estimated that both the applicant and the Commission each spend 250 hours in preparing and processing a case-specific determination.

Alternatives Under Consideration

The first alternative is to make no change to the Commission's regulations. However, because Commission approval is required as a matter of law for these types of authorizations, this alternative would only perpetuate the regulatory problems of cost and time discussed above.

In providing regulations to streamline the certificate process for the transportation or construction activities of interstate pipelines and local distribution companies served by interstate pipelines, the Commission must determine how it will revise its procedures and decide which of these activities are amenable to reduced regulatory process. Under the proposed blanket certificate program, many pipeline activities could be authorized by rule under streamlined procedures. Such activities would include transportation of natural gas for pipelines' and distributors' system supplies, sales by interstate pipelines of natural gas to other interstate pipelines, and construction and operation of facilities. Some activities may be so routine and so well understood that authorization of the activity by the Commission could take place without prior review. In other cases, the activity may be relatively routine, but interested parties (such as customers) may want to express concerns prior to FERC approval of that activity. In these latter cases, such persons should have the opportunity to protest and intervene in the procedure before the Commission considers whether to approve.

Besides deciding which activities should be subject to what type of streamlined procedures, the Commission must also decide whether there should be limits on the types of activities that would be authorized under a blanket certificate. This is because the Commission must, under law, continually regulate the pipelines and the rates they charge for the facilities that have been certificated. For example, the Commission must decide whether the potential cumulative effect on customers of constructing and operating facilities under a blanket certificate on ratepayers should, at some point, be subjected to the scrutiny of a full, case-specific proceeding. The cumulative effect could be limited by requiring that the total costs of projects authorized under a blanket certificate each year not exceed a predetermined dollar amount.

The Commission must also decide how extensive the application requirements should be as well as how detailed subsequent regulatory filings must be. If insufficient information is submitted by the applicant for a blanket certificate, interested persons might routinely protest the proposed activity simply to obtain more information. On the other hand, extensive filing requirements would increase the regulatory burdens imposed on the applicant and defeat the purpose of a blanket certificate.

Off-system sales are sales of excess gas by interstate pipelines to other interstate pipelines who need the gas to serve their customers. If off-system sales are permitted under a blanket certificate, the Commission must consider whether such sales may be made only to other interstate pipelines, or whether intrastate pipelines, local distribution companies, and the final customers may also be eligible purchasers. The Commission must also decide the appropriate price for such sales, e.g., the average price of all gas purchased by the seller, the price of new supplies of gas, the price of gas imported from Canada, or some other just and reasonable price. If the price is set too high, potential buyers may forego purchase of the gas for other, less expensive fuels. However, if the price is set too low, then the seller's customers will be subsidizing the sale without receiving any compensating benefits.

Summary of Benefits

Sectors Affected: FERC; natural gas pipelines; local distribution companies; and natural gas consumers.

This procedure will directly benefit any pipeline or distributor issued a blanket certificate. Unlike the current case-specific procedures, in which interstate pipelines and local distribution companies served by interstate pipelines must first be issued specific certificate authorization by the Commission for each activity, blanket certificate holders would automatically receive authorization for many projects that may then be undertaken without first notifying the Commission or getting specific approval. The procedure would allow the certificate holder to undertake other activities subject only to a notice and protest procedure. The reduced regulatory burden will decrease not only regulatory costs, but also regulatory delays. Local distribution companies served by interstate pipelines that receive a blanket certificate will also benefit from these procedures by reduced regulatory costs and delays. It is estimated that full implementation of the blanket certificate program will reduce regulatory burden on industry by approximately 25,000 hours per year. Approximately 100 cases currently subject to case-specific determinations would be automatically authorized under blanket certificates.

Natural gas consumers will benefit because reduced regulatory delays will assure that gas supplies are more readily available to purchasers. Moreover, reduced regulatory costs ultimately benefit consumers by way of lower gas rates.

The new procedures will also result in more economical and efficient use of the Commission's time. Thus, administrative costs should be lower under the proposed rule than under the Commission's current rules and practices.

Summary of Costs

Sectors Affected: FERC; natural gas companies; and local distribution companies.

The costs that could result from implementing a more efficient and streamlined certificate procedure will ultimately depend on how the Commission implements its blanket certificate program. If, for example, the Commission does not provide for the pipeline certificate holder and one who protest the certificate the opportunity to resolve their differences regarding the appropriateness of the activities, then a single protest filed for the purpose of obtaining more information in such a procedure would remove the proceeding from the blanket certificate procedures and subject it to the more time-consuming, case-specific deliberation. Such a procedure would reduce the benefits of a blanket certificate and increase administrative costs to the

Commission and the blanket certificate holder.

Similarly, if the Commission adopts extensive filing requirements under a blanket certificate program, then the procedures and costs for receiving Commission approval may not significantly differ from those of the present procedures.

These costs ultimately are contingent on the procedures finally adopted. It is impossible at this stage to quantify or estimate the magnitude of such costs.

Summary of Net Benefits

The total benefits of these procedures are in the form of reduced regulatory costs and regulatory delays. Natural gas companies and, ultimately, natural gas consumers, are the beneficiaries. These procedures also will result in the more efficient use of the Commission's time and resources and will reduce administrative costs.

The Commission has proposed to include in the new blanket certificate procedures a broad range of pipeline activities such as: off-system sales of surplus-gas between interstate pipelines, end-user transportation, and transportation of natural gas for pipelines' and distributors' system supplies. Incorporating these activities into the blanket certificate program should result in the more efficient distribution of natural gas supplies throughout the country.

Provided the Commission implements a blanket certificate program that applies to frequently occurring activities and provides substantially streamlined yet fair procedures, then the net benefits to the natural gas industry, consumers, and the Commission of this rulemaking will outweigh the costs.

Related Regulations and Actions

Internal: In Docket No. RM79-34, issued May 21, 1981 (46 FR 30491, June 9, 1981), the Commission invited interested persons to submit written comments in Docket No. RM81-19 on whether pipeline transportation of end-user gas for the displacement of fuel oil should be included in the blanket certificate program.

External: None.

Government Collaboration

None.

Timetable

NPRM—The blanket certificate program was proposed in two separate notices: "Interstate Pipeline Blanket Certificates for Routine Transactions," Docket No. RM81-19, issued March 10, 1981 (46 FR 16903, March 16, 1981); and "Sales and Transportation by Interstate Pipelines and Distributors," Docket No. RM81-29, issued April 27, 1981 (46 FR 24585, May 1, 1981).

Final Rule—Date to be determined.

Final Rule Effective—Date to be determined.

Other—The Commission issued a Notice of Availability of Environmental Assessment for both Docket Nos. RM81-19 and RM81-29, issued July 1, 1981 (46 FR 35529, July 9, 1981).

Public Hearing—A public comment hearing on Docket No. RM81-19 was held on May 4, 1981, and a public comment hearing on Docket No. RM81-29 was held on June 5, 1981.

Public Comment—See "Public Hearing" above.

Regulatory Impact Analysis—The FERC is an independent regulatory agency and is not required to prepare a Regulatory Impact Analysis as prescribed in E.O. 12291. However, the FERC performs a similar analysis for rules of major importance and includes the results in the issuance of NPRMs and the Final Rules.

Regulatory Flexibility Analysis—In both NPRMs the Commission certified that the provisions of the Regulatory Flexibility Act do not apply to these rulemakings because the participants in the blanket certificate program—interstate pipelines and local distribution companies—are not small entities.

Available Documents

Comments to the two NPRMs, as well as copies of all issued documents, are available and may be obtained from the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, DC 20426.

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FERC

Construction Work in Progress for Public Utilities (18 CFR Part 2, Revision; 18 CFR Part 35, New)

Legal Authority

Federal Power Act, 16 U.S.C. 791-828c; Department of Energy Organization Act, 42 U.S.C. 712 (Supp. 1979).

Reason for Including This Entry

The Federal Energy Regulatory Commission (FERC) regulates the sale of electric power sold wholesale in the interstate market. This means that the Commission regulates about 13 percent of the total sales of electricity made in the United States. This rulemaking can have an important impact on the amounts paid by those who purchase electric power in sales regulated by the Commission and on the ability of utilities that make those sales to raise money for capital improvements. The rulemaking can therefore have a significant impact on the financial health of the electric utility industry and the reliability of electric power supplies in the future.

Statement of Problem

The electric utility industry faces an important problem in borrowing money to replace obsolete facilities, to reduce the Nation's dependence on foreign oil by converting existing oil-fired plants to coal, and to construct more pollution control and safety facilities on new and existing electric plants. In recent times, investors and lenders have tended to regard the utility industry as an unattractive investment alternative. Utility bond ratings have declined and the value of common equity stock issues has declined. High inflation rates and high interest rates have contributed to utilities' difficulties.

One method for a utility to recover its cost of borrowing money to build a particular project is to account for that money and the cost of that money (i.e., the interest on that money) during the time construction progresses. When the particular project is completed and generating electricity, the rate charged for that electricity is set at a level that allows the utility a return on its capital investment (the "rate base"), supplemented by the accounted-for costs of financing the building of the project. In this way, while the utility recovers, in rates, the costs of borrowing money to construct the project, that recovery does not start until the project is completed and producing electricity. This is the method that utilities normally use to recover construction costs in rates approved by the FERC.

Another method is to permit the utility to recover some or all of its costs of borrowing money to build a particular project before that project is completed and generating electricity. This is done by including the project being built in the utility's electricity-producing rate

base, on which it earns a return. The utility would then recover the costs of borrowing money from rate payers immediately, rather than adding such expenditures to the total cost of construction later, when the project becomes operational. This method is called return on construction work-in-progress, or CWIP, because the construction work-in-progress cost of money is included in the utility's rate base to produce immediate revenues.

Although the inclusion of CWIP in rates permits a utility to recover some or all of its costs of financing construction more promptly than it otherwise could, it has the effect of producing a mismatch of the benefits of the construction program to rates paid for that program: future customers who will buy electricity generated by the plant when it is completed and providing electricity benefit from that service while costs of financing that construction are borne by present customers of the utility.

FERC has an established policy (18 CFR 2.16) under which utilities are allowed to include CWIP in rate base in limited circumstances. Those circumstances are if: (1) the construction involves pollution control facilities, (2) the construction involves conversion of a generating plant to a more economical fuel, or (3) the utility can demonstrate that it is experiencing severe financial difficulty. The Commission has rarely used the financial distress test, and the existing policy (which may allow some utilities to begin recovering construction costs before the project is completed) has produced protracted and complex litigation.

This rulemaking is to provide a forum for the consideration of the issues related to CWIP and to explore the range of alternative standards that FERC could apply to the use of CWIP. The result of the rulemaking could be a rule that eliminates or reduces extensive and frequently unnecessary litigation of the issue before Commission administrative law judges and clarifies the Commission's policy on this aspect of CWIP relief, so that utilities may anticipate the Commission's response in CWIP cases. If the Commission provides more precise standards under which a utility would qualify for CWIP in rate base, utilities would be better able to plan investments in plant, and the only material questions of fact that would require resolution in any Commission rate proceeding would be whether the utility was eligible under the rule, not whether it was in "financial distress."

Alternatives Under Consideration

At the outset, the Commission could preserve its existing rules respecting CWIP or amend them. If the Commission chooses to amend the rules, it has several basic alternatives to consider in determining whether to amend its provisions allowing CWIP. Moreover, to the extent that the Commission considers inclusion of CWIP in rate base appropriate, there are several methods of computing and limiting this kind of ratemaking.

(A) The proposed rule would evaluate whether a utility is likely to have difficulty raising capital on reasonable terms, based on the recent bond ratings given the utility by either of the major rating agencies—Standard and Poor's or Moody's. The rule would then provide for an evaluation by the Commission of whether this difficulty can be reasonably attributed to the utility's construction program. If this is the case, the utility could be considered eligible for rate-base treatment of its construction work-in-progress, subject to certain limitations that the Commission might impose. Under the proposed rule, a utility would qualify for CWIP in rate base if its first mortgage bond rating on the date of filing of the underlying rate case were of a particular rating or lower under the commonly used financial rating system provided by private companies that judge a company's financial health in order to give an objective picture of the quality of an investment in that company. The proposed rule would then require a determination by the Commission of what percentage of the utility's jurisdictional construction work-in-progress (that portion of a utility's activities that are regulated by the Commission) the Commission could exclude from the utility's jurisdictional rate base. In other words, a utility would generally be permitted to include in rate base an additional amount of CWIP sufficient to reduce the amount of jurisdictional construction work-in-progress excluded from rate base to some percent of jurisdictional rate base. (The proposal provides for 40 percent.) However, the Commission would retain discretion to reduce the amount of CWIP that the utility could include in rate base, after considering the effect of such matters as short-term consumer electric prices, the managerial practices of the utility, or the need for the construction programs. Utilities in severe financial distress could collect CWIP immediately, but the utility might be required to refund to customers any amounts collected in excess of the amount FERC determined to be reasonable under the rule.

(B) The Commission could use criteria for determining the financial condition of a utility other than the bond ratings. For example, other available standards include the relationship of a utility's allowances for funds used during construction to its total net income (i.e., the "quality of earnings") or the relationship of a utility's pre-tax income to its long-term obligations to pay interest on money borrowed (i.e., the "interest coverage ratio").

(C) The Commission could allow the utility to add a fixed percentage of construction work-in-progress into rate base regardless of a utility's financial condition. However, this would require the Commission to depart significantly from its existing policy.

(D) The Commission could allow CWIP associated with construction of a particular plant to go into the rate base at a specified time prior to such facilities becoming operational. This approach would involve inclusion of CWIP at a time when it is reasonably certain that the plant will be completed.

(E) The Commission could allow CWIP in rate base only to the extent that a utility's predominant regulatory authority, generally the State in which it is located, permits such inclusion. However, this alternative may not enable the FERC to assist utilities in severe financial difficulty and may provide healthy utilities with assistance they do not need.

(F) The Internal Revenue Service could consider all customer contributions to current construction programs as a non-taxable loan to a utility that could show financial difficulty. However, the IRS might not find such contributions in aid of construction to be non-taxable income.

Each and every one of these alternatives can be examined either in isolation or in relation to the other alternatives. At this time, the relative merits (or demerits) of any one alternative, or combination of alternatives, is unclear.

Summary of Benefits

Sectors Affected: Electric utilities selling power at wholesale; investors in those utilities; electric utilities purchasing power at wholesale; the ultimate consumers of electricity; and FERC.

Determining the proper application of the Commission's CWIP policies generically rather than through litigation will reduce the length of ratemaking processes and benefit electric utilities, electricity customers, and the Commission. Although the rate changes now submitted to the FERC may be collected by utilities subject to refund, rate proceedings can be protracted. A generic CWIP policy will help eliminate

undue delay in ratemaking proceedings. A liberal CWIP policy could help make utilities that buy or sell electric power appear more attractive to investors and assist both the solvency of the utilities that must invest substantial capital in construction programs and the facility with which utilities can undertake or complete those programs.

Summary of Costs

Sectors Affected: Electric utilities selling power wholesale; investors in those utilities; electric utilities purchasing wholesale power; and ultimate consumers of electricity.

Any alternative that the Commission selects will generate costs, and, depending on which alternative the Commission selects and how the Commission decides to implement the method selected, the costs will affect different sectors and will affect them to varying degrees.

With respect to the alternative to forego any action on the question of changing the Commission's CWIP rules, there may be a considerable cost of missing an opportunity to simplify Commission regulations and to provide a viable alternative to encourage financial investments in the electric utility industry. However, a rule to liberalize the amount of CWIP to be allowed a utility will result in increased immediate costs to consumers. This is because the more CWIP that is allowed into rate base, the greater the cost to buyers of electric power before plant construction is completed; while the less CWIP that is permitted before construction is completed, the lower the cost to electricity customers during construction but the greater the increase in rates at the time the unit being constructed becomes operational.

Inaction on the subject of this rulemaking may adversely affect investor interests and the overall financial situation of the utilities in general, thereby threatening the postponement of construction and threatening reliable service in the future. Delays in construction may ultimately increase the costs of construction due to the escalating cost of labor and materials.

The costs associated with including CWIP in the rate base are the subject of debate, and these have not as yet been quantified. The proposed rule, and perhaps some of the alternatives, could provide for adjustments to the economic impact of CWIP costs to suit the particular utility and its customers, taking into account several factors, such as the impacts on customer rates and the company's management decisions.

Summary of Net Benefits

The benefits normally attributed to a more liberal policy toward inclusion of CWIP in rate base can be related to the overall improvement of a utility's financial situation through lowered costs of borrowing money. Proponents of a liberal CWIP policy also argue that customers may save money as well as assure future service by paying for financial costs of construction as they are incurred.

However, neither costs nor benefits for the various alternatives are quantifiable at this stage of the proceeding and will not be available until near the end of the proceeding. Moreover, given the public response to this proceeding, the relative benefits of a CWIP rulemaking under any of the alternatives will be vigorously debated.

Related Regulations and Actions

None.

Government Collaboration

None.

Timetable

NPRM—46 FR 39445, August 6, 1981, issued in Docket No. RM81-38 on July 27, 1981.
Final Rule—To be determined.
Final Rule Effective—To be determined.
Public Hearing—A public hearing was held on December 7 and 8, 1981 at the offices of the FERC.
Public Comment Periods—The comment period on the NPRM closed on October 30, 1981, and reply comments are to be submitted by December 23, 1981. Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission.
Regulatory Impact Analysis—The FERC is an independent regulatory agency and is not required to prepare a Regulatory Impact Analysis as prescribed in E.O. 12291. However, the FERC performs a similar analysis for rules of major importance and includes the results in issued NPRMs and Final Rules.
Regulatory Flexibility Analysis—The preamble to the NPRM states there will be no significant impact on small entities.

Available Documents

Transcript of Informal Public Conference on the Financial Condition of the Electric Utility Industry, Docket No. EL81-7-000 (March 6, 1981).

All documents listed under the Timetable, as well as comments and reply comments, are available at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street N.E., Washington, DC 20426, during regular business hours.

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FERC

High-Cost Natural Gas: Production Enhancement Procedures (18 CFR Part 271, Subpart G; New)

Legal Authority

Natural Gas Policy Act of 1978, 15 U.S.C. 3317.

Reason for Including This Entry

This rule will encourage production of reserves of natural gas that are recoverable only by application of techniques to enhance production that are often too costly to apply at prices now available.

This, along with other categories of "unconventional" or "high-cost" gas, gas produced from geologic formations or under other conditions that make it especially expensive or risky to produce, represents an important and abundant domestic energy resource and can help to reduce imports of foreign fuels.

Statement of Problem

The Natural Gas Policy Act of 1978 (NGPA) placed all sales of natural gas by producers under Federal jurisdiction and set a series of gradually escalating prices for recently discovered or "new" natural gas that more closely approximated the higher costs of alternate fuels at the time the Act was passed. These prices were intended to stimulate production and to smooth the transition to deregulation of most new gas, which was set for January 1, 1985, by the NGPA.

Unconventional gas, while abundant, can be discovered or produced only at high risk or cost. The NGPA specifies certain categories of unconventional gas eligible for an incentive price, that is, a selling price higher than the prices for conventional gas established by Congress and high enough to make recovery of these reserves economically feasible. Section 107(c)(5) of the NGPA gives the Commission authority to designate other categories of natural gas as unconventional.

In a Notice of Inquiry issued on June 13, 1979, the Federal Energy Regulatory Commission (FERC) requested that the public suggest categories of gas that might qualify under § 107(c)(5) as high-cost or high-risk.

This rulemaking is an outgrowth of the comments received in response to that Notice of Inquiry and a petition filed by the Sun Gas Company requesting the Commission to classify gas produced as a result of production enhancement procedures as high-cost. This petition was supported by other natural gas producers and environmental groups, such as Friends of the Earth and the Environmental Policy Center.

Production enhancement procedures often become necessary in order to maintain or to increase production from a depleting well or a well in which production has become marginal. Production supply enhancement procedures eligible under the proposed rule include: (1) re-entry into a well which has been plugged and abandoned; (2) re-entry into a well in order to drill deeper or start a side shaft; (3) reperforation of the well casing or perforation into a separate gas-producing zone; (4) repair or replacement of a faulty or damaged casing or related equipment in the well; (5) acidizing, fracturing, or installation of compression equipment. Current regulations do not allow sufficient flexibility to contracting parties to amend, modify, or renegotiate contracts in order to provide for production enhancement work.

The purpose of this rule is to set a ceiling or maximum price that may be paid by a purchaser and that is high enough to encourage production of reserves of natural gas recoverable only if production enhancement procedures are applied. Because the price for this gas is controlled by law, this encouragement will not be possible through higher prices if Commission action is not taken.

Alternatives Under Consideration

The Commission has proposed that gas produced with supply enhancement procedures applied after May 29, 1980, be eligible for an incentive price as high as the price for gas under § 109 of the NGPA. (In October 1981, the price for §109 gas was $2.08 per million Btu's.) The proposal also requires that a negotiated contract price must be in effect to ensure that the price for qualified production enhancement gas is set by agreement of all the contract parties. The Commission has also proposed a formula limiting the unit cost of production that results from enhancement procedures so that incremental revenues are not excessive.

The Commission specifically solicited comments on what constitutes a reasonable incentive price and whether other production enhancement techniques should be eligible for the incentive. The Commission also requested any information on the types of supply enhancement projects that will not be undertaken unless the ceiling is even higher than the § 109 price.

The Commission will consider in a separate proceeding whether gas subject to § 104 (gas already dedicated to interstate commerce when the NGPA was enacted) and § 106 (natural gas subject to both interstate and intrastate "rollover" contracts) of the NGPA should be eligible for the incentive price if supply enhancement procedures are necessary to maintain production.

Summary of Benefits

Sectors Affected: Natural gas producers; natural gas users; and the general public.

Large volumes of gas remain in mostly depleted or faulty wells, although it is impossible to estimate the amount. An appropriate incentive price should allow producers to tap reserves on natural gas recoverable only through supply enhancement procedures. The benefits to natural gas users and the general public of increased domestic supplies of natural gas—a clean, environmentally benign fuel—and the possibility of a concomitant reduction in imports of foreign fuels are not precisely quantifiable.

Summary of Costs

Sectors Affected: Natural gas producers; natural gas users; the general public; State jurisdictional agencies; and the Commission.

If the incentive price finally adopted is lower than that necessary to encourage production of reserves recoverable through supply enhancement procedures, these reserves may be left in the ground, and, therefore, natural gas users and the economy will not benefit from increased domestic supply. If an incentive price that is higher than necessary is adopted, consumers will pay unjustified prices for additional gas.

Workload will be increased at the Commission and at the State jurisdictional agencies in order to determine that the supply enhancement work for which the incentive price is claimed has actually been performed and that such work is in fact necessary to produce the gas.

Summary of Net Benefits

One of the most important purposes of the proceeding has been to develop a better understanding of both the benefits of encouraging production of high-cost natural gas by setting higher prices and the costs that must necessarily attend those benefits. At this time, those benefits, while not precisely quantifiable, appear to outweigh costs, in light of present and potential demands for natural gas. However, the Final Rule is still before the Commission because petitions for rehearing have been submitted by several members of the public.

Related Regulations and Actions

Internal: The Commission is considering other categories of gas which may be eligible, as high-cost or high-risk gas, for an incentive price.

External: None.

Government Collaboration

None.

Timetable

NPRM—45 FR 51219, August 1, 1980 (Docket No. RM80-50).
Public Comment Period—Closed 30 days after issuance of NPRM.
Sun Gas Petition for Rulemaking (Docket No. RM80-41).
Final Rule—45 FR 77421, November 24, 1980 (Docket No. RM80-50).
Rehearing Decision—To be determined.
Regulatory Impact Analysis—The FERC is an independent regulatory agency and is not required to prepare a Regulatory Impact Analysis as prescribed in E.O. 12291. However, the FERC performs essentially the same analysis for rules of major importance and reports the results in issuing NPRMs and Final Rules.
Regulatory Flexibility Analysis—Not required.

Available Documents

The comments filed on the NPRM, copies of the Final Rule, petitions to rehear the Rule, and the Order Granting Rehearing Solely for Purposes of Further Consideration (January 12, 1981; Docket No. RM80-50 are available to the public at the Commission's Division of Public Information, Room 1000, 825 North Capitol Street N.E., Washington, DC 20426.

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FERC

Procedures Governing Applications for Special Relief Under Sections 104, 106, and 109 of the Natural Gas Policy Act of 1978 (18 CFR Parts 2 and 271; New)

Legal Authority

Natural Gas Policy Act of 1978, 15 U.S.C. 3301 *et seq.;* Department of Energy Organization Act, 42 U.S.C. 7107 *et seq.;* Natural Gas Act, as amended, 15 U.S.C. 717 *et seq.;* E.O. 12009, 3 CFR, 1977–78 Comp., p. 142.

Reason for Including This Entry

These proposed regulations would encourage producers of these catagories of natural gas to undertake new production or production enhancement projects not otherwise economically feasible. These regulations will cover natural gas production costing millions of dollars annually.

Statement of Problem

The Natural Gas Policy Act of 1978 (NGPA) established a maximum lawful price (MLP) for any first sale of natural gas. The proposed regulations are important in that they would implement the Federal Energy Regulatory Commission's (FERC) authority under the NGPA to set prices higher than the MLP for three categories of gas sales, namely: first sales of gas committed or dedicated to interstate commerce on the day before the date of enactment of the NGPA, first sales of gas under rollover contracts, and first sales of gas not covered by any MLP under any other section of the NGPA. ("First sale" is a term indicating that the sale is subjected to the terms of the NGPA and is therefore eligible for NGPA prices. The term does not refer to the first time gas is sold—hence there may be a chain of first sales.) Thus, producers of these categories of natural gas would be encouraged to undertake new production or production enhancement projects not otherwise economically feasible at the MLP specified in the NGPA.

In the past, ceiling prices for producer sales of natural gas were set by the Commission or its predecessor, the Federal Power Commission (FPC), on an area—later a nationwide—basis. These prices were set to cover classes of producers (large or small) and vintage (when the well was drilled or production began). In some instances, however, the ceiling price did not permit a producer to earn a fair profit or, in the extreme case, recover his cost of production. This put the producer face-to-face with two alternatives: continue production at an economic loss, or abandon the well. Neither of these alternatives was in the public interest, as the first affected the producer and would likely discourge further business ventures, and the latter affected the consumer in that it made less gas available. Therefore, regulations called "special relief procedures" were adopted; they allowed producers to apply for prices higher than those set at area or nationwide ceilings.

Passage of the NGPA fundamentally removed the responsibility for establishing ceiling prices from the Commission. The MLP for a particular sale now depends on when the well is drilled, where the gas is produced, and whether it was priced under the earlier practices of the Commission. As part of its general regulatory scheme, however, the NGPA provides that the Commission may set a price higher than that stated in the NGPA 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, in special or unusual situations, to obtain relief from the MLPs. To this end, the Commission has proposed regulations for granting such relief. The proposed 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

Although these relief prices are not specifically provided for by statute, the mechanism by which the Commission can set these prices is provided. 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 the NGPA 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 the three categories of natural gas sales discussed above. It does not, however, have specific authority to grant special relief for the remaining five categories of natural gas sales defined in the NGPA, namely: new natural gas and certain natural gas produced from the Outer Continental Shelf; natural gas produced from new, onshore production wells; natural gas sold under existing intrastate contracts; certain high-cost natural gas; and stripper well natural gas (wells which produce at very low rates). However, the NGPA could be read to permit a price higher than the MLP for these categories under circumstances which might be considered as warranting "special relief." The Commission is, therefore, considering other rulemaking procedures to encompass some or all of these categories.

Also under consideration is the advisability of an upper limit or "cap" on special relief. The Commission has requested comments on this issue, and a related one: If a "cap" is indeed advisable, what should it be?

One of the more complex problems in establishing a rule for special relief is the criteria by which the Commission should determine a special relief rate. 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 past and future costs, including any extra investment he had to make. The new regulations, while simplifying the standards by providing a formula approach, also distinguish between a producer who must undertake an important investment to make his well economically productive and one who needs no further investment but needs special relief to cover ongoing operating and maintenance expenses.

The most difficult issues concern the rates to be granted to producers making new investments. The Commission must decide what kinds of investment should be recovered and what the appropriate rate of return on investment should be.

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 administrative difficulty (or simplicity) of the regulations, and the intent of the NGPA.

Summary of Benefits

- *Sectors Affected:* The Commission; natural gas production; natural gas pipelines; and natural gas consumers.

This proceeding will directly benefit producer-sellers of natural gas, during the time that the regulation and the NGPA are in effect for the types of gas sales covered by the regulation and before the gas may become deregulated. 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 hesitate to undertake new projects because the costs to produce their gas exceeds the MLP they could get for the gas under the NGPA.

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—a clean, environmentally benign fuel—which would otherwise never reach the market. These added supplies may permit a reduction in imports of foreign fuels.

The new procedures of the proposed rule should result in a more economical use of the Commission's time. Thus, in the long term, administrative costs could be lower than under prior practices. However, about 130 requests for special relief are now pending. These cases, originally filed under the old procedures, form a backlog requiring immediate administrative action under the new procedures.

Summary of Costs

Sectors Afected: The Commission; natural gas producers and sellers; natural gas pipelines that purchase the gas; and natural gas consumers.

During the time that they are in effect, the procedures to allow special relief applications will add to administrative time and costs at the Commission. 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 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 millions of dollars annually.

Summary of Net Benefits

Maximizing production of gas while minimizing adverse social costs is one of the main objectives of this rulemaking. As noted above, neither the benefits nor the costs of this rule are quantifiable. In spite of that, at this stage of the rulemaking the benefits to accrue from a greater supply of gas appear to balance favorably against the administrative costs and the cost of a higher price to consumers for the types of gas sales that will be covered by the special relief procedures.

Related Regulations and Actions

Internal: Regulations implementing the Natural Gas Policy Act.
External: None.

Government Collaboration

None.

Timetable

NPRM—44 FR 49468, August 23, 1979 (Docket No. RM79–67).
Public Comment Period—Closed September 14, 1979.
Notice Granting Extension of Time To Comment—44 FR 53759, September 17, 1979 (Docket No. RM79–67).
Notice of Public Hearing—Issued October 13, 1979 under Docket No. RM79–67.
Public Hearing—February 2, 1980.
Notice of Request for Public Comments and Notice of Public Discussion—45 FR 5321, January 23, 1980 (Docket No. RM79–67).
Public Comment Period—Closed February 1, 1980.
NPRM—45 FR 31744, May 14, 1980 (Docket No. RM79–67).
Public Comment Period—Closed June 9, 1980.
Final Rule—To be determined.
Rehearing Decision—To be determined.
Regulatory Impact Analysis—The FERC is an independent regulatory agency and is not required to prepare the Regulatory Impact Analysis prescribed in E.O. 12291. However, the FERC performs essentially the same analysis for rules of major importance and includes the results in the issued NPRMs and Final Rules.
Regulatory Flexibility Analysis—Not required.

Available Documents

Copies of all notices, transcripts of public hearings and public discussions, and written comments are available at the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, DC 20426.

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FERC

Rate of Return on Common Equity for Electric Utilities (18 CFR Part 2; New)

Legal Authority

Federal Power Act, 16 U.S.C. 824, 824d, and 824e (Supp. 1979) and 42 U.S.C. 712(a)(1)(B)(Supp. 1979).

Reason for Including This Entry

The Federal Energy Regulatory Commission (FERC) regulates the sale of electric power sold wholesale in the interstate market. This means that the Commission regulates about 13 percent of the total sales of electricity made in the U.S. This rulemaking can have an important impact on the amounts paid by those who purchase electric power in sales regulated by the Commission and on the ability of those utilities that make those sales to raise money for capital improvements. The rulemaking can also have an important impact on the processes used by the Commission to decide ratemaking issues.

Statement of Problem

The Commission has initiated an inquiry to explore alternatives to the case-by-case procedure it now uses in setting an allowed rate of return on common equity for electric utilities that sell wholesale electric power. "Return on common equity" is the amount of the utility's total revenues—earned by the rates charged for electricity—that remains for sharing among common shareholders or for improving the business after payment of expenses and debts (including dividends to preferred shareholders).

FERC now sets the allowed rate of return, a percentage that defines the return to be permitted on the common shareholders' capital contribution to the utility, for each utility individually as part of its general rate case. This takes time and involves a great deal of highly involved financial analysis. If a new generic procedure can be developed, the necessary calculations in each of these rate cases could be greatly simplified. This can mean not only a savings in time for the FERC and the utilities (and as time frequently means money, a savings to those utilities' customers), but also a more accurate determination of a critical component of a utility's rate structure.

Electric utilities finance construction of new plant and equipment to serve ratepayers just like other businesses, that is, with a mixture of borrowed funds (debt) and the utilities' shareholders' invested funds (equity). In general, those who purchase the utilities'

electricity (the ratepayers) do not finance new construction or system upgrading. They only pay for the plant that is actually in use for current service. For this reason, the utilities must attract investors and raise capital for construction. To do this, the utilities must be allowed a sufficient rate of return on investment, that is, they must be permitted a rate that—considering the riskiness of the business and other factors—will cover their costs of equity capital.

Many local electric utilities do not own facilities to generate power and confine their operations to the distribution of electric power bought in interstate wholesale transactions. Under the Federal Power Act of 1935, FERC sets the rates for these interstate wholesale power transactions. The FERC regulates rates charged by 211 privately owned electric utilities for their wholesale sales of electricity—about 13 percent of the total annual sales of electricity in the United States. This authority to set rates is, of course, the authority to specify the overall revenues of the utility; included within these overall revenues is a recovery of equity capital costs through the Commission-established rate of return on common equity investment.

Because many rate increases filed by electric utilities subject to the FERC's jurisdiction are contested by customers of utilities, in order to determine an appropriate rate of return on equity, extensive evidence must be taken in a trial-type hearing before an administrative law judge. The equity rate of return issue is at present essentially considered anew in each contested rate case and is thus now determined on a utility-by-utility, case-by-case basis.

There is at present a large electric rate caseload, and the cases tend, by their nature, to be complex and time-consuming. One of the most important aspects of the many elements of an electric rate case is the determination of an appropriate equity rate of return. This is because electric utilities, like most other regulated utilities, are "capital intensive"—that is, far more than in unregulated manufacturing or retailing industries, a considerable amount of capital investment in plant, including costly transmission and distribution equipment, is required to earn a relatively low level of revenues. The cost of invested capital accordingly is a relatively much larger component of the final "sale price" of a kilowatt hour of electricity than it is, for example, in the case of a pair of shoes. Moreover, the allowed level of this element of a utility's total cost of service will in a sense determine that utility's net profit—and it thus is not surprising that disputes on this matter are frequent.

Although the capital structure, business organization, and financial condition of electric utilities vary widely, there are enough similarities to suggest that a more general (or generic) approach to equity rate of return questions might be possible. If so, then this type of approach could provide for better and quicker decisions as to the appropriate rates of return to be allowed by the Commission.

Alternatives Under Consideration

The Commission has four basic alternatives to consider in determining a method for setting the common equity rate of return for electric utilities.

(A) The Commission could continue the current practice of determining the rate of return on a case-by-case basis. This method is geared to individual company requirements and circumstances and complex issues of corporate finance and economic market conditions are considered. The advantage of this method is that these individualized factors can be carefully weighed and—in theory—a finely tailored result will be produced. However, this alternative necessarily involves a large commitment of efforts by analysts, accountants, and attorneys from the utilities and at the FERC and additional efforts in the Federal courts.

(B) The Commission could develop a general, or generic, approach for determining an appropriate return for all electric utilities. Within this general approach, there are three options.

(1) The Commission could establish a specific percentage rate of return, based on industry-wide averages, that would apply to each utility. Once the "standard rate" had been set, this approach would be easily and cheaply administered; and FERC could develop a system of periodic revisions to keep the industry average rate of return current with existing capital market conditions.

(2) FERC could set a limited range of percentages within which the equity rate of return for each utility could be set. Depending on whether a given utility's equity costs were relatively low, medium, or high, its return could be set at the bottom, middle, or top of this zone. However, litigation over whether a specific utility falls in the upper, middle, or lower classes could be just as lengthy and costly as the current litigation over what the percentage rate should be.

(3) A "formulaic" alternative would involve the use of a general formula for setting rate of return on a case-by-case basis: Appropriate utility-specific numbers, when entered into the general formula, would result in a return for that specific utility. With this alternative, the Commission could speed up rate cases while retaining some of the advantages of examining each company's specific structure and capital requirements. There are many precedents for this formulaic approach. For example, the valuation of oil pipelines has been determined in a similar manner for more than 40 years. However, litigation over the utility-specific numbers that would be entered into the formula could create costly delays.

While the results of all these generic approaches may not be as "individualized" as those produced by the present case-by-case approach, it is possible that the savings in litigation costs (both to utilities and FERC) may easily offset the arguable precision that the current system achieves.

All three generic alternatives were developed in some detail by a special FERC Staff Study Group and were presented to the Commission and its staff. This presentation, including the report entitled "Establishing the Rate of Return on Equity for Wholesale Electric Sales: Potential Regulatory Reforms," was made public for comment and discussion on December 15, 1980. A public hearing, attended by representatives of electric power sellers and buyers, the Special Study Group, and FERC staff, was held January 30, 1981 to discuss this report, and written comments from the public have also been submitted. The concept of the report—that there should be a generic approach to setting rates of return—was well received. However, there was no consensus as to which of the three specific approaches (single inflexible percentage rate, range of permissible rates, or formula) was best suited to the needs of the public, the utilities, or the Commission.

The next step may be an NPRM. Staff will be making its recommendations on such a proposal to the Commission early next year (1982).

Summary of Benefits

Sectors Affected: Electric utilities selling power at wholesale; investors in those utilities; electric utilities purchasing power at wholesale; and ultimate industrial, commercial, agricultural, and residential consumers of electricity.

Shortening the time to decide rate of return issues and simplifying the processes involved could benefit electricity consumers, electric utilities, and the Commission.

Under the law, a utility that sells electric power at wholesale and that wishes to increase its rates must file with the FERC a rate increase notice. The new rate goes into effect no sooner than 2 months after the rate increase is filed with FERC and no later than 7 months after it is filed with the FERC. However, a final FERC decision on whether the new rate is proper can require an additional 2 or 3 years or even longer; thus, until that final decision is made, both customers and the selling utility cannot be certain that the new rate is lawful—even though it may have previously gone into effect and is being charged to the rate payers.

Although these rates are collected subject to the seller's obligation to refund to the customers any excess charges (plus interest) if the new rate is finally determined to be too high, the uncertainty of what that refund will be (if any) makes it difficult for utilities—which both sell and buy the electricity—to decide on firm financial commitments and attract investors. Any procedural change that can speed up the time required to finally decide the proper rate reduces that uncertainty and the substantial costs thereby created.

Summary of Costs

Sectors Affected: Electric utilities selling power at wholesale; investors in those utilities; electric utilities purchasing wholesale power; and ultimate consumers of electricty.

Depending on which alternative the Commission selects and how the Commission decides to implement the method selected, there may be costs to one or more of the sectors involved. A high rate of return would result in higher costs to consumers. Conversely, a low rate would reduce rates to consumers. But low rates might also adversely affect investor interest in individual utilities and utilities in general; that in turn might force the utility to postpone needed new construction to a later date, when it may well be far more costly, and these postponements in turn might well result in poorer or more costly service to the ratepayers.

If the generic alternatives are adopted—for example, industry-wide determinations of an appropriate rate of return through the use of either a single number, a zone, or a formula—there will be additional costs.

First, there is an administrative development cost. To develop a workable procedure will most likely take a considerable amount of FERC time and manpower. And these commitments must, in some measure, be maintained in future years in order to "fine tune" the number, range, or formula over time to accord with the vagaries of shifting financial conditions and capital markets.

Second, there will be an implementation and use cost. This is particularly true if the percentage range approach is adopted. Under that approach, although a "high" and a "low" rate is set, precisely where between these two extremes a specific utility may fall will likely be a subject of administrative litigation, much as now occurs. While the scope of that litigation might be considerably narrower than it is at present, it may still be complex and time consuming. The single-rate and formula approaches minimize this type of cost by virtue of their inflexible rigidity.

Third, there is the cost that accompanies a "wrong" result when a particular utility is subjected to the "wrong" rate of return. If that rate is too low, the utility will suffer and, ultimately, so will its customers; if it is too high, the customers will pay too much for too little service. This potential cost problem is most likely with the single-rate approach, for that approach is the least utility specific. Conversely, it is least likely with the formula approach.

Fourth, because a generic or industry-wide ratemaking procedure may not cover all utilities—for example, utilities at the extreme ends of the industry norms may be deliberately excluded from the generic rate because they are so atypical (e.g., their financial structure or condition or their capital costs are substantially different from the industry norms)—there is a possible added cost that could be incurred in determining the proper rate of return for atypical companies that cannot "fit" under a generic approach. This would be the cost of a case-by-case ratemaking procedure for those special cases that would not be addressed under some of the generic alternatives.

At the present time, all of these various costs are very much unquantifiable and subject to much debate. Some, such as the costs of a "wrong" decision, can never be computed.

Summary of Net Benefits

The Commission has not, as yet, chosen between the alternatives of case-by-case decisionmaking and the generic or rule approach to deciding a rate of return on equity for a given utility; nor is there an obvious choice between alternatives available under the generic or rule approach. In deciding whether to propose any generic approach, as opposed to the current case-by-case method, the Commission must consider whether the benefits of the generic approach—reduced decisional delay, certainty, and simplicity—could outweigh the costs that attend the change in procedures. Moveover, comments to a future NPRM should provide the necessary information for FERC to determine how the costs and benefits compare.

With regard to the sub-alternatives available under the generic approach, the same balancing of benefits and costs must precede Commission action. With respect to the "formula" approach, the Commission must weigh the benefit of certainty against the cost of developing and maintaining the necessary formula. At the opposite extreme of complexity, the "specific percentage rate of return," the benefit of prompt and certain decisionmaking must be balanced against the costs that may attend a less precise decision or special rules to handle those cases that do not fall under the umbrella of the "specific percentage" approach. Finally, the third alternative, the "limited range" approach, raises questions on benefits and costs that are similar to the two other alternatives. Again, the NPRM should be the vehicle for providing some information on these questions.

Related Regulations and Actions

None.

Government Collaboration

None.

Timetable

NPRM—To be determined.

Public Comment Period—To be determined.

Public Hearing—January 30, 1980.

Final Rule—To be determined.

Rehearing Decision—To be determined.

Regulatory Impact Analysis—The FERC is an independent regulatory agency and is not required to prepare a Regulatory Impact Analysis as prescribed in E.O. 12291. However, the FERC performs a similar analysis for rules of major importance, and includes the results in the issued NPRMs and Final Rules.

Regulatory Flexibility Analysis—To be determined.

Available Documents

Staff Study Group Report and Executive Summary, "Establishing the Rate of Return on Equity for Wholesale Electric Sales: Potential Regulatory Reforms," RM80-36, December 15, 1980.

Transcript of public hearing, held January 30, 1981, to discuss the Staff Study Group Report.

Written comments submitted in response to the Report.

All documents are available at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street N.E., Washington, DC 20426, during regular business hours.

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FERC

Regulations Governing Applications for Major Unconstructed Projects (18 CFR Part 4; Revision)

Legal Authority

Federal Power Act, 16 U.S.C. 791a *et seq.*; Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2601 *et seq.*

Reason for Including This Entry

This rulemaking is important because it simplifies and clarifies licensing requirements and procedures for major projects yet to be constructed, thereby making the development of new sources of hydroelectric power generation—a renewable energy resource with great undeveloped potential—more attractive and efficient.

Statement of Problem

This rulemaking is the third phase of the Federal Energy Regulatory Commission's (FERC) licensing reform program for all projects built for the generation of electric energy by water power that are within the Commission's jurisdiction.

Section 405 of the Public Utility Regulatory Policies Act of 1978 (PURPA) charges the Commission to establish simple licensing procedures for water power projects that are connected with existing dams and have a capacity to generate 15 megawatts (20,000 horsepower) or less of electricity at any one time. The Commission is extending this reform effort to licensing procedures for all water power projects. As a result, this rulemaking proposes licensing reforms that deal with all "major" projects (those with a generating capacity of more than 1.5 megawatts or 2,000 horsepower) (1) for which there is no dam or impoundment (body of water impounded by a dam) 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), to have a potentially significant environmental impact.

The current requirements governing licensing of major water power projects are to be found in various sections of the Commission's regulations. An applicant may be required to submit information in as many as 23 different exhibits within each application. Frequently, the regulations do not explain in sufficient detail what information applicants must submit. This can result in duplicate filings or deficient applications. The revision of the regulations governing major unconstructed projects where no dam or impoundment has been built consolidates and simplifies the information required of any applicant in order to elicit only that information that is relevant to an informed decision on the merits of the application.

Projects of the magnitude covered by this rulemaking naturally result in more significant environmental disturbances than other, smaller water power projects. The Commission will therefore require any applicant for a major unconstructed project to file an Environmental Report of considerably greater depth and detail than it will require for smaller projects or projects at existing dams. The Commission is also revising its NEPA regulations that set forth the specifications of an Environmental Report for all projects and is 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 concerning such projects also extends to information relating to their structural and financial integrity.

While, as a matter of law, the Commission is not required to undertake all of the reforms provided for under the proposals to reform its regulations governing applications for major unconstructed projects, the opportunity to improve markedly these important procedures should not be wasted. Absent FERC actions, there will be no further improvements, and unnecessary regulatory burdens would continue.

Alternatives Under Consideration

The Commission is not required by PURPA to reform its licensing procedures for hydroelectric projects that are not connected with existing dams. Nevertheless, the FERC has previously reformed hydroelectric licensing procedures outside the scope of PURPA, and this rulemaking accordingly extends to major unconstructed projects the benefits of the simplified licensing program. Because the licensing is required by law, there is no non-governmental mechanism to accomplish this.

There are two basic alternatives available to the Commission. These are: (A) to maintain the existing requirements for licensing; or (B) to reduce further the application requirements consistent with legal requirements. The first alternative would perpetuate costly delays in licensing. The second alternative could affect the discharge of the Commission's statutory responsibilities.

The Commission must determine how it will revise the licensing procedures and decide which of the current reporting requirements to simplify and consolidate. For example, the Commission must determine how extensive the Environmental Report for such projects must be. Because construction of a dam involves flooding land permanently and for the first time and the impacts of extensive construction activity, more environmental detail will be needed to assess the environmental impacts of such a project than is needed for projects where the dam already exists. The Commission will also revise its NEPA reporting requirements to require an Environmental Impact Statement for all such projects.

Summary of Benefits

Sectors Affected: The Commission; State, municipal, and private developers of major unconstructed hydroelectric power projects within the jurisdiction of the Commission; consumers of hydroelectric power; and the general public.

Better licensing procedures should expedite the licensing of water power projects, thus encouraging hydroelectric development. This in turn may help replace costly imported energy supplies with this cheap, renewable energy resource. The licensing of major projects under the new rule will require, on the average, 24 months, compared to about 28 months now required (and 36 months as of about 2 years ago).

Additional hydroelectic facilities will mean that more consumers will have access to hydropower. This may create greater stability in the cost of electricity to consumers. It may even result in lower rates for electric power.

The improved regulations will help conserve the manpower and financial resources of both the Commission and the hydroelectric facility applicants

because the regulations will be more understandable and more reasonable in their requirements. As a result, developers may file fewer deficient applications that require upgrading, and both developers and the Commission may waste less time interpreting and litigating the regulations.

By obtaining more complete environmental data, the improved regulations should also enable the Commission to better fulfill its obligations under NEPA to identify and minimize adverse environmental disturbances. The public will benefit because development of hydropower will be more attractive and adverse environmental impacts will be minimized.

Summary of Costs

Sectors Affected: State, municipal, and private developers of major unconstructed hydroelectric power projects within the jurisdiction of the Commission.

This proposal will require an applicant for a license to construct a major project to file with the Commission a more detailed Environmental Report than is required for smaller projects or for projects at existing dams. The Commission will also require greater specificity regarding the structural and financial integrity of these projects. This will create an additional reporting burden for major project developers. The burden should not discourage them from applying for licenses, however, in light of the significant improvements in the other licensing procedures.

Summary of Net Benefits

The benefits that can accrue from the proceeding—better and more prompt licensing procedures—appear to be worth the added regulatory costs. The procedures will reduce delay in granting certain types of licenses; this reduction will mean that projects can be undertaken more promptly and therefore at some cost savings to licensees. Ultimately, by encouraging hydroelectric power development, the new procedures will encourage less costly energy production.

Related Regulations and Actions

Internal: The first phase of the licensing reform program revised the licensing regulations for all "minor" projects (installed capacity of 1.5 megawatts or less) (FERC Order No. 11, 43 FR 40215, September 11, 1978). The second phase revised the regulations for "major" projects (more than 1.5 megawatts of installed capacity) where at least a dam and impoundment are in existence at the time of the application (FERC Order No. 59, 44 FR 67645, November 27, 1979). In conjunction with these reforms, the Commission also revised its procedural regulations governing licenses and preliminary permits for all water power projects (FERC Order No. 54, 44 FR 61328, October 25, 1979).

The Commission proposed new Regulations Implementing the National Environmental Policy Act of 1969 governing the collection, evaluation, and dissemination of environmental information concerning Commission actions (NPRM, 44 FR 50052, August 20, 1979, Docket No. RM79-79).

External: None.

Government Collaboration

None.

Timetable

NPRM—44 FR 50052, August 20, 1979, Docket No. RM79-169.
NPRM—46 FR 10165, February 2, 1981, Docket No. RM80-39.
Final Rule—Order No. 184, 46 FR 55926, November 13, 1981.
Rehearing Decision—To be determined.
Regulatory Impact Analysis—The FERC is an independent regulatory agency and is not required to prepare the Regulatory Impact Analysis prescribed in E.O. 12291. However, the FERC performs essentially the same analysis and includes the results in the orders issuing NPRMs and Final Rules.
Regulatory Flexibility Analysis—An initial and final Regulatory Flexibility Analysis have been prepared for this and a related rulemaking, and they are published in the preamble to the NPRM and Final Rule of that rulemaking (Docket No. RM81-10, 46 FR 9637, January 29, 1981).

Available Documents

FERC Order No. 11, 43 FR 40215, September 11, 1978.
FERC Order No. 59, 44 FR 67645, November 27, 1979.
FERC Order No. 54, 44 FR 61328, October 25, 1979.
All documents are available at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, DC 20426, during regular business hours.

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FERC

Regulations Implementing Section 110 of the Natural Gas Policy Act of 1978 and Establishing Policy Under the Natural Gas Act (18 CFR Part 271, Subpart K; Revision)

Legal Authority

15 U.S.C. 3320(a) (Supp. II 1978).

Reason for Including This Entry

These regulations will determine who pays for certain services necessary for natural gas production and transportation and how much may be paid for those services.

This rule involves millions of dollars annually in potential revenues to producers and other sellers of natural gas. The Federal Energy Regultory Commission (FERC), in providing for collection of production-related costs, will establish a workable set of rules for natural gas pricing that may increase deliveries of properly compressed, treated, and processed gas for shipment to ultimate consumers.

Statement of Problem

On December 1, 1978, the Natural Gas Policy Act of 1978 (NGPA) became law. By that law the Congress established maximum prices for which a producer could sell natural gas. In establishing these prices, the Congress specified that a producer could collect amounts above the maximum lawful prices when the producer incurred particular types of costs, if the Commission approved.

When the NGPA went into effect, the Commission put out interim regulations implementing the Act. Among those regulations were rules defining who could apply to the Commission for production-related costs, what costs could be applied for, and how an application could be made for authorization to collect the add-ons (i.e., additions to a ceiling price that compensate a producer for certain production-related costs) for the costs. The Commission solicited comments on these interim regulations and amended them in July of 1980.

The July 1980 amendments attempted to address three important problems. First, how can the Commission establish a mechanism so that producer can promptly receive approval to add on to a ceiling price an amount for production-related costs? Second, how can the Commission best respond to the situation in which a pipeline company

rather than the producer agrees to incur production-related costs? And third how can the regultions best be designed to ensure that a producer knows what can be applied for and how to apply?

The Commission received comments on the amendments of July 1980 and, because the amendments were effective on their issuance, petitions to rehear the amendments.

There are several probable consequences of not taking any action at this time. First, producers cannot recoup certain types of production-related costs (specifically, compression and gathering costs) until the Commission establishes the special rules that are involved in this proceeding. Second, other costs, if incurred by pipelines, may be subject to question during the pendency of this proceeding. Third, a series of related proceedings now pending before the Commission, on questions as to who, between natural gas producers and natural gas pipelines, should recoup production-related costs, will be left unresolved. Fourth, additional rulemakings to provide for the costs incurred by producers of certain production-related costs—rulemakings that depend to some extent on the proceedings of this Calendar entry—cannot go forward.

Alternatives Under Consideration

Because the price that a producer charges for natural gas is set by the NGPA, and added amounts for production-related costs are also governed by that statute there are no non-governmental alternatives to allowing gas sellers money for these costs. In implementing the production-related cost section of the NGPA, the Commission has two basic alternatives. It could provide a "simple rule" outlining who can apply, what kinds of production-related costs can be applied for, and how to apply. This was the approach used in the interim regulations first issued to implement the NGPA. That approach was based on a case-by-case determination of cost add-ons and only treated cases in which the producers or other sellers of natural gas incur the production-related costs.

Alternatively, the Commission could establish categories of production-related costs that could automatically be added to a producer's ceiling price and provide for situations when the purchaser, instead of the seller, agrees to incur those costs. In this way, the administration of the program becomes simpler, and both the seller and the purchaser are considered. This was the approach adopted by the Commission in the July 1980 amendments.

In adopting this approach, the Commission decided to proceed step-by-step. First, the regulations were amended to immediately provide that certain minimal types of production-related costs could be automatically added by a producer to a sales price without further administrative action or delay. Second, the two most important types of production-related costs were isolated—costs for gathering natural gas (i.e., collecting it from individual wells and bringing it to a common transporting system) and compressing natural gas (i.e., pressurizing it so that it will move from the gas well to and through a transporting system). An appropriate add-on for these costs will be determined in separate rulemakings so that they too may automatically be added on by sellers.

Third, a policy statement for pipelines that purchase natural gas from producers was issued. This policy describes the types of production-related activities that the Commission will automatically permit in the pipeline's rates, further simplifying administrative proceedings.

Finally, FERC would propose a new rule to mark out certain costs that will be considered production costs as opposed to production-related costs. These costs must therefore be covered by the sales price for the gas, which price cannot exceed the maximum lawful price.

Under the step-by-step approach of the July 1980 amendments, the Commission could adopt one of two sub-alternatives for natural gas producers. The limitations on who may apply for what types of production-related costs could be maintained, or those limitations could be removed. For natural gas pipelines that purchase gas and incur production-related costs, similar sub-alternatives are available. The policy could be expanded to describe more production-related activities that the Commission would automatically permit in rates.

Summary of Benefits

Sectors Affected: Producers and other sellers of natural gas; industry purchasers of natural gas, such as pipelines; and ultimate consumers of natural gas.

All sectors will benefit from a workable and practicable set of rules governing collection of production-related costs. Producers and other sellers of natural gas under the NGPA will benefit because the precise production-related costs that they can recoup through gas prices will be established. Because the July 1980 amendments provided that costs to gather and compress gas that would be allowed under subsequent rules will be allowed for costs incurred since July 1980, producers and other sellers will benefit under the new rules to the extent the rules provide for such costs. Natural gas pipelines regulated by the Commission should also benefit from the Final Rules to the extent that they provide direction as to what pipeline costs can be charged to customers.

This rule, under any alternative, involves several millions of dollars in potential revenues to producers and other sellers of natural gas. The Commission, in providing for production-related costs, is seeking to establish a workable set of rules for natural gas pricing and to increase deliveries of properly compressed, treated, and processed gas for shipment to consumers.

Summary of Costs

Sectors Affected: Natural gas producers; natural gas purchasers; and natural gas consumers.

Any and every add-on permitted by the Commission to a producer will increase the sale price of natural gas. This price must be paid in all cases by the ultimate consumer of that gas. To the extent that a producer does not get an add-on for a production-related cost or is delayed in getting the add-on, the producer will incur costs. To the extent that the add-on is permitted, costs will be incurred by natural gas purchasers and, ultimately, paid by natural gas consumers.

The cost involved is sizable but not quantifiable. The amounts involved will be determined by several factors: how many sellers request or receive add-ons; what add-ons are sought; and the amounts of those add-ons. Some measure of the potential impact of the rule can be deduced from the number of producing natural gas wells in the country. There are some 15,000 such wells now in existence and more being completed every year. There may be production-related costs allowed for most, if not all, of these wells.

Summary of Net Benefits

Neither the benefits nor the costs of this proceeding can be quantified in an accurate manner. However, under this rulemaking, the Commission will be able to define, for both natural gas producers and natural gas pipelines, what extra prices they can charge to recoup production-related costs. In this way regulator certainty will result: producers and pipelines will better know what they can and cannot charge for and,

armed with this knowledge, will better plan natural gas exploration, production, and transportation. Second, because natural gas producers are regulated by law as to the prices they can charge for their gas and because, absent this proceeding, no increase in price can be allowed for production-related costs incurred by producers, this proceeding will give full effect to the NGPA.

Related Regulations and Actions

Internal: Because of the step-by-step process, there are several rulemakings involved. These will include, in addition to the main docket described in this entry, the rulemaking for gathering allowances (Docket No. RM80-73), the rulemaking for compression allowances (Docket No. RM80-74), and a rulemaking for production costs (Docket No. RM80-72). Also, rules considered under Order No. 68, "Final Regulations Under Sections 105 and 106(b) of the Natural Gas Policy Act of 1978," Docket No. RM80-14 (issued January 18, 1980, 45 FR 5678, January 24, 1980), may affect this regulation.

External: None.

Government Collaboration

None.

Timetable

NPRM—None.
Interim Rule—43 FR 56448, December 1, 1978; 45 FR 53099, August 11, 1980.
Public Hearing—October 21, 1980.
Public Comment Period—July 1980 to October 6, 1980.
Final Rule—Date to be determined.
Final Rule Effective—The rule is effective on an interim basis as of July 25, 1980.
Rehearing Decision—To be determined.
Regulatory Impact Analysis—The FERC is an independent regulatory agency and is not required to prepare a Regulatory Impact Analysis as prescribed in E.O. 12291. However, the FERC performs essentially the same analysis for rules of major importance and includes the results in the issuing NPRMs and Final Rules.
Regulatory Flexibility Analysis—Not required.

Available Documents

The interim regulations on which this proceeding is based were published in the Federal Register of December 1, 1978 (43 FR 56488).

Amendments to interim regulations, Order No. 94, "Regulations Implementing Section 110 of the Natural Gas Policy Act of 1978 and Establishing Policy Under the Natural Gas Act," Docket No. RM80-47 [issued July 25, 1980, 45 FR 53099, August 11, 1980].

NPRM, "Special Rule Under Part 270: Production Costs and Maximum Lawful Prices in Sales Under the Natural Gas Policy Act of 1978," 45 FR 61643, September 17, 1980, Docket No. RM80-72.

Notice of Inquiry, "Gathering and Compression Allowances Under Section 110 of the Natural Gas Policy Act of 1978," 45 FR 84814, December 16, 1980, Docket Nos. RM80-73 and RM80-74. This is a special staff report, published for public comment, that estimates costs for gathering and compressing natural gas.

Transcripts of hearings and comments on the interim regulations and their amendments and the notices of inquiry and proposed rulemaking are available and may be obtained from the Commission's Division of Public Information, Room 1000, 825 N. Capitol Street, N.E., Washington, DC 20426.

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FERC

Revised Rules of Practice: Procedures To Expedite Trial-Type Proceedings (18 CFR Part 385; Revision)

Legal Authority

Administrative Procedure Act, 5 U.S.C. 551-557; Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.*; Federal Power Act, 16 U.S.C. 791 *et seq.*; Natural Gas Act, 15 U.S.C. 717 *et seq.*; Natural Gas Policy Act, 15 U.S.C. 3301 *et seq.*; Public Utility Regulatory Policies Act, 16 U.S.C. 2601 *et seq.*; and Interstate Commerce Act, 49 U.S.C. 1 *et seq.*

Reason for Including This Entry

This rulemaking can have an important impact on how the Commission operates in reaching decisions. In addition, this rulemaking will have a significant impact upon those who take part in that process.

Statement of Problem

Many of the Federal Energy Regulatory Commission's (FERC) most significant ratemaking and licensing decisions are initially determined in formal, trial-type proceedings—proceedings in which evidence on disputed factual matters is formally presented in hearings presided over by an independent Administrative Law Judge (ALJ), with testimony by witnesses who are subject to cross-examination and a decision made by the ALJ based solely upon the record evidence. To avoid costly delays and excessive litigation, it is imperative that the FERC's rules establishing the procedural requirements for these formal, on-the-record, trial-type proceedings be as clear, simple, and precise as possible.

This proposed rulemaking seeks to clarify, simplify, and reorganize the FERC rules governing trial-type proceedings so that uncertain or confusing rules are clarified and outdated rules are revised to provide shorter and more sensible procedures. These changes should significantly help to expedite formal natural gas pipeline, oil pipeline, hydroelectric, and electric utility ratemaking and licensing proceedings at the FERC, as well as a variety of other proceedings that are handled in a less formal manner.

Since its inception in 1977, the Commission has been faced with a substantial backlog of numerous proceedings that had been pending for a number of years. In mid-1978 it undertook an examination of its decisionmaking process. To this end, the Commission established an Advisory Committee on the Rules of Practice and Procedure. One of the subcommittees was asked to focus on the procedures governing formal, trial-type proceedings. The final recommendation of that Subcommittee is the subject of this rulemaking.

There are two primary objectives in this proposed rulemaking: first, to create a comprehensive set of rules that can be easily understood by all persons affected by Commission action; these include all who come to the Commission seeking rates or licenses (both electric utilities and gas pipelines and producers) and their customers. Second, to recommend new hearing procedures that would remove unnecessary work from the Commission's agenda and expedite decisionmaking by the Commission.

The need for reorganized and comprehensive FERC procedural rules is compelling. The Department of Energy (DOE) Organization Act conferred upon the Commission many functions of the old Federal Power Commission (FPC) as well as the oil pipeline ratemaking functions of the Interstate Commerce Commission (ICC). Provisions in the DOE Act (42 U.S.C. 7295) continued the effectiveness of FPC and ICC regulations for Commission proceedings

previously conducted by those agencies until such time as the Commission promulgates its own procedural rules. Accordingly, at this time, the Commission operates under two unrelated sets of rules. This, of course, is difficult and confusing for both the Commission and the public. Equally confusing is the fact that in many respects the existing FPC and ICC rules are obsolete and do not accurately reflect current Commission practice.

Work on these proposed rules has led to the conclusion that a complete reorganization of the procedural rules was necessary to achieve a set of rules that could be easily found in the Code of Federal Regulations and understood by all who practice before the Commission.

Among the areas for which new proposals are made are:

- pleadings, tariff or rate filings, notices of tariff or rate examination, orders to show cause, intervention, and summary disposition;
- formal hearings, including the powers of presiding officers, the presentation of evidence, and the examination of witnesses;
- conferences, settlements, and stipulations;
- decisions by presiding officers and by the Commission;
- shortened procedures; and
- formal filing requirements.

Alternatives Under Consideration

This proposal presents the Commission and its staff with an unusually wide variety of alternatives. For example, to what extent should the Commission treat in a similar fashion the different types of legal filings presented to it—applications, tariff and rate filings, complaints, notices of protest or intervention, adjustment requests, motions, answers, orders to show cause, and other pleadings or amendments to pleading—in order to reduce the complexities necessarily introduced by a different legal status and effect for each of these filings? Or will a more uniform treatment instead blur legitimate distinctions among these different filings, make them less suited to fulfill the specific legal functions they do serve, and thereby result in greater confusion and delay? If a more uniform treatment is desirable, to what extent can the Commission achieve it with each type of filing?

Similarly, to what extent should the FERC expressly codify in these rules a variety of procedures and practices customarily followed at the FERC but not specifically set down in detail in the present FERC rules? Too much specific codification can result in overly detailed, inflexible, and unwieldy rules, but too little can be equally counterproductive, simply because vague rules may create uncertainty and, in turn, needless litigation.

Finally, there is the alternative of making no change to the Commission's rules of practice. However, despite the fact that the current procedures are known to administrative law judges, Commission staff, and elements of the private bar practicing before the FERC, this alternative does not, for the reasons already stated, appear particularly attractive. In this context, it is important to note that the Advisory Committee that developed the recommendations on which the notice was based was made up, in large part, of those who practice before the FERC.

Summary of Benefits

Sectors Affected: Natural gas producers and pipelines; oil pipelines; electric utilities; cogeneration and small power producers; hydroelectric powerplants; persons served by these facilities; and the FERC.

The most likely benefits will be in the form of more rapid, simpler, and less costly processing of the wide variety of filings made with the FERC by the industries regulated by it and in the form of shorter, more streamlined formal hearings in ratemaking, certificate, and license proceedings. These benefits can be realized with the implementation of the new procedures.

These savings cannot be quantified. However, it is expected that they will translate into not only savings of dollars to the private and public sectors, but, because of changes in the processes, better participation by all involved.

Summary of Costs

Sectors Affected: Natural gas producers and pipelines; oil pipelines; electric utilities; cogeneration and small power producers; hydroelectric powerplants; and persons served by these facilities.

The most likely costs will be those inevitably occasioned by any new procedures: attorneys practicing before the FERC, and to some extent their clients—the industries regulated by the Commission and their customers—will have to become familiar with, and master, a new set of ground rules, and so will the Commission's members, administrative law judges, and trial, supervisory, and advisory staff. It is accordingly important that the new rules be drafted in a way that minimizes these "switchover" costs as much as possible. Although these costs are impossible to quantify, some portion of them could be borne by consumers and taxpayers in general. Like the benefits, these costs will be incurred when the new procedures go into effect.

Summary of Net Benefits

Neither the costs nor the benefits of the proposed changes can be quantified; however, the benefits to be derived from the adoption of simpler, better rules of practice and procedure appear to outweigh the costs that might attend the switchover from the present rules. Moreover, as the new rules are used, these costs, most of which are associated with learning the new procedures, should decrease, thereby further enhancing the net benefits of the new procedures.

Related Regulations and Actions

None.

Government Collaboration

None.

Timetable

NPRM—Issued in Docket No. RM78-22, 46 FR 17023, March 17, 1981.

Public Hearing—May 19, 1981.

Public Comment Period—Written comments were due by June 1, 1981.

Final Rule—To be determined.

Rehearing Decision—To be determined.

Regulatory Impact Analysis—The FERC is an independent regulatory agency and is not required to prepare a Regulatory Impact Analysis as prescribed in E.O. 12291. However, the FERC performs a similar analysis for rules of major importance and includes the results in the issued NPRMs and Final Rules.

Regulatory Flexibility Analysis—To be determined.

Available Documents

Report of FERC Advisory Committee on the Rules of Practice and Procedure, February 13, 1981.

All documents are available at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street N.E., Washington, DC 20426, during regular business hours.

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CHAPTER 2—ENVIRONMENT AND NATURAL RESOURCES

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Regulations Implementing a Fishery Management Plan for the Groundfish Fishery for the Bering Sea/Aleutian Island Area (50 CFR Chapter 6; New)

Legal Authority

The Magnuson Fishery Conservation and Management Act of 1976, as amended, 16 U.S.C. 1801 *et seq.*

Reason for Including This Entry

The Department of Commerce (DOC) believes these regulations are of significant public interest in the fishery management area under the geographical jurisdiction of the North Pacific Fishery Management Council. We expect the regulations to provide the framework for development of underutilized species of fish, to rebuild fishery stocks or maintain them at productive levels, and to increase profits and productivity of the U.S. fishing industry.

The Department of Commerce has issued regulations implementing several other fishery management plans (FMPs) that address different types of resource management problems. Two of these existing FMPs, for Atlantic mackerel of the northwest Atlantic ocean, and for commercial and recreational salmon off the coasts of Washington, Oregon, and California, were designated for review by the presidential Task Force on Regulatory Relief. We expect the review of these two FMPs to be completed soon.

Statement of Problem

Background Information on Fishery Management Plans

The Magnuson Fishery Conservation and Management Act of 1976 (the Act), as amended, 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 to prevent overfishing, rebuild overfished stocks, ensure conservation of fishery stocks, and realize the full potential benefits of the Nation's fishery resources for present and future generations. To meet these objectives, the Act calls for the preparation of fishery management plans (FMPs) by the eight Regional Fishery Management Councils (the Councils) or, under certain conditions, by the Secretary of Commerce (the Secretary). The Secretary is responsible for the review, approval, and implementation of these FMPs. 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 Act, including the provisions of approved FMPs 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 Act established seven National Standards to be applied by both the Council and the Secretary in the preparation and review of any FMP. The National Standards require that the Councils design their FMPs 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 among 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. The MSY is an average, over a reasonable length of time, of the largest catch that 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 that will not be harvested by U.S. fishermen. 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. The Secretary of State, in cooperation with the Secretary, determines the allocation of the total allowable surplus the applicant nation will receive.

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 include Pacific Ocean perch, Alaska 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 Bering Sea/Aleutian Island area would replace the current Preliminary Fishery Management Plan (PMP) prepared by the National Oceanic and Atmosphere Administration/National Marine Fisheries Service (NOAA/NMFS). This is necessary because the PMP cannot regulate domestic fishing activities and, therefore, cannot guard against overfishing and the potential for incidental catches of halibut and crabs in a directed fishery for groundfish.

The FMP addresses four problems: (1) maintaining stocks currently at levels of MSY; (2) rebuilding depleted stocks to levels of abundance producing MSY; (3) controlling the incidental catch of species of commercial importance to U.S. fishermen; and (4) establishing an environment conducive to development of a U.S. groundfish fishery.

(1) Maintaining or rebuilding of stocks. We (NOAA/NMFS) have conducted stock assessment studies on the following categories of Bering Sea/Aleutian Island groundfish species: Alaska pollock, Pacific halibut, Pacific Ocean perch, 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, we believe all other groundfish species in the Bering Sea/Aleutian Island area to be at levels of abundance equal to or greater than those that would produce MSY.

Pacific halibut stocks have declined sharply in the eastern Bering Sea since the early 1960s. Recent surveys indicate an increase in the abundance of juveniles; however, abundance is still below early 1960s levels. The Council did not set an allowable biological catch for Pacific halibut in the FMP because the fishery is currently regulated by the International Pacific Halibut Commission (IPHC). Instead, the Council specified OY for species other than halibut covered by the FMP to accommodate rebuilding of halibut stocks.

(2) Incidental catch. Foreign fishing fleets dominate current fishery activity directed at Bering Sea groundfish resources. Foreign vessels target on groundfish, and 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.

The growth of the U.S. groundfish trawl fishery (which uses large nets towed through the water) also has resulted in increased incidental catches of halibut and crabs. The discounted loss in gross revenues to U.S. halibut, crab, and salmon fishermen, based on recent interception rates by U.S. and foreign fishermen and the projected 1982 Bering Sea groundfish harvest, is estimated at $20.25 million (1981 dollars). This estimate assumes that the entire incidental catch, minus losses due to natural mortality, would have been harvested in directed fisheries without increases in effort or cost.

(3) Development of a U.S. groundfish fishery. Joint ventures between U.S. and foreign vessels accounted for most of the growth in domestic landings in 1980 and 1981. (Joint ventures involve the sale of fish caught by U.S. vessels and sold to foreign vessels in the FCZ.) Before 1980, the U.S. groundfish catch was less than 0.2 percent (3,118 metric tons) of the total Bering Sea/Aleutian Island area groundfish harvest. In 1980 the joint venture catch rose to 38,774 metric tons (mt) (2.5 percent of the OY), and in 1981 the catch is expected to reach 100,000 mt (6 percent of the optimum yield). Increases in U.S. catches, given a constant optimum yield, are equivalent to reductions in foreign harvest levels. The development prospects for the U.S. fleet involve specifications of the optimum yield that allows significant increases in U.S. catches coupled with reductions in the total allowable level of foreign fishing (TALFF).

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 (a type of gear with hooks attached to a long rope suspended from buoys) 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 expanding U.S. involvement in the Bering Sea/Aleutian Island groundfish fishery, limited only by the OY of individual species and objectives (a) and (b) above; and

(d) allow continued 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 to attain 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 and public comments, the advice and recommendations of all interested persons, including States, and commercial and recreational fishery groups. After the Council selected the preferred management options, it prepared a final FMP for submission to the Secretary for review, approval, and implementation. The alternatives we now are considering are:

(A) Continue the 1981 PMP—Under this alternative, we would extend the 1981 PMP to cover the 1982 fishing 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 adequately control the incidental catch of species of commercial importance to U.S. fishermen (halibut, king crab, and Tanner crab).

(B) Develop an FMP—The FMP developed by the North Pacific Fishery Management Council contains management measures specifying OY for the total fishery (1,579,226 mt), domestic allowable harvest (DAH)(102,150 mt), reserves (74,324 mt), and the TALFF (1,402,752 mt). The Council set optimum yields for Pacific Ocean perch and sablefish at levels that should result in rebuilding these stocks to MSY levels. The Council also set the domestic allowable harvest at a level consistent with the production expectations of both U.S. harvesters and processors.

To prevent the OY from being exceeded without hindering unexpected domestic fishery development (an unanticipated increase in U.S. catching capability and intent), we will hold in reserve 500 mt or 5 percent of the OY (whichever is greater) of each species for allocation later in the fishing 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 percent of the reserve of each species can be released to TALFF every 2 months, beginning with the end of the second month of the fishing year. The Council determined initial TALFFs for each species by subtracting the sum of domestic allowable harvest and reserve from optimum yield.

Additional management measures selected by the Council included statistical reporting requirements for U.S. vessels and permit requirements and area closures for foreign fishing vessels. These areas cover the "Winter Halibut-savings areas," the Petrel Bank, and fishing grounds off the western portions of the Aleutian Islands. If we allowed foreign fishing in these areas during the specified time periods, there would be a continuation of incidental halibut catches. Although these areas are known to contain large concentrations of juvenile halibut, we are unable to quantify the halibut yield losses.

Public comment on the proposed regulations and the draft environmental impact statement raised new issues that forced the Council to reassess the impacts of the management measures on the environment and user groups in the fishery. This has caused at least a 2-year delay in the implementation of the FMP. The PMP, therefore, has been extended through the 1981 fishing season to prevent overfishing by foreign nations.

(C) Discontinue the PMP—Under this alternative, we would allow the PMP to expire. In the absence of conservation and management regulations, the fishery would return to the conditions that existed before the Act: bilateral agreements and flag state enforcement (the United States documents violations, but only foreign nations can enforce the agreement with respect to its fishing vessels). This system was ineffective and resulted in the Act.

Summary of Benefits

Sectors Affected: U.S. commercial fishing and processing in Alaska; consumers of groundfish; and the general public.

The components of the optimum yield are as follows: optimum yield (1,579,226 mt), DAH (102,150 mt), TALFF (1,402,752 mt), and reserves (74,324 mt). The FMP provides an environment for an orderly expansion of the U.S. fleet in the Bering Sea groundfish fishery. The projected dockside value of the 1981 U.S. catch is $23.5 million (1981 dollars). Although we cannot accurately predict the rate of increase of U.S. catches, we estimate that by the end of the decade the annual dockside value of increased catches will range between $41 million to $328 million. For 1982, we estimate that foreign nations could pay $32 million in vessel and management fees to fish in the Bering Sea/Aleutian Island area.

We also expect economic benefits from the rebuilding of stocks to levels of high abundance or to MSY levels. There are potential reductions in the cost of

harvesting fish because of larger catch per unit of effort (i.e., greater productivity). Additionally, 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. Also, there is the benefit of stabilizing the fishable population to reduce the likelihood of sharp yearly variations in the harvest.

Summary of Costs

Sectors Affected: The State of Alaska; the Federal Government; and the Departments of Commerce, State, and Transportation.

We project the total annual cost of implementing the FMP to be the same amount as the cost of continuing the PMP. The estimated cost of either a PMP or FMP is $44.26 million (1981 dollars). Of this total, the cost of the foreign fishing observer program (U.S. observers on foreign fishing boats) ($407,000) will be reimbursed to the U.S. Treasury by foreign governments. The remaining $43.85 million is divided among NOAA ($589,000) for administrative costs, the State of Alaska ($15,000) for data collection, and the U.S. Coast Guard ($43,250,000) for ship and aerial patrols.

Summary of Net Benefits

The most obvious direct benefit of the FMP is the additional gross revenues of the U.S. fleet attributed to increased catches of Bering Sea groundfish. We cannot predict the pace of development of the U.S. fleet, although current estimates indicate exvessel (dockside) revenues by the end of the 1980s may range between $41 million (with a catch of 200,000 mt) and $328 million (1981 dollars, with a catch of 1,600,000 mt). At a minimum, we expect the value of the U.S. catch in 1982 to be $20 million higher than the 1981 revenues. The costs of either a PMP or FMP are estimated at $44,261,000. We have not attempted to calculate net benefits because of the uncertainty in estimating future U.S. landings and the possible changes in Coast Guard enforcement costs as U.S. effort expands and foreign catches diminish.

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 on 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, April 22, 1978) has implementing regulations designed to minimize the incidental catch of halibut. In addition, the Convention for the Preservation of the Halibut Fishery of the North Pacific Ocean and Bering Sea (5 UST 5) controls the directed catch of halibut.

External: The Alaska Department of Fish and Game and the Alaska Limited Entry Commission issue regulations that control the harvest of fishery resources in State territorial waters off the coast of Alaska (0 to 3 miles).

Government Collaboration

We requested comments on this FMP from the Environmental Protection Agency; the Marine Mammal Commission; the Departments of Agriculture, Interior, State, and Transportation; and several State governments.

Timetable

NPRM—44 FR 66356, November 19, 1979.
Public Hearing—1979.
Final Rule—December 1981.
Final Rule Effective—1st Quarter 1982.
Regulatory Impact Analysis—None.
Regulatory Flexibility Analysis—None.

Available Documents

The Draft Environmental Impact Statement and Fishery Management Plan for the Groundfish Fishery in the Bering Sea/Aleutian Island Area.
Draft Regulatory Impact Review.
Amendments 1, 1a, and 2 to the FMP.
"Trawl and Herring Gillnet Fishing in the Eastern Bering Sea—Preliminary Fishery Management Plan."

All documents are available for review at the National Marine Fisheries Service, Office of Resource Conservation and Management, Plan Review Division, 3300 Whitehaven Street, Washington, DC 20235.

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DOC-NOAA—National Marine Fisheries Service

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Fish and Wildlife Coordination Act: Notice of Proposed Rulemaking and Availability of Draft Environmental Impact Statement

Please see text of joint DOC and DOI entry under DOI–FWS on page 1700.

DOC-NOAA-Office of Coastal Zone Management

Channel Islands National Marine Sanctuary Regulations (15 CFR Part 935, §§ 935.6 and 935.7(a)(2) only; Revision); Point Reyes-Farallon Islands National Marine Sanctuary Regulations (15 CFR Part 936, §§ 936.6(a)(1), 936.6(a)(2), and 936.6(a)(3) only; Revision)

Legal Authority

Title III of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, § 302(f), 16 U.S.C. 1432(f).

Reason for Including This Entry

The portions of these regulations dealing with impacts on the development of hydrocarbon energy sources are on the Presidential Task Force on Regulatory Relief's list of "Rules Designated for Postponement."

Statement of Problem

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 conservational, recreational, ecological, or aesthetic values as marine sanctuaries and to issue necessary and reasonable regulations to protect the resources in these areas. Public participation plays an important role in the designation process, and numerous opportunities are provided for all those interested in the proposal to express their views. Concurrence by the Governor is also necessary for sites where State waters are involved. As a final step, the Secretary of Commerce must transmit the marine sanctuary designation to the Congress. Both Houses of Congress can adopt a concurrent resolution within the first 60 calendar days of continuous session

after the date on which the designation was transmitted that disapproves the designation or any of its terms.

On September 21, 1980, the Channel Islands National Marine Sanctuary was designated. The sanctuary includes the waters within 6 nautical miles of the northern Channel Islands (San Miguel, Santa Rosa, Santa Cruz, and the Anacapas) and Santa Barbara Island off the coast of southern California. The total area is approximately 1,252 square nautical miles. The waters of this sanctuary support an extraordinary variety of marine life. They comprise one of the few places in the world where two major ocean ecosystems meet and comingle. The cold waters of the California Current flowing from the north meet the warmer waters of the California Countercurrent and create upwellings of cold, nutrient-rich waters that enhance the biological productivity of the area. Notable aspects of this sanctuary are summarized below:

- The islands, although within a few miles of southern California's populous shoreline, have remained relatively underdeveloped. As a result, they support one of the largest and most varied assemblages of marine mammals in the world. The waters serve as feeding grounds for six species of seals and sea lions (California sea lion, Steller's sea lion, northern fur seal, Guadalupe fur seal, northern elephant seal, and harbor seal). Twenty-seven species of whales and dolphins have been sighted in the area, including the endangered blue, fin, and humpback whales.
- The sanctuary is a focal point for one of the richest resource areas for seabirds in the United States, based on both numbers of individuals and species diversity. Seabird concentrations occur not only on the islands and offshore rocks, which provide nesting habitats for nine of southern California's twelve species of breeding seabirds, but also on the productive waters around the islands, where many species forage for food. The endangered brown pelican breeds on Anacapa Island and forages in sanctuary waters.
- About 40 percent of all kelp beds in the southern California bight are found in the sanctuary waters. The kelp beds support the most productive kelp harvest in southern California and provide habitat for commercially and recreationally valuable finfish.
- The nearshore island waters in the sanctuary are the major southern California producers of such species as abalone, sea urchin, and rockfish.
- The sanctuary offers exceptional recreational opportunities, including pleasure boating, skin diving, sportfishing, and nature study, such as seabird and mammal watching. The recent creation of the Channel Islands National Park emphasizes the important recreational attributes of the area.

On January 16, 1981, the Point Reyes-Farallon Islands National Marine Sanctuary was designated. The sanctuary encompasses a 948 square nautical mile area off the northern California coast. The boundary extends from the mainland between Bodega Head and Rocky Point seaward to a distance of 6 nautical miles and 12 nautical miles around the Farallon Islands and Noonday Rock. The waters off Point Reyes and around the Farallon Islands are especially noteworthy for the seabird and marine mammal populations that thrive there. The waters provide shallow foraging areas and a tremendous diversity of habitats and ecological niches for a significant and complex marine ecosystem. Notable aspects of the Point Reyes-Farallon Islands National Marine Sanctuary are summarized below:

- The Farallon Islands support the largest seabird rookeries in the contiguous United States, including 12 of the 16 known species of seabirds found on the west coast, as well as the entire world's population of ashy storm petrel.
- The Farallon Islands also support one of the largest colonies of western gulls in the world and the largest concentrations of pelagic cormorant, Brandt's cormorant, black osytercatcher, pigeon guillemot, and Cassin's auklet in northern and central California.
- The peregrine falcon, southern bald eagle, brown pelican, California clapper rail, and the California least tern, which are on the Federal and State endangered/threatened species list, are also present in the area although not in large concentrations.
- A large and varied marine mammal population (some 23 species) is present in the waters. Whales, including several endangered species, pass through the proposed sanctuary on their annual migrations.
- The proposed sanctuary includes six offshore zones designated by the California State Water Resources Control Board as "Areas of Special Biological Significance."
- The Point Reyes National Seashore on the adjacent mainland is visited by more than 1.5 million people annually.

The management of each sanctuary includes research, assessment, education, coordination, and regulation. A comprehensive program of this nature did not previously exist and would not have been created in the absence of these sanctuaries. Protection of these marine resources requires an understanding of their condition, both current and evolving. A research, assessment, and monitoring program is essential and has been instituted by the National Oceanic and Atmospheric Administration (NOAA). Funds have been provided for the conduct of specific studies and for projects to coordinate and analyze existing data to assist in the decisions concerning sanctuary management. Likewise, the long-term preservation of ecological, conservational, and recreational values requires public awareness of the value of the resources and of potential harm to the resources. Users of the proposed sanctuary must be informed and educated in order to reduce harm to sensitive areas. NOAA has undertaken a variety of such educational programs. The marine sanctuaries also provide a focus for the coordination of the variety of regulatory actions that State, local, and Federal agencies already undertake in these areas. This coordination assures that complete information concerning the cumulative impacts of activities within the proposed sanctuary is considered as each separate agency pursues its discrete mission and regulatory activities. Finally, through the promulgation of limited additional regulations, the sanctuaries control certain activities that were currently not addressed in a manner most appropriate to the protection of the special values of these rich marine areas.

Specific regulations were proposed in the course of designation as reasonable and necessary for the protection of the natural resources in both sanctuaries. These regulations apply only within the sanctuary boundaries. The portions of the regulations discussed in this entry pertain solely to offshore hydrocarbon (oil and gas) activities. These rules would prohibit any activity for the exploration or exploitation of hydrocarbons anywhere in the sanctuaries pursuant to leases (contracts authorizing exploration for and development and production of hydrocarbons on specific offshore tracts in Federal waters) executed on or after the effective date of these regulations. Exploration, production, and development pursuant to leases predating the effective date of the regulations and the construction of pipelines are allowed, subject to all other proposed sanctuary regulations and all regulations and conditions imposed by the following entities: the Department of the Interior, the U.S. Coast Guard, the Corps of Engineers, the Environmental Protection Agency, the State of California under the Federal consistency provisions of the Coastal Zone Management Act, and any other State or Federal authority. The regulations are designed to reduce the risk of contamination of the nearshore resources by spilled oil and to protect

the island shores and mainland from visual and acoustic disturbances.

As stated above, sanctuary regulations do not become effective until the expiration of a period of 60 calendar days of continuous session of Congress from the date of their transmittal to the Congress, concurrent with publication, to allow for adequate review of the designation. The Congressional review periods began on January 5, 1981 for Channel Islands and January 26, 1981 for Point Reyes and were still running on January 29, 1981, when President Reagan ordered a 60-day suspension of pending regulations.

On February 17, 1981, the President issued Executive Order 12291, directing Federal agencies to suspend further or postpone the effective dates of any pending "major" regulation to the extent permitted by law in order to reconsider the regulation in accordance with the objectives of the Executive Order and to prepare a Regulatory Impact Analysis (RIA). NOAA determined that only those portions of sanctuary regulations that would directly prohibit or have the effect of prohibiting hydrocarbon development could conceivably meet the criteria of the Executive Order. Therefore, on March 30, 1981 (46 FR 19227), NOAA suspended these portions of the regulations within both sanctuaries for a period of 30 days, during which it considered whether to suspend them for an additional period to evaluate their substantive impact in accordance with the Executive Order. On April 29, 1981 (46 FR 23927), the regulations were suspended until September 30, 1981. NOAA accepted comments on substantive issues pertaining to the regulation of hydrocarbon activities until August 1, 1981.

NOAA has awarded a contract for the preparation of a formal Regulatory Impact Analysis, a major element of the reconsideration of these provisions. This reconsideration involves an analysis of the costs and benefits to the Nation that would result from imposing prohibitions on hydrocarbon activities in addition to the controls which may be imposed under the Outer Continental Shelf Lands Act and other Federal statutes. This analysis was not completed by September 30, 1981. NOAA also needs an adequate additional period of time to review its options with respect to the regulations. Therefore, on September 8, 1981 (46 FR 44765), NOAA proposed to further continue the suspension of those portions of the regulations under reconsideration to complete the RIA and fully consider its recommendations. After consideration of comments, NOAA extended the suspension until March 30, 1982 (46 FR 47770, September 30, 1981). As to other activities, the regulations remain effective. (The majority of the regulations issued for the Channel Islands and Point Reyes-Farallon Islands National Marine Sanctuaries became effective on March 30 and April 5, 1981, respectively, and are not at issue here.)

No lease sales involving either sanctuary have been held since designation, and none will be held during the period of the continued suspension. The next lease sale that could impact either sanctuary, sale #68, which contains 37 tracts in the Channel Islands Sanctuary, is not scheduled until April 1982. No activities that could impact either sanctuary will result from the continued suspension.

In summary, the problem under review is to examine the costs and benefits of the hydrocarbon activity prohibitions. Factors to be considered include a determination of hydrocarbon resource reserves, including those already precluded from exploitation through other means, estimation of the value of the ecological resources, and evaluation of various production approaches. The end result must ensure that the level of protection that has been established through sanctuary designation be maintained.

Alternatives Under Consideration

Several regulatory alternatives will be considered in the RIA and are discussed in some detail below. They fall in three general categories.

(A) retain the existing prohibitions as embodied in the current regulations;

(B) eliminate the regulations that affect hydrocarbon development; and

(C) compromise between the two extremes.

All the alternatives involve complex issues dealing with man's use of the areas. The RIA will evaluate optional oil and gas production methods, such as directional drilling techniques and subsea completions, that could allow development of these resources while maintaining existing protection of the environment. It will also evaluate the value to society of ecological resources, such as seal and sea lion rookeries and kelp beds, and quantify whenever possible the worth of the recreational, educational, and aesthetic uses of the sanctuaries. The impact on other commercial operations, like fishing and tourism, will also be considered.

Reinstating the suspended oil and gas development regulations will mitigate potential impacts within the sanctuaries. Prohibiting all future hydrocarbon activities within the boundaries of both sanctuaries:

- creates a buffer area, providing increased response time for oil spill clean-up efforts;
- increases the distance between potential spill/pollutant discharge points (i.e., rigs and platforms) and sensitive resource areas, thereby allowing for weathering and dilution of contaminants before reaching important marine life concentration areas;
- provides a buffer between noise and visual disturbances and important marine life habitats;
- reduces congestion by supply vessels that would otherwise frequent nearshore areas;
- reduces potential visual intrusion on aesthetic values of both the National Marine Sanctuaries and the Channel Islands National Park, Point Reyes National Seahore, and Farallon National Wildlife Refuge, in addition to numerous State parks and preserves; and
- reduces potential air pollution.

The second alternative, that of permanently withdrawing the regulations affecting hydrocarbon operations, would allow the development of available oil and gas reserves within the Federal waters of the sanctuaries. Other existing regulatory bodies involved in offshore hydrocarbon operations and various aspects of environmental protection would continue to exercise some measure of control. However, there is no single entity, besides the National Marine Sanctuary Program, that provides for the comprehensive management of a particular marine area for the purposes of protecting its ecological resources (see Available Documents). For example, under the Outer Continental Shelf Lands Act (OCSLA), the Secretary of the Interior can comprehensively regulate activities associated with oil and gas leasing. While the Secretary is responsible for protecting the marine environment, this responsibility is exercised in the context of carrying out the primary objective of the OCSLA to expedite offshore oil and gas development. This responsibility is carried out in consultation and coordination with other affected agencies and parties as mandated by general environmental protection statutes. However, these priorities and objectives could result in administrative decisions on leasing, exploration, or development that differ from those that would be reached where protection of marine resources has first priority.

The compromise alternative is composed of several interrelated options with the overall purpose of allowing some level of hydrocarbon activity while providing the same level of

environmental protection that would exist under the original rules. This alternative will consist of some amalgam of the following options:

- allow only exploratory drilling to determine the extent of the hydrocarbon resources (resource estimates are very uncertain, especially in Point Reyes, which has no history of oil and gas activity);
- allow drilling on a case-by-case basis, using revised criteria and possibly more stringent lease stipulation and impact-mitigating restrictions;
- allow drilling only in certain areas and at specific times based on criticality and seasonality of the vulnerable habitats and species; and
- allow drilling but require specific technology to minimize the intrusion of oil and gas operations on the sanctuaries; these methods include:

a. directional drilling from a fixed platform (this existing technology would allow hydrocarbon recovery up to 2 miles inside the sanctuary from platforms outside the boundary);

b. extended reach directional wells from a fixed platform (this technology will allow wells to reach out a lateral distance of 8 miles; while this technology is still under development, it should be operational by the latter part of this decade when drilling would likely commence in these areas);

c. subsea production systems (while surface vessels would operate within the sanctuaries while drilling, once the wells began producing this option would eliminate the need to place large surface platforms within sanctuary boundaries, although production activities would still be conducted only underwater); and

d. satellite subsea wells tied to a fixed platform (this existing technology would allow several production Christmas trees (the complex of valves and pipes installed at the well-head to control the flow of high-pressure oil or gas) to sit on the ocean floor and connect with a fixed platform several miles away through flow lines; wells would be drilled within the sanctuary boundary in this case also, but surface facilities would be outside the sanctuary).

All these methods will increase costs to the industry, some possibly prohibitively.

Summary of Benefits

Sectors Affected: Northern Channel Islands and the Santa Barbara Island; Point Reyes and the Farallon Islands; commercial fishing; recreational fishers, boaters, and other users of the area; the nearby tourist industry; the general public; endangered species and marine life; the Federal Government; the State of California; and oil and gas extraction.

Marine sanctuary designation has resulted in enhanced protection of ecological, recreational, and aesthetic resources, particularly endangered species, marine mammals and birds, and the habitats of these populations. Fishing and recreational activities, two major sources of income for the regions, also depend on the continued health of the marine resources of the area.

Environmental resources are difficult to quantify; however, the RIA will attempt to estimate the value of these resources. The hydrocarbon regulations will ensure a partial buffer between petroleum development and nearshore marine mammal and fish habitats, recreational activities, and other resources. The buffer would 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 and the coastal areas.

On the other hand, allowing oil and gas development also has tangible benefits in terms of the value of these resources. The amount of these benefits are also difficult to quantify, since reliable data on the hydrocarbon reserves within the sanctuaries are not available. Approximately half of the Channel Islands site has never been considered for leasing, and no leasing has occurred in northern California. NOAA has few resource estimates for these areas.

Summary of Costs

Sectors Affected: Northern Channel Islands and the Santa Barbara Island; Point Reyes and the Farallon Islands; commercial fishing; recreational fishers, boaters, and other users of the area; the nearby tourist industry; the general public; endangered species and marine life; the Federal Government; the State of California; and oil and gas extraction.

The complicated nature of this analysis is reflected in the description of the costs and benefits of the regulations. One sector's cost is another's benefit, both equally difficult to quantify. However, the thrust of the Executive Order and subsequent analysis now being conducted deals with the effect on industry, and therefore only these costs will be elaborated on below. The RIA will contain a more complete discussion of costs and benefits to all sectors.

As stated earlier, hydrocarbon reserve statistics are not known with any certainty. Also, the extent to which the United States will forego any resources, whatever their potential, as a result of the prohibition is questionable. At least some of the available reserves could be recovered by slant drilling from outside the sanctuary, despite any prohibition. Furthermore, in many areas where recovery of oil and gas will be infeasible under the prohibition, it might be blocked by other agencies independent of any sanctuary regulation. For instance, the State of California prohibits oil and gas development within its waters surrounding the five islands in the proposed sanctuary. In addition, there is a 15-mile oil and gas exclusion zone already in existence around the Point Reyes peninsula.

Finally, to the extent that the capital available for the development of oil and gas reserves can be directed to other tracts outside the sanctuaries, the costs attributable to the prohibition would be minimal. No effect on supply would be felt until such time as excess capital is available. The reserves in the sanctuary would not be destroyed or permanently lost because of the proposed regulation; they could be available in the future if modifications in regulations are instituted.

The petroleum industry would forego any profits it could otherwise realize from the development of the affected tracts. Oil companies that have leased tracts in the Channel Islands area include Texaco, Chevron, Exxon, Mobil, Continental, Union, Phillips, and Champlin. 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 developlment to other areas of the Southern California Bight in which industrial interest appears stronger.

An anlysis of the economic impacts of the Channel Islands National Marine Sanctuary regulations was performed and is included in the final environmental impact statement on this site as Appendix 6. It shows that even under a "worst case" scenario, where all hydrocarbon reserve estimates are doubled and it is assumed that none of these resources within this sanctuary can be exploited, the very small magnitude and value of the foregone hydrocarbon resources will have no impact on competition or market systems in the domestic oil and gas industry. In addition, even under worst case assumptions, the socioeconomic impacts, both direct and indirect, on the economy, consumers, industry, and employment resulting from foregone exploitation of all estimated

hydrocarbon resources within the proposed sanctuary are not significant. The regulations were deemed to have no impact on costs, prices, or supply of materials, products, and services.

Nevertheless, in light of the Executive Order, NOAA is reconsidering the rules and is also including in its review the Point Reyes-Farallon Islands National Marine Sanctuary regulations, which did not undergo an economic analysis because impacts were assumed to be negligible.

Other primary sectors affected are the Federal Government and the State of California because of the loss of possible revenue from lease sales. We cannot estimate the actual loss of revenues at this time, since individual tracts and their resources have not been identified. There is also an unknown social value to the tracts. 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. As oil prices rise, the social value of hydrocarbon reserves will rise as well.

Summary of Net Benefits

NOAA is still in the process of producing the RIA. Because of the large uncertainties in data, no conclusions can be stated at this time, nor can a preferred alternative be identified.

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 suspended regulations. The major ones are:

State

(1) 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.

(2) The California Fish and Game Code, § 1580 *et seq.*, establishes ecological reserves in a portion of both sanctuaries. Within these reserves, the State can control activities that threaten the resources.

(3) 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 the State has designated in the waters within 1 nautical mile of the northern Channel Islands and Santa Barbara Island and at six discrete sites within the Point Reyes-Farallon Islands area.

(4) The Cunningham-Shell Tidelands Act, as amended, Cal. Pub. 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 nautical miles of the Channel Islands, except for Santa Barbara Island.

Federal

(1) The Endangered Species Act, 16 U.S.C. 1531–1543, provides protection for listed species, several of which are located within the proposed sanctuary.

(2) The Marine Mammal Protection Act, 16 U.S.C. 136 *et seq.*, provides for the protection and management of marine mammals.

(3) 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.

(4) The Outer Continental Shelf Lands Act, 43 U.S.C. 1331 *et seq.*, gives the Secretary of the Interior primary responsibility for managing outer continental shelf (OCS) oil and gas activities, while requiring a variety of measures to mitigate impacts and protect living marine resources.

Government Collaboration

Extensive collaboration occurred throughout the designation processes for both sites with the State of California and all relevant Federal agencies. However, NOAA is only required to coordinate with the Office of Management and Budget in the preparation of an RIA and any resulting rulemaking, as stipulated by the Executive Order.

Timetable

Channel Islands

NPRM—44 FR 69971, December 5, 1979.
Environmental Impact Statement—Draft, December 5, 1979; final, June 6, 1980.
Public Hearing—January 10 and 11, 1980.
Public Comment Period—December 5, 1979 to February 4, 1980.
Notice of Final Rulemaking—October 2, 1980.
Suspension of Hydrocarbon Provisions— 46 FR 19227, March 30, 1981; 46 FR 23927, April 29, 1981; 46 FR 47770, September 30, 1981.
Majority of Final Rule (exempting hydrocarbon development provisions) Effective—March 30, 1981.
Regulatory Impact Analysis—January 1982.
Regulatory Flexibility Analysis—None.
Final Hydrocarbon Rule—February 1982.
Final Hydrocarbon Rule Effective—March 1982.

Point Reyes-Farallon Islands

NPRM—45 FR 20907, March 31, 1980.
Environmental Impact Statement—Draft, March 31, 1980; final, September 26, 1980.
Public Hearing—May 13, 1980.
Public Comment Period—March 31, 1980 to June 17, 1980.
Notice of Final Rulemaking—46 FR 7936, January 26, 1981.
Suspension of Hydrocarbon Provisions—46 FR 19227, March 30, 1981; 46 FR 23927, April 29, 1981; 46 FR 47770, September 30, 1981.
Majority of Final Rule (exempting hydrocarbon development provisions) Effective—April 5, 1981.
Regulatory Impact Analysis—January 1982.
Regulatory Flexibility Analysis—None.
Final Hydrocarbon Rule—February 1982.
Final Hydrocarbon Rule Effective—March 1982.

Available Documents

All reference documents and notices, including the draft and final environmental impact statements and General Accounting Office Report CED-81-37 (March 4, 1981), entitled "Marine Sanctuaries Program Offers Environmental Protection and Benefits Other Laws Do Not" are available for review at Sanctuary Programs Office, Office of Coastal Zone Management, 2001 Wisconsin Avenue, N.W., Room 340, Washington, DC 20235, from 9 a.m. to 5 p.m. on business days.

Agency Contact

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DEPARTMENT OF DEFENSE

Department of the Army

Regulatory Program of the Corps of Engineers (33 CFR Parts 320-330; Revision)

Legal Authority

The River and Harbor Act of 1899, 33 U.S.C. 401, 403, 404, 407, and 408; Clean Water Act, 33 U.S.C. 1344 (hereafter referred to as § 404); Marine Protection, Research, and Sanctuaries Act of 1972, 33 U.S.C. 1413.

Reason for Including This Entry

The Department of the Army has included this regulation because it has an impact on a large number of citizens and requires revision to achieve a balance between protection of important environmental resources and economic development. The Presidential Task Force on Regulatory Relief has designated this regulation for review.

Statement of Problem

Prior to the enactment of the Federal Water Pollution Control Act in 1972, the Department of the Army permit program, administered by the Corps of Engineers, was primarily involved in granting permits for those activities that affected the navigable capacity of the navigable waters of the United States. Since then, however, the permit program has been expanded in scope through legislation, court rulings, regulations, policy, and procedures to the point where the Army has been given jurisdiction over all "waters of the United States." Courts have defined this term expansively so that a Department of the Army permit is needed before an individual or company can place any dredge or fill material in such areas as rivers, streams, lakes, bogs, marshes, wetlands, prairie potholes, isolated lakes, and intermittent streams.

Interest groups and other Federal agencies are able to wield great influence in the granting of a permit because of their ability to take the matter to court or possibly delay the process for years. The result is that anyone wanting to place material in the expansively defined "waters of the United States" must obtain a permit from the Corps of Engineers. This is perceived as a regulatory burden by the people of the United States, as they point out in a steady stream of mail and telephone calls. For these reasons, this regulation was identified by the Presidential Task Force on Regulatory Relief as one requiring reform.

Individual permits are requested by about 18,000 individuals, groups, organizations, and businesses annually. To obtain a permit for a major activity it is not uncommon for an applicant to spend around $500 and in very complex cases over $1 million to satisfy demands for information. There are cases where small enterprises and entrepreneurs have almost been driven out of business because of the time required and the mitigation demands of commenting organizations and agencies. The cost that often appears to be felt more keenly than money is the time lost obtaining a permit. For complex cases this can be 2 to 3 years.

The Department of the Army is striving to reform this permit program to achieve a proper balance between protecting our important environmental resources and economic development. The reform effort is targeted toward modifying the jurisdictional extent of the permit program, reducing the time required to reach the decision to grant a permit, and eliminating duplication with the States and other agencies. We hope to provide inducement for the States to assume the regulatory program as provided by § 404 of the Clean Water Act.

Alternatives Under Consideration

We are still in the process of developing alternatives. An interagency task force is presently at work to develop the possible alternatives. Represented on this task force are the Departments of Army, Interior, Commerce, and Justice; the Environmental Protection Agency; and the Office of Management and Budget. Also assisting in the reform effort are the Departments of Agriculture and Transportation and the President's Council on Environmental Quality. We expect that the action needed to balance the permit program will include revisions to regulations, policy, and procedures and possibly legislative changes. There may also be recommendations for methods to induce the States to assume the § 404 permitting program.

On September 19, 1980, the Corps of Engineers published proposed amendments to their permit regulations that would incorporate changes from the 1977 Amendments of the Clean Water Act, simplify the process, and expand general permits. Although the changes were a step in the right direction, they did not go as far as is needed to balance the program. We have not decided at this time whether to publish all or part of these amended regulations as final or to combine them with other changes that are expected in the near future.

Summary of Benefits

Sectors Affected: All landowners, organizations, or commercial enterprises that desire to place fill material in the waters of the United States.

The major benefit of a revised regulatory program is a reduction in the time required to obtain a Department of the Army permit. For individuals and businesses, time is often equivalent to money. Thus, a time savings reflects a real financial savings. If, through general permits or jurisdictional changes, the number of permits required is reduced, there would be a direct savings of time and money. In many cases, applicants must hire engineers to prepare plans and drawings for the permit application and then hire consultants to gather the additional information requested either by the Corps or by other agencies. Although it is difficult to quantify expenses, there are a number of applicants whose costs have run in the million-dollar bracket.

An indirect benefit of a reformed program would be a reduction in harassment factor as perceived by the public. A number of citizens have been appalled that the Federal Government is regulating such activities as leveling their own backyard if a few cattails grow there. Then, when they must jump all the hurdles necessary in order to get a permit, they conclude that they are being overregulated.

Finally, there will be a savings to the taxpayer, since less Federal regulation will result in lower costs to administer the regulatory program. This could be somewhat offset if States adopt the program.

Summary of Costs

Sectors Affected: State governments and the general population.

If the States assume all or a portion of the permit program, as allowed in § 404, they will incur administrative costs. Since this would vary from State to State, depending on such factors as the amount of waters to be regulated (e.g., Florida versus North Dakota) and the complexity of the permitting process, a definitive estimate of costs is not feasible. Much of the State costs would be balanced by reduced costs of regulation at the Federal level. If there is a reduction in the degree of Federal regulation, there could be a minor lessening of environmental preservation.

Summary of Net Benefits

The net benefits are approximately the same as the benefits described above, since the monetary costs to the

States would be nearly balanced by a reduction in Federal costs.

Related Regulations and Actions

None.

Government Collaboration

A series of communications is ongoing with the Departments of Agriculture, Commerce, Interior, and Transportation; the Environmental Protection Agency; the President's Council on Environmental Quality; and the Office of Management and Budget. These agencies are providing their views on how the Corps permit program needs to be reformed.

Timetable

NPRM—45 FR 62732, September 19, 1980.
Public Comment Period—Closed December 1, 1980.
Public Hearings—June 15, 1981; June 17, 1981.
Decision on Reform Actions Needed—Early 1982.
Final Rule—To be determined.
Regulatory Impact Analysis—To be determined.
Regulatory Flexibility Analysis—To be determined.

Available Documents

None.

Agency Contact

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Community Planning and Development

Protection and Enhancement of Environmental Quality (24 CFR Part 50; Revision)

Legal Authority

National Environmental Policy Act of 1969 (P.L. 91-190, 42 U.S.C. 4321 *et seq.*), as amended; and Executive Order 11514 of March 5, 1970, as amended by Executive Order 11991 of May 24, 1977.

Reason for Including This Entry

The Department of Housing and Urban Development (HUD) believes that this new Interim Rule should be included because it will simplify the Department's environmental review requirements. It will be less prescriptive than the rule now in effect and will delete many of the advisory and operational provisions of the present rule. The Presidential Task Force on Regulatory Relief has designated this regulation for review; in addition, this action will represent compliance with the National Environmental Policy Act (NEPA) Regulations issued by the Council on Environmental Quality (CEQ) on November 29, 1978.

Statement of Problem

The length of time it takes to assess the environmental impact of a proposed project has long been a concern of the Department and the building industry. This is increasingly evident when an Environmental Impact Statement (EIS) may be automatically required (EISs take about 20 months to complete) but an Environmental Assessment (which takes about 1 week) would have been adequate. The recommendations from a recent HUD survey of 40 EISs indicated that new procedures should be developed that would increase the quality of Environmental Assessments but would reduce the quantity of EISs produced.

Alternatives Under Consideration

HUD considered two alternatives to issuing a revised regulation. The first alternative would be to issue no new rule at this time but to continue to use the Interim Rule now in effect as published in the **Federal Register** on November 27, 1979 at 44 FR 67906. HUD considered this alternative unacceptable because the basic policy requisites needed to facilitate program operation need to be addressed, including a new look at thresholds for EISs, ensuring good quality EISs, and providing means to handle environmental statutes other than NEPA. The second alternative would be to issue no departmental regulations but to adopt by reference the regulations issued by the Council on Environmental Quality on November 29, 1978 at 43 FR 55978. Although the CEQ Regulations are designed to represent broad agency compliance with NEPA, they are not tailored to the particular needs of HUD program operations.

Summary of Benefits

Sectors Affected: Privately and publicly funded housing construction activities assisted and/or insured by HUD.

This Interim Rule will replace the Interim Rule issued by the Department on November 27, 1979 at 44 FR 67906. It will meet the objectives of Executive Order 12291 by reducing many of the procedural burdens of the present Interim Rule by:

(1) the deletion of advisory provisions and operational guidance information;

(2) elimination of regulatory material previously quoted from the CEQ regulations or otherwise contained in program guidance material; and

(3) elimination of the appendices and repetitious program material that is contained elsewhere.

In addition, this new rule will emphasize the mechanisms and procedures in the CEQ Regulations to produce paperwork, eliminate duplication, and otherwise simplify the environmental review process.

Summary of Costs

Sectors Affected: None.

We do not anticipate that this rule will cause any sectors to bear costs.

Summary of Net Benefits

The net result of this new Interim Rule will be less delay, less paperwork, and lower housing costs. At the same time it will put more emphasis on the mandates identified in the CEQ Regulations of better and more timely environmental decisions. The rule will reduce the number of EISs required and allow greater flexibility in making a finding that an EIS is not necessary.

Related Regulations and Actions

Internal: The review of this Interim Rule encompasses the text of the present Interim Rule, which has been in effect since December 27, 1979. The Rule will complement two companion HUD handbooks: "Procedure for Approval of Single Family Proposed Construction Applications in New Subdivisions" (HUD Handbook 4135.1, Rev 2) and "Procedures for Environmental Clearance of HUD Insured Projects, Subdivisions and Low Rent Housing Projects" (Chapter 8, HUD Handbook 4010.1). This rule does not apply to projects carried out by communities under Title I of the Housing and Community Development Act of 1974, as amended; environmental regulations for such projects are set forth in 24 CFR Part 58.

External: NEPA rules of other agencies.

Government Collaboration

HUD has initiated discussions with the Council on Environmental Quality, Veterans Administration, and Farmers Home Administration on the development of a single environmental assessment procedure for federally assisted housing projects.

Timetable

Regulatory Impact Analysis/ Regulatory Flexibility Analysis—None planned.

Public Hearings—None planned.
Transmittal to Office of Management and Budget, the Council on Environmental Quality, and Congressional Review—January 18, 1982.
Interim Rule—February 1982.
Public Comment Period—Ends April 3, 1982.
Final Rule—July 1, 1982.

Available Documents

Present Interim Rule (24 CFR Part 50).
NEPA (P.L. 1969, 42 U.S.C. 4321 *et seq.*).
NEPA Regulations (40 CFR Parts 1500–1508).

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Coal Management Regulations (43 CFR Group 3400; Revision)

Legal Authority

30 U.S.C. 181; 30 U.S.C. 351–359; 43 U.S.C. 1701; 30 U.S.C. 1201; 30 U.S.C 521–531; 42 U.S.C. 7101; 42 U.S.C. 4321; 90 Stat. 1083–1092; 92 Stat. 2073–2075.

Reason for Including This Entry

The Bureau of Land Management (BLM) includes this entry because: (1) these regulations are to be carried out in a manner that will meet the Nation's need for coal from Federal lands and afford protection for the environment; (2) these regulations may have impacts on other programs of the Department of the Interior (DOI) or other Federal agencies; and (3) the Presidential Task Force on Regulatory Relief has designated these regulations for review.

Statement of Problem

The BLM recently conducted the first competitive regional coal lease sales under the Federal coal management program, which was restructured in 1979. In the process of developing and implementing the current Federal coal program, significant experience has been accumulated, not only by the Bureau and other Federal agencies supporting this effort, but also by State and local governments, private industry, and the general public.

In January 1981 State Governors, industry DOI agencies, and the public were invited to identify regulations that hindered the responsible and efficient production of Federal resources to meet the Nation's needs. Concerns were raised that the existing Federal coal management rules (43 CFR Group 3400) are unnecessarily burdensome and counterproductive, that the regulatory requirements are duplicative, and that some of the provisions have become obsolete. For example, the application of the unsuitability criteria to leased lands, as required by the existing rules, is an unnecessarily burdensome and duplicative requirement because: (1) Federal coal development from leased lands is still subject to the statutory environmental protection requirements that are determined by the Office of Surface Mining or the States at the time of the mine permit application review; and (2) the unsuitability criteria will still be considered through multiple resource tradeoffs screening during land-use planning or mine permit application review.

Revisions to the existing 43 CFR Group 3400 rules are necessary: (1) to streamline Federal coal leasing procedures; (2) to remove duplicative language and requirements; (3) to provide additional opportunities for earlier input and consideration of the resource data and needs of State and local government, general public, and industry consistent with other resources; and (4) to provide clearer direction to lessees regarding operating standards. The revision can only be accomplished through remedial rulemaking.

Alternatives Under Consideration

The BLM has considered two alternatives:

Alternative (A) is an approach that would continue the existing Federal coal management rules (43 CFR Group 3400). This, among other things, will provide a planning system involving two steps: (1) land-use planning, which includes close consultation with State and local governments, industry, and the public to decide which areas of Federal coal reserves will be considered potentially acceptable locations for coal production; and (2) activity planning to delineate, rank, and select for sale specific tracts of coal.

The disadvantage of this alternative is that it will not address all the concerns raised by State Governors, industry, DOI agencies, and the public and will not make the Federal coal management program more efficient by removing excessive and burdensome requirements. For example, unnecessarily excessive information requirements, such as hydrologic data collections for exploration license and certified abstracts for Preference Right Lease Applications (PRLAs), would remain under this alternative. PRLAs are granted if the applicant can demonstrate that the permit area contains commercially valuable coal. The PRLA exempts the applicant from the competitive bidding process. In addition, duplicative regulatory requirements, such as the application of unsuitability criteria to leased lands, will continue to impose excessive burdens on the public and increase government costs. By failing to streamline the procedural requirements during land-use planning and activity planning, this alternative makes the entire Federal coal management program less efficient.

Alternative (B) is a more market-oriented approach that would revise the existing rules to streamline the entire Federal coal leasing procedures while enhancing competition by reducing governmental intervention in Federal coal development. Unnecessarily burdensome and duplicative requirements would be eliminated and the entire Federal coal leasing procedures streamlined. The advantages of this approach are that it would: (1) streamline regulatory procedures and information requirements; (2) incorporate improved procedures and add clarifications that are the result of experience in managing the program; (3) avoid confusion to the public and prospective lease applicants by deleting obsolete provisions and duplications; and (4) coincide with the court's decision in recent civil lawsuits on the application of unsuitability criteria during land-use planning.

At this time the BLM prefers Alternative (B) because it will be more responsive to national energy needs by streamlining regulatory procedures and information requirements while affording protection for the environment.

Summary of Benefits

Sectors Affected: DOI agencies; the coal industry (SIC Code 1211); the general public; and the States.

As the objective of the rulemaking is to streamline the Federal procedures for arriving at leasing decisions, the economic effects of the changes are largely in the form of cost savings to the Federal Government. Total approximate savings of the proposed revisions to the Federal coal management regulations are estimated to be about $2.7 million (in 1981 dollars) annually.

Of this total savings, $1.8 million is a result of steamlining the entire process of arriving at coal leasing and related decisions. This would be accomplished by simplifying the process to establish

regional leasing targets and providing clearer direction to lessees regarding operating standards. Removing the requirement that the 20 unsuitability criteria be applied to existing leases during land-use planning would bring about annual savings of $270,000 to $400,000.

Deleting the hydrologic data collections requirement for exploration licenses is estimated to have an annual savings of $500,000. Finally, eliminating the certified abstracts requirement for PRLAs would add $44,500 to the total annual savings.

All of these efforts would also save the coal industry (bituminous coal and lignite mining) money. In addition, this proposed action would benefit the general public and the States by enhancing competition through: (1) the identification of all areas with coal development potential for possible leasing; (2) the elimination of restrictions on emergency leasing criteria; and (3) the implementation of a market-oriented leasing policy. These changes not only will ensure the least-cost tracts would be offered first for lease, but also will likely increase bonus bids and therefore increase State revenues.

Summary of Costs

Sectors Affected: The coal industry (SIC Code 1211).

As the proposed changes are to reflect a commitment to fulfill the Secretary of the Interior's directives to eliminate or revise excessive, burdensome, and counterproductive regulations in general, no additional significant costs will be incurred as a result of the proposed regulatory action to the Federal Government or to the general public.

The only possible exception is the call for coal resource information early in the land-use planning process to identify potential coal lease areas. The regulation changes would add a formal opportunity for industry to provide data to the BLM on coal areas that ought to be subject to detailed inventory and resource assessment. These data, along with other information, would be used to estimate the development potential of Federal coal lands. While this new regulation would provide an opportunity for additional data submission, any data provided by industry would be voluntary; it is not a new information requirement. To the extent that a coal company chooses to provide such information there would be some additional costs to industry.

Summary of Net Benefits

The benefits of the proposed changes exceed the costs. The economic benefits are largely in the form of cost savings to the Federal Government, amounting to an estimated $2.7 million (in 1981 dollars) annually. No additional significant costs to the Federal Government or to the general public will be incurred as a result of the proposed regulatory action.

Related Regulations and Actions

Internal: None.

External: The proposed action would transfer portions of the 43 CFR 3400 rules to 30 CFR Part 211 or 10 CFR Part 378, which are the U.S. Geological Survey's or the Department of Energy's responsibility, respectively.

Government Collaboration

The BLM is working with other Interior agencies (U.S. Geological Survey, Office of Surface Mining, National Park Service, and Fish and Wildlife Service) in the promulgation of these regulations. In addition, the BLM is coordinating with the Department of Energy, since the requirements for meeting diligent development will have an impact on the Federal coal management program.

Timetable

NPRM—Late December 1981.
Public Meetings—January 11, 1981, Salt Lake City, Utah; January 13, 1981, Casper, Wyoming; January 15, 1981, Farmington, New Mexico.
Public Comment Period—60 days following publication of NPRM.
Final Rule—April 30, 1982.
Final Rule Effective—May 31, 1982.
Regulatory Impact Analysis—The BLM has determined that there is no need for a Regulatory Impact Analysis.
Regulatory Flexibility Analysis—The BLM has determined that the proposed rulemaking will not have a significant economic effect on a substantial number of small entities and therefore will not prepare an RFA.

Available Documents

"Coal Management; Federally Owned Coal," 44 FR 42609, July 19, 1979.

Agency Contact

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DOI—Fish and Wildlife Service
DOC-NOAA-NMFS

Fish and Wildlife Coordination Act: Notice of Proposed Rulemaking and Availability of Draft Environmental Impact Statement (50 CFR 410; New)

Legal Authority

Fish and Wildlife Coordination Act, 16 U.S.C. 661–666c.

Reason for Including This Entry

The Presidential Task Force on Regulatory Relief has designated the rules promulgated under the Fish and Wildlife Coordination Act (FWCA) for review.

Statement of Problem

The first version of the FWCA was passed in 1934, with amendments in 1946, 1948, 1958, and 1965. The purpose of the Act is to ensure that fish and wildlife resources receive equal consideration with other purposes of water development projects, such as flood control, navigation, irrigation, power generation, dredging, filling, etc. To date, no common or uniform rules, regulations, Executive Orders, guidelines, or policies have been published that would guide all executive branch agencies (Department of the Interior, Department of Commerce, Department of the Army and the Corps of Engineers, Department of Energy, Department of Transportation, Environmental Protection Agency, etc.) with responsibilities under this Act. The procedural and substantial implementation of this Act has been left to the numerous affected agencies. Thus there is a wide variety and degree of compliance with the spirit, intent, and letter of the FWCA.

The proposed regulations are a joint effort of the Secretaries of Interior and Commerce. Original drafting efforts and substantive review by about 30 Federal agencies, including the Office of Management and Budget, the Department of Justice, and the Council on Environmental Quality, took place in late 1978 and early 1979. Draft regulations were first proposed in the Federal Register of May 18, 1979 to establish a common set of uniform instructions to be followed by all Federal agencies with responsibilities under the Act. Based on six public hearings and about 450 sets of comments, the draft was revised and published as an NPRM in the Federal Register of December 18, 1980 (45 FR 83412). Simultaneously, a draft

environmental impact statement discussing the proposal and its alternatives was released for review and comment. About 150 sets of comments have been received on the second proposed regulations as of the closing date of May 22, 1981.

Problems and/or issues have been identified in the administration of the FWCA via hearings in 1974 and 1978 before the House Subcommittee on Fisheries and Wildlife Conservation and the Environment, and three General Accounting Office (GAO) reports in 1980 and 1981. Some of the key problems or issues are as follows: (1) no common or uniform rules, regulations, procedures, guidelines, or policies have been established that would guide all executive branch agencies with responsibilities under the Act; (2) applicability of the FWCA to various projects, programs, or areas is contested; (3) no common, uniform, and mutually acceptable fish and wildlife evaluation methods or techniques have been adopted; (4) the use of "user-day" or other monetary or cost evaluations should be banned as a method for "justifying" or rejecting wildlife compensation or mitigation measures or for disregarding wildlife losses in favor of other public or private economic benefits or gains; (5) jurisdictional overlap and duplication of effort needs to be resolved between the FWS and NMFS; (6) funding for both Federal and State wildlife agency participation or implementation of the Act is inadequate or lacking; (7) no standard or established time schedules exist for compliance with various steps under the Act; (8) alternatives or consequences for the action agencies are not stated for situations where the wildlife agencies fail to consult and report findings and recommendations; (9) no standards exist for wildlife agencies to recommend like and proportionate compensation and mitigation for similar loss or damage; (10) fish and wildlife resources do not receive equal consideration; (11) action agencies are not giving full consideration to recommendations; (12) mitigation is provided late and not concurrent or proportionate; (13) mitigation is rejected because it did not meet a favorable cost/benefit ratio; and (14) adequate funds do not exist for operation, maintenance, and replacement for mitigation measures.

As presently drawn, the 21 Memoranda of Agreement between the Fish and Wildlife Service and 14 other bureaus covering activities under the Fish and Wildlife Coordination Act are not adequate to efficiently implement the Act. They meet few or none of the objectives of the President's regulatory review effort. Generally the agencies and bureaus who must implement the Coordination Act have not used Memoranda of Agreement to set forth specific procedures to follow; instead, they use internal guidelines. Most of the agreements are general and apply to other activities. Where they are specific, they apply only to a small part of the activities covered under the Act.

The 1980 proposed regulations are designed to provide uniform procedures for affected Federal agencies to follow in implementing the Act. They are intended to reduce delays and controversy over needed development by: fostering wildlife agency entry into the planning process at an earlier stage; coordinating and combining the various required environmental reviews to the maximum extent possible; and clarifying long-standing disagreements over coverage of the Act. The regulations would be binding on all Interior and Commerce bureaus but would bind other agencies only on mechanical and procedural consultation processes. Decisionmaking on inclusion of wildlife mitigation measures in Federal projects and permits would remain with the action agency, and the regulations would have only the force of guidelines in this regard.

Alternatives Under Consideration

Alternative (A) would be to rescind the NPRM and take no action to issue regulations for implementing the Fish and Wildlife Coordination Act.

Alternative (B) would be to publish non-binding guidelines. These would be less controversial since they invite agency participation rather than require compliance.

Alternative (C) would be to continue to work with action agencies to provide for adequate implementation of the Act through revisions in the Memoranda of Agreement, action agency regulations, guidelines, policy, procedures, etc.

Alternative (D) would be to pursue the objectives of the 1980 proposed regulations.

Other alternatives under study are: legislation to accomplish the objectives of the President's directive, revision of the National Environmental Policy Act (NEPA) regulations to include FWCA concerns, and requiring each concerned agency to promulgate its own specific regulations.

Summary of Benefits

Sectors Affected: All industries that carry out activities that alter the waters of the United States; Federal action agencies involved in water development, water related permits, or licenses; and Federal and State fish and wildlife agencies.

Benefits of Alternative (A), No Action. No immediate change in the existing situation would occur. There would be no new requirements placed on either wildlife or action agencies. Conversely, there would be no immediate change or improvement in the performance of these agencies under the FWCA. The present diversity of agency procedures would continue unless and until corrected by *ad hoc* agency-by-agency agreements.

Benefits of Alternative (B), Non-Binding Guidelines. A text very similar to Alternative (D) would be published as guidelines rather than as binding rules. This would be less controversial in that they would have no legal force except to the extent that courts hearing any subsequent litigation might defer to the interpretations contained therein. Agencies carrying out actions such as loans and grants, which we interpret as being exempt from FWCA, would be invited to follow the procedures and would be provided with our interpretations of the Act in a formal organized manner.

Benefits of Alternative (C), Revisions of Agreements, etc. Results from this effort would be an improvement over the no action alternative (A), but not as much as might be expected to occur with the non-binding guidelines alternative (B).

Benefits of Alternative (D), Promulgating Rules Proposed on December 18, 1980. The proposed rules are primarily procedural in nature, setting out processes that would result in full consideration of fish and wildlife values—the prime purpose of the FWCA. They would be binding on procedural issues and interpretive (hence, advisory) as to substantive action agency decisionmaking criteria. The principal results would be: to ensure early wildlife agency entry, full participation in the planning process, and the availability of information of sufficient detail and relevance for action agencies to make informed decisions; to provide opportunities for the public and the wildlife agencies to have their views thoroughly aired and considered in the decisionmaking process; to improve the coordination of environmental reviews now required by this and other laws and authorities; to standardize the diversity of procedures that has developed among Federal agencies in implementing the Coordination Act; and to ensure that the Congress will have the full range of project costs and mitigation options laid before it. This should result in fewer delays and controversies by

streamlining the environmental review process. This in turn should result in savings, both in the planning process itself and in terms of less impact of inflation on construction costs.

Summary of Costs

Sectors Affected: None.

We have not identified any major costs attributable to this rule. Guidelines, agreements, or regulations would establish a standard way of conducting activities that are now being carried out in a wide variety of ways. The overall result should be general cost reduction.

Summary of Net Benefits

The major benefit of taking an action that would establish some level of standard procedure for executive branch agencies would be greater understanding within the Federal, State, and private sectors, which in turn should bring about a general cost reduction for these kinds of activities.

Related Regulations and Actions

Internal: None.

External: Guidelines, procedures, policies, or regulations of the Departments of Agriculture, Army (Corps of Engineers), Energy, and Transportation and the Environmental Protection Agency.

Government Collaboration

The Fish and Wildlife Service is working with the National Marine Fisheries Service in reviewing implementation of this Act and has requested suggestions and recommendations from other affected executive branch agencies and bureaus, the State wildlife agencies, and the public.

Timetable

NPRM—44 FR 29300, May 18, 1979.
Revised NPRM—45 FR 83412, December 18, 1980.
Draft Environmental Impact Statement—Notice of Availability, 45 FR 83412, December 18, 1980.
Regulatory Reform Review—46 FR 46411, September 18, 1981.
Next Action—To be determined.
Public Hearing—To be determined.
Regulatory Impact Analysis—To be determined.
Regulatory Flexibility Analysis—To be determined.

Available Documents

Draft Environmental Impact Statement—Regulations for Implementing the Fish and Wildlife Coordination Act. Available for review at address below.

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DOI-FWS

Regulations Promulgated Under the Endangered Species Act (ESA) of 1973 (50 CFR Parts 12, 13, 14, 17, 23, 402, 424, 450, 451, 452, 453, and 810; Revision)

Legal Authority

Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*

Reason for Including This Entry

The Presidential Task Force on Regulatory Relief has designated these regulations for review.

Statement of Problem

Congress passed the Endangered Species Act (ESA) in 1973 and amended it in 1978 and 1979. The purpose of the Act is to protect endangered and threatened species of animals and plants. The Act empowered Department of the Interior (DOI) to develop and maintain a list of threatened and endangered plants and animals and prohibited Federal agencies from authorizing funding or undertaking actions that would jeopardize those species. The Act also outlined certain restrictions on interstate and international trade in those species.

DOI issued regulations to enforce the original act but to date has not issued any regulations for certain amendments made to § 7 of the Act (Interagency Cooperation). Several commenters have identified the lack of regulations implementing the specific amendments as contributing to a lack of proper enforcement of these statutes. These comments triggered a comprehensive review by the Department of the Interior (DOI), aimed at making all existing regulations under ESA as effective as possible in carrying out the purposes of the Act while imposing the least adverse effect on other national goals. This regulatory review was combined with an ongoing review of the Act itself, undertaken by DOI in preparation for reauthorization in 1982. The regulations governing interagency cooperation under ESA are now in an advanced stage of preparation. (The lack of such regulations is one of the key reasons for this review.) Specific areas being given priority consideration for possible change and improvement are detailed in the following section.

Alternatives Under Consideration

Our review has identified 38 areas in which changes or improvements might be made. Options for such changes have been defined for all these issues, including changes of policy, regulation, or the law itself. The Department is first considering the statutory changes that may be needed. Of the issues so identified, seven, stated below as questions, have been chosen as of this time as being in particular need of resolution.

Such priority issues are:

(1) At what stage should economic costs be addressed?

Options considered have included retaining the *status quo,* in which economic considerations are made part of the process of adding a species to the lists of Endangered and Threatened animals and plants, as well as at consultation and exemption stages, and the possible confinement of economic considerations to later stages in the protection of a species. Any modifications of present procedures would require statutory amendments.

(2) Is it desirable to retain Critical Habitat designations?

The concept of Critical Habitat (an area identified for possible Federal agency responsibilities under the Act) and the regulatory procedure leading to its designation for Endangered and Threatened Species has been widely misunderstood and often opposed for inappropriate reasons. The present procedures for the Federal Government to designate Critical Habitat are very involved and time consuming and may do little to increase the protection afforded listed species. We have considered the complete elimination of such designation, methods of streamlining the designation, and limitations on its use. All such options would require changes in the statute.

(3) Should ESA afford protection to Endangered or Threatened populations and subspecies?

The ESA presently allows listing of not only full species, but subspecies and, in the case of vertebrates, individual populations, as Endangered or Threatened. This has led to protection under the Act for numerous subspecies and regional populations of several vertebrate species.

Our review has considered the wisdom, given conditions of limited resources, of devoting staff and funding to populations and subspecies when such protection might better be devoted to full species. Consideration has been given to the flexibility conferred by the present situation as well as possibly

more efficient allocation of resources under a system allowing only listings of full species. Options under consideration include statutory restriction of protection under ESA as well as greater regulatory emphasis on "significance" of populations that may be listed.

(4) What change, if any, should be made to the exemption process under § 7 of ESA?

ESA presently provides a procedure to exempt Federal actions, under certain conditions, from the prohibition against jeopardizing listed species or destroying or adversely modifying Critical Habitats of such species. Some responses to our review expressed concern that the present procedure is unnecessarily cumbersome and involved. We are considering several options, all involving amendment of the statute, to streamline and shorten exemption procedures.

(5) Can the § 7 consultation/conference procedures be streamlined?

Section 7 of the ESA now requires that Federal agencies consult with the U.S. Fish and Wildlife Service or the National Marine Fisheries Service if they determine that an action that they are involved with may affect a species listed as Endangered or Threatened under the Act.

A range of statutory and regulatory changes are under consideration as possible means of making the consultation requirements mandated by § 7 of ESA less complicated or burdensome. Options include provisions for other Federal agencies to take a stronger role in enforcing compliance with § 7 of ESA by development of counterpart regulations or by conducting internal consultations.

(6) Should the § 7 "jeopardy" standard be modified?

Section 7 of ESA prohibits Federal agencies from involvement in actions likely to jeopardize Endangered or Threatened species. Our review has identified possible changes in the statute that would reduce the effect of this prohibition on the activities of Federal agencies.

(7) Should the listing of foreign species be undertaken only under the Convention of International Trade in Endangered Species of Fauna and Flora (CITES)?

Current interpretation of § 7 of ESA does not allow its application to U.S. activities abroad. Given this, the principal protection afforded foreign species listed under ESA is that involving international trade. These prohibitions overlap those of CITES, creating confusion. DOI is considering changes in ESA that would prevent confusion, as well as policy changes that would make CITES listing the primary or only protection afforded foreign species.

(8) Should the citizens suit provision of § 11(g) be retained, and, if so, should it be retained in its present form?

ESA now allows citizens to bring suit to enforce any of its provisions. Our review has considered several statutory changes that would alter or eliminate the Act's allowance for citizen suits. Alterations could impose a requirement to demonstrate standing (that the citizen has grounds on which to bring the suit) before bringing suit or to bring suit in the district in which the violation is located. We have also considered recommending a specific provision in ESA to allow mandamus suit (one that would force the Interior Department to take a certain activity) and language to indicate whether judicial review of Department actions should be based on existing administrative record or allow new evidence to be presented.

In addition to the questions dealt with above, our review has identified over 30 issues of lesser priority concerning which we will develop positions as part of our regulatory reform process. These include:

(1) A series of possible alterations of procedures leading to a species' listing under ESA.

(2) Possible alterations in the conduct of consultations under § 7 of ESA.

(3) Consideration of providing, altering, or restricting protection under ESA for species identified as candidates for listing, experimental populations of listed species, lower lifeforms (plants and invertebrate animals), and hybrid offspring of listed species.

(4) Alterations in the application of trade restrictions under ESA.

(5) Changes in prohibitions applied to specimens of listed species held prior to passage of ESA or held in controlled environments.

(6) Refinements or changes in certain statutory or regulatory definitions.

(7) Alterations in the enforcement procedures of § 9 of the Act or their implementing regulations to broaden or strengthen their provisions.

(8) Technical changes to resolve apparent inconsistencies or conflicts among certain provisions of the Act.

Summary of Benefits

Sectors Affected: Endangered and Threatened species; the general public; and Federal and State agencies.

Our review is intended to secure the maximum protection possible for Endangered and Threatened species under ESA so that the public may continue to benefit from the survival of such species, while reducing costs to the public and impacts on other national goals resulting from programs authorized by the Act. Benefits that will accrue as a result of species' survival are difficult to quantify but include contributions to ecosystem stability and preservation of unique genetic resources of present and potential value to mankind. Cost and impact reduction as a result of changes undertaken pursuant to our review are intended to lessen costs to Federal agencies in conducting reviews of their activities required under ESA and to State and private interests in their activities related to management of and trade in listed species.

Summary of Costs

Sectors Affected: Endangered and Threatened species; the general public; and Federal and State agencies.

Relaxation of certain provisions of ESA may result in depletion of genetic resources and lessen their potential value to the public. Conversely, increases in certain restrictions on activities involving listed species may impose increased costs of Federal, State, and private interests dealing with such species.

Summary of Net Benefits

Our review is intended to identify changes that might be made in ESA or its implementing regulations in order to provide maximum benefits in conservation of the resources it affects, while imposing the least costs on the activities they restrict or otherwise affect. The precise balance of such benefits and costs cannot be estimated at this time, but we will attempt to recommend or implement changes that will increase benefits in relation to costs.

Related Regulations and Actions

Internal: ESA and its implementing regulations potentially affect all other programs of the U.S. Fish and Wildlife Service that are governed by regulations in 50 CFR.

External: ESA and its implementing regulations may affect any Federal programs involving resource management or development as well as similar State programs.

Government Collaboration

We have directly involved the National Marine Fisheries Service, which shares our implementing authority under ESA, in our review. We have also solicited comments from all the States, all Federal agencies affected

by ESA, and a wide range of industrial and environmental interests.

Timetable

Department Recommendation on Statutory Changes—January 20, 1982.
Next Action—Contingent on Congressional action.
Regulatory Impact Analysis—To be determined.
Regulatory Flexibility Analysis—To be determined.

Available Documents

Comments received in response to **Federal Register** notice (46 FR 46411) are available at the Office of the Associate Director of Fish and Wildlife Service—Federal Assistance, Main Interior Building, Room 3024, 18th and C Streets, N.W., Washington, DC 20240.

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DOI—National Park Service

Right-of-Way Regulations (36 CFR Part 14; Revision)

Legal Authority

16 U.S.C. 5, 79; 23 U.S.C. 317; 36 CFR Part 14 (45 FR 47092, July 11, 1980).

Reason for Including This Entry

The National Park Service (NPS) includes this entry because these regulations may have region-wide or local impacts on State and local government and on other programs of the Department of the Interior or other Federal agencies.

Statement of Problem

A right-of-way is a use of National Park System lands by State and local governments, other Federal agencies, and private individuals and organizations for such purposes as roads and highways, utility and communication lines and facilities, pipelines, and water facilities.

At the present time, the National Park System of the United States comprises nearly 320 areas, covering some 76 million acres in 49 States, the District of Columbia, Guam, Puerto Rico, Saipan, and the Virgin Islands. These areas include such designations as national park, national preserve, national monument, national memorial, national historic site, national seashore, and national battlefield park.

Until July 1, 1980, the National Park Service, in dealing with request for rights-of-way, used regulations promulgated by the Bureau of Land Management (BLM) and codified in 43 CFR Part 2800. However, BLM revised these regulations in accordance with the Federal Land Policy and Management Act of 1976 (43 U.S.C 1761) and deleted all reference to the National Park Service. Since the provisions of this Act and the regulations promulgated to comply with it do not apply to the National Park Service, the Service must develop independent regulations applicable to right-of-way requests on National Park System lands.

These regulations will provide a process for the review, consideration, and approval or disapproval of requests for rights-of-way across all areas of the National Park System. They will establish procedures for the granting of rights-of-way to State and local governments, other Federal agencies, and private individuals and organizations. These procedures will cover rights-of-way authorized at the discretion of the Secretary of the Interior, by individual park legislation, and for rights-of-way issued because of the right to which the holder is legally entitled.

Until these regulations are drafted, the Service is following interim regulations (45 FR 47092, July 11, 1980).

Alternatives Under Consideration

The National Park Service is considering two alternatives:

Alternative (A) is the drafting of right-of-way regulations that at a minimum are needed to comply with existing laws (16 U.S.C. 5, 79 and 23 U.S.C. 317). This will provide a process for the review, consideration, and approval or disapproval of requests for rights-of-way across all areas of the National Park System.

The disadvantage of this alternative is that it will not address all the issues and problems and may not assure the best protection of all National Park values. Issues and problems that would not be addressed under Alternative A include: access across park lands to private property and rights-of-way authorized in specific legislation establishing a park. These situations currently exist in most of the more than 320 units of the National Park System. By failing to address them in regulations, the NPS will not be providing the maximum protection to the natural, cultural, aesthetic, and recreational resources it administers and is required by law to preserve and protect.

Alternative (B) is the drafting of broader regulations that will cover such issues as: reasonable access to an owner's property, a legally held right to cross NPS lands, and right-of-way authorizations in individual statutes.

These broader regulations will address problems and issues that presently exist in units of the National Park System and will afford greater protection for the natural, cultural, aesthetic, and recreational values that the parks were established to protect. However, since these regulations will be addressing a greater number of complex issues, it is likely that they will be more controversial and difficult to enforce.

At this time the National Park Service prefers alternative (B) because it will afford greater protection for all National Park System areas.

Summary of Benefits

Sectors Affected: Other Federal agencies; State and local governments; private industries (e.g., electric, gas, and other utility services, oil and gas extraction, pipeline transportation, communication services); other establishments requesting rights-of-way across National Park System areas; and NPS.

These rules will benefit each of these sectors because they will provide more detailed, specific, and concise procedures for rights-of-way across National Park System areas. They will also provide information on costs involved and the terms and conditions for revocation and cancellation of permits. These sectors will realize these benefits over the entire time span of the permit.

These regulations will benefits the National Park Service because they will provide detailed, specific, and concise instructions to park management and will afford protection to natural, cultural, aesthetic, and recreational park resources.

If these rules are not promulgated, none of these sectors will have the information or guidance that is necessary to deal with right-of-way requests.

Summary of Costs

Sectors Affected: Other Federal agencies; State and local governments; private industries (i.e., electric, gas, and other utility services, oil and gas extraction, pipeline transportation, communication companies); other establishments requesting rights-of-way across National Park System areas; and NPS.

At this time, NPS does not know what costs these sectors will bear as a result of this proposal. However, fees will be charged to applicants to cover the cost

of processing the application. Rental fees, appraised at fair market value, will also be charged to the holder of a right-of-way. It is likely that these charges will be waived for State local governments if their use of a right-of-way is for governmental purposes and such lands and resources shall continue to serve the general public.

The National Park Service will incur costs for reviewing and processing applications and permits and ensuring that the necessary environmental documents are prepared. It is unknown at this time what these costs will be.

Summary of Net Benefits

Alternative (A) is the promulgation of regulations that will, at a minimum, provide guidance to those desiring rights-of-way to cross National Park Service lands. Since regulations have not yet been written, it is not possible for NPS to quantify the costs and benefits of this alternative or of Alternative (B). Alternative (A) would benefit State and local governments private industries, and individuals desiring rights-of-way by providing them with procedural guidelines. It would ensure protection of park resources and also provide guidance for park managers who must implement these rules.

The net benefits of Alternative (B) are the same as those of Alternative (A), except that the National Park Service believes that this alternative will provide greater protection to national park resources. Interested public and park management will still benefit from detailed guidelines, but because more issues will be dealt with, i.e., reasonable access to an owner's property, a legally held right to cross NPS lands and right-of-way authorizations in individual statutes, national park values will be afforded greater protection.

Related Regulations and Actions

Internal: On July 11, 1980, the National Park Services issued interim right-of-way regulations (45 FR 47092). These regulations will remain in effect until replaced or revised through the rulemaking process. Other Interior agencies have right-of-way regulations. Bureau of Land Management regulations are located in 43 CFR Part 2800, and the U.S. Fish and Wildlife Service regulations are located in 50 CFR Part 28.

External: None.

Governmental Collaboration

The National Park Service is working with other Interior agencies (Bureau of Land Management, U.S. Fish and Wildlife Service) in the promulgation of these regulations. In addition, NPS will be working with State and local agencies as these rules are developed since the regulations will have an impact on their programs.

Timetable

ANPRM—45 FR 54771, August 18, 1980.
NPRM—April 15, 1982.
Regulatory Impact Analysis—The National Park Service has not made a determination on the need for a Regulatory Impact Analysis. We are soliciting public comment on the potential economic impact of the proposed rule.
Public Hearing—None scheduled.
Public Comment Period—90 days following publication of NPRM. Comments should be directed to Division of Ranger Activities and Protection, National Park Service, Department of the Interior, Washington, DC 20240.
Final Rule—October 15, 1982.
Final Rule Effective—November 15, 1982.
Regulatory Flexibility Analysis—Undecided.

Available Documents

None.

Agency Contact

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DOI–NPS

Uniform Rules and Regulations for the Protection and Conservation of Archaeological Resources Located on Public and Indian Lands (36 CFR 1215; New)

Legal Authority

The Archaeological Resources Protection Act of 1979, 16 U.S.C. 470 aa–11.

Reason for Including This Entry

The Department of the Interior (DOI) believes these rules and regulations are important because they will significantly affect many archaeological investigations conducted on public and Indian lands by providing an equitable decisionmaking process within the permitting procedure and thereby ensuring greater accountability among Federal agencies. Furthermore, the regulations will improve the management of archaeological resources, detail procedures for civil penalties, and benefit authorized users by reducing or eliminating procedural differences within and among agencies.

Statement of Problem

In the past, the administration of the American Antiquities Act of 1906 (P.L. 59–209; 16 U.S.C. 431–433) was subjected to legal challenges in the courts. The challenges were based on the statute's vagueness, resulting from its failure to inform the public in lay terms of what consitutes an "object of antiquity." Consequently, the criminal sanctions of this statute were easily avoided by those individuals who were destroying, excavating, and removing objects of antiquity without authorization from federally owned or controlled lands. In addition P.L. 59–209 did not foster cooperation from all segments of society to protect and conserve such resources, for its focus was directed toward institutionally initiated research only. By 1974 it became obvious that the permitting sections of the Act were outdated, because they did not provide adequate criminal penalties for violations.

As a result of the above, the Congress enacted the Archaeological Resources Protection Act of 1979 (P.L. 95–95), which provides adequate criminal penalties, clear definitions, new civil penalties, and the promotion of greater public involvement in the decisionmaking process connected with the permitting procedure. This new law is administered by the National Park Service (NPS), as is P.L. 59–209, on behalf of the Secretary of the Interior. Although NPS exercises overall program policy direction, each land-managing bureau of the Department is responsible for field-level program operations on those lands under its immediate jurisdiction. This statute also applies to all Interior land-managing bureaus, the Departments of Defense and Agriculture, the Tennessee Valley Authority, and all other independent land-managing or land-holding agencies of the Federal Government.

On Indian lands, the specific individual Indian landowner or the recognized Indian tribal authority with jurisdiction over such lands owns the archaeological resources located thereon. Such lands are administered jointly by the Bureau of Indian Affairs and the appropriate tribal authority.

These regulations establish procedures for enforcing the Act. The regulations will place limitations on the use of archaeological resources located on all public and Indian lands. The rule will include a systematic permitting

procedure, an appeals process for parties denied permits, and a procedural approach for civil penalties imposed by the Secretary of the Interior and the other major Federal land managers for those persons who violate the statute in a non-criminal manner. This approach leaves a measure of Secretarial discretion in educating the public rather than using only criminal sanctions as the single effective deterrent to resource degradation.

These regulations seek Federal-wide uniformity in program administration and management policy direction. The Department of the Interior, as the lead Federal agency in the field of historic preservation, seeks to provide national leadership in this effort through the administration of the Federal Antiquities Program by the Departmental Consulting Archaeologist.

The regulations will have a direct impact on the activities of collectors, treasure hunters, and other users of the public domain. These rules will also have a direct impact upon the activities of professional archaeologists undertaking either institutionally initiated field research investigations or work directly related to survey, clearance, and mitigation investigations for energy projects. These regulations will also create new opportunities for the Native American community, resulting in its direct authority to provide protection for resources that form a part of their immediate cultural heritage.

The Departmental Consulting Archaeologist or his/her duly authorized representative, on behalf of the Secretary, either issues or denies permits for archaeological investigations after completion of an institutional and professional review process in response to each application received. Applications are received from potential permittees and placed within a comprehensive review system that includes internal review and review by the affected land managing bureau, scholars who are familiar with the archaeology of the proposed land area, and representatives of the appropriate Native American commnity. The review system constitutes a formal analysis of the applicant's ability to undertake the work, provide adequate curatorial facilities for the archaeological resources recovered, and meet several other requirements that demand professional objectivity by the Federal Government. Permits are normally issued within 4 to 6 weeks after an application is received. In addition, NPS may impose an emergency permitting procedure when specific archaeological resources are in immediate danger from natural or manmade terrain-altering activities or when such investigations may delay energy-related projects if not allowed to commence immediately.

Today, the success of many small professional archaeological businesses and the livelihood of thousands of employees depends upon responsible and objective review.

Therefore, the Federal Antiquities Program is one of the few centralized programs to maintain uniform policy direction within the Department of the Interior and to ensure full professional accountability within the permitting authority.

Alternatives Under Consideration

The Department considered several alternatives to this proposal:

(A) No rules and regulations to implement the legislation. This alternative was rejected, for the Act requires at least two levels of rulemaking to occur: (1) interagency uniform regulations as required in § 10(a) of the Act; and (2) departmental or independent agency regulations directly oriented to the individual mission of each, as required in § 10(b) of the Act.

(B) Implementation through voluntary compliance guidelines. This alternative would not have the binding force of rulemaking and would be contrary to Congressional intent and was therefore rejected.

(C) More restrictive definition of "archaeological resource," which would exclude bottles, bullets, coins, or other collector items of non-Native American manufacture. This alternative was rejected because it was not viewed as consistent with the broad purpose of the Act to protect and conserve the Nation's archaeological resources and sites. The field of archaeology is not confined to the study of prehistoric Indian cultural remains. Much of this Nation's cultural heritage is of non-Indian origin and can be the object of archaeological inquiry. Even common collector's items such as bottles and coins can be of great value in establishing the age of associated materials, demonstrating cultural contact or determining the function of a site. In order to preserve such value, blanket exclusion of such items was rejected in favor of a definition that provides a test for determining whether items have archaeological value.

Summary of Benefits

Sectors Affected: Federal land managers (including the Departments of the Interior, Defense, and Agriculture; the Tennessee Valley Authority; and all other independent land-managing or holding agencies of the Federal Government): professional archaeologists, particularly small professional archaeological firms; Native Americans; the general public; and public and Indian lands throughout the United States (approximately 800 million acres), with major emphasis in the 13 Western States where the majority of such lands are located.

The major benefit of the proposed rules will be to inform the public of what is expected of them and to clarify obligations of the Federal land managers to the public. The general public will benefit from increased knowledge of important cultural resources and availability of those resources for educational purposes. Archaeological research benefits because the program procedures are simpler to understand and thereby inform the public in a clear, concise manner while affording a systematic and equitable permitting procedure for legitimate field investigations. Professional archaeologists will be affected, particularly small professional archaeological firms to which permitting delays are financially burdensome. These firms will benefit from the appeals process in cases of permit denial and from the general streamlining of the permitting process, especially in cases of energy-related projects. The Native American community also benefits greatly because these regulations provide greater control of archaeological resources to the Indian landowners and afford all Indian tribes an opportunity to provide comment on all undertakings proposed to occur on non-Indian public lands that may be their former traditional tribal lands.

This rule also clarifies the enforcement procedures of each land-managing bureau of the Department. The most important single benefit to the public in this rule lies in its implicit intent to foster greater and improved involvement and cooperation among the professional archaeological community, Native Americans, and collectors nationwide.

The Department of the Interior strongly believes one of the most important aspects of the Archaeological Resources Protection Act and its regulations lies in their authority to bring about a greater national sensitivity for the protection and conservation of archaeological resources. Because this program will increase public awareness, the Interior Department is confident that it will help to enhance and safeguard that which remains of our national patrimony, as represented by the

tangible remains of man's prehistory and history in the United States.

Summary of Costs

Sectors Affected: Federal land managers.

It is difficult to provide reliable estimates for the direct and indirect costs of the regulations to the sectors they affect. However, we anticipate only minimal costs. Increases will occur in the costs to the Federal Government of administering the Federal Antiquities Program, especially through policy direction at the national level by the Office of the Departmental Consulting Archaeologist on behalf of the Secretary of the Interior. Beyond costs incurred for overall program management and policy direction through the Federal Antiquities Program, responsibilities at the national level also include initial costs for coordination with Native Americans in constructing a centralized registry of interested Native Americans for application consultation purposes; a classified listing of sites that are significant to Native Americans for religious and cultural purposes; leadership in constructing departmental regulations; policy for the disposition of collection and exchange procedures; and other purposes. In addition, the ongoing activities of the Federal Antiquities Program include the annual report to the Congress and the national public awareness program element to sensitize the general public to the benefits of protecting and conserving this component of the national heritage. Such expenses as recordkeeping, inspections of curatorial facilities, on-site field investigations, and overall program monitoring of project-specific activities by the land-managing bureaus will obviously bring additional costs. These same bureaus will incur slight increases in funds for law enforcement efforts, not by increasing the number of field agents, but by providing greater coordination among existing law enforcement facilities at the State and local levels and increased coordination among Federal law enforcement agencies. However, total costs incurred by the Interior land-managing bureaus at the operational level, other Departments, and independent agencies will not increase over present required program funds for application field review. Costs in time involved in securing permits will be reduced for the private sector by further streamlining the review process and permit issuance.

NPS requested $425,000 for FY 1981 for implementation to the program at the national policy direction level. Such funds as are necessary to implement the responsibilities of the several land-managing bureaus of the Department will be sought as needed by those bureaus, as well as the other Federal land-managing departments and independent agencies. We anticipate the needs of the Interior land-managing bureaus not to exceed $700,000 per fiscal year.

Costs are greater for the Interior Department because, as the nationally recognized lead Federal agency in the field of historic reservation, it maintains national program expertise, and the law itself directs Interior to assume greater responsibilities and to provide leadership for the protection and conservation of archaeological resources throughout the Nation.

For other departments and independent agencies, the levels of funding for full program implementation above existing program levels will depend upon their actual level of involvement and whether or not they choose to delegate program administration and/or policy direction to the Department of the Interior. Fiscal impacts to existing protection and permitting programs for non-Interior agencies is expected to be proportionally equal to Interior.

Summary of Net Benefits

It is highly difficult to foresee and demonstrate in quantitative terms the net benefits of each alternative considered. However, those alternatives chosen throughout the rulemaking process associated with the implementation of this statute are in keeping with the full intent of the Congress, as reflected in the law and legislative history.

The Secretary of the Interior's Interagency Rulemaking Task Force, charged with the writing of the Final Rule designed to provide full implementation of the Act, has studied the comments received in response to the published proposed rule and has determined that greater clarification is necessary in the Final Rule due to major misunderstandings by various segments of the public. While the Congress allows some flexibility in the statute itself relative to definition expansion and clarification and in other cases relative to decisionmaking on procedures, in most cases the statute speaks clearly for itself and the rulemaking is merely a restatement of the law in policy format for emphasis purposes. Those several portions of the Act that do allow for expansion and full clarification shall fully eliminate any potential confusion of interpretation voiced to date by the public. The rule provides its overall greatest net benefit to society through its basic mandate to provide protective and conservation measures for archeological resources on all federally controlled and administered public lands and Indian lands. The rule is designed to fully consider the needs of industry for development purposes on public lands. A net benefit to industry, especially important for the mining and timber industries, is an emphasis on not inhibiting exploration and development of natural resources. In brief, the permitting process is designed to facilitate such activities in coordination with national policy focused on energy independence and a decline in the current reliance on foreign imports.

An important net benefit to society is a planned decrease in permits as separate documents for previously approved Federal projects resulting in Federal contracts. In the past this has been regarded as a duplication of effort and will be eliminated entirely. Such Federal contracts will incorporate the requirements of this statute and its regulations. This action is regarded as a major step toward paper reduction and the duplication of the review and approval processes. In addition, another major step toward minimizing paperwork and manpower allocations is the adoption of longer permit durations than presently used for permittees with established records of acceptable past work on public lands. This action is regarded as a measureable step toward minimizing administrative costs to both the applicant and the Federal land managers. Most importantly, permits issued for longer periods of time for the same land sectors will eliminate not only an abundance of preparation time by the applicant and review time by the Federal land manager, but will ensure stable contracting opportunities for independent small business entities with energy-related industry. This action will not obviate the Federal land managers' responsibilities to ensure annual permit reviews on a regular basis at the field level.

This action reduces the unnecessary burden for an annual resubmittal of applications by many permittees and thereby greatly reduces the institutional and professional review process to include only new applicants who have never held a permit under the authority of this statute and have consequently not established a record of professional competence. However, this action will not affect existing policy of restricting new applicants to 1-year permits. Furthermore, on certain public lands, permits may not be subject to the above procedure due to national security reasons or land availability due to

planned Federal land management purposes.

It is an overall benefit to the professional archeological community in academia and private industry to implement a more streamlined and direct permitting process. A uniform grievance process guarantees objectively to all persons regarding the decisionmaking process for permit issuance and denial. As provided by the Congress, this rulemaking addresses the sensitivity of Federal land managers to the needs of Native Americans relative to cultural and religious practices by incorporating the Native American community fully within the permit application review process. On Indian lands, no permit may be issued without the absolute consent of the appropriate tribal entity. On public lands, Native Americans are invited to participate in the review process, and their comments received full consideration by the Federal land managers. As a matter of public policy, expressed in the American Indian Religious Freedom Act (P.L. 95–341), agencies will take the needs of the Native American community into consideration during the planning associated with any Federal project or undertaking. This statute sets forth the policy of the United States to protect and preserve for American Indian, Eskimo, Aleut, and Native Hawaiian people their inherent right to believe, express, and exercise their traditional religions. The intent is to assure that certain Federal programs that affect Indians are administered in a manner that reflects an awareness and respect of and sensitivity to the traditional Indian beliefs and practices and to the various sacred and natural articles and objects used in the exercise of those religious beliefs and customs. It is the intent of the Congress and the Departments of the Interior, Defense, and Agriculture, as well as the Tennessee Valley Authority and all independent land-managing or land-holding agencies of the Federal Government, to ensure adherence to this national policy respective to P.L. 96–95.

Finally, this rulemaking will, as clearly expressed in law, enhance rapport among collectors and the Federal land managers, together with the Native American and professional archeological communities. The net result promises to have a highly positive cumulative affect on the archeological resource data conservation effort. This rule, through a clarification of the statute's provisions, will serve as an educational tool toward intensifying a national spirit and more positive attitude among the American populace in its relationship with Federal land managers who hold and manage the public land in trust as the corporate property of our Nation.

Related Regulations and Actions

Internal: American Antiquities Act of 1906 (43 CFR 3)—The Department of the Interior published proposed rulemaking on the "Definition of an Object of Antiquity" on April 10, 1978 (43 CFR 14975). Due to the passage of P.L. 96–95, the definition of an "object of antiquity" will be republished as a proposed rulemaking under 36 CFR 1214 to coordinate definitions between the two separate statutes next summer after uniform regulations under 36 CFR 1215 are published in final form and become effective after Congressional review.

External: None.

Government Collaboration

The Department of the Interior, through the auspices of the Federal Antiquities Program, initiated an interagency task force to write the rules and regulations immediately prior to the President's signing of House Bill 1825 (Archaeological Resources Protection Act) on October 31, 1979. On March 24, 1980, the Secretary of the Interior formally created the Interagency Rulemaking Task Force for the Implementation of P.L. 96–95. This task force is comprised of representatives of each Interior land-managing bureau, the Departments of Defense (Navy, Air Force, and Army) and Agriculture, and the Tennessee Valley Authority. In addition, several other smaller land-managing and land-holding independent agencies will be affected by these uniform regulations and will be expected to issue agency specific guidelines and procedures. This interagency task force will remain active through publication of final uniform regulations in the **Federal Register.**

These rules and regulations are the first in a three-tier rulemaking process. Subsequent to the publication of final regulations in the **Federal Register** of the uniform regulations, each Federal land manager (department or independent agency) is required to publish the next level of regulations specific to that department or agency's overall mission. Procedurally, each may vary in scope and applicability within the framework of the uniform regulations. Subsequent to the publication of final departmental regulations in the **Federal Register**, each bureau of a department may issue bureau mission-specific guidelines or procedures, which may take the form of regulations within the scope of that particular bureau's departmental regulations or departmental manual.

Timetable

Regulatory Impact Analysis—To accompany Final Rule.
Regulatory Flexibility Analysis—None.
Completion of Task Force's Draft Final Rule—January 15, 1982.
Concurrence by Departments of Defense and Agriculture and the Tennessee Valley Authority—February 11, 1982.
Publication of Final Rule in **Federal Register**, initiating 90 day review by Congress—June 23, 1982.
Final Rule—2nd Quarter 1982.

Available Documents

"Archaeological Resources Protection Act of 1979: Notice of Permitting Procedures Pending Publication of New Regulations"—45 FR 5302, January 23, 1980.

"Archaeological Resources Protection Act of 1979: Public Hearings Prior to Publication of Proposed Rulemaking"—45 FR 17622, March 19, 1980.

"Uniform Rules and Regulations for the Protection and Conservation of Archaeological Resources Located on Public and Indian Lands"—36 CFR 1215, 45 FR 77755, November 24, 1980.

Transcripts and recordings of early input public hearings—Denver, Colorado (March 22, 1980); Phoenix, Arizona (March 29, 1980); Portland, Oregon (April 12, 1980); and Knoxville, Tennessee (April 19, 1980).

The Environmental Assessment, the Determination of Significance, and the Work Plan for Public Involvement.

"Archaeological Resources Protection Act of 1979: Proposed Uniform Rulemaking and Notice, 46 FR 5566, January 19, 1981.

Transcripts of public hearings—Chicago, Illinois (February 7, 1981); Atlanta, Georgia (February 14, 1981); Albuquerque, New Mexico (February 21, 1981); San Francisco, California (February 28, 1981); Anchorage, Alaska (March 7, 1981); and Denver, Colorado (March 14, 1981).

"Archaeological Resources Protection Act of 1979: Extension of Comment Period: Rulemaking," 46 FR 22208, April 16, 1981.

The above documents are available by mail from the offices of the National Park Service, Federal Antiquities Program, Washington, DC 20240.

Agency Contact

Charles M. McKinney, Manager, Federal Antiquities Program, and Chairman, Interagency Rulemaking Task Force for Implementation of P.L. 96–95

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DOI—Office of Surface Mining

Permanent Regulatory Program of the Surface Mining Control and Reclamation Act (30 CFR Chapter VII; Revision)

Legal Authority

The Surface Mining Control and Reclamation Act of 1977, P.L. 95-87, 30 U.S.C. 1201 *et seq.*

Reason for Including This Entry

The Office of Surface Mining (OSM), Department of the Interior (DOI), includes this entry because the Presidential Task Force on Regulatory Relief has designated OSM's regulations for review. OSM has also begun to review and revise its rules under § 4 of Executive Order 12291.

Statement of Problem

OSM began to review and revise its regulations on surface coal mining and reclamation in April 1981. The effort is organized in the following manner:

Subchapter A contains introductory information intended to serve as a guide to the rest of the Chapter and to the regulatory requirements and definitions generally applicable to the programs and persons covered by the Surface Mining Control and Reclamation Act. Amendments are being proposed to standardize and clarify the definitions found in this Subchapter.

Subchapter C sets forth regulations covering applications for and decisions on permanent State programs dealing with surface coal mining and reclamation; the process for assuming temporary Federal enforcement of an approved State program; and the process for implementing a Federal program in a State when required by the Act. Amendments are being proposed for Subchapter C to reduce burdens on States and increase States' ability to shape their regulatory programs to local conditions.

Subchapter D identifies the procedures that apply to surface coal mining and reclamation operations conducted on Federal lands rather than on State or private lands. Revisions are being proposed for this Subchapter to increase State flexibility for administering and enforcing the program on Federal lands under cooperative agreements with OSM.

Subchapter F implements the requirements of the Act for designating lands that are unsuitable for all or certain types of surface coal mining operations and establishes procedures for designating lands unsuitable or terminating designations no longer found to be appropriate. Amendments being proposed to Subchapter F are intended to provide greater flexibility to the States in processing petitions to designate lands unsuitable for mining or terminate designations.

Subchapter G governs industry applications for and regulatory authority decisions on permits for surface coal mining and reclamation operations. It also governs coal exploration and decisions on permits for special categories of coal mining. Regulations implementing the experimental practices provision of the Act are also included in Subchapter G. Amendments are being proposed to eliminate the regulations in Subchapter G that are duplicative, unnecessarily detailed, or are required by other agencies, and to revise the remaining regulations, as necessary, by emphasizing results to be achieved rather than methods for achievement.

Subchapter J sets forth requirements for performance bonds and public liability insurance for surface coal mining and reclamation activities. Amendments would consider types of bonds rather than the procedures that apply to bonds.

Subchapter K sets forth the environmental and other performance standards that apply to coal exploration and to surface coal mining and reclamation operations during the permanent regulatory program. This subchapter was broken into the following major subject areas for review and revision:

Subsidence—The proposed revision on subsidence requirements would place greater emphasis on protection of surface owners' rights and property.

Roads—The proposed revision would provide minimum performance standards rather than design standards.

Explosives—The proposed revision would allow greater State involvement in defining the degree of health, safety, and environmental protection necessary to meet the Federal statute.

Remining—The proposed revision would include a new section addressing remining of previously mined areas. The new rules would deal with the issues of highwall elimination, approximate original contour, backfill stability, upslope drainage control, highwall stability, and treatment of overcast spoil on the downslope remaining from initial mining.

Excess Spoil—The proposed revision for the excess spoil regulations would provide primarily performance standards rather than design standards.

Alluvial Valleys—The proposed revision would revise the requirements relating to alluvial valley floors, delete the detailed application information requirements, and provide for State environmental conditions.

Hydrology—The proposed revision would emphasize mining techniques and reclamation practices, streamline data collection and monitoring efforts, and clarify data requirements for determining the probable hydrologic consequences of mining and cumulative impact assessments.

Impoundments—The proposed revision would be oriented toward performance standards and give the States more flexibility in approving design criteria.

Revegetation—The proposed revision would broaden the approaches available for determining successful revegetation and provide more flexibility when considering post-mining land uses.

Land Use/Variances—The proposed revision would provide more flexibility for the regulatory authority to approve post-mining land uses, steep slope mining, mountaintop removal, and experimental practices.

Backfilling and Grading—The proposed revision would be oriented toward performance standards rather than toward design standards.

Air Quality—The proposed revision would give the States more flexibility for reducing fugitive emissions.

Fish and Wildlife—The proposed revision would eliminate overburdensome portions of the performance standards.

Coal Processing Waste—The proposed revision would be more consistent with the Mine Safety and Health Administration (MSHA) existing regulations on refuse piles and impounding structures and would emphasize performance standards rather than design criteria.

Topsoil—The proposed revision would clarify requirements for approval of substitute material.

Experimental Practices—The proposed revision would streamline the process States and industry must follow for the submission of experimental practice permit requests and provide quick Federal response to the requestor.

Auger Mining—The proposed revision would emphasize performance standards instead of design standards.

Support Facilities—The proposed revision would provide a new definition of support facilities.

Concurrent Surface and Underground Mining—The proposed revision would

remove aspects that are redundant to other performance standards.

Special Bituminous Coal Mines in Wyoming—The only significant change would be the incorporation of the approved Wyoming statutory and regulatory program requirements for special bituminous coal mines.

Blaster Certification—The proposed revision would provide more flexibility for States to develop programs requiring training, examinations, and certification of persons using explosives in surface coal mining operations.

Ground Vibrations—The proposed revision would establish standards to be applied to blasting operations, limiting the allowable amount of motion of the ground at the location of the nearest structure or dwelling to prevent damage to the property.

Subchapter L sets forth the inspection, enforcement, and civil penalty provisions of the regulations program. The proposed revisions would streamline procedures.

Subchapter R sets forth the regulations for the abandoned mine land reclamation program. These regulations include the fee collection requirements and the mechanisms for implementing the State and Federal portions of the abandoned mine land reclamation program. The proposed revisions would streamline procedures.

All of these rules, presently in some stage of development, will not be promulgated at the same time (see Timetable).

Alternatives Under Consideration

As a result of its review, the Office of Surface Mining rejected the "no action" alternative and is proposing many changes to its present rules, as described previously.

Summary of Benefits

Sectors Affected: The mining industry; coal consumers; and State mining regulatory programs.

These rulemakings will streamline present regulations by eliminating redundancy, by making the regulations clearer, and by emphasizing performance standards rather than design criteria. The rulemakings will give States more flexibility in regulating surface coal mine and reclamation operations under the Act. The rulemakings have been undertaken to recognize regional differences in topography, geology, and hydrology and to allow State regulatory authorities to consider these differences in administering and enforcing the regulatory program.

The coal industry and coal consumers would benefit from the regulatory changes because unnecessarily burdensome requirements would be lessened. The change in emphasis from design criteria to performance standards allows for innovative, cost-effective techniques and encourages technological innovation while ensuring environmental protection.

Summary of Costs

Sectors Affected: State mining regulatory programs.

Under the Act the States will be responsible for administering and enforcing the regulatory program. OSM establishes guidelines for the States and will assist States requesting help. Under the proposed revisions, costs to the States of establishing specific criteria for surface mine regulation will increase. At this time, OSM does not know what the total cost increases will be.

Summary of Net Benefits

It is not possible at this time for OSM to provide a quantitative summary of net benefits for its regulations. OSM has not yet acquired the quantitative data to formulate the costs and benefits required to obtain a net benefit figure. It is estimated that by late January or early February 1982 OSM may have reached that point and may be able to provide that information. However, the primary purpose of the rulemakings is to reduce the cost of complying with the requirements of the Act through the types of revisions described above.

Related Regulations and Actions

Internal: 30 CFR Subchapter B, Initial Regulatory Program, Subchapter T, which contains the approval of State programs and State reclamation plans and OSM-State cooperative agreements.

External: 7 CFR Part 632, Rural Abandoned Mine Program (Soil Conservation Service, Department of Agriculture).

Government Collaboration

The Office of Surface Mining is coordinating its rule development with the Environmental Protection Agency, Corps of Engineers, Department of Agriculture, Department of Transportation, Small Business Administration, and other Department of the Interior agencies (Fish and Wildlife Service, Bureau of Land Management, and Geological Survey). In addition, OSM provided copies of preproposed drafts of the rules to the States and met to discuss the States' concerns.

Timetable

NPRM—OSM is currently issuing NPRMs on many of the above-mentioned rules, and expects to complete issuances of NPRMs by February 1982.

Public Hearings—OSM is scheduling public hearings for all of the rules in this effort. For information about particular rules, consult the NPRMs or contact the agency (see Agency Contact below).

Public Comment Period—OSM affords the public at least 30 days, and on some occasions 45 to 60 days, to comment on its rules.

Final Rule—OSM intends to issue final rules on the above-mentioned regulations by July or August of 1982.

Regulatory Impact Analysis—Those rules that have been proposed by OSM have been determined not to be major rules and therefore do not require a Regulatory Impact Analysis.

Regulatory Flexibility Analysis—Those rules that OSM has proposed thus far have been determined not to have a significant effect on small entities. OSM has sent a copy of all of its Determinations of Effect documents to the Small Business Administration for its review.

Available Documents

30 CFR Subchapter R, Abandoned Mine Land Reclamation.

30 CFR Subchapter B, Surface Mining Reclamation and Enforcement Provisions, Initial Regulatory Program.

30 CFR Subchapters A, C, D, F, G, J, K, and L, Surface Coal Mining and Reclamation Operations, Permanent Regulatory Program.

30 CFR Subchapter T—The approval of State programs and the State reclamation plans and OSM-State cooperative agreements.

7 CFR Part 632—Rural Abandoned Mine Program (Soil Conservation Service, Department of Agriculture).

These documents are available for review in the Administrative Record, Office of Surface Mining, 1951 Constitution Avenue, Room 153, Washington, DC 20240.

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DEPARTMENT OF TRANSPORTATION

United States 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 (46 CFR Parts 30, 32, and 35; Revision)

Legal Authority

Port and Tanker Safety Act of 1978, 33 U.S.C. 1221, 46 U.S.C. 391a.

Reason for Including This Entry

The Coast Guard believes that this rule is important because it has major economic implications for the barge and towing industry in this country. In addition, testimony presented at the hearings on this proposal indicated that the rule may adversely affect the national oil supply network because it would take barges out of service that may not be replaced. The Presidential Task Force on Regulatory Relief has designated this rule for review.

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. Because 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 in 33 CFR Subchapter O, dealing with pollution prevention, which essentially regulate only loading and unloading operations, are insufficient to reduce oil pollution from tank barges. After examining a study entitled "Tank Barge Oil Pollution Study," prepared by Automation Industries, Inc., the Coast Guard concluded that double-hull standards for tank barges could significantly reduce the amount of oil pollution from barges. After reviewing the data, the Coast Guard determined that a "no action" alternative is not acceptable. The barge industry would not attack the river pollution problem without regulatory intervention. The Coast Guard believes that double hulls provide the single most effective means to prevent cargo discharge, which would ordinarily result from groundings and minor collisions that breach the hulls of single-skin 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. This proposal would have required the vertical surfaces, or walls, of barges to be double, but it did not propose double bottoms. Because the normal attrition of existing tank barges is fairly slow, there would be no dramatic reduction in oil pollution due to improved construction standards for new barges. In order to accelerate the retirement of the existing fleet of single-hull barges, the 1971 proposal included a provision that would have prohibited the complete rebuilding of existing vessels and would have allowed only limited repair to damaged areas on these vessels. This provision was designed to speed the attrition of existing single-hull barges, while at the same time allowing them sufficient service life to reduce the financial impact that total fleet replacement would have on barge owners. 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 from the towing industry, 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 them for effectiveness. The second, "Tank Barge Study," evaluated design, construction, and equipment standards for tank barges that carry oil. These studies convinced the Coast Guard that a double-hull standard would be a cost-effective means of reducing pollution due to hull damage.

The comments 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 proposed to accelerate the retirement of existing single-hull vessels and to substitute double-hull barges. Both the early retirement option and rebuilding prohibition were attacked as being too costly. The Coast Guard received no comments suggesting economically acceptable ways to accelerate retirement of these vessels.

The Coast Guard is aware that the problems and costs associated with the construction of new barges differ greatly from the problems and costs associated with modifying existing barges. For this reason, following the 1971 proposal, the Coast Guard split this rulemaking into two parts: an ANPRM asking for comments on how to reduce the pollution problem posed by the existing fleet and an NPRM proposing construction standards for new barges.

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. Forced retirement of single-hull barges could significantly affect both the economic viability of many individual tank barge operators and the tank barge industry's ability to respond to the Nation's need to transport bulk liquid cargo. The alternatives considered in the ANPRM are early retirement of vessels, conversion to other service, restriction of routes, increased Coast Guard 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: (1) taking no action or (2) requiring the use of heavier internal structures in either selected areas of the vessel or overall to make the hulls more resistant to penetration. The Coast Guard selected the double-hull alternative as a result of information gathered in a joint Coast Guard/Maritime Administration study known as the "1974 Tank Barge Study," which indicated that this was the most effective method.

Because any action taken on these two items would have a profound effect on the environment and the economy of the towing industry, a series of hearings on both the ANPRM and the NPRM were held in various parts of the country. Responses at the hearings addressed both the ANPRM and the NPRM, without distinguishing between them.

In general, the comments pointed out the high costs of the proposed alternatives to both the towing industry and the Nation's economy. The comments advocated the following:

(A) Do not retire existing equipment.

(B) Require constructing single-hull barges with heavier materials.

(C) Require more stringent inspection and vigorous enforcement of existing regulations.

Because of the controversy over the proposals, and because the Coast Guard views the problem of oil pollution as a national concern, it asked the Maritime Transportation Research Board of the National Academy of Sciences (NAS) to undertake a study of the tank barge oil pollution problem and to recommend

alternatives for solving it. The NAS has published the results of this study in a report entitled "Reducing Tank Barge Pollution." The report made the following major points:

- Accidental releases of oil from tank barges into U.S. rivers, lakes, and coastal waters are frequent events, and efforts to eliminate them are a proper matter of concern for both the Coast Guard and the tank barge operating companies.
- The retirement of usable single-hull tank barges proposed in the ANPRM would be wasteful and would create unnecessary demands for new capital investment. The financial burdens could be of sufficient magnitude to bankrupt some barge operating companies.
- The proposed standards for new barges are too broad and all-encompassing. Operating conditions on inland rivers, intercoastal waterways, the Great Lakes, and ocean waters are so different that the mere substitution of double hulls for single hulls is too simplistic a way of dealing with the problem of oil spills from tank barges. It is unlikely that a single regulation covering the entire tank barge industry would be a cost-effective way of significantly reducing the amount of oil lost from tank barges.
- Much of the oil pollution from tank barges is the result of a relatively small number of catastrophic accidents.
- Double hulls would appear to provide better protection against oil spills in minor, low-energy accidents than single-hull tank barges but would appear to provide only marginally better protection in accidents resulting in large spills.
- The sustitution of double-hull tank barges for single-hull tank barges could reduce the volume of oil spilled annually by approximately 690,000 gallons. This substitution would not prevent approximately 360,000 gallons annually in operational (transfer) spills nor the annual loss of approximately 910,000 gallons in catastrophic accidents.

The Coast Guard is currently reviewing the report and its conclusions and recommendations.

Summary of Benefits

Sectors Affected: Manufacturers of tank barges; aquatic environment for wildlife; and the general public.

The Coast Guard has concluded that double hulls would be 95 percent effective in preventing pollution incidents due to hull damage. This conclusion is based on the report mentioned previously, the "1974 Tank Barge Study." In fairness to those protesting the proposal, it should be pointed out that several comments called into question the data used in the study. Simply stated these comments contended that the amount of hull penetration suffered in several of the casualties examined in the study would have resulted in spills regardless of whether or not the barge had been equipped with a double hull.

The benefits to the general public are impossible to quantify. There would be some reduction in the amount of oil in the water, which would have an aesthetic value for those using the waterways for recreational purposes. However, the actual improvement in the aquatic environment for wildlife is difficult to determine, because destruction done to plants and animals depends upon such factors as how much oil is spilled and how quickly and at what time of year. The success of subsequent cleanup efforts also has a direct bearing upon how much environmental damage is done. A relatively large spill that occurs in protected waters and is promptly cleaned up could have very little impact on the quality of the water while representing a statistically significant pollution incident. Efforts to quantify the benefits to the public are further frustrated because there are no reliable statistical data available to determine the actual extent of damage oil pollution has caused in terms of destroyed wildlife or depleted income as a result of fish-kills. All parties involved with this proposal agree that reduced oil pollution is a desirable goal, but there are no ways to measure the benefits.

Shipyards that manufacture barges would benefit from an increased demand for construction and servicing.

Summary of Costs

Sectors Affected: Water transportation of oil tank barges; towing services; manufacturers of tank barges; and users of oil.

In 1978, the cost of a double-hull inland tank barge ranged from $146,000 to $425,000 more than for a single-hull inland barge of comparable size. 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 total cost differential between normal fleet replacement and imposed replacement for inland barges is $120,274,000 (1978 dollars), a 28 percent increase over normal replacement costs. The difference for ocean barges (those engaged in trade between U.S. and foreign ports) and coast-wise barges (those engaged in trade between U.S. ports) is $245,030,000, an 85 percent increase over normal replacement costs. To assess which portion of this cost is attributable to the new construction standards, the replacement costs for imposed attrition of these barges was also computed using single-hull construction costs. The early replacement cost for these barges was $101,268,000, a 35 percent increase. The remaining $143,762,000 cost differential is attributable to the proposed rule for double-hull construction and represents a 50 percent increase over normal replacement costs.

The ANPRM solicited 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. Comments received indicated industry estimates for increased expenses were several times the Coast Guard estimates offsetting savings to industry resulting from decreased cleanup costs. Compliance costs would be passed on to the consuming public.

Comments received at the public hearing also pointed out social costs associated with the ANPRM. According to the testimony, any proposal that would limit the useful life of a barge already in service would decrease the value of that barge in the eyes of financial institutions. This would lower the equity that a barge owner has in a single-hull fleet, which would make it virtually impossible for many smaller owners and operators to borrow upon their assets in order to finance new double-hull barge construction. Consequently, many operators could fail financially. The Coast Guard has heard testimony from banks but has been unable to determine how many operators would be put out of business, what percentage of all oil transported these operators ship, or how much this class of operators contributes to the pollution problem.

There are no significant administrative costs associated with the proposal.

Summary of Net Benefits

As previsouly explained, it is virtually impossible to place a dollar value on the net benefits of the proposed standards for two reasons. First, there is no agreement about the actual long-term consequences of an oil spill. Even the short-term damage depends upon unpredictable variables, such as location and weather conditions. Second, the actual costs of the proposals are not fixed. The Coast Guard issued the proposals for existing barges as an ANPRM, precisely in order to get more cost data to evaluate. Since neither side

of the cost-benefit equation is known at this date, a meaningful discussion is impossible and premature.

The costs of the proposed rules differ depending on the intended use of the barge. As explained in the Summary of Costs section, costs for ocean barges are much higher than for inland barges. In addition, the cost of regulating new construction is not as great as regulating an existing fleet. However, the Coast Guard has made rough estimates of both of these costs and they are discussed in the costs section of this entry. In brief, the Coast Guard estimated that the total 1978 cost for new construction of inland barges is about $2.3 million. This cost is due largely to the assumption, based upon historical trends, that even without the proposed regulations, most new inland tank barges would be built with double hulls.

The costs associated with early retirement of existing barges, as proposed in the ANPRM, are about $222 million. Obviously this high estimated cost was a great concern to both the Coast Guard and the regulated industry. Costs of this magnitude suggest that some businesses will fail and that the services they now provide will stop. The Coast Guard has not calculated the exact social cost of this disruption in service, but it would be significant in areas that are supplied with oil almost exclusively by barge. Comments indicated that several commercial users, such as power generating plants and factories, were supplied exclusively by barge. A disruption of barge service to these users would have severe localized impacts.

The difficulties associated with quantifying a net benefit to society provided the Coast Guard with compelling reasons to seek more information about costs, effective alternatives, and benefits. The NAS study was commissioned by the Coast Guard to clarify some of the confusion and resolve some of the controversy about the benefits of the proposals. The Coast Guard is not yet ready to follow up the NAS study with another regulatory proposal. The net benefits of this project will depend greatly on what form any future proposals might take. The Coast Guard wants to keep the costs of this project as low as possible in order to maximize net benefits; thus, no final determination is possbile at this time.

Related Regulations and Actions

Internal: The Coast Guard has proposed revised training and watchkeeeping rules for the tankermen manning barges, which may reduce the amount of oil spilled from tank barges during transfer operations (45 FR 83290, December 18, 1980).

External: None.

Government Collaboration

The Coast Guard has informed the Environmental Protection Agency, the Maritime Administration, and the National Oceanographic and Atmospheric Administration of these regulatory proposals.

Timetable

ANPRM on Existing Vessels—44 FR 34443, June 14, 1979.
NPRM (superseded)—36 FR 24960, December 24, 1971.
NPRM on New Vessels—44 FR 34440, June 14, 1979.
Supplementary NPRM for both proposals—45 FR 16438, March 13, 1980.
Final Rule—Date to be determined.
Final Rule Effective—Date to be determined.
Other— **Federal Register** notice announcing NAS study and deferring rulemaking until completion of Coast Guard review of study, March 13, 1979; NAS Workshop on Lake Barge Pollution, April 15 and 16, 1980; NAS Study completed, July 1981.
Public Hearings—Washington, DC (August 2, 1979); Seattle, WA (August 15, 1979); New Orleans, LA (August 23, 1979); Washington, DC (September 5, 1979); St. Louis, MO (September 7, 1979).
Public Comment Period—90 days following publication of the Supplementary NPRM.
Draft Regulatory Analysis—May 1979.
Regulatory Flexibility Analysis—None.

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.

The superseded NPRM of December 1971; the NPRM for New Vessels; the ANPRM for Existing Vessels; and the Supplementary NPRM for both proposals.

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."

National Academy of Sciences report, "Reducing Tank Barge Pollution" (NTIS AD No. A102118).

Documents available from Agency Contact. Fees will be charged for duplicating the material.

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ENVIRONMENTAL PROTECTION AGENCY

Office of Air, Noise, and Radiation

Controls Applicable to Gasoline Refineries, Lead Phasedown Regulations (40 CFR Part 80; Revision)

Legal Authority

Clean Air Act, §§ 211 and 301, as amended, 42 U.S.C. 7545 and 7601(a).

Reason for Including This Entry

Total lead usage in gasoline has declined to the point that over 50 percent of gasoline sold is unleaded; thus, these regulations controlling lead usage in gasoline should be reexamined. The Presidential Task Force on Regulatory Relief has designated these regulations for review.

Statement of Problem

Because of the known adverse health effects of lead, the Environmental Protection Agency (EPA) promulgated regulations establishing the maximum lead content in gasoline produced at each refinery. Now that unleaded gasoline sales exceed those of leaded, the question has arisen whether the costs of the program now outweigh the benefits. Of particular interest is whether small refineries, which have not yet invested in equipment to meet the 0.5 gram per gallon standard, should be required to meet that standard.

Alternatives Under Consideration

Different options include maintaining current standards, revoking the standards, promulgating new standards, differentiating among classes of refineries, permitting inter-refinery averaging, and setting standards only for certain geographic areas.

Summary of Benefits

Sectors Affected: The general public.

Without the regulations, lead emissions from motor vehicles would roughly double. Therefore, the standards for lead in gasoline help reduce potential exposure to lead. In urban areas, emissions from motor vehicles account for about 90 percent of all lead emissions.

Summary of Costs

Sectors Affected: Oil refineries and the general public.

For small refineries not yet meeting the 0.5 gram per gallon standard, there is a capital cost and a processing cost involved in attaining the 0.5 standard by October 1, 1982, as currently required. For non-small refineries already meeting the standard, only operating costs are involved. Updated estimates of these costs are needed. In addition, there is a cost in terms of energy loss to meet the current standard, estimated in the range of 15,000 to 100,000 barrels per day crude oil equivalent (.1 percent to .7 percent crude oil usage).

Summary of Net Benefits

EPA will provide an assessment of net benefits of the regulation when we issue the Final Rule.

Related Regulations and Actions

Internal: National Primary and Secondary Ambient Air Quality Standards for Lead (43 FR 46246, October 5, 1978).

External: None.

Government Collaboration

The EPA intends to include data from the Department of Energy in its evaluation.

Timetable

NPRM—January 1982.
Final Rule—May 1982.
Public Comment Period—60 days following NPRM.
Regulatory Impact Analysis—None.
Regulatory Flexibility Analysis—Date to be determined.

Available Documents

None.

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EPA-OANR

Review, and Possible Revision, of the National Ambient Air Quality Standard for Nitrogen Dioxide (40 CFR Part 50; Revision)

Legal Authority

Clean Air Act, as amended, § § 109(c) and 109(d), 42 U.S.C. 7409 *et seq.*

Reason for Including This Entry

The Environmental Protection Agency (EPA) believes that this review is important to ensure protection of public health and welfare and because any changes to the existing standards may result in an annual effect of $100 million or more on the economy.

Statement of Problem

Section 109(c) of the Clean Air Act, as amended, directs EPA to promulgate a short-term nitrogen dioxide (NO_2) standard unless there is no significant scientific evidence that such a standard is needed to protect public health. Section 109(d)(1) of the Act requires EPA to review the scientific basis of existing National Ambient Air Quality Standards (NAAQS) every 5 years. (Ambient air quality standards define allowable pollutant concentrations in the ambient air that are required to protect public health and safety. The States are responsible for developing and implementing the necessary regulatory programs to ensure the attainment and maintenance of the NAAQS.) This review includes the existing NO_2 annual average standard promulgated by EPA on April 30, 1971 (36 FR 8186). The standard is 100 micrograms per cubic meter ($\mu g/m^3$) annual arithmetic mean (40 CFR 50.11). The Agency has combined possible proposal of a short-term NO_2 standard with review of the annual average NAAQS into one rulemaking process (see 45 FR 6959, January 31, 1980). After review of scientific bases for the standards (the air quality criteria), EPA will decide whether to propose a short-term NO_2 standard and change or reaffirm the existing annual NO_2 NAAQS.

Public exposure to NO_2 can result in impairment of pulmonary (lung) function and can increase susceptibility to respiratory infection. NO_2 or other nitrogen oxide compounds in the ambient air can adversely affect crops, visibility, and materials and has been associated with the formation of acidic deposition.

Alternatives Under Consideration

Based on revised air quality criteria, EPA may decide to keep the existing annual standard without change or make some modification to the allowable air concentration of nitrogen dioxide, the period over which the concentration is measured, or the number of times States will be allowed to exceed the standards. The Agency may also decide to propose a short-term NO_2 standard.

We are investigating no new regulatory techniques in the NO_2 NAAQS review/standard-setting process. All governmental regulatory actions taken as a result of setting an NAAQS are at the discretion of State governments. States are free to use performance standards, economic incentives, or any other means to attain ambient air quality standards within their jurisdictions. The only EPA requirement for State governments is that they demonstrate attainment and maintenance of the NAAQS by statutory attainment dates.

Summary of Benefits

Sectors Affected: The general public, particularly those persons suffering from respiratory disease.

Revision of air quality criteria and review of the existing ambient air standard will result in greater assurance that the standard that EPA reaffirms or newly promulgates will protect public health and welfare. EPA will complete a study of the benefits of controlling nitrogen oxides under alternative standards when it issues the NPRM.

Summary of Costs

Sectors Affected: Industries emitting nitrogen oxides, such as manufacturing, electric services, and natural gas pipelines; manufacturing of motor vehicles and motor vehicle equipment; regulation and administration of transportation programs; the driving public; EPA; and State air pollution control agencies.

We will assess the costs and economic effects of controlling oxides of nitrogen for alternative short-term and annual standards at the time we propose a revised standard. In addition, EPA will also assess the impact on State air pollution control agencies of developing and modifying control programs to attain and maintain a possible short-term and annual NO_2 standard. The Agency will publish these assessments in a Regulatory Impact Analysis that will be issued simultaneously with the NPRM.

The costs may exceed $100 million annual impact on the economy.

If the Agency's NO_2 activities result in a new regulatory action, the regulation could affect the level of control for

sources of nitrogen oxides emissions, such as power plants, industrial boilers, and natural gas pipeline stations. We currently are controlling mobile source, emissions under existing emissions limits for motor vehicles.

Summary of Net Benefits

EPA will compare and contrast the benefits and costs under alternative standards and provide a summary of net benefits when it issues its NPRM.

Related Regulations and Actions

Internal: Changes to the current ambient standard may affect EPA's regulations for nitrogen oxides emissions from motor vehicles and EPA regulations for new source review (40 CFR 51.18 and 51.24).

External: Modifications in the existing standard may require States to reassess their current implementation control programs and make revisions in control measures and strategies if necessary. A new short-term standard could require States to assess ambient air quality data, and if concentrations exceed the standard, to develop a State implementation plan to control NO_2 emissions.

Government Collaboration

Other Federal agencies that are involved in reviewing the nitrogen dioxide standards are the Departments of Energy, Transportation, Interior, Commerce, and Health and Human Services; and the Tennessee Valley Authority.

Timetable

NPRM—3rd Quarter 1982.
Final Rule—3rd Quarter 1983.
Public Hearing—To be specified in NPRM.
Public Comment Period—Comment period on NPRM will close 60 days from date of NPRM. Comments to be submitted to docket at address specified below.
Regulatory Impact Analysis—Preliminary, September 1982; final, July 1983.
Regulatory Flexibility Analysis—Combined with Regulatory Impact Analysis, see above.
Environmental Impact Statement—Same as Regulatory Impact Analysis.
Urban and Community Impact Analysis—Combined with Regulatory Impact Analysis, see above.

Available Documents

"Air Quality Criteria for Nitrogen Dioxide" (external review draft, annotated version, June 1980), available from the Environmental Criteria and Assessment Office (ECAO), U.S. Environmental Protection Agency, MD–52, Research Triangle Park, NC 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 on January 29 and 30, 1979 and November 13 and 14, 1980; 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, NC 27711.

"National Ambient Air Quality Standards: Establishment of Standard Review Docket for Nitrogen Dioxide," 45 FR 6958, January 31, 1980.

"Preliminary Assessment of Health and Welfare Effects Associated with Nitrogen Oxides for Standard-Setting Purposes," Revised Draft Staff Paper, October 1, 1981, available in Docket OAQPS–78–9 at the address below.

EPA has established a docket (EPA, Central Docket Section OAQPS–78–9) for review of the NO_2 standard. Reports in the docket are available for inspection between 8 a.m. and 4 p.m. on weekdays at the Docket Section Office, Room 2903B, 401 M Street, S.W., Washington, DC.

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EPA–OANR

Review, and Possible Revision, of the National Ambient Air Quality Standards for Carbon Monoxide (40 CFR Part 50; Revision)

Legal Authority

Clean Air Act, as amended, § 109(d)(1), 42 U.S.C. 7409 *et seq.*

Reason for Including This Entry

The Environmental Protection Agency (EPA) believes that this review is important in order to ensure the protection of public health and welfare and because any changes to the existing standards may result in an annual effect of $100 million or more on the economy.

Statement of Problem

Section 109(d)(1) of the Clean Air Act, as amended, directs EPA to review existing national ambient air quality standards (NAAQS) every 5 years. Ambient air quality standards define allowable pollutant concentrations in the ambient air that are required to protect public health and welfare. EPA set the original carbon monoxide (CO) standards (36 FR 8186, April 30, 1971) at 9 parts per million (ppm) averaged over an 8-hour period and 35 ppm for a 1-hour period. On August 18, 1980 (45 FR 55066), the Agency proposed to retain the 9-ppm 8-hour standard and lower the 1-hour standard to 25 ppm. EPA also proposed to change the form of the original standards, which allowed one exceedance in any year, to a statistical form in which the standards cannot be exceeded more than one day per year averaged over several years.

The incidence of adverse health effects in the general population resulting from human exposure to carbon monoxide has not been completely quantified. However, there are several population groups that are particularly sensitive to carbon monoxide exposure, such as people with coronary heart disease (e.g., angina pectoris), peripheral vascular disease, cerebrovascular disease, or chronic obstructive pulmonary disease; pregnant women and their fetuses; and people with anemia. These sensitive population segments range from 5 to 12 percent of the U.S. population.

Potential exposures are localized to the immediate vicinity of sources, and little transport is evident.

Alternatives Under Consideration

The Agency considered the following alternative standards prior to the August 18, 1980 proposal:

1-hr averaging time	8-hr averaging time
15 ppm	7 ppm.
25 ppm	9 ppm.
35 ppm	12 ppm.

EPA originally selected the 8-hour averaging time because most people achieve equilibrium or near-equilibrium levels of carboxyhemoglobin (COHb) in the blood after an 8-hour exposure to carbon monoxide. In addition, most people are exposed to carbon monoxide in roughly 8-hour blocks of time. We uncovered no evidence during the review process resulting in the August 18, 1980 NPRM that indicated that the 8-hour averaging time should be changed.

As a result of the review and revision of the health criteria, EPA proposed to

retain the existing primary 8-hour standard at 9 ppm and to lower the primary 1-hour standard from the current 35 ppm to 25 ppm. The change in the 1-hour standard is being proposed because of the more rapid accumulation of blood carboxyhemoglobin in moderately exercising sensitive persons compared to resting individuals. The impact of exercise, which is greater for short-duration exposures, was not considered in the original standard.

We are investigating no new Federal regulatory techniques in the CO NAAQS review process. State governments use their own discretion in taking regulatory actions to meet EPA's national ambient air quality standards. The States are free to use performance standards, economic incentives, or any other means to attain ambient air quality standards within their jurisdiction. The only EPA requirement for State governments is that they demonstrate attainment and maintenance of the NAAQS by statutory compliance dates.

Summary of Benefits

Sectors Affected: Persons with cardiovascular or pulmonary disease; pregnant women and fetuses; and anemics.

The newly proposed CONAAQSs should result in a greater assurance that persons with cardiovascular heart disease will not experience deleterious health effects due to high ambient concentrations of carbon monoxide.

Summary of Costs

Sectors Affected: Consumers who purchase automobiles; manufacturing of automobiles; administration of State and local transportation programs; the driving public; EPA; and State air pollution control agencies.

In its Regulatory Impact Analysis, EPA estimated the 1987 annualized costs of various CO control strategies for the three 8-hour alternatives; the total nationwide cost in 1979 dollars is approximately $2.8 billion for the 9-ppm proposed standard. It is $2.9 billion for the 7-ppm alternative and $2.6 billion for the 12-ppm alternative. Costs for alternative 1-hour standards were not developed because control strategies needed to attain any of the three alternative 8-hour standards investigated automatically attain all of the 1-hour standards that EPA analyzed.

Approximately 82 percent of these costs are due to the Federal Motor Vehicle Control Program (the automobile emission control program). Buyers of new cars incur these costs. An additional 15 percent of total costs are borne by the auto-using public through inspection and maintenance program fees and repair costs. The remaining 3 percent of total costs are borne by local governments and industrial plants.

Summary of Net Benefits

EPA will provide an assessment of the net benefits of the regulation when we issue the Final Rule.

Related Regulations and Actions

Internal: The newly proposed CO NAAQSs will not affect any other Agency program since there is no change in the controlling 8-hour standard. Emission standards for moving sources will not be affected since they are established under Title II of the Clean Air Act (42 U.S.C. 7501 *et seq.*).

External: The newly proposed CO NAAQSs will not alter any ongoing or planned State, local, or private industry control program since there is no change in the controlling 8-hour standard.

Government Collaboration

Other Federal agencies that are involved in reviewing the standard include the Departments of Transportation, Energy, and Health and Human Services.

Timetable

ANPRM—43 FR 56250, December 1, 1978.
NPRM—45 FR 55066, August 18, 1980.
Final Rule—1st Quarter 1982.
Public Hearings—Washington, DC, October 2, 1980; Denver, CO, October 10, 1980.
Public Comment Period—August 18, 1980 to November 10, 1980.
Regulatory Impact Analysis—"Regulatory Impact Analysis (Preliminary) of the National Ambient Air Quality Standard for Carbon Monoxide," April 1980; final, January 1982.
Regulatory Flexibility Analysis—None.
Environmental Impact Statements—"Proposed National Ambient Air Quality Standards for Carbon Monoxide: Draft Environmental Impact Statement," July 1980; final, January 1982.
Urban and Community Impact Analysis—Combined with the Regulatory Impact Analysis, see above.

Available Documents

"Air Quality Criteria for Carbon Monoxide" (External Review Draft, April 1979); it is available from the Environmental Criteria and Assessment Office, MD–52, U.S. Environmental Protection Agency, Research Triangle Park, NC 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.

Public hearing record and public comments (comment period closed November 10, 1980).

The following reports are available from the U.S. EPA Library (MD–35), Research Triangle Park, NC 27711. Telephone: (919) 541–2777 (FTS: 629–2777).

"Control Techniques for Carbon Monoxide Emissions," EPA–450/3–79/006, June 1979.

"Estimated Exposure to Ambient Carbon Monoxide Concentrations Under Alternative Air Quality Standards (Draft)," August 1980.

"Preliminary Assessment of Adverse Health Effects from Carbon Monoxide and Implications for Possible Modifications of the Standard (Draft)," June 1, 1979.

"Sensitivity Analysis of Coburn Model Predictions of COHb Levels Associated with Alternative CO Standards (Draft)," July 1980.

"Significant Harm Levels for Carbon Monoxide (Draft)," July 1, 1980.

EPA has established a docket (EPA, Central Docket Section OAQPS–79–7) for review of this standard. The docket is available for investigation between 9:00 a.m. and 4:00 p.m. on weekdays in the Section Office: Room 2903B, 401 M Street, S.W., Washington, DC.

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EPA–OANR

Review, and Possible Revision, of the National Ambient Air Quality Standards for Particulate Matter (40 CFR Part 50; Revision)

Legal Authority

The Clean Air Act, as amended, § 109(d)(1), 42 U.S.C. 7409 *et seq.*

Reason for Including This Entry

The Environmental Protection Agency (EPA) believes that this review is important to ensure the protection of public health and welfare, and because

any changes to the existing standards may result in an annual effect of $100 million or more on the economy.

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 (NAAQS) every 5 years. Ambient air quality standards define the level of pollutant concentrations in the ambient air that are allowed while still protecting public health and safety. The current primary standard for particulate matter (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 for particulate matter (to protect public welfare, e.g., effects on soils, vegetation, manmade materials, visibility, economic values, etc.) is 150 $\mu g/m^3$, maximum 24-hour concentration, not to be exceeded more than once per year. The States are responsible for developing and implementing the necessary regulatory programs to ensure the attainment and maintenance of the NAAQSs.

EPA will review the scientific basis of the primary and secondary standards (the air quality criteria), as well as the standards themselves. Where appropriate, EPA will revise the air quality criteria and promulgate new standards.

Exposure to airborne particulate matter (PM) may aggravate asthma and other respiratory disorders, as well as cardiovascular diseases, and can impair pulmonary function; this exposure can also increase coughing and chest discomfort. PM may also increase the adverse health effects of gaseous air pollutants, such as sulfur dioxide. Depending on their chemical composition, specific types of PM may have more serious health effects than others. Elevated PM levels result in increased soiling of exposed materials and impair visibility.

Alternatives Under Consideration

On the basis of the revised air quality criteria, EPA may decide to keep the existing standards without change or, alternatively, 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 of the standards. EPA is also considering standards based on the size of the particulate as well as its concentration. This consideration is based on evidence that smaller particles penetrate deeper into the lung and evidence that when elevated concentrations of particulate matter occur in combination with elevated levels of sulfur oxides, adverse health effects may be more pronounced.

EPA is not investigating new Federal regulatory techniques in the NAAQS review and revision process. All governmental regulatory actions taken as a result of setting an NAAQS are at the discretion of State governments, which are free to use performance standards, economic incentives, or any other means to attain ambient air quality standards within their jurisdiction. The only EPA requirement for State governments is that they attain and maintain the NAAQSs by statutory compliance dates.

Summary of Benefits

Sectors Affected: The general public, including children and those persons suffering from respiratory diseases and cardiovascular diseases.

The revision of the air quality criteria and the review of the existing ambient standards will result in greater assurance that the standards, whether reaffirmed or newly promulgated, will adequately protect health and welfare of the general public, including those groups within the general public most sensitive to adverse health effects of PM.

Benefit may also accrue to the general public as well as commercial, household, manufacturing and public sectors as a result of improved visibility and decreased soiling and materials damage. EPA will complete a study of the benefits of controlling particulate matter under alternative standards when it issues the NPRM.

Summary of Costs

Sectors Affected: Industries emitting particulate matter, including electric and sanitary services, the primary metal industry, and those industries that use or supply large quantities of fossil fuels; and State air pollution control agencies.

EPA will complete a study of costs and economic impacts of controlling particulate matter under alternative standards when it issues the NPRM. This analysis will involve estimates of capital, operating, and energy costs for various industries. Also, estimates of national annual cost will be provided. The annualized capital, operating, and energy cost may exceed $100 million, depending upon the final level of the standards proposed. In addition, EPA will also assess the impact on State air pollution control agencies of modifying their control programs to accommodate revisions to the existing standards.

Summary of Net Benefits

EPA will compare and contrast the benefits and costs under alternative standards and provide a summary of net benefits when it issues its NPRM.

Related Regulations and Actions

Internal: Changes to the current ambient standards for particulate matter may affect EPA's regulations for new source review (40 CFR 51.18 and 51.24).

External: Modifications in the existing standards would require States to reassess their current implementation control programs and make revisions in control measures and strategies if necessary.

Government Collaboration

Other Federal agencies that are actively involved in reviewing the standards for particulate matter are the Departments of Energy, Transportation, Interior, Commerce, and Health and Human Services; and the Tennessee Valley Authority.

Timetable

ANPRM—"National Ambient Air Quality Standards; Review of Criteria and Standards for Particulate Matter and Sulfur Oxides," 44 FR 56730, October 2, 1979.

NPRM—2nd Quarter 1982.

Regulatory Impact Analysis—Preliminary, April 1982; final, December 1982.

Public Comment Period—To be specified in NPRM.

Public Hearing—60 days after publication of NPRM.

Final Rule—4th Quarter 1982.

Regulatory Flexibility Analysis—Will be combined with Regulatory Impact Analysis.

Available Documents

"Air Quality Criteria for Particulate Matter and Sulfur Oxides" (Revised Draft), October 27, 1981, available in Docket ECAO-CD-79-1.

The following documents are available in Docket A-79-29 at the address indicated below.

"Transcript of Proceedings," Clean Air Scientific Advisory Committee, July 6-8, 1981.

"Review of the National Ambient Air Quality Standards for Particulate Matter: Revised Draft Staff Paper," October 31, 1981.

A docket (No. A-79-29) containing other relevant information is available for public inspection at the Central Docket Section, EPA, Gallery I, West Tower, 401 M Street, S.W., Washington, DC 20460, and is available for review between the hours of 8:00 a.m. and 4:00

p.m. Monday through Friday. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

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EPA-OANR

Review, and Possible Revision, of the National Ambient Air Quality Standards for Sulfur Oxides (Sulfur Dioxide) (40 CFR Part 50; Revision)

Legal Authority

The Clean Air Act, as amended, § 109(d)(1), 42 U.S.C. 7409 *et seq.*

Reason for Including This Entry

The Environmental Protection Agency (EPA) believes that this review is important in order to ensure the protection of public health and welfare and because any changes to the existing standards may result in an annual effect of $100 million or more on the economy.

Statement of Problem

Section 109(d) of the Clean Air Act Amendments of 1977 directs the EPA to review the existing National Ambient Air Quality Standards (NAAQS) every 5 years. Ambient air quality standards define allowable pollutant concentrations in the ambient air that are allowed while still protecting public health and welfare. The present primary standard for sulfur oxides measured as sulfur dioxide (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 for sulfur oxides measured as sulfur dioxide (to protect public welfare, e.g., effects on soils, vegetation, manmade materials, visibility, economic values, etc.) is 1300 $\mu g/m^3$ with the maximum 3-hour concentration not to be exceeded more than once per year. The States are responsible for developing and implementing the necessary regulatory programs to ensure the attainment and maintenance of the NAAQSs.

EPA will review the scientific basis of the standards (the air quality criteria), as well as the standards themselves. Where appropriate, EPA will revise the air quality criteria and promulgate new standards.

Sulfur oxides in the air, working alone or in combination with other pollutants, aggravate respiratory diseases such as asthma, chronic bronchitis, and emphysema and also irritate the eyes and respiratory tract. Sulfur oxides also cause impaired visibility, harm vegetation, and have been associated with the formation of acidic deposition.

Alternatives Under Consideration

On the basis of the revised air quality criteria, EPA may decide to keep the existing standards without change or, alternatively, may alter the allowable air concentration of sulfur dioxide or the period over which the concentration is measured.

EPA is investigating no new Federal regulatory techniques in the NAAQS review and revision process. All governmental regulatory actions taken as a result of setting an NAAQS are at the discretion of State governments. States are free to use performance standards, economic incentives, or any other means to attain ambient air quality standards within their jurisdiction. The only EPA requirement for State governments is that they attain and maintain the NAAQSs by statutory compliance dates.

Summary of Benefits

Sectors Affected: The general public, including children and those persons suffering from respiratory diseases; and agriculture.

The revision of the air quality criteria and the review of the existing ambient standards will result in greater assurance that the standards, whether reaffirmed or newly promulgated, will adequately protect the health and welfare of the general public, including those most sensitive to adverse health effects of sulfur oxides.

EPA will complete a study of the benefits of controlling sulfur oxides under alternative standards when it issues the NPRM.

Summary of Costs

Sectors Affected: Industries emitting sulfur oxides, including electric, gas, and sanitary services industries, the non-ferrous metal industry, the petroleum refining industry, and those industries that supply or use large quantities of fossil fuel; and State air pollution control agencies.

A study of costs and economic impacts of controlling sulfur oxides under alternative standards will be completed by EPA when the NPRM is issued. These estimates will include capital, operating, administrative, and other costs (including research and development) for the various industries. Nationwide estimates of annualized cost of the regulatory action will also be provided. It is estimated that such cost could exceed $100 million. In addition, EPA will also assess the impact on State air pollution control agencies of modifying their control programs in order to accommodate any revisions to existing standards.

Summary of Net Benefits

EPA will compare and contrast the benefits and costs under alternative standards and provide a summary of net benefits when it issues its NPRM.

Related Regulations and Actions

Internal: Changes to the current ambient standards may affect EPA's regulations for new source review (40 CFR 51.18 and 51.24).

External: Modifications in the existing standards could require States to reassess their current implementation control programs and make revisions in control measures and strategies if necessary.

Government Collaboration

Other Federal agencies that are actively involved in reviewing the sulfur oxide standards are the Departments of Energy, Transportation, Interior, Commerce, and Health and Human Services; and the Tennessee Valley Authority.

Timetable

ANPRM—"National Ambient Air Quality Standards; Review of Criteria and Standards for Particulate Matter and Sulfur Oxides," 44 FR 56730, October 2, 1979.
NPRM—4th Quarter 1982.
Regulatory Impact Analysis—Preliminary, November 1982; final, November 1983.
Public Comment Period—To be specified in NPRM.
Public Hearing—60 days after publication of NPRM.
Final Rule—4th Quarter 1983.
Regulatory Flexibility Analysis—Will be combined with Regulatory Impact Analysis.

Available Documents

"Sulfur Oxides," National Academy of Sciences, 1978, available from the National Academy of Sciences, Printing and Publication Office, 2101 Constitution Avenue, Washington, DC 20418.

"Air Quality Criteria for Particulate Matter and Sulfur Oxides" (Revised Draft), October 27, 1981, available in Docket ECAO–CD–79–1.

A docket (No. A–79–28) containing other relevant information is available for public inspection at the Central Docket Section, EPA, Gallery I, West Tower, 401 M Street, S.W., Washington, DC 20460, and is available for review between the hours of 8:00 a.m. and 4:00 p.m. Monday through Friday. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

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EPA–OANR

Standards of Performance To Control Atmospheric Emissions from Industrial Boilers (40 CFR Part 50; Revision)

Legal Authority

The Clean Air Act, as amended, § 111, 42 U.S.C. 7411.

Reason for Including This Entry

Industrial boilers produce emissions that could affect ambient air quality. The Environmental Protection Agency (EPA) is evaluating possible and reasonable controls to reduce emissions from these sources in the face of increased industrial use of coal. The impact of this regulation on industry would approach $100 million per year in additional capital and annualized costs by 1990.

Statement of Problem

Combustion of coal, oil, and gas in industrial boilers results in the emission of particulate matter, sulfur dioxide, and nitrogen oxides to the atmosphere. 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 could affect ambient air quality and thus health and welfare. This rule would apply to new and modified industrial boilers. Only the largest industrial boilers are presently covered by standards established in § 111 of the Clean Air Act. We are considering revision of the existing standard by extending coverage to smaller units.

Alternatives Under Consideration

The 1977 Clean Air Act Amendments require 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 pollutants: (1) oil cleaning and use of existing clean oil, (2) coal cleaning and use of existing clean coal, (3) synthetic fuels, (4) fluidized bed combustion (a relatively new technology applicable only to large coal-fired boilers), (5) particulate control, (6) flue gas desulfurization, (7) nitrogen oxides combustion modification, and (8) nitrogen oxides flue gas treatment.

We are examining several control alternatives that include different levels of control for the three pollutants being studied. The option of not revising the standard is also being evaluated. The Agency is using computer modeling to determine the cost impacts, emission impacts, effects upon fuel consumption, overall energy impacts, and other environmental effects on a regional and national basis.

Summary of Benefits

Sectors Affected: Manufacturing industries and the general public.

Installing equipment that represents the best available control technology at new and modified industrial boiler facilities should help lessen air pollution in affected areas and preserve clean air. Since only a small fraction of the industrial boiler population is replaced or modified annually, the short-term impact on air quality should be only nominal. EPA will review the potential long-term effects on air quality.

A regulation that requires controls on new and modified industrial boilers should permit increased industrial expansion and economic growth without adversely affecting ambient air quality. Efforts to quantify benefits of controlling the three pollutants are underway. It should be possible to quantify some of these benefits by late 1982.

Summary of Costs

Sectors Affected: Manufacturing industries and users of products produced by these industries.

This rule would apply to new and modified industrial boilers used in a large number of manufacturing industries, particularly energy-intensive industries, such as glass (SIC Codes 321, 322, 323), pulp and paper (SIC 261, 262, 263), and chemical manufacturing (SIC 281).

The potential cost of the standard would depend on the number, sizes, and types of sources regulated and the degree of control required. EPA estimates that by 1990 annual added capital costs of control could approach $200 million and annualized costs could approach $100 million. Consumer prices for products manufactured by energy-intensive industries may increase slightly as a result of these costs. For industries that are not energy-intensive, increases in consumer prices of products may be negligible. These estimates are necessarily very tentative at this time.

Summary of Net Benefits

Since the level of control for each pollutant has not been determined, net benefits cannot be assessed accurately at this time. Costs cited above reflect stringent control of particulate matter, sulfur dioxide, and nitrogen oxides.

Related Regulations and Actions

Internal: We have issued water pollution regulations for several industries in the form of "Best Practical Technology Currently Available" and "Best Available Technology Economically Achievable." In some industries these regulations cover effluents from boilers. Industrial boilers are also subject to requirements of the Resource Conservation and Recovery Act, Part 261, Subpart C.

External: Industrial boilers are subject to the Power Plant and Industrial Fuel Use Act and associated regulations established by the Department of Energy.

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.

EPA works closely with State and local governments in developing and implementing these rules.

Timetable

ANPRM—44 FR 37632, June 29, 1979.
Regulatory Impact Analysis—To be determined.
NPRM—To be determined.
Regulatory Flexibility Analysis—To be determined.
Public Hearing—To be determined.
Public Comment Period—To be announced in NPRM.
Final Rule—To be determined.

Available Documents

None.

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EPA–OANR—Office of Mobile Source Air Pollution Control

Gaseous Emission Regulations for 1985 and Later Model Year Light-Duty Trucks and 1986 and Later Model Year Heavy-Duty Engines (40 CFR Part 86; Revision)

Legal Authority

The Clean Air Act, as amended, § 202, 42 U.S.C. 7521.

Reason for Including This Entry

Light-duty trucks and heavy-duty engines are sources of oxides of nitrogen and as such should be examined for control.

Statement of Problem

The Clean Air Act Amendments of 1977 require the Environmental Protection Agency (EPA) to establish regulations that require a reduction (from the uncontrolled state) of heavy-duty engine or vehicle emissions of 90 percent for hydrocarbon (HC) and carbon monoxide (CO) in 1983 and 75 percent for oxides of nitrogen (NO_x) in 1985. These amendments also provide EPA with options either to temporarily revise or change the standards under certain conditions. As defined in the Act, heavy-duty vehicles include those trucks over 6,000 pounds gross vehicle weight (GVW); excluded are off-road vehicles, such as farm tractors and construction equipment. This definition overlaps two truck categories as used by EPA. These are light-duty trucks (LDTs), which EPA defines as trucks up to 8,500 pounds GVW, and heavy-duty vehicles (HDVs), which include trucks 8,500 pounds GVW and over. We published regulations implementing the mandated reductions in HC and CO emissions for HDVs on January 21, 1980 (45 FR 4136) and for LDTs on September 25, 1980 (45 FR 63734). This entry concerns the regulations implementing the mandated reduction in NO_x.

During high temperature combustion in internal combustion engines, atmospheric nitrogen reacts to form nitric oxide (NO) and a comparatively small amount of nitrogen dioxide (NO_2). In the atmosphere, the NO is converted to NO_2 by direct reaction with oxygen and by photochemical processes. NO_2 in the atmosphere causes visibility restrictions and brownish coloration. Elevated NO_2 levels are also associated with both long-term and short-term health effects on the respiratory system. Heavy-duty vehicles and light-duty trucks, representing approximately 40 percent of mobile source NO_x emissions, constitute one area where further NO_x control is available on a cost-effective basis. Mobile sources (which as a group include railroads, boats, planes, etc., in addition to motor vehicles) constitute about 30 percent of total NO_x emissions.

Alternatives Under Consideration

In the development of the NO_x standard, EPA is considering the following alternatives:

(A) Implement an NO_x standard that reflects the Clean Air Act's mandated 75-percent reduction.

(B) Implement an NO_x standard that is either less stringent or more stringent than the 75-percent reduction required by the Clean Air Act. The Clean Air Act (as amended August 1977) directs EPA to set an NO_x standard that reflects a 75-percent reduction (from uncontrolled levels), applicable for the 1985 model year. However, Congress incorporated provisions in the Act allowing EPA either to set more stringent standards or less stringent standards. EPA can make such revisions to the standard if it finds that the emission standards cannot be achieved by available technology at reasonable cost. Of course, as standards are made more stringent, more benefits may accrue. Likewise, as standards become more stringent, costs of compliance generally increase. The task confronting EPA is one of determining technological capabilities and balancing costs and benefits.

At the present time, the Agency intends to propose Alternative (B) for public comment. This decision was made in an effort to reduce the regulatory burden on the motor vehicle industry and was announced in the **Federal Register** (46 FR 21628, April 13, 1981). In that notice EPA expressed its commitment to proposing a relaxed NO_x standard for all heavy-duty engines that would be at a level achievable by diesel engines.

EPA is also considering the additional alternative of emission averaging. Under an averaging approach a manufacturer could achieve compliance to an emission standard by averaging its aggregate fleet emissions. The manufacturer could design some engines to be below the standard and others above it. Conceptually, this approach could increase a manufacturer's flexibility from both a technological and an economic standpoint. We published a separate ANPRM for the averaging concept on November 28, 1980 (45 FR 79382), but we will incorporate that rulemaking into the NO_x proposal.

Summary of Benefits

Sectors Affected: The general public, especially urban populations and persons particularly susceptible to respiratory disease.

As stated above, the Agency believes that an NO_x standard representing a 75-percent reduction from uncontrolled levels is infeasible for heavy-duty diesel vehicles. Given that we do not yet have enough information to propose a specific alternative level, our benefit analysis is based on a 75-percent reduction standard. Such a standard should reduce lifetime emissions of an average light-duty truck by 0.2 tons (59 percent) and of an average heavy-duty vehicle by 0.9 tons (77 percent) and 7.8 tons (79 percent) for gas and diesel, respectively (compared to vehicles sold under present regulations). These reductions could yield improvements in excess of 10 percent in average NO_x air quality by 1995.

Summary of Costs

Sectors Affected: Manufacturers of heavy-duty engines and vehicles and light-duty trucks and purchasers and users of heavy-duty engines and vehicles and light-duty trucks.

Based on technology that we expect heavy-duty diesel engine manufacturers to use to achieve maximum feasible emission levels, and based on a 75-percent reduction standard for all other classes, we project that the average initial price increase of a light-duty truck will be roughly $150 (2 percent), while the average initial price increases of heavy-duty vehicles will be roughly $280 (3 percent) for gasoline engines and $740 (at most 7 percent) for diesel engines (in 1980 dollars).

EPA is not able to quantify the fuel economy impacts of the regulations at this time, though buyers of gasoline-powered light-duty trucks and heavy-duty vehicles could see an improvement over earlier models, and buyers of diesel light-duty trucks may see a decrease. We cannot predict the effect on heavy-duty diesel vehicles until we have more information on a feasible standard level. We do not project an increase in maintenance costs for any of these vehicles.

We stated earlier that we expect this regulation to have an annual economic impact of over $100 million.

Summary of Net Benefits

EPA expects this regulation to result in an average initial price increase of $150 for a light-duty truck, $280 for a gasoline-fueled heavy-duty engine, and $740 for a diesel heavy-duty engine (all in 1980 dollars). The aggregate cost to the Nation over the first 5 years of production would be $2.4 billion for light-duty trucks and $1.8 billion for heavy-duty vehicles (discounted to the first year of production in 1980 dollars).

These costs are weighed against an improvement in average NO_x air quality of over 10 percent by 1995. The effect of this improvement on the public health and welfare is as yet unquantified. Qualitatively, there should be a reduction in both short- and long-term adverse health effects.

Related Regulations and Actions

Internal: Current emission standards for light-duty trucks and heavy-duty engines can be found in "Control of Air Pollution from New Motor Vehicles and New Motor Vehicle Engines: Certification and Test Procedures." 40 CFR Part 86. Regulations implementing the Department of Transportation light-duty truck fuel economy standards are found in "Fuel Economy of Motor Vehicles," 40 CFR Part 600.

EPA has recently finalized standards and measurement procedures for the control of particulate emissions for diesel-fueled light-duty trucks ("Standard for Emission of Particulate Regulation for Diesel-Fueled Light-Duty Vehicles and Light-Duty Trucks," 45 FR 14496, March 5, 1980). Other related regulations recently finalized are HC and CO emission regulations for 1984 and later model year heavy-duty engines and for 1984 and later light-duty trucks ("Gaseous Emission Regulations for 1984 and Later Model Year Heavy-Duty Engines," 45 FR 4136, January 21, 1980, and "Gaseous Emission Regulations for 1984 and Later Model Year Light-Duty Trucks," 45 FR 63734, September 25, 1980).

In addition to the existing regulations above, EPA has proposed particulate regulations for heavy-duty diesel engines (46 FR 1910, January 7, 1981) and evaporative emission test procedures and standards for heavy-duty gasoline-fueled vehicles (45 FR 28922, April 30, 1980). EPA has also published an ANPRM for investigation of averaging for heavy-duty engine and light-duty truck NO_x emissions (45 FR 79382, November 28, 1980).

External: Light-duty vehicle and light-duty truck fuel economy standards are found in the Department of Transportation "Passenger Automobile Average Fuel Economy Standards," 41 CFR Part 351.

Government Collaboration

Department of Transportation (discussions with the National Highway Traffic Safety Administration prior to ANPRM regarding light-duty truck fuel economy). Other government offices (for example, the Department of Commerce) routinely provide comment during the rulemaking process.

Timetable

ANPRM—46 FR 5838, January 19, 1981.
NPRM—October 1982.
Public Hearing (on ANPRM)—After March 1982.
Public Comment Period (on ANPRM)—Ends 30 days after the public hearing. Comments may be sent to Central Docket Section A–130, West Tower Lobby, Gallery 1, Environmental Protection Agency, Attn: Docket No. A–80–31, 401 M Street S.W., Washington, DC 20460.
Regulatory Impact Analysis—Draft, January 1981; final, to be determined.
Regulatory Flexibility Analysis—Need to be determined.
Final Rule—Applicable to model year 1985 for light-duty trucks and 1986 for heavy-duty vehicles.

Available Documents

The ANPRM, draft Regulatory Impact Analysis, and draft regulations (January 1981) are available for review in Public Docket No. A–80–31, located at the EPA, Central Docket Section A–130, West Tower Lobby, Gallery 1, 401 M Street, S.W., Washington, DC 20460. The documents are available for personal inspection Monday through Friday between 8:00 a.m. and 4:00 p.m., or copies can be obtained by personal or written request. A reasonable fee may be charged for copying.

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EPA–OANR–OMSAPC

Heavy-Duty Diesel Particulate Regulations (40 CFR Part 86; Revision)

Legal Authority

The Clean Air Act, as amended, §§ 202, 206, 207, and 301, 42 U.S.C. 7521, 7525, 7541, and 7601.

Reason for Including This Entry

Heavy-duty diesel vehicles are a major source of particulate emissions, and the Environmental Protection Agency (EPA) is considering this regulation to help reduce the amount of ambient particulate matter.

Statement of Problem

Despite significant gains made in the control of particulate emissions, there are still many regions of the United States that have not met the National Ambient Air Quality Standard (NAAQS) for total suspended particulate matter (TSP). Congress required EPA (through the Clean Air Act Amendments of 1977) to prescribe standards for the emission of particulate matter from 1981 model year heavy-duty diesel vehicles. EPA must base this standard on the lowest emission rates that we find technologically feasible at the time the standard will take effect, while also taking cost, noise, energy, and safety into consideration.

Diesel engines already power one-third of the heavy-duty vehicles sold in this country. By 1995 EPA expects this figure to increase to over two-thirds, primarily because of the fuel economy advantage of diesel engines over gasoline engines. These diesel engines emit more than twice the particulate matter emitted by gasoline engines operated on leaded fuel.

EPA set the NAAQS for particulate matter at a level to protect the public health and is currently performing a health assessment to determine the risk to human health. Diesel particulate is small in size. Over 95 percent of diesel particulate is fine (aerodynamic diameter of less than 2.5 micrometers). Particulate emissions from diesels occur at ground level, where exposures to humans are direct.

Alternatives Under Consideration

EPA is considering the following alternatives in adopting a standard for particulate emissions from heavy-duty diesel vehicle engines:

(A) Do not regulate particulate emissions from heavy-duty diesel vehicles.

(B) Do not regulate particulate emissions from heavy-duty diesel vehicles, but apply more stringent controls to particulate emissions from other classes of motor vehicles, such as gasoline-powered passenger cars, light-duty trucks and heavy-duty vehicles, and diesel light-duty trucks and passenger cars. Controls placed on these other vehicle classes, however, do not at this time appear to be as cost effective as heavy-duty diesel controls. Also, controls placed on these other vehicle classes may not be able to provide the same improvement in air quality as the regulation of emissions from heavy-duty diesels.

(C) Prescribe a heavy-duty diesel particulate standard and examine alternative levels of control along with alternative dates of implementation. Specifically, EPA is considering a one-step versus a two-step standard, with the one-step standard implemented in 1986 and set at the final level of

technology expected to be available in that year. The two-step standard would involve an interim standard in 1986, based on improved engine design, and a final standard in 1988, set at the final level of technology expected to be available in 1988. It is likely that the different alternatives examined will have different costs and effectiveness and one may prove to be significantly better than the others while still complying with Congressional mandates.

We currently regard Alternative (C) as the most desirable alternative.

Summary of Benefits

Sectors Affected: The general public, particularly those living in urban areas or near busy roadways, and States containing areas currently in violation of the National Ambient Air Quality Standard (NAAQS) for total suspended particulate matter (TSP).

EPA estimates that this regulation could reduce particulate emissions from heavy-duty diesel vehicles by 64 percent. This reduction would begin to appear with those new vehicles produced in the 1986 model year. By 1995 emissions of particulate matter from these vehicles would be reduced from 218,000–266,000 metric tons per year (depending on the number of diesels on the road) to 78,000–95,000 metric tons per year. These reductions could help many areas of the country meet the primary NAAQS for TSP (75 micrograms per cubic meter), which EPA set at a level to protect the public health. Because diesel particulate is potentially respirable, these reductions should provide an added benefit to public health.

Summary of Costs

Sectors Affected: Manufacturers of heavy-duty diesel engines and vehicles and purchasers and users of heavy-duty diesel vehicles.

This regulation probably would require the addition of emission control devices to heavy-duty diesel engines, though the actual devices used and their cost could vary from manufacturer to manufacturer and engine to engine. Manufacturers of these engines and of the vehicles equipped with these engines may have to raise prices to recover their increased investment. This increase could be substantial, roughly a one-time purchase price increase of $527 to $650 (1980 dollars). This increase represents a 0.5 to 3 percent increase in the price of a heavy-duty diesel vehicle.

EPA does not expect this regulation to increase the operating costs of heavy-duty diesel vehicles. In fact, a decrease of an estimated $178 (discounted to the year of purchase in 1980 dollars) is possible due to the use of more durable exhaust system materials and the elimination of a separate muffler. Because operating costs comprise 90 to 95 percent of the total cost of owning and operating heavy-duty diesel vehicles, this regulation should have a negligible impact (less than 0.3 percent) on the cost of hauling freight in these vehicles. Thus, neither those whose business is hauling freight nor those who have their freight hauled should be adversely affected. Small independent haulers should experience no disproportionate effect.

The aggregate cost of the proposed standard over 5 years (1986 to 1990) would be $249 million to $413 million (present value in 1980) or $442 million to $731 million (present value in 1986). Two present-value reference points are given because two different conventions have been used in the past (the year of the analysis and the year the standard is to be implemented).

Summary of Net Benefits

EPA expects this regulation to result in an average initial price increase of $527 to $650 per vehicle (in 1980 dollars). The aggregate cost to the Nation over the first 5 years of production would be $249 million to $413 million (present value in 1980). Qualitatively, these reductions would help many areas of the country meet the primary NAAQS for TSP (75 micrograms per cubic meter), which EPA set at a level to protect the public health. The reductions could also improve visibility, especially in urban areas.

Related Regulations and Actions

Internal: "Control of Air Pollution from New Motor Vehicles and New Motor Vehicle Engines: Certification and Test Procedures," 40 CFR Part 86.

EPA is also in the process of revising the standard for the emissions of nitrogen oxides from both gasoline-fueled and diesel heavy-duty engines (46 FR 5838, January 19, 1981), adopting a standard and test procedure for evaporative emissions from gasoline-fueled heavy-duty engines (45 FR 28922, April 30, 1980) and investigating averaging for heavy-duty engine and light-duty truck NO_x emissions (45 FR 79382, November 28, 1980).

External: None.

Government Collaboration

None.

Timetable

ANPRM—42 FR 61287, December 2, 1977.
NPRM—46 FR 1910, January 7, 1981.
Regulatory Impact Analysis—Draft, December 23, 1980; final, to be determined.
Public Hearings—After December 1981.
Public Comment Period—Ends 30 days after public hearings. Comments may be sent to: Charles L. Gray, Jr., Director, Emission Control Technology Division, Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, MI 48105.
Final Rule—November 1983.
Final Rule Effective—1986 model year.
Regulatory Flexibility Analysis—Not required.

Available Documents

The ANPRM, NPRM, draft RIA, and other documents in Docket A–80–18 are available for review at EPA, Central Docket Section A–130, West Tower Lobby, Gallery 1, Attn: Docket No. A–80–18, 401 M Street, S.W., Washington, DC 20460. The documents are available for personal inspection Monday through Friday between 8:00 a.m. and 4:00 p.m., or copies can be obtained by personal or written request. A reasonable fee may be charged for copying.

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EPA—Office of Legal Counsel and Enforcement

Consolidated Permit Regulations (40 CFR Parts 122, 123, and 124; Revision)

Legal Authority

Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*; Safe Drinking Water Act, 42 U.S.C. 300(f) *et seq.*; Clean Water Act, 33 U.S.C. 1251 *et seq.*; and Clean Air Act, 42 U.S.C. 1857 *et seq.*

Reason for Including This Entry

The Presidential Task Force on Regulatory Relief has designated these regulations for review.

Statement of Problem

The Consolidated Permit Regulations establish permit procedures and program requirements authorized by the Clean Air Act, Clean Water Act, Safe Drinking Water Act, and Resource Conservation and Recovery Act for over

90,000 industrial, municipal, and Federal facilities that discharge or store pollutants. We have received numerous comments from industry, States, and trade associations that the regulations as currently written are overly complex and burdensome, lack flexibility, and are duplicative. As a result of the comments received through the Presidential Task Force on Regulatory Relief and comments received independently from States and the Environmental Protection Agency (EPA) Regions, the Agency is conducting a comprehensive review of the Consolidated Permit Regulations. Failure to revise the regulations would result in an unnecessarily lengthy process in obtaining permits, unnecessarily burdensome application and reporting requirements, unnecessarily stringent State program requirements, and unnecessarily high costs to those seeking permits.

Alternatives Under Consideration

Major alternatives considered during the regulatory review include: increasing State flexibility and autonomy in issuing permits; deleting portions of the regulations that are not required by statute or case law, or necessary for efficient program implementation; simplifying requirements for State program approval; restructuring of the regulations to clarify meaning; reducing intergovernmental coordination; and reducing reporting and paperwork requirements.

Summary of Benefits

Sectors Affected: All industries; all geographic regions; and Federal, State, and local governments.

The major benefits for the sectors affected will be an increase in State flexibility in administering their permit programs, a reduction in costs and reporting burdens for permittees and for the States operating permit programs, and an expedited permit process through streamlined regulations and application forms.

Summary of Costs

Sectors Affected: None.

Because the Consolidated Permit Regulations are already effective, the only impact of the revisions will be to decrease costs for all sectors affected. The method used to achieve this reduction in costs will be to simplify application requirements, decrease reporting burdens, and increase State flexibility, which will allow States to determine the most cost-effective manner suitable for effective program implementation.

Summary of Net Benefits

The revision to the Consolidated Permit Regulations will provide a general reduction in costs for all sectors affected by the regulation. Industries will be able to plan more effectively for future growth and expansion. Those States that participate in the National Pollutant Discharge Elimination System and permittees (those entities that hold permits to discharge pollutants) will realize substantial reductions in reporting burdens as application forms are streamlined and paperwork and reporting requirements are reduced. Additionally, States seeking EPA approval to administer permit programs will obtain approval under an expedited approval process.

Related Regulations and Actions

Internal: Criteria and Standards for the National Pollutant Discharge Elimination System, 40 CFR Part 125; Hazardous Waste Management System, 40 CFR Parts 260–267; General Pretreatment Regulations for Existing and New Sources of Pollution, 40 CFR Part 403; Approval and Promulgation of Implementation Plans, 40 CFR Part 52.

External: Coastal Zone Management Act, 16 U.S.C. 1451; Fish and Wildlife Coordination Act, 16 U.S.C. 661; National Environmental Policy Act, 33 U.S.C. 4321; Wild and Scenic Rivers Act, 16 U.S.C. 1273; National Historic Preservation Act, 16 U.S.C. 470; Endangered Species Act, 16 U.S.C. 1531; Bureau of Land Management.

Government Collaboration

We will be responsive to other government agencies commenting during the public comment period.

Timetable

ANPRM—None.
NPRM—Proposed Rule—3rd Quarter 1982.
Final Rule—1st Quarter 1983.
Final Rule Effective—1st Quarter 1983.
Public Hearing—Undecided.
Public Comment Period—Undecided.
Regulatory Impact Analysis—None.
Regulatory Flexibility Analysis—Undetermined.

Available Documents

Letters received by the Presidential Task Force on Regulatory Relief and memoranda received from States and EPA Regions on initial operation of the Consolidated Permit Program.

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EPA—Office of Water

A Review of Proposed Effluent Limitations Guidelines and Standards Controlling the Discharge of Pollutants from Steam Electric Power Plants (40 CFR Part 423; Revision)

Legal Authority

The Clean Water Act, §§ 301, 304, 306, 307, 308, and 501, 33 U.S.C. 1311, 1314, 1316, 1317, 1318, 1321, 1364, and 1346.

Reason for Including This Entry

Although the Environmental Protection Agency (EPA) does not believe this regulation will have an annual effect on the economy of $100 million or more, the Agency is including this entry because of the high public interest in these regulations. Further, the affected industry thinks the compliance costs will be over $100 million per year.

Statement of Problem

The Environmental Protection Agency, in its efforts to control water pollution under the Clean Water Act, is required to develop technology-based effluent limitations guidelines and standards to control pollutant discharges from the steam electric power generating industry and review these regulations at least once every 5 years. We initially promulgated effluent limitations guidelines for this industry on October 8, 1974 that reflected the best practicable control technology currently available (BPT), the best available technology economically achievable (BAT), new source performance standards (NSPS), and pretreatment standards for new sources (PSNS). 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)). The Court found the record insufficient with respect to various technical aspects and non-water quality considerations (especially cost data and ultimate disposal of wastes).

We reviewed the 1974 regulations to incorporate updated information and attempt to remedy the deficiencies pointed out by the Fourth Circuit Court of Appeals. In addition to the pollutants examined in the previous regulations, such as biological oxygen demand (BOD), pH, oil and grease, copper, and iron, we expanded this 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), as modified in 12 ERC 1833 (D.D.C. 1979), and incorporated into § 307 of the Clean Water Act. The NPRM was published in the Federal Register on October 14, 1980 (45 FR 68328). We did not include guidelines for thermal discharges in these regulations. The Agency is still considering various thermal options in light of *Appalachian*.

The steam electric generating industry is composed of approximately 850 generating plants nationwide. Because these plants have extremely large discharge flows, the quantity of pollutants they discharge may be substantial even if the concentration is relatively low. The Agency estimated that the average discharge flow from a steam electric power plant is 210 million gallons per day and that discharges from the steam electric power industry constitute about 15 percent of the total flow in U.S. rivers and streams. Major pollutants detected in the waste waters of steam electric plants during an EPA sampling program were total residual chlorine (TRC), copper, zinc, nickel, chromium, arsenic, and selenium.

These pollutants, especially TRC, are toxic to fish and other aquatic organisms. Their effect on humans is less documented. Table 1 summarizes ambient waste quality criteria levels and effects on organisms due to their presence in water.

Table 1.—Environmental and Health Effects

Pollutant	Ambient water quality criteria (WQC) (chronic levels, parts per billion (PPB))		Effects
	Fresh water	Salt water	
Total Residual Chlorine	2-10	10	Toxic to fish and other aquatic organisms. No WQC established for human health protection.
Arsenic	NCA	NCA	Toxic to aquatic organisms. Suspected carcinogen in humans (10^{-5} risk—0.022 ppb).
Chromium:			
Trivalent	NCA	NCA	Toxic to fish and invertebrates. Hexavalent chromium is most toxic form and is extremely toxic to aquatic life.
Hexavalent	.29	18	
Nickel	[1] 1.800	7.1	Toxic to fish and aquatic organisms.
Copper	5.6	4.0	Quite toxic to aquatic life. No WQC is established for human health protection.
Zinc	47	58	Toxic to fish and invertebrates. WQC is established for human health protection.
Selenium	35	54	Toxic to fish and aquatic organisms.

[1] Water hardness = 100 mg/l.
NCA = No criteria available.

Alternatives Under Consideration

In the proposed guidelines the Agency considered several wastewater treatment technologies for controlling pollutant discharges from steam electric plants to the Nation's waterways. The primary focus of this effort was to assess the potential control of discharges of toxic substances. In this review of effluent regulations, we focused our efforts on cooling water and ash transport water as the major waste streams because of their large flows. Over 95 percent of the volume of water used in an average power plant is used as cooling water.

The regulatory options for cooling water and ash transport waste are described below:

Cooling Water—All steam electric power plants circulate large volumes of water through their condensers in order to condense steam in the turbines. About 65 percent of existing plants use a "once-through" cooling system. With such a system, the plant withdraws water from a water body, passes the water through condensers, and then discharges the heated water into a receiving water body. Other plants recirculate part of the cooling water using evaporative cooling towers. Cooling towers do not recirculate all of the water; the portion that is discharged is known as cooling tower "blowdown." For regulatory purposes, the Agency has treated once-through cooling water discharges and cooling tower blowdown as two separate waste streams.

The thermal efficiency of the steam cycle can be greatly reduced if biological growth occurs in the condensers. About 60 percent of the plants with once-through cooling water add chlorine to control biological growth; such plants have the potential to discharge total residual chlorine (TRC) and chlorinated compounds into the navigable waters. TRC is a pollutant that has been studied extensively and is known to adversely affect aquatic life.

Chlorine is also added to inhibit biological growth in the cooling tower and condensers. In addition to TRC discharges, plants with cooling towers have the potential to discharge toxic pollutants through other chemicals added for maintenance of the cooling tower.

The technologies that the Agency evaluated for control of pollutants from cooling water included (1) chlorine minimization, (2) dechlorination, (3) chemical substitutes, and (4) mechanical antifouling devices.

Chlorine minimization is a program designed to ensure the most efficient use of chlorine and reduce the amount of TRC discharged. Plant personnel conduct a series of tests to determine the minimum amount of chlorine necessary to control biological growth in the condensers. Chlorination practices can then be adjusted in accordance with the test results. EPA believes that many plants undergoing such a program for once-through cooling water will be able to reduce chlorine doses approximately 70 percent; other plants may not need such control at all.

Dechlorination is chemical treatment that removes a significant amount of TRC from the cooling water before it is discharged from the plant. Although dechlorination reduces the amount of TRC to less than 0.14 milligrams per liter (mg/l) at any time, it does not eliminate it.

Alternatives to chlorine were explored for use in both cooling tower blowdown and once-through cooling water discharges. Substitutes for chlorine were often more expensive and in some cases had similar adverse environmental effects as chlorine.

Alternatives to the non-chlorine chemicals used in cooling towers to prevent scaling and corrosion in the cooling tower were also evaluated. For example, high levels of chromium and zinc are present in cooling tower blowdown when they are added for cooling tower maintenance. Some chemicals that are not priority pollutants, such as sodium bisulfate, potassium hydroxide, and sodium boropolyphosphate, were found to be available at no additional cost, and their expected use is reflected in EPA's proposal for control of toxic pollutants in cooling water blowdown.

Some plants use mechanical antifouling devices to control biological growth in the condensers. Two types of methods are used. One uses sponge rubber balls that are forced through the tubes under water pressure and then recycled. The second method uses brushes that are installed on the inside of each tube. Although this method eliminates chlorine use, it is expensive to install on existing sources. Furthermore, mechanical antifouling devices are not always adequate substitutes for chlorine.

(a) Once-Through Cooling Water—While a total prohibition against TRC

discharges is technologically and economically achievable for many plants with once-through cooling water, this is not the case for all plants. Thus, the Agency has structured the proposed TRC regulation in two parts. First, EPA proposed a general prohibition against TRC discharges. This would be BAT for the many plants that do not need chlorine for biofouling control. Second, plants that must use chlorine to control biofouling would use only the minimum amount demonstrated to be necessary at that plant (chlorine minimization). In no event could a TRC limitation exceed 0.14 mg/l concentration at the point of discharge, and generally TRC could not be discharged for more than 2 hours per day. Use of dechlorination in addition to chlorine minimization may be necessary in some cases to achieve this 0.14 mg/l limitation. These limitations would be established by the National Pollutant Discharge Elimination System (NPDES) permit writer on a case-by-case basis after reviewing the chlorine minimization study.

The Agency considered requiring minimization without specifying a maximum TRC concentration level, as well as specifying a maximum TRC level based on dechlorination technology, without first requiring chlorine minimization. Among other reasons, EPA rejected both options because many plants would have the economic and technological capability to achieve lower discharge levels than either of those options would achieve.

(b) Cooling Towers—For plants with cooling towers, the Agency did not require a chlorine minimization program; it would be unduly complex for this waste stream because chlorine may be used for cooling tower maintenance as well as for biological control. Further, the daily flow is commonly less than 1/100th of the once-through cooling water. Thus, for BAT the proposed regulations only limit the discharge of TRC to 0.14 mg/l based on dechlorination technology. For control of toxic pollutants discharged from cooling towers, the Agency has chosen chemical substitutes as the best technology to eliminate toxic pollutant discharges. These alternative chemicals should protect cooling towers from scaling, corrosion, and biological growth.

The proposed new source performance standards for once-through cooling water and cooling tower blowdown are the same as the proposed BAT.

Ash Transport Water—Coal or oil that is burned in a steam electric plant's boiler produces varying amounts of ash that require periodic collection and disposal. The relatively fine and light-weight ash is carried from the boiler with the flue gases and collected with air pollution control equipment. This type of ash is called "fly ash." The relatively bulky and heavy ash that settles at the bottom of the boiler's furnace is called "bottom ash." These two types of ash can be transported wet or dry to their ultimate or temporary disposal sites. (Only those plants that transport their ash using water would be affected by effluent regulations.)

The Agency is concerned about the presence of inorganic toxic substances in ash transport water. Pollutant concentrations in bottom ash transport water are typically lower than those in fly ash transport water. The Agency did not propose any further controls for existing sources of fly ash transport water beyond the current BPT regulation. EPA seriously considered proposing no discharge of fly ash transport water but concluded that there would be extremely high costs to the industry ($3.2 billion in capital costs for 1980–1985) that were not justified in view of the available data regarding the degree of pollutant reduction. The technology base for achieving this option would have been the use of transport methods that do not require the use of water (dry transport). The Agency is considering further sampling to clarify wastewater characteristics of ash pond discharges.

The Agency proposed a new source performance standard and a pretreatment standard for new sources that would prohibit the discharge of fly ash water for all new plants. EPA proposed the zero discharge limit because the technology to achieve it is clearly demonstrated and available since about half of the industry already uses dry methods of transport. Moreover, EPA believes that the costs for installing a dry fly ash handling system are not appreciably different than costs to install a wet ash sluicing system in a new plant.

Bottom Ash—The need to control pollutant discharges from bottom ash transport water was not demonstrated by the sampling data, since at most plants sampled the concentrations of pollutants detected in the bottom ash pond were less than the concentrations detected in the plant's inlet water. In addition, the concentrations of these pollutants were not only lower than those detected in fly ash ponds, but also exhibited a greater variability. Further, while high costs were associated with the various technological options, the data to quantify effluent reduction beyond BPT were inadequate. Thus, we proposed no further control beyond BPT. We also proposed to withdraw the current BAT requirement for partial recycle of bottom ash sluice water for conventional pollutants since this option does not pass the BCT cost-reasonableness test (40 CFR Part 405, August 23, 1978). This test involves a comparison of the cost and level of reduction of conventional pollutants from the discharge of POTWs to the cost and level of reduction of such pollutants from a class or category of industrial sources.

In addition to the regulatory options for cooling water and ash transport water, the Agency also examined the regulations for metal cleaning wastes. Metal cleaning wastes are generated periodically through operational cleaning of the boiler and steam generator tubes to remove scale and corrosion products that accumulate on the metal surfaces.

The 1974 BAT regulations require that all metal cleaning operations meet limits of 1.0 mg/l for copper and iron. In 1975 EPA narrowed the coverage of the rule to apply only to those metal cleaning operations adding chemicals. EPA now proposes to drop this distinction and to regulate all metal cleaning operations as metal cleaning wastes regardless of whether chemicals or water were used to clean the metal.

The Agency considered mechanisms other than effluent limitations guidelines for achieving the objectives of §§ 301, 304, and 306 of the Clean Water Act. The Agency concluded that the issuance of effluent guidelines, required by the consent decree in *Natural Resources Defense Council* v. *Train*, is the most effective means of achieving these objectives.

Summary of Benefits

Sectors Affected: The general public.

The major benefit of the proposed rule is the improvement of the aquatic environment through the reduction and/or elimination of discharges from steam electric generating facilities. Benefits to public health are less documented, although arsenic (refer to Table 1) is a suspected carcinogen.

The main effect of this rulemaking is to strengthen the control of chlorine. In addition, discharges of toxic pollutant additives from cooling towers were prohibited. Preliminary estimates indicate that the proposed regulations will result in the following reduction or elimination of pollutants by waste stream types:

(1) Once-Through Cooling Water: 17.4 million pounds per year of total residual chlorine.

(2) Cooling Tower Blowdown: a. 30,000 pounds per year of total residual

chlorine; b. 157,000 pounds per year of toxic pollutants (chromium, zinc, chlorinated phenolics, etc.). These discharges are estimated to be between 3 and 5 percent of all chlorine discharged into the Nation's waters. No estimate of the total amount can be made for the toxic pollutants.

Summary of Costs

Sectors Affected: Establishments engaged in the generation, transmission, and/or distribution of electric energy for sale; and users of the electric energy.

Based upon the proposed guidelines, EPA estimated that, on a national basis, the total capital expenditures required to bring existing plants into compliance with the proposed regulations for the period 1980 to 1985 would be $120 million (1980 dollars). This would represent about 0.05 percent of the total anticipated capital expenditures for the industry during the same period. With the addition of operation and maintenance costs, this means that the average electric bill for consumers would increase by approximately 0.04 percent. The estimated capital expenditures for plants coming on line between 1985 to 1995 are $80 million (1980 dollars).

Commenters have questioned some aspects of EPA's analysis, particularly with respect to the costs of treating metal cleaning wastes. EPA will be examining these comments closely before making any further decisions.

Summary of Net Benefits

EPA considered the cost and pollutant removal effectiveness of the various treatment alternatives in proposing the revised effluent limitations guidelines of October 14, 1980. The Agency will consider the benefit of the treatment alternatives in finalizing the guidelines. Further, the Agency will reevaluate its cost information in light of industry comments. Efforts to quantify the benefits and update the cost information are now under way.

Related Regulations and Actions

Internal: The scrubber systems used to comply with air pollution regulations may discharge 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 available technology 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.

Government Collaboration

The Nuclear Regulatory Commission, the Department of the Interior, and the Department of Energy have provided assistance by supplying the Agency with information and/or reviewing materials.

Timetable

NPRM—45 FR 68328, October 14, 1980.
Public Comment Period—Ended January 19, 1981.
Regulatory Impact Analysis—To be determined.
Regulatory Flexibility Analysis—None.
Final Rule—June 1982.

Available Documents

Development Document for Proposed Effluent Limitations Guidelines, New Source Performance Standards and Pretreatment Standards for the Steam Electric Power Generating Point Source Category (EPA 440/1–80/029–b, September 1980).

NPRM—45 FR 68328, October 14, 1980.

Economic Analysis of Proposed Effluent Limitations Guidelines, New Source Performance Standards and Pretreatment Standards for the Steam Electric Power Generating Point Source Category (EPA, August 1980).

Copies of the above reports can be obtained from National Technical Information Service (NTIS) (5285 Port Royal Road, Springfield, VA 22151. Telephone Number: (703) 321–8543) or the EPA contacts designated below. Public comments on the NPRM and transcript record of the pretreatment public meeting are available for inspection and copying at the EPA Public Information Reference Unit, Room 2404 (Rear) PM–213 (EPA Library), 401 M Street, S.W., Washington, DC 20460. The EPA information regulation (40 CFR Part 2) provides that a reasonable fee may be charged for copying.

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EPA–OW

BCT Effluent Limitations Guidelines Controlling the Discharge of Pollutants from Pulp, Paper, and Paperboard Mills into Navigable Waterways (Previously, Effluent Limitations Guidelines and Pretreatment Standards, and New Source Standards Controlling the Discharge of Pollutants From Pulp, Paper, and Paperboard Mills into Navigable Waterways) (40 CFR Parts 430 and 431; New)

Legal Authority

The Clean Water Act, §§ 301, 304, 308, and 501; 33 U.S.C. 1311, 1314, 1318, and 1361.

Reason for Including This Entry

The Environmental Protection Agency (EPA) thinks that this rule is important because it may have an annual effect of $100 million or more on the economy. The annual effect of this regulation is highly dependent on the final "best conventional pollutant control technology" (BCT) cost-reasonableness tests established by the Agency. The test used at the time of proposal would have resulted in costs of over $100 million. However, some tests now under consideration could result in far smaller or no costs for many subcategories of the industry. Also, the pulp, paper, and paperboard industry is the largest industrial discharger of conventional pollutants. In addition, the Best Conventional Technology Standards in general have been designated for review by the Presidential Task Force on Regulatory Relief.

Statement of Problem

The Clean Water Act requires the Environmental Protection Agency (EPA) to develop technology-based effluent limitations guidelines and standards for

discharges of pollutants into navigable waterways and the introduction of pollutants into publicly owned treatment works (POTWs) and to review such guidelines and standards at least once every 5 years. EPA promulgated effluent limitations guidelines reflecting the best practicable control technology currently available (BPT) and the best available technology economically achievable (BAT) and new source performance standards (NSPS) for six subcategories of the industry on May 9 and 29, 1974 (39 FR 16578, 40 CFR Part 431; and 39 FR 18742, 40 CFR Part 430). EPA promulgated BPT guidelines for the 16 remaining subcategories of the industry on January 6, 1977 (42 FR 1398, 40 CFR Part 430).

The Clean Water Act of 1977 requires industry to achieve, by July 1, 1984, effluent limitations requiring application of BAT for those pollutants that Congress declared "toxic" under § 307(a) of the Act. In addition to the emphasis on toxic pollutants reflected by BAT, the Act requires industry to achieve, by July 1, 1984, "effluent limitations requiring the application of the best conventional pollutant control technology" for the regulation of conventional water pollutants (biochemical oxygen demand (BOD), total suspended solids (TSS), fecal coliform, oil and grease, and pH). All pollutants that are neither toxic or conventional have been termed "non-conventional" and are subject to regulation under BAT.

EPA published proposed effluent limitations guidelines for BAT, BCT, and NSPS and pretreatment standards for existing and new sources (PSES, PSNS) for the pulp, paper, and paperboard and the builders' paper and board mills point source categories in the Federal Register on January 6, 1981 (46 FR 1430). At that time, the economic impact analysis for the proposed rules resulted in a combined annualized compliance cost of approximately $338 million (1978 dollars). As a result, the set of rules was designated as a major rule under E.O. 12291 in the regulatory agenda we published on June 30, 1981 (46 FR 34057).

Since proposal, several major issues have arisen (such as our requirement to apply a second cost effectiveness test) concerning the BCT methodology (which was separately promulgated on August 29, 1979). EPA does not believe these issues can be resolved as quickly as the other issues concerning the January 6 proposal. This is of concern to EPA, since there is a court-ordered schedule governing the rulemaking timetable for the non-BCT parts of the proposal. (This is the Consent Decree in *Natural Resources Defense Council* v. *Train*, 8 ERC 2120 (D.D.C. 1976), as modified, 12 ERC 1833 (D.D.C. 1979), and incorporated in § 307 of the CWA.) Accordingly, EPA has decided to separate the final BCT rulemaking from that of BAT, PSES, NSPS, and PSNS. Since the BAT, NSPS, PSES, and PSNS guidelines together will have an estimated annualized compliance cost of $60 million and are not expected to have any major adverse impact, EPA has concluded that these effluent guidelines are minor rules under the Executive Order. However, the proposed BCT rules for the pulp, paper, and paperboard category will remain designated as a major rule.

EPA estimates that there are 706 operating pulp, paper, and paperboard mills in the United States that discharge about 4.2 billion gallons per day of wastewater. Conventional pollutants routinely monitored in discharges from pulp, paper, and paperboard mills include biochemical oxygen demand, suspended solids, and pH. Excessive discharge of conventional pollutants may cause a depletion of the dissolved oxygen in streams, which can kill fish and other aquatic life.

Alternatives Under Consideration

The Agency considered various wastewater treatment technologies for controlling conventional pollutant discharges from the pulp, paper, and paperboard industry to the Nation's waterways. We are required to regulate conventional pollutants under the best conventional pollutant control technology (BCT) and under new source performance standards (NSPS). In setting these various standards, we have divided the industry into 25 separate subcategories to account for processing differences and differences in final products manufactured.

In evaluating the options for development of regulations, the Agency considered 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, and air pollution and solid wastes that the wastewater treatment systems may produce, the cost of these systems, and the economic effects of the regulations.

Conventionl pollutants currently regulated include: biochemical oxygen demand, total suspended solids (TSS), and pH. BCT requires that limitations for conventional pollutants be assessed in light of a "cost-reasonableness" test, which involves a comparison of the cost and level of reduction of conventional pollutants from the discharge of publicly owned treatment works to the cost and level of reduction of such pollutants from a class or category of industrial sources. This methodology compares subcategory removal costs (dollars per pound of pollutant, measuring from BPT to BCT) with costs experienced at POTWs. EPA applied this methodology in developing BCT effluent limitations.

In addition, EPA is required to apply a second internal industry-by-industry cost-effectiveness test (*American Paper Institute* v. *EPA*, No. 79–1511/4 Fourth Cir., July 28, 1981). Because the Court's ruling was issued after the BCT guidelines were proposed, we have not yet applied the second test to this rulemaking.

Five technology alternatives were considered under BCT to reduce further the discharge of BOD and TSS from pulp, paper, and paperboard mills:

Alternative (A) includes BPT plus additional production process controls to reduce raw waste loads.

Alternative (B) includes BPT plus chemically assisted clarification, which involves the use of different chemicals to agglomerate dissolved and colloidal particles in treated effluents that are not readily removed from solution by simple settling, for those subcategories where BPT was based on biological treatment or BPT plus biological treatment for subcategories where BPT was based on primary treatment only.

Alternative (C) includes Alternative (A) plus chemically assisted clarification for those subcategories where BPT was based on biological treatment or Alternative (A) plus biological treatment for those subcategories where BPT was based on primary treatment only.

Alternative (D) includes upgrading of existing BPT to attain effluent levels characteristic of best performing mills.

A new alternative (E), which was not proposed, would establish BCT at the same level of stringency as BPT.

Proposed BCT effluent limitations are based on Alternative (D) for those subcategories that pass the BCT cost-reasonableness test as promulgated (44 FR 50732, August 29, 1979). In those subcategories where Alternative (D) fails the cost-reasonableness test, the less stringent Alternative (A) forms the basis of BCT if it passes the cost-reasonableness test. There are two exceptions—facilities where dissolving sulfite pulp and builders' paper or roofing felt are manufactured—where neither Alternatives (A) or (D) were chosen. Instead, BCT is set at the BPT level because of projected severe economic impact.

EPA selected Alternative (D) as the primary basis of BCT effluent limitations because it yields significant BOD and TSS removals at substantially less cost to the industry than would Alternatives (B) or (C). Alternative (D) technology has proved successful in full-scale operation throughout the entire range of process types and allows considerable flexibility to the industry in achieving BCT.

A major issue in this rulemaking has been the methodology used to establish BCT limitations and, particularly, the methodology used to determine the POTW comparison figure used in the BCT cost-reasonableness test. EPA's methodology for computing the POTW cost comparison figure was upheld in *American Paper Institute* v. *EPA*. However, the Court directed the Agency to develop and apply an internal industry-by-industry cost-effectiveness test and to correct major statistical errors in the computation of the POTW benchmark. These BCT developments have had a major impact on the progress of this rulemaking. Consequently, EPA has extended the period for comments on all issues relating to proposed BCT effluent limitations for this point source category. This extension will last until 60 days after EPA proposes a revised POTW cost comparison figure.

Summary of Benefits

Sectors Affected: The general public and manufacturers of pollution abatement equipment.

The major benefit of the proposed rule will be the reduction or elimination of conventional pollutant discharges from pulp, paper, and paperboard mills.

If the rule is promulgated as proposed, the discharges of BOD and TSS from pulp, paper, and paperboard mills will be substantially reduced by the following amounts:

BOD: 126 million pounds per year (34 percent).

TSS: 245 million pounds per year (40 percent).

The current discharge of 365 million pounds per year of BOD from pulp, paper, and paperboard mills accounts for about 45 percent of the total industrial contribution of BOD. Therefore, these additional reductions represent a significant portion of current conventional pollutant discharge to the Nation's waterways.

Summary of Costs

Sectors Affected: Pulp, paper, and paperboard mills; and users of pulp, paper, and paperboard products.

The Agency estimates that the capital and total annual costs (1978 dollars) for all U.S. pulp, paper, and paperboard mills to attain levels of BOD and TSS associated with the proposed BCT effluent limitations will be $918 million and $280 million, respectively. These costs are expected to result in price increases of such products as newsprint, toilet tissue, writing papers, and bleached kraft foldingboard ranging from zero to 3.6 percent.

These regulations should not require additional resources of EPA or State permit authorities.

Summary of Net Benefits

No estimates are available at this time.

Related Regulations and Actions

Internal: Requirements for the management of solid wastes under the Resource Conservation and Recovery Act may affect the cost of installation and operation of various wastewater treatment technologies.

External: None.

Government Collaboration

The Department of Commerce has provided assistance by reviewing materials.

Timetable

NPRM—46 FR 1430, January 6, 1981.
Public Hearing—March 6, 1981.
Regulatory Impact Analysis—Available with Final Rule.
Regulatory Flexibility Analysis—None.
Public Comment Period—Ended June 9, 1981 for BAT, PSES, PSNS, and NSPS. Comment period on BCT will end 60 days after EPA proposes a change in the POTW cost comparison figure.
Final Rule—August 1982.

Available Documents

Development Document for Proposed Effluent Limitations Guidelines, New Source Performance Standards, and Pretreatment Standards for the Pulp, Paper, and Paperboard and the Builders' Paper and Board Mills Point Source Categories, EPA, December 1980 (copies may be obtained from: Distribution Officer, Effluent Guidelines Division (WH-522), U.S. Environmental Protection Agency, Washington, DC 20460, (202) 426-2724).

Economic Impact Analysis of Proposed Effluent Limitations Guidelines, New Source Performance Standards and Pretreatment Standards for the Pulp, Paper, and Paperboard Mills Point Source Category, EPA, December 1980 (copies may be obtained from: Renee Rico, Office of Analysis and Evaluation (WH-586), U.S. Environmental Protection Agency, Washington, DC 20460; (202) 426-2617).

Development Document for Effluent Limitations Guidelines and New Source Performance Standards for the Unbleached Kraft and Semichemical Pulp Segment of the Pulp, Paper, and Paperboard Mills Point Source Category, EPA, May 1974, National Technical Information Service (NTIS) Number PB-238833.

Development Document for Effluent Limitations Guidelines (BPCTCA) for the Bleached Kraft, Groundwood, Sulfite, Soda, Deink, and Nonintegrated Paper Mills Segment of the Pulp, Paper, and Paperboard Point Source Category, EPA, December 1976 (available for review at EPA Headquarters Library, 401 M Street, S.W., Washington, DC 20460).

Preliminary Data Base for Review of BATEA (Best Available Technology Economically Achievable) Effluent Limitations Guidelines, NSPS, and Pretreatment Standards for the Pulp, Paper, and Paperboard Point Source Category, prepared for the U.S. Environmental Protection Agency by the Edward C. Jordan Co., Inc., Portland, Maine, June 1970 (available for review at EPA Headquarters and Regional Libraries only).

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EPA-OW

Effluent Limitations Guidelines and Pretreatment Standards, and New Source Standards Controlling the Discharge of Pollutants from Metal Finishing Facilities (40 CFR Part 413; Revision)

Legal Authority

The Clean Water Act, 33 U.S.C. 1311, 1314, 1316, 1317, 1318, and 1361.

Reason for Including This Entry

The Environmental Protection Agency (EPA) believes this regulation is important because it will prevent the annual discharge into the water and into publicly owned treatment works (POTWs) of approximately 28 million pounds of toxic metals and 164 million pounds of toxic organics. It may have an annual effect on the economy of more than $100 million. In addition, the General Pretreatment Regulations, which are closely related to this

regulation, have been designated for review by the Presidential Task Force on Regulatory Relief.

Statement of Problem

The Clean Water Act requires the Environmental Protection Agency to limit the industrial discharge of pollutants to the waters of the United States and the introduction of pollutants into publicly owned treatment works. (In general, POTWs store or treat municipal sewage or liquid industrial wastes and are owned by a State or municipality.) This is accomplished for categories and classes of direct dischargers, i.e., industries that discharge directly to the Nation's waters, through effluent limitations guidelines based on best practicable technology (BPT), best available technology (BAT), best conventional technology (BCT), and new source performance standards (NSPS). For categories and classes of indirect dischargers, i.e., industries that discharge to POTWs, limits are established through pretreatment standards for existing sources (PSES), and pretreatment standards for new sources (PSNS). (In general, pretreatment is the treatment of pollutants prior to the introduction of such pollutants into a POTW.) EPA must review these effluent limitation guidelines and pretreatment standards at least once every 5 years.

The Clean Water Act requires industry to achieve, by July 1, 1984, effluent limitations requiring application of BAT for toxic pollutants idenified under §307(a) of the Act. The Act requires industry to acheive, by July 1, 1984, effluent limitations requiring the application of BCT for conventional water pollutants (biochemical oxygen demand, suspended solids, fecal coliform, oil and grease, and pH). All pollutants that are neither "toxic" nor "conventional" are considered "nonconventional" pollutants and are subject to regulation under BAT 3 years after the date of promulgation of the regulation but in no case later than July 1, 1987.

The Metal Finishing Category combines two previous studies conducted by the Agency: electroplating and mechanical products. Although there are no existing effluent limitations or pretreatment standards for the mechanical products category, the results of our earlier study have been incorporated into the metal finishing rulemaking. The electroplating study led to the promulgation on September 7, 1979 of pretreatment standards for existing sources based on BPT (44 FR 52590). These standards were subsequently amended on January 28, 1981 (46 FR 9462). Plants discharging 38,000 liters (10,000 gallons) or more per day must meet limitations for the dicharge of cyanide, copper, nickel, chromium, zinc, lead, cadmium, and, in some cases, silver. Plants discharging less than 38,000 liters (10,000 gallons) per day must meet limitations for the discharge of cadmium, lead, and cyanide. These standards only apply to indirect discharging electroplaters, i.e., those that discharge to POTWs; there are no currently effective standards for direct discharging electroplaters. The electroplating pretreatment standards took effect on March 30, 1981 and establish a compliance deadline of January 28, 1984 for non-integrated facilities and 3 years after the effective date of 40 CFR 403.6(e) (the "combined wastestream formula") for integrated facilities. Section 403.6(e) has not yet taken effect. Therefore, the integrated facilities do not have to comply with the electroplating standards yet. (The term "integrated facility" is defined in 40 CFR § 413.02(h); in general, it means a facility that performs electroplating as only one of several operations, has significant quantities of non-electroplating process wastewater, and its electroplating and non-electroplating process wastewater lines are combined prior to treatment.)

The metal finishing regulations we are proposing are more comprehensive than the electroplating regulations and, with two exceptions, are expected to supersede the electroplating pretreatment standards. The exceptions apply to the job shop and printed circuit board segments of the electroplating industry currently covered by the electroplating pretreatment standards. Since the publication of the final electroplating amendments on January 28, 1981, the Agency has reviewed the data that serve as support material for the new metal finishing regulations. EPA has agreed, in view of the estimated economic impact, not to apply more stringent limitations for metals and cyanide to electroplating job shops (operations plating goods owned by other companies) and printed circuit board manufacturers that were covered by the existing electroplating pretreatment standards.

However, the Agency may propose limitations on the dumping of toxic organic solvents by all electroplaters, including indirect discharging job shops and printed circuit board manufacturers. This additional control is expected to result in very low cost to the industry and, in fact, is predicted in many cases to result in cost savings due to the reclamation value of spent solvents. We expect that most operators would store their spent solvents in separate containers and sell them to a solvent reclaimer. The limitation would take the form of a pretreatment standard for total toxic organics. As an alternative to monitoring for these organics, the plant operator or owner would be permitted to certify that toxic organic solvents are not being dumped into the plant's wastewater. Such certification would obviate the need for monitoring, including monitoring for other toxic organics that might come from sources other than solvents.

The proposed metal finishing regulation includes electroplating operations among the 45 total regulated processes, such as painting, machining, hot dip coating, and others. With the exceptions noted above, direct and indirect dischargers for both existing and new sources will be covered.

EPA estimates that there are approximately 13,000 metal finishing plants in the United States, which discharge about 2 billion gallons per day of wastewater. During EPA's sampling program, a number of toxic pollutants, including silver, copper, chromium, nickel, lead, cadmium, zinc, cyanide, and various toxic organics, were found in significant concentrations. Although there are variations in toxicity among the toxic organic pollutants, a number are known carcinogens. The toxic metals and cyanides are, in varying degrees, hazardous to human, aquatic and plant life. The toxic metals may also contaminate sludges resulting from wastewater treatment and make them unsuitable for recycling into agricultural use as a soil conditioner. Conventional pollutants of concern are total suspended solids (TSS) and oil and grease.

Toxic metals can enter wastewater as a result of any one of 45 operations considered to be metal finishing operations, while cyanide can enter wastewater through electroplating, heat treating, burnishing, and tumbling operations. Toxic organics are generally present in metal finishing wastewater in very small quantities. EPA believes the presence of high concentrations of toxic organics detected in the sampling program is due to the dumping of waste solvents.

Alternatives Under Consideration

In evaluating options for development of regulations, the Agency takes into account several important factors, including the quantity and type of pollutants discharged, available treatment technologies, the air pollution and solid waste that the treatment

systems may produce, and the cost of these systems. In selecting a treatment technology as the basis for a regulation, the Agency considers the criteria provided in § 304(b) of the Clean Water Act (33 U.S.C. 1314(b)). For example, the choice of technology systems for BAT and new source regulations depends on EPA's consideration of the age of equipment and facilities involved; the process employed; engineering aspects of the application of various control techniques; process changes; cost of achieving such effluent reduction; non-water quality environmental impact; and such other factors as the Administrator deems appropriate.

For metal finishing, EPA plans to propose BPT and NSPS regulations controlling toxic and conventional pollutants and PSES, PSNS, and BAT regulations controlling toxic pollutants.

For BPT, the technology being considered includes isolated hexavalent chromium reduction, cyanide destruction, emulsion breaking/skimming of excessive oily wastes, followed by precipitation/clarification and toxic organic control by in-plant isolation and contract hauling of waste solvent degreasers. The Agency refers to this treatment chain as a "precipitation clarification" system. With the exception of emulsion breaking and toxic organic control, this is the same technology that is the basis for the current Electroplating Pretreatment Standards for Existing Sources.

Two technologies are being considered for BAT and PSES regulations. Option 1 is the same precipitation/clarification system under consideration for BPT. In both the BPT and BAT-Option 1 systems, the control of toxic organics would be achieved by setting an effluent limitation or pretreatment standard for total toxic organics and then permitting demonstration of compliance through certification by a plant operator that solvent degreasers are not being dumped into the wastewater. Option 2 includes all of Option 1 plus the addition of filtration. New source technology systems (NSPS and PSNS) being considered include the precipitation/clarification/filtration system with inplant controls to achieve zero discharge from lead and cadmium plating.

EPA estimates that the precipitation/clarification process would remove about 97.6 percent of the raw waste toxic metals from metal finishing wastewater, assuming there is no existing treatment in place. An estimated additional 0.7 percent of the raw waste toxic metals would be removed by the addition of filtration, assuming no filtration is presently in place.

Because of the projected significant economic impact on the direct discharging job shop segment of the industry (see Summary of Costs below), EPA is also considering alternative regulatory approaches such as subcatorization of the industry by job shops and captive shops (captive shops perform electroplating operations on their own materials), limited treatment requirements, and size exemptions based on wastewater flow.

Summary of Benefits

Sectors Affected: The general public and manufacturers of wastewater treatment equipment.

The metal finishing industry is a major industrial source of water pollution in the United States. If precipitation/clarification is selected as the basis for the proposed metal finishing BAT effluent limitation guidelines and pretreatment standards, the metal finishing regulations would prevent the discharge into the Nation's waters and POTWs of approximately 28 million pounds per year or about 97 percent of the toxic metals currently discharged by the metal finishing industry. (The 28 million pound/97 percent removal is in addition to that currently being achieved by treatment equipment already in place.) The proposed rule would also prevent the discharge of approximately 164 million pounds per year of toxic organics by preventing the dumping of organic solvents at little or no cost to metal finishing firms. These levels of removal constitute approximately one third of the total toxic metals and organics removal that could be achieved by all industrial sources for which effluent limitations and standards have been planned or promulgated. Finally, a significant reduction in cyanide, TSS, and oil and grease pollution would be achieved by the proposed regulations.

Although it is not possible to estimate the impact on human health, the proposed rules would lead to a significant improvement in water quality in areas populated with metal finishing plants. Manufacturers of wastewater treatment equipment would indirectly benefit by this regulation through increased demand for their products.

Summary of Costs

Sectors Affected: Metal finishing plants and users of products from metal finishing plants.

The Agency currently estimates that a total capital expenditure of $340 million in 1980 dollars may be necessary for installation of precipitation/clarification technology systems (Option 1) and an additional $723 million would be required if filtration (Option 2) were chosen as part of the BAT technology system. Both of these estimates assume some treatment equipment already in place. The total annual costs for the precipitation/clarification system are estimated to be $102 million, while the total incremental annual costs for the addition of the filtration system are estimated to be $217 million. These large aggregate costs are, in part, due to the size of the industry: current EPA estimates place the total number of plants at over 13,000. Although these costs do not include the costs for control of toxic organics, EPA believes such control can be achieved at little or no cost to the industry by proper solvent segregation and resale of spent solvents to reclaimers.

Despite the high projected industry-wide costs, the impact on the direct and indirect discharging captive shops, which comprise approximately 80 percent of the metal finishing plants, is projected to be low. They are projected to experience no plant closures due to metal finishing regulations based on precipitation/clarification of only 0.3 percent. If filtration is added to precipitation/clarification, captive shop closures are projected to be 0.1 percent. The Agency projects an employment loss of 0.1 percent or 1,841 jobs for this option. The impact on direct discharging job shiops is negligible for Option 1 with no plant closures expected. For Option 2 (precipitation/clarification/filtration), EPA projects a closure rate of 37 percent of job shops and an employment loss percent of 16 percent or 1,122 jobs.

No additional closures are expected for indirect discharging job shops and printed circuit board manufacturers already subject to the Electroplating Pretreatment Standards for Existing Sources, because EPA does not plan to impose more stringent limitations on such facilities. (See Statement of Problem above.)

The metal finishing regulations are estimated to affect prices of metal finishing products by about 0.3 percent if limitations are not based on filtration and by 0.72 percent if based on filtration. These price increases could affect many items in the wide range of metal-based products (e.g., automobiles, household appliances, and machinery). EPA will carefully consider these costs prior to proposal and throughout the rulemaking. Because this rule may have an annual effect on the economy in excess of $100 million and therefore is a major rule under Executive Order 12291, the Agency will conduct a Regulatory

Impact Analysis (RIA). EPA plans to complete the RIA in 1981.

These regulations should not require additional resources of EPA or State permit authorities.

Summary of Net Benefits

No estimates are available at this time. However, we project that, in general, net benefits will take the form of significantly improved water quality in areas populated with metal finishing plants.

Related Regulations and Actions

Internal: Requirements for the management of solid wastes under the Resource Conservation and Recovery Act may affect the cost of installation and operation of various wastewater treatment technologies. The General Pretreatment Regulations, 40 CFR Part 403, are being revised at the request of the Presidential Task Force on Regulatory Relief. The results of this review may affect these regulations.

External: None.

Government Collaboration

The Department of Commerce has provided assistance by reviewing materials.

Timetable

NPRM—January 1982.
Public Comment Period—60 days following publication of NPRM.
Regulatory Impact Analysis—Second half of 1981.
Regulatory Flexibility Analysis—Under preparation.
Final Rule—1982.

Available Documents

Development Document for Existing Source Pretreatment Standards for the Electroplating Point Source Category, EPA, April 1979, National Technical Information Service (NTIS) Number PB80-196488.

Draft Development Document for Effluent Limitation Guidelines and Standards for the Metal Finishing Point Source Category, prepared for the U.S. Environmental Protection Agency by Hamilton Standard, Division of United Technologies (available for review at EPA Headquarters and Regional Libraries only).

Economic Impact Analysis of Proposed BATEA Regulations for the Metal Finishing Industry (available for review at EPA Headquarters and Regional Libraries in mid-July).

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EPA-OW

Effluent Limitations Guidelines and Standards Controlling the Discharge of Pollutants from Foundries to Navigable Waterways and the Pretreatment of Wastewaters Introduced into Publicly Owned Treatment Works (40 CFR Part 420; New)

Legal Authority

The Clean Water Act, as amended, §§ 301, 304, 306, 307, and 501, 33 U.S.C. 1311, 1314, 1316, 1317, and 1351.

Reason for Including This Entry

The Environmental Protection Agency (EPA) believes this regulation is major because it will provide control of discharges from one of the largest metal manfacturing industries in the United States. Approximately 26 billion gallons of wastewater, containing large amounts of toxic pollutants, are annually discharged to navigable waterways and publicly owned treatment works (POTWs). Although EPA has not completed its economic analysis, we expect the regulation will have a substantial economic impact.

Statement of Problem

The Clean Water Act requires the Environmental Protection Agency (EPA) to develop technology-based effluent limitations guidelines and standards for discharge of pollutants into navigable waterways and the introduction of pollutants into publicly owned treatment works and to review such guidelines and standards at least once every 5 years. EPA has not previously promulgated effluent limitations guidelines for the source category that covers foundries.

The Clean Water Act of 1977 requires industry to achieve, by July 1, 1984, effluent limitations requiring application of the best available technology economically achievable (BAT) for those pollutants that Congress declared "toxic" under § 307(a) of the Act. In addition to the emphasis on toxic pollutants reflected by BAT, the Act requires industry to achieve, by July 1, 1984, "effluent limitations requiring the application of the best conventional pollutant control technology" (BCT) for the regulation of conventional water pollutants (biochemical oxygen demand, total suspended solids (TSS), fecal coliform, oil and grease, and pH). All pollutants that are not either toxic or conventional have been termed "nonconventional" and are subject to regulation under BAT.

The foundries category consists of those plants that cast metal. These plants remelt metal to form a cast intermediate or final product by pouring or forcing the molten metal into a mold. Ingots, pigs, or other cast shapes related to primary metal smelting are not included in this category. Casting plants are included within the Standard Industrial Classification (SIC) Major Group 33—Primary Metal Industries. The parts of this major group that are covered by the category we are discussing here are the SIC subgroups 3321, 3322, 3324, 3325, 3361, 3362, and 3369. The types of metal associated with these SIC codes and considered for regulation under this category are: gray iron, ductile iron, malleable iron, steel, aluminum, copper, lead, magnesium, zinc, and their respective alloys.

A 1976 EPA survey indicated that over 3,600 foundries are located in the United States, employing approximately 350,000 workers and producing over 19 million tons per year of cast products. The foundry industry ranks fifth among all manufacturing industries based on "value added by manufacture," according to data issued by the U.S. Department of Commerce in 1970 (Survey of Manufacturers, SIC Codes 29-30).

An estimated 119 billion gallons of process wastewater result each year from the manufacture of castings. Ninety-three billion gallons of process wastewater (or 78 percent) are recycled. Twenty-three billion gallons (or 19 percent) of the total process wastewater flow are discharged to navigable waters. Slightly less than 3 percent (or 3 billion gallons) is annually introduced into POTWs.

Seventy-nine toxic pollutants have been found to be present in foundry process wastewaters. Major toxic pollutants of concern in foundry process wastewaters are: copper, lead, nickel, zinc, toxic phenolic compounds, and other toxic organic compounds. Conventional and nonconventional pollutants are also present in foundry wastewaters. These pollutants include: total suspended solids, oil and grease, pH, ammonia, sulfide, fluoride, manganese, iron, and nontoxic total phenols.

Alternatives Under Consideration

The Agency is evaluating the capabilities and costs of various wastewater treatment technologies for controlling pollutant discharges from casting operations. A primary focus of

this effort is to promulgate regulations to control the discharge of toxic pollutants by direct dischargers (i.e., those who discharge wastewater to surface waters) and indirect dischargers (i.e., those who discharge to POTWs).

To establish discharge levels for control of pollutants at the BPT (best practicable technology currently available), BCT, BAT, NSPS, (new source performance standards), PSES (pretreatment standards for existing sources), and PSNS (pretreatment standards for new sources) levels of treatment, EPA is considering various treatment systems. Most alternatives involve the installation of add-on treatment components (end-of-pipe treatment equipment that can be added in series to existing treatment equipment) in addition to in-plant controls (control equipment that is physically located within the plant).

EPA is considering in-plant controls as part of the technologies identified as best practicable and best available technologies. The in-plant control measures considered include the reduction of wastewater generation via process water reduction and recycle. Reduction in the volume of water used in manufacturing and the increase in the amount of water recycled reduces the volume of wastewater requiring treatment before discharge and the attendant treatment costs.

Add-on treatment for toxic pollutant control could include: settling and recycle; lime, settle, and recycle; chemical oxidation; granular activated carbon; biological treatment pressure filtration; and pressure filtration accompanied with sulfide addition. EPA has not yet determined, but will before proposal, which treatment technologies and effluent levels are appropriate for this category.

Summary of Benefits

Sectors Affected: The general public.

The major benefits of this regulation will be the reduction or elimination of toxic pollutant discharges to the Nation's waterways from metal molding and casting facilities. The quantity of pollutants removed from discharges to the environment under this regulation will be significant.

Effluent levels considered for a proposed BPT (generally based on lime, settle, and 100-percent recycle technology) regulation would result in the removal of an estimated 0.93 million kilograms (2.1 million pounds; 99 percent removal) per year of toxic pollutants and 111.3 million kilograms (245 million pounds; 99 percent removal) per year of other pollutants (primarily suspended solids and oils and greases) above the current discharge levels for these pollutants.

Compliance with the BAT effluent limitations under consideration would result in the removal of the final 1 percent of pollutants, and estimated 3,300 kilograms (7,300 pounds) per year of toxic pollutants, and 175,000 kilograms (386,000 pounds) per year of other pollutants discharged at the BPT level of treatment.

Summary of Costs

Sectors Affected: Manufacturing of ferrous and nonferrous cast products, and users of these products.

The Agency is presently conducting an economic analysis to determine the effects of alternative effluent limitations on the foundry industry and to determine if this regulation meets the criteria established by Executive Order 12291 for performing a Regulatory Impact Analysis. If such criteria are met the Agency will undertake a Regulatory Impact Analysis for this category.

The economic analysis assesses the financial impacts on the foundry industry in terms of the regulation's required capital and annual costs. The specific impacts under the analysis are: plant closures, unemployment, potential price increases, and production changes. To determine major impacts, such as plant closures and unemployment, the costs of compliance are compared to the maximum amount of income available for investment by a foundry. No estimates of the possible effects of this regulation are available at this time.

In addition, §§ 304(b) and 306 of the Act require EPA to consider the nonwater quality environmental impacts of certain regulations. In compliance with these provisions, EPA will be considering the effect of this regulation on air pollution, solid waste generation, water consumption, and energy consumption.

The costs of compliance with proposed Resource Conservation and Recovery Act (RCRA) regulations may not be specifically included for consideration at the time of proposal. The Agency will, however, determine before promulgation of a Final Rule whether there are any significant economic impacts due to RCRA costs.

The Agency has recently completed by phone survey an update of its data base to reflect recent installation of pollution control equipment during the 1977 through 1980 period. Due to the recent completion of this data collection activity and the ongoing analysis, revised cost data are not available for publication at this time.

Summary of Net Benefits

No estimates are available at this time.

Related Regulations and Actions

Internal: The elimination or reduction of one form of pollution may aggravate other environmental problems. Presently, the effects of water regulations on air pollution and on water and energy consumption are likely to be minimal when compared to the total consumption of water and energy by the foundry industry and when compared to the total air emissions controlled by the industry.

However, foundry waste treatment sludges may be identified as hazardous under the regulations implementing Subtitle C of RCRA. If these wastes are identified as hazardous, they will come within the scope of RCRA's "cradle to grave" hazardous waste management program, which covers hazardous wastes from the point of generation to point of final disposition. In addition, RCRA regulations establish standards for hazardous waste treatment, storage, and disposal facilities allowed to receive such wastes. Even if these wastes are not identified by EPA as hazardous, they must still be disposed of in compliance with Subtitle D of RCRA.

External: This proposed regulation would set minimum requirements on a national level that would supersede less stringent State or local regulations. However, any State or locality may require more stringent limitations if there are water quality problems.

Government Collaboration

None.

Timetable

NPRM—August 1982.
Final Rule—October 1983.
Public Hearing—To be determined.
Public Comment Period—60 days following publication of NPRM.
Regulatory Impact Analysis—To be determined.
Regulatory Flexibility Analysis—Publication date to be determined.

Available Documents

Draft Development Document for Effluent Limitations Guidelines and New Source Performance Standards for Foundries; Metal Molding and Casting Point Source Category, April 1980, EPA 440/1-80/070-a. The Development Document may be obtained from the Agency Contact.

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EPA-OW

Effluent Limitations Guidelines and Standards Controlling the Discharge of Pollutants from Iron and Steel Manufacturing Plants to Navigable Waterways and the Pretreatment of Wastewaters Introduced into Publicly Owned Treatment Works (40 CFR Part 420; New for BAT, Revision for BPT

Legal Authority

The Clean Water Act as amended, §§ 301, 304, 306, 307, and 501, 33 U.S.C. 1311, 1314, 1316, 1317, and 1351.

Reason for Including This Entry

The Environmental Protection Agency (EPA) believes this regulation is important because it will provide control of discharges into the water from the largest metal manufacturing industry in the United States. It will have an annual effect on the economy of more than $100 million.

Statement of Problem

The Clean Water Act requires the Environmental Protection Agency (EPA) to develop technology-based effluent limitations guidelines and standards for discharge of pollutants into navigable waterways and the introduction of pollutants into publicly owned treatment works (POTWs) and to review such guidelines and standards at least once every 5 years. EPA promulgated effluent limitations guidelines reflecting the best practicable control technology currently available (BPT) and the best available technology economically achievable (BAT) and new source performance standards (NSPS) for twelve subcategories of the industry on June 28, 1974 (39 FR 24114, 40 CFR Part 420). EPA promulgated BPT guidelines for 14 remaining subcategories of the industry on March 29, 1976 (41 FR 12990, 40 CFR Part 420). These regulations were remanded (Phase I remanded November 7, 1975; Phase II remanded September 14, 1977) to the Agency by the Third Circuit Court (see below).

The Clean Water Act of 1977 requires industry to achieve, by July 1, 1984, effluent limitations requiring application of BAT for those pollutants that Congress declared "toxic" under § 307(a) of the Act. In addition to the emphasis on toxic pollutants reflected by BAT, the Act requires industry to achieve, by July 1, 1984, "effluent limitations requiring the application of the best conventional pollutant control technology" (BCT) for the regulation of conventional water pollutants (biochemical oxygen demand, total suspended solids (TSS), fecal coliform, oil and grease, and pH). All pollutants that are not either toxic or conventional have been termed "non-conventional" and are subject to regulation under BAT.

The Agency promulgated regulations for the iron and steel manufacturing industry on June 28, 1974 (Phase I or steelmaking operations), and on March 29, 1976 (Phase II or forming, finishing, and specialty steel segments). The U.S. Court of Appeals for the Third Circuit remanded the regulations for several reasons, including procedural errors and the Agency's failure to consider adequately (1) the impact of plant age on the cost or feasibility of retrofitting, (2) site-specific costs, (3) consumptive water use, (4) the economic condition of the industry, and (5) the achievability of certain limitations (*AISI et al.* v. *EPA)* 526 F. 2d 1027 (3d Cir. 1975) and *AISI et al.* v. *EPA)* 568 F. 2d 284 (3d Cir. 1977).

The Agency developed and proposed (46 FR 1858, January 7, 1981) a regulation to replace the regulations remanded by the court. This regulation reflects new information from industry surveys and sampling and is designed to remedy the deficiencies found by the court. In addition, the proposed regulation includes BCT and BAT regulations to control conventional, nonconventional, and toxic pollutants, as required by the 1977 amendments to the Clean Water Act. The proposed regulation pertains to effluent limitations and standards for the manufacturing operations covered by the 1974 and 1976 regulations.

Based upon comments received at the close of the public coment period, May 8, 1981, the Agency contacted the American Iron and Steel Institute (AISI) and a number of steel companies in order to clarify comments that had been received and to request additional data related to current plant discharges. The Agency is currently reviewing and assessing this new information.

Further, as a result of Executive Order 12291, the Iron and Steel regulation has been designated a major rule (i.e., will have an effect of $100 million or more on the economy) and is currently undergoing a Regulatory Impact Analysis. This in-depth analysis, together with new information provided at the close of the comment period, could result in significant changes to both the cost and pollutant removal estimates that are contained in the proposed regulation.

The iron and steel manufacturing category (Standard Industrial Classification Codes 3312, 3315, 3316, 3317, and parts of 3479) is comprised of approximately 680 manufacturing facilities nationwide. The amount of process water used by these facilities is estimated to be 6.3 million gallons per day. Because of these large flows, the quantity of pollutants discharged is very large, even though the concentration of pollutants in a waste stream sometimes may be relatively small. A Development Document is available that presents the concentration and load data used in the development of this proposed regulation.

During its sampling program, EPA detected in iron and steel manufacturing wastewaters significant levels of copper, chromium, cyanide, iron, nickel, lead, zinc, oil and grease, ammonia, sulfide, fluoride, and suspended solids. Additionally, the Agency found a wide variety of organic materials including benzene, phenols, and aromatic compounds in wastewaters from coke manufacturing, from blast furnaces which use the coke, and in cold rolling operations. The heavy metals may produce cumulative toxic effects on the aquatic environment and on humans through impacts on drinking water and foods (particularly fishes), and many of the organic compounds are known or suspected carcinogens. Ammonia, a "nonconventional" pollutant, is proposed for control because of its high aquatic toxicity at concentrations present in wastes from some operations in this industry.

Alternatives Under Consideration

The Agency evaluated the capabilities and costs of various wastewater treatment technologies for controlling pollutant discharges from iron and steel manufacturing facilities. A primary focus of this effort was to promulgate regulations to control the discharge of toxic pollutants by direct (to surface waters) and indirect (to POTW) dischargers.

The technologies for the control of wastewater pollutants include both end-of-pipe treatment and methods to reduce water usage. End-of-pipe treatment, best applied after recycle to reduce wastewater volumes, includes, where appropriate, cyanide oxidation, hexavalent chromium reduction, metals precipitation, oil removal, suspended solids (including precipitated metals) removal, and chemical and biological destruction of ammonia and toxic organic materials. The applicability of these technologies is dependent on the type of waste generated by the subcategory or segment; i.e., not all of the listed technologies are applicable to all sources. However, within each

subcategory or subdivision the selected technologies are generally applicable to all iron and steel manufacturing facilities within that segment.

In evaluating options for this regulation the Agency considered several important factors, including: the quantity and type of pollutants generated by each wastewater source; the treatment technologies available for application to that wastewater source; air, solid waste, energy, and other non-water quality environmental aspects of the proposed regulation; and the cost and economic impact of applying each of the several options. The principal technologies selected as the basis for the proposed regulation are: waste volume reduction by recycle, extended biological treatment (byproduct coke subdivision), alkaline chlorination and dechlorination (sinter and iron making subcategories), slag evaporation (iron making subcatergory where appropriate), lime precipitation, filtration, process changes (cold rolling subdivision), and cascade rinsing (pickling and hot coating subcategories). Cold rolling is an operation in which unheated steel is passed through rolls or otherwise processed to reduce its thickness, to produce a smooth surface, or to develop controlled mechanical properties in the steel.

Pickling is an operation in which steel products are immersed in acid solutions to chemically remove oxides and scale and those rinsing operations associated with such immersion.

Hot coating is an operation in which steel products are coated with other metals by immersion of the steel product in a molten bath of the coating metal and the related operations preceding and subsequent to the immersion phase.

The Agency also evaluated additional alternatives including such control and treatment technologies as sulfide precipitation to reduce toxic metals discharges and the use of multiple effect evaporators to achieve zero discharge. The environmental benefits that could be achieved, beyond these achievable by the regulation as proposed, are very small and the costs in both dollars (capital and annual) and energy are very large. The Agency determined these technologies not to be justifiable.

The Agency is gathering additional information on wastewater characteristics, on costs, and on the availability and effectiveness of technolgies, particularly on the hot forming and cold rolling operations and on plants with existing central treatment facilities (i.e., waste treatment facilities that treat wastes from multiple sources). These data will be evaluated to determine (a) the extent to which the hot rolling of carbon steels contributes toxic metal pollutants to wastewaters, (b) the extent to which cold rolling operations contribute toxic organic pollutants to wastewaters, and (c) what central treatment alternatives to BAT might be developed at specific mills.

The Agency will evaluate these data and the comments received in response to the proposal prior to final promulgation.

Summary of Benefits

Sectors Affected: The general public.

The major benefit of the proposed regulation will be the reduction of toxic pollutant discharges from iron and steel manufacturing facilities. The quantity of pollutants removed from discharges to the environment under this regulation will be significant. In the January proposal the Agency estimated that through compliance with the BAT regulation the industry will remove approximately 3.8 million pounds per year of toxic organics (88.5 percent of BPT discharges), 5.0 million pounds per year of toxic metals (91.9 percent of BPT discharges), and 260 million pounds per year of suspended solids, oil and grease, ammonia, and other pollutants (92.7 percent of BPT discharges). The proposed regulation would reduce BPT process wastewater volumes from about 2,600 million gallons per day (mgd) to about 300 mgd (89.8 percent of the BPT flow). The Agency will reevaluate these figures as a part of the reanalysis of the proposed regulation and specifically examine toxic pollutant contributions by hot rolling operations.

The employment effects associated with the installation and operation of the water pollution control facilities required by this regulation will ease the overall employment impacts of the regulation.

In the regulation as proposed, the BCT limitations would have been achieved by the BPT and BAT systems in almost all subdivisions, i.e., little additional cost would have been incurred specifically to achieve BCT limitations.

Because of the remand in *American Paper Institute* v. *EPA* (No. 79–115), the regulation to be promulgated probably will not contain BCT limitations except for those operations for which the BAT limitations are no more stringent than the respective BPT limitations. For most of the basic steelmaking operations, the Agency will reserve its decision on BCT because BCT limitations more stringent than the respective BPT limitations may be appropriate. For the forming and finishing operations, the BCT limitations will be the same as the respective BPT limitations. In any event, no additional costs of compliance are anticipated for BCT.

For the Iron and Steel industry, 31 organic priority pollutants have been observed in sampling in quantities and under circumstances sufficient to consider for regulation. These toxic organics have been found primarily in the coke making and cold rolling operations' wastewaters. These toxic organics are known to be carcinogenic (benzene, benzo(a)pyrene, chrysene, anthracene, phenanthrene, pyrene), eye or skin irritants (ethylbenzene), toxic by ingestion (phenol, toluene, benzene), or toxic by inhalation (trichloroethylene, benzene).

Eleven of the thirteen toxic metals were found in wastes generated by the steel industry in quantities and under circumstances sufficient to consider for regulation. Most steel operations' wastewaters contain one or more of these toxic metals, Toxic effects can be cumulative (long-term) or acute (immediate).

The Agency has determined that 37.3 million tons per year of solid waste (at 30 percent solids) have been and will be generated by the steel industry in complying with the proposed regulation. Of this amount almost all (37.0 million tons) is currently generated by the steel industry in complying with the proposed BPT limitations. This solid waste is comprised almost entirely of treatment plant sludges. EPA recognizes that significant quantities of other solid wastes, such as electric furnace dust and blast furnace slag, are generated by the steel industry. However, those solid wastes are generated by the manufacturing processes and are not associated with this proposed water pollution control regulation. For this reason process solid wastes are not included in this impact analysis.

The data gathered for this study demonstrate that the industry collects and disposes of most sludges currently generated in existing treatment systems. Hence, the industry is presently incurring sludge disposal costs and finding the necessary disposal sites. The Agency believes that the industry will continue to be able to do so. (EPA is unable to estimate accurately the number of disposal sites that are secure, well-maintained operations.) The average sludge disposal cost used in this analysis is $5.00 per ton. These costs have been included in the Agency's estimate for costs of compliance with the proposed regulation, and the Agency expects the solid waste impacts associated with the proposed regulation to be small.

Summary of Costs

Sectors Affected: Manufacturing of iron and steel products; and users of these products.

The Agency is continuing to refine the cost data for BPT remaining to be installed and the costs to implement the proposed BAT requirements. The proposed regulation, when promulgated, would require capital expenditures for water pollution control equipment and create jobs related to the construction and operation of new equipment and facilities. Process changes may also be required (i.e., to rolling oil compositions) to achieve control of toxic pollutants in the cold rolling subdivisions.

In the January proposal the Agency estimated the capital investment required to achieve compliance (in millions of 1978 dollars) for the BPT remaining to be installed and the BAT proposed, to be as follows:

BPT	417.8
BAT	444.1
NSPS	159.5
Total	1021.4

These costs exclude individual Consent Decree commitments and anticipated shutdowns through July 1, 1984. Consent Decrees are legally binding agreements between the Agency and a specific company to make certain changes (usually installation of specific waste treatment facilities). Those costs will not be costs incurred as a result of promulgation of this regulation.

The Agency projected the economic impact of the proposed rule using:

- A model developed for EPA that is designed to use the costing methodology of the ADL/AISI model. ADL (Arthur D. Little, Inc.) is a consultant to the AISI (American Iron and Steel Institute, an association of steel companies).
- An assessment of the economic impact of the proposed regulation under three scenarios. These three scenarios are based on the following assumptions:

Scenario 1: A continuation, from 1981 to 1990, of the economic environment and governmental policy faced by the steel industry over the last 10 years with two subscenarios: zero pass through and full pass through of water pollution control annual costs to the prices for steel industry products.

Scenario 2: A 3-percent growth in steel shipments; higher profitability; and policy changes, including quicker recovery of capital investments, return to "fair value" import prices, and latitude to increase prices.

Scenario 3: Changed economic environment as a result of governmental policies, such as increased real economic growth, reinstatement of the U.S. Treasury's trigger price mechanism that was suspended upon U.S. Steel's filing of dumping charges in early 1980, and a 40-percent increase in depreciation cash flows.

The impact of the proposed regulations under the three scenarios are summarized in Tables 1 and 2.

TABLE 1.—*Short-Run Economic Impact of Proposed Water Pollution Control Regulation—1984*

	Domestic shipments (millions of net tons)	Number of employees (thousands)	Market share (percent)
Industry status in 1979	100.3	342.0	84.8
Scenario 1: Baseline	101.3	334.5	82.0
Additional water pollution control costs:			
Zero pass through	101.3	335.8	82.0
Full pass through	101.3	335.8	82.0
Scenario 2: Baseline	106.7	356.0	82.0
Additional water pollution control costs	106.7	357.3	82.0
Scenario 3: Baseline	106.6	354.8	[1] 85.0
Additional water pollution control costs	106.6	356.1	85.0

[1] Reflects new surge provisions of recently reinstituted Trigger Price Mechanism.

TABLE 2.—*Long-Run Economic Impact of Proposed Water Pollution Control Regulation—1990*

	Domestic shipments (millions of net tons)	Number of employees (thousands)	Market share (percent)
Industry status in 1979	100.3	342.0	84.8
Scenario 1: Baseline	92.4	[2] 271.1	71.5
Additional water pollution control costs:			
Zero pass through	86.1	[2] 254.6	66.6
Full pass through	89.1	262.9	68.9
Scenario 2: Baseline	126.0	366.4	82.0
Additional water pollution control costs	126.0	368.3	82.0
Scenario 3: Baseline	117.8	341.5	[1] 85.0
Additional water pollution control costs	115.3	336.0	[1] 83.2

[1] Represents recovery from baseline market share of 77.8 percent in 1988 and from market share after additional water pollution control costs of 73.4 percent also in 1988.

[2] Derivation of Employment Estimates: The effect of the proposed regulations on employment is a combination of two estimates—the loss in production workers due to cut-backs in reworks expenditures due to the regulations, and the additional workers needed to operate the pollution control equipment necessitated by the regulations. This derivation can be seen in Table 2 under the first scenario. The decline in production workers by 1990 in the zero pass through scenario, due to the regulations, would be about 17,925 jobs because of foregone reworks expenditures. However, the additional water pollution control requirements will require the addition of 1,360 workers to operate the equipment. Thus, the net job loss is about 16,500—the difference between 271.1 thousand in the 1990 baseline of Scenario 1 and the 254.6 in the zero pass through case in Scenario 1. The methodology in all three scenarios is the same.

In the January proposal the Agency estimated the total additional investment costs to be $1.02 billion (in 1978 dollars) as follows:

BPT: $418 million;

BAT: $444 million;

NSPS: $159 million.

At that time incremental annual costs were estimated at $264 million in 1984, decreasing to $226 million in 1990, as follows:

BPT: $97 million decreasing to $93 million;

BAT: $150 million decreasing to $93 million; and

NSPS: $17 million increasing to $40 million.

Industry's ability both to finance baseline production and to satisfy capital requirements for water pollution control from 1981 to 1990 depends heavily on governmental policy changes such as those described in Scenarios 2 and 3.

The Agency selected the economic conditions of the industry depicted in the third scenario as the most likely to represent those the steel industry will face in the 1980s. At the time the regulations were under consideration for proposal, the industry, the Congress, the Carter Administration, and then-candidate Reagan were proposing major changes in government economic policy toward steel in particular and industry in general. These proposals ranged from refundable investment tax credits to complete pricing latitude free from government interference. In the Agency's judgment the conditions embodied in the third scenario represented a reasonable attempt to compromise these proposals into a comprehensive policy that contained common programs being discussed by all parties at the time. Specific changes included a 40 percent increase in depreciation cash flows, a return to the trigger price mechanism for steel, and allowable steel price increases of 10.1 percent through the mid-1980s, in accordance with the wage-price guidelines set forth at the time of proposal. These conditions led to an economic impact less severe than in the first scenario but less optimistic than the second scenario but recognized that some changes in government industrial economic policy will probably be forthcoming in the early 1980s.

Under this scenario the following impacts may result:

- Temporary net job loss of 14,540 below projected baseline by 1988. However, by 1990 the net job loss will be 5,500 below baseline 1990. (For more detail regarding the derivation of employment effects see Table 2.)
- Decreased current market share of 4.4 percentage points below baseline but rising to only 1.8 percent below baseline in 1990.

Summary of Net Benefits

The benefit-cost study included: (1) in-depth analyses of the benefits and costs attributable to the regulation for three

streams, the Black Mahoning, and Monongahela Rivers, and (2) an allocation of shares of the aggregate benefits of water pollution control to the steel industry regulation. Because of the deficiencies in the relevant data and knowledge, both analyses relied heavily upon the existing economic and other professional literature. Hence, we consider this economic benefit analysis to be an experimental endeavor rather than a precise analysis.

The in-depth studies of the three streams focused on recreation benefits and non-user benefits because these benefit categories are expected to constitute a significant portion of the total benefits, which also include human health benefits and diversionary uses and commercial fisheries benefits. For both the Black and Mahoning Rivers, the respective ranges of costs to comply with this regulation lie within the lower end of the respective ranges of estimated benefits. For the Monongahela River, the estimated benefits are clearly higher than the associated costs. Thus, the estimated benefits of moving from in-place treatment to BAT would probably outweigh the costs for all three rivers studied. We believe these estimated benefits are as accurate as possible. However, the sample size of three streams is too small to permit statistically sound extrapolation to all affected waterways. The resources for conducting similar intensive water quality and benefit analyses on a larger number of streams are substantial and are not available.

The aggregate shares analysis yielded a positive benefit-costs comparison. However, we have little confidence in those results. This is due to the fact that the aggregate shares methodology contains several large conceptual problems. For example, the estimates of the national benefits of water pollution control may be imprecise. Also, pollutant loadings are used to define benefit shares for each industry. In many cases, the pollutant loading data are incomplete. Further, benefits are not strictly proportional to loading reductions. Without intricate weighting schemes that would account for relevant factors, such as pollutant toxicity and persistence in the aquatic environment, wastewater and receiving water flow, and affected population, we believe that the aggregate shares approach to benefits estimation could include errors of indeterminant direction and magnitude.

Related Regulations and Actions

Internal: The Agency is reviewing the interaction between this regulation and air pollution and solid waste disposal requirements. As an example, we are evaluating the possible disposal of blowdown (approximately 2 percent of the water applied to the scrubber) from blast furnace wastewater recycle systems by evaporation in slag pits (a pit, adjacent to the blast furnace at many installations, provided as a place to cool the molten slag byproduct of the blast furnace operation). The Agency is coordinating this evaluation with the EPA's Office of Research and Development and with air programs.

In adition, in evaluating wastewater treatment alternatives, the Agency considered, to the extent possible, the requirements and costs for the management of solid wastes under the Resource Conservation and Recovery Act.

External: This proposed regulation would set minimum requirements on a national level that would supersede less stringent State or local regulations. However, all levels of government may require more stringent limitations in specific instances if water quality criteria or other requirements so justify.

Government Collaboration

None.

Timetable

NPRM—46 FR 1858, January 7, 1981.
Public Hearing—March 6, 1981.
Public Comment Period—Closed May 8, 1981.
Regulatory Impact Analysis—December 1981.
Final Rule—January 1982.
Regulatory Flexibility Analysis—Not required.

Available Documents

The applicable documents currently available are:

Public Comments—May 8, 1981 (46 FR 20707, April 7, 1981 (46 FR 24606), (46 FR 32274).

All comments on this proosal are available for inspection and copying at the EPA Public Information Reference Unit, Room 2404 (Rear—EPA Library). The EPA information regulation (40 CFR Part 2) provides that a reasonable fee may be charged for copying. The transcript of the public hearing on pretreatment held March 6, 1981 is also available.

Development Document for Effluent Limitations Guidelines and New Source Performance Standards for the Iron and Steel Manufacturing Point Source Category, December 1980, EPA 440/1-80/024b (Volumes 1 through 6).

The Development Document may be obtained from the Agency Contact.

An Economic (Regulatory) Analysis of Proposed Effluent Limitations Guidelines, New Source Performance Standards, and Pretreatment Standards for the Iron and Steel Manufacturing Point Source Category (December 1980), EPA 440/2-81-009.

The Economic (Regulatory) Analysis document may be obtained by contacting Robert Greene, Office of Planning and Evaluation (PM-220), Environmental Protection Agency, 401 M Street, S.W., Washington, DC 20560, (202) 287-0713.

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EPA-OW

Effluent Limitations Guidelines and Standards Controlling the Discharge of Pollutants from Organic Chemicals and Plastic/Synthetic Fibers to Navigable Waterways and the Pretreatment of Wastewaters Introduced into Publicly Owned Treatment Works (40 CFR Part 420; New)

Legal Authority

The Clean Water Act, as amended, §§ 301, 304, 306, 307, and 501; 33 U.S.C. 1311, 1314, 1316, 1317, and 1351.

Reason for Including This Entry

The Environmental Protection Agency (EPA) believes this is a major regulation because it pertains to two industrial categories that encompass the manufacture of petrochemical products. These products are not only economically important in terms of production volume, but are products whose manufacture generates toxic pollutants listed in § 307(a) of the Clean Water Act. While EPA is only in the preliminary stages of its economic analysis, we expect the regulation may have an annual economic impact in excess of $150 million.

Statement of Problem

The Clean Water Act requires the Environmental Protection Agency to develop technology-based effluent limitations guidelines and standards for the discharge of pollutants into navigable waterways and the introduction of pollutants into publicly owned treatment works (POTWs) and to review such guidelines and standards at least once every 5 years. This

rulemaking covers two point source categories that were previously regulated separately. The organic chemicals regulations were published in two phases. Phase I included 40 major products/processes representing 75 percent of the industry production and was promulgated April 25, 1974 (39 FR 12676). Litigation ensued. Phase II (covering an additional 27 products/processes) was promulgated on January 5, 1976 (41 FR 902). On February 10, 1976, the court in *Union Carbide* v. *Train*, 541 F. 2d 1171 (4th Cir. 1976), granted the parties' motion to remand the Phase I guidelines. The court also directed EPA to withdraw the Phase II guidelines, which EPA did on April 1, 1976 (41 FR 13936), with the exception of butadiene manufacture (which was based on different sets of data acceptable to industry).

The issues raised in the litigation were:

(1) The guidelines contained mass limits for biological oxygen demand (BOD), chemical oxygen demand (COD), and total suspension solids (TSS), determined by multiplying best practicable technology (BPT) concentrations by average flows. Industry contended that EPA's consideration and accounting for variability of flows was inadequate.

(2) Industry contended similarly that EPA inadequately accounted for raw waste load variability in defining subcategories (which were few in number and broad in definition).

(3) Industry contended that several waste-specific and site-specific factors significantly affect treatability and were improperly excluded from EPA's analysis and guideline numbers. These included the biodegradability of particular waste streams, the level of total dissolved solids in the waste streams, and ambient temperatures.

(4) EPA developed the variability factor from long-term data from a single plant. Industry contended that different plants have different factors; industry supported its contention with data from a second plant.

(5) EPA's contractor used unacclimated seed for BOD measurement and produced faulty results. In the notice of Phase II withdrawal, EPA said:

> As a result of the extensive Agency reanalysis of the data base occasioned by the petitions for review . . ., the Agency concluded that the contractor retained by the Agency to measure certain parameters of the industry wastewaters had used procedures which may have been, in certain instances, faulty.

The plastics/synthetic fibers regulations were also promulgated in two phases. Phase I was promulgated on April 5, 1974 (39 FR 12502). Phase II was promulgated on January 23, 1975 (40 FR 3730). In *FMC Corp.* v. *Train*, 539 F.2d 973 (4th Cir., argued on September 25, 1975 and decided on March 10, 1976), Phase I was remanded. The primary basis was EPA's inadequate consideration of the tenfold variability in flows. (The court also frowned upon the absence of an excursion provision.) In accordance with the court's decision, EPA withdrew Phase I (as well as Phase II, which contained the same "errors") on August 4, 1976 (41 FR 32587). However, the pH limitations, which had not been attacked, were not withdrawn. They remain today as the sole guidelines numbers for the plastics/synthetic industry.

Organic chemicals and plastics/synthetic fibers are being studied simultaneously, although separate regulations could be issued. The present schedule is for proposal in July 1982. No regulations have been prepared since the remands.

The Clean Water Act of 1977 requires industry to achieve, by July 1, 1984, effluent limitations requiring application of best available technology economically achievable (BAT) for those pollutants that Congress declared toxic under § 307(a) of the Act. The Act also requires industry to achieve, by July 1, 1984, "effluent limitations requiring the application of the best conventional pollutant control technology" (BCT) for the regulation of conventional pollutants (biochemical oxygen demand, suspended solids, fecal coliform, oil and grease, and pH). All pollutants that are not either toxic or conventional have been termed "nonconventional" and are subject to regulation under BAT.

The organic chemicals and plastics/synthetic fibers industry is comprised of production facilities of two distinct types: plants whose primary function is chemical synthesis and plants that recover organic chemicals as a byproduct from unrelated manufacturing operations such as coke plants (steel production) and pulp mills (paper production). The bulk of the plants are in the former category; these plants process chemical precursors (raw materials) into a wide variety of industrial and consumer products. Approximately 90 percent of the precursors are derived from petroleum and natural gas. The remaining 10 percent are supplied by plants that recover organic chemicals from coal tar condensates generated by coke production.

The industry (organic chemicals and plastics/synthetic fibers) is characterized by a small number of very large plants and a large number of very small plants. Most of the small plants are batch process plants that do not make any of the 50 or so commercially significant, high-volume chemicals. Many plants or companies exhibit a pronounced degree of interdependence between manufacturing areas. This arrangement, known as vertical integration, converts simple chemicals to complex chemicals through several steps where the product of one process becomes the feedstock for the next. One representative complex, for example, may produce a total of 45 high-volume products with an additional 300 lower volume products. In contrast, a batch process plant may produce a total of 1,000 different products with 70 to 100 of these being produced on any given operating day. Manufacturing sites that produce large quantities of specific chemicals, however, often include fewer manufacturing areas than smaller sites that generate a larger number of products. Because production efficiencies are greater for the high-volume products, the waste production per ton of products, for the small-volume products is often higher than for the large-volume products. Regardless of the process type, wastewater treatment facilities typically serve the entire process complex, rather than individual process units.

The organic chemicals and plastics/synthetic fibers industrial categories are described under SIC Codes 2865 and 2869 for organic chemicals and SIC Codes 2821, 2823, and 2824 for plastics/synthetic fibers.

Various EPA surveys indicate that there are approximately 1,185 plants in the industry (organic chemicals and plastics/synthetic fibers), 925 direct dischargers (i.e., those who discharge wastewater directly to surface waters), and 260 indirect dischargers (i.e., those who discharge to POTWs).

An estimated 629 billion gallons of process wastewater result each year from the manufacture of organic chemicals and plastics/synthetic fibers. Of this, 493 billion gallons of process wastewater flow are discharged to navigable waters, and 137 billion gallons are annually introduced into POTWs.

Ninety-one toxic pollutants have been found to be present in organic chemicals and plastics/synthetic fibers process wastewaters. Specific pollutants of concern in organic chemicals and plastics/synthetic fibers process wastewaters are:

Miscellaneous Compounds

Acrolein
Acrylonitrile
Cyanide

Volatile Compounds

1,2-dichloroethane
1,1,1-trichloroethane
Hexachloroethane
1,1-dichloroethane
1,1,2-trichloroethane
1,1-dichloroethylene
Vinyl chloride
trans-1,3-dichloropropene
Benzene
Chlorobenzene
Chloroform
1,2-dichloropropane
Ethyl benzene
Methylene chloride
Toluene
Carbon tetrachloride

Acid Compounds

Phenol
2-nitrophenol
4-nitrophenol
2,4-dinitrophenol
2,4-dimethylphenol
pentachlorophenol

Base Neutral Compounds Phthalates

Bis (2-ethylhexyl phthalate)
Di-n-butyl phthalate
Dimethyl phthalate
Diethyl phthalate

Polynuclear Aromatic Compounds

Acenaphthylene
Anthracene
Chrysene
Fluoranthene
Naphthalene
Phenanthrene
Pyrene

Chloroethers

bis-(2-chloroethyl) ether
2-chloroethyl vinyl ether
bis-(2 chloroisopropyl) ether

Substituted Aromatics

1,3 dichlorobenzene
trichlorofluoromethane
1,2,4-trichlorobenzene
1,2-dichlorobenzene
1,4-dichlorobenzene
Nitrobenzene
2,6-dinitrotoluene
2,4-dinitrotoluene

Metals

Antimony
Arsenic
Chromium
Copper
Lead
Mercury
Nickel
Zinc
Selenium

Conventional and nonconventional pollutants are also present in organic chemicals and plastics/synthetic fibers wastewaters. These pollutants include: biochemical oxygen demand, chemical oxygen demand, total organic carbon, total suspended solids, oil and grease, pH, ammonia, and total phenols.

Alternatives Under Consideration

The Agency is evaluating the capabilities and costs of various wastewater treatment technologies for controlling pollutant discharges from organic chemical operations. A primary focus of this effort is to promulgate regulations to control the discharge of toxic pollutants by direct (to surface waters) and indirect (to POTW) dischargers.

To control toxic and nonconventional pollutants at the Best Practicable Technology (BPT), Best Available Technology (BAT), New Source Performance Standards (NSPS), Pretreatment Standards for Existing Sources (PSES) and Pretreatment Standards for New Sources (PSNS) levels of treatment, various treatment systems are being considered. Most alternatives would involve the installation of add-on treatment (treatment beyond the BPT level of control) components in addition to control systems installed as a part of the manufacturing process equipment (in-plant controls).

The Agency plans to incorporate in-plant controls that have been demonstrated in the industry into the model treatment systems considered for each level of effluent control. The in-plant control measures considered include steam stripping, activated carbon, and ion exchange. Both steam stripping and ion exchange are capable of product recovery while removing pollutants from wastewater.

Add-on treatment under consideration for toxic pollutants includes settling and recycle, coagulation/flocculation, chemical oxidation, granular activated carbon, and filtration. Each of these technologies has an area of optimum applicability defined in terms of the number of pollutants removed and wastewater flow range. The selection of any one of these treatment systems for pollutant abatement may be site specific.

Summary of Benefits

Sectors Affected: The general public.

The major benefit of this regulation will be the reduction of toxic pollutant discharges from organic chemicals and plastic synthetic fibers facilities. EPA expects that the quantity of pollutants removed from discharges to the environment under this regulation will be significant.

Effluent levels considered for one possible BPT treatment alternative (30 milligrams per liter (mg/1) of BOD and TSS in effluent) would result in the removal of an estimated 94 million kilograms (206 million pounds) per year of toxic pollutants and 0.42 billion kilograms (0.93 billion pounds) per year of other pollutants (primarily suspended solids and biochemical oxygen demand). Compliance with PSES limitations would result in the removal of an estimated 39.1 million kilograms (86 million pounds) per year of other pollutants and 51 million kilograms (112 million pounds) of toxic pollutants.

Compliance with the BAT effluent limitations would result in the additional removal of an estimated 58.6 million kilograms (129 million pounds) per year of toxic pollutants and 141 million kilograms (310 million pounds) per year of other pollutants.

Summary of Costs

Sectors Affected: Manufacturing of organic chemicals and plastics/synthetic fibers.

The Agency has estimated the cost of each control and treatment technology option by using standard engineering costing practices. EPA has derived costs for each treatment process unit (i.e., primary coagulation-sedimentation, multimedia filtration, etc.) from model treatment plant characteristics. EPA developed model treatment plants using raw waste characteristics, including wastewater flows, industry-supplied production data, and treatment technology capabilities and performance data. To determine the cost of treatment at the BPT, BAT, NSPS, PSES, and PSNS levels of treatment, EPA added the unit process cost described above to yield total treatment cost at each treatment level. Both investment costs and operating and maintenance costs were developed in this manner. EPA has confirmed the reasonableness of this methodology by comparing EPA cost estimates with actual treatment system costs reported by the industry and to costs (for similar equipment of similar size) developed by consulting firms.

The Agency is presently conducting an economic impact analysis to determine the effects of alternative effluent limitations on the organic chemicals and plastics/synthetic fibers industry.

The purpose of the economic impact analysis is to assess the financial

impacts on the organic chemicals and plastics/synthetic fibers industry in terms of the regulation's required capital and annual costs. The specific impacts estimated by the analysis are: plant closures, unemployment, potential price increases, and production changes.

Summary of Net Benefits

The major benefit anticipated to be achieved by this regulation is a reduction in the discharge of toxic pollutants that have been known to be carcinogenic. Both the general public, the workers, and the environment will benefit from these controls.

The Agency has not started the process of selecting definite pollutant limits. However, the selection process will balance the cost of the proposed treatment versus the quantity of pollution reduced.

All of the data that will allow the quantification of the benefit are not yet available.

Related Regulations and Actions

Internal: The Agency is reviewing the interaction between this regulation and air pollution and solid waste disposal requirements, because the elimination or reduction of one form of pollution may aggravate other environmental problems. Sections 304(b) and 306 of the Clean Water Act require EPA to consider the nonwater-quality environmental impacts (including energy requirements) of certain regulations. In compliance with their provisions, EPA is considering the effect of organic chemicals regulations on air pollution, water consumption, energy consumption, and solid waste generation.

Presently, the effects of water regulations on air pollution and water and energy consumption are likely to be minimal when compared to the total consumption of water and energy by the organic chemicals industry and when compared to the total air emissions controlled by the industry.

However, organic chemicals waste treatment sludges may be identified as hazardous under the regulations implementing Subtitle C of the Resource Conservation and Recovery Act (RCRA). If these wastes are identified as hazardous, they will come within the scope of RCRA's "cradle to grave" management program, which covers hazardous waste from the point of generation to the point of final disposition. In addition, RCRA regulations establish standards for hazardous waste treatment, storage, and disposal facilities allowed to receive such wastes. Even if these wastes are not identified as hazardous, they must still be disposed of in compliance with Subtitle D of RCRA.

In addition, in evaluating wastewater treatment alternatives, the Agency is considering, to the extent possible, the requirements and costs for the management of solid wastes under RCRA.

External: This proposed regulation would set minimum requirements on a national level that would supersede less stringent State or local regulations. However, any State or locality may require more stringent limitations in specific instances if there are water quality problems.

Government Collaboration

None.

Timetable

NPRM—July 30, 1982.
Public Comment Period—60 days following NPRM.
Final Rule—May 30, 1983.
Regulatory Flexibility Analysis—Dates to be determined.
Regulatory Impact Analysis—Dates to be determined.
Draft Development Document for Effluent Limitations Guidelines and New Source Performance Standards for Organic Chemicals and Plastic/Synthetic Fibers—July 1982.

Available Documents

None.

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CHAPTER 3—FINANCE AND BANKING

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Dollar-Value LIFO Inventory (26 CFR Part 1; Revision)

Legal Authority

Internal Revenue Code, 26 U.S.C. 472 and 7805.

Reason for Including This Entry

The Presidential Task Force on Regulatory Relief has designated this regulation for review.

Statement of Problem

Current regulations under § 472 of the Internal Revenue Code of 1954 (the Code) provide that taxpayers may use the dollar-value last-in-first-out (LIFO) method of accounting for valuing inventories. The LIFO method of accounting assumes that the goods in the end-of-the-year closing inventory are the oldest goods in inventory. Accordingly, sales during the year are deemed to be of the newest goods in inventory.

This method of accounting allows a taxpayer to closely associate current inventory costs with current income, a result not possible with other methods of inventory valuation, such as the first-in-first-out (FIFO) method. During periods of rising inflation, the use of the LIFO method will result in a higher cost-of-goods-sold and, therefore, a lower taxable income.

Dollar-value LIFO is a special form of LIFO in which inventories are valued in terms of dollars of cost rather than specific goods. In order to compare the costs in an inventory at the close of a year with the costs in an inventory at the beginning of a year, it is necessary to convert costs into dollars with a constant value, which are referred to as "base-year" dollars.

Current regulations provide that a taxpayer generally is not permitted to use an inventory price index to determine the base-year dollars in inventory unless the index is based on the price change experience of that taxpayer's inventory. An exception to this rule exists for taxpayers with department store inventories. Such taxpayers may use the department store indexes specially prepared by the Bureau of Labor Statistics (BLS) of the Commerce Department. The Internal Revenue Service (IRS) accepts the use of such indexes as accurate, reliable, and suitable. Generally, other taxpayers are unable to use other government-published price indexes because they cannot show that the other price indexes (such as consumer and producer price indexes prepared by BLS) are appropriate to their particular inventories. This is because BLS does not prepare the other price indexes, such as the consumer and producer price indexes, specifically for the purpose of determining the value, for tax purposes, of inventories.

The existing rules (relating to the computation of inventory price indexes used in connection with the dollar-value LIFO method of inventory valuation) are perceived by many taxpayers, especially many small businesses, as being too costly and too complex. Such taxpayers, it is argued, do not and cannot maintain the detailed inventory records and cost histories required by the current regulations. These taxpayers, therefore, do not use the dollar-value LIFO method. For many businesses, however, this method has become the preferred method of inventory valuation, especially during times of continuing inflation. Those taxpayers with both the expertise and resources to maintain their own inventory price indexes, and thus use the dollar-value LIFO method, have a distinct advantage over their less sophisticated or less affluent competitors.

Public concern regarding the perceived complexity of the current regulations has grown considerably during the last few years. The Treasury Department and the Internal Revenue Service in recognition of the problem, issued an NPRM on January 16, 1981 (46 FR 3912) to provide taxpayers with an alternative, simplified method of computing an inventory price index. Subsequent to the publication of the NPRM, Congress expressed its own concern by amending § 472 of the Code to specifically authorize the use of "suitable published governmental indexes in such manner and circumstances as determined by the Secretary [of the Treasury]" (§ 235 of the Economic Recovery Tax Act of 1981 (95 Stat. 172)).

Alternatives Under Consideration

The Treasury Department is proposing the amending regulation in order to reduce the economic impact of the existing regulations as they relate to the use of the dollar-value LIFO method. Because the amending regulation would simplify the computations required under such a method, more small entities will be able to avail themselves of the reduction in tax liability inherent in the use of the LIFO method. We can accomplish this goal only by amending the existing regulations under § 472 of the Code.

Prior to issuing the NPRM, the only significant alternative that the Department considered, other than not proposing any regulations, was to limit the availability of the new method to small businesses. We rejected this alternative because there is no authority under §§ 472 and 7805 of the Code to differentiate between large and small businesses in providing rules that would affect tax liability. The subsequent amendment of § 472 of the Code by § 235 of the Economic Recovery Tax Act of 1981 does not limit the use of governmental indexes to only small businesses.

The proposed regulation will make the use of the dollar-value LIFO method easier and therefore more accessible, especially to small businesses, by permitting taxpayers to use the consumer and producer price indexes prepared by BLS in lieu of computing an inventory price index based on their own inflation experience.

Summary of Benefits

Sectors Affected: All businesses that are required under § 471 of the Code to maintain inventories, that elect to use the LIFO method in valuing such inventories, and that elect to use the simplified rules provided by the proposed regulation.

The proposed regulation, by simplifying the current recordkeeping requirements associated with the dollar-value LIFO method, will reduce the costs of those taxpayers already using such method and reduce the income tax liability of those taxpayers electing to use such method for the first time.

The proposed regulation will be effective for taxable years beginning after the regulation becomes a final Treasury Decision.

Summary of Costs

Sectors Affected: All businesses that are required under § 471 of the Code to maintain inventories, that elect to use the LIFO method in valuing such inventories, and that elect to use the simplified rules provided by the proposed regulation; and the Federal Government.

Any business electing to use the rules provided by the proposed regulation will be required to report, for the first year that the method is used: the inventory pools used, the type of goods included in each pool, and the consumer or producer price indexes selected for each pool. (Inventory pools are subdivisions of an inventory used to group similar types of goods. Separate cost information must be maintained for each pool.) In addition, for each year in which the method is used, the taxpayer will be required to maintain adequate books and records showing how inventory pools were established, how the consumer and producer price indexes were selected, and how the inventory price indexes and the change in such indexes were computed. (These requirements are similar to those applicable to taxpayers currently using the LIFO method.) Professional accounting skills may be desirable in the initial year of using the method provided by the proposed regulation, although information disseminated by various industry groups may provide businesses with adequate assistance. Otherwise, the rules prescribed in the proposed regulation do not require any professional skills in addition to those already needed to keep inventory accounting records for a business.

During periods of inflation, the use of the LIFO method of inventory valuation will result in a lower income tax liability. The proposed regulation, by encouraging more taxpayers to switch to the LIFO method, will cause a reduction in future tax revenues.

Summary of Net Benefits

Taxpayers who currently use the dollar-value LIFO method to value their inventories, and who elect to use the simplified rules provided by the proposed regulation, will experience a net reduction in the costs associated with the required LIFO recordkeeping. The proposed regulation simply does not require the detailed recordkeeping and accounting expertise that is required by the current regulations. Adoption by taxpayers of the proposed simplified LIFO system will also result in significant administrative savings both for the IRS and for taxpayers who will no longer be required to demonstrate the accuracy of their internally generated indexes if audited.

Taxpayers who do not currently use the LIFO method to value their inventories, and who elect to use the simplified rules provided by the proposed regulation, will experience a net increase in costs associated with the required inventory recordkeeping. However, this increase in costs will be considerably less than the increase that would result from the use of the LIFO method under the current regulations. In addition, the costs associated with the additional LIFO recordkeeping requirements will be more than offset by the LIFO-induced reduction in taxable income.

Related Regulations and Actions

Internal: Proposed regulations are currently being developed to implement the new § 474 of the Code, as added by § 237 of the Economic Recovery Tax Act of 1981, which permits certain small businesses to use one inventory pool when electing to use the dollar-value LIFO method of inventory valuation.

External: None.

Government Collaboration

None.

Timetable

NPRM—46 FR 3912, January 16, 1981.
Final Rule—December 31, 1981.
Final Rule Effective—Taxable years beginning after date of Final Rule.
Public Hearing—June 30, 1981, Internal Revenue Service Building, 1111 Constitution Avenue N.W., Washington, DC 20224.
Public Comment Period (on NPRM)—January 16, 1981 through April 16, 1981.
Regulatory Impact Analysis—None planned.
Regulatory Flexibility Analysis—Initial, January 16, 1981; final, December 31, 1981.

Available Documents

Hearings on Inventory Accounting As a Burden on the Capital Formation Process (parts 1 & 2) Before the Subcommittee on Access to Equity Capital and Business Opportunities of the House Committee on Small Business, February 12, June 10 and 11, 1980, 96th Cong., 2d Sess. Available, free of charge, from the House Committee on Small Business, U.S. Congress, Washington, DC 20510.

Public comments received during NPRM comment period are available from the Commissioner of Internal Revenue, 1111 Constitution Avenue N.W., Washington, DC 20224, Attention: CC:LR:T (LR-267-79). Fee for copying: 10 cents per page.

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TREAS—Office of the Comptroller of the Currency

Lending Limits (12 CFR 7.1100, Revision); Unimpaired Surplus Fund (12 CFR 7.7545, Revision)

Legal Authority

Authority to issue regulations, 12 U.S.C. 93a.

Reason for Including This Entry

The Office of the Comptroller of the Currency (OCC) is proposing to change the definition of "capital," thereby affecting the activities of all national banks, State and local governments, and the general public.

Statement of Problem

The OCC charters, examines, regulates, and supervises national (i.e., federally chartered) banks. Maintaining adequate capital in national banks is an important part of OCC's goal to assure a safe and sound national banking system. OCC is considering changes to its policy and procedures for assessing the adequacy of capital of individual banks. In connection with that effort, OCC is reviewing its interpretive rules, which define capital for statutory purposes.

Various statutes limit the extent of a national bank's activities, based on the amount of its capital. These activities include, among others, holding investment securities, establishing branches, borrowing, lending to a single entity or group of related entities, lending secured by real estate, and lending to affiliated entities. In some cases, the limitation is on the aggregate extent of activity; in others, the limitation is on the magnitude of the activity as it relates to single bank customers. Adoption of OCC's proposal to change the definition of capital would affect all those activities.

The contemplated changes will aid banks by providing them with the clear definition of capital they need for planning purposes. They will also aid banks and bank customers by expanding the volume of funds that can be called capital and thereby increasing those activities, such as loans to a single borrower, that are tied to the volume of bank capital.

Capital planning is an integral element in the management of every national bank. Assuring adequate capital in national banks is an important element of bank supervision. Although maintaining adequate capital in the national banking system is a continual task of the OCC, several recent factors present in the financial system have increased the OCC's attention to the subject. For example, inflation has spurred asset growth at a pace far in excess of that for retained earnings, a major source of bank capital. For the banking system as a whole, the ratio of capital to assets has declined.

In order to develop and implement a consistent, rational capital adequacy policy, an appropriate definition of capital is necessary. The present OCC definition includes (for most, but not all purposes) all shareholders' equity accounts, subordinated notes and debentures (long-term debt securities whose holders' rights are subordinated to the rights of depositors and other creditors), and 50 percent of the reserve for possible loan losses (a contra-asset account reflecting expected losses in the loan portfolio). That definition is inconsistent with definitions used by the Board of Governors of the Federal Reserve System and by the Federal Deposit Insurance Corporation in their supervision of State-chartered banks. The other Federal bank regulatory agencies do not include subordinated debt in their definitions of capital. While this is not a problem from our supervisory point of view, the inconsistency could be creating some problems in capital planning for multibank holding companies with both State and nationally chartered banks. OCC is working with those agencies to develop a consistent definition of capital and a more uniform capital adequacy policy. In light of recent economic conditions and uncertainty as to the future, OCC believes that a revised, consistent, rational capital adequacy policy (based on an appropriate definition of capital) is necessary at this time to supervise and monitor national banks properly and to assist banks in their own analyses and planning.

Alternatives Under Consideration

OCC is considering alternatives to the statutory definition of capital and alternative implementation programs. One alternative is to make no change. A disadvantage of that approach is that it would inhibit the development of well-conceived capital adequacy policies for banks, by the banks and by government agencies. Implementation costs associated with change would, of course, be avoided.

The OCC had proposed deleting the reserve for possible loan losses from the statutory definition of capital. That contra-asset account reflects the difference between the face amount of all loans outstanding on the books of the bank and the amount the bank anticipates will be repaid. Deleting the reserve would also limit capital to those accounts representing shareholder equity that are available to absorb loan losses, thereby granting the bank sufficient time for earnings to recover while sustaining market confidence. The disadvantage of deleting this account from the definition of capital is that it would reduce the maximum size of certain loans and investments that may presently be made by national banks.

The OCC also had proposed deleting subordinated notes and debentures from the definition of capital. Although those debt instruments reflect some of the characteristics of capital when they have distant maturities, they must be repaid, interest payments are mandatory, and they become increasingly less like capital instruments as maturity dates approach. The advantage of eliminating subordinated debt from the statutory definition is that the entire capital account will be available to absorb unforeseen losses that may be experienced by an otherwise sound institution. A disadvantage of elimination is a curtailment of various bank activities presently subject to limitations based on bank capital.

In order to avoid disruptions in the ongoing conduct of banking operations, the OCC had proposed to implement any changes over time. The delayed impact would enable banks to plan adequately for any necessary changes. Another advantage is that anticipated growth in other components of capital would minimize the reductions in banking activities inherent in the proposals. As such, it is proposed that the reserve for possible loan losses be eliminated as of December 31, 1981, and that subordinated notes and debentures be eliminated at maturity or December 31, 1985, whichever occurs first.

The OCC considered other implementation options, including:

(1) eliminating only subordinated notes and debentures with short maturities;

(2) establishing a timetable to reduce, in stages, the percentage of the reserve and subordinated debt that may be included in the definition (i.e., a phaseout over time); and

(3) allowing outstanding long-term subordinated debt to be included until its maturity, but excluding new debt regardless of its maturity.

OCC solicited comments on specific questions germane to the proposal. These include:

(1) what terms, e.g., length to maturity, or mandatory conversion features might qualify subordinated notes and debentures as capital;

(2) what other forms of capital instruments exhibit sufficient characteristics to qualify as equity; and

(3) whether subordinated notes and debentures issued or outstanding at any time prior to December 31, 1985 should be included.

As a result of comments received on the NPRM of July 24, 1980 (45 FR 49276), OCC published a new NPRM August 10, 1981 (46 FR 40502).

Changes to the July 1980 redefinition of impaired surplus, which we made with our August reproposal include:

(1) inclusion of 100 percent of the loan loss reserve in the definition of surplus (compared to 0 percent in the July 1980 proposal);

(2) continued inclusion of subordinated debt under certain conditions (minimum final maturity, minimum average weighted maturity, and amortization over the final 5 years to maturity, compared to total elimination of subordinated debt as announced in the July 1980 proposal); and

(3) segregation of total bank capital into primary and secondary components for statutory and adequacy purposes. (That change was not specifically covered in our July 1980 proposal.) Primary capital will include items such as equity and retained earnings. Secondary capital will include long-term debentures. This provides some protection against the impact of loan losses and poor earnings. However, the protection is not as good as that provided by equity, for the debt must be repaid at some point.

Summary of Benefits

Sectors Affected: The national banking industry; customers of national banks; and OCC.

Adequately capitalized banks permit a broad range of banking services to be offered competitively to the public. Improvements in capital analysis will have non-quantifiable benefits for national banks and their customers by improving the ability of bankers, regulators, and the public to assess capital adequacy and by maintaining public confidence. The consistency in our proposed definition of capital for both statutory and adequacy purposes will simplify matters for everyone. Related OCC decisions to be made, such as the need for OCC review of bank plans to issue debt and equity, may reduce burdens on applicants and OCC and are expected to result in expanded abilities of national banks to take advantage of market opportunities to issue appropriate securities. The proposal would also establish a more uniform definition of capital, for statutory purposes, among the Federal bank regulatory agencies and eliminate variable, regulatory treatment of banks in more or less similar circumstances.

Data developed in light of the July 1980 proposal indicated that eliminating 50 percent of the loan loss reserve from the definition of surplus would result in an average reduction in a bank's statutory capital base of 4.5 percent. The OCC's current proposal, which would include 100 percent rather than the current 50 percent, or the earlier-proposed 0 percent, would therefore result in an average increase in the capital of national banks by approximately 4.5 percent.

Summary of Costs

Sectors Affected: The national banking industry and customers of national banks, including businesses and State and local governments that borrow from national banks or whose securities are held by national banks.

Any reduction in capital, as defined, would further limit a variety of national bank activities. For example, current statutes generally permit a national bank to lend to an individual entity no more than 10 percent of its defined capital. Similarly, current statutes generally permit a national bank to invest in a revenue obligation issued by a State of local government in an amount no greater than 10 percent of its defined capital. Reducing the amount of defined capital will decrease the maximum lending and investment limits at every national bank.

Data indicate that approximately 1,000 of the Nation's approximately 4,400 national banks have subordinated notes and debentures outstanding. To the extent those issues fall within the proposed amortization period preceding maturity, affected banks will experience a reduction in their capital base.

Furthermore, the amortization requirement may discourage debt issues. As issued debt approaches maturity, the amortization schedule will reduce the amount that can be called capital. Primary components, chiefly equity instruments, are not subject to amortization. They will be given increased emphasis by banks in meeting capital needs. There are, however, greater costs associated with selling equity compared to selling debt issues. For example, interest on debt is tax-deductible; dividends are not. Also, debt instruments are often issued as private placements, whereas equity instruments are typically marketed as public offerings. Public offerings require more disclosure to investors than private placements and thus incur greater administrative costs.

The foregoing analysis, by itself, does not, however, indicate whether the changed limits would affect actual bank performance. For example, a preliminary analysis might indicate that a specific national bank's lending limit to a single borrower would be decreased from $100,000 to $90,000 if the proposals were adopted without a delayed effective date. If that bank has not made and does not intend to make loans to a single borrower in excess of $70,000, the changes would have little impact. Conversely, if that bank has been making loans at its limit and its present and future customers were likely to need loans in amounts approaching the bank's lending limit, the effects of the changes could be more dramatic.

Summary of Net Benefits

The costs and benefits of this proposal are not easily reduced to dollars and cents. However, the OCC believes that most national banks will witness an increase in their capital/asset ratios if the proposal is adopted. Only 1,000 of the 4,000 national banks have "secondary capital" that will be amortized. For the remaining 3,000 banks, inclusion of all loan loss reserves in capital will increase the size of that account. Such an increase will enable them to compete more aggressively for deposits and other funds and, in turn, permit them to be more aggressive suppliers of credit.

There is, in addition to the pure numbers of "winners" and "losers," another consideration. The proposal set out in explicit terms which balance sheet items constitute capital and to what extent. Numerous respondents to the July 1980 NPRM stated their preference for clarity in that area. Clear rules should enhance every bank's ability to estimate capital needs and to plan for meeting those needs.

Related Regulations and Actions

Internal: Section 303 of the *Comptroller's Handbook for National Bank Examiners* describes the present capital adequacy analysis.

External: Each of the 50 States has capital definitions and limitations based on capital applicable to State-chartered banks.

Government Collaboration

The Federal bank regulatory agencies, including the OCC, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation, through the Federal Financial Institutions Examination Council (FFIEC), developed and proposed a definition of capital to be used for capital adequacy purposes (46 FR 32498, July 23, 1981). That

proposal closely parallels the OCC proposal. Comments to the FFIEC proposal are currently being analyzed. Meetings among the staff of those agencies will continue to be held frequently in an attempt to find a definition that satisfies all parties.

Timetable

NPRM—45 FR 49276, Docket No. 80–6, July 24, 1980.
NPRM—May 31, 1981. OCC received almost 800 comment letters in response to an NPRM of July 24, 1980. The wealth of information provided in those letters was analyzed and led to the publication of a new NPRM.
Public Comment Period—June 1 to August 31, 1981.
NPRM—46 FR 40520, Docket No. 81–14, August 10, 1981.
Public Comment Period—August 10, 1981 to October 9, 1981.
Regulatory Impact Analysis—OCC will not prepare. Our initial investigation indicated costs to affected parties will be negligible, with the possible exception of rural banks.
Regulatory Flexibility Analyses are not required for interpretive rulings.
Public Hearing—None planned.
Final Rule—December 31, 1981.
Final Rule Effective—To be determined.

Available Documents

Public comments received in response to **Federal Register** publications are available for review and photocopying in the Communications Division, Office of the Comptroller of the Currency, 490 L'Enfant Plaza East, S.W., Washington, DC 20219.

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TREAS–OCC

Rules, Policies, and Procedures for Corporate Activities (12 CFR Part 5; Revision)

Legal Authority

Authority to issue regulations, 12 U.S.C. 93a.

Reason for Including This Entry

The Comptroller of the Currency (OCC) believes this rule is important because it affects the corporate and structural activities of all national banks.

Statement of Problem

The Comptroller of the Currency is undertaking a comprehensive review of all of its rules, policies, procedures, and forms governing application for charters, branches, mergers, changes in capital, and all other structural and corporate activities of national banks. This review should:

(1) lower costs to the applicants, the OCC, and the public;

(2) provide a better understanding of OCC policies;

(3) modify or eliminate OCC rules, regulations, policies, procedures, and forms that are unnecessary or lead to inefficiencies; and

(4) remove barriers to competition.

The OCC has authority over the corporate activities of the approximately 4,500 national banks. Each of those banks may file various applications with the OCC at any time. In 1979, for example, OCC received approximately 87 charter applications, 984 branch applications, 100 merger applications, and hundreds of additional applications for changes in capital structure, relocations, operating subsidiaries, title changes, and other matters.

OCC rules, policies, procedures, and forms for the various structural and corporate activities of national banks have not been substantially reviewed or revised since November 1976. Since that time, the banking system has experienced substantial changes, high and fluctuating interest rates, competition from money market funds, increased competition from foreign banks in domestic markets, and expanded powers of thrift institutions. Moreover, many new laws were enacted that may have altered the appropriateness of existing OCC rules, policies, procedures, and forms covering filings for various structural and corporate activities.

In addition, the OCC believes that its regulations and policies governing the procedures it uses in evaluating those filings should be periodically reviewed, with input from national banks and other members of the public. The OCC also believes that the corporate filing process should not create unnecessary delays and costs. Forms and processing procedures should not require the submission or review of unnecessary information while failing to elicit information vital to an appropriate decision.

Accordingly, the OCC has started a comprehensive review of this area and has labeled this review the Corporate Activities Review and Evaluation (CARE) Program.

The first phase of the CARE Program has been completed. Included in this phase is a reorganization and consolidation of all rules, policies, procedures, and forms for national bank structural and corporate activities, which previously were located in numerous Parts of the Code of Federal Regulations and other documents, into a single regulation—12 CFR Part 5. This action should make it easier for all interested parties to locate and understand present requirements plus enable the OCC to review its policies, the need for additional policies, existing regulations and methods and to improve its decision criteria and reduce inappropriate burdens on applicants. Other areas covered in the first phase include:

(1) a policy statement governing OCC evaluation of applications for a national bank charter;

(2) a policy statement governing public disclosure by the OCC of material filed with notices of change in control of a national bank;

(3) Final Rules to be followed by OCC in determining whether or not a public hearing should be held in connection with an application for any corporate activity (charter, branches, etc.); and

(4) final procedures enabling the OCC to treat expeditiously applications for interim banks.

The areas that are being or will be reviewed include:

(1) policies and forms to be used by banks applying for branches, mergers, stock options, Federal branches and agencies, conversions, location and title changes, changes in capital structure, and subordinated debt;

(2) assessing stock appraisal rights of dissenting shareholders in merger-type transactions; and

(3) developing procedures to be employed by the OCC in processing applications.

Alternatives Under Consideration

Although proposed changes will be issued for comment on a subject-by-subject basis (e.g., branches, mergers, etc.), the major alternatives common to each involve the choice between current or lesser levels of government intervention in the business judgments of national banks. OCC's intent is to eliminate unnecessary interference in the business decisions of national banks. For example, OCC will consider whether national banks in sound condition desiring to branch or issue subordinated debt should be permitted to do so with fewer filing requirements

and fewer review procedures than are currently in effect.

Summary of Benefits

Sectors Affected: The national banking industry; customers and shareholders of national banks; the general public; and OCC.

A preliminary investigation of these proposals indicates a significant reduction in regulatory burden for a substantial number of small banks.

The benefits of lesser government intervention could include enhanced competition and efficiency in the supply of financial services. Experience has shown that the marketplace normally is the best regulator of economic activity and that competition allows the marketplace to function and promote a sound and more efficient banking system that better serves customers. In addition, OCC's and applicants' costs may be reduced by this lesser amount of intervention. Unnecessary requirements should be eliminated, speed of processing corporate filings increased and the quality of OCC and banker decisions enhanced.

Because OCC will continue to regulate the national banking system where some intervention is necessary to protect the public interest, the revisions to its corporate rules, policies, procedures, and forms will ensure that, in general, banks will not implement poor decisions to the detriment of the banks themselves and their customers, shareholders, and communities.

Summary of Costs

Sectors Affected: The national banking industry; customers and shareholders of national banks; and the general public.

Intensive review by OCC of applications for banking offices and other corporate activities has helped to ensure that the intended action is based on sound judgment and will boost profits. A relaxation of that review process increases the possibility that affected business decisions will yield the profits they are intended to produce. In turn, lower profits could contribute to a deterioration in safety and soundness and in the competitive vigor with which services are offered.

Summary of Net Benefits

The costs and benefits of the regulatory changes described here cannot be reduced easily to dollars and cents. However, the OCC is convinced that the benefits from continued pursuit of its CARE Program outweigh the costs. That conclusion is supported in part by experience over several years in processing a large variety of applications, which suggests bankers and bank organizers generally can produce reliable predictions of future earnings.

Related Regulations and Actions

Internal: None.

External: Each of the 50 States has rules governing applications for State-chartered banks. Regulations of the Board of Governors of the Federal Reserve System are included in 12 CFR Parts 262, 263, and 265. Federal Deposit Insurance Corporation regulations are included in 12 CFR Parts 303, 304, 306, and 308.

Government Collaboration

OCC will send proposals it issues for comment to the banking authorities for each of the 50 States and to the Board of Governors of the Federal Reserve System and Federal Deposit Insurance Corporation.

Timetable

NPRM—45 FR 68611, Docket No. 80–14, October 15, 1980. (Proposes amendments to OCC's rules governing use of public hearings to acquire additional information prior to evaluating applications for charters, branches, mergers, changes in title and location, and changes in capital.)

NPRM—45 FR 08612, Docket No. 80–15, October 15, 1980. (Proposes amendments to OCC rules governing material to be submitted in support of an application to charter an interim bank.)

Final Rule—45 FR 68586, Docket No. 80–11, October 15, 1980. (Consolidates all existing OCC rules, policies, procedures, and forms concerning the review and processing of applications for charters, branches, mergers, changes in title and location, and changes in capital into a single regulation—12 CFR Part 5.)

Final Rule—45 FR 68603, Docket No. 80–12, October 15, 1980. (Codifies OCC chartering policy in 12 CFR Part 5 and describes the analytical framework used by the OCC to determine whether a proposed national bank is likely to be operated in a safe and sound manner, possess reasonable propects for success, and can be expected to meet the credit needs of its entire community.)

Final Rule—45 FR 68607, Docket No. 80–13, October 15, 1980. (Specifies the circumstances under which the OCC will routinely release basic information contained in notices of change in control required by 12 CFR Part 5.)

Final Rule—46 FR 16656, Docket No. 81–6 March 13, 1981. (Adopts new fee structure for processing applications.)

Final Rule—46 FR 16659, Docket No. 81–7, March 13, 1981. (Adopts revised rules governing written comments and hearings on applications.)

Final Rule—46 FR 16661, Docket No. 81–8, March 13, 1981. (Adopts amendments to OCC rules governing an application to charter an interim bank.)

NPRM—46 FR 38925, Docket No. 81–13, June 30, 1981. (Proposes amendments to OCC policy statement, procedures, and forms concerning applications to establish domestic branches, seasonal agencies (branches that operate for limited periods during a year), and customer-bank communications terminals (CBCTs),which are free-standing automated teller machines), and to change the location of head offices, domestic branches, and CBCTs.)

NPRM (stock appraisal rights of dissenting shareholders)—September 30, 1981.

NPRM (policy statements on OCC evaluation of applications for branches, changes in title, relocation, and OCC evaluation of employee stock option plans)—June 30, 1981.

NPRM (new forms for charter applications)—June 30, 1981.

Regulatory Impact Analysis—OCC will not prepare. Our initial investigation indicates that suggested costs, if any, to affected parties will be minor.

Regulatory Flexibility Analysis—Not required.

Public Hearing—None planned.

Public Comment Period—We have grouped issues under review topically, with each topic cutting across several regulations, and each having its own comment period. We expect the total period to be September 1980 to December 1981. Comments may be sent to Communications Division, Office of the Comptroller of the Currency, 490 L'Enfant Plaza East, S.W., Washington, DC 20219.

Final Rules—Since we are reviewing a number of issues, several rules are involved. We project publication of Final Rules over a period of time, probably extending to December 1982.

Available Documents

Public comments received in response to all documents thus far published in the **Federal Register** are available for review and photocopying in the Communications Division, Office of the Comptroller of the Currency, 490 L'Enfant Plaza East, S.W., Washington, DC 20219.

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TREAS-OCC

Use of Data Processing Equipment and Furnishing of Data Processing Services (12 CFR 7.3500; Revision)

Legal Authority

Authority to issue regulations, 12 U.S.C. 93a; Corporate Powers, 12 U.S.C. 24.

Reason for Including This Entry

The Office of the Comptroller of the Currency (OCC) includes this entry because of the possible significant impact on the activities of all national banks, the data processing industry, and the general public.

Statement of Problem

The OCC regulates and supervises national (i.e., federally chartered) banks. In addition to certain express activities, the National Bank Act (12 U.S.C. 24) authorizes national banks to exercise "all such incidental powers as shall be necessary to carry on the business of banking."

OCC Interpretive Ruling 7.3500, last revised in 1974, attemps to define by generic description and by example the data processing services that a national bank may lawfully provide for itself and others pursuant to 12 U.S.C. 24. That ruling currently permits national banks to perform all data processing services directly or incidentally related to the business of banking. As examples under the existing ruling, a national bank may collect, transcribe, process, analyze, and store, for itself and others, banking, financial, or related economic data as part of its banking business. Additionally, the ruling notes that a national bank, incidental to its banking business, may market excess time on data processing equipment and sell the byproducts of data processing activity under certain defined circumstances. Finally, the ruling emphasizes the Federal probibitions found in 12 U.S.C.1971 against national banks tying other banking services, such as loans and the extension of leasing arrangements, to customer use of data processing facilities.

Since Interpretive Ruling 7.3500 was last revised in 1974, there have been rapid and profound advances in both data processing technology and the application of that technology to the financial industry. Moreover, experience with the application and interpretation of the Interpretive Ruling indicates that a more precise delineation of permissible data processing activities by national banks may be needed. Accordingly, the OCC is considering whether the existing ruling accommodates technological advances and provides adequate guidance, or whether the ruling should be revised and, if so, how.

To this end, the OCC issued an ANPRM (45 FR 40613, June 16, 1980) inquiring into a wide range of subjects. We solicited comments on the types of electronic data processing services (EDP) offered by banks; the advantages and disadvantages of banks as providers of data processing; the extent to which the sale of EDP services, software, and excess time is necessary or beneficial to acquisition and maintenance of an adequate EDP capacity by banks; and foreseeable new applications of EDP technology.

Alternatives Under Consideration

The OCC has defined the following alternatives, described more fully in the ANPRM:

(A) OCC could retain the ruling as now written. This alternative would avoid new confusion for those who have accustomed themselves to working with the ruling, but it would not address ambiguities that may currently exist.

(B) OCC could revise the ruling to include a new generic description of permissible data processing activities. This alternative would establish a clearer framework for data processing activities in which national banks are legally entitled to engage, but it could soon become outdated in failing to reflect future technological change.

(C) OCC could revise the ruling to adopt standards similar to those articulated in the present regulation and the interpretive ruling of the Board of Governors of the Federal Reserve System concerning data processing services provided by bank holding companies. This alternative would provide a measure of consistency to a system in which banks and bank holding companies are closely allied, but it might inhibit innovation and improvement as the two perform their distinct financial roles.

(D) OCC could retain its current ruling and provide supplemental aids, such as a listing of specific activities found to be permissible under the ruling. This alternative would remove uncertainty surrounding the existing ruling, but it might be interpreted as restricting data processing activities that arguably fall within the purview of the statute.

(E) OCC is also considering the promulgation of a formal regulation as an alternative to, or in addition to, an interpretive ruling. This alternative would convert what is now an opinion into a formal directive to national banks, adding greater certainty to the permissible limits of data processing activities, but relinquishing the flexibility needed to reflect changes in banking and technology.

Summary of Benefits

Sectors Affected: The national banking industry; the data processing industry; customers of national banks; the general public; and OCC.

Until both the form and substance of any revision in the interpretive ruling are known, it is impossible to predict the benefits expected from such a revision. Nevertheless, a more specific interpretive ruling would provide additional guidance concerning the nature of data processing services that may lawfully be offered by national banks. By identifying those data processing services that are incidental to the business of banking, the OCC could eliminate confusion regarding the application of the existing ruling to specific services, which would benefit both the national banking and data processing industries. Greater certainty about national bank data processing activities would result in fewer court challenges for the OCC. Two major lawsuits have been brought by trade associations that represent a large number of clients. A more specific interpretive ruling would also reduce OCC's need to issue a multiplicity of individual interpretive letters. OCC prepares about 25 such letters a year, and each usually involves a number of complex questions. Customers also would benefit from the reduced risk to their banks of engaging in data processing activities that are expressly permissible and that might otherwise invite costly litigation or worrisome supervisory actions. Finally, such a revision would benefit the public because it would provide greater certainty to banks that may be deterred

from offering the public financially related data processing services because of the legal questions raised under the existing ruling.

Summary of Costs

Sectors Affected: The national banking industry; the data processing industry; customers of national banks; the general public; and OCC.

Until both the form and substance of any revision are known, it is impossible to predict the costs expected from such a revision. Nevertheless, specific guidelines in the area of electronic data processing technology might unduly limit the flexibility needed by banks to accommodate technological change. Also, such guidelines could become rapidly outdated, requiring continual modification by the OCC. Thus, a less flexible interpretive ruling might retard the development and financial application of data processing technology by national banks. Such an impediment would adversely affect the data processing industry and the general public, which would otherwise benefit from such innovations.

Summary of Net Benefits

The OCC is still in the process of deciding which alternative to put forward in an NPRM. Consequently, a determination of net benefits cannot yet be made. The Office hopes to identify an approach that would provide meaningful guidance to national banks, while preserving, if not enhancing, their flexibility to offer automatic data processing services.

Related Regulations and Actions

Internal: None.

External: The present regulation and interpretive ruling of the Board of Governors of the Federal Reserve System concerning data processing services provided by bank holding companies appears at 12 CFR 225.4(a)(8) and 12 CFR 115.123(e), respectively.

Government Collaboration

None at present.

Timetable

ANPRM—45 FR 40613, Docket No. 80-1, June 16, 1980.
NPRM—Date to be determined.
Regulatory Impact Analysis—We will determine if one is required after reviewing the public comments and determining the precise content of the NPRM.
Regulatory Flexibility Analyses are not required for interpretive rulings.
Public Hearing—None planned.
Public Comment Period—Dates to be determined.
Final Rule—Date to be determined.
Final Rule Effective—Date to be determined.

Available Documents

Public comments received in response to ANPRM of June 16, 1980 are available for review and photocopying in the Communications Division, Office of the Comptroller of the Currency, 490 L'Enfant Plaza East, S.W., Washington, DC 20219.

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COMMODITY FUTURES TRADING COMMISSION

Gross Margining of Omnibus Accounts (17 CFR Part 1)

Legal Authority

Commodity Exchange Act, § 4d, 4g, and 8a, 7 U.S.C. 6d, 6g, and 12a.

Reason for Including This Entry

The Commodity Futures Trading Commission (CFTC) considers this rule important because it will provide better protection of customer funds against loss due to bankruptcies of futures commission merchants (FCMs) and will improve the Commission's ability to monitor and anticipate financial problems of certain FCMs.

Statement of Problem

The Commission is responsible for maintaining a regulatory structure to help prevent loss of customer funds due to financial failures by FCMs. The CFTC staff has reviewed the adequacy of the current system for monitoring the financial condition of both member and non-member FCMs (i.e., FCMs who trade for customers on exchanges where they themselves are not members) in light of recent problems and has found several weaknesses.

Specifically, approximately $7 million of customer funds were lost in FCM bankruptcies in the last half of 1980. This represents a substantial increase in customer losses, which formerly had been insignificant, and parallels the recent growth in the futures industry and the sharp increase in the number of non-member FCMs—up from 59 to 131 between 1976 and 1981. These non-member FCMs held over $125 million in segregated customer funds as of December 31, 1980.

To protect customers from such losses, CFTC has implemented safeguards such as segregation of customer funds, minimum financial requirements, financial reporting, and early warning rules. To enforce this system, the Commission relies on voluntary compliance, notification by affected FCMs or the exchange community of potential problems, and actual audits. In addition to annual audits by independent public accountants and by the various exchanges (in the case of members FCMs), CFTC's own audit staff reviews FCMs on a selective priority basis, targeting most of its resources to situations in which customer funds appear in the greatest jeopardy.

Because of the volatility of the futures markets, the Commission staff also requires non-member FCMs with customer funds to call daily with their segregation calculations and visits at least monthly those with over $1 million of customer funds. Yet despite these safeguards, recent bankruptcies indicate that financial problems are not always detected in time to prevent loss.

One major weakness is that the Commission possesses more and better information about exchange member FCMs than it does about non-member FCMs. Margins on omnibus customer accounts for non-member FCMs are calculated based on the net of the long and the short open positions of each open contract for all contracts held by customers, rather than upon the total number of all customer positions. While practices differ among exchanges, the wide current use of "net" margining of omnibus accounts can obscure weaknesses in a non-member FCM's actual financial posture and allow possibly imminent problems to go undetected.

Alternatives Under Consideration

The Commission held an open meeting on September 17, 1981 to discuss several alternatives for better protecting customer funds from loss, including a proposal to require gross margining of all omnibus accounts. At that meeting the Commission directed the staff to prepare an NPRM to solicit public comment on this issue.

As contemplated, all omnibus accounts would be margined on a gross, rather than net, basis. Non-member FCMs would then have to transmit proper margin funds for the total open positions contained in an omnibus account to the clearing member clearing its trades. This rule, however, would not

provide for disclosure of individual customer names or account numbers to clearing members, and it would seek to minimize new or additional operational procedures. The rule would not preclude non-member FCMs from depositing Treasury bills or some other acceptable form of interest-bearing instrument with the clearing member as margin in order to continue earning interest on segregated funds.

Other alternatives considered by the Commission to protect customer funds included tightening its audit system for monitoring FCMs, requiring some form of insurance or customer account protection, and stressing the role of the National Futures Association, a registered self-regulatory body with mandatory FCM membership and a strong audit and financial compliance program.

Summary of Benefits

Sectors Affected: Futures commission merchants; contract markets; and traders who participate through non-member FCMs.

While gross margining of omnibus accounts is no instant panacea for FCM bankruptcies, it could, in many cases, prompt earlier detection of serious financial problems among FCMs. The additional information it would generate could then allow clearing members, boards of trade, and, where appropriate, the Commission to take remedial action, resulting in greater protection of customer funds from financial failures of FCMs. This additional protection would have the benefit of inspiring greater confidence among the investor public in the financial stability of non-member FCMs.

Other alternative approaches would be less effective in addressing the central problem of bankruptcy losses. Customer account protection or insurance, for instance, would not directly prevent customer losses, but instead would spread the cost of those losses throughout the industry. Similarly, the effectiveness of recent efforts to tighten CFTC monitoring of FCMs while enhancing the Commission's ability to promptly detect troubled firms, would also be augmented by the additional information generated by gross margining.

Summary of Costs

Sectors Affected: Futures commission merchants.

Gross margining of omnibus accounts could impose some additional costs on non-clearing member FCMs who would be required to shift funds currently under their control to clearing members, which, in turn, might experience some related administrative burden.

Summary of Net Benefits

The costs of implementing a gross margining system for omnibus accounts can be minimized if it is properly designed. For instance, CFTC rules already require non-clearing FCMs to inform their clearing FCMs of the gross positions represented by each omnibus account carried in its name, and clearing FCMs must maintain daily tallies of these gross postions. The added step of actually requiring gross margining of these accounts would not appear to entail significantly more recordkeeping or greater operational burdens.

Further, the rule would not preclude non-member FCMs from depositing Treasury bills or other acceptable interest-bearing instruments for margin, and therefore, these FCMs could continue to collect interest on those funds.

While gross margining of omnibus accounts is not a fool-proof protection against FCM bankruptcies, it could prove a direct and efficient mechanism to detect financial weaknesses among FCMs before deterioration leads to major customer losses.

Related Regulations and Actions

Internal: On September 22, 1981, CFTC voted to approve the application of the National Futures Association (NFA), for registration as a futures association under § 17 of the Commodity Exchange Act. Once fully implemented, NFA will conduct many industry self-regulatory functions.

External: None.

Government Collaboration

None.

Timetable

NPRM—To be determined.
Final Rule—To be determined.
Public Hearing—None.
Public Comment Period—To be determined.
Regulatory Impact Analysis—The CFTC, as an independent agency, is not required to prepare a Regulatory Impact Analysis as it is defined under E.O. 12291. However, CFTC includes much of the same information in its NPRMs and Final Rules.
Regulatory Flexibility Analysis—To be determined.

Available Documents

Memorandum of the Division of Trading and Markets, "Gross Margining of Omnibus Accounts," September 8, 1981.

The above document is available by mail at no cost from the Office of the Secretariat, CFTC, 2033 K Street, N.W., Room 806, Washington, DC 20581.

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CFTC

Large Trader Reporting to Exchanges and Reporting Open Positions (17 CFR Parts 15, 16, 17, 18, and 21; Revision)

Legal Authority

Commodity Exchange Act, §§ 4g, 4i, 5(d), and 8a(5), 7 U.S.C. 6g, 6i, 7(d) and 12a(5).

Reason for Including This Entry

The Commodity Futures Trading Commission (CFTC) thinks these rules are important because they would shift primary responsibility for the collection of key market surveillance data from the Commission itself to the commodity exchanges. If we adopt these rules, the exchanges will be better equipped to prevent price manipulations, cornering of commodities, and other market distrubances, and the Commission will be able to act more in an oversight role and less as primary regulator. This will set an important precedent.

Statement of Problem

The Commission and the commodity exchanges both have obligations under the Commodity Exchange Act to prevent price manipulation, corners, and other disruptions in the futures markets. In order to detect market disruptions, the Commission and the exchanges both conduct market surveillance activities. The Commission operates an extensive large trader reporting system through which it collects information about traders who control significant futures positions from commodity exchanges, futures commission merchants (FCMs), foreign brokers who carry futures accounts, and individual traders. The various exchanges employ widely differing market surveillance practices and, according to a recent staff review, in some cases apparently collect little data on individual traders' positions for routine use in their surveillance efforts.

As a result of the overlapping responsibility of the Commission and the exchanges described above, some duplication of effort exists. Additionally,

since large trader data, which the Commission considers essential to preventing and detecting price manipulations and other market disturbances, are generally not equally available to the exchanges and the Commission, it may be difficult for the exchanges to fully discharge their market surveillance obligations. If the Commission does not act, these problems are unlikely to be resolved. In order to reduce duplication of effort and to enable the exchanges to discharge their self-regulatory responsibilities, the Commission is considering a general proposal that would require exchanges to collect, process, and forward to the Commission, in machine readable form, information similar to that which the Commission currently collects under existing regulations from FCMs and brokers. If adopted, this rulemaking approach would improve the market surveillance capability of the exchanges and thus enable the Commission to move toward an oversight rather than regulatory role.

Alternatives Under Consideration

As described above, the Commission is considering whether, as self-regulatory entities, commodities exchanges should be primarily responsible for collecting and processing large trader data. It has requested public comments on this question and is now studying those comments. It will then determine whether to publish specific rulemaking proposals to implement this approach.

Shifting primary responsibility for this activity to the exchanges would have several advantages. It would provide the exchanges with the information that is essential to maintaining an effective exchange market surveillance program; it would transfer significant responsibility from Government to the private sector; it would reduce some duplicative reporting burdens now imposed on the FCM community; and it would transfer a substantial portion of the cost of market surveillance to entities that are the direct beneficiaries of effective self-regulation—namely the exchanges, their members, and their customers. This innovative compliance reform would reduce government costs as well. The most significant disadvantage to this approach is that, absent coordination by the exchanges, a reduction in reporting burdens may not be achieved.

Alternatively, the Commission is considering whether it would be feasible for the exchanges or a newly created self-regulatory organization to maintain a joint reporting system. This would have all of the advantages of the approach described above and would eliminate the possibility that different exchanges might impose duplicative or inconsistent reporting requirements. The disadvantage of this approach is that it could delay, complicate, or, because of startup costs associated with creating a new self-regulatory organization, render more expensive the transfer of primary responsibility from the Commission to the exchanges.

Summary of Benefits

Sectors Affected: Commodity exchanges; futures commission merchants; foreign brokers; the CFTC; and all market users.

These proposals would directly benefit commodity exchanges by enhancing their surveillance capability and by lessening the degree of government involvement in their operations. They would also benefit FCMs and foreign brokers by eliminating the need for them to report certain information both to the Commission and some commodity exchanges, as they are required to do under existing Commission and exchange rules. Moreover, the CFTC would save time and money if proposals that shifted the primary burden of data collection to the exchanges were adopted.

Less directly but equally importantly, all market users would benefit from the exchanges' improved surveillance capacity and ability to prevent certain market disruptions.

Summary of Costs

Sectors Affected: Commodity exchanges; futures commission mechants; and foreign brokers.

Commodity exchanges that are currently collecting and maintaining less comprehensive data than would be required under these proposals are likely to experience increased operating costs. Additionally, unless a joint or coordinated reporting program is developed by the exchanges, futures commission merchants and foreign brokers in some instances might incur the cost of complying with duplicative reporting requirements. It is unlikely, however, that their reporting costs under the new system would exceed present reporting costs once the reporting system has been shifted fully from the Commission to the exchanges.

Summary of Net Benefits

The net benefits of placing more responsibility on the exchanges themselves involves balancing possible incremental costs for some exchanges in filling this expanded role against the potential benefits of improved market surveillance, the elimination of duplicative reporting for FCMs in many instances, and the burden of market surveillance to its prime beneficiaries. Several of these factors are, of course, non-quantifiable, and their resolution must await further analytic work by the Commission.

Related Regulations and Actions

Internal: At the same time that the Commission requested comments on large trader reporting, it also published for comment proposed rules designed to standardize and simplify some of its reporting requirements. These proposals were adopted on March 25, 1981 (46 FR 18528).

The Commission also has proposed to amend its current regulations to eliminate the filing and processing of series '03 reports by large traders, which would substantially reduce the overall reporting burden of these market participants (46 FR 42463, August 21, 1981).

External: None.

Government Collaboration

None.

Timetable

NPRM—45 FR 57141, August 27, 1980.

Regulatory Impact Analysis—The CFTC, as an independent agency, is not required to prepare a Regulatory Impact Analysis as it is defined under E.O. 12291. However, the CFTC prepares much of the same information in its NPRMs and Final Rules.

Revised NPRM—To be determined.

Public Comment Period—Closed November 25, 1981.

Public Hearing—None.

Final Rule—To be determined.

Regulatory Flexibility Analysis—None.

Available Documents

The NPRM and public comments on it are available by mail at no charge from the Office of the Secretariat, CFTC, 2033 K Street, N.W., Washington, DC 20581.

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CFTC

Notice of Proposed Rulemaking for Options on Physical Commodities (17 CFR Part 33; Revision)

Legal Authority

Commodity Exchange Act, § 4c and 8a, 7 U.S.C. 6c and 12a.

Reason for Including This Entry

The Commodity Futures Trading Commission (CFTC) considers this rulemaking proceeding to be important because, if adopted, it could produce a major expansion in commodity trading, reflecting active current interest among commercial traders as well as the trading public. In addition, Congress, when it enacted a ban on commodity options trading until such time as the Commission was prepared to regulate successfully such transactions, expressed specific interest in a program that would permit commodity option trading on exchanges.

Statement of Problem

In 1978 CFTC responded to then-pervasive fraud and unsound practices in the trading of so-called "London" commodity options (claimed to be traded on exchanges in London, England, but often allegedly converted by sellers in the United States) with a general suspension, as of June 1, 1978, of the offer and sale of commodity options in the United States. Congress followed later that year with a general statutory prohibition against exchange-traded commodity options until CFTC could submit documentation of its ability "to regulate successfully such transactions" and could present proposed rules. Congress reserved for itself a 30-day review over these proposals, and limited statutory exemptions for certain types of off-exchange option transactions, referred to as "trade options" and "dealer options," were enacted.

On September 8, 1981, CFTC approved a 3–year pilot program permitting a limited form of commodity options trading on American commodity exchanges.

The program contains several important restrictions, for example:

- a qualifying exchange is limited to trading in one option contract, and each exchange must undertake a heavy self-regulatory burden;
- safeguards are required, such as detailed risk disclosure to members of the public, in order to prevent a recurrence of pre–1978 trading abuses.
- only those futures commission merchants (FCMs) that are members of the exchange upon which the option is traded may offer or sell the option to the public; however, when the National Futures Association, an industry self-regulatory organization registered with the Commission, undertakes to regulate the option-related activities of its member FCMs, such FCMs could also participate in the offer and sale of options.

The CFTC formally submitted its exchange-traded options pilot program to Congress, pursuant to § 4c(c) of the Commodity Exchange Act, on September 18, 1981. Hearings were conducted by the House Agriculture Subcommittee on Conservation, Credit, and Rural Development on September 23, 1981, and by the Senate Agriculture Subcommittee on Agricultural Research and General Legislation on October 14, 1981. The Congressional review period of 30 days has expired. The trading of options on designated exchanges is expected to begin in 1982.

Both CFTC and several public commentators have expressed interest in expanding the options program beyond options-on-futures contracts to include trading in options on the underlying physical commodities. Indeed, some commentators have stated that they would have attractive features not found in options-on-futures. At its meeting on September 8, 1981, the Commission decided to promptly consider expansion of the pilot options program to include options-on-physicals, and a **Federal Register** notice was issued on November 3, 1981 (46 FR 54570) seeking public comment on this proposal.

Alternatives Under Consideration

If the Commission determines to proceed with an option-on-physicals proposal, it must decide whether those options should be introduced on a limited experimental basis, and if so, under what restrictions. Just as the CFTC was guided in shaping the options-on-futures proposal by the Congressional concern for caution born of the pre-1978 experience of abuse, this same prudence would apply to any expansion of that program.

Summary of Benefits

Sectors Affected: Boards of trade; commercial hedgers; futures commission merchants; and the trading public.

An expansion of option trading to include options-on-physicals could give commercial interests greater opportunities to hedge and shift economic risks. The economic functions of providing protection against adverse price fluctuation for both suppliers and buyers of goods, as well as greater economic competition, could all be enhanced by the proposal.

Summary of Costs

Sectors Affected: Boards of trade; commercial hedgers; futures commission merchants; and the trading public.

The most serious potential cost of expanded commodity option trading is the possible recurrence of abuses that occurred prior to the 1978 suspension. These abuses included actual defrauding of the public and the diversion of substantial CFTC resources to investigate allegations and prosecute wrongdoers. Any options program must be designed to minimize, to the extent feasible, the potential for such abuse. Further, by requiring an extensive self-regulatory role for designated exchanges, cost of regulation for the Government can be somewhat reduced.

The actual participation by traders or exchanges in the option program would be voluntary. Each exchange could choose for itself whether to seek approval for option trading or to implement the trading. Thus the traders or exchanges would base their decisions on their own calculations of cost versus potential benefits.

Summary of Net Benefits

The Commission could design several alternatives to reduce any risk of market abuse. So long as expansion of the options program is not so large as to overtax the Commission's resources and those of the industry self-regulatory organizations to effectively oversee trading, greater security of the market would, in turn, bolster investor confidence, maximizing the economic benefits of expanded option trading.

Related Regulations and Actions

Internal: On September 8, 1981, the CFTC approved regulations establishing a 3-year limited pilot program for trading in options-on-futures contracts at qualifying exchanges. The regulation was submitted to Congress for a 30-day review period, as prescribed by statute (46 FR 54500).

External: None.

Government Collaboration

None.

Timetable

NPRM—46 FR 54570, November 3, 1981.
Final Rule—To be determined.
Public Hearing—None.
Public Comment Period—Closed December 3, 1981.
Regulatory Impact Analysis—The

CFTC, as an independent agency, is not required to prepare a Regulatory Impact Analysis as it is defined under E.O. 12291. However, the CFTC prepares much of the same information in its NPRMs and Final Rules.

Regulatory Flexibility Analysis—None.

Available Documents

Public comments on NRPM.

Regulation on Domestic Exchange-Traded Commodity Options (46 FR 54500).

All of the above documents are available by mail at no cost from the Office of the Secretariat, CFTC, 2033 K Street, N.W., Room 805, Washington, DC 20581.

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CFTC

Proposed Rule Concerning Special Calls for Information From Traders (17 CFR 21.03; Revision) (Previously, Proposed Rules Concerning Foreign Brokers and Traders)

Legal Authority

Commodity Exchange Act, §§ 4g, 4i, 5, 5a, and 8a, 7 U.S.C. 6g, 6i, 7, 7a, and 12a.

Reason for Including This Entry

The Commodity Futures Trading Commission (the Commission) proposed this rule to facilitate the Commission's ability to obtain timely information concerning foreign traders. If adopted, the rule could substantially enhance the Commission's market surveillance capability.

Statement of Problem

In recent years, foreign participation in the U.S. futures markets has become increasingly significant. Although little statistical information is available, it appears that foreign participation may account for 25 percent or more of the activity in some commodities. By engaging in futures trading in the United States, foreigners, like domestic market participants, become subject to the regulatory scheme set forth in the Commodity Exchange Act, 7 U.S.C. 1 *et seq.* and the Commission's regulations thereunder. One aspect of this scheme requires the Commission to perform intensive market surveillance, which involves collecting reports from and communicating with both domestic and foreign market participants.

The Commission published for comment proposed rules that would make domestic futures commission merchants (FCMs) who are registered with the Commission primarily responsible for ensuring the availability of information needed by the Commission about the foreign brokers and traders whose futures trading accounts they carry. The reason for this action is that, at present, the Commission receives less timely, less complete, and less verifiable information concerning the size of accounts and the identity of the persons for whose benefit the accounts were established from some foreign brokers and traders than it generally receives from their domestic counterparts. The Commission has encountered difficulties and delays in trying to identify and communicate with these foreign entities, in part because of foreign secrecy laws and legal restrictions in some countries on direct communications between foreign governments and their citizens. It is difficult for the Commission to take effective enforcement action against foreign brokers and traders who do not comply with Commission reporting requirements. As the markets regulated by the Commission have become increasingly international in character, the need for us to address these problems has become more important.

Alternatives Under Consideration

As proposed, the rule would require domestic futures commission merchants who are registered with the Commission and who carry accounts for foreign persons to obtain a list of the persons for whose benefit the accounts were established. If a futures commission merchant could not provide this information to the Commission about an account on request, the FCM would be required to liquidate the futures positions in the account.

At a meeting held on November 25, 1980, the Commission approved the rule in principle, subject to some further revisions. The Commission directed its staff to modify the rule to provide a greater role for futures exchanges (contract markets).

Summary of Benefits

Sectors Affected: All sectors of the U.S. commodity futures markets, including farmers and other producers, processors, manufacturers, commercial users, and consumers of commodities; persons speculating in the futures markets; and the Commission.

The availability of more complete market information will promote fair dealing and integrity in the markets and improve the Commission's ability to detect and take action to prevent price manipulations, corners, and other market disruptions.

Summary of Costs

Sectors Affected: Registered domestic futures commission merchants; contract markets; and foreign brokers and traders who participate through domestic agents in the U.S. futures market.

The proposed regulation could impose some administrative costs on registered futures commission merchants, and some commentators believe that domestic futures commission merchants may experience some loss of foreign business. Commentators also felt that contract markets could also experience some increased administrative costs and a possible loss of trading volume.

Summary of Net Benefits

By facilitating the Commission's ability to obtain market data essential to the effective surveillance of American futures markets, the proposed regulation will aid the Commission in preserving orderly markets for all market participants.

Related Regulations and Actions

Internal; On April 1, 1980, the Commission voted to adopt Final Rules that would require foreign brokers and traders to have an agent for service or delivery of Commission communications ("Designation of a Futures Commission Merchant to be the Agent of Foreign Brokers, Customers of Foreign Brokers and Foreign Traders," 17 CFR 15.05).

External: None.

Government Collaboration

None.

Timetable

NPRM—45 FR 31733, May 14, 1980, "Futures Commission Merchants—Duties Concerning Accounts Carried for Foreign Brokers and Traders."

Public Comment Period—Closed in 1980.

Regulatory Impact Analysis—The Commodity Futures Trading Commission, as an independent agency, is not required to prepare a Regulatory Impact Analysis as it is defined under E.O. 12291. However, the Commission prepares much of

the same information in its NPRMs and Final Rules.

Regulatory Flexibility Analysis—To be determined.

Final Rule—To be determined.

Available Documents

"Rules Concerning Foreign Brokers and Traders," Memorandum of the Office of the General Counsel, April 1, 1980.

"Commission Policy on Reporting Requirements for Foreign Brokers and Traders," Memorandum of the Office of the General Counsel, November 17, 1980.

"Foreign Broker and Trader Reporting Requirements," Memorandum of the Division of Economics and Education, November 21, 1980.

Public comments on the NPRM.

All of the above documents are available by mail at no cost from the Office of the Secretariat, CFTC, 2033 K Street, N.W., Room 806, Washington, DC 20581.

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FEDERAL HOME LOAN BANK BOARD

Consumer Leasing by Federal Associations (12 CFR Part 545; New)

Legal Authority

Home Owners' Loan Act of 1934, § 5, 12 U.S.C. 1464, as amended by Depository Institutions Deregulation and Monetary Control Act of 1980, § 401, P.L. No. 96-221, 94 Stat. 143.

Reason for Including This Entry

The Federal Home Loan Bank Board (FHLBB) is including this proposal because the Board considers it to be a matter of great public interest.

Statement of Problem

In the Depository Institutions Deregulation and Monetary Control Act of 1980 (DIDMCA), Congress for the first time authorized federally chartered savings and loan associations to engage in large-scale consumer lending. This type of lending was just one of several new powers created by DIDMCA in order to make federally chartered associations more effective competitors in the financial marketplace. There are approximately 4,000 savings and loan associations in the country, 2,000 of which are federally chartered.

The Board adopted regulations implementing the consumer lending authority in 45 FR 76104, November 18, 1980 (codified at 12 CFR 545.7-10). At that time, several commenters raised the possibility of federally chartered associations engaging in consumer leasing, a form of financing in which the lender purchases an item of property and leases it to a borrower under terms that will return the lessor-lender's entire investment plus profit.

Although this type of finance-leasing had been approved as an incidental activity for banks by both regulation of the Comptroller of the Currency and judicial decision, the Board was uncertain whether similar authority existed for federally chartered associations. Accordingly, the Board declined to authorize consumer leasing by federally chartered associations at the time of the original consumer lending regulations.

The Board continued to study the area of leasing and, after an extended analysis of the legal underpinnings for bank leasing, determined that similar legal authority can be found for leasing by federally chartered associations. Consequently, the Board has recently proposed regulations to allow federally chartered savings and loan associations to enter into this field (46 FR 49135, October 6, 1981).

Alternatives Under Consideration

The Board's proposed leasing rules basically follow the example of similar regulations already developed by the Office of the Comptroller of the Currency and the Federal Reserve Board (see 12 CFR 7.3400 and 225.4(a)(6)). The Board, however, is specifically seeking comment on various aspects of those guidelines in order to ensure that they are fully relevant to savings and loan practices. Aspects for comment include appropriate limits on residual value estimates, usury impact of leasing transactions, and the tax impact on federally chartered savings and loan associations.

Summary of Benefits

Sectors Affected: Federally chartered savings and loan associations; depositors in these associations; and consumers wishing to lease personal property.

Implementation of the increased authority provided by the proposed regulation will provide federally chartered savings and loan associations with the means to compete more effectively with other financial institutions by offering consumer leasing services, thereby increasing the range of services they provide.

Depositors in federally chartered savings and loan associations will benefit because the associations will have a new source of revenue.

The leasing public will benefit because the increased competition may mean lower prices for services.

Summary of Costs

Sectors Affected: Banks and other entities currently offering consumer leasing services.

Institutions currently engaged in consumer leasing may bear some minimal costs because they might have to lower their charges to remain competitive.

Summary of Net Benefits

There are only minimal costs, those that would result from removal of regulatory restrictions to allow increased competition and a freer consumer leasing market. These possible costs are far outweighed by the benefits provided by increased competition—possible lower costs to consumers for services and increased revenues for federally chartered savings and loan associations and their customers.

Related Regulations and Actions

Internal: These proposed changes, while appearing in a new part of the CFR, would also revise existing portions in 12 CFR Chapter V, Subchapters C and D.

External: Similar regulations have already been adopted by the Office of the Comptroller of the Currency and the Federal Reserve Board (12 CFR 7.3400 and 225.4(a)(6)).

Since a number of State statutes authorize State chartered savings and loan associations to exercise the same powers exercised by federally chartered savings and loan associations, adoption of this regulation could by implication extend consumer leasing authority to many State chartered savings and loan associations.

Government Collaboration

None.

Timetable

NPRM—46 FR 49135, October 6, 1981.

Public Comment Period—October 6, 1981 to December 6, 1981.

Public Hearing—None.

Final Rule—January 1982.

Regulatory Impact Analysis—None, but see extensive analysis and discussion in preamble to NPRM.

Regulatory Flexibility Analysis—None.

Available Documents

Copies of proposed rules, public comment letters, and Final Rules (noted in Statement of Problem) are available at the Board's offices at 1700 G Street, N.W., Washington, DC 20522. The Board's Public Information Office, (202) 377–6934, or Office of Communications, (202) 377–6677, may be called for additional information.

Copies of transcripts of public meetings are available from the Office of the Secretary, Federal Home Loan Bank Board, at the same address.

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FEDERAL RESERVE SYSTEM

Simplification of Securities Credit Regulations (12 CFR Part 207, Revision; 12 CFR Part 220, Revision; 12 CFR Part 221, Revision; 12 CFR Part 224, Revision)

Legal Authority

Securities and Exchange Act of 1934, 15 U.S.C. 78(c)–(hh).

Reason for Including This Entry

We believe this action is important because it simplifies a complex set of regulations and reduces burdens and restrictions on users and suppliers of margin credit.

Statement of Problem

Margin credit regulations apply to the terms upon which borrowing and lending on securities takes place. The "margin" is the amount of the borrower's own funds that must be provided at the time of a transaction.

The Board of Governors (the Board) of the Federal Reserve System (FRS) currently limits extensions of margin credit through four regulations:

- Regulation T: Credit by Brokers and Dealers (12 CFR Part 220).
- Regulation U: Credit by Banks for the Purpose of Purchasing or Carrying Margin Stocks (12 CFR Part 221).
- Regulation G: Securities Credit by Persons Other Than Banks, Brokers, or Dealers (12 CFR Part 207).
- Regulation X: Rules Governing Borrowers Who Obtain Securities Credit (12 CFR Part 224).

The Board promulgated the first of these regulations in the 1930s, adding the others and modifying them over the years. Although we promulgated these regulations separately, they deal with related issues and have long been viewed as an integrated whole. Because the securities market has changed substantially since the 1930s, both through growth in the volume of transactions and advances in technology for administering these transactions, the Board decided to initiate a review of these regulations in 1978. (This review encompasses not only the four regulations described above, but all Federal Reserve System regulations.) This entry describes the proposed revisions to the four above-mentioned margin regulations. The initial proposals in the first NPRM were issued as guiding principles for simplifying the regulations; the actual proposed revisions to the regulations in the revised NPRMs we will issue will reflect comments from the initial NPRMs.

Our proposal will revise Regulation T as follows:

(1) Reduce the retention requirement to the level of maximum loan value of the securities sold. That is, lower the current 70-percent retention requirement (the percentage of proceeds from sales of securities that margin credit customers must leave in their accounts with the margin lender) to equivalence with the maximum loan value of the securities (currently, 50 percent for stock).

(2) Remove the restriction on the same-day substitution privilege (i.e., the restriction on replacing the same dollar value of different securities in an account, on the same day).

(3) Reduce from eleven to seven the number of accounts that securities lenders are required to maintain and identify these accounts as being for the transactions of either public customers or market professionals.

(4) Relax the restriction on arranging by brokers of unsecured credit extensions (credit extended without security collateral).

(5) Change regulatory terminology to that used by the industry.

Our proposals to revise Regulations U and G to promote parallel regulatory treatment between banks and persons or institutions who lend under Regulation G will:

(1) Allow non-margin stock to be used as collateral for bank loans without the current requirement that the borrower must state the purpose for which the loan proceeds are to be used.

(2) Clarify the meaning of "indirectly secured" margin lending in order to reduce confusion and uncertainty about the applicability of these regulations to certain unsecured loan agreements.

(3) Relax the rules for consolidation of credit extensions by purpose and by type of security. This will remove margin lending limits from some bank loans under Regulation U and from some loans made by other lenders under Regulation G.

(4) Make collateral segregation rules comparable across the regulations. It will no longer be necessary to segregate loans secured by convertible bonds from other regulated margin loans.

These revisions also automatically affect margin borrowers, under Regulation X, because the regulation includes by reference the other margin credit regulations (T,U,G).

Alternatives Under Consideration

The major alternative we considered to this proposal was a complete one-time overhaul of the entire constellation of the four regulations (T, U, G, and X), including proposed regulatory language. The Board decided, however, that such a comprehensive action would be very time consuming and therefore chose to address the most substantive problem areas.

In conducting the study of the issues, FRS staff had in-depth discussions on issues with industry representatives, including the New York Stock Exchange and various brokers and bankers. The proposed changes reflect the contributions of industry input to the regulatory review in at least three areas:

(1) action on consolidation of accounts;

(2) provisions for more uniform treatment of credit extensions by banks and non-broker lenders; and

(3) increased attention to "plain English" in the rewritten regulations.

Summary of Benefits

Sectors Affected: Banking; credit agencies other than banks; all other lenders of margin credit, including brokers; and all borrowers who use margin credit.

Borrowers who use margin credit will benefit because the revisions (1) will allow such borrowers more flexibility in the use of their proceeds from securities sales (i.e., they will have more cash available to deal with); and (2) the revisions also will allow individuals and institutions more flexibility in borrowing from banks (e.g., banks will be able to extend larger loans on the same collateral).

All margin credit lenders will have a reduced administrative burden, and the revisions also will allow brokers to provide additional investment banking services.

Summary of Costs

Sectors Affected: None.

The revisions could generate only one-time minor administrative costs to margin credit borrowers and lenders and the FRS as we revise our procedures to reflect these changes.

Summary of Net Benefits

The minor administrative costs associated with implementation of the proposed revisions are expected to be more than fully offset by the benefits that will accrue to both margin credit borrower and lenders. Therefore, the net benefits will be: (1) more flexibility for borrowers in the way they use their proceeds from securities sales, (2) more flexibility for individuals and institutions in borrowing from banks, in that banks will be able to make larger loans on the same collateral, and (3) a reduced administrative burden for all margin credit lenders.

Related Regulations and Actions

None.

Government Collaboration

None.

Timetable

NPRM—46 FR 32592, June 24, 1981; 46 FR 37516, July 21, 1981. (This proposal was issued through two related NPRMs.)
Public Comment Periods—First NPRM, June 24, 1981 to September 15, 1981; second NPRM, 60 days following publication of the notice.
Public Hearing—None.
Revised NPRMs—1st Quarter 1982.
Public Comment Period—Following revised NPRMs.
Final Rule—2nd Quarter 1982.
Final Rule Effective—Immediately upon publication.
Regulatory Impact Analysis—While the FRS does not have to prepare an RIA under Executive Order 12291, we do present our analysis of this action in a 1,000-page document entitled "Securities Credit Regulations of the Board of Governors of the Federal Reserve System," prepared by the Federal Reserve Bank of New York and available free of charge from Jim McNeil, New York Federal Reserve Bank, 33 Liberty Street, New York, NY 10045.
Regulatory Flexibility Analysis—Published with first NPRM.

Available Documents

The NPRMs and public comments are available for review in Docket No. 0362, at the Freedom of Information Office, Federal Reserve Board, 20th Street and Constitution Avenue, N.W., Washington, DC 20551.

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SECURITIES AND EXCHANGE COMMISSION

Proposed Revision of Form S-14 and Other Forms and Rules Relating to Disclosure in Connection With Business Combination Transactions (17 CFR Parts 230 and 239; Revision)

Legal Authority

Securities Act of 1933, §§ 6, 7, 10, and 19(a), 15 U.S.C. 77a *et seq.*

Reason for Including This Entry

The Securities and Exchange Commission (SEC) believes that this proposed action to revise the disclosure requirements under the Securities Act of 1933 (Securities Act) relating to the merger, acquisition, tender offer, and other business combination activity of companies, focusing principally on Form S-14, is of major interest to issuers in the negotiated acquisitions area. It is anticipated that the proposed revision of Form S-14 would substantially reduce costs in connection with preparation of that form.

Statement of Problem

The Securities Act generally requires that, unless an exemption is available, companies file a registration statement containing specified information before they offer securities for sale to the public. Further, investors must be furnished with a prospectus (which constitutes a major part of each registration statement) containing information to enable them to evaluate the securities and make informed investment decisions. Form S-14 is a specialized registration statement form that may be used by companies for registration under the Securities Act of securities to be issued in a transaction specified in Rule 145(a) (17 CFR 230.145(a)), which deals with business combinations. Rule 145(a) provides that the submission to a vote of security holders of a proposal for certain reclassifications of securities, mergers, consolidations, or transfers of assets is deemed by the Commission to involve an "offer," "offer to sell," "offer for sale," or "sale" of the securities to be issued in the transaction. The effect of the rule is to require registration of the securities to be issued in connection with such transaction, unless an exemption from registration is available.

Form S-14 provides that the prospectus to be used in such registrations shall consist of a proxy or information statement that meets the requirements of the Commission's proxy or information rules under § 14 of the Securities Exchange Act of 1934 (Exchange Act). In the case of companies subject to those rules, the filing of the registration statement on Form S-14 satisfies the requirement for filing a proxy or information statement pursuant to those rules. When a company is not subject to the proxy rules, or is subject thereto but is not required to solicit votes from its security holders, the prospectus would contain the same information that would be required by the proxy rules.

The existing disclosure requirements of Form S-14 often result in substantial reporting costs and the filing of voluminous and complex documents that do not sufficiently assist shareholders in making informed voting decisions on the transactions for which their votes are solicited. In addition, existing disclosure requirements are sometimes inconsistent for different ways of effecting business combinations, e.g., by proxy contest, merger, or tender offer. Thus, the amount and timing of required disclosure may differ depending on the transaction and may result in a failure to apprise shareholders in a timely, adequate manner of important business combination transactions affecting their equity holdings. For these reasons, the Commission has determined that disclosure requirements relating to merger proxies and business combinations need to be generally reexamined. The focal point of this review would be the proposed revision of Form S-14.

Alternatives Under Consideration

(A) Alternative (A) would apply the techniques and principles of the Commission's proposed integrated disclosure program to the merger proxy area. Under the integrated disclosure program, the SEC would permit incorporation by reference of disclosure documents prepared pursuant to the continuous reporting requirements of the Exchange Act in certain registration statements under the Securities Act. Moreover, a proposed three-tiered approach to the classification of companies desiring to sell securities would classify registrants into three categories, essentially on the basis of how widely followed the companies are in the market. The three registrant categories correspond to the eligibility criteria for three proposed forms—

Forms S–1, S–2, and S–3—that comprise the basic framework for registration of securities in the proposed integrated disclosure system (Securities Act Release No. 6331, August 6, 1981, 46 FR 41902). Form S–3 relies on incorporation by reference of Exchange Act reports and contains minimal disclosure in the prospectus. Form S–2 represents a combination of incorporation by reference of Exchange Act reports and presentation in the prospectus or in an annual report to security holders of certain information. Form S–1 requires complete disclosure of information in the prospectus and permits no incorporation by reference. In general, the SEC would permit widely followed companies that have been in the Exchange Act continuous reporting system for some time to use the more streamlined Forms S–2 and S–3, which incorporate more disclosure documents by reference, while less widely followed companies that have not been in the Exchange Act reporting system for a minimum period would be required to use Form S–1.

Alternative (A) would use this integrated disclosure framework in Form S–14 by tying disclosure in the negotiated acquisitions context to the level of registration form used by the companies involved in a negotiated acquisition. Thus, if a company that is eligible for registration of its securities on Form S–3 seeks to acquire a company eligible for registration of its securities on Form S–2, the SEC would permit disclosure regarding the acquiring company at an "S–3 level," i.e., through the incorporation by reference of the same disclosure documents allowed by Form S–3. The Commission would require that the company present information regarding the company to be acquired at an "S–2 level," i.e., combining incorporation by reference of the more complete disclosure documents and the delivery of streamlined disclosure presented in either the prospectus or in the annual report. In all cases, Form S–14 would require that transaction-specific information be presented. However, by allowing incorporation by reference and use of the annual report or annual report level of disclosure information according to the basic registration form eligibility of the company, Alternative (A) would reduce the volume of Form S–14, thus reducing costs for issuers that use merger proxies and providing shareholders with a more manageable disclosure document.

Alternative (A) would also eliminate any differences in timing and amount of disclosure for different types of business combination transactions. Eliminating substantive and timing differences in required merger proxy disclosure would make treatment of disclosure for all business combination transactions consistent and help to ensure that shareholders receive more timely and useful disclosure information. This approach might require statutory amendment in the tender offer area.

(B) Similar to Alternative (A), Alternative (B) would require transaction-specific information regarding any business combination. This alternative would also employ the techniques and principles of the SEC's proposed integrated disclosure program described above, including incorporation by reference of existing documents and use of the annual report, to reduce the volume of disclosure on Form S–14 and to make it a more effective disclosure document. However, recognizing that a shareholder's investment decision in the business combination context differs from other investment decisions, Alternative (B) would not permit incorporation by reference to the degree permitted by proposed Form S–3, as does Alternative (A). Shareholders might not have access to market professionals nor retain their annual reports and thus would benefit from more required merger proxy disclosure in Form S–14 than would be present with the high level of incorporation by reference allowed by Form S–3. However, despite the fact that Alternative (B) would not allow as much material to be incorporated by reference as Alternative (A), prospectus bulk and volume would still decrease under Alternative (B) because it would allow "S–2 level" incorporation by reference and actual prospectus presentation of information, as well as the use of the annual report to shareholders.

Alternative (B) would reduce, but not eliminate, differences between disclosure required in the proxy contest situation vis-a-vis the tender offer situation. This alternative would focus reduction of differences on those areas that are not unique to the structure of either acquisition transaction. No statutory amendment would be required and the substantive nature of negotiated acquisitions would not be affected.

The Commission tentatively has determined to pursue the approach outlined in Alternative (B). With regard to application of the techniques of integrated disclosure to the negotiated acquisitions area, Alternative (B) allows reduction of prospectus bulk and cuts preparation expenses, but retains sufficient disclosure in the prospectus to help ensure informed shareholder decisionmaking. Alternative (B) would also minimize inconsistencies in the timing and substance of disclosure regarding negotiated acquisitions and tender offers but, unlike Alternative (A), would not hamper the delicate nature of Williams Act transactions or tip the balance of a negotiated acquisition in favor of either party.

Summary of Benefits

Sectors Affected: Issuers that seek to register securities to be offered in certain business combination transactions under Securities Act Rules 133 and 145; shareholders of such issuers and of companies sought to be acquired; other persons who rely upon or use information filed by such companies with the SEC; and the SEC.

The SEC believes, on the basis of its own informal estimates, that the proposed revision of Form S–14 would reduce the aggregate costs of preparing that form by roughly $14 million annually (in 1981 dollars). This reduction in preparation costs would stem largely from application of integrated disclosure techniques, specifically incorporation by reference of existing disclosure documents, to Form S–14 registration. In addition to legal and other professional preparation cost savings, streamlining of Form S–14 would result in lowered printing, duplicating, mailing, and handling costs. To the extent that these corporate costs are reduced, shareholders will benefit as equity owners. Although the amount of these savings cannot be measured precisely, the SEC believes them to be significant. Additionally, the overall volume reductions should decrease the administrative burdens to the SEC staff, increase processing speed, improve communications with shareholders and investors, and result in some improved access to capital markets.

Shareholders who are solicited to vote on negotiated acquisition transactions would receive a major non-quantifiable benefit because less voluminous and complex proxy material will enhance their understanding of the transaction and therefore increase their ability to make informed voting decisions. Other users of filed information should also benefit from more readable disclosure information.

Summary of Costs

Sectors Affected: None.

The SEC does not believe that any significant costs would be incurred by any affected sector as a result of the adoption of these proposals.

Summary of Net Benefits

As noted, the SEC does not expect any significant costs to be incurred by any affected sector as a result of the adoption of these proposals. Therefore, net benefits are approximately the same as those discussed above in the Summary of Benefits section: the expense to corporations of engaging in business combination transactions will be reduced and shareholders will be provided with a less complex disclosure document to assist them in making their decisions.

Related Regulations and Actions

Internal: "Integrated Disclosure System," Securities Act of 1933 Release Nos. 6331–6338, 46 FR 41902–42057, August 6, 1981.
External: None.

Government Collaboration

None.

Timetable

NPRM—May 1982.
Public Hearing—None planned.
Public Comment Period—3rd Quarter 1982.
Final Rule—3rd Quarter 1982.
Regulatory Impact Analysis—Not required.
Regulatory Flexibility Analysis—Not required.

Available Documents

"Reproposal of Comprehensive Revision to System for Registration of Securities Offerings," Securities Act of 1933 Release No. 6331, 46 FR 41902, August 6, 1981.
"Integrated Disclosure Program," Securities Act of 1933 Release Nos. 6231–6236, 45 FR 63630–63731, September 2, 1980.

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SEC

Proposed Revision of Regulation S–K (17 CFR Part 229; Revision) and Guides for the Preparation and Filing of Registration Statements and Reports (17 CFR Part 231; Revision)

Legal Authority

Securities Act of 1933, §§ 7, 10, and 19(n), 15 U.S.C. 77g, 77j, and 77s(a); Securities Exchange Act of 1934, §§ 13, 14, 15(d), and 23(a); 15 U.S.C. 78m, 78n, 78o(d), and 78w(a); and Investment Company Act of 1940, §§ 20 and 38(a), 15 U.S.C. 80a–20 and 80a–37(a).

Reason for Including This Entry

The Securities and Exchange Commission (SEC) believes that this proposed action to revise the requirements for preparation and filing of registration statements and reports is of major interest to registrants subject to the disclosure provisions of the Federal securities laws. The proposals potentially would affect approximately 9,000 public companies and other issuers.

Statement of Problem

The Securities Act requires companies that desire to offer securities to the public to file registration statements with the SEC. The Exchange Act requires certain companies with publicly traded securities to register such securities with the SEC, to file annual and other periodic reports, and, in connection with the solicitation of proxies or consents from shareholders to elect directors or approve various corporate actions, to file proxy solicitation materials. The registration statements and reports are designed to provide the investing public with complete and accurate information to assist them in making investment decisions, while the proxy solicitation materials are designed to provide adequate information to security holders for voting purposes. Historically, the mandated disclosures in the registration statements, reports, and proxy statements required under the two Acts evolved separately, resulting, in some areas, in different disclosure requirements even though the disclosures are to be used by investors to make the same investment decisions. Moreover, while major portions of the disclosure required under the two Acts may overlap, differences in the timing of the filings and other factors also resulted in varying disclosures on the same subject matter; such varying disclosures serve no purpose under the Acts.

In addition, many public companies prepare and deliver to security holders informal annual and other periodic reports, portions of which are regulated by State law and SEC and stock exchange regulations. These informal reports may contain much of the information also required in formal filings, but because of differences in State regulatory requirements and the purposes of such reports, the disclosures may vary subtantially in form and context of presentation.

Thus, as a result of the separate historical evolution of disclosure requirements under the two Acts and the differences in informal disclosure documents, registrants had to prepare, in many instances, and the SEC staff had to review, three separate sets of disclosure documents that were all addressed to the same general subject matters and served the same statutory purpose, that is, to provide investors the information necessary to make informed investment decisions. The SEC, recognizing the problems and inefficiencies of subjecting registrants to several disclosure systems, both from the standpoint of registrants themselves and that of the reviewing staff of the SEC, began an effort in the mid-1960s to integrate the various disclosure systems.

The problem faced by the SEC is to reduce or eliminate the duplicative reporting and to reduce thereby both the volume and the cost of the material that companies prepare. Concurrently the SEC is seeking to maintain the quality of disclosure and to update disclosure obligations to eliminate outmoded or unnecessary requirements.

At least three significant factors suggest that the SEC combine or integrate disclosure under the Securities Act and the Exchange Act and in informal shareholder reports. First, the report of the SEC's Advisory Committee on Corporate Disclosure, delivered to the SEC in November 1977, examined the possiblity of combined reporting and indicated a significant and urgent need for integration. Second, an SEC examination of registration statements, Exchange Act reports, and informal shareholder reports indicated that over the years, the number of significant content differences may have diminished, thereby making an integrated system more feasible. Finally, as the volume of disclosure requirements has increased over the years, the cost to registrants and the burden upon the SEC staff correspondingly has increased. An integrated system would reduce the volume of disclosure documents and the number of varying rules and thus reduce both the costs and burdens to reporting companies.

Prior to the adoption in December 1977 of Regulation S–K, which contains the specific disclosure requirements that are incorporated by reference into registration statement and report forms of the SEC (17 CFR 229.20), there were disparate informational requirements between Securities Act registration forms and Exchange Act reporting forms. Regulation S–K reflects the SEC's judgment that information necessary for

investment or voting decisions (other than that relating to the transaction itself) should be the same for the trading markets and for primary distributions. Having made such determination, the Commission was in a position to decide what information is important to such investment decisions and thus should be standardized for use under both Acts.

The SEC designed Regulation S–K as the repository for the Commission's standardized disclosure requirements to be incorporated by reference into the provisions of the various forms that specify the content of registration statements, reports, and proxy statements. In December 1977, the Commission adopted Items 1 and 2 of Regulation S–K, outlining the required descriptions of a registrant's business and properties, respectively, to be included in both registration statements and periodic reports filed pursuant to the Securities Act and Exchange Act.

Over the past 3 years, the SEC has added nine more standardized disclosure items to Regulation S–K, specifying the disclosure requirements with respect to registrants' directors and executive officers, remuneration, legal proceedings, security ownership, market for and dividends on common stock, selected financial data, management's discussion and analysis of the financial condition and results of operations of the registrant, and certain supplementary financial information.

The revisions presently proposed to Regulation S–K will complete the SEC's consolidation into a single regulation of the content requirements for most registration statements and annual reports required under the two Acts. The proposed revisions also implement a recommendation of the Advisory Committee that the Commission undertake a "sunset" review of existing rules and regulations in order to eliminate "duplicative, unnecessary, or impractical reporting requirements."

The principal factors indicating that the SEC should act at this time to revise Regulation S–K and the Guides for the Preparation and Filing of Registration Statements and Reports, a compendium of policies and practices of the Division of Corporation Finance of the SEC in applying the Federal securities laws in its review of disclosure documents, include (1) the SEC's concurrent proposal to revise the system for registration of securities offerings under the Securities Act, (2) the need to complete the SEC's efforts to consolidate and to standardize disclosure requirements in Regulation S–K, and (3) in view of costs to registrants of compliance with disclosure requirements and the burden such requirements also place on the SEC staff in its review procedures, the need to facilitate the integration of the disclosure systems to achieve the efficiencies and cost advantages such integration will provide.

If the SEC does not act to fully implement an integrated disclosure system at this time, companies will continue to bear unnecessary disclosure costs and burdens.

Alternatives Under Consideration

(A) With respect to the "sunset" review and revision of the Guides, there are two alternatives to that presented in the proposals, neither of which appears viable. The first is to have the Guides stand as presently in effect. The consequences of such inaction would be to diminish the usefulness of Regulation S–K to the integrated disclosure system, to continue a system in which content requirements applicable to a filing are dispersed throughout the rules and regulations of the SEC rather than centralized in a single place, and to fail to eliminate those requirements that have become outmoded, unnecessary, or inordinately burdensome. If the proposed revisions to the Guides are adopted, over 30 percent of the existing Guides would be withdrawn as being out of date. Moreover, to leave certain of the Guides in their present form as Guides, a type of disclosure requirement whose legal status is not clear (i.e., on adoption it is specifically noted that they are "not to be rules of the Commission nor are they published as bearing the Commission's official approval"), would perpetuate the practice of formalizing staff practices that have not been adopted by the Commission as rules. The SEC believes this practice is no longer appropriate except in the area of specific industry guides where, in many instances, formal, inflexible rules would not serve the public interest. The SEC believes it is important to clarify the legal status of the other Guides by codifying their substantive and procedural provisions in rules and regulations of the SEC. This clarification is particularly important at this time due to the Commission's recent initiation of a system whereby only selected disclosure documents are reviewed, as under these procedures more and more disclosure will not be subject to the staff review and comment that in the past have been relied upon to assure general compliance with the Guides.

The second alternative is to withdraw the Guides altogether, without incorporating their substance into other Commission rules and regulations. The SEC originally adopted the Guides to clarify existing staff construction of its rules and regulations and to make pubilc its staff practices and policies in applying various disclosure and procedural requirements. To eliminate completely this source of clarification and public information may lead to the problems the Guides originally were designed to eliminate.

(B) With respect to the proposed revision of Regulation S–K, in order to incorporate the content requirements presently included in the Guides, Regulation C, and proposed Securities Act Registration Forms S–1, S–2, and S–3, the principal alternatives are either to repeat disclosure requirements in each form or to adopt the proposed system under which the Regulation S–K items will be incorporated into the various Securities Act and Exchange Act forms.

The SEC believes that there is sufficient commonality of disclosure, whichever major registration form is being used, to justify the standardization of content requirements and their inclusion in Regulation S–K. To leave these requirements in each separate form would again lead to dispersion of content requirements and the inefficiency such dispersion produces. Moreover, Regulation S–K, with its uniform requirements for both the Acts, encourages the uniformity that reduces duplicative disclosure and hence reporting burdens.

Summary of Benefits

Sectors Affected: Companies having a class of securities registered under § 12 or having a reporting obligation under § 15(d) of the Exchange Act, or which offer securities subject to registration under the Securities Act; persons soliciting proxies with respect to securities of registered investment companies or securities registered under § 12 of the Exchange Act; security holders of such companies; persons wishing to purchase securities of such companies: other persons who rely upon or use information filed by such companies with the SEC, or who rely upon or use information contained in informal security holder reports; and the SEC.

The SEC does not believe that its proposed revisions of the Guides or Regulations S–K, by themselves, will result in any measurable cost savings to issuers, security holders, potential investors, and other users of financial reports and filed information, as they largely involve simply a change in formation and the relocation of existing or proposed content items, and the proposed revision of some of the Guides should have at most a minor impact as

the proposals generally would codify existing practice.

The proposed revisions, however, would make the integrated disclosure system more workable and therefore would indirectly help to achieve the cost savings that the Commission believes will result from such an integrated system. The Commission believes that with integration at least some direct cost savings would be realized by nearly all of the approximately 9,000 companies having a reporting or filing obligation. Although the SEC cannot measure the amount of these savings because of numerous internal variables and the lack of a reporting system, it believes them to be significant. Additionally, the overall volume reductions should decrease the administrative burden to the SEC staff, increase processing speed, improve communications with shareholders and investors, and result in some improved access to capital markets.

That part of the proposal that may result in the total withdrawal of outmoded Guides will, however, have a benefit as it will lessen the reporting burden of registrants. Again, however, the cost saving is very difficult to quantify. In addition, the proposals contain a new rule derived from an existing Guide that would, under certain circumstances, permit the registration of securities that are intended to be offered for sale on a delayed or continuous basis in the future. The procedures proposed in the rule are intended to reduce registration costs and the burdens on capital formation by permitting an issuer (or another person) to take immediate advantage of favorable market conditions.

The SEC does not believe that there will be any measurable cost savings to shareholders, potential investors, and other users of financial reports and filed information. However, to the extent that corporate costs are reduced, companies may pass on some of the cost reduction to one or more of these interests.

Summary of Costs

Sectors Affected: None.

The SEC does not believe that any significant costs would be incurred by any affected sector as a result of the adoption of these proposals.

Summary of Net Benefits

As noted, the SEC does not expect any significant costs to be incurred by any affected sector as a result of the adoption of these proposals. Therefore, net benefits are the same as those discussed above in the Summary of Benefits section, i.e., the integrated disclosure system will function more smoothly, which should result in cost savings to registrants and others.

Related Regulations and Actions

Internal: "Integrated Disclosure System," Securities Act of 1933 Release Nos. 6331–6338, 46 FR 41902–42057, August 6, 1981.

External: None.

Government Collaboration

None.

Timetable

NPRM—"Proposed Revision of Regulation S–K and Proposed Rescission of Guides for the Preparation and Filing of Registration Statements and Reports," Securities Act of 1933 Release No. 6332, 46 FR 41925, August 6, 1981.

Public Hearing—None planned.

Reproposal Public Comment Period—August 6, 1981 to October 30, 1981.

Final Rule—January 1982.

Final Rule Effective—2nd Quarter 1982.

Regulatory Impact Analysis—Not required.

Regulatory Flexibility Analysis—Not required.

Available Documents

"Review of Guides for the Preparation and Filing of Registration Statements and Reports," Securities Act of 1933 Release No. 6163, 44 FR 72604, December 14, 1979.

"Proposed Revision of Regulation S–K and Guides for the Preparation and Filing of Registration Statements and Reports," Securities Act of 1933 Release No. 6276, 46 FR 78, January 2, 1981.

"Reproposal of Comprehensive Revision to System for Registration of Securities Offerings," Securities Act of 1933 Release No. 6331, 46 FR 41902, August 6, 1981.

Public comments for period ending October 30, 1981 (File No. S7–894) are available in the Commission's Public Reference Room, 1100 L Street, N.W., Washington, DC 20549.

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SEC

Reproposal of Comprehensive Revision to System for Registration of Securities Offerings (17 CFR Part 239; Revision)

Legal Authority

Securities Act of 1933, §§ 6, 7, 10, and 19(a), 15 U.S.C. 77a *et seq.*

Reason for Including This Entry

The Securities and Exchange Commission (SEC) believes that these new registration forms are important because they will significantly revise the registration statements filed with the SEC under the Federal securities acts when securities are offered to the public. The proposed revision potentially would affect all of the approximately 9,000 public companies and other issuers of securities.

Statement of Problem

The Securities Act of 1933 (Securities Act) requires companies that desire to offer securities to the public to file registration statements with the SEC. The Securities Exchange Act of 1934 (Exchange Act) requires companies with publicly traded securities to register with the SEC, to file annual and other periodic reports, and to register additional securities that they may wish to sell to the public. The SEC is proposing to revise its forms for Securities Act registration statements to establish a single, integrated disclosure system that will permit most registered companies to comply simultaneously with the disclosure provisions of both Acts.

At present, the Securities Act and the Exchange Act have different disclosure requirements. The Securities Act requires that companies registering securities give detailed disclosure concerning their business and financial condition at the time that securities are offered for public sale. Under the Exchange Act, companies whose shares are registered with the SEC, or which have previously sold shares to the public under the Securities Act, must file periodic reports containing detailed disclosure of their affairs. Often major portions of the disclosure required in Securities Act registration statements and in Exchange Act reports overlap to a great degree, but because of differences in the timing of the filings, the disclosure is not word-for-word the same.

In addition to filing registration statements and periodic reports with the SEC, many public companies prepare and deliver to shareholders informal

annual reports, portions of which are required by various State laws and SEC rules. Again, the informal annual reports prepared by many public companies tend to contain information that duplicates some of the information contained in Securities Act registration statements and Exchange Act reports. In the case of informal reports, however, the duplicated information tends to be delivered in a somewhat different format.

The problem faced by the SEC is to reduce or eliminate the duplicative reporting and to reduce thereby both the volume and the cost of the material that companies prepare. Concurrently, the SEC is seeking to maintain the quality of disclosure and to update disclosure obligations to eliminate outmoded or unnecessary requirements.

At least three significant factors suggest that the SEC should act at this time to combine or integrate disclosure under the Securities Act, the Exchange Act, and in informal shareholder reports. First, the report of the SEC's Advisory Committee on Corporate Disclosure, delivered to the SEC in November 1977, examined the possibility of combined reporting and indicated a significant and urgent need for integration. Second, an SEC examination of registration statements, Exchange Act reports, and informal shareholder reports indicates that over the years, the number of significant content differences may have diminished, thereby making an integrated system more feasible. Finally, as the volume of disclosure requirements has increased over the years, the cost to registrants and the burden upon the SEC staff has correspondingly increased. An integrated system will reduce the volume of disclosure documents and correspondingly reduce both the costs and burdens to reporting companies.

If the SEC does not act now, companies will continue to bear unnecessary costs and burdens. Additionally, from the SEC's point of view, over the past 10 years the SEC staff responsible for the review of filings has been gradually reduced, while the volume of disclosure has increased. At present staffing levels, if the SEC did not eliminate the need to review essentially duplicative filings, the staff would increasingly dilute its ability to review effectively the content and quality of filed documents.

Alternatives Under Consideration

(A) Alternative (A) would create a three-tiered approach to the classification of companies desiring to sell securities. This proposed registration statement framework would classify registrants into three categories: (1) companies that are widely followed by professional analysts; (2) companies that have been subject to the periodic reporting system of the Exchange Act for 3 or more years, but that are not widely followed; and (3) companies that have been in the Exchange Act reporting system for less than 3 years. The first category would be eligible to use proposed Form S–3, which shortens the prospectus by incorporating Exchange Act reports by reference and presenting minimal disclosure in the prospectus itself. This form reflects the Commission's belief that the market operates efficiently for these companies, i.e., that the disclosure in Exchange Act reports and other communications by the registrant, such as press releases, has already been disseminated and accounted for by the marketplace. The second category would be eligible for Form S–2, which represents a combination of incorporation by reference of Exchange Act reports and presentation of certain information in the prospectus or in an annual report to security holders. The third category would use Form S–1, which requires complete disclosure of information in the prospectus and does not permit incorporation by reference. As with the present system, if it desired, a company eligible to use Form S–3 could also use either of the other forms, and a Form S–2 company could also use Form S–1 and, for certain offerings, Form S–3.

(B) The second alternative would also consist of three basic forms comprising the framework of registration of securities under the Securities Act. However, Alternative (B) would have different eligibility requirements for the three forms, with less emphasis on the efficient market for dissemination of information regarding issuers and more emphasis on eligibility criteria related to the quality of the issuer. Thus the eligibility standards for the shortest form would require that an issuer have a consolidated income of at least $250,000 for at least 3 of the 4 years preceding the registration. Eligibility criteria for the middle-tier form would exclude "financially troubled" companies from using the form, based on a recent decline in income, material uncertainty concerning the issuer's financial position, or a downgraded security rating during the previous 12 months. This approach arguably enhances investor protection by requiring more financial stability of issuers that use abbreviated registration statements.

(C) Alternative (C) would be similar to Alternative (B) in terms of basic framework and eligibility standards. However, companies could accomplish much of the disclosure called for in the middle-tier form by furnishing an annual report on Form 10–K in lieu of prospectus reiteration. This would allow the Form 10–K to fulfill a dual purpose for registrants and would integrate reporting requirements under the Securities Act and the Exchange Act.

The Commission has determined that the approach outlined in Alternative (A) is best suited to achieve the implementation of a comprehensive integration of disclosure systems under the Federal securities laws and the improvement and simplification of disclosure requirements where possible. The SEC is not pursuing Alternative (B) because that approach is inconsistent with the concept that registrant classification should depend on the extent to which information about the registrant has been disseminated in the marketplace and on the accuracy of such information. The Commission believes that the standards of Exchange Act experience and a minimum value of voting stock held by persons not affiliated with the registrant are more appropriate than the quality of the registrant in determining the type and amount of disclosure that is set forth in the prospectus delivered to investors. In the Commission's view, indicators of the "quality" of the registrant, such as net income, are more appropriately disclosure matters than criteria for eligibility to use a form. Thus, the SEC has designed the eligibility criteria of Alternative (A) to recognize the realities of the marketplace by matching a registrant to the form that will furnish investors with the appropriate disclosure for delivery in the prospectus. The Commission has decided not to pursue the middle-tier disclosure approach of Alternative (C), which would allow prospectus delivery of the annual report on Form 10–K. The Commission believes the readability of the annual report to security holders makes it more useful to investors than the report on Form 10–K and thus makes the annual report more appropriate to fulfill the purposes of the Securities Act. In addition, use of the annual report to security holders promotes integration of formal and informal corporate disclosure documents as well as integration of documents under the Exchange Act and Securities Act. As proposed in Alternative (A), delivery of the annual report to security holders would be optional for issuers using Form S–2.

Summary of Benefits

Sectors Affected: Companies having a class of securities registered under

§ 12 or having a reporting obligation under § 15(d) of the Exchange Act, or that offer securities subject to registration under the Securities Act; shareholders of such companies; persons wishing to purchase shares of such companies; other persons who rely upon or use information filed by such companies with the SEC, or who rely upon or use information contained in informal shareholder reports; and the SEC.

The SEC believes, on the basis of its own informal estimates, that the proposed amendments would result in approximately a 25 percent decrease in the total cost burden to respondents now using the existing registration forms, which would be replaced by proposed Forms S–1, S–2, and S–3. The cost savings would occur for the following reasons: (1) relaxation of requirements for the use of shorter forms; (2) changes in disclosure required for public offerings and the streamlining of procedures as set forth in proposed revisions of Regulation S–K, Regulation C, and other aspects of the Commission's integrated disclosure program; and (3) as regards proposed Form S–2, increased use of incorporation by reference and the optional use of previously prepared annual and quarterly reports. The Commission estimates that, on the average, the cost of preparation of the proposed forms over their current counterparts will be, respectively, 10 percent lower for Form S–1, 50 percent lower for Form S–2, and 5 percent lower for Form S–3. The SEC believes that at least some direct cost savings would be realized by nearly all companies having a reporting or filing obligation.

The SEC does not believe that there will be any measurable cost savings to shareholders, potential investors, and other users of financial reports and filed information. However, to the extent that corporate costs are reduced, shareholders will benefit as equity owners. Additionally, companies may pass on some of the cost reduction to one or more of these interests.

Because of the reduction in the total volume and complexity of disclosure documents, registered companies and issuers of securities should realize reduced legal and other professional costs, printing and duplicating charges, and mailing costs. Although the SEC cannot measure the amount of these savings precisely, the SEC believes them to be significant. Additionally, the overall volume reductions should decrease the administrative burden to the SEC staff, increase processing speed, improve communications with shareholders and investors, and result in some improved access to capital markets.

Shareholders, investors, and other users of filed information should also benefit because companies will produce more readable disclosure information.

Summary of Costs

Sectors Affected: Companies having a class of securities registered under § 12 or having a reporting obligation under § 15(d) of the Exchange Act, or that offer securities subject to registration under the Securities Act; shareholders of such companies; persons wishing to purchase shares of such companies; and other persons who rely upon or use information filed by such companies with the SEC, or who rely upon or use information contained in informal shareholder reports.

The SEC does not believe that any significant costs would be incurred by any affected sector as a result of the adoption of these proposals, although in some circumstances a limited number of companies filing reports and issuing shares could incur greater auditing costs.

Shareholders, investors, and other users of filed documents will receive slightly less information as a result of these proposals. To the extent that concern for legal liability leads to the use of more complicated and detailed legal terminology, making some parts of documents less readable, these sectors could also be detrimentally affected. The SEC believes, however, that these minimal costs will be more than offset by the greater readability of the overall information package.

Summary of Net Benefits

As noted, the SEC does not expect any significant costs to be incurred by any affected sector as a result of the adoption of these proposals. Therefore, net benefits are approximately the same as those discussed above in the Summary of Benefits section, i.e., implementation of this part of the integrated disclosure program is expected to result in substantial savings in registration costs for registrants as well as in other benefits to other sectors.

Related Regulations and Actions

Internal: "Integrated Disclosure System," Securities Act of 1933 Release Nos. 6331–6338, 46 FR 41902–42057, August 6, 1981.

External: None.

Government Collaboration

None.

Timetable

NPRM—"Reproposal of Comprehensive Revision to System for Registration of Securities Offerings," Securities Act of 1933 Release No. 6331, 46 FR 41902, August 6, 1981.
Public Hearing—None planned.
Reproposal Public Comment Period—August 6, 1981 to October 30, 1981.
Final Rule—January 1982.
Final Rule Effective—2nd Quarter 1982.
Regulatory Impact Analysis—Not required.
Regulatory Flexibility Analysis—Initial Regulatory Flexibility Analysis appears at 46 FR 41923, August 6, 1981. Final Regulatory Flexibility Analysis will appear with Final Rule, January 1982.

Available Documents

"Integrated Disclosure Program," Securities Act of 1933 Release Nos. 6231–6236, 45 FR 63630–63731, September 2, 1980.

Public comments for period ending October 30, 1981 (File No. S7–893) are available in the Commission's Public Reference Room, 1100 L Street, N.W., Washington, DC 20549.

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SEC

Simplification of Investment Company Prospectuses (17 CFR 239.15, 17 CFR 274.11; Revision)

Legal Authority

Securities Act of 1933, 15 U.S.C. 77a *et seq.*, Investment Company Act of 1940, 15 U.S.C. 80a–1 *et seq.*

Reason for Including This Entry

The Securities and Exchange Commission (Commission) believes that its effort to simplify investment company prospectuses is precedent setting and of great public interest because it represents the first time the Commission has studied the information contained in investment company prospectuses, and the way that information is presented, with the express aim of making the prospectus more useful to investors in understanding the essential features of

an investment in an investment company.

Statement of Problem

The Securities Act of 1933 requires investment companies, like other companies, to file a registration statement with the Commission before they may offer their securities for sale to the public. The registration statement form on which securities are registered includes a prospectus, which must contain the information about the investment company and its operations that the Commission considers necessary to an investor wishing to make an informed investment decision. The Securities Act requires that a company deliver its prospectus to an investor no later than the time of the delivery of the securities or confirmation of the sale, if the securities themselves are not delivered to the investor. However, an investment company that uses sales literature as part of its sales effort cannot deliver such literature unless it is accompanied or preceded by a prospectus, so that many prospective investors in investment companies receive a prospectus before they make an investment decision. As a result, the prospectus is the principal selling document for issuers of securities.

The prospectus is also a significant means of communication to existing shareholders for many investment companies, namely open-end management investment companies. Because these companies engage in a continuous offering of their securities, they must bring their prospectuses up to date each year. Many of these companies (the types commonly known as "mutual funds") send a prospectus to their existing shareholders every year, whether or not these shareholders are making further investments in the company.

Under current rules of the Commission (17 CFR 239.15, 17 CFR 274.11), the prospectus includes information about the following aspects of an investment company's operations:

(1) its investment objectives (e.g., current income or long-term growth of capital) and policies;

(2) its investment adviser (including its experience and the fee it charges for administration and portfolio management);

(3) purchase of the company's securities (including whether it charges a sales load—i.e., that portion of the price of the security to the public that is allocated for sales expense—or whether there are minimum amounts for initial and subsequent investments);

(4) redemption of the company's securities (including any redemption charges and the proper procedure for redemption); and

(5) its financial condition (presented both as a per share table covering the 10 most recent years of its operation and, in statements of income, changes in net assets, and assets and liabilities for shorter time periods).

In addition, the prospectus contains a great deal of additional disclosure about an investment company, including identification of the company's officers and directors, a discussion of how it chooses broker-dealers to execute its portfolio transactions, and a discussion of special investment options that it may make available, including whether it offers its securities through retirement plans.

The Commission has required all of this information to be included in investment companies' prospectuses because it considered the information to be material to investors, that is, information that an average prudent investor ought reasonably to have before purchasing the security. Nonetheless, while the Commission has added new disclosure requirements over the years as a response to changes in investment company operations, it has rarely reviewed existing requirements to remove those that have become outmoded. In addition, because the Securities Act imposes heavy standards of liability upon companies for omissions or misstatements in prospectuses, there has been a growing tendency on the part of issuers to include more disclosure, and in greater detail, than that actually required by the Commission, in order to avoid that liability. As a result of these forces, the prospectus has grown more and more cumbersome, so that it is not as effective as it should be as a source of information for prospective investors. The prospectus has become so long and complex that an investor may be discouraged from reading it at all, much less from learning about the significant features of the investment.

The Commission has attempted in the past to improve the utility of prospectuses to prospective and existing investors. For example, in 1978 the Commission introduced a new item, called the synopsis, to investment company prospectuses, in an effort to highlight the significant features of the offering. The synopsis and a table describing the income and capital changes of a share of stock over the previous 10 years are required to appear within the first five pages of the prospectus, so that an investor is fully informed if he or she reads only that part of the prospectus. Additionally, the Commission is currently considering a separate proposal to eliminate the differences in financial statements between prospectuses, which are sent to purchasers and prospective purchasers (including purchasers who are also already shareholders), and reports to all current shareholders. However, it would appear that more basic changes in the form and content of investment company prospectuses are necessary in order for those documents to be useful to investors.

By revising the disclosure requirements for investment company prospectuses, the Commission will simplify the filing procedures for approximately 1,000 open-end management investment companies. If the Commission does not revise these disclosure requirements the prospectuses of investment companies will continue to be documents that, by their length and complexity, often defeat the Commission's goal of facilitating informed investment decisions.

Alternatives Under Consideration

The Commission is considering the following possible alternatives regarding disclosure in prospectuses of open-end management investment companies:

(A) Reducing the number of items of required disclosure—The types of disclosure requirements that might be deleted altogether from the prospectus include: disclosure of "negative" investment policies (such as "the registrant does not invest in real estate") that the Investment Company Act requires to appear in the company's registration statement but not necessarily in the prospectus; disclosure of practices that are common to most investment companies (such as the company's status under the Internal Revenue Code); and disclosure of those aspects of an investment company's operations that require detailed description to be legally sufficient but that do not appear to be material to most investors (such as a description of a company's valuation practices). Reducing the number of required items of disclosure would allow companies to shorten prospectuses so that they would not be as daunting to a prospective investor. A problem with this alternative, however, is that all of the information currently required to be in the prospectus is there because it is considered significant at least to some investors. Deleting disclosure requirements could conceivably result in the loss of information that is material to an investment decision.

(B) Changing the format of prospectuses—Another alternative would be to require companies to

describe their fundamental characteristics at the beginning of the prospectus. Generally, those features of an investment company that are considered most significant to investors are the following: its fundamental investment policies; its investment adviser; its financial condition; and the method of purchase and redemption of shares. All other disclosure items would be required to follow this introductory portion, which might look like an expanded version of the synopsis that is currently required. This proposal would have the advantage of making it easier for a prospective investor in a mutual fund to find out the most significant things about an investment without reading detailed disclosure that may be directed only to certain groups of investors (such as disclosure concerning the fund's offering of its securities through retirement plans). One disadvantage of a required format, however, would be the cost to investment companies in accommodating themselves to a new disclosure format. Depending on whether the change in format included specific requirements as to the placement of information within the prospectus, investment companies might find that they have less flexibility in arranging disclosure within the prospectus than they find desirable.

(C) Developing a "core prospectus" for investment company complexes—Under this alternative, complexes of investment companies (i.e., investment companies that are managed by the same investment adviser or affiliated advisers) could send one prospectus covering all the companies in the complex, describing their common features, with a separate prospectus for each company describing its fundamental characteristics and other information specific to the fund. This proposal would allow investment company complexes (approximately 90 percent of the investment company industry) to save printing and mailing costs by allowing them to make disclosure about complex-wide operations in only one document, rather than five or ten (or more, in some complexes), and by eliminating duplicative information to prospective investors who request a prospectus for more than one company in a complex. However, a two-part prospectus could confuse investors.

(D) Developing a separate prospectus for current shareholders—An investment company could send a current shareholder who makes an additional investment in the company a prospectus shorter than the one it delivers to prospective investors. The prospectus for current investors could incorporate the company's annual report to shareholders and describe any recent material changes in the company's operations without repeating information that was provided to the investor as of the time of his or her initial investment and that has not changed. This proposal could allow an investment company to save on printing and mailing costs and allow current shareholders to receive a more concise and readable prospectus. Any such savings, however, could be offset by the necessity of developing two separate prospectuses.

These proposals are not mutually exclusive. For example, the elimination of certain disclosure requirements from the prospectus might be accomplished in combination with the development of a core prospectus for investment company complexes. Alternatively, the elimination of certain disclosure requirements could be effected in conjunction with a change in prospectus format that would highlight the essential features of the investment. This latter alternative would provide for the most comprehensive change in prospectus and, at this point, is the alternative being most actively considered for recommendation to the Commission.

Summary of Benefits

Sectors Affected: Registered investment companies; current holders of shares in registered investment companies; and prospective investors.

Prospective investors in investment companies will benefit from the elimination of certain disclosure requirements or from a change in the format of the prospectus by receiving a more readable prospectus. Because a prospectus with fewer items, of required disclosure could be a significantly shorter document, investment companies might be more likely to send the prospectus before the delivery (or confirmation of the purchase) of the security. Earlier delivery of the prospectus would allow a prospective investor to have more time to study the prospectus before making an investment decision. Even if the prospectus were not delivered earlier, a prospective investor would benefit from the removal of certain disclosure requirements if the resulting prospectus were shorter and less complex. A prospective investor receiving a prospectus with disclosure about the essential features of the investment highlighted in the first few pages would find it easier to locate essential imformation. A change in format would also benefit prospective investors, because the format change would make the prospectus more readable by requiring a company to highlight its essential features at the beginning of the prospectus and to disclose information that is useful to sophisticated investors or investors with special interest in the back of the prospectus, where they could find it but where it would not be likely to confuse other investors.

Investment companies would benefit from the removal of certain disclosure requirements or the development of a separate prospectus for current shareholders because the resulting shorter prospectuses would be cheaper for them to prepare, print, and mail. Investment companies would also benefit from the development of a core prospectus for investment company complexes. A complex would save money whenever a prospective investor requested information about more than one fund in the complex because the complex would only be required to send one prospectus for the complex, with separate, shorter prospectuses for each of the funds about which the investor inquired. Investment companies that are not part of complexes, roughly 40 percent of the industry, would not receive any benefits from this alternative, however.

Current shareholders would benefit from the removal of certain disclosure requirements, a change in the prospectus format, or the development of a separate prospectus for current shareholders. Many investment companies send current shareholders copies of their most recent prospectus whether or not the shareholder invests additional money in the fund. Therefore, any improvement in the readability of the prospectus would benefit those current shareholders who receive copies of the prospectus. Also, because the removal of certain disclosure requirements and the development of a separate prospectus for current shareholders would lead to shorter, less expensive prospectuses, more investment companies might send prospectuses annually to their current shareholders, who would then receive more information about the company than is currently required to appear in reports to shareholders. Finally, the development of a separate prospectus for current shareholders would allow a company to send a current shareholder a prospectus that is more closely tailored to his or her needs.

The potential benefits of simplified investment company prospectuses would be widespread. However, an

estimate of the present discounted value of the potential benefits to prospective investors, investment companies, and current shareholders—individually or as a group—is undeterminable.

Summary of Costs

Sectors Affected: Registered investment companies and prospective investors.

Because all of the information currently required to be disclosed in the prospectus is useful at least to some investors, the removal of some disclosure requirements could be harmful to those investors who would no longer receive information they believe is useful to an informed investment decision. Prospective investors could also be harmed by the development of a core prospectus for investment company complexes, with shorter, separate prospectuses for each fund, if they found the two-part prospectus format to be confusing. However, this cost could be minimized if the Commission required companies to explain clearly the importance of each part of the prospectus on the cover of each part.

Investment companies could be expected to incur higher expenses as a result of any change in the prospectus format. These increased costs would not be expected to continue, however, after companies have changed their current prospectuses to meet the new disclosure requirements. An estimate of the present discounted value of the potential costs to investment companies and investors, like the value of the potential benefits, is undeterminable.

Summary of Net Benefits

The removal of certain disclosure requirements or a change in the format of the prospectus would result in (1) a shorter, more readable prospectus for the potential investor, (2) less paperwork and, in the long run, fewer expenses for investment companies, and (3) a prospectus that is more tailored to the requirements of current shareholders and one that they are likely to receive more frequently. However, the removal of some disclosure requirements could result in the elimination of information that is useful to at least some prospective investors and initial cost increases for investment companies as they become accustomed to revised prospectus requirements. The Commission has nevertheless attached more importance to increased benefits for the investing public with shorter and more readable prospectuses than to the short-run expense incurred by investment companies. Moreover, the Commission recognizes that the initial cost burden to the industry should diminish over a period of time.

Related Regulations and Actions

Internal: The proposed revision of the disclosure requirements for the prospectuses of investment companies is part of the Commission's ongoing review of the disclosure process as it applies to investment companies. On July 8, 1981, the Commission adopted regulations to standardize the financial statement requirements in prospectuses and shareholder reports of management investment companies (Securities Act Release No. 6327; 46 FR 36195, July 14, 1981; File No. 57–865).

External: None.

Government Collaboration

None.

Timetable

NPRM—January 1, 1982.
Regulatory Flexibility Analysis—With NPRM and final adoption of the rule.
Regulatory Impact Analysis—Not required.
Public Hearing—None planned.
Public Comment Period—90 days following publication of NPRM.
Final Rule—3rd Quarter 1982.
Final Rule Effective—For companies with fiscal years ending after March 1, 1983.

Available Documents

None.

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CHAPTER 4—HEALTH AND SAFETY

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Abbreviated New Drug Applications for New Drugs Approved After October 10, 1962, for Human Use (21 CFR Part 314; Revision)

Legal Authority

Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 321(p), 352, 355, and 371(a).

Reason for Including This Entry

The Food and Drug Administration, (FDA) includes this entry because it represents a change in Federal policy with signfiicant implications for competition for prices in prescription drug markets and for reducing regulatory barriers that sometimes preclude competition.

Statement of Problem

Under § 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355), no person (sponsor) may market a new drug for human use in interstate commerce without prior approval from FDA in the form of an approved new drug application (NDA). An approved NDA permits marketing of the product only under the conditions approved and only by the person named in the NDA. Other persons who want to manufacture and market the same product must have their own approved NDAs.

The statute also requires that an NDA contain the information essential for FDA to determine whether a new drug is approvable. FDA regulations (21 CFR Part 314) explain the application requirements in detail. These regulations also describe the contents of abbreviated new drug applications (ANDAs) (21 CFR 314.1(f)). An ANDA must contain all the information essential for FDA to determine the approvability of a drug product that is identical or closely related to a drug product that has previously satisfied the NDA requirements. However, an ANDA need not contain evidence of safety and effectiveness of the drug product because information already available to FDA is applicable to that product. (Safety and effectiveness evidence, gathered from studies of the drug when used in animals and humans, accounts for about 95 percent of a firm's costs for a duplicate NDA.)

On October 10, 1962, the Federal Food, Drug, and Cosmetic Act was amended to require that new drugs be proven to be effective as well as safe before marketing. Prior to that date, the statute required only evidence of safety. FDA regulations (21 CFR Part 314) and policy now in effect make many drug products first approved for marketing prior to October 10, 1962 eligible for approval on the basis of an ANDA rather than an NDA. The proposed rule would extend the applicability of ANDAs to certain drug products introduced after this date.

It is not in the public interest for FDA to continue to require full NDAs for all new drug products introduced into commerce after October 10, 1962. Because FDA now requires an NDA for all post-1962 drug products, prospective marketers of a "duplicate" drug product (i.e., a product identical in active ingredient(s), dosage form and strength, and route of administration to one that has an approved NDA) either must conduct their own clinical studies or they must submit published studies to support claims of safety and effectiveness that already had been documented in the NDA of the first sponsor ("pioneer") of the drug. If published studies do not exist, prospective marketers of duplicate drug products cannot obtain NDA approval without incurring the costs of clinical trials. Conducting duplicate clinical studies for the purpose of obtaining safety and effectiveness data unnecessarily exposes human test subjects to risk, consumes clinical resources, and causes FDA to use its resources in reviewing the reports of the studies. Moreover, FDA's current policy acts as a barrier to the marketing of duplicate drug products, thus dampening competition and causing higher drug prices. This barrier to market entry provides "secondary" protection to the pioneer drug product in addition to the product's patent coverage.

FDA is estimating in its preliminary Regulatory Impact Analysis the effects of its policy on competition, drug prices, and use of resources.

Alternatives Under Consideration

The agency is considering several alternatives in developing its proposed rule.

(A) No change. The Agency not permit ANDAs for duplicates of drug products that FDA approved after October 10, 1962. However, FDA has allowed the submission of "paper" NDAs, i.e., NDAs that rely on published reports of clinical studies showing safety and effectiveness. Thus, a paper NDA policy would achieve many of the same objectives sought by an extended ANDA policy. However this informal paper NDA policy would necessarily be restricted to drugs for which adequate published literature is available, and published data are estimated to exist for less than one-third of the pioneer drugs whose patents have expired. No change in policy would perpetuate the existing restrictions on competition in prescription drug markets. Such a policy benefits sponsors of pioneer drug products to the extent that market exclusivity sometimes continues beyond the patent expiration.

(B) Full extension of ANDA applicability. This alternative would allow ANDAs for appropriate drugs introduced after October 10, 1962,

regardless of date of approval. Although this alternative would maximize the potential competition in prescription drugs by reducing the costs associated with marketing new drugs, ANDA activity would be constrained (just as NDA activity is now constrained) by the existence of patents in many cases, particularly for more recently approved pioneer drugs. (Although NDA and ANDA approvals are independent of patent issues, marketers of duplicate drugs risk civil suits of patent infringement when a patent has not expired.)

(C) Limited extension of ANDA applicability. The Agency could limit the extension of applicability of the post-1962 ANDA policy in two general ways. First, FDA could extend ANDA availability to duplicates or drugs very similar to "older" drugs introduced during a fixed period of time (e.g., 1962–1967, 1962–1972, etc.). Second, FDA could extend ANDA availability initially to duplicates of drugs introduced before a certain date (e.g., December 31, 1967) and provide annually for successive 1-year extensions, thereby increasing each year the total number of products for which FDA would accept ANDAs. This alternative is a means to balance the trade-off to society. On the one hand society benefits from enhanced competition (i.e., the expectation of subsequent lower prices on generic drugs to consumers). On the other hand society derives benefits from a policy that fosters research and development of previously unmarketed drugs, which in turn is dependent on adequate revenues that result from an exclusive marketing period for a producer of drugs. Clearly, there are numerous possible limited extension alternatives that could be evaluated. FDA selected a few of these possibilities and is now preparing estimates of their consequences.

Summary of Benefits

Sectors Affected: Certain drug test populations (human subjects in clinical trials); consumers of prescription drugs (pharmaceutical preparations); taxpayers; manufacturers of generic drugs (generic pharmaceutical preparations—SIC Code 2834); Federal and State drug purchasing programs; and FDA.

Certain drug test populations (human subjects) would benefit by this proposal through the elimination of duplicate testing on human subjects. The benefits to human subjects were not quantified.

With respect to drugs subject to the proposal, it would eliminate the requirement for safety and effectiveness studies in human subjects. These studies are unnecessary when testing drugs with known characteristics. FDA resources would not be used unnecessarily for the review of duplicative research. Additionally, the proposal would be favorable to increased competition in post-1962 drugs, potentially leading to reduced prices in many cases through increased direct competition or through anticipatory price decreases to reduce the threat of such competition. Consumers would benefit from savings on purchases of affected drugs, as would taxpayers through Federal and State drug purchasing and reimbursement programs. The savings to consumers under full extension of ANDA applicability are tentatively estimated at $248 million to $421 million. Savings under a limited extension may range from $107 million to $236 million, depending upon the terms of the limited extension. All benefit estimates refer to the present value of the benefits to be received from 1983 to 1995 in 1979 dollars.

Prospective marketers (e.g., generic drug manufacturers) could submit ANDAs for approval without conducting new safety and effectiveness testing. Savings to the industry due to the avoidance of duplicative testing and data submission are tentatively estimated at $285 million to $402 million for full extension of policy and $128 million to $325 million for various limited extensions (all are present value estimates).

FDA would also realize some savings through the elimination or reduction in the resources spent to review duplicate NDA data. FDA would save approximately $1 million to $4 million (present value) depending on the alternative chosen.

This proposal is expected to have a significant effect in benefiting small business. The proposed regulation is expected to shift revenues from research-oriented firms (primarily firms developing innovative products) to production-oriented firms. The tentatively estimated present value of this shift in revenues is from $200 million to $800 million, depending on the alternative. This proposed regulation benefits even small firms in the research-oriented sector in that it permits all research-oriented firms to plan research and development investments in a climate of minimum uncertainty on the timing of generic competition.

Summary of Costs

Sectors Affected: Manufacturers of drugs (pharmaceutical preparations—SIC Code 2834); consumers; and FDA.

None of the alternatives imposes any direct costs on the economy. Extension of the ANDA policy would reduce from present levels the requirements on firms who must now submit an NDA to obtain approval to market duplicate drug products. Nevertheless, insofar as an action (i.e., any alternative except no change) results in activities that promote the concomitant goals of increased competition and reduced societal expenditures for prescription drugs, certain costs may be incurred by various sectors of the economy.

Drug manufacturers as a group would incur costs for the preparation of increased numbers of ANDAs. The costs per ANDA are modest as compared to costs of an NDA. However, as the proposed rule became fully implemented, the number of ANDAs submitted could generate aggregate application costs that exceed those costs that likely would have been generated by the submission of a smaller number of duplicate NDAs. The aggregate application preparation costs incurred by industry as a result of this proposal are tentatively estimated to be $206 million to $316 million for the full extension of the policy and $91 million to $231 million for various limited extensions (all are present value estimates).

Drug firms that develop innovative drug products could receive less revenues from such products as a consequence of increased competition in certain markets. The amount of reduced revenues would depend upon factors such as the extent of competition and the type of drug. Conceivably, the impact on total revenues of such firms or on the expected revenues from newly developed drugs could affect unfavorably the economic capacity or incentives for drug development. Should this be translated into a reduction in the future rate of drug development, it could represent a future indirect cost to consumers in the form of delayed introduction of new or improved therapies. FDA believes that drug firms that develop innovative drug products could lose revenues as a consequence of increased competition. The magnitude of the loss—present value from 1983 to 1995—is tentatively estimated at $763 million to $1,295 million for full extension of policy and $327 million to $725 million for various limited extensions of policy.

Processing the increased volume of ANDAs could produce a net increase in FDA's total drug approval workload and resource requirements. The estimated costs (present value from 1983 to 1995) to FDA are tentatively estimated at $2

million to $8 million, depending on the alternative.

Summary of Net Benefits

The total benefits of this proposal to extend ANDA eligibility to post-1962 drugs are tentatively estimated as follows (all estimates are the present value of the effects from 1983 to 1995 in 1979 dollars): total benefits for full extension of ANDA eligibility are $654 million to $708 million; for various limited extensions, $283 million to $475 million.

The total costs for each alternative are: for full extension of ANDA eligibility, $212 million to $324 million; for various limited extensions, $93 million to $237 million.

The net benefits for each alternative are: $330 million to $496 million for full extension and $131 million to $329 million for various limited extensions.

Two effects that could not be quantified are the benefits to human subjects of not being exposed to duplicative clinical testing and the effect on innovation as a result of the projected loss in revenues from increased competition realized by firms that develop innovative products. The benefits to human subjects could not be calculated due to the complexity of determining the value of foregone therapy (for those subjects receiving a placebo or less effective therapy during duplicative testing) and therefore the subsequent health risk experienced by human subjects. With respect to impact on innovation, although R&D investment is usually tied to sales revenues of innovative firms in this industry, these firms have a number of recourses open to them if they attempt to offset some of the revenue loss and therefore the loss in R&D investment for innovative products.

Although the full extension of ANDA applicability alternative has the greatest net benefits, this alternative could have the most negative impact on the future innovation of drugs. The limited extension alternative may provide the greatest net benefits, while also minimizing to the greatest extent adverse effects on innovation by retaining a finite interval of "secondary" protection (for products whose effective patent lives are less than 17 years or for never-patented products). In addition, this alternative implementation option will afford industry the opportunity to plan research and marketing strategies in a climate of minimum uncertainty on the timing of generic competition and provide consumers with a growing body of generic product alternatives.

Related Regulations and Actions

None.

Government Collaboration

None.

Timetable

NPRM—March 1982.
Public Comment Period—To be determined.
Public Hearing(s)—To be determined.
Final Rule—To be determined.
Draft Regulatory Impact Analysis—Available at time of NPRM.
Regulatory Flexibility Analysis—To be determined.

Available Documents

None.

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HHS–FDA

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. 409(c)(3)(A), 512(d)(1)(H), 706(b)(5)(B), and 701(a).

Reason for Including This Entry

The Food and Drug Administration (FDA) includes this entry because the proposed rule could have an annual effect of $100 million or more on the economy.

Statement of Problem

The Federal Food, Drug, and Cosmetic Act (§§ 409(c)(3)(A), 512(d)(1)(H), and 706(b)(5)(B)) allows FDA to approve a carcinogenic new animal drug, food additive, or color additive for use in food-producing animals, provided the compound will not adversely affect the animals for which it is intended and no residue of such compound will be found (by methods of examination prescribed or approved by FDA regulation) in any edible portion of such animals after slaughter or in any food yielded by or derived from the living animals. This exception to the general statutory prohibition (Delaney clause) against the addition of carcinogenic substances to the food supply has come to be known as the "DES Proviso."

The enactment in 1962 of the DES Proviso to the Delaney clause of the Act has been a source of continuing controversy stemming 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 the animal's 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, FDA could not permit any use of carcinogenic drugs in animals if the Agency 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 Congress intended to require FDA to give an operational and more realistic definition to the phrase "no residue" and to proceed accordingly.

As a matter of policy, to implement the DES Proviso, the Agency has adopted the second interpretation as a more likely reflection of Congressional intent for two reasons. First, by its nature, the absolute interpretation constitutes a negation of the DES Proviso to the Delaney clause and leads to the conclusion that the Congress introduced the 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, food additives, or color additives hinges on the availability of appropriate analytical methods that determine whether residues are present in edible tissues from animals treated with carcinogenic drugs. Although FDA has adopted the second interpretation, it has never specified by regulation the criteria and procedures that apply in the process of approving methods for analyzing animal tissues for carcinogenic residues. The proposed regulation would specify such criteria and procedures.

Alternatives Under Consideration

The Agency considered several alternatives in developing its proposed

rule published in the Federal Register of March 20, 1979 (44 FR 17070).

(A) No change. The current method for approval of suspect carcinogenic compounds for veterinary use relies on an FDA/sponsor-negotiated ("sponsor" means the person seeking approval to market the compound) residue level, which attempts to weigh in balance the known or perceived human risk of cancer, the availability of a reliable regulatory test method, and the agricultural importance of the compound. The Agency has rejected this approach because it is difficult to administer fairly and rationally.

(B) State-of-the-art. This alternative, which the Agency has considered inappropriate from the start, defines the phrase "no residue" as the lowest limit of measurement or detection by the best analytical method that is capable of measuring the residues of a compound in edible tissues of animals and that is available at the time FDA approves the compound. The Agency has rejected this approach. Different compounds have differing carcinogenic potencies. These differences are not in any way related to the availability or lack of sensitive analytical methods that measure residues in edible tissues from food-producing animals that have been administered a compound. For instance, depending on the relative sensitivity of the available methods, this alternative would permit public consumption of meat contaminated with very large levels of some potently carcinogenic residues while it would require that meat be essentially free from other carcinogenic residues of low potency. The Agency has rejected this alternative because the degree of public risk associated with the use of a compound would become a function solely of the capability of available analytical technology.

(C) Practical zero. This approach would have one advantage over Alternative (B): it would provide a well-defined criterion for the lowest limit of measurement that a regulatory assay method would have to satisfy. This approach would not, however, take into account differences in carcinogenic "potency" among various carcinogens. Therefore, it is unacceptable for the same reason as Alternative (B). Unless the "practical zero" were set at the level appropriate for the most potent carcinogen, it would not provide sufficient protection, but if it were set at that level, it might be unnecessarily stringent for carcinogens that produce a response that is of a lower magnitude. In sum, no one "practical zero" is appropriate for all carcinogens.

(D) Sensitivity of Method (SOM). A fourth approach is to establish procedures to define "no residue" operationally, on the basis of quantitative carcinogenicity testing of residues and extrapolation of test data (using one of a number of available procedures). The extrapolation procedure would estimate the residue levels that are safe in the total diet of test animals and that would if they occurred, be considered safe in the total diet of man. This approach (SOM procedures) would account for differing carcinogenic potencies of each compound but is feasible only if there is a regulatory assay method to reliably measure the safe level in edible tissue. Under this approach, the Agency accepts a very low level of increased risk of cancer (one case in one million lifetimes).

FDA proposed to adopt Alternative (D).

Summary of Benefits

Sectors Affected: Veterinary pharmaceutical manufacturing; livestock production; consumers of meat and poultry; and FDA.

The proposal would provide uniform criteria and procedures for evaluating the carcinogenic risk presented by residues of sponsored compounds for use in food-producing animals. FDA, industry, and consumers would benefit from uniformity in regulation of such compounds.

Veterinary pharmaceutical manufacturers would know in advance the procedures on which FDA would rely to approve or reaffirm prior approval of applications if the compound is a suspect carcinogen. FDA would apply a screening mechanism known as "threshold assessment" to make the determination of potential carcinogenicity. If, under the criteria provided in the threshold assessment, no such potential exists, the compound need not be subject to the SOM data collection procedures. This should benefit sponsors of future applications because they would be able to determine the kinds and extent of evidence the FDA requires to evaluate carcinogenic potential. For some compounds such evidence already exists, and the manufacturer would avoid unnecessary costs. In other cases, manufacturers could elect to initiate SOM procedures if it appears that the stepwise SOM procedures would identify a safe, feasible residue level and a suitable analytical method for its detection. Finally, there could be cases where manufacturers would avoid the expense of conducting tests for compounds that are unlikely to be approved because their safe residue levels cannot be measured by existing technology or would exceed the safe residue criteria.

Consumers of meat and poultry derived from the animals to whom the compounds were administered (either as a drug or a feed additive) would be assured a virtually risk-free supply of these products.

FDA would benefit because the standardized requirements would permit more efficient review of applications, fewer negotiating sessions with industry, and reduced likelihood of legal challenges to its decisions.

Summary of Costs

Sectors Affected: Veterinary pharmaceutical manufacturing; livestock production; and consumers.

The sponsor of a compound subject to SOM procedures would bear the costs to complete the prescribed procedures. The aggregate cost estimate would depend on the outcome of the Agency's application of the "threshold assessment" to individual compounds sponsored for approval. If the safety of an already approved compound is called into question, the Agency in all likelihood would evaluate the compound first by applying the threshold assessment in order to determine if studies under the SOM procedures are necessary to resolve the safety concerns. FDA plans to publish a notice of availability of the guideline for conducting threshold assessments in First Quarter 1982.

Veterinary pharmaceutical manufacturers who sponsor or have sponsored a compound that is subject to SOM procedures (that is, a compound that the threshold assessment finds has a carcinogenic potential) would bear the costs to conduct the prescribed testing procedures. These costs could be passed on to livestock and poultry producers who later purchase the products to control diseases and stimulate animal growth. Ultimately, consumers could pay higher prices for meat and poultry.

The draft Regulatory Analysis estimated that the average one-time costs of compliance with SOM procedures for an exogenous substance (a synthetic- or natural-origin substance that is not produced in the body of the food-producing animal) would not exceed $2.8 million (1979 dollars) for each combination of target species and route of administration. There is a corresponding estimate of $0.5 million for endogenous substances (substances normally produced in the body of the food-producing animal). The aggregate

cost would depend on the carcinogenic potential as identified by the threshold assessment. Thus, the greater the number of compounds that are identified, the greater the aggregate cost. If, after conducting SOM procedures and determining the approvable residue level for a specific compound, the manufacturer were unable to develop a residue-testing method of the required sensitivity (and such a method is otherwise unavailable), FDA would deny approval of the product and perhaps, where the FDA has applied procedures to reevaluate the safety of an already approved product, withdraw approval. It is difficult, if not impossible, to predict which products would be affected in this way. The ultimate effect on feedlot operations and on the supply of meat and poultry is in turn subject to speculation about which products might lose market approval. If few products are affected in this way and there were an adequate array of substitute products, the impacts could be small and limited to the substitution costs and some loss of total output of slaughtered animals. Conceivably, however, a number of unique products could be affected and the impact correspondingly higher. The annual effect on the economy could exceed $100 million. FDA's final Regulatory Impact Analysis will address these questions.

Summary of Net Benefits

The draft Regulatory Analysis placed on file with the FDA Dockets Management Branch at the time of publication of the proposed rule in the Federal Register of March 20, 1979 (44 FR 17070) concluded that the (selected) SOM approach was probably among the highest compliance-cost alternatives because no alternative approach appeared likely, on the average, to impose more testing requirements (the principal cost difference being the requirement for chronic feeding studies) or produce more secondary impacts in the form of market withdrawals of carcinogenic compounds. Though benefits were not quantified, the SOM alternative was chosen because it also appeared to offer the greatest net benefits. The SOM approach offers the fullest degree of public health protection by establishing an acceptable risk of carcinogenesis to humans and by taking into account the carcinogenic potency of drugs in extrapolating to what level of a drug in tissue represents that acceptable level of risk. Accordingly, the SOM is least likely to dictate unnecessary market withdrawals of low-risk suspect compounds or fail to produce withdrawals of higher-risk substances. For these reasons, it eliminates market uncertainty about possible future withdrawals as a result of technological improvements in residue detection methods. None of the other alternatives combined these advantages to the same degree as the proposed approach.

Related Regulations and Actions

Internal: FDA may develop a policy for exempting from SOM procedures certain new animal drug applications pending at the time the March 20, 1979 proposal was published.

External: None.

Government Collaboration

We are keeping the Department of Agriculture (USDA) informed of our action and they are reviewing the analytical methodology that we require.

Timetable

NPRM—44 FR 17070, March 20, 1979.
Public Comment Period—Closed July 18, 1979.
Public Hearing—June 21 and 22, 1979, Washington, DC.
Reproposal or Tentative Final Regulation or Guideline—3rd Quarter 1982.
Regulatory Impact Analysis—Draft available with reproposal or tentative final regulation or guideline; final Regulatory Impact Analysis will be available with final regulation or guideline.
Regulatory Flexibility Analysis—Will accompany Regulatory Impact Analysis.

Available Documents

Data and information supporting the NPRM.

Comments received during public comment periods.

Transcript of the public hearing on June 21–22, 1979.

Draft Regulatory Analysis.

Food and Drug Administration Docket No. 77N–0026.

The above documents are available for review in the Dockets Management Branch, Food and Drug Administration, 5600 Fishers Lane, Room 4–62, Rockville, MD 20857.

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HHS–FDA

Food Labeling; Declaration of Sodium Content of Foods and Label Claims for Foods on the Basis of Sodium Content (21 CFR Part 101, New; and 21 CFR Part 105, Revision)

Legal Authority

Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 321, 343, and 371(a).

Reason for Including This Entry

The Food and Drug Administration (FDA) is including this entry because it concerns an issue of great public interest that affects the health of many people.

Statement of Problem

Sodium is an essential element in human nutrition. However, in the United States there has been considerable scientific discussion about the possible health effects of sodium intake in excess of physiological needs. Common salt (sodium chloride) is the greatest single contributor of sodium to our diet, yet sodium also occurs naturally in many foods and drinking water sources and is added to processed foods as other sodium-containing substances for a variety of technical purposes. The scientific concerns have primarily focused on the possible relationship between sodium intake and the development of hypertension and on the value of restricting sodium intake as a supportive measure in treating hypertension.

As early as 1904, scientific reports began to implicate the excessive dietary intake of sodium in the development of hypertension. Since then a long series of studies on humans and animals has suggested a relationship between sodium intake and hypertension in genetically susceptible subjects. The literature also cites a number of other factors, including stress, age, body weight, genetic profile, chronic kidney infection, and potassium intake, as factors in the development of hypertension.

Hypertension is one of the most of prevalent major diseases in the United States. The National Heart, Lung, and Blood Institute (NHLBI) estimates that approximately one out of every four Americans is hypertensive or is predisposed to hypertension. High blood pressure is the primary cause of stroke and is a major contributor to heart attacks.

Although epidemiological studies suggest a relationship between sodium intake and the onset of hypertension, the evidence that sodium consumption is

a major factor in causing hypertension is not conclusive. Nevertheless, the evidence is strong enough for most members of the medical and scientific community to conclude that a significant portion of those persons who are hypertensive or who are predisposed to hypertension would benefit from a reduction in dietary sodium. Further, sodium-restricted diets are common medical practice for treatment of edema associated with some types of heart, liver, and kidney disease and as supportive dietary therapy for patients suffering from other kinds of chronic health problems.

Many health professionals and consumers have expressed a desire for product labels displaying sodium content of foods to facilitate following medically prescribed or self-imposed sodium-moderated diets. Currently, less than 13 percent (by dollar volume) of foods carry such labeling.

FDA regulations for special dietary foods, codified at 21 CFR 105.69 under the heading "Foods used to regulate sodium intake," require the declaration of a food's sodium content only when the label makes a claim about the sodium content of the food. Further, the regulation does not make full nutrition labeling mandatory when sodium content is declared on the label.

FDA's regulations require that if a manufacturer makes a nutritional claim for his product or adds a vitamin, mineral, or protein to it, these actions trigger full nutrition labeling (21 CFR 101.9). At present, nutrition labeling requires the testing of calories, protein, carbohydrates, and fat as well as certain vitamins and minerals. Several items are optional, including sodium. The declaration of sodium was not made mandatory in nutrition labeling in order to permit manufacturers to list sodium content without listing other nutrients. Under the proposed regulations being prepared, when nutrition labeling is required, sodium will be a mandatory part of that labeling. These are food products that, either voluntarily or because they make a claim or add a vitamin, mineral, or protein, provide nutrition labeling and do not include sodium. The agency's proposal, if adopted as a Final Rule, will ensure that all foods that bear nutrition labeling will include sodium labeling as well. Approximately 40 percent of the dollar volume of processed foods now contains nutrition labeling. Thus the agency action will substantially increase the amount of sodium information on food products.

As part of FDA's comprehensive scientific evaluation of substances generally recognized as safe (GRAS), the Federation of American Societies for Experimental Biology (FASEB) submitted to FDA a report on the "Evaluation of the Health Aspects of Sodium Chloride and Potassium Chloride as Food Ingredients." The FASEB report expresses concerns that current levels of use of sodium chloride are not safe for individuals who now have or who are predisposed to hypertension. FDA is committed to a public policy aimed at reducing the amount of sodium in processed foods and providing consumers the kind of information they need to make informed choices according to their own health needs. As part of this policy, the agency will propose revision in the existing sodium labeling regulations to encourage and facilitate more sodium content labeling of the American food supply.

Alternatives Under Consideration

The agency has considered the following alternatives in developing its proposed rule:

(A) No change in existing labeling regulations, which permit food manufacturers to include sodium content declaration in nutrition labeling on an optional basis. This would permit manufacturers to continue to label sodium content solely on a voluntary basis. However, since it is premature to determine whether the agency's voluntary part of the sodium program will be fully successful, this addition to the nutrition labeling requirements would ensure that at least those foods that contain nutrition labeling will bear quantitative sodium information as well.

(B) Legislation to require sodium labeling on all foods. FDA considered seeking new legislation to require sodium labeling on all foods but decided against it. Existing statutory authority is sufficient to implement the proposed regulations that are described herein, i.e., add sodium to nutrition labeling and define such terms as "low sodium." Present law does not contain explicit authority to require quantitative sodium labeling. Although the Department has considered the need for explicit authority to require sodium labeling, it is not considered necessary at this time. The combination of the voluntary efforts of industry and these proposed regulations are deemed sufficient to ensure that this information will be provided to the public.

(C) A change in existing regulations. After considering other options, FDA determined that this approach would be the most cost-effective and least burdensome method for providing consumers information on sodium content of foods. The agency will propose to revise the existing nutrition labeling regulation to (1) require that the sodium content of foods be included as part of nutrition labeling whenever nutrition labeling is required or is provided voluntarily, (2) establish definitions for various levels of sodium in foods, (3) provide for the proper use of these terms in the labeling of foods, (4) provide for the voluntary inclusion of potassium content information in nutrition labeling, and (5) establish policy guidelines for the use of other descriptive labeling terms concerning sodium, such as "no salt added."

Summary of Benefits

Sectors Affected: Food manufacturers and consumers of food products.

Providing information on sodium content would enable those consumers among the estimated 23 million to 60 million persons in the United States who have diseases or disorders that may require dietary control of sodium to limit their sodium intake. Approximately 30 percent of U.S. households report at least one hypertensive in the family, and an estimated 9 percent of all households report one person who must avoid or strictly limit sodium consumption for health reasons. Defining terms for sodium content would ensure that the consumer can rely on foods so labeled to contain a particular range of sodium content.

The medical costs associated with the treatment of hypertension-related diseases and disorders are estimated at $8 billion per year. Since there is a sizable segment of the population that could benefit from information that would enable them to reduce sodium consumption, this proposal has potential health benefits that may exceed the costs of this requirement if a significant percentage of medical costs are avoided.

Summary of Costs

Sectors Affected: Food manufacturers and consumers.

This regulation will have an economic impact on food manufacturers who currently provide nutrition labeling on their products but do not disclose sodium content. The agency estimates that the number of affected firms was about 3,500 in 1980, but that the number may decline as more firms voluntarily disclose sodium content. If manufacturers do not currently know, or cannot determine the sodium content of their product, they may have to test their product to determine its sodium content. They will also have to modify their nutritional label on or before the effective date of the final regulation to include the sodium content. Preliminary

cost estimates of these requirements indicate the initial costs of this requirement to be less than $20 million (in 1981 dollars) and the recurring annual costs to be less than $1 million.

The regulation will also have a cost impact on consumers to the extent that costs to manufacturers are passed on to the consumer in the form of higher food prices. Annual costs to consumers may increase $20 million, which equals about 0.01 percent of the consumer expenditures for nutritionally labeled foods.

The annual economic effect is not expected to approach the thresholds in Executive Order 12291 requiring a Regulatory Impact Analysis.

Summary of Net Benefits

For an initial cost of less than $20 million and less than $1 million in recurring annual costs, a significant percentage (estimated 9 to 30 percent) of the U.S. population seeking to reduce sodium intake for medical reasons will be able to select a varied diet of low sodium food products. As a result, some undetermined share of the $8 billion in health care costs for the treatment of hypertension will be avoided.

Related Regulations and Actions

None.

Government Collaboration

We have worked with the U.S. Department of Agriculture.

Timetable

Notice of Public Hearings—43 FR 25296, June 9, 1978.
ANPRM—44 FR 75990, December 21, 1979.
Public Comment Period—Closed March 20, 1980.
Notice of Meeting—46 FR 33104, June 26, 1981.
Public Hearings—Were held to elicit consumer views on food labeling in general, including sodium. These hearings were held in Wichita, KA, August 22 and 23, 1978; Little Rock, AR, September 18 and 19, 1978; Washington, DC, September 27 and 28, 1978; and Boston, MA, October 25 and 26, 1978. Another public hearing was held in Washington, DC on March 4 and 5, 1980 to gather consumer views on the ANPRM regarding tentative positions on food labeling issues including sodium. A public meeting was held in Washington, DC June 30, 1981 for comments on sodium in foods from representatives of the food industry.
NPRM—1st Quarter 1982.
Public Comment Period—To be determined.
Regulatory Impact Analysis—To be determined.
Regulatory Flexibility Analysis—Available at time of NPRM.

Available Documents

Data and information supporting Notice and ANPRM.

Comments received during the public comment period.

Transcripts of the public hearings held in 1978 and 1980 and meeting held in 1981.

Food and Drug Adminstration Docket No. 78N–0158.

The above documents are available for review in the Dockets Management Branch, Food and Drug Adminstration, 5600 Fishers Lane, Rockville, MD 20857.

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HHS–FDA

New Drug Approval Process; Revision of Regulations Governing the Clinical Investigation of Drugs and Approval for Marketing (21 CFR Parts 310, 312, 314, and 431; Revision) (Previously, New Drug and Antibiotic Drug Regulations; Revision of Regulations Governing Approval for Marketing)

Legal Authority

Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 321(p), 352(1), 355, 357, and 371(a).

Reason for Including This Entry

The Food and Drug Administration (FDA) includes this entry because it represents a comprehensive revision of current regulations governing the Agency's review and approval processes for new drugs and antibiotic drugs and it will have significant implications for applicants seeking marketing approval of human drug products. The Presidential Task Force on Regulatory Relief has designated these proposed regulations for review. Revision of the investigational new drug (IND) and new drug application (NDA) regulations is only part of the Agency's response to the Presidential Task Force on Regulatory Relief. The Commissioner has established a top level task force, composed of top officials from both the Agency and other offices within the Department of Health and Human Services (HHS), to review all aspects of the drug approval process and to recommend whatever legislative, regulatory, managerial, and policy changes are needed. The goals of these changes will be to improve the quality and efficiency of the drug approval process without compromising the safety and effectiveness of new drugs. Areas being addressed by this task force include the criteria for approval of NDAs (efficacy and safety), post-marketing authority, role of advisory committees, and deregulation of early clinical research.

Statement of Problem

The Federal Food, Drug, and Cosmetic Act (the Act) provides in § 505 (21 U.S.C. 355) that a new drug for human use may not be introduced or delivered for introduction into interstate commerce in the United States unless FDA has approved a new drug application for it. FDA approves an NDA if the person seeking approval to market the drug (the sponsor of the application) shows by scientific evidence that the drug is safe and effective for the conditions prescribed, recommended, or suggested in the product's proposed labeling.

The drug approval process begins with extensive preclinical and clinical tests of an investigational drug by the sponsor. The regulations governing this stage of drug approval are found at 21 CFR Part 312. Before human testing may begin, the sponsor of an investigation must submit an IND to FDA, containing complete information about the investigational drug, including the results of animal studies that show it is reasonably safe to begin human testing and a detailed outline of the planned human tests. FDA has 30 days from receipt of the IND to notify a sponsor that an IND is deficient. If the sponsor is not notified of any deficiencies in 30 days, human testing may begin.

Drug testing in humans usually consists of three separate phases: short-term studies in a small number of normal subjects and patients to test the properties of the drug and levels of toxicity, metabolism, and, when appropriate, pharmacologic effect (Phase I); larger, more detailed studies in patients designed to evaluate the effectiveness of the drug and to obtain information about the drug's relative safety (Phase II); and more extensive testing on patients to systematically assess the drug's safety and effectiveness (Phase III).

When a sponsor believes the investigational studies on a drug have shown that the drug is safe and effective for specific therapeutic conditions, the sponsor submits an NDA to FDA to obtain the Agency's approval under the

Act, to market the drug in the United States. The Act requires FDA to approve the application before the new drug may be marketed. By the time an application is submitted, the drug usually has been studied in several thousand patients. The application, which often consists of thousands of pages of material, is reviewed by FDA physicians, pharmacologists, chemists, statisticians, and other professionals who are experienced in evaluating new drugs. Their recommendations receive further review by FDA management before the Agency approves the application. The regulations governing this part of the approval process are found at 21 CFR Part 314.

The statutory standards for approval are stated in the Act, but only generally. Accordingly, FDA has established general regulations, applicable to all "new drugs," that implement the statutory requirements. Although the Agency's review of INDs and NDAs has incorporated new scientific and technological developments as they have become known, its regulations have been revised infrequently, and then primarily to deal with specific, discrete problems.

The infrequent revisions of the regulations and the evolutionary changes in the Agency's review practices have resulted in regulations that no longer adequately reflect the Agency's practices. For the same reasons, they fail to promote expeditious Agency review of INDs and NDAs. In some cases they are outdated, requiring information often found unnecessary. The NDA regulations also do not reflect well the Agency's "bookkeeping" practices regarding NDAs nor the significance of certain administrative actions taken on applications, such as the issuance of "approvable" or "nonapprovable" letters. These latter failures have contributed to communications problems with sponsors. By providing the regulated industry with requirements that accurately reflect the Agency's informational needs, that improve the organization of applications, and that explain the mechanics of the IND and NDA process, FDA hopes to improve the quality and speed of the review process.

Requirements for the approval of antibiotic drugs will also be revised. Under special statutory requirements not applicable to other new drugs, antibiotics are required to be "batch certified," that is, manufactured batches are subject to laboratory testing by the Agency before marketing. Standards for these tests are embodied in regulations issued through informal rulemaking. The regulations for batch certification are drug-specific and are frequently issued without a need for prior public comment. Although the approval of each new antibiotic requires the issuance of a new regulation, the standards for approval (safety and effectiveness) of an antibiotic are very much like those for non-antibiotic drugs. Current regulations, however, still differ in some respects: for example, sponsors of new drug applications may make many changes in manufacturing processes or labeling without FDA's prior approval, but sponsors of antibiotic drugs must obtain FDA approval before making almost any change. Apart from certification, the Agency intends in the revision to conform the requirements for antibiotics to the more liberal ones for other new drugs.

Alternatives Under Consideration

The Agency is considering the following alternatives in developing its proposed rules:

(A) No change. FDA rejects this alternative because the Agency believes changes in the regulations are essential.

(B) Retain current requirements but restate them in "plain English." This alternative would help applicants understand existing IND and NDA regulations. It would not, however, provide any refinement of the regulations to improve the approval process, such as the elimination of requirements for submitting unnecessary information.

(C) Revise the regulations. FDA would revise the existing regulations to improve the efficiency of FDA's review processes and to improve the Agency's dealings with sponsors. The NDA revisions would articulate general requirements in regulations containing performance standards and would complement them through detailed guidelines on, among other matters, appropriate ways of meeting requirements for submission of chemistry, pharmacology, biopharmaceutics, and statistical data that would better address the intricate scientific issues involved. Although the guidelines would not establish regulatory requirements, persons would be able to rely upon them with confidence that action taken under a guideline would be acceptable to the Agency.

Summary of Benefits

Sectors Affected: Consumers of drugs (pharmaceutical preparations) and manufacturers of drugs (pharmaceutical preparations).

The changes in the regulation are intended to improve the approval process and the accompanying dialogue between FDA and sponsors of INDs and NDAs. The improvements will enable sponsors to prepare and submit higher quality applications, ones which FDA can review more efficiently and with fewer delays. This will benefit sponsors by reducing the length of time required to obtain FDA approval to market a new drug. Quantification of the time savings will be made in the draft Regulatory Impact Analysis but cannot be reliably estimated until various policy specifications are determined. The changes will also benefit consumers through earlier availability of new drugs.

Summary of Costs

Sectors Affected: Manufacturers of drugs (pharmaceutical preparations).

Sponsors of NDAs may bear additional costs in preparing summaries, analyses, and tabulations in submissions to meet some of the revised FDA requirements. Such costs will be offset by reduced costs for other submission requirements and reduced requirements on the holders of previously approved NDAs. On balance, the changes are expected to be neutral with respect to direct cost impacts on manufacturers of drugs. The changes will have a favorable indirect cost impact to the extent they provide benefits of quicker approval described above.

Summary of Net Benefits

The proposed changes will be essentially neutral with respect to direct cost impacts. They will yield benefits in the form of a shorter interval between the submission of a new drug application to FDA and its approval for marketing. This benefit, which can also be viewed as a favorable impact on indirect costs associated with the duration of the drug development process, can be quantified in terms of time. The draft Regulatory Impact Analysis will estimate this time savings after all policy specifications are determined.

Related Regulations and Actions

Internal: New drug and antibiotic regulations, 21 CFR Parts 310 (new drugs), 312 (investigational new drugs), 314 (new drug applications), and 431 (certification of antibiotic drugs).

External: None.

Government Collaboration

None.

Timetable

IND regulations

NPRM—December 1982.
Public Comment Period—To be determined.
Final Rule—To be determined.
Draft Regulatory Impact Analysis—Available at time of NPRM.
Regulatory Flexibility Analysis—Will accompany Regulatory Impact Analysis.

NDA regulations.

NPRM—March 1982.
Public Comment Period—To be determined.
Final Rule—To be determined.
Draft Regulatory Impact Analysis—Available at time of NPRM.
Regulatory Flexibility Analysis—Will accompany Regulatory Impact Analysis.

Available Documents

Concept Document—Investigational and New Drug Regulations—Revisions—HHS/FDA—October 1979.

Notice of Public Meeting on Concept Document, October 12, 1979 (44 FR 58919).

Transcript of the public meeting on November 7, 1979, held in Washington, DC.

The above documents are available for review in the Dockets Management Branch (Docket No. 79N-0388), Food and Drug Administration, 5600 Fishers Lane, Room 4-62, Rockville, MD 20857.

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IND regulations

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HHS-FDA

Prescription Drug Products; Patient Package Inserts Requirements (21 CFR Part 203)

Legal Authority

The Federal Food, Drug, and Cosmetic Act, §§ 201, 502, 503, 505, 506, 507, and 701, 21 U.S.C. 321, 352, 353, 355, 356, 357, and 371; the Public Health Service Act, § 351, 42 U.S.C. 262; 21 CFR 5.1.

Reason for Including This Entry

This action is taken under § 10.35(a) of the Food and Drug Administration's (FDA) procedural regulations (21 CFR 10.35(a)), which authorize the Agency to stay at any time the effective date of a pending action or following a decision on any matter. Important questions continue to be raised regarding the cost, necessity, and utility of FDA's patient package insert program. These questions merit further review before final implementation of any requirements. FDA also believes additional review of these requirements to be consistent with the spirit of the provisions of Executive Order 12291 (46 FR 13193, February 19, 1981). Further, the Presidential Task Force on Regulatory Relief has designated this regulation for review.

Statement of Problem

FDA has had concern that generally, users of prescription drugs are not routinely exposed to all the necessary information about the proper use of these drugs. The Agency therefore concluded that providing complete and readily understandable information about drugs to patients could produce health benefits by increasing patient understanding and awareness of the need for observing precautions and following directions in taking prescription drugs. Therefore, in the Federal Register of July 6, 1979 (44 FR 40016), FDA proposed that written information describing both the benefits and risks involved in the use of a prescription drug product be provided directly to the patient when the drug product is dispensed. The Agency has adopted the term "patient package inserts" (PPIs) to describe these information leaflets.

Final regulations, published in the Federal Register of September 12, 1980 (45 FR 60754), require manufacturers and distributors of prescription drug products to provide PPIs for their products to dispensers (generally pharmacists and physicians). Dispensers are then required to provide the inserts to patients when each drug product is dispensed under a new prescription. The Final Rule specifies that during an initial pilot implementation period of about 3 years, PPIs would be limited to 10 drugs or drug classes.

The ten drugs were selected on the basis of the following criteria: (1) whether patient package inserts could affect the patient's decision to use the drug, (2) whether patient package inserts could help prevent serious adverse effects, (3) whether patient package inserts could help increase the patient's adherence to the prescribed course of therapy, and (4) the extent to which a particular drug is prescribed. Although all four criteria did not apply to all ten drugs, each drug is subject to at least two, and most to more than two.

Also in that issue of the Federal Register, the Agency published ten draft guideline patient package inserts for drugs to which it intended to apply the regulations initially. After soliciting comments on the draft guidelines, the Agency published three final guidelines and announced the applicability of regulations to these drugs effective May 25, 1981 (45 FR 78516, November 25, 1980); and to two more drugs effective July 1, 1981 (46 FR 160, January 2, 1981).

FDA estimated the cost for each dispensed leaflet at about 18 cents and the total annual cost of the program at $21 million. The pilot program was intended to provide more definite data about the costs and benefits of PPIs.

As originally proposed, these regulations would have required most prescription drug products for human use to be dispensed with patient labeling. Implementation of the program was proposed to be gradual and in two phases. During the first phase, FDA, its contractors, and drug manufacturers would draft guideline patient labeling for approximately 50 to 75 drug products and drug classes. Before beginning the second phase, FDA would thoroughly evaluate the progress and effects of required patient labeling. The Agency would also carefully review the necessity and usefulness of FDA guideline labeling. By that time the Agency, drug manufacturers and distributors, and drug dispensers would be more familiar with the requirements. During the planned second phase of the program the Agency would merely schedule the effective dates of the patient labeling requirements for the remaining prescription drug products. Responsibility for preparing patient labeling would then shift to drug manufacturers.

Although most comments on the proposed regulation recognized the benefits of patients being fully informed about drugs prescribed for their use, many comments criticized the draft

Regulatory Analysis stating that it significantly underestimated the costs of implementing the regulation. One comment estimated the annual cost to be between $214 and $720 million, or two to seven times FDA's estimate. Variously, the comments argued that the rulemaking be ended, that it be postponed until better economic data were developed, or that implementation be limited to a pilot program consisting of a much reduced number of drugs.

Ultimately, although FDA determined that the proposed regulation should be adopted, the comments influenced this Agency to apply the regulation initially to the pilot implementation program mentioned above. Further, FDA stated in the preamble to the Final Rule that an evaluation of the costs and benefits of this pilot program would guide the Agency in deciding whether to extend, revise, or defer the requirements.

Even though the implementation program selected by the Agency was reduced from that initially proposed, the Agency continued to receive strong expressions of concern that the cost of the selected mandatory pilot approach was in considerable excess of that predicted in the final order. Consequently, as the complaints continued to mount that the benefits of patient labeling do not justify the costs of even the ten-drug pilot program, it became apparent that an additional review of the program was merited. Further, FDA also concluded that additional review of this regulation is consistent with the spirit of the provisions of Executive Order 12291.

Therefore, in the Federal Register of April 28, 1981 (46 FR 23739 and 23815), the Agency stayed the effective dates of its patient package insert program to permit further review of the questions that have continued to be raised about the program and to review the rulemaking with respect to Executive Order 12291 (46 FR 13191, February 19, 1981).

A public meeting was held in Washington, DC, on September 30 and October 1, 1981, at which persons holding competing views on the program submitted them to the Agency. In addition, since the stay was imposed, the Rand Corporation completed an FDA-funded study that assessed the effects of various prototype PPIs on active drug users.

The information presented at the public meeting, all of the information in the Agency's administrative record of the patient package insert program, and the results of the Rand Study are currently being reviewed.

Alternatives Under Consideration

In addition to the original program, possible alternative approaches being considered include modifying the current regulation to include fewer drugs or withdrawing the regulation and encouraging and supporting voluntary efforts to inform patients.

Summary of Benefits

Sectors Affected: Consumers of prescription drugs.

It is reasonable to believe that increased patient understanding and awareness of the need for observing precautions and following directions in taking prescription drugs will produce health benefits by reducing the incidence or effects of: excessive or inappropriate use of drugs, adverse drug reactions and adverse drug/drug and drug/food reactions, and therapeutic failure due to poor compliance with drug regimens. Such effects may cause additional visits to physicians, prolonged or additional treatment or hospital admissions, disability, death, lost work time or reduced productivity, or wasted expenditures on drugs not properly used. FDA's Regulatory Analysis published with its Final Rule on September 12, 1980 (45 FR 60754) did not make firm quantitative projections of the benefits of reduced incidence of these events that might accrue from patient labeling of the ten drugs or drug classes covered by the final regulation. It gave examples demonstrating how assumptions believed to be plausible and conservative could imply major annual savings.

Summary of Costs

Sectors Affected: Pharmaceutical manufacturers; pharmaceutical distributors and wholesalers; pharmaceutical retailers; hospitals and nursing homes; and pharmacists.

Manufacturers will incur costs for internal review of PPI texts and administrative costs associated with printing and handling, printing costs, and distribution costs to wholesalers and retailers. The distribution/wholesaling sector will incur handling and shipping costs for distributing those PPIs not distributed directly by manufacturers to retailers. Pharmacies will have costs of storing PPIs and operating costs for filing, retrieving, and dispensing them. Hospitals and nursing homes will bear the costs of revising admitting forms to inform patients of the availability of prescription drug information and the costs of a reference binder of patient labeling at each nursing station. The Agency believes that there will be no incremental costs to pharmacists or physicians for increased patient consultation. For at least the initial phase of the regulation, limited to ten drugs or drug classes, the Agency concluded that there would be no disproportionate impact on small businesses or on their ability to remain competitive because virtually all the costs are variable and proportionate to prescription volume. FDA's Regulatory Analysis, published with the Final Rule on September 12, 1980 (45 FR 60754) provides details of projected costs for the Final Rule as published.

Summary of Net Benefits

Since this rule is now under review, evaluation of net benefits will depend on the policy finally adopted.

Related Regulations and Actions

None.

Government Collaboration

None.

Timetable

NPRM on PPIs for Prescription Drug Products—44 FR 40016, July 6, 1979.

Final Rule on PPIs for Prescription Drug Products—45 FR 60754, September 12, 1980.

Final Guideline Labeling for Cimetidine, Clofibrate, and Propoxyphene—45 FR 78516, November 25, 1980.

Proposed Guideline for Bendectin Substitution for Warfarin—45 FR 80740, December 5, 1980.

Final Guideline Labeling for Ampicillin and Phenytoin—46 FR 160, January 2, 1981.

Temporary Stay of Effective Dates of Final Rules—46 FR 23739, April 28, 1981.

Temporary Stay of Effective Dates for Final Guideline Patient Package Inserts—46 FR 23815, April 28, 1981.

Notice of Public Meeting and Request for Comments—46 FR 42470, August 21, 1981.

End of Review—Date to be determined.

Available Documents

The following documents are on file in the Dockets Management Branch (HFA-305), Food and Drug Administration, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857:

- Regulatory Analysis of Final Rules.
- Copies of all comments received.
- Transcripts of Public Hearings held on September 10, 12, 14, 1979, and September 30 and October 1, 1981.
- Final Report on Rand Study of Patient Package Insert Program.

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HHS—Health Care Financing Administration

Conditions of Participation for Nursing Homes (42 CFR Parts 405 and 442; Revision)

Legal Authority

Social Security Act, as amended §§ 1102, 1814, 1832, 1833, 1861, 1865, 1866, and 1871, 42 U.S.C. 1302, 1395f, 1395k, 1395t, 1395x, 1395z, 1395bb, 1395cc, and 1395hh.

Reason for Including This Entry

The Department of Health and Human Services (HHS) includes this entry because this regulation is under revision as part of the Health Care Financing Administration (HCFA) deregulation activity and is one of a variety of Medicaid regulations designated for review by the Presidential Task Force on Regulatory Relief.

Statement of Problem

In order to participate as a provider of institutional long-term care services under the Medicare and Medicaid programs, a facility must be a skilled nursing facility (SNF) within the meaning of § 1861(j) of the Act or an intermediate care facility (ICF) within the meaning of § 1905(c) of the Act. These sections of the Act and additional health and safety regulations prescribe specific standards that facilities must meet in order to be eligible to participate in the Medicare and Medicaid programs. Participation in either program is voluntary.

SNFs and ICFs are currently surveyed at least annually by State government survey personnel under contract with the Department of Health and Human Services. Based on the information obtained during those surveys, the HHS Regional Office certifies facilities for participation in the programs. However, if the facility elects to participate only in the Medicaid program, the State makes the certification decision.

Alternatives Under Consideration

This regulation is presently under active review by the HCFA Task Force for Regulatory Reform. The principles used in developing Task Force recommendations are as follows:

(1) Only provisions specifically mandated by statute, or by a strong inference in statute or by some indication of Congressional intent will be retained.

(2) The only exception to the above provision relates to conditions of participation that may be retained when not mandated by statute if the condition clearly relates to the health and safety of patients.

(3) In order to retain any provision, the appropriateness of a Federal oversight role, as defined in the regulation, must be clearly justified.

Summary of Benefits

Sectors Affected: Skilled nursing facilities and intermediate care facilities (nursing and personal care facilities) participating in the Medicare and Medicaid programs; patients and staff of these facilities; and State health agencies.

Since we have not yet developed specific alternatives in detail, we are unable to assign quantities or dollar values to any benefits or costs. The primary goal of simplification, clarification, and reduction of regulatory burden will accrue directly to the facilities themselves and indirectly to the Federal and State governments and all Medicare and Medicaid beneficiaries, since this will result in cost savings to the facilities through reduction in compliance requirements and to the Government through reduced enforcement costs. Beneficiaries would benefit indirectly through more efficient operation of the facilities where they reside.

Summary of Costs

Sectors Affected: Skilled nursing facilities and intermediate care facilities (nursing and personal care facilities) participating in the Medicare and Medicaid programs; patients of these facilities; and Federal and State certification personnel.

As indicated above, due to lack of development of specific alternatives we are unable to assign quantities or dollar values at this time.

Summary of Net Benefits

As indicated above, we are unable to list any specific alternatives or cost or benefit figures. Therefore, we are unable to calculate the net benefits of this regulation at this time.

Related Regulations and Actions

Internal: Consolidation of Survey and Certification Requirements for Medicare and Medicaid (42 CFR Parts 405 and 431). A regulation proposal was contained in 45 FR 13477, February 29, 1980, and an entry appears elsewhere in this Calendar.

External: None.

Government Collaboration

We will collaborate with various agencies within the Department of Health and Human Services involved in long-term care, the Federal Trade Commission, and various State agencies concerned with survey and certification and reimbursement for long-term care.

Timetable

NPRM—To be determined.
Public Comment Period on NPRM—To be determined.
Regulatory Impact Analysis—Preliminary, to be determined.
Regulatory Flexibility Analysis—To be determined.

Available Documents

None.

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HHS–HCFA

Consolidation of Medicare and Medicaid Regulations for Survey and Certification of Health Care Facilities (42 CFR 405, 431, 442, and 489; Revision) (Previously, Consolidation of Survey and Certification Requirements for Medicare and Medicaid)

Legal Authority

The Social Security Act, as amended, Titles 11, 18, and 19, 42 U.S.C. 1302 and 1395 *et seq.*

Reason for Including This Entry

The Department of Health and Human Services (HHS) includes this entry because of its potential for impact on consumers, the health care industry, and State agencies. The Presidential Task Force on Regulatory Relief has designated this regulation for review.

Statement of Problem

In order to participate in the Medicare or Medicaid program, providers of services must be found to meet pertinent requirements, specified in Titles 11, 18, and 19 of the Social Security Act

(hereafter referred to as "the Act") and related regulations. The Act (§ 1864) further requires that the Secretary of HHS enter into an agreement with a State agency for the purpose of performing surveys to ascertain compliance with program requirements. Under this agreement, the State survey agency is further required to certify to the Secretary whether health care providers meet program requirements.

For Medicaid, the statute (§ 1902(a)(33)(B)) requires that the State survey agency determine compliance with health and safety requirements. The survey agency must then certify its findings to the State Medicaid agency. In this instance, the certification is a determination of eligibility, not a recommendation. If eligibility is established, the State Medicaid agency will enter into an agreement (§ 1902(a)(27) of the Act) with the health care provider.

The Health Care Financing Administration (HCFA) and the States have approved providers based on the results of surveys since the earliest days of the program.

At the same time, the health industry has gained sophistication, in terms of knowing what it has to do in order to participate. In contrast to the early days of the programs, when residential nursing homes were upgraded to meet skilled nursing requirements, facilities are now built to conform with program requirements. Similarly, the chain organization, with its resources and managerial expertise, has had a significant impact on the industry.

HCFA believes that the survey and certification process needs reassessing. Provider groups complain about the extreme reporting burden. Consumers and their advocates claim that we are not really looking at the quality of care and are insisting that they be involved in the survey and certification of health care facilities. The Office of Management and Budget is insisting that we reduce administrative costs and the public reporting burden. State agencies and providers complain that often multiple State agencies survey the same facilities but arrive at different conclusions.

The State agencies are budgeted a total of $46 million to conduct surveys and certify their findings. There are about 37,000 health care providers who participate in Medicare or Medicaid. The State agency budget in fiscal year 1981 was about $70 million. The amount was needed to fund annual surveys of the 37,000 providers and suppliers that participate in Medicare and Medicaid, as well as the other activities performed historically by the State agency. The budget for fiscal year 1982 was reduced to $46 million. Given the reduction in fiscal resources, it is incumbent on HCFA to reduce, refine, and streamline the survey and certification process in a way that will not compromise our ability to monitor the quality of care being furnished. In these times of Federal budgetary restraints and escalating costs of health care, HCFA believes it important to consider ways of making the process more efficient, cost effective, and meaningful in terms of evaluating the quality of care actually being furnished program beneficiaries and recipients.

Alternatives Under Consideration

Following publication of a Regulation Proposal on February 29, 1980 (45 FR 13477), we published a Notice of Public Meeting on March 7, 1980 (45 FR 14900). Public hearings were held in each of the HHS Regions and in Washington, DC. The purpose was to solicit public reaction and comment on a set of survey and certification issues that we, along with State agencies and Regional Offices, had identified as needed modifications.

Summary of Benefits

Sectors Affected: The Federal Government; State Health Departments; State Social Services Departments; and 37,000 health care service providers, consumers, and their advocates.

All proposals are expected to result in a real cost savings to all sectors affected. For example, if only 10 percent of the providers were surveyed every 2 years, we would save about $6 million in FY 1982 dollars (.10 × 37,000 × $70 million divided by 37,000=$7 million). This would also reduce the overall reporting burden now imposed on providers. (37,000 is the total number of providers and $70 million was the amount required to survey and certify them in FY 1981).

We anticipate a more efficient process that will reduce provider reporting burdens and overall Federal and State costs. Further, we see the process being returned to what it was designed to do—determine whether providers of services meet program requirements. Eliminating superfluous procedures not directly related to assessing quality of care and the facilities in which it is being furnished will enable the Federal and State governments to focus their limited resources where they are most needed. This will ultimately benefit the beneficiaries and the taxpaying public.

Summary of Costs

Sectors Affected: None.

We foresee no additional cost to providers of services. The purpose is to reduce overall administrative costs and the public reporting burden.

Summary of Net Benefits

Our goals involve a reduction in total survey and certification procedures. Accordingly, costs to the Administration, State survey agencies, and providers and suppliers of services, who will realize a reduction in their reporting burdens, will be significantly reduced. At the same time, Federal and State governments will be able to focus and concentrate limited human and fiscal resources on marginal health care facilities.

The last full year of annual surveys cost the Federal Government $70,000,000. The current budget, however, is about $46,000,000. Therefore, we must reduce activities if we are to accommodate the $24,000,000 reduction. Our intent is to ensure that only activities that have proven wasteful or ineffective are eliminated. This should benefit the health care industry through a substantial reduction in its reporting burden.

Related Regulations and Actions

None.

Government Collaboration

State agency personnnel participated in a work group to identify procedures that should be considered for revision. Other bureaus within HCFA and the Office of General Counsel will have the opportunity to comment on proposals before they are adopted.

Timetable

NPRM—2nd Quarter 1982.
Public Comment Period—60 days following publication of NPRM. Address comments to: Administrator, HCFA, P.O. Box 17082, Baltimore, MD 21235.
Regulatory Impact Analysis—To be determined.
Regulatory Flexibility Analysis—None.
Final Rule—1st Quarter 1983.

Available Documents

Regulation Proposal (45 FR 13477, February 29, 1980).

Notice of Public Meetings (45 FR 14900, March 7, 1980).

Issue Papers—These issue papers were sent to those who requested them. Their availability was announced in the **Federal Register** on March 7, 1980.

Summary of public hearings held in each HHS region and Washington, DC.

The above documents are available for review at: Health Care Financing Administration, Health Standards and Quality Bureau, Room 2–A–2, Dogwood East Building, 1849 Gwynn Oak Avenue, Baltimore, MD 21207.

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HHS–HCFA

End-Stage Renal Disease Program: Incentive Reimbursement for Dialysis Services (42 CFR Part 405; Revision)

Legal Authority

Social Security Act, as amended, §§ 1102, 1814(b), 1833(a), 1861(v), 1871, and 1881; 42 U.S.C. 1302, 1395f, 1395l, 1395x(v), 1395hh, and 1395rr.

Reason for Including This Entry

The Department of Health and Human Services (HHS) believes this review is required because changes in the method of reimbursing for dialysis services may result in an annual effect on the economy of $100 million or more.

Statement of Problem

We are in the process of developing a comprehensive regulation revising the reimbursement method for all outpatient and home dialysis services to provide greater incentives for economy and efficiency, pursuant to P.L. 97–35.

Alternatives Under Consideration

We are issuing a new NPRM, instead of issuing a Final Rule implementing our proposals of September 26, 1980.

Payment Methods: The 1981 Budget Reconciliation Act gives the Secretary broad discretion in selecting the payment method and the means of applying it. We are currently studying the numerous alternatives open to us that would accomplish the intent of the legislation. Because of the early nature of our deliberations, it would be premature to list or discuss any alternatives in detail. The objective of any alternative selected will be to encourage home dialysis where possible and to reduce overall program costs.

Summary of Benefits

Sectors Affected: Hospitals and outpatient care facilities that provide dialysis services; manufacturers of dialysis equipment; dialysis patients and their families; home dialysis aides; Medicare beneficiaries; and the Federal Government.

Since we have not yet developed any specific alternative in detail, we cannot assign quantities or dollar values to any benefits or costs.

Summary of Costs

Sectors Affected: Hospitals and outpatient care facilities that provide dialysis services and physicians treating dialysis patients; manufacturers and distributors of dialysis equipment and supplies; dialysis patients and their families; and the Federal Government.

As noted above, we cannot assign dollar values to costs, since we have not yet developed any specific alternative in detail.

Summary of Net Benefits

Since we cannot yet quantify any projected benefits or costs, we cannot calculate net benefits. This will be addressed to the extent feasible in the Regulatory Impact Analysis that we are required to perform for these regulations and that will be available when these regulations are published.

Related Regulations and Actions

None.

Government Collaboration

None.

Timetable

Statutory Deadline—October 1, 1981.
NPRM—To be determined.
Public Comment Period on NPRM—30 days from date of publication.
Final Rule—To be determined.
Final Rule Effective—Date of publication.
Regulatory Impact Analysis—To be determined.
Regulatory Flexibility Analysis—Combined with Regulatory Impact Analysis, see above.

Available Documents

NPRM—Incentive Reimbursement for Outpatient Dialysis and Self-Care Dialysis Training (45 FR 64008, September 26, 1980).

Public comments on above NPRM, received from September 26, 1980 to November 25, 1980 are available for review in Room 309–G of the Department's office at 200 Independence Avenue, S.W., Washington, DC 20201, on Monday through Friday of each week from 8:30 to 5:00 p.m., telephone (202)245–7890.

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HHS–HCFA

Medicaid Regulations Affecting States (42 CFR Parts 430 through 456; Revision)

Legal Authority

Social Security Act, as amended, Title 19, 42 U.S.C. 1396.

Reason for Including This Entry

The Department of Health and Human Services (HHS) includes this entry because the Presidential Task Force on Regulatory Relief has designated these regulations for review.

Statement of Problem

Since the inception of the Medicaid program, the Federal Government, as a contributor to the States' Medicaid funding, has furnished detailed requirements and guidelines with which States have to comply in order to receive Federal Financial Participation (FFP) funds. In many cases, it was discovered that the regulations involved did not accomplish their purpose of assuring the efficiency and integrity of the programs involved, but instead contributed to increased administrative costs and reduced efficiency. The States have long contended that many regulations hamper their ability to provide services to needy people at reasonable funding levels. In addition, the President has promised States that regulatory relief will accompany his proposal to limit Federal Medicaid expenditures. For these reasons, the Health Care Financing Administration (HCFA) Task Force on Regulatory Reform has undertaken a review of existing Medicaid regulations affecting States.

Alternatives Under Consideration

Because the Task Force's review is at an early stage, we are unable to list specific alternatives at this time. The objectives of the Task Force in performing its review are as follows:

(1) Only provisions specifically mandated by statute or a strong inference in statute will be retained.

(2) The only exception to the above provision relates to conditions of participation that may be retained when not mandated by statute if the conditions clearly relate to the health and safety of patients.

(3) In order to retain any provision, the appropriateness of a Federal oversight rule, as defined in the regulation, must be clearly justified.

Summary of Benefits

Sectors Affected: State Medicaid Agencies; State governments; providers, practitioners, and suppliers participating in the Medicaid Programs of the various States and Territories; and recipients of services under those programs.

The primary benefit sought, increased State flexibility, will accrue directly to the State governments and State Medicaid Agencies, which will be able to make more effective use of available funds without incurring additional costs of compliance with ineffective or inappropriate Federal regulations. Since this should result in a reduction in administrative costs, Medicaid providers, practitioners, and suppliers should benefit by the larger remaining funds for purchase of services and supplies, while recipients will benefit from retention of services under the programs in their States.

Summary of Costs

Sectors Affected: Providers, practitioners, and suppliers participating in the Medicaid programs of the various States and Territories; and recipients of service under those programs.

Any costs will ultimately depend upon the options exercised by the States.

Summary of Net Benefits

We cannot yet quantify any projected benefits; any costs will ultimately depend upon the options exercised by the States.

Related Regulations and Actions

Internal: Revocation of 60-day Public Notice Requirement for Changes in Medicaid Method or Level of Reimbursement (42 CFR Part 447). An NPRM was published at 46 FR 45964, September 18, 1981. Medicaid Program; Freedom of Choice: Waivers of an Exception to State Plan Requirements was published in interim final form with comment period at 46 FR 48524, October 1, 1981. Medicaid Program; Miscellaneous Medicaid Provision—Increased State Flexibility was published in interim final form with comment period at 46 FR 48556, October 1, 1981.

External: None.

Government Collaboration

None.

Timetable

NPRMs—To be determined.
Public Comment Periods on NPRMs—To be determined.
Regulatory Impact Analyses—Under consideration.
Initial Regulatory Flexibility Analysis—Will accompany NPRM.

Available Documents

None.

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HHS—Health Resources Administration

Health Planning and Resources Development (42 CFR Parts 121, 122, 123, and 124; Revision)

Legal Authority

Public Health Service Act, 41 U.S.C. 300k–1, 42 U.S.C. 216, 41 U.S.C. 3001–4 and 3001–5, 42 U.S.C. 216, 300o–1, and 300–r.

Reason for Including This Entry

The Presidential Task Force on Regulatory Relief has designated these regulations for review.

Statement of Problem

Federal health planning legislation is intended, among other things, to control rising health care costs. However, the regulations implementing the legislation have themselves been quite costly. They require extensive justification for expansion of health care facilities and services or changes in or acquisition of new equipment. Additionally, they prescribe detailed requirements for the designation, funding, establishment, and operation of State and local health planning agencies. The Health Resources Administration (HRA) will review these regulations and explore ways to make them more cost effective and less burdensome on the health planning agencies and on health care providers.

The current health planning program evolved through a number of Federal efforts, beginning with the Hospital Survey and Construction Act of 1946 (known as the Hill-Burton program). This Act authorized grants to States to identify and meet some of the deficiencies in the supply and distribution of health facilities. In 1964 the Hill-Burton program was modified to provide funding for regional, or areawide, voluntary health facilities planning agencies. This resulted in many major urban areas having non-profit, private corporations, governed by boards of community leaders and health care providers.

The Regional Medical Program, enacted in 1965, was aimed at creating regional centers of care for heart disease, cancer, and stroke victims. The program had a planning component but was primarily concerned with increasing and sharing knowledge about technical developments in medical care.

The concept of areawide planning became firmly established with the Comprehensive Health Planning program in 1966, which created State and areawide agencies to coordinate Federal programs at the State and local levels and to promote and plan the rational development of health resources in local communities. The National Health Planning and Resources Development Act of 1974, adding Titles XV and XVI to the Public Health Service Act, authorized a 3-year effort aimed at ensuring equal access to quality health care at reasonable cost. The Health Planning and Resource Development Amendments of 1979 (P.L. 96–79) substantially revised the health planning program under Title XV and extended it for 3 years. The Health Programs Extension Act of 1980 (P.L. 96–538) contained both technical and minor amendments to Title XV of the Public Health Service Act.

The Omnibus Budget Reconciliation Act of 1981 (P.L. 97–35) made a number of changes to the health planning program (Title XV of the Public Health Service Act, as previously amended) by relieving regulatory burdens on local and State health planning agencies and the health care industry and by reducing funding authorizations for planning agencies. Specifically, the amendments to the planning program made by P.L. 97–35 reduced the authorizations for health planning to $102 million (of which not more than $65 million is to be expended for health systems agencies (HSAs)); reduced the minimum grant for HSAs from $245,000 to $100,000; delayed by 12 months the imposition of a penalty on States that did not have a fully designated State health planning and development agency (SHPDA); reduced the federally required minimum

thresholds for certificate of need reviews; allowed Governors to make application to eliminate HSAs within their States under certain conditions; and allowed the Secretary to waive any or all of the requirements for HSAs to conduct reviews of proposed uses of Federal funds, conduct appropriateness reviews of institutional health services in their health service areas, and/or collect and make available to the public rates charged for each of the 25 most frequently used services in their States.

The Administration's budget proposal provides for no Federal funding for local health planning agencies or for State health planning agencies in FY 1983. In the interim, prior to the complete phase-out of Federal support, State and local planning agencies are receiving reduced levels of Federal funding. Specifically, under the Administration's FY 1982 budget proposal, HSAs would receive $6.6 million and SHPDAs would receive $25.7 million. In light of this, the existing regulatory requirements impose an especially difficult burden on planning agencies, which we hope to lighten as Federal support decreases. Specifically, the regulations HRA is taking action to revise and the nature of the proposed revisions include the following:

- Regulations to implement provisions in the Omnibus Budget Reconciliation Act regarding a waiver of the requirement that HSAs review proposed uses of Federal funds, conduct appropriateness reviews, and collect and publish certain hospital rate charges.
- Regulations to repeal the current Computerized Tomographic (CT) Scanner Regulations.
- Revisions to the existing certificate of need regulations. Specifically, the regulations will be revised to specify that certain capital expenditures by or on behalf of health care facilities will no longer be required to be subject to review by planning agencies. Also, requirements for specific written findings by planning agencies on access for medically underserved populations will be eliminated, and some currently required review criteria will be eliminated from the regulations.
- Revisions to the existing regulations related to requirements for capital expenditure reviews under § 1122 of the Social Security Act. The regulations will be simplified to increase State flexibility in implementation.
- Revisions to the existing regulations regarding the designation and funding of State health planning and development agencies. Many procedural requirements for State health planning and development agencies (e.g., public hearings on the State administration program) will be eliminated. Also, many structural requirements for State health planning and development agencies and Statewide Health Coordinating Councils will be eliminated, leaving the State the flexibility to determine policies related to terms of office, public access requirements, etc.

Hopefully, our revision of the above health planning regulations will relieve planning agencies, as well as health care providers, of certain onerous and costly Federal regulatory requirements. It is important to note, however, that many of the requirements in the existing regulations are taken directly from the statute and therefore cannot be eliminated. Additionally, at the same time the regulations described above are being streamlined to relieve regulatory burden, they will be revised to incorporate the requirements of P.L. 96–79, P.L. 96–538, and P.L. 97–35. Although the Omnibus Budget Reconciliation Act (P.L. 97–35) relieves Federal regulatory burden (as described above), the Health Planning and Resources Development Amendments of 1979 (P.L. 96–79) in many areas increase Federal requirements. For example, P.L. 96–79 adds requirements related to the collection of data by SHPDAs, the development of State health plans, and conflict of interest policies. These, as well as other provisions from P.L. 96–79, must be added to the regulations at the same time they are revised for the purpose of streamlining.

In addition to streamlining the regulations described above, HRA is developing new regulations governing the revision of health service areas. These regulations are being developed because § 104(a) of P.L. 96–79 requires the Secretary of Health and Human Services to develop criteria in regulations for the revision of health service area boundaries. Further, in light of reduced Federal funding, we anticipate that HSAs will wish to combine and conserve scarce resources (i.e., money, personnel, equipment, etc.) by consolidating health service areas.

HRA has reviewed all existing health planning regulations and has identified for revision (and listed above) those regulations that affect the operations and structure of SHPDAs. Other regulations related to the performance, structure, and funding of HSAs will not be streamlined since, under the Administration's budget proposal, HSAs would receive only $6.6 million in FY 1982. This low level of funding does not justify revising regulations that would be operative for only a brief time, if at all. On the other hand, the regulations listed above that govern the activities of SHPDAs are being revised since, under the Administration's proposal, these agencies would receive $25.7 million in FY 1982. With this greater level of funding, SHPDAs could be operative for several months longer than HSAs.

Alternatives Under Consideration

HRA has considered three major alternatives with respect to the health planning regulations:

(A) No additional Federal action at this time. In light of the proposed phase-out of the Federal health planning program, HRA considered making no revisions to any existing regulations.

(B) Revising and streamlining *all* major health planning regulations (those affecting HSAs as well as SHPDAs).

(C) Revising those regulations governing the activities of SHPDAs and developing new regulations establishing criteria for the redesignation of health service areas.

HRA favors Alternative (C). Alternative (A) (no Federal action) would result in health planning agencies, as well as health care providers, being burdened with onerous and costly Federal requirements. Alternative (B) is unrealistic and unnecessary, since Federal funding for HSAs is proposed to be quite low. Therefore, the preferable alternative at this point in time is to streamline only those regulations affecting SHPDAs. Also, new regulations governing the designation of health service areas are being developed. Although HSA funding is proposed to be very low in FY 1982, these regulations are deemed critical so that HSAs can consolidate health service areas, thereby conserving scarce resources as long as they are in operation. These regulations have been put on a fast track by the HRA. Hopefully they will be adopted in time to allow the HSAs time to consolidate their health service areas well before Federal funding is phased out.

Summary of Benefits

Sectors Affected: HSAs; SHPDAs; health care facilities and other health care providers; and health care consumers.

The revisions in the existing health planning regulations will relieve the regulatory burden on health planning agencies by (1) no longer requiring them to perform certain review functions, and by (2) eliminating many procedural and structural requirements, thereby giving each State maximum possible flexibility. Further, the revisions being proposed will reduce the costs to health care facilities of complying with these regulations by reducing the numbers and kinds of activities subject to certificate

of need and § 1122 reviews. Finally, the issuance of new regulations governing the redesignation of health service areas will allow agencies to consolidate, thereby conserving scarce resources and reducing costs.

Summary of Costs

Sectors Affected: None.

There are no direct or indirect costs associated with the proposal described above. If HHS simplifies and streamlines the regulations, the costs of complying will be decreased.

Summary of Net Benefits

Since there are no costs associated with this proposal, the net benefits are the same as those described above in the section entitled Summary of Benefits. Specifically, the planned revisions will reduce costs to both planning agencies and health care facilities by eliminating procedural and structural requirements, making certain review functions by health planning agencies optional, and reducing the number of activities subject to certificate of need and § 1122 reviews.

Related Regulations and Actions

None.

Government Collaboration

None.

Timetable

Final Rule, Amendment to the HSA Designations and Funding Regulations (Waiver of HSA requirements)—Date to be determined.
Final Rule, Revision of Health Service Area Boundaries—Date to be determined.
NPRM, National Guidelines for Health Planning (CT Scanner Standard)—Date to be determined.
NPRM, Amendments to Certificate of Need Regulations—Date to be determined.
Final Rule or NPRM (action to be determined), Amendments to § 1122 Regulations—Date to be determined.
Final Rule or NPRM (action to be determined), Amendments to the SHPDA Designation and Funding Regulations—Date to be determined.
Public Hearing—None.
Public Comment Periods—To be determined.
Regulatory Impact Analysis—Not required.
Regulatory Flexibility Analysis—Not required.

Available Documents

None.

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Community Planning and Development

Siting of HUD-Assisted Projects near Hazardous Operations Handling Conventional Fuels or Chemicals of an Explosive or Flammable Nature (24 CFR Part 51-C; New)

Legal Authority

Housing Act of 1949, P.L. 81-171; Housing and Urban Development Act of 1968, P.L. 90-448; and Housing and Community Development Act of 1974, P.L. 93-383.

Reason for Including This Entry

The Department of Housing and Urban Development (HUD) is mandated by the Acts cited above to ensure that HUD-assisted projects are located in a suitable (safe and healthful) environment. This regulation, which pertains only to future HUD-assisted projects and will not apply to ongoing or completed projects, is needed to ensure compliance with the mandate.

We found during the environmental review process involving proposed HUD projects that such projects are too often being located near hazardous operations of an explosive or fire-prone nature. This is particularly true of public housing and housing for the elderly projects, which are generally located on low-cost land and therefore in the proximity of industrial areas.

Statement of Problem

The problem was first brought to the attention of the Department in 1974, when a public housing authority proposed construction of 1,250 units of public housing, which were to be located within 120 feet of a public utility facility containing forty 60,000-gallon liquid propane storage tanks. An engineering analysis determined that an explosion of just one of the tanks would emit a force capable of destroying 60 percent of the project.

Incidents involving chemicals or petrochemicals of an explosion- or fire-prone nature occur nationwide on at least a weekly basis. Condoning the location of HUD-assisted projects near such hazards is tantamount to playing Russian roulette.

Public housing and housing for the elderly, two important HUD endeavors, will be most favorably affected by adoption of this regulation. With increased use of land in the United States and escalating land prices, affordable land for such low-income housing tends to be located in undesirable, industrial areas. Therefore, these sites tend to be located dangerously close to operations that store and handle chemicals or petrochemicals of an explosive or fire-prone nature, e.g., gasoline, kerosene, liquid propane, butane, and vinyl chloride.

Alternatives Under Consideration

One alternative we considered was to maintain the status quo of having no regulation, but this would be tantamount to assuring the location of low-cost housing in undesirable (dangerous) areas.

A second alternative considered was to apprise local public housing authorities, planning agencies, community development block grant recipients, and others of the dangers involved and identify methods for reducing or negating potential hazards to proposed HUD-assisted projects. We can disseminate information by means of seminar-type training sessions, by issuance of a guidebook, or by a combination of the two. This would be better than nothing, but would not ensure compliance with safety standards, since they would not be enforceable.

The alternative we chose and described in our NPRM (45 FR 55223, August 19, 1980) will establish safety standards for explosion and thermal radiation and will provide guidance that can be used by HUD field staff, developers, project sponsors, planning agencies, public housing authorities, and others to determine acceptable separation distances from such potential hazards or to identify mitigating measures that can be incorporated in the projects, such as an earth berm or building design that can withstand specified blast overpressure and thermal radiation flux levels.

Summary of Benefits

Sectors Affected: Persons living in HUD-assisted housing; local housing authorities; and HUD.

Adoption of the proposed regulation will assure the safe location of all HUD projects that are to be sited in the immediate vicinity of explosive or fire-

prone materials, and will provide guidance to HUD and local agencies involved in public housing, as detailed in "Alternatives Under Consideration" above.

Summary of Costs

Sectors Affected: Builders and tenants of HUD-assisted housing projects and HUD.

Any additional land costs or costs resulting from incorporation of mitigation design measures into the project, such as an earthen berm, would be borne by the project sponsor and HUD, through its housing assistance activities. Some or all of these costs may be borne by the tenant in such ways as lower levels of other amenities in the dwelling.

Summary of Net Benefits

The basic benefit of the proposed regulation will be to assure that people and property are not exposed to potential explosion and thermal radiation hazards represented by chemicals or petrochemicals. A secondary benefit is to protect the investments of HUD by assuring that projects located in the proximity of such hazards are located at acceptable separation distances or that mitigating measures are incorporated into the project to protect against potential explosion or high-intensity fire.

Related Regulations and Actions

Internal: None.
External: Department of Transportation, Materials Transportation Bureau, regulation entitled, "Liquefied Natural Gas Facilities, Federal Safety Standards." This proposed regulation establishes safety standards for locating liquified natural gas processing plants and facilities.

Government Collaboration

None.

Timetable

ANPRM—44 FR 52695, September 10, 1979.
NPRM—45 FR 55223, August 19, 1980.
Final Rule—Will be ready for final departmental clearance March 30, 1982.
Regulatory Impact Analysis—None.
Regulatory Flexibility Analysis—None.

Available Documents

Guidebook PD&R-161, December 1975, entitled, "Safety Considerations in Siting Housing Projects."

HUD Research Contract No. HC-5232, "Urban Development Siting with Respect to Hazardous Commercial/Industrial Facilities." To be completed December 16, 1981.

The first document mentioned above is available for review in the office of the Agency Contact. The second document will be available in the same office after January 1, 1982.

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HUD—Office of the Assistant Secretary for Housing

Manufactured Home Construction and Safety Standards (24 CFR Part 3280; Revision) (Previously, Mobile Home Construction and Safety Standards)

Legal Authority

The National Manufactured Housing Construction and Safety Standards Act of 1974, §§ 604 and 625, 42 U.S.C. 5403, 5424, and 7(d): Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Reason for Including This Entry

The Department of Housing and Urban Development (HUD) has determined that some of the options under consideration may result in an annual economic effect of $100 million per year, and this should therefore be considered a major proposal. The Presidential Task Force on Regulatory Relief has designated the Standards for review.

Statement of Problem

The Department of Housing and Urban Development promulgated the National Manufactured (Mobile) Home Construction and Safety Standards in September 1975, and there have been virtually no changes made on them since that time. Because of the Standards, manufactured (mobile) homes are safer, more durable, and more energy efficient than would otherwise be the case. Still, changes in energy prices and the availability of new information makes any set of building standards obsolescent. (Ordinarily, the normal cycle for periodic review and revision of building codes is 3 years.) During the past 5 years, the Department has conducted numerous research projects and obtained fire data and other information that suggested the need to revise the Standards in the areas of safety, quality, and durability of manufactured (mobile) homes. Revisions are also needed to allow the use of new materials and technolgoy, to clarify the meaning of various sections in all subparts of the Standards, and to improve the management of the enforcement of the Standards based on the Department's experience during the past 5 years. Further, on August 12, 1981, the Presidential Task Force on Regulatory Relief included the Standards among a list of thirty Federal regulations to be reconsidered under Executive Order 12291. The Department believes that revision of the Standards is necessary at this time to assure that they provide reasonable levels of protection for consumers of manufactured (mobile) homes and impose no unnecessary cost for builders and consumers.

Alternatives Under Consideration

The Department previously identified major areas of the Standards it was considering for revision in an ANPRM issued June 7, 1979 (44 FR 32711). Those areas were:

- Fire Safety
- Egress Safety
- Transportation
- Energy Conservation
- Structural System Performance
- Wind Safety
- Protection Against Freezing
- Glazing Requirements

Subsequent to the issuance of the ANPRM, the Office of Manufactured (Mobile) Home Standards staff and its consultants developed alternative recommendations for revising the above-cited areas of the Federal Mobile Home Construction and Safety Standards and detailed changes to all subparts of the Standards.

Alternatives under consideration within some of the major areas include:

Fire Safety

(A) Institute no regulatory changes.

(B) Provide improved measures to restrain the spread of fire so as to reduce the number of fire deaths and extent of property damage resulting therefrom by: (1) requiring reduced flamespread-rated materials for ceilings and/or walls; and (2) improving the reliability of smoke detectors by requiring a minimum of two detectors and redefining acceptable locations to ensure proper detector response.

Energy Conservation

(A) Redefine climatic areas (zones) within the Standards so that insulation requirements can be more closely tailored to the climates of different

regions or maintain the current climatic boundaries.

(B) Change the method for determining insulation provisions by: (1) establishing requirements for the wall, floor, and ceiling cavities, limiting the amount of glazing based on the climatic zone and/or the relationship of window to wall areas; or (2) using the entire thermal envelope (that is, the entire wall, ceiling, and floor surface) as presently required by the Standards.

(C) Change the levels of insulation required by the Standards to: (1) achieve comparability with the Federal Housing Administration's Minimum Property Standards (the standards that apply to HUD-insured or -assisted one- and two-family dwellings); and/or (2) implement the recommendations of HUD research (see section on available documents) maintain present insulation standards, or establish another standard. The level of insulation we choose will depend primarily on a comparison of the costs of each alternative in relation to future energy cost savings. In general, more insulation means a higher initial cost and lower utility bills in the future.

Wind Safety

(A) Improve the resistance criteria to overturning and sliding from high wind conditions or retain current criteria for designing anchoring systems.

(B) Provide more effective measures for resisting high uplift wind forces applied to the roof structure or do not implement changes to the wind resistance provisions.

Structural System Performance and Transportation

(A) Improve present design criteria to resist on-site and/or dynamic forces induced during transportation so as to enhance the structure's performance and durability or make no changes to current design criteria.

The alternative revisions prepared by the staff and its consultants were reviewed by the National Manufactured (Mobile) Home Advisory Council during its August 1981 meeting. Following an evaluation of recommendations made by the Council, completion of the deregulatory review, and consideration of other information, the Department will develop an NPRM.

Summary of Benefits

Sectors Affected: Manufacturers, purchasers, and potential purchasers of manufactured (mobile) homes.

Given the wide range of options within each of the four areas described above, it is impossible to quantify the benefits at this time, but the Regulatory Impact Analysis will do so in the future. Qualitatively, these benefits fall into the categories suggested by the four general areas. A strengthening of the fire safety standards would lead to reductions in loss of life and injuries sustained as a result of fires in manufactured (mobile) homes. Also, these more stringent standards would lead to a reduction in property losses due to fire. To quantify these benefits, we will consider the extent to which proposed changes lead to lower property loss, and thus lower insurance premiums, as well as the effect on accidental injury and loss of life.

In the area of energy conservation, there is a continuum of benefits depending on the amount of insulation required. Higher "R" values (R values measure resistance to heat transmission) lead to lower fuel bills over the life of the manufactured (mobile) home. Since marginal benefits (e.g., benefits of each additional inch of insulation) decline as higher R values are required, this necessitates a careful consideration of the marginal costs of additional insulation. The Regulatory Impact Analysis, available when the NPRM is published, will be useful in making this determination.

The area of wind safety is similar to that of fire safety in that more stringent criteria for wind resistance are expected to lead to lower personal injury and property damage occurrence. There is information that suggests that the structural system performance and transportation may affect the useful life of the home. A lack of structural integrity, particularly as the manufactured (mobile) home is moved from the factory to its destination, may lead to a premature degradation of the unit, thereby potentially shortening its useful life. A relatively low additional cost may extend the useful life of the structure.

Benefits will also accrue to all sectors as a result of the deregulatory review. For example, among the revisions being contemplated is elimination of specific location requirements for connection of utility services to the home. This will provide for greater freedom in design, while eliminating costly field connections between the point of connection on the home and utility service available at the site.

Benefits have been discussed largely from the point of view of the buyer or potential buyer of a manufactured (mobile) home, but these same factors will lead to benefits to the manufacturers, provided the standards are such that additional benefits exceed additional costs and provided that consumers are aware of these considerations. If these conditions are met, there should be an increased acceptance of manufactured (mobile) homes by the public and therefore increased demand for the improved units.

Summary of Costs

Sectors Affected: Manufacturers, purchasers, and potential purchasers of manufactured (mobile) homes.

While costs are potentially easier to quantify than benefits in this case, the wide range of choice limits this quantification, at least until the Regulatory Impact Analysis is prepared. In general, more stringent standards imply higher costs to manufacturers and consumers as well as higher benefits. Apart from the issue of whether each of the changes that may be proposed increases the net benefit to consumers, there is the overall issue of affordability—can the higher quality manufactured (mobile) home that sells at a higher price be financed by the same spectrum of buyers as before the change? Until the overall scope of change is determined, this issue cannot be addressed, but will be addressed in the Regulatory Impact Analysis.

Summary of Net Benefits

Quantification of net benefits is not possible at this time. However, it is expected that the following benefits will result from the contemplated changes to the Standards:

(1) Fire safety provisions will lead to reductions in loss of life and injuries and reductions in property losses due to fire.

(2) Improvement of insulation levels will generally result in reduced fuel bills depending on local climatic conditions and fuel costs.

(3) Improvements to structural integrity should enhance the useful life of the structure.

(4) Changes resulting from the deregulatory review will provide benefits to all sectors by eliminating unnecessary requirements in the Standards.

These will be balanced against possible higher costs for consumers.

Related Regulations and Actions

None.

Government Collaboration

The Department will consult with the Consumer Product Safety Commission, as required by the Act, prior to issuing revisions to the Standards.

Timetable

ANPRM, Revision of Manufactured Home Construction and Safety Standards, Docket No. R-81, 44 FR

32711, June 7, 1979.
NPRM—April 1982.
Final Rule—October 1982.
Public Hearings—To be determined.
Public Comment Period—60 days following publication of NPRM.
Regulatory Impact Analysis—Preliminary, will accompany NPRM; final, will accompany Final Rule.
Regulatory Flexibility Analysis—None.

Available Documents

Transcripts of National Manufactured Home Advisory Council Meeting, August 4–7, 1981, available for review in the Office of Manufactured Housing and Construction Standards, Room 3236, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, DC 20410.

Research and Data Collection Studies are listed in the Fourth Report to Congress on Mobile Homes, available for review in the Office of Manufactured Housing and Construction Standards, Room 3236.

Copies of the research documents are available from: HUD User, P.O. Box 280, Germantown, MD 20767, and/or National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22151.

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HUD–HOUS

Minimum Property Standards for Multi-Family Dwellings (24 CFR Part 200; Revision)

Legal Authority

National Housing Act, 12 U.S.C. 1701 *et seq.*; Housing Act of 1949, 42 U.S.C. 1441.

Reason for Including This Entry

The Department of Housing and Urban Development (HUD) has determined that the removal of federally originated standards dealing with life, safety, and health and their replacement with nationally recognized model building codes and the removal of standards for marketability and livability from the Multi-Family Minimum Property Standards (MPS) is precedent setting and an issue of great public interest in the deregulation process. The Presidential Task Force on Regulatory Relief has designated these standards for review.

Statement of Problem

The Minimum Property Standards (MPS) for Multi-Family Dwellings describe physical standards for new housing constructed under HUD mortgage insurance, public housing, and rent subsidy programs. The Standards cover criteria for general acceptability, site design, building design, materials, and construction methods.

A report by the National Institute of Building Sciences (NIBS), entitled "Federal Regulations Impacting Housing and Land Development: Recommendations for Changes," was made public on April 15, 1981, and copies were forwarded to the White House Office of Regulatory Affairs, the Presidential Task Force on Regulatory Relief, and the Congress of the United States. The first recommendation in this report pertained to the HUD Minimum Property Standards. The section of this recommendation concerning the MPS for one- and two-family dwellings is currently being implemented. This proposed revision to the MPS was issued as a Proposed Rule in the **Federal Register**, 45 FR 62316, September 18, 1980. Publication as a Final Rule is imminent. The Presidential Task Force announcement of March 25, 1980 took notice of the proposed revision to the Single-Family Minimum Property Standards and suggested a comprehensive review of the Multi-Family Minimum Property Standards as well.

The review of the MPS for Multi-Family Dwellings parallels the review of the MPS for One- and Two-Family Dwellings in major respects, such as identification and deletion of durability or criteria not bearing directly on legislative requirements. For example, criteria related to health and safety, which are typically covered by codes, have been deleted. Criteria related to marketability and livability have been deleted, and we will rely on free market forces to establish acceptable performance levels. We have retained legislative requirements, such as those related to elderly and handicapped criteria, and we have retained criteria related to durability, not typically covered by codes, such as windows, doors, finished flooring, and exterior finish materials. The review will also focus on the function and methodology of the MPS. For example, the Department's regulations describe the MPS as referring to material standards developed by industry and accepted by HUD. However, they frequently restate provisions found in the referenced industry standards. This increases the bulk and complexity of the Standards and reduces the Department's ability to keep the Standards current with industry standard changes. The Department's regulations provide that changes in the Standards "will generally be made every three months," but in experience that has not happened. In terms of functions, the review concentrates on identifying those objectives of the Standards that are adequately satisfied by private market forces, locally enacted requirements and codes, and nationally recognized model codes.

Alternatives Under Consideration

As indicated above, a principal intent of the current revision of the MPS is to limit the Standards to criteria bearing directly on legislative requirements and durability. Within the areas of health and safety, the principal non-governmental regulatory alternative being considered is reliance upon one of the four nationally recognized model building codes:

(1) Basic Building Code of Building Officials and Code Administrators International (BOCA);

(2) Standard Building Code of the Southern Building Code Congress International (SBCC);

(3) Uniform Building Code of the International Conference of Building Officials (ICBO); and

(4) National Building Code of the National Conference of States on Building Codes and Standards, Inc.

In addition, the revised multi-family MPS may be used with any other code formally adopted, by a community provided that the HUD Area Office Manager has approved the use of the abbreviated MPS with that code.

A method of coordination of the MPS for Multi-Family Dwellings is different from that considered in connection with the MPS for One-and Two-Family Dwellings because of the difference in code recognition structure. In the single-family area there is a single Model One- and Two-Family Code that HUD can reference. In the multi-family area, however, there are the four separate codes listed above. Different housing authorities recognize different ones. In addition, approximately half of all local jurisdictions have adopted preferred versions of the various codes; others recognize none of the model codes. In addition, there would be a single, fuller MPS volume to be used in jurisdictions that do not recognize any code.

The method described above, if adopted, will simplify compliance by architects and contractors in

jurisdictions recognizing one of the model codes but will introduce an obvious burden of monitoring the different codes in the Department's continuing process of updating the Standards. The Department intends to work with all model code bodies in making the codes more comprehensive and, where appropriate, uniform, and also intends to encourage local jurisdictions that have not done so to recognize one of the model codes for their area.

The alternative to this action is to retain the multi-family MPS in its present format with applicable criteria. This action would continue to present a single set of standards to developers nationwide. However, it would fail to comply with the Administration's policy toward deregulation and would leave another layer of Federal requirements intact.

Summary of Benefits

Sectors Affected: Multi-family residential construction; public and private developers of HUD housing programs; and occupants and owners of HUD housing.

Builders of multi-family HUD housing are the chief beneficiaries of a reduction in the number and level of the multi-family standards. Substitution of recognized codes will enable architects and builders to use the same basic criteria that currently exist for all private construction. Quantification of reduction in housing costs cannot be determined at the present time. In fact, the immediate impact may not be great in dollar terms. However, eliminating duplication of standards and expediting the acceptance process will undoubtedly have long-range cost benefits. Reducing the compliance costs and construction costs will ultimately benefit tenants of that housing and the Federal Government by reducing housing costs and permitting government assistance to reach more families.

Summary of Costs

Sectors Affected: Multi-family residential construction; occupants and owners of housing complying with the MPS; and HUD.

To the extent that reduced standards may allow an increased risk of injury or illness, some tenants or owners may suffer from the less restrictive standards. The national codes, however, that would replace any MPS standard are considered sufficiently restrictive to prevent that risk from being of concern. The multi-family construction industry will have to become familiar with the multi-family MPS if none of the national codes are accepted in the area, but the areas of difference are considered small. These differences are technical in nature and are often subject to varying interpretation by designers, depending on building types, construction details, materials, and locations. Most aspects of construction, from foundation to finish, can be affected, costing either a higher or a lower amount than at present, depending on the national code being used as a basis of comparison. HUD could end up at greater risk of default resulting from accelerated deterioration if removing standards permits significantly lower-quality housing that does not maintain its value. That too, however, is considered unlikely because the general market will evaluate the building and its amenities according to its attributes without the MPS minimum level of livability, marketability, and health and safety features.

Summary of Net Benefits

The major benefits of this action are a reduction in Federal regulation, more consistency in requirements between HUD-assisted and conventionally financed construction, possible cost reductions in HUD-assisted residential construction, and encouragement of local adoption of nationally recognized codes with fewer amendments. We feel that the costs associated with this action (e.g., effort by the construction industry to become familiar with codes or the possibility of accelerated deterioration) are more than offset by these benefits.

Related Regulations and Actions

Internal: Revision to Minimum Property Standards for One- and Two-Family Dwellings (Proposed Rule), 45 FR 62316, September 18, 1980, expected to go final soon.

External: None.

Government Collaboration

Collaboration with the Veterans Administration and Farmers Home Administration is essential because they also use the Multi-Family Minimum Property Standards.

Timetable

NPRM—December 1981.
Public Hearing—None.
Public Comment Period—60 days following NPRM.
Final Rule—To be determined.
Regulatory Impact Analysis—None.
Regulatory Flexibility Analysis—None.
Economic Analysis—December 1981.

Available Documents

HUD Handbook, 4910.1 "HUD Minimum Property Standards for Multifamily Housing, Presently in Force." Available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. The price is $19 (domestic) and $23 (foreign).

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DEPARTMENT OF LABOR

Mine Safety and Health Administration

Civil Penalties for Violations of the Federal Mine Safety and Health Act of 1977 (30 CFR Part 100; Revision)

Legal Authority

Federal Mine Safety and Health Act of 1977 (Act), 30 U.S.C. 801, 815, 820, and 957.

Reason for Including This Entry

The Mine Safety and Health Administration (MSHA) is including this entry because it is of significant public interest. In addition, it may reduce administrative and other costs associated with MSHA's civil penalty system.

Statement of Problem

Under the Act, MSHA is required to assess a penalty for all violations. MSHA's current civil penalty regulations were promulgated on May 30, 1978 (43 FR 23514). Basically, the rules included a formula system for proposing penalties based on six criteria. They also provided for an increase in proposed penalty amounts, and included, for the first time, the metal and nonmetal mining industries in the penalty system. Approximately 20,000 coal and metal and nonmetal mines are subject to MSHA's civil penalty regulations. In calendar year 1980 MSHA proposed approximately $26 million in penalties, of which approximately $20 million was collected. At the time of the 1978 promulgation, MSHA indicated to the mining community that the Agency would undertake a comprehensive review of its penalty regulations and

subsequently modify them where change was shown to be needed. After intensively reviewing its own experience and evaluating comments from both the mining industry and the public at large, MSHA has concluded that the civil penalty system is in need of restructuring to provide increased incentives for mine operators to come into compliance, as well as to shift the emphasis toward the more serious violations of the Act and its mandatory standards and regulations. Under the current system, MSHA and mine operators go through the same penalty assessment process for minor violations as for the more serious ones. The mining industry has suggested that resources are often diverted from more productive health and safety efforts, since inordinate amounts of time are devoted to administrative handling and contesting of citations for violations whose impact on safety and health is not substantial. MSHA concurs and further believes that several provisions of the regulations are in need of refinement and clarification to permit a more equitable application of the statutory criteria.

Alternatives Under Consideration

In the Agency proposal (45 FR 74444, November 7, 1980), the major modifications under consideration include:

(A) a new provision for the assessment of a fixed "minimum penalty" of twenty dollars ($20) for violations involving a low level of gravity and no negligence, that is, less serious violations. This alternative would reduce administrative costs associated with processing penalties and allow the operator to devote more financial and other resources to more serious safety and health hazards. This concept, however, being somewhat subjective, could result in uneven implementation;

(B) the elimination of two classes of cases from an operator's "history of violations"—violations for which the operator has paid a minimum penalty and those which the operator is in the process of contesting;

(C) separate gravity considerations for health violations;

(D) the awarding of greater good faith credit for timely abatement of conditions underlying a violation and special efforts to abate;

(E) the establishment of separate penalty tables for independent contractors. The Federal Mine Safety and Health Act of 1977 redefined the term mine operator to include independent contractors. This alternative will allow them to be appropriately assessed; and

(F) a revised and more explicit "special assessment" provision. The proposal included eight categories of violations; for example, fatalities and imminent danger violations would be reviewed individually to determine if a special assessment were necessary.

Summary of Benefits

Sectors Affected: Coal, metal, and nonmetal mine operators and miners; independent contractors and workers (SIC Codes 10, 11, 12, 14, 15, 16, and 17); and MSHA.

At this stage in the rulemaking process, MSHA has not quantified the benefits. However, generally, MSHA believes that the proposed changes to the civil penalty regulations will provide increased incentives for compliance. The proposal would allow operators to more effectively focus their efforts on the prevention and correction of those hazards that most directly affect miner safety and health. The minimum penalty proposal, which should reduce administrative and other costs associated with processing the contesting citations, will allow operators to devote more of their resources to preventing more serious safety and health hazards. The concept of a fixed minimum penalty will likely reduce penalties for a large number of less serious violations and streamline the penalty process. MSHA anticipates that this would result in savings of administrative costs for operators, which could be devoted to other safety and health efforts. As a result, MSHA expects this regulation to help improve overall miner safety and health. MSHA also anticipates that these changes will reduce administrative costs related to implementation of the civil penalty system and thereby improve both the effectiveness and the efficiency of the civil penalty system. Several specific provisions in the proposal should result in a more equitable application of the statutory criteria in determining the amount of a proposed penalty. MSHA will undertake a more detailed analysis as it proceeds into this rulemaking.

Summary of Costs

Sectors Affected: Coal, metal, and nonmetal mine operators and miners; and independent contractors and workers. (SIC Codes 10, 11, 12, 14, 15, 16, and 17.)

MSHA has not quantified any additional costs associated with this proposal. Although certain alternatives under consideration, e.g., the health provision, may result in some additional costs, for example, higher penalties for more serious violations, MSHA believes that they will be partially or totally offset by other provisions in the proposal, e.g., the minimum penalty provision. At this time, MSHA does not feel that the proposal will result in significant cost increases. MSHA will prepare a more detailed analysis of each major alternative contained in the proposal but does not anticipate preparing a Regulatory Impact Analysis.

Summary of Net Benefits

MSHA has not quantified the net benefits associated with this proposal at this time. MSHA does believe, however, that the focusing of primary safety and health resources toward the more serious violations and the resulting improvement in safety and health at mines will produce a substantial net benefit to the entire mining community. In addition, under this proposal there should be improvements in the administration of the civil penalty regulations.

Related Regulations and Actions

None.

Government Collaboration

None.

Timetable

NPRM—45 FR 74444, November 7, 1980.
Public Comment Period—Closed February 5, 1981.
Public Hearings—Date to be determined.
Final Rule—Date to be determined.
Regulatory Impact Analysis—We do not anticipate preparing one.
Regulatory Flexibility Analysis—Date to be determined.

Available Documents

None.

Agency Contact

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DOL-MSHA

Review of Metal and Nonmetal Standards (30 CFR Parts 55, 56, and 57; Revision) (Previously, Review of Safety and Health Standards Applicable to Metal and Nonmetal Mining and Milling Operations)

Legal Authority

Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801, *et seq.*; E.O. 12291; Regulatory Flexibility Act, P.L. 96-354; and the Paperwork Reduction Act, P.L. 96-511.

Reason for Including This Entry

The Mine Safety and Health Administration (MSHA) is including this entry because it is a review of all safety and health standards applicable to metal and nonmetal mining and concerns issues of great public interest.

Statement of Problem

In April 1980 MSHA published an ANPRM that announced a review of all its metal and nonmetal standards. Most of these standards had been in place since 1969, and MSHA believed that an overall review was necessary to determine if they were still relevant and effective. Specifically, the review was undertaken to: (1) eliminate unnecessary standards; (2) clarify and update existing standards; (3) incorporate technological advances; and (4) reduce recordkeeping burdens on the industry.

This review is intended to achieve the Administration's goal of regulatory relief. It is consistent with the goals of E.O. 12291, the Regulatory Flexibility Act, the Paperwork Reduction Act, and other departmental initiatives related to improving government regulations.

Alternatives Under Consideration

MSHA is considering alternatives that would: (A) reorganize the standards to facilitate their use by the metal and nonmetal mining community; (B) simplify and clarify them so that they can be easily understood; and (C) delete those that are outdated, duplicative, or overlap other MSHA standards. The standards are currently organized in the Code of Federal Regulations (CFR) in terms of general hazards covered, such as electrical, explosives, etc. However, commenters on the ANPRM stated that the existing sections are not comprehensive, in that standards covering electrical hazards, for example, appear in several sections of the CFR. The commenters felt that combining all associated standards in one section would enable operators to understand their responsibilities more easily.

MSHA is also considering an alternative that would delete standards that are no longer applicable because of changes in technology. In addition, the current regulations incorporate by reference other non-Federal requirements, such as the National Fire Protection Code, Threshold Limit Values of the American Conference of Government Industrial Hygienists, and various American National Standards Institute (ANSI) requirements, some of which may be outdated. In its review, MSHA will pay particular attention to these incorporations by reference. In response to commenters, the Agency is also considering style and format changes, including indexing, as well as other organizational modifications designed to make the standards easier to understand and use. More explicit alternatives will be developed as we proceed in the rulemaking.

Summary of Benefits

Sectors Affected: Metal and nonmetal mining industries (except fuel) and miners in these industries (SIC Codes 10 and 14).

Because of the unique nature and early stage of the project, it is not possible to quantify or qualify benefits. However, MSHA will begin to undertake a more detailed analysis to assess benefits as further development of those specific sections selected for review takes place. We anticipate that this review will benefit the metal and nonmetal community by making it easier for operators to comply with MSHA's regulations, and allowing them to concentrate their efforts on those standards that address significant hazard areas.

Summary of Costs

Sectors Affected: None.

Again, because we are in such an early rulemaking stage, we cannot reasonably quantify costs. We will develop cost analyses as sections are reviewed.

We will consider the effect of these regulations on small businesses and make a special effort to minimize recordkeeping and compliance burdens on these businesses. It is important to note that the majority of businesses affected are small businesses. At this point, MSHA does not anticipate that this review will result in any net cost increase.

Summary of Net Benefits

MSHA is hopeful that the review will actually result in a reduction in recordkeeping costs and a deletion of duplicative requirements. In addition, a deletion of duplicative and outdated standards may result in a reduction of operator costs associated with compliance. Our reassessment of standards will result in rulemaking that will improve safety and health standards for the metal and nonmetal community. In addition, clarification of ambiguous standards could facilitate enforcement efforts.

Related Regulations and Actions

None.

Government Collaboration

None.

Timetable

ANPRM—45 FR 190267, March 25, 1980.
ANPRM—January 1982.
Public Comment Period—60 days following publication of ANPRM.
Extension of Comment Period Notice—45 FR 38037, June 6, 1980.
Public Comment Period—June 6 to August 5, 1980.
Notice of MSHA Decision of Priorities—46 FR 57253, November 20, 1981.
Regulatory Impact Analysis—Preliminary, June 1982; final, to be determined.
Notice Regarding Open Conferences—January 1982.
Open Conferences on Selected Sections—Throughout 1982.
Public Comment Period—60 days following publication of NPRM.
Regulatory Flexibility Analysis—To be determined.
Public Hearings—To be determined.
Final Rule—To be determined.

Available Documents

All existing standards in 30 CFR Parts 55, 56, and 57, as of July 1, 1980.

Copies of public comments received in response to ANPRM are available from Agency Contact on request. Copies are available by mail at a cost of 10 cents per page for copying.

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DOL—Occupational Safety and Health Administration

Access to Employee Exposure and Medical Records (29 CFR 1910.20; Revision)

Legal Authority

Occupational Safety and Health Act of 1970, §§ 6(b), 8(c), and 8(g), 84 Stat. 1593, 1599, and 1600; 29 U.S.C. 655 and 657; E.O. 12291; and 29 CFR Part 1911.

Reason for Including This Entry

The Occupational Safety and Health Administration (OSHA) is planning to review and possibly repropose the records access regulation. The review will include preparation of an economic analysis as described in §§ 2(b) and 2(d) of Executive Order 12291.

Statement of Problem

A regulation aimed at ensuring access to records of workers exposed to toxic substances was promulgated by OSHA on May 23, 1980 (45 FR 35212), and went into effect on August 21, 1980. The regulation requires employers in general industry, construction, and maritime industries to: (1) preserve and maintain for a minimum of 30 years certain exposure and medical records pertinent to an employee's occupational exposure to toxic substances and harmful physical agents; (2) ensure access to these exposure records by employees, designated employee representatives, and OSHA; (3) ensure access to medical records by the employee who is the subject of the records, the employee's designated representative, and OSHA; and (4) inform employees annually of their rights under the regulation and of the procedures for exercising those rights. The National Institute for Occupational Safety and Health (NIOSH) estimates that 25 million workers are exposed to toxic substances and harmful physical agents. "Designated representative" is defined in the regulation (paragraph (c)(3) as any individual or organization to whom an employee gives written authorization to exercise a right of access. For the purposes of access to employee exposure records, a recognized or certified collective bargaining agent is treated automatically as a designated representative without regard to written employee authorization.

The regulation, which is the subject of court challenges by both industry and labor groups, raises complex policy and legal issues, such as: (1) whether or not OSHA exceeded its statutory authority in promulgating the regulation; (2) the breadth of the scope of the regulation; (3) possible trade secret disclosure; and (4) personal privacy considerations. These issues have also been raised by trade associations and other interested parties in formal petitions for modification of the regulation and other comments. OSHA has decided to review these issues in light of the information received and, if necessary, propose to modify the regulation.

Alternatives Under Consideration

Scope and Application. The current regulation applies to workers "exposed" to a toxic substance. The regulation defines "exposure" (paragraph (c)(8)) to include almost any contact with a toxic substance, excluding only exposure that is no different from typical non-occupational exposure. Consequently, employers are required by the regulation (paragraph (e)) to maintain and provide access to existing records of employees minimally exposed to toxic substances, although these workers are at no apparent health risk from such exposures.

An issue we will consider is whether to limit the scope of the regulation to include only those groups of employees most likely to be at risk from occupational exposures to toxic substances (i.e., production, maintenance, and construction workers). A second alternative is to somehow redefine "exposure" to exclude those workers with minimal toxic substance exposure.

Another issue of scope and application is whether OSHA should prepare separate rules for particular industries (e.g., contract construction).

Toxic Substance. The regulation requires the retention and disclosure of exposure records regarding any "toxic substance or harmful physical agent." The standard defined "toxic substance" (paragraph (c)(11)) broadly, most notably by including any substance listed in the National Institute for Occupational Safety and Health (NIOSH) Registry of Toxic Effects of Chemical Substances (RTECS), a compendium of over 39,000 chemicals. Many affected parties, including the Louisiana Chemical Association, the Flavor and Extract Manufacturers Association, and the American Feed Manufacturers Association, have criticized RTECS (and hence the regulation) as overinclusive. OSHA is interested in devising an alternative means of defining the toxic substance information that employers must retain and disclose in a way that is neither overinclusive nor underinclusive.

Exposure Record. In the absence of more formal exposure records (air contaminant measurements, biological monitoring data, material safety data sheets), the current regulation defines any other record that reveals the identity of a toxic substance (e.g., records of substances an employer had purchased) as an "exposure record" (paragraph (c)(5)). The requirement to keep and make available this information, when coupled with the current broad definitions for 'toxic substance" and "exposure," is a source of employer concern regarding trade secret disclosure and the economic burdens of complying with the regulation. As a result of these concerns, and the provision's close interaction with the hazard communication standard OSHA is developing (see "Related Regulations and Actions" and separate entry in this Calendar), we will reconsider this aspect of the exposure record definition. We will also review the appropriateness of defining biological monitoring records, which measure the absorption of chemicals by the body, as exposure records in light of personal privacy considerations.

Retention Periods. The regulation requires employers to keep existing exposure and analysis records for 30 years and to keep medical records for the duration of employment plus 30 years (paragraph (d)). These periods reflect the latency periods associated with some occupational diseases, most notably cancer. Affected parties, such as construction employers, have expressed concern that the occupational health need of retaining records for the full 30-year period does not justify the expense, particularly with respect to short-term employees.

OSHA will reconsider the requirement for the current retention periods and will consider alternatives that would lessen the recordkeeping burden without undermining the purpose of the standard (e.g., allowing employers to turn over records to short-term employees upon termination of employment with no further retention obligation for the employer).

X-ray Microfilming. The current regulation prohibits the microfilm storage of employee x-rays. This prohibition is based on evidence that a certain amount of diagnostic detail is lost when x-rays are reduced to microfilm. The microfilm industry maintains that the microfilm reduction of x-rays is possible in the majority of cases without loss of diagnostic detail.

An alternative we will consider is whether to allow employers to use microfilm storage of x-rays, as long as the microfilming is performed under certain conditions, such as under the direct supervision of a certified radiologist.

Trade Secrets. The regulation requires the disclosure of toxic substance identities, notwithstanding employer trade secret claims, subject only to the use of confidentiality agreements (paragraph (f)). Confidentiality agreements are written agreements "not to use the trade secret information for the purpose of commercial gain and not to permit misuse of the trade secret by a competitor or potential competitor of the employer" (paragraph (f)(3)). OSHA has already proposed an interim modification of the regulation (46 FR 40492, August 7, 1981) to strengthen the protection afforded by confidentiality agreements with respect to access to trade secret information by employee-designated representatives. OSHA will consider ways of providing additional trade secret protections while providing for the necessary records access.

Summary of Benefits

Sectors Affected: Employees in general industry, construction, and maritime industries who are exposed to toxic substances or harmful physical agents.

The primary intent of the review is to make the existing regulation more effective, understandable, and enforceable. Moreover, any modification of the regulation will seek to preserve the occupational health benefits of the regulation.

A thorough qualitative analysis of the benefits of the records access regulation is contained in the preamble to the final standard (45 FR 35219, May 23, 1980). OSHA concluded that employee, employee representative, and OSHA access to employee exposure and medical records is important to the detection, treatment, and prevention of occupational disease.

The most immediate benefit of the regulation is to enable workers and their representatives to play a meaningful role in detecting, treating, and preventing occupational diseases. To accomplish this purpose, workers and their representatives require the opportunity to learn: (1) what workers are or were exposed to on the job, (2) what are or were the levels of exposure, and (3) what are or were the health consequences of those exposures. Through awareness of their health histories and their exposures to toxic substances, workers will be able to obtain more accurate diagnoses of illnesses, obtain more effective treatment, and take steps to prevent occupation-related illnesses from occurring.

Occupational disease is extremely costly to our society, both in terms of human impact (e.g., premature death, pain, and suffering) and in terms of purely economic consequences (e.g., extended health care costs, insurance premiums, increased workers' compensation expenses, welfare payments, lost productivity, and absenteeism). The 1979 Surgeon General's report on health promotion and disease prevention indicated that nine out of every ten workers are not adequately protected from exposure to chemicals. Further, the report stated that 100,000 Americans a year die from occupational illnesses and that almost 400,000 new cases of occupational diseases are discovered. However, as we did not undertake a Regulatory Impact Analysis when the regulation was promulgated, no precise quantification of benefits is currently available. Furthermore, the nature of the regulation makes it difficult to quantify accurately most of the expected benefits.

Summary of Costs

Sectors Affected: Each general industry, construction, and maritime employer who makes, maintains, contracts for, or has access to employee exposure or medical records or to analyses pertaining to employees exposed to toxic substances or harmful physical agents.

OSHA's review and modification of the existing record access regulation aims to reduce the compliance costs of the regulation to employers where possible without reducing net benefits (see "Alternatives Under Consideration"). We are not currently considering any alternatives that would increase compliance costs.

The economic costs of the existing records access regulation are largely determined by three factors: (1) the number of records that are actually created by employers and covered by the standard, (2) the extent to which the preservation periods and access provisions go beyond what employers would do were the standard not in effect, and (3) the increased frequency with which employees and their representatives seek access to records. In the preamble to the final regulation (45 FR 35254, May 23, 1980), OSHA concluded that these costs would not exceed $100 million annually. OSHA will examine this finding in light of actual experience with the regulation.

For example, some estimates of compliance costs (under the current standard) in the construction industry have been submitted to OSHA. The International Brotherhood of Painters and Allied Trades estimated that records storage and access cost between $16.00 and $22.50 per worker per year. The Industrial Health and Hygiene Group, a private firm that develops and markets protocols for compliance with the standard, estimates the costs at between $6.00 and $19.00 per employee per year. However, a study commissioned by the National Constructors' Association (NCA) concluded that the costs of the regulation would be approximately $100.00 per employee per year. OSHA economists have not completed evaluation of these estimates, but the compliance costs of a modified regulation are expected to be lower than the above estimates.

Summary of Net Benefits

OSHA intends that any modification resulting from the review of the records access regulation will reduce employer compliance costs where possible without reducing the net benefits. Since several such areas have been identified (see "Alternatives Under Consideration"), we expect the overall benefits of the review and modification to be positive for the economy as a whole.

Related Regulations and Actions

Internal: OSHA is developing a hazard communication standard. This standard will provide for the communication to workers of chemical hazard information through the use of such mechanisms as container labeling, material safety data sheets, and employee training (see separate entry in this Calendar). OSHA intends that any modifications of the records access standard will take into account the hazard communication rulemaking.

External: None.

Government Collaboration

None.

Timetable

Interim Final Rule—43 FR 31019, July 19, 1978.
NPRM—43 FR 31371, July 21, 1978.
Final Rule—45 FR 35254, May 23, 1980.
Public Comment Period on NPRM—43 FR 31371, closed September 22, 1978.
Public Hearings on NPRM—43 FR 46322, December 5–8, 1978, Washington, DC; December 12–13, 1978, Chicago, IL; December 15, 1978, San Francisco, CA; January 3–5, 1979, Washington, DC; January 9–10, 1979, Chicago, IL.
Public Comment Period on Hearing Testimony—44 FR 11096, closed March 30, 1979.
Effective Date For Final Rule—45 FR 35212, August 21, 1980.

Notice of Interim Modification and Reconsideration—46 FR 40492, August 7, 1981.
Reproposal—Approximately February 10, 1982.
Regulatory Impact and Regulatory Flexibility Analysis—Approximately February 10, 1982.

Available Documents

29 CFR 1910.20, Access to Employee Exposure and Medical Records (45 FR 35212).
46 FR 23740, Access to Employee Exposure and Medical Records; Construction Industry; Administrative Stay.
46 FR 40490, Access to Employee Exposure and Medical Records; Partial Stay; Interpretations.
46 FR 40492, Access to Employee Exposure and Medical Records; Proposed Interim Modification.
46 FR 45758, Access to Employee Exposure and Medical Records; Construction Industry; Lifting of Administrative Stay.
Docket No. H–112, which includes:
• public comments on the July 21 proposal;
• background materials collected by OSHA;
• notice of intent to appear at the public hearings;
• pre-hearing submissions of testimony and evidence;
• verbatim transcripts of the public hearings;
• hearing exhibits; and
• post-hearing comments.
Docket No. H–112B, which contains comments on extending 29 CFR 1910.20 to agricultural employments.
Docket No. H–112C, which contains public comments on OSHA's partial stay of 29 CFR 1910.20 for the construction industry.
Docket No. H–112D, which contains public comments on OSHA's proposed interim modification of 29 CFR 1910.20(f) concerning trade secret protections.
Documents are available from the OSHA Docket Officer, Occupational Safety and Health Administration, Room S–6212, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210, (202) 523–7894.

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DOL–OSHA

Hazard Communication (29 CFR Part 1910; New) (Previously, Hazards Identification)

Legal Authority

The Occupational Safety and Health Act of 1970, 29 U.S.C. 655 and 657.

Reason for Including This Entry

The Occupational Safety and Health Administration (OSHA) believes this standard is extremely important because it would allow employees to identify the chemical substances and know the workplace hazards to which they are exposed, thereby enabling them to take actions to better protect themselves from these hazards. We expect this standard to meet the criteria of a major regulation under E.O. 12291.

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 or the hazards of 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 protect themselves properly and are unaware that they should ask their employers for adequate protection. Furthermore, if hazards in the workplace are not appropriately identified, it is difficult to determine which chemicals are responsible when occupational diseases occur.

OSHA is in the process of reproposing a hazard communication standard that we first proposed on January 16, 1981 (46 FR 4412) and withdrew to allow careful review of its provisions in accordance with E.O. 12291. The January proposal included the following key features: (1) coverage of all manufacturing industries and importers and repackagers of chemical products and virtually all containers including pipes and support systems (such as pumps and valves); (2) highly specific evaluation procedures required for hazard evaluation for all manufacturers; (3) detailed labeling of chemical products with no significant adjustments for trade secrets; (4) material safety data sheets for hazardous chemicals to be filed in a central location, if available, or otherwise an information sheet with contents identical to the label; (5) certification that a particular chemical product does not pose a hazard where applicable; (6) extensive recordkeeping on hazard search and evaluation procedures to be kept for 3 years; and (7) a phase-in compliance period of approximately 2 years.

Alternatives Under Consideration

Several alternatives have been considered by OSHA. A brief description of these follows:

(A) *No action*—Propose no Federal action or chemical hazard communication at this time, leaving the problem of hazard communication in the workplace to the marketplace and to State and local action. However, the marketplace inherently undervalues hazard information, and private litigation, which is costly and inefficient, is an inadequate means of correcting for market failure. Similarly, liability or insurance systems have not proven to be effective instruments to apply to the problem and may in fact aggravate the informational problem. The absence of correct information concerning the hazard posed by the chemical substance or mixture will reduce the likelihood of litigation. The potential effectiveness of legal remedies is limited by the fact that workers often cannot afford to forego Workers' Compensation payments while awaiting settlement. In addition, they may not be able to afford the costly legal fees associated with protracted litigation. The threat of litigation may actually suppress information, especially if employers are vulnerable to third-party product liability suits. State and local legislation has been piecemeal and uncoordinated; the inconsistencies and consequent inefficiencies that have been and will be created by these disaggregated efforts are large.

The alternative regulatory approaches OSHA is currently considering include:

(B) *Scope of industry coverage*—The scope of coverage may be limited to only the chemical industry (SIC Code 28). The production employment in chemical manufacturing (SIC Code 28) represents approximately 5 percent of total production employment in manufacturing. However, a substantial number of workers employed in other manufacturing industries, the construction industry, and the services industry are also exposed to significant concentrations of hazardous chemicals. We might limit the scope of the coverage to the manufacturing industries (SIC

Codes 20–39), expand the scope to include construction (SIC Code 15–17), or expand the scope to all industry. If a standard were applied selectively to different manufacturing industries it would create potentially significant inefficiencies. There would be an incentive to shift chemical production and use to exempted industries. Uniform coverage of all manufacturing industries would prevent these potential economic distortions. Because the nature of non-manufacturing production processes differ from manufacturing production processes, a different hazard communication program may be necessary. This is currently being evaluated by OSHA.

(C) *Scope of hazard coverage*—One alternative would be to limit the coverage of the proposed standard to a list of hazardous substances or to a list of hazards. The advantage of this approach is that OSHA could use it to target information on the more serious hazards and thus reduce the possibility of requiring employers to provide "too much information." The disadvantages of this approach include the difficulty of developing a list of hazardous substances that meets the needs of a hazard communication standard. The same can be said of a specific list of hazards—the proposed definitions invariably neglect some known hazardous material. Furthermore, data indicate that a relatively small number of hazardous substances appear in a large proportion of the chemical products. Thus, limiting the standard to a specific list of hazardous substances would not be likely to yield a significant reduction in the costs of regulations.

An alternative approach under consideration is the use of a performance-oriented hazard determination procedure. The standard would be self-limiting: coverage would be limited to those chemicals that the chemical manufacturer has determined to be hazardous in accordance with the performance criteria. This may reduce the number of chemical products that would be accompanied by hazard information. However, the hazard determination by chemical manufacturers would indicate those products that pose a significant hazard. Information overload could thereby be avoided.

(D) *Hazard communication provisions*—A hazard communication program may include several basic components: container labels, material safety data sheets (a document presenting information about the hazardous properties of a chemical and precautions for use), and education and training. The elements of each of these components may be varied in scope and stringency. For example, such a rule might require employers to include chemical names, common names, and Chemical Abstract Service numbers of all chemical ingredients as well as hazard warnings on the label; alternatively, we could require only a simple hazard warning and chemical identifier. The hazard warning format may be made specific as to exact wording or may be left to the judgment of the respective employer.

(E) *Compliance periods*—We are considering the use of alternative effective dates, e.g., staggering the compliance dates by industry, by entity size, and by chemical composition, so that industries can take advantage of the flow of information. A rule may give industrial users of chemical products additional compliance time. Small entities may similarly be given an extension. We are also considering different compliance periods for pure chemical substances and for chemical mixtures.

Summary of Benefits

Sectors Affected: Workers and employers in all industries which produce, use, or otherwise come in contact with hazardous chemicals.

A hazard communication standard would directly affect workers and employers in manufacturing establishments (SIC Codes 20 through 39) that produce or use hazardous chemicals. Establishments and employees in other industries not required to comply with the standard (for example, in retail trade or services) would also benefit from this regulation because they may receive products for which the chemical hazards will have been identified.

Most important, the proposed standard would increase employee awareness and education of the potential health and safety risks associated with industrial chemicals. This should result in increased worker use of personal protective devices, improved work practices, and other precautionary measures when they are handling hazardous substances. Improved hazard communication should also result in early job transfers out of more hazardous jobs and treatment of chronic disease, thus lowering future health care costs. Quantitative estimates are provided in Table 1.

Similarly, the proposed standard would provide employers with improved information on the health and safety hazards of various chemical products as part of their investment and production process decisions. This improved information should result in more safety-enhancing investments—in new control technology, process redesign, and product substitution. Improved information among supervisory personnel of the necessary precautions should result in proper day-to-day handling of hazardous substances. In turn, this hazard recognition would produce market responses to the information provided to employers and employees. These responses would translate into lower incidences of chemically related injury and illness on the job.

In addition to the health effects implications, there would be other expected efficiency improvements as well. Improved information should lead to better matches between the risk preferences of workers and true job risks (and to some extent relative risks across firms), thus improving the allocation of labor. Employers would also benefit from lower production costs as a result of gains in productivity, reduced worker absenteeism and turnover, and, over the long run, lower worker compensation costs (e.g., compensation for illness).

Finally, society should benefit from a reduction in occupational injury and illness costs that firms currently do not incur. These include transfer payments to disabled individuals and their families, such as social security disability benefits and public assistance, health care costs not paid by the individual or company, such as Medicare and Medicaid; and higher administrative costs of related government programs.

The benefits of an effective hazards communication standard are being measured as the discounted present value of (1) reductions in lost earnings and medical expenses for various categories of chemical source illnesses and injuries, (2) lowered turnover costs, and (3) property losses from chemical fires. The injury and illness categories include non-lost workday and first-aid cases; lost workday cases, permanent disease disabilities; and cancers related to industrial chemical soures.

Table 1 presents a summary of the monetizable benefits for which sufficient data were available. Table 1 shows the present discounted value of the total benefits over the 40-year period to be $5,230.1 million for one alternative hazard communication program, using a 10-percent discount rate. The benefits of an information standard stem from the effect of information on workers' and employers' perceptions and actions. The benefits presented in Table 1 represent

a preliminary evaluation of the potential impact of improved information on the social costs of chemical exposures in the manufacturing sector. While these various estimates are not exact, they do provide a reasonable evaluation of the likely beneficial impact of one alternative currently being considered by OSHA. Moveover, they do not incorporate intangible costs important to the individual and associated with premature death, pain, suffering, and family bereavement. Nor do the estimates include firm-based cost savings such as reduced worker compensation premiums and health care costs and productivity gains. Indeed, there is not even a complete accounting of the medical and wage-loss cost.

TABLE 1.—*Summary of some of the monetizable benefits—discounted and undiscounted (1980)*

Type of benefit	Undiscounted benefits			Present discounted value [1]	
	1st year (millions)	20th year (millions)	40th year (millions)	20-year stream (millions)	40-year stream (millions)
Non-lost workday cases:					
Lost production	$0.03	$1.36	$3.60	$2.92	$5.48
First-aid costs	.02	1.00	2.80	2.20	4.20
Lost workday cases:					
Lost production	.61	30.69	81.42	66.01	124.02
Medical costs	.11	5.42	14.39	11.66	21.91
Disabling illness:					
Lost production	13.40	667.80	1,798.30	1,357.80	2,739.00
Cancer illness:					
Lost production	—	487.70	1,293.90	751.70	1,673.60
Medical costs	—	186.20	493.90	286.90	638.80
Turnover costs	.04	2.32	6.16	5.00	9.39
Chemical fire costs	1.00	1.80	3.30	10.80	13.70
Total	$15.21	$1,384.29	$3,697.77	$2,494.99	$5,230.10

[1] A discount rate of 10 percent is used.

Source: U.S. Department of Labor, Occupational Safety and Health Administration, Office of Regulatory Analysis.

Summary of Costs

Sectors Affected: Establishments in the manufacturing sector (SIC Codes 20 through 39).

Cost estimates have been developed for several alternative hazard communication standards. The cost evaluations for these alternative standards have been divided into three major categories: initial costs, annual costs, and present value costs. The initial cost includes the expected startup costs for each of the alternatives. The annual cost is the expected cost of maintaining compliance with the respective standard for the first year after phase-in using differing assumptions regarding manufacturing growth. The present value cost is the expected cost of compliance with the standard over a 40-year period under different assumptions about manufacturing and shipment growth.

The cost estimates vary widely depending on the provisions included. The expected initial costs vary from $581.57 million to $7,627.932 million. Using a 0-percent rate of growth for the number of manufacturing establishments, the expected annual cost ranges from $227.92 million to $3,050.70 million. Using a 4.2-percent rate, the expected annual cost ranges from $228.41 million to $3,070.81 million.

Estimates of the present value of the costs of the alternative hazard communication standards for a 40-year period were calculated for discount rates of 5 and 10 percent. Incorporation of the various growth rates for the components of each alternative standard required that the present values be estimated separately for each component. Compliance costs for the hazard evaluation of new chemicals were projected to grow at a 3-percent rate, which is the average annual growth rate of new chemicals. The growth rate of the number of shipments of chemical containers (and hence labels) was estimated to be between 3 and 6 percent. The present value of the costs of the substance-employee identification lists and the recordkeeping provisions were calculated assuming 3-percent annual rates of growth. The annual growth rate for the cost of education and training programs was assumed to equal the rate of growth of manufacturing employment or 0.7 percent.

Using the low growth rates and a 5-percent discount rate, the present value of the total cost for the alternative standards ranges from $5,059.42 million to $56,630.03 million. By contrast, using all the high rates of growth and a discount rate of 10 percent, the present value of the costs for the alternatives ranges from $3,217.81 to $33,712.15 million.

These estimates show the range of possible costs; however, OSHA's new proposal is likely to fall at or near the bottom end of that range. In contrast, the January proposal, which required extensive labeling (pipes and piping systems included), extensive hazard evaluation, and recordkeeping, was expected to be highly costly. The initial cost of the January proposal was estimated at $2,596.65 million with annual costs of about $1,254 million. The present value cost over a 40-year period, using a 10-percent discount rate, was $22,864.08 million.

Summary of Net Benefits

OSHA will evaluate alternative hazard communication standards to determine the least costly alternative consistent with the objectives of the OSH Act.

Related Regulations and Actions

Internal: None.

External: The Toxic Substances Control Act of 1976 authorizes the Environmental Protection Agency (EPA) to develop a hazards warning regulation. EPA, under the Federal Insecticide, Fungicide, and Rodenticide Act, 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. The Department of Transportation's regulations pertain to the bulk shipment of hazardous goods. FDA and CPSC regulations pertain to products for consumer consumption. However, none of these labeling regulations adequately address the problem of identifying and communicating hazards of chemical substances in the workplace environment. A number of State and local governments have promulgated or are considering hazard communication standards.

Government Collaboration

OSHA has actively participated 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—January 1982.
Public Comment Period—Following NPRM, length to be determined.
Public Hearings—Dates to be determined.
Final Rule—Date to be determined.
Preliminary and Final Regulatory Impact Analysis, Regulatory Flexibility Analysis, and Environmental Impact Analysis—Date to be determined.
Final Rule Effective—Date to be determined.

Available Documents

ANPRM—42 FR 5372, January 28, 1977.
NPRM—46 FR 4412, January 16, 1981.
Draft "Regulatory Analysis and Environmental Impact Statement for the Hazards Identification Standard," January 1981.
Notice withdrawing NPRM, 46 FR 12020, February 12, 1981.
"A Recommended Standard—An Identification System for Occupationally Hazardous Materials" (HEW–NIOSH, Publication Number 75–126).
Public docket of the record of rulemaking on hazard communication (OSHA Docket H–022).
These documents are available for review and copying at the OSHA Technical Data Center, Room S–6212, 200 Constitution Avenue, N.W., Washington, DC 20210.

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DOL–OSHA

Hearing Conservation Amendment (29 CFR 1910.95(c)–(s); Revision)

Legal Authority

The Occupational Safety and Health Act of 1970, 29 U.S.C. 655.

Reason for Including This Entry

This entry is included because the Hearing Conservation Amendment has an annual effect on the economy of $100 million or more. Also, the Presidential Task Force on Regulatory Relief has designated this action for review.

Statement of Problem

Occupational noise exposure can cause irreversible hearing loss, which can lead to serious social and psychological handicaps. Approximately 5.5 million workers are exposed to average levels above 85 decibels (dB) in 300,000 workplaces. OSHA estimated that approximately 900,000 people will develop material impairment of hearing when exposed over a working lifetime. The current occupational noise exposure regulation (29 CFR 1910.95(a) and (b)) limits an employee's noise exposure to an 8-hour time-weighted average sound level (TWA) of 90 dB. Employers must reduce employee exposures to within permissible limits by feasible engineering controls or administrative controls. Where such controls cannot reduce employee exposure to within permissible limits, employers must supplement the controls with personal protective equipment. (The current occupational noise exposure regulation that sets these requirements is also under review. See separate entry in this Calendar.)

Until this year (1981), the Occupational Safety and Health Administration (OSHA) also required employers to establish "a continuing, effective hearing conservation program" for all employees exposed to a TWA of 90 dB or above. On January 16, 1981, OSHA amended the standard for occupational exposure to noise (29 CFR 1910.95), setting forth specific requirements for hearing conservation programs, including requirements for noise monitoring, audiometric testing, hearing protectors, training, warning signs, and recordkeeping. This rule extended these programs to cover all workers exposed to noise at or above a TWA of 85 dB (see 46 FR 4078, January 16, 1981).

After we published requirements for hearing conservation programs in January, OSHA received over 250 comments, requests for interpretation, petitions for administrative stay, and requests for reconsideration pursuant to Executive Order 12291. In order to evaluate the merits of these petitions and comments, OSHA stayed the effective date of the amendment several times (see 46 FR 21365, April 10, 1981; 46 FR 28845, May 29, 1981; and 46 FR 39137, July 31, 1981). Petitions for judicial review of the January 1981 hearing conservation amendment have been filed by the Chocolate Manufacturers Association, U.S. Chamber of Commerce, American Iron and Steel Institute, Fleck Industries, Inc., and the AFL–CIO.

On August 21, 1981, OSHA published in the **Federal Register** a notice that (1) lifted the administrative stay of the effective date of the amendment (46 FR 42622); (2) made certain technical corrections, such as corrections of typographical errors and omissions; (3) invited public comment on the continuation of the administrative stay on certain provisions; and (4) invited new information and comments on the merits of many of the stayed provisions (see 46 FR 42622–46239 for specific information). After reviewing these public comments, OSHA will complete its reconsideration of the hearing conservation amendment and publish its final determinations in the **Federal Register.**

Alternatives Under Consideration

Four alternative actions were available to the Agency:

(A) propose to revoke the January 1981 hearing conservation amendment;

(B) propose to revoke both the January 1981 hearing conservation amendment and the old requirement for hearing conservation programs (29 CFR 1910.95(b)(3));

(C) put into effect all hearing conservation provisions published in January 1981; or

(D) put some hearing conservation provisions into effect on August 22, 1981, but continue the administrative stay of the remaining requirements in order to consider them further.

Under Alternative (A), proposing to revoke the hearing conservation amendment, the Agency could have maintained the current ("old") requirement (29 CFR 1910.95(b)(3)), which requires employers to institute a "continuing, effective hearing conservation program" for all employees exposed above 90 dB.

The Agency rejected this alternative of no new regulatory action. OSHA has determined that 10 to 15 percent of the population is at risk of hearing loss at exposures of 85 dB. Moreover, the old requirements of "continuing, effective hearing conservation programs" do not provide sufficient guidance to enable employers to establish such programs.

The Agency also rejected Alternative (B), i.e., proposing to revoke both the hearing conservation amendment and the current requirement for hearing conservation programs. For the reasons outlined in our Regulatory Impact Analysis, this alternative would not sufficiently protect the approximately 900,000 workers who can be expected to

incur material impairment of hearing in the absence of hearing conservation programs.

We also rejected Alternative (C), i.e., allowing all of the hearing conservation provisions published in January 1981 to become effective. After publication, the Agency received many comments concerning the costs and usefulness of a number of the requirements published in January 1981. Commenters objected to such requirements as periodic remonitoring of employee noise exposure, notifying employees of their exposure levels, performing baseline audiograms within 4 months of exposure to high noise levels, and certain of the recordkeeping requirements. Because many of the concerns expressed in these comments appeared to have some validity, the Agency decided to continue to stay some of the requirements published in January in order to evaluate these concerns.

OSHA chose Alternative (D), allowing many of the less controversial requirements published in January to go into effect while continuing the administrative stay of some of the more controversial requirements. This alternative enables the Agency to put into effect those aspects of the hearing conservation amendment that the Agency had already found to be necessary and feasible while allowing a continuing reconsideration of the remaining requirements.

Summary of Benefits

Sectors Affected: Noise-exposed workers in industries covered by OSHA's general industry and maritime standards.

OSHA anticipates that most noise exposures at or above 85 dB occur in manufacturing (SIC Codes 20–39) and utilities (SIC Code 49).

In the Regulatory Analysis prepared for the amendment, published in January 1981, OSHA estimated that hearing conservation programs for all employees exposed at or above 85 dB would prevent 212,000 cases of material impairment of hearing after 10 years, 696,000 cases after 30 years, and 898,000 after these programs become fully effective (in 70 years). The provisions we published in January were designed to form a system of checks and balances to ensure that employers would identify employees who were susceptible to noise and that they would intervene at an early stage, with counseling, training, retesting, and professional evaluation to prevent material impairment. OSHA pointed out in the Regulatory Impact Analysis (required by Executive Order 12291), published in August 1981, that the interrelated nature of these provisions makes it difficult to predict what effect, if any, the relaxation of any one requirement or group of requirements might have on the predicted benefits. OSHA has requested public comment on the implications of the August publication for the benefits and effectiveness of hearing conservation programs.

Summary of Costs

Sectors Affected: Industries covered by OSHA's general industry and maritime standards, especially manufacturing and utilities.

OSHA anticipates that most noise exposures at or above 85 dB occur in manufacturing (SIC Codes 20–39) and utilities (SIC Code 49).

In the August 1981 Regulatory Impact Analysis, OSHA estimated the new costs of the provisions that were to become effective after August 22, 1981. The annualized costs for each major provision, in 1980 dollars, are:

Monitoring	$23,100,000
Audiometric testing	76,000,000
Hearing protectors	45,500,000
Training	20,000,000
Recordkeeping	6,000,000
Total	170,600,000

Summary of Net Benefits

OSHA estimated that hearing conservation programs, after becoming fully effective, might prevent as many as 898,000 cases of material impairment of hearing. We estimated that these programs would cost about $170.6 million annually.

Throughout the Hearing Conservation rulemaking, OSHA has endeavored to develop a cost-effective standard consistent with the objectives of the Occupational Safety and Health (OSH) Act. As noted above, we requested public comment on the implications of the August publication for the benefits and effectiveness of hearing conservation programs.

Related Regulations and Actions

Internal: OSHA also regulates occupational noise exposure in the construction industry (29 CFR 1926.52). This regulation is virtually identical to paragraphs (a), (b)(1), and (b)(2) of OSHA's regulation for general industry (29 CFR 1910.95) and still contains paragraph (b)(3), which calls for a "continuing, effective hearing conservation program" for employees whose average exposures exceed 90 dB. The construction noise standards is not affected by the new hearing conservation requirements that amend the noise standards for general industry (29 CFR 1910.95).

The Mine Safety and Health Administration (MSHA) has three noise exposure regulations:

(1) Underground Coal Mines (30 CFR 70.500 to 70.510). These regulations cover permissible exposure limits, noise measurement, and survey requirements and reporting procedures.

(2) Surface Work Areas of Underground Coal Mines and Surface Coal Mines (30 CFR 71.300 to 71.305). These regulations are essentially the same as those for underground coal mines.

(3) Metal and Nonmetal Mines (30 CFR 55.5). These regulations are essentially the same as paragraph (a), (b)(1), and (b)(2) of OSHA's noise standard, 29 CFR 1910.95.

External: Pursuant to the OSH Act, all States having their own occupational health programs must promulgate requirements at least as protective as those of the Federal OSHA. A few States already have some hearing conservation requirements.

The Department of Defense (DOD) has had hearing conservation requirements for many years. Under the most recent DOD Instruction (No. 6055.3, June 8, 1978) the three services (Army, Navy, and Air Force) develop and issue individual requirements.

The Federal Advisory Council on Occupational Safety and Health has established a Subcommittee on Noise for the purpose of developing noise abatement and hearing conservation guidelines to be used by all Federal agencies.

The Environmental Protection Agency (EPA) has regulations and programs for noise control and hearing conservation. Under the Noise Control Act of 1972, EPA has the statutory responsibility to coordinate all Federal noise programs.

Government Collaboration

Formal coordination between OSHA and other agencies has taken place under the auspices of the Interagency Regulatory Liaison Group. The vehicle has been the Noise Subgroup of the Regulatory Development Work Group. OSHA has interacted with the other member agencies: the Environmental Protection Agency, Consumer Product Safety Commission, and Food and Drug Administration. We also have coordinated activities with the Department of Labor's Mine Safety and Health Administration and with the Department of Defense, under the auspices of the Noise Subgroup's Hearing Conservation Planning Group. Informal liaison has taken place with

the National Institute for Occupational Safety and Health, the Department of Transportation's Federal Railroad Administration, and the National Bureau of Standards in the Department of Commerce.

Timetable

Public Comment Period on the stayed provisions of the hearing conservation amendment—August 22, 1981 to November 23, 1981.
Regulatory Impact and Regulatory Flexibility Analysis for the Hearing Conservation Amendment—August 1981.
Next Action—To be determined.

Available Documents

Preamble to the Hearing Conservation Amendment, January 16, 1981 (46 FR 4161).

Preamble—August 21, 1981 statement of provisions becoming effective (46 FR 423622).

"Final Regulatory Analysis of the Hearing Conservation Amendment," January 1981.

OSHA Docket OSH-011 A, B, C, and D.

All documents are available for review in the Docket Office, Room S-6212, U.S. Department of Labor-OSHA, 200 Constitution Avenue, N.W., Washington, DC 20210. A fee is usually charged for copies of these documents.

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DOL-OSHA

Identification, Classification, and Regulation of Potential Occupational Carcinogens—The "Cancer Policy" (29 CFR Part 1990; Revision)

Legal Authority

The Occupational Safety and Health Act of 1970, 29 U.S.C. 655.

Reason for Including This Entry

The Presidential Task Force on Regulatory Relief has designated this regulation for review.

Statement of Problem

The Cancer Policy was promulgated in an attempt to deal with two issues. The first issue is the prevalence of cancer among American workers due to occupational exposure; the second is the history of OSHA's efforts at regulating occupational carcinogens.

While there is general agreement that some percentage of cancer is related to occupational exposure to chemicals, individual estimates vary widely. In the 11 years that OSHA has been in existence, its efforts at controlling occupational carcinogens have been slowed repeatedly by scientific controversy over the same issues. Some of the major issues debated were how to define a carcinogen, how to relate cancer in animals to risk for workers, and where to set permissible exposure levels.

In an effort to expedite and streamline the regulatory process, thereby conserving the resources of the Agency and affected industries, as well as providing greater protection to workers, OSHA developed the Cancer Policy.

The Cancer Policy establishes (1) the criteria to guide OSHA in determining what substances may be potential carcinogens; (2) the process OSHA will use for screening the evidence and setting priorities among substances; (3) the procedures for limiting the issues that the regulated sector and other interested parties can raise during rulemakings; and (4) the substantive provisions that feasible engineering and work practice controls shall be preferred as the primary method of controlling exposure to carcinogens in future regulations.

OSHA modified the Cancer Policy to conform legally with the subsequent Supreme Court decision regarding benzene, *Industrial Union Dept.* v. *American Petroleum Institute*, 448 U.S. 607 (1980). Specifically, OSHA deleted the provision that requires it to automatically set the lowest feasible exposure limit for occupational carcinogens. Exposure limits are now to be set based on statutory requirements as interpreted by the Court based on the significance of risk and feasibility. The Cancer Policy, with the above changes, is currently in effect.

Both OSHA and the Presidential Task Force on Regulatory Relief have received requests to consider amending certain provisions of the Cancer Policy in light of the Supreme Court's decision, Executive Order 12291, and new Administration policies.

A review is needed to assess the cost effectiveness of suggested or mandatory regulatory provisions in the Cancer Policy, to assure that the regulation of carcinogens will protect workers, and to coordinate the Cancer Policy with the objectives of E.O. 12291 consistent with the statute. OSHA is preparing an ANPRM for the purpose of considering proposing amendments to the Cancer Policy.

Alternatives Under Consideration

(A) *Amend the Policy.* Issues concerning the Cancer Policy are complex. There is a need to reexamine certain of the provisions of the Policy to assure consistency with recent court decisions, to review certain scientific conclusions, to improve the priorities process to assure that chemicals will only be prioritized after appropriate review, to respond to Executive Order 12291, and to include cost effective considerations where appropriate.

(B) *No Federal Action.* The Cancer Policy would remain in effect. The disadvantage of "no Federal action" would be the loss of opportunity to consider newly suggested regulatory strategies that include cost effectiveness and other possible improvements mentioned in Alternative (A).

(C) *Withdraw the Cancer Policy.* The absence of a rational and predictable policy for dealing with occupational carcinogens would hinder OSHA in the protection of workers.

Summary of Benefits

Sectors Affected: Employers covered by the Occupational Safety and Health (OSH) Act of 1970; workers who are potentially exposed to cancer-causing chemicals; and industry in general, but especially chemical production and manufacture.

Potential carcinogenic substances are used in a wide variety of industrial operations, including primary chemical production (SIC Code 28). Secondary use of these products occurs in various manufacturing processes (SIC Codes 20-39). The actual scope of each standard would be established during the rulemaking on a specific carcinogen and is not predetermined by the Cancer Policy.

Benefits of an amended Cancer Policy would result from a clear, consistent, and cost-effective approach to setting standards. Time and resources required for official regulatory and judicial processes would be decreased as the amended Cancer Policy would enable OSHA staff to act with greater efficiency and predictability in framing the critical scientific issues in any rulemaking. Industries' short- and long-term planning would benefit because firms would know the policies and procedures that OSHA would follow. Workers would benefit because the time required to regulate exposure to cancer-causing substances would be reduced, thereby decreasing the possibility of

debilitating disease and death among workers.

Without a Cancer Policy, OSHA might be required to repetitively reexamine scientific and policy issues regarding the regulation for each occupational carinogen. This is a time-consuming and resource-expending process for OSHA, union, industry, and other interested parties.

For example, during its 11-year existence, OSHA has promulgated only seven carcinogen standards. These standards include those for asbestos, arsenic, acrylonitrile, benzene, coke oven emissions, "fourteen carcinogens," and vinyl chloride. Moreover, the total time required from the initiation of the rulemaking to its conclusion ranged from 15 months (the vinyl chloride standard) to over 38 months (the arsenic standard).

Summary of Costs

Sectors Affected: All industries covered by the OSH Act of 1970, including general industry, construction, maritime, and agriculture.

To the extent that the Cancer Policy enables regulation to proceed at a more rapid pace, industry's compliance costs would be greater. OSHA does not have, however, a precise knowledge of the specific substances to be regulated, the affected industries and populations, the available control technologies, or the timing of implementation of each regulation. Thus, it is impossible to differentiate and quantify at this time the costs of regulations to be developed under the Cancer Policy as compared to the costs of regulations that would be developed in its absence.

Summary of Net Benefits

OSHA will evaluate the Cancer Policy to determine the most effective and least costly alternatives consistent with the objectives of the OSH Act.

Related Regulations and Actions

Internal: OSHA is currently reviewing its standards on three carcinogenic substances: ethylene dibromide, ethylene oxide, and formaldehyde. In each action, the basic scientific and policy issues addressed in the Cancer Policy are being discussed.

External: Several other Federal agencies, including the Consumer Product Safety Commission, the Environmental Protection Agency, and the Food and Drug Administration, are developing or reviewing agency policies on the regulation of carcinogenic materials within the scope of their respective statutes.

Government Collaboration

Specifically with respect to the scientific issues, OSHA has and will continue to collaborate extensively with the National Cancer Institute, the National Institute for Occupational Safety and Health, the Environmental Protection Agency, the Food and Drug Administration, the National Institute for Environmental Health Sciences, and the Consumer Product Safety Commission.

Timetable

ANPRM—January 1982.
NPRM—Date to be determined.
Final Rule—Date to be determined.
Public Hearing—Undecided.
Public Comment Period—Date to be determined by ANPRM.
Regulatory Impact Analysis—Date to be determined.
Regulatory Flexibility Analysis—Date to be determined.

Available Documents

"Identification, Classification, and Regulation of Potential Occupational Carcinogens," 45 FR 5001, January 22, 1980.

"List of Substances Which May Be Candidates for Further Scientific Review and Possible Identification, Classification, and Regulation as Potential Occupational Carcinogens," 45 FR 53672, August 12, 1980.

"Identification, Classification, and Regulation of Potential Occupational Carcinogens; Conforming Deletions," 45 FR 4889, January 19, 1981.

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DOL-OSHA

Methods of Compliance Hierarchy (29 CFR 1910.134(a)(1) and 1910.1000(e); Revision)

Legal Authority

The Occupational Safety and Health Act of 1970, 29 U.S.C. 655 *et seq.*

Reason for Including This Entry

The Occupational Safety and Health Administration (OSHA) has included this entry because the primary reliance on engineering controls by some OSHA health standards may impose higher costs than are necessary to protect employee health. The President's Task Force on Regulatory Relief has designed this issue for review.

Statement of Problem

Various OSHA health standards require that employee exposure to airborne toxic materials be reduced to or below specified maximum levels. To achieve compliance with these standards, employers can use engineering controls, administrative work practice controls, and respirators. Engineering controls are modifications to plant, equipment, processes, or materials that reduce an employee's exposure. Administrative controls are procedural or scheduling types of changes that an employer can use (e.g., worker rotation). Respirators are devices worn by an employee to protect against overexposure.

It has been OSHA policy to require that engineering controls be used to the maximum extent feasible to prevent excessive employee exposures and that respirators be used only as a last alternative when other methods are inadequate, infeasible, or have not yet been installed. This policy is reflected in two health standards of general application, 29 CFR 1910.134(a)(1) and 1910.1000(e), and is in accordance with good industrial hygiene practice as recommended by such professional organizations as the American Conference of Governmental Industrial Hygienists, American Industrial Hygiene Association, and the National Safety Council. However, it is not clear whether the employment of all feasible engineering controls is warranted in all situations for the reasonable protection of employee health. In particular, the primary reliance on engineering controls has become the object of continuing controversy in those situations where the expected costs of engineering controls exceed the expected costs of respiratory protection. OSHA has received complaints from employers that there are many instances where strict adherence to this policy is unnecessary to protect employees, is unreasonable, and imposes costs that are far higher than necessary to protect employee health.

Some parties have argued that in achieving worker protection it should not be required that an occupational environmental hazard be minimized in preference to adopting the use of respirators. Others accept the general proposition that occupational environmental protection is preferable to personal protection, but believe that respirators are acceptable in lieu of

implementing all feasible engineering controls. Still others maintain that the uncertainty of the actual protection afforded by respirators, together with inherent problems of convenience and comfort, are sufficient reason to insist on the primacy of engineering controls as now specified in the standards.

Thus, there is a wide difference of opinion about the relative effectiveness, reliability, cost, and reasonableness of engineering controls and respirators. The places of employment affected by OSHA policy in this regard range from those with very few employees to those with several thousand employees and involve exposures to toxic materials that range from relatively innocuous (e.g., chlorofluorocarbons) to very hazardous to life and health (e.g., parathion).

OSHA has concluded that it is timely and appropriate to reexamine formally its policy on these matters to determine whether it is possible to identify circumstances where workers' safety and health can be protected by compliance strategies other than primary reliance on feasible engineering controls.

Alternatives Under Consideration

OSHA will be considering the following alternatives:

(A) Continue to require in future standards that respirators be used only where engineering and work practice controls are not feasible, not adequate, or not yet installed.

(B) In future standards identify specific processes, operations, or situations where respirators or other control strategies may be used in lieu of installation of all feasible engineering controls.

(C) In future standards specify criteria by which employers can identify situations where respirators may be used in lieu of installation of all feasible engineering controls.

(D) Change current standards to reflect changed policy.

Summary of Benefits

Sectors Affected: All firms in manufacturing, construction, and water transportation industries in which workers are exposed to hazardous substances.

OSHA intends to publish an ANPRM to solicit data on the relative benefits and costs of the use of respirators and different control technologies. Therefore, benefits cannot now be estimated. An important factor that will affect the level of potential benefits is the effectiveness of respiratory protection programs, which OSHA is addressing in a reexamination of the respiratory protection standards (see separate entry in this Calendar). Another possible benefit will accrue to firms that may not have been able to raise sufficent capital to install engineering controls. These firms may be able to continue operations by using personal protection programs. Thus, allowing firms the option of using either engineering controls or personal protection programs, when either will provide the required level of worker protection, may increase both efficiency and productive employment levels. In addition, engineering controls may require large capital expenditures that may have a greater impact upon smaller firms than upon larger firms. Allowing respiratory protection programs to substitute for engineering controls may provide needed regulatory relief to small entities. Further, this could also release capital for productive investment, which would increase productivity and wages while reducing costs to the consumer.

Summary of Costs

Sectors Affected: All firms in manufacturing, construction, and water transportation industries in which workers are exposed to hazardous substances; producers of engineering control equipment; and producers of safety appliances and equipment.

Imposing engineering controls may involve higher costs to firms than the costs for personal protection programs. As actual cost data have not been assembled, OSHA cannot predetermine whether there will be any cost differences and, if so, whether these will be significant or whether they will vary across industries and among regulated substances. However, it is possible that firms involved in the manufacturing of equipment for engineering controls would be adversely affected by any changes in policy. Once again, the size of this impact cannot now be determined, but it will be carefully examined. It is unlikely that respiratory protection programs will be permitted to replace engineering controls in every situation and for every regulated substance. This change in OSHA policy may have little impact upon the competitive positions of the many firms already in compliance with the existing engineering control requirements.

Summary of Net Benefits

A changed OSHA policy that permits the use of respiratory protection programs in control strategies other than all feasible engineering controls will result in opportunities for employers to choose the most cost effective means of employee protection. The extent of these cost savings will depend upon the adequacy of current respirators and respiratory protection programs to provide the necessary level of protection and a careful evaluation of the cost trade-offs between alternative methods of protection. Estimates of these regulatory impacts will be provided before revisions to current standards, if any, are proposed. OSHA expects that there will be net benefits since employers would be able to choose the most cost-effective methods that can be demonstrated to offer necessary employee protection.

Related Regulations and Actions

Internal: 29 CFR 1910.134 and the other general respiratory protection standards are the subject of a separate reevaluation project. 29 CFR 1910.1025(f)(3)(ii) is also the subject of a separate rulemaking.

External: Twenty-two States have regulations similar to the above "internal" regulations, and to 29 CFR 1910.134 and 1910.1000.

Government Collaboration.

None.

Timetable

ANPRM—January 1982.

Public Comment Period —Comments should be sent to the OSHA Docket Officer, Docket H–160, Room S–6212, U.S. Department of Labor, 200 Constitution Ave., N.W., Washington, DC. 20210.

The existence and timing of other rulemaking steps are unknown at this time and depend on decisions to be made after an analysis of the comments received.

Regulatory Impact Analysis—Date to be determined.

Regulatory Flexibility Analysis—Date to be determined.

Available Documents

None.

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DOL-OSHA

Occupational Exposure to Cotton Dust (29 CFR 1910.1043; Revision)

Legal Authority

The Occupational Safety and Health Act of 1970, 29 U.S.C. 655.

Reason for Including This Entry

The 1978 standard for occupational exposure to cotton dust could generate annual costs of more than $100 million. The Occupational Safety and Health Administration (OSHA) currently is reviewing this regulation to ensure, among other things, that it is cost effective.

Statement of Problem

Byssinosis is an occupational respiratory disease that occurs in workers who are exposed to cotton dust. In the early stages of the disease, the worker may notice a tightness in the chest on the first day of the work week, which may be accompanied by a measurable decrease in breathing capacity. As the disease progresses, this tightness in the chest is accompanied by breathlessness, and the symptoms then occur on other workdays as well. Eventually, the worker becomes severely affected on every working day with permanent and severe shortness of breath. In the final stages, the disease may lead to permanent disability and death.

In its 1979 "Report to the Congress," the Department of Labor (DOL) estimated that, of the nearly 467,000 production workers in the cotton industry, excluding the cotton ginning sector, which is not covered under the standard, an estimated 68,000 have byssinosis in varying stages. Industry sources have maintained that the number of production workers in these industries is only about 315,000, and some other studies have found lower byssinosis prevalence rates. One prominent study estimated that, in 1973, there were at least 35,000 former textile workers who were permanently disabled as a result of their exposure to cotton dust.

There are a number of reasons for reviewing the standard at this time. First, following publication of the final standard for cotton dust in 1978, a number of industry representatives challenged the standard in court. While the application of the standard to the textile industry was upheld, the courts have vacated the standard as it applies to cottonseed oil mills and remanded it to the Agency. The courts also vacated the section on wage retention following medical removal as it applies to the textile industry. OSHA has suspended enforcement of the standard as it applies to cotton classing and warehousing. The standard as it applies to two other sectors of the cotton industry—knitting and waste processing and utilization—is currently under a stay of enforcement. Second, there have been problems with the vertical elutriator, the device that is used to measure cotton dust. Third, control methods and other requirements specified by the standard may not be the most cost-effective methods available. Finally, industry has questioned whether a significant risk of disease can be demonstrated in all of the non-textile sectors. OSHA can resolve, or at least clarify, most of these issues by revising the standard.

If the Agency does not take action at this time, the above-mentioned problems will continue to exist.

Alternatives Under Consideration

The Agency is considering a number of alternative approaches that are not necessarily mutually exclusive, including:

(A) develop internal program directives to clarify some points in the standard;

(B) make some minor technical changes to provisions of the standard;

(C) modify substantially the standard to allow, for example, alternative methods of compliance; or

(D) alter the standard's scope, that is, the industrial segments covered by the standard.

The Agency is not considering changes to the current permissible exposure limits.

Summary of Benefits

Sectors Affected: All establishments that store, process, or otherwise handle cotton lint, cotton linters, cotton yarn, or cotton waste; the workers employed in these industries who are exposed to cotton dust; the industries that provide dust measurement and control technologies; and the consumers of cotton products. Many of the affected industries and individuals are located in the northeastern and southeastern portions of the United States. These potentially affected industries include the following, listed with their Standard Industrial Code numbers: cotton textiles, including yarn manufacturing, weaving, and knitting (2211, 2241, 2252, 2253, 2254, 2257, 2258, 2259, 2271, 2272, 2279, 2281, 2282, 2284, 2292, 2297, 2298, 2299, 3842); cottonseed oil mills (2074); cotton warehouses and compresses (5152); cottonseed delinting (0723); and cotton waste processors and users (2293, 2294, 2512, 2515).

The direct benefit OSHA expects from controlling exposure to cotton dust is a reduction in the incidence, prevalence, and severity of byssinosis and other respiratory diseases that result from exposure to cotton dust. At this time OSHA has not yet quantified the benefits attributable to each alternative. However, in the 1979 "Report to the Congress," DOL estimated that if the current standard were fully implemented there would be 23,490 fewer cases of byssinosis after a complete turnover of the work force currently exposed to cotton dust. The report estimated the tangible worker benefits, such as increased earnings and reduced medical costs, at $751 million per year in 1977 dollars.

Indirect benefits include reductions in the burden placed on such public support programs as Medicare and Medicaid, Welfare, and Workers' Compensation. In addition, improved worker health and safer working conditions are likely to reduce employee turnover and raise labor productivity. A major benefit expected from reexamining certain provisions of the current standard is improved cost effectiveness. The DOL's 1979 report to Congress calculated the annual cost per byssinosis case avoided as $8,658, although industry argues that the cost per case would be substantially greater. More cost effective controls will encourage innovations in control and measurement technology while increasing productivity.

Summary of Costs

Sectors Affected: Establishments that store, process, or otherwise handle cotton lint, cotton linters, cotton yarn, or waste cotton.

The direct costs of the regulatory options that OSHA is considering range from minimal to significant because the required level of capital expenditures and operating expenses depend upon which alternative the Agency chooses. At this preliminary stage the Agency has made no specific determinations as to the cost of any of the alternatives. DOL's 1979 study estimated that the cost of the current standard in 1977 dollars would amount to $655 million in capital costs and $80 million in annual operating, maintenance, and energy costs. Industry estimates ranged to over $2 billion in capital costs. However, the recent trend to modernize plants and equipment in the textile industry has probably reduced the amount of new

investment that would be required to reduce dust levels.

Summary of Net Benefits

DOL's 1979 report estimated the total annualized costs of the 1978 Cotton Dust Standard at approximately $203 million and the annual benefits at about $751 million. Estimates from other parties differed widely. In the reconsideration of this standard, the Agency will determine if any of the alternative provisions can protect employee health in a more cost-effective manner.

Related Regulations and Action

Internal: The OSHA standard for cotton dust, 29 CFR 1910.1000, Table Z–1, which applies in all industries not covered by the cotton dust standard currently under review (29 CFR 1910.1043).
External: None.

Government Collaboration

OSHA shares information with other government agencies, such as the National Institute for Occupational Safety and Health and the U.S. Department of Agriculture.

Timetable

ANPRM—January 1982.
NPRM—4th Quarter 1982.
Final Rule—Date to be determined.
Final Rule Effective—Date to be determined.
Public Hearing—Date to be determined following publication of NPRM.
Public Comment Period—At least 60 days following publication of ANPRM; also 60 days following publication of NPRM.
Regulatory Impact Analysis—Preliminary published with NPRM; final to be determined.
Regulatory Flexibility Analysis—Combined with Regulatory Impact Analysis, see above.

Available Documents

Occupational Safety and Health Administration Dockets H–052 and H–052B.

The above documents are available for review in the OSHA Docket Office, Room S–6212, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, DC. 20210.

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DOL-OSHA

OSHA Commercial Diving Operations Standard (29 CFR Part 1910, Subpart T; Revision)

Legal Authority

The Occupational Safety and Health Act of 1970, 29 U.S.C. 655.

Reason for Including This Entry

The Presidential Task Force on Regulatory Relief has designated this standard for review.

Statement of Problem

The standard for Commercial Diving Operations became a Final Rule on July 22, 1977 (42 FR 37650). The standard contains provisions for personnel requirements, general operations procedures, specific operations procedures, equipment procedures and requirements, and recordkeeping.

Since its promulgation, several affected groups have raised concern over certain aspects of the standard. One of these affected groups, the educational/scientific divers (scientific diving performed by educational institutions), object to their inclusion in the standard. They avidly maintain that their operations are significantly different than commerical operations and that self-regulation has eliminated unwarranted risk for their divers. They also state that compliance with Subpart T, which contains the commercial diving operations standard, is impeding scientific progress by constraints that limit their programs. One such constraint is the limit on the depth at which SCUBA (self-contained underwater breathing apparatus) diving can be performed. Another constraint is the estimated cost of meeting the decompression chamber requirements. The educational/scientific divers estimate that the implementation cost per institution would exceed $80,000 initially and $30,000 annually thereafter (1976 dollars).

The exemption issue was the subject of an August 17, 1979 ANPRM (44 FR 48274). The majority of responses to that notice supported exemption.

When the standard was promulgated in 1977, the structure of the commerical diving industry was such that approximately 90 percent of offshore operations were conducted by 23 contractors employing commercial divers. In addition, there were approximately 400 small and medium-sized diving companies whose work was principally confined to relatively shallow harbors and inland waterways.

The commercial diving industry has raised issues concerning the stringent specifications in the standard. These include the decompression chamber requirements and other specifications that negate the use of alternative methods of compliance. For example, the standard requires that a diver depth gauge be read at the dive location but does not allow for other means to indicate diver depth (e.g., sonar). The commercial diving industry believes that the alternative measures would ensure that employees have comparable safety and health. Additionally, compliance with Subpart T requirements (personnel requirements, general operations procedures, specific operations procedures, equipment procedures and requirements, and recordkeeping) may place an economic burden on the small entities within the industry.

For these reasons, OSHA believes that Subpart T should be revised by replacing the existing specification-oriented standard, to the greatest extent feasible, with a performance-oriented standard, where criteria are set but ways of meeting that criteria are not specified.

Alternatives Under Consideration

Alternative (A) would be to take no action, leaving the present standard as it is. If no action is taken, the standard will continue to be financially burdensome and will not allow the most cost-effective alternative means of compliance. Additionally, the educational/scientific diving community will continue to be hampered by their inclusion under the standard.

Alternative (B) is to revise only those provisions that are creating problems for the industry. Educational/scientific diving operations (scientific diving performed by educational institutions) could be exempted in this alternative. An advantage to this alternative is that provisions identified by the industry can be revised and the educational/scientific diving community will benefit by an exemption. The disadvantage of this alternative is that it may be almost as time consuming as a complete evaluation and revision of the entire standard. Moreover, an inadequate review may result if we do not examine the entire standard.

Alternative (C) entails a complete revision of Subpart T after careful evaluation of the entire standard. The revised standard would be performance-oriented, to the greatest extent feasible, permitting the industry to use alternate methods of compliance. A performance-

oriented standard has the advantage of addressing the means by which small entities can meet the standard with their limited resources. This approach will best meet the intent of the Regulatory Flexibility Act, which requires regulators to take into consideration disproportionate effects that standards may have on small entities. In addition, Alternative (C) could exempt educational/scientific diving operations from the standard. OSHA believes that Alternative (C) would address the problems in the standard and still ensure a comparable level of employee safety and health.

Summary of Benefits

Sectors Affected: Industries that employ commercial divers—oil and gas extraction (SIC Code 12); bridge, tunnel, and elevated highway construction (1622); water, sewer, pipe lines, communication, and power line construction (1623); heavy construction (1629); water well drilling (1781); petroleum refining (2911); shipbuilding and repairing (3731); boatbuilding and repairing (3732); water transportation (44); pipelines, except natural gas (46); telephone communication (wire or radio) (4811); telegraph communication (wire and radio) (4821); electric, gas, and sanitary services (49); telephone and telegraph apparatus (3661); business services (7399); and scientific and educational institutions (8922).

In 1977 OSHA estimated that approximately $22 million in annualized costs would result from complete implementation of the standard, as contrasted with estimates of up to $40.2 million presented by the industry. Some portion of these costs would be reduced if Alternative (C) were selected. By replacing the existing specification-oriented standard with a performance-oriented standard, Alternative (C) would provide a comparable level of safety and health to divers, while reducing unnecessary cost, particularly to small firms. The actual reduction would depend on individual company decisions about the types of safety precautions to be retained and the amount of money the firm may have already invested in equipment in order to comply with the present standard.

Benefits would remain unchanged if Subpart T, the present standard, were continued. The exemption of educational/scientific operations, Alternative (B) or (C), would reduce unnecessary costs to educational institutions. More detailed benefits data will be available when specific alternative measures have been evaluated and described more fully.

Summary of Costs

Sectors Affected: Oil and gas extraction (SIC Code 12); bridge, tunnel, and elevated highway construction (1622); water, sewer, pipe lines, communication, and power line construction (1623); heavy construction (1629); water well drilling (1781); petroleum refining (2911); shipbuilding and repairing (3731); boatbuilding and repairing (3732); water transportation (44); pipelines, except natural gas (46); telephone communication (wire and radio) (4811); telegraph communication (wire and radio) (4821); electric, gas, and sanitary services (49); telephone and telegraph apparatus (3661); and business services (7399).

Alternative (B) and (C) are cost-saving. Leaving the present standard as it is, Alternative (A), would continue to be financially burdensome to these sectors, for the reasons we outlined in the "Statement of Problem" section above.

Summary of Net Benefits

OSHA will select the least costly alternative consistent with the objectives of the OSH Act. We expect the net benefits to be in the form of more efficient and appropriate regulations that maintain current levels of safety.

Related Regulations and Actions

Internal: None.

External: The U.S. Coast Guard's Commercial Diving Operations Standard is similar to that of OSHA but exempts scientific diving performed by educational institutions (46 CFR Part 197).

Government Collaboration

OSHA and the U.S. Coast Guard are discussing the possible overlap of jurisdictional responsibilities for commercial diving operations.

Timetable

Regulatory Impact Analysis—Date to be determined.
Regulatory Flexibility Analysis—Date to be determined.

Educational/Scientific Diving

ANPRM—44 FR 48274, August 17, 1979.
NPRM, Educational/Scientific Exemption—December 1981.
Public Comment Period—60 days following NPRM.
Close Record—February 1982.
Final Rule—June 1982.

Commercial Diving Operations Standard

ANPRM—December 1981.
Public Comment Period—90 days following ANPRM.
Close Record—March 1982.
NPRM—Undetermined.

Available Documents

Public record from 1977 rulemaking, Docket H–103.

Educational/Scientific Diving ANPRM, Docket H–103S.

The above documentation is available for review and copying in the Docket Office, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room S–6212, Washington, DC 20210.

A Request for Variance was submitted on August 17, 1981 by the Association of Diving Contractors. This document is available for review in the Office of Fire Protection Engineering and Systems Safety, U.S. Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue, N.W., Room N–3463, Washington, DC 20210.

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DOL–OSHA

OSHA General Industry Standard for Walking and Working Surfaces (29 CFR Part 1910, Subpart D; Revision), and Contruction Safety Standards for Ladders and Scaffolding (29 CFR Part 1926, Subpart L; Revision), Floor and Wall Openings, and Stairways (29 CFR Part 1926, Subpart M; Revision)

Legal Authority

The Occupational Safety and Health Act of 1970, 29 U.S.C. 655.

Reason for Including This Entry

The Occupational Safety and Health Administration (OSHA) believes these rules are important because preliminary economic estimates indicate that these revisions may involve compliance costs in excess of $100 million annually.

Statement of Problem

The number of occupational injuries resulting from fall accidents associated with unsafe ladders, scaffolding, floors, wall openings, stairways, and walking and working surfaces ranges from 20 to

25 percent of all occupational injuries in general industry and construction. There are approximately 60 million workers in these categories. The National Safety Council estimates that the direct medical cost and lost productivity cost of injuries and fatalities resulting from these hazards may reach $5 billion annually (1977 dollars).

Present OSHA standards for ladders, scaffolding, floors, wall openings, stairways, and walking and working surfaces, promulgated in 1971, contain deficiencies, ambiguities or redundancies in coverage.

Since 1971, industry and construction standards groups have revised and updated the voluntary consensus standards OSHA used to develop the original OSHA standards. Court decisions have held some of the current OSHA standards invalid. Other standards have been either modified by OSHA Standards Instructions or by variances in an attempt to provide consistent interpretation and enforcement of the standards.

The overall result of these actions is a group of standards, some of which cause problems for industry and OSHA in determining compliance. Compliance with current standards is costly both to industry and to OSHA because of misunderstandings of what hazard in what industry is covered by what standard.

OSHA needs to correct this problem at this time in order to end needless financial difficulties of employers and employees in complying with current specification standards. If the Agency fails to take action at this time, the existing deficient, ambiguous, and redundant standards will remain in effect and continue to cause confusion for employers and employees. Industry and OSHA will expend extensive resources without significant reduction in injuries related to falls in the workplace.

Alternatives Under Consideration

(A) OSHA's first alternative is to continue recent Agency efforts to replace existing specification-oriented standards with revised performance-oriented standards. The performance-oriented standards would permit and encourage more flexibility in controlling hazards. OSHA believes that greater flexibility would lead to more effective protection at decreased expense. As part of the first alternative, OSHA would include an appendix to the standards document to aid employers and employees in complying with the performance-oriented standards through alternative methods. The appendix would provide specific, non-mandatory ways of complying with the standard. Failure to use any of the alternatives in the appendix would not mean failure to comply with the standard. The purpose of an appendix would be to help employers be aware of acceptable methods of compliance they may follow if they do not wish to develop their own compliance methods to meet the performance-oriented language of the standard.

The advantage of this alternative is that it would address the most important problems of the existing standards by fully using the research work, support studies, and outside assistance that OSHA has collected to date. A comprehensive revision of the standards would permit more flexible and cost-effective compliance methods, reduce inconsistency among several regulatory standards, and simplify regulatory language. However, this alternative may have a major economic impact because it would cover a greater number of hazards than the present standards. Consequently, this option would involve a greater number of interested parties in the rulemaking procedures.

(B) The second alternative is a phased effort, where a series of rulemaking procedures would be used in an established order of priority to remedy major problems in the existing standards, rather than to comprehensively revise those standards in a single effort. This alternative would not address the many gaps and shortcomings in the current standards and would not include an appendix listing alternative methods of compliance.

This alternative may cost the affected employers less and may simplify the overall rulemaking process, but it would not address many important hazards that are presently causing working injuries. This alternative would only remove those major problem areas known to exist in the present standards. In addition, it would not advance OSHA's regulatory policy of promulgating performance-oriented rather than specification standards.

(C) The third alternative is to take no action, leaving the present standards as they are. This would greatly hinder OSHA's enforcement and consultation efforts, and certain hazardous areas, such as catenary scaffolding and steep-roof-perimeter protection, would remain unregulated. Many organizations and individuals who have contributed significantly to the development of proposed revisions would be disappointed with OSHA. In addition, there would be no immediate hope of more adequately addressing those hazards that may account for one-fifth of all occupational injuries.

Adoption of any one of the three alternatives would have some effect on most industrial activities. However, under Alternatives (A) and (B), OSHA would stagger the effective dates for implementation to enhance voluntary compliance, to minimize potential economic effects, and to provide time to implement an enforcement strategy.

The Agency currently regards Alternative (A) as the most desirable, since it is the only one that will adequately address all of the injuries associated with falls.

Summary of Benefits

- *Sectors Affected:* All general industries (manufacturing; wholesale and retail trade; transportation, communication, electric, gas, and sanitary services; finance, insurance, and real estate; and service industries); the construction industry; and employees in these industries.

The major benefit is expected to be a reduction in work-related injuries and deaths, which now account for approximately 20 percent of all occupational injuries. There would also be a reduction in related personal and family pain and suffering. OSHA expects to see benefits because the proposed standard would cover currently unregulated hazards and would revise existing standards that offer inadequate protection. Although there are no simple solutions to the hazards covered by these standards, even marginal improvements in accident rates will be significant when aggregated on a nationwide basis. For example, a 10 percent reduction in work-related falls could save $500 million (1977 dollars) annually in associated medical and lost productivity costs.

In addition to these economic benefits, the revision of the construction standards to include all relevant provisions and the parallel rulemakings for construction and for general industry would encourage compliance by all employers by making it easier for employers to locate the particular regulations covering a specific situation. Further, OSHA will use a new format that will help to eliminate redundancy and ambiguity. Elimination of ambiguity will assist employers and compliance officers alike by reducing confusion as to the exact requirements of the standard. Less ambiguous language will also aid in any judicial review of a citation.

Summary of Costs

Sectors Affected: All general industries and the construction industry.

The cost of Alternative (A), comprehensive revision using performance-oriented standards, may exceed $100 million (1980 dollars) for employers to comply. This cost includes capital costs as well as operation and maintenance costs. These costs primarily affect the private sector and include every employer who is covered by either the OSHA general industry or construction industry standards. We have not yet determined whether there will be differential costs for small businesses. There will be some consideration given to the size of the facility and the frequency of use. OSHA will conduct an economic analysis.

Summary of Net Benefits

The objective of the standards revisions is to develop more cost-effective standards. Employers will gain the advantage of choosing the form of compliance that best suits their particular needs. No estimates of the amount of these cost reductions are possible until the proposed revisions are more fully defined.

Related Regulations and Actions

Internal: Following this action, OSHA intends to revise its standards for walking and working surfaces in the maritime industries (29 CFR Parts 1915, 1916, 1917, and 1918). The agricultural standards (29 CFR Part 1928) do not need revision at this time.

External: Publications by the American Society of Testing and Materials, the American National Standards Institute, and the American Society of Civil Engineers contain or soon will contain related voluntary standards for many of the products and installations that this proposal addresses. OSHA has shared its research information with all of the affected standards development groups.

Government Collaboration

OSHA has worked and is continuing to work with the National Bureau of Standards in the Department of Commerce to develop safety requirements for scaffolding, guardrails, and safety belts. The Consumer Product Safety Commission and OSHA have been working together to establish satisfactory ladder performance standards.

The Coast Guard is also developing standards for maritime vessels and oil drilling platforms on the Outer Continental Shelf, where hazards exist that are comparable to those addressed in this rulemaking. OSHA will coordinate this rulemaking with the Coast Guard's action in these areas.

Timetable

NPRM—2nd Quarter 1982.
Regulatory Impact Analysis—Accompanying NPRM.
Public Hearings—In at least three cities. Dates to be determined.
Public Comment Period—120 days after NPRM.
Final Rule—To be determined.
Final Rule Effective—To be determined.
Regulatory Flexibility Analysis—To be determined.

Available Documents

ANPRM–40 FR 17160, April 23, 1976. Comments and transcripts from town meetings, which were held on June 8–10, 1976, in San Diego, California; June 15–17, 1976, in Rosemont, Illinois; June 22–24, 1976, in New Orleans, Louisiana; and June 29–July 1, 1976, in New York, New York. These documents are available for review and copying at the OSHA Technical Data Center, Room S–6212, Second Street and Constitution Avenue, N.W., Washington, DC 20210.

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DOL-OSHA

Respirator Fit Testing Requirements of the Lead Standard (29 CFR 1910.1025(f)(3)(ii); Revision)

Legal Authority

The Occupational Safety and Health Act of 1970, 29 U.S.C. 655 *et seq.*

Reason for Including This Entry

This Occupational Safety and Health Administration (OSHA) will review this regulation in view of new scientific evidence suggesting that lower cost qualitative respirator fit testing (QLFT) may be adequate for assuring effective respiratory protection for employees exposed to lead. This issue has generated considerable controversy and may significantly affect the general use of respiratory protective equipment.

Statement of Problem

On November 13, 1978, OSHA promulgated a standard regulating occupational exposure to lead (43 FR 52952), pursuant to section 6(b) of the Occupational Safety and Health (OSH) Act. The standard requires employers to provide employees with respirators where engineering and work practice controls do not reduce employee exposure below the permissible exposure limit of 50 $\mu g/m^3$ (micrograms of lead per cubic meter of air). Respirators are the primary means of protecting most of the 100,000 employees overexposed to lead under the rule because the engineering controls and work practice requirement is to be phased in over periods extending up to 10 years. In order to help ensure that respirators will provide employees with the necessary protection, the standard requires employers periodically to perform quantitative face fit tests (QNFT) on all users of negative pressure respirators, which are those respirators that depend on the user's inhalation to draw air into the mask.

QNFT is a method for numerically measuring any leakage of the seal between the respirator facepiece and the wearer's face. The fit test is used to determine whether the respirator assigned to the employee provides the protection factor specified in the lead standard's Respirator Selection Table, 29 CFR 1910.1925(f)(3)(ii). OSHA chose to require QNFT rather than qualitative fit testing, which relies upon the employee's subjective response to an irritant fume or a substance with a characteristic odor or taste, based on its conclusion that QNFT is more accurate.

Although expert testimony in the original record supported the decision to require QNFT, OSHA has concluded that a reexamination of the issue is warranted in the particular circumstances presented. First, there are several new and conflicting studies on the subject. One of the studies, performed at the Lawrence Livermore Laboratories by Hardis, *et al.*, was submitted by the 3M Company, along with its petition for stay and reconsideration of the requirement for QNFT, to support the contention that QLFT is essentially equivalent to QNFT. Another study, performed by Dr. Nelson

Leidel at Harvard University, concluded that QLFT is less accurate than QNFT in measuring the adequacy of the fit of a respirator. OSHA has concluded that these studies should be subjected to close scrutiny in a public proceeding. This will permit the Agency to resolve, on the basis of the best available evidence, the question of which type of fit testing should be required. Moreover, additional scientific studies on this issue by governmental or private organizations may well be completed in the near future and may shed additional light on this issue.

Second, reevaluation of the QNFT requirement is also appropriate because preliminary results of a study by the National Cancer Institute suggested that substance that is used in one type of QNFT instrumentation, di-2-ethyl hexyl phthalate (DEHP), may be a potential carcinogen. Although OSHA's preliminary assessment is that feasible substitutes for DEHP exist, OSHA has concluded that this issue should be fully discussed in a public forum. Moreover, OSHA is concerned that, because the regulation does not preclude the use of DEHP, employers may continue to expose their employees to this substance. Thus, even if it is ultimately determined that QNFT alone should be required under some conditions, the question of whether to permit the continued use of DEHP must also be resolved.

OSHA will announce its intention to conduct rulemaking, pursuant to § 6(b) of the Occupational Safety and Health Act, that will include consideration of QNFT and QLFT as part of a general revision of the respirator protection provisions in 29 CFR 1910.134 and the other general respiratory protection standards that apply to all users of respirators in general industry, construction, and maritime industries. Whatever the ultimate outcome of the planned rulemaking on 29 CFR 1910.134, including consideration of the merits of QNFT versus QLFT, OSHA has decided that it may be inappropriate under the lead standard to require employers to conduct QNFT pending completion of that rulemaking proceeding. QNFT is more expensive than QLFT because it requires sophisticated equipment costing several thousand dollars and more highly trained operators. Therefore, the Agency believes that this burden should not be borne by employers unless and until the need for QNFT has been established on the basis of a more complete evidentiary record. Moreover, that Agency believes it is inappropriate to expose employees to the health hazard of DEHP, which the present QNFT standard may inadvertently be encouraging, unless it can be determined that (1) the health risk presented by DEHP is minimal, or (2) that feasible substitutes to DEHP exist.

Thus, the Agency has proposed to permit alternatives to QNFT pending completion of the general § 6(b) rulemaking. However, OSHA believes that the qualitative fit testing that employers may use during this interim period must meet certain requirements. There are several different types of QLFT, which vary in sensitivity and reliability depending on how the tests are performed. For example, many types of QLFT depend on the user's detection of the odor or taste of substances, such as isoamyl acetate or saccharin, to determine whether the respirator fits properly. Because each individual's sense of smell or taste has a different threshold, some employees may falsely "pass" QLFT (i.e., not smell or taste the test agent while wearing the respirator) merely because they have high detection thresholds. For this reason, unless employees are prescreened to ensure that they can detect the test agent at the tested concentrations, the results of the QLFT cannot be considered reliable. Similarly, if the airborne concentration of the test agent is too low when the respirator wearer is being tested, the wearer may falsely pass the test simply because an insufficient amount of the test agent was present for the wearer to detect it.

Because of these considerations, OSHA proposes to permit the use of QLFT as an alternative to QNFT only if the employer follows strict protocols that are designed to increase the accuracy of these tests (see 46 FR 27358, May 19, 1981).

Alternatives Under Consideration

OSHA will be considering the following alternatives:

(A) Retain the present standard that requires QNFT, as promulgated.

(B) Allow forms of QLFT to be used as an alternative to the presently required QNFT.

(C) Substitute QLFT for QNFT.

Summary of Benefits

Sectors Affected: Employers and employees in 56 industries using lead, primarily primary smelting and refining of lead (SIC Code 3332), copper (SIC Code 3331), zinc (SIC Code 3333), and precious metals (SIC Code 3339), secondary smelting and refining of lead and copper (SIC Code 3341), battery manufacture (SIC Code 3691), steel production (SIC Code 3312), shipbuilding and repairing (SIC Code 3731), non-ferrous foundries (SIC Code 3369), brass and bronze foundries (SIC Code 3362), pigments manufacture (SIC Code 2816), and scrap collection and processing (SIC Code 5093).

This review of the QNFT requirement focuses on the most effective way of testing respirators to ensure that the appropriate exposure level is reached in those work areas that require the use of respirators. Thus, the primary benefit of Alternative (A) is that QNFT provides the highest level of assurance that the respirator worn will provide the required level of protection and worker health. If Alternatives (B) and (C) can ensure this required level of protection, then their benefits will be the improvement in worker health from the reduced exposure to lead and the reductions in employer costs of compliance.

Summary of Costs

Sectors Affected: Manufacturers of QNFT equipment and employers and employees in 56 industries using lead, primarily primary smelting and refining of lead (SIC Code 3332), copper (SIC Code 3331), zinc (SIC Code 3333), and precious metals (SIC Code 3339), secondary smelting and refining of lead and copper (SIC Code 3341), battery manufacture (SIC Code 3691), steel production (SIC Code 3312), shipbuilding and repairing (SIC Code 3731), non-ferrous foundries (SIC Code 3369), brass and bronze foundries (SIC Code 3362), pigments manufacture (SIC Code 2816), and scrap collection and processing (SIC Code 5093).

The types of costs likely to be incurred under Alternative (A) are the continuance of the costs of QNFT—the training of personnel to administer the test, the testing apparatus, the cost of the testing medium, and the lost employee production time during the fit test. The types of costs likely to be incurred under Alternatives (B) and (C) are primarily the costs of QLFT—the training of personnel to administer the test, the testing apparatus, and the lost employee production time during the fit test. Evidence seems to indicate that none of these alternatives will have a major impact upon the economy as defined by Executive Order 12291.

Summary of Net Benefits

OSHA will evaluate the respirator fit testing requirements of the lead standard and alternatives to determine the least costly alternative consistent with the objectives of the OSH Act.

Related Regulations and Actions

Internal: 29 CFR 1910.134, Respiratory Protection. OSHA will also soon commence a separate proceeding on all the general respiratory protection standards—29 CFR 1910.134, 1926.103, 1915.82, 1916.82, 1917.82, and 1918.102.

External: 30 CFR Part 11, Respiratory Protective Devices; Test For Permissibility; Fees (MSHA–NIOSH). Twenty-two States have regulations similar to the OSHA lead regulation and to the above "internal" regulations.

Government Collaboration

None.

Timetable

ANPRM—None.
NPRM—46 FR 27358, May 19, 1981.
Public Hearing—September 22–23, 1981.
Public Comment Period—For NPRM: May 19, 1981 to August 4, 1981; post-hearing: September 24, 1981 to December 18, 1981.
Final Rule—Date to be determined.
Regulatory Impact Analysis—Date to be determined.
Regulatory Flexibility Analysis—Date to be determined.

Available Documents

An extensive docket file (No. H–049A) for this proceeding is available for inspection and copying at the OSHA Docket Office, Room S6212, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, DC 20210, telephone (202) 523–7894.

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DOL–OSHA

Respiratory Protection (29 CFR 1910.134, 29 CFR 1926.103, 29 CFR 1915.82, 29 CFR 1916.82, 29 CFR 1917.82, and 29 CFR 1918.102; Revision)

Legal Authority

The Occupational Safety and Health Act of 1970, 29 U.S.C. 655 *et seq.*

Reason for Including This Entry

Since the Occupational Safety and Health Administration (OSHA) promulgated the existing standards, the field of industrial repiratory protection has advanced significantly and the demands on respiratory protection have increased substantially. OSHA has included this entry because of the need to revise outdated regulations, especially in view of the fact that for many workers respirators will be the only protection available for several years. Any changes to these standards could have a significant impact on compliance costs and affect a very large number of workers and industries.

Statement of Problem

Many thousands of employees are exposed to unhealthy levels of toxic materials in the workplace and must wear respirators to protect themselves. The current regulations governing the use of respirators have been in effect since 1971 or earlier. The OSHA general industry standard, 29 CFR 1910.134, was adopted from a national consensus standard (American National Standard Institute (ANSI) Z88.2–1969, Practices for Respiratory Protection). The OSHA construction industry standard (29 CFR 1926.103) was promulgated in April 1971. The OSHA maritime standards (29 CFR 1915.82, 1916.82, 1917.82, and 1918.102) were promulgated in the 1960s.

Since the promulgation of these regulations, the field of industrial respiratory protection has advanced significantly. Qualitative fit testing (QLFT) has been used for many years to check the adequacy of fit of a respirator by relying on the subjective response of the wearer in detecting an odor or irritation from an airborne chemical introduced into the air near the respirator. Newer, improved methods of qualitative fit testing are now available. A newer method of respirator fit testing, called quantitative fit testing (QNFT), has also been developed. Quantitative fit testing measures the fit of a respirator by actually measuring and comparing the contaminant level inside and outside of the respirator facepiece. In addition, the concept of assigned protection factors, a numerical indication of the effectiveness of a respirator, has become firmly established. Finally, the consensus of industry concerning what constitutes a reasonable, effective respirator program has changed, as demonstrated by the recent issuance of a revised edition of ANSI Z88.2. The new edition is an extensive revision and incorporates the following:

- Oxygen deficiency is more thoroughly discussed.
- QNFT is now included and described.
- QLFT is more fully described.
- The concept of protection factors is introduced.
- Higher protection factors are assigned when quantitative fit testing is used.
- The section on respirator selection is expanded and now includes fit testing.
- The special problems section now includes a discussion of respirator use in confined spaces.

Besides these developments, the demands on respiratory protection have also increased substantially since 1971. Levels of airborne contaminants allowed by recent OSHA health standards, such as arsenic, lead, and cotton dust, are substantially lower than those levels permitted by previous standards. Levels of contaminants considered acceptable by non-regulatory authorities, such as the American Conference of Governmental Industrial Hygienists (ACGIH), have been lowered significantly for a great many substances. Providing respiratory protection against known or suspected carcinogens has become much more difficult and complex as more substances have been identified as carcinogens and as the degree of protection expected by workers, their families, and the public has increased.

Recent OSHA health standards have imposed respirator-related requirements not found in 29 CFR 1910.134. (See 1910.1018(h), arsenic; 1910.1025(f), lead; 1910.1029(g), coke oven emissions; and 1910.1043(f), cotton dust.) These requirements include the following:

- Quantitative fit tests have been required both annually and semiannually.
- Employees are to be given powered air purifying respirators (PAPRs) upon request.
- Employees may change the filter elements of a respirator whenever an increase in breathing resistance is detected.
- Employees are permitted time during working hours to wash their faces and respirator facepieces to prevent skin irritation associated with using respirators.
- Employers must provide respirators that exhibit minimum facepiece leakage.
- Employers must refer to a physician trained in pulmonary medicine any employee who exhibits difficulty in breathing either at fit testing or during routine respirator use.

A multiplicity of studies and reports provides more extensive background information than has previously existed. In addition, developments in microprocessor and other new technologies have made it possible to develop respirators with warning devices to indicate whether the

respirator is providing appropriate protection while in use, and communication equipment so that employees can warn each other of safety hazards and coordinate their work activities in a safe manner. Improvements in cartridge technology may permit development of respirators for protection from chemicals for which there are not now any approved respirators. Further developments in PAPRs may permit their broader use to reduce the fatigue factors, skin irritation problems, and breathing resistance difficulties sometimes created by negative pressure respirators. These possible improvements when taken together would make it possible to have a more effective respirator program.

Since current respirator standards are based on older technologies, respirator suppliers have been inhibited in developing improved respirators that do not fit into existing categories or that provide protection from chemicals not included in present MSHA–NIOSH approval criteria because of the time period involved from respirator development to ultimate approval.

OSHA has found signficant disagreement among respirator users and manufacturers as to the relative merits of many of the technical issues involved. In view of the potentially significant cost differences between respirator programs and engineering controls as well as the large number of workers and industries affected, OSHA believes that current standards related to respiratory protection should be reexamined in light of current knowledge and accepted industrial hygiene practice. If OSHA does not respond to this situtation, many employees may be overexposed needlessly to a variety of airborne toxic materials because of inappropriate respirator programs. Such exposure could result in severe illness and disability. Alternatively, obsolete regulation may unnecessarily limit an employer's options in providing respiratory protection or restrict innovation in respiratory protection devices. Inadequate regulations may also impose costs that are not always required by actual circumstances.

Alternatives Under Consideration

Alternatives will eventually have to be considered for each individual provision of the standards. These cannot be proposed until after further technical input is received resulting from publication of the ANPRM.

Summary of Benefits

Sectors Affected: All firms in manufacturing, construction, and water transportation industries in which workers are exposed to hazardous substances; producers of engineering control equipment; producers of safety appliances and equipment; and employees of those firms.

The ANPRM will elicit information concerning the relative capabilities of respirators (and respiratory protection programs) and alternatives to reduce employee exposure to hazardous substances. This information is necessary before we can develop any benefit estimates. If OSHA modifies the standards, then firms that are currently using respirators, as well as firms that may use them in the future, will benefit from the increased efficiency arising from a more advanced respirator technology. Employees will benefit by being provided more efficient respirators that afford greater protection to hazardous substances in the workplace.

Summary of Costs

Sectors Affected: All firms in manufacturing, construction, and water transportation industries in which workers are exposed to hazardous substances; producers of engineering control equipment; and producers of safety appliances and equipment.

Uncertainty about the adequacy of respiratory protection programs has caused OSHA and other regulatory agencies and institutions to limit respirator use to situations where all other methods of protection are infeasible. Advancing respirator technology may now warrant revised regulations for the use of respirators. In situations where respirators are adequate and more cost effective, employers may reduce operating costs. Other situations may exist that require more stringent rules for respiratory protection programs, which would increase operating costs. OSHA will evaluate this information and provide estimates of regulatory impacts before changes to the standards are proposed.

Summary of Net Benefits

Benefits will accrue in the form of reduced expenditures for engineering controls, administrative controls, and work practices in those situations where respirators can adequately protect employees and are more cost effective. Careful trade-off analysis will be required to determine where these net benefits can be obtained.

Related Regulations and Actions

Internal: The following sections of 29 CFR Part 1910, Subpart Z, Air Contaminants: .1001, Asbestos; .1017, Vinyl Chloride; .1018, Inorganic Arsenic; .1025, Lead; .1029, Coke Oven Emissions; .1043, Cotton Dust; .1044, 1,2-dibromo-3-chloropropane; .1045, Acrylonitrile.

External: 30 CFR Part 11, Respiratory Protective Devices; Tests For Permissibility; Fees (MSHA-NIOSH).

Government Collaboration

None.

Timetable

ANPRM—January 1982.

Public Comment Period—To be determined.

Regulatory Impact Analysis—To be determined.

Regulatory Flexibility Analysis—To be determined.

All other steps in the rulemaking process are undecided at this time and will depend on decisions made after analysis of the public comment.

Available Documents

A docket file (No. H–049) is available for inspection and copying in the OSHA Docket Office, Room S6212, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, DC 20210, telephone (202) 523–7894.

A related file concerning qualitative respirator fit testing is also available at the OSHA Docket Office in docket file H–049A.

The public comments submitted in response to the ANPRM for this project will become part of docket file No. H–049.

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DOL–OSHA

Standard for Employee Exposures to Toxic Substances in Laboratories (29 CFR Part 1910; New)

Legal Authority

Occupational Safety and Health Act of 1970, 29 U.S.C. 655.

Reason for Including This Entry

The Occupational Safety and Health Administration (OSHA) believes this regulation will be of particular interest to academic institutions, industries, and other organizations with laboratory employees because it will provide many laboratories with a more economical, feasible, and protective alternative to implementation of the general industry standards for toxic substances in laboratories.

Statement of Problem

OSHA has designed most exposure standards for general industry so as to ensure protection of employees who are engaged in industrial production or service activities involving exposure to only a few toxic chemicals during relatively standardized, continuous, or repetitive processes. OSHA has not exempted laboratories from these general industry standards. Currently, OSHA does not have reliable estimates of the number of laboratory employees that will be affected by this proposed action. However, many laboratory employers, employees, and supervisors have stated that the general industry standards are inappropriate for most laboratories because of the large number of toxic chemicals used in the typical laboratory, their predominantly short-term and low-level usage, and the protective equipment and careful, scientific procedures routinely used in laboratories. Laboratory personnel also have contended that these procedures and equipment, which laboratory professionals choose to fit the specific facility and task, are more effective, feasible, and economical for laboratory work than any exposure standard designed for industrial workplaces could be.

OSHA agrees that, with regard to health hazards, there are significant differences between work with toxic chemicals in general industry and in laboratories, especially when the laboratory employees are engaged in activities that produce frequently changing or unpredictable exposure conditions. For such cases, a general laboratory standard would be more feasible and more protective than implementation of the numerous OSHA substance-specific health standards. Accordingly, OSHA has been considering alternative regulatory approaches toward the protection of laboratory employees from toxic substance exposures.

If OSHA takes no action to respond to this problem, laboratories will continue to be required to comply with the substance-specific general industry standards. An alternative approach, based on general chemical hygiene, may provide better protection in a more cost-effective manner.

Alternatives Under Consideration

On April 14, 1981 (46 FR 21765), OSHA published a request for comment and information regarding this problem and the suggested alternative regulatory actions. The following alternatives are based on the comments submitted and are the major alternatives that OSHA will consider:

(A) Maintain the current regulations. The major disadvantage of this option would be continued costs of implementation in laboratories of health standards requirements that are designed for industrial workplaces and that in laboratories may be relatively ineffective and wasteful of resources.

(B) Develop a general laboratory standard, requiring that acceptable work practices and other protective measures be used during all work with toxic chemicals. This option would have the advantages of providing a laboratory standard designed for laboratories, rather than for industrial workplaces, and of providing greater protection for laboratory workers than now exists because it would apply not only to OSHA-regulated substances (see Alternative (C)) but to all toxic chemicals. It would have two major disadvantages: (1) because of the great variability in laboratories and in procedures carried out in laboratories, it may be difficult or impossible to develop comprehensive mandatory procedures and specifications of consistent applicability and effectiveness; and (2) the requirement that the standard be implemented for work with all toxic substances would extend far beyond the scope of existing OSHA health standards, possibly necessitating lengthy rulemaking proceedings to establish that toxic chemicals can and should be regulated as a class, rather than on a substance-by-substance basis.

(C) Continue to require laboratories to meet the permissible exposure limits (PELs) specified by existing standards (29 CFR 1910.1000–1910.1045) but relieve them of most other requirements of existing standards, allowing each employer to decide how to meet the PELs. This option would include a requirement that a Chemical Hygiene Plan (designed by the affected organization to ensure that it would not exceed PELs) be developed and implemented. However, laboratory work practice and facility guidelines, based on general scientific consensus, would be published by OSHA as non-mandatory recommendations rather than as standards. The advantage of this option is that it would retain mandatory requirements for control of employee exposures, but would eliminate the necessity for compliance with inappropriate requirements, allowing designated responsible individuals to decide how best to meet PELs in each particular case.

(D) Totally relieve laboratories of the obligation to comply with general industry standards, relying on voluntary compliance with good work practices that OSHA would publish as non-mandatory guidelines. The advantage of this option would be its simplicity and convenience for all concerned. The disadvantage would be that mandatory protection against overexposures would be diminished for laboratory employees and enforcement would be difficult for OSHA.

All of these alternatives are currently under OSHA review.

Summary of Benefits

Sectors Affected: All establishments that use OSHA-related chemicals in laboratories and that are subject to OSHA regulations (29 CFR 1910.1000–1910.1045).

If Alternative (C) is chosen, OSHA anticipates that the regulation would be adopted for most eligible laboratories as more cost effective and more feasible than the general industry standards it would supersede. At the same time, since acceptable exposure levels would not be changed, existing levels of employee protection would be maintained. Indeed, many of those who submitted comments stated that health protection would actually be enhanced by the implementation of such a regulation, because each facility would establish effective chemical hygiene precautions based upon the particular circumstances at that facility. As an incidental health-protective benefit, these precautions would also improve exposure control for other laboratory chemicals that are not regulated by OSHA standards.

Some industrial firms with existing programs for compliance with OSHA's general industry standards in their operations, including laboratories, would probably choose to continue their present program instead of adopting a new regulation based on Alternative (C) and, therefore, would be unaffected by the regulation.

OSHA believes that there are many academic and clinical laboratories (among others) in which the general industry standards have not been implemented because the employers are

not subject to OSHA (the Occupational Safety and Health Act defines which employers are affected), because the laboratory supervisors are not aware that the current regulations are applicable to their workplaces, or because the requirements are considered impractical for laboratories. We believe that many of these laboratories will voluntarily institute measures needed for compliance if we choose Alternative (C). This will have the beneficial effect of improving chemical hygiene precautions for increased numbers of employees.

If OSHA were to exempt laboratories from the general industry exposure standards and to issue non-mandatory guidelines for laboratory chemical hygiene (Alternative (D)), employers and laboratory supervisors would benefit from the freedom to define their own chemical hygiene criteria and standards. Employees would benefit only to the extent that employers and managers voluntarily improved any unsatisfactory chemical hygiene conditions.

If we choose Alternative (B), a general laboratory standard for work with all toxic chemicals, specified protective measures for virtually all laboratory work with chemicals would be required. If this alternative were to achieve general compliance, laboratory employees would benefit from mandatory protection against overexposure to a wider spectrum of chemicals than for any of the other alternatives.

If we choose to take no action (Alternative (A)), the current standard would apply to laboratories and their employees.

Whether Alternative (B), (C), or (D) is chosen, in a particular laboratory, employees and employers will begin to realize benefits as soon as they begin to implement the regulation. For all three alternatives, a significant benefit would be expected because of a reduction in instrumental monitoring requirements. In each case, the regulation would recognize that with the use of standard recommended laboratory precautions, reasonable assurance of non-violation of PELs is possible without the routine use of instrumental monitoring. Reduced costs would also result from reduction of medical surveillance requirements for some chemicals.

Summary of Costs

Sectors Affected: All establishments that use OSHA-regulated chemicals in laboratories and that are subject to OSHA regulations.

We expect that direct costs of compliance with the intended regulation (Alternative (B), (C), or (D)) will be less than the costs of compliance with the existing standards.

To the extent that laboratories not now complying with existing standards undertake the expenditures needed for compliance with the new standard, additional costs will be incurred. The costs of such compliance measures have not been estimated.

However, OSHA expects that the cost to laboratories will not have a great impact because it intends to model the regulation (whether Alternative (B), (C), or (D)) largely on recently published guidelines, prepared by experts from the scientific community. Such guidelines are already being implemented in some laboratories. However, OSHA believes it is important to issue a regulation in order to relieve laboratories of the requirement for complying with the general industry standards, to provide guidance for improvement of laboratory chemical hygiene programs, and, in the case of Alternative (B) or (C), to require improvements by those laboratory employers who would not otherwise adopt satisfactory programs.

Summary of Net Benefits

OSHA will evaluate the laboratory standard to determine the least costly alternative consistent with the objectives of the OSH Act.

Related Regulations and Actions

Internal: None.

External: The National Institutes of Health (NIH) have recently published guidelines for laboratory use of chemical carcinogens in NIH laboratories. These guidelines are closely related to draft guidelines prepared for the Department of Health and Human Services (HHS) Committee To Coordinate Environmental and Related Programs. They are also consistent with "Prudent Practices for Handling Hazardous Chemicals in Laboratories," recently published by the National Research Council. Each of these guidelines documents, recommends, and specifies prudent general work practices rather than substance-specific regulations as the most protective approach to laboratory use of toxic chemicals.

Government Collaboration

The National Institute for Occupational Safety and Health (NIOSH) assigned knowledgeable representatives to assist with this project as needed. Representatives of the National Institutes of Health, National Science Foundation, Office of Science and Technology Policy, and National Academy of Sciences were active as members of an informal group that met to consider the problems that OSHA's general industry standards may pose for laboratories. This group, which also included representatives from universities, the chemical industry, and professional associations, has provided active assistance to OSHA during its consideration of possible regulatory actions. There has been mutual consultation with individuals at the Environmental Protection Agency who are concerned with the impact on laboratories of hazardous waste disposal regulations.

Timetable

Request for Comments and Information—46 FR 21785, April 14, 1981.
ANPRM—Date to be determined.
NPRM—Date to be determined.
Public Comment Period—Date to be determined.
Public Hearing—Date to be determined.
Final Rule—Date to be determined.
Regulatory Impact Analysis (if required)—Date to be determined.
Regulatory Flexibility Analysis (if required)—Date to be determined.

Available Documents

"Draft Guidelines for the Laboratory Use of Chemical Carcinogens," Department of Health and Human Services (HHS) Committee To Coordinate Environmental and Related Programs, March 1980.

"Prudent Practices for Handling Hazardous Chemicals in Laboratories," National Academy Press, 1981.

"NIH Guidelines for the Laboratory Use of Chemical Carcinogens," HHS, 1981.

Comments in response to 46 FR 21785, April 14, 1981 (Docket No. H–150), are available for inspection and copying; Room S–6212, U.S. Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue, N.W., Washington, DC 20210.

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DOL–OSHA

Standard for Occupational Exposure to Asbestos (29 CFR 1910.1001; Revision)

Legal Authority

The Occupational Safety and Health Act of 1970, 29 U.S.C. 655.

Reason for Including This Entry

The Occupational Safety and Health Administration (OSHA) is currently evaluating the occupational health risks associated with exposure to asbestos. OSHA is also assessing the expected costs and feasibility of achieving alternative reduced exposure levels. The research findings may lead to a revision of the current OSHA standard. Preliminary estimates prepared for OSHA indicate that the current standard may impose annual costs of over $100 million.

Statement of Problem

A preliminary report prepared for OSHA indicated that from 2.3 million to 2.6 million employees have some degree of occupational exposure to asbestos. Of this total, 180,000 to 400,000 are employed in the construction industry and the remaining 2.1 million are in general industry. A significant number of these employees are exposed to airborne asbestos levels at the existing permissible exposure limit of 2 million fibers per cubic meter (fibers/m^3) or higher. This level was established by OSHA for the purpose of reducing the incidence of asbestosis (a diffuse, non-malignant scarring of the lungs).

The National Institute for Occupational Safety and Health (NIOSH) and other sources have provided data to OSHA indicating that the present OSHA exposure limit may be inadequate to protect workers from asbestos-related diseases. Exposure to asbestos can cause asbestosis, lung cancer, and mesothelioma (a cancer of the chest and abdominal cavity linings of exposed workers). Recent epidemiologic evidence indicates that these diseases may be induced at very low levels of exposure.

OSHA is developing a proposal to revise the current standard for occupational exposure to asbestos. This may include a reevaluation of the current permissible exposure limit (PEL) and control requirements representing the most cost effective way for industries to achieve the PEL. The current OSHA standard includes provisions for engineering and administrative controls, work practices, and procedures for medical surveillance and monitoring. The effectiveness of these provisions and others will be evaluated.

A preliminary quantitative risk assessment performed by OSHA has indicated that a significant number of workers (8 to 260 per 1,000 workers) would develop cancer in the lung following a working lifetime exposure to asbestos at the current OSHA permissible exposure limit. A substantial reduction of lung cancer risk may be achieved by lowering the current PEL to either 500,000 fiber/m^3 or 100,000 fiber/m^3. The estimated ranges of the lifetime risk at these two levels are 2 to 75 workers per 1,000 and 0.4 to 15 workers per 1,000, respectively (versus 8 to 260 per 1,000 at the current level).

Alternatives Under Consideration

The Agency is considering a range of alternative PELs as well as possible revisions to current provisions for engineering and work practice controls, hygiene facilities, medical surveillance, respirators, and training. We will consider such revisions both for the alternative PEL and for the current OSHA standard.

Some scientists argue that all commercially available forms of asbestos are cancer-causing agents and therefore should be regulated equally. Others believe that different asbestos forms display varying degrees of toxicity and that OSHA should develop separate standards based on data associated with each specific asbestos mineral. The stringency of a regulation and hence the cost or compliance would then vary for employers using or producing different asbestos forms. Non-uniform treatment may encourage substitution of less toxic forms for more toxic forms of asbestos. This subsitution may change the exposure levels for workers exposed to the asbestos forms. Hence, the long-term impact of a non-uniform treatment on the projected illnessess and the costs of compliance must be evaluated. Experimental data on animals suggest that all forms of asbestos present a health hazard. OSHA will evaluate the relative toxicity of asbestos forms and the regulatory option of establishing different standards for different forms of asbestos.

Still another approach is to establish regulations for asbestos on the basis of the effectiveness and 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, such as construction versus general industry.

Those States that have assumed responsibility from OSHA for conducting occupational health and safety programs could act to revise their asbestos standards without Federal action. However, the majority of States are without their own program, and hence a Federal action may be necessary.

Summary of Benefits

Sectors Affected: Workers and establishments in manufacturing, retail trade, construction, and service industries that produce or use asbestos-containing products; users of these products; establishments manufacturing substitutes for asbestos or asbestos-containing products; and the general public.

Affected industries include the primary manufacturers of asbestos products; secondary fabricators in the automobile aftermarket, shipbuilding and repair, and elsewhere; and the construction industry. The primary manufacturers are larely grouped in Standard Industrial Classification (SIC) Code 3292 (asbestos products), and many of these establishments also perform some secondary fabrication. Shipbuilding and repair is included in SIC Code 3731. The automobile aftermarket includes establishments that repair, resurface, and repackage such friction parts as brake shoes and clutch faces. The establishments involved are located in SIC Code 55 (automotive dealers and gasoline stations), SIC Code 3714 (motor vehicle parts and repair), and SIC Codes 7538 and 7539 (general automotive repair shops, and automotive repair shops not elsewhere classified). Other secondary fabricators are located in SIC Code 3293 (gaskets, packing, and sealing devices), and in many other SIC Codes too numerous to list here. Construction (SIC Codes 15–17) will also be affected where asbestos-containing products are used, such as roofing felt, asbestos-cement pipe, asbestos-cement siding, and some forms of floor tile.

Establishments that produce substitutes for asbestos or asbestos-containing products will also be affected. Although a complete enumeration of such substitutes and their respective SIC Codes is not included here, a partial listing is as follows: substitutes for asbestos itself, in various uses, including fibrous glass (SIC Code 322), mica (SIC Code 329), graphite-carbon fibers (SIC Code 329), nylon (SIC Code 228), polypropylene (SIC Code 282), and others. A large number of substitutes also exist for asbestos-containing products. Iron or polyvinyl chloride pipe (produced in SIC Codes 33 and 307) can be substituted for

asbestos-cement pipe. Substitutes for asbestos-cement siding include vinyl, aluminum, and wood siding: substitutes for vinyl-asbestos floor tile include pure vinyl tile, carpeting, and hardwood flooring.

The potential benefits of implementing more cost effective methods of controlling asbestos at the level specified by the current standard would be the reduction in compliance cost for the affected firms.

The direct benefit we expect from controlling exposure to asbestos is a reduction in the incidence and prevalence of the health effects. Such reductions in mortality and morbidity will result in reduced pain and suffering for employees and in savings in medical expenses and lost output that would otherwise occur.

Indirect benefits from controlling asbestos exposures to either of the alternative levels will include reductions in the burden placed on such public support programs as Medicare and Medicaid, Welfare, and Worker's Compensation. In addition, improved worker health and safer working conditions are likely to reduce employee turnover and raise labor productivity. Finally, further controlling asbestos exposures will stimulate a search for asbestos substitutes and for alternatives to asbestos-containing products, and it will induce employers to innovate improved control technologies. With less asbestos and fewer asbestos products used, consumers will benefit since incidental asbestos exposures will decline.

Summary of Costs

Sectors Affected: Workers and establishments in manufacturing, retail trade, construction, and service industries that produce or use asbestos-containing products; and consumers of these products.

The costs of the regulatory options being considered are largely the capital and operating expenses that the regulated firms will incur in order to comply. Because these cost increases may raise the prices of asbestos-containing products, the quantity demanded of such products may decline. Higher prices of asbestos products would result in a switch to presently unregulated substitutes. To the extent that some of the substitutes have adverse health or safety effects, these will also be costs of the regulation. The extent of this substitution is under investigation and quantitative estimates are presently unavailable.

A preliminary evaluation of the potential impact on industry of regulation of asbestos was reported in a previous *Calendar of Federal Regulations* [45 FR 36971, May 30, 1980]. This evaluation is currently being updated by OSHA.

Indirect costs attributable to additional regulation hinge on the estimated impact of the use of substitute products and their likely consequences for health, safety, and product quality. Costs associated with the most stringent alternative could result in a significant use of substitutes for asbestos fibers and asbestos-containing products. The extent of this substitution is under investigation by OSHA, and quantitative estimates are presently unavailable. We are also evaluating the health and safety effects of likely substitutes, but, again, no qualitative or quantitive estimates can be ventured at this time.

Summary of Net Benefits

OSHA will evaluate the current asbestos standard and alternative asbestos standards to determine the least costly alternative consistent with the objectives of the Occupational Safety and Health Act.

Related Regulations and Actions

Internal: We are planning to modify the existing OSHA standard for asbestos, found at 29 CFR 1910.1001 of the Agency's General Industry Standards, which specifies an 8-hour time-weighted average of 2,000,000 fibers/m^3. Other provisions of the standard address monitoring, medical surveillance, training, respirators, recordkeeping, protective clothing, and methods of compliance.

On October 7, 1975, OSHA published a notice proposing to revise the current asbestos standard and to reduce the PEL to 500,000 fibers/m^3 [40 FR 3392]. We are performing analyses of the economic and technological impact of that and alternative exposure levels.

External: Regulatory measures are under consideration by the Environmental Protection Agency (EPA) and the Consumer Product Safety Commission (CPSC). EPA/CPSC published an ANPRM for asbestos use in October 1979. EPA currently has a national emission standard for asbestos (38 FR 8820), and CPSC regulates uses of asbestos in certain consumer products.

Government Collaboration

An OSHA/Environmental Protection Agency/Consumer Product Safety Commission task group will coordinate development of an appropriate regulatory response to possible health hazards associated with asbestos. Information-sharing activities with other governmental agencies, such as the National Institute for Occupational Safety and Health, Food and Drug Administration, and Department of Agriculture, are underway.

Timetable

ANPRM—Date to be determined.
NPRM—Date to be determined.
Final Rule—Date to be determined.
Final Rule Effective—Date to be determined.
Public Hearing—Date to be determined.
Public Comment Period—Date to be determined.
Regulatory Impact Analysis—Date to be determined.
Regulatory Flexibility Analysis—Date to be determined.

Available Documents

"Occupational Exposure to Asbestos," Notice of Proposed Rulemaking (40 FR 47652), and comments received in response to the NPRM (OSHA Docket No. H–033).

"Workplace Exposure to Asbestos: Review and Recommendations," Department of Health and Human Services Publication No. 81–103, NIOSH–OSHA Asbestos Work Group, April 1980.

"Criteria for a Recommended Standard . . . Occupational Exposure to Asbestos" (NIOSH-HEW, 1975); updated Criteria Document (1976).

These documents are available by mail and for review and copying at the OSHA Technical Data Center, Room S–6212, 200 Constitution Avenue, N.W., Washington, DC 20210. A fee is usually charged for copies of these documents.

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DOL–OSHA

Standard for Occupational Exposure to Ethylene Oxide (29 CFR 1910.1000, Table Z–1; Revision)

Legal Authority

The Occupational Safety and Health Act of 1970, 29 U.S.C. 655.

Reason for Including This Entry

The Occupational Safety and Health Administration (OSHA) believes reduction of the present exposure limit may be necessary in order to adequately protect workers from the carcinogenic

risks and other adverse health effects associated with exposure to ethylene oxide (EtO). OSHA believes that the existing EtO standard is an issue of great public interest.

Statement of Problem

Exposure to EtO can cause irritation of the eyes, skin, nose, throat, and lungs and can adversely affect the central nervous system. Recent epidemiologic and experimental evidence indicates that exposure to EtO may also result in carcinogenic, reproductive, and mutagenic effects. The National Institute for Occupational Safety and Health (NIOSH) and other sources have provided data to OSHA indicating that the present OSHA permissible exposure level (PEL) of 50 parts per million (ppm) parts of air may be inadequate to protect workers from ethylene oxide-related disease.

NIOSH estimates that approximately 144,000 workers may be exposed to EtO. The largest amounts of EtO are found in chemical plants where it is produced and used as a chemical intermediate. Because EtO is highly explosive and reactive, the processing equipment containing it in these plants generally consists of tightly closed and highly automated systems. The equipment is often located outdoors, and workers spend most of their work shift inside or around control rooms, away from the equipment. Samples collected by NIOSH in general process areas of six plants indicated that EtO concentrations were, with few exceptions, less than 1 ppm. The greatest potential for worker exposure probably occurs during loading or unloading of transport tanks, product sampling procedures, and equipment maintenance and repair.

OSHA is aware that there are certain activities, particularly in hospitals and in the manufacture of health care devices, in which EtO exposures of employees engaged in sterilizing equipment may exceed those of the chemical industry. However, under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.*, the Environmental Protection Agency (EPA) has responsibility for the registration, labeling, and application of pesticides containing EtO. These regulations cover persons engaged in the application of EtO for sterilization of equipment in hospitals and medical supply companies. Since EPA has regulated exposure to EtO in this context, OSHA, under § (4)(b)(1) of the Occupational Safety and Health Act (OSH Act), does not have jurisdiction over the working conditions of employees using EtO as a sterilant or fumigant. In addition, the limited data currently available to OSHA indicate that most hospitals have reduced exposures below an 8-hour time-weighted average (TWA) of 10 ppm during the sterilization of equipment. The data also suggest that the number of employees at any given hospital who may be involved in using EtO as a sterilant is very small and that their exposure is intermittent.

It should be noted here that, based on recent health data, several industrial users and producers have adopted internal company exposure limits well below OSHA's 50 ppm limit. For example, Exxon and the American Hospital Supply Corporation have adopted a policy to limit employee exposure to EtO to 10 ppm; Shell Chemical Division, Union Carbide, and Medtronic have adopted a 5 ppm limit; Dow Chemical and Celanese have established a limit of 3 ppm; Texaco has established a 2 ppm exposure limit; and Rohm & Haas and Johnson and Johnson have a 1 ppm limit.

Since the current OSHA standard appears to be inadequate, OSHA has decided to proceed with rulemaking under § 6(b) of the OSH Act to lower the PEL and to incorporate appropriate provisions for monitoring of exposed workers, medical surveillance, and other protective requirements.

Alternatives Under Consideration

The Agency is currently considering the necessity of lowering the existing PEL to alternative 8-hour TWAs of 0.5 ppm, 1 ppm, 5 ppm, and 10 ppm. The necessity of establishing a short-term, or ceiling, limit (a level above which employees may not be exposed for any period) is also under consideration. For each of these alternatives, OSHA is also considering the necessity of including other provisions for engineering and work practice controls, hygiene facilities, medical surveillance, respirators, training, etc.

Finally, we may establish new regulations for EtO, if necessary and appropriate, on the basis of the technological and economic feasibility of compliance for different industries. Specific requirements of a new standard may differ according to the feasibility of various control measures in different industries or processes.

Summary of Benefits

Sectors Affected: Workers and establishments in manufacturing and service industries that produce or use EtO-containing products and the general public.

Industries that this action could affect include: organic chemical manufacturers; metal products manufacturers; manufacturers who use EtO as an intermediate for producing chemical and EtO products, such as automotive antifreeze and cleaning agents. Users of these products also would be affected.

On a volume basis, EtO is used primarily as an intermediate in the production of several industrial products. The largest consumption of EtO is in the production of ethylene glycol for automotive antifreeze and as an intermediate for polyester fibers, films, and bottles. The second largest consumption is in production of nonionic surface-active agents for industrial applications and for heavy-duty home laundry detergents and dishwashing formulations. Production of glycol ethers (e.g., solvents for surface coatings) and ethanolamines (used in production of soaps, detergents, and textile chemicals) constitute the third and fourth largest uses, respectively.

The direct benefit we expect from controlling exposure to EtO is a reduction in the incidence and prevalence of adverse health effects. Such reductions in mortality and morbidity will result in reduced pain and suffering for employees and in savings in medical expenses and lost output that would otherwise occur.

Indirect benefits from controlling EtO exposures will include reductions in the burden placed on such public support programs as Medicare and Medicaid, Welfare, and Workers' Compensation. In addition, improved worker health and safer working conditions may reduce employee turnover and raise labor productivity.

Summary of Costs

Sectors Affected: Workers and establishments in manufacturing and service industries that produce or use EtO-containing products; retail and wholesale trade of EtO products; and consumers of these products.

The costs of the regulatory options OSHA is considering are largely the capital and operating expenses that the regulated firms will incur in order to comply. Because these cost increases may raise the prices of EtO-containing products, the quantity demanded of such products may decline. Higher prices of EtO products could result in a switch to presently unregulated substitutes. To the extent that some of the substitutes have adverse health or safety effects, these will also be costs of the regulation. The extent of this substitution is under investigation, and quantitative estimates are presently unavailable.

Summary of Net Benefits

OSHA will evaluate the proposed EtO standard to determine the least costly alternative consistent with the objectives of the OSH Act.

Related Regulations and Actions

Internal: None.

External: In 1979 the American Conference of Government Industrial Hygienists (ACGIH) published its intention to change its recommended threshold limit value (TLV) for EtO from 50 ppm to 10 ppm, and it did so in 1981. ACGIH's 1981 TLV publication also proposes to further lower the EtO limit from 10 ppm to 5 ppm.

On May 22, 1981, NIOSH released "Current Intelligence Bulletin No. 35" on EtO to disseminate recent information concerning the potential carcinogenic hazard of EtO to workers.

EPA is continuing to review the comments and rebuttals submitted in response to its January 27, 1978 notice on EtO (43 FR 3800).

In July 1980 the Food and Drug Administration, Department of Health and Human Services, completed its review of comments it received on proposed exposure limits for EtO and EtO residues and of the data and comments EPA received on their notice for EtO.

Government Collaboration

OSHA is a member of the Ethylene Oxide Interagency Science/Health Coordination Group, which is composed of representatives of the Consumer Product Safety Commission, the Environmental Protection Agency, the Food and Drug Administration, the Food Safety and Quality Service, and OSHA. This group convenes on a regular basis in an effort to coordinate regulation, research, and information concerning EtO.

Timetable

ANPRM—January 1982.
NPRM—Date to be determined.
Final Rule—Date to be determined.
Final Rule Effective—Date to be determined.
Public Hearing—Date to be determined.
Public Comment Period—Date to be determined.
Regulatory Impact Analysis—Date to be determined.
Regulatory Flexibility Analysis—Date to be determined.

Available Documents

TLV Airborne Contaminants Committee, "Threshold Limit Values for Chemical Substances in Workroom Air Adopted by ACGIH for 1981." American Conference of Governmental Industrial Hygienists, Cincinnati, Ohio, 1981.

NIOSH, "Current Intelligence Bulletin. Ethylene Oxide (EtO): Evidence of Carcinogenicity," May 22, 1981.

Agency Contact

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DOL-OSHA

Standard for Occupational Exposure to Lead (29 CFR 1910.1025; Revision)

Legal Authority

The Occupational Safety and Health Act of 1970, 29 U.S.C. 655.

Reason for Including This Entry

The Presidential Task Force on Regulatory Relief lists the current standard in its "Rules Designated for Postponement." When the Task Force requested information on burdensome regulations, the lead standard was one of those most frequently cited.

Statement of Problem

Lead is a toxic substance that can adversely affect the health of workers through inhibition of heme synthesis (the process of blood formation), damage to the central and peripheral nervous systems, and damage to the kidney. Children are especially susceptible to the toxic effects of lead, and the children of workers can be harmed at conception, in the uterus, and through lead contamination brought into the home from the worksite.

The current standard for occupational exposure to lead was promulgated by the Occupational Safety and Health Administration (OSHA) in 1978. This standard sets a permissible exposure limit (PEL) of 50 micrograms of lead per cubic meter ($\mu g/m^3$) of air as a time-weighted average (TWA). Other provisions include requirements for environmental and biological monitoring, medical surveillance, medical removal protection, employee education and training, hygiene facilities, and a compliance hierarchy that requires implementation of engineering and work practice controls to achieve the PEL without regard to the use of respirators.

The lead standard, as promulgated in 1978, is extremely controversial. Both industry and labor groups challenged some aspect of nearly every provision of the standard in court, and numerous groups have petitioned OSHA for review of this regulation. Information received in response to an ANPRM issued on April 21, 1981 (46 FR 22764) indicates that serious questions remain concerning the feasibility and cost effectiveness of the standard in certain industries. Because of these controversies, the Presidential Task Force on Regulatory Relief expects reconsideration of this standard.

The April ANPRM raised several issues but focused on the applicability of cost-benefit analysis in setting occupational health standards. This was in response to Executive Order 12291. On June 17, 1981, the Supreme Court, in its cotton dust decision, ruled that OSHA cannot perform a cost-benefit analysis for health standards because the Occupational Safety and Health (OSH) Act requires a feasibility analysis. OSHA will soon issue a second ANPRM on lead to state its intention to comply with this ruling.

One of the most costly aspects of the lead standard is the requirement that all covered industries must install engineering controls to achieve the 50 $\mu g/m^3$ PEL. Although the courts have upheld the other aspects of the standard, the U.S. Court of Appeals for the District of Columbia remanded this provision to the Agency for all but 10 of 56 affected industries on the grounds that OSHA had failed to demonstrate its feasibility. Since the issue of feasibility of the standard is presently in litigation, the probable consequences of taking no action at this time cannot be determined. If the court upholds the current standard, employers of approximately 100,000 workers now employed in areas where air lead levels exceed 50 $\mu g/m^3$ must install these engineering controls.

Alternatives Under Consideration

Based on data to be collected on technologic and economic feasibility and cost effectiveness, OSHA may decide to retain an implementation schedule requiring various sectors of the lead industry to comply with a single air PEL within set time frames (either the current 50 $\mu g/m^3$ or some other level). OSHA would extend the time required to achieve compliance where such an extension is warranted. Alternatively, OSHA may require compliance with an air PEL without specifying a hierarchy of controls that regulated firms must use to achieve this level.

If information we collect is sufficient to conclude that a single air PEL is not appropriate, OSHA may place a greater

degree of reliance on biological monitoring to measure compliance and deemphasize the lead-in-air requirements.

Because the uses of lead are diverse and the standard covers many compounds with different chemical and physical properties, OSHA anticipates that the final standard will probably encompass more than one of the alternatives listed. All alternatives are intended to provide cost savings to industry where health of workers is not jeopardized.

Summary of Benefits

Sectors Affected: Employers and employees in 56 industries using lead, especially primary smelting and refining of lead (SIC Code 3332), copper (3332), zinc (3333), and precious metals (3339), secondary smelting and refining of lead and copper (3341), battery manufacture (3691), steel production (3312), shipbuilding and repairing (3731), nonferrous foundries (3369), brass and bronze foundries (3362), pigments manufacture (2816), and scrap collection and processing (5093).

OSHA estimates that about 375,000 workers are exposed to airborne lead in excess of 30 $\mu g/m^3$ and that 100,000 of these workers are exposed above the 50 $\mu g/m^3$ PEL. The data indicate that even if workers are exposed to lead at the PEL, 30 percent will have blood lead levels in excess of 40 $\mu g/100g$ whole blood. OSHA has determined that this blood lead level is the lowest at which most adverse health effects have been observed. (Reproductive effects occur at lower blood lead levels.)

Because quantitative risk assessments have not been performed, OSHA has not calculated the distribution of health impairments associated with lead exposure. Therefore, quantified estimates of the benefits of reducing lead exposure are not currently available. Likewise, potential changes in benefits resulting from reconsideration of the standard cannot be quantified at this time. However, to the extent that cost-saving modifications such as phased-in compliance deadlines, use of personal protection in lieu of engineering controls, and tiered PELs can be incorporated into the standard without jeopardizing the health of employees, affected industries will realize benefits in the form of lower compliance costs.

Summary of Costs

Sectors Affected: Employers in 56 industries using lead, especially primary smelting and refining of lead (SIC Code 3332), copper (3331), zinc (3333), and precious metals (3339), secondary smelting and refining of lead and copper (3341), battery manufacture (3691), steel production (3312), shipbuilding and repairing (3731), nonferrous foundries (3369), brass and bronze foundries (3362), pigments manufacture (2816), and scrap collection and processing (5093); and consumers of goods produced by these sectors.

In the preamble to the final lead standard, OSHA presented estimates of the costs of compliance with the proposed standard of 100 $\mu g/m^3$ (costs shown are in 1976 dollars). OSHA estimated compliance expenditures for primary smelting and refining of lead ranging from $32 million to $47 million in capital costs, annual operating and maintenance costs of $2.7 million to $4.1 million, and annual costs for provisions such as monitoring and recordkeeping of $4.2 million. For the secondary lead smelters, OSHA presented capital costs ranging from $34.1 million to $51.1 million, annual operating and maintenance costs of $8.4 million to $12.7 million, and annual recordkeeping and monitoring costs of $10.4 million to $15.8 million. In addition, OSHA calculated the cost of rebuilding the entire industry to achieve the 50 $\mu g/m^3$ PEL at $90.6 million. For the battery industry, capital costs presented ranged from $205.1 million to $230.0 million. Data in the record but not included in the preamble indicated annual operating and maintenance costs of $19.0 million to $38.0 million and annual costs of $27.3 million for compliance with other provisions. For those 46 industries remanded to OSHA for further study of the feasibility of installing engineering controls, OSHA calculated total capital assets (in 1980 dollars) of $303.0 million to comply with the 50 $\mu g/m^3$ PEL.

Given these total cost estimates, predicted impacts on lead prices were generally negligible. Based on 1975 total production, OSHA expected on the basis of 1976 costs that the price per pound of lead produced in primary smelters (i.e. from ore) would rise by at most $0.006, and the predicted increase in the price of lead produced in secondary smelters (i.e. from scrap) was $0.013 per pound, both heavily affected industries. However, in the battery industry, estimated price increases per battery averaged $1.11. OSHA recognized that many small battery producers might not be able to compete with large producers and that closure of small businesses would increase industry concentration. If this occurs, further price increases might result from less competition among battery producers.

In reviewing the lead standard, OSHA will analyze the costs of alternative regulatory actions. In addition, OSHA will give special attention to those industries with a large percentage of small businesses.

Summary of Net Benefits

OSHA will evaluate the current lead standard and alternatives to determine the least costly alternative consistent with the objectives of the OSH Act.

Related Regulations and Actions

Internal: Respirator Fit Testing in the Lead Standard (29 CFR 1910.1025(f)(3)(ii)) and Respiratory Protection (29 CFR 1910.134) (see separate entries in this Calendar).

External: Modifications in the existing standard may require States to reassess their current standards for lead and make revisions if necessary.

Government Collaboration

OSHA has informed the Interagency Science/Health Coordination Group of this review. This group coordinates the regulatory authorities of the Occupational Safety and Health Administration, Environmental Protection Agency, Food and Drug Administration, Consumer Product Safety Commission, and the Food Safety and Quality Service of the Department of Agriculture.

Timetable

ANPRM—46 FR 22764, April 21, 1981.
ANPRM—December 1981–January 1982.
NPRM—Date to be determined.
Final Rule—Date to be determined.
Public Comment Period—To be specified in NPRM.
Public Hearings—To be specified in NPRM.
Regulatory Impact Analysis—Date to be determined.
Regulatory Flexibility Analysis—Date to be determined.
Environmental Impact Statement—Date to be determined.

Available Documents

"Occupational Exposure to Lead," 43 FR 52952, November 14, 1978.

"Occupational Exposure to Lead—Attachments to the Preamble for the Final Standard," 43 FR 54353, November 21, 1978.

"Occupational Exposure to Lead; Administrative Stay; Reconsideration; Corrections," 44 FR 5446, January 26, 1979.

"Occupational Safety and Health Standard; Occupational Exposure to

Lead; Appendices to Standard," 44 FR 60980, October 23, 1979.

"Occupational Exposure to Lead; Supplemental Statement and Amendment of Standard; Final Rule," 46 FR 6134, January 21, 1981.

OSHA has established a docket number (H-004) for lead. Reports in the docket are available for inspection between 8:15 a.m. and 4:45 p.m. on weekdays in the Docket Office, Room S-6212, U.S. Department of Labor, Third Street and Constitution Avenue, N.W., Washington, DC 20210. There is a per-page charge for copies of materials obtained through the Docket Office.

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DOL-OSHA

Standard for Occupational Exposure to Noise (29 CFR 1910.95 (a) and (b); Revision)

Legal Authority

The Occupational Safety and Health Act of 1970, 29 U.S.C. 655.

Reason for Including This Entry

The Occupational Safety and Health Administration (OSHA) believes that this regulation is important because it provides for the reduction of noise exposures for workers. It is estimated that the current regulation has an annual impact of $100 million or more on the economy. The Presidential Task Force on Regulatory Relief has designated this regulation for review.

Statement of Problem

The Agency is considering a review of its current health standard for occupational noise exposure. Exposure to excessive noise is probably the most prevalent occupational health hazard. Approximately 5.5 million people are exposed to average noise levels above 85 decibels (dB) in 300,000 workplaces. There is an abundance of epidemiological and laboratory evidence indicating that protracted noise exposure above 90 dB cause hearing loss in a substantial portion of the exposed population and that more susceptible individuals will incur hearing loss at levels below 90 dB. OSHA also estimated that approximately 940,000 people will suffer material impairment of hearing when exposed over a working lifetime even when current compliance with the noise standard (29 CFR 1910.95 paragraph (a) and (b)) is taken into account. Noise-induced hearing loss is an irreversible condition that progresses with increased exposure and with age. Because hearing is essential for normal interpersonal communication, hearing loss can lead to serious social and psychological handicaps.

Noise can also cause other adverse effects, including degraded job performance, increased accidents and absenteeism, job dissatisfaction, fatigue, sleeplessness, and stress-related illnesses.

OSHA's existing standard for occupational exposure to noise (29 CFR 1910.95) specifies a maximum permissible exposure limit (PEL) of 90 dB. This limit is a time-weighted average noise level (TWA) occurring over an 8-hour day, so that higher levels are allowed for shorter periods of time. The relationship between noise level and duration is called the exchange rate. The present standard requires a 5-dB exchange rate, meaning that the sound level may be increased by 5 dB with every halving of exposure duration. The employee's exposure level is described in terms of an 8-hour TWA. The present standard calls for a reduction in employee exposure to noise to a 90-dB PEL by engineering controls (e.g., modification of noisy equipment) or administrative means (e.g., worker rotation), whenever feasible.

In January 1981 the Agency amended the existing noise standard to clarify its requirement for a "continuing, effective hearing conservation program" for all employees exposed to a TWA above 90 dB and to extend coverage of hearing conservation programs to employees exposed to a TWA of 85 dB or above (see entry in this Calendar on the hearing conservation amendment). The majority of the amendment became effective on August 22, 1981. It calls for noise monitoring, periodic testing of employees' hearing, the availability of hearing protectors, employee education and training, and the maintenance of records.

OSHA proposes to review the noise standard in order to assess the cost effectiveness of various regulatory alternatives that the Agency has not previously studied. The Agency will base this review on 10 years of enforcement experience and on the industry-wide effectiveness of hearing conservation programs that will be stimulated by the new amendment. The Agency also intends to examine the PEL in view of current research data on the safe level for continuous and impulsive noise, the appropriateness of the exchange rate, and the risk of extra-auditory effects, such as stress-related illness. In addition, OSHA will evaluate the standard's impact on small entities. OSHA plans to publish an ANPRM on these issues in the near future to request public comment.

Alternatives Under Consideration

OSHA will consider alternatives that would revise the present regulation after reevaluating the PEL, the exchange rate, the effectiveness of hearing conservation programs, regulatory alternatives to the industry-wide compliance approach, and special problems for small entities. These alternatives include setting lower permissible noise limits for new facilities, establishing different compliance approaches for different industries or different sizes of establishments, and developing various combinations of hearing conservation programs and engineering controls. These alternatives would enable the Agency to identify the means of protecting workers against noise that are more cost effective than the single, industry-wide engineering approach.

Summary of Benefits

Sectors Affected: Noise-exposed workers in industries covered by OSHA's general industry and maritime standards.

OSHA anticipates that most noise exposures at or above 85 dB occur in manufacturing (SIC Codes 20-39) and utilities (SIC Code 49).

The primary benefit of the noise regulation is the reduction in the incidence of occupational hearing impairment. Studies show that lifetime exposures to workplace noise significantly increase the incidence of moderate to severe hearing impairment. For noise exposure levels of 85 to 90 dB, the increase is about 11 percent; for 90 to 95 dB the increase is 25 percent; for 95 to 100 dB, it is 45 percent; and for over 100 dB, it is greater than 55 percent in male workers. Female workers would suffer comparable risks of impairment. Effective hearing conservation programs are expected to reduce the cases of impairment by approximately 838,000.

In the past, the Agency has held that the benefits anticipated from the use of engineering controls are expected to exceed those provided by hearing conservation programs (whose elements are described above), because the hazard is reduced at the source. Studies relied upon by the Agency in issuing its

1974 proposed standard and the recent hearing conservation amendment indicated that ear protection, even when it is supported by audiometry and employee education, may not be as effective as reducing the hazard at the source, since the effectiveness of ear protection varies considerably according to fitting and wearing practices. The forthcoming ANPRM and Agency reconsideration will address these issues.

Summary of Costs

Sectors Affected: Industries covered by OSHA's general industry and maritime standards.

OSHA anticipates that most noise exposures at or above 85 dB occur in manufacturing (SIC Codes 20–39) and utilities (SIC Code 49).

The cost of reducing noise levels by engineering or administrative controls can be very high for those industries characterized by inherently noisy industrial processes. Previous estimates of the cost to reduce all noise exposure above 90 dB to 90 dB or below (as required by the present standard where feasible), range into the billions of dollars.

OSHA has estimated the cost of hearing conservation programs (as required by the provisions effective August 22, 1981) at $170.6 million per year (in 1980 dollars). As part of the reconsideration of the noise exposure regulation, OSHA will study further the cost of various regulatory alternatives (such as those enumerated in the previous section), their feasibility, and their relative cost effectiveness. The forthcoming ANPRM will also request public comment on the issues of cost and cost effectiveness.

Summary of Net Benefits

During this reconsideration, OSHA will evaluate the noise standard to determine the least costly alternative consistent with the objectives of the Occupational Safety and Health Act.

Related Regulations and Actions

Internal: OSHA also regulates occupational noise exposure in the construction industry (29 CFR 1926.52). This regulation is virtually identical to paragraphs (a), (b)(1), and (b)(2) of OSHA's regulation for general industry (29 CFR 1910.95). The construction noise standard contains paragraph (b)(3), which calls for a "continuing, effective hearing conservation program" for employees whose average exposures exceed 90 dB. The construction noise standard is not affected by the new hearing conservation requirements that amend the noise standard for general industry (29 CFR 1910.95) (see separate entry in this Calendar).

The Mine Safety and Health Administration (MSHA) has three noise exposure regulations:

(1) Underground Coal Mines (30 CFR 70.500 to 70.510). These regulations cover permissible exposure limits, noise measurement, and survey requirements and reporting procedures.

(2) Surface Work Areas of Underground Coal Mines and Surface Coal Mines (30 CFR 71.300 to 71.305). These regulations are essentially the same as those for underground coal mines.

(3) Metal and Nonmetal Mines (30 CFR 55.5). These regulations are essentially the same as paragraphs (a), (b)(1), and (b)(2) of OSHA's noise standard, 29 CFR 1910.95.

External: All States having their own occupational health programs must promulgate requirements at least as protective as OSHA's. A few States already have some hearing conservation requirements.

The Department of Defense (DOD) has had hearing conservation requirements for many years. Under the most recent DOD Instruction (No. 6055.3, June 8, 1978), the three services (Army, Navy, and Air Force) develop and issue individual requirements.

The Federal Advisory Council on Occupational Safety and Health has established a Subcommittee on Noise for the purpose of developing noise abatement and hearing conservation guidelines to be used by all Federal agencies.

The Environmental Protection Agency (EPA) has regulations and programs for noise control and hearing conservation. Under the Noise Control Act of 1972, EPA has the statutory responsibility to coordinate all Federal noise programs.

Government Collaboration

Formal coordination between OSHA and other agencies has taken place under the auspices of the Interagency Regulatory Liaison Group. The vehicle has been the Noise Subgroup of the Regulatory Development Work Group. OSHA has interacted with the other member agencies: the Environmental Protection Agency, Consumer Product Safety Commission, and Food and Drug Administration. OSHA has coordinated activities with the Mine Safety and Health Administration and with the Department of Defense under the auspices of the Noise Subgroup's Hearing Conservation Planning Group. Informal liaison has taken place with the National Institute of Occupational Safety and Health, the Department of Transportation's Federal Railroad Administration, and the National Bureau of Standards in the Department of Commerce.

Timetable

ANPRM—January 1982.
NPRM—To be determined.
Public Hearings (if appropriate)—To be determined.
Public Comment Period—To be determined.
Regulatory Impact Analysis—To be determined.
Final Rule—To be determined.
Regulatory Flexibility Analysis—To be determined.

Available Documents

Preamble to the hearing conservation amendment, 46 FR 4161, January 16, 1981.

Preamble to the notice of effective provisions, 46 FR 42622, August 21, 1981.

"Final Regulatory Analysis of the Hearing Conservation Amendment," January 1981.

"Regulatory Impact and Regulatory Flexibility Analysis for the Hearing Conservation Amendment," August 1981.

OSHA Docket OSH–011 A, B, C, and D.

All documents are available for review in the Docket Office, Room S–6212, U.S. Department of Labor-OSHA, 200 Constitution Avenue, N.W., Washington, DC 20210. A fee is usually charged for copies of these documents.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Bumper Standard (49 CFR Part 581; Revision)

Legal Authority

Motor Vehicle Information and Cost Savings Act, § 102, 15 U.S.C. 1912; National Traffic and Motor Vehicle Safety Act, § 103, 15 U.S.C. 1392.

Reason for Including This Entry

The National Highway Traffic Safety Administration (NHTSA) believes this proposed rule is important because of its

possible effect on manufacturers of motor vehicles and components; the interest the motor vehicle and insurance industries, Congress, and the public have shown in the proposed rule; and the potentially significant effect of the rule on costs to consumers.

Statement of Problem

In passing the Motor Vehicle Information and Cost Savings Act of 1972, Congress sought to reduce the economic losses resulting from motor vehicle accidents by providing for the promulgation of standards for bumper performance. Congress directed the Secretary of Transportation to promulgate bumper standards, taking into account the costs and benefits of the proposed standard and other factors. To fulfill this mandate, NHTSA issued the 49 CFR Part 581 "Bumper Standard" (41 FR 9346, March 4, 1976). The standard incorporates the safety features of former Federal Motor Vehicle Safety Standard 215, "Exterior Protection," and adds requirements for damage resistance for front and rear vehicle exterior surfaces in general.

In light of changing economic conditions (e.g., increasing fuel costs), the Senate Appropriations Committee, in June 1978, directed NHTSA to conduct studies and analyses to reevaluate the costs and benefits of the bumper standard. This led NHTSA to reassess the standard. In June 1979 NHTSA issued a report that concluded that the current Part 581 bumper standard provides greater net benefits to consumers than the alternatives considered. However, since that report was completed, manufacturers, insurance companies, and others have continued to supply information to the Agency on this subject. In addition, NHTSA has developed additional relevant data of its own.

In April 1981, the Agency completed a new review of the bumper standard and published its findings in a report entitled "Evaluation of the Bumper Standard." As a result of its review, NHTSA concluded that a rulemaking proceeding is necessary to determine which bumper performance level would best fulfill the statutory mandate to seek the maximum net benefits to the public and to the consumer. On October 1, 1981, NHTSA published an NPRM (46 FR 48262) proposing several alternative amendments to the Part 581 Bumper Standard.

Alternatives Under Consideration

The NPRM proposes several alternative amendments to the Part 581 bumper standard. These alternatives involve reducing to varying degrees the level of impact speed for barrier and pendulum testing from the 5.0 mph currently required under the regulation. (In a barrier test, a vehicle is crashed into a flat, vertical, unyielding surface. In a pendulum test, a weighed block having a mass equal to the mass of the test vehicle is swung into the bumper at a specified height.) In some of the alternatives, the current damage resistance criteria are eliminated.

NHTSA implemented the Part 581 Bumper Standard in two phases. The Phase I damage resistance criteria, which went into effect on September 1, 1978, require manufacturers to design the cars to protect a number of safety-related components and systems, such as the lights and the fuel and exhaust systems. In addition, the Phase I criteria require protection for the exterior surfaces of the vehicle, except for the bumper face bar itself and the components and associated fasteners that attach the bumper to the vehicle. The Phase II criteria, which went into effect on September 1, 1979, supplement the Phase I requirements by requiring protection for the bumper face bar and its components and fasteners.

The alternatives being considered are:

(I–A) Alternative I–A would amend the test impact speeds for rear bumpers only to 2.5 mph for longitudinal impacts and to 1.5 mph for corner impacts. It would maintain the test impact speed for front bumpers at the present level (5.0 mph), and it would retain the damage resistance criteria that the standard presently requires (Phase II damage resistance criteria).

(I–B) Alternative I–B would amend the test impact speeds as described in Alternative I–A and would substitute Phase I damage resistance criteria for both the front and rear bumper.

(II–A) Alternative II–A would eliminate the damage resistance criteria for rear bumpers only, with the exception of the criterion that is intended to ensure uniform bumper height, by requiring bumper contact with a pendulum test device within a specified height range (bumper height criterion). It would maintain the test impact speed and damage resistance criteria for front bumpers at their present levels.

(II–B) Alternative II–B would amend the damage resistance criteria and test impact speed requirements as described in Alternative II–A and would substitute Phase I damage resistance criteria for the front bumper.

(III–A) Alternative III–A would amend the test impact speeds for both front and rear bumpers to 2.5 mph for longitudinal impacts and 1.5 mph for corner impacts.

(III–B) Alternative III–B would amend the test impact speeds as described in Alternative III–A and would substitute Phase I damage resistance criteria for both the front and rear bumpers.

(IV–A) Alternative IV–A would amend the test impact speeds for front bumpers to 2.5 mph for longitudinal impacts and 1.5 mph for corner impacts. It would also eliminate the damage resistance criteria for rear bumpers only, with the exception of the bumper height criterion.

(IV–B) Alternative IV–B would amend the damage resistance criteria and test impact speed requirements as described in Alternative IV–A and would substitute Phase I damage resistance criteria for the front bumper.

(V) Alternative V would eliminate the damage resistance criteria for both front and rear bumpers, with the exception of the bumper height criterion.

Summary of Benefits

Sectors Affected: Manufacturing of passenger cars and consumers.

The lack of field experience with 2.5 mph bumper systems and the uncertainty as to how much damage protection manufacturers would provide in the absence of damageability requirements result in a range of estimated benefits. Reducing the stringency of the current bumper standard could save consumers money by lowering car prices, fuel costs, and financing charges. If the alternatives under consideration lower manufacturers' variable costs by 20 to 30 percent, the total savings to consumers could range from $44 to $239 per vehicle (present discounted value). Easing the bumper requirements could also save money for manufacturers of passenger cars. The alternatives under consideration could save manufacturers from $13 to $72 per vehicle (in 1981 dollars) per year in variable costs if there is a 20- to 30-percent reduction in variable costs.

Summary of Costs

Sectors Affected: Insurance companies and consumers.

Again, the lack of field experience with 2.5 mph bumper systems and the uncertainty about how much damage protection manufacturers would provide in the absence of damageability requirements result in a range of estimated costs. In the Preliminary Regulatory Impact Analysis, NHTSA estimated the alternatives under consideration would increase consumer costs for such items as repairs and income premiums from $15 to $289 (present discounted value). Reductions

in damage protection afforded by bumpers could result in increased costs to the consumer to repair the car. Consumers would spend more time having their vehicles repaired. Insurance premiums could increase to reflect not only the increase in the amount of claims paid out but also the increase in administrative and processing costs. Because insurance companies are regulated by the States, they may not be able to increase the premiums they charge in anticipation of any changes in the bumper standard. Instead, they would probably have to wait to adjust premiums until after they had actual claims experience. NHTSA expects that this inability to adjust premiums in anticipation of increased claims could initially result in insurance company expenses exceeding revenues. Eventually, premiums would be adjusted to reflect the higher payouts, and all costs for increased damage would be passed through to the consumer. The Agency does not at this time have data to assess the effect of this potential cash-flow change on the insurance companies.

Summary of Net Benefits

Based on the latest available data and analyses, it appears that the alternative bumper standards considered differ only very slightly from the present bumper standard in the level of net benefits that they provide. Moreover, the absolute amount of benefits available under any of the various alternatives is minimal. When an average of repair cost estimates is used, no alternative offers more than $4 per year in net benefits over the average life of a vehicle. Furthermore, uncertainties regarding data and assumptions tend to limit even the apparent confidence with which the Agency can identify the standard best meeting the statutory requirements and the Administration's regulatory goals. NHTSA has not yet determined which alternative, if any, should be adopted.

Related Regulations and Actions

Internal: Passenger Automobile Average Fuel Economy Standards (49 CFR Part 531); Insurance Cost Information Regulation (49 CFR Part 582).

External: None.

Government Collaboration

None.

Timetable

Bumper Evaluation—Completed April 1981.
NPRM—46 FR 48262, October 1, 1981.
Final Rule—To be determined.
Final Rule Effective—To be determined.
Public Hearing on the NPRM—Held October 22, October 23, and November 12, 1981, Washington, DC.
Public Comment Period on the NPRM—Closed November 30, 1981.
Regulatory Impact Analysis—Preliminary, Possible Modifications to Part 581 Bumper Standard, July 1981; final, to be determined.
Regulatory Flexibility Analysis—Combined with Regulatory Impact Analysis, see above.
Environmental Assessment—Completed October 1981.

Available Documents

"Final Assessment of the Bumper Standard," June 1979.

"Evaluation of the Bumper Standard," April 1981.

Notice of Public Hearing (46 FR 48958, October 5, 1981).

Comments on the 1979 Final Assessment.

Comments on the NPRM.

Transcript of the public hearing.

These documents, in addition to the NPRM, the Preliminary Regulatory Impact Analysis, and the Environmental Assessment, are available for review in Docket No. 73-19, Notices 25, 26, and 27. These documents are located in the Docket Section, NHTSA, Room 5109, 400 Seventh Street, S.W., Washington, DC 20590.

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DOT-NHTSA

Crashworthiness Ratings (49 CFR Part 583; New)

Legal Authority

Motor Vehicle Information and Cost Savings Act, 15 U.S.C. 1941; National Traffic and Motor Vehicle Safety Act, 15 U.S.C. 1401.

Reason for Including This Entry

The National Highway Traffic Safety Administration (NHTSA) thinks that this rulemaking is important because of the possible impact on manufacturers, the interest shown by consumers, and the potentially significant effect of the rule on the automotive marketplace.

Statement of Problem

Consumers do not have objective, comprehensive information available to them on the comparative ability of cars to protect them in a crash. Such information would help consumers make informed decisions about buying cars and would foster competition among manufacturers to produce safer cars.

To help consumers make informed purchasing decisions, Congress enacted the Motor Vehicle Information and Cost Savings Act of 1972. Title II of the Act directs NHTSA to develop ways to assess the ability of a car to protect its occupants in a crash (crashworthiness), the susceptibility of a car to property damage in a crash (damageability), and the ease of diagnosing and repairing vehicle systems that fail in use or are damaged in a crash (repairability).

The Act further directs NHTSA to develop methods of providing information on crashworthiness, damageability, and repairability to the public in a simple and readily understandable form to facilitate comparisons among various makes and models of cars.

The Act also directs the Agency to require car dealers to distribute information to prospective purchasers that compares differences in insurance costs for different makes and models of cars based upon differences in damageability and crashworthiness.

NHTSA has conducted an experimental program to assess the crashworthiness of cars in crash tests. The Agency's testing of 1979, 1980, and 1981 makes and models has demonstrated that there may be significant differences in the ability of cars to protect their occupants in a crash.

However, NHTSA is concerned over the degree to which the test results convey valid, meaningful information to the public. For this reason, NHTSA is planning to conduct crash tests directed toward establishing the repeatability and reproducibility of the test results with respect to the vehicles themselves. A minimum of three identical cars will be crashed in this effort under closely controlled test conditions. This test will be conducted before the Agency reaches a decision in this rulemaking. If the three-car crash test indicates inexplicable or unacceptable variations in results, NHTSA will review the premises on which this proposal was based and will consider alternatives other than those spelled out in the NPRM.

Alternatives Under Consideration

The Agency is currently considering several alternative ways of carrying out its statutory mandate to provide consumers with comparative information rating the crashworthiness of cars. This information program would supplement the command and control regulatory program under the National Traffic and Motor Vehicle Safety Act.

NHTSA issued an NPRM on January 22, 1981 (46 FR 7025) to solicit public comments on two ways to assess the crashworthiness of passenger cars and how to distribute this data to consumers to help them make more informed purchasing decisions.

(A) Alternative (A), proposed in the Agency's NPRM, would require manufacturers to develop the crashworthiness data and distribute it to consumers. Manufacturers already conduct crash testing to determine if their cars comply with the Federal Motor Vehicle Safety Standards. By conducting those tests at higher speeds (e.g., 35 mph rather than 30 mph as set in the current safety standards), manufacturers would be able to determine if their vehicles comply with the Federal Safety Standards. They would also be able to rate the crashworthiness of their cars. As a practical matter, the compliance crash testing must be completed before the cars are produced and offered for sale to enable manufacturers to have the crashworthiness ratings available for prospective purchasers at the beginning of the model year.

(B) Under Alternative (B), also discussed in the NPRM, the Agency would conduct all the crash tests needed to rate the cars and provide the information to manufacturers for dissemination to prospective purchasers. Although this approach would place all the testing under the full, direct control of the Agency, it would require an expensive test program. More importantly, the Agency would have to obtain the cars for testing after they have been publicly offered for sale to ensure that they are representative of cars available to the public rather than pre-production prototypes. Thus, the comparative ratings could not be distributed at the beginning of the model year to help consumers make their buying decisions.

Other issues discussed in the NPRM include: (1) developing an indexing procedure that would combine head, chest, and femur (leg) injury readings developed in frontal crash tests into a composite measure of crashworthiness; and (2) rating cars on a continuum of crash test speeds.

The NPRM proposes disseminating information to consumers by using a window sticker containing information on the particular model and distributing a booklet containing comparative information. NHTSA would publish this booklet and make it available through automobile dealerships. The NPRM requests comments on alternatives to this approach, including elimination of the window sticker requirement.

If the upcoming crash tests directed toward repeatability and reproducibility indicate a need to revise the crash test standards, NHTSA will consider alternatives other than the two specified in the NPRM and could reopen the issue for additional comment.

Summary of Benefits

Sectors Affected: Purchasers of new cars.

NHTSA has developed an analysis of the expected benefits for the proposed rulemaking. One of the chief benefits would be to provide prospective purchasers of new cars with objective information about the crashworthiness of different makes and models to enable them to make informed buying decisions. The crashworthiness rating should foster competition among manufacturers to produce cars that provide increased levels of protection in a crash. To the extent that consumers and manufacturers respond to this program by demanding and building safer vehicles, there will be a corresponding reduction in highway deaths and injuries.

Summary of Costs

Sectors Affected: Manufacturers of cars; purchasers of new cars.

NHTSA has developed an analysis of the expected costs of the proposed rulemaking. If manufacturers are required to develop the crashworthiness data, they would have to conduct crash tests to rate the ability of their cars to protect occupants in a crash. Manufacturers could combine that crash testing with the testing they already do to certify compliance with Federal Safety Standards. Thus, the additional crash test costs for all manufacturers should be limited, particularly for manufacturers who design their cars to provide more than the 30 mph level of protection required by the current Federal Safety Standards.

Under the system proposed in the NPRM, the first-year cost to the industry for developing the ratings would be approximately $3 million (in 1980 dollars) for model year 1983 vehicles. The annual cost for each successive year would be $240,000. It would cost the Government less than $1 million (annually) to compile, print, and disseminate the ratings booklet and to perform new car verification testing for enforcement purposes. These costs cannot be discounted because the system, if adopted as proposed in the NPRM, would not have any specified lifetime.

No direct costs to automobile purchasers are associated with the crash testing and information dissemination program. Manufacturers, however, may raise prices on their vehicles if they design them with new, more costly safety features.

Summary of Net Benefits

Both alternatives considered by NHTSA could provide consumers with comparative information on the crashworthiness of different vehicle models and could thereby encourage the purchase of cars that achieve superior crashworthiness results. Both alternatives would require that new or redesigned vehicles be crash-tested each year in order to determine the ability of various models to protect occupants in a crash. However, under Alternative (A), the crashworthiness ratings would be available, as a practical matter, for prospective purchasers at the beginning of the model year to help consumers make their buying decisions. Manufacturers could and probably would use the same tests both to rate the crashworthiness of their cars and to determine compliance with the Federal Motor Vehicle Safety Standards. Although maufacturers might in some instances decline to conduct crashworthiness tests and might routinely state that their vehicles do not comply with the occupant crash protection criteria at 35 mph, NHTSA believes that market forces will induce manufacturers to provide ratings for most cars. Thus, at the time the NPRM was issued, the Agency tentatively concluded that Alternative (A), voluntary manufacturer testing, coupled with a mandatory declaration regarding performance, provided the best means of obtaining information for the program. However, NHTSA may reconsider whether this is the best alternative, based on the results of pending crash tests that will determine the repeatability and reproducibility of the test results.

Related Regulations and Actions

Internal: Insurance Cost Information Regulation (49 CFR Part 582).

External: None.

Government Collaboration

None.

Timetable

NPRM—46 FR 7025, January 22, 1981.
Final Rule—To be determined.
Final Rule Effective—To be determined.
Public Hearing—None Scheduled.
Public Comment Period on the NPRM—Ended October 22, 1981.
Regulatory Impact Analysis—Preliminary (prepared before issuance of Executive Order 12291), Crashworthiness Ratings, January 1981; final, to be prepared if necessary, issue date to be determined.
Regulatory Flexibility Analysis—Initial, Crashworthiness Ratings, January 1981; final, to be prepared if necessary, issue date to be determined.

Available Documents

NPRM Correction Notice—46 FR 18059, March 23, 1981.
Notice extending comment period—46 FR 19947, April 2, 1981.
NPRM—46 FR 7025, January 22, 1981.
Results of the Agency's series of tests rating the crashworthiness of 1979 and 1980 model cars.
Public comments on the NPRM.
These documents, in addition to the NPRM, the Preliminary Regulatory Impact Analysis, and the Initial Regulatory Flexibility Analysis, are in Docket No. 79–1, Notice 1, and are available for public inspection. All documents are available for review in the Docket Section, NHTSA, 400 Seventh Street, S.W., Room 5109, Washington, DC 20590.

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DOT–NHTSA

Uniform Tire Quality Grading System (49 CFR Part 575; Revision)

Legal Authority

National Traffic and Motor Vehicle Safety Act, 15 U.S.C. 1423.

Reason for Including This Entry

The National Highway Traffic Safety Administration (NHTSA) believes this rulemaking proceeding is important because of its possible effect on consumers and the manufacturers of tires and because of the interest consumers and manufacturers have shown in the proceeding.

Statement of Problem

Section 203 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1423) directs the Department of Transportation (DOT) to prescribe a system of uniform tire quality grading for motor vehicle tires to help consumers make informed decisions when purchasing tires. In response, NHTSA promulgated a Final Rule (43 FR 30542, July 17, 1978) adopting the Uniform Tire Quality Grading Standards (UTQGS), which became effective on October 1, 1980.

The UTQGS requires tire manufacturers to grade their tires for three properties: (1) treadwear, (2) traction, and (3) temperature resistance. The treadwear grade reflects a tire's projected treadwear on a specified Government test course. The grade is based on the tire's wear rate on the test course, as measured in a 6,400-mile test sequence following an 800-mile break-in period. The traction rating represents a tire's straight-ahead stopping ability on wet surfaces of asphalt and concrete. The temperature resistance grade is a measure of a tire's ability to dissipate heat in testing on an indoor laboratory test wheel. The grades for a tire, along with an explanation of them, must be included on the paper tread label affixed to each tire. The grades must also be molded in the tire's sidewall.

NHTSA chose treadwear as a rating factor because it is an attribute of tire performance of greatest interest to the consumer. The characteristics of traction and temperature resistance were added primarily because of their interrelationship with treadwear. Treadwear can be increased at the expense of traction by varying carcass materials to produce a "harder" tire. ("Carcass" means the tire structure, except the tread and sidewall rubber.) However, such changes have a negative effect on traction performance. Similarly, treadwear can be increased by adding more rubber to the tread. However, increased tread depth results in a hotter-running tire and a greater possibility of catastrophic tire failure. It is uncertain whether, in the absence of traction and temperature resistance ratings, manufacturers would seek to improve treadwear performance at the expense of these safety factors.

The utility of the UTQGS depends largely on two factors: (1) the adequacy of the grades as a measurement of the tire's properties, and (2) the consumer's ability to understand and use the grades. In the past year, certain tire manufacturers have charged that UTQGS is inadequate on either basis. The Agency also has serious questions about utility to consumers of this system in its present form.

On the issue of grade assignment, problems center in two areas: differences in grade assignment procedures and repeatability of test results. Responses to special orders sent by NHTSA to several major tire manufacturers revealed that significant differences in grade assignment techniques existed among manufacturers. The effect of these differences is reflected in UTQGS compliance test data collected by NHTSA's Office of Vehicle Safety Compliance. These data indicate that, in many cases, treadwear test results obtained in NHTSA's compliance testing of specific tires were higher than those values represented by the manufacturers' assigned UTQGS grades.

Manufacturers have responded that because of variability of test results and uncertainty as to the validity of their own data, they are required to apply conservative grading practices to attempt to ensure successful compliance tests of individual specimens. The Agency is concerned that any circumstances that would lead manufacturers to select UTQGS grades below those supportable by valid available test results could undermine the utility of the system to consumers and to the Government, which now purchases tires relying partially upon formulas based on assigned grades. Differing grade assignment practices or results could create apparent differences in tire performance where none really exist or could change the relative ranking of tires with comparable performance properties.

Of potentially greater significance is the question of repeatability of treadwear test results. NHTSA's own compliance test data, as well as data generated in testing conducted for tire manufacturers, indicate that in some cases, test results for a particular line and size of tire can differ considerably among tests run on different occasions, even after correction for environmental factors. While such differences may be partially attributable to tire variability, variations exist even in the case of course-monitoring tires, which are produced under closely controlled conditions. (Course-monitoring tires are tires of the same general construction type—bias, bias-belted, radial—as the test tire and are run in the same convoy as the test tire. The performance of course-monitoring tires is used to correct the projected mileage of a test

tire to account for environmental variations). These circumstances tend to call into question the repeatability of the tests themselves. If NHTSA finds the UTQGS test results are not repeatable, serious questions would be raised concerning the validity of the grades assigned and therefore the utility of the treadwear grades to consumers.

With respect to consumer understanding of the grading system, NHTSA considers the issues of system complexity and homogeneity of grade assignments to be a serious concern. Having three grading categories for tire performance may provide some consumers with more information than they can reasonably use in making a purchasing decision. The present UTQGS system provides consumers with no basis for weighing the relative importance of the three properties as to which grades are issued. Moreover, the use of numerical treadwear grades, compared to ranges of three alphabetical groupings (A, B, C) for traction and temperature resistance, may make trade-offs between criteria difficult.

NHTSA is also concerned that portions of the regulation may be beyond the understanding of many consumers. Some of this information is of a technical nature. In particular, tire temperature resistance is a technical concept that may bear little or no relationship to the experience of the typical consumer.

Finally, NHTSA is concerned that, because of these technical questions, consumers may conclude that the grades themselves convey more information than is actually the case.

These considerations led NHTSA to conclude that a reevaluation of all aspects of UTQGS is in order. Failure to respond to these issues could result in the continuance of a system that fails to provide consumers with useful and accurate information while imposing cost and price penalties on both manufacturers and consumers.

Alternatives Under Consideration

NHTSA will examine the following alternatives in the review of the UTQGS.

(A) *Do nothing*—This alternative would retain all current requirements for grading treadwear, traction, and temperature resistance of tires. It would continue to provide consumers with information on tire characteristics but would not address the possible problem that the grades may convey more information than consumers need or can use.

(B) *Eliminate the treadwear grade requirements*—This alternative would significantly reduce testing costs and eliminate significant uncertainty about the validity of this aspect of the program. However, a valid measurement or grade of predictable treadwear is perceived to be the most important property for consumer information.

(C) *Eliminate traction grade requirements*—This alternative would reduce manufacturers' testing costs for a grade that shows little variation and that therefore is of little utility for the consumer. However, it would remove the incentive provided by the traction grading to produce tires with improved traction and the similar disincentive to reduce traction performance to achieve improved treadwear.

(D) *Eliminate traction grading; establish a minimum traction standard in Federal Motor Vehicle Safety Standard (FMVSS) No. 109*—This alternative would ensure that unsafe tire traction designs are not adopted. However, there are questions to be resolved about the benefits of a traction safety standard.

(E) *Eliminate temperature grading*—This alternative would reduce manufacturers' testing costs for a grade that some consumers may have trouble understanding but could result in tires that are more likely to have heat dissipation problems and are not as fuel efficient.

(F) *Eliminate the entire UTQGS program*—This alternative would reduce manufacturers' testing and labeling costs but would deprive consumers of performance and safety information on tire purchases. Legislative relief would be necessary, since UTQGS is required by statute.

At this time, NHTSA is not recommending a specific alternative.

Summary of Benefits

Sectors Affected: Purchasers of original equipment and replacement tires; manufacturers and distributors of tires included under SIC-Code 3011 (Tires and Inner Tubes).

Benefits resulting from the review of UTQGS will depend on the chosen alternatives.

The alternative to do nothing (A) would continue to give consumers some safety information, encourage tire companies to improve traction and heat resistance properties of their tires, and continue to provide adequate safeguards against tire production based on long tread-life alone at the expense of wet traction/temperature resistance.

The alternative to eliminate the treadwear grading requirement (B) could reduce manufacturing costs by about 6 cents per tire. In addition, it would remove from the standard a grade that is determined by controversial testing procedures. Such action may contribute to greater industry and public acceptance of the overall program.

The alternative to eliminate traction grade requirements (C) would make the system simpler for consumers to understand and could reduce manufacturing testing costs by about 1 cent per tire for a grade that shows little variation and therefore little utility for the consumer.

The alternative to eliminate traction grading and establish a minimum traction standard in FMVSS No. 109 (D) would allow for a simpler grading system while assuring a minimum threshold of traction and would ensure against unsafe tire traction design.

The alternative to eliminate temperature grading (E) would simplify the grading system by eliminating a grade that consumers have trouble understanding.

The alternative to eliminate the entire UTQGS program (F) could reduce manufacturers' testing and labeling costs by as much as 9 cents per tire.

Summary of Costs

Sectors Affected: Purchasers of original equipment and replacement tires; manufacturers and distributors of tires included under SIC Code 3011 (Tires and Inner Tubes).

Costs resulting from review of UTQGS will depend on the chosen alternative. At this time NHTSA is not recommending a specific alternative.

Under the alternative to do nothing (A), the continued implementation of UTQGS would probably cost manufacturers as much as 9 cents per tire in testing and labeling costs.

The alternative to eliminate treadwear grading requirements (B) would remove an incentive to produce tires with improved treadwear. Manufacturers might be encouraged to reduce treadwear in order to improve traction. The remaining portions of UTQGS would probably cost manufacturers about .3 cents per tire.

The alternative to eliminate traction grade requirements (C) would remove an incentive to produce tires with improved traction on wet surfaces and may result in reduced traction in exchange for improved treadwear. The remaining portions of UTQGS would probably cost manufacturers about 8 cents per tire.

The alternative to eliminate traction grading and establish a minimum traction standard in FMVSS No. 109 (D) would retain manufacturer test costs of about 9 cents per tire and may

encourage tire construction to minimum requirements.

The alternative to eliminate temperature grading (E) may allow manufacturers to increase tread life at the expense of safety and fuel economy. The remaining portions of UTQGS would continue to cost manufacturers about 8 cents per tire.

The alternative to eliminate the entire UTQGS program (F) would deprive consumers of safety and performance information on tire purchases. Manufacturers' costs for testing and labeling, however, would be eliminated.

Summary of Net Benefits

Because of the preliminary status of this review, data are not yet available to make a meaningful analysis of net benefits.

Related Regulations and Actions

Internal: FMVSS No. 109, New Pneumatic Tires; Docket No. 25, Notice 43, Statistical Procedures for Grade Assignment (UTQGS), 46 FR 10429.

External: None.

Government Collaboration

None.

Timetable

ANPRM—Late 1981 or early 1982.
NPRM—1st or 2nd Quarter 1982.
Final Rule—To be determined.
Final Rule Effective—To be determined.
Public Hearing—None.
Public Comment Period on the ANPRM—60 days following publication of ANPRM. Comments should refer to the docket and notice number and be submitted to the Docket Section, NHTSA, Room 5109, 400 Seventh Street, S.W., Washington, DC 20590.
Regulatory Impact Analysis—To be determined.
Regulatory Flexibility Analysis—To be determined.

Available Documents

The ANPRM and all comments received on it are available for review in Docket No. 25, in the Docket Section, NHTSA, Room 5109, 400 Seventh Street, S.W., Washington DC 20590.

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DOT—U.S. Coast Guard

Construction and Equipment for Existing Self-Propelled Vessels Carrying Bulk Liquefied Gases (46 CFR 31, 34, 38, 40, 54, 98, and 154; Revision)

Legal Authority

Port and Tanker Safety Act of 1978, 33 U.S.C. 1221, 46 U.S.C. 391a.

Reason for Including This Entry

This proposal concerns the safe shipping of bulk liquefied gas in existing ships that have been designed for this purpose. The Coast Guard has included this entry because the safety of this cargo and class of vessels has been of great public interest for several years.

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 Coast Guard developed these standards as the need for ships capable of carrying extremely cold liquefied gas grew. 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, because not all countries recognize each other's standards. Therefore, an individual ship must comply with the standards of each country with which it wants to trade. This has the effect of restricting free international trade. To alleviate this situation, the international community agreed upon two uniform sets of standards for gas ships, developed by the International Maritime Consultative Organization (IMCO). One set of standards was for new ships. The Coast Guard adopted these standards on May 3, 1979 (44 FR 25986). There was not much controversy about the standards for new ships because they represented only small incremental additional construction costs.

The second set of standards was for existing vessels. A very careful evaluation of the economic impact of implementing provisions of the Existing Gas Ship Code is needed to avoid costly retrofit of vessels that are presently in operation. Therefore, the Coast Guard has issued an ANPRM for public comment (42 FR 33353, June 30, 1977). Existing U.S. gas ships could continue to be regulated without change under the present provisions of 46 CFR Subchapter D, which specifies equipment for and construction of tank vessels. However, these regulations were not drafted with the special needs of vessels carrying cryogenic cargoes in mind. This means that none of the materials used to construct cargo tanks, piping, valves, or any of the items presently inspected by the Coast Guard would have to meet standards specifically designed for liquefied gas service. This not only would be a questionable safety practice, but would also result in an adverse economic impact to these ships by restricting their ability to compete in international trade.

Alternatives Under Consideration

The Coast Guard has considered four alternatives:

(A) Adopt the IMCO Existing Ship Gas Code in its entirety.

(B) Issue no regulations.

(C) Require existing gas ships to comply with the IMCO new ship standards.

(D) Treat all affected vessels on a case-by-case basis.

The proposal in the ANPRM—implementing provisions of the IMCO Existing Ship Gas Code that exceeds current requirements of 46 CFR—would affect 19 U.S. flag vessels. Most U.S. vessels and those foreign vessels currently trading with the United States come close to complying with the IMCO Existing Ship Gas Code. Adoption of the code would establish a uniform level of safety at an acceptable cost and would allow U.S. flag ships to trade in countries that have adopted the IMCO standard. Consequently, the Coast Guard favors Alternative (A). Comments received in response to the ANPRM indicate that there would be minimal difficulty for U.S. vessels to comply with this alternative. Under Alternative (B), the Coast Guard could not issue these ships the International Certificate of Fitness authorized by the IMCO code. This could result in a significant economic burden for those ships desiring to trade with a country that had adopted the IMCO Existing Gas Ship Code. Alternative (C), if selected, would represent a significant economic burden for these vessels and would entail major and unnecessary rebuilding of some of the ships. This would drive them out of business for little social benefit. Selection of Alternative (D) would mean that different ships would have different standards for compliance, some of which may be more costly than others. This situation could result in a feeling among the regulated vessel owners that the rules of fair play have not been observed.

Summary of Benefits

Sectors Affected: The general public; the marine environment; water

transportation of bulk liquefied gas; and construction of liquid cargo vessels.

The Coast Guard expects that any proposed regulation would benefit the public because it would ensure the safe transportation of bulk liquefied gases aboard existing vessels entering the United States by upgrading the mimimum standards for their equipment, material, and construction. However, development of the IMCO standards has been going on for a long time, and most U.S. vessels come close to meeting these standards. In addition, the Coast Guard has been issuing Letters of Compliance to foreign vessels for years. This means that although the IMCO rules would upgrade some safety standards, there would be no radical changes. The major benefit derived from the adoption of these rules would be to have an internationally uniform set of regulations. This would help the industry and the Nation by eliminating confusing conflicts between various standards accepted in different parts of the world. In other words, along with increased safety, an even greater benefit would be promotion of free trade between countries that adopt the IMCO standards.

Summary of Costs

Sectors Affected: Water transportation of bulk liquefied gas; users of this product; and manufacturing of liquid cargo vessels.

Any regulatory action would directly affect owners and operators of gas ships, who probably would pass costs on to the general consumer. The comments received in response to the ANPRM, although incomplete in many respects, indicate that costs would be well below the levels required for a Regulatory Impact Analysis in the Department of Transportation's guidelines. In any case, the present market for this type of ship is at a minimum. Therefore, in most cases, owners and operators would have the flexibility to perform modifications without interrupting their delivery schedules.

This eliminates one of the most costly aspects of laying up a ship that has a busy delivery schedule. In some cases the cost of pulling a ship out of service can be more than the cost of actual modifications. A slack market eliminates this cost, or at least reduces it to a minimum. Administrative costs to the Government would be minimal. The information received as a result of the ANPRM has indicated that the net costs for upgrading the existing U.S. gas ships to the IMCO Existing Gas Ship Code will average $1 million in 1981 dollars per ship. More detailed information will be developed to complete a Financial Draft Evaluation for issuance with the NPRM. The Coast Guard does not anticipate the need for a Regulatory Impact Analysis. Of the 19 affected U.S. gas ships, only 13 are presently operating, and 10 of these ships are trading exclusively between foreign countries. Costs passed on to the domestic industry base or to the U.S. consumer are expected to be minimal.

Summary of Net Benefits

Most of the vessels that this proposal would normally regulate are already in compliance, out of service, or in some other trade. Therefore, the total estimated cost would be relatively low—about $3 million (in 1981 dollars) for the three regulated vessels to retrofit the materials and equipment necessary to meet the minimum safety standards specified in the IMCO code. This expenditure would result in two benefits: it would give these vessels the option of trading internationally, and it would increase safety.

As to international trade, many foreign nations have already adopted the IMCO code, and U.S. vessels wishing to trade with those countries must comply with it. Because all liquefied gas is shipped internationally, it would be difficult to avoid countries that have adopted the code. Therefore, owners who want to enter these markets must bear the compliance costs as a normal business expense. The proposal does not represent any increase in business costs imposed by the U.S. Government.

The second benefit would be an increased level of safety. The chief reason for including this entry in the Calendar was because of public concern about the safety of vessels carrying liquefied gas, not because the proposal was costly. The safety issue has been the subject of extensive international discussions, and the IMCO code represents the minimum safety level that is acceptable to all concerned. However, since there have been no accidents with these vessels, the role the IMCO code will play in preventing future mishaps is unknown. Moreover, although experts agree that the code improves the basic requirements currently in the Coast Guard's regulations, there is no practical way to calculate the value of those improvements in social or monetary terms.

Related Regulations and Actions

Internal: On May 3, 1979, the Coast Guard published rules for new self-propelled vessels carrying bulk liquefied gases, which are based on the IMCO Gas Code for new ships. The rules were effective on May 31, 1979.

External: IMCO Existing Gas Ship Code.

Government Collaboration

None.

Timetable

ANPRM—42 FR 33353, June 30, 1977.
NPRM—This project has been delayed because of review efforts mandated by E.O. 12291 and the Regulatory Flexibility Act. No date has been set for publication of the NPRM.
Final Rule—To be determined.
Final Rule Effective—30 days following publication.
Public Hearing—None.
Regulatory Impact Analysis—None.
Regulatory Flexibility Analysis—None.
Draft Evaluation—Made available when NPRM is completed.

Available Documents

Documents, including the ANPRM and comments in response to it, are available from the Agency Contact. Fees will be charged for duplicating the material.

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ENVIRONMENTAL PROTECTION AGENCY

Office of Air, Noise, and Radiation

Environmental Radiation Protection Standards for Management and Disposal of Spent Nuclear Fuel, High-Level and Transuranic Radioactive Wastes (40 CFR Part 191; New)

Legal Authority

Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201(b).

Reason for Including This Entry

The Environmental Protection Agency (EPA) thinks this rule is important because it is a critical step towards developing disposal methods for high-level and other long-lived radioactive wastes that could pose serious health problems to current and future generations of people, and because it is an issue of great public interest.

Statement of Problem

It is important to ensure proper management and disposal of high-level radioactive wastes; otherwise they could cause excessive radiation exposures to the population of the United States that, in turn, could result in some premature deaths from cancer. Large quantities of these wastes already exist, and national defense programs, commercial nuclear power plants, and research reactors are producing more. At present, the Department of Energy (DOE) stores 70 million gallons of high-level defense wastes in various liquid and solid forms on three Federal reservations in the States of Idaho, South Carolina, and Washington. Owners of commercial nuclear power plants are temporarily storing about 7,000 tons of spent fuel (i.e., fuel removed from a reactor after it has generated electrical power) in holding ponds at the various plant sites. Over the next few years, we expect all the reactors currently licensed to operate to produce an additional 600 tons a year of spent fuel.

Our program to develop these standards began in 1976 as part of an interagency effort to speed up development and demonstration of a high-level waste repository. President Ford announced this program as part of his Nuclear Waste Management Plan on October 27, 1976. President Carter established an Interagency Review Group (IRG) on Waste Management in March 1978 to review existing programs and recommend new policies where necessary. After holding several public hearings on its draft report, the IRG prepared a final report to President Carter in March 1979. This report recommended that EPA accelerate its programs to set standards for nuclear waste management and disposal activities. President Carter approved this recommendation as part of his Program on Radioactive Waste Management, which he announced on February 12, 1980.

If EPA took no action, this would further delay the Federal waste management program and could have significant environmental consequences. Delay in developing disposal methods results in longer storage of existing wastes in surface facilities requiring human control. Such storage is not necessarily a danger under normal conditions. The wastes, however, are more vulnerable to accidental release in surface storage than they would be in disposal facilities. The chances for environmental damage are greater the longer the wastes are stored in existing sites. Furthermore, the lack of a solution to this problem has caused serious uncertainty about the future use of nuclear energy in the United States. This uncertainty makes both national and local energy policy more difficult to develop and has many indirect adverse economic and environmental effects.

Alternatives Under Consideration

The disposal system for high-level radioactive waste has yet to be designed and demonstrated by DOE. As a result, we are evaluating two basic types of environmental protection standards and a third alternative that combines certain aspects of both.

Alternative (A)—We could develop a standard establishing general principles to govern disposal methods without setting quantitative standards. These principles would specify broad design requirements for disposal systems such as: (1) designing multiple manmade barriers and using natural barriers to prevent release of the wastes, (2) disposing of the wastes so that future generations could recover and relocate them, if necessary, and (3) designing disposal systems to reduce potential releases to the lowest levels reasonably achievable. Such requirements would reduce some of the uncertainties of the disposal systems to be developed that must work for very long times. However, they would not place any clear limit on expected environmental effects.

Alternative (B)—We could set numerical performance requirements for disposal systems without using general principles like those discussed in Alternative (A). These environmental protection standards would then be compared by the Nuclear Regulatory Commission (NRC) against the predicted performance of a proposed disposal system to determine whether the system should be approved. Such an approach would allow complete flexibility in meeting the objectives; however, it would rely upon predictions over very long time periods, and such predictions involve many uncertainties.

Alternative (C)—We could combine both types of standards discussed above. This will require long-term predictions of disposal system performance to determine if environmental protection objectives are met. The general principles would require conservative design approaches that would protect the environment as much as possible even if these long-term predictions are wrong.

Summary of Benefits

Sectors Affected: The general public.

The primary benefit of these standards is the protection of human health from radioactive wastes.

Summary of Costs

Sectors Affected: Commercial nuclear power plants; consumers of electricity supplied by nuclear power; Federal defense waste management programs; and NRC.

The high-level radioactive waste disposal program would initially be financed by the Federal Government. According to current policies, electrical utilities would then pay the Federal Government for disposal of the high-level wastes from their reactors. The charge paid by the utilities would cover all the costs of storage, encapsulation, disposal, research and development, and government overhead involved in the management of these wastes. Military-produced wastes would be managed and disposed of by the Federal Government.

We do not know what the incremental cost resulting from these standards will be because we cannot specify how these wastes would have been disposed of without our action. However, we considered how the costs of disposal might be affected if we chose different levels of protection. To do this, we evaluated the long-term protection of different mined geologic repository designs in three different geologic media. From these evaluations, we estimated potential releases from the various types of repositories. These estimates can be the basis for the numerical standards in Alternatives (B) or (C).

We estimate that the incremental cost to consumers of electricity of meeting the most restrictive level of protection we considered could range from zero to $60 million (1981 dollars) per year when compared to the cost of meeting the least protective level. This potential increase is much less than the overall uncertainty in the total costs for waste management and disposal, which range from $700 million to more than $1.4 billion (1981 dollars) per year. The details of these cost estimates will be provided in our Regulatory Impact Analysis.

The Nuclear Regulatory Commission is responsible for implementing these standards and therefore will incur administrative costs.

Summary of Net Benefits

We believe that these environmental standards should provide adequate long-term protection of public health and the environment. We expect the standards to provide the public with a

high degree of confidence that this protection will be attained. In turn, this assurance should help the Federal waste management program to proceed with the key steps needed to develop and demonstrate a disposal system. These steps include identification, examination, and comparison of potential repository sites. While we cannot quantify the potential net benefits of our action, we believe that the assurance of long-term protection and the progress towards resolution of an important uncertainty about nuclear power will compensate for the relatively small potential increase in the costs of waste management and disposal that might be caused by our standards.

Related Regulations and Actions

Internal: We have coordinated the part of these standards that covers normal waste management operations with our Environmental Radiation Protection Standards for Nuclear Power Operations (40 CFR Part 190) to provide consistent exposure standards for all uranium fuel cycle operations.

External: The Nuclear Regulatory Commission is responsible for implementing these standards. To accomplish this, NRC is currently developing regulations for Disposal of High-Level Radioactive Wastes in Geologic Repositories (10 CFR Part 60).

Government Collaboration

We established an interagency working group to help us develop these standards. The agencies represented are the Nuclear Regulatory Commission, the Department of Energy, and the U.S. Geological Survey.

Timetable

ANPRM—41 FR 53363, December 6, 1976.
NPRM—January 1982.
Draft Regulatory Impact Analysis and Draft Environmental Impact Statement—January 1982.
Public Hearings—Several public hearings will be conducted during the public comment period. We will announce the dates and locations in the **Federal Register.**
Public Comment Period—180 days following publication of NPRM.
Final Rule—January 1983.
Final Rule Effective—January 1983.

Available Documents

None.

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EPA–OANR

Remedial Action Standards for Inactive Uranium Processing Sites (40 CFR Part 192; New)

Legal Authority

Uranium Mill Tailings Radiation Control Act of 1978, § 206, 42 U.S.C. 2022.

Reason for Including This Entry

The Environmental Protection Agency (EPA) thinks these standards are important because the Federal and State governments cannot undertake the remedial actions Congress authorized until we have promulgated standards for them. People who live or work near tailings areas, primarily in the Rocky Mountain States and Pennsylvania, are very interested in all aspects of the remedial action program.

Statement of Problem

The soils and rocks that make up the earth's crust contain radioactive uranium and thorium isotopes (radionuclides). Almost all human activities that 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 1,000 times greater than are normally found in the natural terrestrial environment. After mining, the mine operators ship the ores 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 as "yellow cake" (U_3O_8). The residues of the process, normally in the form of a wet sand (tailings), 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 ground water.

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, EPA estimates that approximately 200 premature deaths per century could occur in the national population from radiation-induced lung cancer resulting from radon emissions from the tailings piles. These effects would be divided approximately equally between people who live within 5 miles of the inactive tailings piles and those in the rest of the country. Health effects from tailings that have blown off the piles and potential contamination of ground water resources are not included in this estimate. The radioactive components in the tailings will remain hazardous for hundreds of thousands of years.

In addition to the hazards posed by tailings piles are those of tailings that have been removed from the piles. In uranium milling areas, tailings have been used in construction, often as fill under buildings. Radioactive gas from the tailings may then enter the buildings and raise indoor radioactivity well above normal levels. Tailings have also been used for sidewalks, driveways, patios, lawns, and gardens.

Congress recognized that unless it acted, tailings from inactive processing sites might pose a continuing health hazard. Therefore, with the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA), Congress authorized a joint Federal and State program to perform remedial actions for inactive uranium processing sites according to standards EPA would set. Under the terms of UMTRCA, the Department of Energy (DOE) has designated 24 eligible inactive processing sites. Tailings piles at these sites contain more than 26 million tons of residual radioactive materials on more than 1,030 acres of

land. In addition, DOE is working to designate additional lands and buildings that are affected by tailings from these sites. However, UMTRCA also provides that DOE may undertake no remedial actions until EPA has promulgated standards. EPA has not met the deadline of November 8, 1979 that UMTRCA set for promulgation.

Alternatives Under Consideration

EPA's standards for uranium mill tailing would apply to all the inactive sites designated under P.L. 95–604. They are standards that define environmental radiation conditions that must not be exceeded, but do not specify remedial methods. UMTRCA requires DOE to conduct the remedial action program. 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 such effects. EPA proposed cleanup and disposal standards in April 1980 and January 1981, respectively. The following broadly describes the alternatives we considered in developing the proposals. However, we are now formulating a new set of alternatives to be analyzed, based on the public's comments on the proposed standards.

(A) Disposal standards—EPA considered an entire range of options, from no control to virtually complete control of releases of radioactivity and of non-radioactive toxic substances from tailings. We also examined the health benefits and costs of controlling these releases to alternative levels that 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. Standards corresponding to alternative (b) were proposed. We are now analyzing the cost and health effect differences of several higher radon release levels. In general, radon control is achieved through earth cover. The thickness of the cover affects both its effectiveness and durability. Since health benefits are proportional to both of these factors, the benefits of cover increase faster than costs until significant durability (1,000 years) is achieved, at which point greater thickness achieves little improvement.

We also considered whether we should prohibit releases of radioactive and non-radioactive toxic substances from tailings to water or should limit releases to levels that preserve water quality for potential uses, including drinking and agriculture. We proposed standards for uranium mill tailings disposal that prohibit degrading the existing quality of underground and surface water bodies. We are now analyzing earlier and recent data on potential water pollution from tailings, which appear to indicate there is little danger of future pollution by stabilized tailings. We are, therefore, considering alternatives that include not issuing standards if they are not needed, issuing water protection guidance, or issuing revised standards that take account of the uses of water.

The health protection that the disposal system ultimately affords depends on the control levels and the time over which they are maintained. We have examined the technical and economic reasonability of requiring effective control for (a) several hundred years, (b) hundreds to thousands of years, and (c) longer than tens of thousands of years. We proposed to apply the disposal standards for at least 1,000 years. Because some commenters challenged the need for and practicality of a 1,000-year standard, we are now reconsidering the costs and effectiveness of requiring tailings control by physical and institutional methods for durations of 100 to 1,000 years.

(B) Cleanup standards for contaminated open land—We considered alternative standards for cleanup of contaminated open land as follows:

(a) Standards that would reduce residual radiation levels to local natural backgound levels.

(b) Standards that would limit the residual radioactivity to levels that may be above local background but are still within a common natural range of values.

(c) Standards that limit residual radiation to levels significantly above normal background.

Our proposed standards followed alternative (b). Many responses indicated that this may be too restrictive. We have now analyzed several cleanup standards that would allow higher residual radiation levels, as well as institutional versus passive methods of control.

(C) Cleanup standards for buildings—Tailings have sometimes been used by contractors and individuals as construction materials for buildings. This can cause elevated indoor radioactivity and increased risk of lung cancer for occupants who breathe radioactive particles in the air. In developing remedial action standards for this condition, we considered 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 also considered alternative standards that take account of this earlier guidance and that reflect current assessments of the health effects of the indoor radioactivity. The proposed standards take the form of specifications that, if exceeded, would require remedial action.

We could set action levels in terms of the total indoor radioactivity concentrations or as an increment above average natural background levels. We proposed the indoor radon decay product limit in terms of total radon decay concentration, because background levels cannot be determined separately in practice. Indoor gamma radiation levels are much more easily determined, however, so we proposed to express the gamma radiation standard as an increment above background. In all cases, the standards would apply to radiation that may reasonably be attributed to tailings, not to other causes.

Most comments indicated a belief that we had chosen too low a value for the indoor radon limit. We are now reanalyzing the costs and risk reductions of alternative indoor radon decay product limits and means of providing some discretion in implementation. There is little controversy regarding our proposed indoor gamma radiation standard, however, so we are not actively reconsidering it.

Summary of Benefits

Sectors Affected: People living or working near inactive uranium mill tailings sites designated by DOE for remedial actions under UMTRCA that are located in Arizona, Colorado, Idaho, New Mexico, North Dakota, Oregon, Texas, Pennsylvania, Utah, and Wyoming; individuals who live or work in contaminated buildings; and the general public.

The following broadly describes the benefits we estimated would occur under the proposed standards. However, in developing final standards, we will more thoroughly and explicitly analyze the benefits of alternative standards.

The proposed disposal standards would provide a reasonable expectation of avoiding virtually all detrimental effects of uranium mill tailings from the 24 designated inactive sites for at least 1,000 years. Based on current population distributions, we estimate that the standards would prevent about 200 deaths per century caused by radon emissions from tailings piles. The number may be larger if populations

increase, or if population centers develop near piles that are now remote from people. About 500,000 people live within 6 miles of these tailings piles. Furthermore, the proposed standards would protect surface and ground water from degradation by the tailings. Individuals who live or work in perhaps hundreds of contaminated buildings would benefit from application of the cleanup standards. Finally, applying the cleanup standards for open land would result in conditions that do not require further control. This could make several thousand acres of land available for use and avoid a long-term administrative burden of government control.

Local economies could benefit from decreased unemployment and increased business activity associated with performing the remedial actions to comply with the standards. The remedial actions would also virtually eliminate the inequitable distribution of risk associated with the tailings, which is now greater for people who live or work very near the piles or in contaminated buildings than for the general population. After disposal in accordance with the proposed standards, the radiation risk for such people would be within the normal range of natural background levels.

Summary of Costs

Sectors Affected: The Federal Government; affected States; and people living near inactive uranium mill tailings sites designated by DOE for remedial action.

The following describes the costs we currently estimate would occur under the proposed standards.

UMTRCA provides that the Federal Government bear 90 percent of the actual costs of the remedial actions and the ten affected States bear 10 percent. The Federal Government will bear all the costs of remedial actions on Indian lands. We assume expenditures will be spread over the 7 years Congress authorized for the remedial action program.

The costs of meeting the disposal standards at all the tailings piles eligible under UMTRCA are difficult to estimate, primarily because methods should be chosen on a site-specific basis. We currently estimate the cost of performing remedial actions to meet the proposed disposal standards as $270 million (1981 dollars). We made this estimate under the conservative assumption that nine piles would have to be moved to comply with the standards. However, we believe perhaps only one pile might have to be moved once all pertinent site-specific factors are fully analyzed.

Our estimate of the cleanup cost under the proposed standard for contaminated land immediately adjacent to tailings piles and away from the mill site is $21 million and $36 million (1981 dollars), respectively. Remedial actions for contaminated buildings would cost about $7 million (1981 dollars) under the proposed standards.

DOE estimates that research, development, and administration of the remedial action program would cost $118 million (1981 dollars). When added to our estimated costs for performing remedial actions, the resulting program cost is $452 million (1981 dollars) to satisfy the proposed standards.

During the performance of the remedial actions, localities would be subjected to increased traffic, dust, and other side effects of earth-moving and construction operations. Disposal operations may require large quantities of clay and soil for covering the tailings. Contaminated open land would be subjected to scraping and digging by the cleanup operations. The environmental effects of these land disturbances would vary with the site.

Summary of Net Benefits

The proposed disposal standards would provide a reasonable expectation of avoiding virtually all detrimental health effects of uranium mill tailings from the 24 designated inactive sites for at least 1,000 years. We anticipate that at least two-thirds and perhaps nearly all the existing sites would be suitable for disposal under the proposed standard. The cleanup standards would result in substantially reduced risks for people living in structures constructed on contaminated land. Additionally, thousands of acres of contaminated land could be made available for unrestricted use. We currently estimate the total cost of meeting the proposed standards is about $452 million (1981 dollars).

Related Regulations and Actions

Internal: Radiation protection guidance for remedial actions on residences on Florida phosphate lands (44 FR 38664, July 2, 1979).

Draft proposed standard for high-level radioactive waste (in development).

Regulations for treatment, storage, and disposal of hazardous wastes under the Resource Conservation and Recovery Act (40 CFR Parts 260–267).

Applicable Federal Radiation Protection Guidance.

Clean Water Act regulations (40 CFR Subchapter D, Part 100 *et seq.*).

National Interim Primary Drinking Water Standards (40 CFR Part 141).

EPA Proposed Air Carcinogen Policy (44 FR 58642, October 10, 1979).

Resource Conservation and Recovery Act (42 U.S.C. 6905, 6912(a), 6921–27, 6930, and 6974).

External: UMTRCA gives to DOE the responsibility for selecting and performing remedial actions that satisfy EPA's standards. Any States that share the cost must participate fully, and the Nuclear Regulatory Commission must concur. DOE must also consult any affected Indian tribe and the Department of Interior when Indian lands are involved. In addition, the Department of Justice has responsibilities related to determining the responsibility, if any, of any private parties for remedial actions.

Government Collaboration

The Environmental Protection Agency, the Nuclear Regulatory Commission, and the Departments of Energy, Justice, and Interior all have responsibilities under UMTRCA. These agencies have formed a staff level working group, which plans necessary interagency coordination and reviews draft documents as appropriate.

Timetable

ANPRM—44 FR 33433, June 11, 1979.
Statutory Deadline—November 8, 1979.
NPRM (Cleanup Standards)—44 FR 27370, April 22, 1980.
Interim Cleanup Standards—44 FR 27366, April 22, 1980.
NPRM (Proposed Disposal Standards)—44 FR 2556, January 9, 1981.
Public Hearings—Salt Lake City, UT, April 24 and 25, 1981; Durango, CO, April 27 and 28, 1981; Washington, DC, May 14 and 15, 1981.
Public Comment Period—Proposed Cleanup Standards, April 22, 1980 to July 15, 1981; Proposed Disposal Standards, January 9, 1981 to July 15, 1981.
Final Rules (Cleanup and Disposal Standards)—March 1982.
Final Rules Effective—60 days after promulgation.
Regulatory Impact Analysis—EPA has not decided whether such an analysis is required. In either case, however, we will present similar information in the Final Environmental Impact Statement.
Regulatory Flexibility Analysis—EPA will not develop an analysis. The standards do not apply to small entities and would have no effect on them. In any case, EPA proposed the standards before the Regulatory Flexibility Act took effect.

Environmental Impact Statement—We issued a draft Statement (EPA 520/4–80–011) in January 1981. We will issue a final Statement when standards are promulgated.

Available Documents

From the Congress—House Document Room, H–226 Capitol, Washington, DC 20515: P.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—Technical Library, Bendix Field Engineering Corp., P.O. Box 1569, Grand Junction, CO 81502: "Phase II, Title I, Engineering Assessment of Inactive Uranium Mill Tailings Sites" by Ford, Bacon and Davis, Utah Inc. (microfiche copy only, nominal charge per report).

From EPA/OANR–ORP: "EPA Development of Standards for Uranium Mill Tailings and Report on Uranium Mining Wastes—Call for Information and Data," 44 FR 33433, June 11, 1979.

"EPA Indoor Radiation Exposure Due to Radium-226 on Florida Phosphate Lands—Radiation Protection Recommendations and Request for Comment," 44 FR 38664, July 2, 1979.

"Interim Cleanup Standards for Inactive Uranium Processing Sites," 45 FR 27366, April 22, 1980.

"Proposed Cleanup Standards for Inactive Uranium Processing Sites," 45 FR 27370, April 22, 1980.

"Proposed Disposal Standards for Inactive Uranium Processing Sites," 46 FR 2556, January 9, 1981.

"Draft Environmental Impact Statement for Remedial Action Standards for Inactive Uranium Processing Sites," EPA Report 520/4–80–011, December 1980.

EPA documents listed above are available at 401 M Street, S.W., Washington, DC 20460.

Comments on the proposed standards and transcripts and other material from public hearings have been placed in Docket No. A–79–25, which is located at EPA, Central Docket Section, West Tower Lobby, 401 M Street, S.W., Washington, DC 20460. Additional documents, when they become available, will also be placed in this Docket.

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EPA–OANR—Office of Mobile Source Air Pollution Control

Fuels and Fuel Additives Protocols (40 CFR Part 79; Revision)

Legal Authority

The Clean Air Act, as amended, § 211, 42 U.S.C. 7545.

Reason for Including This Entry

The Environmental Protection Agency (EPA) thinks that this rule is important because it may have a marked effect on the way private industry develops and markets fuels and fuel additives and because of its potentially beneficial public health effects. While this rule may not have an annual impact of $100 million or more, the potential growth in the use of synthetic fuels and fuel additives in the future, as the Nation attempts to lessen its dependence on foreign oil, makes it a rulemaking worthy of attention.

Statement of Problem

In 1977 Congress amended the Clean Air Act, adding § 211(e), which requires EPA to develop regulations to test the environmental and health effects of fuels and fuel additives. Section 211(e)(2) of the Act itself 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 by 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 testings of fuels and fuel additives before registration. Present regulations require submittal of the additive name, use, chemical description, and analytical technique for detection and do not require any chemical or biological testing.

On August 29, 1978, EPA published an ANPRM in the **Federal Register** (43 FR 38607) requesting comments on the types of health effects and emissions test methods to be used, small business criteria, and cost sharing provisions. In response to this request, the Agency received many submittals of comments from the interested public. These regulations will consider all comments received from interested individuals and organizations.

Alternatives Under Consideration

Our preferred alternative is to require health effects and emissions testing by manufacturers on a tier basis. This approach would require manufacturers to report the chemical composition of all candidate fuels and fuel additives. If, based on chemical composition, EPA can make a determination that the environmental and health impacts are insignificant, further testing may not be required. However, if the initial and subsequent data present a cause for concern, further testing could be required until the concern is alleviated.

The second alternative would require full testing by manufacturers for all fuels and fuel additives with no exemptions. Approximately 2,000 fuels and fuel additives could require full environmental and health testing by their current manufacturers. This alternative would be unnecessarily costly, as many fuels and fuel additives whose environmental impact we can predict to be small or negligible would have to be tested.

The third alternative would provide for full testing for all fuels and fuel additives, except that firms producing a small amount of a fuel or fuel additive could be exempted from testing requirements. (This small business exemption would not apply to chemicals that are believed by EPA to have a potentially hazardous environmental effect.) Testing costs may be prohibitively expensive for small businesses, and EPA believes that this alternative would provide an incentive for small businesses to produce and test fuels and fuel additives. The disadvantage of this alternative is that it would be difficult for EPA to determine criteria for exempting small businesses. Therefore, the Agency is planning further study of this alternative.

The fourth alterenative would permit companies to share the costs of producing and testing fuels and fuel additives. For example, EPA could allow two companies that are making essentially the same additive to test and register the chemical jointly. This alternative could reduce costs for individual firms and also eliminate duplication. In addition, it might provide some incentive for a company to be first

in producing and testing new fuels. By sharing the costs with another firm, the entrepreneurial firm could protect its investment. EPA has not determined specifically how such a cost sharing plan would work; therefore, this alternative is being studied further.

The final alternative would be to require manufacturers to submit test data demonstrating the effect of their fuel or fuel additive on regulated pollutants only (oxides of nitrogen, carbon dioxide, hydrocarbons) before registration, but not to require health or environmental testing. This is the present system as required by 40 CFR Part 79, but which the Congress required be improved via these regulations.

Summary of Benefits

Sectors Affected: The general public, particularly those living in urban areas where the concentration of vehicles is greatest; and those people who live near or work in plants that produce fuels or fuel additives.

The benefit we expect from this regulation is the protection of public health. Those fuels and fuel additives and the products of their combustion, which may be harmful to public health, would be identified and eliminated from the marketplace, where appropriate. A particular concern is that certain combustion products of fuels and fuel additives could be carcinogenic or mutagenic. Adverse health effects could occur in urban areas and near fuel depots or fuel distribution centers. Effects could also be seen by those who fuel their own cars.

Summary of Costs

Sectors Affected: Petroleum refining and users of motor vehicles or their services.

There are over 2,000 fuels and fuel additives currently registered under § 211 of the Clean Air Act. We roughly estimate that approximately 200 of these will require some degree of testing by the manufacturers. The cost to the industry of implementing these tests could total as high as $99 million to $132 million (1980 dollars). These costs would be incurred over the first 3 years of regulation, because by law, all fuels and fuel additives must meet the testing requirements within 3 years of the date of promulgation of this regulation. Small businesses would be exempt from the most costly tests. Users of motor vehicles would share these costs to the extent they are passed on by the petroleum refiners.

Summary of Net Benefits

EPA expects a well designed test program could result in improved public health that will outweigh the cost of testing and thus have a net benefit to the Nation.

Related Regulations and Actions

Internal: Fuels and Fuel Additives Registration, 40 CFR Part 79.

Proposed Guidelines for Registration of Pesticides, 40 CFR Parts 161, 162, and 163.

Toxic Substances Control Act, § 4, Carcinogen Protocols and Chronic Toxicity Protocols, 40 CFR Part 772.

Ambient Air Quality Standards, 40 CFR Part 50.

External: None.

Government Collaboration

Health-testing protocols will be submitted to appropriate interagency review groups for screening before the regulation is promulgated.

Timetable

ANPRM—43 FR 38607, August 29, 1978.
ANPRM—October 1982.
NPRM—October 1983.
Regulatory Impact Analysis—June 1983.
Public Hearing—60 days after publication of NPRM.
Public Comment Period—90 days following publication of NPRM. Comments may be sent to Charles L. Gray, Jr., Director, Emission Control Technology Division, Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, MI 48105.
Final Rule—October 1984.
Final Rule Effective—Three years after promulgation of regulation.
Regulatory Flexibility Analysis—In conjunction with NPRM.

Available Documents

The August 29, 1978 ANPRM and other documents in EPA Docket ORD-78-1 are available for review at EPA, Central Docket Section, Waterside Mall, Room 2903B, 401 M Street, S.W., Washington, DC 20460. The documents are available for personal inspection Monday through Friday between 8:00 a.m. and 5:00 p.m., or copies can be obtained by personal or written request. A reasonable fee may be charged for copying.

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EPA—Office of Pesticides and Toxic Substances

Pesticide Registration Guidelines (40 CFR Part 163, Subparts A-P; New)

Legal Authority

Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136a(c)(2)(A), 136f, and 136w.

Reason for Including This Entry

The Environmental Protection Agency (EPA) estimates that the cost to chemical companies and other registrants whose products are registered with EPA or who apply for registration of their products to meet the Guidelines' requirements will total $56 million to $107 million (in 1980 dollars) annually over the next 10 years. This means that the Guidelines, taken as a whole, will probably meet the criterion for classification as a "major regulation" under Executive Order 12291, although the Agency will publish most subparts of the Guidelines in a form other than regulations.

In addition, the Presidential Task Force on Regulatory Relief has designated this program for review.

Statement of Problem

With certain limited exceptions, EPA must, in accordance with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), register all pesticides before legal sale and distribution by manufacturers and formulators can occur in the United States. The purpose of requiring registration of a pesticide is to permit EPA to determine if: (A) the composition of the pesticide is such as to warrant the proposed claims for it; (B) the labeling and other material required to be submitted comply with the requirements of the Act; (C) the pesticide will perform its intended function without unreasonable adverse effects on the environment; and (D) when used in accordance with widespread and commonly recognized practice it will not generally cause unreasonable adverse effects on the environment.

In the absence of the Guidelines, manufacturers and formulators must develop, and EPA must review, health and safety data on a case-by-case basis. Such a procedure causes confusion, inefficiency, and inconsistency. Experience has shown that when guidelines have not existed, registration applications often have been incomplete

or inadequate; applicants have spent unnecessary time and money because requirements were not clearly explained; and EPA could not perform registration reviews efficiently. With some 35,000 currently registered pesticide products to be reregistered, and many new ones to be registered each year, the Congress recognized the need for guidelines and called for their preparation and publication at FIFRA § 3(c)(2)(A).

The Guidelines specify the kinds of information required to support a registration application. Such information encompasses data required for evaluation of health and safety hazards to humans, domestic animals, wildlife, aquatic organisms, and nontarget plants and insects. It also includes data concerning chemical characteristics of the ingredients of the pesticide products, the food and feed crop residues resulting from the use of pesticides, and the environmental fate of pesticides. In addition, information on labeling, product efficacy, exposure analysis, and product disposal can be required. The Guidelines also specify the kinds of information of each type mentioned above that are required for pesticides to be tested under an experimental use permit and for pesticides categorized as biorational pesticides (pheromones, bacteria, viruses, etc.).

Prospective registrants (primarily pesticide manufacturers and formulators) are responsible for both testing and submittal of test results to the Agency to support their applications for new registrations. In addition, FIFRA requires that currently registered pesticides be *reregistered* expeditiously. In many cases, the registrants of these pesticides will have to submit health and safety data to meet FIFRA requirements during the next several years, either because they had not previously submitted the data or because they had submitted inadequate data.

Alternatives Under Consideration

Section 3(c)(2)(A) of FIFRA requires that "The Administrator shall publish guidelines specifying the kinds of information required to support the registration of a pesticide and shall revise such guidelines from time to time." Therefore, EPA is not considering alternatives to publication of the Guidelines. The Agency is, however, analyzing public comments on the portions already proposed (see "Timetable") and is considering these comments to improve the nature and clarity of the proposed data and testing requirements. In addition, the Agency is reconsidering whether the tests that would be required are, in fact, essential, and whether more flexibility should be allowed for performing the actual tests. Also, the Agency will publish some subparts of the Guidelines in a form other than regulations, for the time being.

Summary of Benefits

Sectors Affected: Pesticide chemical manufacturing and formulating; chemical/biological testing laboratories; EPA; and people who use or are exposed to pesticides, including farmers and the general public.

The Guidelines will give prospective registrants the benefit of knowing precisely what kinds of data the Agency requires (though there are provisions for waiving or modifying some requirements under some circumstances, such as certain use- or product-related situations where specific kinds of exposure are precluded, or where certain kinds of data, such as efficacy results, are no longer needed under Agency policy). Manufacturers and formulators therefore will be able to plan their research and development programs with greater certainty and thereby save money and time. Improved decisionmaking will result in fewer adverse impacts, increasing public confidence in pesticide use, and, ultimately, increasing the market for certain pesticide products. The chemical/biological testing industry (comprising over 120 businesses and still expanding) will benefit from decreased confusion over when a test is to be run and what is considered a generally acceptable method.

The Guidelines will benefit the Agency by improving the quality of data available for making decisions, and by allowing for more efficient processing of applications. Farmers and other major users will benefit generally from having registered pesticides made available sooner.

Summary of Costs

Sectors Affected: Pesticide chemical manufacturing and formulating; and users of pesticides, including farmers and the general public.

EPA estimates that it will cost registrants between $661 million and $888 million (1980 dollars) over the next 10 years to comply with the Guidelines requirements. These figures are based on the number of new registration actions and requests for data to support existing registrations for all types of pesticides that the Agency expects to process over the next 10 years. The range is due to variability in the number of chemicals for which EPA will request data (the number is expected to decline as EPA's reregistration program progresses) and in the cost of performing the required studies. This range covers all Guidelines subparts as now drafted. EPA estimates sales of all the chemicals for which data under the Guidelines will be required will be about $33 billion over the next 10 years.

On an annual basis, the Agency estimates the costs would range from $56 million to $107 million (1980 dollars). Current (1981) pesticide industry research and development expenditures are estimated to be $365 million annually; of this total, approximately $100 million are used to meet existing registration requirements. In relation to sales, the annual costs (1980 dollars) attributable to the Guidelines would amount to 2 percent to 3.6 percent of the income at the basic producer level ($3 billion), or 1 percent to 1.8 percent of the income at the retail level ($5.8 billion).

The projected cost of the Guidelines represents expenditures for conducting laboratory and field testing and developing the reports of such tests. While registrants will initially bear the cost, we expect that it will be passed on to pesticide users.

We do not expect these Guidelines to have any significant effect on employment in the pesticide industry, or to have any other nationally significant economic effects. We do expect producers of some currently registered pesticides of small economic significance to withdraw their products from the market rather than go to the expense of developing the data required for reregistration. In this situation, we expect consumers to choose other available pesticides.

Summary of Net Benefits

Executive Order 12291 requires that a statement of net benefits be provided with each regulation. Such summary would include, under most circumstances, a quantification of benefits versus costs associated with meeting the regulatory goals. In this instance, however, most of the benefits are not quantifiable (e.g., improved public health, less hazard to wildlife, etc.). A brief explanation of some of the nonquantifiable benefits is provided below.

These guidelines are designed to provide the following two principal benefits concurrently:

(1) make pesticide product development and registration more efficient; and

(2) make the resultant approved pesticide products generally safer to humans and the environment.

Balanced against relatively slight increases in costs at the basic chemical producers level (2 to 3.6 percent of income) and at the retail level (1 to 1.8 percent of income), which are passed on to pesticide users, the direct and indirect benefits of registering pesticides at a more rapid pace than in the past considerably outweigh the costs. Pests not now controlled and crops or sites not now easily or economically protected from pests will in the future gain greater attention from pesticide producers because of the improved efficiency of the registration process. New products designed to deal with these problems will probably be developed and registered sooner now that prospective registrants and the Agency know better what kinds of data to develop and what standards these data must meet.

In addition to benefits attributable to greater efficiency, other benefits will flow from the fact that the data used to register pesticides will often be of better quality than under the present system. This will improve EPA's ability to make accurate and reliable decisions on the risks associated with a pesticide's use. Improved decisionmaking ultimately will result in fewer adverse effects from pesticide use and should increase the public's confidence in pesticide safety. This, in turn, may lead to an increased market for certain pesticide products.

A number of the cost/benefit aspects discussed above are mentioned briefly in the Regulatory Analysis paragraphs in each of the preambles to the guidelines subparts. A more extensive discussion of costs and benefits will be contained in an overall economic impact analysis of the guidelines that the Agency has been developing for over a year and that will be available in early 1982.

Related Regulations and Actions

Internal: In addition to the development of these Registration Guidelines, EPA has been conducting a comprehensive review of its existing pesticide registration regulations (40 CFR Part 162, Subpart A, "Registration, Reregistration, and Classification Procedures") during the past year. The purpose of that review is to determine how those rules should be reorganized and revised to make them more consistent with recent amendments to FIFRA, to delete or change impractical and unnecessary requirements, and to make the rules easier for the public to understand, for industry to comply with, and for the Agency to implement.

The review process is consistent with the August 12, 1981 directive of the Presidential Task Force on Regulatory Relief, which required EPA to review its registration program. In addition to continuing its review of the current registration regulations, EPA plans to comply with the directive of the Task Force by reviewing other related regulations and registration programs for requirements that could now be deemed unnecessarily costly or burdensome to industry or the public. Where appropriate, EPA will propose changes in those requirements to alleviate the costs or burdens and to ensure that the net benefits of each requirement exceed its net costs. EPA is developing a plan and schedule for conducting these reviews.

EPA is also developing a limited number of testing guidelines for chemical substances and mixtures under the Toxic Substances Control Act (TSCA). As far as possible, EPA will make the TSCA and FIFRA testing standards consistent with each other. The Good Laboratory Practice standards we are developing under TSCA and FIFRA, which prescribe standards of performance for toxicological testing, will also be consistent.

External: Four Federal agencies (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 and standards that will meet all four agencies' needs.

The Agency is also working with the Organization for Economic Cooperation and Development (OECD). This group is developing international testing standards, and has the cooperative input of 24 other countries besides the United States. In published form, our toxicology guidelines (Subpart F) will be consistent with the international standards. As additional international standards in other areas are developed, the Agency will seek to achieve as much consistency as possible.

Government Collaboration

FIFRA §§ 25 (a) and (d) requires the Administrator of EPA to provide copies of draft proposed and final regulations to the Department of Agriculture, the Committee on Agriculture in the House of Representatives, the Committee on Agriculture and Forestry in the Senate, and the FIFRA Scientific Advisory Panel. These groups provide technical, legal, and scientific oversight.

Agencies and other government groups that EPA has consulted or that have provided assistance in Guidelines development include members of the former Interagency Regulatory Liaison Group, the National Cancer Institute, the Department of the Interior, and the Department of Agriculture.

Timetable

The current rulemaking process began in 1973 and is expected to continue until 1982–1983. There are a number of subparts to these regulations that will have separate NPRMs, public hearings, and requests for public comments. However, some subparts will be published as guidance documents. An overall Regulatory Impact Analysis will be published for the entire Guidelines in early 1982. This analysis will also include the impacts cited in the Regulatory Flexibility Act and Executive Order 12291.

We intend to publish the following subparts in proposed form in early 1982:

Subpart G—Product Performance.
Subpart H—Label Development.
Subpart I—Experimental Use Permits.
Subpart K—Exposure Data Requirements: Reentry Protection.

We intend to publish Subpart A—Introduction—in final form in early 1982.

The following will appear as Guidelines rather than CFR Parts:

Chemistry Requirements: Product Chemistry.
Hazard Evaluation: Wildlife and Aquatic Organisms.
Hazard Evaluation: Humans and Domestic Animals.
Hazard Evaluation: Nontarget Plants.
Hazard Evaluation: Nontarget Insects.
Chemistry Requirements: Environmental Fate.
Good Laboratory Practices.

Available Documents

We have published the following portions of the Guidelines as NPRMs:

Subpart B—Introduction, 43 FR 29606, July 10, 1978. This subpart will become Subpart A when published final.

Subpart D—Chemistry Requirements, 43 FR 29696, July 10, 1978. This subpart has now been divided into five subparts: D—Chemistry Requirements: Product Chemistry; K—Exposure Data Requirements: Reentry Protection; N—Chemistry Requirements: Environmental Fate; O—Chemistry Requirements: Residue Chemistry (scheduled for NPRM in 1982); and P—Data to Support Disposal Instructions (scheduled for NPRM in 1982).

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.

Subpart F—Hazard Evaluation: Humans and Domestic Animals (two additional general sections on good laboratory practices for toxicology testing), 45 FR 26373, April 18, 1980. (This proposal will be separated from Subpart F when developed into a Final Rule; it will be Subpart Q—Good Laboratory Practices.)

Subpart J—Hazard Evaluation: Nontarget Plants and Microorganisms, 45 FR 72948, November 3, 1980.

We have published the following portion of the Guidelines as an Interim Final Rule:

Subpart C—Registration Procedures, 40 FR 41788, September 9, 1975. (This subpart may be replaced by a revised regulation now being developed under FIFRA § 3.)

We also published an "Economic Analysis of Guidelines for Registering Pesticides in the U.S." (covering the costs of Subparts B, D, E, and F, which would be responsible for about 90 percent of the total Guidelines cost) at 43 FR 39644, September 6, 1978.

All documents listed in the Timetable section that have already been published are available for review at the OPTS Reading Room, Room 107, Waterside Mall East Tower, Environmental Protection Agency, 401 M Street, S.W., Washington, DC 20460.

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EPA–OPTS

Premanufacture Notification Requirements and Review Procedures (40 CFR Part 720; New)

Legal Authority

Toxic Substances Control Act (TSCA). § 5.15 U.S.C. 2604.

Reason for Including This Entry

The Environmental Protection Agency (EPA) thinks that this rule is important because the regulations may have a substantial impact on the chemical industry. The Presidential Task Force on Regulatory Relief has designated for review EPA's policy of exempting certain chemicals from premanufacture notification requirements.

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 § 5 requires a manufacturer to notify 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 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; regulate production or use; or require reporting by manufacturers, processors, or distributors of chemicals 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 October 1979 EPA reproposed the forms and certain portions of the rule. While the statute generally described the notice requirements, the rules, when final, will clarify the statutory obligations of manufacturers and importers of new chemical substances to provide information on the substances, and will also clarify the Agency's procedures for reviewing the information. Without knowledge of the Agency's review procedures, the chemical industry may have difficulty in providing information to the Agency, in planning commercialization of new chemical substances, or in understanding the reasons for regulatory actions taken by the Agency. The forms will provide a detailed specification of the information that manufacturers, processors, and distributors 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 may present an unreasonable risk to human health or the environment, and if so, what action to take.

Under § 5(h)(4) of TSCA, the EPA Administrator may, upon application and by rule, exempt the manufacturer of a chemical substance from all or part of the requirements of § 5 if the Agency determines that the new chemical substance will not present an unreasonable risk of injury to health or the environment. The development of exemptions from premanufacture review has been designated by the Presidential Task Force on Regulatory Relief as an area for immediate action.

The Agency received its first application for an exemption from Polaroid Corporation on April 7, 1980. Additional petitions for exemptions have been received from the Chemical Manufacturers Association (CMA), the Synthetic Organic Chemical Manufacturers Association (SOCMA), and the Dyes Environmental Toxicity Organization (DETO).

The CMA petition requests the Agency to commence rulemaking proceedings to exempt certain site-limited intermediates, chemical substances manufactured in quantities less than 25,000 pounds per year, and polymers whose precursor monomers are on the inventory. CMA also requests that the Agency allow premanufacture notification submitters to begin manufacture before the end of the 90-day notice review period when the Agency determines it will take no regulatory action. Finally, CMA requests that the Agency establish procedures for processing other exemption applications that it may receive.

The Agency is considering the CMA petition and meeting with industry and other interested groups to develop an approach to exemptions. In particular, the Agency is considering the relationship between the broad exemptions requested by the CMA petition and the narrower exemptions requested by others, the necessary information to determine that categories of chemicals present no unreasonable risk, and the appropriate procedures for processing applications. No timetable has been established.

Alternatives Under Consideration

There are several significant issues to be resolved in this rulemaking. Among them are the scope and the level of detail of information it should require; the identification of chemical substances for which industry must submit premanufacture notification to EPA; policies regarding the confidentiality of information submitted; the extent to which the submitter must contact prospective customers to obtain relevant data; supplemental reporting; and whether and how EPA determines that submissions meet its requirements. A detailed discussion of the proposal

and other regulatory options the Agency is considering is included in the draft Regulatory Impact Analysis and proposed Economic Impact Analysis (see "Available Documents," Proposed Economic Impact and Draft Regulatory Analysis of November 13, 1980 (45 FR 74945)).

Summary of Benefits

Sectors Affected: The chemical industry and its employees; importing of chemical products; the general public; and the environment.

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, especially that which would result if a chemical is in full production and use is withdrawn. The rules will benefit manufacturers and importers of chemical products by clarifying statutory obligations for providing information. 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

Sectors Affected: The chemical industry and importing of chemical products.

EPA is conducting an in-depth study of the premanufacture notification requirements to determine with a greater degree of confidence the nature of the costs and economic effects of this rulemaking. These 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. Preliminary results of this analysis estimated that the notice form proposed on January 10, 1979 would impose a one-time cost between $2,500 and $22,500 to complete for each submitter, in 1980 dollars. Estimates for the October 16, 1979 reproposed shortened form indicated that completion of the revised form would impose a one-time cost between $1,155 and $8,925, in 1980 dollars. It has also been estimated that approximately 400 notices would be submitted per year. Therefore, the total cost of providing the notice forms in a typical year would be between $462,000 and $3,570,000, in 1980 dollars. Estimates of costs for the October 16, 1979 revision also included costs of between $0 and $6,400 for asserting and substantiating claims of confidential business information in connection with the notice submission.

The previous estimate did not include confidentiality costs, although there would be some cost for confidentiality imposed by the statute as well as any implementing regulation.

Summary of Net Benefits

The Agency is currently expanding its economic analysis and regulatory analysis to conform with the requirements of Executive Order 12291. This analysis will compare the costs and benefits of the alternatives under consideration by the Agency. Because the analysis is underway, the net benefits of the alternatives are unknown.

Related Regulations and Actions

None.

Government Collaboration

Other Federal agencies that have been 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

NPRM for Premanufacture Notification Requirements and Review Procedures—44 FR 2242, January 10, 1979 (Docket Number OTS 050002).
Reproposed Rule—44 FR 59764, October 16, 1979.
NPRM for Proposed Processor Requirements, Premanufacture Review Program—45 FR 54642, August 15, 1980 (Docket Number OTS 050002).
Proposed Economic Impact and Draft Regulatory Analysis—45 FR 74945, November 13, 1980.
Final Rule—April 1983.
Final Rule Effective—30 days following publication of the Final Rule.
Regulatory Impact Analysis—April 1983.
Regulatory Flexibility Analysis—Not required.

Available Documents

Public comments on NPRM.
Discussion of Premanufacture Testing Policy and Technical Issues—44 FR 16240, March 16, 1979 (Docket Number OTS 050002).
Interim Policy Statement—44 FR 28558, May 15, 1979 (Docket Number OTS 050002).
Extension of Comment Period—45 FR 81615, December 11, 1980.
These documents are available from the Agency Contact listed below.

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EPA-OPTS

Toxic Substances Control Act (TSCA) Section 4 Test Rules (40 CFR Part 773; New)

Legal Authority

Toxic Substances Control Act, §§ 4 and 26, 15 U.S.C. 2603 and 2625.

Reason for Including This Entry

The Environmental Protection Agency (EPA) believes these rules are important because we need data to assess the risk of injury to human health and the environment caused by exposure to chemicals in commercial production and use.

Statement of Problem

Section 4 of the Toxic Substances Control Act (TSCA) gives the Environmental Protection Agency the authority to require that manufacturers and/or processors of chemicals test these chemicals for possible adverse effects on human health or the environment. 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 scientific methodology and analysis to be used in testing for an effect. A test rule is a regulation requiring manufacturers and processors of specific chemicals to test these substances for certain effects according to appropriate test standards. The Agency established a reasonable timetable in which industry must complete the development of the test data.

Section 4(e) of TSCA established an Interagency Testing Committee (ITC) to make recommendations to the EPA Administrator, in the form of a list containing chemical substances that should receive priority consideration in

the Agency's development of test rules. For the most part, chemicals to be included in test rules come from the semiannual recommendations made by the ITC. The Committee's eight members represent the Council on Environmental Quality, the Department of Commerce, the Environmental Protection Agency, the National Science Foundation, the National Institute of Environmental Health Sciences, the National Institute for Occupational Safety and Health, the National Cancer Institute, and the Occupational Safety and Health Administration (OSHA).

In its Initial Report (42 FR 55026, October 12, 1977), the ITC recommended that chloromethane be tested for carcinogenicity, mutagenicity, teratogenicity, and other chronic effects and emphasized its concern about chloromethane's effects on the central nervous system, liver, kidney, bone marrow, and the cardiovascular system.

Monochlorobenzene and, dichlorobenzene were also contained in the ITC's initial report. The ITC recommended the development of rules that would require industry to test these chlorinated benzenes for potential to cause cancer, gene mutation and chromosomal aberration, structural birth defects, other chronic effects, and environmental effects and also recommended requiring an epidemiological study. The ITC's third report (43 FR 50830, October 30, 1978) added the higher chlorinated benzenes, (tri-, tetra-, and penta-) to the priority list and recommended testing requirements for the same effects. To date, the ITC has completed reports designating 43 chemicals and groups of chemicals as priority for EPA test rule development.

On July 18, 1980, EPA proposed that chloromethane be tested for its potential to cause cancer and structural birth defects, and that chlorinated benzenes be tested for their potential to cause cancer, birth defects, reproductive effects, and organ-specific effects (45 FR 48524). Approximately 300 million to 500 million pounds of chloromethane are manufactured annually in the United States. Almost all chloromethane is used as a chemical intermediate in the manufacture of materials such as silicones and tetramethyl lead. Because of chloromethane's almost exclusive use in chemical and allied product manufacture and processing, the greatest potential for human exposure during the chemical's life cycle occurs for workers engaged in the manufacture, processing, and use of the chemical.

The annual domestic production volume of chlorinated benzenes ranges from approximately 5 million pounds of pentachlorobenzene to 325 million pounds of monochlorobenzene. Exposure to the liquid chlorobenzenes is due to their use as a functional fluid in transformers, process solvents, solvents in formulated products, and synthetic intermediates, while exposure to the solid forms occurs from their use as synthetic intermediates and pesticides. Workers are exposed to chlorinated benzenes during manufacture, processing, and use; consumers are exposed to certain chlorobenzenes in the use of formulated products such as toilet bowl cleaners, drain cleaners, space deodorants, and moth control agents; and the general population may be exposed from environmental concentrations resulting from manufacture, processing, use, and disposal of the substances.

Simultaneously with the publication of this first proposed test rule, we published a proposed Statement of Exemption Policy and Procedure for granting exemptions from § 4 testing (45 FR 45812). EPA's exemption policy will implement § 4(c) of TSCA, which provides that manufacturers and processors can be exempted from the testing requirements of § 4 if EPA finds that the chemical they manufacture or process is equivalent to a chemical already being tested and that testing of both chemicals would produce data that are duplicative. EPA proposed that in most cases the Agency will consider one test substance to be representative of all forms of the substance subject to the test rule.

We also announced on July 18, 1980 our tentative decision not to require health effects testing for acrylamide, a compound suspected of entering surface water and ground water through its use as a chemical grout, a wastewater treatment chemical, and other industrial applications (45 FR 48510). This decision was made on the judgment that exposure to acrylamide could be controlled on the basis of its neurotoxicity and that Agency resources could best be used on more pressing testing needs. Final rulemaking on these actions is scheduled for March 1982.

We proposed our second test rule on June 5, 1981. This rule would require testing of dichloromethane (DCM), 1,1,1-trichloroethane (TCE), and nitrobenzene for both health and environmental effects. In its Initial Report, the Interagency Testing Committee recommended that nitrobenzene be tested for its potential to cause cancer, genetic damage, and environmental effects. In its Second Report, the ITC recommended that DCM and TCE be tested for their potential to cause cancer, genetic damage, birth defects, chronic toxicity, and environmental effects and that epidemiology studies be performed.

The annual domestic production volume of DCM is approximately 634 million pounds. Exposure to the liquid is due to its use in paint stripping, urethane foam blowing, vapor degreasing, and dip solvent for metals and aerosols. Workers are exposed to DCM during manufacture, processing, and use; consumers are exposed to the chemical in cleaning agents, aerosols, adhesives, paints, and paint-removers. Besides the proposed health effects testing for cardiovascular effects from DCM, the June 5, 1981 proposed rule would require specific environmental effects tests due to the production volume and the estimated 499 million pounds released yearly to the atmosphere through the production, processing, and use of DCM.

The annual domestic production volume of nitrobenzene is about 575 million pounds. Ninety-seven percent of this volume (557.7 million pounds) is used in the production of anilines; 2 percent (12.8 million pounds) is used as a solvent, and 1 percent (6 million pounds) is used in the manufacturing of dye intermediates, metal polishes, and other solvents. EPA proposed health effects tests because of nitrobenzene's reproductive and teratogenic activity, and environmental effects tests because of its high production volume and environmental release (estimated at 12.75 million pounds annually).

TCE manufacturing results in 716 million pounds of the chemical produced annually. This liquid is used as an organic solvent and metal cleaner; these uses account for 422 million pounds of its total volume. Besides the obvious exposure to workers, consumers are significantly exposed because of its commercial use in aerosols, adhesives, textiles, paints, ink, and other consumer items as well as in pharmaceuticals and leather tanning. EPA proposed environmental effects tests due to TCE's substantial production and occupational exposure, and substantial yearly environmental release, estimated to be 75 percent of the total yearly product volume.

In the preamble of this proposed test rule, we discussed our approach for determining the § 4(a)(1)(B) finding for the chemicals in this rule and our approach for determining what health and environmental effects tests EPA would require according to § 4(a)(1)(B).

Finally, in this proposed rule, we stated our intent to pursue consistency in our test standards with those of the

Organization for Economic Cooperation and Development (OECD).

EPA's third § 4 test rule is scheduled for proposal in December 1981. We may include aryl phosphates, antimony, antimony sulfide, and antimony trioxide in this proposal. The ITC recommended in its Second Report that aryl phosphates be tested for carcinogenicity, mutagenicity, teratogenicity, other chronic effects, and environmental effects, and also recommended epidemiological studies. Antimony and its oxide and sulfide were recommended for study in the ITC Fourth Report due to their potential for causing cancer, genetic damage, birth defects, chronic toxicity, and environmental effects and that epidemiology studies be performed.

We also plan to publish test rules or notices stating our reasons for not requiring testing on the benzidine dyes, o-dianisidine dyes, o-tolidine dyes, polychlorinated terphenyls, chlorinated naphthalenes, alkyl phthalates, butyl glycolyl butyl phthalate, butyl benzyl phthalate, and chloroparaffins. These chemicals were recommended for testing by the ITC in its First, Second, Fourth, Fifth, and Seventh Reports. These notices containing our decisions appeared in the **Federal Register** in late October and November of 1981.

Finally, we published an Advance Notice of Proposed Rulemaking in October 1981 for fluoroalkenes (46 FR 53704, October 30, 1981). This chemical was recommended by the ITC in their Seventh Report. In this advance notice, we discussed testing that we expect to propose based on epidemiological information we currently have available.

Other test rules covering the remainder of the 45 ITC-designated priority chemicals will follow.

Alternatives Under Consideration

The alternatives to testing available to us are quite limited. Under TSCA, if EPA finds that (1) a chemical may present an unreasonable risk of injury to human health or the environment or a chemical may enter the environment in substantial quantities or result in significant human exposure, and (2) there are insufficient data or experience to reasonably determine or predict its effects on health or the environment, and (3) testing is necessary to develop such data, we must require industry to conduct testing and there is no alternative to issuing a test rule. However, we will encourage industry to begin testing of a chemical before a test rule is proposed. If such testing is satisfactory, it could obviate the need for a test rule. Voluntary testing proposals for alkyl phthalates and chorinated paraffins have been submitted to the Agency by industy groups and are now being reviewed. If these proposals adequately address our concerns, we will not issue test rules for these chemicals.

Another alternative is to conduct testing in governmental facilities or under contract to the Government. We may take this approach where it would be inappropriate or infeasible to require testing by the chemical industry. This may occur when no test standard exists and EPA's sponsorship of testing would aid the development of the test standard. Heavy 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."

EPA also considered an alternative approach to the reporting deadlines. This approach would have established dates only for the beginning of the testing period rather than dates for reporting during and at the end of the testing period. This alternative was rejected because § 4(b)(1)(C) of TSCA requires EPA to specify the time period within which persons subject to a test rule must submit test data. In addition, EPA believes that it is not necessary to consider size or production capacity of the manufacturers or processors subject to the rule when establishing reporting deadlines because (1) this is not specifically required in the Act, (2) it is difficult to predict exactly who will bear the testing responsibility, and (3) EPA expects manufacturers and processors to coordinate their testing efforts.

Summary of Benefits

Sectors Affected: Workers in establishments manufacturing industrial chemicals and products produced with these chemicals, and workers otherwise exposed to these chemicals; consumers of formulated products containing the chemicals; the environment; the general public; EPA; OSHA; and State and local governments.

The data generated from the testing required by a rule would permit EPA to assess the risk to humans and the environment of manufacturing, processing, distribution in commerce, use, and disposal of chemicals subject to a test rule. If the Agency finds this risk to be unreasonable, it may take action to reduce human exposure under one of its authorities or recommend regulation by another agency, such as OSHA.

The testing required by these rules could potentially benefit individuals who may be exposed to these chemicals. In the case of the first rule, this would include potentially 50,000 workers who may be exposed to chloromethane and potentially 3 to 4 million workers who may be exposed to the chlorinated benzenes.

In regard to the second rule, potentially 2.5 million people are exposed annually to DCM in occupational settings, 13,500 to nitrobenzene, and 2.6 million to TCE. In addition, consumers exposed to products containing these chemicals and the general population exposed to any of these chemicals via dissemination throughout the environment may also derive benefits from the test rule on these chemicals.

The data generated by these test rules will also result in benefits to Federal agencies such as EPA and OSHA and State and local governments. These data will serve to alert government agencies to potential risk from these chemicals and will also obviate the need for these agencies to expend resources to search for data on these chemicals when assessing their risks.

Summary of Costs

Sectors Affected: Manufacturing and processing of designated chemicals, including some manufacturers and processors of industrial solvents, dyes, organic intermediates, pesticides, and solvent-carrying chemicals; processors of some silicone products, chlorinated hydrocarbons, butyl rubber products, herbicides, and lubricating greases and oils; and consumers of products produced with these chemicals.

EPA estimates the annualized costs of complying with the first proposed rule to be $144,000 to $267,000 (1979 dollars) for manufacturers and processors of chloromethane and $371,000 to $1,016,000 for manufacturers and processors of the chlorinated benzenes.

For the second rule the annualized costs of compliance (in 1979 dollars) would be: $58.1 million to $183.4 million for nitrobenzene; $61.3 million to $192.8 million for DCM; and $22.4 million to $75.8 million for TCE. These costs might conceivably be passed on to processors of these chemicals who have not contributed money towards the cost of testing through reimbursement procedures (i.e., manufacturers using these chemicals in their manufacturing processes), or to consumers of products produced with these chemicals.

In general, for future rules, EPA expects that manufacturers will bear the

costs of testing directly, but that processors will pay for testing indirectly through small increases in the price of chemicals. For instance, price increases on dichloromethane, 1,1,1-trichloroethane, and nitrobenzene, chemicals in EPA's second rule, are predicted to be less than 0.1 cent per pound.

Summary of Net Benefits

EPA is unable at this time to provide quantitative estimates of net benefits.

Related Regulations and Actions

Internal: We proposed health effects test standards for various effects on May 9, 1979 (44 FR 27334) and July 26, 1979 (44 FR 44054) and standards for Good Laboratory Practices for Health Effects on May 9, 1979 (44 FR 27362). We also proposed Environmental Fate test standards and Good Laboratory Practices for Environmental Effects testing on November 21, 1980 (45 FR 77332).

We also published a proposed rule under TSCA § 8(d) that would require persons to submit to EPA all unpublished health and safety studies concerning all chemicals recommended for testing by the Interagency Testing Committee (44 FR 77470, December 31, 1979).

External: The EPA has been a full and regular partner in extensive international consultations and negotiations in the Organization for Economic Cooperation and Development (OECD) during the development of its chemical testing and other requirements under TSCA. The Agency places a high priority on these activities because of benefits both for international chemical trade and for more effective health and environmental protection.

U.S. experts, along with those of other OECD member states, have worked since 1977 to develop agreed-upon chemical testing guidelines and good laboratory practices, as well as an agreed-upon set of data that manufacturers should develop for new chemicals prior to marketing. The United States strongly endorsed the work of the expert groups at a meeting of high-level national regulatory officials in May 1980 and firmly committed the United States to domestic implementation of the guidelines and practices.

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, National Cancer Institute, and National Institute of Environmental Health Sciences.

Timetable

Dichloromethane, Nitrobenzene and 1,1,1-Trichloroethane, Proposed Test Rule—46 FR 30300, June 5, 1981.

Public Meeting—December 15, 1981.

Chloromethane and Chlorinated Benzenes Proposed Test Rule, Proposed Health Effects Standards Amended—45 FR 48524, July 18, 1980.

Public Comment Period—Closed October 31, 1980.

Public Meetings—October 15, 21, 24, 30, and 31, 1980.

Proposed Test Rule or Decision Not to Test Benzidine dyes, o-Dianisidine dyes, o-Tolodine dyes, Polychlorinated terphenyls, Chlorinated naphthalenes, alkyl phthalates, butyl glycocyl butyl phthalate, butyl benzyl phthalate, and chloroparaffins—Fall 1981.

Final Test Rule on Chloromethane and Chlorinated benzenes or Decisions Not to Require Testing—March 1982.

Explanation of Decision Not to Test Acrylamide—March 1982.

Proposed Test Rule or Decision Not to Require Testing for Antimony, Antimony sulfide, Antimony trioxide, Alkyl phthalates, and Chloroparaffins—December 1981.

Regulatory Impact Analysis—Not required. Economic Impact Analysis and Regulatory Flexibility Analysis for all test rules available at proposal.

Available Documents

Acrylamide: Response to the Interagency Testing Committee—45 FR 48510, July 18, 1980.

Exemptions from Test Rules: Proposed Statement of Policy and Procedures—45 FR 48512, July 18, 1980.

Proposed Health Effects Test Standards for Toxic Substances Control Act Test Rules: Proposed Good Laboratory Practice Standards for Health Effects—44 FR 44054, July 26, 1979.

Proposed Health Effects Test Standards for Toxic Substances Control Act Test Rules—44 FR 27334, May 9, 1979.

Proposed Environmental Standards, and Proposed Good Laboratory Practice Standards for Physical, Chemicals, Persistence, and Ecological Effects Testing—45 FR 77332, November 21, 1980.

Assessment of Testing Needs: Chemical Support Document for each test rule is available at proposal.

The Interagency Testing Committee established under TSCA has issued six reports making recommendations on chemicals to be covered by TSCA testing rules:

First Report—42 FR 55026, October 12, 1977.

Second Report—43 FR 16884, April 19, 1978. OTS Docket 040004.

Third Report—43 FR 50630, October 30, 1978. OTS Docket 04005.

Fourth Report—44 FR 31886, June 1, 1979. OTS Docket 41001.

Fifth Report—44 FR 70664, December 7, 1979. OTS Docket 41001.

Sixth Report—45 FR 35897, May 28, 1980. OPTS Docket 41002A.

Seventh Rule—46 FR 12317, November 25, 1980.

Eighth Report—46 FR 28138, May 22, 1981.

Public comments on the first test rule are available for inspection in the OPTS Reading Room (Room 407 East Tower, 401 M Street, S.W., Washington, DC 20460) between the hours of 8:00 a.m and 4:00 p.m. on working days.

Transcripts of public meetings for the first test rule chemicals, held on October 15, October 21, October 24, October 30, and October 31, 1980, are also available for inspection in the OPTS Reading Room.

The following Proposed Support Documents are also available in the OPTS Reading Room: (1) Chloromethane Support Document, (2) Chlorinated Benzenes Support Document, (3) Exposure Support Document, and (4) Nitrobenzene Support Document, (5) Dichloromethane Support Document, (6) 1,1,1-Trichloroethane Support Document, and (7) Economic Analysis Support Documents.

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Hazardous Waste Regulations: Phase II Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities (40 CFR Parts 260, 264, 267 and 122; Revision) (Previously, Hazardous Waste Regulations: Phase II–C Regulations Applicable to Hazardous Waste Disposal Facilities)

Legal Authority

Resource Conservation and Recovery Act of 1976 (RCRA), as amended §§ 3004 and 3005, 42 U.S.C. 6924 and 6925.

Reason for Including This Entry

These regulations are important because they initiate, for the first time on a national level, management of the disposal on land of hazardous waste. The Environmental Protection Agency (EPA) includes them in the Calendar to inform the general public of EPA's continuing actions to implement a comprehensive national program to manage hazardous wastes from generation through transportation, storage, and treatment to final disposal. In addition, this qualifies as a major rule in accordance with Executive Order 12291. EPA projects that associated costs to industries that generate hazardous waste could be $100 million or more per year. The Presidential Task Force on Regulatory Relief has designated these regulations for review.

Statement of Problem

Because of the enormity and complexity of the regulatory task, EPA elected to issue its hazardous waste regulations in phases. The Phase I regulations became effective November 19, 1980. These regulations identified hazardous wastes; established standards for generators and transporters of hazardous wastes; govern the issuance of facility permits by EPA and the States and the authorization of States to implement a hazardous waste program; and set both interim status standards for existing treatment, storage, and disposal facilities and administrative non-technical standards for use in issuing permits.

The Phase II regulations providing the technical standards for use in issuing permits to hazardous wastes management facilities (as well as companion requirements pertaining to permit applications) were partially promulgated on January 12, 1981 (46 FR 2802) and January 23, 1981 (46 FR 7666). That interim final promulgation included additional general requirements applicable to all treatment, storage, and disposal facilities; standards for closure, post-closure, and financial responsibility of facilities; permitting of storage of hazardous wastes in containers; permitting of storage and treatment in tanks, surface impoundments, and waste piles; and permitting of incinerators. Missing from the interim final promulgation were standards for land disposal facilities—surface impoundments and waste piles in which hazardous wastes are disposed in lieu of or in addition to their storage or treatment; land treatment facilities; landfills; underground injection facilities; and underground seepage facilities. Due to extensive public comments concerning these parts of the proposed hazardous waste regulations of December 18, 1978 (43 FR 58946), EPA felt that it was not ready to promulgate final technical land disposal standards (Phase II–C). Instead, the Agency reproposed these standards on February 5, 1981 (46 FR 11126).

EPA wanted the development of land disposal standards to deal with the problem of eventual leachate and volatiles generation and migration from land disposal sites and the technical and institutional limits on preventing or perpetually controlling such occurences. EPA was not confident that the originally proposed standards would assure sufficiently secure land disposal facilities to protect human health or the environment. The reproposed standards offered another approach for public review.

Since reproposal postponed final permitting standards for the most prevalent method of hazardous waste disposal and no new facilities could be built without a permit, EPA supplemented its February 5, 1981 reproposal with temporary standards applicable only to new hazardous waste land disposal facilities (46 FR 12414, February 13, 1981). These standards would allow permits to be issued to new facilities in the near term. As existing facilities can continue to operate under the interim status provisions of the Resource Conservation and Recovery Act (RCRA), it was not necessary to issue temporary standards for them.

EPA estimates that more than 54 million metric tons of hazardous waste are generated annually in the United States; about 27 million metric tons are currently sent to land disposal facilities. Hazardous waste includes toxic chemicals, pesticides, acids, caustics, flammables, and explosives. EPA estimates that as much as 90 percent of hazardous wastes generated in the United States has been subject to improper handling from generation to ultimate disposal. A variety of health and environmental damages have resulted from improper management practices.

These regulations, required by § 3004 of the Resource Conservation and Recovery Act of 1976, as amended, establish for the first time a national framework for proper hazardous waste storage, treatment, and disposal.

The regulations have been subject to a court-ordered promulgation deadline of Fall 1980, resulting from the *State of Illinois* v. *Costle* case. The land disposal regulations are now subject to a new court-ordered promulgation deadline of February 1, 1982.

EPA invited comments on all three of its rulemaking actions of early 1981 in order to assess serious problems requiring remedy before the interim final regulations become effective or, in the case of the land disposal reproposal, were promulgated. In response to its solicitations, EPA received a number of comments from the regulated community and the general public contending that, for various cost, technical, and practical reasons, some of the interim final standards are inappropriate for existing facilities, especially for incinerators and storage surface impoundments. The applicability of the interim final standards for either new or existing tanks, piles, or containers or for new incinerators was not seriously criticized. Because the 1980 RCRA amendments expressly required EPA to distinguish between new and existing facilities where appropriate, EPA is carefully examining the public comments received and is reexamining its regulatory approaches to facility standards.

In the meantime, EPA has proposed suspending the effective dates for the interim final rule concerning existing incinerators and existing storage surface impoundments (46 FR 51407, October 20, 1981). When the reexamination is complete, EPA will lift the suspension or initiate additional rulemaking.

Simultaneously, EPA will analyze comments on the reproposed land disposal facility standards to determine the best approach, in terms of technical feasibility, cost, and level of protection, to making land disposal facilities safe.

Alternatives Under Consideration

Developing standards for hazardous waste treatment, storage, and disposal facilities, particularly landfills, surface impoundments, land treatment facilities, and underground injection wells, continues to be the most difficult task EPA faces in developing its hazardous waste management regulatory program.

The Agency first proposed standards for permitting facilities on December 18,

1978 (43 FR 58982). EPA received hundreds of comments on these standards, which were basically design and operating standards, criticizing them for their reliance on design criteria and their lack of flexibility. In response, EPA examined several other regulatory approaches and decided to develop revised regulations combining features of four approaches: (A) facility design and operating standards, (B) containment standards, (C) specific (numerical) health and environmental performance standards, and (D) non-specific (non-numerical) health and environmental performance standards.

(A) A major advantage of detailed requirements for liners, leachate collection systems, and final covers, such as design and operating standards contain, is that the regulated community and regulating agencies clearly know facility requirements. The drawbacks are their inability to reflect site-specific or waste-specific conditions, their tendency to inhibit application of emerging technology or improved operating procedures, and the finiteness of the time period for which they guarantee protection to human health and the environment.

(B) Containment standards EPA considered specified some amount of time, e.g., 100 years, that hazardous wastes had to be contained within the facility. Although similar in effect to design and operating standards, this approach differs in that it specifies the ultimate performances that treatment, storage, or disposal methods will achieve. Thus, the permit applicant would have the flexibility of tailoring the design and operating methods of the facility to its waste or site conditions. However, this approach will not provide protection beyond a set containment period.

(C) Specific health and environmental performance standards involve establishing specific, often numerical, ambient quality standards that could not be exceeded for ground and surface waters and eventually for air and soils. Such standards would apply at points of current or potential use of the environment, such as points of groundwater withdrawal. This approach allows the permit applicant wide flexibility in designing and operating a facility. The application of this type of standard would require a considerable amount of site study and prediction by the permit applicant to demonstrate that migration of hazardous wastes beyond the facility would never cause the established ambient standards to be exceeded. Ambient quality standards have not, however, been established for most of the constituents or wastes EPA has designated as hazardous. Consequently, exclusive use of this approach is not currently possible.

(D) Non-specific health and environmental performance standards establish (1) the type of assessments and predictions to be performed by a permit applicant to show the environmental effect of the facility's operation, and (2) the broad environmental objectives to be used by the agencies issuing permits to judge the acceptability of the facility's effects. The broad narrative environmental objectives substitute for ambient quality levels contained in specific standards as the basis for judging whether or not the future health and environmental effects can be accepted.

EPA's newest interim final standards for hazardous waste management facilities are drawn from Alternatives (B), (C), and (D), above, supplemented with certain design and operating standards where EPA concluded these can be fashioned. The preambles to the two sets of interim final rules and the reproposed land disposal standards contain discussions of how they each embody these alternatives.

The Regulatory Impact Analysis required by Executive Order 12291, which EPA is preparing on the interim final and reproposed technical facility standards, will include a full evaluation of critical assertions made by commenters, an examination of the human health risks and economics impact and benefits of the current RCRA approaches, and several alternatives. Issues and regulatory options raised by petitioners, challenging EPA's previous hazardous waste promulgations of May 19, 1980, will also be explored through the RIAs wherever the concerns are relevant to the technical facility standards. The RIAs will address a wide range of regulatory and non-regulatory options before the regulations are promulgated in final.

Among the regulatory options to be evaluated are: (A) uniform national performance standards, such as a requirement for incinerators to destroy 99.99 percent of the hazardous wastes received, (B) different performance standards for new versus existing facilities, (C) tailored performance standards based on class of hazard, (D) flexible performance standards for individual facilities based on case-by-case risk assessments and/or emissions tradeoffs; and (E) operating and design standards. Also to be evaluated in terms of risks, costs, benefits, and feasibility are: (A) market abilities, (B) non-Federal controls, such as State controls or citizen suits, and (C) non-RCRA Federal controls, such as economic incentives or regulation through other statutes.

By temporarily delaying final promulgation of technical standards for permitting hazardous waste management until after the Regulatory Impact Analyses are complete, EPA can carefully consider and efficiently promulgate these controversial requirements. To the extent they are currently effective, however, the interim final regulations for incinerators and for storage and treatment in tanks, containers, surface impoundments, and piles and interim regulations for new land disposal facilities can be used by Federal or State agencies to issue permits to owners and operators of approximately 9,500 new or existing facilities. Owners and operators of existing hazardous waste facilities not affected by the recent promulgation will be allowed to continue operation provided that they comply with interim status standards already in effect. Should any of these pose a serious threat to human health or the environment, EPA plans to use the emergency response provisions of RCRA (§ 7003) and other statutes. Section 7003, imminent hazard, allows the EPA Administrator to sue and prevent from continuing to do so anyone who imminently and substantially endangers the environment by handling, storage, treatment, transportation, or disposal of hazardous waste.

Summary of Benefits

Sectors Affected: The general public; the hazardous waste management industry; and Federal, State, and local governments.

These regulations, in combination with other elements of the RCRA hazardous waste regulatory program already in place, will produce a number of improvements to help reduce damage to public health and the environment. The program will: (1) reduce groundwater and surface water pollution from leaching of toxic pollutants from improperly designed or managed tanks, waste piles, landfills, and surface impoundments and diminish the need for expensive drinking water purification; (2) reduce poisoning and injury from direct contact with randomly dumped wastes; (3) reduce illicit dumping in ditches or along roadsides; (4) reduce emissions of toxic gases from improperly run incinerators and decrease the need for some other air pollution control; (5) reduce the number and severity of accidents, mistakes, and malfunctions at facilities that could affect nearby populations due to

improved training of personnel, monitoring and inspection procedures, required emergency equipment, and contingency plans; and (6) limit the possibility of future contamination, as facilities will be secured at closing and monitored and maintained afterwards. None of these improvements are easily quantifiable since records of past problems are limited.

The regulations will relieve all levels of government, and ultimately the general public, of the costs of emergency response and remedy for uncontrolled release of hazardous wastes. The average disposal costs with the RCRA program in place will be much less than the $1,800 per ton estimated societal cost for response to emergencies such as Love Canal in Niagara Falls, New York. In this case, the hazardous waste facility was not properly monitored after it was closed. This 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 liver and respiratory disorders.

Improved regulatory controls over hazardous waste facilities may also help reduce public opposition to locating facilities at environmentally secure locations in or near communities. Properly managed facilities will also mean higher property values than if property were located near poorly controlled facilities and will ease the minds of nearby residents.

In addition to major economic benefits expected from decreased human health problems and pollution in the air and water and from avoidance of millions of dollars in future cleanup costs at uncontrolled sites, EPA expects an improvement in economic efficiency and equity. Unfil now, in most places, firms could handle and dispose of wastes in environmentally unsound ways at a lower cost. Thus, the price of goods did not reflect the full social cost of production, as often, at the request of affected individuals and the general public, tax revenues were used by Federal, State, and local governments to clean up facilities in which hazardous wastes were improperly disposed. It would be more equitable for the costs of adequate hazardous waste management to fall upon the specific consumers and producers of goods that generate the wastes. Because the price of products that did not reflect disposal costs has been low, consumption of these products has been higher than for those products whose prices were higher because they did reflect disposal costs. Also, companies employing sound hazardous waste management techniques have been at a competitive disadvantage and this has tended to discourage them from continuing such sound practices. The economy will now be more efficient and equitable because those receiving the benefits will also bear the disposal costs.

The changeover in practices and their increased cost will also serve as an incentive for producers to develop and install advanced technologies and to process changes to lessen the quantity of hazardous waste generated or to recover wastes as useful materials.

Summary of Costs

Sectors Affected: All industries generating hazardous waste, especially those in the manufacturing industries (SIC Codes 20–39); the public and private hazardous waste management industry; consumers of goods produced by waste-generating industries; EPA; and State governments.

Most of the incremental cost of compliance with the RCRA hazardous waste regulations will be passed on to consumers, while some will be borne by the generator, particularly where price increases are held down in some way, such as by competition.

The estimated annual cost of only the RCRA § 3004 general and interim status standards (which are replaced by technical facility standards) is $665 million in 1978 dollars. Of this, $255 million is attributed to higher prices charged by facilities for off-site disposal and $164 million represents costs of compliance with closure and post-closure financing requirements (these require hazardous waste facilities to be responsible for and to assure EPA of their ability to provide adequate finances for safe closure and post-closure care).

EPA has not been able to isolate the specific incremental costs and impacts of the technical facility standards, because most hazardous wastes can be managed satisfactorily in a variety of ways. The methods chosen by any given company for storage, treatment, or disposal will depend substantially on the costs of each feasible option, as the costs directly depend on the regulations governing the method. Therefore, until the RCRA regulations covering all waste management approaches are available, the total incremental costs and impacts of any particular approach cannot be determined. EPA is developing a model for use in making this determination. Information on each industry producing hazardous waste and unit costs of management methods will eventually produce the total incremental costs of the final RCRA technical facility standards.

EPA does have some engineering costs, as well as some preliminary operating and capital cost data for specific management techniques. The preamble to the interim final regulations issued in January 1981 contain unit cost information for tanks, surface impoundments, waste piles, and incinerators.

The Regulatory Impact Analyses will provide considerably more information on cost-performance relationships as well as assess costs and benefits in quantitative terms. We will make the RIAs publicly available upon completion.

Summary of Net Benefits

The regulations will reduce the average disposal costs and burden on all levels of government substantially, reduce damage to public health and the environment, improve public acceptability of hazardous waste facilities, make the costs of hazardous waste management more equitable, and encourage producers to lessen the quantity of hazardous waste generated and to recover wastes as useful materials. The Regulatory Impact Analyses, which are presently being prepared, will examine the costs of these regulations. At present, EPA feels that the improvements to public health and the environment outweigh the costs of these regulations.

Related Regulations and Actions

Internal: Regulations constituting Phase I of EPA's phased hazardous waste regulatory program were issued on February 26, 1980 and May 19, 1980. Several proposed, final, and interim final amendments to these have been published on or since May 19, 1980. The Phase I regulations require generators to identify their hazardous wastes; transporters to meet specific requirements for off-site shipment of hazardous wastes; and owners and operators of existing treatment, storage, and disposal facilities to comply with administrative and interim status standards. The interim status standards continue to apply to existing storage surface impoundments, incinerators, and land disposal facilities until Final Rules are promulgated.

Management of polychlorinated biphenyls (PCBs) remains under the Toxic Substances Control Act PCB regulations promulgated by EPA on February 17, 1978 (43 FR 7150) and May 31, 1979 (44 FR 31514).

Current Clean Air Act regulations address a portion of the potential emissions from a hazardous waste incinerator. They are, however, oriented toward control of emissions on a pollutant-by-pollutant basis. They focus largely on widespread, large-volume pollutants such as particulates, NO_x (nitrogen oxides), and SO_x (sulfur oxides), and they only regulate specified hazardous emissions from specific sources. To the extent that EPA develops future standards under the Clean Air Act to deal with specific hazardous air emissions, this may aid in the task of regulating hazardous waste incineration.

External: In many cases, more stringent State standards, including standards for issuing State permits, will apply to existing hazardous waste treatment, storage, and disposal facilities.

Government Collaboration

The Department of the Interior, Soil Conservation Service, Water Resources Council, and U.S. Geological Survey cooperated with EPA during development of the proposed regulations.

Timetable

NPRM—Amendments to these standards: Storage, March 1983, Location, April 1983, and Incineration, April 1983. Land Disposal, date to be determined.

Final Rules—Amendments to these standards: Storage, September 1983; Location, October 1983; Incineration, October 1983. Land Disposal—we are presently under court order to produce this by February 1982.

Final Rules Effective—6 months after promulgation.

Public Hearings—2nd Quarter 1983. We will announce details on public participation, dates, and place in the **Federal Register.**

Public Comment Period—2nd Quarter 1983. We will include dates and address for admission of comments in the new NPRMs.

Regulatory Impact Analyses—Hazardous Waste Storage Standards: Preliminary, March 1983; Final, September 1983. Floodplain and Seismic Location Standards for Hazardous Waste Facilities: Preliminary, April 1983; Final, October 1983.

Hazardous Waste Land Disposal Standards—Dates to be determined.

Regulatory Flexibility Analysis—Combined with Regulatory Impact Analyses, see above.

Available Documents

NPRM—43 FR 58946, December 18, 1978. This was the general hazardous waste regulatory proposal, of which the storage, location, incineration, and land disposal aspects were a part.

Supplemental Notice of Proposed Rulemaking—45 FR 66186, October 8, 1980.

Addition of General Requirements for Treatment, Storage, and Disposal Facilities and Conforming Amendments to the Permitting Requirements—46 FR 2802, January 12, 1981.

Interim Final Rule and Proposed Rule for Incinerator Standards—46 FR 7666, January 23, 1981.

Reproposal of Proposed Rule and Proposed Amendments to Rule—46 FR 11126, February 5, 1981.

Interim Final Rule and Request for comments—46 FR 12414; February 13, 1981.

Notice of Effective Dates of Interim Final Rules—46 FR 38318, July 24, 1981.

Proposal to Suspend Effective date of Interim Final Rules—46 FR 51407, October 20, 1981.

Amendments to Interim Final Rule—46 FR 55110, November 6, 1981.

Interim Final Rule and Interim Final Amendments to the Rule—46 FR 56592, November 17, 1981. This allows the disposal of small lab pack containers of liquid and solid hazardous waste in landfills.

EPA has developed two sets of documents in conjunction with the technical facility standards. Background documents support the regulations and provide EPA's response to public comments and rationale for the current approach embodied in the regulations. Copies of the various background documents are available for review in the ten EPA regional office libraries and at the headquarters EPA library, Room 2404, Waterside Mall, 401 M Street, S.W., Washington, DC 20460.

Also available to assist both owners and operators of facilities and regulatory officials is a series of design and operation manuals. These provide guidance on how facilities may meet the standards and what modifications and variances are likely to be effective under variance procedures. Limited copies of these may still be available through the RCRA Hotline, (800) 424-9346 (in Washington, DC, 554-1404).

Copies of all documents are available for public review in the RCRA Docket, Room 2711, Waterside Mall, 401 M Street, S.W., Washington, DC 20460.

There are background documents and manuals available for the January 12 and 23 and November 17, 1981 interim final regulations and the February 5, 1981 reproposal.

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EPA—Office of Water

Control of Organic Chemicals in Drinking Water (40 CFR Part 141; New)

Legal Authority

The Safe Drinking Water Act, as amended, § 1412, 42 U.S.C. 300(f) *et seq.*

Reason for Including This Entry

The Environmental Protection Agency (EPA) includes this regulation because one regulatory option under consideration might possibly impose compliance costs of over $100 million.

Statement of Problem

Recent technological developments in analytical measurement techniques have resulted in the identification of numerous organic contaminants in drinking water that may pose a health risk to consumers. For example, chloroform is only one of many organic chemicals found in some drinking water. Chloroform is representative of a class of chemicals known as trihalomethanes (THMs), whose presence in drinking water was controlled by Final Rules issued at 44 FR 68624 on November 29, 1979.

Other volatile organic chemicals (VOCs) are also of concern because of their frequency of occurrence, concentrations, and potential health effects. Available data show that these compounds can occur in both surface waters and ground waters; this finding contradicts previous perceptions of ground water quality. Historically, ground water has been viewed as a pristine resource, and it is generally used without major treatment. However, recent information indicates the detection of increasing incidents of serious contamination of drinking water, especially in the vicinity of hazardous waste disposal sites.

Accordingly, EPA is considering publishing an ANPRM to initiate a dialogue with interested parties on how best to approach contamination of drinking water by VOCs under the provisions of the Safe Drinking Water

Act. The ANPRM will request comment on the following broad issues:

- What is the significance of contamination of drinking water by VOCs?
- Should national standards be set for VOCs?
- If standards are appropriate, how should levels be established?

Comment will also be requested on any and all other issues covered in the ANPRM and related documents. Included in the ANPRM are discussions of: data on the occurrence of volatile synthetic organic chemicals in drinking water and the characteristics of ground water contamination; potential health effects associated with these chemicals; and available treatment technologies to reduce the levels of these chemicals in drinking water and their associated costs. In addition, background information is provided on the provisions of the Safe Drinking Water Act (SDWA) that might be used to reduce human exposure to VOCs in drinking water.

At this time, contamination of drinking water by volatile organics has been found to be most frequent in ground waters in urbanized and industrial areas. The VOCs that have been found most often include:

- Trichloroethylene
- Carbon tetrachloride
- Tetrachloroethylene
- 1,2-Dichloroethane
- 1,1,1-Trichloroethane
- cis-1,2-Dichloroethylene
- trans-1,2-Dichloroethylene
- 1,1-Dichloroethylene
- Methylene chloride
- Vinyl chloride
- Benzene
- Chlorobenzene
- Dichlorobenzene
- Trichlorobenzene

Alternatives Under Consideration

The major alternatives under consideration by EPA include: (1) non-Federal regulatory actions, such as guidance to the States on health effects and treatment technology; (2) requiring monitoring for VOCs and providing guidance on health effects and treatment technology; and (3) setting national standards in the form of maximum contaminant levels (MCLs) for some or all of these chemicals.

Summary of Benefits

Sectors Affected: The general public; municipally and privately owned public water supply systems; and all segments of the water supply industry, including consulting sanitary engineers, analytical chemists, plant operators, and equipment manufacturers and suppliers.

Preliminary data suggest that 1 to 5 percent of these systems using ground water supplies may have contaminated sources of water, with less than 1 percent having relatively high levels of contamination. The public served by such systems will, in particular, realize the benefits of any actions taken toward reducing exposure to the VOCs.

It is impossible at this time to assign quantitative values to the benefits that may be realized under the alternatives being considered. Such benefits include a lessening of public exposure to toxic substances, including possible carcinogens in drinking water.

Summary of Costs

Sectors Affected: The general public; State and local governments; and public water systems (both privately and publicly owned).

The public in general will be the principal group affected since the users will undoubtedly bear the costs of any necessary modifications to their water supply system. Small water supply systems that currently employ little or no treatment may be particularly affected. State and local governments may bear additional administrative burdens.

No estimates of the economic impact are available at this time.

Summary of Net Benefits

No estimates are available at this time.

Related Regulations and Actions

Internal: All EPA regulations that affect control of chemical contaminants of water are directly related, including: Effluent Guidelines, the National Pollution Discharge Elimination System, Water Quality Criteria, Hazardous Waste Disposal Controls, and Underground Injection Control.

External: State programs would be expected to deal with decisions on variances and exemptions from any regulations and to provide technical assistance to public water systems making changes in their treatment processes.

Government Collaboration

Supporting documentation for the health basis of any regulation requires information-sharing with the National Cancer Institute, National Institute of Environmental Health Sciences, Consumer Product and Safety Commission, and Food and Drug Administration. In addition, the National Academy of Sciences and the National Drinking Water Advisory Council will be consulted during the evaluation of alternative approaches and in selection of the most appropriate approach.

Timetable

ANPRM—2nd Quarter 1982.
Technical Workshop—To be announced.
Public Meeting—To be announced.
Public Comment Period—90 days following APRM.
NPRM—4th Quarter 1982.
Final Rule—3rd Quarter 1983.
Regulatory Impact Analysis—To be determined.
Regulatory Flexibility Analysis—To be determined.

Available Documents

"National Organics Reconnaissance Survey," EPA, Municipal Environmental Research Laboratory, 1975.

"National Organics Monitoring Survey," EPA, Office of Drinking Water.

"Interim Treatment Guide for Controlling Organic Contaminants in Drinking Water Using Granular Activated Carbon," EPA, Municipal Environmental Research Laboratory, January 1978.

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FEDERAL EMERGENCY MANAGEMENT AGENCY

Review and Approval of State and Local Radiological Emergency Plans and Preparedness (44 CFR Part 350; New)

Legal Authority

Disaster Relief Act of 1974, as amended, 42 U.S.C. 5121; Federal Civil Defense Act of 1950, as amended, 50 U.S.C. App. 2251 *et seq.*, Executive Order 12148 of July 20, 1979, as amended, 44 FR 43239.

Reason for Including This Entry

The Federal Emergency Management Agency (FEMA) includes these regulations because of the great interest of the public in planning for safety around nuclear power plants. These procedures describe how State and local governments can obtain FEMA evaluation, assessment, findings, and determinations as to the adequacy of State and local plans and preparedness to cope with the offsite effects of a

radiological emergency at nuclear power plants.

Statement of Problem

President Carter's Commission on the Accident at Three Mile Island (known as the Kemeny Commission), the General Accounting Office, Congressional Committees, and others have all concluded that State and local plans and preparedness are inadequate to cope with the offsite effects of an emergency resulting from accidental emission of radiation at a nuclear power plant.

Forty States have a population of 3 million people living within 10 miles of the more than 160 nuclear power plants that are licensed to operate or are under construction or being planned. While more than half of the 500 local site-specific State plans have been completed, considerably more needs to be done for State and local governments to achieve the proper preparedness. For example, nearly half of the local jurisdictions and a few of the States have not completed their plans. The plans need to be exercised before FEMA deems them adequate, and public hearings need to be held by FEMA, State, and/or local authorities.

The Federal Emergency Management Agency is responsible for offsite emergency planning and response. This means planning for action taken outside the plant to deal with consequences affecting the public away from the plant. FEMA also reviews State plans in those States with nuclear power facilities either in operation or scheduled for operation in the near future. FEMA, in order to implement this assignment, entered into a Memorandum of Understanding with the Nuclear Regulatory Commission (NRC), which has the responsibility for licensing nuclear power plants. NRC, however, has no authority to specify the emergency planning responsibilities of State and local governments. Under the Memorandum, FEMA has agreed to make findings and determinations as to whether State and local plans are adequate and capable of implementation (e.g., adequacy and maintenance of procedures, training, resources, staffing levels, and qualifications and equipment adequacy).

The NRC issued emergency planning regulations that became effective November 3, 1980. These were published August 19, 1980 (45 FR 55402). Under the NRC rule, in order for a plant to continue operations or to receive an operating license, the licensee is required to submit its emergency plan as well as State and local government emergency response plans, to NRC. The NRC will then make a finding as to whether the state of onsite and offsite emergency preparedness provides reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency. The NRC will base its finding on a review of the FEMA findings and determinations as to whether State and local emergency plans are adequate and capable of being implemented and on the NRC assessment as to whether the emergency plans for the nuclear plant itself are adequate and capable of being implemented. These issues may be raised in NRC operating license hearings, but a FEMA finding will constitute a rebuttable presumption on the question of adequacy.

Alternatives Under Consideration

The FEMA-proposed rule provides for a formal process for evaluation, review, and approval by FEMA of State plans and the local plans that are submitted to FEMA as annexes to the State plan and considered jointly with it. FEMA would also evaluate and assess the capabilities of State and local governments to implement the plans. The process is voluntary; that is, there is no requirement in law that a State submit a plan to FEMA for review and approval. There is no FEMA sanction for failure to submit a plan. FEMA, which offers grants to State and local agencies to support civil defense and disaster preparedness planning, has not made submission of radiological emergency plans and preparedness a condition for making these other grants.

The FEMA-proposed rule also calls for a public meeting at which the State, utility, and FEMA would explain the plan and for an exercise at which the plan is tested. Both of these requirements are conditions for approval. The findings and determinations are based on performance standards rather than adherence to detailed criteria.

Alternatives would include deletion of one or all of the above features. For example, as one Governor suggested, the review process could be established without a rule, without an exercise or public meeting, and without public involvement at all. A number of commentators on the proposed rule believe the public meeting is unnecessary. FEMA believes such a meeting is extremely important in informing the public and thus obtaining its support for whatever decisions may be made.

Another alternative is to use the November 4, 1980 memorandum of understanding between FEMA and NRC. In this memorandum FEMA agreed to provide findings and determinations concerning the adequacy of offsite emergency plans and preparedness on request from NRC. This alternative is geared to the NRC process of licensing nuclear power plants and usually does not allow for the orderly and more complete process of evaluating State and local radiological preparedness plans prescribed in the FEMA-proposed rule. The findings and determinations made under this arrangement are, therefore, interim in nature, and NRC thus far has issued licenses on the condition that plant operators complete the process described in the proposed 44 CFR Part 350. No alternative has yet finally been chosen.

Summary of Benefits

Sectors Affected: State and local governments; NRC; nuclear power facilities; and the general public.

The benefits to be obtained from these procedures are those of an orderly process by which States can obtain evaluation and review of their plans and preparedness to cope with the away-from-the-plant consequences of a radiological accident at a nuclear power plant. The Nuclear Regulatory Commission is conditioning licensing of nuclear power plants on, among other things, the adequacy of State or local measures to be taken offsite in event of a radiological emergency. The NRC does not have jurisdiction to require a State or locality to develop or submit a plan. It does have jurisdiction to require a nuclear power plant licensed by NRC to submit, as data, information (the State and local plans) about the adequacy of State and local preparedness to cope with the effects of an accident. NRC, by its rules, will rely in its licensing proceedings on FEMA findings and determinations on the adequacy for health and safety purposes of the plans and preparedness. FEMA is the expert Federal agency on State and local plans and preparedness to respond to emergencies of all types.

The FEMA procedure is justified on its own terms as a process for review and approval of State and local plans to cope with a special type of emergency, and the procedure thus exists independent of NRC licensing hearings and is usable even if not tied to a licensing hearing.

The State and local governments benefit because the procedure is related to other emergency preparedness response plans and allows them to deal with a single Federal agency on this subject rather than dealing with many agencies. It further assures an

independent, carefully considered review and evaluation of their plans.

Nuclear power facilities also benefit because they will know that FEMA's findings and determinations are the product of a comprehensive, impartial, and independent review process.

The general public also benefits because it knows that the process calls for review and approval of plans and preparedness, based on established performance standards; and it can directly participate by attending the public meeting where it can comment. The various notices and the meeting keep the public informed. Advance planning may result in reduced public expenditures in dealing with emergencies.

Summary of Costs

Sectors Affected: FEMA; State and local governments; nuclear power plants; and users of electricity produced by nuclear power.

We have not prepared a Regulatory Impact Analysis. The procedure itself does not require any expenditure of large amounts of funds. That is to say, submission of a plan is voluntary and the process by which FEMA determines whether or not it can approve the plan involves staff time on the part of Federal agencies, such as the Departments of Energy, Health and Human Services, Commerce, and Agriculture, and the Environmental Protection Agency, State and local governments, and the utilities. The conduct of an exercise and the holding of a public hearing do have cost impact on the aforementioned agencies.

What may have a small cost impact are actions that a State or local government may need to take in order that its plans and preparedness can be found adequate. According to studies, typical costs to a State or local government to prepare a plan for a single facility can be approximately $360,000 initially and $74,000 annually thereafter to update plans. It may well be that these costs can be passed to the utilities and perhaps to the consumer. Costs might include communications equipment, radiation monitoring equipment, exercises, training, etc. However, the total cost is going to be minute when compared to a total investment in a nuclear plant, which now exceeds $1 billion. Who bears the cost is a matter of State and local law. In some cases, the utilities are charged for State and local costs. In some, the utilities may volunteer to pay.

Summary of Net Benefits

The major benefit to be achieved from following the procedures in proposed 44 CFR Part 350 is development of emergency plans and preparedness by State and local jurisdictions where commercial nuclear power plants are located using an orderly, cooperative (Federal/State/local) process. Since this process need not be tied directly to the Nuclear Regulatory Commission licensing process, more time is usually available to State and local governments and Federal evaluators to put in place the desired emergency preparedness capabilities. Another benefit is the general acceptance of the proposed regulation by State and local governments through their use if it, at the request of FEMA, pending publication in final form. As noted, the costs are minimal and are substantially exceeded by the benefits.

Related Regulations and Actions

Internal: FEMA has developed, pursuant to a Presidential assignment, interagency assignments that replace a description of assignments set out in a Notice published in the **Federal Register** on December 24, 1975 (40 FR 59494). These new assignments were published on October 22, 1980 (45 FR 69904). See also the discussion under External actions.

External: FEMA and the Nuclear Regulatory Commission (NRC) have jointly issued "Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants," NUREG–0654/FEMA–REP–1, Rev. I. These criteria provide a basis for NRC licensees and State and local governments to develop radiological emergency plans and improve emergency preparedness associated with nuclear power facilities. The document combines guidance to State and local governments with guidance to the NRC and supersedes previous guidance and criteria published by FEMA and NRC. It is intended for use by Federal officials in reviewing and assessing the adequacy of State, local and nuclear power facility operator emergency plans and preparedness. FEMA–REP–1/NUREG 0654 contains a series of planning standards that will be a part of the FEMA rule. Notice of this publication was given December 30, 1980 in the **Federal Register** (45 FR 85862). We intend that the FEMA rule will set the same standards and criteria as the new NRC rule discussed in "Statement of Problem." Thus, both FEMA reviewers and NRC reviewers will be using the same criteria and standards.

Government Collaboration

We are closely coordinating this rulemaking with the Nuclear Regulatory Commission (NRC), which has formally commented on it. We furnish the findings and determinations with respect to adequacy of State plans and preparedness, which are a product of this procedure, to NRC.

FEMA will use the expertise of the Departments of Energy, Agriculture, Health and Human Services, Commerce, and Transportation, and the Nuclear Regulatory Commission and the Environmental Protection Agency, in making its findings and determinations. The manner in which we will accomplish this is set out at 45 FR 69904, which was prepared in collaboration with other agencies.

Timetable

NPRM—45 FR 42341, June 24, 1980.
Public Comment Period—Closed August 25, 1980.
Public Hearing—None.
Final Rule—Not yet scheduled.
Final Rule Effective—30 days after adoption.
Regulatory Impact Analysis—None.
Regulatory Flexibility Analysis—None.

Available Documents

Memorandum of Understanding between NRC and FEMA to accomplish a prompt improvement in radiological emergency planning and preparedness, 45 FR 82713, November 8, 1980.

FEMA–REP–1, NUREG–0654, Rev. I: Criteria for Preparation and Evaluation of Radiological Emergency Plans and Preparedness in Support of Nuclear Power Plants, November 1980.

Copies of the above documents are available from the Agency Contact listed below.

Public Comments: Copies are available for review at FEMA, Rules Docket Clerk, Room 801, 1725 I Street N.W., Washington, DC 20472.

Agency Contact

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FEMA

Review of the National Flood Insurance Flood Plain Management Criteria for Flood-Prone Areas (44 CFR Part 60; Revision)

Legal Authority

The National Flood Insurance Act of 1968, as amended, § 1361, 42 U.S.C. 4102.

Reason for Including This Entry

The Presidential Task Force on Regulatory Relief has designated the program for review.

Statement of Problem

The National Flood Insurance Program (NFIP) is a self-help program designed to reduce the high costs of flood disaster assistance. Established by Congress in 1968 under the National Flood Insurance Act, the NFIP was originally administered by the Department of Housing and Community Development. Broadened and modified since then, it is now administered by the Federal Emergency Management Agency (FEMA).

Congress created the program to address the problem of increasing annual flood losses. For decades the national response to flood disasters was generally limited to building flood control works (dams, levees, seawalls, etc.) and providing disaster relief to flood victims. To compound the problem, the public could not buy flood coverage from insurance companies, and building techniques to reduce flood damage to new construction were often overlooked. In the face of mounting annual flood losses, Congress created the NFIP to mitigate future damge and provide insurance against property losses that do occur.

The NFIP works on the basis of an agreement between the Federal Government and those flood-prone communities that choose to participate in the program. The community agrees to adopt and enforce the minimum standards required by FEMA for mitigation of flood losses. In return, the Federal Government agrees to make flood insurance available to individual property owners at reasonable rates as a financial protection against flood damage.

The program must have community participation to work. Without community oversight of building activities in the flood plains, the best efforts of some to reduce flood losses could be undermined or destroyed by the careless building of others. Unless the community as a whole practices adequate flood hazard mitigation, the potential for loss cannot be lowered sufficiently to reduce disaster assistance costs or to permit insurance to be offered at reasonable rates. The insurance rates for new construction in a community depend on how safe the structure is from the estimated flood risk.

This agreement by participating communities to practice adequate flood plain management to mitigate future losses is the cornerstone to the NFIP. Congress did not intend to subsidize indefinitely the expense of the program. If the NFIP is to become a financially self-supporting program as Congress intended, wise flood plain management must be achieved in all participating flood-prone communities.

FEMA and the States have important roles in achieving the goal of the NFIP to reduce flood losses. FEMA is required by law to identify all flood hazard areas and notify the affected communites, alerting them to the degree of hazard. FEMA administers the insurance aspects of the program though local insurance agents across the country. FEMA also provides technical assistance and funding to States and local governments for flood hazard mitigation projects. In the event of a Presidentially declared flood disaster, FEMA provides disaster assistance and aids in recovery efforts to communities participating in the NFIP. FEMA is also required by law to develop criteria or standards to encourage States and local governments to adopt adequate measures for flood hazard mitigation.

The States also have an important role in the effort to reduce flood losses. Each Governor has designated an agency of State government to coordinate the State's flood insurance program activities. These State agencies assist communities in defining and adopting flood plain management measures required for community participation in the NFIP.

Community participation in the NFIP is strictly voluntary. Each flood-prone community must assess its flood hazard and determine whether flood plain management measures and flood insurance would be beneficial to the community and its residents. The primary concern most communities have about joining the NFIP is the effect flood plain management will have on future develpment in flood hazard areas.

Although participation by a community in the NFIP is voluntary, non-participation by a community that has known flood hazards impacts on that community. Congress decided, by passage of the Flood Disaster Protection Act of 1973, that the Federal Government should not invest funds or provide financial assistance to communities that did not choose to make flood insurance available to its residents or practice flood plain management to mitigate flood losses after the hazard has been identified for one year.

The Act requires the purchase of flood insurance to protect property acquired or constructed *in flood hazard areas* with the Federal funds or financial assistance. If the community has chosen not to participate in the NFIP, and therefore insurance protection is not available, loans or guarantees made by Federal agencies, such as the Small Business Administration, Federal Housing Administration, and Veterans Administration, are prohibited for acquisition or construction *in flood hazard areas*. However, lending institutions insured or regulated by a Federal agency may make loans at their own discretion in these areas.

In addition, if a community chooses not to participate after it has known for one year that flood hazards exist in the community as identified by FEMA, no disaster assistance for acquisition or construction *in flood hazard areas* may be provided by FEMA in the event of a flood disaster. Families may receive assistance under the temporary housing program that is not related to acquisition or construction but may not receive funds for minimal repairs to their dwellings. Individual and family grant assistance for housing and personal property in not available under these circumstances. Congress requires these sanctions to avoid spending Federal tax dollars *in flood hazard areas* of communities not willing to take steps to protect lives and property from flood hazards.

As described above, one of FEMA's roles in administering the NFIP is to develop criteria to encourage States and local governments to adopt adequate flood plain management measures. Communities must adopt and enforce such measures to participate in the NFIP. Specifically, § 1361 of the National Flood Insurance Act of 1968, as amended, requires FEMA to develop comprehensive criteria designed to encourage, where necessary, the adoption of adequate State and local measures that, to the maximum extent feasible, will:

(1) constrict the development of land that is exposed to flood damage, where appropriate;

(2) guide the development of proposed construction away from locations that are threatened by flood hazards;

(3) assist in reducing damage caused by floods; and

(4) otherwise improve the long-range land management and use of flood-prone areas. The Director shall work closely with and provide any necessary technical assistance to State, interstate, and local government agencies, to encourage the application of such criteria and the adoption and enforcement of such measures.

To meet this requirement, FEMA has developed minimum standards for flood plain management that communities must meet to participate in the NFIP. These minimum standards are published at 44 CFR Part 60. A community must adopt and enforce flood plain management regulations based on these minimum standards. The detail of flood risk information published by FEMA determines the extent of regulation by the community of its flood hazard areas. Of course, a community may adopt more restrictive requirements, or a State, through its State laws, may require a community to meet more restrictive standards than FEMA's minimum standards.

The most recent comprehensive revisions to the NFIP regulations were made in 1976 after lengthy review and public hearings. Since that time some problems have been experienced in the application of these national minimum standards to specific situations. The regulations have been described by some as too specific in some cases and too inflexible in others. The purpose of the review will be to determine what alternatives are available for addressing these concerns.

One example of the regulations being described as too specific relates to the requirement (44 CFR 60.3 (b)(8)) that all mobile homes be anchored according to a specific number of ties. This NFIP standard conflicts with other Federal government standards and thus leaves local governments in the position of not being able to comply. The NFIP standard for anchoring mobile homes was at one time acceptable but does not work now because of changes in the mobile home industry.

An example of the concern that the regulations are too inflexible also relates to mobile homes or manufactured housing. The NFIP regulations treat mobile homes differently than conventional housing, based upon assumptions made in 1976 that mobile homes, even if properly anchored, were less safe than conventionally constructed housing. FEMA has reexamined these assumptions and has found that they generally are not valid due to the better standards of construction in the mobile home industry. FEMA will examine ways to reflect these changes in the NFIP regulations.

Section 60.6(b) of the NFIP regulations provide an exception process for communities that for hardship reasons cannot meet the minimum standards. This process is adequate for true hardship cases, for which a lesser standard is sought. However, FEMA does not have a process for considering technically equivalent methods of achieving the NFIP minimum standards. Presently, all requests for variations from the NFIP minimum standards must be treated as a hardship case. This inability to examine alternative approaches to achieving the NFIP minimum standards has been criticized. To achieve more flexibility, FEMA will examine ways of accommodating such requests without going through the lengthy exception process outlined in § 60.6(b), which requires lengthy review of environmental impacts. If an approach is technically equivalent to the minimum NFIP standard, such review should not be required.

Another criticism received about the NFIP flood plain management standards is that they apply to urban and rural areas alike without recognizing the differences between urban flooding and rural flooding. FEMA will examine ways to address these concerns.

FEMA will examine other sections of Part 60 to determine if they need revision.

Alternatives Under Consideration

Specific alternatives have not been considered for most of the concerns outlined above because the review just recently began.

A "no action" alternative will result in concerns about the flood plain management standards not being addressed. FEMA will review the regulations in view of the concerns outlined above and develop alternative solutions. As part of this review, FEMA will consider tiering the regulations and using more general standards as the regulatory requirements, accompanied by greater emphasis on technical guidance to communities in achieving flood plain management. The review may indicate that few changes are needed in the regulations or that specific sections need major revisions. Alternatives will be developed more fully during the review.

Summary of Benefits

Sectors Affected: Communities that participate in the NFIP and State Coordinating Agencies in each State.

This review will benefit the more than 17,000 communities participating in the NFIP by assuring that FEMA uses the least burdensome means for achieving the objectives of the National Flood Insurance Act, as amended. Other specific benefits of this review have not been identified at this time.

Summary of Costs

Sectors Affected: Communities that participate in the NFIP and State Coordinating Agencies in each State.

Specific costs are not available because the review has just recently begun. If any regulatory changes are made, State and local governments could incur administrative costs. However, the review should indicate where excessive administrative costs are incurred by communities, the States, and FEMA due to inflexibilities in the regulations. If the regulations are relaxed, additional costs could be incurred by the Federal Government in the form of disaster relief, just as strengthening the regulations could further decrease such expenditures.

Summary of Net Benefits

The review should determine what alternatives can be used to reduce flood losses while at the same time using the least burdensome means for assuring that communities meet the minimum standards for NFIP participation.

Related Regulations and Actions

None.

Government Collaboration

We will coordinate our review with the Office of Management and Budget and the Presidential Task Force on Regulatory Relief.

Timetable

NPRM—To be determined.
Final Rule—To be determined.
Final Rule Effective—To be determined.
Public Hearing—None.
Public Comment Period—To be determined.
Regulatory Impact Analysis—To be determined.
Regulatory Flexibility Analysis—To be determined.

Available Documents

44 CFR Part 60, Criteria for Land Management and Use.

44 CFR 59 *et seq.*, National Flood Insurance Program Regulations.

For information on available documents, contact Agency Contact below.

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CONSUMER PRODUCT SAFETY COMMISSION

Chronic Hazards Associated with Benzidine Congener Dyes in Consumer Dye Products

Legal Authority

Consumer Product Safety Act, 15 U.S.C. 2051 *et seq.*

Reason for Including This Entry

The Consumer Product Safety Commission (CPSC) believes this is an issue of considerable public interest due to the possibility of adverse health effects which can result from consumer exposure to benzidine dyes, o-tolidine dyes, and o-dianisidine dyes (collectively termed "benzidene congener dyes") and the significant number of consumers that may be exposed to them.

Statement of Problem

Benzidine and two related chemicals (congeners), o-tolidine and o-dianisidine, constitute a family of synthetic aromatic amines used as intermediates in the synthesis of more than 400 direct benzidine congener dyes.

In 1972, the International Agency for Research on Cancer (IARC) concluded that benzidine is carcinogenic in several species of animals and that "epidemiologic studies showed that occupational exposure to commercial benzidine alone was strongly associated with bladder cancer." Both the Occupational Safety and Health Administration (OSHA) and the Environmental Protection Agency (EPA) have issued regulations for benzidine based on the determination of its carcinogenicity. In 1978 the National Cancer Institute (NCI) reported that three benzidine dyes produced tumors in rats. Although it has not been conclusively shown that o-tolidine and o-dianisidine are human carcinogens, there is animal evidence demonstrating carcinogenicity. In addition, evidence indicates that dyes based on benzidine, o-tolidine, and o-dianisidine may be metabolically converted to their respective parent compounds in the body.

In October 1978 the Center for Occupational Hazards, the Artist-Craftsmen of New York, the Foundation for the Community Artists, and the Surface Design Association petitioned the CPSC for a ban of consumer dye products and arts/crafts dye products that contain benzidine congener dyes. In September 1980 the CPSC staff presented to the Commission an evaluation of the carcinogenicity and metabolism of benzidine congener dyes and recommended that all benzidine congener dyes should be recognized as potential human carcinogens. In November 1980 the CPSC granted the petition in part as to consumer dye products containing benzidine dyes, o-tolidine dyes, and o-dianisidine dyes and instructed the staff to prepare an appropriate proposal under § 8 of the Consumer Product Safety Act. At that time, the Commission requested that the staff further address several scientific and economic issues.

Consumer exposure to these dyes may occur from the use of packaged consumer dyes in homes, schools, and arts and crafts processes. In addition to the consumer market, benzidine dyes, o-tolidine dyes, and o-dianisidine dyes are used industrially in the manufacture of consumer products. For example, in 1978 it was estimated that 40 percent of all benzidine dyes produced are used to dye paper goods such as tissues, paper towels, and stationery; 25 percent are applied to textiles; and 15 percent are used in dyeing leather products.

The consumer dyes market can be divided into two segments: the mass-merchandised dye market, consisting of consumer dye products sold at various retail outlets to the general public for home dyeing applications, and the market for specialty dye products sold as arts and crafts materials. Consumer dyes are purchased by the general public from retail stores; their major use is in home fabric dyeing because these dye products are specifically formulated for ease of application and affinity for cotton and rayon fibers. Artists use the consumer dyes for home crafts, teaching workshops, textile printing, and in the production of craft items for resale on a limited basis. Children may be exposed to benzidine congener dyes during arts and crafts applications in school projects.

Experiments conducted in 1981 by CPSC scientists indicate that the potential risk from inhalation of dye powder during the mixing operation is less than originally assumed. However, a danger to consumers arises from the possibility that benzidine congener dyes or their decomposition products may enter the human system by skin absorption. It is possible, despite precautions, for even an experienced artist to contact dye solution on some part of the body during dyeing operations. Experiments to determine the degree of benzidine congener dye dermal (skin) penetration will be performed by the National Center for Toxicological Research (NCTR) in the third quarter of FY 1982.

In 1979 sources estimated that about 30 million packages of consumer dye products were sold annually. It was estimated that the retail market for home dyes fell between $15 million and $18 million (in 1979 dollars).

The three major home dye manufacturers have indicated that since 1978 they have not used benzidine dyes in consumer dye products. Further, in 1981 one of the consumer dye product manufacturers indicated that his company no longer produces dye products containing o-tolidine dyes or o-dianisidine dyes.

Field studies conducted by the CPSC in 1979 demonstrated that general retail outlets still were selling older dye packages, manufactured at a time when industry used benzidine dyes. Although benzidine dyes no longer may be produced for sale to the general public, arts and crafts people are able to purchase them directly from manufacturers or retail dye outlets. Often these dyes are industrial dyes which have been repackaged for arts and crafts use. In 1979 it was estimated that 100 to 500 pounds of benzidine dyes were sold annually to between 1,000 and 4,000 consumers for arts and crafts applications.

Substitutes used for benzidine dyes in consumer dye products may be based on o-tolidine or o-dianisidine. In 1980 it was estimated that about nine different o-tolidine dyes and o-dianisidine dyes are currently used in consumer dye products. Of approximately 30 million packages sold in 1979, estimates place the range of packaged dye products containing o-dianisidine dyes or o-tolidine dyes between 15 million and 21 million, encompassing as much as 60 to 70 percent of the home dye market at that time.

It should be assumed that 1980 estimates do not reflect the current market situation with respect to the consumer dye product industry. It is expected that the current share of benzidine congener dye products is well below the 1979 level. More recent market information will be developed pending completion of benzidine congener dye experiments in late FY 1982.

Alternatives Under Consideration

The Commission considered the following three regulatory alternatives in response to a petition requesting a

ban of benzidine dyes, o-tolidine dyes, and o-dianisidine dyes in consumer dye products. The staff recommended alternative A to the Commission.

(A) Commence a proceeding to ban the use of benzidine dyes, o-tolidine dyes, and o-dianisidine dyes in consumer dye products. This action would eliminate the risk of consumer exposure to benzidine congener dyes in consumer dye products.

(B) Commence a proceeding to ban the use of benzidine dyes in consumer dye products and do not take immediate action on o-tolidine dyes and o-dianisidine dyes.

The economic impact of a ban on benzidine dyes on the consumer dye industry is expected to be minimal. Deferred action on o-tolidine dyes and o-dianisidine dyes pending further study of substitutes and reformulation may cause less market disruption.

(C) Deny the petition. The Commission may decide to take no action with respect to benzidine dyes, o-tolidine dyes, and o-dianisidine dyes in consumer dye products. This alternative would permit continued consumer exposure to benzidine congener dyes.

To date, the CPSC staff's primary concern has been with home dye packages containing benzidine dyes, o-tolidine dyes, or o-dianisidine dyes sold directly to consumers. The Commission staff plans to investigate the industrial use of benzidine congener dyes in textiles.

Summary of Benefits

Sectors Affected: Consumers of benzidine congener dyes, including home dyes; and craftspeople and hobbyists.

Benzidine congener dyes are used in packaged consumer dye products. Evidence indicates that these dyes may be potential carcinogens. Consumers may be exposed to these dyes by inhalation, skin absorption, or ingestion during the home dyeing process. Regulation of benzidine congener dyes in consumer dye products would reduce consumer exposure to potential carcinogens.

Summary of Costs

Sectors Affected: Craftspeople and hobbyists who use benzidine congener dyes; and consumer dye product manufacturers.

The consideration of substitute dyes to replace benzidine congener dyes is of great concern to the Commission staff; substitution of noncarcinogenic dyes for those that present chronic health effects is essential. Current information indicates that substitutes for o-tolidine dyes and o-dianisidine dyes are generally available with the possible exception of a few colors.

If substitutes for these few colors cannot be readily identified or developed for consumer dye products, a search for substitutes not based on benzidine or its congeners could involve virtually hundreds of other organic compounds and, because the entire dye formulation may need to be adjusted, there could be substantial costs to industry. No overall estimates of substitution costs are available. However, information currently available to the CPSC staff suggests that the cost of dye ingredients may not be the predominant cost element that determines the retail price of consumer dyes. If substitution were to occur, costs for labor, packaging, distribution, and advertising, which may be the primary price determinants, may not vary greatly from present costs.

The CPSC staff is considering, at the present time, only the need for controls of consumer dye products; however, if later action is considered against the other uses of benzidine congener dyes in consumer products, the Commission will investigate the potential economic impacts on those products that have been colored with benzidine dyes, o-tolidine dyes, and o-dianisidine dyes.

Related Regulations and Actions

Internal: At the present time the CPSC is supporting research at the National Center for Toxicological Research on the breakdown of benzidine congener dyes in the body. A hazard assessment for textile and non-textile uses of benzidine dyes, o-tolidine dyes, and o-dianisidine dyes is planned for fiscal year 1982 pending the results of NCTR experiments.

External: The Occupational Safety and Health Administration (OSHA) released a field directive on the carcinogenicity of three benzidine dyes which recommends that other benzidine dyes also be handled as carcinogens.

The National Institute for Occupational Safety and Health (NIOSH) published the "Special Hazard Review of Benzidine Based Dyes," which recommends that these dyes should be recognized as potential human carcinogens and that the benzidine congener dyes be handled with extreme care.

OSHA and NIOSH jointly released a Health Hazard Alert for benzidine dyes, o-tolidine dyes, and o-dianisidine dyes, which concludes that benzidine dyes are carcinogenic and states that o-tolidine dyes and o-dianisidine dyes may present a cancer risk to workers and should be handled with care.

The Environmental Protection Agency (EPA) has proposed a Toxic Substances Control Act (TSCA) § 8(a) rule, and is developing a TSCA § 8(d) rule to require manufacturers to submit specific information and health and safety studies for a variety of chemicals, including benzidine dyes.

Government Collaboration

The National Cancer Institute, National Institute of Occupational Safety and Health, the Stanford Research Institute, Consumer Product Safety Commission, Occupational Safety and Health Administration, and the Environmental Protection Agency plan to meet periodically with the Dyes Environmental and Toxicology Organization to perform a systematic study of dyes and to recommend dyes to the National Toxicology Program for carcinogenicity testing.

Timetable

The Commissioners granted a petition and directed the staff to prepare a proposed ban. Final staff analysis and recommendations will be completed in September 1982.

NPRM—September 1982.

Public Hearing—September 1982.

Public Comment Period—September 1982.

Commission Decision/Order—September 1982.

Regulatory Flexibility Analysis—September 1982.

Regulatory Impact Analysis—The Commission, as an independent agency, is not required to prepare a Regulatory Impact Analysis as defined under E.O. 12291. However, the Commission prepares essentially the same information in its rulemaking proceedings.

Available Documents

"CPSC Staff Briefing Packages" dated February 26, 1979, and September 24, 1980 are available from the Office of the Secretary, 1111 18th St., N.W., U.S. Consumer Product Safety Commission, Washington, DC 20207.

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CPSC

Consumer Products Containing Asbestos

Legal Authority

Consumer Product Safety Act, 15 U.S.C. 2051 *et seq.*; Federal Hazardous Substance Act, 15 U.S.C. 1261 *et seq.*

Reason for Including This Entry

Asbestos is a known human carcinogen used in a variety of products. The Consumer Product Safety Commission (CPSC) believes this to be an issue of great interest to the public because of serious potential health hazards that may be involved when consumers are exposed to inhalable asbestos fibers.

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. CPSC could act to protect the public from exposure to asbestos fibers in consumer products by issuing a standard or ban concerning asbestos-containing products, requiring labeling of consumer products containing asbestos, encouraging some form of voluntary action by industry, or taking other action.

The CPSC staff has completed a review of the health effects of asbestos which causes the staff to believe that, under certain conditions (discussed below), the presence of asbestos in consumer products may present a risk of cancer and respiratory disease. The health hazard occurs when asbestos fibers are released into the air and people inhale them. Inhaled asbestos fibers may become embedded in lung tissue and once embedded they may remain there indefinitely. Asbestos fibers that are released from consumer products can remain in household air for long periods of time and may subject household members to a continuous risk of fiber inhalation.

Consumer products are one source of exposure to asbestos fibers; there are also a number of environmental sources. Therefore, consumer products must be viewed as part of a cumulative burden of asbestos exposure.

Asbestos released from consumer products poses several problems in the household. First, young children and infants are exposed. 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.

In a **Calendar of Federal Regulations** entry published November 24, 1980 (45 FR 77883), the Commission stated its concern about consumer exposure to asbestos fibers. This Calendar statement on asbestos described an ANPRM we issued in October 1979 (44 FR 60057). The purpose of the ANPRM was to inform the public of the Commission's concern and to announce the initiation of a Commission investigation of asbestos in consumer products. The Commission is considering comments and information received in response to the ANPRM in determining regulatory options we might pursue.

One example of CPSC action on products containing asbestos is hairdryers. As a result of information indicating that certain hairdryers released asbestos fibers during use, CPSC asked the National Institute for Occupational Safety and Health (NIOSH) of the Department of Health, Education, and Welfare (now the Departments of Education and Health and Human Services) to conduct tests. The results showed that some hairdryers released asbestos fibers into the airstream and directly on the user's head during ordinary use; thus, any fibers the hairdryers emitted could potentially be inhaled.

As a result of negotiation between the Commission's staff and firms which share approximately 50 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 for hairdryers they currently owned.

We do not know exactly how many asbestos-containing products are available to the consumer. CPSC has initiated a program to test various products for asbestos fiber release and issued a General Order (December 22, 1980, 45 FR 84384) to manufacturers (including importers) of certain categories of consumer products to submit information on the use of asbestos in their products. CPSC staff will examine the information received in response to the order to help identify specific products containing asbestos, to determine how the asbestos is used in the products, and to analyze the use of possible substitute materials in a variety of applications. The CPSC staff review of this information will also aid in evaluating the impact of possible regulation on the cost, availability, and utility of the products.

The staff is concentrating its evaluation on certain types of products. We will focus initial action on products which show definite fiber release. We may make subsequent efforts to investigate other products which contain asbestos.

Alternatives Under Consideration

On the basis of health research and economic studies, the Commission may consider remedial options which would reduce risks to consumers from asbestos-containing consumer products from which asbestos fibers may be released.

In making its determination of whether or not to take action, the CPSC will consider detailed risk and economic findings. The CPSC will also take into account the function performed by the asbestos in the product, the cost to industry and consumers of the regulations, and the availability of substitutes for the asbestos and the safety of such substitutes.

In cases in which we do not know the asbestos content and whether there is any fiber release, the staff will continue to test products for any asbestos fiber emission.

Summary of Benefits

Sectors Affected: The general public.

The primary benefit of asbestos regulations is to reduce consumer exposure to a known human carcinogen.

Asbestos fiber inhalation has been linked with lung cancer, asbestosis and mesothelioma (cancer of the pleura—the membranes surrounding the lung). These diseases can inflict pain and are often fatal. They may cause large financial burdens due to medical expenses that result. The CPSC believes that by reducing the release of asbestos from consumer products it will help alleviate some of these unfortunate consequences.

Summary of Costs

Sectors Affected: Asbestos mining industry; all manufacturers and wholesale and retail traders; and users of products containing asbestos.

The CPSC estimates that some economic impact may occur on industry in those cases where a mandatory regulation concerning asbestos-containing products occurs. Currently, studies are being made to determine potential costs to industry in developing substitutes for asbestos in consumer products.

Related Regulations and Actions

Internal: In 1979 the Consumer Product Safety Commission issued an ANPRM. The purpose of the ANPRM was to inform the public of the Commission's concern and to announce the initiation of a Commission investigation of asbestos in consumer products. In April 1980, the Commission granted a petition to ban asbestos paper and in July 1980, the Commission cosponsored with the Environmental Protection Agency (EPA) a workshop on asbestos substitutes. The Commission issued a General Order (45 FR 84384) in December 1980, seeking information on asbestos in certain products. The Commission has initiated a testing program for the purpose of testing certain products for asbestos fibers released under typical use conditions.

External: EPA issued on January 26, 1981 (46 FR 8200) a proposal for comment on a life-cycle reporting and recordkeeping requirement on asbestos. In September 1980, EPA published a corrective action program for school buildings containing asbestos.

In 1975 the Occupational Safety and Health Administration (OSHA) proposed lowering the occupational exposure to asbestos from 2 million fibers per cubic meter to 500,000 fibers per cubic meter. Subsequently, in 1976, the National Institute of Occupational Safety and Health recommended a further lowering of the standard to 100,000 fibers per cubic meter.

Government Collaboration

We have worked closely with the Environmental Protection Agency to ensure that our efforts to investigate and possibly regulate the use of asbestos will be coordinated, compatible, and non-duplicative. EPA simultaneously published an ANPRM in October 1979 which describes that Agency's systematic effort to gather information on groups of asbestos products and to evaluate risk from these products based on the "life-cycle" concept. In the life-cycle analysis, the Agency examines cumulative risk from human exposure to asbestos from primary processing through end use and disposal. The CPSC's 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. The first is to reduce significantly, 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 activities. Third, to avoid inconsistent or needlessly burdensome regulations, we will develop regulatory actions that may result from these investigations in close consultation with each other.

CPSC published, jointly with EPA, an ANPRM on consumer products containing asbestos in the **Federal Register** of October 17, 1979 (44 FR 60057). Comments on that ANPRM have been received and reviewed.

Timetable

ANPRM— 44 FR 60057, October 17, 1979.

Briefing Package on Recommendations for Selected Products—December 1981.

NPRM—June 1982.

Public Hearing—30 days following NPRM.

Regulatory Impact Anaylsis—The Commission, as an independent agency, is not required to prepare a Regulatory Impact Analysis as defined under E.O. 12291. However, the Commission prepares essentially the same information on its own rulemaking proceedings.

Regulatory Flexibility Analysis—August 1982.

Available Documents

Briefing Package of Comments on Advance Notice of Proposed Rulemaking, September 1980, and Briefing Package on Petition to Ban Asbestos Paper, April 1980.

Asbestos: General Order for Submission of Information, December 22, 1980 (45 FR 84384).

Proceedings of the Workshop on Asbestos Substitutes, February 1981.

16 CFR Parts 1304 and 1305: Ban on asbestos-containing patching compounds and emberizing materials, January 1977.

Copies are available from the Office of the Secretary, 1111 18th Street, N.W., U.S. Consumer Product Safety Commission, Washington, DC 20207.

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CPSC

Omnidirectional Citizens Band Base Station Antenna Standard (16 CFR Part 1402; New)

Legal Authority

Consumer Product Safety Act §§ 7 and 14, 15 U.S.C. 2056 and 2063.

Reason for Including This Entry

This standard may impose a major increase in costs or prices for antenna manufacturers, distributors, retailers, and purchasers.

Statement of Problem

One hundred thousand omnidirectional Citizens Band (CB) base station antennas are sold annually in the United States. The Consumer Product Safety Commission (CPSC) estimates that 220 persons in 1977, 105 persons in 1978, 105 in 1979, and 95 in 1980 were electrocuted in incidents involving communications antennas. The vast majority of these deaths occurred when people were putting up or taking down the antennas, which in the process contacted electric power lines. Typically, these incidents occur when the antenna contacts the power line while people are transporting it 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 55 percent of the antennas involved in these accidents are omnidirectional CB base station (other than mobile) antennas.

On June 29, 1978, the Commission 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) antenna 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 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 better

able to take the necessary steps to protect themselves.

While the Commission believes that the present 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 help ensure 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.

In 1979 the Commission contracted to evaluate the impact of its § 27(e) information and labeling rule, which became effective September 26, 1978. The contractor surveyed consumers who had purchased CB base station antennas and outdoor TV antenna components before and after the effective date of the labeling rule.

The hypothesis that many consumers do not recognize nor accurately gauge the potential for electrical shock death or injury associated with antenna installation and removal is firmly supported by the findings of this study. Only one respondent in ten knew that power lines often are not insulated, and a substantial minority failed to recognize the strong likelihood of death or severe injury should direct contact be made with power lines. These findings support the rationale for requiring manufacturers to include hazard avoidance instructions and warning labels with new communications antenna equipment and also indicate that warning labels and instructions are less effective than safety standard requirements.

On August 14, 1981 (46 FR 41082), the Commission proposed a mandatory performance standard. The Commission is presently developing a standard directed only at non-directional CB antennas because they account for the largest number of reported injuries. Moreover, they can be insulated more readily than TV and directional CB antennas because they have fewer joints and element parts. At the same time, the Commission proposed a non-mandatory test method as an alternative to the mandatory standard.

Alternatives Under Consideration

One possible alternative to pursuing a mandatory standard was a voluntary approach through the Electronics Industries Association (EIA). The EIA had formed an ad hoc committee to develop a voluntary standard for CB omnidirectional base station antennas. However, the EIA effort was dropped on October 6, 1980. This action was taken after the committee reached the determination that the conclusions contained in a contractor's final report to the Commission on research in support of the standard development formed a "de facto" standard.

Summary of Benefits

Sectors Affected: Users, installers, manufacturers, and importers of CB base station omnidirectional antennas.

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 many of the deaths associated with outdoor communications antennas (all outdoor antennas) by addressing omnidirectional (reception and transmission essentially uniform in all directions) CB antennas only. These antennas are involved in about 45 deaths each year. This figure represents almost one-half the total number of communications antenna-related deaths in 1980.

We estimate that in the first year of the standard, deaths associated with CB antennas would be reduced by 20 percent, since the standard would only affect new antennas. In subsequent years, a greater precentage of deaths would be prevented because more insulated antennas would be in use and would have replaced old antennas that are involved in accidents when they are taken down or moved.

In addition to the reduction in deaths associated with the standard, we anticipate that the present § 27(e) rule will reduce other deaths: (1) some deaths that would otherwise be associated with antennas manufactured between October 1978, the effective date of the § 27(e) rule, and the date when the new standard could take effect; (2) some deaths otherwise associated with antennas or voltages that the standard will not cover; and (3) some deaths where contact would be between the power line and the mast or other support structures, rather than the antenna itself.

The proposed standard could also prevent ten or more injuries in the first year of compliance. Using a conservative range of average costs from the Commission's Injury Cost Model (excluding cost components for pain and suffering and long-term disability), the estimated injury-reduction savings attributable to the standard in the first year of compliance may be about $21,000 to $37,000 (in 1981 dollars). Using a range of average costs which includes the less readily quantifiable components for pain and suffering and long-term disability, first-year injury-reduction benefits could be about $288,000 to $1,680,000 (in 1981 dollars).

Materials-weathering provisions of the standard may also benefit consumers in the form of increased useful life of the product.

Manufacturers and importers of these antennas may also benefit from a decrease in product liability suits to the extent the standard reduces accidents.

A non-mandatory test method may also result in benefits to consumers (i.e., reductions in the numbers of deaths and injuries), to the extent that products that meet the tests are marketed by the industry. The reduction in the number of deaths and injuries could range from zero (if no additional products meeting the tests are produced) to eight, i.e., the same as under the proposed standard (if all antennas met the tests). The precise extent of these potential benefits depends on the degree of market conformance to the tests, which is unknown.

Summary of Costs

Sectors Affected: Manufacturing, importing, and wholesale and retail trade; and purchasers of CB base station omnidirectional antennas.

The price of a typical CB antenna, which retails for about $50.00, may rise to about $60.00; the price of some antennas may rise by nearly 50 percent as a result of the standard. The Commission staff estimates that the standard may cost consumers $750,000 to $1 million a year (in 1981 dollars).

We anticipate that manufacturers may meet the standard by coating or covering the antenna with a nonconductive material, by constructing antennas of a nonconductive material with an embedded conductor, or by electrically separating the antenna from the antenna mast or antenna support structure by a nonconductive material.

Current retail prices for omnidirectional CB antennas range from $20.00 to over $150.00. The price of some antennas may not increase at all because of the standard. Some manufacturers have claimed that depending on provisions of the standard, price increases for some antennas may range up to 50 percent or more. The standard may lead to an annual cost to the industry of up to $300,000. Certain producers, particularly the smaller companies in the industry, may leave the omnidirectional CB antenna market if they cannot develop the capability to produce complying antennas at a reasonable cost.

We estimate that the standard would prevent up to eight deaths in the first year of compliance. If eight deaths were averted, and the cost of the standard to consumers each year were about $750,000 (in 1981 dollars), then the standard could cost about $94,000 per life saved. The cost per life saved would be greater if fewer deaths were averted in the first year. In any case, consumers would incur a higher product price because the cost to industry of meeting the standard would be passed on to them.

Under a non-mandatory test method, some manufacturers may choose to market antennas that meet the tests. One firm claims that its products already meet the test; other producers would have to modify or redesign their antennas. The costs to the industry could range from zero (if no additional firms endeavored to meet the tests) to about the same as the proposed standard (if many firms' products meet the tests). The extent of industry conformance to the tests in the absence of a mandatory rule is uncertain. At least one or two firms may attempt to meet the tests on a voluntary basis; the cost of this to industry and to consumers, which is not precisely known, depends on such factors as how many models of antennas are involved, what kinds of changes to the products can be made, and general conditions in the market for CB antennas.

Related Regulations and Actions

Internal: "CB Base Station Antennas, TV Antennas and Supporting Structures: Warning and Instructions Requirements," 16 CFR Part 1402 (43 FR 28392).

External: Electronics Industry Association (EIA) development of a Voluntary Standard for CB Antennas.

Government Collaboration

We encourage Federal agencies and State governments to participate in developing the standard by submitting comments.

Timetable

ANPRM—Omnidirectional Citizens Band Base Station Antennas—Proceeding to Develop a Consumer Product Safety Standard by the Commission, 44 FR 53676, September 14, 1979.
NPRM—Omnidirectional Citizens Band Base Station Antennas; Proposed Consumer Product Safety Standard; Proposed Non-Mandatory Test Method, 46 FR 41082, August 14, 1981.
Final Rule—April 1982.
Final Rule Effective—To be determined.
Public Meetings—We held four public meetings between November 1, 1979 and November 14, 1980.
Public Comment Period—September and October 1981.
Regulatory Impact Analysis—The Commission, as an independent agency, is not required to prepare a Regulatory Impact Analysis as defined under E.O. 12291. However, it prepares essentially the same information in its rulemaking proceedings.
Regulatory Flexibility Analysis—CB Antennas: Initial Regulatory Flexibility Analysis, March 25, 1981.
Economic Impact Analysis—Proposed Antenna Standard, March 1981.

Available Documents

Comments from public meeting held November 17, 1980, in Washington, DC.

"CPSC Staff Briefing Packages," dated January 23, 1979, and August 1, 1979, and June 3, 1981.

"Accident Factors Relevant to the Development of a Safety Standard for Omnidirectional Citizens Band Base Station Antennas," June 1980.

"Research and Technical Service for Safety Standard Development for CB Base Station Antennas Final Report," June 1980.

Transcripts of four public meetings from November 1, 1979 to November 17, 1980.

Six progress reports from August 4, 1979 to January 19, 1981.

Eight evaluation reports on standard development from September 25, 1980 to January 26, 1981.

These documents are available from the Office of the Secretary, U.S. Consumer Product Safety Commission, Washington, DC 20207.

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CPSC

Safety Requirements for Chain Saws

Legal Authority

Consumer Product Safety Act, 15 U.S.C. 2051 *et seq.*

Reason for Including This Entry

The Commission estimates that there were over 124,000 chain saw injuries requiring medical attention in 1980, an increase from an estimated 77,000 injuries in 1976. This rulemaking proceeding aims to reduce many of the 28,000 injuries that are specifically related to kickback problems and is of public interest to those concerned about consumer safety and well being.

Statement of Problem

In recent years, the increased use of wood-burning stoves and fireplaces in this country has brought about the increased use of chain saws by consumers. It is estimated that industry shipped 3.4 million professional and home use chain saws for sale in 1980, compared to 2.3 million in 1976. Unfortunately, the increase in the use of chain saws has been accompanied by an increase in injuries associated with them. The Commission estimates that there were over 124,000 chain saw injuries requiring medical attention in 1980, which is up from an estimated 77,000 injuries in 1976. It further estimates that about 23 percent of the injuries associated with chain saws resulted from a phenomenon known as "kickback." The other injuries resulted from loss of control of the saw or from loss of balance of the operator. They also resulted from the saw bouncing, from following through after the cut, or from falling material.

Kickback is the sudden and potentially violent rearward and/or upward movement of the chain saw that can be caused by sudden interference with the movement of the chain. This interference can be caused by the chain binding in the cut, by the chain hitting an unusually hard portion or obstruction in the wood being cut, or by the chain striking the wood or another object on the top quadrant of the tip of the bar. This interference with the movement of the chain transfers the energy that is driving the chain into a movement of the entire saw, causing the bar tip to move back and/or up so fast that the operator may be struck by the moving chain, frequently in the face, neck, or throat area.

Manufacturers have developed a number of devices in attempts to reduce the risk of kickback occurring or to reduce the likelihood of injury if it occurs. One way to help prevent kickback is to provide a guard to cover the chain at the upper quadrant of the tip of the blade, thereby preventing contact with the chain in the chain area. Another way is to provide a chain brake intended to stop the chain before contact with the operator can occur. The chain brake is generally operated by contact of the operator's hand with a hand guard as the saw moves back, although some types of chain brakes are automatic and do not depend upon the

user's hand. These automatic brakes are actuated by an inertial sensing device. A hand guard alone can also provide significant protection against kickback and other injuries. Manufacturers have also designed "low-kick" guide bars and chains, which are intended to reduce the energy generated when the chain at the bar tip contacts an object.

In a letter dated March 21, 1977, John Purtle, Esq., of Batesville, Arkansas, petitioned the Commission (Petition CP 77-10) to begin proceedings under § 7 of the Consumer Product Safety Act (CPSA) to develop a mandatory consumer product safety standard to minimize and prevent chain saw kickback. Mr. Purtle suggested that every chain saw incorporate a safety device such as ". . . a chain saw brake, a nose-tip guard, a kill switch or other safety device."

Alternatives Under Consideration

While the Commission's staff was evaluating this petition in 1977, the Chain Saw Manufacturers Association (CSMA) met with the staff. CSMA recommended that the petition be denied on the grounds that a mandatory standard was not needed because the industry was taking significant voluntary steps to address the chain saw kickback hazard. CSMA estimated that 50 to 60 percent of the saws being sold at that time already contained some type of kickback protection. The industry expected the American National Standards Institute (ANSI) to approve an interim design standard by February 1978. The interim voluntary design standard (ANSI B 175.1, published in April 1980) would require gasoline chain saws to incorporate such protection as a nose-tip guard, a chain brake, a low-kick chain, or a low-kick guide bar. The technology to define kickback in terms of a performance standard did not exist in 1977, but CSMA estimated at that meeting that a test method could be developed and performance requirements drafted in approximately 2½ years.

In December 1977 CSMA proposed a joint 18-month effort with the Commission to develop a voluntary performance standard. The Commission directed the staff to study the proposal to determine whether it provided an acceptable approach. In March 1978 the staff recommended the voluntary effort, because it appeared to be the most expeditious and cost-effective strategy for reducing chain saw kickback injuries.

Subsequently, the Commission denied the petition to establish a mandatory standard (43 FR 26103, June 16, 1978) and in June 1978 formally agreed to participate with CSMA in a joint effort to develop a voluntary performance standard to reduce chain saw kickback injuries. The joint process involved the active participation of consumer, industry, and government representatives in the development of testing equipment and procedures, study of operator interaction with the saw, and analysis of injury data. The agreement specified that work on the standard was to be completed by December 31, 1979.

On December 21, 1979, CSMA submitted to the Commission draft performance requirements for chain saws and backup documentation. CSMA considered the draft to be both "a final standard and rationale," containing sufficient information for CPSC to write a supportable performance standard proposal, although additional work on correlation between the standard and rationale was needed.

The draft standard submitted by CSMA calls for manufacturers to use a specified test apparatus to measure the maximum energy generated at the tip of the chain bar at the initial moment of kickback. A computer model then translates the maximum energy measurement into the angle that the saw would rotate toward an operator. In making this translation, the model uses (1) the energy measurement, (2) information describing key characteristics of the saw being tested, (3) an equation for converting the measured energy into horizontal, vertical, and rotational energy, and (4) formulas intended to describe the influence of the operator's hands on the handle during kickback. The result is a "Derived Angle of Rotation," which manufacturers compare to acceptance criteria to determine whether the saw meets or fails the requirements.

The staff's evaluation of CSMA's draft standard and rationale has left serious doubts that the standard as submitted would reduce injuries associated with chain saws. Staff identified the following specific deficiencies:

(1) The portion of the computer model that attempts to account for the action of the operator's hands on the saw is based on an unproved equation. Furthermore, the study did not establish that the hand-held tests that were performed by CSMA related to the situation where kickback occurs with an unsuspecting user.

(2) The lack of a method to determine the angle at which the chain would stop, and the inability of the model to predict the angle at which the chain stops, prevent use of the acceptance criteria applicable to chain brakes.

(3) There is no analysis of the sensitivity of the computer model to variations in input data.

(4) The draft standard would apply only to saws with an engine displacement of 3 cubic inches (CID) and less, whereas the Commission has data indicating that saws up to 4.5 CID are used regularly by consumers.

As a result the Commission preliminarily concluded that a consumer product safety standard was necessary to reduce or eliminate this unreasonable risk.

In starting the effort to develop a standard addressing chain saw kickback, the Commission expected the standard to apply to both gasoline-powered and electric chain saws. The standard could be a developed performance standard that would, for example, specify allowable levels of kickback energy or allowable kickback angles under specified test conditions. CPSC has not determined whether the standard should apply only to the assembled chain saw, only to components of the saw, such as the saw chain, or both, or whether replacement parts such as saw chains should be subject to requirements of the standard. These questions will be considered by the Commission during the development of the standard. For the time being, however, where the term "chain saw" is used in this regulatory development it also refers to the components and replacement parts of chain saws.

In the case of the kickback hazard associated with chain saws, the Commission is not now aware of any standard issued, adopted, or proposed by any Federal department or agency or by any other qualified agency, organization, or institution that could be published as a proposed standard by the commission. CPSC is undertaking further analysis of foreign standards.

The voluntary standard presently in effect in the United States (ANSI B 175.1, Safety Specification for Gasoline Powered Chain Saws, published in April 1980), while requiring at least some features designed to reduce the hazard, does not go far enough and still permits the marketing of consumer chain saws that present an unreasonable risk of injury. ANSI is developing a similar standard, ANSI B 175.2, for electric chain saws. There are also a number of standards in effect in foreign countries that may be effective in reducing the unreasonable risks of kickback, but the requirements of these standards have not been developed or analyzed to the point that we could propose them as a consumer product safety standard at this time.

CSMA has continued work on their voluntary standard and has told the Commission that they will forward the standard to the Commission by December 15, 1981.

If a valid voluntary standard applicable to a sufficient number of consumer saws is developed and implemented in the future, the Commission could reconsider the need to continue the development of a mandatory standard.

The Omnibus Budget Reconciliation Act of 1981 (P.L. 97–35, 95 Stat. 357, signed by the President on August 13, 1981) changes the procedures that the Commission must use to issue mandatory standards and places greater emphasis on the development and use of voluntary standards to address risks of injury from consumer products. Thus, before additional formal steps toward proposal of a mandatory standard can be taken, the Commission would have to issue an ANPRM in accordance with the new procedures.

Summary of Benefits

Sectors Affected: Users of chain saws, expecially working age males and their dependents; and manufacturing of chain saws.

The benefits we expect from this proceeding are improved public health and safety through the prevention of accidents and injuries associated with chain saws. We estimate that over 124,000 injuries occur annually requiring medical treatment. The maximum benefit one could expect from a chain saw kickback standard, voluntary or mandatory, is a 23 percent reduction of these 124,000 injuries, or 28,520 fewer injuries. There are also an increasing number of deaths associated with this product.

The purpose of these proceedings would be to reduce injuries and deaths and the costs associated with them. These costs can be considerable.

For example, assuming kickback injuries are a fairly constant proportion of total chain saw injuries, the Commission estimates that the total annual cost (in 1978 dollars) of chain saw kickback injuries, not including pain and suffering, was $12 million in 1976, $17 million in 1977, $22 million in 1978, and $24 million in 1979. We estimate injury costs (in 1978 dollars), including pain and suffering, at $28 million in 1976, $40 million in 1977, $51 million in 1978, and $54 million in 1979. These cost estimates include hospital costs, follow-up medical treatment costs, foregone earnings, health insurance costs, product liability insurance, litigation cost, transportation cost, patients' visitors' foregone earnings, and transportation costs.

A reduction in any of these costs would be a sizable benefit to the accident victims and their families.

Furthermore, many manufacturers may benefit from a decrease in product liability suits to the extent safety requirements reduce accidents.

Summary of Costs

Sectors Affected: Professionals who use consumer chain saws; wholesale and retail of consumer chain saws; and manufacturing of consumer chain saws.

Professional users of consumer chain saws may find that low-kick bar and chain safety requirements may decrease cutting speed of the saws. They may also find saws with chain brakes more expensive and heavier. Increased cost for a chain saw could be up to $10, or less than 10 percent of the total cost of the saw, depending on the requirements of the final standard and the changes needed to comply with it.

Economic costs of these safety requirements for manufacturers, suppliers, and purchasers would be minimal, and would depend in part on the need to retool and redesign to comply with the standard. Until requirements are finalized we cannot estimate tooling costs connected with a voluntary or mandatory standard. Tooling costs are implicit in our retail price impact estimates and should not be counted twice. Generally speaking, the lowest tooling costs are associated with nose-tip guards and hand guards, while new guidebars, saw chains, and chain brakes involve substantial tooling costs. Tooling costs for a brand new chain involving very large production levels and the use of highly automated machinery could approach $800,000 (in 1978 dollars). Tooling for a new laminated guidebar is about $100,000. Of course, many of these costs may have already been incurred by manufacturers.

Many manufacturers now offer safety features on their saws. Additional costs would also vary depending on whether or not suppliers of specific parts have already retooled for options now available.

Related Regulations and Actions

Internal: None.

External: In spring of 1980 the State of Washington proposed safety standards for chain saws, including requirements for chain brakes and low-kick chains.

Government Collaboration

The National Bureau of Standards (NBS) of the Department of Commerce has provided some technical analysis concerning the Commission's safety activities on chain saws. We will ask NBS to continue to do so in this regulatory development.

Timetable

ANPRM—Chain Saws and Their Components and Replacement Parts: Proceedings To Develop a Consumer Product Safety Standard—46 FR 26262, May 11, 1981.
Notice of Intent To Develop Standard for Chain Saws—45 FR 62392, September 19, 1980.
New ANPRM—To be determined.
NPRM—To be determined.
Public Hearing—To be determined.
Public Comment Period—To be determined.
Regulatory Impact Analysis—The Commission, as an independent agency, is not required to prepare a Regulatory Impact Analysis as defined under E.O. 12291. However, the Commission prepares essentially the same information as a part of its rulemaking proceedings.
Regulatory Flexibility Analysis—To be determined.
Final Rule—To be determined.
Final Rule Effective—To be determined.

Available Documents

"CPSC Staff Briefing Packages," dated November 1977, March 1978, April 15, May 28, 1980, and January 1981, are available from the Office of the Secretary, U.S. Consumer Product Safety Commission, Washington, DC 20207.

Notice of Denial of Petition from John Purtle, 43 FR 26103, June 16, 1978.

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CPSC

Upholstered Furniture Cigarette Flammability Standard

Legal Authority

Flammable Fabrics Act. § 4.15 U.S.C. 1193.

Reason for Including This Entry

One of the major causes of death, injuries, and property damage in the United States each year is from fires in upholstered furniture started by burning cigarettes. Appropriate remedial action is needed to address these problems.

Mandatory or voluntary upholstered furniture cigarette flammability standards could reduce this death, injury, and property damage toll. Standards could increase costs for upholstered furniture manufacturers, and these cost increases are likely to be passed on to distributors, retailers, and purchasers.

Statement of Problem

The staff of the Consumer Product Safety Commission (CPSC) estimates that 39,000 upholstered furniture fires occur each year in residences in the United States, 25,000 of which are associated with cigarettes. Our current estimates indicate that 1,500 deaths occur annually because of those fires. Cigarette ignition of residential upholstered furniture causes 1,200 of the deaths. Among other actions, the Commission is considering both mandatory and voluntary cigarette ignition-resistant flammability standards for upholstered furniture.

The Commission staff estimates that the annual losses associated with cigarette ignition of upholstered furniture exceeds $1.3 billion (in 1978 dollars).

Alternatives Under Consideration

The major alternative under consideration is the Upholstered Furniture Action Council's (UFAC) Voluntary Action Program. UFAC believes that manufacturers who agree to build furniture according to the provisions of the UFAC program will produce furniture that can resist ignition by cigarettes. This program provides for the classification of upholstered fabrics into two categories based on their performance in a cigarette-ignition test that UFAC developed. For furniture covered with Class I fabrics (those that are more resistant to cigarette ignition), this voluntary program requires elimination of ignition-prone welt cord (heavy yarn enclosed by fabric around the edges of furniture cushions) and 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 furniture walls. The requirements for furniture covered with Class II fabrics (those that are less resistant to cigarette ignition) are the same as for Class I, with the addition that furniture using Class II fabrics must also avoid contact between conventional polyurethane foam cushions and horizontal seating surfaces. The UFAC voluntary program provides test methods to determine acceptable filling materials (such as treated cotton batting, polyester batting, etc.) for use in furniture.

Tests carried out by CPSC and UFAC during 1979 indicated that the UFAC Voluntary Action Program had a strong potential for significantly increasing the safety (cigarette-ignition resistance) of upholstered furniture. Therefore, the program might substantially reduce the annual loss of life and property damage attributed to cigarette ignition of upholstered furniture. Late in 1979 the Commission voted to defer any regulatory action on the flammability of upholstered furniture in order to determine the effectiveness of UFAC's voluntary program in reducing the ignition of upholstered furniture by cigarettes. This evaluation indicated that the upholstered furniture industry has improved the cigarette-ignition resistance of upholstered furniture. However, further significant improvements are required before upholstered furniture on this retail market can be considered to provide an acceptable level of safety from cigarette ignition.

Another alternative is the proposal of a mandatory performance standard, which is now in draft form. Under this draft proposed mandatory 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 constructions 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 and permit manufacturers to use only the combinations of fabric and filling material that did not ignite when the applicable mockup was tested.

On October 21, 1981, the Commission considered the results of the evaluation of the UFAC Voluntary Action Program and voted to defer consideration of any mandatory requirements until such time as ongoing assessments by CPSC of the industry voluntary program indicate a need for such a consideration. The Commission will continue to work with the upholstered furniture industry to further improve the ignition resistance of upholstered furniture.

Summary of Benefits

Sectors Affected: Users of upholstered furniture.

The benefits we expect from the proceeding are related to the loss statistics we cite in "Statement of Problem." We would expect that both the voluntary program and the mandatory standard would result in reductions in future losses from cigarette ignition of upholstered furniture. Staff considers that while the upholstered furniture industry has improved the cigarette-ignition resistance of upholstered furniture, further significant improvements are required before upholstered furniture on the retail market could be considered to provide an acceptable level of safety from cigarette ignition. We expect that modification of the voluntary program could achieve further improvements in cigarette-ignition resistance, thereby resulting in greater reductions in future losses from upholstered furniture fires. The staff previously estimated that the draft proposed mandatory standard could prevent about 86 percent of the losses.

Other benefits that may be related to the voluntary program or the mandatory cigarette-ignition standard are a reduction in losses associated with pain and suffering from burn injuries and a possible increase in the durability of upholstered furniture fabrics as thermoplactics replace cellulosic fibers.

Summary of Costs

Sectors Affected: Upholstered furniture manufacturing; textile mill products manufacturing (particularly cotton and other cellulosic fibers); upholstery shops that sell reupholstered furniture to non-original owners (under a mandatory standard), particularly small establishments in these industries; wholesale and retail trade of upholstered furniture; and users of upholstered furniture.

In 1978 UFAC estimated that its voluntary program would result in increased consumer outlays of $30 million (in 1978 dollars) annually. Based on the material changes that have been made by firms now complying with the program, the staff believes that estimate was reasonable.

In 1978 the CPSC staff estimated that the annual retail cost increase to the consuming public as a result of the mandatory standard that it is considering would range from $114 million to $174 million (in 1978 dollars). However, the preliminary results for the CPSC evaluation of the UFAC program have indicated that many of the technological assumptions upon which these estimates were based need to be modified.

Related Regulations and Actions

Internal: None.

External: The State of California has flammability regulations, parts of which the CPSC standard may preempt. Other States may have similar regulations.

Government Collaboration

The National Bureau of Standards of the Department of Commerce developed the technical basis for the standard.

Timetable

ANPRM—To be determined.
NPRM—To be determined.
Regulatory Impact Analysis—The Commission, as an independent agency, is not required to prepare a Regulatory Impact Analysis as defined under E.O. 12291. However, the Commission prepares essentially the same information in its rulemaking proceedings.
Public Hearing—To be determined.
Public Comment Period—To be determined.
Final Rule—To be determined.
Final Rule Effective—To be determined.
Regulatory Flexibility Analysis—To be determined.

Available Documents

"CPSC Staff Briefing Packages," November 15, 1978, September 27, 1979, and May 26, 1981, and other applicable material related to upholstered furniture flammability are available from the Office of the Secretary, U.S. Consumer Product Safety Commission, Washington, DC 20207.

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CPSC

Urea Formaldehyde Foam (UFF) Insulation (16 CFR Part 1306; New)

Legal Authority

Consumer Product Safety Act, 15 U.S.C. 2051 *et seq.*

Reason for Including This Entry

This investigation is of great public interest because of possible adverse health and safety effects of urea formaldehyde foam (UFF) insulation. It is of special interest to consumers with homes containing the insulation, to consumers considering the purchase of it, and to those who manufacture, distribute, sell, and install it.

Statement of Problem

The Consumer Product Safety Commission (CPSC) is concerned about adverse safety and health effects that may be associated with UFF insulation. This type of home insulation, which is also referred to as urea-based foam insulation or foamed-in-place insulation, is manufactured at the jobsite. Workers drill holes in existing wall cavities and pump in the resin and a foaming agent through pressurized hoses. There are an estimated 500,000 installations of UFF insulation. The Commission has received nearly 2,200 complaints involving an estimated 5,700 people concerning adverse health effects associated with the release of formaldehyde from UFF insulation. Over one-half of these complaints were reported directly to the Commission, and the remainder were referred, mainly by various State agencies. The Commission has complaints from 47 States, and has received 10 or more complaints from 21 States. Most of these complaints involve installations of UFF insulation that occurred after 1977, although a small proportion of installations occurred in 1976 and earlier. In some cases the reactions to formaldehyde gas do not appear for months after installation. Also, any connection between the symptoms and the insulation may be delayed or never recognized by the consumer. As a result, the Commission does not know the exact number of health problems from UFF insulation.

Based on current information, the Commission believes interested persons should be aware of the following reports concerning the possible carcinogenic potential of formaldehyde. Preliminary test results from the Chemical Industry Institute of Toxicology (CIIT), a scientific organization supported by 36 U.S. chemical corporations, show that rats and mice exposed to formaldehyde gas (15 parts per million (ppm)) and rats exposed to 6 ppm formaldehyde gas developed squamous cell carcinomas of the nose. To date no tumors have been reported in rats or mice exposed to the lower concentrations.

The Commission, under the auspices of the National Toxicology Program, convened a panel of eminent scientists from within the Federal Government. This Federal panel assessed the human health implications of this study and the health implications of exposure to formaldehyde. The panel concluded that formaldehyde should be presumed to pose a carcinogenic risk to humans.

The potential for UFF insulation to release formaldehyde may be dependent on the following factors: (1) quality of ingredients in the insulation; (2) age or shelf life of ingredients; (3) viscosities of ingredients; (4) ratios of ingredients; (5) temperatures at which foaming occurs; and (6) mixing of ingredients. Additional factors that may increase the likelihood of liberating formaldehyde are: (1) excess formaldehyde in the resin; (2) excess catalyst in the foaming agent; (3) excess foaming agent; (4) improper ratio of resin to foaming agent; (5) foaming at high humidities; (6) foaming with cold chemicals; (7) dry density of foam exceeding the manufacturer's specifications; (8) application against recommended practice; and (9) improper use or lack of vapor barriers.

The Commission staff has conducted in-depth investigations for over 400 of the consumer complaints and has reviewed over 380 of these investigations. The in-depth investigations reviewed so far have confirmed the presence of UFF insulation and the involvement of a human health problem for over 90 percent of the consumer complaints investigated. Thirty-one persons were hospitalized, primarily for respiratory distress, after UFF insulation was installed. In over one-forth of the investigated cases, involving nearly 100 families, there were reports that some or all of the occupants either vacated, or planned to vacate, all or a portion of the building for various periods of time, or had to delay their move into a home insulated with UFF insulation. Some of these families were advised to leave their homes by their physicians. In about half of the households involved in the consumer complaints, someone sought medical treatment. The health-related symptoms were linked to formaldehyde by a doctor or someone in the medical profession in about 50 of the investigation reports. Non-specific allergic reactions were diagnosed in an additional 30 families. About 40 percent of the reports state the symptoms improve when the victim leaves the insulated environment and reappear after the victim returns to the environment.

Current information suggests that the most common reactions of consumers exposed to formaldehyde gas released from UFF insulation are: (1) eye, nose, and throat irritation; (2) coughing and shortness of breath; (3) skin irritation; (4) headaches and dizziness; and (5) nausea. Persons with respiratory problems or allergies, and especially persons who are allergic to formaldehyde, can suffer more serious reactions.

Although some consumers' reactions to formaldehyde may be so severe that

they seek medical attention, many others may experience a less specific but persistent discomfort that may be mistaken for a cold, allergy, or generally rundown feeling.

In addition to the above effects, current information indicates that formaldehyde is a strong sensitizer, so that certain exposed individuals may become allergic and experience progressively more severe reactions to formaldehyde at very low levels of exposure. Sensitized individuals may find it increasingly difficult to stay in their homes. In some cases, the individual's sensitization to formaldehyde is so severe that even after leaving the home, the consumer may be adversely affected by exposure to very low levels of formaldehyde from other sources. Since there are many sources of formaldehyde exposure, complete avoidance of this exposure may be nearly impossible.

After the UFF insulation is in place it may begin to release formaldehyde, either immediately or after a delay, and may continue to release formaldehyde indefinitely. Available information indicates that heat and humidity may increase formaldehyde emission. Because of these factors, the Commission believes that some consumers who insulate their homes in the winter months may not experience adverse health and safety effects until the summer months.

Alternatives Under Consideration

On January 13, 1981, the Commission proposed a ban on UFF insulation (46 FR 11188, February 5, 1981). The comment period ended on April 6, 1981, and the Commission, after analyzing the comments received, will decide whether or not to make the ban final. The proposed regulation would ban UFF insulation in order to prevent the risk of injury from cancer as well as acute illnesses caused by the release of formaldehyde gas from the product. After the effective date of the final regulation, persons would be prohibited from manufacturing or selling UFF insulation. The ban would not apply to UFF insulation that had been installed before the effective date.

The proposal defines the product that is banned as any cellular plastic thermal insulation material which contains, as a component chemical, formaldehyde, formaldehyde polymers, formaldehyde derivatives, or any other chemical from which formaldehyde can be released.

The definition does not include urethane or styrene foam insulation. These installation materials are rigid in form and are not foamed in place or manufactured at the site of installation.

The proposed ban applies to UFF insulation for use as a consumer product, including UFF insulation that is intended for installation in new homes or residences as well as retrofit applications in existing homes. As proposed, the ban would also apply to UFF insulation that is installed in commercial buildings, recreational facilities, schools, and other public buildings. The Commission included non-residential applications within the scope of the proposal since (1) there is no information showing that the product that is installed in non-residences is different than the product installed in residences, (2) there are some reports of acute health problems associated with non-residences, and (3) there could be some degree of risk to persons exposed to formaldehyde gas released in non-residential applications.

The Commission proposed this ban under the authority provided by § 8 of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2057).

The Commission staff learned of possible health problems associated with UFF insulation as early as 1976. In October 1976 the Metropolitan Denver District Attorney's Consumer Office filed a petition (CP 77–1) under § 10 of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2059, requesting the Commission to develop a safety standard under § 7 of the CPSA, 15 U.S.C. 2065, for certain types of home insulation products, including UFF insulation.The petitioner claimed that there is an unreasonable risk of injury of irritation and poisoning associated with UFF insulation. After considering information compiled by the Commission staff, the Commission decided, on March 5, 1979, to defer a decision on the part of the petition relating to UFF insulation and instructed the Commission staff to evaluate additional information on possible means of addressing this alleged unreasonable risk of injury (44 FR 12080).

After gathering additional information, the Commission held public hearings on UFF insulation in Portland, OR; Atlanta, GA; Minneapolis, MN; and Hartford, CT from December 1979 through February 1980 (44 FR 69578, December 3, 1979).

From April 9 to 11, 1980, the Commission staff held a technical workshop on formaldehyde at the National Bureau of Standards. At this workshop, experts from the United States and eight foreign countries presented information on UFF insulation, formaldehyde chemistry, product applications and properties, and measurement and sampling of formaldehyde.

On June 10, 1980, the Commission published a proposed notice to purchasers concerning the potential adverse acute health effects associated with the release of formaldehyde gas from UFF insulation (45 FR 39434). The proposal would have required manufacturers of UFF insulation to give specified technical and performance information to prospective purchasers to assist them in making an informed choice in purchasing the product. The proposal included information concerning the release of formaldehyde gas, symptoms of the acute illness associated with its release, and certain conditions under which the release of formaldehyde gas is more likely. The Commission solicited comments on the proposal and received 63 comments from interested persons.

Also during its 2-year investigation of UFF insulation and consideration of regulatory options, CPSC staff and Commissioners have met with representatives of the Formaldehyde Institute and other industry representatives, including UFF insulation installers, on numerous occasions, including a lengthy public meeting to assess industry data and viewpoints on December 5, 1980.

The CPSC staff recommendation to propose the ban also relied on two advisory reports on the chronic and acute health effects posed by formaldehyde prepared for the Commission by two prestigious bodies of outside experts and a panel ("Federal Panel on Formaldehyde") of 16 Federal experts in health science and cancer research established under the auspices of the National Toxicological Program. The panel's recommendation was based in part on a chemical industry cancer study conducted for 2 years on laboratory animals. The study showed that two different species (rats and mice) developed nasal cancer when exposed to inhalation doses of formaldehyde gas within an order of magnitude of the exposure in residences where UFF insulation has been installed.

CPSC also recently received a report from the Franklin Research Center of Philadelphia, which tested nine separate installations of UF foam under conditions considered by installers to be ideal for minimizing release of formaldehyde gas. The Franklin Research Center discovered that significant amounts of formaldehyde gas were released by all the products that were tested.

The Commission has carefully examined existing standards and manufacturer's specifications for the product, as well as draft standards that recently have been submitted to the Commission. Those standards examined were: Department of Energy standard (1980); Department of Housing and Urban Development Use of Materials Bulletin No. 74 (1977); Dutch Quality Requirements for UFF insulation (1976); British Standards 5617 and 5618 (1978); German Standards DIN 18–159 (Part 2) (1977); and Canadian Standards 51–CP–24M (1977) and 51–CP–22MP (1978). Those standards recently submitted to the Commission were: the National Insulation Certification Institute Voluntary Standard and the Formaldehyde Institute Draft Standard. The Commission preliminarily has concluded that none of these standards or specifications have been shown to addresss adequately the release of formaldehyde from the product and the chronic and acute risk of injury associated with that release. The Commission also concludes at this time that the provisions purporting to reduce formaldehyde emissions are not supported by either a technical rationale or by documentation and experimentation demonstrating their effectiveness. Instead, the ability of manufacturers to avoid complaints of acute illness after the product has been installed is at the present time largely dependent on the skill of the individual installer, and is not something which can be codified in a standard or predictably and reliably duplicated by others. Moreover, even those installations which do not result in complaints of acute illness pose a risk of injury from cancer to consumers exposed to the formaldehyde.

Based on present information, the Commission believes that the technology and support for a standard that would adequately limit the release of formaldehyde from the product to a predictable level is not presently at hand and has not been shown to be readily available in the future.

The Commission has also considered other regulatory alternatives, such as labeling and information disclosure to consumers. However, because of (1) the nature of the product—the fact that it is manufactured at the site of installation and is essentially a nonreturnable product, or one that is removable only at great expense—and (2) the inability to provide notification to subsequent purchasers of the building where the insulation is installed, labeling or disclosures would not adequately address the problem.

The Commission recognizes that banning a product is a serious action. If UFF insulation is banned, the economic consequences to that industry, which is composed of many small businesses, are likely to be severe. At the same time, however, given the unreasonable risk of injury presented by the product, the availability of substitute forms of insulation for nearly all applications, and the fact that there is no feasible standard, including labeling or information disclosure, that would eliminate or adequately reduce the risk the Commission preliminarily concludes that a ban is necessary and is in the public interest. The Commission has included in the proposed rule a procedure for interested persons to apply for an exemption from the ban, based on evidence showing that they have developed a product that will not present an unreasonable risk of injury from the release of formaldehyde gas.

On October 1, 1981, the Commission decided to extend for 130 days (from October 6, 1981) the time in which it must issue a final ban on UFF insulation or withdraw the rule proposed on February 5, 1981. CPSC needs an extension of the period to analyze the complex and voluminous comments submitted in response to the proposal and to publish for public comment additional information obtained during the analysis of the comments received to date. This additional information includes data on off-gasing from UFF insulation panels, a revised risk assessment, and additional economic data. This additional information will be considered by the Commission for publication in the **Federal Register** on November 18, 1981 (46 FR 56762). Once these comments are analyzed early next year, the Commission will decide whether to issue a final ban or to withdraw the proposal.

Summary of Benefits

Sectors Affected: Consumers of UFF insulation, especially persons with respiratory problems and allergies and those sensitized to formaldehyde; and manufacturers, wholesale and retail traders, and installers of UFF insulation.

The benefits we expect from this proceeding are improved public health and safety resulting from the reduction of consumer exposure to formaldehyde released from UFF insulation.

The Commission staff estimates in the ban proposal that the lifetime risk of injury from cancer to consumers resulting from the release of formaldehyde gas from UFF insulation is that up to 150 people may develop cancer among the population of 1.75 million persons exposed to formaldehyde in residences that have been insulated with UFF insulation from 1975 to 1980. Although this estimate reflects the limitations and uncertainties of data, it does provide a measure of the magnitude of the problem associated with the levels of formaldehyde to which consumers are exposed from UFF insulation.

In preparing the risk assessment for the proposed ban on the UFF insulation, the Commission staff relied upon the model used by the Federal panel to assess the risk of nasal tumors in rats caused by the inhalation of formaldehyde insulation.

In considering the potential benefits of a ban in reducing the future incidence of cancer, the Commission has relied upon a risk assessment, which was discussed in the proposal, concerning the degree of the risk of injury for chronic hazards. Based on a projection of 75,000 installations of UFF insulation in 1980 as well as the information in the risk assessment, approximately 262,500 persons would be at risk from the projected 1980 residential installations of UFF insulation. Based on the upper estimation of risk (.000086), approximately 23 of these persons may develop cancer as a result of their exposure.

If the estimated value of foregone energy savings (discussed in the "Summary of Cost" section) is compared to the estimated risk of 23 cases of cancer that might eventually result from these installations each year, based on the upper value of the estimated range of risk, the calculated cost of foregone energy savings per cancer avoided would range from $70,000 to $226,000 per year in 1980 dollars.

This range compares only the benefits of avoided incidences of cancer to estimated foregone energy savings. Although additional benefits cannot be reliably quantified, a ban would also benefit society in the following ways: (1) avoidance of the cost of lives lost and the medical and social costs for treatment of cancer; (2) reducing the costs of adverse acute health effects caused by formaldehyde; (3) avoidance of the costs of remedial measures to attempt to correct problems in future installations, including the costs of removing foam from residences; and (4) avoidance of costs incurred due to time lost from work, rental of other residences, and costs of litigation involving installations.

When the benefits of avoided incidences of cancer and the additional benefits described above are considered

in relationship to the facts that the ban is likely to result in a relatively minor impact to the economy as a whole, and will result in minimal energy losses because of the ready availability of substitute types of insulation for most applications, the Commission has preliminarily concluded that the benefits of the ban do bear a reasonable relationship to, and do in fact justify, the costs of the regulatory action.

The Commission staff believes that there are substitutes for most, but not all, uses of UFF insulation.

In narrow-cavity walls of residences (which represent 10 to 15 percent of the current total residential UFF installations), other types of cavity insulation may not be feasible at this time, although alternatives are under development now and may become widely available in 1 to 2 years. Insulation of these walls can now be done either on the interior or exterior side, although it is not likely that alternative materials would be used frequently. Such materials may be more likely to be used in non-residential, narrow-cavity walls.

Each of the UFF-insulated homes is a potential source of formaldehyde exposure. The Commission is not aware of a practical solution that has been demonstrated to be effective in all instances to the problems from release of formaldehyde gas from UFF insulation. Some of the remedial measures that have been suggested by industry representatives include ventilation by opening windows and doors and turning on air conditioners, the use of ammonia or other chemicals to neutralize formaldehyde gas, painting interior walls with an oil-base paint to keep formaldehyde gas out of the living areas of the home, and the use of chemically treated air filters to absorb formaldehyde gas. These remedies have not been successful in all cases. In some instances, persons have successfully eliminated problems by removing the UFF insulation after it has hardened. However, since this remedy requires removal of the interior walls of the homes, it can be a very expensive solution. The Commission has also received reports that in some instances, formaldehyde gas problems have continued even after the UFF insulation has been removed. Also the proposed ban may result in or cause some firms a decrease in the number of complaints, costs of remedial measure to correct installations involving complaints, law suits involving adverse health effects, and unfavorable publicity.

Summary of Costs

Sectors Affected: Manufacturers, importers, wholesale and retail traders, installers, and consumers of UFF insulation; and the general public.

The economic effects of a ban of UFF insulation would fall on: (1) UFF chemical manufacturers and supplies of imported UFF chemicals; (2) UFF insulation contractors who manufacture the product at the site of installation; and (3) consumers and the public at large, in the direct effect of foregone energy savings, and the indirect effect of reduced real estate values.

The major anticipated economic impacts of a ban for manufacturers and importers of the urea formaldehyde foam component materials are in lost revenues and unemployment. If the total number of residential installations of urea formaldehyde foam per year in the absence of a ban is 60,000 to 80,000, suppliers of the materials used to make UFF insulation would have a loss in sales that corresponds to the value of the materials in these installations. If the lost revenues are calculated by multiplying the estimated value of the chemicals used by the number of installations, the lost sales would be $12 million to $20 million per year (in 1980 dollars). If the lost revenues are calculated as percentage of the retail value of the installed product, then the estimated lost sales would be from $11 million to $40 million per year.

When the Commission staff prepared its preliminary economic assessment (November 1980), available information indicated that 30, and possibly more, companies in the United States either manufactured urea formaldehyde foam chemicals or distributed imported urea formaldehyde foam chemicals. Information available in preparing the assessment showed that the ten largest companies may supply 85 to 90 percent of the resin used for UFF insulation. Information presented to the Commission in December 1980 by industry representatives indicate that there were nine U.S. firms manufacturing component materials for UFF insulation, and that there were ten U.S. firms that were either private labelers of component materials or distributors of materials produced by domestic or foreign firms at that time.

In September 1981 an industry representative informed the Commission's staff that as few as four firms were still manufacturing or supplying UFF insulation materials. Although UFF insulation sales have increased in recent years, the remaining suppliers may still derive a substantial percentage of their revenues from the material. Some may go out of business unless they can diversify their operations. Some major manufacturers and suppliers of urea formaldehyde foam chemicals have gone out of business because of reduced demand for UFF insulation or anticipated problems in marketing the product in the future. Based on information as of September 1981, the maximum impact of a ban for manufacturers and distributors of the component materials used to make UFF insulation may be the exodus of about four firms from the industry, with a loss in employment of perhaps 50 persons.

The major anticipated economic impacts of a ban for persons installing UFF insulation will be in the form of a loss of revenues and reduced employment.

Available information indicates that there has been a substantial decline in the number of installers in the last several years. As of April 1980, the best available estimates were that there were approximately 1,500 to 2,000 active installers, and that approximately an equal number of persons had the necessary equipment to install the product but were not installing UFF insulation. Industry sources estimated that the number of active installers had fallen to between 600 and 800 in January 1981 and to between 200 to 250 in September 1981. A survey of insulation contractors in September 1981 by Commission staff indicated that nearly all current UFF insulation installers have other sources of revenue, such as the installation of other types of insulation, roofing, siding, and storm windows. These findings are consistent with information given to the Commission at the time of the proposed ban; however, several of these firms still receive a significant percentage of their total revenues from UFF insulation.

Based on an estimated total annual retail value of $43 million to $120 million (in 1980 dollars) for 60,000 to 80,000 UFF insulation installations per year and on the assumption that 1,500 to 2,000 installers would be active in the absence of a ban, the average number of annual installations per firm would range from 30 to 50. The average gross revenues per firm would range from $30,000 to $80,000 per year (in 1980 dollars). The actual gross revenues may be greater or less than this amount for individual installers. The overall impact of a ban on each installer would depend on the extent to which total revenues are derived from UFF insulation jobs and the extent to which lost revenues may be compensated by increased installation of other types of insulation

materials or other home improvement operations. (However, the Commission does not have current information on UFF insulation activity that would allow precise estimates of average installation rates of revenues for these firms.)

Information provided by insulation contractors at the time of the proposal indicates the there may have been from 3 to 15 employees per firm who install UFF insulation. According to UFF insulation installers surveyed in September 1981, the average number of employees that install the insulation was then slightly more than four per contractor. The number of employees who would lose their jobs as a result of a ban would vary depending on whether these employees could be used in other activities. Some of the contractors contacted by the staff who are no longer installing UFF insulation indicated that they were able to use these employees in other activities and were not forced to lay them off when they discontinued use of UFF insulation. However, where UFF insulation represents a substantial portion of the firm's revenue, layoffs are more likely to result.

At the time of the proposed ban 75,000 installations were projected for 1980, and the estimated total energy savings for UFF insulation ranged from 2.7 trillion to 3.4 trillion Btu's annually. These savings have an estimated value between $16 million and $20 million of 1980 energy prices. This may be less than .005 percent of national energy use. More recent information indicates that 1980 residential installations may have been closer to a range of 25,000 to 30,000. Annual installations may not total 75,000 in the absence of a ban. Therefore, energy savings per year may be less than projected in the proposed ban.

Present information indicates that the walls of most residences now being insulated with urea formaldehyde foam could be insulated with alternative insulating materials. In approximately 10 to 15 percent of the residences, the wall cavities may be so narrow that alternative materials are inadequate. However, because these homes have narrow wall cavities, the energy savings from UFF insulation in these homes would probably be less than in homes with deeper wall cavities. The Commission staff estimates that the total annual energy savings for UFF insulation in these residences in 1980 could range from 35 to 87 billion Btu's with a value of $204,000 to $518,000 at 1980 energy prices. These foregone energy savings would be repeated for each year that insulation is not installed.

A ban could also have the indirect result of discouraging installation of alternative types of wall insulation in some homes in which the alternative types of insulation are suitable because of a decline in the solicitation of insulation jobs or a decision by consumers not to have other types of insulation installed. However, where other types of insulation are suitable, the energy losses are less likely to be continued in later years, since consumers are able to insulate and are more likely to do so as they consider their energy losses. For this reason, and because the failure to insulate these residences would be an indirect result of a ban, the foregone energy savings in those home where alternative types of insulation are less suitable should be given greater emphasis.

The cumulative foregone energy savings after the ban becomes effective cannot be precisely determined because of uncertainty about: (1) the number of UFF insulation installations in future years in the absence of a ban; (2) the total number of uninsulated residences; and (3) the development of new alternative wall cavity insulating materials in the future that may also be suitable for the small percentage of installations for which urea formaldehyde foam is now reportedly the only available insulating material.

A ban of UFF insulation could have an adverse effect on the resale value of residences or other buildings that have been insulated with UFF insulation. Since the ban is not retroactive and does not directly affect products that have already been installed, this impact would be a secondary, rather than a primary impact of the ban. A decline in real estate values of homes insulated with UFF insulation could also occur in the absence of a ban, though to the extent that it does, such losses in value would not be attributable to the ban. At the present time, there is insufficient information to accurately estimate the magnitude of these effects, if any.

If the Commission bans UFF insulation, consumers who have already had the product installed may increase their efforts to have the insulation removed. This increase in efforts may lead to greater costs incurred by urea formaldehyde foam chemical manufacturers and installers in litigation or in taking remedial measures. Although these costs could be a significant factor in the overall economic impact of a ban, at the present time there is insufficient information to estimate their magnitude, if any.

Related Regulations and Actions

Internal: None.

External: The Commission is aware of the following actions taken by State and Federal agencies concerning UFF insulation:

(1) Based on the risk of acute illness presented by the product, the State of Massachusetts has declared UFF insulation to be a banned hazardous substance and has required the removal of UFF insulation from commerce in that State. The Massachusetts ban became effective November 14, 1979. The Massachusetts regulations are currently in litigation, although the ban itself is in effect during this litigation. The State has issued repurchase provisions for the ban, effective November 20, 1980. These provisions allow homeowners who have had their homes insulated with UFF insulation to have the foam removed at the manufacturer's expense if at least one occupant of the structure has suffered adverse health effects which occurred or were aggravated after exposure to the UFF insulation.

(2) On June 2, 1981, the Governor of Connecticut signed into law a ban on UFF insulation.

(3) The Office of the Attorney General of the State of Colorado issued a warning on December 4, 1978 about potential acute health hazards to consumers who have purchased UFF insulation. On September 17, 1980, the State banned UFF insulation in State-licensed buildings. Arvada County banned UFF insulation in 1978. The city of Denver requires homeowners to sign a statement presented by the installer that they are aware UFF insulation is being installed in their home and that there could be possible health effects from the insulation. Denver County has adopted a prohibition against the use of UFF insulation in new or existing construction.

(4) In Minnesota, the legislature enacted a law requiring the Commissioner of Health to determine if a significant health problem is presented by the use of building materials, including UFF insulation, that emit formaldehyde gas. On May 22, 1980, the Commissioner of Health declared that because of problems of acute toxicity, the use of building materials which give off formaldehyde vapor can be a "significant health problem" under certain circumstances. On June 23, 1980, a temporary rule was proposed which will establish a maximum limit of 0.4 parts per million of formaldehyde for the air inside newly constructed dwelling units. An injunction has been filed against the State to stop this rulemaking.

(5) In Maine, installers are required to inform prospective purchasers that UFF insulation may release formaldehyde gas into the home for long periods after installation; that it may cause eye, nose, and throat problems; that people with allergies or respiratory problems may be particularly susceptible; and that UFF insulation is not recommended for attic spaces and interior walls. The State also requires real estate brokers, when listing a residence for sale, to make an attempt to determine what insulation is in the house and to inform prospective buyers

of the determination. If UFF insulation is present, a disclosure similar to the warning statement above must be given to the prospective buyer.

(6) On July 1, 1981, the State of Rhode Island issued a requirement for UFF insulation installers to give purchasers a statement on the possibility of adverse health effects from exposure to UFF insulation.

(7) On March 31, 1981, New York State requirements became effective whereby a written warning notice must be given to purchasers of UFF insulation or to the owner of a building in which UFF insulation is installed. The New York city building department has removed UFF insulation from its list of approved buildings materials, thereby causing a *de facto* ban.

(8) In August 1981 the State of New Hampshire issued requirements for a warning label on possible health hazards to be posted on the premises by the installer while work is in progress.

(9) In Pennsylvania three State bills are pending: one to ban UFF insulation, another to grant financial relief to homeowners with installed UFF insulation, and another to require a warning notice disclosing acute problems associated with the insulation.

(10) On October 1, 1981, a Wisconsin standard became effective that does not allow formaldehyde vapors in mobile homes to exceed .4 parts per million.

(11) Many local governments have regulations banning or controlling the use of UFF insulation. Some have already been mentioned, such as Denver and Arvada counties in Colorado and the cities of New York and Denver. Others are Euclid, OH, which has an ordinance prohibiting the sale or use of UFF insulation; Las Vegas, NV, which has a ban on the use of UFF insulation in residential and commercial buildings, except on exterior surfaces; and the city of Seattle, WA, whose Housing Authority has prohibited the use of UFF insulation in low-cost housing.

(12) The Canadian government has adopted a temporary ban of further sales of UFF insulation, effective in December 1980, because of the acute and chronic risks of injury associated with the product.

(13) The Department of Housing and Urban Development has issued a Use of Materials Bulletin (UMB #74, October 13, 1977) for UFF insulation. UMB #74 explains the conditions under which HUD will accept the product and stipulates certain limitations for its use in new home construction. On August 28, 1981, HUD published its ANPRM "Formaldehyde Emissions in Manufactured Homes" (46 FR 43466).

(14) On May 29, 1980, the Small Business Administration (SBA) informed the Commission that the SBA declined to make small businesses in the UFF insulation industry eligible for financial assistance under the Economic Dislocation Loan Program. SBA determined that the problems affecting the industry are not due to direct governmental actions but were caused by adverse publicity resulting from improper installation of the product by dealers.

(15) On September 25, 1980, the Department of Energy (DOE) published interim final material and installation standards for UFF insulation (45 FR 63786). These standards are now in effect. DOE stated in the preamble to the regulation that if significant new information arises, DOE will be able to take whatever action is appropriate, including, if necessary, banning UFF from the Residential Conservation Service Program (45 FR 63787). DOE also stated that its regulations will conform with any legal action taken by the Commission with respect to UFF insulation (45 FR 63787). The DOE regulations include a required notice to consumers that is similar to the notice proposed by the Commission.

On January 27, 1981, DOE proposed (48 FR 8997) to either amend their interim standard for UFF insulation or to ban the installation of UFF insulation under the Residential Conservation Service Program.

Government Collaboration

The National Academy of Sciences (NAS), in a 10–month comprehensive analysis of existing formaldehyde research in the international health community prepared for the Commission in March 1980, recommended that consumer exposure to formaldehyde be reduced to the lowest practical level.

In November 1980 a panel of 16 Federal experts in health science and cancer research advised the Commission that formaldehyde should be presumed to pose a risk of cancer for human beings.

The Commission has also conducted research with the Department of Energy to help determine why formaldehyde gas is released from UFF insulation and whether there are means of preventing such release. The Commission has also received a completed economic study, conducted by a contractor, concerning the major uses of formaldehyde in consumer products, including UFF insulation. The study also provides an overview of the production of and market for formaldehyde. The Commission has kept the Environmental Protection Agency and other Federal agencies informed of its activities on UFF insulation.

The Commission staff has had meetings with the National Association of Urea-Foam Insulation Manufacturers, the National Insulation Certification Institute, and the Formaldehyde Institute (including the National Particleboard Association and the Hardwood Plywood Manufacturers Association).

Timetable

Proposed Ban and Denial of Petition—46 FR 11188, February 5, 1981.

Public Comment Period—February 5, 1981 to April 6, 1981.

Public Hearing—March 20, 1981.

Public Comment Period (on additional technical, scientific, and economic data acquired by the Commission)—Ended December 18, 1981.

Commission Decision (on petition to issue a standard and whether to issue a final ban or to withdraw the proposal)—February 1982.

Regulatory Flexibility Analysis—January 1981.

Regulatory Impact Analysis—The Commission, as an independent agency, is not required to prepare a Regulatory Impact Analysis as defined under E.O. 12291. However, the Commission prepares essentially the same information in its rulemaking proceedings.

Final Rule—To be determined.

Final Rule Effective—30 to 180 days after any final ban is published.

Available Documents

CPSC staff Briefing Packages dated November 2, 1979, April 23, 1980, September 2, 1980, and November 18, 1980 (includes economic impact report and public comments, from comment period February 5 to April 6, 1981) are available from the Office of the Secretary, U.S. Consumer Product Safety Commission, Washington, DC 20207.

"Public Hearings Concerning Safety and Health Problems That May Be Associated With Release of Formaldehyde Gas From Urea Formaldehyde Foam Insulation," 44 FR 69578, December 3, 1979.

"Urea-Formaldehyde Foam Insulation Proposed Notice to Purchasers," 45 FR 39434, June 10, 1980.

Regulatory Flexibility Analysis, January 1981.

"Urea-Formaldehyde Foam Insulation; Proposed Ban; Denial of Petition," 46 FR 11188, February 5, 1981.

These documents are available from the Office of the Secretary, U.S. Consumer Product Safety Commission, Washington, DC 20207.

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CHAPTER 5—HUMAN RESOURCES

DEPARTMENT OF EDUCATION

Office for Civil Rights

Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting From Federal Financial Assistance (34 CFR Part 104; Review)

Legal Authority

Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794.

Reason for Including This Entry

The Department of Education (ED) includes this entry because the Presidential Task Force on Regulatory Relief has designated these regulations for review.

Statement of Problem

The regulations in 34 CFR Part 104 implement § 504 of the Rehabilitation Act of 1973, which prohibits discrimination against any "otherwise qualified handicapped individual" in any program or activity receiving Federal financial assistance. For those programs and activities funded by ED, the Office for Civil Rights has compliance and enforcement responsibilities.

The Presidential Task Force on Regulatory Relief expressed concern about the application of these regulations to institutions administering

programs receiving Federal financial assistance. In particular, the Task Force cited excessive compliance costs and the diversion of resources from the education of handicapped individuals because of administrative and recordkeeping costs.

The ED Office for Civil Rights has initiated a review of these regulations. As a result of this review, amendments to these regulations are anticipated that will reduce fiscal and administrative burdens on all recipients of ED assistance.

Alternatives Under Consideration

The amendments ED expects to propose are in the planning stage. Therefore, it is not clear what alternatives will be considered. Public comments will be requested when specific amendments are proposed in order to assure that the Department considers all possible alternatives.

The amendments to the § 504 regulations being considered concern employment discrimination, accessibility to education facilities, and accessibility of publicly funded television programming to the hearing impaired, as well as administrative provisions of the regulations.

Summary of Benefits

Sectors Affected: Persons subject to discrimination on the basis of handicap in any program or activity receiving or benefiting from Federal financial assistance furnished by ED; and any agency, institution, organization, or person operating a program or activity that receives Federal financial assistance from ED.

These regulations provide that no qualified handicapped person shall, on the basis of handicap, be excluded from participating in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives or benefits from Federal financial assistance furnished by ED.

All handicapped persons benefit by being free from discrimination. At this time ED is unable to provide precise data on the number of handicapped persons who are beneficiaries of these regulations or to quantify the benefits received. However, statistical information on handicapped and disabled persons in the population can be found in the "Digest of Data on Persons With Disabilities," prepared under contract to the Congressional Research Service of the Library of Congress and available from the U.S. Government Printing Office (Stock No. 017-090-0050-0).

Summary of Costs

Sectors Affected: Any agency, institution, organization, or person operating a program or activity that receives Federal financial assistance from ED. Included among the sectors affected by these regulations are State educational agencies, approximately 16,000 local educational agencies, and institutions of higher education.

The ED Office for Civil Rights is currently investigating the costs of compliance with these regulations but is unable to provide estimates of these costs at the present time. The costs imposed by the existing regulations and any amendments proposed will be considered in determining the appropriateness of preparing a Regulatory Impact Analysis in accordance with Executive Order 12291.

Summary of Net Benefits

Benefits accruing to handicapped individuals through enforcement of the discrimination prohibition in § 504 are not quantifiable in financial terms. However, it is expected that amendments made in these regulations as a result of this review will reduce compliance and administrative costs for educational agencies and other recipients of ED assistance.

Related Regulations and Actions

Internal: Multiple amendments to Part 104 are anticipated before completion of the review.

External: Executive Order 12250, Leadership and Coordination of Nondiscrimination Laws, November 2, 1980 (45 FR 72995; November 4, 1980).

Government Collaboration

These regulations are subject to review by the Department of Justice in accordance with Executive Order 12250.

Timetable

NPRM—June 1982.
Final Rule—Date to be determined.
Final Rule Effective—Date to be determined.
Public Hearing—To be determined.
Public Comment Period—To be determined.
Regulatory Impact Analysis—To be determined.
Regulatory Flexibility Analysis—To be determined.

Available Documents

45 CFR Part 84 was published on May 4, 1977 at 42 FR 22677. It was transferred and redesignated as 34 CFR Part 104 on November 21, 1980 at 45 FR 77368.

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ED-OCR

Nondiscrimination on the Basis of Sex in Education Programs and Activities Receiving or Benefiting From Federal Financial Assistance (34 CFR Part 106; Review)

Legal Authority

Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681 *et seq.*

Reason for Including This Entry

The Department of Education (ED) includes this entry because the Presidential Task Force on Regulatory Relief has designated a policy interpretation of these regulations for review.

Statement of Problem

These regulations implement Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex in any education program or activity that receives Federal financial assistance.

The Presidential Task Force on Regulatory Relief expressed concern about the application of a policy interpretation of Title IX and its implementing regulations relating to intercollegiate athletic programs. In particular, the Task Force cited requirements for recordkeeping, overall coverage of intercollegiate athletics programs, and comparable expenditures for both sexes as areas for review.

The ED Office for Civil Rights (OCR) has initiated a review of the policy interpretation. As a result of this review, we anticipate making amendments to the regulations that will reduce fiscal and administrative burdens on recipients of Department assistance.

The review of civil rights regulations enforced by OCR is a major project because of the complexity of the issues and the broad scope of the regulations, rules, and policy statements. In conducting our review, OCR will be guided by President Reagan's Executive Order 12291, the requirements of the Regulatory Flexibility Act, and the Paperwork Reduction Act of 1980.

Alternatives Under Consideration

We will request public comments on any proposed amendments to Part 106 to assure that the Department considers all possible alternatives.

Our goal is to reduce unneccessarily costly and burdensome regulatory compliance and recordkeeping requirements. Additionally, OCR will study the role of State and local authorities in civil rights enforcement. Through the regulations review process, OCR will develop models for increased involvement of the States and localities in the areas of monitoring and enforcement.

Summary of Benefits

Sectors Affected: Persons subject to discrimination on the basis of sex in any education program or activity receiving or benefiting from Federal financial assistance furnished by ED; and any agency, institution, organization, or person operating an education program or activity that receives Federal financial assistance from ED.

ED is unable to provide precise data on the number of beneficiaries of these regulations or to quantify the benefits to individuals from nondiscrimination.

The potential beneficiaries of our review of the Title IX policy interpretation and these regulations are recipients of ED financial assistance.

OCR's goal is to reduce the burden of Federal regulations while ensuring compliance with the civil rights laws enforced by OCR.

Summary of Costs

Sectors Affected: Any agency, institution, organization, or person operating an education program or activity that receives Federal financial assistance from ED. Included among the sectors affected by these regulations are State educational agencies, approximately 16,000 local educational agencies, and institutions of higher education.

The costs imposed by these regulations will be considered in determining the appropriateness of preparing a Regulatory Impact Analysis in accordance with Executive Order 12291. However, the ED Office of Civil Rights is unable to provide estimates of the costs of compliance with these regulations at the present time.

Summary of Net Benefits

Benefits accuring to individuals through enforcement of the sex discrimination prohibition in Title IX are not quantifiable in financial terms. However, it is expected that amendments made in these regulations as a result of this review will reduce costs for educational agencies and other recipients of financial assistance while continuing to provide protection against sex discrimination.

Related Regulations and Actions

Internal: An NPRM revoking a provision in 34 CFR Part 106 prohibiting discrimination in the application of codes of personal appearance was published on April 23, 1981 at 46 FR 23081. Other amendments to Part 106 may be proposed as a result of the Secretary's commitment to review all ED regulations.

External: Executive Order 12250, Leadership and Coordination of Nondiscrimination Laws, November 2, 1980 (45 FR 72995, November 4, 1980). DOJ proposed regulations on sex discrimination at 45 FR 41001, June 17, 1980 (28 CFR 42.701–.771).

Government Collaboration

These regulations will be submitted to the Department of Justice for review in accordance with Executive Order 12250.

Timetable

NPRM—June 1982.
Final Rule—Date to be determined.
Final Rule Effective—Date to be determined.
Public Hearing—To be determined.
Public Comment Period—To be determined.
Regulatory Impact Analysis—To be determined.
Regulatory Flexibility Analysis—To be determined.

Available Documents

45 CFR Part 86 was published on June 4, 1975 at 40 FR 24128. It was transferred and redesignated as 34 CFR Part 106 on November 21, 1980 at 45 FR 77368.

A policy interpretation of Title IX intercollegiate athletic provisions and implementing regulations was published at 44 FR 71413 on December 11, 1979.

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ED—Office of Post-Secondary Education

Institutional Aid Programs (34 CFR Parts 624, 625, 626, and 627)

Legal Authority

Title III of the Higher Education Act of 1965, §§ 301–347, as amended by P.L. 96–374, 20 U.S.C. 1051–1069c.

Reason for Including This Entry

The Department of Education (ED) includes this entry because these regulations concern issues of great public interest in this program.

Statement of Problem

The regulations the Department has proposed are necessary to implement Title III of the Higher Education Act of 1965, as amended by the Education Amendments of 1980.

Title III provides Federal financial assistance to institutions of higher education to solve problems that threaten their ability to survive and to stabilize their management and fiscal operations so that they may become self-sufficient.

Beginning in fiscal year 1982–83 eligible institutions will be able to apply for funding under the following three new grant programs:

- The Strengthening Program, which provides Federal assistance to institutions in order to improve their academic quality, institutional management, and fiscal stability.
- The Special Needs Program, which provides Federal assistance to institutions with special needs in order to strengthen their planning, management, and fiscal capabilities.
- The Challenge Grant Program, which provides Federal assistance on a matching basis as an incentive for eligible institutions to seek alternative sources of funding.

These programs provide funds to plan, develop, and implement activities for: the development of academic programs and faculty; administrative management; acquisition of equipment for use in management of funds and academic programs; joint use of facilities such as libraries and laboratories; and student services.

Federal assistance under these programs is not intended to supplement the operating expenses of grantees or to supplant what an institution would otherwise spend to carry out activities allowed under the programs. The purpose of these programs, rather, as expressed in § 301 of the Higher Education Act, is to assist eligible institutions to carry out activities that

enable them to become "viable, thriving institutions of higher education," i.e., self-sufficient institutions.

Alternatives Under Consideration

These regulations are necessary to implement the eligibility requirements and establish the application procedures and selection criteria for the programs of institutional aid established by the Education Amendments of 1980. We particularly requested comments on the definition of a "substantial percentage" of recipients of need-based student assistance used to establish eligibility for the Strengthening and Special Needs programs and on further opportunities to reduce regulatory burdens.

The public comment period on the proposed regulations closed September 18, 1981. The comments received will be considered in issuing final regulations.

Summary of Benefits

Sectors Affected: Institutions of higher education.

In reenacting the Title III program, Congress recognized that many institutions of higher education face the problems of declining enrollments and scarce resources, which threaten their ability to survive. In addition, many institutions also face problems stemming from ineffective administrative and fiscal management, as well as an inability to engage in long-range planning, recruitment, and development activities. The money provided to institutions under the Title III programs enables them to develop and implement a comprehensive, long-range development plan in order to strengthen their academic quality and institutional management and to promote self-sufficiency and growth. Activities that may be funded as part of such a plan include faculty and curriculum development, student services, and fiscal and administrative management development. For example, grants may be awarded to institutions of higher education to: improve their career counseling and placement services; develop curriculum in new areas; establish an integrated management information system; and develop institutional research offices.

In general, eligible recipients are institutions that are providing higher education to substantial numbers of persons from low-income families and that do not yet have sufficient resources to provide adequate management, improve academic programs and student services, or upgrade the quality of their faculty members.

Both 2-year and 4-year public and non-profit private colleges are eligible for funding under all the programs. In addition, certain graduate schools and certain medical schools are eligible for funding under the Challenge Grant Program. Both the Strengthening Program and Special Needs Program provide for grants to institutions in cooperative arrangements. A cooperative arrangement is an agreement under which two or more eligible institutions share or combine resources and otherwise cooperate in order to carry out the purposes of the Institutional Aid Programs more efficiently and effectively than if each institution were to conduct those activities separately.

It has been estimated that 375 to 400 awards will be made under Title III in fiscal year 1982:

- 203 under the Strengthening Program.
- 213 under the Special Needs Program.
- 15 under the Challenge Grant Program.

Further, it has been estimated that:

- Planning grants awarded under the Strengthening and Special Needs programs will range between $30,000 and a maximum of $50,000.
- Short-term development grants under the Strengthening Program will range between $50,000 and a maximum of $150,000 per year.
- Long-term development grants awarded under the Strengthening and Special Needs program will range between $200,000 and a maximum of $600,000 per year.
- Grants awarded under the Challenge Grant Program will range between $150,000 and a maximum of $750,000 per year.

The Administration requested an appropriation of $129.6 million for FY 1982 for the Title III programs.

Summary of Costs

Sectors Affected: Institutions of higher education.

Before an institution may receive a grant, it must submit an application to determine if it is eligible to receive Title III funding.

We estimate that:

- The applications for grants under the Strengthening Program, the Special Needs Program, and the Challenge Grant Program will each require an average of 91 person-hours to complete.
- The request for designation as an eligible institution under the Institutional Aid Programs will require an average of 0.5 person-hours to complete.

The authorizing legislation also requires an applicant to develop a long-range comprehensive development plan.

Summary of Net Benefits

Institutions are expected to apply for planning grants to defray the expense of preparing comprehensive development plans. Therefore, this item should not represent a real cost to grant recipients. Benefits to grant recipients will far exceed application and program administration costs.

Related Regulations and Actions

None.

Government Collaboration

None.

Timetable

NPRM—46 FR 37470, July 20, 1981.
Public Comment Period—Ended September 18, 1981.
Final Rule—January 1982.
Regulatory Impact Analysis—Not required.
Regulatory Flexibility Analysis—Not required.

Available Documents

Public comment file. All comments submitted in response to these proposed regulations are available for public inspection in Room 3045, ROB–3, Seventh and D Streets, S.W., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week, except Federal holidays.

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ED—Office of Special Education and Rehabilitative Services

Assistance to States for Education of Handicapped Children (34 CFR Part 300; Review)

Legal Authority

Part B of the Education of the Handicapped Act, as amended by P.L. 94–142, 20 U.S.C. 1411–1420.

Reason for Including This Entry

The Department of Education (ED) includes this entry because the Presidential Task Force on Regulatory Relief has designated these regulations for review.

Statement of Problem

Under Part B of the Education of the Handicapped Act, as amended, State educational agencies may apply for and receive entitlement grants to assist them in educating handicapped children.

The primary goal of this program is to assist States, and ultimately local educational agencies, to provide full educational opportunities to all handicapped children. It is designed to aid in the initiation, expansion, and improvement of programs and projects for the handicapped at the preschool, elementary, and secondary levels.

The statute authorizes formula grants to States based on the number of the handicapped child population aged 3 through 21 who are receiving special education and related services multiplied by a percentage of the national average per-pupil expenditure. These grants help the States defray the excess costs of educating handicapped children.

Congress appropriated $874,500,000 for this program in fiscal year 1980 and the same amount in fiscal year 1981.

Alternatives Under Consideration

These regulations are still under review by ED. Therefore, it is not clear what amendments to the regulations we will propose. One alternative to the present regulations would be to write minimal regulations directly incorporating the basic wording or substance of the statute and interpreting the statutory provisions only where the statute is not clear. On the other hand, our review may indicate that few changes should be made in the regulations because they provide necessary guidance.

Summary of Benefits

Sectors Affected: State and local educational agencies and handicapped children and their parents.

As a result of this review, proposed amendments to the regulations are anticipated that will reduce fiscal and administrative burdens on recipients by deleting regulatory provisions imposing burdensome procedural and reporting requirements. Responsibility for certain decisions concerning procedures and recordkeeping would be returned to State and local educational agencies, and more resources would be available for educational purposes.

Summary of Costs

Sectors Affected: State and local educational agencies.

As a condition of receiving assistance under this program, a State must provide a free, appropriate public education, along with certain other rights and protections, to its handicapped children. Any State requesting a grant is required to submit a State plan to the Secretary of Education through its State educational agency.

The review of these regulations by the Department has indicated that unnecessary cost burdens may be imposed by certain other regulatory provisions that exceed specific statutory requirements (e.g., information that we require State agencies to obtain in local educational agency applications). A Regulatory Impact Analysis is being prepared by the Department to evaluate the costs involved.

Summary of Net Benefits

We are preparing a Regulatory Impact Analysis on these regulations to determine what percentage of the $874,500,000 appropriations in fiscal years 1980 and 1981 was spent to meet administrative and recordkeeping requirements. Our goal is to review and, where necessary, amend the regulations in order to reduce regulatory burdens and costs while continuing to comply with the authorizing statute. If costs imposed by the regulations can be reduced, more money will be available for educating handicapped children.

Related Regulations and Actions

Internal: The Office of Special Education and Rehabilitative Services (OSERS) has scheduled all existing Department regulations for which it has responsibility for review in order to reduce regulatory burden. OSERS regulations are published in 34 CFR Parts 300–399.

External: None.

Government Collaboration

None.

Timetable

NPRM—April 1982.
Public Hearings—To be determined.
Public Comment Period—Following NPRM.
Final Rule—Date to be determined.
Regulatory Impact Analysis—January 1982.
Regulatory Flexibility Analysis—To be determined.

Available Documents

Final regulations for this program were published as 45 CFR Part 121a on August 23, 1977 at 42 FR 42474. These regulations were redesignated as 34 CFR Part 300 on November 21, 1980 at 45 FR 77368.

A briefing paper providing an overview of the deregulation process being implemented by the Special Education Programs office is available from the agency contact.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

DEPARTMENT OF LABOR

Employment and Training Administration

Work Incentive Programs for Aid to Families With Dependent Children (AFDC) Recipients Under Title IV of the Social Security Act (29 CFR Part 56, Revision; 45 CFR Part 224, Revision)

Legal Authority

Social Security Act, §§ 402, 403, 406, 431–434, 436, and 437, as amended, 42 U.S.C. 602, 603, 606, 631–634, 636, and 637.

Reason for Including This Entry

The Office of Human Development Services and the Employment and Training Administration include this entry because the Presidential Task Force on Regulatory Relief has designated these regulations for review.

Statement of Problem

The Work Incentive Program (WIN) was established to help people receiving Aid to Families with Dependent Children (AFDC) find jobs and become self-supporting. The Department of Labor (DOL) and the Department of Health and Human Services (HHS) jointly administer the WIN program through the National Coordinating Committee (NCC). At the State level, the State WIN sponsor and the State welfare agency develop an annual State WIN plan for operation of the WIN program in the State and submit it to the appropriate Regional Coordination Committee for approval. The State WIN sponsor and State welfare agency also administer and supervise the administration of the WIN program in each State.

At the local level, there are three units involved—the income maintenance unit (IMU), the WIN sponsor, and the separate administrative unit (SAU). The IMU determines AFDC eligibility and exemption status and refers suitable persons to the WIN program. The WIN sponsor (usually part of the State job service) registers referred individuals and provides work and training services. The WIN sponsor and the SAU appraise registrants and develop an employability plan for each registrant found suitable for participation in the program. The SAU furnishes social services to enable registrants to engage in employment, training, and employment-related activities.

In response to complaints from some States regarding the perceived restrictive nature of certain portions of the regulations, a review is being undertaken to determine the extent to which the regulations may be revised to allow greater flexibility in the State administration of the program and to reduce reporting and recordkeeping burden. As part of that review, a Notice of Intent will be published in the **Federal Register** in December 1981 to solicit suggestions from the public of areas where the regulations can be revised to reduce burden and increase program flexibility.

Alternatives Under Consideration

We are reviewing every area of the regulations with the objective of revising provisions that are not required by the statute. Some areas that appear to be candidates for revision are:

(A) *Adjudication and fair hearings*—The present regulation (45 CFR Part 224, Subpart G) imposes detailed procedural requirements for fair hearings in cases involving disputes between WIN recipients and State administering agencies. Can we simplify these procedures?

(B) *Employability plan*—The present regulation (45 CFR 224.22) requires joint development of an employability plan for each registrant by the local WIN sponsor and the separate administrative unit at the time of the appraisal for employability potential. This appraisal usually takes place at the time of registration. Are there more desirable alternatives to this current practice?

(C) *Time limits on provision of social services*—The present regulation (45 CFR 224.30) provides that the local separate administrative unit must provide social services for a period of 30 days following the start of unsubsidized employment and may continue to provide these services for an additional 60 days with Federal financial participation. Should the regulations allow each State to decide on the minimum and maximum lengths of time for provision of social services?

(D) *Relocation of exemption provisions*—As part of the eligibility determination process for Aid to Families with Dependent Children, the local welfare agency determines whether the AFDC applicant is exempt from registration for WIN. The law spells out these exemptions (over age 65, certain caretaker relatives, etc.), and the WIN regulations, at 45 CFR 224.20, codify them in regulatory language. The regulation on determination of eligibility for AFDC is a regulation of the Office of Family Assistance (45 CFR Part 233), whose regulations control the eligibility determinations by local welfare agencies. Since the determination of exemption from WIN is made by the State agency that determines eligibility for AFDC as part of the AFDC eligibility determination process, shouldn't the WIN exemption regulation be transferred from Part 224 to Part 233?

(E) *Reduction of reporting burden*—Present requirements for overall WIN reporting by State administrators are lengthy and seem to be burdensome. For this revision, we will review all approved reporting and recordkeeping requirements. Our aim is to reduce the annual reporting and recordkeeping burden on WIN State administrators from 386,234 hours to 241,043 hours. These totals include both DOL and HHS burden hours.

We are preparing a notice for publication in the **Federal Register** that review of the WIN regulations is underway. We expect that public comment in response to this notice will suggest additional areas for consideration and will provide suggestions for the way to treat the areas set forth here.

Summary of Benefits

Sectors Affected: State agencies that operate the WIN program and AFDC recipients.

These regulations control State agency operation of the WIN program. The regulations ultimately benefit AFDC recipients. We hope that increased flexibility and reduction in reporting hours will allow State administrators to use staff and resources more efficiently. This, in turn, will allow the State offices to serve, and provide more activities for, larger numbers of the AFDC population.

Summary of Costs

Sectors Affected: None.

It is unlikely that ultimate regulatory changes arising from this initiative will produce additional costs. Increased flexibility for State operation should benefit larger numbers of the AFDC population for the same cost of administration.

Summary of Net Benefits

The Office of Management and Budget estimates indicate that one burden hour imposes a $10 per hour cost on the public. Therefore, the anticipated reduction of 145,191 burden hours results in an estimated savings of $1,451,910 for State administrators of the WIN program. Ultimately, we anticipate the increased flexibility of operation for State administrators will result in an increased level of WIN activities for AFDC recipients.

Related Regulations and Actions

None.

Government Collaboration

We are soliciting written comments and suggestions, directed to sections of the regulations that are not mandated by the Social Security Act, from all State agencies administering WIN programs and other interested parties, identifying the specific sections of the WIN regulations that are of concern, suggesting proposed revisions, and justifying the basis for the proposed changes. We are also setting up a State Regional Advisory Task Force to analyze regulations and recommend changes. Proposals for legislative changes will not be considered.

Timetable

Notice of Intent soliciting comments—December 1981.
Public Comment Period—45 days.
Interim Final Regulations—February 26, 1982.
Public Comment Period—60 days.
Regulatory Impact Analysis—Not applicable.
Regulatory Flexibility Analysis—Not applicable.

Available Documents

None.

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Community Planning and Development

Community Development Block Grants (CDBG)—Entitlement (24 CFR Part 570, Subparts A, B, C, D, J, K, M, and O; Revision)

Legal Authority

Title I, Housing and Community Development Act (HCD Act) of 1974, as amended, 42 U.S.C. 5301 *et seq.*

Reason for Including This Entry

In response to E.O. 12291, the Department of Housing and Urban Development (HUD) initiated review of the Community Development Block Grant (CDBG) Entitlement regulations in the context of the statute then in effect in order to reduce unnecessary restraints on local flexibility and to reduce excessive administrative and compliance costs. Subsequently, Congress included significant revisions to the Housing and Community Development Act (HCD Act) in the Omnibus Budget Reconciliation Act of 1981. These statutory changes have broadened the scope of regulatory revisions under consideration. In addition, the Presidential Task Force on Regulatory Relief has designated these regulations for review.

Statement of Problem

The CDBG Entitlement program provides formula grants to central cities of Metropolitan Statistical Areas (MSAs), other cities in MSAs with populations of 50,000 or more, and certain urban counties. The earlier categorical community development programs, such as urban renewal, water and sewer, and open space land programs have been consolidated into this single "block grant." Funds were awarded on the basis of HUD's review of an application submitted by each entitled locality.

Program regulations became increasingly complex and restrictive over the 7 years of the program's existence. Those subject areas under review include application requirements (including the Housing Assistance Plan), eligibility of activities, compliance with primary objectives, and performance standards.

The application required of CDBG Entitlement recipients was initially a brief summary document. Over the past several years administrative requirements for application content have been revised to require a lengthy statement of needs, strategies, project descriptions, and additional detail in completing the Housing Assistance Plan (HAP), an assessment of present and future housing requirements in the area applying for a grant. To a large extent, reductions in the burden on localities will be achieved through statutory changes that eliminated application requirements and substituted a statement of community development objectives and projected use of funds.

The requirement for a HAP in this case has been retained, however. The statutory requirements for a HAP include information on housing conditions, households in need of assistance, reasonable goals for meeting housing needs, and the general locations where assisted housing will be provided. Areas that HUD will review include requirements specifying how to estimate the number of needy households expected to reside in the community, the standards for establishing reasonable goals for assisted housing, and the specification of suitable locations for new or rehabilitated assisted housing.

Eligibility of activities has become complex and difficult to understand due, in part, to administrative requirements for special HUD approval. In addition, many localities have proposed activities not clearly specified as eligible under the statute (such as public services to residents outside of specified areas), which has led to further complexity in the Department's attempt to administer the program in a manner consistent with the intent of Congress to limit eligible activities to those specified in the statute.

Compliance with the primary objectives of the HCD Act requires that each activity carried out with CDBG funds either benefit low- and moderate-income families, aid in the prevention or elimination of slums or blight, or meet other community development needs of a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community where other financial resources are not available to meet such needs. While the Department believes that some regulatory definition of this requirement is important (particularly now that applications are no longer required), the current provision defines these national objectives rather narrowly (particularly the definition of "prevention or elimination of slums and blight") and needs to be made more realistic.

The current regulations establish performance standards by which HUD can measure whether the grant recipients are complying with the grant objectives and requirements. With regard to performance standards, we will revise the current rules so that performance will not be reviewed against the application, since the application will be replaced by a simplified statement beginning in fiscal year 1982. This will require deletion of the existing regulatory provision. Other changes in performance standards regarding compliance with the HCD Act and other applicable laws and standards for timely program implementation are in the early stages of consideration.

Alternatives Under Consideration

(A) For each of the subject areas described above, one alternative would be to make no changes. This alternative is not feasible since we must change the regulations to be consistent with new provisions in the statute.

(B) Alternative (B) would be to limit changes to those absolutely necessary to conform the regulations to the statute, as revised. While this approach would, in effect, eliminate regulations governing applications (since applications are no longer required), changes in the areas of HAP, eligibility, compliance with primary objectives, and performance standards would be minimal. This approach would not be consistent with E.O. 12291 and the objectives of maximum local flexibility and reduction of administrative requirements on recipients.

(C) Alternative (C) would be to develop comprehensive revisions to the regulations that eliminate administrative embellishments and retain amplifying provisions only to the extent mandated by the statute or where absolutely necessary for efficient administration of the program and the control of fraud, waste, and mismanagement. This is the approach HUD has selected in this rulemaking procedure.

We expect that in place of the regulations on applications, Subpart D of Part 570 will describe the grant award process with little, if any, amplification beyond the minimum statutory requirements. Revised eligibility regulations will, of course, reflect the statutory changes. In addition, the Department will remove special restrictions not required by statute wherever possible and attempt to edit and clarify existing provisions. While striving for brevity, we recognize that some explanatory provisions will be necessary so that recipients, HUD staff, auditors, and the public will understand more clearly the permitted uses of CDBG funds. In revising the HAP, the Department will be guided primarily by the regulations issued on February 23, 1981 (46 FR 13676) governing HAPs under the CDBG Small Cities program.

which significantly reduced the complexity of the rules local governments must follow in completing a HAP. Revisions in the regulations governing compliance with primary objectives will focus on a more specific definition of activities that benefit low- and moderate-income families and elimination of the overly restrictive provisions that limit activities deemed to aid in the prevention or elimininations of slums or blight. The statutory changes also obviate the need to emphasize any one of the primary objectives more than the others. Performance standards will be based on statutory criteria (§ 104(d)(i)), with sufficient explanatory material to ensure that recipients understand the basis for the Department's post-award review conclusions.

Summary of Benefits

Sectors Affected: Local governments receiving CDBG Entitlement grants and HUD.

The requirement for a statement of objectives and projected use of funds instead of the detailed application will permit local government recipients to save staff time. Savings may vary based on the size of locality. On the average, however, it is anticipated that the annual savings per locality will approach 200 hours. Additional quantifiable savings are expected from revisions to the HAP, but estimates of savings are not available at this time.

Benefits from changes in eligibility and compliance standards are not easily quantifiable. Nevertheless, it seems clear that less local government staff time will be necessary when regulations are less restrictive and more easily understood.

These benefits will occur when each grantee prepares its fiscal year 1982 grant submission and annually thereafter.

Summary of Costs

Sectors Affected: Local governments receiving CDBG Entitlement grants and HUD.

The more thorough revision to the CDBG regulations contemplated will involve additional costs to the Department in staff time and could result in staff not being available to carry out other functions. The revisions will also require more extensive training of HUD staff to ensure understanding of significantly changed regulations.

Local governments may experience some initial difficulty becoming familiar with new requirements and procedures. Some localities have already incurred costs to develop an application and HAP consistent with existing provisions. These will have to be significantly changed to comply with new regulations. These are minimal, one-time costs, however, and are inherent in any transition to new requirements.

Summary of Net Benefits

The benefits of reduced local staff costs will increase over time and should enable a greater proportion of the funds to be used for program activities instead of administration. Costs to HUD and recipients are minimal and will not recur. Therefore, in the long term, these costs would be more than offset by future savings.

Related Regulations and Actions

Internal: Community Development Block Grants—Small Cities (24 CFR Part 570, Subparts F and I); Environmental Review Procedures for the Community Development Block Grant Program (24 CFR Part 58); see separate entries in this Calendar.

External: None.

Government Collaboration

None.

Timetable

24 CFR Part 570 Subparts A, B, C, D, and M

Interim Rule—February 1982.

Public Comment Period—60 days after publication of Interim Rule.

Final Rule—To be determined.

Regulatory Impact Analysis—None.

Regulatory Flexibility Analysis—None.

24 CFR Part 570 Subparts J, K, and O—Timetable to be determined.

Available Documents

Community Development Block Grants—Small Cities Program—Housing Assistance Plan (46 FR 13676, February 23, 1981).

Available from Rules Docket Clerk, Room 5218, at address below.

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HUD-CPD

Community Development Block Grants—Small Cities Program (24 CFR Part 570, Subpart F)

Legal Authority

Housing and Community Development Act of 1974, as amended, 42 U.S.C. 5301.

Reason for Including This Entry

In line with Executive Order 12291, the Department of Housing and Urban Development (HUD) is simplifying the Block Grant Program by eliminating unnecessary regulatory constraints, i.e., those that are not specifically required by the Housing and Community Development Act of 1974, as amended. The Omnibus Budget Reconciliation Act of 1981 includes provisions to radically simplify this block grant program. Finally, the Presidential Task Force on Regulatory Relief has designated these regulations for review.

Statement of Problem

The HUD Small Cities Program regulations have evolved over the past 5 years as a result of HUD's desire to implement the program in accordance with the numerous goals and changes in the Housing and Community Development Act of 1974. It has become apparent that these regulations, which govern the selection process for those small cities applying for Community Development Block Grant (CDBG) funds, are more complex than necessary. Also, the Omnibus Budget Act of 1981 eliminated the requirement that small cities prepare a Housing Assistance Plan (HAP), and the regulations and application procedures must be modified to reflect this change.

For these reasons HUD is preparing simplified regulations that will, in effect, make it easier to apply for program funds and to use such funds for problems and eligible activities chosen by local officials.

Alternatives Under Consideration

Alternative (A) would be to make no change in the current program regulations. This would save HUD's administrative efforts and would retain a system familiar to many local officials. On the other hand, if no changes are made, many of the current unnecessary requirements would remain, causing local officials needless administrative burden.

Alternate (B) would be to dramatically revise the Program regulations which would create an entirely new selection system and operating procedures. We feel this is

unwise because of the confusion it would lead to and the training and administrative burden involved in implementing such a change.

Alternative (C) is to modify existing regulations in such a way as to give local officials more flexibility and still make clear what the law requires. Equally important is HUD's need to administer an objective selection process that remains understandable to those cities that compete with other cities for scarce CDBG funds. Changes in the selection process include reducing the number of factors used in the selection process to rate cities' applications and the elimination of unnecessary submission requirements, such as the HAP.

The Department has considered the above alternatives and has chosen to pursue alternative (C).

Summary of Benefits

Sectors Affected: General units of local government that are not recipients of Community Development Block Grant Entitlement funds.

HUD expects that these regulatory changes will ease the administrative burden placed on local officials who apply for and administer Small Cities Program grants. Early estimates indicate that the simplified Small Cities Program will save local governments approximately $1.2 million in fiscal year 1982, based on an estimated savings of 96,000 staff hours.

Summary of Costs

Sectors Affected: None.

The Small Cities Program regulations define the selection system used to select grantees and to administer those projects after the grantees are selected. Since the regulations are only being simplified, and the substantive characteristics remain unchanged, no significant costs are anticipated.

Summary of Net Benefits

Given that we expect this action to generate no significant costs, the net benefits correspond to the savings we described above.

Related Regulations and Actions

Internal: Community Development Block Grants (CDBG)—Entitlement, 24 CFR 570, Subparts A, B, C, J, K, and O.
External: None.

Government Collaboration

HUD has held discussions with public interest groups representing local governments.

Timetable

NPRM—None planned.
Public Hearings—None planned.
Public Comment Period—None.
Final Rule—To be determined.
Interim Rule—January 1982.
Interim Rule Effective—
Approximately 30 days after publication in the **Federal Register**.
Regulatory Impact Analysis—None.
Regulatory Flexibility Analysis—None.

Available Documents

Current operating regulations are contained in the Code of Federal Regulations. The citations are 24 CFR 570.420 and 570.437.

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HUD-CPD

Environmental Review Procedures for Title I, Community Development Block Grant Programs (24 CFR Part 58; Revision)

Legal Authority

Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d); § 104(f), Title I, Housing and Community Development Act of 1974, P.L. 93-383, 42 U.S.C. 5304(f), as amended by § 103(g) of the Housing and Community Development Amendments of 1979, P.L. 96-153, and by § 302(e) of the Housing and Community Development Amendments of 1981, P.L. 97-35; § 103, National Environmental Policy Act of 1969, P.L. 91-190, 42 U.S.C. 4332, as amended; Executive Order 11514, Protection and Enhancement of Environmental Quality, March 5, 1970, as amended by Executive Order 11991 of May 24, 1977.

Reason for Including This Entry

The Presidential Task Force on Regulatory Relief has designated this regulation for review. The Department of Housing and Urban Development (HUD) also considers the regulation to be important because it specifies all the environmental responsibilities of the Department that must be assumed by States and local governments and other recipients of Community Development Block Grant (CDBG) assistance under § 104(f) of Title I of the HUD legislation. The regulation will provide the means by which block grant recipients can fulfill their environmental obligations under the National Environmental Policy Act (NEPA) and other provisions of law (statutes, Executive Orders, and Federal regulations).

Statement of Problem

Given the § 104(f) provisions and the NEPA requirements for regulations to be issued by the HUD Secretary, can the broad array of environmental obligations and the multiplicity of procedural actions prescribed under related laws and authorities be synthesized and integrated into one environmental review and approval process? The problem is threefold.

(1) The environmental review regulations, governing the Title I Community Development Block Grant programs of the Department since 1975, were changed substantially during 1979. The changes were the result of two concurrent but parallel undertakings, both initiated in May 1977. The Council on Environmental Quality, following the directives of Executive Order 11991 to review and promulgate new NEPA regulations codified in 1975 in 24 CFR Part 58, initiated an Advance Notice of Proposed Rulemaking (42 FR 24755, May 16, 1977) as part of a rulemaking process that would ultimately result in the adoption of a final regulation. This process has yet to be completed. The first changes to the 24 CFR Part 58 environmental review procedures were the comprehensive revisions and amendments proposed by the Department in the **Federal Register** of September 19, 1978 (43 FR 42220-42232) and the Final Rule issued on May 24, 1979, taking into account the extensive public comments that we received. The latest changes to Part 58 were introduced in the Interim Rule published by the Department on August 2, 1979 (44 FR 45568-45585).

(2) Recent changes to the HUD legislation require that the current interim regulation issued by HUD on August 2, 1979 be amended to implement the procedure reauthorized by the 1981 amendments and redesignated as § 104(f) and to conform with the new provisions of the Housing and Community Development (HCD) Amendments of 1981 in this fiscal year. Two innovative developments to the Title I statute are of particular interest to this rule:

(a) the elimination of the application and review process for the annual grant assistance to entitlement and small cities and, in its stead, the establishment of a pre-grant award procedure under § 104(a), (b), and (c) of Title I; and

(b) the authorization to assume HUD's oversight responsibilities (including NEPA) by those States that elect to

administer the CDBG program for non-entitlement cities under § 106(d) of Title I.

(3) In addition, conformity of the environmental regulations with the HCD amendments of 1979 is long overdue. The problem here is the need, on the one hand, to formalize and specify the environmental responsibilities that must be assumed by grant recipients under provisions of law other than NEPA, while at the same time we must seek to reduce the regulatory burden on States, cities, and other block grant recipients.

In the selection of alternative measures by HUD, one important criterion will be the development of such an integrated but simplified and streamlined environmental review and clearance process that takes into account the deregulatory objectives of HUD and that will permit block grant recipients to fulfill all their environmental obligations.

Alternatives Under Consideration

The Department has decided to issue a revised Interim Rule to replace the August 1979 Interim Regulations rather than publish a Final Rule or an ANPRM, which would entail the repetition of the entire rulemaking process. The new Interim Rule is needed to implement the changes in the 1979 legislation and to provide the regulatory relief described below.

The provisions of this new Interim Rule are designed to reduce the regulatory burden of the current Interim Regulation on block grant recipients by:

(A) Substantially reducing the text of the 1979 interim regulations through: (1) the deletion of general guidance on procedural and operational measures such as those contained in § 58.14 of the 1979 rule; (2) deletion of the requirement that a "Notice of Intent To Prepare an Environmental Impact Statement (EIS)" be published in the Federal Register for each block grant project that needs an environmental impact statement;

(B) Emphasizing the mechanisms and procedures designed in the NEPA regulations to reduce paperwork, eliminate duplication, and otherwise simplify the environmental review process by such measures as:

- incorporation by reference of information and data already stated in other documents;
- adoption of existing impact statements;
- joint preparation of EISs with State and local agencies;
- combining environmental documents with other documents;
- circulating summaries of EISs;
- writing analytically and in plain language;
- setting further page limits if appropriate;
- discussing less significiant issues briefly;
- attaching and circulating only changes to the draft EIS rather than rewriting and recirculating entire EIS when changes are minor;
- using categorical exclusions to exclude from the EIS and assessment requirements categories of actions that will not significantly affect the environment; and
- integrating NEPA requirements with other environmental review and consultation requirements.

(C) Providing new mechanisms to reduce delays in project approvals due to deficiencies in the environmental review of block grant projects through:

(1) The establishment of a "scoping process." The purpose and anticipated effect of the scoping process are to: (a) identify the signficant environmental impact issues surrounding the proposal; (b) provide a greater opportunity for affected persons (including Federal, State, and local agencies) to participate in the process, thereby narrowing the issues and enhancing community and agency agreement over environmentally desirable changes before the proposal becomes too firm; (c) reduce interagency conflicts by allocating assignments for the preparation of the EIS among the lead and cooperating agencies; (d) facilitate timely identification of related environmental review and consultation requirements, thereby enhancing the opportunities for integrated, concurrent environmental analyses and reducing opportunities for later, delaying conflicts; and (e) provide an effective mechanism to set page and time limits for completing the EIS process where appropriate.

(2) The encouragement of joint environmental reviews with other agencies either as a lead or as a cooperating agency. Another reason for unnecessary delays is inadequate coordination among agencies where more than one agency has an interest in a project. Inadequate coordination occurs where several agencies cannot agree on which is to be the lead agency responsible for preparing the draft EIS. We anticipate that the proposed regulations will reduce delays of this sort by providing a mechanism for promptly resolving lead agency disputes. Inadequate coordination also occurs where a non-lead Federal agency, with jurisdiction over a proposal (or portion of a proposal), fails to participate in the lead agency's drafting of the EIS and waits until after the draft EIS is circulating for review and comment before analyzing its interests and registering its objections.

(D) Amending the current Interim Rule by substituting a single threshold for submitting an EIS of 2,500 dwelling units for the sliding scale numerical threshold contained in the 1979 interim rule. The built-in environmental safeguards of the former sliding scale can be realized by a recipient's prior determination, based on available environmental information, of the level of clearance that would be appropriate for a particular project. This simplification can further reduce the unnecessary burden of preparing an EIS just because the numerical threshold is exceeded. For such projects where the Title I recipient determines that significant environmental impacts are unlikely, Part 58 provides that this determination must be verified by preparing an environmental assessment (EA) instead of an EIS.

(E) Adoption in the rule of a new option that allows a recipient to combine into one notice the contents of two public notices: the notice of finding of no significant environmental impact and the public notice of intent to request HUD to release funds. This was requested by a substantial number of comments addressed to the 1979 regulations. Timing requirements and conditions relative to the exercise of these options are further defined to make it clear that the public comment period prescribed for the finding of no significant impact must have elapsed before the actual request for release of funds and the recipient's certification can be submitted to HUD (new § 58.45).

(F) Exempting from the environmental requirements, under NEPA and the laws, seven additional categories of activities based on the Department's experience since the publication of the 1979 Interim Rule. Block Grant recipients will be able to undertake such activities without having to go through the clearance process prescribed in the Interim Rule for the other block grant projects that require environmental reviews. Activities exempted thus include: (1) administrative costs; (2) the payment of principal and interest on outstanding urban renewal project loans; (3) the payment of principal and interest due on notes or other obligations guaranteed by the Department under Title I; (4) project engineering and design costs; (5) technical assistance awards; (6) public service grants; (7) interim assistance for imminent threats to health and safety.

Summary of Benefits

Sectors Affected: Recipients of CDBG assistance, including State, city, and other local units of government (SIC

Code 919) and Indian tribes (SIC Code 953).

Some regulations lend themselves readily to the analysis of benefits and costs. A regulation establishing a particular level of pollutants above which emissions are banned, or one setting up a housing program, can be analyzed in terms of cost and the returns that can be expected from such investments. The influence of a referral policy created for protection and improvement of the environment can be generally recognized as beneficial. The effectiveness of various procedural devices may also be rightfully perceived as benefits because they avoid duplication and reduce delays. However, quantification of the benefits devised from such a particular environmental review procedure, or from public notice requirements is simply not possible. The new Interim Rule, in implementing the National Environmental Policy Act, provides that block grant recipients consider the environmental impact of their community development projects funded under Title I of the HCD Act of 1974. They must carry out environmental reviews that thoroughly assess the environmental effects of each such project and its alternatives, including alternative measures for avoiding or mitigating any adverse environmental effects. Consideration of environmental effects ultimately benefits the State, city, locality, or in the case of discretionary funding the Indian tribe receiving the grant.

By requiring the block grant recipient to consider such environmental reviews documents, the regulation improves the chances that environmental factors will influence the course of action and lead to decisions that avoid or minimize environmental harm. When considered, an environmental review document reduces the risk that the potential adverse effects of block grant activities will be arbitrarily discounted or simply ignored.

Before an environmental impact statement is issued, it must undergo review and comment by Federal, State, and local agencies, interested members of the public, and others. The final statement must respond to the comments that are made on the draft or otherwise incorporate the comments into its analysis.

The review and comment period provides those interested in a proposal with the opportunity to supply additional environmental information and analysis for the EIS and thereby reduces the possibility that important data or materials will be overlooked. It also provides those with varied backgrounds, expertise, and perspectives a chance to scrutinize an agency's analysis of environmental issues. In the course of such a review, factual inaccuracies and analytical errors may be discovered. The agency is responsible for making the necessary corrections and clarifications in the final statement.

Finally, their role in the environmental review process gives interested citizens a chance to advise the block grant recipient concerning possible impacts on the quality of their environment. With a clearer understanding of the public's perspective on such matters, local government officials stand in a better position to strike a balance in their decisionmaking that reflects the broader public interest in community development activities affecting the environment.

Summary of Costs

Sectors Affected: None.

No direct cost to block grant recipients is associated with carrying out the requirement of this new Interim Rule. Environmental reviews, studies, and related actions are eligible activities funded under the Title I block grant program. Financial assistance for environmental reviews is further confirmed in the proposed Interim Rule (§ 58.23).

Summary of Net Benefits

Within the statutory framework of NEPA and other Federal laws, the proposed regulation will strike an appropriate balance between the needs of localities and program recipients and the needs for environmental protection.

Related Regulations and Actions

Internal: 24 CFR Part 570, Community Development Block Grant Programs; 24 CFR Part 571, Community Development Block Grants for Indian Tribes and Alaska Natives; and 24 CFR Part 51, Environmental Criteria and Standards.

External: 40 CFR Parts 1500–1508, NEPA Regulations of the Council on Environmental Quality; and the following related laws:

• *Historic Properties:*

The National Historic Preservation Act of 1966 (P.L. 89–665, 16 U.S.C. 470 *et seq.*), as amended.

Executive Order 11593, Protection and Enhancement of the Cultural Environment, May 13, 1971.

The Act of June 1960 (P.L. 86–523, 16 U.S.C. 469), as amended by the Archeological and Historic Data Preservation Act of 1974 (P.L. 93–291).

• *Floodplain Management and Wetland Protection:*

Flood Disaster Protection Act of 1973 (P.L. 93–234, 42 U.S.C. 4001 *et seq.*), as amended.

Executive Order 11988, Floodplain Management, May 24, 1977.

Executive Order 11990, Protection of Wetlands, May 24, 1977.

• *Coastal Zone Management.* The Coastal Zone Management Act of 1972 (P.L. 92–583, 16 U.S.C. 1451 *et seq.*), as amended.

• *Sole Source Aquifers.* The Safe Drinking Water Act of 1974 (P.L. 93–253, 42 U.S.C. 201, 300(f) *et seq.*, and 21 U.S.C. 349), as amended.

• *Wildlife.* The Fish and Wildlife Coordination Act of 1958 (P.L. 85–624, 16 U.S.C. 661 *et seq.*), as amended.

• *Endangered Species.* The Endangered Species Act of 1973 (P.L. 93–205, 16 U.S.C. 1531), as amended.

• *Wild and Scenic Rivers.* The Wild and Scenic Rivers Act of 1968 (P.L. 90–542, 16 U.S.C. 1271 *et seq.*), as amended.

• *Other Applicable Authority—Funding Conditioned on Non-Violation:*

Water Quality. The Federal Water Pollution Control Act of 1970 (P.L. 92–500, 33 U.S.C. 1251 *et seq.*), as amended by the Federal Water Pollution Control Act Amendments of 1972 (P.L. 92–500) and by The Clean Water Act of 1977 (P.L. 95–217, 33 U.S.C. 1251).

Air Quality. The Clean Air Act Amendments of 1970 (P.L. 91–604, 42 U.S.C. 1857), as amended by the Clean Air Act Amendments of 1977, P.L. 95–95 and P.L. 95–190 (42 U.S.C. 4362, 7401, *et seq.*).

Solid Waste Management. The Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (P.L. 94–580) and by P.L. 95–609, 42 U.S.C. 6901, *et seq.*.

Government Collaboration

The National Environmental Policy Act and § 104(f), Title I, of the Housing and Community Development Act of 1974, as amended, require HUD to consult with the Council on Environmental Quality prior to issuance of this regulation.

Under the Paperwork Reduction Act and Executive Order 12291, the proposed Interim Rule must be submitted to the Office of Management and Budget (OMB) for review.

Timetable

ANPRM—42 FR 24755, May 16, 1977.
NPRM—43 FR 42220, September 19, 1978.
Final Rule—44 FR 30260, May 24, 1979.
Interim Rule—44 FR 45568, August 2, 1979.
Revised Interim Rule—January 1982.
Public Comment Period—60 days

following Revised Interim Rule.
Interim Rule Effective—February 1982.
Final Rule—May 1982.
Public Hearing—None.
Final Rule Effective—June 1982.
Regulatory Impact Analysis—The Interim Rule was conditionally waived from the requirements for a Regulatory Impact Analysis by the OMB Office of Economic Affairs, Policy Development and Research.
Regulatory Flexibility Analysis—None.

Available Documents

National Environmental Policy Regulations, 40 CFR Parts 1500–1508, 43 FR 55978, November 29, 1978.
"Community Development Block Grant Program Environmental Review Procedures," 24 CFR Part 58.

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HUD—Office of the Assistant Secretary for Housing

Income Eligibility and Rent for Public Housing, Section 8 Housing Assistance Payment Program, Section 236 Mortgage Insurance Program, and Section 101 Rent Supplement Program (24 CFR Parts 813, 236, and 215; Revision)

Legal Authority

Sections 322 and 323 of the Housing and Community Development Amendments of 1981, 42 U.S.C. 1437a, 12 U.S.C. 1715z–1, 12 U.S.C. 1701s and 42 U.S.C. 1437n.

Reason for Including This Entry

This rule could have an economic impact exceeding $100 million annually.

Statement of Problem

The Housing and Community Development Act of 1981 requires changes in the Federal housing subsidy programs in order to achieve greater uniformity in the treatment of tenants, to increase rental income, and to provide housing assistance to families with the greatest need.

The statutory changes affect the Low-Income Public Housing Program, the Section 8 Housing Assistance Payment Program, the Section 236 Mortgage Insurance Program, and the Section 101 Rent Supplement Program. These programs were developed at different times, have different emphases, and have evolved on somewhat separate courses. The oldest, public housing, is operated by local public housing agencies (PHAs), which, prior to the 1981 Act, were given a good deal of flexibility in setting income limits and in determining deductions from gross income for eligibility and rent computation purposes. The Section 8 Housing Assistance Payments Program, which is operated by both PHAs and private owners, has had more streamlined, Federally mandated eligibility and rent requirements. The Section 236 Mortgage Insurance Program provides below-market rents to tenants by subsidizing the projects' initial mortgage interest. The Section 101 Rent Supplement Program (also referred to as Section 215) provides additional assistance to families in projects insured by the Department of Housing and Urban Development (HUD). In all programs, the intended recipients are low income (below 80 percent of area median income) and very low income (below 50 percent of area median income) families who want housing assistance.

Very low-income households find it very difficult to locate suitable housing without paying an inordinate percentage of their income for rent. In fact, 62 percent of such households paid more than 30 percent of their income for rent in 1977, and many paid over 50 percent of their income. The problem is less serious for those with incomes between 50 and 80 percent of area medians. The changes in the 1981 Act restrict the extent to which Federal rent subsidies can go to such households. While these changes also involve a phased-in increase in rent from a maximum of 25 percent of a family's adjusted income to 30 percent of adjusted income, the new provisions still require a much smaller portion of income for rent than typically paid by very low-income households in the private market and indeed provide considerable benefits to them.

The 1981 Amendments change the definition of income for eligibility and rent calculation purposes to conform more closely to current procedures under Section 8. Those changes focus assistance on very low-income families. All of the housing assistance programs will have the same income limits and allow the same deductions in determining adjusted income. This will help to achieve uniformity among the federally assisted housing programs as well as equitable treatment of participants. The statutory changes provide for tenant rent contributions to increase to 30 percent of adjusted income for all programs. Thirty percent of income is about the amount that most non-subsidized households pay in rent.

The regulation we are proposing is really two separate rules, one implementing the requirements of §§ 322 and 323 of the Housing and Community Development Amendments of 1981 for public housing and § 8, the other implementing the same legislation as it applies to programs under §§ 236 and 215. Given the similarities of the separate rulemakings, they are grouped together for the purpose of this Calendar entry.

Alternatives Under Consideration

HUD has been given very little flexibility under the 1981 Amendments for defining adjusted income or determining the level of tenants' rents. For example, a phase-in of the income changes so that no existing tenant has a rent increase of more than 10 percent in any one year is mandated by the statute. However, one option that the Department considered was an increase in the portion of income paid for rent of some percentage point per year until the rents have risen to the statutory maximums (after 5 years). The law also allows some latitude in determining the deductions permitted in determining adjusted income.

One significant policy determination given to the Department is when to make the changes effective. To avoid placing a burden on local administrators, we propose making the new provisions effective for each family at their next income reexamination.

Summary of Benefits

Sectors Affected: Low-income families seeking housing assistance; public housing authorities; HUD; and taxpayers.

The increases in rent payments will represent larger receipts to the public housing agencies and private owners and lower subsidy payments by the Federal Government. To the extent that low-income families presently receiving assistance will be replaced by very low-income families, a less significant fiscal benefit can be expected in rental income.

The primary beneficiaries of the policy to increase rents will be the families that have heretofore been unable to find available assisted housing. With this change, those less in need of assistance will have incentives to either move to privately supplied units or cease receiving assistance payments on their present units. In

either case, funds and units will then be available to those most in need.

Summary of Costs

Sectors Affected: Present tenants and recipients of housing assistance and local housing authorities.

Increases in rents are provided to present and potential recipients of housing assistance and to families with incomes high enough to make them ineligible under the new rules. While the number failing to meet the new income cutoffs may not be large, a number of families may choose to move or stop assistance if 30 percent of their income would come close to providing them with a dwelling on the private market. We have no estimates of the magnitude of these effects but make the observations based on relative impacts to different income groups.

Some small administrative costs will accrue to PHAs and private owners of assisted units during the initial period, when incomes must be calculated and rents increased. Once this changeover is completed, the administration of all assistance programs will be easier for PHAs and private owners because all eligibility criteria will be the same.

Summary of Net Benefits

Increased tenant contributions will yield rental revenues for public housing agencies and reduce the need for operating subsidies. Thirty percent of adjusted income represents a more common rent ratio in the current private market situation, and the rule will permit better targeting of housing subsidies to those of very low incomes.

Related Regulations and Actions

None.

Government Collaboration

None.

Timetable

NPRM—None.
Public Hearing—None.
Interim Rule—March 1982.
Regulatory Impact Analysis—None.
Regulatory Flexibility Analysis—None.
Economic Analysis—Available with Interim Rule.
Public Comment Period—60 days after Interim Rule.
Final Rule—July 1982.

Available Documents

Economic Analysis for the proposed Increase in Tenant Contribution in Subsidized Programs, available for inspection at the Office of the Rules Docket Clerk, HUD Building, 451 Seventh Street, S.W., Washington, DC 20410.

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HUD–HOUS

Public Housing Lease and Grievance Procedures (24 CFR Part 866; Revision)

Legal Authority

Housing Act of 1937, 42 U.S.C. 1437.

Reason for Including This Entry

The Presidential Task Force on Regulatory Relief has designated this regulation for review.

Statement of Problem

Part 866 of the Department of Housing and Urban Development's (HUD) regulations (Title 24, Code of Federal Regulations) contains two subparts governing landlord-tenant relationships in public housing assisted under the Housing Act of 1937. Subpart A (Dwelling Leases, Procedures, and Requirements) prescribes provisions that must be incorporated in leases between public housing agencies (PHAs) and tenants and also specifies certain provisions that are prohibited from being included in such leases. The provisions that must be incorporated in the lease include those dealing with the PHAs and the tenants' obligations, payments due under the lease and rent redeterminations, hazardous defects, and lease termination. Prohibited lease provisions include those where there is a confession of judgment or a waiver of legal notice or legal proceedings.

Subpart B (Grievance Procedures and Requirements) sets forth:

> requirements, standards and criteria for a grievance procedure to be established and implemented by PHAs to assure that PHA tenants are afforded an opportunity for a hearing if the tenant disputes within a reasonable time any PHA action or failure to act involving the tenant's lease with the PHA or PHA regulations which adversely affect the individual tenant's rights, duties, welfare or status.

Subpart B also requires that if a tenant who has been given a notice of lease termination requests a grievance hearing and satisfies the hearing requirements, then the PHA may not commence a State law eviction proceeding until completion of the administrative grievance procedure.

The Presidential Task Force announcement of August 12, 1981 commented:

> These rules establish compliance procedures that must be incorporated in leases by local public housing authorities (PHAs) assisted by HUD. Not only do they often duplicate and sometimes exceed State and local ordinances, they tend to make it difficult for PHAs to protect the health and safety of tenants. For example, PHAs claim that disruptive tenants that violate their leases, vandalize housing and prey upon other tenants can avoid for months effective remedial actions by the PHA. Reforming these requirements could benefit tenants, PHAs, and deserving families seeking public housing.

The lease provisions, eviction procedures, and grievance procedures provided by HUD's regulation are not prescribed by statute.

A proposed revision to particular provisions of Subpart A was published for public comment in August 1980 (45 FR 51615). The particular objective of the proposed changes was the faster processing of evictions for non-payment of rent. Our intent was to clarify that the separate notices that PHAs must issue under Federal and State law in connection with the termination of tenancy may run concurrently, rather than consecutively. The proposed rule also attempted to confirm the Department's position that the grievance procedure must be made available to a tenant whose tenancy is being terminated solely for failure to pay rent and who files a grievance (i.e., who has a dispute with the PHA).

The proposal drew 64 public comments, most of them negative and for different reasons. Many of those writing on behalf of housing authorities thought that the proposed rule would create additional administrative and financial impediments in the way of their rent collection efforts. Those commenting on behalf of tenants thought that the concurrent notices permitted by the proposed rule would result in tenants being denied access to the grievance procedure and deprived of

their right to due process. The proposal clearly failed in its stated purpose of clarification and satisfied neither tenants nor public housing agencies.

The Department may issue a regulation that would reduce greatly the Federal regulatory requirements for lease and grievance procedures. In addition, the Department's Housing Deregulation Task Force is reviewing the basic structure and assumptions of the lease and grievance procedure provisions with a view toward decreasing administrative inflexibility while protecting legitimate interests of tenants. The deregulation review also seeks to take into account increases in procedural protections provided to tenants that have developed generally under State and local law since original promulgation of HUD lease and grievance procedure requirements.

Alternatives Under Consideration

Various alternatives to particular provisions of the existing regulation have been under consideration (e.g., the rules currently require that PHAs give tenants 14 days notice before eviction for non-payment of rent. We had considered reducing that notice period to 5 days). More generally, alternative approaches under consideration are:

(A) Deletion of HUD-prescribed lease, grievance, and eviction procedures in their entirety, permitting public housing agencies to develop lease and eviction procedures that satisfy State and local law. This would provide maximum deregulation but may be infeasible in light of the extent of already developed judicial authority regarding the scope of "property interests" inherent in public housing occupancy and due process requirements applicable to such "property." This is an area where courts perhaps have been more responsible for regulatory burden than executive agency rulemaking. Abstention from executive rulemaking would only leave a vacuum to be filled by further judicial developments.

(B) Retention of HUD-prescribed lease and grievance procedures. State judicial proceedings would be substituted for the administrative grievance procedures in eviction cases. This would be accomplished, in essence, by making the eviction procedures now applicable to HUD-subsidized but privately owned projects applicable to public housing projects. These procedures would require PHAs to give tenants written notice of termination based on "good cause," but due process procedural requirements would be satisfied through the judicial proceedings provided by State law. Under this alternative, revised HUD rules may require special provisions where State law proceedings are determined by HUD to be inadequate under due process standards. In addition, PHAs would be permitted to retain separate administrative grievance procedures for evictions if they elected to do so.

Alternative (B) above does not contemplate elimination of a requirement of proceedings for the handling of tenant grievances but would make such procedures inapplicable to eviction procedures. In addition, PHAs would be given more latitude in formulating grievance procedures.

Summary of Benefits

Sectors Affected: Public housing tenants; public housing authorities; and HUD.

A reduction in the legal agreements between tenants and landlords (in this case, public housing authorities) will benefit both sides when those agreements have become too encumbered with unnecessary provisions. When the protections afforded by these agreements begin to provide protection to the wrong party, removal or revision will assist those living by the standards and rules. Removing procedures and processes that are duplicative of State and local law simplifies the landlord/tenant relationship and allows local remedies instead of national dictums. The primary beneficiaries are the public housing tenants who observe the rights and privileges of other tenants but bear the cost and possible danger when those not willing to observe rules are allowed to continue tenancy because of delay tactics built into the protection system. Reduced costs to PHAs, HUD, and, ultimately, taxpayers are possible if unnecessary procedures are eliminated, rent is collected more quickly, and evictions are processed more rapidly.

Summary of Costs

Sectors Affected: Public housing tenants and HUD.

The present procedures were designed to protect both the tenants and the housing authorities under HUD programs. As such, the maximum possible airing of all difficulties between those two parties was allowed. In retrospect, that latitude may have been too great but seemed necessary to protect all parties. Removal, therefore, of any part of the procedures increases the risk that a party will not receive the full hearing or protection that he deserves. Possible costs include: grievance where none is deserved; an eviction where more extensive hearings, time, etc. would have prevented it; or uncertainty where more specific HUD actions would have provided clear resolutions to problems.

Summary of Net Benefits

Although there may be some risk that a tenant will not receive as full protection as the existing process provides, we feel that the benefits of the proposed revision to those tenants who abide by the rules and standards, as well as to the taxpayers in general, would outweigh this possibility.

Related Regulations and Actions

None.

Government Collaboration

None.

Timetable

NPRM—January 1982.
Public Hearing—None.
Public Comment Period—60 days after publication.
Final Rule—60 days after end of public comment period.
Regulatory Impact Analysis—None.
Regulatory Flexibility Analysis—None.

Available Documents

None.

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HUD-HOUS

Revision to Public Housing Utility Allowances (24 CFR Part 865; Revision)

Legal Authority

Housing Act of 1937, § 6(2)(4) 42 U.S.C. 1437d; Department of Housing and Urban Development Act, § 7(d) 42 U.S.C. 3535(d).

Reason for Including This Entry

The Presidential Task Force on Regulatory Relief has designated this regulation for review.

Statement of Problem

One of the Federal Government's efforts for assisting low-income people to obtain safe, decent, and sanitary housing is the public housing program. This housing is owned and managed by local governmental entities designated as public housing agencies or authorities (PHAs). The Federal Government assists PHAs with owning and managing public

housing projects by providing annual contributions to pay the debt service for the bonds sold to pay for the cost to construct or acquire the projects. The Federal Government provides additional subsidies to assist in paying the operation and maintenance expenses. The other principal source of PHA income used to operate the housing project is tenant rent. The amount of the rent is based on the tenant's income.

In administering the low-income public housing program, the Department of Housing and Urban Development (HUD) historically has considered tenants' rents to include shelter plus reasonable amounts of utilities. Depending upon the individual project design, utilities can be purchased by the PHA or by the tenant. If purchased by the PHA and if the amount of utilities used by each tenant is measured, tenant's rent includes reasonable amounts of utilities defined in utility units such as kilowatt-hours of electricity. If a tenant exceeds his or her allowance, the tenant is surcharged for the cost of the excess use. For tenant-purchased utilities, the tenant's rent is reduced by an amount in dollars equal to the cost of reasonable usage.

The Interim Rule has been criticized severely by tenants and by PHAs. Tenants have complained that the allowances are too low, resulting in tenants paying more for shelter and "reasonable" utility costs than the maximum percentage of income established by statute. PHAs contend that the allowance system contains no incentive toward energy conservation (particularly because of the requirement of upward adjustment of allowances as actual consumption by the tenant group increases) and results in severe revenue losses to the PHAs.

In a fundamental sense, the scope of the Department's review is limited by the fact that some system of utility allowance is required by the nature of the income-based limitations on "rent" that can be charged to tenants in public housing. The object of the review, therefore, is to determine a formula structure that will be consistent with statutory limitations on the "rent" burden imposed on tenants while also encouraging energy conservation and consequent expense reductions for PHA agencies.

Alternatives Under Consideration

(A) The theoretically available alternative of retaining the existing Interim Rule has already been rejected. The criticism that the Interim Rule contains no incentive toward energy conservation is too plainly valid to be ignored.

(B) A second theoretically available regulatory alternative would be to abstain from HUD regulation completely, leaving the allocation of tenant responsibility for utility costs entirely to the discretion of PHAs. This alternative, while accomplishing maximum deregulation, probably is inconsistent with the statutory structure of uniform rent burden limitation. An exercise of rulemaking authority toward the definition of a "reasonable" utility cost burden includable in basic tenant rental charges is necessary to reduce the vulnerability of PHAs to a proliferation of costly litigation challenges by tenants over whether their utility allowances are adequate for reasonable needs.

(C) A third alternative is to provide to PHAs a degree of latitude in establishing a utility allowance based upon a reasonable or normal tenant need. This would permit local PHAs to devise administrative frameworks suitable to their own capacities while retaining a basis for incentives to tenant conservation (or penalty for tenant overconsumption of utilities).

HUD is considering the third alternative. This alternative should accomplish the necessary objectives of a utility allowance that meets the needs of tenants, encourages energy conservation by tenants, reduces PHA administrative and operating costs, and reduces PHA needs for operating subsidies.

Summary of Benefits

Sectors Affected: Public housing agencies; public housing tenants; and HUD.

The reasons why some public housing agencies prefer no regulatory requirement was discussed in Alternative (B) above. However, past experience has shown that many PHAs will not systematically establish utility allowances or revise allowances unless required by court order or by HUD. Alternative (A) has proved to be too rigid to meet local conditions. Alternative (C) contains the HUD requirement while allowing for PHA flexibility to develop a method for establishing utility allowances that meet the normal needs of their tenants but also encourage energy conservation. This Alternative also would reduce HUD's liability if tenants institute litigation.

Summary of Costs

Sectors Affected: Public housing agencies; residents of public housing; and HUD.

Regulations on utility allowances impose costs on public housing agencies for administering the system. PHAs must also absorb utility costs either through reduced rents after tenant-purchased utilities are deducted or through direct operating costs and surcharges if utilities are purchased directly by the project.

Public housing tenants are affected economically. If utility allowances are lower than reasonable, tenants are paying more for rent and utilities than legally required. On the other hand, if utility allowances are higher than reasonable, tenants should be paying more for rent and utilities than they are being charged.

HUD is affected also by the level of utility allowances. If utility allowances are unreasonably low, the tenants can initiate legal proceedings against PHAs and, in some instances, against HUD. If the allowances are too high, PHAs are eligible for operating subsidies that are greater than necessary.

Summary of Net Benefits

Regulations that are uncomplicated and adaptable to local conditions and that result in reasonable utility allowances benefit PHAs, tenants, and HUD. PHAs will benefit by lower administrative costs and utility allowances that encourage energy conservation by tenants, thus lowering operating costs and the need for additional Federal subsidies. Tenants will benefit by receiving utility allowances that meet their reasonable needs and by living in projects that can be adequately maintained by the PHAs. HUD will benefit by lower operating subsidy requirements from PHAs and by reduced liability if tenants should institute litigation.

Related Regulations and Action

Internal: Interim Rule, 24 CFR Part 813, Income Eligibility and Rent for the Public Housing Program. See Calendar entry.

External: None.

Government Collaboration

None.

Timetable

NPRM—None.
Public Hearing—None.
Interim Rule—January 1982.
Public Comment Period—60 days following Interim Rule.
Regulatory Impact Analysis—None.
Regulatory Flexibility Analysis—None.
Final Rule—May 1982.

Available Documents

None.

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DEPARTMENT OF JUSTICE

Civil Rights Division

Coordination of Enforcement of Nondiscrimination in Federally Assisted Programs (28 CFR 42.401-.415; Revision)

Legal Authority

E.O. 12250, "Leadership and Coordination of Nondiscrimination Laws" (45 FR 72995, November 4, 1980).

Reason for Including This Entry

The Department of Justice (DOJ) includes this entry because it concerns nondiscrimination, a matter of great public interest. Executive Order 12250 assigned to the Attorney General responsibility for coordinating enforcement of statutes that prohibit discrimination in federally assisted programs on the basis of race, color, religion, sex, national origin, or handicap. Executive Order 12250 also transferred to the Department of Justice the Guideline coordinating enforcement of § 504 of the Rehabilitation Act of 1973, originally issued by the Department of Health, Education, and Welfare (now Health and Human Services (HHS)). The Presidential Task Force on Regulatory Relief has designated this Guideline for review.

Statement of Problem

The DOJ is in the process of developing changes to its existing regulation that coordinates enforcement of nondiscrimination in federally assisted programs, 28 CFR 42.401–.415. These changes are the result of responsibilities assigned to the Attorney General by Executive Order 12250, issued on November 2, 1980. This Order, which superseded E.O. 11764 (1974) and E.O. 11914, was the result of a multi-year study undertaken by the Reorganization Task Force on Civil Rights. The first part of this review resulted in the issuance of E.O. 12067, which made the Equal Employment Opportunity Commission (EEOC) responsible for coordinating Federal government activity concerning nondiscrimination in employment. A subsequent evaluation by the Task Force in the area of nondiscrimination in federally assisted programs found numerous problems, including: a lack of civil rights enforcement by the 34 Federal grant agencies charged with that responsibility; overlapping civil rights and programmatic jurisdictions, resulting in inconsistent standards and inconsistent investigative procedures and findings; inadequate coordination; inadequate government-wide leadership; deficient civil rights laws; poor management; and inadequate resources. This second evaluation and review took approximately 2 years to complete.

The Task Force identified several possible alternatives for resolving these problems, including: complete consolidation of civil rights enforcement into a new or existing Federal agency other than EEOC; partial consolidation; improving the existing enforcement mechanisms; and legislative changes in civil rights laws.

In choosing among the possible alternatives, the option of working within existing structures but following the EEOC model of consolidating coordination responsibility within one agency was chosen. E.O. 12250 was issued to implement this approach. EEOC continues to be the coordinator for employment enforcement. E.O. 12250, which is administered by DOJ, addresses services, programs, and activities receiving Federal funds. EEOC does not have responsibility for this Executive Order or for the implementation and administration of this regulation.

E.O. 12250 substantially broadened the authority for coordinating Federal enforcement of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*), previously assigned to DOJ by E.O. 11764. In addition to Title VI, which prohibits discrimination in federally assisted programs because of race, color, or national origin, the Attorney General also was charged by the new Order to coordinate Federal enforcement of Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681 *et seq.*, which prohibits discrimination on the basis of sex in federally assisted education programs and activities; § 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, which prohibits discrimination on the basis of handicap in federally assisted or federally conducted programs; and all other provisions of Federal statutory law that prohibit discrimination on the basis of race, color, national origin, sex, handicap, or religion in federally assisted programs.

E.O. 12250 expanded the protected classes from race, color, and national origin to include sex, handicap, and religion for a total of six protected classes. Additionally, under the Attorney General's jurisdiction, E.O. 12250 also expanded the number of coordination responsibilities assigned to DOJ by the earlier E.O. 11764. For example, the Attorney General is now charged with the responsibility for reviewing existing and proposed rules and regulations issued by executive agencies in order to identify those that are inadequate, unclear, or unnecessarily inconsistent; issuing standards and procedures concerning civil rights law enforcement, such as those establishing reasonable time frames for securing voluntary compliance, for initiating sanctions,and for referring matters to DOJ when voluntary compliance fails and administrative hearings are inappropriate; developing model information systems; ensuring consistent reporting and recordkeeping requirements; and establishing cooperative enforcement systems between Federal, State, and local agencies.

Alternatives Under Consideration

The Department considered the possibility of not amending regulations that were issued to implement E.O. 11764, the predecessor to E.O. 12250, but rejected this alternative for three reasons. First, 4 years of experience with the existing regulations on nondiscrimination in federally assisted programs, 28 CFR 42.401–.415, indicated that a redraft was necessary whether or not there were any changes in the Attorney General's authority. For example, 28 CFR 42.407(b), "Application Review," requires that all grant agencies must review and make a written determination that the State or local organization making application for Federal funds is in compliance with Title VI prior to the provision of Federal financial assistance. Our experience has shown that disbursing agencies with a large number of applicants could not reasonably be expected to implement this section. To illustrate, when we raised this requirement with HHS they pointed out to us that they had neither the time nor the civil rights or programmmatic staff to make pre-award determinations of compliance for all of the thousands of applications that they receive yearly. Consequently, the new regulations will recommend a series of alternative approaches to be used in conducting pre-award reviews that will be more reasonable and at the same time improve civil rights enforcement.

Second, the existing coordination regulations *extend only to Title VI* (race,

color, or national origin discrimination). To effectively implement E.O. 12250, this coverge must be expanded to include § 504 (discrimination on the basis of handicap), Title IX (discrimination on the basis of sex in federally assisted education and programs and activities), and the nondiscrimination provisions of grant statutes. Therefore, the regulation must be redrafted to be responsive to this new authority.

Third, DOJ is presently involved in two law suits, *Paralyzed Veterans of America* v. *Smith*, No. 79–1979 (C.D.-Cal., filed May 30, 1979), and *Greater Los Angeles Council on Deafness* v. *Bell*, No. 78–4715 (C.D.-Cal. November 24, 1981), concerning the Attorney General's responsibility for implementing portions of E.O. 12250. The changes proposed in the coordination-regulations would in part respond to the issues being raised in these cases. DOJ is the responsible reviewing agency for providing guidance in the preparation of agencies' regulations as set forth in this Coordination Regulation.

Summary of Benefits

Sectors Affected: The Federal Government; racial and ethnic minorities; handicapped individuals; women; and the general public participating in or benefiting by federally-assisted programs.

Below is an outline of the issues to be addressed by this two-part regulation.

Introduction

Purpose and definitions.
Delegation.
Coordination.
Agency implementation.
Content of implementing directives staffing.
Interagency cooperation and delegations.
Public dissemination of civil rights information.
Data and information collection.
Compliance procedures.
Complaint procedures.
Methods of resolving noncompliance.
Opportunity for hearing and agency findings.
Continuing programs.

Nondiscrimination on the Basis of Handicap

Purpose.
General prohibitions against discrimination.
General prohibitions against employment discrimination.
Reasonable accommodation.
Employment criteria.
Pre-employment inquiries.
Program accessibility.
Existing facilities.
New construction and alterations.
Coordination with the Architectural and Transportation Barriers Compliance Board.
Compliance with the Architectural Barriers Act.
Communications.
Other specific requirements.

Appendix A

Executive agencies to which this regulation applies.

Appendix B

Federal grant statutes with nondiscrimination provisions to which this regulation applies.

We expect that these proposed rules will result in a more efficient use of Federal executive agency civil rights personnel. The regulation places time limits on how long investigations of alleged civil rights noncompliance may last and how long voluntary negotiations between an agency and recipient may continue before the agency determines whether voluntary compliance is possible or formal enforcement action is necessary. As a result, civil rights investigations should be resolved more quickly. The benefits of increased government efficiency, elimination of duplicative efforts, and less complication for those filing complaints would be results of this regulation. In addition, because this regulation provides that civil rights compliance decisions are subject to the approval of agency civil rights offices, whose staffs are trained in civil rights requirements, decisions should be more consistent and made more promptly.

As a result, recipients, racial and ethnic minorities, women, disabled individuals, and the public can expect that civil rights problems will be dealt with in a more predictable and efficient manner.

Summary of Costs

Sectors Affected: The Federal Government.

Any additional costs (e.g., increased staff or training expenses) will be borne by the Federal Government.

Over a period of time, however, Federal costs should be reduced by E.O. 12250 and the proposed implementing regulations, which will stress more efficient use of staff and increased cooperation among Federal agencies.

DOJ believes this regulation will not have an annual effect on the economy of $100 million or more. It will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. It will not have significant adverse effects on competition, employment, investment, productivity, or innovation or have any effect on the ability of United States-based enterprises in domestic or export markets.

Summary of Net Benefits

This regulation will establish procedures for the Federal enforcement of statutes prohibiting discrimination on the basis of race, religion, national origin, sex, color, and handicap in programs and activities that receive Federal financial assistance, thereby complying with Executive Order 12250. Compliance costs should be minimal. The net effect will be accomplishment of this important purpose for an issue of great public interest at virtually no cost to any affected sector.

Related Regulations and Actions

Internal: These proposed rules will amend the regulation entitled "DOJ Nondiscrimination in Federally Assisted Programs—Implementation of Title VI of the Civil Rights Act of 1964," 28 CFR 42.401-.415.

External: These proposed rules will require the amendment or issuance of regulations implementing Title VI, Title IX, § 504, and other statutes that prohibit discrimination on the basis of race, color, national origin, handicap, religion, or sex by the following agencies: ACTION; Agency for International Development; Department of Agriculture; Civil Aeronautics Board; Department of Defense; Department of Commerce; Department of Education; Equal Employment Opportunity Commission; Environmental Protection Agency; Federal Home Loan Bank Board; General Services Administration; Department of Health and Human Services; Department of Labor; Department of Housing and Urban Development; Department of the Interior; Department of the Treasury; National Aeronautics and Space Administration; National Endowment for the Arts; Nuclear Regulatory Commission; National Science Foundation; Office of Personnel Management; Small Business Administration; Department of State; Department of Transportation; Tennessee Valley Authority; Veterans Administration; Department of Energy; Department of Justice; Federal Emergency Management Agency; International Communications Agency; International Development Corporation; and National Endowment for the Humanities.

Government Collaboration

As required by § 1–303 of E.O. 12250, the Attorney General shall consult with the agencies listed above and others, as appropriate, before the final coordination regulations are issued.

Timetable

NPRM—December 28, 1981.
Regulatory Impact Analysis—To be determined.
Public Hearing—Not required.
Public Comment Period—Minimum of 90 days following publication of NPRM.
Final Rule—To be determined.
Final Rule Effective—Upon publication.
Regulatory Flexibility Analysis—Not required.

Available Documents

E.O. 12250, "Leadership and Coordination of Nondiscrimination Laws," 45 FR 72995, November 4, 1980.
28 CFR 42.401–.415.
42 U.S.C. 2000d *et seq.*
20 U.S.C. 1681 *et seq.*
29 U.S.C. 794.
The above documents may be reviewed at the address of the Agency Contact below.
"Agencies When Providing Federal Financial Assistance Should Ensure Compliance With Title VI," General Accounting Office, April 15, 1980. Available from the General Accounting Office, publication number HRD–80–22. Up to five copies are free.

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DOJ–CRD

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Procedures for Complaints of Employment Discrimination Filed Against Recipients of Federal Funds (28 CFR Part 42; 29 CFR Part 1691; New)

Legal Authority

E.O. 12250 (45 FR 72995, November 4, 1980); E.O. 12067 (43 FR 28967, June 30, 1978); Civil Rights Act of 1964, Title VI, 42 U.S.C. 2000d *et seq.;* Civil Rights Act of 1964, Title VII, as amended, 42 U.S.C. 2000e *et seq.;* Education Amendments of 1972, Title IX, 20 U.S.C. 1681; Age Discrimination in Employment Act, as amended, 29 U.S.C. 621 *et seq.;* Equal Pay Act of 1963, 29 U.S.C. 206(d); President's Reorganization Plan No. 1 of 1978, 92 Stat. 3781.

Reason for Including This Entry

The Department of Justice (DOJ) includes this entry because the proposed rule would cause an increase in the efficiency and productivity of Federal agencies and minimize the regulatory burden on recipients of Federal financial assistance.

Statement of Problem

The authority of the Equal Employment Opportunity Commission (EEOC) to enforce prohibitions against employment discrimination on the basis of race, color, religion, sex, national origin, or age overlaps with the authority of Federal funding agencies to enforce prohibitions against employment discrimination by recipients of Federal funds. Among the major Federal funding agencies concerned are the Department of Health and Human Services, the Department of Education, the Department of Labor, and the Office of Revenue Sharing of the Department of the Treasury.

Because of the overlapping authority, there is a potential for duplicative efforts by Federal agencies, which may cause needless burdens on the recipients. According to a survey conducted by the General Accounting Office, more than one-third of the discrimination complaints filed with Federal agencies under Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d *et seq.*, contained allegations of employment discrimination. If the complainant also had filed a similar employment discrimination complaint with EEOC, then the recipient may have been subjected to separate investigations by EEOC and Federal agencies concerning the same employment practice. Another problem is that victims of discrimination may be confused about with which agency to file their complaints of employment discrimination and may, therefore, inadvertently lose their rights.

EEOC has the responsibility of coordinating the Federal effort to enforce Federal equal employment opportunity law, according to Executive Order 12067, 43 FR 28967. The Attorney General has the responsibility of coordinating Federal enforcement of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d *et seq.*, Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 *et seq.*, and similar provisions in Federal grant statutes prohibiting discrimination on the basis of race, color, religion, sex, or national origin (Executive Order 12250, 45 FR 72995).

DOJ and EEOC initially decided to act on this problem upon the suggestion of several Federal fund-granting agencies, including the Department of Health and Human Services and the Department of Education. By taking regulatory action, we may be able to eliminate duplicative investigations, increase the efficiency of Federal agencies, and minimize needless burdens on recipients of Federal funds.

Alternatives Under Consideration

(A) Allow each interested Federal fund-granting agency to negotiate a separate memorandum of understanding with EEOC. A memorandum of understanding could provide for a Federal fund-granting agency and EEOC to share information or conduct joint investigations relating to the employment practices of the recipients of Federal funds. This alternative would allow a Federal agency to address a unique aspect of its program in a separate memorandum of understanding. However, the process of negotiating separate memoranda would be time-consuming and might lead to inconsistent results. For example, employment discrimination complaints filed with one Federal fund-granting agency may be treated differently by that agency than similar kinds of complaints filed with another agency. This creates confusion and an extra administrative burden for employers who may be subjected to varying investigative procedures and substantive standards.

(B) Promulgate a joint (DOJ and EEOC) regulation setting forth procedures for processing complaints of employment discrimination filed with Federal fund-granting agencies. The regulation would allow Federal fund-granting agencies to refer complaints of employment discrimination to EEOC for investigation and conciliation and would provide for the agencies and EEOC to share information relating to the employment practices of recipients of Federal funds. Federal funding agencies would retain authority to determine whether there had been a violation of the statute(s) they are charged with enforcing and to take enforcement action, where appropriate. This alternative would provide a uniform approach to the processing of such complaints and would be easier for EEOC to administer. Recipients of Federal funds would not be subjected to duplicative investigations or varying investigative procedures for the same types of complaints. Victims of discrimination would be protected from

losing their rights based upon a misfiled complaint because a complaint filed with an agency and thereafter sent to EEOC woud be treated as a complaint filed with EEOC. An individual who misfiled his or her complaint would therefore be able to proceed under Title VII if his or her complaint would have been timely had it been initially filed with EEOC.

(C) No action. If no action is taken, recipients of Federal funds will continue to be subjected to duplicative investigations and varying investigative procedures for the same types of complaints.

We regard alternative (B) as the desirable alternative because it addresses the problem across the board and eliminates the possibility of a multiplicity of procedures governing the same type of complaints.

Summary of Benefits

Sectors Affected: Recipients of Federal financial assistance covered by Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, and similar provisions in Federal grant statutes; persons filing complaints of employment discrimination alleging violations of those statutes; Federal fund-granting agencies; DOJ; EEOC; and the general public.

This regulation is intended to eliminate duplication of investigations by EEOC and Federal fund-granting agencies by providing for EEOC investigation and conciliation of employment discrimination complaints filed with Federal fund-granting agencies. The elimination of duplicative investigations will not only increase the efficiency and thus the productivity of Federal agencies but also will minimize the reporting burdens on recipients of Federal funds.

By referring complaints of employment discrimination against any individual to EEOC, Federal fund-granting agencies will be able to focus their enforcement efforts on discrimination in the provision of services and significant patterns or practices of employment discrimination that affect the rights of beneficiaries. The individual complaints, except in special circumstances, will be handled by EEOC, the agency with the most expertise for processing that kind of complaint.

The general public will benefit because the Government will be able to enforce prohibitions against employment discrimination with greater effectiveness and reduced costs.

Summary of Costs

Sectors Affected: None.

We anticipate that administrative costs to implement this regulation, such as training employees, will be minimal and that the regulation will save money by reducing duplicative investigations of employment discrimination complaints by Federal fund-granting agencies and EEOC.

Summary of Net Benefits

We do not anticipate any significant costs for the proposed rule, and any minor costs that will occur will be short-term and related to administrative changes. Therefore, the benefits of increased government efficiency, elimination of duplicative efforts, and less complication for those filing complaints far outweigh any minor costs the Government will bear.

Related Regulations and Actions

Internal: Coordination of Enforcement of Nondiscrimination in Federally Assisted Programs, 28 CFR 42.401 *et seq.;* Guidelines for the Enforcement of Title VI, Civil Rights Act of 1964, 28 CFR 50.3.

External: The procedural regulations of EEOC are codified at 29 CFR 1601.1 *et seq.* Federal fund-granting agencies have promulgated regulations concerning the enforcement of Title VI of the Civil Rights Act of 1964. See, e.g., 34 CFR Part 100.

Government Collaboration

DOJ and the Equal Employment Opportunity Commission have worked together to develop this joint regulation. In December 1980 we circulated for comment a draft of the proposed regulation to Federal fund-granting agencies and met to discuss the draft with the major fund-granting agencies, including the Departments of Health and Human Services, Education, Labor, Energy, Interior, Housing and Urban Development, and Transportation, and the Economic Development Administration.

Timetable

NPRM—46 FR 22395, April 17, 1981.
Public Hearing—None.
Public Comment Period—April 17, 1981 to June 16, 1981.
Final Rule—January 1982.
Final Rule Effective—February 1982.
Regulatory Impact Analysis—None.
Regulatory Flexibility Analysis—None.

Available Documents

Public comments may be reviewed from 9:30 a.m. to 4:30 p.m., Monday through Friday, at: Library (Room 2303), Equal Employment Opportunity Commission, 2401 E Street, N.W., Washington, DC 20503.

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DOJ-CRD

Regulation Prohibiting Discrimination on the Basis of Age in Federally Assisted Programs (28 CFR Part 42, Subpart H; New)

Legal Authority

Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 *et seq.;* Health, Education, and Welfare (now Health and Human Services) Government-Wide Age Discrimination Regulations, 44 FR 33768, June 12, 1979.

Reason for Including This Entry

The Department of Justice (DOJ) includes this entry because it concerns nondiscrimination, an issue of great public interest. This proposed regulation prohibits discrimination on the basis of age against persons participating or attempting to participate in DOJ-assisted programs.

Statement of Problem

A substantial number of people in the United States are denied full participation in major activities, such as public benefits, services, and facilities, because of discrimination based on their age. Recognizing this fact, the Congress passed the Age Discrimination Act of 1975, which prohibits discrimination solely on the basis of age 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 the Age Discrimination Act of 1975.

Pursuant to the Act, the Secretary of Health and Human Services (HHS) has issued general regulations, 45 CFR Part 90, 44 FR 33768 (June 12, 1979), to guide Federal agencies in implementing the Act. In addition to setting government-wide standards, HHS reiterated the Act's requirement that all disbursing agencies, such as DOJ, issue agency-specific regulations.

The DOJ regulation closely adheres to the substance of the HHS standard. However, the DOJ regulation has been program-specific by including a number

of illustrative examples that apply the Act to those recipients who receive assistance from DOJ, including police departments, court systems, and correction agencies.

Failure to issue this regulation at this time would constitute a failure to adequately address the potential problem of age discrimination in DOJ-assisted programs.

Alternatives Under Consideration

In furtherance of its statutory responsibility for oversight and coordination of enforcement of this law, HHS has required each disbursing Federal department or agency to issue regulations that are consistent with the HHS regulations. There are no alternatives to issuance of such a DOJ regulation in terms of scope, timing, or substantive requirements. DOJ has tailored this regulation to identify issues of concern to recipients under and to beneficiaries of DOJ-assisted programs. For example, the regulation addresses issues arising within DOJ-assisted programs, such as juvenile justice, minimum age limits for visitors to incarcerated prisoners, separate prison facilities for the elderly, separate rehabilitation programs for juvenile offenders, and the resultant status of such kinds of programs in light of the Age Discrimination Act.

Although there are no alternatives to issuing this regulation, we are concerned that some applications of the Act may result in substantial problems in the administration of federally assisted programs. In a November 10, 1980 letter from the then-Assistant Attorney General, Civil Rights Division, DOJ, to the then-Secretary, HHS, we recommended a study of the Act with an eye toward recommending that Congress clarify its scope and purpose. We are especially concerned about the unclear nature of the Act's prohibitions and exceptions.

Summary of Benefits

Sectors Affected: Persons who may be beneficiaries of DOJ-assisted programs and who may be victims of discrimination on the basis of age (e.g., juveniles and the elderly).

The regulation establishes standards to define and prohibit age discrimination in programs and activities that receive Federal financial assistance from DOJ. Programs and activities that the regulation would cover include those administered by State and local units of the criminal justice system that receive Federal assistance in the form of grants and Federal assistance contracts from the law Enforcement Assistance Administration (e.g., police departments, prisons, and courts) or training from the Federal Bureau of Investigation or other agencies with DOJ.

We are unable to provide precise data on the number of recipients covered by the proposed regulation because the major disbursing component of the DOJ, the Law Enforcement Assistance Administration, is in the process of phasing out its grant-making programs. Other components of DOJ that provide Federal financial assistance include the National Institute of Justice; the Bureau of Justice Statistics; the Federal Prison System, formerly the Bureau of Prisons; the Drug Enforcement Administration; the Office of Justice Assistance, Research, and Statistics; and the Multi-State Regional Intelligence Projects. These agencies provide grants, contracts, and training to units of State and local government.

This regulation may also benefit such private entities as juvenile homes, educational institutions, and certain public interest groups such as sub-recipients of funds from State or local government units that have received financial assistance from DOJ. It will also benefit the target populations of these programs, providing them with services that are free of prohibited discrimination based on age.

Summary of Costs

Sectors Affected: Units of government receiving Federal financial assistance from DOJ, including police departments, court systems, and correction agencies.

We cannot provide estimates of compliance costs, but we expect them to be minimal because the exemptions contained in the Act appear to exclude from coverage a significant portion of the activities conducted by DOJ recipients. In support of this conclusion, we note that DOJ has not yet received any age discrimination complaints. The minimal costs associated with the implementation of this regulation may involve such items as new paperwork and additional staff time. After inviting public comment on this issue, we determined that this regulation does not have an annual effect on the economy of $100 million or more. It will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; nor will it have significant adverse effects on competition, employment, investment, productivity, or innovation. Also, it will not have any effect on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. For these reasons, we will not do a Regulatory Impact Analysis.

Summary of Net Benefits

This regulation will establish standards to define and prohibit discrimination on the basis of age in programs and activities that receive financial assistance from DOJ, thereby serving such purpose and complying with both the Age Discrimination Act and the general regulations promulgated pursuant to that Act. Compliance costs should be minimal. The net effect, therefore, will be accomplishment of this important purpose for an issue of great public interest at virtually no cost to any affected sector.

Related Regulations and Actions

Internal: None.

External: The Department of Health, Education, and Welfare (now HHS) general regulations under the Age Discrimination Act, 44 FR 33768, June 12, 1979.

Government Collaboration

Pursuant to 42 U.S.C. 6103(a)(4), the proposed Final Regulation was sent to the Secretary of Health and Human Services for approval.

Timetable

NPRM—45 FR 32710, May 19, 1980.
Final Rule—June 1982.
Regulatory Impact Analysis—Not required.
Public Hearing—Not required.
Regulatory Flexibility Analysis—Not required.
Final Rule Effective—Upon publication, for any program that received or receives financial assistance from DOJ after July 1, 1979.

Available Documents

Public Comments—Available for review; see Agency Contact.

Agency Contact

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DOJ-CRD

Regulation Prohibiting Discrimination on the Basis of Sex in Education and Training Programs Receiving Federal Financial Assistance (28 CFR 42.701-.771; New)

Legal Authority

Education Amendments of 1972, as amended, Title IX, §§ 901 and 902, 20 U.S.C. 1681 *et seq.*

Reason for Including This Entry

The Department of Justice (DOJ) includes this entry because it deals with nondiscrimination, a matter of great public concern. This regulation would prohibit discrimination on the basis of sex in education programs and activities receiving Federal financial assistance from DOJ.

Statement of Problem

In June 1980 the Department of Justice proposed a new regulation for nondiscrimination on the basis of sex in education and training programs receiving or benefiting from Federal financial assistance provided by DOJ (45 FR 41001, June 17, 1980). We intended the June proposal to implement Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681 *et seq.*, which prohibits (with certain exceptions) sex discrimination in federally assisted education programs or activities.

Examples of such DOJ-covered programs include:

The National Institute of Corrections gives a grant to a State sheriffs' association to develop and implement a plan to assist local jails. Activities under the grant project include training of resource personnel, who in turn provide on-site training to local jail employees. The sheriffs' association is a recipient of Federal financial assistance for a program that includes education programs and activities. Title IX and this regulation apply to the association's selection and training of resource personnel and to on-site training provided to local jail employees.

The National Institute of Corrections provides a grant to a State agency to implement State jail standards. Employees of the State agency provide training to employees of local jails on the requirements of the jail standards. This training is part of the implementation project, which is subject to the Federal grant, and it is covered by Title IX and this regulation.

Alternatives Under Consideration

The DOJ had two possible alternatives in designing this Congressionally mandated regulation: it could have followed the directions provided by the other Federal agencies, the Department of Health, Education, and Welfare (HEW, now the Departments of Education (ED) and Health and Human Services (HHS)), and the Department of Agriculture (USDA), which had already issued their Title IX regulations; or it could have developed an entirely new approach to Title IX enforcement, ignoring the work performed by other agencies. DOJ is following the leads of HEW and USDA in order to ensure consistency in the Federal Government's approach to enforcing Title IX.

On June 17, 1980, this Department issued the proposed regulation implementing Title IX (45 FR 41001-41012). On August 18, 1980, the Department of Justice extended the comment period on the June 17 proposal to September 19, 1980 (45 FR 54770). Because numerous comments received on the original proposal indicated misunderstanding of its intent and definitions, the Department will publish a revised and clarified regulation for additional comments.

In addition to providing clarifying information, the redraft will also contain changes based on suggestions made during the public comment period. For example, we have provided new definitions for "Department" and "assisted education program or activity," added a prohibition against sexual harassment, and decided not to allow for a lengthy adjustment period for recipients who have already been permitted an adjustment period because of prior coverage under another regulation.

Summary of Benefits

Sectors Affected: Persons who may be beneficiaries of DOJ-assisted education programs and who may be victims of discrimination on the basis of sex.

For example, the Bureau of Prisons (BOP), within DOJ, awarded approximately $42 million to State and local organizations in contracted services for FY 1981. These contracts went to community treatment centers and halfway houses, State and local correctional institutions for Federal prisoners' confinement, local hospital services for the treatment of Federal inmates, vocational training for Federal prisoners, State and local prison and hospital security, recreation and religious program activities, and psychological and mental health services. The implementation of this regulation will ensure that the education programs and services provided with these funds are provided equally and fairly without regard to a person's sex. There are well over 26,000 Federal inmates that would potentially benefit from this regulation with the BOP-funded services listed above.

DOJ also distributes funds through the National Institute of Corrections, the Drug Enforcement Administration, the Bureau of Justice Statistics, the Multi-state Regional Intelligence Projects, and the Federal Bureau of Investigation in the form of grants, contracts, and cooperative agreements. The recipients of these funds include police departments, court systems, correction agencies, juvenile homes, educational institutions, and public interest groups that participate in activities related to the Nation's criminal justice system, and individuals eligible to take part in their programs.

This regulation will clarify what is prohibited discrimination on the basis of sex in education and training programs receiving the above Federal funds. Viewed from a larger perspective, implementation of this regulation will upgrade the quality of law enforcement and related activities by ensuring equality in education and training programs regardless of sex. Specifically, it will improve the ability of women, who have traditionally been discriminated against by the employment practices of law enforcement agencies, to obtain equal access, once hired, to those activities needed for professional advancement.

Below is an outline of the issues to be addressed by this regulation.

Introduction

Purpose and effective date.
Definitions.
Remedial and affirmative action and self-evaluation.
Assurance required.
Transfers of property.
Effect of other requirements.
Effect of employment opportunities.
Designation of responsible employee and adoption of grievance procedures.
Dissemination of policy.

Coverage

Application.
Educational institutions controlled by religious organizations.
Military and merchant marine educational institutions.
Membership practices of certain organizations.
Exempt activities.
Admission.
Education institutions eligible to submit transition plans.
Transition plans.

Discrimination on the Basis of Sex in Admission and Recruitment Prohibited

Admission to assisted education programs and activities.
Recruitment.

Discrimination on the Basis of Sex in Education Programs and Activities Prohibited

Education programs and activities.
Housing.
Comparable facilities.
Access to course offerings.
Access to schools operated by local education agencies.
Counseling and use of appraisal and counseling materials.
Financial assistance.
Employment assistance to students.
Health and insurance benefits and services.
Marital or parental status.
Athletics.
Textbooks and curricular materials.

Discrimination on the Basis of Sex in Employment in Education Programs and Activities Prohibited

Employment.
Employment criteria.
Recruitment.
Compensation.
Job classification and structure.
Fringe benefits.
Marital or parental status.
Effect of State or local law or other requirements.
Advertising.
Pre-employment inquiries.
Sex as a bona fide occupational qualification.

Procedures

Interim procedures.
Appendix.

Summary of Costs

Sectors Affected: State and local law enforcement and correction agencies and private entities participating in activities related to the Nation's criminal justice system, such as juvenile homes, educational institutions, and public interest groups.

We cannot provide estimates of compliance costs; however, they appear to be minimal. The primary costs to the recipients associated with Federal implementation of this regulation are those traditionally associated with civil rights compliance activities, for example, responding to complaint investigations and compliance reviews, the collection and reporting of equal opportunity data, and public notification programs. This regulation will not have an annual effect on the economy of $100 million or more. It will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. It will not have significant adverse effects on competition, employment, investment, productivity, or innovation or have any effect on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. For these reasons, at this time we do not expect to do a Regulatory Impact Analysis.

Summary of Net Benefits

This regulation will establish standards to define and prohibit discrimination on the basis of sex in education programs and activities that receive financial assistance from DOJ, thereby complying with both Title IX of the Education Amendments of 1972 and the general regulations promulgated by HHS pursuant to that Act. Compliance costs should be minimal. The net effect, therefore, will be accomplishment of this important purpose for an issue of great public interest at virtually no cost to any affected sector.

Related Regulations and Actions

Internal: DOJ regulation issued by the Law Enforcement Assistance Administration under the authority of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 U.S.C. 3789d(c) *et seq.* This law, which contains a general prohibition against sex discrimination, has been reenacted in the Justice System Improvement Act of 1979, P.L. 96–157, and is implemented by 28 CFR 42.201–.217.

External: HEW regulation, 45 CFR Part 86; USDA regulation, 44 FR 21610, April 11, 1979.

Government Collaboration

At the time of development of this regulation, no Federal agency had been delegated overall responsibility for coordination of Title IX. However, on November 2, 1980, DOJ was assigned the responsibility by E.O. 12250 of coordinating the enforcement of various statutes, including Title IX, concerning nondiscrimination in federally assisted programs on the grounds of race, color, national origin, sex, handicap, and religion. Nevertheless, in order to assure consistency with the regulations already published, DOJ has followed the lead established by the Departments of Health and Human Services and Agriculture in their Title IX rules.

Timetable

NPRM—45 FR 41001, June 17, 1980.
Revised NPRM—June 1982.
Regulatory Impact Analysis—To be determined.
Public Hearing—Not required.
Public Comment Period—90 days following publication of revised NPRM.
Final Rule—To be determined.
Final Rule Effective—Upon publication.
Regulatory Flexibility Analysis—Not required.

Available Documents

Comments received on the June 17, 1980 NPRM and the revised NPRM will be available for public inspection in Room 854, 320 First Street, N.W., Washington, DC, between 9:00 a.m. and 5:30 p.m., Monday through Friday, except on Federal holidays, until the rule is published in final form.

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DOL—Employment Standards Administration

Defining and Delimiting the Terms "Any Employee Employed in a Bona Fide Executive, Administrative, or Professional Capacity" (29 CFR Part 541; Revision)

Legal Authority

Fair Labor Standards Act, 29 U.S.C. 201 *et seq.*

Reason for Including This Entry

The Department of Labor has determined that this regulation should be treated as a "major" rule for purposes of E.O. 12291 because of the public interest regarding it.

Statement of Problem

The Fair Labor Standards Act (FLSA) provides minimum wage and overtime protection for most workers. While most non-supervisory workers are subject to the Act, executive, administrative, and professional employees are statutorily exempt under § 13(a)(1) from the minimum wage and overtime requirements. This exemption stemmed from the recognition that such personnel have special work responsibilities, compensatory privileges, and benefits superior to those of other employees.

Section 13(a)(1) of the FLSA gives the Secretary of Labor the responsibility to define the terms of the exemption. These

regulations set forth the criteria for determining the application of the exemption. They delineate the duties, responsibilities, and mimimum salary levels necessary for "executive," "administrative," and "professional" employees to qualify for exemption from the mimimum wage and overtime requirements of the Act. At present, the salary test levels are $155 per week for executive and administrative employees and $170 per week for professional employees. In addition, the regulation sets an "upset" test—a salary level above which employees are considered exempt if they meet a "short" test of responsibilities including "primary duty." This is currently set at $250 per week.

Since the salary test levels are not indexed, periodic adjustments are needed to reflect increases in the average salaries of executive, administrative, and professional employees. The Department's latest adjustment in the salary test levels was an interim adjustment in 1975 and did not fully reflect the increases in various economic indices that had occurred subsequent to the 1970 increase in the salary tests. Further increases in actual salaries paid have seriously outdated these interim levels.

The salary test levels have long provided employers with guidelines for distinguishing executive, administrative, and professional employees from non-exempt workers. Formerly, employers could rely on the salary test as a good indicator of whether an employee was likely to be exempt. Now that the test levels are lagging behind actual salaries, employers who depend on the current salary tests could be misled into inadvertent noncompliance with the FLSA. As the gap between salary test levels and actual executive, administrative, and professional salaries widens, greater emphasis must be put on the time-consuming and more complex "duties-and-responsibilities" portion of the regulations. The duties-and-responsibilities provisions and the salary tests together serve as complementary standards in defining exempt executive, administrative, and professional employees. The Department is also reviewing the duties-and-responsibilities provisions as well as the salary test provisions of these regulations to determine whether any further changes in the regulations may be appropriate at this time.

Alternatives Under Consideration

The following alternatives were considered in developing regulations the Department of Labor published on January 13, 1981 (46 FR 3010), which are currently being reconsidered under President Reagan's E.O. 12291. These alternatives are examples of the types of options we are considering in the review of this regulation.

(A) Continue to use the 1975 interim salary test levels.

The growing gap between salary test levels and actual salaries paid executive, administrative, and professional employees has greatly reduced the usefulness of the salary test as a guide for employers and the Department in determining FLSA exemption status. Because of the rise in salaries generally, more and more employees now meet the salary requirements but may not meet the duties and responsibilities tests and may be erroneously claimed by employers to be exempt.

(B) Update the salary test levels by applying the percentage increase in the Consumer Price Index (CPI) since 1970.

While the CPI is the most widely used series for indexing purposes, use of a wage series that reflects actual pay practices in excutive, administrative, and professional labor markets would be more appropriate in adjusting the salary test levels. The CPI approach would result in salary test levels above those determined by most wage series, which would impose an unnecessary additonal cost burden on employers. (This option would have resulted in salary test levels of $265 per week for executive and administrative employees and $295 per week for professional employees if it had been selected and applied under the January 13, 1981 regulations.)

(C) Set the salary test levels at the entry levels for various professional and administrative occupational classifications taken from the National Survey of Professional, Administrative, Technical, and Clerical Pay (PATC).

While salary test levels should reflect the minimum compensation level of employees who meet the duties-and-responsibilities requirements of the exemption, the PATC survey does not provide sufficient detail for determining the appropriate levels. The PATC survey is restricted to only ten professional and administrative occupations, and the sample size is relatively small within some of the specific entry level categories. Also, the sample is restricted to larger establishments, generally those with 100 employees or more. For these reasons, we do not believe that the entry-level data from the PATC survey are sufficiently representative for executive, administrative, and professional employees to be used in determining the new salary test levels. (This option would have resulted in salary test levels of $335 per week for executive, administrative, and professional employees if it had been selected and applied under the January 13, 1981 regulations.)

(D) Set the salary test levels in two phases, applying data on the percentage increase in the averge salaries paid to employees in the relevant PATC categories to a March 1970 baseline to compute final salary test levels. The regulations the Department published on January 13, 1981, for which the effective date has been stayed indefinitely pending their reconsideration under E.O. 12291, used this approach in determining the appropriate salary test levels.

This method more closely reflected relative increases in salary levels actually paid to executive, administrative, and professional employees as determined by supply and demand conditions. The salary test levels calculated using this methodology appeared reasonable overall compared to actual entry-level salaries paid employees in professional and administrative occupations as indicated by PATC survey data. However, using a single average percent increase may result in levels that exceed the rates paid to some executive, administrative, and professional employees in certain retail and service industries. (This option would have ultimately resulted in salary test levels of $250 per week for executive and administrative employees and $280 per week for professional employees under the January 13, 1981 regulations.)

(E) Set the salary test levels using the PATC percentage increases from March 1975 to March 1980 with 1975 as the base.

Applying the PATC percentage increases to currently applicable 1975 interim salary test levels would result in somewhat lower salary test levels than the above options. This is due to the fact that the 1975 levels were only interim adjustments that did not fully reflect prior increases in executive, administrative, and professional salaries. (This option would have resulted in salary test levels of $230 per week for executive and professional employees and $250 per week for professional employees if it had been selected under the January 13, 1981 regulations.)

Summary of Benefits

Sectors Affected: Employees and employers throughout the economy who are covered by the minimum wage and over-time pay provisions of the Fair Labor Standards Act.

Appropriate changes in the salary test levels would specifically benefit employers by providing them with a more realistic indicator of which employees are exempt as executive, administrative, and professional employees. The changes would benefit non-exempt employees by ensuring that they do not lose appropriate FLSA overtime protection by being improperly classified as exempt employees.

Summary of Costs

Sectors Affected: Employers throughout the economy who are covered by the minimum wage and overtime provisions of the Fair Labor Standards Act.

The estimate costs of significantly raising the salary test levels would involve two types of costs: (1) the added costs to those employers who choose to pay their employees higher salaries in order to qualify for the exemption, and (2) the additional overtime payments to employees who fail to qualify for exempt status under the new tests.

The January 1981 regulations would have increased the salary test levels in February 1981 and February 1983 from $155 to $225 and then $250 per week for executive and administrative employees, and from $170 to $250 and then $280 per week for professional employees. The Department estimated that the planned increases would have affected 0.8 percent of the employees claimed to be exempt as executive, administrative, and professional employees and resulted in additional compensation totaling $53 million (on an annual basis) as of February 1981 had the change in the salary test levels taken effect at that time. This would have resulted in a rise of .03 percent in the aggregate salary bill for such employees and a rise of .01 percent in total wages and salaries for all workers. The salary test levels that would have become effective February 1983 would not have resulted in a further increase in the annual salary bill for executive, administrative, and professional employees because of the expected increases in salary levels that would have occurred by that time. (These cost estimates are based on a "least cost" methodology that assumed that employers would convert salaried employees doing executive, administrative, or professional work and working in excess of 40 hours a week to an hourly basis and provide overtime pay as long as the added costs would be less than the increase associated with raising salaries to the new salary test levels.)

Summary of Net Benefits

The Department intends to issue any proposed changes in a manner that will facilitate cost-effective regulation while providing appropriate minimum wage and overtime protection to non-exempt employees consistent with the objectives of the Act.

Related Regulations and Actions

None.

Government Collaboration

None.

Timetable

ANPRM—None.
NPRM—43 FR 14688, April 7, 1978; proposal to stay indefinitely, 46 FR 18998, March 27, 1981.
Final Rule—January 13, 1981 (46 FR 3010).
Final Rule Effective—Originally scheduled for February 13, 1981, but stayed indefinitely (46 FR 11972 and 46 FR 18998).
Public Comment Period—Closed April 27, 1981.
Public Hearing—None.
Regulatory Impact Analysis—None to date under E.O. 12291; "Regulatory Analysis for the Department of Labor's Decision to Increase the Salary Tests for Executive, Administrative, and Professional Employees under the Fair Labor Standards Act" under E.O. 12044 (46 FR 3016).
Regulatory Flexibility Analysis—None to date.

Available Documents

Comments received during public comment periods are available for review at the address below.

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DOL-ESA

Labor Standards for Federal Service Contracts (29 CFR Part 4; Revision)

Legal Authority

Service Contract Act of 1965, 41 U.S.C. 351 *et seq.*

Reason for Including This Entry

The Presidential Task Force on Regulatory Relief has designated these regulations for review.

Statement of Problem

These provisions contain regulations and interpretations governing the administration of the Service Contract Act. The Act requires contractors and subcontractors performing work under contracts for services to the Federal Government to observe minimum wage and fringe benefit standards as determined by the Secretary of Labor to be prevailing in the locality for the various classes of employees engaged in the performance of the contract. The Department of Labor has perceived a need for thorough review of this regulation to assure that it provides for cost-effective implementation of the Act while meeting statutory objectives and to update its codification of the Department's policies for administering the Act.

Alternatives Under Consideration

The Department of Labor published a proposal to revise these regulations on December 28, 1979 and modified it by a December 12, 1980 proposal. Final regulations resulting from these proposals were published on January 16 and 19, respectively, but their February 1981 effective dates were deferred in response to President Reagan's January 1981 Memorandum on the Postponement of Pending Regulations, in order to allow for careful review of their provisions in accordance with E.O. 12291. The revision published in January 1981 essentially reflected existing practices and interpretations of applicability under the Service Contract Act (SCA) by the Department of Labor. Nevertheless, the regulations generated considerable controversy. In particular, some contractors and associations and the procuring agencies perceived that provisions of that revision indicating SCA coverage of certain types of contracts (such as maintenance and repair of automated data processing (ADP) equipment, especially under contracts for purchase and/or lease of equipment; research and development contracts; and timber sales contracts) represented an expansion of the Act's coverage. Serious concerns were raised regarding the potential inflationary impact of these provisions on government contracting costs. In view of this controversy, the Department thoroughly examined the coverage provisions of the Act and concluded that changes in the regulations in this regard are appropriate. In addition, the

Department determined that certain proposed exemptions of contracts otherwise covered are also appropriate. A new proposal resulting from this review was published on August 14, 1981.

Major regulatory revisions contained in the August proposal that are under consideration include:

(A) Establishment of a two-step wage determination procedure to be used when the geographic area where a contract will be performed is not known at the time of bid solicitation.

(B) Provisions that contracts are subject to the Act when the principal purpose of the entire contract is for services and the work on the contract is performed principally by service employees.

(C) Guidelines indicating when contracts for major overhaul or modification of equipment are subject to the Service Contract Act or Walsh-Healey Act (which sets basic labor standards for employees working on Federal contracts for the manufacture or furnishing of materials, supplies, articles, or equipment, as contrasted with Federal contracts to procure services).

(D) An exemption for certain research and development contracts.

(E) An exemption for certain contracts for the maintenance and repair of automated data processing and other equipment—including office information systems, high technology scientific and medical apparatus, and office/business machines.

(F) A provision showing that contracts primarily for the sale of timber are not subject to the Act.

(G) Limitation of the application of § 4(c) of the Act, which requires that successor contractors pay employees not less than the wage rates and fringe benefits established under a predecessor contractor's collective bargaining agreement, to situations where the successor contractor performs the contract in the same locality as the predecessor contractor.

Summary of Benefits

Sectors Affected: Federal government agencies contracting for services; service contractors and subcontractors; and service employees.

The Department has determined that the August 14, 1981 proposal would result in substantial cost savings for both service contractors and the Government. The Department has estimated that, compared to the January 1981 regulations, the changes in coverage and exemptions contained in the August 14, 1981 proposal would reduce by at least $240 million the annual costs of service contractors, and hence the Federal government procuring agencies. Estimated savings in annual costs attributable to specific revisions in coverage are (1) approximately $50 million (in 1980 dollars) relating to the applicability of the Act to contracts principally for service workers together with the exemption of research and development contracts, (2) $13.24 million in relation to contracts primarily for the sale of timber, (3) close to $100 million (including administrative cost savings) in relation to contracts for the maintenance and repair of automated data processing and other equipment, and (4) approximately $85.64 million in relation to other types of bid specifications for services not included in other coverage and exemption areas contained in contracts where the principal purpose of the entire contract is not for services. Further non-quantified cost reductions would also result from a provision ensuring that wage determinations for the proper locality are issued when the locality is unknown at the time of bid solicitation. Also, possible disruptions of local wages would be eliminated by limiting the application of § 4(c) to where the successor contract is performed in the same locality as the predecessor contract.

The proposed regulations assure that under Federal contracts necessary prevailing labor standards protection for service employees would continue under Federal service contracts.

Summary of Costs

Sectors Affected: Federal government agencies contracting for services; service contractors and subcontractors; and service employees.

The Department is investigating costs in its review of this existing rule.

Summary of Net Benefits

The Department intends to issue a final regulation that substantially reduces government contracting costs while providing necessary wage protection to service workers consistent with the objectives of the Act.

Related Regulations and Actions

Internal: Rules of Practice for Administrative Proceedings Enforcing Labor Standards in Federal Service Contracts (29 CFR Part 6); proposed regulations (29 CFR Part 8), Practice Before the Board of Service Contract Appeals.

External: Federal Procurement Regulations (41 CFR Part 1–12.9) and Defense Acquisition Regulations (32 CFR Part 12).

Government Collaboration

The proposed revisions resulted, in part, from ongoing discussion with Federal contracting agencies (including the National Aeronautics and Space Administration, the Department of Defense, the General Services Administration, and the Department of Energy) concerning their experience in the administration of the requirements of the Service Contract Act and its regulations in their procurement activities.

Timetable

NPRM—December 28, 1979 (44 FR 77036), modified December 12, 1980 (45 FR 81785).
Final Rule—January 16 and 19, 1981 (46 FR 4320; 46 FR 4886).
Final Rule Effective—Originally scheduled for February 17 and 18, 1981, but deferred until action is taken on new proposal.
NPRM—August 14, 1981.
Statutory or Legal Deadline—None.
Public Hearing—November 19 and 20, 1981.
Public Comment Period—Closed December 1, 1981 on August 14, 1981 proposal.
Regulatory Impact Analysis—"Preliminary Regulatory Impact Analysis on Proposed Service Contract Act Regulations;" final to be determined.
Regulatory Flexibility Analysis—Combined with Regulatory Impact Analysis, see above.

Available Documents

None.

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DOL–ESA

Labor Standards Provisions, Davis-Bacon and Related Acts (29 CFR Parts 1 and 5; Revision)

Legal Authority

Davis-Bacon and Related Acts and Copeland Anti-Kickback Act (40 U.S.C. 276 *et seq.*); Reorganization Plan No. 14 of 1950; and Contract Work Hours and

Safety Standards Act (40 U.S.C. 327 *et seq.*)

Reason for Including This Entry

The Presidential Task Force on Regulatory Relief has designated these regulations for review.

Statement of Problem

The Davis-Bacon and Related Acts require that laborers and mechanics employed by contractors and subcontractors engaged in federally funded or assisted construction projects be paid at least the minimum wages determined by the Secretary of Labor to be prevailing for corresponding classes of employees employed on projects of a similar nature in the geographic area where the work is to be performed. Under the Contract Work Hours and Safety Act, hours standards also apply to such employment, as well as work on other Federal contracts. These regulations govern the Department of Labor's issuance of prevailing wage determinations, the administration and enforcement of the labor standards that must be included in contracts under the Davis-Bacon Act and related Acts and the Contract Work Hours and Safety Standards Act, and related reporting requirements under the Copeland Anti-Kickback Act. Thorough review of these regulations is needed to assure that they reflect and codify the Department's policies for administering the Act and, further, to improve the cost effectiveness of the regulations while assuring consistency with statutory objectives. Proposed changes would address concerns raised by contractors and the procuring agencies regarding the impact on government costs of several of the current requirements.

Alternatives Under Consideration

Proposed changes in these regulations were published by the Department of Labor in the **Federal Register** on December 28, 1979. In response to President Reagan's January 1981 Memorandum on the Postponement of Pending Regulations, final regulations published on January 16, 1981 were deferred to allow for careful review of their provisions in accordance with E.O. 12291, and a new proposal to revise these regulations was issued on August 14, 1981 (46 FR 41444 and 41456).

The August 14, 1981 proposal would amend the procedures for determining the prevailing wage rates applicable to federally funded or assisted construction contracts by eliminating the "30-percent rule" for determining the prevailing wage rates. Under the current procedures, if a single wage rate is not paid to a majority of workers on similar projects in a particular job classification in a geographical area, the Department sets as the prevailing wage for that work the rate paid to the greatest number of such workers if that wage rate is paid to at least 30 percent of the workers in the classification within the geographical area. If at least 30 percent of the workers in a classification in the area are not paid at the same rate, the average wage of workers on the classification in the area is determined to be the prevailing wage. Under the new proposal, the prevailing wage would be redefined as the single rate paid to a majority of workers in a particular classification on similar projects in the locality, or, if no single rate is paid to a majority, the average rate.

Additionally, the August 1981 proposal would provide for the issuance of semi-skilled (helper) classifications on wage determinations and for the increased use of helpers when they are employed in the locality.

The proposal would also eliminate the requirement that contractors submit weekly payrolls to the appropriate Federal agencies.

Summary of Benefits

Sectors Affected: Construction contractors and subcontractors; construction workers; Federal government contracting agencies; government agencies providing Federal assistance for construction; and State and local governments and other entities receiving such assistance.

We expect the proposed changes to result in savings for construction contractors and subcontractors, Federal procurement and assisting agencies, and State and local governments and other entities receiving Federal assistance for construction.

The Preliminary Regulatory Impact Analysis for the revisions in these regulations, proposed on August 14, 1981, anticipates that a reduction of at least an estimated $670 million (1980) dollars in annual costs would result from the revisions. This represents substantial cost savings annually for both contractors and the Government. The amended procedure for determining prevailing wages would result in an estimated annual cost savings of about $120 million. The expanded issuance of wage determinations for semi-skilled classifications, when they can be identified in an area, would result in an estimated $450 million savings in annual costs. Elimination of the requirement that contractors submit weekly a copy of all payrolls to the contracting agencies would save an estimated $100 million a year in administrative costs to contractors.

The proposed regulations would at the same time continue to assure that wage rates on federally funded and assisted construction projects will be in accord with local pay practices.

Summary of Costs

Sectors Affected: Construction contractors and subcontractors; construction workers; Federal government contracting agencies; government agencies providing Federal assistance for construction; and State and local governments and other entities receiving such assistance.

The Department is investigating costs in its review of this existing rule.

Summary of Net Benefits

The Department intends to issue a final regulation that substantially reduces government contracting costs while providing necessary wage protection to construction workers consistent with the objectives of the Act.

Related Regulations and Actions

Internal: Anti-kickback regulations under the Copeland Act (29 CFR Part 3); Practice Before the Wage Appeal Board (29 CFR Part 7); and proposed regulations (29 CFR Part 6), Rules of Practice for Administrative Proceedings Enforcing Labor Standards in Federal and Federally-Assisted Construction on Contracts and Federal Service Contracts.

External: Federal Procurement Regulations (41 CFR Part 1–18.7) and Defense Acquisition Regulations (32 CFR Part 18).

Government Collaboration

The proposed revisions resulted, in part, from ongoing discussion with Federal contracting agencies (including the National Aeronautics and Space Administration, the Department of Defense, the Department of Energy, and the General Services Administration) concerning problems experienced in the administration of the requirements of the Davis-Bacon Act and its regulations.

Timetable

NPRM—44 FR 77026 and 77080, December 28, 1979.
Final Rule—46 FR 4306 and 4380, January 16, 1981.
Final Rule Effective—Originally scheduled for February 17, 1981, but deferred until action is taken on new proposal.
NPRM—46 FR 41444 and 41456,

August 14, 1981.
Public Hearing—None.
Public Comment Period—Closed October 13, 1981 on August 14, 1981 proposal.
Regulatory Impact Analysis—"Preliminary Regulatory Impact Analysis on Proposed Davis-Bacon Related Regulations;" final to be determined.
Regulatory Flexibility Analysis—Combined with Regulatory Impact Analysis, see above.

Available Documents

None beyond those cited above.

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DOL-ESA

Office of Federal Contract Compliance Programs, Government Contractors' Affirmative Action Requirements (41 CFR Parts 60-1, 60-2, 60-4, 60-20, 60-30, 60-50, 60-60, 60-250, and 60-741; Revision)

Legal Authority

E.O. 11246, as amended; § 402 of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, 38 U.S.C. 2012; § 503 of the Rehabilitation Act of 1973, as amended, 20 U.S.C. 793.

Reason for Including This Entry

The Presidential Task Force on Regulatory Relief has designated these regulations for review.

Statement of Problem

These regulations contain nondiscrimination and affirmative action requirements for government contractors and subcontractors and federally assisted construction contractors. The existing regulations have been criticized by contractors for lacking flexibility and for imposing substantial reporting and recordkeeping burdens. Contractors also have complained that the regulations are redundant and conflicting. The Department of Labor has perceived a need to streamline these regulations and thoroughly review them in order to reduce compliance costs while achieving affirmative action to assure equal employment opportunities.

Alternatives Under Consideration

The Department of Labor published proposed changes to these regulations in the Federal Register on December 28, 1979 and February 22, 1980. The Department published final regulations on December 30, 1980 but deferred the effective date to allow for a full review of their provisions under E.O. 12291.

On August 25, 1981, after a review under E.O. 12291, the Department published a proposed revision of most of the Office of Contract Compliance Programs (OFCCP) regulations (46 FR 42968). The current regulations contain separate parts for each of the three contract compliance programs. The new proposal would streamline existing regulations by integrating, to the extent practical, the separate parts. The proposal would thus eliminate many redundancies.

The proposal would raise the thresholds for requiring written affirmative action programs from 50 employees and a contract of $50,000 or more to 250 or more employees and a contract of $1 million or more. (The Department also considered other threshold levels.) Contractors with 250 to 499 employees would be permitted to prepare abbreviated affirmative action programs. All contractors covered by written affirmative action program requirements would be permitted to consolidate into a single affirmative action program all establishments located within the same chain of command. Absent otherwise compelling circumstances, contractors would not be required to declare underutilization or set goals and timetables for job groups in which the employment of the subgroups is at least 80 percent of their job market availability.

Further reductions in paperwork would result from elimination of subcontractor certifications regarding nondiscrimination and a requirement that annual affirmative action program summaries be submitted. Contractors with specified training programs and/or recruiting arrangements that significantly increase the availability of minorities and women, who successfully complete an on-site compliance review, could be exempted from routine compliance reviews for 5 years. Preaward compliance reviews would be eliminated.

In construction, small contractors, e.g., generally those with fewer than 20 employees and a contract of less than $50,000, would be exempt from routine recordkeeping and reporting requirements. Nine rather than the present sixteen affirmative action steps would be delineated for construction contractors to show their good faith effort to assure equal employment opportunity.

On July 14, 1981, the Department published an ANPRM (46 FR 36213) to elicit the views of the public on several controversial issues concerning these OFCCP regulations that are not addressed in the August 25, 1981 proposal but that may be addressed by a separate additional proposal. The issues listed were: (1) the method for contractors to determine the availability of minorities and women for non-construction contractors; (2) the appropriateness of backpay as a remedy under E.O. 11246; (3) E.O. 11246 coverage of a Federal construction contractor's non-federally funded construction projects; and (4) the methods contractors use to set goals for women and minorities in construction. On August 21, 1981, the Department published an amendment to the ANPRM to incorporate a series of questions concerning appropriate formulation of "job groups"—having similar content, wage rates, and opportunities—for the purpose of equal employment opportunity analysis (46 FR 42490).

Summary of Benefits

Sectors Affected: Federal contractors, subcontractors and federally assisted construction contractors; employees of such contractors; State and local government agencies working on or under Federal contracts, subcontracts, and federally assisted construction contracts, and employees of such agencies; Federal Government procuring agencies; and Federal agencies providing Federal assistance for construction.

The proposed revisions to the OFCCP regulations would substantially reduce compliance costs. While it is not possible to estimate all of the dollar savings that would result from this proposal, the Department believes that the cost savings would be large. The following summary includes the major areas of cost savings where estimates are feasible.

Written affirmative action program thresholds—The current threshold for written affirmative action programs is 50 employees and a contract of $50,000. The proposal would raise the threshold to 250 employees and a contract of $1 million or more. At these proposed levels, the Department estimates that the number of companies covered by written programs would be reduced from 16,767 to 4,143. However, these threshold levels would maintain coverage for nearly 77 percent of the 26

million employees currently covered by written affirmative action programs.

Grouping establishments—The proposed regulations would permit the consolidation of affirmative action programs for all establishments in the same chain of command. This change alone would reduce the required number of individual programs by an estimated 58,613. The combined proposed thresholds and consolidation provisions would reduce the total number of affirmative action programs from an estimated 107,915 to about 23,740, a decrease of approximately 78 percent. If both proposed changes are adopted, estimated annual compliance costs for employers would be reduced by approximately 45 percent from over $46.2 million to about $25.8 million.

Abbreviated affirmative action programs—The proposal would permit contractors with between 250 and 499 employees to maintain abbreviated affirmative action programs. This would affect about 17 percent of the companies required to maintain such programs under the new thresholds and result in additional annual cost savings of approximately $4.6 million (1980 dollars).

Elimination of EEO–1 reporting requirement for small contractors—The Department proposes to raise the employee threshold for requiring covered employers to file annual employment reports (EEO–1 forms) from 50 employees to 100 employees. We estimate that this change would reduce the number of contractors required to file such forms by 3,221 contractors, from 16,767 companies to 13,546 companies, but would affect reports covering less than 1 percent of the workforce. We estimate the cost savings of raising the EEO–1 reporting threshold at $25,000 a year.

Elimination of certification requirements—The proposal to eliminate subcontractor certifications of compliance would save in excess of $1.64 million in annual costs. In addition, subcontractor certifications of non-segregated facilities would be eliminated for an estimated savings in annual costs of $1.69 million.

Elimination of affirmative action program requirements for non-construction employees of construction contractors—The proposal does not include a requirement contained in the Department's deferred December 30, 1980 regulation that would require construction contractors with 50 or more non-construction employees in their workforce and construction contracts aggregating to at least $50,000 to develop written affirmative action programs to cover such employees. Compared to the December 30, 1980 regulation, elimination of this requirement would save construction contractors an estimated $62,000 a year.

Other construction industry requirements—Several proposed changes would significantly reduce paperwork requirements for construction contractors. Under the current regulations, all covered construction contractors are subject to minority and female equal employment goals and are required to document their efforts to meet these goals through 16 specific steps. The proposal would exempt small construction contractors from these requirements, small contractors being those with a contract of less than $50,000 or fewer than 20 employees. In addition, the number of affirmative action steps would be reduced from 16 to 9.

Equal benefits—A proposed section (41 CFR 60–1.21(c)) would prohibit contractors from making any distinction based upon sex in employment opportunities, wages, hours, or other conditions of employment, including fringe benefits. The Supreme Court held in *Los Angeles Department of Water and Power* v. *Manhart*, 435 U.S. 702 (1978), that fringe benefits for similarly situated men and women must be equal, notwithstanding that the contractor's contributions for men and women are unequal.

Summary of Costs

Sectors Affected: Federal contractors, subcontractors and federally assisted construction contractors; employees of such contractors; State and local government agencies working on or under Federal contracts, subcontracts, and federally assisted construction contracts; and Federal agencies providing Federal assistance for construction.

The August 25, 1981 proposal is designed to substantially reduce OFCCP reporting cost burdens to government contractors without infringing upon equal employment opportunity protection for minorities, women, veterans, and the handicapped.

While nearly all of the proposed revisions would reduce compliance costs for covered employers, the proposed section relating to fringe benefits might impose additional compliance costs. While these requirements may lead to increased costs, they are already required under Title VII of the Civil Rights Act of 1964.

Summary of Net Benefits

The Department will analyze the public comments received in response to the proposals in an effort to determine the respective net benefits of the regulatory changes under consideration. The net benefits of this review are in the form of reduced recordkeeping and reporting burden on government contractors and streamlined regulations that will eliminate conflict and overlap in requirements.

Related Regulations and Actions

Internal: None.

External: Many Federal agencies and most States have rules and regulations affecting equal employment opportunity and affirmative action. The major Federal agency enforcing antidiscrimination provisions in addition to the OFCCP is the Equal Employment Opportunity Commission (EEOC). The EEOC administers Title VII of the Civil Rights Act of 1964, the Equal Pay Act of 1963, and the Age Discrimination in Employment Act of 1967, as amended. The EEOC guidelines are published in Title 29 of the CFR.

Government Collaboration

Executive Order 12067 provides that Federal departments and agencies will coordinate enforcement of all Federal statutes, Executive Orders, regulations, and policies that require equal employment opportunity without regard to race, color, religion, sex, national origin, age, or handicap. The Equal Employment Opportunity Commission is the lead agency in this coordination.

Timetable

ANPRM—None for the December 28, 1979, February 22, 1980, or August 25, 1981, NPRMs; further issues addressed by July 14, 1981 ANPRM (46 FR 36213).

NPRM—44FR 77006, December 28, 1979; 45 FR 11856, February 22, 1980; and 46 FR 42968, August 25, 1981.

Final Rule—December 30, 1980 (45 FR 86216) for December 28, 1979 and February 22, 1980 NPRMs. Date to be determined for August 25, 1981 NPRM.

Final Rule Effective—Originally scheduled for January 29, 1981 for December 30, 1980 Final Rule, but deferred until action is taken on August 25, 1981 NPRM.

Public Hearing—None.

Public Comment Period—Closed October 26, 1981 on August 25, 1981 NPRM.

Regulatory Impact Analysis—"Preliminary Regulatory Impact Analysis on Proposed Office of Federal Contract Compliance Regulations," August 1981; Final to be determined.

Regulatory Flexibility Analysis—

Combined with Regulatory Impact Analysis, see above.

Available Documents

None, beyond those cited in Timetable.

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DOL-ETA

HHS—OHDS

Work Incentive Programs for Aid to Families With Dependent Children (AFDC) Recipients Under Title IV of the Social Security Act (29 CFR Part 56, Revision; 45 CFR Part 224, Revision)

Please see text of joint DOL and HHS entry under HHS–OHDS on page 1862.

DOL—Labor Management Services Administration—Pension and Welfare Benefit Programs

Definition of Plan Assets and Establishment of Trust (29 CFR Part 2550; New)

Legal Authority

Employee Retirement Income Security Act of 1974, §§ 401(b), 403(b) and 505, 29 U.S.C. 1101(b), 1103(a), 1103(b), and 1135.

Reason for Including This Entry

The Department of Labor (DOL) includes this entry because these proposed regulations have generated considerable public interest. Below we describe alternatives that will, among other things, avoid unnecessarily affecting the flow of pension assets into certain types of investments, including certain small businesses.

Statement of Problem

The Employee Retirement Income Security Act of 1974 (ERISA) covers virtually all private employee benefit plans. There are several statutory exceptions, such as plans for government employees or plans established by churches. ERISA does not require any employer to establish an employee benefit plan; but if the employer does have an employee benefit plan, the requirements of ERISA will apply to it.

Part 4 of Title I of ERISA sets forth certain requirements that a fiduciary has to meet in handling plan assets. The term "fiduciary" is defined in § 3(21) of ERISA to include a person who exercises any discretionary management of such plan or who exercises any authority or discretion regarding the management or disposition of its assets.

While ERISA contains a definition of fiduciary and that definition uses the concept of "plan assets," ERISA does not explicitly define plan assets. The proposed regulation would provide this key definition. This definition is important under ERISA because plan assets are the funds that will generate the benefit payments to participants and beneficiaries. Consequently, in order to protect plan assets, ERISA requires that they be held in trust and provides that persons responsible for decisions regarding those assets be subject to ERISA's fiduciary responsibility requirements (i.e., they must meet certain standards of conduct, such as making prudent investments).

These proposed regulations also relate to the requirement of ERISA that assets of an employee benefit plan must be held in trust by one or more trustees. The Secretary of Labor is authorized to exempt the assets of certain types of employee benefit plans from the trust requirement. One of the proposed regulations would exempt, pursuant to that authority, certain assets of employee welfare benefit plans.

On August 28, 1979, these proposed regulations appeared in the **Federal Register** (44 FR 50363). They substituted for and withdrew a proposal the Department made in December 1974 that was never finalized (29 CFR 2552.1). The Department held public hearings in Washington, DC on February 27 and 28, 1980. At the conclusion of these hearings, the Department held the record open until March 28, 1980 in order to permit the filing of additional comments. Based on these comments, the Department reproposed for comment, on June 6, 1980, a revised version of a portion of one of the August 28, 1979 proposed regulations.

The regulations proposed on August 28, 1979 provided that any property in which a plan has a beneficial ownership interest is a plan asset. They also provided that the assets of an entity in which a plan has an equity investment would be plan assets, except that the assets of operating companies (i.e., companies that are primarily in the business of providing goods or services, but not the investment of capital), whose shares are widely held and freely transferable, and companies that are registered with the Securities and Exchange Commission under the Investment Company Act of 1940, would not be regarded as plan assets. The June 6, 1980 reproposal modifies the proposed definition of plan assets to treat plan investments in the equity securities of certain companies (e.g., certain venture capital companies), which are involved in influencing or controlling the management of the companies in which they invest, in the same manner as plan investments in the equity securities of operating companies (i.e., the assets of such companies would not be regarded as plan assets). In addition, holding companies of operating companies would be regarded as operating companies, and companies primarily engaged in the development or management of real estate (as opposed to merely financing, holding real estate for appreciation, etc.) would also be regarded as operating companies.

The Department believes that the concept of "plan assets" should be clarified so that persons exercising discretionary authority or control respecting the management or disposition of these assets (and who, therefore, are fiduciaries with respect to the plan) are aware of their responsibilities under ERISA.

A number of the public comments submitted to the Department on the proposals argued that employee benefit plan investments would be curtailed in certain types of companies that invest in small businesses, thereby affecting the amount of capital available to small business. The Department's reproposal addresses these concerns, among others. The portion of the proposals that gave rise to concerns about the amount of capital available to small business was reproposed to address many of the arguments presented by these commentators, and the reproposal, if adopted, should eliminate any unnecessary adverse impact on small business. Public comments generally indicate an acceptance of the principle of the reproposal while indicating some concern about certain technical requirements.

If no regulation is issued, confusion among those who may or may not be handling plan assets will continue.

Alternatives Under Consideration

For the reasons set forth above, the Department has concluded that the alternative of not publishing a regulation defining "plan assets" is inappropriate. The Department is considering modifications to the proposed definition

suggested by commentators in this matter. Some modifications were incorporated in the reproposal of June 6, 1980. These modifications classified certain pooled investment vehicles, such as venture capital companies, as not handling plan assets. DOL is considering, among other things, how other types of pooled investment vehicles should be handled.

Summary of Benefits

Sectors Affected: Fiduciaries (which include trustees and investment managers), sponsors (e.g., employers), participants, and beneficiaries of employee benefit plans; and persons providing investment management services, such as banks and insurance companies.

The benefit of regulations in this area is that confusion as to what are plan assets would be avoided, thus enabling fiduciaries to be aware that they have certain responsibilities respecting the management or disposition of such assets, and the other sectors named above to clearly understand their rights and duties. In addition, once the status of various investment vehicles is made clear, certain types of investments now not being made because of uncertainty may be made, including more investments of pension assets in certain small businesses. A Regulatory Impact Analysis will be prepared but has not yet been completed.

Summary of Costs

Sectors Affected: Fiduciaries (which include trustees and investment managers), sponsors (e.g., employers), participants, and beneficiaries of employee benefit plans; and persons providing investment management services, such as banks and insurance companies.

There will be some administrative costs to plan sponsors incident to holding in trust any plan assets that are not now being held in trust. The proposed regulation may also make some persons reluctant to accept plan assets, which, if it retains that characteristic, would subject them to ERISA's fiduciary provisions. This could change plan investment strategies (i.e., investments might be made in different ways). The extent, if any, that such changed investment strategies might affect small business would depend on the availability of needed capital in general. The Department expects the reproposed portion of the proposed regulation to eliminate many of the concerns that pension capital, specifically, will not be available to small business. A Regulatory Impact Analysis will be prepared but has not yet been completed.

Summary of Net Benefits

A Regulatory Impact Analysis will be prepared consistent with E.O. 12291. Any final regulation will assure that net benefits are weighed as appropriate under the Executive Order.

Related Regulations and Actions

Internal: None.
External: Section 4975 of the Internal Revenue Code of 1954.

Government Collaboration

None.

Timetable

NPRM—39 FR 44456, December 24, 1974.
NPRM—44 FR 50363, August 28, 1979.
NPRM—45 FR 38084, June 6, 1980.
Public Hearings—February 27 and 28, 1980, Washington, DC.
Public Comment Period—Closed March 28, 1980.
Further Public Comment Period—Closed August 5, 1980.
Final Rule—To be determined.
Regulatory Impact Analysis—Date to be determined.
Regulatory Flexibility Analysis—Date to be determined.

Available Documents

Public Comments—All documents are available for review in the Public Documents Room, Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, N.W., Washington, DC 20216. "Plan Asset Regulation."

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DOL-LMSA-PWBP

Individual Benefit Reporting and Recordkeeping for Multiple Employer Plans (29 CFR Parts 2520 and 2530; New)

Legal Authority

Employee Retirement Income Security Act of 1974, §§ 105, 209, and 505, 29 U.S.C. 1025, 1059, and 1135.

Reason for Including This Entry

The Department of Labor (DOL) proposed regulations in the individual benefit reporting and recordkeeping area (44 FR 8294, February 9, 1979). These proposed regulations generated considerable public interest among those members of the public directly and indirectly involved with the administration of pension plans. In light of the comments on that proposal, DOL decided to publish new proposed regulations in that area.

Statement of Problem

The Employee Retirement Income Security Act of 1974 (ERISA) imposes a comprehensive scheme of regulation on private sector employee benefit plans. There are several statutory exceptions, such as plans for government employees and plans established by churches. ERISA does not require any employer to establish an employee benefit plan; but if the employer does have an employee benefit plan, it is subject to Title I of ERISA. In the case of pension plans, Title I of ERISA imposes reporting and disclosure requirements, fiduciary duties, and minimum standards. The term "fiduciary" is defined in § 3(21) of ERISA to include a person who exercises any discretionary management of a plan or who exercises any authority or discretion regarding the management or disposition of its assets. With respect to welfare plans, Title I of ERISA imposes only reporting and disclosure requirements and fiduciary duties. This proposed regulation only applies to multiple employer pension plans, other than plans adopted by employers who are under common control. A multiple employer pension plan is one to which more than one employer makes contributions. There are approximately 8 million multiple employer plan participants and beneficiaries.

ERISA generally requires pension plan administrators to provide participants and beneficiaries with statements of the individual benefit entitlements (i.e., the benefits that they would be entitled to receive at retirement age by virtue of their service up to the date of the benefit statement) upon request and upon certain other occasions, such as a 1-year break in service or the termination of service. These statements must include information on the total benefits the individual has accrued, the percentage of those accrued benefits which are non-forfeitable (i.e., the benefits that they will be entitled to receive at retirement age regardless of whether they leave

employment before retirement age), or the earliest date the benefits would become non-forfeitable.

ERISA also requires employers in plans with more than one employer contributing to furnish the plan administrator with the information necessary to maintain records and compile the benefit statements. The Secretary of Labor has the authority to issue regulations on the specifics of the requirement.

Many plans now provide benefit statements to their participants and beneficiaries; however, many others may not. Further, of those plans that do issue benefit statements, some of the plans' statements may not be adequate or may not be provided at the appropriate times. Likewise, some plans keep records; but many plans may have inadequate or no records.

On August 8, 1980, the Department published in the **Federal Register** (45 FR 52824) proposed regulations dealing with individual benefit reporting and recordkeeping for multiple employer plans. These proposed regulations specify content, format, and timing of benefit statements and the retention time, content, and manner of retention of records. DOL published separate proposed regulations concerning single employer plans on August 1, 1980 (45 FR 51231). The two sets of proposed regulations published in August 1980 represent a revision and reproposal of individual benefit reporting and recordkeeping regulations that were proposed on February 9, 1979 (44 FR 8294).

In the new proposals, by contrast to the 1979 proposal, the Department issued separate regulations for single and multiple employer plans in order to address more effectively the distinct problems of each type of plan. If no regulation is issued, many participants may not receive information as to their individual benefits.

Alternatives Under Considerations

In adopting regulations in this area, the Department is seeking to achieve a balance. On the one hand, plans should provide participants and beneficiaries with accurate, timely, and useful information. On the other hand, the Department recognizes the need to avoid imposing undue administrative burdens and costs on employers and administrators.

In response to the originally proposed regulations, the Department received a significant number of comments. In light of these comments, the Department has reproposed the regulations to include some substantial changes. The *Calendar of Federal Regulations* (Vol. 45, No. 106, May 30, 1980) entry for the regulations originally proposed in 1979 discussed four alternatives that were under consideration. The Department has incorporated those alternatives into the reproposed regulations. The following changes were made in the proposed regulations:

(A) The reproposal generally extends the time frame for furnishing individual benefit statements to enable plan administrators to key benefit statements to the end of the plan year (i.e., the plan's fiscal year) and to allow more time for preparing benefit statements.

(B) The reproposal reduces the amount of information that the plan administrator is required to set forth in the benefit statement, particularly that information that is unique to each participant or beneficiary. This should reduce the burden and cost to the plan attendant involved in retrieving, compiling, and reporting the information in a benefit statement.

(C) The new proposal includes separate individual benefit reporting and recordkeeping regulations for single employer plans and for multiple employer plans. Separation of the regulations permits the Secretary of Labor to establish standards that are appropriate to the different conditions of single employer and multiple employer plans, particularly in the recordkeeping area.

(D) The new proposal indicates that the Department contemplates delaying the date on which collectively bargained multiple employer plans have to be in compliance with the recordkeeping rules. Changes in the collective bargaining agreement may be necessary before such a plan can implement the recordkeeping standard. Because of this, DOL contemplates providing an implementation schedule keyed to the expiration date of the collective bargaining agreement(s) in effect on the date of adoption of the regulations so that employers can achieve a more orderly compliance to the regulations.

The Department is looking at whether further changes can be made in these provisions to simplify compliance.

Summary of Benefits

Sectors Affected: Multiple employer pension plan sponsors (employers, labor unions, and joint labor-management bodies that establish plans), administrators (i.e., persons who are responsible for the administration of pension plans), participants, and beneficiaries.

The proposed regulations would provide multiple employer plan sponsors and administrators with the necessary guidance for compliance with the statutory provisions. This would enable participants in multiple employer pension plans and their beneficiaries to receive accurate, timely, and useful information about their specific benefit entitlements under pension plans and to have the information verified from records maintained by the plan under the standards established by the Secretary of Labor. With this information, participants and beneficiaries will be better able to protect their rights to retirement benefits. A Regulatory Impact Analysis will be prepared but has not yet been completed.

Summary of Costs

Sectors Affected: Sponsors and administrators of multiple employer pension plans.

Based on available data as furnished in public comments on the proposed regulation, the estimated first-year cost of complying with the requirements of these reproposed regulations would be approximately $58.1 million. The startup costs attributable to the recordkeeping are approximately $35.8 million. Some plans that currently maintain adequate records will not be faced with significant startup costs. Approximately $22.3 million will be expended annually by plans in order to furnish benefit statements on request. The deferral of implementation of the recordkeeping requirements in order to accommodate the collective bargaining process should further reduce the total cost of compliance for all multiple employer plans in any one year. (All costs were estimated based on 1979 dollars.) A Regulatory Impact Analysis will be prepared but has not yet been completed.

Summary of Net Benefits

A Regulatory Impact Analysis will be prepared consistent with E.O. 12291. Any final regulation will assure that net benefits are weighed as appropriate under the Executive Order.

Related Regulations and Actions

Internal: Proposed Regulations for Individual Benefit Reporting and Recordkeeping for Single Employer Plans.

External: Treasury Regulations under § 6057 of the Internal Revenue Code of 1954.

Government Collaboration

None.

Timetable

NPRM—44 FR 8294, February 9, 1979.

NPRM—45 FR 52824, August 8, 1980.
Public Comment Period—Closed October 8, 1980.
Public Hearings—December 4, 1980.
Regulatory Flexibility Analysis—Date to be determined.
Final Rule—To be determined.
Regulatory Impact Analysis—Date to be determined.

Available Documents

NPRM of August 8, 1980 and public comments are available for review in the Public Documents Room, Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, N.W., Washington, DC 20216, (202) 523-8671.

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DOL-LMSA-PWBP

Individual Benefit Reporting and Recordkeeping for Single Employer Plans (29 CFR Parts 2520 and 2530; New)

Legal Authority

Employee Retirement Income Security Act of 1974. §§ 105, 209, and 505, 29 U.S.C. 1025, 1059, and 1135.

Reason for Including This Entry

The Department of Labor (DOL) proposed regulations in the individual benefit reporting and recordkeeping area (44 FR 8294, February 9, 1979).

These proposed regulations generated considerable interest among those members of the public directly and indirectly involved with the administration of pension plans. In light of the comments on that proposal, DOL decided to publish new proposed regulations in that area.

Statement of Problem

The Employee Retirement Income Security Act of 1974 (ERISA) imposes a comprehensive scheme of regulation on private sector employee benefit plans. There are several statutory exceptions, such as plans for government employees and plans established by churches. ERISA does not require any employer to establish an employee benefit plan; but if the employer does have an employee benefit plan, it is subject to Title I of ERISA. In the case of pension plans, Title I of ERISA imposes reporting and disclosure requirements, fiduciary duties, and minimum standards. With respect to welfare plans, Title I of ERISA imposes only reporting and disclosure requirements and fiduciary duties. This proposed regulation only applies to single employer pension plans, defined to include plans maintained by groups of employers under common control (a term relating to ownership)—e.g., the relationship between parent companies and subsidiaries). There are approximately 23 million plan participants and beneficiaries affected by this regulation.

ERISA generally requires pension plan administrators to provide participants and beneficiaries with statements of their individual benefit entitlements (i.e., the benefits that they would be entitled to receive at retirement age by virtue of their service up to the date of the benefit statement) upon written request and upon certain other occasions, such as a 1-year break in service or the termination of service. These statements must include information on the total benefits the individual has accrued, the percentage of those accrued benefits which are non-forfeitable (i.e., the benefits that they will be entitled to receive at retirement age regardless of whether they leave employment before retirement age) or the earliest date the benefits would become non-forfeitable.

ERISA also requires employers to maintain records so that the information is available for the administrator of the plan to compile the benefit statements. The Secretary of Labor has the authority to issue regulations on the specifics of the requirement.

Many plans now provide benefit statements to their participants and beneficiaries; however, many others may not. Further, of those plans that do issue benefit statements, some of the plans' statements may not be adequate or may not be provided at the appropriate times. Likewise, some plans keep records, but many plans may have inadequate or no records.

On August 1, 1980, the Department published in the **Federal Register** (45 FR 51231) proposed regulations dealing with individual benefit reporting and recordkeeping for single employer plans. These proposed regulations specify content, format, and timing of benefit statements and the type, retention time, content, and manner of retention of records. DOL published separate proposed regulations concerning multiple employer plans on August 8, 1980 (45 FR 52824). The two sets of proposed regulations published in August 1980 represent a revision and reproposal of individual benefit reporting and recordkeeping regulations that were proposed on February 9, 1979 (44 FR 8294).

In the new proposals, by contrast to the 1979 proposal, the Department issued separate regulations for single and multiple employer plans in order to more effectively address the distinct problems of each type of plan. If no regulation is issued, many participants may not receive information as to their individual benefits.

Alternatives Under Consideration

In adopting regulations in this area, the Department is seeking to achieve a balance. On the one hand, plans should provide participants and beneficiaries with accurate, timely, and useful information. On the other hand, the Department recognizes the need to avoid imposing undue administrative burdens and costs on employers and administrators.

In response to the originally proposed regulations, the Department received a significant number of comments. In light of these comments, the Department has reproposed the regulations to include some substantial changes. The *Calendar of Federal Regulations* (Vol. 45, No. 106, May 30, 1980) entry for the regulations originally proposed in 1979 discussed four alternatives that were under consideration. The Department has incorporated those alternatives into the reproposed regulations. The following changes were made in the proposed regulations:

(A) The reproposal generally extends the time frame for furnishing individual benefit statements to enable plan adminstrators to key benefit statements to the end of the plan year (i.e., the plan's fiscal year) and to allow more time for preparing benefit statements.

(B) The reproposal reduces the amount of information that the plan administrator is required to set forth in the benefit statement, particularly that information that is unique to each participant or beneficiary. This should reduce the burden and cost to the plan attendant involved in retrieving, compiling, and reporting the information in a benefit statement.

(C) The new proposal includes separate individual benefit reporting and recordkeeping regulations for single employer plans and for multiple employer plans. Separation of the regulations permits the Secretary of Labor to establish standards that are

appropriate to the different conditions of single employer and multiple employer plans, particularly in the recordkeeping area.

(D) The fourth alternative addressed the problems of multiple employer plans and therefore is covered in a separate DOL entry in this *Calendar* (see "Individual Benefit Reporting and Recordkeeping for Multiple Employer Plans").

The Department is looking at whether further changes can be made in these provisions to simplify compliance.

Summary of Benefits

Sectors Affected: Single employer pension plan sponsors (employers, labor unions, and joint labor-management bodies that establish plans), plan administrators (i.e., persons who are responsible for the administration of single employer pension plans), participants, and beneficiaries.

The proposed regulations would provide single employer plan sponsors and administrators with the necessary guidance for compliance with the statutory provisions. This would enable participants in single employer pension plans and their beneficiaries to receive accurate, timely, and useful information about their specific benefit entitlements under pension plans, and to have the information verified from records maintained by the plan under the standards established by the Secretary of Labor. With this information, participants and beneficiaries will be better able to protect their rights to retirement benefits. A Regulatory Impact Analysis will be prepared but has not yet been completed.

Summary of Costs

Sectors Affected: Sponsors and administrators of single employer pension plans.

Based on available data as furnished in public comments submitted on the proposed regulations, the estimated cost of complying with requirements of these reproposed regulations would be approximately $29 million annually. Of these costs, employers would spend $22 million annually for providing statements on request and approximately $7 million annually for statements furnished upon terminations and breaks in service. No significant costs are attributable to compliance with the recordkeeping requirements of the regulations. (All costs were estimated based on 1979 dollars.) A Regulatory Impact Analysis will be prepared but has not yet been completed.

Summary of Net Benefits

A Regulatory Impact Analysis will be prepared consistent with E.O. 12291. Any final regulation will assure that net benefits are weighed as appropriate under the Executive Order.

Related Regulations and Actions

Internal: Individual Benefit Reporting and Recordkeeping for Multiple Employer Plans.

External: Treasury Regulations under § 6057 of the Internal Revenue Code of 1954.

Government Collaboration

None.

Timetable

NPRM—44 FR 8294, February 9, 1979.
NPRM—45 FR 51231, August 1, 1980.
Public Comment Period—Closed October 1, 1980.
Public Hearings—November 25, 1980.
Regulatory Flexibility Analysis—Date to be decided.
Final Rule—To be determined.
Regulatory Impact Analysis—Date to be decided.

Available Documents

NPRM of August 1, 1980 and public comments are available for review in the Public Documents Room, Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, N.W., Washington, DC 20216, (202) 523-8671.

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary of Transportation

Nondiscrimination on the Basis of Handicap (49 CFR Part 27, Subpart E; Revision)

Legal Authority

Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794; Section 16(a) of the Urban Mass Transportation Act of 1964, as amended, 49 U.S.C. 1612(a).

Reason for Including This Entry

The Department of Transportation (DOT) has included this regulation because the Presidential Task Force on Regulatory Relief has designated it for review; because DOT had previously identified it for one of its own priority reviews of regulations; and because of the cost and controversy surrounding the original DOT rule on this subject.

Statement of Problem

In May 1979, DOT issued its regulation to implement § 504 of the Rehabilitation Act of 1973. This regulation affected mass transit, airport, highway, and railroad programs receiving financial assistance from DOT and prohibited employment discrimination in these programs on the basis of handicap. Of these provisions, the requirements affecting mass transit were the most important, costly, and controversial. The regulation required that all new buses purchased with the assistance of Federal funds be equipped with wheelchair lifts and that new and existing rail rapid transit systems be made accessible to wheelchair users and other handicapped persons, often through the installation of elevators. Transit operators and State and local governments argued that these requirements were extremely costly and that other means of transportation (e.g., door-to-door van service) better served the needs of handicapped persons. In addition, critics of the regulation said that local areas should have the option to decide what kind of service is most suitable for handicapped persons in their area.

DOT identified the § 504 rule as one of its priority regulatory reviews in February 1981. The mass transit portion of the Department's § 504 rule also appeared on the March 25, 1981 list of "Existing Regulations to be Reviewed," which was issued by the Presidential Task Force on Regulatory Relief. In May 1981, a Federal appeals court in Washington, in the case of *American Public Transit Association* v. *Lewis*, decided that § 504 did not support the accessibility requirements that the Department's regulation had imposed. The court's decision directed the Department to determine whether other statutes could support these requirements. In response to the court's decision and to the direction from the Presidential Task Force to review the regulation, the Department decided that, as a matter of policy, it did not want to maintain the existing accessibility requirements in force and that it was legally unnecessary to do so.

Consequently, on July 20, 1981, the Department published an Interim Final Rule eliminating the controversial accessibility requirements and substituting for them a "local option" provision that required local areas to certify to the Department that they were making "special efforts" consistent with DOT guidelines to provide transportation service for handicapped persons.

This Interim Final Rule was intended only to be a temporary measure, giving relief from the costly accessibility requirement while the Department devised a permanent regulatory approach to the problem of how best to provide transportation for handicapped persons. Based on its continuing study of the issue and over 280 comments received in response to the Interim Final Rule, the Department will prepare a new NPRM concerning transit programs for handicapped persons. This NPRM will also propose changes, if needed, in the highway, railroad, airport, and employment discrimination portion of the Department's existing § 504 rule.

The Department believes that to take no further regulatory action at this time would be inappropriate. The Interim Final Rule may not be an adequate permanent solution to the question of transportation services for handicapped persons. For instance, it establishes, as an example, that spending 3½ percent of an urbanized area's § 5 Urban Mass Transportation funds on services for handicapped persons is an inadequate level of effort. The Administration's proposed mass transit legislation calls for § 5 funding to be phased out over a period of years, preventing the use of a percentage of § 5 funds as a long-term measure of adequate effort. In addition, the Department must consider the effect of the *American Public Transit Association* case on its requirements affecting railroads, highways, and airports, and the effect of a series of Federal appellate court decisions on the scope of employment discrimination coverage under § 504. Failure to take further regulatory action in these areas could leave the Department with a regulation that is not fully consistent with current legal developments.

Alternatives Under Consideration

The alternatives discussed in this section apply only to the mass transit portion of the § 504 regulation, which is the most important and controversial part of the rule. DOT has not yet identified alternatives concerning other parts of the rule.

(A) *Special efforts*—This alternative would essentially retain the approach taken by the Interim Final Rule. This approach gives local areas substantial discretion with respect to the kind of transportation service provided for handicapped persons, requiring the local areas only to certify that they are making appropriate "special efforts" to provide such transportation. The nature of the special efforts is spelled out in essentially non-regulatory guidance that gives examples of the kinds and levels of effort that the Department intends to be carried out. Some modifications to the Interim Final Rule would have to be made in order for this approach to succeed (e.g., a change from the reliance on a percentage of § 5 funds as a measure for an appropriate level of effort). This approach has the advantage of giving considerable flexibility to local areas while retaining Federal guidelines to ensure reasonable consistency among the kinds of efforts that various transit operators make. Its disadvantages are that it leaves some transit operators unsure of what they should do and that it may permit some transit operators to make minimal transportation service available to handicapped persons.

(B) *Mandatory service criteria*—This alternative would also permit "local option" to local areas. However, the local option would be among alternatives specified in regulations. For example, the regulation could require a transit operator to make 50 percent of its buses accessible to provide paratransit service meeting specified service criteria (e.g., hours of service, geographic scope of service, and fares comparable to regular public mass transit; no restriction on trip purpose; maximim 24-hour wait time for service), or could require the transit operator to provide a certain subsidy level for taxi service. The operator would choose one of these specified approaches, depending on its own situation. The advantages of this approach are that it offers local discretion in decisionmaking and firmer guidance to transit authorities than other alternatives and is more likely to result in consistently higher quality services for handicapped persons. The disadvantages of this approach are that it imposes somewhat greater constraints upon the range of choices available to transit operators and may, especially in the paratransit area, require a somewhat costlier system than other approaches.

(C) *Procedural approach*—This alternative is similar to the legislation that the Administration introduced in the Spring of 1981. It would require local areas to certify that they had established a program for providing transportation services to handicapped persons that took into consideration the various service criteria that affect the quality of these services. These transportation programs would have to be adopted after a consultation process that included the handicapped community in each area. The advantage of this approach is that it would permit local areas maximum discretion in shaping the kind of transportation program for handicapped persons best suited to each area's resources and needs. It would also ensure that the handicapped community in each area had input into the decisionmaking process. It should be pointed out that the consultation feature of this approach could be incorporated in other alternatives. The main disadvantage of this approach is that, without any substantive Federal criteria, the quality of transportation services offered to handicapped persons might be inconsistent or quite low in some areas.

In selecting one of these alternatives, DOT will need to consider the requirements of two principal statutes. Section 504 of the Rehabilitation Act of 1973 requires that there be no discrimination on the basis of handicap in progams receiving Federal financial assistance. Section 16(a) of the Urban Mass Transportation Act requires grantees under the Act to make special efforts to provide transportation service for elderly and handicapped persons. The effectiveness of the various approaches in carrying out the statutory requirements will be an important factor in determining the alternative chosen, as will the Administration's regulatory policy of selecting the most cost-beneficial alternative.

Summary of Benefits

Sectors Affected: Handicapped persons; Federal, State, and local governments; manufacturers of wheelchair lifts and other accessibility equipment; and the general public.

The principal group of beneficiaries of this regulation are handicapped persons who, because of their handicaps, are unable to use the mass transit services provided to the general public. Some handicapped persons are unable to drive cars; many others, especially low-income handicapped persons, cannot afford to own or operate their own vehicles. Consequently, these handicapped persons are dependent on public transportation. If such persons are unable to use regular mass transit services, and if other services are not provided for them, they will be, in many cases, unable to get to or hold a regular job, make necessary medical and shopping trips, or leave their places of residence for social or recreational purposes. To the extent that the

provision of special transportation services enables handicapped persons to get to and hold regular jobs, there will be benefits to the general public and to Federal, State, and local governments in that these people will be able to contribute to tax revenues and will not require public assistance.

It is impossible to estimate reliably the number of handicapped persons who might become employed under various alternatives. However, some savings in Federal, State and local expenditures could be anticipated. For example, a handicapped person who receives disability benefits from the Social Security Administration, and who becomes employed because of improved travel opportunities, can save the Federal Government between $2,736 and $3,451 per year (in 1981 dollars), which includes elimination of cash payments and additional income taxes paid to the Federal Government. These amounts do not include the elimination of additional Federal expenditures on unemployed persons for such things as food stamps, Medicare, Medicaid, Aid to Families with Dependent Children, and vocational rehabilitation services.

A summary of estimates of the relative benefits of various alternatives, expressed in numbers of additional trips per year for handicapped persons, may be found in Table 1.

TABLE 1.—ANNUAL COSTS AND BENEFITS OF REGULATORY OPTIONS

[In 1981 Dollars]

Alternative	Average annual cost (in millions of dollars)	Average annual trips (in millions of trips)	Average costs/trip
Costs/Benefits for Service Provided to All Handicapped Persons			
A. Full Accessibility (1979 rule)	$104 to $306	25.5 to 49.6	$2.10 to $12.00
B. Special Efforts 3½% of Section 5	$50.75	3.0 to 17.3	$2.93 to $16.80
50% accessible buses	$33.3 to $93.3	22.7 to 44.2	$0.75 to $4.11
Vouchers for 20 trips/week	$243 to $21,000	46.8 to 4,000	$5.20
C. Paratransit (service fully comparable to regular mass transit).	$260 to $2,984	88.8 to 177.6	$2.93 to $16.80
Costs/Benefits for Service Provided Only to Handicapped Persons Requiring Lift Assistance			
A. Full Accessibility (1979 rule)	$104 to $306	5.3 to 17.4	$5.98 to $57.75
B. Special Efforts 3½% of Section 5	$50.75	3.0 to 17.3	$2.93 to $16.80
50% accessible buses	$33.3 to $93.3	4.7 to 15.5	$2.15 to $19.85
Vouchers for 20 trips/week	$243 to $21,000	46.8 to 4,000	$5.20
C. Paratransit (service fully comparable to regular mass transit).	$99 to $1,045	33.7 to 62.2	$2.93 to $16.80

Summary of Costs

Sectors Affected: Mass transit operators and State and local governments.

The principal sectors affected by costs of this regulation are operators of mass transit systems and State and local governments.

The costs of the various alternatives reflect the incremental costs of purchasing additional equipment (e.g., wheelchair lifts for buses, vans for use in paratransit, etc.) and the costs of operating additional service for handicapped persons (e.g., extra maintenance costs for lifts on buses, and drivers and fuel for paratransit vehicles). These costs are shown in Table 1.

Summary of Net Benefits

Table 1 summarizes the costs and benefits of various alternatives that the Department considered in promulgating its Interim Final Rule on July 20, 1981. This Interim Final Rule eliminated the full accessibility requirements of the original 1979 § 504 rule in favor of a local option, "special efforts" approach. The table was developed in connection with the regulatory evaluation for the Interim Final Rule. It should be emphasized that the figures in this table represent ranges among different estimates of costs and ridership derived from several different sources. These figures do not necessarily represent DOT's conclusions concerning the best estimates for costs and benefits.

At this time, the Department is preparing a more detailed Regulatory Impact Analysis concerning options for requirements related to transportation for handicapped persons. The Department is also evaluating approximately 300 comments that it has received in response to the request for comments published in conjunction with the Interim Final Rule. Until these evaluations are completed, the Department is not able to state its view as to the most desirable alternative.

Related Regulations and Actions

Internal: None.

External: The Department of Justice is in the process of revising its Guidelines for the Implementation of § 504. These Guidelines, originally promulgated by the former Department of Health, Education, and Welfare in 1978, give direction to the other Federal agencies as they implement § 504 in their financial assistance programs.

Government Collaboration

As required by Executive Orders 12291 and 12250, respectively, the Department will coordinate its § 504 regulation with the Department of Justice and the Office of Management and Budget. Under Executive Order 12067, the Department will also coordinate the employment discrimination section of the § 504 regulation with the Equal Employment Opportunity Commission.

Timetable

ANPRM—None.

NPRM—1st Quarter 1982.

Public Comment Period—On NPRM, 60 to 90 days after publication in Federal Register. Send comments to Docket Clerk, Department of Transportation, 400 Seventh Street, S.W., Room 10421, Washington, DC 20590.

Public Hearing—None now scheduled.

Final Rule—3rd Quarter 1982.

Final Rule Effective—30 days from date of publication.

Regulatory Impact Analysis—We expect to issue a preliminary Regulatory Impact Analysis with the NPRM, and a final Regulatory Impact Analysis with the Final Rule.

Regulatory Flexibility Analysis—If necessary, will be done in conjunction with the Regulatory Impact Analysis.

Available Documents

Documents pertaining to this rulemaking action are not yet completed and available. However, the rulemaking documents concerning the 1979 § 504 regulation and the July 20, 1981 Interim Final Rule are available for review in the Office of Regulation and Enforcement, U.S. Department of Transportation, 400 Seventh Street, S.W., Room 10421, Washington, DC 20590. Inquiry should refer to Dockets 56 and 56A.

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EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DOJ-CRD

Procedures for Complaints of Employment Discrimination Filed Against Recipients of Federal Funds (28 CFR Part 42; 29 CFR Part 1691; New)

Please see text of joint EEOC and DOJ entry under DOJ-CRD on page 1875.

EEOC—Office of Policy Implementation

Guidelines on Discrimination Because of Sex; Sexual Harassment (29 CFR 1604.11)

Legal Authority

Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000(e) *et seq.*

Reason for Including This Entry

The Presidential Task Force on Regulatory Relief has designated these guidelines for review.

Statement of Problem

Sexual harassment, like harassment on the basis of color, race, religion, or national origin, has long been recognized by the Equal Employment Opportunity Commission (EEOC) as a violation of § 703 of Title VII of the Civil Rights Act of 1964, as amended. However, despite the position taken by the Commission, sexual harassment continues to be widespread. Because of the continued prevalence of this unlawful practice, the Commission had determined that there was a need for guidelines in this area of Title VII law. Therefore, EEOC proposed to amend its Guidelines on Discrimination Because of Sex (37 FR 6836, April 5, 1972, as amended) to add § 1604.11, Sexual Harassment. The proposed guidelines were approved by the Commission in final form on November 10, 1980. The guidelines provide that harassment on the basis of sex is a violation of Title VII and states that such unwelcome behavior may be either physical or verbal in nature. These guidelines set out three criteria for determining whether an action constitutes unlawful behavior. These criteria are (1) submission to the conduct is either an explicit or implicit term or condition of employment; (2) submission to or rejection of the conduct is used as the basis for employment decisions affecting the person who did the submitting or rejecting; or (3) the conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment. It is the Commission's position that sexual harassment, like racial harassment, generates a harmful atmosphere. Under Title VII, employers of 15 or more employees should afford employees a working environment free of discriminatory intimidation, whether based on sex, race, religion, or national origin. Therefore, the employer has an affirmative duty to maintain a workplace free of sexual harassment and intimidation.

Section 1604.11(b) of the guidelines recognizes that the question of whether a particular action or incident established a purely personal, social relationship without a discriminatory employment effect requires a factual determination. In making such a determination, the Commission will look at the record as a whole and at the totality of the circumstances, emphasizing the nature of the sexual advances and the context in which the alleged incidents occurred. The Commission's determination of the legality of a particular action will be made from the facts, on a case-by-case basis.

Section 1604.11(c) of the guidelines applies general Title VII principles to the issue of sexual harassment and states that an employer is responsible for the acts of its supervisory employees or agents, regardless of whether the acts were authorized or forbidden by the employer and regardless of whether the employer knew or should have known of the acts. This subsection further states that the Commission will determine on a case-by-case basis, whether an individual acts in either an agent or a supervisory capacity as distinguished from other employees (discussed below). To make this determination, the Commission will examine the circumstances of the particular employment relationship and the job functions performed by the individual rather than accepting an individual's title as the determining factor.

Section 1604.11(d) distinguishes the employer's responsibility for the acts of its agents or supervisors from the responsibility it has for the acts of other persons. This subsection states that liability for the acts of those persons not mentioned in subsection (c) exists only when the employer or its agents or supervisory employees know or should have known of the conduct. The subsection further provides that the employer may rebut this apparent liability for the conduct by showing that it took immediate and appropriate corrective action.

Consistent with the policy of voluntary compliance under Title VII, § 1604.11(e) recognizes that the best way to achieve an environment free of sexual harassment is to prevent the occurence of such harassment by using appropriate methods to alert the employees to the problem and to stress that sexual harassment, in any form, will not be tolerated. This subsection requires an employer to take all steps necessary for the prevention of sexual harassment and gives the following as examples of steps that might be deemed necessary: affirmatively raising the subject and expressing strong disapproval, developing appropriate sanctions, informing employees of their right to raise the issue of sexual harassment under Title VII, and developing methods to sensitize all concerned.

Alternatives Under Consideration

Because this review is in the preliminary stages, EEOC is not considering any alternatives at this time.

Summary of Benefits

Sectors Affected: Employees in all industries subject to Title VII of the Civil Rights Act of 1964 and EEOC.

The guidelines apply to employers, as defined in § 701(j) of Title VII of the Civil Rights Act of 1964. Employees benefit by having their rights clearly defined. The guidelines will aid EEOC in fulfilling its mandate, under Title VII of the Civil Rights Act of 1964, to eliminate employment discrimination of the basis of sex.

Summary of Costs

Sectors Affected: Employers of 15 or more employees.

The guidelines require employers subject to Title VII of the Civil Rights Act of 1964 to take all steps necessary for the prevention of sexual harassment. The Commission believes that the costs to be borne by employers in complying with the guidelines will be minimal.

Summary of Net Benefits

Since the review of these guidelines is in very early stages, it is not possible to project what the net benefits of any proposed changes would be. The Commission believes that the net benefits of the existing guidelines include clarification of the legal responsibilities of covered employers and the rights of employees. Ultimately this will help ensure work environments that are free of discrimination.

Employers are concerned about what they perceive as increased liability for

the actions of others. However, EEOC notes that the guidelines merely interpret the statutory requirements of Title VII and articulate the enforcement standards currently used by Federal courts.

Related Regulations and Actions

Internal: None.

External: EEOC also has jurisdiction over the Federal agencies' Affirmative Action Plans and has directed agencies to prepare such plans and submit them to EEOC. The Commission has specifically directed that Federal agencies include, as a supplement to their Phase II Affirmative Action Planning Process, a plan indicating the steps the agency will take to prevent sexual harassment.

Government Collaboration

In compliance with E.O. 12067 (3 CFR 1978, Comp., p. 206), the Commission has consulted with represenateatives of the Office of Personnel Management, and the Departments of Justice, Labor, Education, and Health and Human Services.

Timetable

Final Guidelines—45 FR 74676, November 10, 1980.
Regulatory Impact Analysis—2nd Quarter 1982.
Other Action—To be determined.

Available Documents

Public comments on the proposed guidelines are available at the EEOC library, Room 2303, at the address below.

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EEOC-OPI

Uniform Guidelines on Employee Selection Procedures (29 CFR 1607)

Legal Authority

42 U.S.C. 2000e *et seq.*

Reason for Including This Entry

The Presidential Task Force on Regulatory Relief has designated these guidelines for review.

Statement of Problem

One problem that confronted the Congress that adopted the Civil Rights Act of 1964 involved the effect of written preemployment tests on equal employment opportunity. The use of these test scores frequently denied employment to women and minorities, in many cases without evidence that the tests were related to success on the job. Yet employers wished to continue to use such tests as practical tools to assist in the selection of qualified employees. Congress sought to strike a balance that would proscribe discrimination but otherwise permit the use of tests in the selection of employees. Thus, in Title VII, Congress authorized the use of "any professionally developed ability test provided that such test, its administration or action upon the results is not designed, intended or used to discriminate . . ." (§ 703(h), 42 U.S.C. 2000e(2)(h)).

At first, some employers contended that, under this section, they could use any test that had been developed by a professional so long as they did not intend to exclude women and minorities, even if such exclusion was the consequence of the use of the test. In 1966 the Equal Employment Opportunity Commission (EEOC) adopted guidelines to advise employers with 15 or more employees and other users as to what the law and good industrial psychology practice required (see 35 U.S. L.W. 2137 (1966)). The Department of Labor adopted the same approach in 1968 with respect to tests used by Federal contractors under Executive Order 11246, in a more detailed regulation. The Government's view was that the employer's intent was irrelevant. If tests or other practices had an adverse impact on protected groups, they were unlawful unless they could be justified. To justify a test that screened out a higher proportion of women and minorities, the employer would have to show that it fairly measured or predicted performance on the job. Otherwise, it would not be considered to be "professionally developed."

In succeeding years the EEOC and the Department of Labor provided more extensive guidance, which elaborated upon these principles and expanded the guidelines to emphasize all selection procedures. In 1971, in *Griggs* v. *Duke Power Co.*, 401 U.S. 424 (1971), the Supreme Court announced the principle that employer practices that had an adverse impact on women and minorities and were not justified by business necessity constituted illegal discrimination under Title VII. Congress confirmed this interpretation in the 1972 amendments to Title VII. The elaboration of these principles by courts and agencies continued into the mid 1970s, but differences between the EEOC and the other agencies (the Departments of Justice and Labor and Civil Service Commission) produced two different sets of guidelines by the end of 1976.

Under the Carter Administration in 1977, efforts were intensified to produce a unified government position. These guidelines, issued on August 25, 1978, represent the result of that effort. While the guidelines are complex and technical, EEOC has based them upon principles upheld by the courts and the Congress.

Alternatives Under Consideration

Because this review is in the preliminary stages, EEOC is not considering any alternatives at this time.

Summary of Benefits

Sectors Affected: Employees and employers subject to Title VII of the Civil Rights Act of 1964; and EEOC, the Departments of Justice and Labor, and the Civil Service Commission.

The guidelines apply to employers as defined in § 701(j) of Title VII of the Civil Rights Act of 1964. The guidelines aid the agencies in fulfilling their mandate under Title VII to eliminate employment discrimination. These guidelines aid employers to avoid employee selection procedures that are discriminatory by providing a methodology to alert employers that potential discrimination problems could arise. The guidelines help ensure that all job applicants and employees seeking promotional opportunities, regardless of race, color, sex, or national origin, have an equal opportunity for employment.

Summary of Costs

Sectors Affected: All employers subject to Title VII of the 1964 Civil Rights Act.

Employers bear the cost of compliance with the guidelines. Letters from employers to the Task Force indicated that the recordkeeping and validation requirements are the most costly portions of the guidelines. The guidelines require that employers maintain data on the race, sex, and ethnicity of each applicant for employment so that the progress of each group can be tracked through the selection process. EEOC will attempt to obtain an estimate of costs associated with these requirements through a practical utility survey. The survey will be used to assess the usefulness of the recordkeeping requirements, the incremental burden associated with the guidelines, and whether alternatives to the current requirements should be developed.

The guidelines also require employers to validate selection procedures, usually tests, that have an adverse impact on the selection rate of women and minorities. The Commission is unable to place a dollar figure on the cost of such validation processes, since such costs depend upon the nature of work or skills being tested and the scope of the test itself. During the review required by E.O. 12291 the Commission will attempt, to the extent possible, to assess the cost to employers of complying with the validation section and other requirements of the guidelines. EEOC notes, however, that these guidelines, which interpret the statutory requirements of Title VII, articulate the enforcement standards currently used by the Federal courts.

Summary of Net Benefits

EEOC, through the practical utility survey it is issuing, will attempt to assess the costs of the present guidelines. The benefits associated with the guidelines include helping employers to understand what the law requires, which leads to the ultimate benefit of nondiscriminatory hiring and promotion practices and equal employment opportunity.

Related Regulations and Actions

None.

Government Collaboration

These guidelines were developed in collaboration and issued jointly with the Department of Justice, the Department of Labor, and the Civil Service Commission. These agencies' guidelines are published at 28 CFR 50.14, 41 CFR Part 60–3, and 5 CFR 300.103(e), respectively.

Timetable

Final Guidelines—43 FR 38290, August 25, 1978.
Final Guidelines Effective—September 25, 1978.
Regulatory Impact Analysis—2nd Quarter 1982.
Other Actions—To be determined.

Available Documents

Public comments from the comment period following the proposed guidelines in 1978 are available at the EEOC library, Room 2303, at the address below.

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GENERAL SERVICES ADMINISTRATION

Office of the Administrator

Nondiscrimination in Federally Assisted Programs (41 CFR Part 101–8; New)

Legal Authority

The Civil Rights Act of 1964, Title VI, 42 U.S.C. 2000d *et seq.;* the Education Amendments of 1972, Title IX, as amended, 20 U.S.C. 1681 *et seq.;* Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 *et seq.;* the Rehabilitation Act of 1973, as amended, § 504, 29 U.S.C. 794; the Federal Property and Administrative Services Act of 1949, as amended, Title VI, § 606, 40 U.S.C. 476; and E.O. 12250 (45 FR 72995, November 4, 1980).

Reason for Including This Entry

The General Services Administration (GSA) includes this entry because it wishes to inform the widest possible audience of the scope of procedures GSA will issue to enforce nondiscrimination in programs and activities that receive Federal assistance from GSA.

Statement of Problem

GSA is required by Federal laws to promulgate regulations that provide, in whole or in part, that no person in the United States shall on the grounds of race, color, national origin, handicap, age, or sex be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal assistance from GSA.

GSA issued one such "Title VI" regulation (29 FR 16287, December 4, 1964, as amended at 38 FR 17975, July 5, 1973), which prohibits discrimination only on the grounds of race, color, or national origin (41 CFR 101–6.2). "Title VI" refers to the applicable title of the Civil Rights Act of 1964. GSA will amend this regulation again to conform to the Department of Justice (DOJ) guidelines "Coordination of Enforcement of Nondiscrimination in Federally Assisted Programs," 28 CFR 42.401–415 (41 FR 52669, December 1, 1976). These guidelines were developed pursuant to Executive Order 11764, which designated DOJ the lead agency for coordination and implementation of Title VI by Federal agencies. In doing so, they require that agency regulations provide for specific timeframes for action; that is, conducting reviews for compliance both before and after an agency has made a funding award, placing limits on how long post-award compliance reviews and complaint investigations may last, or otherwise establishing internal controls to avoid unnecessary delays (28 CFR 42.407(b) and (c)(2) and 42.408(a)). Section 42.407(a) requires that "All Federal agency staff determinations of Title VI compliance shall be made by, or be subject to the review of, the agency's civil rights office." The GSA regulations, as presently written, do not cover these and other requirements, and it is unclear who in the Agency has the responsibility for enforcing civil rights matters in federally assisted programs.

Additionally, since GSA published its Title VI regulations, new laws have been adopted prohibiting discrimination on the grounds of handicap (§ 504 of the Rehabilitation Act of 1973, as amended), age (the Age Discrimination Act of 1975, as amended), and sex (Title IX of the Education Amendments of 1972, as amended). As each new law was adopted, the former Department of Health, Education, and Welfare (HEW) (now Health and Human Services (HHS)) was designated by law as the lead agency for coordination and implementation of these laws. As such, the former HEW issued separate coordination rules or guidelines as each law was enacted. HEW incorporated by reference DOJ's Title VI rules on "Procedures to Determine Compliance," §§ 42.407–415, in each rule it issued. Subsequently, Federal agencies issued regulations to implement the laws and lead-agency guidelines as required by those laws. This resulted in many Federal agencies having four separate regulations with duplicate compliance procedures and, in some cases, fragmented program implementation at the Federal, State, and local levels. However, Executive Order 12250 (45 FR 72995, November 4, 1980) redesignated DOJ as the lead agency for Title VI, Title IX, and § 504 of the Rehabilitation Act of 1973. (HHS remains the lead agency for the Age Act.) As such, DOJ has advised GSA and other agencies to adopt the "umbrella" approach as a method of reducing duplication and burden. Some agencies—for example, the Department of Energy and the Environmental Protection Agency—have already published umbrella regulations.

In order to ensure that we issue these regulations and regulations on other bases of discrimination in the most useful, timely, and comprehensive manner, GSA will issue an "umbrella" regulation, which will incorporate the required prohibitions provided in the Federal laws listed under the "Legal

Authority" section above. The regulation will follow the DOJ standards and procedures for monitoring compliance, taking enforcement actions, conducting investigations, establishing reasonable time limits on efforts to secure voluntary compliance, and referring to DOJ for enforcement when there is noncompliance.

The objectives of the regulation are to ensure, to the extent possible, that federally assisted program and activity benefits are distributed equitably to all eligible recipients, subrecipients (donees), and beneficiaries; to streamline certain administrative procedural requirements by consolidating prohibitions on discrimination into one regulation; and to make requirements clear, convenient, and less burdensome and costly to comply with, as well as making the regulation manageable for GSA to administer.

On June 16, 1981, the U.S. District Court of the Central District of California issued an Order and Supporting Findings of Fact and Conclusions of Law in the case of *Paralyzed Veterans of America et al.* v. *William French Smith et al.* The court ordered that GSA issue a final § 504 (Rehabilitation Act of 1973) regulation on an "expedited basis." Therefore, GSA will issue a final § 504 regulation and will incorporate it into the umbrella regulation when the umbrella regulation is published.

Congress enacted the nondiscriminatory provisions found in Federal statutes after thorough analysis and debate about federally assisted programs. The following excerpt from the legislative history of Title VI of the Civil Rights Act of 1964 clearly illustrates Congress' intent: "Title VI is necessary . . . because the Federal Government simply cannot be expected to continue to pay out tax dollars contributed by all the people to just some of them and to exclude others because of the color of their skin." (110 Cong. Rec., p. 6842, April 7, 1964.) The Congress gradually saw fit to include additional distinctions of nondiscriminatory protections for other classes of individuals (i.e., based on handicap, age, and sex) since they too were being denied benefits from federally assisted programs and activities.

GSA-assisted programs and activities, for the most part, permit the taxpayer to obtain the maximum use of real and personal property acquired by the Federal Government. This is achieved by redistributing back to eligible individuals, groups, and State and local governments the property that the Federal Government no longer needs.

The approach we propose in this rule will provide the most flexibility in the adminstration of GSA's nondiscrimination in federally assisted programs efforts and will alleviate for more than 62,000 recipients and subrecipients (donees) unnecessary burdens and cost. The recipients of GSA aid are listed in the table below (these data are based on fiscal year 1980):

RECIPIENTS—GSA-SPONSORED PROGRAMS AND ACTIVITIES

Number of Disposals of Federal Surplus Real Property	420
Number of Recipients of Federal Surplus Personal Property:	
Primary Recipients	(1)
Subrecipients (Donees)	61,792
Number of Recipients of National Historical Publications and Records Grants	180
Number of Recipients of Facilities and Services (Vendors and Concessionaires):	
Health Units	227
8(a) Facilities	45
Recreation and Services Facilities	527
Cafeterias	134
Credit Unions	(2)
Employee Associations	(2)
Unions	(2)
Day Care	(2)
Other	(2)

[1] 54 States and territorial possessions.
[2] Data unavailable.

Federally assisted programs sponsored or supported by GSA are categorized as follows: (A) Project Grants; (B) Sale, Exchange, or Donation of Real and Personal Property and Goods; and (C) Use of Property, Facilities, and Equipment.

GSA activities to ensure compliance with this proposed rule are projected to occur in categories (B) and (C). In fiscal year 1982 GSA will target two specific States, cities, and other local recipients of Federal assistance to focus its compliance resources based on some of the following criteria: size of recipient's program (dollar value), reviews scheduled by other GSA components, Inspector General's audit reports, review of complaint files, recipient's failure to comply with regulatory provisions, and requests from other Federal agencies (or from recipients, subrecipients (donees), or eligible beneficiaries).

GSA's compliance activities in fiscal year 1983 will depend on what resources are available. However, we anticipate that, as familiarization with the program increases, compliance efforts will increase.

The compliance efforts will also include monitoring the civil rights compliance activities of other Federal agencies with whom we have delegated agreements or to whom we have delegated authority, as we are still required by DOJ regulations to monitor these nondiscrimination compliance activities as they pertain to categories (B) and (C) above. The nature of some assisted programs does not lend itself to compliance monitoring, i.e., compliance monitoring is not appropriate for State participation in Federal Telpaks, one program under the category "Use of Property, Facilities, and Equipment." ("Federal Telpaks" refers to interstate telecommunications circuits consisting of twelve or more voice circuits comprising a single channel. The Federal Government leases Telpaks from a common carrier. To make use of any spare capacity that exists, the excess capacity is offered to State governments at a specific rate.)

There are two programs in which the greatest GSA compliance activity will occur. The first, the "Federal Surplus Personal Property Donation Program," by which GSA's Federal Property Resources Service (FPRS), through State agencies, may transfer surplus personal property for donation to public agencies for public purposes and to eligible nonprofit, tax-exempt activities, falls under category(B) above. Under this program, Federal surplus personal property, with an organized government acquisition cost of approximately $340 million, was distributed through 54 States and Territorial Possession Agencies for Surplus Property to 61,792 recipients or subrecipients (donees) during fiscal year 1980.

Another program in the "Sale, Exchange, or Donation of Property and Goods" category is the program for real property donation or transfers for education or public health purposes, for use as public airports, and for park, recreation, or historic monument purposes. In fiscal year 1980, 420 conveyances of real property were completed by the GSA Office of Real Property.

The second area of high compliance activity is the assistance program that deals with facilities (space) and services (utilities) offered to vendors and concessionaires through negotiated contracts. This program falls under the category "Use of Property, Facilities, and Equipment." GSA's Public Buildings Service (PBS) permits and encourages the location of commercial, cultural, educational, and recreational facilities and activities in public buildings.

Below are the requirements that we set forth in our Calendar entry of June 30, 1981 (46 FR 34153):

Requirements for Compliance with Nondiscrimination Provisions in Federal Statutes

General.

As a requirement for compliance with

nondiscrimination provisions in Federal statutes, a recipient of Federal assistance must take action in the areas listed below.

Certificate of Assurance.

In order to qualify for Federal assistance, an application must be accompanied by a written assurance that the program or facility to be benefited will be operated in compliance with Federal nondiscrimination laws and GSA regulations. An applicant must provide methods of administration for the program designed to ensure that the primary recipient and subrecipient (donee) under the program will comply with all applicable regulations and correct any existing or developing instances of noncompliance. The assisted program or activity must be offered on a nondiscriminatory basis, and it must be accessible and usable by the handicapped. A recipient might comply with this latter requirement through such means as redesign of equipment or structural changes in existing buildings. We will use "GSA Accessibility Standards" (PBS (PCD): DG6, October 14,1980) as our standard. Where the assistance is in the form of real property, the proposed regulation will stipulate that GSA may reclaim the property if the recipient's use is contrary to the nondiscrimination provisions.

Publication Notification Procedures.

Each recipient will be responsible for ensuring that all eligible persons, particularly minorities, women, and handicapped individuals, who may have been previously or traditionally deprived of equal opportunity, are adequately encouraged to participate fully in GSA programs and informed of GSA policy of nondiscrimination and the procedures for filing a complaint. The recipient will be required to prominently display the nondiscrimination poster, "We Won't Cut You Out Because Of," developed by GSA or a similar poster developed by the recipient.

Program Participation Data.

A recipient must maintain a system for collecting and reporting data on the name, address, and dollar value of assistance received by subrecipients (donees) participating in its program. This system will allow GSA to identify the eligible populations and measure delivery of program benefits in order that the quantity and quality of benefits and services delivered to minorities, women, and handicapped individuals can be documented and compared to benefits delivered to non-minority individuals and to allow GSA or primary recipients to evaluate the effectiveness of their nondiscrimination efforts. Further, recipients must set up a complaints procedure. In programs where discrimination is found to occur, the regulation will require GSA to encourage remedial action on a voluntary basis before commencing with the provisions to terminate aid.

The subpart on nondiscrimination on the basis of race, color, and national origin prohibits discrimination in employment if the purpose of the Federal assistance is to increase employment or where service to beneficiaries or potential beneficiaries is affected by employment practices. The subparts on nondiscrimination on the bases of sex and handicap prohibit discrimination in employment in any federally assisted program or activity. This means, for example, that a hospital built on GSA-donated land would have to abide by Federal nondiscrimination regulations in hiring a handicapped individual. The subpart on nondiscrimination on the basis of age excludes most employment practices except for programs funded under the public service titles of the Comprehensive Employment and Training Act (CETA) (P.L. 93–203, December 28, 1973). The principal tool for combatting age discrimination in employment continues to be the Age Discrimination in Employment Act (ADEA) (P.L. 90–202, December 5, 1967), which is administered by the Equal Employment Opportunity Commission. The ADEA protects persons between the ages of 40 and 70 in non-Federal employment from discrimination in employment on the basis of age.

Access to Sources of Information.

The regulation will require recipients to keep records and to submit timely, complete, and accurate compliance reports upon request. In addition, it will require recipients to permit access by GSA to such books, records, accounts, and other sources of information as may be pertinent to determining compliance.

Failure To Take Action.

Failure on the part of a recipient of Federal assistance to take action in any of the aforementioned areas may constitute a case of noncompliance. Instances of noncompliance will require GSA to take immediate corrective action to remedy the situation. If a recipient fails to cooperate or take voluntary corrective actions, GSA may wish to take formal enforcement action. This, in turn, could result in termination of assistance or other legal means to achieve compliance.

Alternatives Under Consideration

In an effort to reduce the burdens of paperwork and costs in complying with the regulation by recipients and subrecipients (donees), under the subpart dealing with compliance reports, we are considering the following alternatives:

(A) Each recipient must submit a compliance report to GSA's Director of Civil Rights within 90 days of the effective date of the regulation; new applicants for GSA assistance must submit a report with their application; and subsequent annual reports must be submitted by August 25, covering the preceding fiscal year.

(B) Each recipient must submit a compliance report to GSA's Director of Civil Rights within 180 days of the effective date of the regulation; new applicants for GSA assistance must submit a report with their application; and subsequent reports must be submitted every 3 years on the 25th of August to update their last report.

GSA prefers Alternative (B) because it gives recipients twice the time to respond to the regulation and to collect the required data. The 3-year reporting cycle will reduce paperwork and cost burdens and will provide an additional incentive to recipients to comply voluntarily with the regulation.

Summary of Benefits

Sectors Affected: The general population; special populations (Blacks, Hispanics, Asian Americans and Pacific Islanders, American Indians, Alaskan Natives, women, and handicapped individuals); Federal, State and local governments; other public bodies; charitable (tax-exempt) organizations; and GSA.

The direct benefits will accrue primarily to the special nationwide populations as recipients, subrecipients (donees), and beneficiaries, who will be assured of equal participation in programs, and, in the case of handicapped individuals, access to facilities that receive Federal assistance through GSA. Because nondiscrimination provisions cover employment, some handicapped workers may achieve self-sufficiency or higher standards of living because of increased employment opportunities.

Indirect benefits are realized in terms of GSA fulfilling its obligations under the law. Other beneficiaries will benefit from the enrichment of the program by the increased presence of the special population, particularly its participation in GSA's National Archives and Records Service (NARS) historical records grants. Recipients, including government and other public bodies and charitable organizations, will be in a better position to administer their assisted

programs on an equitable basis because of definitive guidance and clearer understanding of how to comply with all Agency requirements, as provided in the regulation.

Summary of Costs

Sectors Affected: State and local governments and other public and charitable bodies receiving Federal assistance through GSA; programs and activities that benefit from this assistance; and GSA.

Because the projected effect on the economy is less than $100 million, we will not prepare a Regulatory Impact Analysis. We have not estimated cost figures for the recipient, but we have provided a list of the requirements for each recipient (see the discussion labeled Requirements for Compliance with Nondiscrimination Provisions in Federal Statutes, which is in the "Statement of Problem" section above) and the number of recipients (see the table of Recipients of GSA-Sponsored Programs and Activities in the "Statement of Problem" section) to allow the reader to analyze the scope of the direct costs. Because a large proportion of GSA recipients and subrecipients (donees) in these programs also receive assistance from other Federal agencies, the GSA regulation will not generate significant additional costs for recipients. There will be some additional costs and paperwork generated by the required compliance report that must be borne by recipients and subrecipients (donees). For example, in the largest GSA assistance program, Donation of Personal Property, each property transfer transaction from a recipient to a subrecipient (donee) is recorded on a Standard Form 123. There are 300,000 transactions made by more than 60,000 subrecipients (donees) in any given fiscal year. Therefore, dividing 300,000 (transactions) by 60,000 (subrecipients or donees) equals 5, which represents the average number of times per fiscal year that a subrecipient (donee) would have to log the value of assistance received from a State recipient. The total, along with the name and address, would be reported to the State recipient every 3 years. The State recipient would then submit this information to GSA's Director of Civil Rights on the 25th of August every third fiscal year, except for the first report. The first report would be due within 180 days of the effective date of the regulation or, in the case of a new applicant for assistance, with the application. (See Alternative (B) under the discussion labeled "Alternatives Under Consideration.") Any cost incurred by recipients to meet, for example, accessibility requirements of § 504 of the Rehabilitation Act of 1973 would be to comply with the lead agency (DOJ) regulations. The recipients, therefore, should have no significant pass-through costs to the general public as a result of the GSA nondiscrimination regulation.

We cannot provide estimates of compliance costs; however, they appear minimal. The primary costs to the recipients associated with Federal implementation of the regulation are those traditionally associated with civil rights compliance activities; for example, responding to complaint investigations and compliance reviews, collecting and reporting equal opportunity data, and instituting public notification programs.

Summary of Net Benefits

Because we do not have concrete cost estimates but perceive the costs to be minimal, we consider that the benefits of equal praticipation and equal access outweigh the costs of the regulation.

Related Regulations and Actions

Internal: The Federal Property Resources Service (FPRS), in conducting GSA's "Federal Surplus Personal Property Donation Program" in accordance with 41 CFR 101–44.207(f), requires all applicants for program participation to provide necessary assurances of nondiscrimination. FPRS also requires nondiscrimination clauses in any disposal of real property to public bodies by negotiations in accordance with 41 CFR 101–47.307–2. In contracts entered into for facilities and services offered to vendors and concessionaires, GSA's Public Buildings Service (PBS) requires contractors to adhere to equal employment provisions of Title VII of the Civil Rights Act of 1964. PBS monitors these provisions in accordance with Executive Order 11246. In addition, the above contracts require the contractor to render nondiscriminatory services to the general public (Title VI).

External: The Department of Health and Human Services (HHS) has issued guidelines for nondiscrimination in federally assisted programs on the basis of (1) Sex, 45 CFR Part 86; (2) Handicapping condition, 45 CFR Part 84; and (3) Age, 44 CFR Part 90. The Department of Justice issued guidelines on the basis of race, color, and national origin, 28 CFR Part 42. Executive Order 12250 (45 FR 72995, November 4, 1980) redesignated to the Attorney General additional responsibilities to coordinate the implementation and enforcement by executive agencies of items (1) and (2) above, but keep in effect HHS regulations implementing (1) and (2) until they are revoked or modified.

Government Collaboration

GSA has worked with the Department of Justice, the lead agency for nondiscrimination in federally assisted programs under Title VI of the Civil Rights laws of 1964, Title IX of the Educational Amendments Act of 1972, and § 504 of the Rehabilitation Act of 1973, as amended, and with the Department of Health and Human Services, the lead agency for nondiscrimination in federally assisted programs under the Age Discrimination Act of 1975.

Timetable

On July 8, 1981, in response to a court order, GSA published a notice (46 FR 35356) to notify all recipients of GSA's Federal financial assistance that they are required to comply with § 504 of the Rehabilitation Act of 1973, even though GSA has not yet issued final implementing regulations. The notice indicated that recipients may look to regulations issued by the Department of Health and Human Services (45 CFR Part 84) for guidance concerning their obligations under § 504. To finalize this rulemaking, our projected schedule is as follows:

NPRM—January 1982.
Public Hearing—None.
Public Comment Period—60 days following NPRM.
Final Rule (Discrimination Prohibited on the Basis of Handicap; § 504 of the Rehabilitation Act of 1973, as amended)—December 1981.
Final Rule Effective—July 8, 1981.
Final Rule (Umbrella)—April 1982.
Final Rule Effective—April 1982.
Regulatory Impact Analysis—Not required.
Regulatory Flexibility Analysis—Not required.

Available Documents

28 CFR Part 42, Nondiscrimination; Equal Employment Opportunity; Policies and Procedures.

41 CFR Chapter 101, Federal Property Management Regulations.

45 CFR Part 84, Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance .

45 CFR Part 86, Nondiscrimination on the Basis of Sex in Education Programs and Activities Receiving or Benefiting from Federal Financial Assistance.

45 CFR Part 90, Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance.

E.O. 11246, 3 CFR, 1964–65 Comp., p. 339, Equal Employment Opportunity.

E.O. 12250 (45 FR 72995, November 4, 1980), Leadership and Coordination of Nondiscrimination Laws.

PBS (DG 6), October 14, 1980, GSA Accessibility Standards.

GSA Order PRM P 4025.1, Chapter 2, Donation of Surplus Personal Property.

The CFR and FR are available at many public libraries. Write to the Office of the Federal Register to obtain a list of libraries that receive these documents: Director of the Federal Register, National Archives and Records Service, General Services Administration, Washington, DC 20408, or call (202) 523–5240. PBS (DG 6) and GSA Order PRM P 4025.1, Chapter 2, can be obtained through Business Service Centers, General Services Administration, National Capital Region, Seventh and D Streets, S.W., Washington, DC 20407, or Regional Business Service Centers in Boston, MA; New York, NY; Philadelphia, PA; Atlanta, GA; Chicago, IL; Kansas City, MO; Fort Worth, TX; Denver, CO; San Francisco, CA; and Seattle, WA.

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GSA—Public Buildings Service

Federal Space Management

Legal Authority

40 U.S.C. 486(a); E.O. 12072, 3 CFR, 1978 Comp., p. 213.

Reason for Including This Entry

The General Services Administration (GSA) includes this entry because of increased concern over the cost to the Federal Government of giving priority consideration to locating Federal agencies in central business areas (CBAs) and because the relative inflexibility of the existing regulations has sometimes resulted in interference with agency mission accomplishment. It should be noted that Executive Order 12072 is now under review by the Presidential Task Force on Regulatory Relief and by the Office of Management and Budget (OMB).

Statement of Problem

GSA is required by Executive Order 12072 (Federal Space Management) to develop programs to implement the policies of this Order through the efficient acquisition and utilization of federally owned and leased space. On May 27, 1980, GSA issued Amendment D–76 to the Federal Property Management Regulations (FPMR) (45 FR 37199, June 2, 1980), which provides in 41 CFR 101–17.001 *et seq.* the implementing instructions for carrying out the provisions of Executive Order 12072. These regulations require that, in meeting space needs in urban areas, first consideration be given to the CBA. The CBA is defined as that area within a central city in a Standard Metropolitan Statistical Area (SMSA) or any non-SMSA that encompasses the community's principal business and commercial activities and the immediate fringes thereof, as geographically defined in consultation with local elected officials. GSA's implementing instructions for the siting of Federal facilities in the CBA includes a provision that would allow the Federal Government to pay a 15-percent rental premium to owners of buildings in the CBA offering acceptable space to the Government.

GSA is basically an urban-oriented Agency, and even before Executive Order 12072, most of its client agencies were located in downtown areas of the urban centers. Because of this fact, the relocations required by the Order could not produce the massive influx of Federal activities into the CBAs that was apparently envisioned at the time the Order was issued. However, the relocations that did take place under the Order often involved long delays before the agencies' space needs were satisfied. For the most part, these delays were caused by extended disputes over the presumed benefits of relocations to the CBA. Adjoining communities and governmental entities have sometimes been pitted against one another over which location was entitled to the Federal activity, while the primary aim of satisfactorily housing the agency was overlooked.

Despite the opposition of agencies to the policy, and the often protracted space delivery timeframes that this opposition produced, GSA did make a substantial effort to comply with the Order. From October 1978 to February 1981 almost 7,600 Federal employees in approximately 2 million square feet of space in 282 separate space actions were relocated.

Due to questions about the cost to the Federal Government of this regulation, on May 11, 1981, the Director of the Office of Management and Budget (OMB) requested GSA to delay all moves being made solely in compliance with the Executive Order and to reassess the Order's economic and operational impact. As a result, on June 11 the Administrator of General Services notified OMB of GSA's plan to suspend the present FPMR requirements relating to CBA locations and submitted a revised Executive Order for consideration.

Alternatives Under Consideration

Aside from a "no action" alternative, which would continue the problems cited above, the only alternative considered was suspension of the present FPMR requirements until completion of the review of Executive Order 12072. Consequently, a proposed FPMR amendment suspending the CBA requirement until September 1, 1982 has been prepared and is presently being circulated within GSA for concurrences prior to publication in the Federal Register.

Summary of Benefits

Sectors Affected: Federal agencies subject to the locational requirements of the FPMR, including GSA.

GSA will have more flexibility with which to carry out its space management responsibilities. Federal agencies will benefit through elimination of a policy that did not focus sufficient attention on mission accomplishment, and one that was opposed by their clients, who objected to relocation from relatively accessible suburban areas to congested downtown locations.

The direct benefits will accrue primarily to Federal agencies requesting space through GSA. They will no longer be required to accept space in the CBA that could be inconvenient for their clientele or that, to some extent, adversely impacted their mission. Further, less expensive space would result in lower Standard Level User Charges (i.e., the standard rate that Federal agencies pay for office space they use) for the agencies. Direct benefits will also accrue to GSA (and the taxpayers) by elimination of the 15-percent rental premium allowable for a CBA location versus a non-CBA site.

Indirect benefits are realized in terms of GSA fulfilling its mission of satisfactorily housing Federal agencies in a timely manner without the time-consuming CBA requirement as part of its space acquisition process.

Summary of Costs

Sectors Affected: Central business areas of cities where there would be a potential for relocation under the CBA policy.

The above-listed sector will be affected to the extent that CBAs no longer receive the same priority consideration as under existing regulations.

Although no records were kept of the total costs of implementing the CBA policy during the period October 1978 through February 1981, direct costs for moving furniture and changing telephones approximate $2 per square foot. Consequently, these one-time costs were about $4 million. Further, assuming 50 percent of these relocations involved a rental payment premium of $1.50 per square foot, the increased lease costs to the Government would approximate $1.5 million per year. Indirect costs incurred by the agencies in "down time" during the move, new stationery, etc., are difficult to estimate but are significant.

As stated in the "Statement of Problem" section, the relocations envisioned when the Order was published did not produce the anticipated large-scale influx of Federal activities into the CBAs of urban centers. Consequently, the suspension of the CBA policy will have little or no effect on the economy of the downtown areas.

Summary of Net Benefits

While it is difficult to summarize net benefits and weigh them against costs without more complete cost data, it is apparent that the CBA policy has produced little positive benefit to the Federal Government, while the benefits accruing to the downtown areas of urban centers are minimal or non-existent.

Related Regulations and Actions

None.

Government Collaboration

None.

Timetable

NPRM—None.
Public Hearing—None.
Public Comment Period—None.
Final Rule—September 1, 1982.
Regulatory Impact Analysis—Not required.
Regulatory Flexibility Analysis—Not required.

Available Documents

41 CFR Part 101–17, Assignment and Utilization of Space.

FPMR Amendment D–76, Federal Space Management (45 FR 37199, June 2, 1980).

Executive Order 12072, Federal Space Management.

The CFR is available at many public libraries. Write to the Office of the Federal Register to obtain a list of libraries that receive this document: Director of the Federal Register, National Archives and Records Service, General Services Administration, Washington, DC 20408. Copies of the FPMR and Executive Order can be obtained through the Business Service Center, General Services Administration, National Capital Region, Seventh and D Streets, S.W., Washington, DC 20407, or Regional Business Service Centers in Boston, MA; New York, NY; Philadelphia, PA; Atlanta, GA; Chicago, IL; Kansas City, MO; Fort Worth, TX; Denver, CO; San Francisco, CA; and Seattle, WA.

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OFFICE OF PERSONNEL MANAGEMENT

Office of Planning and Education

Standards for a Merit System of Personnel Administration (5 CFR Part 900 Subpart F; Revision)

Legal Authority

42 U.S.C. 4728; 42 U.S.C. 4763; E.O. 11589; 3 CFR Part 557, 1971–75 Comp.

Reason for Including This Entry

The Presidential Task Force on Regulatory Relief has designated this regulation for review, as part of the Administration's deregulation effort. The regulation is being revised to provide regulatory relief to State and local governments as far as possible consistent with statutes.

Statement of Problem

Nineteen Federal grants programs require, as a condition of eligibility for grants-in-aid, that State and local governments maintain merit personnel systems for State and local personnel engaged in administration of the programs involved.

A merit personnel system, as defined by statute, is a personnel system that operates in a manner consistent with the following principles:

(1) recruiting, selecting, and advancing employees on the basis of their relative ability, knowledge, and skills, including open consideration of qualified applicants for initial appointment;

(2) providing equitable and adequate compensation;

(3) training employees, as needed, to assure high-quality performance;

(4) retaining employees on the basis of the adequacy of their performance, correcting inadequate performance, and separating employees whose inadequate performance cannot be corrected;

(5) assuring fair treatment of applicants and employees in all aspects of personnel administration without regard to political affiliation, race, color, national origin, sex, or religious creed and with proper regard for their privacy and constitutional rights as citizens; and

(6) assuring that employees are protected against coercion for partisan political purposes and are prohibited from using their official authority for the purpose of interfering with or affecting the result of an election or a nomination for office.

The U.S. Office of Personnel Management (OPM) is required by the Intergovernmental Personnel Act (IPA) to prescribe standards for these systems.

The IPA gives OPM considerable discretion in developing standards for these systems. It requires only that the standards (1) contain the six principles listed above, and (2) be prescribed in a manner that will minimize Federal intervention in State and local personnel administration.

The existing standards are very detailed and go beyond the six broad merit principles stated above in prescribing how State and local governments shall operate their merit systems. In addition, they impose a number of recordkeeping and reporting requirements on State and local governments. Under these detailed standards, OPM formerly was heavily involved in the details of State and local personnel administration. OPM provided technical assistance to State and local governments; reviewed laws, rules, regulations, and policy statements, and negotiated agreements of State and local governments; conducted on-site audits; and obtained information regarding State and local government activity through surveys.

The existing regulations are not consistent with the IPA requirement that they be prescribed in a manner that will minimize Federal intervention in State and local personnel administration.

Alternatives under Consideration

OPM is reviewing these regulations to eliminate provisions that are unnecessary and to revise provisions that are unduly burdensome.

OPM is paying particular attention to issues such as the following:

(A) Is any guidance beyond the six merit principles set forth above required to inform State and local governments of their responsibilities with regard to merit personnel administration with respect to agencies that receive grants under the Federal programs?

(B) Are any recordkeeping and reporting requirements necessary to ensure compliance with the merit principles?

(C) What role should OPM carry out in ensuring compliance with merit principles? Are there State and local activities that must be closely supervised, or can OPM manage the program by exception?

The Administration has submitted for the consideration of the Congress legislation that would eliminate all statutory merit personnel requirements established as a condition for the receipt of Federal grants-in-aid by State and local governments. This legislative proposal has been introduced in the Senate as S 1042. Should S 1042 be enacted into law, these regulations would become obsolete and revision would be unnecessary.

Summary of Benefits

Sectors Affected: State and local governments that are required to operate merit personnel systems as a condition of Federal grants-in-aid; OPM; Federal departments and agencies that make grants to State and local governments.

The detailed standards will be replaced with broad guidelines, which will increase State and local government flexibility to tailor merit personnel systems to suit their particular needs and to pursue administrative innovations and will allow them to reduce their administrative costs. Reporting requirements will be kept to a minimum, thus decreasing recordkeeping and reporting costs.

OPM will continue to advise Federal agencies that make grants covered by the standards and to coordinate their actions to carry out the purposes of the Act but will decrease costs involved in administration of the standards as much as possible.

Summary of Costs

Sectors Affected: None.

The revision will entail no additional costs. It will decrease costs to State and local governments and to OPM.

Summary of Net Benefits

The proposed revision will increase State and local government flexibility in administering merit systems, allow administrative innovations, reduce compliance recordkeeping and reporting requirements, and reduce costs. It will allow OPM to administer the program at a reduced cost.

Related Regulations and Actions

Internal: None.

External: S 1042, pending in the Senate, would eliminate all statutory merit personnel requirements established as a condition of the receipt of Federal grants-in-aid by State and local governments.

Government Collaboration

The results of OPM's review of these regulations will be furnished to Federal agencies that administer grants programs requiring merit systems and to interested State and local government organizations for comment.

Timetable

ANPRM—None.
NPRM—December 1981.
Final Rule—March 1982.
Final Rule Effective—April 1982.
Statutory or Legal Deadline—None.
Public Hearing—None.
Public Comment Period—December 1981 to January 1982. Details in NPRM to be published in December.
Regulatory Impact Analysis—Not required.
Regulatory Flexibility Analysis—Not required.

Available Documents

Intergovernmental Personnel Act of 1970, as amended, P.L. 91-648; "Standards for a Merit System of Personnel Administration," 5 CFR Part 900, Subpart F.

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CHAPTER 6—TRADE PRACTICES

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

Standards and Labeling Requirements for Mechanically Processed (Species) Product (MP(S)P) and Products in Which It Is Used (9 CFR Parts 317, 318, and 319; Revision)

Legal Authority

Federal Meat Inspection Act, 21 U.S.C. 601 (m) and (n) and 607.

Reason for Including This Entry

The proposed action has been reviewed under U.S. Department of Agriculture (USDA) procedures established to implement Executive Order 12291 and has been classified as a major rule pursuant to section (b) of that order; it is likely to result in an annual effect on the economy of $100 million or more. The Presidential Task Force on Regulatory Relief has designated this rule for review.

Statement of Problem

Mechanically Processed (Species) Product (MP(S)P) is a product that is made from the mechanical separation and removal of most of the bone from attached skeletal muscle of livestock carcasses and parts of carcasses. It can be used as a low-cost protein ingredient in processed meat formulations. MP(S)P has been permitted as an ingredient in certain processed red meat products since June 1978. At that time, regulatory requirements were promulgated by the Department in accordance with its statutory responsibility to prevent the preparation and distribution in commerce of meat and meat food products that are adulterated, misbranded, or not properly labeled.

In general, the existing regulations on MP(S)P state that it may be used in sausage, frankfurters, and similar products as long as it makes up no more than 20 percent of the meat portion. Fat and protein content are restricted to a maximum of 30 percent for fat and a minimum of 14 percent for protein. Bone particle size is limited, and an upper limit is set on the amount of calcium allowable. Labels of products in which MP(S)P is used must carry the phrase "With Mechanically Processed (Species) Product." Moreover, to give notice to consumers who must restrict their intake of calcium, the presence of powdered bone must also be noted on the front label with the statement, "Contains Up To —% Powdered Bone."

The amount of MP(S)P produced since the promulgation of the current regulations has been quite small. It appears that MP(S)P is not being produced at all for use as an ingredient in meat food products sold at retail, despite the availability of the technology and raw materials. As a result, a potential food source is not being made available to the general public. Moreover, utilization of this low-cost protein as an ingredient in meat food products would result in consumer savings by lowering the cost of the meat food products in which it is used.

The red meat industry has contended that its failure to market products containing MP(S)P is due to regulatory requirements that go beyond what is necessary to protect the public from meat food products that are adulterated, misbranded, or not properly labeled. The industry has asked the Department to reconsider these requirements in light of additional information it has compiled since the completion of the MP(S)P rulemaking in 1978. This position was advanced most recently in a February 1981 petition by the Pacific Coast Meat Association (PCMA), a regional trade association of meat packing and processing companies, and the American Meat Institute (AMI), a national trade association of meat packing and processing companies, on behalf of their members.

Based on the information contained in the PCMA–AMI petition, and review and reevaluation of the MP(S)P regulations in accordance with Executive Order 12291, the Department has issued a proposal (46 FR 39274, July 31, 1981) to amend the Federal meat inspection regulations that would (1) change the name of the product to one that would be less burdensome and more descriptive of its characteristics; (2) establish two categories of product:

one that would meet the current fat and protein content requirements and a second for which there would be no fat or protein content requirements; (3) permit use of the second category of product only in meat food products subject to regulatory definition and standards that limit fat content; (4) replace the limit on the amount of product meeting fat and protein content requirements that could be used in a meat food product with limits on the amount of calcium such product could contain (as a measure of its bone content) when used at various levels; (5) delete the requirement that the names of all meat food products containing the product must be qualified by a phrase indicating its presence, but consider retaining this requirement in particular situations on the basis of information submitted in this rulemaking; (6) replace the requirement that the names of meat food products containing the product must be further qualified to indicate the amount of powdered bone they contain with a requirement that their labels declare calcium content as part of a nutrition label—or, if a meat food product does not bear nutrition labeling, in a statement in conjunction with the ingredients list—whenever the amount so declared would differ from the amount that would be declared if such meat food product contained only hand-deboned ingredients; and (7) add labeling requirements for the product itself where this would be necessary to assure compliance with the regulations.

According to an AMI-funded study, "Economic Impacts of Regulations on Mechanically Deboned Red Meats," by J. Bruce Bullock and Clement C. Ward, which was submitted with the PCMA–AMI Petition, 350 million pounds of beef and pork MP(S)P were not produced in 1979 due to the labeling and fat and protein content restrictions imposed by the current regulations. According to the study, this represents a net economic loss of $450 million.

Alternatives Under Consideration

(A) "No regulation," i.e., not imposing any labeling or compositional requirements or use limits. Under such an approach, the product would be delcared by its species designation, could contain any amount of bone and bone particles of any size, and could be used at any level in any meat food product regardless of its composition.

(B) Amend only the Labeling Requirements. The name of the product would be changed to one that provides a more meaningful description of its characteristics. The options under consideration include "Mechanically Separated (Species)," "Mechanically Deboned (Species)," "Mechanically Recovered (Species)," and "Mechanically Processed (Species)." The requirement that the names of all meat food products must be qualified to indicate the presence of MP(S)P would be deleted, with possible exceptions. The argument here is that the qualifier places undue emphasis on a single ingredient and that listing the product in the ingredients statement would generally provide sufficient notice that it is present. The requirement that the names of meat food products containing MP(S)P must be further qualified by the phrase "Contains Up To —% Powdered Bone" would be deleted. Instead, producers of final meat food products containing MP(S)P would declare calcium content as follows: (1) as part of the nutrition labeling information, or (2) if the meat food product does not bear nutrition labeling, in a prominent statement in immediate conjunction with the ingredients list. Removing the undue emphasis on MP(S)P by removing both the product qualifier and the powdered bone qualifier would have the effect of removing possible derogatory implications about the product. Thus, products in which MP(S)P is used would be more acceptable and more marketable to consumers.

(C) Amend the Labeling, Product Standard, and Use Limits as set forth in the proposed rule. The Labeling requirements would be amended as set forth in Alternative (B) above. The Product Standard for MP(S)P would be amended to include two categories of product: (1) product that meets the current fat (maximum 30 percent) and protein (minimum 14 percent) content requirements (which could be used in any meat food product in which use of MP(S)P is currently permitted), and (2) product that does not meet the current fat and protein content requirements (i.e., product "for processing," which could be used only in meat food products that are subject to a regulatory definition and standard that limits fat content). These categories would be reflected on the label of the product.

The proposal would revise the limits on the amount of mechanically processed product that may be used as an ingredient as follows: (1) The maximum usage level of product that contains at least 14 percent protein and not more than 30 percent fat would depend on its calcium content as a measure of its bone content. Where product contains the maximum calcium level permitted—0.75 percent—the current 20-percent use limit would continue to apply; but where calcium content is reduced, greater amounts could be used (i.e., product that has a calcium content of no more than 0.15 percent could constitute up to 100 percent of the livestock and poultry product portion; product that has a calcium content of no more than 0.30 percent could constitute up to 50 percent of such portion; product that has a calcium content of no more than 0.60 percent could constitute up to 25 percent of such portion). This would provide an incentive for the development of machinery capable of producing product with a lower bone content. (2) Product for processing (i.e., product that contains less than 14 percent protein and/or more than 30 percent fat) would be subject to the current 20 percent limitation. (Where product for processing is used as an ingredient, its calcium content would be taken into account.) In addition, product for processing could only be used in meat food products that are subject to a definition and standard of identity or composition that establishes a maximum limit on the fat content of the finished product. The purpose here is to maintain the reliablity of meat food products as good sources of high quality protein while preventing increases in the fat content of these products. (3) The Department would continue to prohibit use of MP(S)P in certain meat food products in which its use would destroy the food's accepted identity, e.g., hamburger, fabricated steaks, and similar products.

In general, the above limitations will benefit consumers by protecting the quality and integrity of meat food products.

Alternative (B) was not selected as it would not allow industry or consumers to receive the full benefit of increased MP(S)P production. Alternative (A) was not selected because of legal constraints and the fact that it would not result in significant net economic benefits beyond those brought about by the proposed changes.

The Department is proposing to amend the MP(S)P regulations as set forth in Alternative (C). There are ample outlets for potential supplies of MP(S)P, and the proposed revisions as set forth in Alternative (C) will not constrain the production or marketing of MP(S)P. That is, the Department's proposal as set forth in Alternative (C) contains labeling requirements that are not expected to cause consumers to react negatively to an MP(S)P-containing product; it sets forth fat and protein restrictions that will not constrain the potential supply of MP(S)P; and it establishes a use limitation that is also not expected to constrain the supply of MP(S)P. Hence, it is reasoned that the proposed revisions as set forth in Alternative (C) will allow the production of MP(S)P to reach the same level as without

regulation and that these revisions will not affect the ability of users to market the products using MP(S)P.

Summary of Benefits

Sectors Affected: Producers of meat products (SIC Group 201) and consumers of meat products.

Alternative (C) is the alternative that has been proposed by the Department. (All estimates are based on 1979 figures.) Adoption of both the fat and protein requirement changes as well as the proposed labeling changes, as set forth in Alternative (C), would have resulted in increased production of MP(S)P (beef and pork) in 1979 of 351.7 million pounds, an increase of 350.4 million pounds over actual 1979 production. This increased production would have resulted in a net economic gain in 1979 of $495 million. The proposed change in the fat and protein requirements would not bring about this economic gain if the proposed labeling changes were not also made.

The increase in production would also have an impact on income distribution, i.e., dollars would be transferred from producers to processors and consumers. Based on the estimate of 1979 potential production, the amount of this transfer would have been $493 million, in 1979 dollars.

The revisions to the use limits would provide for the development of meat food products containing higher levels of mechanically processed product where limits on calcium, fat, and protein content can be relied upon to prevent potential health and safety problems and maintain the nutritional quality of finished products. Thus, processors would have greater flexibility to explore the possibilities for new products that might be acceptable to consumers. It is likely that the increased production resulting from the above changes would have resulted in an increase in employment in this case, an estimated 640 jobs. Alternative (B), which amends only the labeling requirements, would have resulted in potential MP(S)P (beef and pork) production of 87 million pounds in 1979, an increase of approximately 85 million pounds over actual 1979 production. This would have resulted in a net economic gain in 1979 of $110.7 million. The increased production would also have an impact on income distribution; i.e., dollars would be transferred from producers to processors and consumers. Based on the above estimate of 1979 potential production, the amount of the transfer would have been $106 million. It is also likely that employment would have risen by approximately 160 jobs from the increased production of MP(S)P in response to these labeling changes.

The economic benefits of the "no regulation" Alternative, (A), are the same as those for Alternative (C), the one proposed by the Department.

All three alternatives would benefit processors and consumers to the extent quantified above. In general, processors would benefit from being able to make and use a relatively less expensive raw material, and consumers would benefit from lower prices for meat products. The consumer is expected to receive most of the income transfer due to the competitive nature of the food processing industry. That is, the processors are expected to pass along their cost savings.

Summary of Costs

Sectors Affected: Producers of meat products (SIC Group 201); producers of livestock, except dairy, poultry, and animal specialties (SIC Group 021); and consumers of these products.

Processors of MP(S)P are responsible for costs of quality control in both Alternatives (B) and (C). Production of MP(S)P under an approved quality control system would be retained as a prerequisite for label approval. The system must include provisions to control handling and processing of raw materials and MP(S)P and for chemcial analyses to determine compliance of the MP(S)P with compositional requirments. The burden on plants for conducting these tests to comply with quality control regulations varies according to the variety of mechanically processed product produced by the plants as the analytical requirements apply to each type of product produced.

A minimum and a maximum annual quality control cost per product can be estimated as follows (a minimum and a maximum result due to frequency of testing required based on past compliance. These are current dollars.):

	Per year
Minimum: fat, protein, and calcium—once every 5 lots*; amino acids—once every 6 months	$2,550
Maximum: fat, protein, and calcium—once every lot; amino acids—once per month	14,900

*A lot is the MP(S)P designated by the operator of the establishment from the product produced from a single species of livestock in no more than one continuous shift of up to 12 hours.

Averaging these estimates of maximum and minimum quality control costs, and assuming adoption of the proposed labeling changes, Alternative (B), the total quality control costs for the potential 1979 production of 87 million pounds of MP(S)P would be $.3 million or .27 percent of $110.7 million, the 1979 value of the product at this level of production. Assuming adoption of the labeling and fat and protein content changes, Alternative (C), the total quality control costs for the potential 1979 production of 351.7 million pounds of MP(S)P would be $1.4 million or 0.28 percent of $495 million, the 1979 value of the product at this level of production.

In addition to the quality control costs associated with the production of MP(S)P, there are potential costs tied to the use of MP(S)P. The proposed changes require that the labels of meat food products containing MP(S)P declare calcium content if the percent of the U.S. Recommended Daily Allowance (RDA) of calcium to be declared differs from the percent of the U.S. RDA that would be declared if the product contained only hand-deboned ingredients. One way to determine calcium content is a laboratory test of the final product. The average cost of this calcium test is $20 to $25. It is difficult to estimate how often this test would be performed on the final product and, therefore, what the aggregate cost of this testing would be. One reason is that the final product maker may be able to control this calcium level by means of formulation. That is, the level may be determined by knowing the amounts and calcium content of ingredients used in the final product.

Although there are costs associated with production and use of MP(S)P that may exclude small entities (e.g., quality control and labeling costs), one of the purposes of the proposed changes is to allow the industry to incorporate efficiency-improving technology, which will have the primary long-term effect of reducing producer costs and expanding business opportunities. The costs that small entities will face to enter the MP(S)P market and to use MP(S)P as an ingredient are not, for the most part, costs resulting from the proposed regulatory changes but costs associated with entering any market.

The income transfer, as described earlier under Summary of Benefits, results in a cost or a loss of income to livestock producers (farmers). The Bullock and Ward analysis can be used to estimate that increased 1979 production under Alternative (B) would have resulted in price decreases of 12 cents per hundredweight for live cattle and 25 cents per hundredweight for live swine in 1979. Spread across 35,103 million pounds of live cattle and 25,425 million pounds of live swine, the decrease in total farm revenue would have been $106 million, $42 million for live cattle and $64 million for live swine. This is a .07 percent decrease in total

farm revenue, based on USDA's estimate of 1979 total farm revenue of $150 billion. Again using the Bullock and Ward analysis, increased production under Alternatives (A) or (C) would decrease live cattle and swine prices by a little less than 1 cent per pound, a decrease of 86 cents per hundredweight for live cattle and 75 cents per hundredweight for live swine. Spread across 35,103 million pounds of live cattle and 25,424 million pounds of live swine, this larger price decline would result in a decrease in total farm revenue of $493 million, $302 million for beef producers and $191 million for pork producers. This is a 0.3 percent reduction in total farm revenue, based on the USDA estimate of $150 billion for 1979 total farm revenue, and assuming all other market variables remained at the same level.

Summary of Net Benefits

The following chart summarizes benefits, costs, and net benefits of each alternative. These estimates are based on 1979 figures.

Alternative	Benefits	Costs (million dollars)	Net benefits
(A)	$495.0	0	$495.0
(B)	$110.7	$0.3	$110.4
(C)	$495.0	$1.4	$493.6

The benefits stated in the above chart represent net economic gain of increased production (using base year 1979) should the regulations be amended as set forth in the three alternatives. This increased production would cause a subsequent increase in the number of jobs: for Alternative (B), 160 jobs would be created; for Alternatives (A) and (C), 640 jobs would be created. The costs above are quality control costs that would result from increased production (using base year 1979) should the regulations be amended as set forth in each alternative.

It must be pointed out that the amount of MP(S)P produced since promulgation of the current regulations has been quite small. The purpose here is to amend the regulatory requirements to facilitate the production and use of MP(S)P while continuing to protect the public against adulterated and misbranded product. The overall benefit is to facilitate production of a potential food source and make it available to the general public.

Related Regulations and Actions

None.

Government Collaboration

None.

Timetable

NPRM—46 FR 39274, July 31, 1981.
Public Comment Period on NPRM—July 31 through October 29, 1981.
Final Rule—2nd Quarter 1982.
Preliminary Regulatory Impact Analysis (as appendix to NPRM)—46 FR 39274, July 31, 1981.
Initial Regulatory Flexibility Analysis (combined with Preliminary Regulatory Impact Analysis)—July 31, 1981.

Available Documents

PCMA–AMI Petition of February 1981 and supporting documents, e.g., "Consumer Focus Groups Concerning Mechanically Processed Meat Product," September 1980 Report by Market Research Services; "Economic Impacts of Regulations on Mechanically Deboned Red Meats," July 1980 Report by J. Bruce Bullock and Clement E. Ward (published in FR with NPRM—46 FR 39274, July 31, 1981).

"Health and Safety Aspects of the Use of Mechanically Deboned Meat, Volume I—Final Report and Recommendations, Select Panel" and "Health and Safety Aspects of the Use of Mechanically Deboned Meat, Volume II—Background Materials and Details of Data." (Docket No. 81–016P)

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DEPARTMENT OF TRANSPORTATION

Maritime Administration

Construction-Differential Subsidy Repayment; Total Repayment Policy (46 CFR Part 276; Revision)

Legal Authority

Merchant Marine Act, 1936, as amended, §§ 204(b), 207, 506, and 714, 46 U.S.C. 1114(b), 1117, 1156, and 1204.

Reason for Including This Entry

The Maritime Administration (MarAd) is including this entry because the regulation sets a major precedent for the administration of the maritime subsidy programs. The regulation would establish a policy for total repayment of construction-differential subsidy (CDS) in exchange for the removal of domestic trade restrictions prescribed in § 506 of the Merchant Marine Act, 1936, as amended (the Act). However, the annual impact of the regulation on the economy may not exceed $100 million, and is not expected to impose a major increase in costs or prices. The Presidential Task Force on Regulatory Relief has designated this rule for review.

Statement of Problem

Pursuant to Title V of the Act, MarAd grants financial aid in the form of construction-differential subsidy (CDS) for the construction of vessels for operation in the U.S. foreign trade. However, if no favorable opportunities exist for the viable employment of CDS-built vessel(s) during a protracted period which exceeds that normally associated with cyclical downturns, then MarAd might consider whether "exceptional circumstances" exist to consider payback of CDS in order that the vessel may seek viable employment opportunities in the domestic trade. By establishing the existence of "exceptional circumstances" as a precondition to considering CDS repayment, the regulation would ensure that CDS-vessel owners do not prematurely abandon the foreign trade for which they are intended if more lucrative opportunities exist in the domestic trade. The purpose of the regulation is to establish guidelines for deciding whether to permit vessels built with such aid to operate without restriction in the domestic trade in exchange for the payback of the CDS attributable to the remaining economic useful life of the vessel. These guidelines will be designed to minimize adverse impacts on investors in and operators of vessels built without CDS exclusively for the domestic trade, shipbuilders, shippers, MarAd, consumers, and the general public.

Sections 501–507 of the Act (46 U.S.C. 1151–1157) contain the provisions relating to eligibility and conditions for the award of CDS by the Secretary of Transportation (Secretary). The authority to grant these awards rests, by delegation, with the Maritime Subsidy Board within MarAd. Essentially, CDS represents the excess of the cost of constructing (including reconstructing or reconditioning in exceptional cases) a vessel in a U.S. shipyard (excluding the cost of national defense features) over the fair and reasonable estimated cost of its construction in a representative foreign shipbuilding center. This excess is paid by MarAd to the U.S. shipyard only for a vessel "to be used in the

foreign commerce of the United States," as defined in § 905 of the Act (46 U.S.C. 1244).

Section 506 of the Act (46 U.S.C. 1156) requires the owner of every vessel for which CDS has been paid to agree that the vessel be operated "exclusively in foreign trade" or in foreign trade with limited domestic trade operation as specified in this section. If such a vessel engages in this limited domestic operation, the owner must repay a portion of the CDS. Section 506 also provides for the temporary transfer of such a vessel to services other than those covered by the owner's CDS agreement for periods "not exceeding 6 months in any year," with the consent of the Secretary. A condition for consent to such temporary transfer is the agreement by the owner to repay, on conditions that the Secretary may prescribe, "an amount which bears the same proportion to CDS paid as such temporary period bears to the entire economic life of the vessel."

In addition to these express statutory provisions for partial repayment, the Secretary has discretionary authority to accept full repayment of CDS in return for the permanent removal of the domestic trading restrictions in § 506. The U.S. Supreme Court has affirmed this authority. *(Seatrain Shipbuilding Corp., et al.* v. *Shell Oil Co. et al.,* 100 S. Ct. 800 (February 20, 1980).)

Consistent with this decision, MarAd proposed the regulation to provide, as a matter of sound policy, guidelines and procedures for approval of applications to repay CDS, which MarAd can apply uniformly to all applicants.

Neither § 506 nor any other provision of the Act provides guidelines for determining the circumstances under which the total repayment of CDS is appropriate. In order to establish such guidelines, MarAd conducted an analysis to provide a basis for determining suitable conditions and to estimate costs and benefits. The economic impact of the regulation depends on these conditions.

MarAd published an interim regulation applying only to tankers of at least 100,000 deadweight tons (DWT) (45 FR 68393, October 5, 1980). Ten existing CDS-built vessels are in this category. MarAd has received applications for the total repayment of CDS with respect to six of these vessels. One of the applications has been approved and three have been withdrawn, leaving two applications with aggregate outstanding CDS balances of approximately $39 million. MarAd has approved one of these applications with respect to the BAY RIDGE (upheld on appeal to the Secretary), a 225,000 DWT vessel. On September 17, 1981, the U.S. District Court for the District of Columbia decided a consolidated action in favor of the United States *(American Petrofina and Independent U.S. Tanker Owners Committee* v. *Baldrige et al.;* C.A. Nos. 80–3038 and 80–3214). The principal issues involved were whether the interim rule was issued in full compliance with the Administrative Procedure Act and whether the decision to approve the BAY RIDGE application was arbitrary and capricious.

Alternatives Under Consideration

Among the alternatives considered in the Regulatory Impact Analysis was the "no-action" option. MarAd believes that adoption of a regulation is not a legal requirement, and that it could exercise discretion in allowing the total repayment of CDS by adopting a case-by-case approach and making a determination on the individual merits of each application. However, the advantage of a formalized rule is that it would provide a framework for the decisionmaking process. The regulation would be in compliance with the District Court's suggestion in the *Seatrain* case that the Agency provide guidelines that apply uniformly to all applicants.

MarAd has also considered adoption of a single regulation for all CDS vessels, regardless of type, size, or employment pattern, or adoption of separate regulations for various categories. A single regulation has the advantage of general applicability and simplicity, but may not adequately reflect the unique aspects of the markets in which the various categories of vessels operate.

The choice of specific "exceptional circumstances" under which MarAd would grant permission for a vessel to operate in the domestic trade requires the evaluation of a number of potential alternatives and underlying conditions. If the conditions are too restrictive, the interest of the CDS-built vessel's owner, MarAd, and the maritime industry may not be served. If they are too general, they raise questions concerning whether the non-subsidized fleet, in which there is considerable investment, will be equitably treated.

If no favorable opportunities exist for economic employment of a category of CDS-built vessels in the foreign trade for a protracted period that is longer than that of normal cyclical market downturns, MarAd might consider that "exceptional circumstances" are present that may then warrant approval of total CDS repayment in return for removal of the restrictions on domestic trade operation of the vessel.

MarAd must consider potential impacts on competition in the development of these conditions. The approval of an application for total repayment of CDS for a vessel can be expected to remove that vessel from the foreign trade for which it was intended, generating a potential competitive impact in that trade. Similarly, the removal of the domestic trading restrictions may have a competitive impact in the domestic trade. Among the factors that MarAd would consider before approving an application is whether the operation of the vessel in the domestic trade would be likely to have any significant adverse impact on other vessels operating in that trade.

Finally, MarAd must consider two principal procedural alternatives to ensure that all interested parties have an opportunity to present their views. Under the first alternative, MarAd would publish in the Federal Register a notice of any application for the total repayment of CDS and would allow a specified period for interested parties to submit written comments. As a second alternative, MarAd would hold a hearing or similar proceeding to provide an opportunity for all interested parties to provide data and analyses in support of their respective positions. The formal hearing requirement would greatly increase the likelihood of delays in the decisionmaking process. These delays could have significant adverse impacts on the applicant, as well as on the Government's security interest in the vessel with respect to any outstanding ship obligation guarantees or ship mortgage insurance.

MarAd has considered various hypotheses in order to prepare a Regulatory Impact Analysis involving economic matters. The statements in this document concerning impacts are merely illustrative and are in no sense to be considered exhaustive or definitive.

Summary of Benefits

Sectors Affected: Owners and operators of vessels built with CDS and intended for deep sea foreign water transportation; owners and operators of vessels built without CDS and intended for deep sea domestic water transportation; shipbuilding; shippers of commodities by U.S. deep sea foreign and domestic water transportation; MarAd; consumers; and the general public.

Fairness to all identifiable interests in the administration of the CDS program is the object of the regulation. The regulation can be expected to state the conditions MarAd will consider for removing a restriction on domestic trade

operation that is required by the Act as a condition for receiving CDS assistance.

The regulation may limit total repayment of CDS in exchange for the removal of domestic trade restrictions to situations determined by MarAd to represent "exceptional circumstances," with guidelines provided for making this determination. Benefits would accrue to the owner or operator of an existing vessel that has no favorable opportunities for employment in the foreign trades for which it was originally built with CDS.

Since vessels built with CDS may have obligation guarantees or vessel mortgage insurance issued by MarAd under Title XI of the Act, the prospective default by the vessel owner may mean an imminent loss to the Government due to its payment of the debt (reduced by the amount of recovery through foreclosure sale), as well as the loss of any ongoing benefit to the economy from the Government's CDS expenditure. MarAd may better preserve the value of its security interest by allowing the vessel to operate in the domestic trade in order to generate sufficient income to amortize its government-guaranteed obligations or insured debt. The incidence of default for Title XI guarantees has been extraordinarily low, only seven-tenths of one percent (net losses of only $62.9 million out of $8.8 billion of guarantees since the inception of the program in 1938 to date).

The guidelines to be adopted are intended to minimize any potential adverse impact on the U.S. shipbuilding market for the construction of vessels for the domestic trade. The regulation may significantly reduce uncertainties in this market. Other objectives are that owners of vessels built without CDS will not be displaced from the domestic trades; shippers will be protected against unreasonably high rates; and the consuming public will not experience higher commodity prices resulting from unreasonably high freight rates.

MarAd's careful application of these guidelines should protect investment in domestic trade shipping, shippers of domestic trade cargoes, consumers of commodities shipped in the domestic trade, MarAd's security interests, and the general public.

By allowing repayment, the funds repaid become available for other government purposes, and the vessel can be actively employed. The general public may benefit through reallocation of the asset. A Regulatory Impact Analysis has been prepared that provides estimates of the potential benefits under repayment/non-repayment scenarios.

For example, the Regulatory Impact Analysis shows (theoretically) that the greatest positive impact or benefit of repayment can be expected to occur if repayment will mean that the vessel will avoid indefinite lay-up. The magnitude of the benefit will depend upon costs associated with each application for repayment.

Summary of Costs

Sectors Affected: Owners and operators of vessels built with CDS and intended for deep sea foreign water transportation; owners and operators of vessels built without CDS and intended for deep sea domestic transportation; shipbuilding; shippers of commodities by U.S. deep sea foreign and domestic water transportation; MarAd; and the general public.

The Regulatory Impact Analysis provides estimates of these costs and impacts. Owners and operators of existing domestic trade vessels, which are not eligible for CDS aid, contend that the introduction of even a single additional vessel into the trade, through CDS repayment, would have significant impacts on rates. Unlike liner trades with regulated tariffs, rates in the bulk trades are generally controlled by vessel availability, suitability, and location at any particular time. The domestic trades are relatively small. Few vessels are available at any given time, since most are in proprietary trades or under long-term charter. Thus, the addition of a single CDS vessel could temporarily reduce the profit potential of an existing owner. However, over time, the average charter rates obtained in the domestic trade might not be significantly affected.

The Regulatory Impact Analysis shows that the greatest (theoretical) cost impact associated with CDS repayment on the domestic trade fleet is the displacement of domestic trade vessels. Assuming that one CDS–VLCC (Very Large Crude Carrier) could displace up to two typically smaller domestic trade vessels, the direct cost (losses) to the domestic trade, including the cost to support industries, such as fuel suppliers, shipyards that perform maintenance and repair, and maritime manpower (crew), exceeds possible cost savings to be achieved through repayment.

While the regulation is intended to limit impacts on shipbuilding, shipyards in the United States could possibly lose an opportunity for new vessel construction for the domestic trade if a CDS vessel owner is allowed to make total repayment in exchange for the removal of domestic trade restrictions. In addition, the uncertainty of potential competition from other CDS vessels could further reduce the incentives for vessel construction for the domestic trade. Since the Act expressly permits owners of vessels built with CDS to apply for permission to operate temporarily in domestic trades for periods not exceeding 6 months in any year, the policy reflected in the regulation does not create a completely new class of competing vessel. Also, when the foreign trades again provide favorable employment opportunities, new construction for these trades would probably occur.

Summary of Net Benefits

The first regulatory alternative is to continue an informal ad hoc approach to determining the circumstances and conditions of CDS repayment. It would allow any CDS-built vessel to apply for repayment and enter the domestic trades of the United States. The decisionmaking power would be concentrated in the Secretary (as delegated to the Maritime Subsidy Board). It would be a very flexible system that would allow the widest possible discretion in making determinations. However, there are compelling arguments that the public interest is best served by the promulgation of uniform criteria and procedures for making this determination. In the district court decision on the STUYVESANT case, Judge Richey ruled that while the Administrative Procedure Act did not *require* the Secretary to have a rule or regulation to govern CDS repayment it was strongly *recommended.*

The precedents set in the STUYVESANT case indicate that the Secretary does have the power to allow repayment of CDS funds and the subsequent lifting of the domestic trade restrictions on a permanent basis, provided there is a formalized rule, regulation, or standard that prevents arbitrary and capricious actions and unfair competition with Jones Act (46 U.S.C. 883) vessels, i.e., vessels built without CDS that operate in the domestic trade. Therefore, a continuation of an unformalized approach to determining the circumstances and conditions of CDS repayment is not advisable. To estimate costs and benefits of an approach contrary to that recommended by the courts is not appropriate.

A second alternative involves the creation of a formalized regulatory procedure to allow or disallow CDS repayment and entrance of the vessel

into the Jones Act trades. MarAd has analyzed three general categories of formalized rules. The first would allow total repayment by any owner of a CDS-built vessel on request. The Board would have no discretion to approve or disapprove individual applications. It would give all owners equal standing. However, this approach could be criticized because it would give no consideration to the competitive effect on current owners and operators of vessels built without CDS and operated in the domestic trades and would not address the question of unfair competition.

The benefits to existing and future owners of CDS-built vessels and to the Government of such a rule could be significant, but the costs may exceed these benefits, under certain conditions. For example, should conditions in the foreign trades, for which CDS vessels are intended, deteriorate to a point where there are no prospects for remunerative employment for the foreseeable future, the vessels could find employment in the domestic trades if prospects there are favorable. This substantially reduces the risk associated with CDS construction. However, owners of existing vessels built without CDS could not reduce their market risks in a similar manner, since there is no current mechanism for granting CDS to existing vessels. Thus, there would be a disincentive for investment in Jones Act tonnage. Allowing the repayment of CDS on request could cause certain firms with existing Jones Act vessels to face bankruptcy. With the possibility of bankruptcies involving significant government financial exposure through the Federal Ship Financing Program under Title XI of the Act (Title XI), there is a need to consider the possibly significant adverse impact on all maritime financing, including both domestic and foreign trade owners and operators, if there were to be significant losses incurred by the Title XI program. There would be a direct loss of any funds paid out on bonds guaranteed by the Title XI program. In addition, there would be the cost of the funds lost from the Title XI program and from the repayment of CDS that could be put to other uses, as well as the secondary and tertiary income and employment effects. Another adverse impact would be the possible decline in the size of the U.S.-flag fleet and the reduced capacity for operations in times of national emergency, because displaced domestic trade vessels are unlikely to find alternative employment and may be scrapped by their owners.

The second category of formalized rules would prohibit total repayment of CDS and prohibit all CDS-built vessels from entering the Jones Act trades on a full-time basis. Under this rule, there would be no added cost of administration directly related to the rule. There would be no adverse competitive impact on domestic owner/operators from CDS-built vessels entering the domestic trades on a permanent basis and thus no potential losses to Jones Act vessel owners and to the Government concerning those vessels.

While the prohibition by rule of total repayment of CDS would not preclude an owner from applying for permission to operate in the domestic trade for periods up to 6 months, pursuant to § 506 of the Act, it would not offer any potential solution to the foreign trade problem. The resulting losses to the owners of CDS-built vessels, employees, support industries, and the Government could be substantial. The greatest losses are expected to occur if denial of repayment will mean that the vessel will lay-up for an indefinite period. These costs are shown in the RIA on a theoretical basis, but will depend on the costs associated with each application for repayment.

The third category of formalized rules would consider repayment/non-repayment only under certain conditions or circumstances. It is clear that any rule (or the lack of a formalized rule) that does not retain the Secretary's discretionary authority to approve total repayment of CDS and that is not based on established guidelines and procedures, including consideration of competitive impacts, has serious deficiencies. Therefore, it is necessary to define the conditions and circumstances under which MarAd will consider application for total repayment. This may or may not include specific standards to be met by applicants. Estimates of the net benefits arising from the regulation will depend on the conditions and circumstances MarAd chooses to consider.

The primary condition determined to be essential for consideration of repayment/non-repayment of CDS is that market conditions in the foreign commerce of the United States effectively preclude the viable employment of the subject vessel in the trades for which it was constructed with CDS. Such conditions should continue for a protracted period, of a duration considerably in excess of that normally associated with cyclical market downturns as defined above. Without this condition, there could be a tendency to abandon foreign trade simply because more lucrative opportunities existed in the domestic trade.

The regulation, as it is presently being developed, provides that total repayment of CDS in exchange for the removal of domestic trade restrictions will be limited to situations determined to represent "exceptional circumstances." The first among these conditions is that the foreign trade cannot economically support operation of the vessel. In addition, if an opportunity exists in a domestic trade that can be satisfied by employment of the vessel after repayment of CDS, without significant adverse competitive effect (displacement) on other vessels (Jones Act) operating in the trade, the general public benefits through reallocation of a productive asset. Also, the Government benefits through the repayment of CDS and the improved security for the debt that it guarantees or insures.

The purpose of the formalized rule is to minimize the adverse impacts identified in the preceding analysis where repayment of CDS is not allowed and where repayment is permitted without regard for the employment of existing Jones Act vessels. The rule establishes generalized evaluative criteria for allowing a specific vessel to totally repay CDS, thus permitting the vessel to enter the Jones Act trade on a full-time basis. The actual costs and benefits to be considered and resulting net benefits in this decision are dependent upon prevailing conditions and circumstances at the time the application for repayment is submitted and can only be determined on a case-by-case basis. Individual applications for repayment can be evaluated in terms of the benefits and costs that would be incurred by vessel owners, the Government, and the economy in general.

In summary, the above analysis confirms that the proposed rule, while not a "major rule" under the economic criteria contained in E.O. 12291, satisfies the general requirements of the Executive Order. The evaluation of the need for and consequences of the proposed government action are based on adequate information. The potential benefits to society from the proposed rule outweigh the potential costs to society. The proposed rule seeks to maximize the net benefits to the economy and society. The approach chosen maximizes the net benefits to society, taking into account the condition of the particular industries affected, the condition of the national economy, and other regulatory actions

contemplated in the future. Consequently, the proposed rule is fully consonant with the regulatory objectives set forth by the President.

Related Regulations and Actions

Internal: Participation by vessels built with CDS in the carriage of oil from Alaska in the domestic trade (46 CFR Part 250).

External: None.

Government Collaboration

MarAd encourages Federal agencies and State and local governmental bodies, as well as the general public, to participate in development of this regulation through submission of comments to the Agency Contact listed below.

Timetable

NPRM—45 FR 51045, November 2, 1978; and 45 FR 29610, May 5, 1980.
Interim Rule—45 FR 68393, October 15, 1980; Amendment to Interim Rule, 45 FR 77445, November 24, 1980.
Final Rule—1st Quarter 1982.
Final Rule Effective—On date of publication.
Public Hearing—None.
Public Comment Period—NPRM (November to January 1978); NPRM (May to July 1980); Interim Rule (October to December 1980).
Regulatory Impact Analysis—Although the economic impacts of the regulation do not exceed the thresholds requiring the preparation of a Regulatory Impact Analysis, MarAd has prepared a Preliminary Regulatory Impact Analysis, expected to be published for comment in December 1981, because it considers the regulation to be a matter of sufficient policy significance to warrant such an analysis.
Regulatory Flexibility Analysis—This regulation will not have a significant economic impact on a substantial number of small entities. Since the NPRM was issued prior to January 1, 1981, the Regulatory Flexibility Act (P.L. 96-354) provisions are not applicable.

Available Documents

Decision renderd by U.S. District Court for the District of Columbia (*American Petrofina and Independent U.S. Tanker Owners Committee* v. *Baldridge et al.*; C.A. Nos. 80-3038 and 80-3214). Available from U.S. District Court for the District of Columbia.

Application for CDS Repayment, dated May 1, 1980, or Richmond Tankers, Inc., assigned Docket No. S-668. Available from Secretary, MarAd, 400 Seventh Street, S.W., Room 7300, Washington, DC 20590.

Docket entries, Docket No. S-668, including comments received from public. Available from Secretary, MarAd.

Comments received on NPRM of November 2, 1978. Available from Secretary, MarAd.

Comments received on republication of NPRM of May 5, 1980. Available from Secretary, MarAd.

Application for Repayment of CDS, dated June 16, 1980, of American Petrofina, Inc. ("FINA"), assigned Docket No. S-671. Available from Secretary, MarAd.

Docket entries, Docket No. S-671, including comments received from public. Available from Secretary, MarAd.

Application for repayment of CDS, dated July 7, 1980, of Gulf Trading and Transportation Co. ("GULF"), assigned Docket No. S-673. Available from Secretary, MarAd.

Docket entries, Docket No. S-673, including comments received from public. Available from Secretary, MarAd.

Comments received on Interim Rule on Construction-Differential Subsidy Repayment; Total Repayment Policy, of October 15, 1980. Available from Secretary, MarAd.

Agency Contact

William B. Ebersold, Director
Office of Trade Studies and Statistics
Maritime Administration
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DOT—Urban Mass Transportation Administration

Buy America Requirements (49 CFR Part 660; Review, Revision)

Legal Authority

Surface Transportation Assistance Act of 1978, § 401, P.L. 95-599, 92 Stat. 2689.

Reason for Including This Entry

The Urban Mass Transportation Administration (UMTA) believes that a review and possible revision of the Buy America regulations is necessary because these regulations may have a significant impact on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic markets; in addition, possible revisions of the existing regulations could have a $100 million annual effect on the economy.

Statement of Problem

Congress enacted the Buy America provision of the Surface Transportation Assistance Act in 1978. This provision states that, with exceptions, funds authorized by Congress may not be obligated for urban mass transportation projects unless materials and supplies used are of U.S. origin. Since the provision was effective immediately, UMTA issued emergency regulations on December 6, 1978 (49 CFR Part 660), retroactive to November 6, 1978.

UMTA published a Final Rule on January 19, 1981, containing minor changes that UMTA believed should be made immediately. The Final Rule clarified the existing emergency regulations and responded to several issues and comments presented during the comment period established upon publication of the emergency regulations, and since the enactment of the statutory provision. The Final Rule became effective on March 31, 1981.

UMTA issued, on January 19, 1981, a separate NPRM (46 FR 5815) concerning proposed revised implementation of the Buy America provision. A description of the proposed revision is set out in the "Alternatives Under Consideration" section below.

UMTA is reviewing the entire regulation because enough time has elapsed since the statutory provision was enacted to evaluate its impact as well as the impact of the regulations. UMTA is using the comments it received on the NPRM as a critical element in the review.

This review will focus on the relative impacts on prices of the Buy America requirement versus a "free-market" policy that includes open competition between domestic and foreign manufacturers. The range of scenarios varies from a monopoly for domestic producers of mass transportation vehicles and equipment to a monopoly for foreign producers. The Buy America regulations potentially affect transit agency expenses, U.S. jobs, tax and tariff revenues, trade balances, and innovation in products and services.

The principal objectives of the review are to determine whether the present implementation of the statutory provision is consistent with the Administration's policies and is achieving the purposes of the provision and to determine whether any other approaches (including non-regulatory ones) are viable and more cost effective. The NPRM has already proposed implementation in several areas that

would be substantially different from the existing regulations.

Alternatives Under Consideration

(A) UMTA is considering revisions within the scope of the existing regulations. These revisions could result in changing the regulations so that the cost of domestic subcomponents that are incorporated into components in other countries are included in the computation of domestic components. This would permit U.S. subcomponents that receive Customs Bureau tariff exemptions to retain their domestic identity for purposes of the Buy America regulations. Another change to the existing regulation would be to define "final assembly." The existing regulation states that final assembly of an end product must take place in the United States in order for that end product to be considered domestic. UMTA is considering defining "final assembly" or establishing mechanical tests for final assembly in order to provide more guidance for manufacturers.

(B) UMTA is also considering revisions outside the scope of existing regulations. The Agency will also examine other regulatory methods or approaches available to implement the statutory intent consistent with Administration policy. The possible revisions include using different tests to determine whether an end product is domestic (the current two-step test requires at least 50 percent of components used in an end product to be domestic and final assembly to take place in the United States).

(C) UMTA will decide whether construction contracts should be treated differently than they are under existing regulations. Under the present regulations, procurement of construction is treated as procurement of a manufactured product, in that the item to be constructed under the construction contract is considered as the end product, and the construction materials used are regarded as components of the end product. Thus, an UMTA construction project may be considered domestic if more than 50 percent of the value of the construction materials delivered to the job site and incorporated into the project is domestic and if the final assembly of the components (construction) takes place in the United States.

As can be seen, the UMTA regulations permit bidders to use up to 50 percent of foreign construction materials without forfeiting the competitive advantages of a domestic bid. The UMTA regulations differ from other Federal laws and regulations that require each construction material used in the project to be domestic, unless a waiver is granted, thus making the use of foreign construction materials far more difficult.

(D) UMTA will examine and evaluate possible statutory revisions. Possible statutory changes could include those that would delete, limit, or make flexible the existing Buy America provision.

Summary of Benefits

Sectors Affected: Transit vehicle manufacturers, their employees, and their suppliers; and operators of mass transportation systems, both bus and rail.

Domestic preference requirements are very beneficial to domestic producers. In the face of an increased demand (say, from Buy America), manufacturers are able to operate more efficiently, at a larger production scale. Under certain conditions, the provision could encourage re-entry of U.S. manufacturers into the mass transportation vehicle field, or, equally important, U.S. production by foreign producers. Another producer-related benefit is the increased availability of reliable replacement parts, equipment parts, and service networks.

In the employment area, more benefits than costs are expected to flow from the Buy America provision. Domestic jobs will be saved, or perhaps created, in both the transit equipment industry and spinoff industries. These effects tend to be regionalized due to the location of manufacturing.

The transit operators may be expected to incur a wide variety of benefits from Buy America. The companies stand to gain in the sense that it is easier to make site visits to see the procured capital equipment being manufactured. Domestic production also tends to cut down the amount of time it takes for delivery of mass transit equipment.

Along with protecting U.S. jobs, there is a range of broader, federally related objectives and effects that may be evaluated in a cost-benefit framework. For example, a strong domestic preference provision tends to ensure that Federal tax moneys remain in the United States and further allows that such funds remain available to satisfy other objectives, such as encouraging minority business enterprise or fulfilling equal employment opportunity goals. Politically, the Buy America provision can be effectively used to eliminate dependence on foreign-manufactured mass transportation vehicles. It also carries with it benefits that appeal to certain constituencies affected physically or philosophically by the domestic preference requirement (i.e., domestic manufacturers and their employees, especially unionized employees).

Summary of Costs

Sectors Affected: Transit vehicle manufacturers, their employees, and their suppliers; and operators of mass transportation systems, both bus and rail.

For manufacturers, on the cost side of the ledger, entry barriers are increased in the industry, which further concentrates an already concentrated market. An additional danger along these lines is that the industry will become significantly more concentrated if a domestic manufacturer fails or, alternatively, is unable to bid for a period of time.

In the employment area, on the cost side, the only conceivably important factor, all other influences being equal, is the possible increase in the bargaining power of domestic transit equipment production workers in view of the added job protection provided. Under certain conditions this could lead to inflated labor costs for the companies.

The transit companies will have to accommodate the possible impacts of reduced competition among manufacturers. Some of these impacts are possible higher prices, reduced product variety (fewer choices), and less technological innovation.

The provision, however, also has implications for costs at the national level. International relations may suffer, perhaps triggering a similar protectionist response from other countries. In addition, there are costs to be borne (number of Federal employees involved in enforcement) in the administration and enforcement activities required by the program.

Summary of Net Benefits

At this time, UMTA has not completed a Regulatory Impact Analysis. However, it is possible to make some general statements concerning net benefits.

It should be noted again that the original Congressional intent was to protect domestic companies and preserve U.S. jobs by ensuring that these interests are served under Federal awards for mass transit capital equipment projects. Determination of the possible impacts resulting from Buy America can be made within the general framework of protectionism (non-tariff trade barriers) and its consequences. Among the beneficiaries are domestic labor, whose jobs are protected, and domestic manufacturers, who are given captive markets. This assumes that sales losses by foreign firms are gained by

U.S. companies. Possible costs associated with the provisions include limiting competition, perhaps leading to higher prices, less innovation, and fewer choices for transit operators.

To date, the provision has not resulted in the re-entry of previous manufacturers or entry of new domestic firms into the rail car manufacturing industry. However, several foreign firms have located rail car assembly facilities in the United States. Since the enactment of the provision, all rail car contracts have been awarded to firms, regardless of nationality, that have complied with the Buy America requirements.

Several foreign bus manufacturers have established plants in the United States. This will increase the amount of U.S. labor involved in bus manufacturing.

Operators of mass transportation systems may benefit from the establishment of stable and reliable sources of vehicles in the United States.

Related Regulations and Actions

Internal: None.

External: Federal Highway Administration Buy America requirements (23 CFR Part 635.410).

Government Collaboration

We will work with the Departments of State and Commerce and the Office of the Special Trade Representative.

Timetable

Emergency Final Rule—43 FR 57144, December 6, 1978.
Emergency Final Rule Effective—November 6, 1978.
Public Comment Period (on Emergency Final Rule)—Opened, December 6, 1978; closed, February 15, 1979).
Public Hearing—None.
Final Rule—46 FR 5808, January 19, 1981.
Final Rule Effective—March 31, 1981.
NPRM (on proposed revision)—46 FR 5815, January 19, 1981.
Public Comment Period (on NPRM)—Opened, January 19, 1981; closed, April 20, 1981.
Final Rule on Revision—To be determined.
Regulatory Impact Analysis—The DOT Transportation Systems Center is performing a preliminary assessment, scheduled for completion in December 1981.

Available Documents

Urban Mass Transportation Administration Docket Numbers 78–B and 80–L.

These documents are available for examination in the Chief Counsel's Office, Urban Mass Transportation Administration, 400 Seventh Street, S.W., Room 9320, Washington, DC 20590.

Agency Contract

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DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco, and Firearms

Implementation of the Distilled Spirits Tax Revision Act of 1979 (27 CFR Parts 5, 13, 19, 170, 173, 186, 194, 195, 196, 197, 200, 201, 211, 212, 213, 231, 240, 250, 251, and 252; Revision)

Legal Authority

Distilled Spirits Tax Revision Act of 1979; Trade Agreements Act of 1979, Title VIII, P.L. 96–39, 93 Stat. 273.

Reason for Including This Entry

The Department of the Treasury thinks that this regulatory project is important because it established a new tax system for proprietors of distilled spirits plants. There is also an annual revenue loss to the Treasury in excess of $100 million and a tax savings amounting to over $100 million a year to importers of bottled distilled spirits.

Statement of Problem

Under the Internal Revenue Code of 1954, the Secretary of the Treasury had 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 government permits, on-site supervision by officers of the Treasury Department's Bureau of Alcohol, Tobacco, and Firearms (ATF), and restriction of industry operations to separate premises or designated areas. However, in recent years, with the increased emphasis on audit techniques and the use by industry of sophisticated data and accounting systems, 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 are conducted on the bonded premises of a distilled spirits plant, and the tax is determined after processing and bottling is completed on the basis of the proof (alcoholic content) of the finished product when it is removed from bond.

The Distilled Spirits Tax Revision Act of 1979 changed the tax system to eliminate disparities in taxation between domestic and imported spirits. Under previous law, foreign bottled spirits were taxed on each wine gallon when removed from bond, which resulted in a higher effective tax on foreign bottled imported spirits than on other domestically bottled spirits taxed on a proof gallon basis. Under the new Act, the tax is based solely on the alcoholic content of the domestic or foreign distilled spirits products, and this results in a tax parity between domestic and imported spirits. The Act also gave 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 permitted many other simplifications in the regulation of the distilled spirits industry. Reduction of government forms and increased acceptance of commercial documents in place of separate government records, elimination of the distinction between bonded and non-bonded operations and premises, and elimination of many letterhead applications all contribute to greater simplification of operations and recordkeeping systems.

On December 11, 1979, ATF issued temporary regulations in Treasury Decision (T.D.) ATF–62 (44 FR 71613). These regulations implemented the Distilled Spirits Tax Revision Act of 1979, effective January 1, 1980.

Alternatives Under Consideration

Because these regulations were required to implement a statute, there was no practical alternative to issuing them. However, because these regulations completely changed the ways the distilled spirits industry was operated and regulated, ATF issued them in the form of a temporary rule with provision for public comment. Based on these public comments, the Bureau will issue a Final Rule in the Spring of 1982.

Summary of Benefits

Sectors Affected: Manufacturers and importers of distilled spirits, brandy, and wine spirits; bonded

manufacturers of wine; and the Federal Government.

Direct benefits accruing to proprietors of distilled spirits plants include savings due to simplification of their operational methods and required recordkeeping. With respect to operations, greater flexibility on the use of premises and equipment is possible, because all operations are conducted on bonded premises. Proprietors are able to employ their equipment, such as tanks, in multiple uses (e.g., production, storage, and processing) and are concerned with paper transactions rather than the physical transfer of spirits from one type of premises to another (i.e., bonded premises and bottling premises). In addition, eliminating the requirement for government officers to supervise directly certain operations or to be present to allow proprietors access to bonded areas allows the proprietors to schedule plant operations more efficiently.

Under the new system, proprietors determine the amount of tax due to the Government after processing and bottling is completed on the basis of the proof of the bottled product when removed from bond. Under previous regulations, ATF officers determined the tax when bulk spirits were 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 simplifies the records systems necessary for proprietors to document their tax liability.

Distilled spirits taxes are paid on the basis of semi-monthly tax returns. Under the previous system, qualified proprietors could defer actual payment of tax for up to 30 days. The new law provided for an additional deferral period of 15 days, and this benefits proprietors of distilled spirits plants because it saves them the cost of borrowing money for this additional length of time.

Wineries are also directly affected by the elimination of "standard wine premises." Under previous law, winery proprietors could not manufacture and bottle non-standard wine products on standard winery premises. The previous regulations required these non-standard wine products to be manufactured on non-standard wine premises. Effective January 1, 1980, the new law abolished distinction between standard and non-standard premises, and manufacturers may now both produce and bottle wines on the same bonded winery premises.

These regulations directly affect importers of bottled distilled spirits because such products are no longer taxed on a wine gallon basis when below 100 degrees proof (i.e., on the actual volume of liquid in the product when below 100 degrees proof). Under the new law and regulations, imported bottled distilled spirits are taxed on a proof gallon basis (i.e., on the actual degree of proof in the product). As a result, importers are paying a reduced amount of tax amounting to over $100 million a year which began in calendar year 1980.

The Government will realize manpower savings because of 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

Sectors Affected: Manufacturers of distilled spirits, brandy, and wine spirits; and the Department of the Treasury.

Proprietors of distilled spirits plants should generally experience some increase in costs during the year in which government supervision is eliminated. 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 is also bearing 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. The taxation of certain distilled spirits on a proof gallon basis rather than on a wine gallon basis directly affects the Government because there will be an annual revenue loss to the Treasury amounting to over $100 million a year, which began in calendar year 1980.

Summary of Net Benefits

The benefits derived from this regulatory action are five-fold:

(1) Savings for distilled spirits plant proprietors due to simplification of their operational methods and required recordkeeping.

(2) Savings for distilled spirits plant proprietors due to an increased deferral period for filing semi-monthly distilled spirits tax returns.

(3) Savings for bonded wine cellar proprietor due to the elimination of standard wine premises.

(4) A tax savings exceeding $100 million a year for importers bringing bottled distilled spirits into the United States.

(5) The manpower savings to the Government due to the elimination of on-site supervision of distilled spirits plants by ATF officers.

The costs imposed by this regulation are—

(1) A one-time cost to the industry for training employees, adopting security measures to replace those of the Government, and revising internal controls and recordkeeping systems; and

(2) An annual revenue loss to the Treasury amounting to over $100 million a year due to the elimination of the wine gallon method for taxation of distilled spirits.

The overall net benefit of this regulatory action is a reduced tax burden for the alcoholic beverage industry that far outweighs the costs imposed by this regulation.

Related Regulations and Actions

Internal: The principal regulations that this statutory change affects are the following: Gauging Manual (27 CFR Part 13); Distilled Spirits Plants (27 CFR Part 19); Distilled Spirits Plants (27 CFR Part 201); Wine (27 CFR Part 240); Taxpaid Wine Bottling Houses (27 CFR Part 231); Liquors and Articles from Puerto Rico and the Virgin Islands (27 CFR Part 250); Importation of Distilled Spirits, Wine and Beer (27 CFR Part 251); Exportation of Liquors (27 CFR Part 252); Gauging Manual (27 CFR Part 186); Miscellaneous Regulations Relating to Liquors (27 CFR Part 170); Distribution and Use of Denatured Alcohol and Rum (27 CFR Part 211); Distribution and Use of Tax-Free Alcohol (27 CFR Part 213); Liquor Dealers (27 CFR Part 194); Drawback on Distilled Spirits Used in Manufacturing Nonbeverage Products (27 CFR Part 197); Labeling and Advertising of Distilled Spirits (27 CFR Part 5).

We have incorporated the following regulation projects that were under development into this general revision:

Alternate Premises between Distilled Spirits Plants and Bonded Wine Cellars (27 CFR Parts 201 and 240).

Formulas for Rectified Products (27 CFR Parts 170, 201, 250, and 252).

Strip Stamps and Alternative Devices (NPRM published November 7, 1978 (43 FR 51808), 27 CFR Parts 194, 201, 250, 251, and 252).

Export Storage Facilities at Distilled Spirits Plants (27 CFR Part 201).

Samples of Distilled Spirits (27 CFR Part 201).

Distilled Spirits Meters (27 CFR Part 201).

External: The statutory changes affect the regulations that the U.S. Customs Service administers (Title 19, Code of Federal Regulations).

Government Collaboration

Certain aspects of the regulatory changes affect procedures of the U.S. Customs Service and the Internal Revenue Service (IRS). Some distilled spirits plants received imported bulk spirits under an immediate delivery procedure whereby ATF officers acted as Customs officers. Elimination of assignment of ATF officers precludes the use of this procedure.

The repeal of the rectification tax (an additional tax applicable to certain mixed or processed products) eliminated the need for the collection of the rectifier's occupational tax by IRS.

Timetable

ANPRM—Notice No. 326, 44 FR 41833, July 18, 1979.
NPRM—Notice No. 329, 44 FR 71612, December 11, 1979.
Temporary Rule—T.D. ATF-62, 44 FR 71613, December 11, 1979.
Extension of comment period—Notice No. 347, 45 FR 54087, August 14, 1980.
Extension of comment period to December 1, 1980—Notice No. 349, 45 FR 69249, October 20, 1980.
Regulatory Impact Analysis—None.
Regulatory Flexibility Analysis—None.
Final Rule—1st Quarter 1982.

Available Documents

Public Law 96-39, Trade Agreements Act of 1979.

Committee Reports—U.S. Senate, Committee of Finances (S. 1376); U.S. House of Representatives, Ways and Means Committee (H.R. 4537).

Documents listed under "Timetable" and comments received during public comment periods may be inspected during normal business hours at the ATF Reading Room, Room 4405, Federal Building, 12th Street and Pennsylvania Avenue N.W., Washington, DC 20226.

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TREAS-ATF

Labeling and Advertising Regulations Under the Federal Alcohol Administration Act (27 CFR Parts 4, 5, and 7; Revision)

Legal Authority

Federal Alcohol Administration Act, 27 U.S.C. 205 (e) and (f).

Reason for Including This Entry

The Department of the Treasury believes this rule is important because it is the first major amendment of alcoholic beverage advertising regulations since the repeal of prohibition. The regulations proposed are intended to deregulate in some instances, update advertising standards, and ensure conformity between the labeling and advertising regulation subparts.

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 changing advertising practices and growing consumer awareness. In many cases, unclear regulations and varied interpretations of these regulations have caused confusion for both the advertiser and the consumer.

Pre-publication review by ATF of advertisements is not mandatory. Of all advertisements reviewed by ATF, most are done on a post-publication basis.

Therefore, because of the confusion over certain regulations, some advertisements violate these regulations, and ATF recalls or rejects them, costing the industry and ATF money and effort. ATF does not have a monetary estimate of the costs that it and industry incur because of recalled and rejected advertisements.

From the consumer's perspective, many advertisements that conform to ATF regulations seem to be false or misleading because of consumers' changing perceptions 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, that is, reduced caloric content.

For these reasons, ATF reviewed the labeling and advertising regulations for possible updating and revision. The major proposals in the NPRM (45 FR 83530, December 19, 1980) were:

(A) The use of active athletes and the depiction of athletic events where alcoholic beverages are shown being consumed before or during the event would be prohibited in alcoholic beverage advertisements and on labels;

(B) The use of subliminal advertising techniques (i.e., the use of words and devices to send a message to an audience below the level of normal awareness (subconsciously)) would be prohibited;

(C) A regulatory standard would be set for the use of the word "natural" on labels and in advertisements to imply that the product is natural;

(D) A definition would be established for "false" or misleading statements and advertisements;

(E) Curative or therapeutic references on labels and in advertisements would be prohibited;

(F) Guidelines would be proposed to conduct comparative advertisements (i.e., ads that mention a competitor's name or brand);

(G) A definition would be established of disparagement (for instance, should statements about a competitor's product that are true but nonetheless disparaging be allowed on labels and in advertisements?);

(H) Guidelines would be proposed to conduct "taste tests," the results of which will be used in alcoholic beverage advertisements;

(I) A standard would be set for the use of the term "light" on alcoholic beverages; and

(J) The prohibition against the use of the words "pure," "double distilled," and "triple distilled" on labels and in advertisements would be lifted.

If ATF fails to address these issues, the problem of false and misleading labeling and advertising statements and representations will continue.

Alternatives Under Consideration

The Federal Alcohol Administration (FAA) Act requires the Treasury Department to regulate the labeling and advertising of alcoholic beverages that are entered into interstate commerce. ATF received approximately 8,900 comments on the ANPRM (43 FR 54266, November 21, 1978) from the general public, some of whom wanted greater restrictions on advertising, including a total ban on alcoholic beverage advertisements. This is beyond the

authority of ATF and would require legislative action. However, the Treasury Department may deregulate certain areas within the framework of the FAA Act. For example, if an industry member feels that a certain advertisement by a competitor does not comply with regulations, or that certain statements made in the advertisement cannot be factually supported, the industry member would submit a complaint to ATF for its review and corrective action if statements or claims cannot be supported by facts.

ATF reviewed all comments received in response to the ANPRM and analyzed the alternatives. The ANPRM we published on December 19, 1980 (45 FR 83530) reflected the consideration of the alternatives and comments received on the ANPRM. The alternatives were to (A) take no action, leaving the present regulations as they are now written and not consolidating rulings into the regulations; (B) to place stricter regulations on industry; or (C) to issue guidelines for industry to follow in presenting advertisements that are truthful and that will not tend to mislead the consumer, while at the same time allowing industry greater discretion in choosing their advertising matter. ATF received 396 comments on the NPRM proposals, as described previously. The comments supported our intent and made many suggestions on modifying the proposed regulations.

By clarifying and consolidating regulations, policies, interpretations, and rulings on advertising, ATF hopes to provide a single comprehensive source of guidelines and 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 that 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

Sectors Affected: Manufacturing and wholesale and retail trade of advertised alcoholic beverages, including malt beverages, wines, and distilled spirits (liquors); the advertising industry; consumers who view advertisements of these products; and Federal and State government agencies with authority relating to the labeling and advertising of alcoholic beverages.

These regulations will benefit consumers and those listed above. 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 by reducing necessary revisions of the advertisement's content in order to comply with regulations, while protecting the industry's right to advertise its products and reinforcing the consumer's right to expect clear and truthful advertisements. In addition, the use of taste tests will promote competition among industry members, while regulations prohibiting subliminal advertising would protect the consumer against undue persuasive advertising.

Revising the regulations will not increase costs to the Government. The Government will benefit, since it currently spends much effort in explaining confusing regulations and rulings.

The FAA Act affects only labeled and advertised alcoholic beverages that are entered into interstate commerce. In the case of malt beverages, which command about 80 percent of the total market, the labeling and advertising regulations issued under the authority of the FAA Act apply only to the extent that the law of a particular State imposes similar requirements. In States that have adopted the FAA Act (22 States have adopted) or imposed similar requirements, these State governments should also benefit from the revisions and amendments of the regulations in that Federal and State regulation would more closely conform.

Summary of Costs

Sectors Affected: None.

We have not been able to determine specific cost estimates for this project. In general, costs to producers of alcoholic beverages and the advertising media should not increase because these regulations affect only advertising content and do not alter methods of advertising. A change in content should not necessitate an increase in costs of advertising. A change in the advertising medium, e.g., printed media or television, could increase costs; however, ATF does not regulate this area.

Summary of Net Benefits

The benefits derived from this regulatory action will be:

(1) The modernization of regulations, taking into account the sociological and technological advances of the past 45 years;

(2) The reduction of regulatory constraints in a number of areas, as previously discussed, and the providing of freer competition among industry members;

(3) The providing of a single source of guidelines and rules; and

(4) The protection of the consumer against false and misleading labeling and advertising practices.

The overall net benefit of this action will be a lessening of the regulatory burden and a simplification in the areas that we must regulate. This will encourage competition among industry members in the marketplace. The alternative to this regulatory action is no action, that is, retaining regulations that have remained basically unchanged since 1935. Since these proposed amendments are subjective in nature and the net benefit is a freer and more competitive market, ATF has no plausible way in which to attach a dollar figure to this project. This action does not require amending or revising labels and advertisements but, at industry's option, opens up areas for labeling and advertising. However, industry will be able to operate under these regulations in a more fluid manner with less ambiguous regulatory guidance.

Related Regulations and Actions

Internal: ATF has published a Treasury Decision (T.D. ATF-94, 46 FR 55093, November 6, 1981) rescinding the ingredient labeling regulations for alcoholic beverages. ATF contracted a study with Michigan State University to study the effects of alcoholic beverage advertising on the drinking habits of young people. The University had submitted a preliminary report, which ATF did not accept. Michigan State University's revised report is now available. This study was made under the joint sponsorship of the Federal Trade Commission (FTC), the National Institute of Alcohol Abuse and Alcoholism, the National Highway Traffic Safety Administration of the Department of Transportation, and ATF.

External: The FTC is responsible for regulating the advertisement of wine with less than 7 percent alcohol by volume and the advertisement of non-alcoholic beverages. Under the FAA Act (27 U.S.C. 211[a][7]), wine is an alcoholic beverage containing not less than 7 percent and not more than 24 percent of alcohol by volume. Therefore, any beverage containing less than 7 percent alcohol by volume does not come under the purview of the FAA Act and is not subject to regulations promulgated by ATF.

Government Collaboration

The Federal Trade Commission and ATF are collaborating on this project. ATF is soliciting comments on proposed regulations from other Federal agencies and State and local governments.

Timetable

ANPRM—Notice No. 313, 43 FR 54266, November 21, 1978, entitled Advertising Regulations Under the Federal Alcohol Administration Act.

Notice extending the comment period to March 23, 1979—Notice No. 313, 44 FR 2603, January 12, 1979.

NPRM—Notice No. 362, 45 FR 83530, December 19, 1980, entitled Labeling and Advertising Regulations Under the Federal Alcohol Administration Act.

Public Hearings—September 9 and 10, 1981, Washington, DC; December 10 and 11, 1981, San Francisco, CA.

Regulatory Impact Analysis—None.

Regulatory Flexibility Analysis—None.

Final Rule—1st Quarter 1983.

Available Documents

Hearing Transcript—Public hearing of September 9 and 10, 1981. Copies may be obtained by contacting Diversified Reporting Services, Inc., P.O. Box 23582, Washington, DC 20044, (202) 667–6655. Specify ATF Advertising Hearing, September 9 and 10, 1981. Copies of the exhibits will be included if specifically requested.

Documents listed under "Timetable" and comments received during public comment periods may be inspected during normal business hours at the ATF Reading Room, Room 4405, Federal Building, 12th Street and Pennsylvania Avenue, N.W., Washington, DC 20226.

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TREAS—United States Customs Service

Civil Aircraft Regulations (19 CFR Parts 6 and 10; Revision)

Legal Authority

Trade Agreements Act of 1979, § 601, 19 U.S.C. 66 and 1624.

Reason for Including This Entry

The U.S. Customs Service (Customs) is including this entry because it concerns an issue of public interest.

Statement of Problem

Unless specifically exempted, all merchandise imported into the United States is subject to a customs duty. One of the major responsibilities of Customs is to assess and collect duties when due and to insure that the entry requirements for merchandise are met.

In some instances, the President and the Congress determine that it would be in the national interest to reduce or eliminate duty on particular merchandise. In this regard, as part of the Multilateral Trade Negotiations conducted with many of the nations engaged in international trade, the United States signed the Agreement on Civil Aircraft. This Agreement, which was incorporated into U.S. law as Title VI of the Trade Agreements Act of 1979 (the Act), provides for the duty free trade in civil aircraft and parts for civil aircraft.

To implement the statutory provisions of Title VI of the Act, Customs is proposing to amend its regulations as they relate to (1) the importation of civil aircraft and parts for civil aircraft, and (2) foreign repairs to and foreign purchases of repair parts and materials for U.S.-registered civil aircraft. The regulations that we will develop will enable us to administer the provisions of the Agreement.

In the area of tariffs the Agreement eliminated, as of January 1, 1980, duties on the following:

(a) all civil aircraft;

(b) all civil aircraft engines and their parts and components;

(c) all other parts components, and subassemblies of civil aircraft; and

(d) all ground-flight simulators (machines used for training on the ground that duplicate flight conditions) and their parts and components, whether used as original or replacement equipment in the manufacture, repair, maintenance, rebuilding, modification, or conversion of civil aircraft.

"Civil aircraft" are defined in Title VI of the Act to mean all aircraft other than those purchased for use by the Department of Defense and the Coast Guard.

Under the Act, parts, components, and subassemblies of civil aircraft qualify for duty-free entry if they (1) are for use in civil aircraft, and (2) are classified for Customs purposes under one of the specific Tariff Schedules of the United States (19 U.S.C. 1202) headings listed in Title VI of the Act.

To be admitted free of duty, parts, components, and subassemblies must be "Certified for Use in Civil Aircraft" by the Federal Aviation Administration (FAA) or an FAA-recognized airworthiness authority in the country of exportation.

In addition, duties on foreign repairs to and foreign purchases of repair parts and materials for U.S.-registered civil aircraft, previously assessed under § 466, Tariff Act of 1930, as amended (19 U.S.C. 1466), and §§ 6.7 (d) and (e), Customs Regulations (19 CFR 6.7(d) and (e)), are eliminated.

Alternatives Under Consideration

Customs cannot consider alternatives to the proposal because it must implement the provisions of the Agreement and the Act providing for the duty-free entry of civil aircraft and aircraft parts. However, certain enforcement and administrative methods are being considered as a result of public comments on the NPRM.

Summary of Benefits

Sectors Affected: Domestic and foreign manufacturing, repair services, wholesale trade (particularly importing), and retail trade of civil aircraft and parts for civil aircraft; the general public; and purchasers of civil aircraft and parts for civil aircraft.

This Agreement and implementing regulations will indirectly benefit all nations with a civil aircraft industry, whether it be a civil aircraft manufacturer, air carrier, or civil aircraft maintenance industry, by providing for the free flow between countries that are signatories to the Agreement on civil aircraft and parts for civil aircraft.

Foreign repairs to, and foreign purchase of, repair parts and materials for U.S.-registered civil aircraft that were previously dutiable, are duty free under the Act and Customs' proposed implementing regulations. This will eliminate a trade barrier to foreign repairs to and foreign purchases of repair parts and materials for U.S. registered civil aircraft. Elimination of the duty will also benefit purchasers of foreign civil aircraft and purchasers of spare or replacement parts for those aircraft through a reduction in the purchase price because of elimination of duties. The reduction would vary because of the different percentage rates of duty on aircraft, parts, and foreign equipment and repairs, but would range between 5 and 50 percent of their appraised value.

Summary of Costs

Sectors Affected: None.

These regulations do not require a Regulatory Impact Analysis under the criteria established by E.O. 12291 (46 FR 13193). Accordingly, no analysis of costs has been made by Customs. An analysis of the budgetary impact is contained in the Senate report on the Act (Senate Report No. 96–249). Customs believes the costs of implementation of the provisions would be negligible, since significant additional requirements for the entry of the items covered by the Act have not been and will not be established.

Summary of Net Benefits

Customs believes that this rule will have important benefits to all sectors identified above because of the elimination of duty on civil aircraft and parts for civil aircraft. The free flow of aircraft and aircraft parts will be stimulated between all participating nations, and benefits will result to all sectors identified above.

Related Regulations and Actions

Internal: Customs has appointed a Multilateral Trade Negotiations (MTN) Coordinator to oversee implementation of the Act, including the proposed regulations relating to civil aircraft. We have held meetings at the Customs Service headquarters with representatives of the aircraft industry and others who were involved in the MTN negotiations on this Agreement.

External: None.

Government Collaboration

The proposal has been coordinated with representatives of the Office of the Special Trade Representative; the Departments of State, Labor, Commerce, and Treasury; the International Trade Commission; and the Federal Aviation Administration.

Timetable

NPRM—45 FR 1633, January 8, 1980.
Public Comment Period—Closed March 10, 1980.
Regulatory Impact Analysis—None.
Public Hearing—None.
Final Rule—4th quarter 1981.
Final Rule Effective—30 days from date of publication in the **Federal Register**.
Regulatory Flexibility Analysis—Will accompany Final Rule.

Available Documents

Work Plan 79–30.
Public comments on NPRM.

Copies of these documents may be reviewed at the Customs Service Headquarters, 1301 Constitution Avenue, N.W., Washington, D.C. 20229, Room 2426, during normal business days between 9:00 a.m. and 4:30 p.m.

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TREAS—Customs

Importation of Motor Vehicles and Motor Vehicle Engines Under the Clean Air Act (19 CFR 12.73; Revision)

Legal Authority

Clean Air Act Amendments of 1970, 42 U.S.C. 7521 *et seq.;* 19 U.S.C. 66 and 1624; 42 U.S.C. 7521, 7522, and 7601.

Reason for Including This Entry

The U.S. Customs Service is including this entry because it would be precedent setting and concerns an issue of public interest and possible controversy.

Statement of Problem

Under §§ 202 and 203 of the Clean Air Act, as amended (42 U.S.C. 7521 and 7522) (the Act), the Department of Health and Human Services (formerly the Department of Health, Education, and Welfare) and the Environmental Protection Agency (EPA) have promulgated regulations in 40 CFR Parts 85 and 86 that establish standards for the control of emissions from certain vehicles and engines. The Act prohibits importation into the United States of a vehicle or engine manufactured after the effective date of an emission control standard applicable to the vehicle or engine (or which would have been applicable had the vehicle been manufactured for importation into the United States). However, this prohibition does not apply if the vehicle or engine is covered by a certificate of conformity with applicable standards or if it is exempted by the EPA Administrator.

In conjunction with EPA, Customs enforces those laws and regulations applicable to emission controls for imported vehicles and engines. Regulations relating to those importations are found in § 12.73, Customs Regulations (19 CFR 12.73), and in the EPA regulations at 40 CFR Part 85, Subpart P. EPA is proposing several major changes in its regulations, published in the **Federal Register** on July 21, 1980 (45 FR 48812). If adopted, the revision to the EPA regulations would require corresponding changes to 19 CFR 12.73, Customs Regulations.

If a vehicle or engine now fails to comply with emission standards, an importer may post a bond with Customs and bring the vehicle or engine into conformity within 90 days of entry. This procedure has misled some importers into believing that modification is an easy option. Likewise, although an importer may post a bond and enter a vehicle or engine to attempt to demonstrate that it conforms by subjecting it to the full Federal test procedure, in some cases this is expensive and impracticable. If, after modification and testing, a vehicle or engine still does not comply with emission standards, the vehicle or engine must be exported or destroyed at the expense of the importer.

Administration and enforcement of present procedures place a substantial burden on Customs and EPA. To alleviate this burden, Customs published in the **Federal Register** on July 21, 1980 (45 FR 48817) an NPRM that would eliminate the provisions currently found in § 12.73(c), Customs Regulations, which allow conditional importation of a vehicle or engine under bond. Further, because of potential hardships, described above, the proposed regulations would provide an exemption from EPA emission control regulations to an individual who has not imported or attempted to import a nonconforming vehicle or engine since December 31, 1970, the effective date of the Clean Air Act Amendments of 1970, and who wishes to import a vehicle or engine for personal use and not for resale. The individual could use this exemption only once.

The Customs proposal provides very limited exemptions for national security and repairs or alterations to vehicles or engines and strengthens and clarifies the exemption in § 12.73 and other exclusions.

Customs thinks this proposal is important because it would improve our administrative and enforcement efficiency and the effectiveness of regulations relating to the importation of motor vehicles and motor vehicle engines under the Clean Air Act. The proposal also would be a matter of public interest because it provides a precedent setting exemption to an individual who wishes to import a vehicle or engine for personal use. The proposal might be controversial because every nonconforming vehicle or engine admitted into the United States would theoretically diminish the air quality.

Alternatives Under Consideration

Because Customs, in conjunction with EPA, enforces those laws and

regulations applicable to emission controls for imported vehicles and engines, the proposed Customs regulations to a large degree are predicated upon the alternatives proposed by EPA.

Alternative (A) would be to maintain the *status quo.* However, because the present regulations appear to have misled some importers, resulting in great expense and inconvenience to them, and are burdensome to Customs and EPA, we believe that this alternative is not satisfactory.

Alternative (B) would be to eliminate the current provisions, which allow conditional importation of a vehicle or engine under bond, pending modification to make the vehicle or engine identical in construction to a vehicle or engine covered by a certificate of conformity, or testing to demonstrate that the vehicle or engine conforms with Federal emission standards. However, adoption of this alternative could cause a hardship to individuals who import nonconforming personal use vehicles for the first time. Without the modification and testing options, an individual attempting to import a vehicle or engine not covered by a certificate of conformity would have to export or destroy the vehicle.

Alternative (C), which we favor and have set forth in the NPRM, would be to adopt Alternative (B) above but promulgate regulations providing a qualified exemption for an individual who imports a nonconforming vehicle or engine for his or her own personal use and not for resale. The exemption would apply only to an individual who has not imported or attempted to import a nonconforming vehicle or engine since the effective date of the Clean Air Act Amendments of 1970 (December 31, 1970). Therefore, an individual could use the exemption only one time at most to import one vehicle or engine not covered by a certificate of conformity.

Summary of Benefits

Sectors Affected: Individuals importing nonconforming vehicles or engines for their own personal use and not for resale; nonresident and resident owners of fleet vehicles (such as corporate owners of taxicabs or buses) importing those vehicles or engines for repairs or alterations; Customs; and EPA.

Under current regulations, if a vehicle or engine fails to comply with emission standards, an importer may post a bond with Customs and bring the vehicle or engine into conformity within 90 days of entry. This procedure and related regulations have imposed a substantial administrative and enforcement burden on Customs and EPA. Similarly, it has proved misleading, expensive, and impracticable for importers to modify or test nonconforming vehicles or engines. Adoption of Alternative (C) would allow an individual, under specified conditions, to import a nonconforming vehicle or engine only once and for personal use and not for resale.

A savings in expenses to the Government and individuals would be realized. Individuals eligible to use the exemption to import a nonconforming vehicle or engine for personal use would be saved the expense of bringing the vehicle or engine into conformity or having to export or destroy it. Similarly, the Government would be able to reduce its expenses associated with administering and enforcing the present procedures related to conditional importations under bond.

The current regulations do not allow residents or nonresidents to import vehicles or engines for the purpose of repairs or alterations. Under the proposed regulations, owners of fleet vehicles would be allowed to import those vehicles or engines for repairs or alterations.

Summary of Costs

Sectors Affected: None.

Customs believes that adoption of the proposed regulations would not result in any increased cost to any sectors. Any measurable impact on air quality is expected to be negligible.

Summary of Net Benefits

It is the opinion of the Customs Service that proposed Alternative (C), as described above, provides the most acceptable compromise between the present regulatory procedure, which is burdensome and costly for both Customs and importers, and a harsh policy of flatly prohibiting entry of all nonconforming vehicles into the United States. The net benefit of this alternative, given that we expect no costs, would be a savings in expenses to the Government and to individuals, as described above.

Related Regulations and Actions

Internal: None.

External: The regulations of EPA applicable to emission control for imported vehicles and engines are found in 40 CFR Part 85, Subpart P.

In conjunction with Customs, EPA publishd its NPRM on July 21, 1980, in the **Federal Register** (45 FR 48812). On September 22, 1980, EPA published a document in the **Federal Register** (45 FR 62851), extending the time for public comment to December 3, 1980 and announcing that a public hearing would be held at EPA headquarters on November 3, 1980. Customs' final action on these regulations has been suspended pending EPA consideration of public comment received in response to both NPRMs and the EPA public hearing.

Government Collaboration

Customs-proposed regulations were coordinated with and reviewed by the Environmental Protection Agency, which would review in a similar manner any Final Rule adopted by Customs.

Timetable

NPRM—45 FR 48817, July 21, 1980.
Public Comment Period—Closed December 30, 1980.
Regulatory Impact Analysis—None.
Public Hearing—None.
Final Rule—4th Quarter 1981.
Final Rule Effective—30 days from date of publication in the **Federal Register.**
Regulatory Flexibility Analysis—None.

Available Documents

Clean Air Act Amendments of 1970 (P. L. 91–604).
Comments to NPRM.
EPA NPRM—45 FR 48812, July 21, 1980.

Copies of these documents may be reviewed at Customs Service Headquarters, 1301 Constitution Avenue, N.W., Washington, DC 20229, Room 2426, during normal business days between 9:00 a.m. and 4:30 p.m.

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TREAS—Customs

Interest Charges on Delinquent Accounts (19 CFR Parts 24 and 113; New)

Legal Authority

19 U.S.C. 66, 580, 1623, and 1624.

Reason for Including This Entry

The U.S. Customs Service (Customs) has included this project because it is precedent setting and could save the Federal Government millions of dollars.

Statement of Problem

This project would provide an incentive for importers to pay accounts due to Customs promptly and, if

accounts are not paid on time, provide for reimbursement of interest costs resulting from unnecessary government borrowing, possibly resulting in millions of dollars in savings to the Government.

The Department of the Treasury (Treasury) has overall responsibility to maintain adequate cash to meet the Government's expenditure needs. One source of that revenue is the duty and other charges that Customs collects on imported merchandise. If importers or other persons who owe the Government money do not pay these amounts on time, Treasury must borrow funds to meet the Government's expenditure needs.

In a major effort toward improving cash management practices, Treasury in 1979 issued requirements prescribing cash management-related procedures, including interest charges on overdue receivable accounts. Specifically, Part 6, Chapter 8020.20, Treasury Fiscal Requirements Manual (TFRM), requires payment of amounts owned the Government on time and assessment of a late charge on overdue accounts, calculated at a precentage rate based on the current value of funds to the Treasury. The percentage rate will be calculated by Treasury as an average of the current value of funds to the Treasury for a recent 3-month period and will be transmitted in TFRM bulletins before the first day of each calendar quarter.

Section 580 of Title 19, United States Code (19 U.S.C. 580), provides for collection of interest upon all bonds on which suits are brought for the recovery of duties at the rate of 6 percent a year from the time when the bonds became due. The TFRM provides that interest will be charged at a percentage based on the current value of funds to the Treasury. Thus, the TFRM requirements would be applicable in all cases except those covered by 19 U.S.C. 580.

In a report from the Comptroller General to the Congress, dated August 21, 1978, the General Accounting Office (GAO) recommended that Customs charge interest on all duty accounts 30 days past due. GAO made this recommendation as part of an effort to maximize the Government's use of Customs collections to decrease its own borrowing. That report states that in the Customs Regions of Boston, Chicago, Los Angeles, and New York, accounts receivable for duties averaged $8.5 million each month from April 1976 to March 1977 and that approximately 38 percent of that amount was more than 90 days past due.

The present Customs accounts collection policy is to (1) issue a bill which is due and payable upon receipt, (2) pursue collection in accordance with the Federal Claims Collection Act (31 U.S.C. 951, 952, and 953) if payment is not received by Customs within 30 days, and (3) if a surety (guarantor) is also liable by virtue of a bond (contract), to make a formal demand on the surety for payment if the bill remains unpaid after 60 days. Currently, there is no provision for collection of an amount exceeding the principal amount, regardless of the time period of delay or additional administrative costs to the Government incurred as a result of special collection efforts.

This project would amend Parts 24 and 113, Customs Regulations (19 CFR Parts 24 and 113), to establish interest charges for the late payments of supplemental duty bills (bills for additional duties found due after payment of estimated duties and release of merchandise); reimbursable services; and miscellaneous bills issued by Customs to organizations outside the Government, including sureties.

Alternatives Under Consideration

Customs is proposing amending its regulations to conform to Treasury cash management policies. Accordingly, other than giving the importing community sufficient time to adjust their procedures, alternative approaches are not applicable. To take no action would result in continued unnecessary government borrowing. All importers will be required to comply with the same deadlines.

Summary of Benefits

Sectors Affected: The Federal Government and the general public.

If this proposal is adopted, it will provide substantial benefits to the Government (1) through the avoidance of unnecessary borrowing by the Treasury and (2) by providing an incentive for prompt payment of accounts that will reduce delays in collection or, alternatively, provide compensation to the Government for revenue collection delays on overdue accounts.

Customs considered preparing a Regulatory Impact Analysis to detail the monetary benefits and other impacts from this proposal on the Federal Government, importing community, and surety insurance industry. However, it has been determined that neither a Regulatory Impact Analysis, as described in E.O. 12291, nor a Regulatory Flexibility Analysis, as provided in the Regulatory Flexibility Act, is required.

Summary of Costs

Sectors Affected: The Federal Government; the importing community, and the surety insurance industry.

The Federal Government will bear the startup costs to initiate this project. The importing community and the surety insurance industry will bear the cost of interest charges for late payments. However, there will be no such cost if payments are made on a timely basis.

Summary of Net Benefits

If the project is adopted, the benefits to the Government of reducing unnecessary borrowing by the Treasury will outweigh the Government startup costs to initiate this program. Customs' Office of Economic Analysis estimates that the Treasury is "losing" between $3.3 million and $6.8 million per year in interest fees that it pays to borrow funds from the public to make up for delinquent payments owed to Treasury.

Related Regulations and Actions

None.

Government Collaboration

None.

Timetable

NPRM—1st Quarter 1981.
Regulatory Impact Analysis—None.
Regulatory Flexibility Analysis—None.
Public Comment Period—60 days following publication of NPRM in the **Federal Register.**
Public Hearing—None.
Final Rule/Treasury Decision (T.D.)—4th Quarter 1982.
Final Rule Effective—180 days from date of publication in the **Federal Register.**

Available Documents

Part 6, Chapter 8020.20, "Treasury Fiscal Requirements Manual."

Report from the Comptroller General to the Congress, dated August 21, 1978.

These documents are available at Customs Service Headquarters, 1301 Constitution Avenue, N.W., Room 2426, Washington, DC, during normal business days from 9:00 a.m. to 4:30 p.m.

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GENERAL SERVICES ADMINISTRATION

Federal Property Resources Service

National Defense Stockpile Disposal Regulations (41 CFR 101-14.4; New)

Legal Authority

Strategic and Critical Materials Stock Piling Act, 50 U.S.C. 98 *et seq.*; Executive Order 12155, 44 FR 53071, September 12, 1979.

Reason for Including This Entry

The General Services Administration (GSA) includes this entry because it is the first time procedures concerning disposal of materials from the National Defense Stockpile have been developed as regulations.

Statement of Problem

The Strategic and Critical Materials Stock Piling Act, as amended (Act), became effective July 30, 1979. All functions of § 6 of the Act that dealt with Stockpile management were delegated to the Administrator of General Services in Executive Order 12155, effective September 12, 1979. That section of the Act imposed definite restrictions and contained specific authorizations in the management of the Stockpile, including disposals. Specifically, the Act required that disposals shall be made by formal advertising, competitive negotiations procedures, or authorized barter. It also required, under specific conditions, certain notices to the Committees on Armed Services of both Houses of Congress.

The earlier version of the Act placed few restrictions on disposal actions other than requiring the preparation of a disposal plan for each material for the express approval of Congress. In performing his current obligation, the Administrator of General Services must follow procedures for disposal that reflect the international character of markets and the markets' ability to absorb the quantities of materials being disposed, while at the same time protecting the United States against avoidable loss without undue disruption.

The General Services Administration (GSA) plans to publish a regulation on procedures to be followed in implementing the disposal requirements of the current Act by setting forth formal binding principles and procedures that both Government and industry can rely on.

Presently, the Stockpile contains 93 commodities. The Stockpile is continuously being restructured to meet new military developments and changes in the sources of supply due to technological developments in industry. When materials become excess and are authorized for disposal, they are usually sold, and proceeds are used to acquire new requirements. Most disposals result in sales to consumers, processors, or traders.

To proceed in an orderly manner, it is necessary to communicate to these commercial and industrial sectors, as well as Congress and government officials (including disposal contracting officers), the basic principles and procedures that will occur in disposal actions.

The purpose of this regulation will be to formally promulgate these procedures as regulations.

Alternatives Under Consideration

No alternatives are under consideration. Standard government legal structures require implementing statutes with regulations having the force of law where implementation is necessary. Foreign, State, and local governments have no jurisdiction in defense stockpile operations.

Summary of Benefits

Sectors Affected: Congress and Federal executive departments interested in the Stockpile transactions; GSA personnel involved in everyday Stockpile activities, including Stockpile contracting officers; consumers in industry and traders using the Stockpile as a source of supply of Stockpile-type materials available for sale; and trade publications oriented to Stockpile materials markets.

These benefits cannot be quantified, but all sectors will benefit substantially by being more knowledgeable of Stockpile disposal operations.

Summary of Costs

Sectors Affected: None.

No sectors enumerated above will incur any additional costs, but should save by having fewer inquiries to make, or make answers to, about Stockpile disposal principles and procedures. No principles or procedures will be changed to increase any burden.

Summary of Net Benefits

No negative effects are perceived, since a void in the communication of disposal knowledge is being filled. Therefore, net benefits are those we have described above.

Related Regulations and Actions

Internal: The only related regulations involved are those cross-referenced in the proposed regulations to avoid duplicating information and lengthening the submission.

External: The Federal Emergency Management Agency (FEMA), in its delegated authority to indicate and quantify Stockpile materials, has an applicable regulation dealing with their functions, the content of which has been considered in the proposed regulations. (DMO-11, 44 CFR 328)

Government Collaboration

Since by statute and Executive Order 12155 Stockpile management is exclusively a GSA-Federal Property Resources Service operation, no Government collaboration is necessary, although other agencies, such as the Federal Emergency Management Agency, participate in other aspects of the National Defense Stockpile program.

Timetable

NPRM—None.
Public Hearing—None.
Public Comment Period—None.
Final Rule—March 1, 1982.
Final Rule Effective—March 1, 1982.
Regulatory Impact Analysis—Not required.
Regulatory Flexibility Analysis—Not required.

Available Documents

DMO-11, General Policies for Strategic and Critical Materials Stockpiling (44 CFR Part 328)

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FEDERAL ELECTION COMMISSION

Communications by Corporations or Labor Organizations (11 CFR 114.3 and 114.4; Revision)

Legal Authority

Federal Election Campaign Act, 2 U.S.C. 438(a)(8) and 441b.

Reason for Including This Entry

The Federal Election Commission (FEC) includes this proposed rulemaking because it concerns an issue of public interest that affects all corporations and labor organizations contemplating

nonpartisan activities in connection with Federal elections.

Statement of Problem

The Federal Election Campaign Act (at 2 U.S.C. 441b) prohibits corporations and labor organizations from making contributions or expenditures in connection with a Federal election. Certain exceptions from that general prohibition are set forth in the statute. These statutory exceptions permit a corporation or labor organization to make contributions or expenditures for communications or activities aimed at the corporation's executive and administrative personnel, stockholders and their families, or the union's members and their families. Thus, 2 U.S.C. 441b(2) (A) and (B) specifically permit:

(1) A corporation to use its treasury funds for communications or for nonpartisan registration and get-out-the-vote campaigns aimed at its stockholders and their families or at its executive or administrative personnel and their families.

(2) A labor organization to use its treasury funds for communications or for nonpartisan registration and get-out-the-vote campaigns aimed at its members and their families.

While the above statutory exceptions permit contributions or expenditures for communications or activities aimed at a corporation's or labor organization's restricted class, there are no comparable statutory exceptions for communications or activities aimed at the general public. Commission regulations, however, do permit a corporation or union to use its treasury funds for communications or activities directed to individuals who are outside the restricted class—that is, to all employees of the corporation or labor organization or to the general public—provided that certain requirements are met. 11 CFR 114.4 (c) and (d) of Commission Regulations permit the following activities:

(1) A corporation or labor organization may, through various communications, urge *employees* of the corporation or employees of the labor organization to register, to vote, or to otherwise participate in the electoral process, provided that the organization meets certain specified conditions designed to ensure nonpartisanship. These conditions are that the communication mentions no political affiliation and that information on particular candidates or political parties is not included unless the entire list of candidates on the ballot is reproduced (see 11 CFR 114.4(c)(1) (i) and (ii)).

(2) A corporation or labor organization may reprint in whole and distribute to the *general public* official registration and voting information or materials, provided that the organization distributes the forms in a nonpartisan manner and does not encourage or support registration with a particular party (see 11 CFR 114.4(c)(2)).

(3) A corporation or labor organization may distribute to the *general public* voter guides and similar materials describing the candidates and their positions if the organization obtains the materials from a nonpartisan, nonprofit organization and if the materials do not favor one candidate or political party over another (see 11 CFR 114.4(c)(3)).

(4) A corporation or labor organization may participate in registration and get-out-the-vote drives aimed at the *general public* if the drive is jointly sponsored with and conducted by a nonpartisan, nonprofit organization and if the services are made available without regard to the voter's political preference (see 11 CFR 114.4(d)).

The above regulations thus specifically permit a corporation or labor organization to make nonpartisan registration and voting communications directly to the corporation's or union's *employees*. There is, however, no provision that specifically permits a corporation or labor organization to use its treasury funds to make such communications directly to the *general public*. Except for official materials prepared by a State government current regulations specifically permit a corporation or labor organization to make contributions or expenditures for communications or activities directed to the general public only with the involvement of a nonpartisan, nonprofit organization.

Any person may request an Advisory Opinion from the FEC on the application of the Federal Election Campaign Act to a proposed specific transaction or activity by the requestor. Several corporations and labor organizations have expressed, through the Advisory Opinion procedure, interest in making nonpartisan communications directly to the general public. In certain situations, the Commission has approved the expenditure of corporate funds for nonpartisan registration and voting communications directed to the general public without the involvement of a nonpartisan nonprofit organization. (See Advisory Opinions 1980–20, Federal Election Campaign Financing Guide (CCH) ¶5487; and Advisory Opinion 1980–33, ID., ¶5500.) In order to clarify the circumstances in which corporations and labor organizations may make such nonpartisan communications, the Commission is considering the promulgation of regulations to govern such activity.

Alternatives Under Consideration

The Commission is now considering proposed regulations that would permit the following communications by corporations and labor organizations under 11 CFR 114.4:

(A) The proposed rules would allow corporations and labor organizations to make nonpartisan registration and get-out-the-vote communications to the general public, provided that the communication meets certain conditions designed to ensure nonpartisanship. The proposed rules would also allow the communication to refer to an issue of public interest in connection with the need to register and vote.

(B) The proposed rules would allow corporations and labor organizations to publish and distribute to the general public the voting records of all Members of Congress, all Members of either House, or all Members from a particular State. To be permissible, the proposed rules wold require a voting record publication to meet certain conditions designed to ensure nonpartisanship.

(C) The proposed rules would allow corporations and labor organizations to publish and distribute to the general public a voter guide that consists of questions posed to all candidates for a particular Federal seat or office and a verbatim reprinting of the candidates responses. The proposed rules would require the voter guide to meet certain conditions designed to ensure nonpartisanship.

In addition to these proposals, the Commission is considering a provision that would allow incorporated membership organizations, incorporated trade associations, cooperatives, and corporations without capital stock to make the same communications the proposed rules would permit corporations and unions to make.

Although all of these proposals are under consideration, the Commission has made no decision at this time to adopt any of the proposed changes.

Summary of Benefits

Sectors Affected: Labor organizations and corporations in all industries, including corporations without capital stock, incorporated membership organizations, trade associations, and cooperatives.

The revisions under consideration would affect those entities whose activities come within the purview of 2 U.S.C. 441b: corporations, labor organizations, incorporated membership organizations, trade associations,

cooperatives, and corporations without capital stock.

By clarifying which types of nonpartisan communications by corporations and labor organizations to the general public are permissible under 2 U.S.C. 441b, the revisions under consideration will remove uncertainty as to such activity. This will make it easier for corporations and labor organizations to plan such nonpartisan activity and will thereby encourage such activity.

It is hoped that the proposed action will provide increased voter participation, reduced costs to corporations and labor organizations in complying with 2 U.S.C. 441b (because greater clarity in regulations will eliminate the need to seek Advisory Opinions), and reduction in Advisory Opinion workload at FEC.

Summary of Costs

Sectors Affected: None.

The alternatives under consideration would impose no obligation to make nonpartisan communications. There is, therefore, no cost imposed by any of the possible revisions.

Summary of Net Benefits

As noted above, the proposed rules would clarify the types of election-related communications corporations and labor organizations may make to the general public. There is no cost and no burden imposed on any sector to comply with these rules.

Related Regulations and Actions

None.

Government Collaboration

Per 2 U.S.C. 438(f), we have informed the Internal Revenue Service of our actions.

Timetable

ANPRM—45 FR 56349, August 25, 1980.
NPRM—46 FR 44964, September 8, 1981.
Public Hearing—October 26, 1981.
Public Comment Period—September 8 to October 8, 1981.
Regulatory Impact Analysis—None.
Regulatory Flexibility Analysis—None.
Transmittal to Congress—4th Quarter 1981. (Pursuant to 2 U.S.C. 438(d), the FEC must transmit all rules interpreting the Federal Election Campaign Act to Congress. Each House has 30 legislative days to disapprove a regulation submitted under this provision.)
Final Rule—1st Quarter 1982.

Available Documents

None.

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FEC

Transfers of Funds; Collecting Agents, Joint Fundraising (11 CFR 102.6 and 102.7; Revision)

Legal Authority

Federal Election Campaign Act, 2 U.S.C. 438(a)(8), 432(e), and 441a(a)(5)(A).

Reason for Including This Entry

The Federal Election Commission (FEC) includes this proposed rulemaking because it concerns an issue of public interest that affects all candidates for Federal office and political committees operating under the provisions of the statute that contemplate engaging in joint fundraising activity in connection with Federal elections. In addition, this proposed rulemaking affects all organizations that collect and transfer contributions received on behalf of separate segregated funds.

Statement of Problem

Joint fundraising is the solicitation of contributions through the combined effort of two or more candidates or political committees. Joint fundraising is distinguished from a second method of collecting contributions in which a collecting agent, which is generally an organization not required by the Federal Election Campaign Act to register and report its activities to the FEC, collects contributions on behalf of a related separate segregated fund.

The FEC has issued a series of Advisory Opinions establishing guidelines for joint fundraising activity and collecting agents. The FEC is now considering proposed regulations that would incorporate the Commission's Advisory Opinions on both topics into its regulations. As a result of FEC's action, candidates, political committees, and other organizations would have access to uniform guidelines for joint fundraising activity. In addition, organizations that qualify as collecting agents would have clearer guidance with respect to their responsibilities as collecting agents under the statute.

The Commission's current regulations at 11 CFR 102.6, although entitled "Transfers of funds; Joint Fundraising," deal only with the collecting agent situation and do not give adequate guidance to entities engaging in joint fundraising activity. The proposed rulemaking that is the subject of this entry makes a distinction between true joint fundraising and the "collecting agent" situation by providing for separate procedures for the two forms of fundraising. The proposed rules would create a new CFR section, entitled "Joint Fundraising," which would incorporate a series of Advisory Opinions issued by the FEC with respect to permissible joint fundraising methods and procedures. In addition, the Commission's regulations at 11 CFR 102.6 would be retitled "Transfers of Funds; Collecting Agents" and would govern the reporting and recordkeeping requirements of only those organizations that qualify as "collecting agents."

The proposed rulemaking in this area reflects the FEC's commitment to provide complete guidance to candidates, political committees, and other organizations that may engage in fundraising activity in the 1982 Federal election cycle. Providing this clearer guidance will encourage voluntary disclosure of campaign finance information under the Federal Election Campaign Act.

Alternatives Under Consideration

(A) *Collecting Agents*—With respect to collecting agents, the proposed regulations would define the term "collecting agent" to include any connected organization of a separate segregated fund or any affiliated committee of the separate segregated fund. In addition, the draft regulations provide several means of transmitting contributions to the separate segregated fund, including depositing the contributions in a transmittal account, a treasury account of the connected organization, or an account of an affiliated committee.

(B) *Joint Fundraising*—The proposed regulations being considered by the Commission would provide for three possible joint fundraising methods: the participants may establish a separate fundraising committee, they may designate one participating committee to act as fundraising representative, or they may hire a commercial fundraising firm or agent. The draft regulations set out procedures for determining gross and net proceeds and for recordkeeping and reporting by the political committees involved in the joint fundraising.

The proposed regulations are designed to cover joint fundraising

activity by Presidential primary candidates electing to receive matching funds under Chapter 96 of Title 26 of the Internal Revenue Code in addition to fundraising activity by candidate committees and other political committees operating under Title 2 of the U.S. Code. If candidates receiving Federal funding engage in joint fundraising activity, such candidates would continue to be subject to the stricter recordkeeping and reporting requirements of Chapter 96 and §§ 9031 *et seq.* of the Commission's regulations. However, these proposed regulations do not address certain substantive issues unique to joint fundraising in the context of Title 26, such as whether contributions received may be submitted for matching funds.

Summary of Benefits

Sectors Affected: Candidates, political committees, and other organizations engaging in joint fundraising activity in connection with the Federal election process, including candidate committees, multi-candidate committees, party committees, and unregistered organizations acting as collecting agents for separate segregated funds.

The revisions under consideration would affect those entities whose activities come within the purview of 2 U.S.C. 441a and who contemplate engaging in joint fundraising activity. By codifying the FEC's Advisory Opinions in this area, the revisions under consideration would remove uncertainty as to the permissible methods and procedures of joint fundraising and the reporting and recordkeeping requirements that those engaging in joint fundraising must observe. In addition, organizations qualifying as collecting agents will have clearer guidelines to follow in collecting and transmitting contributions to separate segregated funds. The FEC hopes that the revisions being considered will reduce costs to political committees because greater clarity in regulations will reduce the need for political committees to seek Advisory Opinions.

Summary of Costs

Sectors Affected: None.

The alternatives under consideration would impose no obligation to engage in joint fundraising activity or collecting agent activity. There is, therefore, no cost imposed by any of the possible revisions.

Summary of Net Benefits

As noted above, the proposed rules would clarify the existing requirements for collecting agents and joint fundraising. There is no cost and no burden imposed on any sector to comply with these rules.

Related Regulations and Actions

None.

Government Collaboration

None.

Timetable

NPRM—46 FR 48074, September 30, 1981.
Transmittal to Congress—1st or 2nd Quarter 1982. (Pursuant to 2 U.S.C. 438(d), the FEC must transmit all rules interpreting the Federal Election Campaign Act to Congress. Each House has 30 legislative days to disapprove a regulation submitted under this provision.)
Final Rule—30 legislative days after transmittal to Congress, if not disapproved.
Public Hearing—None.
Public Comment Period—September 30 to October 30, 1981.
Regulatory Impact Analysis—None.
Regulatory Flexibility Analysis—None.

Available Documents

NPRM—46 FR 48074, September 30, 1981. Copies of relevant FEC Advisory Opinions may be obtained from the Public Records Office at the address below.

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FEDERAL TRADE COMMISSION

The Federal Trade Commission (FTC) entries for credit practices, mobile homes, vocational schools, and standards and certification describe rulemaking proceedings that are currently in progress. The views expressed in these entries are those of the Commission's 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 record.

The entry for eyeglasses describes a current investigation in which rulemaking is one of several ultimate options under consideration. The entry for the premerger notification program decribes a current review of the coverage and content of the Premerger Notification Rules and Report Form, 16 CFR Sub-Section 801–803 and Appendix. The views expressed here are those of the 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 or some other course of action should be undertaken.

The entry for the Commission's investigation of residential real estate brokerage, which was listed in the **Calendar of Federal Regulations** published in June 1981, is not included in this edition. A description of this investigation may be found at 46 FR 25476, May 7, 1981. Although rulemaking may ultimately result from the investigation, it is believed that an Advance Notice of Proposed Rulemaking will not be issued within the 1982 calendar year. There may, however, be a staff report published and a request for comment on the findings of the investigation in 1982.

With respect to any rulemaking activities and in compliance with the Federal Trade Commission Improvements Act of 1980, P.L. 96–252, a preliminary Regulatory Analysis will be issued whenever the Commission publishes a Notice of Proposed Rulemaking, and a final Regulatory Analysis will be issued whenever the Commission promulgates a Final Rule. Such Regulatory Analysis parallels the requirements of Executive Order 12291 for Regulatory Impact Analysis.

FTC

Proposed Amendment to Eyeglasses Rule and Eyeglasses II (16 CFR Part 456; Revision)

Legal Authority

Federal Trade Commission Act, §§ 5 and 18, 15 U.S.C. 45 and 57(a).

Reason for Including This Entry

The Federal Trade Commission (FTC) is examining State and private restrictions on the delivery of eye care services and products in an effort to ensure optimal consumer access to these goods and services at competitive prices, without any compromise in the quality of vision care.

On December 2, 1980, the Commission issued an ANPRM requesting public comment on the issues discussed below.

Statement of Problem

The staff of FTC's Bureau of Consumer Protection has identified a number of State and private restrictions

on delivery of eye care goods and services that may have the effect of decreasing consumer access to vision care services, increasing the cost of those services, and impeding the growth of alternative "non-traditional" eye care practices. The Commission's interest in assessing the effects of these restrictions stems from its earlier eyeglasses investigation, which began in 1975 and culminated in 1978 in a new Federal regulation (16 CFR Part 456) requiring (among other things) the release of eyeglasses prescriptions following an eye examination. In that investigation, which focused on advertising restrictions, the Commission's staff became aware of a number of additional eye care restrictions that may significantly harm consumers by maintaining higher prices and limiting the accessibility to consumers of vision care products and services. The Commission staff is aware of little evidence at this time to support the assertion by proponents of these restrictions that they are necessary to protect the public health and safety.

One category of restriction under review inhibits the commercial or high volume practice of optometry and opticianry. (Optometry is the examining of eyes and the prescribing of corrective lenses, and opticianry is the dispensing of eyeglasses.) For example, approximately 40 States prohibit optometrists and/or opticians from engaging in one or more of the following practices: working for non-professional corporations or department stores; locating in high-traffic commercial locations such as shopping centers; operating branch offices; and using trade names.

Proponents of these restraints argue that they are needed to guard against low-quality vision care. They argue that the practice of optometry in commercial settings invites the intrusion of profit motives into the profession, resulting in poor-quality, incomplete examinations, or unnecessary prescribing of corrective lenses. Bans against the use of trade names are justified by the additional argument that they protect consumers from deception.

The effect of these laws may be to prevent individual practitioners from locating in areas such as shopping centers, where the potential for developing high-volume, lower-cost operations, such as optical chains exists. They may also limit the ability of opticians, optical chains, and department stores to compete and, according to preliminary evidence, may result in an increase in consumer prices. Finally, branching and location restrictions may restrict consumer accessibility to vision care, especially affecting the elderly and other less mobile members of society. Both higher prices and decreased accessibility may mean that some consumers receive no care at all or obtain vision care less frequently than they otherwise would.

The second category of restrictions that the FTC staff has examined consists of those prohibiting opticians from (1) duplication, a process whereby a new eyeglass lens is produced by analyzing the prescription of an existing lens, and (2) fitting of contact lenses. These restrictions may limit the consumer's ability to comparison shop for eyeglasses or contact lenses, particularly when consumers are not given a copy of the prescriptions following the initial sale of eyeglasses or contact lenses. The Commission's Eyeglasses Rule currently mandates prescription release only after the eye examination and not after the dispensing of prescription lenses.

Approximately twelve States prohibit opticians from duplicating a new eyeglass lens from an existing lens. One of the justifications advanced in support of such prohibitions is that opticians may not be able to duplicate eyeglasses accurately from an existing pair. The FTC staff conducted a study that was designed to measure the accuracy of the duplication process. The results indicate that there appears to be some potential for introducing a significant margin of error through the duplication process. However, even in States where duplication is prohibited, an optician is permitted to make new eyeglass lenses from a valid prescription. Thus, if the consumer has been provided with a copy of his or her prescription following the initial sale of eyeglasses (i.e., a "re-release" procedure), he or she could use that prescription to purchase new eyeglass lenses from any optician, so that comparison shopping would be facilitated while any problems in the duplication process would be avoided.

A possible concern with such a "re-release" procedure is that it will enable the consumer to bypass regular eye examinations. However, staff is unaware of any State that presently requires an additional eye examination before the purchase of new eyeglasses if the seller already possesses a valid prescription for the consumer. Thus, even in States where duplication is prohibited, a consumer can purchase additional eyeglasses from his or her initial seller without further eye examinations.

Certain States also prohibit opticians from fitting contact lenses. It has been argued that these restrictions are necessary on the ground that opticians may not be adequately trained to perform this function. The FTC staff has designed a study of recently fitted contact lens wearers in an attempt to generate comparative empirical data about relative quality and prices of lenses in States that restrict opticians from fitting contact lenses and those States that do not.

Alternatives Under Consideration

Various options are available to the Commission if it decides to proceed in this area, including an amendment to its Eyeglasses Rule, the promulgation of new trade regulation rule provisions, a formal complaint against private parties alleged to have engaged in unfair acts or practices, a voluntary guide defining unfair acts or practices, legislative recommendations to Congress or to the States (including development of model State laws), or a public report setting forth the findings of the staff, or no action. On December 2, 1980, an ANPRM was published in the **Federal Register** (45 FR 79823), requesting comment on the options available to the Commission. A discussion of some of these options follows.

A. Staff Recommendations

The FTC staff has written a report recommending that the Commission (1) commence a rulemaking proceeding to examine commercial practice restrictions and (2) propose amendments to the Eyeglasses Rule concerning release of eyeglass and contact lens prescriptions following the dispensing of those ophthalmic goods.

The staff's proposal concerning commercial practice restraints is a deregulatory action and would remove certain State restrictions on the practice of optometry and opticianry in commercial settings. Data from economic studies indicate that these restrictions may raise consumer prices and that the argued justifications are without merit. The staff proposal, however, would not interfere with the State's ability to control any perceived abusive practices through more direct regulations, rather than broad restrictions aimed at banning commercial practice altogether. For example, to the extent that a State is concerned with the thoroughness of eye examinations offered by eye doctors, the State would remain free to enact minimum eye examination standards.

In its report, the staff has also recommended that the Commission extend the prescription release requirement of the Eyeglasses Rule to

require that upon filling a prescription for spectacle lenses, the dispenser (whether an ophthalmologist, optometrist, or optician) return the prescription to the consumer. This would enable the consumer to obtain replacement or duplicate pairs of eyeglasses from the provider of his or her choice and should enhance competition among dispensers. Under this recommendation, States or individual eye doctors would be free to impose a reasonable expiration date on the prescription.

The staff has also recommended that questions concerning the fitting of initial contact lenses by opticians be explored in public hearings, which could result in the issuance of a model State law.

Finally, in its report the staff has recommended that the Commission expand the release-of-prescription requirement in the Eyeglasses Rule to require that the original contact lens fitter provide each consumer with a copy of his or her complete contact lens specifications at the completion of the initial contact lens fitting process. This would enable consumers to obtain replacement contact lenses from the dispenser of their choice.

The Commission has made no determination on the findings and recommendations of the staff. The ANPRM solicited comments on the staff's analysis and on the facts and evidence supporting the staff report.

B. Other Options

In addition to the staff report recommendations, the Commission is considering alternative courses of action. One of the alternatives is publication of a Commission report along with a model State law for review by the States. Such a model statute might, for example, permit optometrists and opticians to practice in commercial settings but at the same time ensure protection of quality of care by including minimum standards for eye examinations and equipment and the protection of the doctor-patient relationship. Adoption in whole or in part of the model State law would be at the discretion of each State.

Another alternative would be the issuance of a voluntary guide, including some or all of the provisions recommended by the Commission's staff for a rulemaking. A guide could define, for example, the kinds of private restrictions on commercial practice that the Commission believed unjustifiably inhibited competition among eye care providers or consumer access to alternative, low-cost eye care goods and services. Enforcement of the restrictions, however, would not lead to the same kinds of Federal sanctions as would violation of a trade regulation rule.

A third alternative under consideration is for the Commission to issue complaints on a case-by-case basis against an ophthalmic board association or practitioner alleged to have engaged in unfair acts or practices. Even if successful, such a suit would not have the nationwide applicability of a trade regulation rule.

Summary of Benefits

Sectors Affected: The retail ophthalmic industry and primarily three groups within that industry: ophthalmologists, optometrists, and opticians; and consumers of eyeglasses and contact lenses.

The Commission's staff estimates that the removal of commercial practice restraints should benefit consumers by reducing vision care costs and making vision care more accessible. In this regard, the Commission's Bureau of Economics (BE) conducted a study that compared prices charged for eye examinations and eyeglasses in cities where commercial optometry exists and in cities where it is restricted. The analysis of data collected in the late 1977 and early 1978 found that (1) prices were 25 percent lower in the cities where commercial practice and advertising were not restricted; (2) commercial optometrists charged lower prices than non-commercial optometrists; and (3) non-commercial providers who operated in markets where commercial practice was permitted charged, on the average, $21 less than those non-commercial providers working in markets where commercial practice was prohibited.

The BE Study also found that the estimated average price for an eye examination and eyeglasses was $72 (in 1977–78 dollars) in markets where commercial practice was permitted, as opposed to $94 in restrictive cities. Given the substantial size of this industry (over one-half of the general population requires some type of corrective lens in order to enjoy optimal vision), consumers annually spend approximately $2.7 billion for ophthalmic goods and an additional $1 billion for eye examinations. There may be considerable savings to consumers if commercial practice restrictions are lessened or eliminated. Present vision care practitioners would be able to own and operate more than a limited number of offices, locate in mercantile settings, use a trade name for their practice, and enter into employment or leasing arrangements with lay individuals and firms. Corporations or other business entities currently selling ophthalmic goods would be able to engage the services of optometrists or lease space to them in order to offer one-stop shopping to consumers. Optometrists who do not dispense corrective lenses would be able to locate near retail optical dispensaries, thus offering their patients easier accessibility to prescription eyewear.

The lifting of commercial practice restraints may also facilitate the growth of commercial chains or volume practices because practitioners would be able to locate in high-traffic commercial areas, have branch offices, and be employed by lay individuals and firms. Such firms could compete with other traditional dispensers of optical goods, with a very possible effect of generating lower prices to consumers. In addition, such changes may provide consumers with a wider choice of providers and greater accessibility to vision care.

If the Commission were to adopt a requirement that the person who fills an eyeglasses prescription must return the prescription, consumers would be able to have their prescriptions refilled by sellers of their choice without necessarily obtaining another eye examination. Such a "re-release" requirement, by enabling consumers to engage in comparison shopping for replacement lenses, could increase competition and lead to lower prices. In addition, the re-release requirement recommended by the staff should fully protect the quality of care received by consumers who wish a duplicate or replacement pair of eyeglasses that reproduce the visual correction present in their existing eyeglasses. The duplication process, on the other hand, may have some potential for error, according to preliminary evidence reviewed by the staff.

Under the staff's recommendation, States or individual eye doctors would be free to impose a reasonable expiration date on the prescription. Such a requirement would prevent consumers from bypassing needed examinations by obtaining duplicate or replacement lenses with an outdated prescription.

If the Commission were to adopt a provision that requires original contact lens fitters to release complete contact lens specifications after the initial fitting, consumers would be able to engage in comparison shopping for replacement lenses. The market for replacement lenses appears to be substantial: preliminary data indicate that contact lens wearers purchase, on the average, one new lens per year. Furthermore, the data suggest that there may be a wide price disparity for

replacement lenses. Such a provision could enable consumers who have been forced to purchase replacement lenses from higher priced providers to obtain lenses from lower priced providers without undergoing a new fitting procedure. (Although there is no currently available evidence that lower-priced providers of contact lenses offer lower quality goods or services, data from the FTC's contact lens study will provide information concerning comparative quality and any possible tradeoffs between quality and price.)

Preliminary evidence indicates that it is likely that a large number of contact lens wearers are denied access to their contact lens specifications and, therefore, are forced to purchase replacement lenses from their original fitters. The free availability of prescriptions might stimulate the growth of small businesses, particularly opticianries, since opticianry is wholly dependent upon the availability of prescriptions. The rule recommended by the staff would in theory assure opticianry unfettered access to all potential eyeglass purchasers and, in States where opticians are permitted to dispense contact lenses, assure them access to all potential purchasers of replacement contact lenses.

Summary of Costs

Sectors Affected: The retail ophthalmic industry and primarily three groups within that industry: ophthalmologists, optometrists, and opticians; and States.

In assessing the costs of possible Commission action, it should be understood that this proposal is essentially deregulatory, not regulatory. That is, the investigation seeks to enhance competition by eliminating restrictions on the marketplace that may be unnecessary.

One cost associated with removal of present commercial restrictions may involve the issue of quality of care. While removal of these restrictions may lower consumer prices, it is necessary to determine whether their removal would involve any decrease in the quality of care received by the public. Before any action is taken, the Commission must determine what, if any, effect there will be if such restrictions are removed.

The critical area of concern is the quality of care comparison between markets that permit commercial forms of practice and those that restrict such practice. The Bureau of Economics study found that the overall level of quality for each of the measures of quality employed was the same both in markets that permit commercial practice and those that prohibit it. With respect to one of the measures of quality, the thoroughness of the eye examination, the results show substantial variation from optometrist to optometrist in the thoroughness of exams being performed, and that variation exists both in markets with and without commercial forms of practice.

Within cities which permit commercial practice, the less thorough exams tended to be given more frequently by commercial providers. However, less thorough examinations were available from about the same percentage of optometrists even in markets where commercial practice was prohibited. With respect to the other measures of quality, commercial or chain-firm optometrists derived the correct prescription and produced accurate eyeglasses no less frequently than non-commercial optometrists. In addition, the study found no difference between commercial optometrists and non-commercial optometrists in the incidence of unnecessary prescribing of eyeglasses.

The economic effect of any Commission action on various industry members cannot be determined with any degree of precision. Data from economic studies of the optical market indicate that the market is price elastic; that is, as per-unit prices decline for eye examinations and eyeglasses, there is a proportionately greater increase in consumption. Total expenditures for vision care should, therefore, increase. However, the market will be a more competitive one, and some inefficient providers will undoubtedly fail to meet the competition. As commercial firms enter markets where they previously were restricted from entering, they will inevitably capture a segment of the market. However, in States that currently permit commercial practice, commercial firms appear to co-exist with traditional solo practices and other small optical businesses.

No direct compliance costs would be imposed on any affected sector if the Commission removed State restrictions on commercial forms of practice. But, instead of restricting commercial practices, the States were solely to impose requirements to control specific abusive practices (for example, by setting minimum eye examination requirements to ensure that all practitioners provide thorough examinations), the States would have to bear the costs of monitoring compliance with those requirements, and it is possible that the prices of vision care would be affected.

The Commission staff does not yet know exactly what costs would be associated with a requirement that a seller return an eyeglass prescription to the purchaser or a requirement that the original contact lens fitters release complete contact lens specifications to their customers following the fitting process. As noted above, data from the FTC's contact lens study will provide information concerning comparative quality of contact lenses fitted by lower priced providers and possible tradeoffs between price and quality.

If the Commission were ultimately to require that when an eyeglass prescription is filled the seller return it to the patient, the compliance cost should be minimal, involving only the time and material for the seller to write a copy of the prescription. If the Commission were to require ophthalmologists and optometrists to release complete contact lens specifications following the initial contact lens fitting so that consumers could obtain replacement contact lenses from a fitter of their choice, the compliance cost should be, again, minimal. In addition, these re-release provisions would impose no government reporting requirements on practitioners.

A model State law would impose no costs directly on any affected sector because it is an option to be adopted by State governmental entities at their discretion. State governments that elect to consider the model State law would incur only those costs normally incurred in the legislative process. If some States do not enact the model State law while others enact only certain provisions or different versions altogether, the end result would be a lack of uniformity in the State laws concerning commercial practice. This might burden practitioners or firms that wish to maintain interstate operations.

If the Commission instead issued a voluntary guide, State restraints would remain intact. Practitioners who wish to engage in commercial forms of practice would still be prohibited from doing so under State law, even if private trade associations adopted the guidelines. Consumers would, therefore, not receive the full benefits of commercial practice.

Summary of Net Benefits

Each of the alternative courses of action under consideration by the Commission focuses on relaxing State and private restrictions that impede commercial ophthalmic practice and prevent consumers from having access to their corrective lens prescriptions. Assuming the broadest application of successful outcomes, the same costs and benefits should result irrespective of the alternative process used to achieve these ends. Therefore, in the discussion

that follows, the staff presents a summary of the total benefits, total costs, and net benefits of permitting commercial ophthalmic practice and ensuring that consumers have access to their corrective lens prescriptions.

With respect to removing State restrictions on commercial practice and thereby permitting commercial forms of practice to enter the market in States that currently prohibit such forms of practice, no direct compliance costs would be imposed on any affected sector. The rule is permissive and would only permit, not require, providers to engage in commercial ophthalmic practice. Thus, the only "costs" borne by industry members would be the indirect effects of doing business in a market where greater consumer choice creates a more competitive market.

No direct economic costs would be imposed on consumers of vision care by removing bans on commercial forms of practice. To the contrary, average prices for eye examinations and eyeglasses were found to be 25 percent lower in markets where commercial practice was permitted. In addition, no adverse impact on the quality of vision care delivered is expected. The staff study of commercial practice indicates that overall quality of care and the percentage of practitioners offering lower quality of care are the same whether commercial practice is present or not. The staff findings also indicate that some practitioners actually increase the quality of their goods and services in response to increased competition.

If State restrictions on commercial ophthalmic practice are removed, indirect costs might arise should State or local regulatory agencies determine to enact new regulations to control potentially abusive practices. In addition to the cost involved in enacting such regulations, the regulatory agencies might incur some additional enforcement costs.

If commercial practice restrictions are removed, present vision care providers would be able to own and operate more than a limited number of offices, locate in mercantile settings, use a trade name, and enter into employment or leasing arrangements with lay individuals and firms, notwithstanding State law to the contrary. Consumers of vision care should be able to purchase vision care at lower prices without any compromise in quality of care (1) from practitioners who lower their prices in response to increased competition and (2) from commercial practitioners who offer vision care at low prices by taking advantage of economies of scale. As a result, it can be anticipated that some consumers will be able to purchase vision care for the first time or on a more frequent basis.

The net benefits should, therefore, be increased consumer access to vision care at lower prices without any compromise in quality of care. The market should also be a more competitive one, and consumers will have greater choice. It is true that increased competition may result in greater market concentration and, therefore, adversely impact on some solo practitioners; however, in States that currently permit commercial practice, this form of practice appears to co-exist with traditional solo practice. Thus, the costs that would be borne by those States that choose to enact new regulations to control potentially abusive practices and the costs to those practitioners who are unable to meet the increased competition would appear to be offset by the fact that the removal of these restrictions should result in increased access to vision care at lower prices without a lowering of quality of care and less direct government interference with practitioners' decisionmaking.

With respect to ensuring consumer's access to their current lens prescriptions, no State laws would be preempted by the proposed action and no direct costs of any kind would be imposed on State or local governmental agencies. Enforcement as needed would be carried out by the FTC. No government reporting requirements would be imposed. And the compliance costs associated with writing out a contact lens prescription at the conclusion of the contact lens fitting and dispensing process appear to be minimal. However, dispensers of prescription eyewear who choose to retain the original prescription that they fill for their files may have to provide consumers with photocopies of their prescriptions if State law requires prescriptions to contain the refractionist's signature and date of examination. Thus, the cost of photocopying the patient's prescription would be incurred and, if the dispenser does not have ready access to a photocopy machine, the cost of acquiring or gaining access to one might be imposed. As a result, practitioners' compliance costs might indirectly be passed on to consumers of vision care in the form of higher prices for vision care goods and services.

Extension of the rule to contact lens specifications and to re-release of eyeglasses prescriptions would increase competition among dispensers of contact lenses and eyeglasses. The free availability of prescriptions might stimulate the growth of small businesses, particularly opticianries, since opticianry is wholly dependent upon the free availability of prescriptions. In addition, consumers would benefit by being able to purchase contact lens replacements from the dispensers of their choice, and average purchase prices might decrease once consumers begin effectively comparison shopping. By ensuring that consumers can obtain copies of their current eyeglass prescriptions from dispensers, consumers would be able to purchase duplicate or replacement pairs of eyeglasses, which are accurate according to their most recent eye examination, from the dispensers of their choice. In States where duplication without a prescription is prohibited, consumers would not be forced to return to the original dispenser or undergo another examination in order to obtain a duplicate pair of eyeglasses. The proposed action would not interfere with the ability of States and eye doctors to require that an expiration date be placed on every prescription; thus, the proposal attempts to ensure that consumers would not be able to bypass regular eye examinations by obtaining duplicate lenses with out-of-date prescriptions.

The Commission staff believes that the benefits of increased consumer choice and potential savings due to the increased ability to engage in comparison shopping for replacement eyeglasses and contact lenses exceed the compliance costs associated with an obligation to release prescriptions.

Related Regulations and Actions

Internal: The Advertising of Ophthalmic Goods and Services Trade Regulation Rule (16 CFR Part 456).

External: Various State laws restricting commercial vision care practices and the ability of opticians to fit contact lenses and duplicate lenses without a prescription.

Government Collaboration

None.

Timetable

ANPRM—45 FR 79823, December 2, 1980.

The ANPRM comment period closed on February 2, 1981. The Commission staff reviewed and analyzed the comments that were received and forwarded its recommendations to the Bureau of Consumer Protection.

NPRM—Undecided.

Commission Decision on Appropriate Action—Date to be determined.

Preliminary Regulatory Analysis—If, and when, an NPRM is issued.
Initial Regulatory Flexibility Analysis—If, and when, an NPRM is issued.
Public Hearings—Undecided.

Available Documents

All documents are available from Room 281, Federal Trade Commission, Washington, DC 20580.

Comments in response to the ANPRM are available for review and copying. Call Agency Contact.

"Staff Report on the Advertising of Ophthalmic Goods and Services and Proposed Trade Regulation Rule (16 CFR Part 456)," dated May 1977.

"A Comparison of a Random Sample of Eyeglasses," prepared by Resource Planning Corporation for the Federal Trade Commission, dated July 2, 1979.

"Advertising and Commercialism in the Profession: The Case of Optometry," prepared by the FTC's Bureau of Economics, April 1980.

"State Restrictions on Vision Care Providers: The Effects on Consumers (Eyeglasses II)," Report of the Staff to the Federal Trade Commission, July 1980.

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FTC

Proposed Rule on Standards and Certification (16 CFR Part 457; New)

Legal Authority

Federal Trade Commission Act, §§ 5 and 6(g), 15 U.S.C. 45 and 46(g).

Reason for Including This Entry

The Federal Trade Commission (FTC) includes this proposed rule because of the impact it could have on matters of significant public interest, including inflation, the rate of innovation, and the viability of small businesses.

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. They are relied on by consumers, building code officials, Federal and State agencies, and others for regulatory and procurement purposes. 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 the safety, fitness, energy efficiency, or other aspects of product performance. However, substantial injury to competitors and consumers can occur when standards development or certification blocks the use of superior or lower cost technology, prevents businesses from competing in profitable industries, establishes inadequate or excessive product safety levels, inflates product prices, or deceives consumers about the quality of a product.

More than 150 complaints filed with the Federal Trade Commission during the rulemaking proceeding allege injuries to competitors and consumers. These injuries may occur for a number of reasons. The procedures that some private standards setting and certifying organizations use may be inadequate to prevent the process from being dominated by large producers, who have the resources to participate actively and hold positions of authority in the organizations, at the expense of smaller businesses and consumers. Economic injury may also occur if private standards development and certification organizations fail to examine potential adverse market effects of their actions. In addition, competitive and consumer injury may occur if such organizations fail to respond to challenges to their standards in a fair and timely manner—for example, if they do not update standards in response to technological change.

On December 7, 1978 (43 FR 57269), the FTC proposed a rule intended to reduce the incidence and severity of injuries to competition that may result from private standards development and certification. The proposed rule would require procedural safeguards to ensure that affected persons (large and small businesses, consumers, government officials, and others) have an opportunity for participation in the development or revision of standards. These procedural safeguards include a requirement that developers of standards permit aggrieved parties to challenge standards.

The FTC proposal of the standards and certification rule was immediately preceded by the publication of an FTC staff report summarizing the results of a 4-year investigation of standards and certification practices. The Commission originally directed the staff to conduct a broad investigation of the standards and certification system after it accepted consent orders in *In re Society of the Plastics Industries*, 84 FTC 1253 (1974). (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.) In that case, the FTC accepted consent orders from 25 manufacturers whose foam plastic building insulation was allegedly falsely rated as fire safe under an inappropriate standard test. The manufacturers agreed on the consent orders to make certain disclosures about fire performance when they marketed their products.

If the FTC does not take any action in this area, any injuries to competition and consumers that now occur because of the current standards and certification system may continue. Standards may raise the cost of manufacturing and thus add to inflation. Anticompetitive standards may contribute to the current decline in innovation. Product standards that set excessively low levels of safety may cause direct harm to consumer health and safety.

Alternatives Under Consideration

When the FTC initiated the rulemaking proceeding, staff focused on practices that may constitute unfair methods of competition and on practices that may be unfair or deceptive. Authority to promulgate rules relating to unfair methods of competition is found in § 6(g) of the Federal Trade Commission Act. Authority to promulgate rules relating to unfair or deceptive acts or practices is found in § 18 of the FTC Act. The FTC Improvements Act of 1980, Pub. L. 96-252, 94 Stat. 374, in § 7, removed authority to promulgate rules under § 18 relating to development and use of standards and certification. Therefore, any rule on standards and certification can only be promulgated by the FTC pursuant to § 6(g) and must be limited to intercepting practices that are unfair methods of competition. Other FTC law enforcement actions, such as guides and individual cases, can be used to remedy any unfair or deceptive acts or practices that the Commission finds to exist.

In response to passage of the Improvements Act, the Commission has determined that the most efficient way to decide what Commission enforcement actions, if any, are necessary with regard to standards and certification activities is to complete analysis of the rulemaking record gathered to date. The Commission has directed the staff to pay special attention to the issues raised in Congress during consideration of the

FTC Improvements Act of 1980 when it examines the rulemaking record and prepares its recommendations. In the Conference Report on the Act several issues were raised by the Managers of the Bill concerning the need for an FTC rule in the standards and certification area. Specifically, the Report states:

> . . . [T]he conferees believe the Commission should explore the possibility of issuing voluntary rules and guidelines in this area. The conferees note that the Office of Management and Budget has now issued OMB Circular No. A–119 which, among other things, sets out procedures for the development of standards applying to products purchased by the Federal Government. The conferees hope the Commission will closely follow the activities of other interested Federal agencies and, in the spirit of Executive Order 12044, will avoid inconsistent or duplicative activity in this area. (Statement of Managers, Cong. Rec. H3157, May 1, 1980.)

FTC staff has been directed by the Commission to analyze the rulemaking record, to address the above issues and to prepare a final report. The final report will be followed by a report of the Presiding Officer in the rulemaking and an opportunity for interested persons to comment on both reports.

Based on the record of the proceeding, staff is considering several alternatives. One set of alternatives includes a variety of non-rule remedies. The Commission could issue an industry guide or statement of enforcement policy and then enforce on a case-by-case basis. Another option would be to move directly into case-by-case enforcement and then encourage industry-wide compliance with a resulting order prohibiting certain practices. Staff is also reviewing other government activities that affect the area to determine whether their impact on competitive and consumer problems would reduce the need for FTC action. One such activity is OMB Circular A–119, Federal Participation in the Development and Use of Voluntary Standards, which is described below under "Related Regulations and Actions."

The remaining alternatives relate to changes in the proposed rule that could make it more effective, less costly, or easier to enforce. First, the Commission could limit the scope and coverage of the proposed rule. The alternatives under consideration by the staff include: tiering of the rule to exclude smaller standards developers from coverage; exclusion of standards that are used primarily by manufacturers as a means of specifying materials or components they use in production; inclusion of only consumer product standards; and exclusion of standards developed primarily by groups of buyers (e.g., purchasers of components for which standards are being written) rather than groups of producers (e.g., manufacturers of the components).

The advantages of limiting the scope of the proposed rule are varied. A tiering approach, such as exempting small standards development organizations from some or all of the rule provisions, would alleviate compliance costs for organizations with limited resources. It would also target rule provisions specifically to the organizations that develop the great majority of standards. Exclusion of certain types of standards from rule requirements would also reduce the cost of compliance to standards developers. The disadvantage of these limitations is that they could leave several areas of the marketplace without regulatory protection.

Second, the Commission could modify the structure of the proposed rule. Possible changes include: extending the notice, participation rights, appeals, and other due process protections to require balanced participation in standards development by all affected interests (including small businesses and consumers); imposing higher burdens of proof on standards organizations or certifiers to justify the reasonableness of their actions when they are challenged by persons alleging injury; requiring organizations to pay the expenses of small business and other interests that could not otherwise participate in the process of developing standards; and making the decisions of private standards developers' appeals boards binding on them. Alternatives also include giving standards developers the option of providing routine procedural safeguards (e.g., notice, right to participate) or of making available an internal complaint mechanism to enable aggrieved parties to challenge restrictive or deceptive standards on a case-by-case basis. The present proposal contains both procedural safeguards and a complaint mechanism.

The advantages of increasing the scope of the procedural safeguards in the proposed rule include the anticipated benefits derived from receiving input from all affected interests in standards development. The disadvantages primarily entail greater direct compliance costs of this broader participation.

Third, the Commission could set performance standards in a rule to increase the flexibility that organizations would have in meeting compliance obligations. One of these alternatives would be to state 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 protection in the standards process.

The advantage of such approaches is that they may minimize the direct cost of compliance while achieving regulatory objectives. The disadvantage of such approaches is that standards developers and certifiers might be unsure whether their actions fully comply with the general performance standards set out in the rule.

Fourth, the Commission could use information disclosure to affect the pattern of reliance on standards. For example, standards developers could be required to disclose dissenting positions on standards, so that persons who rely on these standards would be informed of potential problems with use of the standards. This approach could decrease reliance on injurious standards.

One advantage of this approach is that it creates an incentive for standards developers to resolve justifiable substantive disputes, while allowing them to adopt procedures for doing so that are best suited to their needs. The disadvantage is that the incentive may not be present if reliance on a particular standard is very strong, because it is mandated by law, because of market conditions, or for other reasons.

Fifth, the Commission could vary the timing of compliance with the proposed rule. It could phase in individual provisions of the rule over a period of time. Alternatively, it could delay enforcement of the entire rule for a period of time in order to allow standards developers and certifiers to adjust gradually to rule requirements.

The advantage of varying the timing of compliance is that it may reduce costs by allowing standards developers and certifiers to phase in procedural changes in an economical manner. The disadvantage of this alternative is that it delays the achievement of statutory objectives.

The staff is still in the process of analyzing the rule record, and has reached no decisions on any of the rule or non-rule alternatives described above.

Summary of Benefits

Sectors Affected: Manufacturing industries, especially small firms; and business and private users of standards, certifications, and affected products.

Although it is not possible to discuss fully at this time the sectors benefiting from the proposed rule, various small business and consumer representatives have testified during public hearings that they expect to benefit from a rule, and other sectors may benefit as well. For example, manufacturers would benefit from a rule if it prevented standards and certifications from blocking the use of their superior or lower-cost technology. Consumers may benefit from the resulting increased product choice. Consumers would also benefit from a rule if it prevented standards and certifications from inflating product prices or deceiving consumers about product safety or quality.

It is not possible at this time to quantify the benefits for these sectors that result from the different remedial options the FTC is considering. The staff is still in the process of analyzing the rulemaking record. Moreover, as is often the case, certain benefits that would derive from a rule, such as improvements in the availability of some types of information, may not be susceptible to precise measurement even though such benefits may be substantial. There are currently no data on the aggregate beneficial or adverse impact of present standards development and certification activity; this makes quantitative measurement of the effects of a rule even more difficult.

Entries in the rulemaking record explore a variety of specific situations that the rule may improve, such as the elimination of delays in standards revisions for residential energy devices that 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. If these reductions occurred, they could have a beneficial impact on inflation. Analysis of these and additional case studies in the rulemaking record may suggest the type and potential magnitude of benefits to be derived from improving the operation of the private standards system.

A rule could facilitate entry into markets, where entry is predicated on conformance to a standard or on certification, to the extent that the rule reduced unnecessary restrictions. 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 offset if manufacturers pass on to consumers any of the new costs of standard setting imposed by the rule.

A rule or other enforcement action may also encourage an increase in the supply of useful information (such as information on comparative product performance) through standards. If a rule encourages more diverse interests to participate in the development of standards, this participation may cause a more complete and accurate consideration of the costs and benefits of standards and a more equitable allocation of the 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 products subject to standards, would be able to make more informed choices based on quality and price.

Summary of Costs

Sectors Affected: Private standards development and certification organizations, including trade associations, professional or technical membership organizations, and commercial testing laboratories; manufacturing industries; and business and private users of standards, certifications, and affected products.

As many as 1,200 non-governmental standards development and certification organizations could be affected by the costs imposed by the proposed rule. In addition, manufacturers who use standards and/or certify their products in accordance with a standard would be directly affected by the costs of the proposed rule. Consumers would be indirectly affected by the costs of the proposed rule, to the extent that any additional costs are passed on through the production process.

Staff cannot quantify the specific direct and indirect costs of alternative FTC actions at this time, because analysis of the rulemaking record is incomplete. In addition, as in the case with certain benefits of the proposed rule, there are a number of effects that may be impossible to quantify, even though they may be substantial. 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 initial cost of transition. Standards developers that did not already provide what the rule would require would have the ongoing costs of providing the additional notice, participation rights, and complaint and appeals mechanisms that would be necessary. These costs presumably would be passed on to members of standards development organizations in the form of dues and to 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. The actual direct 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 they perceive benefits to themselves from this voluntary activity. To the extent that the rule changes the benefits individuals derive from participation, it would affect the mix of affected interests that participate. Individuals would have to reevaluate the costs and benefits of their participation. It is not possible at this time to conclude whether the amount of such participation would be greater or less 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 any increased cost of standards development or to reduce the number of standard setting organizations. A loss of socially beneficial standards might occur in such a case.

The cost of certification might be affected in several ways. If a rule requires more information in conjunction with certification marks, there may be additional costs of printing. If a rule requires information 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 if the action required differs from present practice. There may also be increased costs of certification associated with creating and maintaining a required appeals process. An increase in certification costs would result in higher charges for certification services. This presumably would result in higher prices of certified products and/or reduction in the use of certification.

Summary of Net Benefits

As discussed earlier, many of the types of benefits and costs of FTC action in the standards area are not quantifiable. In addition, staff has not yet completed its analysis of the rulemaking record to determine if any FTC action is necessary and, if so, what action would be appropriate. In its analysis of alternative actions, staff is studying the cost and benefit information on the rule record to aid it in its determination. The staff's final report will contain a discussion of the net benefits of the alternatives under consideration.

Related Regulations and Actions

Internal: None.

External: The Office of Management and Budget (OMB) has issued a Circular No. A–119 (45 FR 4326, January 21, 1980), which establishes government-wide policy concerning the use of voluntary standards for procurement purposes and Federal agency participation in voluntary standards development. Only standards activities of organizations following specified due process criteria in their standards development program are open to participation by Federal employees (unless the participation is on their own time). The Circular also cautions Federal agencies that adverse effects may result when unnecessarily stringent or deceptive product standards are used as a basis for government procurement. The Department of Commerce published regulations to implement the Circular but has delayed their effective date indefinitely pending review by the Secretary of Commerce, which was requested by the Presidential Task Force on Regulatory Relief. The Circular itself is currently undergoing review by OMB pursuant to a request by the Task Force on Regulatory Relief.

Legislation has implemented the Tokyo Round trade agreements to reduce tariff and non-tariff barriers to trade in the United States. One of these trade agreements, the Code of Conduct for Preventing Technical Barriers to Trade (Standards Code), places obligations on the United States to reduce barriers to trade that are created by Federal, State, and local government and private sector standards. Commission staff is represented on the Standards subcommittee of the Trade Policy Staff Committee concerned with the trade agreements. Through this participation, staff is working to assure coordination and policy consistency in the Standards Code and FTC enforcement efforts.

Government Collaboration

FTC staff has made numerous presentations relating to the proposed rule to the Department of Commerce (DOC)-sponsored Interagency Committee on Standards Policy and its subcommittees. FTC staff has also worked with DOC in drafting procedures to implement Office of Management and Budget Circular No. A–119. 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 testifed or submitted comments during the rulemaking proceeding.

Timetable

The FTC Improvements Act of 1980, P.L. 96–252, 94 Stat. 374, removed the Commission's authority to promulgate rules under FTC Act § 18 (proscribing unfair or deceptive acts or practices) relating to the development and use of standards and certification. The Commission has determined to continue with analysis of the rulemaking record and preparation of Staff and Presiding Officer Reports under authority granted by FTC Act § 6(g) to promulgate a rule proscribing unfair methods of competition.

NPRM—43 FR 57269, December 7, 1978.
Staff Report—May 1982.
Presiding Officer's Report—60 days after staff report.
Post-Record Comments—60 days after Presiding Officer's Report.
Rebuttal Comments Relating to the Impact of OMB Circular A–119—30 days after post-record comments.
Regulatory Analysis—To be determined.

Available Documents

FTC Staff Report on Standards and Certification (December 1978), available at Room 130, Federal Trade Commission, 6th and Pennsylvania Avenue, N.W., Washington, DC 20580.

Public record documents relied on by staff in preparing the initial staff report, available at Room 288, Federal Trade Commission, at the above address.

Rulemaking record and public record of the comment period and of the rulemaking hearings held May 21 through September 21, 1979, and rebuttal submissions received through January 15, 1980, are available at Room 130, Federal Trade Commission.

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FTC

Proposed Trade Regulation Rule Concerning Credit Practices (16 CFR Part 444; New)

Legal Authority

Federal Trade Commission Act, §§ 5 and 18, 15 U.S.C. 45 and 57(a).

Reason for Including This Entry

The Federal Trade Commission (FTC) is conducting a rulemaking proceeding on the consumer and competitive effects of certain practices used by creditors when consumers have difficulty repaying their debts. Remedies under consideration in this proceeding could have an important effect on the relationship between creditors and consumer debtors in the United States and on competition in this sizable sector of the economy.

Statement of Problem

Most Americans use consumer credit at some time in their lives. At any given time, about half of all households in the Nation are making payments on installment debt. Many encounter financial or other problems that cause them to become delinquent in their payments. Studies show that the leading causes are unplanned events, such as unemployment and 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, may inflict injury on debtors that may be disproportionate to the gain to creditors or the amount owed. The potential injury includes not only dollar losses, but also non-pecuniary 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 complete information and choice about credit terms were 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. Staff believes that there is generally no bargaining over terms between debtor and creditor.

The record shows that many consumers may be unable to shop for credit terms because they lack the specialized legal knowledge necessary to understand and evaluate remedy terms in contracts. Furthermore, creditors do not always compete with each other by offering more favorable remedy terms of contracts, and therefore, in a given market, consumers may find little variation in such terms. Staff believes all of these factors indicate that market forces may not have produced a reasonable balance of creditor and debtor rights in credit contracts.

Specific contractual and other creditor remedies that may cause substantial injury to consumers and that are in widespread use include the following:

(1) Confession of judgment—As part of the contract by which credit is extended, the debtor signs a form that 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 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, the rulemaking record indicates that some creditors nonetheless have used this waiver to threaten debtors with loss of 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 may be 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 may use these security interests primarily to threaten the debtor and deter default, rather than to actually secure the debt.

(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 deficiency, i.e., the difference between the sale price of the product and the amount the consumer owes. The evidence suggests that the sale prices of repossessed collateral may frequently be very low, resulting in large deficiencies.

(7) Attorney's fee provisions—The provisions require the debtor to pay the creditor's attorney's fees. Thus they may tend to inhibit debtors from defending themselves against payment of disputed debts. The evidence indicates that, in some instances, attorney's fees assessed by courts may be larger than actual court costs or the cost of actual legal services provided.

(8) Late charges—Late charges are penalty fees that the creditor assesses when the debtor fails to pay an installment on time. The rulemaking record indicates that 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—The record indicates that creditors make contacts for debt collection purposes with third parties, such as relatives, neighbors, or the debtor's employer. Such contacts may tend to invade privacy and may harm a debtor's employment relationship and lead to job loss.

(10) Cosigners—Creditors sometimes require the debtor to obtain one or more cosigners, who agree to pay the debt if the principal debtor defaults. The evidence indicates that cosigners may frequently fail to understand that the obligation they undertake is substantial, i.e., that they become responsible for the debt if the principal debtor defaults.

Alternatives Under Consideration

The rule that the Commission proposed on April 11, 1975 (40 FR 16347) would prohibit a number of the above creditor remedies and restrict the use of others. It would prevent or limit confessions of judgment, waivers of State property exemptions, wage assignments, security interests in household goods where the credit is not used to buy such 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. Cross-collateral security would be permitted 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 information explaining their obligation and a 3-day "cooling-off" period to evalute 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 debtor, 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) suggested numerous modifications, alternatives, exceptions, and deletions to the proposed rule. Based in part on these suggestions, the rulemaking staff, in its staff report, recommended modifications to the originally proposed rule. The most important proposed modifications concern the provisions on late fees, security interests, deficiencies, and cosigners.

The original proposal would have limited late fees to the amount derived by applying the annual percentage interest rate governing the debt to the amount that was late, for the period it was late. The staff report finds insufficient evidence to support the proposed general limitation on late fees and recommends confining the provision to a ban on "pyramiding."

The original proposal on security interest would have prohibited any security interest other than a purchase money security interest, where credit is used to purchase consumer goods. (A purchase money security interest is a security interest in goods that are purchased with the credit that is being secured.) The staff report recommends dropping the general restriction on non-purchase money security interests. Instead, it recommends a provision banning non-purchase money security interests in household goods but allowing them in other consumer goods, such as automobiles. The recommended provision is intended to focus on the specific problem discussed on the record.

The original proposal on deficiencies would have required that whenever a creditor repossesses collateral, the creditor must credit the debtor with the fair market retail value of the property. The revised proposal would apply a retail value standard only if the creditor wished to collect a deficiency. Creditors

would not be required to return surplus to debtors based soley on the retail value standard. In addition, retail value would have to be determined based on an actual sale in an established retail market, either by the creditor or a third party. This would eliminate ambiguity in the determination of retail value. If no established retail market exists for the collateral, the creditor could not collect any deficiency. This recommendation stems from staff's view that deficiencies may be appropriate when high-value collateral, such as automobiles, is repossessed, but not when low-value collateral is repossessed.

The original proposal required that creditors provide cosigners with a 3-day cooling-off period before the cosigners become obligated on a debt. The staff report recommends a cooling-off period only when a creditor solicits someone to become a cosigner after a debtor has defaulted.

Apart from the four alternatives described, the staff report recommends a variety of other, more technical changes in the proposed rule. The staff report is accompanied by a memorandum from the director of the Bureau of Consumer Protection, which does not make specific recommendations but which invites public comment on alternatives to a number of proposed rule provisions. These include: substituting a "loser pays" approach to attorney's fees for the proposed ban on provisions that require a debtor to pay attorney's fees, limiting the prohibition against third-party contacts to contacts with employers, and dropping proposed protections for cosigners that go beyond disclosure. In addition, the Bureau director's memorandum suggests that the Commission may wish to consider some optimal mix of rule provisions, perhaps modeled on consumer credit laws that are already in effect in Connecticut, Iowa, and Wisconsin. These three States have laws that are similar in many respects to the proposed rule, and the rulemaking developed extensive information about how these State laws have worked in practice.

Finally, a memorandum from the Commission's Bureau of Economics concerning the recommended rule is also available to the public. The Bureau of Economics memorandum suggests alternative rule provisions in a number of areas, including elimination of the prohibition on security interest in household goods, elimination of the cross-collateralization provision of the rule, substitution of a "loser pays" approach to attorney's fees, and modification of the deficiency balances section of the rule to permit creditors to calculate deficiencies based on either the wholesale or retail value of the collateral, as determined by an actual sale.

The Commission will consider the alternatives recommended in the staff report, as well as those raised by the Bureau Director, the Bureau of Economics, and various participants in the proceeding, and will decide what form of rule, if any, it ultimately should promulgate.

Summary of Benefits

Sectors Affected: Consumer debtors.

The primary beneficiaries of this rule would be consumers who borrow to obtain goods or services and have difficulty repaying their debts. While the rule would not prevent creditors from compelling consumers to pay legitimate debts where necessary, it seeks to limit possibly unjustified consumer injury arising from the use of certain "boilerplate" collection remedies, where the benefits to creditors from such use appear to be small and the injury to consumers may be substantial.

Although at the present time the Commission does not know what form of rule, if any, it will adopt, it is possible to identify the type of benefits that would result if it promulgates certain provisions of the proposed rule. For example, several provisions may produce dollar benefits for consumers by reducing excessively large deficiencies and late fees. If the Final Rule eliminates collection methods that result in injury to the employment relationship, it may benefit consumers by protecting their employment security. Eliminating practices by which creditors evade procedural requirements would increase the fairness with which creditors treat consumers and may improve consumers' ability to defend themselves legally when creditors demand payment even though the consumer did not get what he or she paid for as a result of fraud or other seller non-performance.

An important qualitative benefit of any Final Rule may be fairer treatment of people suffering from financial difficulties. The proposed rule attempts to rectify practices that may result in some creditors unfairly threatening such individuals with the loss of their possessions and 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 up to 10 to 20 percent of the time, at least for low-income consumers. Next, the rulemaking record indicates that well over 10 million consumers are subject to contracts containing blanket security interests in household goods. Creditors may often make implicit or explicit threats to repossess when borrowers become seriously delinquent. The staff estimates, based on the rulemaking record, that creditors make such threats to repossess to at least several hundred thousand borrowers each year. Finally, over 750,000 automobiles are repossessed each year. In many cases where an auto is repossessed, it may be sold at less than its wholesale value and the consumer continues to owe the creditor money. Based on figures for the mid-1970s, the amount owed as a deficiency totals over $400 million. Although not all of this amount is attributable to sales below fair market value, the provision of the proposed rule relating to deficiency judgments, if adopted, may significantly reduce this total.

Summary of Costs

Sectors Affected: Consumer debtors; credit agencies other than banks, which are exempt from the FTC Act, particularly installment sales finance companies, and other establishments providing consumer credit; retail trade of consumer products; adjustment and collection agencies; and State governments that regulate consumer credit.

The cost to consumers of any rule may potentially take two forms: increases in the price of consumer credit (i.e., interest rate) and reductions in availability of credit to certain consumers.

The rulemaking record contains empirical economic evidence, based on data in States whose credit laws contain provisions similar to one or more provisions of 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, but suggest that adopting the rule in the form originally proposed by the Commission would cause a small increase in the interest rate on loans made by finance companies in States with no existing regulation.

For example, the primary econometric study prepared for the proceeding applied statistical techniques commonly

used by economists to data on individual loans from 30 States with varying credit laws. The estimates of the effect of the rule on the price of credit varied with the method of estimation. The estimates predicted an increase in the annual precentage rate ranging from 0.19 percentage points to 1.6 percentage points, compared to the average interest rate of 25 percent for loans in the sample. (The 0.19 percent measures the overall impact on the price of credit of demand and supply factors influencing the cost and availability of credit as implemented by the rule. The 1.6 percent, in contrast, measures only factors influencing the supply of credit. This estimate is based on loans made at or above the legal interest rate ceiling, where it is hypothesized that the demand for credit exceeds the available supply of credit.) However, these estimates should be viewed as "worst case" estimates. For example, the study measures the effect of a shift to the rule from a system where there is no regulation whatsoever. In fact, most States already restrict one or more of the creditor remedies covered by the rule, so the change created by the rule should be smaller than that measured by the study. The study does not directly address any possible impact on the availability of credit to certain consumers.

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 significant impact on either the cost or availability of credit in these States. However, the Commission and its staff will analyze these economic data carefully before determining if the rule should be issued or what form it should take.

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 perform these tasks only once. Since creditors can spread these costs over all subsequent transactions covered by the rule, costs should therefore be low on a per-transaction basis.

While the rule would restrain certain creditor remedies, the staff believes that such restraints would not prevent creditors from collecting debts. For example, the remedies rated as most valuable by creditors in surveys—self-help repossession (retaking of collateral without first going to court) and garnishment (creditor taking a proportion of a debtor's wages directly from the employer pursuant to a court order)—would not be affected by the rule. Moreover, the fact that most serious delinquency is unintentional may limit the economic importance of any collection remedy, particularly of pressure devices such as household goods security and third-party contacts.

The proposed rule would be likely to affect large and small creditors in similar ways. This proposal would affect finance companies more than other creditors because finance companies make greater use of the remedies covered by the rule.

The rule would not impose any requirements on State and local governments. However, several of the proposals concerning cosigners could preempt existing State laws.

Summary of Net Benefits

The empirical evidence contained in the rulemaking record suggests that adoption of this rule would have little or no impact on credit cost or credit availability. The econometric evidence reveals a possible increase of .19 percent in the mean annual percentage rate for consumer credit extended by finance companies, assuming a shift, as a result of the rule, from an environment of no regulation whatsoever to the format contemplated by the rule.

This reduced form estimate takes demand and supply changes into account. For this reason staff believes it is the best estimate of cost impact. However, most States regulate some of the practices addressed in the rule. This fact renders the likely impact of the rule smaller than that predicted by empirical studies, which only measured the difference between a non-regulated environment and the effects of a rule.

On the benefit side, millions of consumers are affected by the remedies addressed in the rule. Adoption of the rule may reduce the invasions of privacy and disruptions of employment caused by third-party contacts and wage assignments. It may reduce the emotional and economic harm caused by seizure of and threats to seize household necessities. It may reduce the deficiency owed by consumers in the more than 750,000 cases of auto repossession each year. It may save consumers the costs of pyramided late charges and automatically imposed attorney's fees. It may reduce the possibility of cosigners unexpectedly finding themselves responsible for debts, by insuring accurate information at the time a loan is guaranteed by a consumer. Finally, the rule may materially enhance the consumer's legal rights when a consumer fails to receive the goods or services contracted for by preventing evasion of due process via confessed judgments and threats to invoke onerous remedies.

Unlike the costs of the rule, these benefits cannot be quantified with precision because the precise impact of each remedy addressed in the rule varies in each individual case. Every consumer default involves a different income, cost, and benefit level, as well as different familial and employment circumstances.

One source of information as to net benefits is the experience of States such as Wisconsin, which has legislation more restrictive than that imposed by the rule. Wisconsin consumers are free of the remedies addressed in the Commission's proposed rule. The incidence of personal bankruptcy in the State is substantially below the national average. The cost of credit in the State is lower than prevailing rates in adjacent States that have not restricted these practices.

The incidence of personal bankruptcy is another indicator of the possible net benefits from this rule. The available data indicate that States that impose restrictions on harsh creditor remedies (for example, Texas, Iowa, Wisconsin, Connecticut, and Massachusetts) have a significantly lower incidence of personal bankruptcy than the Nation as a whole. A number of published studies indicate that this relationship holds even if differences between States in debt/income ratio, unemployment, and other factors are controlled for and suggest that the relationship between remedies (particularly garnishment) and bankruptcy may be causal (Apilado *et al.*, "Personal Bankruptcies," 7 *J. Legal Studies* 371 (1978); Shuchman and Jantscher, Effects of the Federal Minimum Exemption from Wage Garnishment on Nonbusiness Bankruptcy Rates," *Commercial Law Journal*, November 1972 at 360. See also Stanley and Girth, *Bankruptcy, Problems, Process, Reform* (Brookings Institution 1971) at 28–32, and consumer survey results recently presented to Congress by Andrew Brimmer and Robert Johnson). If the rule reduces the incidence of bankruptcy, the result may be beneficial to creditors as well as to consumers who otherwise would be subject to the costs associated with bankruptcy. Benefit to creditors may occur because, if use of a remedy by one creditor induces bankruptcy, all of the bankrupts' creditors may suffer losses. A relationship between remedies and bankruptcy therefore implies a possible external effect on other creditors from the use of remedies by any one creditor.

Thus, while there is no way to quantify the net benefits of this rule in dollars, the available empirical evidence affords the decisionmaker with a variety of different quantitative measures that suggest the nature and magnitude of such benefits.

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 unless the Board determines that such acts or practices of banks are not unfair or deceptive or that implementation of similar regulations would seriously conflict with essential monetary and payment systems policies of the Board. The Federal Home Loan Bank Board is also required to consider a similar rule for savings and loan institutions.

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.

Government Collaboration

Federal, State, and local government agencies participated in the rulemaking proceeding. Representatives of over half the States testified at hearings, along with a number of local government officials. A member of the Federal Reserve Board staff 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

NPRM—40 FR 16347, April 11, 1975.
Public Comment Period on NPRM—Closed.
Final Notice Concerning Proposed Trade Regulation Rule—42 FR 32259, June 24, 1977.
Final Staff Recommendations to Commission—February 1982.
Oral Presentation to Commission by Interested Parties—March 1982.
Commission Decision—April 1982.
Final Regulatory Analysis—If, and when, any Final Rule is issued.
Regulatory Flexibility Analysis—Not required.

Available Documents

Report of the Presiding Officer—August 1978.
Staff Report—August 1980.
Bureau of Economics Comments on Credit Practices Rule—August 1980.

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, DC.

All documents on the rulemaking record, including hearing transcripts, public comments, etc., are available for examination at the same address.

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FTC

Proposed Trade Regulation Rule on Mobile Home Sales and Service (16 CFR Part 441; New)

Legal Authority

Federal Trade Commission Act, §§ 5 and 18, 15 U.S.C. 45 and 57(a).

Reason for Including This Entry

Mobile homes are an important segment of the housing industry, with annual sales of approximately 275,000 units. The Federal Trade Commission (FTC) staff's recommended rule seeks to enhance warranty performance in the mobile home industry by establishing certain requirements and incentives designed to ensure that mobile home manufacturers fulfill warranty obligations. Therefore, the rule could have a significant impact on the mobile home segment of the housing market.

Statement of Problem

Most mobile home manufacturers offer a 1-year written warranty to cover defects in the materials and workmanship of the home. This warranty obligates them to repair defects. However, the FTC staff believes, on the basis of the rulemaking record developed, that some manufacturers and dealers have failed in a significant number of instances to provide adequate warranty service to the homeowner. (Data from surveys conducted in California and Ohio, for example, indicate that up to 80 percent of new mobile homes have defects and that 40 percent of mobile home owners who request service have not received adequate and timely service.)

The record indicates that many mobile homeowners discover defects in their new mobile homes, including water leaks, malfunctioning plumbing, buckled frames, and inoperative windows and doors. Such problems may have been caused by factory defects or improper transportation or installation of the mobile home. In some cases, severe problems—for example, lack of electricity and heat—may threaten the safety of the homeowner and make the mobile home uninhabitable. Nonetheless, when consumers seek warranty repairs, some manufacturers and dealers often refuse service or delay repairs beyond a reasonable time. In some instances, when manufacturers and dealers attempt repairs, they do not adequately remedy the problem.

These problems in providing adequate warranty service indicate that mobile home manufacturers and dealers may not have adequate service systems to properly perform their warranties. Their warranty systems appear to be deficient in several ways. First, although dealers perform much of the warranty work, the evidence indicates that many manufacturers fail to allocate clearly service responsibilities between themselves and their dealers. As a result, disputes between manufacturers and dealers can delay warranty service. Second, some manufacturers and dealers fail to have sufficient parts, service personnel, and equipment to fulfill consumer requests for repairs. Finally, some manufacturers do not properly monitor their dealers to determine if they have completed repairs. Because they do not have an adequate warranty performance system, some manufacturers and dealers are not able to provide prompt and adequate warranty repairs for mobile homeowners. In additon, disputes over the responsibility for defects caused by transportation and installation (set-up) of the home also impede and delay warranty repairs.

The Federal Trade Commission's investigation into warranty service problems in the mobile home industry initially led to consent orders against four major manufacturers in 1975. (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.) Under the orders, the companies agreed to take specific steps to improve their warranty service programs. Shortly after the consent agreements were entered into, the Commission began this rulemaking proceeding because the investigation that led to the consent orders yielded evidence indicating that substantial numbers of mobile home purchasers receive inadequate warranty service

and that an industry-wide approach to this problem might be necessary.

After a period for submission of written public comments, 40 days of public hearings, and a period for submission of written rebuttal by rulemaking participants, the Commission staff issued a report on August 13, 1980 that summarized and analyzed the record evidence and recommended a rule concerning warranty practices in the mobile home industry. The version of the rule recommended by the FTC staff contains substantial modifications and deletions from the rule as originally proposed by the Commission (40 FR 23334, May 29, 1975). Differences between the version of the rule as originally proposed by the Commission and the version recommended by the staff are the result of the staff's analysis of the record supporting each individual provision of the rule and of the staff's effort to make the structure and language of the rule simpler and easier to understand. The recommended rule seeks to improve warranty service by setting time limits within which the warrantor must complete warranty repairs and by requiring manufacturers or their service agents to perform inspections of the home after delivery, at the homesite. It would also require that manufacturers who offer written warranties on mobile homes maintain recordkeeping systems and disseminate a consumer questionnaire to monitor the adequacy of factory and dealer repairs. The recommended rule also would require that manufacturers enter into written service agreements with dealers and others who perform warranty repairs. Under the rule, written warranties must include specific time deadlines for service; set-up and transportation damage cannot be excluded; and repairs cannot be contingent on return of the home to the factory or return of a registration card (some mobile home manufacturers have used clauses in their written warranties requiring that a registration card be returned to validate the warranty as a precondition to receiving free warranty service).

Alternatives Under Consideration

In contrast to the detailed requirements of the original proposed rule, the recommended rule sets general performance standards for warranty service and warranty service systems and omits many of the original provisions proposed in 1975. The use of performance standards should allow industry flexibility to develop its own specific systems and procedures. To illustrate this approach, the original proposal addressed alleged problems in the manufacturers' handling of consumer complaints by requiring (1) implementation of a specific system to process complaints; (2) designation of a corporate focal point to handle complaints, with responsibility vested in non-sales personnel; (3) recordkeeping; and (4) regular review and periodic reports on the effectiveness of complaint handling procedures. In contrast, the rule now recommended by staff only requires warrantors to resolve complaints in 30 days and to keep records concerning such complaints. Similarly, the 1975 proposal contained detailed requirements for the manufacturers' evaluation of prospective new dealers, including periodic visits to the dealers' sales lots. The staff has deleted these provisions from the recommended rule on the basis that the recommended service deadlines—as well as Federal warranty law, which places ultimate responsibility for warranty performance on the manufacturer that offers a written warranty—provide sufficient incentives for manufacturers to develop their own cost-effective evaluation mechanisms.

The Commission and the staff will further evaluate the need for each of the provisions of the recommended rule based on a review of the written comments that have been received from the public on the staff report. While the staff has designed the provisions of the recommended rule as performance standards for warranty service and service systems, the Commission and staff must still resolve the appropriate degree of flexibility for any rule provision the Commission decides to adopt. For instance, the recommended rule sets specific time deadlines for warranty repairs. These deadlines are consistent with some present industry policies and some State laws. A possible alternative would be to allow individual manufacturers and dealers to set their own deadlines, so long as they were disclosed in their warranties.

The recommended rule sets out eight issues (e.g., specific time deadlines for repairs, inspections) that must be addressed in the written service agreement between the manufacturer and dealer. If any Final Rule that is promulgated retains specific deadlines and related requirements, the written agreement may not need to include some of the terms that essentially track obligations the recommended rule would impose on manufacturers.

The Commission and staff also will consider whether or not it is necessary to mandate an inspection by the warrantor or his agent after delivery of the home at the owner's site. Some industry members consider such an inspection to be a beneficial procedure, and at present about half of all new mobile homes are inspected after delivery at the homesite by manufacturers or their agents. Given these facts and that other provisions of the rule create strong incentives for timely warranty service, many manufacturers may independently decide to perform inspections.

The recommended rule requires warrantors to assume responsibility for set-up and transportation damage. While this requirement should eliminate manufacturer-dealer disputes as to the cause and responsibility for defects, the Commission and staff will consider further whether ultimate liability for such defects should be imposed on the manufacturer.

Finally, the recommended rule requires manufacturers to monitor the effectiveness of factory and dealer warranty repairs by maintaining service records and disseminating consumer questionnaires. The questionnaire is designed to provide a low-cost means of monitoring dealer service. Because the questionnaire will also enable consumers to list in one place all remaining defects at a specified time, service costs thereby could be lessened to the extent that the number of service calls decreases. Since the recommended rule would require manufacturers to monitor warranty repairs, and alternative may be to have manufacturers select their own monitoring devices, rather than require the use of a questionnaire.

Summary of Benefits

Sectors Affected: Purchasers of mobile homes; mobile home dealers; and mobile home manufacturers.

By ensuring that manufacturers meet warranty obligations, the recommended rule may heighten industry competition by removing unjustified advantages that may be enjoyed by companies that appear to offer warranty coverage but breach their warranties. It would allow reputable manufacturers to communicate the effectiveness of their warranty repair program through written warranties and would permit consumers to evaluate competing warranty claims when making their decision to select a particular brand.

Owners of new mobile homes may receive more prompt and adequate warranty service. Evidence on the rulemaking record indicates that a significant number of mobile home purchasers who request warranty service have not been successful in

obtaining adequate repairs. Thus, these consumers either have to pay for some repairs themselves or suffer the inconvenience of defective homes. Improved warranty service may reduce these problems. Moreover, consumers may benefit from inspections that provide early detection and repair of problems. Because many defects can lead to more serious structural damage if not promptly repaired, the recommended rule may also prolong the useful life of mobile homes and, thus, increase their resale value. This, in turn, may lead to more favorable financing terms for purchasers of mobile homes and may make mobile homes a more attractive investment.

The recommended rule may also encourage warrantors to reduce customer claims by voluntarily correcting the underlying causes of defects. For example, manufacturers may find it less costly to comply if they build better homes that require less warranty service, thereby providing a clear benefit to consumers, as well as to dealers, who may be responsible for performing repairs.

Summary of Costs

Sectors Affected: Mobile home manufacturers and dealers, particularly firms not presently providing adequate warranty service.

The proposed rule would affect the business practices of some 200 mobile home manufacturers (Standard Industrial Classification 2451) and approximately 12,000 mobile home dealers.

The recommended rule would affect most heavily those firms that do not presently provide adequate warranty service. For such companies, staff estimates that the total cost to comply with the rule recommended in the staff report would be a maximum of $145 per home in 1981 dollars. (All estimates are derived from evidence on the rulemaking record, and have been adjusted for inflation based upon relevant component series of the Consumer Price Index.) This figure represents roughly 1 percent of the average wholesale price of a new home. Other companies would experience lower compliance costs. These projections are based in part upon an analysis of records submitted in 1977 by the four mobile home manufacturers that are operating under consent orders. These estimates of compliance costs are based on the terms of the recommended rule and may change significantly if it is modified.

Industry compliance costs fall into one of three categories: (1) administrative and other overhead costs, (2) inspections, and (3) additional repairs to mobile homes. Many of the provisions of the original proposed rule that imposed purely administrative costs have been eliminated. Staff estimates that administrative costs for the recommended rule will represent a maximum per-home cost increase of about $6 to $12 for large manufacturers, $15 for medium-sized producers, and $30 for small firms, 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 may be below these estimates.

Manufacturers would also incur other overhead costs through compliance with the service agreement and questionnaire provisions of the recommended rule. The administrative cost to manufacturers of entering into written agreements should be concentrated in the first year of compliance and therefore should have minimal effect on prices in the long run. For the most part, the long-term impact will depend on the frequency with which manufacturers affiliate with new dealers. Responses from the companies currently under Commission order indicate that legal costs for drafting the written service contracts should not exceed about $2 per home for the medium-sized manufacturer. Staff estimates that such costs would be less than $1 for large manufacturers and should not exceed $6 for small companies. Based upon the experience of the consent order companies, the required consumer questionnaires should cost no more than $6 per home to print, distribute, and tabulate. Adding this figure to the other costs brings the total administrative and overhead compliance costs of the recommended rule to a maximum of $42 per home for small firms, $24 for medium firms, and $19 for large firms.

Staff's analysis of data from the companies under the consent orders indicates that each of the required inspections of mobile homes after delivery at the homesite costs these manufacturers about $60. Since half of all new mobile homes are already inspected, total industry compliance costs should not exceed $30 per unit. These estimates include reimbursements to dealers for travel and all inspection expenses. Furthermore, because 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.

It is difficult to estimate the magnitude of increases in warranty costs related to repairs or general increases in warranty expenditures resulting from more diligent attention to customer complaints, as the recommeded rule presumably could motivate producers to lower the incidence of defective homes. While quality control improvements are part of the cost of compliance, they should be no greater than the costs of additional warranty service. Specifically, manufacturers can be expected to introduce quality control improvements whenever the cost is justified by expected future savings in warranty expenditures. In addition, an inspection after delivery and set up at the consumer's homesite should permit dealers to spot and correct installation problems before costly structural problems result and could therefore reduce overall warranty service expenditures.

Staff estimates that additional expenditures for each different size of manufacturer for the warranty service under the recommended rule should be approximately $0 to $90 per home, depending on the present level of service provided. Companies that already meet the recommended requirements should experience no additional costs. Firms on the other end of the service and quality spectrum could expect to incur substantial costs, perhaps greater than the $90 estimate. However, if industry service costs increase more than $90 per home, it will be because staff has underestimated the seriousness of current warranty problems and thus the benefits to be achieved by strengthening warranty performance. Thus, staff estimates that total compliance costs for administration, overhead, inspection, and service should not exceed $145 per home for medium-sized firms. Comparable maximums for large firms would be $139 per unit and $163 for small firms. These costs should not have an unfair impact on small manufacturers, since most of the cost (direct warranty service) will vary by the number of homes sold. Manufacturers would probably attempt to increase prices by an equivalent amount, though competitive pressures from firms with more effective warranty systems and lower compliance costs might prevent a full cost pass-through to consumers.

Staff believes that the recommended rule should not alter the competitive structure of the industry significantly. The rule could encourage manufacturers to integrate vertically into retailing or

enter into exclusive franchising agreements with dealers. Moreover, even the largest manufacturers would probably find the capital costs of establishing a large network of company-owned retail outlets to be prohibitive. The record also suggests that dealers would not find exclusive franchises (representing one manufacturer) as profitable as their present practice of representing four to five manufacturers. 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 floor plans. Exclusive dealing would generally limit the variety of homes that dealers could offer without giving them any compensating benefits.

Summary of Net Benefits

The rulemaking staff estimates that the total compliance costs of the recommended rule will be no greater than $139 per mobile home for large firms, $145 per mobile home for medium-sized firms, and $163 per mobile home for small firms. Since about 80 percent of all mobile homes are sold by companies that manufacture 1,000 units or more annually, unit cost increases for most homes should not exceed the $145 per home estimate applicable to medium-sized firms. In return for the projected increase in purchase price, the rule would tend to spread the risk of defect-related repair costs among all mobile home purchasers. Staff estimates that slightly over 20 percent of new buyers would save about $242 on repairs that manufacturers or dealers previously would have refused or otherwise failed to service under warranty. This figure understates true benefits, however, since owners would be spared unquantifiable but nonetheless real costs in frustration and wasted effort. An additional 15 percent of buyers would have service expedited by an average of about 4 months. While it is again difficult to assign a dollar value to this improved service, staff believes that benefits would be substantial, since many service delays involve serious problems that consumers are presumably anxious to have corrected promptly.

It is possible that the risk-sharing benefits discussed above could largely offset total compliance costs. In addition, the recommended rule could lower manufacturing and set-up defect rates. By assigning ultimate responsibility for set-up defects to manufacturers, the rule is designed to motivate companies to monitor dealer performance more closely and help ensure that the useful life of homes will not be shortened by structural deterioration caused by improper installation and leveling. Consumers may also benefit from stricter quality control at the factory. (While it is true that any such quality control and dealer monitoring functions would impose costs not included explicitly in the $145 compliance cost estimate, these efforts would be undertaken only if they at least paid for themselves in reduced warranty outlays. Thus, $145 is a valid upper-limit estimate of combined warranty, quality control, and monitoring costs.) Improvements in product quality or warranty service could also encourage lending institutions to offer more attractive credit terms to mobile home purchasers, reducing the total costs of installment purchases. Finally, industry compliance with the recommended rule's performance standards may allow consumers to comparison shop more easily for mobile homes by using written warranties as an indicator of the relative quality of competing homes.

The provisions to be included in a Final Rule are still being evaluated by the staff and the Commission; therefore, the costs and benefits of the Final Rule, if one is adopted, may differ from those of the recommended rule. If the Final Rule does not include an inspection requirement, compliance costs may be reduced to no more than $115 per mobile home, in staff's estimate. However, without the inspection provision there might be a diminished likelihood of prompt discovery and correction of defects that, if left unchecked, can produce substantial harm to mobile homes and their contents and may contribute to accelerated deterioration and depreciation of mobile homes. Similarly, if the Final Rule does not require specific deadlines for completion of service, this may reduce compliance costs to $109 per mobile home. However, approximately 15 percent of mobile home purchasers who currently receive delayed service would still not receive timely service. If the Final Rule does not include a provision prohibiting exclusion of set-up and transportation from the coverage of written warranties, staff estimates that the costs would not be significantly different from those of the recommended rule. However, without such a provision these costs may be imposed upon consumers, as is generally the case now, rather than manufacturers. Shifting these costs to manufacturers may represent a more efficient allocation of cost because they may be able to reduce those costs by means of improvements in design and quality control and through closer monitoring of dealers. The decrease in the benefits of a rule without the set-up provision may be substantial for those consumers for whom service is refused, delayed, or inadequately performed due to disputes between manufacturers and dealers over the cause of and responsibility for defects. Evidence in the record indicates that there are substantial numbers of such consumers.

Related Regulations and Actions

Internal: Commission consent orders presently require four mobile home companies to establish effective warranty performance systems. The Commission has also brought other cases 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 mobile homes at the factory under the National Mobile Home Construction and Safety Standards Act of 1974, Title VI, 42 U.S.C. 5401 *et seq.*

Seventeen States require warranties in the sale of new mobile homes. A number of States license and bond mobile home dealers and manufacturers.

Government Collaboration

The Department of Housing and Urban Development, Small Business Administration, and representatives from eleven State attorney general offices testified at the rulemaking hearings. Other Federal and State officials submitted written comments on the proposed rule.

Timetable

NPRM—40 FR 23334, May 29, 1975.
Public Comment Period on NPRM—May 29, 1975 through September 7, 1977.
Final NPRM—42 FR 26398, May 23, 1977.
Public Comment Period on Final NPRM—May 23, 1977 through September 7, 1977.
Public Hearings—October 11, 1977 through November 2, 1977, in San Francisco; December 5–23, 1977, January 1 and 31, 1978, and June 9, 1978, in Washington, DC.
Final Staff Recommendations—April 1982.
Oral Presentation Before the Commission by Interested Parties—May 1982.
Commission Consideration and Decision—June 1982.
Final Regulatory Analysis—If, and when, any Final Rule is issued.

Regulatory Flexibility Analysis—Not required.

Available Documents

Presiding Officer's Report—45 FR 53538, September 11, 1979.

Final Staff Report (including a cost-benefit analysis)—45 FR 53839, August 13, 1980.

The record of this proceeding, including comments to the NPRMs and post-record comments on the Presiding Officer's and Staff Reports, is publicly available at the Office of Legal and Public Records Section, Room 130, Federal Trade Commission, Sixth Street and Pennsylvania Avenue, N.W., Washington, DC 20580.

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FTC

Review of Premerger Notification Rules and Report Form (16 CFR Parts 801-803 and Appendix; Revision)

Legal Authority

Clayton Act, § 7A, 15 U.S.C. 18a.

Reason for Including This Entry

The premerger notification rules appear on the August 12, 1981 list of the Presidential Task Force on Regulatory Relief (the Task Force) citing paperwork requirements for agencies to review.

Statement of Problem

Section 7A of the Clayton Act (the Act) requires large firms contemplating substantial mergers or acquisitions to notify the Federal Trade Commission (FTC) and the Antitrust Division of the Department of Justice (DOJ) and to wait a specified period before consummating the transaction. The Act also requires the FTC, with the concurrence of the Assistant Attorney General for Antitrust (the AAG), to promulgate rules requiring that the notification be in a form and contain the information about a proposed acquisition necessary to enable the FTC and DOJ to determine whether the acquisition may, if consummated, violate the antitrust laws. Accordingly, the FTC, with the concurrence of the AAG, promulgated the premerger notification rules (the Rules) (16 CFR Parts 801-803) and the Antitrust Improvements Act Notification and Report Form for Certain Mergers and Acquisitions (the Form) (16 CFR Part 803-Appendix).

The Rules closely track the provisions of the Act. A transaction involving one party with annual net sales or total assets of $100 million or more and another party with sales or assets of $10 million or more must be reported by the parties to the antitrust enforcement agencies (FTC and DOJ) if the transaction itself meets a minimum size requirement. Generally, a transaction must be valued at $15 million or more or involve the acquisition of at least 50 percent of the voting securities of a company with sales or assets in excess of $25 million. Specific classes of transactions—for example, acquisitions of goods or realty in the ordinary course of business, acquisitions of non-voting securities, acquisitions solely for purposes of investment, and certain acquisitions requiring approval of other government agencies—are either completely or conditionally exempt from reporting requirements under the Act.

The Form requires the filing persons to identify themselves and provide information about the transaction. Acquiring persons supply dollar revenues for 1977 by industry and by manufactured product and dollar revenues for the most recent year by industry and by product class. Acquired persons give this information only for the assets or entities to be acquired. Filing persons must identify persons holding more than 5 percent of their stock and their holdings in other issuers. When a filing person believes that it is engaged in a business in which another party to the acquisition is also engaged, it must give information about the geographic area in which it conducts that business, and, if it is an acquiring person, information about previous acquisitions it has made of other firms that also were engaged in that business. The parties must also describe any significant vendor-vendee relationship that existed between them in the most recent year. Finally, the Form requests the submission of certain documents filed with the Securities and Exchange Commission, the most recent annual financial reports, and any reports analyzing the effects on competition of the proposed acquisition.

The Form is designed to require only information that is necessary for the FTC and DOJ to carry out the preliminary antitrust analysis required by the Act, through the least burdensome means available. To reduce the burden on individual firms, the Form is designed to take advantage of information that most filing companies have already compiled for other purposes.

The FTC's review of the premerger notification program focuses on two questions about reducing the paperwork burden imposed on the business community.

First, can the number of transactions affected by the program be reduced? The Task Force has observed that only a small number of the transactions reported result in preliminary injunction actions brought by the FTC or DOJ. It is useful to ask whether there are ways the FTC can exempt more transactions from the program, thereby reducing the paperwork burden on business, while maintaining the program's efficacy as an antitrust enforcement tool. At the same time, it should be noted that the premerger notification program has other values to the public beyond permitting the antitrust agencies to seek preliminary injunctions when necessary, including deterrence of anticompetitive acquisitions and early notice to the FTC and DOJ about possible violations of the antitrust laws. The frequency with which the FTC or DOJ must use the courts to prevent anticompetitive transactions may not be a definitive measure of the appropriate coverage of a law enforcement screening program.

The second question focuses on another way of reducing the program's paperwork burden: can the quantity of information that parties to a transaction are required to submit be reduced? Some of the reports filed with the FTC and the AAG are very bulky, containing copies of numerous or lengthy documents. Some of the information in each of the documents is likely to be irrelevant to an antitrust review of the proposed transaction. At the same time, the great bulk of most filings is composed of copies of documents prepared by the filing persons for other purposes. If the Form required more focused information, the filings might be shorter; yet such a requirement could impose on the parties a greater burden than merely copying existing documents. However, after 3 years of experience with the premerger notification program, it is appropriate to reassess the value for antitrust enforcement purposes of each item of information required by the Form to see whether the paperwork burden imposed on the business community can be reduced.

Alternatives Under Consideration

The FTC staff is considering several approaches to reducing both the coverage of the premerger notification program and the quantity of information that reporting persons must supply. The Act authorizes the FTC to exempt from coverage of the Act only those

categories of transactions that are unlikely to result in antitrust violations. Similarly, the Act requires that the Form include all information necessary to determine whether the acquisition may violate the antitrust laws. As a basis for evaluating a number of rulemaking options, the staff is now conducting a statistical analysis of filings received in the most recent year. This analysis is designed to identify categories of acquisitions that have not posed antitrust problems. It will also help to determine what information required by the Form has not proved useful.

On the basis of this analysis, the FTC will consider changes to the current rules, which would do some of the following:

- raise the size criteria to be met by companies involved in a transaction before that transaction must be reported,
- raise the size criterion that identifies which acquisitions must be reported,
- eliminate from reporting and waiting-period requirements classes of transactions in certain industries that are not likely to result in antitrust violations,
- eliminate some items from the Form, and/or
- change the instructions on the Form to require responses to some questions only in certain identifiable classes of transactions.

Summary of Benefits

Sectors Affected: Business entities with total assets or annual net sales of at least $10 million involved in acquisitions valued at $15 million or more.

Companies currently required to report acquisitions that are unlikely to result in antitrust violations will be relieved of the reporting and waiting period requirements of the Act to the extent that the coverage of the Rules is reduced. The FTC estimates that, on the average, it takes filing persons 50 hours to complete a premerger notification filing, although this figure varies widely depending on the transaction and the companies involved.

Companies still subject to the reporting requirements of the Act will expend less time and money preparing the Form when items calling for unnecessary information are eliminated. The savings associated with these changes will depend on the items eliminated, the transaction, and the companies.

Summary of Costs

Sectors Affected: The general public and customers and competitors of business entities involved in undetected anticompetitive transactions.

The Congress enacted the Hart-Scott-Rodino Antitrust Improvements Act of 1976 to improve the effectiveness of antitrust enforcement. Before the current premerger requirements became effective, the antitrust enforcement agencies often lacked the necessary information and sufficient time to obtain an adequate remedy for an illegal acquisition. The Hart-Scott-Rodino reporting and waiting period requirements were intended to address certain recurring problems in antitrust enforcement—in particular, to prevent companies from engaging in protracted litigation subsequent to an illegal acquisition. In many instances, by the time such an acquisition was determined to be illegal the acquired company had been so altered—or so thoroughly integrated into the acquiring firm—that there was no way to "unscramble the eggs" and restore a viable competitor to the market.

Competitors of companies engaged in undetected anticompetitive transactions may be subject to unfair competition, may be unable to offer their customers prices and services determined by a freely competitive market, and may lose business. Customers of all firms in the affected industry may lose the choices and fair prices assured by a competitive market.

The limitations imposed by the Act on the kind of exemptions that the FTC may propose and on the kind of information that the Form must contain will assure that these costs remain small.

Summary of Net Benefits

The FTC will base any reduction in the coverage or information requirements of the Rules on the statistical analysis of previous filings. Changes will be made only if past experience supports the conclusion that the type of transaction is unlikely to violate the antitrust laws or that the information is unnecessary to an antitrust analysis of the transaction. Therefore, the FTC expects the benefit of any reduction in reporting costs to exceed any cost to the public from a reduction in reporting of antitrust violations.

Related Regulations and Actions

Internal: On July 29, 1981, the Commission published for comment a Notice of Proposed Rulemaking that would, among other things, exempt certain transactions that are reviewed by Federal regulatory agencies from the premerger reporting requirements. In addition, certain information currently required by the Form would be eliminated. A final recommendation will be made to the Commission by the end of December.

External: None.

Government Collaboration

The Antitrust Division of the Department of Justice is also reviewing the premerger notification rules and the Form. The FTC and the Antitrust Division will coordinate their activities in this area.

Timetable

Preliminary Analysis and Report to Commission—January 1982.
Publication of Results and Request for Public Comment—March 1982.
Public Conference (if determined useful by the Commission)—July 1982.
Recommendation to the Commission for Rules Changes—September 1982.
NPRM—To be determined.
Public Comment Period—To be determined.
Final Rule—To be determined.
Regulatory Analysis—Not required.
Regulatory Flexibility Analysis—Not required.

Available Documents

None.

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FTC

Revision to Trade Regulation Rule Pertaining to Proprietary Vocational and Home Study Schools (16 CFR 438; Revision)

Legal Authority

Federal Trade Commission Act, §§ 5 and 18, 15 U.S.C. 45 and 57(a).

Reason for Including This Entry

This rule could cause significant changes in the way proprietary vocational and home study schools conduct their business.

Statement of Problem

In 1978 the Federal Trade Commission promulgated a trade regulation rule in response to problems that the Commission determined to be prevalent

within the proprietary (private, non-profit) vocational schools industry (43 FR 60796, December 28, 1978). These problems included use of high pressure sales tactics, misrepresentations about the employment opportunities for particular skills, and misrepresentations concerning the ability of students to complete a course of study successfully. The Commission adopted several remedies designed to correct the perceived problems. It was the Commission's intention that the remedies be primarily self-enforcing, i.e., they provide students with rights to obtain information about dropout and graduation rates; rights to cancel a contract without penalty during an initial "cooling-off period;" and rights to refunds pro-rated on a class-by-class or lesson-by-lesson basis if students left a course after the cooling off period.

In 1979 the Second Circuit Court of Appeals remanded the rule to the Commission for further consideration of certain provisions it found objectionable. The Court remanded it to the Commission citing the Commission's failure to define unfair and deceptive practices with specificity in the rule and disagreeing substantively with certain remedial requirements of the rule. The Court upheld other remedies—cooling-off and dropout disclosures (*Katharine Gibbs School, Inc.* v. *FTC*, 612 F.2d 658 (2d Cir. 1979)). The Commission's rulemaking staff has initially recommended that the Commission reissue the rule, revised to conform to the Court's opinion. Industry representatives have moved that the Commission abandon the rulemaking. The Commission will soon consider the staff's initial recommendations, additional revisions the staff is preparing, and the motions of the industry.

There are about 6,000 schools in the proprietary vocational school industry. Approximately 100 of these are home study schools, i.e., they provide vocational training through the mail. The remaining schools provide classroom instruction. Courses offered by both types of schools cover a wide range of occupational skills, including secretarial skills, computer operations, truck driving, television repair, and cosmetology.

The rulemaking record contains evidence and testimony presented at public hearings in six different cities and written comments from over 900 interested parties. The record includes extensive evidence of practices that some schools have used in order to persuade students to purchase their courses. Such practices include: misrepresenting employment opportunities or demand for particular skills; misrepresenting the content of courses or the school's facilities; and using duress, harassment, or techniques designed to evoke shame or humiliation to secure enrollments. In the Statement of Basis and Purpose accompanying the original rule, the Commission concluded that it was extraordinarily difficult if not impossible to make a precise quantitative assessment of the frequency of the problems. Nevertheless, the Commission found and the Court of Appeals agreed that the record established that large, if not precisely ascertainable, numbers of students are affected by these practices, and this number represents a significant number of all enrollments in proprietary vocational courses.

The staff believes that these problems arise from two interrelated factors. The lack of readily available information by which a potential student can assess the quality and suitability of a particular course of study is one factor. Record evidence indicates that objective evidence of a school's quality is not always available, and if schools use such data, it may be unreliable or incomplete.

The widespread availability of Federal loan and grant money for tuition is the other factor. The Guaranteed Student Loan Program, Basic Educational Opportunity Grants (Pell Grants), and veterans' benefits provide needed educational opportunities for millions of students. They also unintentionally facilitate many of the sales practices described above by reducing consumers' incentives to demand reliable evidence of high-quality education before enrolling in a course and distorting incentives for schools to maintain the cancellation and refund structures that unsubsidized students would choose. For example, proprietary schools received approximately 30 percent of the $2 billion in Guaranteed Student Loans that was dispensed in 1972 and a commensurate portion of GI benefits for the same year. This infusion of Federal money facilitates the indiscriminate enrollment of students who may not complete their courses and find employment. Evidence in the rulemaking record indicates the average dropout rate for all kinds of proprietary vocational schools may be as high as 70 percent. This phenomenon of high dropout rates and low placement percentages may reflect distortions created by Federal funding.

Demographic studies in the record describe the typical consumer of vocational training as young, inexperienced, and underemployed or unemployed. These persons seek job skills in order to elevate their economic station. Without access to dependable information, the potential student cannot easily distinguish the promotional appeals of a good school from those of a poor one. The unethical or poor-quality school may use misleading or incomplete advertising and promotional literature to bring potential students to the school. Deceptions, distortions, and high pressure during an oral sales presentation may then be used to induce potential students to make ill-advised enrollment decisions. Incentives that the schools use to motivate sales personnel do not usually encourage screening for properly qualified and motivated students. Students may begin to discover that the course has been misrepresented to them or that the training is unsuitable only after they are financially obligated. Many students may not discover inadequate training until they complete the course and find the job market still closed to them. Staff believes that a significant percentage of graduates of proprietary vocational schools are unable to obtain employment in the field of their training. Studies in the record indicate that, overall, fewer than half of the graduates of proprietary schools get related jobs.

Vocational schools have been a frequent subject for Commission attention. Under authority of § 5 of the Federal Trade Commission Act, the Commission has issued more than 100 administrative orders against individual schools to cease and desist unfair and deceptive sales practices of the kind described earlier in this entry. In spite of this unusually high level of enforcement effort, problems continued. The rulemaking staff believes that without industry-wide action, a significant segment of the vocational school industry may continue to perform poorly. The result may be that many consumers of vocational eduction will remain unemployed or underemployed, unwilling or unable to make further attempts to obtain entry-level job skills. A byproduct of this may be a continued high default rate in government-insured educational loans and resulting losses in Federal revenues.

Alternatives Under Consideration

The principal components of rule alternatives that the staff will ask the Commission to consider are:

- Requirements that schools disclose to potential students information such as dropout rates and placement rates.

• An initial "cooling-off period" to allow potential students time to consider informational disclosures and to allow opportunity for reflection away from pressure sales tactics.

• A post-cooling-off cancellation right based on time the student spends in the course.

The rule that the Commission issued on December 13, 1978 (43 FR 60796) contained all of these components. It required a 14-day initial cooling-off period, during which a student could cancel and obtain a full tuition refund, and also required schools to use a strict pro rata calculation (less an initial registration fee) for determining the financial obligation of a student who cancelled after the cooling-off period. That version of the rule also required that schools disclose to prospective students their dropout and graduation rate for the course. If the schools made job or earnings claims about a course, these would trigger the requirement to disclose to prospective students the placement rate for persons who completed the course. Following publication of the Final Rule, several schools and associations sought judicial review of the rule.

The Second Circuit Court of Appeals remanded the rule to the Commission, citing procedural and substantive error that it found in the rule. The Court held that, procedurally, the Commission had failed to define specifically in the rule the unfair and deceptive acts or practices the rule was designed to prevent, as § 18 of the Federal Trade Commission Act requires. Substantively, the Court said, the mandated format for making placement rate disclosures was too restrictive because it did not allow schools to explain about graduates who did not look for jobs or those who did not respond to the school's survey. The Court also concluded that there was "no rational connection between the Commission's universally applicable refund requirements and the prevention of specifically described unfair and deceptive enrollment practices." As previously noted, the Court upheld provisions of the rule requiring disclosure of dropout rates and an initial cooling-off period.

In responding to the Court, the rulemaking staff has considered four alternatives. The first alternative is to retain a mandatory strictly prorated refund calculation in the rule; to define the unfair or deceptive acts and practices in the rule; and to allow schools to explain, in the context of the triggered placement rate disclosure, how many students did not respond to the school's inquiries and how many did not look for jobs. This approach retains the mandatory strict pro rata calculation and assumes that the Court's only problem with the strict pro rata requirement was the absence from the rule of the list of specifically defined unfair or deceptive acts or practices that the Court may have deemed necessary to demonstrate the rational connection between remedies and abuses. This was the alternative published in the Federal Register on July 10, 1981 (46 FR 35668) in order to stimulate discussions between the staff and interested parties about the recommended rule revisions. This approach retains the primary remedy of the original rule—strictly prorated refunds—which the Commission then believed to be the best means for creating economic incentives for avoiding the problems in the industry. However, this alternative continues to apply the requirement to the entire universe of proprietary vocational programs and does not distinguish between cancellations for different reasons, including those related to the prohibited practices and those that occur for other reasons.

The second alternative would be to seek to reduce the costs imposed upon all schools by abandoning a strict pro rata formula. There would be a less stringent refund calculation wherein, instead of calculating refunds on a strict class-by-class or lesson-by-lesson basis, the refund due to a canceling student would decline at fixed increments according to the time the student had spent in the course (a 95 percent refund if cancellation occurs at any time during the first 5 percent of the course, 90 percent at any time during the next 5 percent, etc.). This could be further modified by cutting off the right to a refund at some point short of 100 percent. This approach would reduce the costs imposed on all schools. Like the strict pro rata formula, students' refunds would be commensurate with time spent in the course and, provided that the increments were small and frequently spaced, would not impose an unduly harsh penalty on the student who cancels. However, this approach continues to treat all cancellations alike, regardless of cause.

A third alternative would be to eliminate any post-cooling-off refund requirement and to limit the rule to the pre-purchase remedies of cooling-off and "track record" disclosures. However, some schools might find it more costly and burdensome to provide these disclosures than to comply with a refund requirement.

The fourth alternative under consideration by the staff would give schools the option to choose between either mandated dropout and placement rate disclosures or a strict pro rata refund formula. With either option, schools would have to provide the mandatory cooling-off period. Under this approach, schools could avoid the requirement to use the strict pro rata standard, but if they did, they would no longer have discretion to avoid making placement rate disclosures. Students would be assured of receiving either the most important indicator of a school's ability to deliver a valuable service, i.e., the consumers' record of finding target employment or the means of extracting themselves from a poor enrollment choice without incurring a large financial loss. This approach would give schools more flexibility by allowing them the choice of providing either the enhanced informational remedy as described above or a strict pro rata remedy, but it would not require both. However, neither the informational remedy nor the refund remedy directly addresses all of the objectionable practices that schools have used in the past. For example, a failure to deliver the services as represented during the enrollment process may not be cured by a placement disclosure alone. Also a misrepresentation of the school's ability to place a student after graduation would not be fully corrected by a pro rata refund remedy that expires before the student can actually test out the job market.

Two other alternatives that the Commission may wish to consider as substitutes for rulemaking are case-by-case enforcement, supplemented by industry guides and enforcement policy statements, and intervention before other Federal and State agencies having jurisdiction over proprietary vocational schools.

Summary of Benefits

Sectors Affected: Proprietary vocational education.

Although they operate differently, each alternative under consideration is intended to make it easier or less costly for students to obtain and act on reliable information about vocational school courses. Consumers' enhanced abilities to respond to the true qualities of courses may provide schools with strengthened incentives to compete for students on the basis of quality rather than by using methods (such as exaggerated claims) that are only successful when consumers are poorly informed.

The rule alternatives will produce benefits to the extent that they enable students to avoid expenditures on inappropriate courses or increase the effectiveness of the vocational school

industry in training and placing people in productive jobs. Even if schools fail to respond to the incentives provided by a rule, students may benefit by having better information about course quality and by having more rights to retrieve misspent tuition.

Cooling-Off Period and Disclosure of Graduation and Placement Rates

A 14-day cooling-off period within which to cancel the contract and receive a full refund gives the student time to reconsider his purchase decision in light of graduation and placement rate information provided by the school and any other information that may be acquired during this period. If the student decides that his or her enrollment decision was inappropriate, he or she can reverse the decision.

The effectiveness of such a remedy depends on (a) how well the graduation and placement statistics reflect the current effectiveness of the school's screening, counseling, and course instruction; and (b) the ability of students properly to interpret and act on the information made available to them during the cooling-off period. Making inferences from these statistics about school quality may be difficult for students if they have only facts pertaining to the one course being considered. Many students might not get this information from several schools before making a decision. In spite of this difficulty, many students may find it easier with the disclosures to avoid a school with an extremely poor record.

The availability of the disclosure information makes possible the accumulation and sale of this information by a third party in guidebook form to vocational students and its use by high school vocational counselors. Purchase of this type of consolidated graduation and job placement information might be valuable to prospective students by allowing them to make comparisons among schools before enrolling.

Mandatory Refund Formula

An important way of discovering the quality and suitability of a vocational training course is through enrollment and participation in the course. However, this method may be too costly to be effective if students who cancel their enrollment early are required to pay a very large portion of the full tuition. Such a refund policy tends to lock in those students who make inappropriate choices and, in so doing, it may reduce the normal market incentives that schools might otherwise have to screen students and to maintain high quality instruction. Instead, it may give schools incentives to switch resources away from instruction and into sales efforts, if high enrollment yields the higher payoff.

Therefore, a mandatory refund policy that is nearer to a pro rata refund formula may provide benefits in the form of improved instruction and screening adopted by schools. The school would have a greater incentive to convince enrolled students not to exercise their strengthened refund rights. Additional benefits under a mandatory refund formula may result if the schools have a greater incentive to start students in courses they are likely to complete.

The effectiveness of a mandatory formula depends on the student's ability to perceive the quality and usefulness of course instruction. Some schools, even under a pro rata refund formula, should be able to satisfy some students with instruction that does not advance them toward their goals. However, it may be difficult to mislead a large number of students in this way, and since any deception may be just as difficult as (and less profitable than) appropriate high quality instruction, schools may not maintain such a strategy.

Case-by-Case Enforcement Supplemented by Industry Guides and Enforcement Policy Statements

This case-by-case approach is likely to yield many of the same types of benefits as each of the proposed rules. However, it may generate significantly less graduation and job placement information and, as indicated in the Summary of Costs, may produce smaller benefits than one of the rule alternatives for the same level of enforcement effort.

Summary of Costs

Sectors Affected: Proprietary vocational schools; post-secondary vocational schools; and Federal and State enforcement agencies.

The cooling-off, disclosure, and refund components of the four rule variations under consideration would affect differently schools now performing poorly and schools now performing well. Schools would become less profitable if they used high-pressure sales tactics, misrepresented their educational services, or failed to screen prospective students. Similarly, schools that remain ineffective in maintaining student interest in educational programs, are unable to train students sufficiently well to qualify them for jobs related to the training offered, or do not provide students with adequate placement services would have reduced profits. They would suffer loss of tuition revenues, both because students could change their minds during the cooling-off period and because they would select schools with higher graduation and placement rates. Such schools would have to refund larger amounts than those presently paid to students who cancel after the start of class and might suffer additionally from earlier cancellations. Revenue losses from cancellations, however, are not entirely social costs because they may consist partly of a transfer or return of funds by the school to the student, rather than an increased use of society's real resources. When cancellations occur during the cooling-off period, the transfer component is larger than when cancellations occur after classes start; consequently the social cost component is greater for cancellation after classes start than during the cooling-off period.

All schools, however, would incur other real social costs in complying with the rule. The costs of the proposed cooling-off requirement, taken alone, would be principally the administrative costs of processing cancellations. These can be kept reasonably low if schools effectively screen students for their aptitude and motivation. Such screening efforts, however, also have costs.

Schools would also incur social costs in complying with the rule's graduation and placement disclosure requirements. These would include the costs of collecting and disseminating the information. Schools that are currently very successful in placing their graduates, however, may incur only small additional costs for these purposes because they may already collect and use the information as part of their selling efforts. All schools may incur additional costs if students respond to this information by demanding improved quality of education and better placement services. The refund requirements under consideration may similarly result in social costs and possible price increases as schools strive to maintain student interest in courses by improving the quality of education.

Schools may also incur the social costs of adapting to the requirement to pay greater refunds. Price increases may initially result from the need to pay greater refunds but might be moderated as schools adapt to the new refund requirements by such means as distributing course materials at frequent intervals instead of in an initial package, rearranging use of classrooms and instructors as enrollment changes, and changing the length of courses.

More generous refunds may lead to higher drop-out rates and increased costs. However, the more generous

refund requirements under consideration may add only marginally to the current incentives of students in residential vocational programs to drop out. This is because the major portion of their educational costs consists of foregone earnings. For correspondence students, however, the effect might be somewhat greater, because these students typically do not give up employment in order to make time for education.

Finally, to the extent that the rule causes the price of courses to increase, students who do not value the increased refund policy or the improved quality of courses will find the training to be too costly. The magnitude of this effect depends greatly on the size of the price increase.

To summarize, the social costs imposed by the rule's alternatives may be lower than their apparent total cost, since tuition cancellations and refunds, while seen by schools as a cost, are partly transfers back to students that impose no resource costs on society as a whole. Real resource costs are greater when cancellations occur after classes begin than for cancellations during the cooling-off period. Schools incur real resource costs as they respond to the rule's requirements to gather and to disseminate information and the rule's incentives to screen students and to upgrade the quality of education. However, not all schools will face these added costs. Many now screen students and provide quality education. Some have already chosen to collect and to use graduation and placement rate information in their promotional activities.

A comparison of the costs imposed by a rule with the costs imposed by a combination of industry guides, enforcement policy statements, and case-by-case enforcement indicates that the rule would impose lower enforcement costs on the Commission. With a rule in place, enforcement can be focused on compliance with contractual obligations and disclosure requirements. Without a rule, the evidentiary burden for the Commission is larger, and therefore enforcement would be more costly.

Case-by-case enforcement can be expected to impose lower costs on industry because the remedies resulting from selective enforcement against poorly performing schools would not impose costs on other schools, including those already performing well. For example, a disclosure remedy in a particular case would impose collection and dissemination costs on the school affected but would not require all schools to collect and to disseminate such data.

Summary of Net Benefits

There is no way to quantify the net benefits of the alternative rules in dollar terms. However, the available evidence offers a variety of different measures that suggest the nature and magnitude of such benefits. As the discussion above indicates, the alternatives with the highest benefits may have the highest costs. Nevertheless, while the optional method may have the lowest monetary costs, staff believes that the approach suggested on July 10, 1981 is more likely to offer the greatest social benefits. The optional rule has the lowest monetary costs to schools, because schools will choose the least costly means to comply when offered a choice. The July 10 combination of remedies is more likely to offer greater benefits, because it retains a mandatory full pro rata refund, combined with graduation and placement rate disclosures.

Staff believes that the net benefits of each of the alternative rules may be substantial. Each will make some contribution to remedying the perceived problems of the vocational school industry without necessarily imposing high social costs in relation to expected benefits.

A properly designed case-by-case approach could be effective in dealing with some of the problems in this industry. In the past, however, with the level of resources that were available, the problem continued at a level that staff believes is significant. In view of this, staff believes that the net benefits of a case-by-case approach would be lower than those of one of the alternative rules.

Related Regulations and Actions

Internal: Guides for Private Vocational and Home Study Schools, 16 CFR 254.

The Trade Regulation Rule Concerning a Cooling-Off Period for Door-to-Door Sales (16 CFR 429.1) has limited coverage of one provision of the proposed vocational schools rule.

External: The Department of Education has regulations covering some provisions of the proposed rule in those schools that offer courses that enroll students covered by the Title IV programs (34 CFR Part 668 and 34 CFR Part 682).

The Veterans Administration regulations cover some provisions of the rule in connection with veterans' benefits (38 CFR Part 4209, 38 CFR Part 4252 *et seq.).*

State laws and regulations generally do not contain provisions requiring disclosures to prospective students. However, several States have some form of refund requirement and cooling-off provision. Three States—Massachusetts, Minnesota, and Wisconsin—have a strict pro rata refund at least up to 75 percent.

Government Collaboration

Federal and State governmental officials testified during the hearings. Among those testifying was Terrell H. Bell, then Commissioner of the Office of Education. Informed discussions concerning a staff draft of the proposed rule have been held with officials of the Veterans Administration, Department of Education, and some State officials.

Timetable

NPRM—39 FR 29385, August 15, 1974.
NPRM—40 FR 21048, May 15, 1975.
Final Rule and Statement of Basis and Purpose—43 FR 60796, December 28, 1979.
Rule set aside and remanded December 12, 1979 by the Second Circuit Court of Appeals *(Katharine Gibbs* v. *FTC,* 612 F.2d 658 (2d Cir. 1979)).
Publication of Staff's Revised Rule—43 FR 35668, July 10, 1981.
Public Comment Period on Staff's Revised Rule—July 10, 1981 to September 8, 1981.
Commission Consideration of Staff Recommendation—June 1982.
Final Rule—To be determined.
Final Regulatory Analysis—If, and when, any Final Rule is issued.
Regulatory Flexibility Analysis—Not applicable.

Available Documents

Rulemaking Record; Docket No. 215–38.

Report of the Presiding Officer—September 10, 1976.

Staff Report—December 10, 1976.

Copies of these documents can be obtained from the Office of Legal and Public Records, Room 130, Federal Trade Commission, Sixth Street and Pennsylvania Avenue, N.W., Washington, DC 20580.

All documents on the rulemaking record, including hearing transcripts, public comments, etc., are available for examination at the same address.

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CHAPTER 7—TRANSPORTATION AND COMMUNICATION

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Design Standards for Highways—Geometric Design Standards for Resurfacing, Restoration, and Rehabilitation (RRR) of Streets and Highways Other Than Freeways (23 CFR Part 625; Revision)

Legal Authority

Federal-Aid Highway Acts, as amended, 23 U.S.C. 101, 109, 315, and 402; 49 CFR 1.48(b).

Reason for Including This Entry

The Federal Highway Administration (FHWA) believes this rule is important because of the controversy over its possible impacts on safety and because the geometric design criteria proposed in the NPRM would substantially affect the condition of the Nation's highway system.

DOT has been reviewing its regulations dealing with design standards. Standards for new construction exist; DOT is proposing standards for resurfacing, restoration, and rehabilitation (RRR) of streets and highways other than freeways. The Presidential Task Force on Regulatory Relief has designated the design standards for new construction for review, which review DOT is conducting. This Calendar entry deals with proposed new standards for RRR.

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 regulations and procedures (23 CFR Part 625), RRR improvements must meet the geometric design standards established for new construction, unless FHWA approves specific exceptions on a project-by-project basis. These standards were established by the American Association of State Highway and Transportation Officials (AASHTO) and

have been adopted by FHWA. The standards deal with the dimensions of highway features such as alignment, grades, widths, sight distances, slopes, and clearances. The intent of this proposed rule is to amend existing regulations in order to provide procedures for establishing separate geometric design standards for RRR improvements.

Separate geometric design standards are needed for RRR improvements because current standards for new construction are not appropriate to the basic purpose of RRR improvements—to preserve and prolong the service life of existing highways. Geometric design standards for new construction were developed for projects normally much greater in scope and cost than typical RRR improvements. Continued application of these higher standards to RRR improvements has complicated and discouraged the use of Federal-aid funds for RRR improvements. Although figures are not available, this practice probably has kept some RRR improvements from being completed in a timely manner.

The red tape and delay associated with the current process, particularly for project-by-project exceptions, aggravate the already serious problem of preserving and maintaining the Nation's highway system. Rapidly spiraling construction costs in the past few years, coupled with relatively static or diminishing State and local revenues, have prevented the traditional State and locally funded RRR programs from keeping pace with RRR needs. Consequently, the overall condition of the highway system is deteriorating. Since 1972, the percent of the Nation's arterial and collector systems rated in good condition has dropped from 38 percent to 30 percent. Furthermore, the rate of deterioration accelerates as the deterioration progresses. If this situation is allowed to continue unabated, the utility of the highway system will be significantly diminished, and the eventual repair or replacement cost will rise sharply.

Because of the magnitude of the need and relative shortness of funds, it is important to devise a system that permits States to make some improvements in as many highways as possible, allocating funds at their own discretion. Uniform design standards that require a high level of improvements would instead concentrate available funds in relatively fewer places.

Alternatives Under Consideration

The FHWA has considered a number of alternatives for implementing the RRR program. Initially, the FHWA explored three major alternatives through the publication of an ANPRM on August 25, 1977 (42 FR 42876). These were:

(A) To continue FHWA design approval operations within the provisions of the current regulations (23 CFR Part 625) by granting exceptions to existing design standards on an individual project basis for RRR projects.

(B) To incorporate, by reference, AASHTO's "RRR Guide" as the acceptable criteria for Federal-aid RRR work.

(C) To permit State officials, in conjunction with FHWA Division Administrators, to develop individual RRR standards for each State by using the AASHTO "RRR Guide" and other guides.

An FHWA task force rejected all three alternatives after reviewing comments it received on the ANPRM. The alternatives were rejected because: (1) FHWA recognized the need to establish separate standards for RRR improvements; (2) FHWA perceived the need to minimize inconsistencies in application arising from the present exceptions process (FHWA approval of exception to full standards on a project-by-project basis); and (3) public comments, primarily from highway safety groups, severely criticized AASHTO's "RRR Guide" because it tended to emphasize the perpetuation of existing geometric features rather than safety improvements. The FHWA withdrew the ANPRM on January 19, 1978 (43 FR 2734).

FHWA then recommended a new set of geometric design standards for RRR projects, which it published as an NPRM on August 23, 1978 (43 FR 37556). The FHWA design standards were more stringent than AASHTO's "RRR Guide," but still significantly less stringent than full geometric standards required for new construction. The NPRM elicited more than 100 comments, primarily from State and local highway agencies. The FHWA subsequently established an internal working group to review the comments it received on the NPRM and to identify and evaluate alternatives for implementing the RRR program.

Two basic policy alternatives are available to the FHWA:

(A) The FHWA could adopt design standards for use on all federally assisted, non-freeway RRR projects nationwide. Various options for implementing this alternative include: application of current design standards in 23 CFR Part 625 with exceptions granted on a case-by-case basis (i.e., essentially maintaining the status quo); application of current design standards in 23 CFR Part 625 without exception; development and application of new design standards (e.g., standards proposed by the FHWA in 1978 under Docket No. 78-10).

(B) The FHWA could adopt a flexible approach to non-freeway RRR projects without establishing nationwide standards. Options available under this alternative include: providing State highway agencies with full authority to adopt their own non-freeway RRR design standards; issuing an FHWA policy statement for non-freeway RRR work; issuing an FHWA policy statement for non-freeway RRR work; and establishing a framework for the adoption of non-freeway RRR procedures and criteria in each State that meets the intent of the FHWA policy.

After evaluating these alternatives, FHWA chose to issue an FHWA policy statement for non-freeway RRR work and establish a framework for the adoption of non-freeway RRR procedures and criteria in each State which meets the intent of the FHWA policy.

No specific or detailed national geometric criteria would be established. Instead, each State would be allowed to set, with FHWA approval, geometric design criteria that are considered the most appropriate and cost effective for local circumstances (geography, topography, climate, functional classification, traffic volume, etc.) The advantages of this approach are that: (1) it provides needed program flexibility; (2) it encourages designs that conform to local needs; (3) it maintains sufficient Federal oversight for preservation of the highway system as well as for safety; (4) it reflects the intent of Congress to provide greater flexibility in the use of Federal funds and to obtain maximum use of the existing highway system; (5) it minimizes the burden of Federal regulations on State and local governments; and (6) it avoids disproportionate impacts on urban and rural communities that nationally uniform standards might cause. The only significant disadvantage is that, to use the flexibility provided by the proposal, States would have to develop their own procedures, criteria, and/or standards. The FHWA does not consider this a serious disadvantage, since most States already have developed similar procedures or criteria for guidance in using the present system of exceptions on a project-by-project basis. The selected alternative was published as an NPRM on January 5, 1981 (46 FR 1228).

Summary of Benefits

Sectors Affected: Users of highways; State and local governments; and the general public.

The primary benefits of this program would be to prolong the life of the existing highway system and to enhance highway safety features. Approximately 8 percent of the Nation's arterial and collector highway mileage is rated in poor condition, which means it is approaching structural failure. Another 62 percent is rated only as fair, or in a state of advancing deterioration. If this program is not expediently and effectively implemented, these highways will continue to deteriorate to the point of structural failure, requiring a much larger expenditure by Federal, State, and local governments, and ultimately taxpayers, for reconstruction. Other anticipated benefits to users of highways and the general public 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

Sectors Affected: Users of highways; State and local governments; the highway construction industry and its suppliers; and engineering services.

The FHWA has prepared an analysis of the impacts of the major alternatives entitled "RRR Alternative Evaluations for Non-Interstate Rural Arterial and Collector Highways Systems." (Copies may be obtained from A. R. Cowan or K. H. Davis at the address noted below.) Using three levels of funding availability (one to satisfy total needs, and a high and a low realistic forecast of available funds), the analysis compares the impacts of various levels of design standards. It concludes that, given limited funding availability, improving or preserving many miles of existing highways to less than full standards would yield a greater safety benefit than complete reconstruction of many fewer miles to full standards. In addition, it concludes that effective and expedient implementation of the RRR program would avoid much of the sharply higher costs of total reconstruction or replacement. The analysis is available as a support document for the NPRM.

Summary of Net Benefits

The Summary of Benefits and the Summary of Costs describe the benefits and costs of this rule in general terms. Because of the flexibility this rule would allow, it is not possible to project or quantify accurately either the benefits or the costs. This rule would establish no specific or detailed geometric design criteria. Instead, it would allow States to set, with FHWA approval, geometric design criteria that are considered the most appropriate and cost effective for local circumstances (geography, topography, climate, functional classification of highway, traffic, and so forth).

The analysis mentioned in the Summary of Costs ("RRR Alternative Evaluations for Non-Interstate Rural Arterial and Collector Highway Systems") considers and compares the impacts of applying three levels of geometric criteria to RRR on a large sample of the highway system over a 16-year period (1975–1990). The three levels of geometric criteria are defined as follows:

(1) Case 1: Minimum Tolerable Conditions (MTC) are set at the level of the currently approved design standards (23 CFR Part 625) for new construction. This case places emphasis on improving lane and shoulder widths, operating speeds, and horizontal and vertical alignments whenever a RRR project is undertaken. Case 1 is a theoretical bound which exceeds present practice for RRR in that the MTC used are the current standards in Part 625 applied without exception to the roadway sections needing improvement. Case 1 represents the upper bound for RRR geometric design standards.

(2) Case 2: The MTC are essentially the standards proposed by FHWA in the August 1978 NPRM (Docket No. 78–10). This case represents the lower bound that would be considered in this analysis as being acceptable for RRR work. Case 2 emphasizes reversing the present trend toward non-freeway pavement surface deterioration without substantially changing the existing system relative to highway geometrics (i.e., lane and shoulder widths, operating speeds, etc.).

(3) Mid-Case: The MTC used in the Mid-Case closely represent current State practice for Federal-aid RRR work (i.e., current design standards in Part 625 with exceptions granted by the FHWA Division Administrator on a project-by-project basis).

Three nationwide highway investment levels were considered, one that would satisfy total needs, and a high and low realistic forecast of available funds. The analysis showed that for either of the realistic funding levels, the lower criteria would result in:

(1) A greater percentage of the system receiving some improvement.

(2) A significantly better 1990 system-wide pavement condition on the principal arterials and a slightly better pavement condition on the other minor arterials and collectors.

(3) Significantly lower surface and shoulder maintenance costs.

(4) Lower operating costs over the entire system.

(5) Fewer fatal, non-fatal, and property damage accidents occurring system-wide.

(6) A higher ratio of total savings to construction costs.

All of these findings support the basic conclusion that a greater overall benefit would be achieved by improving more miles to less than full standards than by improving fewer miles to full standards.

Related Regulations and Actions

Internal: FHWA has regulations establishing geometric design standards for highway construction projects (23 CFR Part 625).

External: None.

Government Collaboration

None.

Timetable

ANPRM—42 FR 42876, August 25, 1977.
Withdrawal of ANPRM—43 FR 2734, January 19, 1978.
NPRM—43 FR 37556, August 23, 1978.
Notice on Status of Proposed Rulemaking—44 FR 29921, May 23, 1979.
NPRM—46 FR 1228, January 5, 1981.
Final Rule—1st Quarter 1982.
Final Rule Effective—30 days after publication of Final Rule.
Public Meeting—February 3, 1981, Washington, DC; hearing before House Subcommittee on Investigations and Oversight—September 17, 1981; October 27–28, 1981; further testimony expected.
Public Comment Period—On NPRM published on January 5, 1981, closed May 5, 1981.
Regulatory Impact Analysis—Will be prepared in conjunction with Final Rule.
Regulatory Flexibility Analysis—Not required.

Available Documents

ANPRM—42 FR 42376, 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.

Draft Regulatory Analysis of the proposed regulations (FHWA Docket 78–10).

Notice regarding status of proposed rulemaking—44 FR 29921, May 23, 1979.

NPRM—48 FR 1228, January 5, 1981, FHWA Docket 80-3.

Draft Regulatory Analysis on proposed regulations (FHWA Docket 80-3).

Analysis Appendix—"RRR Alternative Evaluations for Non-Interstate Rural Arterial and Collector Highway Systems," FHWA Docket 80-3.

All documents, including the record of a public meeting held February 3, 1981, and public comments in response to the January 5, 1981 NPRM, are available for review in the Office of the Chief Counsel, Federal Highway Administration, Room 4205, 400 Seventh Street, S.W., Washington, DC 20590

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DOT—Office of the Secretary of Transportation

Special Air Traffic Rules and Airport Traffic Patterns (14 CFR Part 93)

Legal Authority

Federal Aviation Act of 1958, as amended, 49 U.S.C. 1303, 1348 (a) and (c), and 1354(a); Department of Transportation Act, § 6(c), 49 U.S.C. 1655(c); Act for the Administration of Washington National Airport, 54 Stat. 688, 1940.

Reason for Including This Entry

The Department of Transportation (DOT) thinks these proposed rules are significant for several reasons. Airline fares and services are of substantial public interest. The proposed rules could be potentially costly for the airlines and, if they have to pay for slots, the airlines may pass the costs on to customers. The rules could also affect air transportation service to some communities with service to and from Washington National Airport (DCA).

Statement of Problem

The airport "High Density Rule" (14 CFR 93.123 *et seq.*) limits the number of landings and takeoffs per hour at four heavily used airports: Washington National (DCA), La Guardia, John F. Kennedy, and O'Hare. Because of this restriction, air carriers serving these airports must make reservations for each landing and takeoff. Such reservations are known as "slots." To distribute (allocate) the limited number of slots among air carriers who want to serve these airports, airline scheduling committees, made up of representatives of the air carriers and chaired by a representative from the Air Transport Association, draw up schedules for each of the four airports. The schedules are made up on the basis of unanimous agreement among the airline representatives who serve on the respective scheduling committees. Without antitrust immunity, the airlines were unwilling to meet in scheduling committees to allocate slots. The Civil Aeronautics Board (CAB) granted such immunity in the form of an exemption from antitrust law.

The scheduling committees temporarily suspended operations after the Federal Aviation Administration (FAA) itself began allocating slots at DCA and other congested airports in the wake of the air traffic controllers' strike (August 3, 1981). However, when FAA restores enough system capacity, it will stop allocating slots. At that time, if the scheduling committees still have antitrust immunity—and if the FAA takes no other action—the committees will resume their original slot allocation activities at the four heavily used airports.

Scheduling committees operate under a strict set of rules designed to prevent collusion and overly anticompetitive behavior. To a degree, they are successful. However, they recently have been criticized on antitrust grounds for faults inherent in the system. The CAB is investigating whether slot agreements substantially reduce or eliminate competition within the meaning of § 412 of the Federal Aviation Act and whether it should continue to grant antitrust immunity to the scheduling committees. The Department of Justice, which will inherit the exemption-granting authority when the CAB expires in 1985, also has opposed the scheduling committees as anticompetitive.

While the FAA of DOT does not have statutory authority to authorize the continued operation of the committees, it solicited comments on the committees, as part of its consideration of a "no-action" regulatory alternative, in an NPRM issued October 27, 1980 (45 FR 71236). DOT does have the authority to allocate slots by means other than the existing scheduling committee system and proposed several alternatives in the NPRM.

Alternatives Under Consideration

Based on several studies and review of the existing slot allocation system, DOT proposed in its NPRM to establish a specific methodology for allocation of slots at Washington National Airport. (Although the proposals in the NPRM apply only to DCA, if the rule is promulgated and proves effective, DOT could expand them to cover all high density airports. Such expansions would occur only through additional rulemaking.)

The NPRM described three alternative types of slot allocation methods:

(A) administrative allocation;

(B) allocation by auction;

(C) allocation by the present scheduling committee (the status quo) or some modified version of this technique.

The NPRM indicated no preferred methods.

Regardless of the method adopted, there are elements of the allocation process that are applicable to each method and should be considered. Specifically, these elements are:

- How should a "slot" or "reservation" be defined?
- Should all airport users compete for all slots or should there be separate allocations for different classes of users?
- Who should be eligible to bid for slots?
- Over how long a time period should a slot be awarded?
- What property rights, if any, do recipients of a slot have with respect to resale of slots?
- Should there be a penalty for nonuse of a slot?
- What provision is provided to assure that slots are available for essential air service?
- Should provision be made to restrict the use of slots to ensure that carriers do not substitute more profitable service to larger cities for existing service to smaller communities?

With respect to these elements, DOT proposed in its October 1980 NPRM that:

(1) A reservation be defined as authority to schedule one operation, either landing or takeoff, during a given 1-hour interval between 7:00 a.m. and 8:59 p.m. or the half-hour interval between 9:00 p.m. and 9:30 p.m. The term "slot" as used in this document refers to a single reservation.

(2) Three classes of reservations be defined. The first would be for "air carriers," which conduct operations with aircraft having a maximum passenger seating capacity of 55 or more; the second would be for "scheduled air taxis," which would be defined as air taxis or air carriers that conduct operations with aircraft having a maximum seating capacity of less than 58; and the third would be for other operations (general aviation). The first two categories of slots would be subject to the carrier agreement, administrative allocation, or auction processes described below. In the NPRM, DOT

further proposed that allocations for the first two categories of reservations be made through separate allocations for each category. Finally, a procedure for establishing fees for the third class of user (general aviation) would be set forth in a separate section.

(3) Bidding or application for reservations would be limited to carriers operating under a certificate of convenience and public necessity issued by the CAB or registered with CAB and exempted from certification under 14 CFR Part 298.

(4) Reservations would be awarded for a period of 6 months starting either in October or April immediately following the award of reservations. This would follow the current procedure of the airline scheduling committee, which allocates slots in January for the 6-month period starting the last Sunday in April.

(5) The air carrier slots available under any of the three proposed allocation methods would be subdivided into three parts, with three different sets of slots devoted to three categories of airports served: large hub, medium hub, and small and non-hub. (A hub is an airport where there is a large amount of connecting traffic.)

The question of a marketable property right for holders of a slot (the right to sell a slot) and the question of a penalty being levied for nonuse of a slot was addressed in the NPRM's discussion of each of the procedures under consideration. In addition, under the administrative allocation procedure, DOT proposed, as one alternative, to allocate slots specifically for the purpose of providing the minimum level of essential air service as determined by the CAB. DOT recognizes that there may be some problems with this proposal and, therefore, solicited comments on other alternatives that may be more effective for the allocation of slots for essential air service under any allocation procedure chosen. A discussion of the three major alternatives follows.

(A) *Administrative Procedures*—To ensure continuity of operation at Washington National Airport, DOT has been analyzing several alternative administrative procedures for allocating slots. The easiest way would be to freeze all allocations at their existing levels, but this would not help DOT meet the objectives of the Airline Deregulation Act, such as increased competition and access by new carriers. If DOT froze slot allocations, new carriers could begin operations at DCA only when encumbent carriers were willing to relinquish slots.

Alternative (A) would involve a two-step administrative allocation procedure. Each carrier wanting a reservation would submit an initial reservation request to DOT. For any given hour, an air carrier could request one or more reservations as desired. These requests would have to be submitted by January 1 and July 1 of each year. DOT would tally the reservation requests. If there were a "resolution" (i.e., the number of reservations requested by the airlines was less than or equal to the number available in each hour), DOT would grant all requests. If there were no resolution, DOT would have to compute the number of slots for each airline. This would be done based on a number of factors, including:

- number of slots allocated in the preceding scheduling period, with a minimum of slots;
- number of passengers enplaned (i.e., who boarded the plane) per departure;
- number of passengers deplaned (i.e., who left the plane) per arrival;
- number of different cities to which non-stop service has been provided in the preceding scheduling period relative to the number of slots allocated.

The first factor (current slot allocation) would allow for some continuity and stability of existing service patterns. DOT is now considering allocating half of the available slots based upon the existing allocation. The second and third factors (enplaning and deplaning) would allow DOT to measure the service each airline provided with its slot allocations in the past. Because larger airlines, serving higher-population markets, tend to enplane and deplane more passengers, this factor places smaller markets (i.e., areas with less air service) at a disadvantage. Therefore, DOT also proposed using the fourth factor, namely, the number of different cities provided direct air service by each carrier. By considering the airlines' enplanement/deplanement figures, along with the number of cities served, DOT would be able to measure the carriers' "public service," obtain a better distribution of service to and from high density markets among the three area airports (National, Dulles, and Baltimore-Washington International), and provide direct access to and from DCA to the maximum number of cities.

Once DOT had awarded each carrier its total number of reservations for the day, the second step of this administrative procedure—allocation of slots by hour of day—would begin. Each carrier would submit several alternative schedules, and DOT would combine these into a feasible "consolidated schedule" for all participating airlines. DOT invited comments in the NPRM concerning this mechanism, the specific weighting factors to be assigned to each component of the allocation formula, and minimum allocation to new entrants.

(B) *Auctions*—DOT also proposed separate semiannual auctions for air carrier commuter reservations at DCA. The proposed procedure would take place in two steps: a "reservation auction," followed by a continuous "reservation exchange." In the first step of the auction, each carrier (a similar procedure would be used for air taxis) would have to submit, by January 1 and July 1 of each year, sealed bids for the landing and takeoff reservations it desires for the next 6-month period. The bidding would take place in a number of rounds, during which DOT would release certain information on which the air carriers could base their bids for the next round. Individual airlines' demands would not be revealed. After a specified period, if there were no more bids, or only minimal changes to previous-round bids, the auction would end. The auction also could end, and DOT could finalize awards and prices, if all the participating carriers informed DOT within 24 hours after a round of bidding that they chose to end the auction. DOT then would notify each successful bidder in writing of the amount of its accepted bid prices. (DOT would not retain this money, but would pay it into the U.S. Treasury. DOT also has asked for comments in its NPRM on whether this money could be handled in other ways—for example, paid into a special fund for DCA or some other aviation-related purpose. The auction revenues would not take the place of landing fees, which now cover the cost of maintaining and operating the airfield and which air carriers and taxis would continue to pay.)

In the second step of the process—the continuing "reservation exchange"—reservation owners could sell their reservations to other users. Any reservation owner wishing to sell a reservation and any air carrier or air taxi wishing to buy a reservation would notify DOT in writing. DOT would maintain a list of available reservations and desired reservations and bid prices, but the names of the bidders and offerors would not be disclosed until the transaction was completed. This would eliminate special deals, collusion, or conspiracy that might impair DOT's objective of enhancing competition.

There are several advantages to the auction process. By requiring carriers to pay for slot rights, the auction method

ensures that the slots go to those carriers that can most profitably use them. The auction process would encourage some new entry and expansion by the more efficient carriers, while discouraging less efficient carriers from entering or expanding at the airport. A carrier would be free to discontinue marginal or unprofitable service by selling its slots, but could re-enter the market at a future date if it so desired.

An important advantage of the auction system is that, because it would force airlines to pay for landing and takeoff privileges, the airlines might be encouraged to redistribute their flights to the other area airports (Dulles International and Baltimore-Washington International), where they could charge lower fares (because the fares would not reflect slot allocation costs). One disadvantage of the auction system would be that airlines serving DCA could raise fares to reflect the cost of their slots.

(C) *Scheduling Committees*—This alternative would maintain the status quo.

DOT invited specific comments on the appropriateness of the operations of the present committee system as well as any suggestions for modifications to the rules under which the committees function that would improve the results. In addition, comments were invited on the current system used to allocate air taxi slots. Under that system, slots allocated to commuters are essentially frozen. New entrants or additional flights by a given air taxi can only be added when another air taxi relinquishes a slot or when the number of slots is increased. DOT will weigh these comments against objections to aspects of the auction and administrative allocation process to determine whether regulatory action under Alternative (A) or (B) is advisable. In addition, these comments will be considered if Alternative (A) or (B) is adopted and proves unworkable, inefficient, or otherwise undesirable in actual practice.

In addition to Alternatives (A), (B), and (C), above, the October 1980 NPRM also described a special provision that would offer some protection to smaller markets and, in the event of an auction, the airlines that serve them. These markets have suffered because of the current trend at DCA and other major airports toward slot usage by carriers in more profitable markets (those involving longer haul and/or high passenger levels). To alleviate this problem DOT proposed dividing the current market categories (large hub, medium hub, and small or non-hub) into "submarkets," based on distance from Washington, geographic quadrant (New England, Middle Atlantic, Southeast, etc.), or city hub size.

The process would start with a determination of the percent of total slots that are currently being used to serve the three market categories. During June 1980, the distribution was:

	Percent
Large hub	54
Medium hub	23
Small hub and non-hub	28

These percentages would then be applied to the total number of slots to be made available during the forthcoming scheduling period. This would set the size of the three air carrier "submarkets."

The second phase would be to allocate the slots independently in each of these submarkets using either scheduling committees, slot auctions, or the administrative procedure. There would be no transfer of slots between "submarkets" unless the total demand for slots fell short of the number available. Using hub size as a criterion for establishing the allocation subset has the advantage of placing together markets or relatively comparable economic strength. While this mechanism would not guarantee that every small or non-hub would continue to receive the same amount of non-stop service to and from Washington National, it would tend to protect these markets and enable them to compete more equitably for a limited resource with similarly situated competitors.

With respect to the possible two-step process for allocation, DOT also proposed that if the slots are not used to serve the specified hub type, they would revert to DOT for reallocation.

Another alternative DOT is considering involves general aviation operators (those that do not qualify as commuter operators or air carriers). For example, if DOT adopts the auction system—Alternative (B) above—the system might treat general aviation operators separately, setting aside an allocation for these operators, rather than requiring them to participate in the bidding process. Some public comments have pointed out that this is a logical system, since general aviation operators do not require slots on a regularly scheduled basis. Others, however, contend that, given the limited number of slots available and the need for economic efficiency, it is not desirable to allocate slots specifically to general aviation. These commenters believe that general aviation users should compete in an auction system.

DOT is considering two alternatives:

(1) Continue the present system, in which general aviation operators would continue to pay landing fees, but would not be required to bid for slots or participate in a two-step administrative scheduling procedure. This would not require a regulatory change.

(2) Set the fee for the use of a slot for general aviation during any hour at the bid price established during the auction for scheduled air taxi reservations. An advantage to this alternative is that it would encourage redistribution of general aviation traffic to nearby airports, where auction fees are not applied.

Summary of Benefits

Sectors Affected: Scheduled air carriers; commuter airlines; and scheduled passengers, including passengers traveling to and from small communities.

DOT expects that benefits from a two-step allocation system, which is different from the current scheduling committee system, would be to increase competition among carriers serving DCA; to make more efficient use of the airspace; and to continue and possibly improve service to Washington, DC for travelers from small communities. Other benefits are discussed above in the "Alternatives Under Consideration" section.

Summary of Costs

Sectors Affected: Air carriers; commuters; and scheduled passengers.

Without the two-step procedure, both the slot exchange auction and the administrative allocation are expected to result in increased service on high-density routes at the expense of service to smaller cities. If a slot exchange auction is initiated, passenger fares may, on the average, rise by as much as $8 to $24 (in 1980 dollars) depending on the airline bidding strategy. The average first-leg-out/last-leg-in fare for DCA (that is, the fare to the first stop after leaving DCA or the last stop before landing there) was $72 in February 1980. Fares would be unaffected by the administrative procedure or the scheduling committee procedure.

The slot exchange auction may increase airline costs of service at DCA between $49 million and $197 million per year (in 1980 dollars) depending upon airline bidding strategy.

Summary of Net Benefits

If DOT undertakes rulemaking to establish a slot auction, it will prepare a regulatory impact analysis including an estimate of the net benefits of the proposed rule if the benefits are quantifiable. DOT does not have a quantitative benefits estimate as of this date. An annual estimated increase in the costs of airline service at DCA of between $49 million and $197 million (in 1980 dollars) implies that the present value of the benefits during the first 10 years of a DCA slot exchange auction would have to be between $302 million and $1.2 billion (in 1980 dollars).

Related Regulations and Actions

Internal: On August 15, 1980, the Secretary of Transportation issued a Washington Airport Policy. This followed publication of a Notice of Proposed Policy (45 FR 4320, January 21, 1980). The policy and implementing regulations were published in the **Federal Register** on September 18, 1980 (45 FR 62406). On October 29, 1980, DOT issued a regulation for the temporary allocation of slots at DCA for the period December 1, 1980 to April 26, 1981, because of the failure of the scheduling committee to come to agreement for that period. On March 24, 1981, the Secretary issued a notice delaying the effective date of the Washington Airport Policy and implementing regulations so that they could be reviewed under Executive Order 12291 [46 FR 19225, March 30, 1981), Federal Regulation.

On July 13, 1981, the FAA issued a Notice of Proposed Rulemaking, "Metropolitan Washington Airports" (46 FR 36068), which proposed to revoke the rules issued September 15, 1980 and substitute new rules for them beginning October 25, 1981. On September 4, 1981, the FAA published Special Federal Aviation Regulation 44–1, "Air Traffic Control System Interim Operations Plan" (46 FR 44424), which established certain procedures for the operation of the National Air Traffic Control System, including the establishment of air traffic reduction schedules for 22 airports, until at least April 24, 1982. On October 5, 1981, FAA published Special Federal Aviation Regulation 44–2, "Air Traffic Control System Interim Operations Plan" (46 FR 48906), which amended Special Federal Aviation Regulation 44–1.

External: The Air Transport Association (ATA) has petitioned the CAB for an extension of the antitrust immunity granted to the Airline Scheduling Committee. In CAB Order 80–9–148, the CAB granted the ATA a one-year extension of antitrust immunity. At the same time, the CAB will investigate the need for antitrust immunity for airline scheduling committees.

On October 27, 1981, the CAB issued Order 81–10–152, extending the antitrust immunity of the air carriers' scheduling committees for another 6 months, with the requirement that the ATA submit, within that time, an acceptable method for resolving deadlocks in scheduling committees. In the same order, the CAB found the air taxi (commuter) scheduling committees to be anticompetitive because new entrants could obtain slots only when current users relinquished them. The commuter carriers, therefore, will have to devise a new method for allocating slots in time for the Summer 1982 allocations.

Government Collaboration

The DOT has worked with the Civil Aeronautics Board (CAB) and the Department of Justice to develop a set of alternative allocation procedures. An initial study of slot auctions was prepared for DOT/CAB and was widely circulated for comment within the Government and to the general public.

Timetable

NPRM—45 FR 71238, October 27, 1980.
Public Hearing on NPRM—February 12 and 13, 1981, Washington, DC.
Public Comment Period on NPRM—Closed February 26, 1981.
Regulatory Impact Analysis—To be determined.
Regulatory Flexibility Analysis—Not required because NPRM was published before January 1, 1981.
Other Analyses—To be determined.
Final Rule—To be determined.
Final Rule Effective—Not before January 1982.

Available Documents

NPRM—October 27, 1980 (45 FR 71238).
Draft Regulatory Analysis.
"A Method for Administrative Assignment of Runway Slots," June 1980, FAA-AVP–80–3.
Econ, Inc. "The Allocation of Runway Slots by Auction." Princeton, NJ, April 1980, FAA-AVP–80–3.
J. Watson Noah, Inc. "A Slot Allocation Model for High Density Airports," Falls Church VA, August 1980.

The above documents are or will be available from the Agency Contact listed below.

Polynomics Research Laboratories, Inc. "Alternative Method of Allocating Slots; Performance and Evaluation." Available from the Civil Aeronautics Board.

Transcripts from public hearings held February 12 and 13, 1981, and written comments are available for public inspection and copying in the Office of the Assistant General Counsel for Regulation and Enforcement, Room 10421, Department of Transportation, 400 Seventh Street, S.W., Washington, DC. Refer to Docket No. 70. The docket is open between 9:00 a.m. and 5:30 p.m., Monday through Friday.

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CIVIL AERONAUTICS BOARD

Elimination of the Mandatory Joint Fare System (14 CFR Part 399; New)

Legal Authority

Federal Aviation Act of 1958, §§ 404, 1002, and 1601, as amended by the Airline Deregulation Act of 1978, P.L. 95–504, 92 Stat. 1739, 49 U.S.C. 1374, 1482, and 1551.

Reason for Including This Entry

The Civil Aeronautics Board (CAB) considers this rule important because it would eliminate most Federal regulation of fares that passengers pay when their trips involve connecting flights on two or more different airlines. Airlines would have greater freedom to determine joint fare levels and the division of the revenue received. Passengers would be affected by possible changes in fare and service levels.

Statement of Problem

Passengers making connecting flights on two or more different airlines (interline passengers) pay a "joint fare," which we define as a through fare from the airport of departure to the final destination. Currently, the CAB regulates both the amount that the airlines can charge an interline passenger and how the airlines divide the joint fare revenue. The CAB set the basic rules that govern these matters in 1974, in its Domestic Passenger Fare Investigation, and made some modifications in subsequent orders. Currently, the joint fare ceiling is either the sum of the actual fares on each segment of the journey or the sum of the maximum fares allowed by the CAB on each segment minus a set "terminal charge" for each connection, whichever is less. The terminal charge represents

the theoretical cost savings of one reservations transaction, single ticketing, and through baggage handling.

The division of the joint fare revenue is based on a formula that divides the revenue on the basis of the cost of providing the service. The formula, which was set in 1974, is now outdated because the significant increase in the cost of fuel and changes in equipment used has changed the cost of providing service. The division formula now results in distortion of revenue distribution and provides cross-subsidy to some airlines. In the most extreme case, an airline flying the short leg of the connecting airline trip may receive more than its usual fare for its segment, while the airline flying the long leg receives only a fraction of its usual fare from the joint fare division. This distortion affects long-haul airlines' willingness to provide interline service, as well as the fare and service level offered.

Alternatives Under Consideration

The CAB issued an NPRM (46 FR 29719, June 3, 1981) proposing three alternative ways to change the present mandatory joint fare system.

Alternative (A) would eliminate the mandatory division and ceiling in all markets. The dramatic rise in the cost of fuel over the last 8 years and changes in equipment type have significantly altered the cost relationships in the original formula, so that in some cases, the short-haul partner can receive joint fare revenues in excess of its local fare. Under this option, airlines would be free to negotiate the joint fare level and division.

Alternative (B), our preferred option, would also eliminate the current ceiling and division. In the absence of a mandatory system, smaller airlines might suffer if the larger airlines chose not to make joint fare agreements with them on favorable terms. Therefore, in order to protect small airlines' access to interline arrangements, Alternative (B) provides that an airline that agrees to interline with one airline would be required to interline, upon request, with any other airline, including a small one. The airlines would be free to negotiate the fare level and division, but if they were unable to agree, the joint fare would be the sum of the actual local fares, and the revenue would be divided proportionately on the basis of their usual local fares. This option encourages convenient interline service for passengers. Small airlines would have continued access to interline agreements and larger carriers would not lose as much revenue from cross-subsidy as they do under the current system.

Alternative (C) would eliminate regulation in all markets served by one or more certificated airlines but would retain the present joint fare system in all markets served only by commuter airlines. Only those markets where there is no single-carrier service and where every reasonable interline routing includes at least one leg that is served only by commuter airlines would continue to be regulated. As a compromise alternative, it would remove much of the distortion caused by the current mandatory joint fare system, yet it would give those carriers and communities that must rely on the revenue generated by the division more time to adjust to total deregulation.

Summary of Benefits

Sectors Affected: Air transportation industry and air travelers.

Airlines would benefit by being freer to determine joint fare levels and how the revenue is divided. With a more equitable division, airlines might be able to negotiate more joint fare agreements at fare levels that would generate more traffic and lower fares. The distortion caused by the present regulation would be removed. Adoption of any of the options would provide a transition period to prepare airlines for the Congressionally mandated end of the joint fare system on January 1, 1983.

The proposed changes would benefit passengers by allowing a competitive market to set fare and service levels. The current system provides incentives for larger airlines to charge a higher joint fare than they would negotiate in a less-regulated market so that they can receive a larger fraction of their usual local fare. The new rule would remove this incentive.

Summary of Costs

Sectors Affected: Air transportation industry; air travelers; and small communities.

The elimination of a cost-prorate division may result in small airlines receiving less revenue from each joint fare pasenger in certain markets. Alternatives (A) and (C) would not provide all small airlines with a legal right to interline with large airlines, and as a result, some smaller airlines might be closed out of some markets because of free-market competition. Alternative (C), to the extent that it retained the current system, would perpetuate the fare dilution resulting from the cross-subsidy by some large airlines to short-haul partners.

Passengers may have to pay higher fares or receive a lower level of service in some markets. This would be particularly true in those small communities whose current level of fares and service is in large part based on the cross-subsidy resulting from joint fare division.

Summary of Net Benefits

The proposed changes would remove distortions caused by current and past regulations and would give carriers greater freedom to determine fare levels and divisions. Passengers would benefit generally because of increased competition that should result from the elimination of the current systems.

Related Regulations and Actions

Internal: The CAB issued a Final Rule providing for tariff flexibility (46 FR 46787, September 23, 1981, 14 CFR Part 399). The rule provides that any tariff filed for joint fare construction is binding on airlines and ticket agents, except for interline routings, where the airlines have agreed to charge lesser amounts.

External: None.

Government Collaboration

None.

Timetable

NPRM—46 FR 29729, June 3, 1981.
Final Rule—1st Quarter 1982.
Final Rule Effective—1st Quarter 1982.
Public Comment Period—Closed September 3, 1981.
Public Hearing—None.
Regulatory Impact Analysis—The CAB, as an independent agency, is not required to prepare a Regulatory Impact Analysis as it is defined under E.O. 12291. However, the CAB prepares essentially the same information in its NPRMs and Final Rules.
Regulatory Flexibility Analysis—Three alternative approaches are set forth in the NPRM. CAB has considered other alternatives, such as updating the present division formula or substituting a mandatory rate-prorate for the current cost-based division. The rule may affect some small communities and commuter airlines, as discussed above.

Available Documents

Available documents can be viewed at Docket Section, Room 711, 1825 Connecticut Avenue, N.W., Washington, DC 20428.

Final Rule—46 FR 46787, September 23, 1981 (ER–1246); tariff flexibility.

NPRM—46 FR 29729, June 3, 1981 (PSDR–70); elimination of mandatory joint fare program.

Extension of Comment Period—46 FR 42075, August 19, 1981 (PSDR-70A).

Final Rule—45 FR 70431, October 24, 1980 (PS-98); CAB grants more upward fare flexibility in domestic markets.

Final Rule—45 FR 42254, June 24, 1980 (PS-95); CAB broadens fare flexibility for Puerto Rico/Virgin Islands, Hawaii, Alaska.

Final Rule—45 FR 24115, April 9, 1980 (PS-92); amended 14 CFR Part 399 to harmonize the broad fare flexibility zone with the statutory flexibility zone.

Final Rule—43 FR 39552, September 5, 1978 (PS-80); CAB voluntarily established first zone of domestic fare flexibility.

Order 80-2-35—Exemption from Order prescribing division of joint fares.

Order 80-2-34—Publication of joint fares.

Order 79-6-196—Exemption to permit voluntary divisions of joint fares.

Order 79-1-111—Phase II (Division of Revenues).

Order 78-11-154—Commuter/Certificated Carrier Joint Fares.

Order 74-3-80—Phase IV (Domestic Passenger Fare Investigation).

(Note: Numbers in parentheses are CAB reference numbers for these documents.)

Civil Aeronautics CAB Dockets 38585, 34138.

Public comments may be examined in Room 711, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, DC 20428.

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CAB

Essential Air Service Subsidy Guidelines (14 CFR Part 271; New)

Legal Authority

Federal Aviation Act of 1958, § 419(d), as amended by the Airline Deregulation Act of 1978, P.L. 95-504, 92 Stat. 1739, 49 U.S.C. 1389(d).

Reason for Including This Entry

The Civil Aeronautics Board (CAB) considers this rule important because it should significantly reduce the Federal subsidy of airlines. It also represents a major shift in focus of the subsidy program. Rather than subsidizing certificated airlines to aid in their economic viability and expansion, the new subsidy program will focus on smaller commuter airlines in order to improve air service to small communities.

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. However, 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 that cannot support profitable air service, using Federal subsidy when necessary. The CAB is responsibile for 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 (746 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.

The Federal Aviation Act has long contained a subsidy provision, § 406. Although the CAB has built monetary incentives into that subsidy system, § 406 has not always been effective as a tool to prevent the withdrawal of airlines from small communities. One reason is that § 406 is limited to certificated airlines, which typically use large aircraft that cannot operate efficiently to many of the affected cities and towns. Also, the CAB must consider the needs of the certificated airline's overall system, and not only the point affected, when determining the airline's subsidy need.

This subsidy provision had not been significantly modified since the adoption of the Civil Aeronautics Act in 1938. Its primary intent was the development of a national air transportation system, rather than ensuring air service to small communities. That is why the CAB considered the financial need of the airlines' entire system in establishing subsidy rates. This approach enabled airlines to expand and acquire larger aircraft. While this worked well in building the air transportation system and nurturing airlines to self-sufficiency, the shift to larger equipment made high-frequency service to smaller points increasingly impractical. Because the § 406 subsidy was limited to certificated airlines, the CAB was unable to subsidize the air taxi industry (uncertificated operators of small aircraft), whose equipment was better suited to serving the small points.

The essential air service subsidy program of § 419, which was added to the Federal Aviation Act by the Airline Deregulation Act of 1978, corrected this problem. This rulemaking to establish subsidy guidelines responds to § 419(d), 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 fiscal year 1980 the CAB instituted subsidy support for 27 points, at average annual rates of about $225,000 per point. During fiscal year 1981 the CAB expects to provide subsidy support for 53 points. Those points are smaller communities where airlines cannot provide service at a profit. The § 419 subsidy program is reaching all communities that want service, need subsidy, are not receiving subsidized service under § 406, and qualify as eligible points under the Act.

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 ensuring 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 possibly conflicting objectives of assuring the provision of essential air services while maintaining a fiscally responsible program.

Developing a market for air service to small communities is a step common to achieving both goals. Specifically, increased traffic volumes can at once justify better service (more flights) and reduced subsidy cost. The CAB is considering two alternatives for

achieving these goals. The cost-plus subsidy, under which the CAB would reimburse airlines for their expected losses, allow them a reasonable profit, and, in addition, compensate them for any additional losses that they incur in actually providing the service, would not appear to promote either goal. The CAB has rejected this approach.

Instead, the CAB favors two innovative incentive approaches. Under one, the fixed incentive rate, the CAB reimburses the airline for a predetermined projected loss and allows a reasonable profit. If the airline incurs additional losses, it does not receive additional compensation. If the airline receives additional revenue, however, it may keep the extra profit. The possiblity of making large profits with subsidy gives airlines the incentive to be cost efficient and to develop the market. The possibility of uncompensated losses, however, poses the danger of service terminations. To avoid this problem, the CAB is considering another approach, the shared incentive rate. Under this approach, as with the others, the CAB would reimburse the airline for a predetermined projected loss and allow a reasonable profit. The difference is that under the shared rate, the CAB would compensate the airline for some of its additional losses instead of all of them (cost-plus approach) or none of them (fixed incentive rate approach). These alternatives are more fully discussed in the NPRM (45 FR 83254, December 18, 1980).

Summary of Benefits

Sectors Affected: Small communities; air travelers and potential travelers to these communities; industries within small communities; the air transportation industry, particularly small, commuter airlines; the general public; and CAB.

The benefit from the subsidy program is the assurance that all communities that were receiving service from a Board-certificated carrier would continue to be linked to the air transportation network. In some subsidy cases, the combination of deregulation and subsidy will result in more flights and cheaper or more available air service. Small commuter airlines are more likely to take advantage of the subsidy program because it is oriented toward cities where jet service is inefficient. This may lead to other tangible benefits to the communities, 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 for the CAB and airlines. It should also result in improved services and lower subsidy costs by using an incentive approach. 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.

The Congressional Budget Office estimated that when this new system is phased in and the old subsidy system phased out (currently scheduled for 1986), there will be a savings of 26 million subsidy dollars (1980 dollars) per year. CAB submitted a proposal to Congress to end the § 406 subsidy program on October 1, 1981. Hearings have been held on the § 406 issue, but legislative action to end or modify the § 406 subsidy program has not taken place as yet. If the proposal is adopted, several points currently subsidized under § 406 would require subsidy under the § 419 program. This would raise the costs of the § 419 program but should result in an estimated overall savings of 55.6 million subsidy dollars (1980 dollars) per year. The subsidy program and guidelines are not predicated on a cost/benefit analysis by the Agency, but are required by law.

Summary of Costs

Sectors Affected: CAB.

The cost to the Government of the underlying § 419 subsidy program for fiscal year 1979 was $1.2 million, all of which was paid to carriers that were "held in" while replacement carriers were being sought. For fiscal year 1980 the total hold in payments and final rates for selected carriers was $9 million. The CAB staff's preliminary estimates of the costs are $15.2 million (1980 dollars) for fiscal year 1981 and $20.7 million (1980 dollars) for fiscal year 1982. If the §406 program is eliminated, the CAB staff estimates that the costs of the §419 program would be $58 million (1980 dollars) annually. A regulation establishing subsidy guidelines, as opposed to the subsidy program itself, is not likely to impose any significant costs.

Summary of Net Benefits

The rule should significantly reduce Federal subsidy of airlines. At the same time, it should improve air service to small communities where airlines cannot provide service at a profit.

Related Regulations and Actions

Internal: The CAB has adopted the following new regulations: Criteria for Designating Additional Eligible Points—14 CFR Part 270. Terminations, Suspensions, and Reductions of Service—14 CFR Part 323. Procedures for Compensating Air Carriers for Losses—14 CFR Part 324. Guidelines for Individual Determinations of Essential Air Transportation—14 CFR Part 398.

External: The CAB is a party to an interagency cooperative agreement, described below.

Government Collaboration

The CAB is a party to an interagency 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.

Timetable

NPRM—45 FR 83254, December 18, 1980.
Final Rule—2nd Quarter 1982.
Final Rule Effective—2nd Quarter 1982.
Public Comment Period—Closed February 17, 1981.
Public Hearing—None.
Regulatory Impact Analysis—The CAB, as an independent agency, is not required to prepare a Regulatory Impact Analysis as it is defined under E.O. 12291. However, the CAB prepares essentially the same information in its NPRMs and Final Rules.
Regulatory Flexibility Analysis—The Regulatory Flexibility Act does not require a Regulatory Flexibility Analysis for NPRMs issued before January 1, 1981.

Available Documents

Final Rule adopting Part 270—44 FR 76767, December 28, 1979 (ER-1166).
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).
NPRM proposing new Part 271—45 FR 83254, December 18, 1980 (EDR-415).

Available documents, including public comments, in CAB Docket 39041 may be examined and copied at the Docket Section, Room 711, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, DC 20428.

(Note: Numbers in parentheses are CAB reference numbers for these documents.)

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CAB

Notice to Passengers of Conditions of Carriage (14 CFR Parts 221, 250, 298, Revision; 14 CFR Part 255, New)

Legal Authority

Federal Aviation Act of 1958, as amended, §§ 403, 404, and 411, 49 U.S.C. 1373, 1374, and 1381.

Reason for Including This Entry

The Civil Aeronautics Board (CAB) considers this rule important because it would affect the information concerning the conditions of carriage that airlines must give passengers. The rule should help the industry prepare for the later stages of deregulation, when they no longer will file tariffs with the CAB.

Statement of Problem

Contracts between airlines and their passengers are very complicated. The airlines write thousands of contract provisions in technical legal language and publish them in tariffs, which are documents that airlines file with the Civil Aeronautics Board (CAB). These documents contain crucial information about the rights passengers do or do not have when 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, airlines do not give air travelers a copy of the tariffs to take home and read. The CAB now requires airlines to alert passengers about a few basic subjects by using airline ticket notices and ticket counter signs written by the CAB (14 CFR 221.173–221.176). But even these notices have been technical and hard to understand, and to read most of the terms of their contracts, passengers must visit the Tariffs Section at the CAB or an airline ticket office where tariffs are kept open for public inspection. It is hard for the average passenger to locate and understand important information in the tariffs, and most airline passengers do not find out about many important limitations on the airline's responsibility until after they have a serious problem and register a claim with the airline. But because of the legal doctrine of "constructive notice," under which passengers are assumed to know what is in the tariffs, passengers are usually bound by the contents of tariff rules, whether or not they are aware of them when they agree to buy their tickets.

Alternatives Under Consideration

The CAB issued two separate NPRMs (45 FR 25817, April 16, 1980, and 45 FR 42629, June 25, 1980), soliciting comments on the notice that airlines must give passengers concerning the condition of their contracts of carriage. The first NPRM proposed to revise the text of standard notices that, under current regulations, airlines must post on signs at ticket counters and print on airline tickets. The second proposed a more direct way than tariffs of informing passengers of their contract terms. This proposed rule states that airlines may not bind the passenger to any tariff rule unless they provide written notice of the provision. Airlines would decide what to include in the notices, and courts would review the adequacy of the airlines' notification efforts in claims brought before them, as they do in unregulated industries. Airlines would still file tariffs, and until January 1, 1983, the CAB would continue to review the reasonableness of the practices they describe.

The two NPRMs were consolidated as Option 1, and a second option was set forth in a Supplementary NPRM (46 FR 35936, July 13, 1981). That NPRM proposed to eliminate passenger rules tariffs in interstate and overseas air transportation and to eliminate most of the CAB-prescribed notices to passengers in domestic and foreign air transportation. Without the constructive notice that rules tariffs currently provide, or some equivalent substitute, airlines would have to give actual notice to passengers in order to enforce any conditions of carriage. Under this proposal, CAB would leave the substance and placement of the notices to airlines. In another, related Supplementary NPRM (46 FR 43057, August 26, 1981), the CAB proposed to eliminate the requirement that air taxis post signs at all ticket counters, stating their policy on baggage liability and denied boarding compensation, in order to remove similar burdens placed on small, uncertificated carriers.

Summary of Benefits

Sectors Affected: Air travelers (over 250 million passengers yearly); the air transportation industry; and travel agents.

If rules tariffs were eliminated, and no equivalent form of constructive notice were substituted, 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 such as baggage liability limitations and minimize the consequences when problems do arise. They would also be able to make more informed choices among competing airlines, since they would have a clearer understanding of the differences in the services offered.

Under Option 1, the transition to deregulation would be gradual so that the industry could gain valuable experience for the later phases of deregulation, when airlines will no longer have the protection of a government-regulated tariff system and the concomitant doctrine of constructive notice. Similarly, travel agents would be better able to serve their customers, since they could more easily determine the differences between different airlines' service offerings.

Under the second option, a greater degree of government intervention would be removed. The conditions of carriage would be determined by the contracts made between airlines and passengers. With the elimination of rules tariffs, if no equivalent form of "incorporated" rules were substituted, airlines would be expected to give actual notice of the terms of travel and limitations of their liability. The terms of the contract and the forms of notice would be left to airline discretion and competition. Enforcement would be through private legal action.

Summary of Costs

Sectors Affected: The air transportation industry and air travelers.

There would be one-time airline costs to develop contract documents, or other types of notices that airlines choose to provide, as well as printing and distribution costs to make the documents available to passengers. When airline deregulation eliminates tariffs for domestic air transportation in 1983, however, airlines will have to either develop contract documents or substitute some other form of constructive notices. The costs would presumably be reflected in the airlines' fare-setting decisions. The effect of the

CAB regulation would not be to add significantly to costs in the long run, but instead to assist the industry in developing the most cost-effective means of making passengers aware of the terms and conditions of their travel.

Summary of Net Benefits

Elimination of rules tariffs and CAB-prescribed notice requirements would aid small airlines that currently have to file rules tariffs and provide the regulatory notices to passengers. Adoption of the proposal would leave important decisions about formulating and disclosing terms of carriage to the business and legal judgment of airline management. Adoption of the proposal may also have side effects on travel agents, most of which are small businesses, as they participate in the air transportation system's adjustment to methods of providing notice to passengers in a tariff-free environment. This adjustment would have to take place in any event, due to the Congressionally mandated elimination of domestic tariffs on January 1, 1983.

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, Orders 79-4-115, 79-9-129, 79-11-23, and 80-3-10, Docket 35361.

Air Carrier Rules Governing the Application of Tariffs, Order 79-2-106, 79-12-98, and Order 80-4-51, Docket 34772.

14 CFR Part 221, Tariffs.

14 CFR Part 250, Oversales.

14 CFR Part 298, Classification and Exemption of Air Taxi Operators.

External: None.

Government Collaboration

None.

Timetable

NPRM—45 FR 25817, April 16, 1980 (EDR-396). Simplifies the notices that CAB already requires airlines to give passengers.

NPRM—45 FR 42629, June 25, 1980 (EDR-404). Requires that airlines give actual notice to passengers about the terms of the contract of carriage. Under the proposed rule, tariff filings would no longer automatically be part of the passenger/airline contract. CAB reference number for this document is EDR-404.

Extension of Comment Period—45 FR 52820, August 5, 1980 (EDR-404A).

Supplementary NPRM—46 FR 35936, July 13, 1981 (EDR-404B). Consolidated the two NPRMs we list above as Option 1 in a merged proceeding, and proposed a new Option 2 for consideration. The new option would eliminate passenger rules tariffs in interstate and overseas air transportation and most of the CAB-prescribed notices to passengers in domestic and foreign air transportation.

Extension of Comment Period—46 FR 40703, August 11, 1981 (EDR-404C).

Extension of Comment Period—46 FR 40703, August 11, 1981 (EDR-404D).

Supplementary NPRM—46 FR 43507, August 26, 1981 (EDR-404E, addendum to Supplementary NPRM of July 13, 1981). Eliminates the requirement that air taxis post signs at all ticket counters stating their policy on baggage liability and denied boarding compensation.

Public Hearings—None.

Public Comment Period—Closed September 28, 1981.

Final Rule—1st Quarter 1982.

Final Rule Effective—1st Quarter 1982.

Regulatory Impact Analysis—The CAB, as an independent agency, is not required to prepare a Regulatory Impact Analysis as it is defined under Executive Order 12291. However, the CAB prepares essentially the same information in its NPRMs and Final Rules.

Regulatory Flexibility Analysis—The Regulatory Flexibility Act does not require a Regulatory Flexibility Analysis for EDR-396 and EDR-404 (Option 1), which were issued before January 1, 1981. The CAB did prepare a Regulatory Flexibility Analysis for EDR-404B (Option 2).

Available Documents

The orders listed under the Timetable can be obtained from the Distribution Section, Civil Aeronautics Board, Washington, DC 20428, (202) 673-5432.

Public Comments—CAB Dockets 38021 and 38348 may be examined and copied at the Docket Section, Room 711, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, DC 20428.

(Note: Numbers in parentheses are CAB reference numbers for these documents.)

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FEDERAL COMMUNICATIONS COMMISSION

Amendment of the Commission's Rules To Allocate Spectrum in the Frequency Band of 18 Gigahertz (GHz) for Microwave Radio Stations Called Digital Termination Systems and for Point-to-Point Microwave Stations for the Provision of Common Carrier, Private Radio, and Broadcast Auxiliary Services; and for the Private Radio Use of Digital Termination Systems at the Lower Frequency of 10 GHz, Previously Authorized Only for Common Carriers (47 CFR Parts 2, 21, and 94; Revision)

Legal Authority

The Communications Act of 1934, as amended, 47 U.S.C. 1, 4(i), 303, and 403; the Administrative Procedure Act, 5 U.S.C. 553.

Reason for Including This Entry

The proposed regulations would help meet the public need for communications facilities to handle the burgeoning growth of electronic transfer of information. These proposals are directly related to the precedent-setting Federal Communications Commission (FCC) Order, released in April 1981, authorizing these new communications facilities operating at lower frequences.

Statement of Problem

Information transfer in the form of written documents, voice, video teleconferencing (roughly described as conduct of conferences by long-distance telephone with TV), and computer data are becoming increasingly digital. That is, information is represented as and sent by coded pulses (i.e., computer data) rather than electrical waves (i.e., voice). Whereas there are a number of entities providing a digital communications capability on an intercity basis, the communications facilities that transmit directly to the user-subscriber locations are almost exclusively provided over local telephone company lines. However, these facilities, designed to handle information represented by electrical waves (typically voice) rather than pulses (presently mostly computer data), can only transmit with limited transmission rates and introduce unacceptable numbers of errors. Transmission facilities designed to accommodate digital signals would do away with these deficiencies.

On November 16, 1979, the Xerox Corporation (Xerox) submitted to the FCC a petition for rulemaking requesting that microwave frequencies between

10,550 and 10,680 million hertz (megahertz or MHz) be set aside for digital termination systems (DTSs) and that rules and policies be adopted for nationwide common carrier digital communications facilities. DTSs, microwave radio stations that transmit to small rooftop antennas at user-subscriber locations within a circular area about the stations, would transmit in a point-to-multipoint fashion to all receiver stations simultaneously. Like the telephone company, the owners of these facilities could offer to the public, without discrimination, communications services for hire, i.e., they would be regarded as communications common carriers. This network of facilities would provide for high-speed, two-way transmission of digitally coded information directly to and from customers' premises at a greatly reduced error rate. The FCC responded to Xerox's petition by adopting rules and policies governing the use of DTS and associated conventional microwave communications links for a new common carrier service, Digital Electronic Message Service (DEMS). These frequencies were set aside because the FCC found that the establishment of nationwide networks by common carriers for this type of service is in the public interest. In the Notice of Proposed Rulemaking and Inquiry that initiated the docket proceeding concerning DTS, the FCC noted that the public demand for services offered over DTS may exceed our estimates and discussed the possibility of using the 17,700–19,700 MHz (18 GHz) frequency band. The Further Notice of Proposed Rulemaking addressed the use of this frequency band as well as other related issues. Also, the Further Notice responded to a request by the Farinon Electric Division of the Harris Corporation (Farinon) to adopt a scheme for restructuring the 18 GHz frequency band to permit assignment of narrower segments of the band than are currently provided for. Farinon indicated that narrower band segments (or channels) could be attractive for entities like utilities, railroads, and oil companies transmitting a much smaller volume of business information than that for wide-band common carrier channels.

The meager use of 18 GHz frequencies has been of concern to the FCC, particularly since 1974, when wide channels of predetermined width were made available to license applicants. In general, the FCC attempts to encourage exploitation of higher frequencies to alleviate crowding at lower frequencies. Because of the greater difficulties in transmitting a higher frequency signal through the atmosphere and the general lack of readily available and moderately priced equipment for operation at higher frequencies, users have been reluctant to operate at a higher frequency when lower frequencies are available. As a consequence, congestion has occurred at these lower frequencies in the major urban areas.

As part of the FCC's mandate, we must continually investigate more efficient and better uses of the radio spectrum. DTSs and the radio services provided over these systems represent new uses of radio. We have provided for use of DTS for Digital Electronic Message Service in the rules we promulgated in Spring 1981. In a further response to this mandate, we propose that more frequencies for DTS be made available. Failure to do so could dampen the availability of low-cost digital communications directly to and from users' premises. This so-called local distribution of digital communications will be essential as the transmission of information in digital form expands. Were the FCC not to encourage the use of higher frequencies such as 18 GHz, the prospects of spectrum overcrowding at lower frequencies would persist. Technological advance could also be impeded by a failure to tailor our regulatory scheme to encourage exploitation of the higher frequencies.

Alternatives Under Consideration

In the Notice of Proposed Rulemaking and Inquiry that led to the reallocation of the frequencies between 10,550 and 10,680 MHz (10 GHz) to DTS, the FCC considered the use of non-radio facilities, such as various forms of transmission by wire or cable for communication directly to and from user-subscribers. This alternative was rejected primarily because of the relatively low speeds at which information could be transmitted to subscriber premises using present facilities, which are virtually all wire or cable. Additionally, the capital costs of constructing facilities other than the present system for distributing digital communications directly to subscriber premises—the ubiquitous public telephone network—would be prohibitive. For this reason, primarily, radio was deemed to be the most feasible alternative. In one very important respect, the 18 GHz band was considered ideal for the intended purposes. It has been virtually unused. However, equipment unavailabilty and the shorter distances over which the signal at these frequencies could be transmitted would be a disadvantage compared to operation at 10 GHz. Its use, while greater than at 18 GHz, has also been meager. We therefore adopted rules and policies for the use of DTS in the 10 GHz frequency band. In the Further Notice of Proposed Rulemaking, we propose use of the 18 GHz band should the demand for DTS-provided services at 10 GHz exceed our initial expectations. In the rulemaking proposal for 10 GHz, we considered, as alternatives to the assignment of DTS frequencies, the adoption of lotteries or auctions in spectrum rights at 10 GHz. Policy development at the Commission, however, has reached a very preliminary stage in this regard, making it premature to apply these alternatives to the assignment of 18 GHz frequencies. The Commission, therefore, did not propose these alternatives in the Further Notice.

Summary of Benefits

Sectors Affected: Communications industry, including common carriers, their subscribers, and equipment manufacturers; and user groups, including manufacturers, financial institutions, educational institutions, local governments, and service industries.

Those directly benefited would be sectors of American business located in the major urban centers and the smaller communities to which DTS networks would be connected. The entire industrial economy of the United States would be benefited by the direct access to high-speed, digital communications facilities. The widespread availability of DTS will facilitate the development of advanced information distribution services provided over DTS. The need for communicating information required for effective management, which will be increasingly digital in nature, will continue to grow as the number of decentralized offices of the same regional or national organization grows. All segments of the economy would benefit, some more than others, depending on the need to interact with and among their geographically dispersed offices. Common carriers employing DTS are expected to tap a rapidly expanding market for the transmission of digitally coded information. Consumer choice would be broadened with the availability of services offered over DTS, tailored for the carriage of digital information. For example, reliance on the existing telephone network for direct access to customers' premises would be lessened. Additionally, the presence of DTS in the marketplace could spur the development of alternative competing systems, thereby resulting in lowered costs to the

consumer. The proposal we make in the Further Notice of Proposed Rulemaking to allow business, local governments, universities, etc., to operate their own DTS facilities would likewise increase consumer choice. Consumers could avail themselves of this option instead of relying on common carrier-provided services using DTS.

Restructuring other portions of the 18 GHz band into narrow channels would encourage its greater use, relieving congestion at the lower frequencies. Additionally, the availability of these narrow channels would make the pending move of conventional point-to-point microwave stations out of the 12.2–12.7 GHz (12 GHz) band to make room for direct broadcast satellite operation far less painful. The 18 GHz band is a prime candidate for displaced 12 GHz users, who are accustomed to operation on preset channels. A channeling plan at 18 GHz is also more desirable because the potential for interference between stations would be lessened.

An increased demand for both point-to-multipoint DTS and for conventional point-to-point uses should lead to the manufacture of more equipment for use in the 18 GHz band. This should in turn lead to a lower unit cost for each piece of equipment, making operation at the higher frequencies more attractive to prospective users. In sum, we aim to spur greater use of a relatively fallow region of the spectrum and to encourage the development of a market in low-cost equipment at these frequencies.

Small business organizations would especially benefit from the availability of more spectrum for DTS and from the competitive spur DTS would give to the communications marketplace, making such communications affordable to the smaller user. The major factor contributing to lower system costs, as for DTS at 10 GHz, would be the very low-cost transmit/receive stations at the user premises. The benefits of the availability of more frequencies at 18 GHz for DTS would further facilitate the communication of digitally encoded information, an integral part of the near-term proliferation of advanced information distribution systems.

Summary of Costs

Sectors Affected: Communications industry, including common carriers, their subscribers, and equipment manufacturers; and providers of their own communications facilities, including manufacturers, financial institutions, service industries, and local governments.

The major thrust of the DTS proceedings has been to satisfy the public demand for nationwide networks offering end-to-end, high-speed digital communications. To fully implement a nationwide network of DTS stations connected by satellite links, a carrier would probably require capital expenditures in excess of $100 million. Smaller, regional networks would cost proportionately less than nationwide systems in accord with the fewer number of cities served. In our Further Notice of Proposed Rulemaking regarding the use of 18 GHz, the FCC has proposed a relaxation of the eligibility criteria for providing DTS services. For example, channel width is not assigned on the basis of the number of cities in a DTS network as at 10 GHz. The capital costs of implementing a digital termination system using 18 GHz, however, would likely be greater than the cost of DTS using the 10 GHz band. The decreased signal range at 18 GHz would mean less coverage area per station and thereby more stations to cover the service area in some cities. System costs for 18 GHz DTS would therefore be greater than at 10 GHz, even assuming equal equipment costs.

Reallocations normally mean that a current use of the spectrum can no longer be made. Occasionally, displacement of the current users is necessitated. A cost is associated with this displacement. However, the meager use of the 18 GHz band minimizes the likelihood that the few current users would incur any costs due to the partial reallocation of frequencies to DTS or the provision of narrow channels. Operation in the 18 GHz band for conventional point-to-point microwave systems that would utilize the proposed narrow channels would likely be more costly than at lower frequencies. The factors of unavailability of equipment and the decreased signal range are again the prime reasons.

The FCC has recently proposed the authorization of direct broadcasting satellites (DBS) (see entry in this Calendar). A portion of the 12.2–12.7 GHz (12 GHz) band was proposed for use by DBS to transmit TV directly to home receivers. However, this band is utilized presently for non-common carrier, point-to-point microwave operations. Because these two different operations are incompatible, many of the point-to-point microwave operations in this band will have to shift to a higher frequency band, the prime candidate being the 18 GHz band. Such a move would require changes in equipment, such as transmitters, receivers, and antennas. Therefore, users owning their own microwave links, such as petroleum companies, railroads, and other industrial users, would incur costs as a result of these changes. In addition to the cost of equipment, these users would have to bear the costs of some redesign of their systems. With respect to the FCC proposal that non-common carriers operate DTS facilities while sharing the same spectrum with common carriers, a concern for a potential of undue interference between the respective DTS operations arises. Developing means to avoid such interference frequently entails untoward expense.

The staff at the Commission has roughly estimated that for both 10 and 18 GHz 8 man-weeks per year would be required for licensing. For certification of the kinds of DTS transmitters employed, 3 man-years are estimated.

Summary of Net Benefits

The contribution DTS will make to the widespread availability of advanced information systems is the paramount benefit DTS would provide to American society. Particularly, business information, in the form of documents, computer data, and video conference calls, would be communicated directly to and from a user's premises. Should such services over DTS at 10 GHz become widespread, the attractiveness of DTS at 18 GHz presumably would increase despite the relatively higher costs of operation at 18 GHz. Moreover, costs of the greater expense of equipment at the higher frequency band should diminish as more of the 18 GHz equipment is manufactured in response to demand for DTS-provided services.

Comparing the prospective demand for DTS-provided services at 18 GHz with the meager use of 18 GHz for point-to-point use, despite predictions of such large-scale use that have proven to be optimistic thus far, the costs of reallocating a portion of this band appear to be far outweighed by the benefits of making DTS services more available to the public.

Restructuring the 18 GHz frequency band to accommodate 12 GHz point-to-point operations displaced by direct broadcast satellite (DBS) operation would mean virtually no displacement costs to the few current users of 18 GHz. On the other hand, in authorizing DBS, the Commission made the determination that the significant equipment and system cost of the displacement of 12 GHz operations to another frequency band was outweighed by the public benefits of DBS. The Commission also made the tentative judgment, in proposing that non-common carriers may own their own DTS facilities, that the benefits of users having this option superseded concerns over the feasibility

of common carriers and other DTS owners sharing spectrum.

Related Regulations and Actions

Internal: The rules adopted for DEMS using DTS at 10 GHz, located in Part 21 of the Commission's Rules and Regulations, 47 CFR 21.500–511 *et al;* proposal to authorize broadcast satellites, Notice of Proposed Policy Statement and Rulemaking, in General Docket 80–603, 46 FR 30124 (1981).

External: None.

Government Collaboration

None.

Timetable

Initial Request by Petitioner—November 1978.

Notice of Proposed Rulemaking and Inquiry—44 FR 51257, released August 1979.

First Report and Order—46 FR 23428, April 27, 1981.

Public Comment Period—Ends January 14, 1982 for comments; ends March 1, 1982 for reply comments. Send comments to Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Washington, DC 20554.

Second Report and Order—1st Quarter 1983.

Public Hearings—None planned.

Regulatory Impact Analysis—None required.

Regulatory Flexibility Analysis—None required.

Available Documents

Federal Communications Commission Docket 79–188 on "Digital Termination Systems," including the initial request filed in November 1978 by the petitioner, and the comments to the request; the Notice of Proposed Rulemaking and Inquiry, August 1979, and related staff studies, and the comments in response to that proposal; the First Report and Order, April 1981, and the five petitions for reconsideration filed in June 1981 and the oppositions and replies. These documents may be reviewed in the Docket Reference Room, 1919 M Street, N.W., 2nd Floor, Washington, DC.

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FCC

Authorization of Teletext Service by Broadcast Television Stations (Broadcast Docket No. 81–741) (47 CFR Part 73; New)

Legal Authority

The Communications Act of 1934, as amended, 47 U.S.C. 303(a), (b), (c), (d), (e), (f), (g), (h), (n), and (r), and 4(i).

Reason for including This Entry

Teletext is a new form of broadcast service that is the product of recent technological development. The Federal Communications Commission (FCC) believes that teletext offers substantial opportunities for extending and diversifying the service of television stations and for improving the efficiency of spectrum utilization.

Statement of Problem

In recent years, technological development has produced a number of possibilities for new forms of communications services, including some that can be adapted for use with home television receivers. Teletext is one of this new generation of information transmission systems. The term teletext is generally defined as a broadcast system that superimposes digitally encoded alphanumeric (letters and numbers) and/or graphic information on a television signal in addition to regular programming. The teletext signals are transmitted in the vertical blanking interval (the black bar that can be seen when a television picture rolls) and do not interfere with the reception of regular programming. A special decoder device is needed to display the textual information. Since FCC authorization of such signals has not been considered in the past, they are not permitted under the FCC's current rules for television transmission.

Teletext has the potential to serve a wide variety of applications. Consumer services identified thus far range from those such as closed captioning for the hearing impaired, which are related to a station's regular programming, to news and weather reports, comparative shopping prices, and community service bulletins, which are not related to normal television service. In addition, commercial data and messages can be transmitted over teletext.

The Commission has received two petitions for rulemaking, asking that teletext transmissions be authorized. One request came from CBS, Inc. and the other from the United Kingdom Teletext Industry Working Group. It is apparent from the comments received in response to these two petitions and from other activity on the part of the broadcast and related industries that there is substantial interest in developing teletext service and that such service would be in the public interest.

Alternatives Under Consideration

The Commission is considering whether to authorize television stations to broadcast teletext. The major alternative to this proposal would be to decide not to authorize this service.

If the decision is made to permit teletext, then the Commission will also have to determine which lines in the vertical blanking interval it will make available to carry the signals and the rules to regulate technical operation. As a general rule, any increase in the number of lines that are used will increase the amount of information that can be carried. The Commission's proposal specified that seven lines in the vertical blanking interval would be available for teletext now, and four additional lines would be phased in for use in the future. These lines would be authorized for use, not reserved exclusively, so as not to preclude some other use of the vertical blanking interval that may arise in the future. The Commission could choose to authorize fewer lines than the eleven suggested in the NPRM. The Commission is proposing to authorize teletext under an open environment policy. Under this plan, licensees would be permitted to use their own discretion with respect to both the teletext services they might offer and the technical system they use to support those services. The only restriction would be that teletext signals not degrade the regular service of the originating station or interfere with the service of any other radio or television station. The advantage of the open environment approach is that it would rely on market forces to direct the kinds and amounts of service that are provided. Teletext appears to be particularly well suited to a market-based regulatory strategy because it can be used for many divergent types of service. A second approach would be for the Commission to select a single technical system to be the standard for all teletext transmissions. This option is not considered to be a likely choice for teletext policy. Intermediate options, which would fix some parameters but allow licensees to determine others, are also possible.

Summary of Benefits

Sectors Affected: Television broadcasting industry, including the cable industry and subscription television industry; manufacturing, wholesale, and retail trade of radio

transmitting, signaling, and detection equipment and apparatus; information providers; and television users, including those with hearing impairments.

Authorization of teletext could have a beneficial effect on most of the parties that would be involved in providing and using such services. Television stations would be permitted to engage in a new line of business, thus providing them an opportunity to generate additional income. There are approximately 1,025 television stations, including both commercial and non-commercial broadcasters. Manufacturers of electronic equipment for both transmitting and receiving television signals would need to develop teletext decoders or acquire them from a secondary electronics manufacturer. This would create additional business for these firms, the volume of which would depend in part on the Final Rules that the Commission may adopt. The number of manufacturers that would be affected, while unknown, would probably be significant, since component parts suppliers as well as assemblers of final products would be involved.

Teletext would also give rise to the emergence of new firms or new production units within television stations, whose purpose would be to support and operate the information service. The function of these organizations would be to collect and edit information and to prepare it for insertion in the television signal. The number of such organizations that would be created is difficult to estimate, but it would probably be closely related to the number of television stations. Information providers such as local governments, service and social organizations, and businesses that supply the basic material for teletext would benefit by having an additional avenue for communication.

Users of teletext, which could ultimately include every television household in the United States, would benefit from having an additional source of information. This would help to achieve more efficient use of the television frequencies. Hearing-impaired individuals would benefit to the extent that stations would choose to offer teletext captioning services.

Summary of Costs

Sectors Affected: Newspapers and publishers of other printed media.

Newspapers and other publishers of information that is the same or similar to that which may be carried on teletext would likely experience increased competition that may affect their liability. Authorization of service would result in use of spectrum that is in general not now allocated to other purposes. If the vertical blanking interval lines are only authorized and not reserved for teletext, as proposed, then they will remain available for different types of applications that may emerge in the future.

Summary of Net Benefits

Because teletext is a new form of broadcast service that has not yet found a market, the extent of its future success or failure cannot be evaluated in quantitative terms at this time. Qualitatively, though, it appears that authorization of teletext would have a net beneficial effect on the parties involved. While competing information sources such as newspapers and other publishers would experience increased competition and possible losses of revenue, these losses would probably be offset by increased revenues for all media, including newspaper, due to the authorization. The sectors affected would generate increased revenues in terms of developing new lines of businesses and increasing manufacturing for necessary equipment and component parts. New firms would probably emerge to perform teletext operations and serve as information providers. These functions might even be performed by the competing publishers as an extension of their present services. This possibility might enhance rather than reduce their revenues.

In terms of use of the television frequencies, authorization of the vertical blanking interval lines for teletext would not preclude different types of application in the future, but rather could create a more efficient use of the frequencies now. It would result in use of spectrum that is currently not now allocated and would benefit hearing-impaired individuals to the extent that stations would choose to offer captioning services.

Related Regulations and Actions

Internal: Teletext is related to closed captioning for hearing-impaired persons. Closed captions are authorized on line 21, as specified in 47 CFR 73.682. If the open environment approach were adopted, the line 21 captioning system would not need a separate authorization. Therefore, the Commission will also consider eliminating the separate rules for the line 21 system if it adopts the open environment option.

External: None.

Government Collaboration

None.

Timetable

NPRM—Adopted October 20, 1981 and released November 27, 1981.
Public Hearing—None.
Public Comment Period—Comments on the NPRM are due by January 11, 1982, and replies are due by February 10, 1982. Submit comments to Federal Communications Commission, 1919 M Street, N.W., Washington, DC 20554. Refer to BC Docket 81-741.
Report and Order—3rd or 4th Quarter 1982.
Regulatory Impact Analysis—None.
Regulatory Flexibility Analysis—With NPRM.

Available Documents

For review of public comments, request BC Docket 81-741 at the FCC Public Docket Room or Office of Public Affairs.

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FCC

Deregulation of Competitive Domestic Telecommunications Market (Common Carrier Docket 79-252) (47 CFR 61.38; Revision)

Legal Authority

Communications Act of 1934, as amended, 47 U.S.C. 4(i), 4(j), 201, 202, 203, 204, 205, 214, and 403; Administrative Procedure Act, 5 U.S.C. 553.

Reason for Including This Entry

The Federal Communications Commission (FCC) is attempting to change the traditional approach to regulating commom carriers to one where the Commission would exercise only that amount of regulation that is necessary, depending upon the degree of market power exercised by particular providers of communications services.

Statement of Problem

The telecommunications industry provides telephone, telegraph, and similar "communications" services. 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 rules the FCC originally adopted to regulate a monopolistic telecommunications market may now result in unnecessary regulatory burdens on smaller competitive carriers, which up until now we have regulated fully as common carriers. In general, a common carrier means any entity engaged in providing interstate and foreign communications services for hire. Since these smaller carriers must compete to sell their services, they are incapable of the monopolistic abuses common carrier regulation seeks to control. It is therefore questionable whether these smaller carriers should be defined as common carriers, even though the term generally has applied to any entity providing interstate or foreign communications services for hire. We refer to these smaller carriers as "competitive carriers."

Alternatives Under Consideration

We have attempted to address the problem in two ways. (A) The FCC has adopted a new regulatory scheme substantially reducing or eliminating several of the rules by which we regulate the entry and exit of certain carriers in the telecommunications market and the rates and practices they may charge and employ.

Under the FCC's new approach toward fulfilling its regulatory responsibilities, we have classified carriers on the basis of their ability to control prices in the marketplace. Those that lack such ability are labeled as non-dominant, and regulatory burdens on them have been significantly reduced or eliminated through a rulemaking that became effective November 28, 1980. Because these carriers lack the market power to charge rates or impose conditions of service that would contravene the Act, we now presume that their tariff filings are lawful. These carriers no longer have to submit the extensive economic data required by our current rules to support their tariff filings, and they only have to provide 14 days notice to the public of tariff changes rather than the 90 days notice previously required. Moreover, the FCC will not suspend their tariff filings unless a petitioner can make a strong showing of substantial and irreparable injury to competition that harms the public. Non-dominant carriers are also able to institute or discontinue service more easily under the new regime. They have blanket authority to extend their circuits into any part of the continental United States and thus will no longer need a separate certificate to do so. They will also be able to discontinue service simply by giving the Commission and their customers 30 days notice.

On the other hand, we have not relaxed the regulatory rules for those carriers that we have identified as possessing market power, i.e., dominant carriers, since we need to ensure that such carriers do not exploit their dominance to the detriment of the public.

(B) The FCC is also examining the question of what types of communications carriers should be defined as common carriers and hence subject to our jurisdiction. The issues involved are set forth in a further NPRM released January 16, 1981 (46 FR 10924, February 5, 1981).

The Federal Communications Commission has tentatively concluded that the Communications Act of 1934 (the Act) does not compel us to apply any of the regulatory obligations set forth in Title II of the Act to all companies that offer communications services and facilities to the public. (The essential elements of Title II encompass traditional public utility regulations, including control on price, publication of terms and conditions of service, prohibitions on price discrimination, control on investments, and an obligation to service all. These obligations are imposed on common carriers.) Rather, the Commission has the discretion to decide which communications suppliers should be treated as common carriers, and hence subject to Title II regulation, as well as the discretion to forbear from imposing the full panoply of Title II regulation upon those entities that the Commission determines should be—treated as common carriers.

The Commission must have a set of standards upon which to exercise this discretion. We therefore have sought comment on what criteria should be used; but we tentatively conclude that market power is at least one element sufficient to identify those firms that should be treated as carriers as well as those common carriers that need not be subjected to full regulation under Title II. This element emerges from an analysis of the regulatory scheme embodied in Title II of the Act, the historical context in which the Act was adopted, and applicable legal precedent. We have also asked for comment on how this discretionary authority should be applied to the telecommunications industry, although we have tentatively determined that only those carriers with substantial market power in relevant submarkets need be subjected to Title II regulation. And finally, we sought suggestions on how our tentative conclusions should be implemented.

Summary of Benefits

Sectors Affected: The telecommunications industry, particularly non-dominant carriers; telecommunications users; and the FCC.

This proposal would allow the FCC staff to concentrate its resources on regulating those carriers with substantial market power, particularly the American Telephone & Telegraph Company.

Under our new regulatory scheme, the FCC expects that non-dominant carriers (approximately 27) will save unnecessary regulatory costs, such as responding to petitions by competitors asking that we suspend or reject their tariff filings. This savings in turn will be passed on to the consumer.

Summary of Costs

Sectors Affected: None.

We do not expect that the industry or the FCC will bear any additional costs as a result of these policies, and, in fact, regulatory and administrative costs will be significantly reduced if not totally eliminated.

Summary of Net Benefits

We cannot summarize in quantitative terms the net benefits to be realized. Nevertheless, by reducing regulatory requirements for non-dominant carriers, we expect to foster a more competitive marketplace, which in turn will benefit consumers.

Related Regulations and Actions

Internal: The FCC found that the public interest would be served by allowing all interstate telecommunications services, including message telephone service (MTS), wide area telephone service (WATS), and their functional equivalents, to be provided competitively (FCC Docket 78–72, MTS–WATS Market Structure Inquiry).

External: None.

Government Collaboration

None.

Timetable

Notice of Inquiry/NPRM—77 F.C.C. 2d 308, September 27, 1979.

First Report and Order— 45 FR 76145, November 18, 1980 (released November 28, 1980).

Further NPRM—46 FR 10924, February 6, 1981.

Public Comment Period—The initial and reply comment period on the

Further NPRM closed July 10, 1981.
Second Report and Order—1st Quarter 1982.
Regulatory Impact Analysis—The FCC, as an independent agency, is not required to prepare a Regulatory Impact Analysis. However, the FCC does an extensive analysis of the economic effects of regulation, which is set forth in the First Report and Further NPRM.
Public Hearing—None.
Regulatory Flexibility Analysis—46 FR 10934, February 5, 1981.

Available Documents

The Notice of Inquiry/NPRM of September 27, 1979, 77 F.C.C. 2d 308 (1979), the First Report and Order, and the Further Notice of Proposed Rulemaking are available on request from the FCC's Office of Public Affairs, Washington, DC 20554. Request FCC Docket 79-252.

MTS/WATS Market Structure Inquiry (FCC Docket 78-72).

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FCC

Further Inquiry Into the Problem of Radio Frequency Interference to Electronic Equipment (General Docket No. 78-369; FCC 81-267)

Legal Authority

The Communications Act of 1934, as amended, 47 U.S.C. 4(i), 302, 303(f), (g), (r), and (s), 330, and 403.

Reason for Including This Entry

The Federal Communications Commission (FCC) believes that the subject matter of this Inquiry is important because radio frequency interference (RFI) is a problem that, directly and indirectly, affects most of the electronics industry as well as many consumers. This proceeding deals with a very controversial issue and may indeed be precedent setting. In the past the solution to most interference problems has focused on the transmission source. While the transmission source is still a factor in this proceeding, receivers are under close scrutiny as to their role in causing and solving the RFI concerns.

Statement of Problem

During the past decade the FCC has recognized a dramatic change in the number of citizens experiencing interference to the expected performance of various pieces of home electronic equipment caused by the operation of transmitters and other emitters of radio frequency (RF) energy. While some recent data suggest a change in the types of RF devices creating interference, the majority of the increase in complaints is directly attributable to the popularity of Citizens Band (CB). In fact, the number of interference complaints received by the FCC's Field Operations Bureau (FOB) peaked dramatically in 1976 and 1977, closely paralleling the peak in CB license applications. While interference to home electronic equipment from non-CB sources such as low power devices is beginning to become significant, CB-related radio frequency interference still accounts for 64 percent of all complaints received in fiscal year 1980. Both the Congress and the FCC have expressed concern with the trends of RFI totals over the past several years.

The technical aspects of RFI are highly complex. While one may be able to broadly categorize interference into those instances occurring because of on-channel interference sources (those sources that operate within a common frequency band) and those occurring from off-channel sources (those sources that operate on different frequencies), in fact these two classifications may overlap. Despite the ability to categorize interference in this manner, the "best" solution for one particular case may not be the best for another similar case because circumstances surrounding interference tend to be highly individualized.

Alternatives Under Consideration

The FCC finds that there are basically four alternatives to control the spread of RFI that the Commission can follow: direct regulation, liability rules, implicit responsibility of users and manufacturers of equipment, and grading and labeling.

The distinguishing characteristic of the direct regulation approach is that the regulations would set the performance requirements that spectrum users or equipment manufacturers would be required to meet to reduce interference. The Commission would decide just which methods should be used to reduce interference and how much interference should be avoided. Since most kinds of interference can be controlled in more than one way, there are many forms direct regulation might take. For example, design features in TV sets could be required or channel or interservice sharing could be reduced.

The primary benefits of such regulations would be, of course, the reduction in interference, and the attendant certainties and benefits of this approach would depend on the effectiveness with which the regulations controlled interference. Direct regulation also would impose certain costs: costs of equipment modification, of lost service, and of administering and enforcing policy. These costs would vary with the strictness of the regulations and the amount of interference avoided.

Interference remedies fall into two categories: those that address the interfering signal and those that address the affected equipment. Direct regulation might specify use of measures in either category.

The liability rules alternative to direct regulation would establish who is responsible for interference and, therefore, who must act to avoid the interference. Such rules would act to shift the responsibility for interference control from the Government to the affected parties. The rules would not establish how the affected parties would have to reduce the interference, and the responsible parties could choose different methods to avoid different cases of interference. The essential function of such rules would be to increase the incentive of someone to avoid interference by specifying a responsible party and penalties that will be incurred if interference complaints are not resolved.

A third alternative is to establish rules that outline the implicit responsibility of users and manufacturers of home equipment. Interference that is not controlled by direct regulation and for which no one is assigned specific responsibility becomes implicitly the responsibility of the home users of home electronic equipment. They suffer the interference and must decide how to deal with it. They can live with the interference, try to change the installation of the equipment, complain to the manufacturer of the equipment, or purchase different equipment. Because of the last two of the users' options, the market will implicitly shift some of the responsibility for interference to manufacturers of home electric equipment.

This market mechanism allows a third policy approach to controlling interference. By choosing not to eliminate all interference by direct regulation of RF emitters and by not assigning responsibility for interference to RF emitters, marketplace incentives are created for equipment manufacturers to design equipment less susceptible to interference. Of course, it will take time for manufacturers to make design changes, and the changes may or may not control the optimal amount of

interference. Manufacturers may or may not codify the changes by writing them up as voluntary industry standards.

A final alternative would be for the Commission to establish a program of grading and labeling the immunity to interference of home electronic equipment. Under such an alternative the Commission could devise susceptibility standards, i.e., a measure of an equipment's likelihood of accepting or rejecting interference, that determined a minimum level of performance for a product in the presence of harmful interference and then specify labels based upon how a device performed relative to the standard. In addition, the Commission could grade the radio environment so that consumers could match the immunity grade of the equipment they purchase with the predicted need for immunity where they live. Grading and labeling afford more flexibility to both consumers and manufacturers than other forms of regulation in that manufacturers could build and customers could choose various grades of equipment. This would, in addition, strengthen the market incentives for manufacturers to design equipment resistant to interference that is not otherwise controlled.

The Commission could adopt a variety of labeling schemes. These would fall mostly into two categories: voluntary labeling or mandatory labeling. Voluntary labeling would not require manufacturers to label their equipment. Under this approach, the Commission could establish a standard for equipment interference rejection, but the manufacturers would not need to meet the standard nor tell the public of their equipment deficiencies. However, those manufacturers whose products passed the susceptibility standard could label their products with this information. Labeling that indicates compliance with the standard could then be used for promotional advantage. Furthermore, consumers would be given the opportunity to choose between equipment that meets and does not meet the standard, according to their individual preference with respect to interference rejection. Examples of the viability of voluntary labeling schemes can be found in other industries in which products that voluntarily pass government guidelines exploit that fact.

Mandatory labeling would require equipment manufacturers to label their products, regardless of whether they met the suggested standard or not. Consumers could then determine the differences among similar products. Mandatory labeling would be more costly for manufacturers to implement than a voluntary program but would still increase consumer choice.

A labeling approach to the RFI problem can be designed in a variety of forms. For instance, a simple pass-fail standard could be adopted—the product meets the Commission's standard or it does not. The advantage of this approach is the simplicity afforded the consumer in choosing between two products.

Alternatively, the FCC could establish a plan with multiple gradations. Similar to automobile tire labels, the FCC could establish several categories with several classifications, and manufacturers could design equipment that met different standards. The costs of such a program would depend upon the costs of designing, manufacturing, and testing for multiple levels of protection rather than a single level.

Summary of Benefits

Sectors Affected: Owners of consumer electronic devices; communicators (both broadcast and common carrier); industrial electronic equipment users; pacemaker and hearing aid users; and equipment and device manufacturers.

The Further Notice of Inquiry will continue FCC inquiry into the effects and cures of RF interference. Any rulemaking would involve one or more of the four alternatives outlined above. The impact on reduced interference, improved communications, and reduction of risk to wearers of hearing or cardiac devices would be weighed against increased costs and possible increased regulation of the industries affected. Any scheme that allows the FCC to control RFI, directly or indirectly, will increase the Commission's ability to manage the available spectrum more effectively because of an improved interference environment for communications.

Summary of Costs

Sectors Affected: Owners of consumer electronic devices; communicators (both broadcast and common carrier); industrial electronic equipment users; pacemaker and hearing aid users; and equipment and device manufacturers.

Until one or more of the alternatives is endorsed by the Commission, the impact of costs would be difficult to measure. Costs that seem trivial in individual units, literally pennies, may expand when the manufacturer produces millions of units. Even inaction increases costs to users, as RFI degrades mobile radio performance or requires the installation of additional equipment or devices to eliminate RFI.

Summary of Net Benefits

The public should be subjected to less interference to home electronic entertainment devices unless the FCC decision is to retain the *status quo.* How much benefit actually accrues is dependent upon the policy that the Commission follows. Some consumers might use the concept of labeling to make discriminating purchases, others may ignore labels. It may be difficult to discern any change in interference to home devices, if the number of unregulated devices increases while certain others are equipped for RFI suppression.

Related Regulations and Actions

Internal: The Commission has instructed its Office of Science and Technology to independently verify manufacturer compliance with the Electronic Industries Association guideline by testing available TV receivers against the guideline, if resources allow. It also instructed all FCC bureaus and offices to list the RFI issues raised by their current or future activities and instructed the staff to proceed with its investigation of the overall RFI problem.

External: Senate Bill 929 has passed the Senate. The major RFI provision of S929 would "allow the FCC to require that radio frequency suppression techniques be incorporated into electronic home entertainment devices by the manufacturers" (Senator Barry Goldwater, *Congressional Record,* April 8, 1982).

Government Collaboration

None.

Timetable

Notice of Inquiry—Issued November 14, 1978 (43 FR 56062, November 30, 1978).
Further Notice of Inquiry—Issued July 16, 1981 (46 FR 40899, August 13, 1981).
Comments due November 30, 1981; reply comments due January 15, 1982.
Regulatory Impact Analysis—The FCC, as an independent agency, is not required to prepare a Regulatory Impact Analysis. However, the FCC does an extensive analysis on the economic effects of regulation.
Staff Report and possible NPRM—3rd Quarter 1982.
Final Commission Action—1st Quarter 1983.

Available Documents

Notice of Inquiry, November 14, 1978, In the Matter of Radio Frequency (RF)

Interference to Electronic Equipment; Further Notice of Inquiry, July 16, 1981, In the Matter of Radio Frequency (RF) Interference to Electronic Equipment.

These documents and public comments are available for review from the Secretary, Federal Communications Commission, Room 222, 1919 M Street, N.W., Washington, DC 20554.

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FCC

Implementation of the Final Acts of the World Administrative Radio Conference, Geneva 1979 (General Docket No. 80–739) (47 CFR Part 2; Revision)

Legal Authority

The Communications Acts of 1934, as amended, 47 U.S.C. 303(b), (c), (g), and (r), 315, 317, 318, 325(a), and 4(i).

Reason for Including This Entry

The Federal Communication Commission (FCC) believes the proposed revisions to domestic allocations for the radio frequency spectrum are of great public interest in that they will provide the basic framework for all domestic allocations until a subsequent General World Administrative Radio Conference is convened. This event is not likely to occur within the next 15 to 20 years, as it had been 20 years since the last conference. One of the resolutions passed at the 1979 Conference was to assess the need in 1990 for convening another general conference.

Statement of Problem

In the Fall of 1979, from September 24 through December 6, a general World Administrative Radio Conference (1979 WARC) was held in Geneva. Its purpose was to review and revise, as necessary, the international Radio Regulations, which had become outdated due to technical advances and inconsistencies resulting from a number of amendments adopted by smaller, more specialized administrative radio conferences. At the 1979 WARC, more than 15,000 proposals were considered, of which over 900 were submitted by the United States. Most of the U. S. Proposals were attained, either in entirety or in substantial part. An example of one such proposal was the U.S. proposal to increase the amount of spectrum in the AM broadcasting band. The conference adopted the proposal by increasing the band from 535–1605 kilohertz (kHz) to 525–1705 kHz.

The U.S. proposals were the result of a 5-year process that coordinated both government and non-government proposals. The FCC developed the non-government proposals through an involved proceeding, Docket 20271, which served as the vehicle by which comments and recommendations were obtained from the public. Many parties representing diverse interests and perspectives participated in this proceeding. In December 1978 a comprehensive set of recommended proposals, representing the combined thinking of the FCC and the executive branch, was issued by the FCC in a Report and Order (Docket 20271).

The result of the 1979 WARC was a treaty entitled "The Final Acts of the 1979 WARC" (Final Acts), which will substantially modify the international Radio Regulations. The Final Acts become effective internationally on January 1, 1982 for those administrations that have ratified the treaty. If the United States ratifies the treaty, the Final Acts will have the force of law in the United States, and we will be obliged to adhere to its provisions. To do this, it will become necessary for the FCC to make substantial modifications to its rules and regulations to be compatible with the international provisions.

The international Radio Regulations are a set of rules that allow efficient and compatible use of the spectrum internationally by governing the rights and responsibilities of each country in its use of the electromagnetic spectrum. This is necessary as electromagnetic energy knows no bound in free space and it is possible for a user of the spectrum in one country to cause interference (i.e., interrupt communication) to a user in an adjacent country or even a country halfway around the world. The Regulations alleviate this potential for interference as much as possible by allocating the usable spectrum in a compatible manner throughout the world. Those countries that operate within this allocation framework are entitled to protection from sources of interference outside of their own boundaries. Therefore, in order to obtain the highest degree of protection from interference from users of other countries, it is important that our domestic Table of Frequency Allocations (Table) be as compatible as possible with the international Table.

Alternatives Under Consideration

Through a series of Notices of Inquiry (NOIs), an NPRM, and a Report and Order, the FCC will modify its Rules to be compatible with the Final Acts. In this effort we do not intend to reopen a general discussion of issues or to initiate discussion of new issues; extensive analyses of various service requirements and recommended proposals occurred during the lengthy preparation process. We will be comparing the Final Acts with the U.S. proposals in order to develop appropriate modifications to the Rules. For those U.S. proposals that were attained at the Conference but provided flexibility in the manner of implementation in our Rules, this proceeding will describe the precise proposal. This effort will be coordinated with the executive branch (e.g., National Telecommunications and Information Agency and Department of State) which faces the same task in developing provisions for the Federal Government sector.

Summary of Benefits

Sectors Affected: Users of the radio frequency spectrum; manufacturers of radio equipment; and the general public.

If adopted, the proposed modifications would result in a significant number of reallocations to the U.S. domestic Table of Frequency Allocations. These allocations would be consistent, to the degree possible, with the Table of Frequency Allocations contained in the international Radio Regulations, and therefore users would have international protection from sources of harmful interference originating outside the United States. Further, the proposed Table would provide a framework that would satisfy current domestic spectrum needs as well as provide flexibility for industry to develop future radio frequency spectrum uses, such as direct broadcast satellites. It would also allow the FCC a reasonable amount of flexibility in future spectrum management decisions. For example, the FCC will have flexibility in deciding the best way to use the spectrum between 470 and 890 megahertz (MHz), which was allocated only for broadcasting use before the Conference but now is also available in certain portions for fixed, mobile, and mobile-satellite use as well.

In general, the proposed Table would benefit the users of the spectrum and general public by managing and providing spectrum for identified spectrum requirements. Further, it will provide spectrum for development of new uses, such as fixed-satellite and mobile-satellite, which should prove to be of great benefit in satisfying the

communication needs of the general public.

Summary of Costs

Sectors Affected: Potentially all users of the radio frequency spectrum.

Potentially all users of the radio frequency spectrum could be affected; however, it is anticipated that no one group will be adversely affected to an intolerable degree. In modifying the domestic Table to be as consistent as possible with the U.S. proposals and the adopted international provisions, it will be necessary to move some users out of certain frequency bands to other bands. However, the vast majority of current users will not have to change bands. Those that will have to move will be, for the most part, "grandfathered" (i.e., allowed to continue operation) through January 1, 1990. This will allow most affected users to depreciate their equipment before changing bands, thereby greatly reducing their costs and enabling them to efficiently plan new equipment purchases. Other costs, however, may not be avoided, such as operation, administrative, and advertisement costs.

It is difficult to determine the exact extent of effects. For example, we are proposing to increase the AM broadcasting band from 535–1605 kHz to 535–1705 kHz, thus providing increased commercial opportunities and public choice. This will not require existing AM broadcasting stations to purchase any new equipment, nor will anyone in the general public who is interested in receiving only the existing AM broadcasting stations have to purchase a new receiver. However, anyone who would like to receive the new AM broadcasting stations (above 1605 kHz) would have to purchase a new receiver.

Summary of Net Benefits

Overall, the results of the 1979 WARC were very good for the United States. We are able to satisfy nearly all of our currently identified spectrum requirements and will still have a reasonable amount of flexibility in determining in which bands future allocations should be made. In some cases, however, it will be necessary that some users move to new bands over the course of future years if we are to maintain a compatible allocation table and if we are to take maximum advantage of the international protection afforded by the international Table of Frequency Allocations. Although a few spectrum users will be temporarily inconvenienced, the greater good of all spectrum users will be served through this proceeding.

Related Regulations and Actions

Internal: As an ongoing process, the FCC regularly entertains petitions for rulemaking to modify the Table. However, these proceedings are not directly related to the implementation of the 1979 WARC.

External: None.

Government Collaboration

This proceeding is being extensively coordinated with the government sector through a subcommittee of the Interdepartmental Radio Advisory Committee, which is chaired by the National Telecommunications and Information Administration (NTIA). NTIA is responsible for overseeing use of the radio frequency spectrum by the Federal Government.

Timetable

NPRM—1st Quarter 1982.
Report and Order—2nd Quarter 1982.
Public Hearings—None.
Public Comment Period—Following NPRM, dates to be determined.
Regulatory Impact Analysis—The FCC, an independent agency, is not required to prepare a Regulatory Impact Analysis.
Regulatory Flexibility Analysis—None.

Available Documents

Preparation for 1979 WARC (Docket 20271): Third Notice of Inquiry (FCC 79–1099, 41 FR 54309); Fifth Notice of Inquiry (FCC 77–349, 42 FR 27756); Eighth Notice of Inquiry (FCC 78–265, 43 FR 18748); Report and Order (FCC 78–849, 44 FR 2683).

Implementation of the 1979 WARC (General Docket 80–739): First Notice of Inquiry (FCC 80–659, 46 FR 3060, January 13, 1981); Second Notice of Inquiry (FCC 81–247, 46 FR 31693, June 17, 1981); Third Notice of Inquiry (FCC 81–323, 46 FR 40536, August 10, 1981); Fourth Notice of Inquiry (FCC 81–457).

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FCC

Inquiry Into Creation of "New" Personal Radio Service (PR Docket 79–140) (Previously, Creation of "New" Personal Radio Service)

Legal Authority

The Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 403.

Reason for Including This Entry

The Federal Communications Commission (FCC) thinks this inquiry is important because it would make a new personal radio service available to the public.

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 Band (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 greater equipment cost, 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 channel congestion and interference.

The FCC is now exploring several issues:

(1) to what extent the public views the limitations of the three personal radio services as problems (the limitations include the complaints mentioned above, as well as any other problems brought to our 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 radios service; and

(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. If the decision is made to establish the new service, there will be a series of secondary issues that will have to be resolved. 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 and whether to allow interconnection with the public telephone system. A new service might aid the public in satisfying their personal communication needs. In comparison to CB, a new service could provide for better emergency highway and information communications, better

communications between known parties (car to home or work, etc.), and could provide other technical and operational features not available in the other personal services.

Summary of Benefits

Sectors Affected: Manufacturing, wholesale, and retail trade of two-way radio transmitting, signaling, and detection equipment and apparatus; all potential personal two-way radio users; and all owners of home entertainment equipment (such as stereos, televisions, etc.).

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 interference to home electronic entertainment equipment; and the possibility to incorporate special features (such as channels devoted to special uses) in the new service. A new service could reduce congestion in the CB Radio Service and offer a higher quality radio service than the present-day CB service offers. The communications equipment industry could benefit from the sale of a new line of equipment usable by the general public. Some individuals may purchase new 900 MHz equipment to supplement or supplant their 27 MHz CB equipment, while others who never bought 27 MHz equipment will purchase 900 MHz equipment because of the high quality communications potential of the new personal radio service.

Summary of Costs

Sectors Affected: Radio services desiring the 900 MHz spectrum for their communications systems (broadcasting, private land mobile, and common carriers) and FCC.

Nine-hundred MHz equipment costs more than CB equipment because it uses an advanced state-of-the-art technology, and, at least initially, demand would be low for the 900 MHz equipment.

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 technical standards for the radios in the new service should be set so as to minimize the costs of the radio.

The Commission will also have to take into consideration the costs to itself of licensing 900 MHz personal radio stations and type-acceptance of 900 MHz equipment.

Summary of Net Benefits

Hundreds of comments were received from individual members of the public, manufacturers of radio equipment, and other interested organizations. The Commission staff is evaluating these comments as well as assessing the administrative costs to the Commission that a personal radio service at 900 MHz would create. No final determination has been made at this time as to whether the net benefits of a new personal radio service outweigh its net costs.

Related Regulations and Actions

Internal: The Commission terminated the proceeding in Docket 19759 (the proposal to create a new personal radio service in 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.

External: None.

Government Collaboration

None.

Timetable

NPRM or Memorandum Opinion and Order—2nd Quarter 1982.

Public Comment Period—Comments on Notice of Inquiry closed January 15, 1980; reply comments were due February 15, 1980.

Regulatory Flexibility Analysis—None.

Regulatory Impact Analysis—The FCC, as an independent agency, is not required to prepare a Regulatory Impact Analysis. However, the FCC does an extensive analysis of the economic effects of regulation.

Public Hearing—None.

Available Documents

The Notice of Inquiry (44 FR 37522, June 27, 1979) is available on request from the FCC's Office of Public Affairs, Washington, DC 20554.

For review of public comments, request PR Docket 79-140.

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FCC

Inquiry Into the Development of Regulatory Policy for Direct Broadcast Satellites (General Docket No. 80-603)

Legal Authority

The Communications Act of 1934, as amended, 47 U.S.C. 1, 4(i) and (j), 303(g) and (r), and 403.

Reason for Including This Entry

The Federal Communications Commission (FCC) thinks that this rulemaking is of great public interest, because direct broadcast satellite (DBS) service may provide a major new source of video programming for American television viewers.

Statement of Problem

The 1977 World Administrative Radio Conference (WARC-77) allotted a band of frequencies to the United States for direct broadcast satellite service. DBS service would provide television programming from satellites to individual homes by means of small, inexpensive receiving dishes. Both the public and potential DBS operators have shown great interest in the possibility of such a service.

Before DBS service can go into operation, the FCC must establish the rules under which it can operate. Permanent regulations cannot reasonably be established until after the 1983 Regional Administrative Radio Conference (RARC-83), which will determine final international frequency allocations for DBS. Since waiting until after RARC-83 would delay introduction of the service by at least 2 years, the FCC has decided to establish interim regulations before RARC-83 in order to avoid such a delay.

About 1,400 terrestrial microwave users now operate in the 12.2-12.7 gigahertz frequency band, which is allocated internationally to DBS. If the FCC makes no changes in the rules governing terrestrial operations in the band, the terrestrial users will cause sufficient interference to make DBS reception impossible in many parts of the country, including several major urban areas. To prevent such interference the terrestrial users would have to cease operation or be moved to other frequencies, which would require modification or replacement of equipment.

Alternatives Under Consideration

In its Notice of Proposed Policy Statement and Rulemking (NPRM) on DBS, the FCC made a preliminary determination that authorization of DBS

systems would serve the public interest. The FCC proposed to permit interim DBS systems in the period before RARC–83 in order not to delay provision of the service. The FCC also proposed to impose on DBS operators only the requirements necessary to ensure compliance with the Communications Act and international agreements and to ensure that any system authorized under interim rules would be able to come into compliance with the outcome of RARC–83 and any permanent rules or policies later established by the FCC. The FCC believes that such an approach will allow DBS to meet consumers' preferences more precisely and at lower cost than would more stringent regulations.

The FCC proposed to require that terrestrial microwave systems authorized in the 12.2–12.7 gigahertz band not cause harmful interference to DBS systems. Terrestrial users who did cause interference to DBS systems would have to cease operation or move to different frequencies. The FCC, however, also invited public comment on the option of allowing existing terrestrial operators to remain in the 12.2–12.7 gigahertz band for a given period of time even if DBS systems were in operation on the same frequencies. DBS operators then would have the option of reaching agreements with terrestrial users to lessen or eliminate interference, possibly compensating terrestrial operators for the costs of relocating on other frequencies. This option would allow terrestrial users more time to depreciate old equipment before moving and would shift some of the cost from the terrestrial users to the DBS operators. The FCC also stated that it would initiate a proceeding to consider the accommodation of the terrestrial users in other bands.

Summary of Benefits

Sectors Affected: Television viewers nationwide, particularly those in remote areas and central cities; some cable television operators and television stations; and the program production industry.

DBS systems could make available to American viewers many additional channels of television programming, some for pay and some advertiser-supported, and could result in much greater variety in television programming for all television households. Since signal strength would be roughly equal throughout the United States, DBS systems would be able to provide many channels of programming in remote areas, where neither good quality over-the-air signals nor cable television is available, and in inner cities, where cable systems may not be profitable because of the high cost of installing cable and the relatively low incomes of residents. DBS service would be particularly valuable for the 1.2 million households in the United States that have access to no television service at all and the 4 million that receive only one or two channels. While the total number of DBS channels available to the United States will depend on the outcome of RARC–83, enough channels should be available to allow several multiple-channel systems to operate.

The availability of more channels of programming may cause program suppliers to try to meet the tastes of more specialized audiences and thus may result in a much wider variety of programming and greater consumer satisfaction. DBS may provide programming to some cable systems and terrestrial television stations, as well as to individual homes. DBS may also provide other valuable services, such as transmission of programming for educational and medical institutions. The program production industry will probably benefit from the greatly increased demand for programming.

Summary of Costs

Sectors Affected: Local television stations and cable systems and terrestrial microwave operators in the 12.2–12.7 gigahertz band.

DBS systems would provide competition to other sources of video programming. Since DBS programming might be either advertiser-supported or for pay, both conventional advertiser-supported programming and cable and subscription television would be affected. The effect might be greatest on local television stations, particularly subscription television stations that would charge prices similar to those charged by DBS operators but would offer only a single channel.

Terrestrial microwave operators now using the frequencies also allocated to DBS would cause enough interference to DBS reception that the two services would not be able to operate on the same frequencies in the same geographic areas. Requiring terrestrial users to provide protection from interference to DBS systems will mean that some, but probably not all, of these systems will have to move to other frequencies. This will require modification or replacement of their equipment, depending on the frequencies to which they are required to move. About 1,400 microwave links are now licensed in the band. The number that will be affected by DBS will depend on the outcome of the 1983 Regional Administrative Radio Conference and the number of DBS systems implemented in the United States. The cost of changing frequencies would lie between $2,000 and $90,000, depending on the frequencies chosen. Under an alternative proposal DBS operators might be required to accept some interference or compensate terrestrial users for the costs of relocation.

Summary of Net Benefits

The major benefit of DBS is the increase in the quantity and quality of television programming it would make possible for all American viewers, particularly those in remote areas. If 5 million households were willing to subscribe to three channels of DBS service at $25 per month, the gross value of the service to the viewers would be $1.5 billion per year. This does not account for the fact that for many viewers the service would be worth more than they had to pay for it. On the other hand, the value of DBS service would be partially offset by reduced viewing of other program options. The estimate does not account for the value of the spectrum in other uses, or the one-time cost of moving terrestrial microwave users, which might be $25 million to accommodate one three-channel DBS system. As the number of DBS channels increased, the value per channel to viewers would probably decline. The cost per channel of moving terrestrial users would probably remain constant, but might increase if the least heavily used frequencies where chosen first for DBS.

Related Regulations and Actions

Internal: The FCC is studying the United States' spectrum needs for DBS in preparation for RARC–83 in General Docket No. 80–398. The Commission is also beginning a proceeding dealing with the allocation of spectrum to accommodate the future needs of private, fixed microwave users, including those who may be displaced by DBS.

External: None.

Government Collaboration

The FCC is coordinating its planning for direct broadcast satellite service with the National Telecommunications and Information Administration (NTIA).

Timetable

Notice of Inquiry—45 FR 72719, November 3, 1980.
Notice of Proposed Policy Statement and Rulemaking—86 FCC 2d 719, July 3, 1981.
Report and Order—March 1982.

Public Hearings—None.
Public Comment Period—Ended July 31, 1981.
Regulatory Impact Analysis—The FCC, as an independent agency, is not required to prepare a Regulatory Impact Analysis. However, the FCC does an extensive analysis on the economic effects of regulation.
Initial Regulatory Flexibility and Analysis—June 1981; final, March 1982.

Available Documents

FCC General Docket No. 80-603.
Florence O. Setzer, Bruce A. Franca, and Nina W. Cornell, *Policies for Regulation of Direct Broadcast Satellites* (Federal Communications Commission, October 1980).
Notice of Inquiry, 45 FR 72719, November 3, 1980.
Notice of Proposed Policy Statement and Rulemaking, 86 FCC 2d 719 (July 3, 1981).
These and other documents are available for review and can be copied in Room 230, 1919 M Street N.W., Washington, DC 20554, from 8:00 a.m. to 4:30 p.m. on business days.

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FCC

Inquiry Into the Future Role of Low Power Television Broadcasting and Television Translators in the National Telecommunications System (Broadcast Docket No. 78-253; RM-1932; FCC 80-503) (47 CFR Part 73; Revision)

Legal Authority

The Communications Act of 1934, as amended, 47 U.S.C. 303 (b), (c), (g), and (r), 315, 317, 318, 325(a), and 4(i).

Reason for Including This Entry

The Federal Communications Commission (FCC) believes the rules proposed for a new low power television service are important because they could facilitate the provision of increased and more diverse television service to greater numbers of viewers throughout the United States and to groups that currently are underserved by conventional methods of television distribution. They also would afford new television opportunities to entrepreneurs, while continuing to permit translator licensees to offer rebroadcast service.

Statement of Problem

On September 9, 1980, the FCC began a rulemaking proceeding proposing to authorize low power television stations that could originate an unlimited amount of programming and operate subscription (pay TV) service. If adopted, the low power proposal could result in a significant increase in the number of television stations, both in rural areas and large cities. The Commission's action was motivated in part by its recognition of the large, unsatisfied demand for television service, particularly in rural and mountainous areas, where millions of Americans do not receive even the basic complement of three or four signals. According to Arbitron and A. C. Nielsen surveys, approximately 1.9 million households, or 42.5 million individuals, receive fewer than four television signals. The low power proposal would permit low power stations (with maximum power of 100 watts VHF and 1,000 watts UHF) to operate on any available channel on a secondary, or non-interference, basis to regular, full-service stations. Secondary status means that any low power station creating interference to a full-service station must cease operation if it is unable to change channels or take other steps to correct the interference. Low power stations also must give way to full-service stations proposing a mutually exclusive use of a frequency. The proposed low power service would consist of existing translator stations, as well as new low power stations. A translator is a low powered transmitter permitted by present FCC rules only to rebroadcast simultaneously the programming of a full-service station in order to extend coverage or correct interference problems. Under the FCC's present rules, the only stations that can originate programs are full-service stations. Under the proposed rules translators could originate programming as low power stations. The FCC's TV Table of Assignments, which allocates channels by community, requires full-service stations operating on the same or adjacent channels to be separated by very wide mileages. Low power stations could be separated from each other and from full-service stations by small distances, because their low operating powers would make their coverage areas smaller. Thus, low power station operators would have the flexibility to use lower cost equipment and to design and program a system adapted to local needs.

Alternatives Under Consideration

Through the proposed rule changes, the FCC hopes to facilitate television service in locations that otherwise are unserved or underserved by regular stations and cable services. At the same time, translators could continue the rebroadcast service they have offered in the past.

Low power is the first new broadcast service the FCC has proposed in over 20 years. The proposed rule would subject low power stations to minimal programming rules, as required by the Communications Act. The only program rules would be the Fairness Doctrine, the prohibitions against obscenity and lotteries, the provisions of access for political candidates, and the personal attack rule. The copyright laws, which require consent of the primary station for retransmission or commercial substitution, would apply. The proposed rules would not require cable systems to carry the programming of local low power stations. Low power stations that originate programming would be required to have a licensed operator on duty at all times. The FCC has proposed no requirement that low power licensees ascertain the needs and interests of other communities or non-entertainment programming or commercialization guidelines, nor has it prescribed hours of operation or origination for low power stations. We believe that these essentially deregulatory aspects of the proposal will facilitate swift development of low power stations. The proposal represents a balance between more stringent regulatory requirements, which could impose prohibitively high entry costs and more relaxed requirements, which might not be in the public interest. To promote diversified control of broadcast outlets and therefore diverse program offerings, we propose that TV networks not be permitted to own low power stations. Under the proposed rules, cable and full-service TV and radio station operators would not be permitted to own low power stations in their own service areas.

Summary of Benefits

Sectors Affected: Television broadcasting industry, including the subscription TV industry and cable industry; and television users, especially those in underserved areas.

If adopted, the low power proposal could result in a significant number of new broadcasting outlets, bringing television service to unserved and underserved locations and audiences and bringing specialized service to particular groups in larger communities. Low power could open up new opportunities for increased service to and ownership by minorities, as well as

other individuals wishing to enter the broadcast industry. It has long been FCC policy to encourage minority ownership, which in turn may result in programming for minority audiences. The relatively inexpensive nature of construction and operation of a low power facility would facilitate entry into the market. The FCC has proposed few limitations on the methods that may be used to provide economic support for low power stations. They could use subscription (pay for programming) service, advertising, listener solicitation, or local tax revenues, in any combination. Satellite and terrestrial microwave interconnections, already permitted for TV translators, would facilitate program networking on low power stations.

Another concern is the competition between cable and low power stations. Cable systems operate on a subscription basis and offer a multi-channel service. The cost of building a cable system is very high, and a minimum population density is necessary for a cable operation to be economically viable. It is believed that the less costly low power service operation is attractive economically. The low power stations could provide additional programming that cable systems could carry if they chose to do so.

Summary of Costs

Sectors Affected: The television broadcasting industry, including the subscription TV industry and the cable industry; and television users.

Provision of a signal of very high technical quality and coverage of a wide geographic area are goals for the FCC's current regulatory scheme for television. Expensive transmitting equipment is necessary to achieve these goals. Thus, the cost of entry into the television industry is relatively high. These costs may preclude development of stations that would be financially viable if the FCC permitted smaller coverage areas and relaxed transmission standards. It is believed that numerous small communities cannot provide the advertising revenues required to maintain full-service stations. The proposed low power rules could reduce the cost of serving small or specialized communities, because low power stations would be less expensive to own and operate than full-service stations. The trade-off is wide-area coverage, superior reception, and fewer stations in exchange for smaller coverage areas, adequate reception, and a greater number of stations and program offerings.

The FCC expressed interest in learning, during the comment period, if this proceeding could affect any other sectors and what other potential costs and benefits may be anticipated. Full-service broadcasters expressed concern that their audiences might be fragmented by low power competition. Cablecasters evinced similar sentiments.

Summary of Net Benefits

Because low power television broadcasting is a new form of broadcast service that is yet untested, the extent of its future success or failure cannot be evaluated in quantitative terms at this time. However, in qualitative terms, it appears that authorization of low power stations would have a net beneficial effect on the broadcasting industry and television users.

While cablecasters and broadcasters expressed concern that the competition of low power service would fragment their audiences, this concern appears to be outweighed by the increased service to unserved and underserved locations and audiences that low power television would provide. In addition, low power television would further increase programming availability by providing specialized service to larger communities and minority audiences.

At present, opportunities for entry into the television industry are limited for minorities, among others. The expense of facility construction and operation currently prohibit opportunities for ownership of full-service broadcast services or cable systems. The less costly mode of low power operation would facilitate entry into the market and also reduce costs of serving small or specialized communities.

Related Regulations and Actions

Internal: The FCC instructed its staff to continue to accept for filing and processing translator applications, including those seeking waiver of the rules for low power features, while the rulemaking is pending. With over 5,200 such applications pending, the FCC has discontinued acceptance of new applications until further notice.

External: In the Omnibus Budget Reconciliation Act of 1981, P.L. 97-35, the U.S. Congress amended the Communications Act of 1934 to permit random selection among competing applicants for telecommunications facilities. The Commission will institute a separate proceeding to implement a lottery system in the broadcast services, and this system may be implemented for the low power service.

Government Collaboration

None.

Timetable

Notice of Inquiry—68 FCC 2d 1525 (1978).
NPRM—45 FR 69178, October 17, 1980.
Further NPRM—46 FR 42478, August 21, 1981.
Report and Order—1st Quarter 1982. Staff will review comments on the Further Notice, which proposes additional technical standards during the Fall.
Public Hearings—None.
Public Comment Period—Comments were due by October 13, 1981; replies were due by November 2, 1981.
Regulatory Impact Analysis—The FCC, as an independent agency, is not required to prepare a Regulatory Impact Analysis. However, the FCC does an extensive analysis of the economic effects of regulation.
Regulatory Flexibility Analysis—See NPRM, 46 FR 42478, August 21, 1981.

Available Documents

Staff Report and Recommendations in the Low Power Inquiry, September 9, 1981.

Comments on the Notice and Further Notice are available for review at the address below.

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FCC

Procedures for Implementing the Deregulation of Customer Premises Equipment and Enhanced Services

Legal Authority

The Communications Act of 1934, as amended, 47 U.S.C. 4(i), (j), 201-205, 403, and 404.

Reason for Including This Entry

The Federal Communications Commission (FCC) is beginning a proceeding to implement a decision that will affect the operation of all telephone companies and most other firms in the telecommunications industry.

Statement of Problem

The telecommunications industry provides telephone and other communications services via electronic means, as well as the equipment used in providing these services. In 1980 this

industry accounted for more that $60 billion in operating revenue. For more than a decade, the FCC has been grappling with the regulatory and policy problems created by the interdependence of telecommunications and data processing. Rapid technological change has forced the Commission to consider whether or not existing regulatory practices, developed over years of relative stability and monopolistic market structures, have been rendered obsolete by these advances.

In the recent landmark proceeding, known as the Second Computer Inquiry, the FCC developed policies that will govern the behavior of telecommunications firms. The Commission adopted a regulatory scheme that distinguishes between regulated offerings of transmission capacity, denoted "basic services," and unregulated offerings of services that are more than simply transmission capacity, known as "enhanced services." Local telephone service is an example of a basic service, while "store and forward," in which a call is electronically stored and retransmitted at a later time, is an enhanced service. The former are subject to price, service, and facility regulation, while the latter are freed of these burdens. The Commission also ordered that customer-premises equipment (CPE), including residential telephones and business private branch exchanges provided by telephone companies or other carriers, be provided on a deregulated basis. That is, after the date of full implementation of the decision, neither the States nor the FCC will continue to regulate the terms of provision of CPE. Finally, the FCC ruled that if the American Telephone and Telegraph Company (AT&T) wishes to participate in the enhanced services or CPE markets, it must do so through a new affiliate, separated from those affiliates providing basic services.

Alternatives Under Consideration

The FCC, the telephone companies, and the other carriers now must implement this new regulatory scheme. The purpose of this proceeding is to resolve the many complex and contentious issues that were raised by the decisions in the Second Computer Inquiry. The Commission has determined that enhanced services and CPE provided to new customers will be deregulated as of January 1, 1983, but it has yet to determine the date on which the CPE already in the hands of customers will be deregulated. For ratemaking purposes, the FCC must determine the value of the CPE to be transferred to unregulated accounts. The Commission must also specify the detailed mechanisms by which this CPE is to be transferred. The Commission must specify accounting rules for allocating costs between regulated and unregulated activities.

Alternatives regarding the substantive implementation issues are still under consideration by the staff.

Summary of Benefits

Sectors Affected: The telecommunications industry; telecommunications users; State regulatory agencies; and the FCC.

The Commission has determined that the continued provision of CPE by regulated carriers would impede the development of a truly competitive market in which prices are driven toward cost, diverse consumer needs are served, and technological progress is rapid. Thus, the Commission expects the deregulation of CPE to enhance competition, bringing these benefits to all consumers of telecommunications services.

One of the major benefits of the deregulation of enhanced services is that the threat of regulatory oversight by the FCC will no longer deter potential entrants from offering these services to the public. The Commission anticipates that deregulation will promote competition, leading to reasonable prices, diversity of services, and rapid innovation in the provision of enhanced telecommunications services. All consumers of the telecommunications services should be the beneficiaries of this improved performance.

The Commission also anticipates that deregulation in the CPE and enhanced services markets will allow it and the State regulatory commissions to focus their regulatory efforts on the provision of basic services. This last market continues to have structural characteristics that require more traditional regulatory oversight. Focusing attention more closely on markets where monopoly abuses are more likely to occur will lead to better protection of consumers.

Summary of Costs

Sectors Affected: The telecommunications industry; telecommunications users; State regulatory agencies; and the FCC.

The transition from the current regulatory scheme to the new deregulated environment will be costly to carriers and regulatory agencies. The telecommunications carriers will have to develop new operating procedures that separate regulated and unregulated activities. AT&T will have to establish one or more separate subsidiaries, which could involve the transfer of over $10 billion in assets and thousands of employees. During the transition, consumers may initially suffer from some confusion or other inconveniences. However, one goal of this implementation proceeding is to determine transitional procedures that will minimize these costs on the carriers, the public, and the State regulatory agencies.

Summary of Net Benefits

The net benefits of the implementation of the FCC's decisions in its Second Computer Inquiry are difficult to quantify, but they should be dramatic. Removing regulatory burdens and promoting competition in the telecommunications industry will provide increased diversity of consumer choice and augmented technical innovation, with market protection from monopoly abuses and freedom from regulatory burdens. These factors will benefit consumers throughout the foreseeable future. The Commission intends to make the costs of transition to this new regulatorty scheme as small as possible and fully expects that these costs will be trivial when compared to the benefits to be achieved in the future.

Related Regulations and Actions

Internal: The FCC is considering the appropriate regulatory scheme for carriers providing regulated services (FCC Docket 79-252, Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor, 47 CFR 61.38 *et seq.*). The Commission has also established a Joint Board, consisting of FCC members and representatives of State regulatory commissions, to reexamine the jurisdictional allocation of telephone plant investment in light of the deregulation of CPE (FCC Docket 80-286, Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, 47 CFR Part 67).

External: None.

Government Collaboration

As one possible alternative, the Commission may establish an additional Joint Board, consisting of FCC members and representatives of State regulatory agencies, to address some important transitional issues related to the deregulation of customer-premises equipment.

Timetable

Notice of Inquiry—4th Quarter 1981.
NPRM—Dates to be determined.

Memorandum Opinion and Order—Dates to be determined.
Public Hearing—No public hearing scheduled as yet. Item is still in infant stage.
Public Comment Period—Dates to be determined.
Regulatory Impact Analysis—The FCC, as an independent agency, is not required to prepare a Regulatory Impact Analysis.
Regulatory Flexibility Analysis—Dates to be determined.

Available Documents

The Final Decision, 77 FCC 2d 384 (1980), Memorandum Opinion and Order, 84 FCC 2d 50 (1980), and Memorandum Opinion and Order on Further Reconsideration, released October 30, 1981, from the Second Computer Inquiry are available on request from the FCC's Office of Public Affairs, Washington, DC 20554. Refer to FCC Docket 20828.

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FCC

Release, Allocation, and Criteria for Use of the 250 Remaining Channels in the 806-821/851-866 MHz Bands (PR Docket 79-191) (47 CFR 90; Revision)

Legal Authority

The Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(f), 303(g), and 303(r).

Reason for Including This Entry

The Federal Communications Commission (FCC) thinks this rule making is important because it would make available for use by private land mobile radio users the 250 reserve channels that remain in the 806-821/851-866 megahertz (MHz) band.

Statement of Problem

In 1976 the Commission began assigning channels in the 806-821/851-866 MHz band to private land mobile radio users according to rules and policies that had been promulgated in Docket 18262. At that time, the Commission released 300 of the 600 channel pairs available in the band, designating 200 of these channels for trunked systems and 100 for conventional systems. (A conventional radio system is one in which one or more channels are operated independently. A trunked system is one in which several channels are assigned to a licensee as a block and computer circuitry automatically searches for and accesses an unoccupied channel.) Although trunked systems are theoretically more spectrally efficient than conventional systems, the Commission decided in 1975 that it should wait until a number of trunked systems had been constructed and operated before making a decision on releasing the remaining 300 channels. This would enable the Commission to use its actual operating and regulatory experience with both trunked and conventional systems. Early in 1978 the original 100 channels designated for use by conventional systems were all assigned in the major metropolitan areas. In response, in August 1978, the Commission released an additional 50 channels for conventional systems. Then, in 1979, to alleviate a shortage of spectrum for conventional systems in New York, Los Angeles, and Chicago, the Commission increased the mobile loading limits (or maximum number of mobile radios allowed to operate on a single channel) for conventional channels in the top 25 urbanized areas of the United States. Notwithstanding these efforts to make more 800 MHz spectrum available, by late 1979 it had become apparent that the popularity of 800-MHz systems had resulted in spectrum shortages for trunked and conventional systems in the Nation's major urban centers. Waiting lists of applicants seeking spectrum have developed as applicants anticipated an additional spectrum allocation. Currently, there are no trunked channels available for assignment in Chicago, Los Angeles, New York, Washington, DC, San Francisco, Houston, or Dallas/Forth Worth; and there are no conventional channels available for assignment in Chicago, Los Angeles, or New York.

Alternatives Under Consideration

On June 16, 1981, the Commission adopted a Further Notice of Proposed Rulemaking (Docket 79-191, 46 FR 37927, July 23, 1981) proposing the release of the 250 channels now held in the 800 MHz reserve and a regulatory structure for the licensing and operation of these channels. The Further NPRM would allocate the 250 reserve channels among four private land mobile radio service categories or "pools" in the following manner: Public Safety/Special Emergency Radio Services, 60 channels; Industrial/Land Transportation Radio Services, 70 channels; Business Radio Service, 70 channels; and Specialized Mobile Radio Systems, 50 channels. The selection of frequencies from the new 250 channels will be made by the applicant. The applicant will also have to provide an engineering field survey or frequency coordination recommendation along with his or her application. This frequency coordination procedure is similar to the requirements in all the other private land mobile radio frequency bands. The applicant will have the option of using his or her frequency(ies) for either conventional or trunked operations. However, once a channel is assigned for a particular mode in a specific geographic area, the Commission would not assign that frequency in the same geographic area for the other mode.

As under our existing rules for the original 350 channels, no person or entity may be assigned more than five conventional channels in any one market area. While the conventional channel assignment policy remains unchanged, the Commission proposed that trunked system applicants be eligible for only five channels at a time. They would have to load the five channels to the loading standards being proposed before they would be eligible for another five channels. The Commission also proposed to change the current rule, which prohibits land mobile radio equipment manufacturers from operating more than one trunked radio system in the United States. The proposal would permit land mobile radio equipment manufacturers to operate one trunked system per market area, as defined by the 40 dBu signal contour (approximately 20 miles from the transmitter site). In this Further NPRM the Commission also solicits comments on an alternative proposal that would remove all limitations on the number of trunked systems that can be licensed to manufacturers. Commenters were asked to consider, before commenting, that the equipment manufacturers, as well as all other licensees of trunked systems, would continue to be limited to loading only one trunked system at a time in a given market area. Under this alternative proposal, once a system is loaded, however, the equipment manufacturers would be able to license their next trunked system in the same area.

The Commission proposed that the loading level (number of mobile radio units actually being operated by the licensee) necessary to obtain exclusive use of a conventional channel be 90 percent of the maximum number of mobile radios permitted on a conventional channel and that this 90-percent level be achieved within 8 months of authorization of the facilities.

This 90-percent loading level standard would be applied only to those 800 MHz systems that are located within 75 miles of the Nation's 25 largest urban areas. In all other locales, where demand for 800 MHz spectrum is minimal and where this situation should continue for some time, the loading level necessary for a licensee to get exclusive use of a channel would still be 90 percent, but the licensee would have 2 years from the date of authorization of the facilities to achieve this 90-percent loading level.

In the case of loading maximums, the Commission proposed that all maximum loading limits be lifted unconditionally and retroactively for all conventional and trunked systems—single-user, multiply licensed, or Specialized Mobile Radio Systems (SMRS). Mobile licensees of multiply licensed or SMRS facilities would be free to change systems if a system is unacceptable for their requirements; licensees of single-user systems can load as many mobiles on their system as they see fit.

The Commission also proposes in the Further NPRM to allow greater technical flexibility on those channels assigned for exclusive use to a single licensee, to SMRS operations, and to those shared systems in which all users agree to the intended use of the channel. This enhanced flexibility would be permitted on both the new channels and the original channels in the 800 MHz band. Licensees would be given greater technical flexibility in choosing the type of emission mode(s) they use. This flexibility would enable licensees to use the combination of emission mode and bandwidth that is most appropriate for their particular communications requirements. Technical flexibility, however, will be constrained by present limitations on out-of-band emissions, which are intended to eliminate interference.

Summary of Benefits

Sectors Affected: Manufacturing, wholesale, and retail trade of two-way radio transmitting, signaling, and detection equipment and apparatus; and all current and potential users of two-way land mobile radio equipment operating in the bands 806–821 MHz and 851–866 MHz.

Mobile radio users will have a greater number of service options available due to the release of 250 channels. Larger users, such as utility companies, that currently cannot build their own radio systems because they require an exclusive channel, may be able to do so with the release of the remaining spectrum. In general, competition for providing 800 MHz service will be greater with resulting lower prices if more radio systems (trunked or conventional) exist in an area. Also, with more 800 MHz radio systems in an area, users will be able to procure service that best meets their coverage area, waiting time, and privacy (compatible sharing) requirements. Therefore, user satisfaction will probably be higher if the remaining channels are released.

Summary of Costs

Sectors Affected: Manufacturing, wholesale, and retail trade of two-way radio transmitting, signaling, and detection equipment and apparatus; and all current and potential users of two-way land mobile radio equipment operating in the bands 806–821 MHz and 851–866 MHz.

At this time, the Commission cannot identify any costs that would be incurred by the land mobile radio equipment manufacturers or 800 MHz land mobile radio users as a result of the proposed rules. We expect that during the comment period for this rulemaking, interested parties will inform us of any costs they believe the proposed rules would impose on them.

Summary of Net Benefits

If we do not release the 250 channels in reserve, existing 800 MHz systems would be loaded faster. However, at the same time, the 250 reserve channels would be totally unused, which would result in the lowest possible spectrum efficiency on these channels. It appears desirable for the Commission to release the 250 channels currently held in reserve in order to improve the choices available to the user of 800 MHz radio and increase competition in both the 800 MHz radio equipment and service industries.

Related Regulations and Actions

None.

Government Collaboration

None.

Timetable

Further NPRM—46 FR 37927, July 23, 1981.
Final Rule—4th Quarter 1982.
Public Comment Period—Comments on Further NPRM closed October 30, 1981; reply comments are due January 15, 1982.
Regulatory Impact Analysis—The FCC, as an independent agency, is not required to prepare a Regulatory Impact Analysis. However, the FCC does an extensive analysis of the economic effects of regulation.
Regulatory Flexibility Analysis—Contained within the Further NPRM.

Available Documents

The Further NPRM is available on request from the FCC's Office of Public Affairs, Washington, DC 20554.

For review of public comments, request PR Docket 79–191.

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INTERSTATE COMMERCE COMMISSION

Application Procedures for a Certificate To Construct, Acquire, or Operate Railroad Lines (49 CFR Part 1120: Revision)

Legal Authority

Administration Procedure Act, 5 U.S.C. 553; Interstate Commerce Act, 49 U.S.C. 10321 and 10901.

Reason for Including This Entry

The Interstate Commerce Commission (ICC) believes that adopted of this revised regulation will streamline application procedures by eliminating unnecessary and redundant informational requirements, thus reducing the administrative burden on the industry, Government, affected shippers, and the public at large.

Statement of Problem

The regulation under revision sets forth the informational requirements and procedures related to the processing of applications for a certificate of public convenience and necessity to construct, extend, acquire, or operate railroad lines. Prior approval of the Commission is required under 49 U.S.C. 10901.

The existing regulation calls for detailed informational concerning the financial and operational aspects of the rail line, including its geographic location; the nature, extent, and growth prospects of industries to be served; demographic data; traffic and revenue projections; and types of service that will be provided. Complete information concerning ownership, control, and financing the entity that will provide service is required. Where applicable, in-depth data concerning the engineering aspects of construction must be provided, including cost estimates on tract and other structural components, equipment and locomotive power to be

used, a topographic map of the route of the proposed line, and environmental information.

The regulation at issue was last revised in 1967. Since that time, a number of statutory changes bearing on the Commission's regulatory responsibility in this area have occurred, thus necessitating the modifications now under consideration. In particular, § 221 of the Staggers Rail Act of 1980 (P.L. 96–448) changed the standard to be applied in considering an application under § 10901. Under former § 10901(a), we were required to determine whether the public convenience and necessity required or would be *enhanced by* the proposal. Now, the Commission need only find, that the public convenience and necessity require or *permit* the proposal.

The existing regulation was adopted prior to the enactment of the National Environmental Policy Act of 1969 (NEPA) and the Commission's implementing regulations in that area, codified at 49 CFR Part 1106 and 49 CFR Part 1108, as revised by *Revision of Natl. Envi. Policy Act Guidelines*, 363 I.C.C. 653 (1980). These regulations embrace separate notification procedures and call for the filing of detailed environmental information. The revised regulation will reduce the filing burden presently required by taking into account the parallel reporting and notice provisions of the environmental regulations.

Superimposed on the specific statutory requirements noted above is the general directive of Congress, as expressed in the Railroad Revitalization and Regulatory Reform Act of 1976 (4R Act) and in submission (2) of the new rail transportation policy, 49 U.S.C. 10101a, established by the Staggers Act, that we expeditiously process applications submitted by rail carriers.

A number of specific changes in the application process, in terms of both procedure and informational content, are contemplated by the proposed regulation. First, the types of transactions covered by the regulations are described. This new statement will eliminate confusion on the part of the public as to the applicability of regulation to a particular type of transaction. The proposed rule disposes of the rigid format required under the existing regulation and in general reduces the amount of information required so as to require only data that the Commission has found through experience to be useful or necessary in reaching an informed decision. For instance, under existing § 1120.7, an extremely detailed filing requirement concerning construction of new facilities has been supplanted by a less rigorous rule requesting that only general information be given. In general, a concerted effort has been made to permit an applicant to file in support of its proposal information that would ordinarily be available as part of its own investigation of the economic and operational feasibility of the transaction. Further, the number of required copies of the application has been reduced from nine to five, in line with the Commission's actual needs. Other changes include a reduction in the analysis of revenues and costs from a 5-year to a 2-year time frame.

Procedural changes have been made to dovetail the proposed regulation with the environmental regulations set forth in § 1108 of NEPA. The existing regulations calls for a two-step procedure in which an applicant first submits an abbreviated application notice, published in the **Federal Register**. Later, the applicant submits a "return to questionnaire," which includes more detailed information about the proposal. However, the proposed rule would require the applicant to submit the information required under the environmental rules at least 6 months prior to filing its proposal (49 CFR 1108.9(b)). The rules that deal with construction currently do not require this lead time. The proposed rule dovetails the existing requirement in the environmental rules with the construction rules. Notice of the application to appropriate State officials and the public and pertinent substantive information concerning it will be generated from the environmental scoping process (the process by which major environmental issues are identified and evaluated). Accordingly, the revised regulation would reduce the notice requirement by requiring only one newspaper announcement rather than three. However, a copy of the proposal must be submitted to the State department of transportation in addition to the Governor and State public service commission, as required under the present regulation. This reflects the growing interest and participation of State agencies in coordinating rail transportation activities within their borders.

In addition, the second phase of the application procedure (the "return to questionnaire") has been eliminated. If there is no opposition to the application, additional evidence normally need not be filed, and a decision will be reached on the basis of the information presented in the application. Thus, only in cases where a hearing is required would an applicant have to furnish the detailed information called for under the present regulation.

The proposed regulation also encourages use of a waiver procedure whereby information that is not readily available or perceived by the Commission to be irrelevant to the decisional process need not be submitted. The availability of waivers of filing requirements under this regulation complements similar procedures available in applications for rail consolidations (49 CFR Part 1111) and for abandonments (49 CFR Part 1121).

In addition, the proposed regulation would codify the Commission's existing regulations concerning procedures for obtaining a certificate of designated operator. The procedures were adopted by the Commission in 1976 in response to Congress' directive in § 304(c) of the Regional Rail Reorganization Act of 1973 (3R Act), as revised by the 4R Act. Under this section, certain operations, conducted over lines of six bankrupt Northeast railroads not designated for transfer to the Consolidated Rail Corporation (ConRail), are not subject to the requirement of prior approval under § 10901.

Finally, the proposed regulation would incorporate the modified certification procedures adopted in *Common Carrier Status of States, State Agencies*, 363 I.C.C. 132 (1980), as modified at 46 FR 37702 (July 22, 1981). These rules apply to the operations conducted over abandoned rail lines that are acquired by a State or State agency. Under these procedures, the State may contract with an operator to provide service. The operator may apply for a modified certificate of public convenience and necessity and be exempted from the requirements of 49 U.S.C. 10901 and 10903, which would otherwise govern the startup and termination of operations.

Alternatives Under Consideration

Deletion of the waiver provision of the new regulation was considered because the filing burden has already been substantially reduced. This position was rejected, because the granting of a waiver does not preclude the Commission from requiring that the information be submitted at a later date.

Summary of Benefits

Sectors Affected: Railroad industry; State governments; shippers; and the general public.

The rail industry will benefit from the more expeditious processing of pertinent applications. The informational filing burden will be reduced so that carriers can, in most cases, submit information

already in their possession, either as is or in slightly modified form. In cases where information is not readily available, an applicant can seek a waiver of the requirement that the information be filed. It is estimated that the proposed rule will reduce by more than 50 percent the railroad staff time needed to compile the information required in an application. Because format requirements have been made less demanding, an application can probably be prepared by lower-level personnel without sacrificing accuracy. Reducing the time frame for the operational and financial analysis will lessen the need for analysis by an applicant's financial and operational staff.

State governments will benefit from the modified certification procedures because they will not be subject to the more rigorous filing requirements for startup and termination of operations required under 49 U.S.C. 10901 and 10903 and pertinent regulations. Also, the States would not be liable for the labor-protective conditions normally required by 49 U.S.C. 11347 and 10903 when operations of railroads terminate, nor for other obligations stemming from the acquisition of common carrier status.

Shippers will benefit from quicker access to new rail service, which will be made possible by adoption of the proposed rule. In addition, under the modified certificate procedures, there is an increased likelihood that a threatened existing service will continue, because the reduced responsibilities placed on States will result in their increased involvement in service continuation programs.

The public at large will benefit ultimately from the decreased cost of regulation and the preservation, through the modified certificate procedures, of rail service that might otherwise be terminated.

Summary of Costs

Sectors Affected: None.

This proposal would streamline application procedures, resulting in savings of time, effort, and money. The rules would not result in costs of any kind to the involved public and private sectors.

Summary of Net Benefits

Since no costs would be imposed by the proposed regulation, the Summary of Benefits above is an accurate description of net benefits.

Related Regulations and Actions

Internal: Modified Certificate of Public Convenience and Necessity, 49 CFR Part 1120A.

Exemption of Certain Designated Operators from § 11343, 361 I.C.C. 379 (1979).

External: None.

Government Collaboration

None.

Timetable

NPRM—46 FR 43721, August 31, 1981; 365 I.C.C. 236 (served August 28, 1981).
Public Hearing—No public hearing is anticipated at this time.
Public Comment Period on NPRM—Closed October 12, 1981.
Final Rules—Final Rules will be issued by the end of the first calendar quarter of 1982.
Regulatory Impact Analysis—The Commission does not plan to issue a separate Regulatory Impact Analysis in this proceeding. The final decision of the Commission will incorporate the results of our regulatory analysis.
Regulatory Flexibility Analysis—With NPRM.

Available Documents

Public comments were due on October 12, 1981 and are available for inspection at the Interstate Commerce Commission, 12th Street and Constitution Avenue, N.W., Washington, DC 20423, during normal business hours. Documents may be copied at nominal charge.

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ICC

Coal Rate Guidelines—Nationwide

Legal Authority

Interstate Commerce Act, 49 U.S.C. 10321, 10701, and 10704; Administrative Procedure Act, 5 U.S.C. 553.

Reason for Including This Entry

We include this entry because it is precedent setting and of broad impact, it concerns an issue of great public interest, and it is controversial. It is precedent setting because the rail rates for transporting coal throughout the Nation will be set according to the guidelines determined by the proceeding. It is of broad impact because it will affect coal rates throughout the Nation. It concerns an issue of great public interest because virtually the entire population will be affected. It is controversial because there are many different ways to determine how the rates should be set.

Statement of Problem

The Interstate Commerce Act requires that rail rates on market-dominant traffic be reasonable (49 U.S.C. 10701a). Because a considerable number of coal purchasers are tied to a particular railroad for transportation service, the Commission often finds that the railroad has market dominance for this traffic. Therefore, it is important that the Commission establish guidelines for determining the reasonableness of the rates on coal, so that rate reasonableness does not have to be determined on a case-by-case basis.

With the passage of the Staggers Rail Act of 1980, P.L. 96–448, the need to establish guidelines for coal rates has become more pressing. This is due, in part, to the requirement that the Interstate Commerce Commission balance the needs of captive shippers with the needs of the railroads to attain revenue adequacy (49 U.S.C. 10704). Thus, the Commission will determine, in this proceeding, how to allocate the cost of transporting coal so as to ensure revenue adequacy for the railroads without placing an undue burden on captive shippers. Improper allocation of costs could cause customers of the utilities that use coal to pay higher and more inflationary rates than necessary to sustain adequate service, or it could cause the railroads to earn inadequate revenues that could result in inadequate rail service. Therefore, it is imperative that the Commission arrive at an appropriate method for properly allocating the cost of service.

Alternatives Under Construction

Most of the parties to this proceeding agree that the determination of the cost of moving coal should be the principal starting point to determine reasonable rates. There is a general consensus that a rail rate should at least cover the railroad's full, long-run costs of transporting coal. Railroads and their shippers/customers do not agree, however, on how to compute the actual cost of service. Additionally, the railroads favor greater emphasis on demand-sensitive pricing (that is, prices set by demand for the transportation), but this approach is opposed by captive coal shippers. A principal source of dispute lies in the difficulty in computing the proportion of constant costs that can be properly allocated to a particular movement of coal; a second problem lies in the allocation of the costs of newly purchased real estate, plants, tracks, and other non-moveable assets; and a

third lies in computing the cost of investment in locomotives and other equipment. With respect to these issues, the Commission proposes significant departures from its past practices. First, the Commission proposes to re-examine the present method of allocating costs. Second, the Commission proposes to eliminate the use of certain types of investment costs from the ratemaking process. Third, the Commission proposes to eliminate locomotive and certain other equipment investment costs. Finally, the Commission proposes eliminating the use of an additive above fully allocated costs.

It is a well-known characteristic of rail transportation that some costs vary directly with the level of a particular service and can be allocated accordingly, while other costs are shared by two or more services and hence cannot in any precise way be allocated directly to any one service on a per-unit basis. These unallocable costs are commonly known as *fixed* or *constant* costs. To avoid the dangers of either under- or over-allocation, we conclude that constant costs should be allocated among users in a way that reflects the importance of rail service to each user as well as the cost of providing service. The Commission is examining the alternatives.

In a number of past coal cases, we have applied an additive of 7 percent over and above fully allocated costs, as calculated by the method then in use. While not entirely ruling out the possible need for an additive above fully allocated costs in future coal rate cases, the Commission believes such an additive will be less often appropriate than in the past. It believes that improvements in costing methodology and the broad program of legislative, regulatory, and industry initiatives now underway will accelerate the rate of railroads to a state of economic health and will eventually eliminate altogether the need for *ad hoc* additives to guarantee revenue adequacy. However, because the necessary changes will take several years to become completely effective, the Commission remains willing to consider, as necessary, the need for an additive above fully allocated costs in exceptional circumstances. It will determine whether to apply such an additive and how high an additive to apply on a case-by-case basis. In the Final Rules, the Commission may wish to propose guidelines for the submission of evidence in cases where an additive is sought.

In the absence of actual cost data, the Commission has used the system-wide average for fuel and maintenance in calculating average costs. The railroads have argued that costs should be revised upward to reflect the heavier weight of coal locomotives. The commission rejected this argument, finding that weight is not the only factor to be considered in adjusting the fuel and maintenance expenses. Indeed, characteristics of some types of coal train movements may lower fuel and maintenance costs below system-wide averages. In the absence of actual operating cost data, the system-wide average is the best estimate of these expenses. However, the Commission is seeking comment on whether sufficient data are now available for it to consider how these costs differ among individual unit coal trains.

A similar situation exists with regard to rail roadway maintenance expenses, as these vary with the use and tonnage of the roadway. In most past decisions, the Commission has allowed roadway maintenance expenses to be allocated on a tonnage basis using system averages. In the absence of data reflecting actual operating expenses, it will continue to use system averages. However, the Commission will make every effort to obtain more specific data. Frequent, heavily loaded coal-train service is relatively new, and it is only recently that its effect on roadway maintenance expenses can be observed. When possible, the Commission will consider these effects in estimating cost.

No specific alternatives to those proposed are presently contemplated. The Commission remains open to modify its proposals. We rejected the alternative of "no action" because improper allocation of transportation costs in the absence of guidelines could result in either railroads or consumers bearing an unfair portion of the cost of coal transportation.

Summary of Benefits

Sectors Affected: Railroads; utility companies and their rate payers; coal mines; other purchasers of coal; and other users of rail service.

The method of allocating the costs affects the revenue of railroads. It also affects those who are paying for the transportation of the coal—the utility companies and, ultimately, their rate payers. Because coal mines selling coal must compete for sales at the delivered price of coal, and the proper allocation of transportation costs will result in the lowest possible coal prices, all purchasers of coal are affected. If the costs are improperly allocated so that the coal industry pays less than it should, other users of rail services may have to pay the difference, because the costs will be allocated to them. Conversely, if the coal industry pays more than it should, it could result in a windfall either to the railroads or to other users of rail services. Thus, all the affected sectors stand to benefit from a proper allocation of rail costs, which is the objective of this rulemaking action.

Summary of Costs

Sectors Affected: None.

The proposed rules would not impose any costs over and above those incurred in existing ratemaking procedures of the affected sectors.

Summary of Net Benefits

Proper allocation of costs according to the proposed guidelines will benefit all sectors involved in the production, transportation, and use of coal. Use of the guidelines by the railroads in the cost allocation and ratemaking process should not require any greater expenditures of time, effort, or money than is required in the absence of the guidelines.

Related Regulations and Actions

Internal: Filing of Contracts by Common Carriers, 49 CFR Part 1030; Railroad Contract Rates: Policy Statement, 49 CFR Part 1039; Procedures Governing Rail General Increase Proceedings, 49 CFR Part 1102; Requirements and Procedures Relating to Railroad Rate Adjustment Act of 1973, 49 CFR Part 1107; Passenger and Freight Tariffs and Schedules, 49 CFR Parts 1300–1310.

External: None.

Government Collaboration

None.

Timetable

Proposed Guidelines—45 FR 80370, December 4, 1980.
Public Comment Period on Proposed Guidelines—Closed April 17, 1981.
Final Guidelines—By March 1982.
Regulatory Impact Analysis—The Commission does not plan to issue a separate Regulatory Impact Analysis in this proceeding. The final decision of the Commission will incorporate the results of our regulatory analysis.
Regulatory Flexibility Analysis—Not required.
Public Hearing—No public hearing is anticipated at this time.

Available Documents

All documents, including the Notice of Proposed Guidelines, the Extension of Time to Notice of Proposed Guidelines

(46 FR 2204), and comments from the public, can be found in Room 1221 in the public docket, at the address below.

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ICC

Railroad Consolidation Procedures (49 CFR Part 1111; Revision) Legal Authority

49 U.S.C. 11343–5, as amended by § 228 of Staggers Rail Act of 1980; Administrative Procedure Act, 5 U.S.C. 553.

Reason for Including This Entry

The Interstate Commerce Commission (ICC) considers this rulemaking to be significant because it would reduce the administrative burden imposed by rail consolidation proceedings on U.S. railroads and the Commission.

Statement of Problem

Commission approval is required before rail carriers can complete rail consolidation transactions. These transactions include consolidation or merger of rail carriers; purchases, leases, or contracts to operate the property of carriers; acquisition of control of a carrier; trackage rights over a carrier's line; and joint ownership or use of a line or terminal. Former Commission rules governing rail consolidation proceedings require parties to submit extensive amounts of information.

The Staggers Rail Act of 1980, P.L. 96–448, created a new classification system for these transactions. Under that Act, both the statutory standard for approval and the statutory deadline are governed by the classification of a particular transaction.

If the transaction involves two or more Class I railroads (i.e., the largest U.S. railroads), the Commission must decide whether or not the transaction is consistent with the public interest after considering five factors listed in 49 U.S.C. 11344(b). If the transaction does not involve two or more Class I carriers, the Commission must approve it unless it finds that the transaction is anticompetitive and that any transportation benefits do not outweigh its anticompetitive effects.

In order to make these determinations, the Commission requires applicants to submit financial statements, operational data, environmental information, and market analyses. Such data may also be required from "inconsistent" applicants, i.e., those seeking the same authority as the original applicant or seeking Commission imposition of conditions on the transaction.

Prior to revision of the Commission's regulations (at 49 CFR Part 1111), the Commission required the same information from an applicant regardless of the type or impact of the transaction. The proposed rules relate the extent of information required to the nature and size of the contemplated transaction.

The current regulatory structure imposes a burden on carriers required to submit information that the Commission will not need to examine in order to reach its decision on the application. This unnecessary administrative burden has been brought to the Commission's attention by its staff and by rail carriers subject to these regulations, who often seek to have various informational requirements waived in individual cases.

If the Commission chose a "no-action" alternative, carriers participating in covered transactions would remain subject to requirements for the provision of unnecessary data.

Alternatives Under Consideration

The Commission consulted its staff and reviewed past proceedings governed by these regulations to determine what information is necessary for a particular determination and what is not. It also reviewed comments received in response to its NPRM published in November 1979 (44 FR 66626). For each type of material, the Commission considered the alternatives of continuing to require submission or of dropping the requirement. The proposed rules represent its conclusions about the usefulness of the data.

Summary of Benefits

Sectors Affected: Railroads and line-haul operating establishments (SIC Code 4011); switching and terminal establishments (SIC Code 4013); and the Commission.

These revised rules are procedural, so no quantitative estimate of benefits or costs is possible. Benefits include: reduction in the paperwork required to be submitted with rail consolidation applications and, it is hoped, a simpler and less expensive proceeding in which the Commission obtains all information required to make the findings required by law. The Commission itself would benefit from not needing to sort through massive application material in order to collect the information necessary for decisionmaking.

Summary of Costs

Sectors Affected: Railroads and line-haul operating establishments (SIC Code 4011); switching and terminal establishments (SIC Code 4013); and legal services (SIC Code 8111).

Railroads may incur some costs in generating impact analyses (i.e., descriptions of the likely effects of the transaction on affected markets). The format and degree of sophistication of these analyses, however, are left to the discretion of the applicant. In addition, the requirement for submission of an impact analysis replaces the previous requirement that a "traffic study" (describing diversion resulting from the transaction) be prepared. The Commission considers the impact analysis to be less burdensome, overall, than the traffic study because the impact analysis does not necessarily sample as wide a range of rail movements.

The legal services sector may experience costs in terms of reductions in need for legal man-hours (corresponding to the decrease in material that must be submitted with applications).

Summary of Net Benefits

The Commission believes that the benefits, in terms of lower costs for the railroads resulting from reduced paperwork in affected proceedings, will considerably outweigh any costs, such as those incurred by rail carriers in developing impact analyses or those experienced by lawyers due to reduced need for certain services.

Related Regulations and Actions

Internal: Ex Parte No. 282 (Sub-No. 8), Rail Consolidation Proceedings—Time Revisions, 45 FR 74488, November 10, 1980.

Ex Parte No. 282 (Sub-No. 5), Rulemaking Concerning Traffic Protective Conditions in Railroad Consolidation Proceedings, 45 FR 46461, July 10, 1980.

External: None.

Government Collaboration

None.

Timetable

Final Rule (Procedural Aspects)—363 I.C.C. 200, August 1980.
NPRM (Informational Aspects)—44 FR 66626, November 20, 1979.
Revised NPRM (Informational Aspects)—363 I.C.C. 200, August

1980.
Final Rules (Informational Aspects)—To be determined.
Public Comment Period—Ended October 1980.
Public Hearing—None.
Regulatory Impact Analysis—Not required.
Regulatory Flexibility Analysis—To be included in Final Rule.

Available Documents

Copies of the two NPRMs and the Final Rule (Procedural Aspects), as well as comments received in response to the two NPRMs, are available in the Public Docket in the Office of the Secretary, Room 1221, Interstate Commerce Commission, 12th and Constitution Avenue, N.W., Washington, DC 20423, under Ex Parte No. 282 (Sub-No. 3). Fees for copying are set at 49 CFR 1002.1.

Agency Contact

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POSTAL RATE COMMISSION

Electronic Mail Classification Proposal, Docket No. MC78-3 (Remand)

Legal Authority

Postal Reorganization Act, 39 U.S.C. 3621-23.

Reason for Including This Entry

The Postal Rate Commission thinks this case is important because it concerns the U.S. Postal Service's (USPS) plans to offer E-COM service, in which large-volume mailers can electronically transmit messages from their computers to specially equipped post offices, where the messages would be printed and delivered. This service could be an economical and efficient method for large-volume mailers to use in sending messages.

Statement of Problem

The Commission issued an opinion in this case, approving the Postal Service's proposed electronic mail service, E-COM. The Commission's decision, however, set a termination date of October 1, 1984, so that it could review the costs and rates of the service after the Postal Service gained operating experience. The Governors of the Postal Service allowed the Commission's decision to go into effect, but asked the DC Circuit Court of Appeals to review the Commission's authority to limit its decision in such a manner (*Governors of USPS* v. *PRC*, Docket No. 80-1971, decided May 29, 1981). An additional E-COM action is described in the following entry. The court held the Commission did not have such authority and returned the entire matter to the Commission for further consideration.

On October 8, 1981, the Commission issued an order on the scope of the issues in this remanded proceeding. The Commission analyzed the court decision and concluded that it had returned the entire case to the Commission, not just the issue of the propriety of imposing a termination date. The Commission also divided the remanded case into two phases. In the first phase, the Commission will make a decision on those issues that must be resolved before the Postal Service begins offering the E-COM service. In the second phase, the Commission will resolve the remaining issues. To accommodate the Postal Service's desire to begin offering E-COM service in early 1982, the Commission has committed itself to completing the first phase by February 1982, assuming cooperation from all participants.

The issues the Commission will resolve in the first phase include the determination of what are compensatory rates—rates that reflect costs accurately and avoid cross-subsidization of E-COM service by the other classes of mail. Another issue the Commission will reach a decision on in the first phase is how to structure the E-COM classification so that telecommunications carriers may interconnect with it on open and nondiscriminatory terms. Parties have also raised the issue of whether the Postal Service should be offering an E-COM service. This issue must be settled in the first phase.

The parties in this case are the U.S. Postal Service, American Bankers Association, American Business Press, Inc., American Cable & Radio Corporation, American Newspaper Publishers Association, American Retail Federation, Association of American Publishers, Inc., Computer and Business Equipment Manufacturers Association, Council of Public Utility Mailers, DHL Communications, Inc., Direct Mail/Marketing Association, Inc., Envelope Manufacturers Association, Federal Communications Commission, Graphnet Systems, Inc., GTE Service Corporation, Department of Justice, Magazine Publishers Association, Inc., Mail Order Association of America, MCI Telecommunications Corporation, National Association of Greeting Card Publishers, National Industrial Traffic League, National Telecommunications and Information Administration, J.C. Penney Company, Inc., United Parcel Service, Dr. George M. Wattles, Xerox Corporation, Officer of the Commission, American Facsimile, RCA Global Communications, Inc., American Satellite Corporation, Jack R. Taub, Plexus Corporation, Southern Pacific Communications Company, Western Union International, Inc., and Satellite Business Systems.

Alternatives Under Consideration

At this early stage of the remanded proceeding, before any party has presented evidence, there are only three general alternatives. The Commission cannot estimate the costs and benefits of these alternatives before the parties present evidence concerning them.

The alternatives are:

(A) The Commission may recommend classification changes for E-COM service similar to those it recommended in the original proceeding but without a termination date.

(B) The Commission may recommend classification changes for E-COM service with some changes in accordance with suggestions that the parties may present in their evidence in this proceeding.

(C) The Commission may recommend that the Postal Service not offer any E-COM service.

Summary of Benefits

Sectors Affected: USPS; large-volume mailers and recipients of that mail; and the telecommunications industry.

At this stage of the proceeding, before the parties have presented any evidence, the Commission cannot estimate the costs of any of the alternatives. When the parties present their evidence, they will discuss the benefits of the various alternatives.

Summary of Costs

Sectors Affected: USPS; large-volume mailers and recipients of that mail; and the telecommunications industry.

At this stage of the proceeding, before the parties have presented any evidence, the Commission cannot estimate the costs of any of the alternatives. When the parties present their evidence, the Commission anticipates that they will discuss the costs of the various alternatives.

Summary of Net Benefits

At this stage of the proceeding, before the parties have presented any evidence, the Commission cannot calculate the net benefits of any of the alternatives. The Commission will

analyze the net benefits before it makes its recommendation.

Related Regulations and Actions

None.

Government Collaboration

None.

Timetable

Notice of Inquiry in Remanded Proceedings—46 FR 35400, July 2, 1981.

Public Hearing—The Commission will hold hearings in compliance with the requirements for formal rulemaking on the record, having regard to the fact that the case is before it on remand from a court.

Public Comment Period—In addition to intervention in the proceedings, interested parties may send letters of comment at any time during the Commission's consideration of this case (see address below). Although these letters do not become part of the record on which the Commission bases its decision, they are placed in the Commission's public "commenter" file.

Regulatory Impact Analysis—The Postal Rate Commission, as an independent agency, here engaged in formal rulemaking on the record, is not required to prepare a Regulatory Impact Analysis as it is defined under E.O. 12291. However, the Postal Rate Commission presents essentially the same information in its decisions.

Regulatory Flexibility Analysis—The Postal Rate Commission, as an independent agency, here engaged in formal rulemaking on the record, is not required to prepare a Regulatory Flexibility Analysis as it is defined in 5 U.S.C. 603–04. However, the Postal Rate Commission presents essentially the same information in its decisions.

Available Documents

As the following documents are filed with the Commission or issued by it during the course of the proceedings, they will be available from the Commission's Docket Room, 2000 L Street, N.W., Room 500, Washington, DC 20268, (202) 254–3800.

Notice of Inquiry in Remanded Proceedings.

Transcripts of Hearings, as well as Letters of Comment, Testimony, Exhibits, Workpapers, Library References/Studies, Interrogatories and Answers, and Requests for Oral Cross-Examination and Written Cross-Examination for Docket MC78–3.

Commission Orders and Notices; Presiding Officer's Orders, Rulings, Motions and Notices, Petitions for Leave to Intervene and Requests for Limited Participation; and Commission's Recommended Decision for Docket MC78–3.

Documents may be inspected in the Commission's reading room. Copies of documents issued by the Commission or filed by the Officer of the Commission are available without charge. Copies of all other public documents are available for 15 cents per page.

Agency Contact

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PRC

Postal Rate Commission Docket No. MC 80–1—E–COM Forms of Acceptance, 1980

Legal Authority

Postal Reorganization Act, 39 U.S.C. 3621–23.

Reason for Including This Entry

This case may have a national effect because it will investigate possible ways to make the U.S. Postal Service's (USPS) planned new service, E–COM (Electronic Computer Originated Mail), available to more mailers. The decision in this case may provide an opportunity for the Postal Service and large-volume mailers to increase their productivity without causing adverse effects.

Statement of Problem

The Postal Service is preparing to offer a service, E–COM, in which large-volume mailers can electronically transmit messages from their computers to specially equipped post offices. At these post offices, the Postal Service will convert the electronic messages to printed documents that the Postal Service will put in envelopes and deliver. After reviewing new and developing technologies, the Postal Service decided that electronic mail was an important way of offering innovative service and lowering costs to mailers. The Postal Service plans to offer E–COM service by early 1982.

The Postal Service filed a proposal for the Postal Rate Commission's (PRC) consideration. The Postal Service intended to contract with a single commercial telecommunications carrier to provide all the transmission and data processing services involved when mailers used the E–COM service. The Commission, while agreeing with the Postal Service's decision to enter the market for electronic mail, recommended an alternative plan in which various private firms can compete for the business of transmitting the electronic messages from customers to 25 specially equipped post offices, where the data processing, printing, and enveloping would be done. The Commission determined that such a system would provide a technically superior service at a lower price to the consumer. On August 15, 1980, the Governors of the Postal Service accepted the E–COM system the Commission recommended.

At the time the Governors accepted the Commission's design for E–COM they instructed the Postal Service to present, as soon as possible, evidence to the Commission supporting two additional methods mailers could use to enter electronic mail into the postal system. With either of these methods, mailers would not need to purchase telecommunications service from one of the various firms that will offer it. The Governors want to permit (1) mailers to enter electronic mail by presenting magnetic tapes over the counter at the specially equipped post offices, and (2) direct connection to those post offices by mailers who have their own telecommunication systems.

Consideration of these two additional methods of entry will not delay the Postal Service's implementation of its E–COM service offering. To facilitate consideration of the matter, the PRC instituted Docket No. MC80–1 on May 27, 1980, shortly after the Governors first suggested the two alternative entry methods, in anticipation of the Postal Service's filing. The institution of Docket No. MC80–1 gives notice to interested parties that the Commission will expeditiously consider the proposal to add two other methods of entry for E–COM mail. The parties therefore have additional time to assess their positions and decide whether to intervene and what to present.

Alternatives Under Consideration

At this stage of the case, before the Postal Service has filed its proposal, only a general outline of the issues to be considered is clear. After the Postal Service has filed its proposal, interested parties will have an opportunity to offer modifications to the two forms of entry under consideration, as well as any related proposals—possibly including additional methods for entry. The alternatives we are considering are:

(A) No change in the forms of entry. The system would operate as described in our opinion in Docket No. MC78–3. Any mailer wanting to use E–COM would have to use the services of a carrier. The Postal Service can implement E–COM service without the additional method of entry. These two methods were not explored in Docket No. MC78–3; therefore, neither the Postal Service nor the Commission can estimate how many mailers would use the additional methods if they were available and what the cost to the Postal Service and mailers would be.

(B) The Governors of the Postal Service want the methods of entry expanded to include presentation of magnetic tapes in the specified post offices and direct connection of telecommunication systems owned by mailers. According to the Governors, this expansion of the methods of entry into the E–COM system could reduce mailers' costs. Additionally, mailers who might not use the E–COM service if they had to purchase telecommunication service might decide to use E–COM if the additional methods of entry were available. The availability of additional methods of entry might enhance competition both for the companies offering the telecommunications service and for the large-volume mailers who could choose the form of entry most cost effective for their circumstances.

The parties to this proceeding now include the Postal Service, Graphnet, Inc., Computer & Business Equipment Manufacturers Association, American Cable & Radio Corporation, and MCI Telecommunications Corp. After the Postal Service files its proposal, the Commission will set a deadline for persons to notify the Commission that they wish to intervene in this case.

Summary of Benefits

Sectors Affected: USPS; large-volume mailers and recipients of that mail; and the telecommunications industry.

The exploration of these possible modifications should reveal whether improvements can be made in methods of entry into the E-COM system. The availability of additional ways to enter messages into the E-COM system might decrease costs (compared to the cost of entry using the services of a telecommunications carrier) to mailers and might make electronic mail available to more mailers. Competition might be enhanced, because the telecommunications carriers would be competing against these alternatives as well as against each other. The Postal Service would benefit if the additional entry methods increased the volume of E-COM mail and the Postal Service's costs of handling this mail were not increased by the different forms of entry. Recipients of E-COM mail might benefit if the alternative methods reduced mailers' costs, because there may be less potential cost pass-through to the mail recipients, who will often be consumers of the goods and services produced by the mailers.

Summary of Costs

Sectors Affected: USPS; and large-volume mailers and recipients of that mail.

If the methods in Alternative (B), described above, are adopted, the Postal Service will have to pay an employee to accept computer tapes over the counter and perform the operations necessary to convert the messages from the tapes into printed words on paper. Large-volume mailers who use either alternative form of entry will need to pay the cost of putting their messages into a form that the Postal Service's E-COM system can accept. Some of these costs would be one-time startup costs. Others, such as the actual conversion of messages into a form that the E-COM system can accept, would occur for each mailing. Because recipients will often be consumers of the goods and services produced by the mailer, those recipients probably will bear the costs involved when they pay for the goods and services.

At this time, the Commission cannot estimate the effect this case will have on costs. The Commission anticipates that the Postal Service will present evidence on the costs of accepting electronic mail under the two additional methods and that mailers desiring to use the additional methods of entry will present evidence concerning their costs.

Summary of Net Benefits

At this time, before the Postal Service has filed its proposal, the Commission cannot present the net benefits, as that assessment can be made only after the Postal Service files its proposal and the Commission gives the parties an opportunity for a formal hearing. Possible benefits may have to be weighed against potential increases in costs to the Postal Service, which might result if extra equipment or personnel are needed to deploy the new forms of entry. These are the issues that the Commission will consider in the case.

Related Regulations and Actions

None.

Government Collaboration

None.

Timetable

When the Postal Service files its proposal, the Commission will issue a schedule for the expeditious consideration of this case.

Commission Order No. 339 instituting the prodeeding in MC80–1 and the Notice sent to the *Federal Register*, published at 45 FR 37571, June 3, 1980.

Public Hearing—The Commission will hold public hearings at 2000 L Street, N.W., Washington, DC, in compliance with the requirements for formal rulemaking on the record; dates to be determined.

Public Comment Period—In addition to intervention in the proceedings, interested parties may send letters of comment at any time during the Commission's consideration of this case (see address below). Although these letters do not become part of the record on which the Commission bases its decision, they are placed in the Commission's public "commenter" file.

Regulatory Impact Analysis—The Postal Rate Commission, as an independent agency, here engaged in formal rulemaking on the record, is not required to prepare a Regulatory Impact Analysis as it is defined under E.O. 12291. However, the Postal Rate Commission presents essentially the same information in its decisions.

Regulatory Flexibility Analysis—The Postal Rate Commission, as an independent agency, here engaged in formal rulemaking on the record, is not required to prepare a Regulatory Flexibility Analysis as it is defined in 5 U.S.C. 603–04. However, the Postal Rate Commission presents essentially the same information in its decisions.

Available Documents

As the following documents are filed with the Commission or issued by it during the course of the proceedings, they will be available from the Commission's Docket Room, 2000 L Street, N.W., Room 500, Washington, DC 20268, (202) 254–3800.

Transcripts of Hearings, as well as Testimony, Letters of Comment, Exhibits, Workpapers, Library References/Studies, Interrogatories and Answers, and Requests for Oral Cross-Examination and Written Cross-Examination for Docket MC80–1.

Commission Orders and Notices; Presiding Officer's Orders, Ruling, Motions and Notices, Petitions for Leave to Intervene, Requests for Limited

Participation, and Commission's Recommended Decision for Docket MC80–1.

Documents may be inspected in the Commission's docket room. Copies of documents issued by the Commission or filed by the Officer of the Commission are available without charge. Copies of all other public documents are available for 15 cents per page.

Agency Contact

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PRC

Postal Rate Commission Docket Nos. MC81–2 and R81–1—Attached Mail Proceeding, 1981

Legal Authority

Postal Reorganization Act, 39 U.S.C. 3622–23.

Reason for Including This Entry

This case may have an important national effect because it is an investigation into a mail classification change that may bring about improvement in the joint productivity of mailers and the U.S. Postal Service (USPS) and therefore may mitigate cost increases for both the Postal Service and its customers.

Statement of Problem

Attached mail occurs when more than one item travels through the mail as one unit. A well known example is a first-class letter enclosed within a package mailed at the parcel post rate. Currently, the mailer must pay the first-class rate for the letter plus the parcel post rate for the package. The Postal Service, of course, handles the items as a unit. The package with the enclosed letter receives regular parcel post (fourth-class) treatment, and the Postal Service does not incur the cost of handling the first-class letter separately.

The Postal Rate Commission (PRC) initiated this case to explore the issue of whether separate classifications, and possibly different rates, are appropriate for the various types of attached mail (e.g., first-class letters enclosed in packages or attached to magazines). This case should show whether the Postal Service, by offering lower rates for attached mail, should encourage mailers to combine mail pieces and so reduce the Postal Service's costs of handling the pieces separately. These classification changes might stimulate new volume; business mailers might take advantage of the classification changes, if they result in lower rates, to offer various products and services to their current customers. Such a change could reduce the postal workload while the rates paid would protect necessary postal revenue. If the rates charged reflect a savings made possible by the handling of combined rather than separate pieces, the Postal Service will benefit because it can handle the volume more efficiently. If the change results in additional volume, the Postal Service will benefit as long as the rates are set to cover the costs and make a contribution toward covering institutional costs (e.g., headquarters and regional administration costs).

On February 5, 1981, the Commission issued an order instituting the Attached Mail Proceeding. The order set a deadline for persons wanting to intervene and requested that parties submit proposed language to describe any change they support.

On July 6, 1981, the Postal Service filed a proposal for changes in the rates of postage for attached mail. The PRC docketed this filing as R81–1. Because the subject matter is similar to that in MC81–2, the Commission combined the cases.

In response to a suggestion by the Postal Service, the Commission provided for settlement conferences in these consolidated cases. The Postal Service has filed a settlement proposal that many of of the participants support; none of the participants have opposed this settlement proposal. The settlement contemplates disposition of some, but not all, of the issues in these consolidated cases. The details of the settlement proposal are described as Alternative (C) below.

Alternatives Under Consideration

At this stage in the proceeding, only some of the alternatives that the Commission will consider are apparent. The parties may present additional alternatives for the Commission to consider.

The parties to this proceeding now include the Postal Service, Associated Third Class Mail Users, Meredith Corporation, Reader's Digest Association, Magazine Publishers Association, Association of American Publishers, Recording Industry Association of America, American Business Press, American Retail Federation, Classroom Publishers Association, Department of Defense, J.C. Penney Company, Time Incorporated, United Parcel Service, Parcel Shippers Association, Dow Jones & Co., and the Officer of the Commission (OOC), who represents the interests of the general public.

Some of the alternatives described below do not deal with all of the issues in these consolidated cases. The alternatives at present are:

(A) No change in the current classification schedule. Mailers who wish to attach first-class mail or other types to the other classes of mail will continue to pay the same rates as if the pieces were mailed separately. This alternative would avoid the potential drop in Postal Service revenue if mailers currently using attached mail should begin paying a lower rate for the service. Because attached mail now must pay the same rate as separate pieces, mailers have no monetary incentive to combine pieces; and, although no definite figures are available, the volume of attached mail appears to be small. The Postal Service therefore incurs the costs for the larger number of pieces that must be handled separately.

(B) Another alternative is to classify attached mail separately and to charge a rate that reflects the lower costs of handling attached mail as one piece rather than separately. Under this alternative the Postal Service would face a reduction in revenue, because the small number of pieces of attached mail now pays the full rate charged the class. However, the Service also would achieve a cost savings if mailers convert into attached mail pieces now mailed separately. Rates can be set to reflect only the Postal Service's cost reduction and so protect its financial position. Additionally, lower rates might attract new volume and hence improve the Postal Service's financial position. A rate schedule requiring the full rate for a mail piece as well as some payment for the attached or enclosed piece could improve the financial situation of both the Postal Service and mailers. Taking into account potential revenue lost because attached mail now must pay the full rate, the Postal Service's overall revenue might increase if reduced rates can be offered and generate additional volume. The mailers would have a more economic means of sending messages.

(C) The settlement agreement proposes that first-class attachments or enclosures that are "incidental" to second-class (periodic publications), third-class merchandise pieces, and fourth-class pieces be considered part of the other mail piece for rate purposes. To be incidental, an attachment or enclosure must be closely associated with or related to the other mail piece. Also the attachment or enclosure must be secondary to the other piece and

must not encumber postal processing. An example of incidental attachments or enclosure is a bill for the product or publication.

The parties have agreed that the settlement proposal will be an improvement because they believe that the current rate structure for attached mail is difficult to enforce and unsupported on a cost basis. Additionally, they think the current rate structure is not in accord with a competitive posture and may not further the Postal Service's goal of effectively serving the public. The Postal Service estimates that, in the period March 21, 1981 to March 20, 1982, with the settlement proposal, approximately 150 million first-class pieces might travel as attached mail, causing a $12 million reduction in the net revenue of the Postal Service, during that time period.

(D) The Department of Defense (DOD) has submitted a proposal that would apply to mailing practices principally affecting DOD. Currently, the Department of Defense computes the postage for each of its mail pieces separately, except when a pouch contains only one type of mail, such as first class. When all the mail in the pouch is the same class, the Department of Defense computes the postage in a simplified manner, using the total weight of the pouch and the classification of its contents. The Department of Defense proposes changes in the Domestic Mail Classification Schedule to permit it to treat a pouch of mail as one mail piece, subject to a unitary rate, rather than computing postage individually on each mail piece in the pouch, even if the mail pieces are of different classes.

(E) The OOC says that any changes with regard to attached mail should not allow attached mail prepared in such a way as to impede the Postal Service (for example, if a letter were only partially secured to a parcel, it could jam the Postal Service's sorting machinery). Additionally, the OOC believes any changes should avoid rate and service anomalies and should not jeopardize the Postal Service's financial position. The OOC proposes a rate of 8 cents for the first ounce and 7 cents for each additional ounce of first-class mail attached to mail pieces of other classes. The OOC projects that 623 million pieces would travel as attached mail if its proposal were in effect during the year between March 21, 1981 and March 20, 1982. The OOC's proposal would apply to all attached mail, in contrast to the settlement proposal described in (C), which applies only to incidental attached pieces. The OOC has signed the settlement proposal.

Summary of Benefits

Sectors Affected: USPS; mailers who could take advantage of the attached mail option, such as magazine publishers and mail order businesses; and recipients of that mail.

This case will explore the potential benefits of separate classification for attached mail. The Postal Service would benefit if a classification change caused mailers to give the Postal Service new volume as long as rates cover costs and provide some contribution to institutional costs. Moreover, if present volume shifts to attached mail, the Service could experience reduced costs because of the ease of handling combined rather than separate pieces. Mailers would benefit if the classification change permitted them to send messages more economically. Recipients of the mail would benefit from the mailers' lower costs because often those recipients are purchasing products or services from the mailers. In this case, the Commission will consider these benefits as well as any other ones the parties may point out.

Summary of Costs

Sectors Affected: USPS; mailers who could take advantage of the attached mail option, such as magazine publishers and mail order businesses; and recipients of that mail.

One of the costs that could result from a classification change for attached mail is reduced Postal Service revenue, since attached mail now pays the regular rate. Additionally, mail that could convert to attached mail also pays the regular rate when mailed separately. However, the Postal Service's costs of handling mail that converts to attached mail will drop. Mailers might experience some increased costs in their preparation of items for mailing if they decide to change and take advantage of an attached mail classification, and they might pass these costs on to their customers. However, those costs over the long run must be lower than the expected savings in postage; if not, the mailer would continue to mail these pieces separately.

Summary of Net Benefits

For the mailers who decide to convert, increases in costs for mail preparation would be offset by lower postage. In this case, the Commission will consider the costs to the mailers and the Postal Service. The Commission expects that the parties will present estimates on the amounts of the relevant costs. The Postal Service estimates that the settlement proposal would reduce its net income, over a 12-month period, by $12 million. The net benefits that could flow from a change in the rate structures for attached mail are increased postal volume and lower costs for a particular type of communication—attached mail.

Related Regulations and Actions

None.

Government Collaboration

None.

Timetable

Public Comment Period—In addition to intervention in the proceedings, interested parties may send letters of comment at any time during the Commission's consideration of this case (see address below). Although these letters do not become part of the record on which the Commission bases its decision, they are placed in the Commission's public "commenter" file.

Commission Order No. 367 instituting the proceeding in MC81–2 and the Notice sent to the **Federal Register**—published 46 FR 12377, February 13, 1981.

The Notice concerning the Postal Service's proposal—46 FR 37411–12, July 20, 1981.

Commission Order No. 386 combining MC81–2 and R81–1—46 FR 37412–13, July 20, 1981.

Completion of all discovery directed to the Postal Service witness—August 14, 1981.

Beginning of hearings, i.e., cross-examination of the Postal Service's case-in-chief—September 22, 1981.

Filing of the case-in-chief of each participant, including that of OOC; parties may amend previously filed testimony through this date—October 5, 1981.

Completion of all discovery directed to the intervenors—October 30, 1981.

Beginning of evidentiary hearings as to the case-in-chief of other participants—November 23, 1981.

Rebuttal evidence of the Postal Service and each participant (no discovery to be permitted on this rebuttal evidence; only oral cross-examination)—December 14, 1981.

Beginning of evidentiary hearings on rebuttal evidence—January 5, 1982.

Record closed—January 8, 1982.

Initial briefs filed—January 19, 1982.

Reply briefs filed—January 29, 1982.

Oral argument (if scheduled)—February 2, 1982.

Regulatory Impact Analysis—The

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Commission Orders and Notices; Presiding Officer's Orders, Ruling, Motions and Notices, Petitions for Leave to Intervene and Requests for Limited Participation; and Commission's Recommended Decision for Docket MC81–2 and R81–1.

Documents may be inspected in the Commission's reading room. Copies of documents issued by the Commission or filed by the OOC are available without charge. Copies of all other public documents are available for 15 cents per page.

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INDEX I—SECTORS AFFECTED BY REGULATORY ACTION

This index graphically presents those sectors of our society that are most likely to benefit from or incur the costs of the regulations described in this edition of the Calendar. The information noted here corresponds to that provided by the agencies in the "Summary of Costs" and "Summary of Benefits" sections of each entry. The index presents the regulations alphabetically, by agency, by unit within the agency, and then by title of the regulation. For additional information on the effects of the regulation, the reader should refer to the specific Calendar entry.

A reader who is interested in a particular industry or group can easily identify those regulations that have a major impact on that industry or group. The reader should locate the relevent "Affected Industries" or "Other Affected Sectors" heading and scan the columns within them to locate the specific industry or other sector in which he or she is interested. For each entry, the reader can then see the agency issuing the regulation, the title of the regulation affecting the sectors of interest, and the page number of which the regulation appears in the Calendar.

Similarly, a reader who is interested in a particular regulation can identify the activities and groups that the particular regulation will affect significantly.

This index highlights two types of regulatory effects: (1) direct impact on industries and other sectors that are required to take a specific action or that will receive a direct or immediate benefit as a result of a regulation; and (2) indirect impact on industrial or population sectors that are important suppliers or customers of the directly regulated or benefited sector or important providers of substitute products.

For each regulation, we first identify the major industrial sectors affected. The terminology we use in the Affected Industries section of the index corresponds, where possible, to standard SIC nomenclature (see the Standard Industrial Classification Manual, 1972 edition with 1977 supplement, available from Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, Stock Nos. 041–001–00066–6 and 003–005–00176–0, respectively). The SIC Manual defines industries in accordance with the composition and structure of the economy and covers the entire field of economic activities. The SIC classifies industries by major division, further classifying them within divisions by using multiple digit numbers.

The specific categories within the Affected Industries section correspond to the major SIC industrial divisions. Where an impact will probably be felt throughout a major industrial division, we name that major division (e.g., Agriculture, Mining, Construction, Manufacturing, etc.). Where a regulation will affect only a particular type of establishment within a division, we use a more specific SIC level (e.g., Livestock Production, Coal Mining, Building Construction, Petroleum Refining, etc.). Below is a brief explanation of each major industrial division.

Agriculture, Forestry, Fishing

This division includes establishments primarily engaged in agricultural production of crops, seeds, livestock, and dairy products, along with related agricultural services; forestry; and commercial fishing (including shellfish and marine products). Manufacturing and processing of agricultural products away from the farm and packaging of fish are classified under Manufacturing.

Mining

This division includes establishments primarily engaged in metal and nonmetallic mineral mining, coal mining and processing, oil and gas extraction, and related mining services. (Petroleum refining and smelting, and refining of metal are classified under Manufacturing. Natural gas transmission is classified under Electric, Gas, and Sanitary Services, and pipeline transportation of petroleum is listed under Transportation.)

Construction

This category includes establishments and contractors primarily engaged in construction. Construction includes new work, additions, alterations, and repairs. Three broad types of construction activity are covered: (1) building construction by general contractors or builders primarily engaged in construction of residential, farm, industrial and commercial buildings, rather than as special trade contractors; (2) heavy construction, such as highways, streets, cemeteries, mines, dams and water projects, sewage collection plants, treatment and disposal facilities, hydroelectric plants, and irrigation projects; and (3) construction by special trade contractors, such as painting, carpentry, and electric work, and including establishments primarily engaged in the sale and installation of communication equipment and insulation material.

Manufacturing

This division includes establishments engaged in the mechanical or chemical transformation of materials or substances into new products. The materials processed by manufacturing establishments include products of agriculture, forestry, fishing, mining, and quarrying, as well as products of other manufacturing establishments. This division includes milk processing and bottling, fish packaging, smelting and refining of metal, and shipbuilding.

Transportation, Communications, and Electric, Gas, and Sanitary Services

This division includes establishments providing to the general public or to other business enterprises passenger and freight transportation; communication services; utilities such as electricity, gas, steam, and water or sanitary services; and the U.S. Postal Service.

Trade

This division covers both wholesale and retail trade. In addition, we have specifically identified impacts on the exporting and importing operations of wholesale and retail establishments. Wholesale trade includes establishments or places of business primarily engaged in selling merchandise to retailers, to industrial, commercial, institutional, agricultural, or professional business users, or to other wholesalers; and businesses acting as agents or brokers in buying merchandise for or selling

merchandise to such persons or companies. Retail trade includes establishments engaged in selling merchandise for personal or household consumption and rendering services incidental to the sale of goods. Impacts highlighted include increases or decreases in demand for goods or services traded, as well as passthrough costs from suppliers to wholesalers and retailers.

Finance, Insurance, Real Estate

This division includes establishments operating primarily in the fields of finance, insurance, and real estate. Finance includes banks, trust companies, credit agencies other than banks, investment companies, brokers and dealers in securities and commodity contracts, and security and commodity exchanges. Insurance covers carriers of all types of insurance and all insurance agents and brokers. Real estate includes owners, lessors, lessees, buyers, sellers, agents, and developers of real estate.

Other Services

This division includes establishments primarily engaged in providing a wide variety of services for individuals, business and government establishments, and other organizations. Included are health services; accounting, architectural, legal, engineering, and other professional services; educational institutions; business, repair, and recreational services; and membership organizations. Not included are services closely related to a particular industry, such as agricultural, mining, transportation services, etc., which are noted in their respective categories.

All- or Multi-Industry Impact

This category identifies regulations having (1) an "across-the-board" impact on all sectors of the economy, or (2) an impact which affects several industries and cannot be adequately identified with SIC terminology. Examples of the latter include regulations affecting industries producing a particular pollutant; using a particular manufactured product, raw material, or energy source; employing a particular minority group; or subject to a particular law. For some regulations having this kind of cross-industry impact, we also identify specific industries within the general group that will be significantly affected. For example, in the case of a regulation restricting the production of asbestos products, we (1) record "Other Industries Using Asbestos Products" in the All- or Multi-Industry Impact column, and (2) record "Construction" in the Construction column, because that industry is the major industrial user of asbestos products.

After highlighting industrial sectors affected, we next record impacts on governmental, social, geographic, and other sectors. A brief explanation of each of these "Other Affected Sectors" follows.

State and Local Government

This category identifies regulations significantly affecting State and local governments. We highlight regulations in this category that directly regulate a State or local government function, involve State or local governments in implementation, or preempt a State law or regulation.

Some State and local governments engage in operations not traditionally considered "governmental" in nature (such as State-owned liquor stores). Impacts on such operations are recorded in the appropriate category of the Industries Affected section of the index (e.g., any impact on State-owned liquor stores is included in the listing "Retail of Liquor" under the Wholesale and Retail Trade column).

Population Groups

We use this category to highlight impacts on various population groups, including groups defined by age, income, health status, type of employment, ethnicity, and living environment.

We also use this column to highlight regulations that the agencies identify as having a special or significant impact on consumers. Regulations identified include proposals aimed at providing safer and better quality consumer goods and services, as well as proposed actions that might change prices or the quality or quantity of consumer goods and services.

This category also identifies proposed actions that affect the general public. This term encompasses general improvements to the quality of life, including upgrading the environment, encouraging the development of energy sources, curbing inflation, and improving the balance of trade.

Geographic Areas

In this category, we identify those areas of the country particularly affected by a regulation, such as specific states; rural, urban, or other regions; and specially owned lands such as Indian lands and national parks.

Small Business

In this category we identify those regulations which have special impacts on the small business community as a whole, as well as on small businesses within specific industries. Notations in this category encompass a variety of impacts, including Small Business Administration proposals aimed at directly benefiting the small business community, proposals that might adversely affect small businesses, and regulations that are structured to meet both the special needs and the special limitations of small businesses.

Alternative Regulatory Approaches Considered

The Alternative Regulatory Approaches category is the final column in our index. This category highlights different approaches to regulation that agencies are considering implementing by using a market-oriented strategy. These approaches are departures from traditional "command-and-control" regulation, which involves strictly specified rules and formal government sanctions for failure to comply. Instead, alternative regulatory approaches involve the use of private ingenuity and the economic forces of the marketplace to develop better long-term solutions to problems traditionally addressed by regulation.

These approaches include:

• Marketable rights: allowing government-conferred rights to be exchanged by private parties, eliminating the need for detailed government involvement in their allocation.

• Monetary incentives: structuring fees or subsidies (rather than government-enforced standards) that encourage private sector achievement of regulatory goals.

• Performance standards: replacing regulations that specify the means of compliance (usually detailed design standards) with more general standards. These standards are based on desired overall performance levels, leaving regulated firms free to find the most efficient means of compliance.

• Information disclosure: replacing direct regulation with programs that give customers information about products and services.

• Enhanced competition: achieving needed regulatory goals more efficiently by adjusting market structure through the removal of barriers, governmental or nongovernmental, to market entry or limits on the services that may be provided.

• Tiering: tailoring regulatory requirements, usually recordkeeping and reporting requirements and compliance responsibilities, according to the nature of the regulated entity so as to achieve more cost-effective attainment of regulatory goals (e.g., different requirements for small businesses).

The remaining paragraphs provide an overview of the sectors that may be most significantly affected by regulations described in this edition of the Calendar. We present industrial impacts by major SIC division; where appropriate, we also present data for particular industries within the major divisions. We only tabulated impacts when they were industry-specific; we did not include other all- or multi-industry impacts in the tabulations we present below. Because our goal is to present an overview rather than a detailed analysis, we limited the information we present here to direct impacts and important indirect impacts.

Of the 167 regulations appearing in the Calendar, approximately 82 affect Manufacturing. Within the Manufacturing Division, regulatory impacts are most frequent on chemical and allied products (19), primary metal industries (12), transportation equipment (13), and electrical and electronic machinery, equipment, and supplies (11).

Trade industries are affected by 33 regulations, with wholesale and retail establishments each being affected by 28 regulations. A substantial number of regulations also affect Service Industries (40), with 7 affecting various membership organizations, 7 affecting health services, and 10 involving other business services. Twenty-six regulations affect Transportation, 22 regulations affect Construction, and 18 affect Mining.

Of the 18 regulations affecting the Finance sector, 6 affect banking. Electric, Gas, and Sanitary Services are affected by 25 regulations, with a majority affecting electric and gas services. The Communications sector is affected by 14 regulations. The Divisions affected least are Agriculture (8); Real Estate (2); and Insurance (2). This edition of the Calendar contains 2 regulations with impacts on Forestry and 2 with impacts on Fishing.

Of the 79 regulations affecting consumers, 20 deal with health and safety issues. Seventeen of these regulations affect the consumers of manufactured products. Of the 29 regulations that affect employees, 12 affect manufacturing workers. Other population groups affected are minorities (5); children (2); and the handicapped (5). Over 60 of the regulations have direct or significant indirect effects on the general public. A total of 54 regulations have a general effect on State governments and 35 will affect local governments.

A total of 106 of the 167 entries discuss implementation of various alternative regulatory approaches. The techniques most often mentioned are performance standards (43); tiering (44); enhanced competition (32); and information disclosure (18).

Small businesses are specifically affected in 35 of the entries.

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USDA-FSIS Standards and Labeling Requirements for Mechanically Processed (Species) Product (MP(S)P) and Products in Which It Is Used	1902	Producers of Livestock Except Dairy, Poultry, and Animal Specialties			Meat Products							Consumers of Meat Products		Information Disclosure; Performance Standards
DOC-NOAA Regulations Implementing a Fishery Management Plan for the Groundfish Fishery for the Bering Sea/Aleutian Island Area	1690	Commercial Fishing for Groundfish in Bering Sea/Aleutian Island Area			Fish Processing		Exporting of Fish Products				Alaska	Consumers of Groundfish; General Public; Alaska		
DOC-NOAA-OCZM Channel Islands National Marine Sanctuary Regulations; Point Reyes - Farallon Islands National Marine Sanctuary Regulations	1692	Commercial Fishing	Oil and Gas Extraction						Tourism		California	Channel Islands, Santa Barbara, Point Reyes, & Farallon Islands; Recreational Fishermen; General Public; Endangered Species & Marine Life		Enhanced Competition

PLEASE SEE INTRODUCTION FOR EXPLANATION OF CATEGORIES

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DOD-DOA 1697 Regulatory Program of the Corps of Engineers									Commercial Enterprises Desiring To Fill U.S. Waters	State Water Planning Agencies	Landowners and Organizations Desiring To Fill U.S. Waters; General Public		
ED-OCR 1858 Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance								Institutions of Higher Education		State and Local Educational Agencies	Handicapped People; Programs Receiving Federal Financial Assistance from the Department of Education		
ED-OCR 1859 Nondiscrimination on the Basis of Sex in Education Programs and Activities Receiving or Benefiting from Federal Financial Assistance								Educational Services; Educational Programs Receiving Federal Financial Assistance from ED		State and Local Educational Agencies	Persons Subject to Sex Discrimination in Educational Programs Funded by ED		

PLEASE SEE INTRODUCTION FOR EXPLANATION OF CATEGORIES

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ED-OPE Institutional Aid Programs	1860								Institutions of Higher Education			People Attending Institutions Receiving Grants; Low-Income Recipients; General Public		Monetary Incentives
ED-OSERS Assistance to States for Education of Handicapped Children	1861										State and Local Educational Agencies	Handicapped Children; Parents of Handicapped Children		Monetary Incentives
DOE-CE Commercial and Apartment Conservation Service Program	1670					Electric and Gas Services	Retail of Home Heating Oil	Commercial Buildings; Apartment Buildings		Occupants and Owners of Apartment and/or Commercial Buildings	State Energy Conservation Programs	Apartment Dwellers; General Public		
DOE-CE Energy Conservation Program for Consumer Products Other Than Automobiles	1671				Major Household Appliances							Consumers of Major Household Appliances; General Public		Performance Standards

PLEASE SEE INTRODUCTION FOR EXPLANATION OF CATEGORIES

INDEX I - SECTORS AFFECTED BY REGULATORY ACTION

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DOE-CE Residential Conservation Service Program	1673				Energy Conservation and Renewable Resource Products	Electric and Gas Utilities	Wholesale and Retail Sale of Energy Conservation and Renewable Resource Products		Lenders and Installers of Energy Conservation and Renewable Resource Products		State Energy Conservation Programs	Owners of Residential Buildings; Tenants of Residential Buildings; General Public		
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HHS-HCFA Consolidation of Medicare and Medicaid Regulations for Survey and Certification of Health Care Facilities	1775								Health Services		State Health and Social Services Departments	Consumers of Health Services		Tiering

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HHS-HCFA 1777 Medicaid Regulations Affecting States				Medical Suppliers Participating in Medicaid Programs				Providers, Practioners Participating in Medicaid Programs		State Medicaid Agencies	Recipients of Medicaid Services		
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DOL-OSHA Respiratory Protection	1803			Construction	Manufacturing; Safety Appliances and Equipment; Engineering Control Equipment	Maritime				General Industry		Workers Exposed to Hazardous Substances	Small Businesses Having Employees Exposed to Hazardous Substances	Performance Standards
DOL-OSHA Standard for Employee Exposures to Toxic Substances in Laboratories	1804									Establishments Using OSHA-Regulated Chemicals and Subject to OSHA Regulations		Employees Working in Laboratories Using OSHA-Regulated Chemicals		Performance Standards
DOL-OSHA Standard for Occupational Exposure to Asbestos	1807			Construction	Primary Asbestos Products; Asbestos Substitutes					Other Industries Using Asbestos Products		Workers in Industries Producing or Using Asbestos Products; Consumers of Asbestos Products; General Public	Small Businesses Using Asbestos	Tiering; Performance Standards

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DOL-OSHA Standard for Occupational Exposure to Lead	1810				Primary Metal Industries; Lead Users, Smelting and Refining; Storage Batteries; Shipbuilding and Repairing; Industrial Pigments		Wholesale of Scrap and Waste Material; Metals and Minerals, Except Petroleum			Other Industries Using Lead		Employees of Primary Metal Industries Exposed to Lead; Consumers of Products Containing Lead	Small Businesses Having Employees Exposed to Lead	Tiering; Performance Standards

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DOL-OSHA 1812 Standard for Occupational Exposure to Noise				Manufacturing	Maritime; Electric, Gas, and Sanitary Services				General Industry		Workers Exposed to Noise Covered Under OSHA's General Industry Standards	Small Businesses	Tiering; Performance Standards
DOT-FHWA 1945 Design Standards for Highways -- Geometric Design Standards for Resurfacing, Restoration, and Rehabilitation (RRR) of Streets and Highways Other Than Freeways			Highway and Street Construction	Highway Construction Materials				Engineering Services		State and Local Highway Agencies	Users of Highways; General Public		
DOT-MARAD 1905 Construction-Differential Subsidy Repayment; Total Repayment Policy				Shipbuilding	Deep Sea Foreign and Domestic Water Transportation				Shippers of Goods by Deep Sea Transportation and Their Business Customers		Consumers of Goods Shipped by Deep Sea Transportation; General Public		Tiering
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DOT-OST Nondiscrimination on the Basis of Handicap	1890				Wheelchair Lifts and Accessibility Equipment						State and Local Mass Transportation Agencies	Handicapped People; General Public		Performance Standards; Monetary Incentives
DOT-OST Special Air Traffic Rules and Airport Traffic Patterns	1948					Air Carriers				Commercial Users of Scheduled Air Carriers, Particularly at DCA - National Airport		Air Passengers; Communities with Air Service to DCA; DCA - National Airport	Small Airline Markets	Marketable Rights; Tiering
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TREAS-ATF Implementation of the Distilled Spirits Tax Revision Act of 1979	1911				Distilled Spirits; Brandy; Wine; Alcoholic Flavorings		Importing of Distilled Spirits, Wine, and Brandy					Consumers of Distilled Spirits, Brandy, and Wine		

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TREAS-ATF 1913 Labeling and Advertising Regulations Under the Federal Alcohol Administration Act				Alcoholic Beverages		Wholesale and Retail of Alcoholic Beverages		Advertising Industry		Twenty-Two States that Have Adopted the Federal Alcohol Administration Act	Consumers of Alcoholic Beverages		Enhanced Competition
TREAS-CUSTOMS 1915 Civil Aircraft Regulations				Civil Aircraft and Parts, Domestic and Foreign	Air Transportation	Wholesale, Retail, and Importing of Civil Aircraft and Parts		Domestic and Foreign Repair of Civil Aircraft and Parts	Other Commercial Users of Civil Aircraft and Parts		Users of Civil Aircraft and Parts; General Public		
TREAS-CUSTOMS 1916 Importation of Motor Vehicles and Motor Vehicle Engines Under the Clean Air Act					Passenger Transportation by Taxicab, Bus, or Charter Service	Importing of Cars			Other Industries Owning Fleet Vehicles, such as Taxicabs and Buses		Individuals Importing Motor Vehicles and Engines		
TREAS-CUSTOMS 1917 Interest Charges on Delinquent Accounts						Importing Community	Surety Insurance				General Public		

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TREAS-IRS	Dollar-Value LIFO Inventory	1740								Accounting, Auditing, and Bookkeeping Services	All Businesses Required Under Section 471 to Keep Inventories that Use LIFO				Tiering
TREAS-OCC	Lending Limits; Unimpaired Surplus Fund	1742							National Banking Industry		Business Customers of National Banks	State and Local Governments	Customers of National Banks and Shareholders; General Public		Tiering
TREAS-OCC	Rules, Policies, and Procedures for Corporate Activities	1744							National Banking Industry		Business Customers and Shareholders of National Banks	Comments Solicited from Banking Commissioners of Each State	Customers and Shareholders of National Banks; General Public	Small Banks	Enhanced Competition; Tiering
TREAS-OCC	Use of Data Processing Equipment and Furnishing of Data Processing Services	1746							National Banking Industry	Data Processing	Business Customers of National Banks		Customers of National Banks and Shareholders; General Public	Non-Bank Suppliers of Data Processing Services	

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EPA-OANR Controls Applicable to Gasoline Refineries, Lead Phasedown Regulations	1713				Petroleum Refining					Other Commercial Users of Leaded Gasoline		Leaded Gasoline Users; General Public; Urban Dwellers	Small Petroleum Refineries	Tiering; Marketable Rights
EPA-OANR Environmental Radiation Protection Standards for Management and Disposal of Spent Nuclear Fuel, High-Level and Transuranic Radioactive Wastes	1820					Commercial Nuclear Power Plants				Other Commercial Users of Electricity Produced by Nuclear Power		Consumers of Electricity Produced by Nuclear Power; General Public; ID, SC, WA		Performance Standards
EPA-OANR Remedial Action Standards for Inactive Uranium Processing Sites	1822										AZ, CO, ID, NM, ND, OR TX, PA, UT, and WY	People Living or Working near Inactive Uranium Mill Tailings Sites in Affected States or Uranium-Contaminated Buildings; General Public		Tiering; Performance Standards

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EPA-OANR Review, and Possible Revision, of the National Ambient Air Quality Standard for Nitrogen Dioxide	1714	Agriculture			Manufacturing Industries Emitting Nitrogen Oxides; Motor Vehicles and Equipment	Electric Services; Natural Gas Pipelines				Other Industries Emitting Nitrogen Oxides	State and Local Transportation Programs; State Air Pollution Control	General Public, Particularly Persons Suffering from Respiratory Disease; Aquatic Ecosystems; the Driving Public		
EPA-OANR Review, and Possible Revision, of the National Ambient Air Quality Standards for Carbon Monoxide	1715				Motor Vehicles and Equipment	Motor Vehicles					State and Local Transportation Programs; State Air Pollution Control	Persons with Cardiovascular or Pulmonary Disease; Pregnant Women and Fetuses; Anemics; the Driving Public		
EPA-OANR Review, and Possible Revision, of the National Ambient Air Quality Standards for Particulate Matter	1716		Coal Mining		Manufacturing; Primary Metal Industry; Petroleum Refining	Electric and Sanitary Services				Other Industries Emitting Particulate Matter, Including Industries Supplying or Using Large Quantities of Fossil Fuel	State Air Pollution Control	General Public; Children and Other People with Respiratory and Cardiovascular Diseases		Tiering

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EPA-OANR 1718 Review, and Possible Revision, of the National Ambient Air Quality Standards for Sulfur Oxides (Sulfur Dioxide)	Agriculture	Coal Mining		Non-Ferrous Metal Industry; Petroleum Refining	Electric, Gas, and Sanitary Services				Other Industries Emitting Sulfur Oxides, Including Industries Supplying or Using Large Quantities of Fossil Fuel	State Air Pollution Control	General Public, Particularly Children and OtherPeople with Respiratory Diseases		
EPA-OANR 1719 Standards of Performance To Control Atmospheric Emissions from Industrial Boilers				Energy-Intensive Manufacturing Industries, Particularly Glass, Pulp and Paper, and Chemicals					Other Energy-Intensive Industries; Commercial Users of Manufactured Products, Particularly Glass, Pulp and Paper, and Chemicals	State Air Pollution Control	General Public; Consumers of Manufactured Products, Particularly Glass, Pulp and Paper, and Chemicals		Tiering; Performance Standards

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EPA-OANR-OMSAPC Fuels and Fuel Additives Protocols	1825				Petroleum Refining	Trucking; Passenger Transportation by Taxicab, Bus, or Charter Service				Other Commercial Users of Motor Vehicles		People Who Live near or Work in Plants Producing Fuels and Additives; Users of Motor Vehicles; Urban Dwellers; General Public	Firms Producing Small Amounts of Fuels or Fuel Additives	Tiering
EPA-OANR-OMSAPC Gaseous Emission Regulations for 1985 and Later Model Year Light-Duty Trucks and 1986 and Later Model Year Heavy-Duty Engines	1820			Construction	Heavy-Duty Engines and Vehicles; Light-Duty Trucks	Trucking; Busing				Other Commercial Users of Heavy-Duty Engines and Vehicles and Light-Duty Trucks		General Public, Particularly Urban Populations and People with Respiratory Disease; Users of Heavy-Duty Vehicles and Light-Duty Trucks		Performance Standards

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EPA-OANR-OMSAPC Heavy-Duty Diesel Particulate Regulations	1721			Construction	Heavy-Duty Diesel Engines and Vehicles	Trucking; Busing				Other Commercial Users of Heavy-Duty Diesel Engines and Vehicles	States with Areas in Violation of the National Ambient Air Quality Standard for TSP	General Public and Urban Populations; Purchasers of Heavy-Duty Diesel Vehicles		
EPA-OLCE Consolidated Permit Regulations	1722									All Industries	State and Local Governments			
EPA-OPTS Pesticide Registration Guidelines	1826	Agriculture and Forestry			Pesticides and Agricultural Chemicals				Chemical and Biological Testing Laboratories	Other Commercial Users of Pesticides and Agricutural Chemicals		Users of Pesticides and Agricultural Chemicals; General Public		
EPA-OPTS Premanufacture Notification Requirements and Review Procedures	1829				Chemicals		Importers of Chemical Products					Workers in the Chemical Industry; General Public		Information Disclosure; Tiering

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EPA-OPTS 1830 Toxic Substances Control Act (TSCA) Section 4 Test Rules				Chloromethane; Chlorinated Benzenes; Other Chemical Products Produced with These Chemicals				Testing Laboratories		State and Local Governments	Workers Exposed to Industrial Chemicals in Production and Handling; Consumers of Formulated Products Containing the Chemicals; General Public		Tiering
EPA-OSWER 1834 Hazardous Waste Regulations: Phase II Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities			Construction of Hazardous Waste Depositories	Industries Generating Hazardous Wastes	Hazardous Waste Management Industry				All Industries Generating Hazardous Wastes; Consumers of Goods Produced by Waste-Generating Industries	State and Local Governments	Persons Living or Working near Hazardous Waste Disposal Sites; General Public		Performance Standards; Tiering; Marketable Rights
EPA-OW 1723 A Review of Proposed Effluent Limitations Guidelines and Standards Controlling the Discharge of Pollutants from Steam Electric Power Plants				Anti-Pollution Equipment; Manufacturing Industries Using Electricity	Electric Services				Other Commercial Users of Electricity		General Public; Users of Electric Energy		Tiering; Performance Standards

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EPA-OW 1726 BCT Effluent Limitations Guidelines Controlling the Discharge of Pollutants from Pulp, Paper, and Paperboard Mills into Navigable Waterways				Pulp, Paper, and Paperboard Mills; Pollution Abatement Equipment					Commercial Users of Pulp, Paper, and Paperboard Products		Consumers of Pulp, Paper, and Paperboard Products; General Public		Performance Standards
EPA-OW 1837 Control of Organic Chemicals in Drinking Water				Water Supply Equipment	Public and Private Water Supply Systems	Wholesale of Water Supply Equipment		Sanitary Engineers	Commercial Users of Water	State and Local Governments Implementing Drinking Water Programs	Water Consumers; General Public		Performance Standards
EPA-OW 1728 Effluent Limitations Guidelines and Pretreatment Standards, and New Source Standards Controlling the Discharge of Pollutants from Metal Finishing Facilities				Metal Finishing; Pollution Abatement Equipment					Other Industries with Electroplating and Metal Finishing Operations; Commercial Users		Aquatic Environment; General Public		Tiering; Performance Standards
EPA-OW 1731 Effluent Limitations Guidelines and Standards Controlling the Discharge of Pollutants from Foundries to Navigable Waterways and the Pretreatment of Wastewaters Introduced into Publicly Owned Treatment Works				Iron and Steel Foundries; Non-Ferrous and Ferrous Cast Products					All Commercial Users of Foundry Products		General Public; Consumers of Foundry Products		Performance Standards

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EPA-OW 1733 Effluent Limitations Guidelines and Standards Controlling the Discharge of Pollutants from Iron and Steel Manufacturing Plants to Navigable Waterways and the Pretreatment of Wastewaters Introduced into Publicly Owned Treatment Works			Construction	Iron and Steel; Manufacturing Industries Using Iron and Steel Products					Other Commercial Users of Iron and Steel Products		Consumers of Iron and Steel Products; General Public		Performance Standards
EPA-OW 1736 Effluent Limitations Guidelines and Standards Controlling the Discharge of Pollutants from Organic Chemicals and Plastic/Synthetic Fibers to Navigable Waterways and the Pretreatment of Wastewaters Introduced into Publicly Owned Treatment Works				Plastic Materials and Synthetic Resins, Synthetic Rubber, Synthetic and Other Man-Made Fibers, Except Glass; Industrial Organic Chemicals					All Commercial Users of Organic Chemicals and Plastic/Synthetic Fibers		General Public		Performance Standards
EEOC-OPI 1893 Guidelines on Discrimination Because of Sex; Sexual Harassment									Employers of 15 or More Employees		Employees in Industries Subject to Title VII of the Civil Rights Act of 1964		

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EEOC-OPI Uniform Guidelines on Employee Selection Procedures	1894									All Employers Subject to Title VII of the Civil Rights Act of 1964		All Employees Subject to Title VII of the Civil Rights Act of 1964		
FEMA Review and Approval of State and Local Radiological Emergency Plans and Preparedness	1838				Manufacturing	Nuclear Power Plants				Other Commercial Users of Electricity Produced by Nuclear Power	State and Local Radiological Emergency Programs	Consumers of Electricity Produced by Nuclear Power; General Public		Performance Standards
FEMA Review of the National Flood Insurance Flood Plain Management Criteria for Flood-Prone Areas	1840										Communities in Flood-Prone Areas; State Coordinating Agencies	Persons Living in Flood-Prone Areas; General Public		Tiering; Performance Standards

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GSA-ADM Nondiscrimination in Federally Assisted Programs	1895								Membership Organizations; Charitable Organizations		State and Local GSA-Funded Programs and Activities	General Public; Special Populations (e.g., Hispanic, Women, Handicapped); GSA-Funded Programs and Activities	Small Business	Tiering
GSA-FPRS National Defense Stockpile Disposal Regulations	1919				Manufacturing; Trade Journals					Other Industries Supplying, Trading, and Using Basic Industrial Raw Materials				
GSA-PBS Federal Space Management	1899									All Federal Agencies		All Federal Agencies; General Public; Central Business Areas of Cities Where Government Agencies Could Relocate		Enhanced Competition

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OPM-OPE Standards for a Merit System of Personnel Administration	1900										State and Local Government Recipients of Federal Grants			Performance Standards
CAB Elimination of the Mandatory Joint Fare System	1951					Air Transportation						Air Travelers	Small Airlines; Small Communities	Enhanced Competition
CAB Essential Air Service Subsidy Guidelines	1953					Air Transportation				Industries in Small Communities		Small Communities; Air Passengers to and from These Communities; General Public	Small Commuter Airlines	Monetary Incentives
CAB Notice to Passengers of Conditions of Carriage	1955					Air Transportation; Travel Agencies						Air Passengers		Information Disclosure

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CFTC 1747 Gross Margining of Omnibus Accounts							Futures Commission Merchants; Contract Markets				Commodity Traders Who Participate Through Non-Member Futures Commission Merchants		Information Disclosure
CFTC 1748 Large Trader Reporting to Exchanges and Reporting Open Positions							Commodity Exchanges; Futures Commission Merchants; Foreign Brokers		Commercial Users of and Speculators in Commodity Futures		Consumers of and Speculators in Commodities		
CFTC 1750 Notice of Proposed Rulemaking for Options on Physical Commodities							Futures Commission Merchants	Boards of Trade	Commercial Hedgers		Trading Public		Tiering; Enhanced Competition
CFTC 1751 Proposed Rule Concerning Special Calls for Information from Traders							Commodity Domestic Futures Commission Merchants; Foreign Brokers and Traders		Commercial Users of and Speculators in Commodities		Consumers of and Speculators in Commodities		Information Disclosure

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CPSC Chronic Hazards Associated with Benzidine Congener Dyes in Consumer Dye Products	1843				Dye		Consumer Dye Product Industry					Consumers of Benzidine Congener Dyes, including Home Dyes; Crafts-people; Hobbyists		
CPSC Consumer Products Containing Asbestos	1845		Asbestos	Construc-tion	Asbestos Products		Wholesale and Retail of Asbestos Products					Consumers of Asbestos Products; General Public		Information Disclosure
CPSC Omnidirectional Citizens Band Base Station Antenna Standard	1846			Instal-lation of CB Base Station Omnidi-rectional Antennas	CB Base Station Omnidi-rectional Antennas		Wholesale, Retail, and Importing of CB Base Station Omnidi-rectional Antennas			Commercial Users of CB Base Station Omnidi-rectional Antennas		Consumers of CB Base Station Omnidi-rectional Antennas		Information Disclosure
CPSC Safety Requirements for Chain Saws	1848	Forestry			Chain Saws and Components		Wholesale and Retail of Chain Saws			Industries Using Chain Saws		Profes-sional and Consumer Users of Chain Saws		Perfor-mance Standards

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CPSC Upholstered Furniture Cigarette Flammability Standard	1850				Upholstered Furniture; Textile Mill Products; Raw Materials for Furniture		Wholesale and Retail of Upholstered Furniture and Mill Products				California	Consumers of Upholstered Furniture; Cigarette Smokers	Small Businesses	Performance Standards
CPSC Urea Formaldehyde Foam (UFF) Insulation	1852			Installation of UFF Insulation	UFF Insulation		Wholesale, Retail, and Importing of UFF Insulation			Commercial Users of UFF Insulation	Several States that Have Taken Some Action on UFF Insulation	Consumers of UFF Insulation, Particularly People Sensitized to Formaldehyde and People with Respiratory Illness and Allergies; General Public		Information Disclosure; Performance Standards
FCC Amendment of the Commission's Rules To Allocate Spectrum in the Frequency Band of 18 Gigahertz (GHz) for Microwave Radio Stations Called Digital Termination Systems and for Point-to-Point Microwave Stations for the Provision of Common Carrier, Private Radio, and Broadcast Auxiliary Services; and for the Private Radio Use of Digital Termination, etc.	1956				Radio Transmitting, Signaling, and Detection Equipment and Apparatus	Communication		Financial Users of Digital Termination Systems	Users of Digital Termination Systems	Commercial Users of Digital Termination Systems	Local Government Users of Digital Termination Systems	Consumers of Digital Termination Systems	Small Businesses Using Digital Termination Systems	Marketable Rights

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FCC 1959 Authorization of Teletext Service by Broadcast Television Stations (Broadcast Docket No. 81-741)				Radio and Television Transmitting, Signaling, and Detection Equipment and Apparatus	Radio and Television Broadcasting; Communication Services Not Elsewhere Classified	Wholesale and Retail of Radio Equipment		News Syndicates	Other Information Providers		Radio and Television Users		Enhanced Competition; Marketable Rights
FCC 1960 Deregulation of Competitive Domestic Telecommunications Market (Common Carrier Docket 79-252)					Telecommunications Industry				Commercial Telecommunications Users		Telecommunications Users	Small Business	Enhanced Competition; Tiering
FCC 1962 Further Inquiry into the Problem of Radio Frequency Interference to Electronic Equipment (General Docket No. 78-369; FCC 81-267)				Electronic Equipment	Communication; Radio and Television Broadcasting; Common Carriers				Users of Consumer Communication Equipment		Persons with Pacemakers and Hearing Aids		Performance Standards; Information Disclosure
FCC 1964 Implementation of the Final Acts of the World Administrative Radio Conference, Geneva 1979 (General Docket No. 80-739)					Communication				All Users of Communication Devices and Services; Commercial Providers		General Public; Users of Radio Frequency Spectrum		

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FCC 1965 Inquiry into Creation of "New" Personal Radio Service (PR Docket 79-140)				Radio Transmitting, Signaling, and Detection Equipment and Apparatus	Radio Broadcasting	Wholesale and Retail of Electronic Parts and Equipment			Other Commercial Users of Radio Transmitting, Signaling, and Detection Equipment and Apparatus		Users of Two-Way Radios; Owners of Home Entertainment Equipment		
FCC 1966 Inquiry into the Development of Regulatory Policy for Direct Broadcast Satellites (General Docket No. 80-603)					Local TV and Cable Stations; Television Programs; Television Broadcasting Stations; Cable Systems						Viewers, Especially in Remote Areas and Cities		
FCC 1968 Inquiry into the Future Role of Low Power Television Broadcasting and Television Translators in the National Telecommunications System (Broadcast Docket No. 78-253; RM-1932; FCC 80-503)				Radio and Television Transmitting, Signaling, and Detection Equipment and Apparatus	Television Broadcasting Industry, including Subscription Television and Cablevision Services	Wholesale and Retail Trade of Electrical Apparatus and Equipment					Television Users, Particularly in Rural and Mountainous Areas; Minorities		Enhanced Competition

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	AGRICULTURE, FORESTRY, FISHING	MINING	CONSTRUCTION	MANUFACTURING	TRANSPORTATION, COMMUNICATIONS, ELECTRIC, GAS, AND SANITARY SERVICES	WHOLESALE AND RETAIL TRADE	FINANCE, INSURANCE, REAL ESTATE	OTHER SERVICES	ALL OR MULTI-INDUSTRY	STATE, LOCAL GOVERNMENT	POPULATION GROUPS, GEOGRAPHIC AREAS	SMALL BUSINESS	
FCC 1969 Procedures for Implementing the Deregulation of Customer Premises Equipment and Enhanced Services					Telecommunications Industry					State Communications Regulatory Agencies	Telecommunications Users		Enhanced Competition
FCC 1971 Release, Allocation, and Criteria for Use of the 250 Remaining Channels in the 806-821/851-866 MHz Bands (PR Docket 79-191)				Radio Transmitting, Signaling, and Detection Equipment and Apparatus		Wholesale and Retail of Radio Transmitting, Signaling, and Detection Equipment and Apparatus					Users of Radio Equipment Operating in the Bands 806-821 MHz and 851-866 MHz; Large Urban Area Users		Enhanced Competition
FEC 1919 Communications by Corporations or Labor Organizations								Membership Organizations, Including Trade Associations and Labor Organizations	Corporations in All Industries				

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			AGRICULTURE, FORESTRY, FISHING	MINING	CONSTRUCTION	MANUFACTURING	TRANSPORTATION, COMMUNICATIONS, ELECTRIC, GAS, AND SANITARY SERVICES	WHOLESALE AND RETAIL TRADE	FINANCE, INSURANCE, REAL ESTATE	OTHER SERVICES	ALL OR MULTI-INDUSTRY	STATE, LOCAL GOVERNMENT	POPULATION GROUPS, GEOGRAPHIC AREAS	SMALL BUSINESS	
FEC	Transfers of Funds; Collecting Agents, Joint Fundraising	1921								Political Organizations Engaging in Joint Fundraising Activity for Federal Election Process					
FERC	Blanket Certificates for Interstate Pipelines and Local Distribution Companies	1674		Natural Gas			Interstate and Local Natural Gas Distribution						Natural Gas Consumers		
FERC	Construction Work in Progress for Public Utilities	1676					Electric Services				All Commercial Users of Electricity		Consumers of Electricity; Investors in Electric Utilities		Tiering
FERC	High-Cost Natural Gas: Production Enhancement Procedures	1678		Natural Gas Production		Manufacturing	Natural Gas Transmission and Distribution				Other Business Users of Natural Gas	State Jurisdictional Agencies	Consumers of Natural Gas; General Public		Performance Standards

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	AGRICULTURE, FORESTRY, FISHING	MINING	CONSTRUCTION	MANUFACTURING	TRANSPORTATION, COMMUNICATIONS, ELECTRIC, GAS, AND SANITARY SERVICES	WHOLESALE AND RETAIL TRADE	FINANCE, INSURANCE, REAL ESTATE	OTHER SERVICES	ALL OR MULTI-INDUSTRY	STATE, LOCAL GOVERNMENT	POPULATION GROUPS, GEOGRAPHIC AREAS	SMALL BUSINESS	
FERC 1680 Procedures Governing Applications for Special Relief Under Sections 104, 106, and 109 of the Natural Gas Policy Act of 1978		Natural Gas Production		Manufacturing	Natural Gas Transmission and Distribution				Other Business Users of Natural Gas		Consumers of Natural Gas		Tiering
FERC 1681 Rate of Return on Common Equity for Electric Utilities	Agriculture			Manufacturing	Electric Services				Other Business Users of Electricity; Investors in Electric Services		Consumers of Electricity; Investors in Electric Services		Tiering
FERC 1684 Regulations Governing Applications for Major Unconstructed Projects			Hydroelectric Power Projects	Manufacturing	Hydroelectric Power				Other Business Users of Hydroelectric Power	State and Local Hydroelectric Power Projects	Consumers of Hydroelectric Power; General Public		Tiering
FERC 1685 Regulations Implementing Section 110 of the Natural Gas Policy Act of 1978 and Establishing Policy Under the Natural Gas Act		Natural Gas Production		Manufacturing	Natural Gas Transmission and Distribution				Other Business Users of Natural Gas		Consumers of Natural Gas		

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FERC	Revised Rules of Practice: Procedures To Expedite Trial-Type Proceedings	1688		Natural Gas		Manufacturing	Oil and Natural Gas Transmission and Distribution; Electric Services; Hydroelectric Power; Cogeneration				Other Business Users of Natural Gas, Oil, and Electric Services		Consumers of Natural Gas, Oil, and Electric Services	Small Power Producers	Tiering
FHLBB	Consumer Leasing by Federal Associations	1752							Federally Chartered Savings and Loan Associations; Banks and Other Entities Currently Offering Consumer Leasing Services				Depositors in Federally Chartered Savings and Loan Associations; Consumers Wishing To Lease Personal Property		Enhanced Competition
FRS	Simplification of Securities Credit Regulations	1753							Banking; Credit Agencies Other Than Banks; All Other Lenders of Margin Credit				Borrowers Who Use Margin Credit		Enhanced Competition

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FTC	Proposed Amendment to Eyeglasses Rule and Eyeglasses II	1922						Retail Ophthalmic Industry		Ophthalmologists; Optometrists; Opticians		State Regulation of Ophthalmic Industry	Consumers of Eyeglasses and Contact Lenses; Elderly or People with Limited Mobility	Small Opticianries	Enhanced Competition; Information Disclosure
FTC	Proposed Rule on Standards and Certification	1927				Manufacturing				Business Associations; Professional Membership Organizations; Commercial Testing Laboratories	All Business Users of Standards, Certification, and Affected Products		Private Users of Standards, Certification, and Affected Products	Small Manufacturers Requiring Standards and Certification	Tiering; Performance Standards; Information Disclosure; Enhanced Competition
FTC	Proposed Trade Regulation Rule Concerning Credit Practices	1930						Retail Trade of Consumer Products	Credit Agencies, Excluding Banks; Other Establishments Providing Consumer Credit	Adjustment and Collection Agencies		State Regulation of Consumer Credit	Consumer Debtors		

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FTC 1934 Proposed Trade Regulation Rule on Mobile Home Sales and Service				Mobile Homes		Retail Trade of Mobile Homes				State Mobile Home Regulation	Purchasers of Mobile Homes		Performance Standards; Information Disclosure; Enhanced Competition
FTC 1938 Review of Premerger Notification Rules and Report Form									Businesses with Certain Assets or Sales		Customers and Competitors of Certain Businesses		Tiering
FTC 1939 Revision to Trade Regulation Rule Pertaining to Proprietary Vocational and Home Study Schools								Vocational Schools		State Enforcement Agencies			Information Disclosure
ICC 1972 Application Procedures for a Certificate To Construct, Acquire, or Operate Railroad Lines					Railroads; Shippers					State Governments	General Public		
ICC 1974 Coal Rate Guidelines -- Nationwide		Coal Mines			Railroads; Utilities				All Other Purchasers of Coal and Users of Railroads		Utility Company Rate Payers		
ICC 1976 Railroad Consolidation Procedures					Railroads			Legal Services					

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		AGRICULTURE, FORESTRY, FISHING	MINING	CONSTRUCTION	MANUFACTURING	TRANSPORTATION, COMMUNICATIONS, ELECTRIC, GAS, AND SANITARY SERVICES	WHOLESALE AND RETAIL TRADE	FINANCE, INSURANCE, REAL ESTATE	OTHER SERVICES	ALL OR MULTI-INDUSTRY	STATE, LOCAL GOVERNMENT	POPULATION GROUPS, GEOGRAPHIC AREAS	SMALL BUSINESS	
PRC Electronic Mail Classification Proposal, Docket No. MC78-3 (Remand)	1977					U.S. Postal Service; Telecommunications Industry						Large-Volume Mailers		Enhanced Competition
PRC Postal Rate Commission Docket No. MC80-1 -- E-COM Forms of Acceptance, 1980	1978					Telecommunications Industry; U.S. Postal Service				Business Users of Large-Volume Mailers' Goods and Services		Large-Volume Mailers; Recipients of Mail Throughout the Nation		Enhanced Competition
PRC Postal Rate Commission Docket Nos. MC81-2 and R81-1 -- Attached Mail Proceeding, 1981	1980				Periodicals; Publishing	U.S. Postal Service	Mail Order Houses			Business Users of the Mail		Large-Volume Mailers; Recipients of Attached Mail		
SEC Proposed Revision of Form S-14 and Other Forms and Rules Relating to Disclosure in Connection with Business Combination Transactions	1754							Security Brokers and Dealers	Attorneys Retained by Publicly Held Companies Engaged in Business Combination Transaction	Publicly Held Companies Engaged in Business Combination Transaction; Business Investors		Shareholders of Companies Seeking To Acquire or Be Acquired; Persons Using SEC Information		Tiering

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SEC	Proposed Revision of Regulation S-K and Guides for the Preparation and Filing of Registration Statements and Reports	1756							Security Brokers and Dealers		Publicly Held Companies Required To File Periodic Reports with SEC; Business Investors in These Companies		Investors and Those Seeking Proxies in Publicly Held Companies Required To File Periodic Reports with SEC		
SEC	Reproposal of Comprehensive Revision to System for Registration of Securities Offerings	1758							Security Brokers and Dealers; Investment Advisory Companies; and Institutional Investors		Publicly Held Companies Required To Register Securities with SEC; Business Investors in These Companies		Investors in Publicly Held Companies Required To Register with SEC		Tiering
SEC	Simplification of Investment Company Prospectuses	1760							Registered Investment Companies		Business Investors in Registered Investment Companies		Current and Prospective Investors in Registered Investment Companies		Tiering

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INDEX II - DATE OF NEXT REGULATORY ACTION

This index provides a quick reference to the status of each of the regulations under development that agencies describe in this edition of the Calendar. The index indicates the month(s) in which the agency plans to take the next scheduled regulatory action.The index is organized alphabetically by agency, unit within the agency, and then by title of the regulation. We also provide the page number where you can find each entry in this edition of the Calendar so you can locate specific details in the "Timetable" section of that entry. The actions we note fall into four general categories: ANPRM (Advance Notice of Proposed Rulemaking), NPRM (Notice of Proposed Rulemaking), Final Rule, and Other (any important next action that does not fall into the previous three categories). Independent agencies are most likely to have "Other" actions, such as Staff Recommendations or Commission Decisions.

Of the 167 entries described in this edition of the Calendar, 57, or about 34 percent, of the entries have "Final Rule" scheduled as the next regulatory action; NPRMs are scheduled as the next action for 50 (about 30 percent); and 15 (about 9 percent) list ANPRMs as the next action. Of the remaining entries, 37 list "Other" regulatory actions, 2 do not have next actions scheduled yet, and 6 involve multiple actions.To review the overall schedule that the agency anticipates for each regulation under development, the reader should turn to the specific entry and refer to the "Timetable" section.

Note: In most cases, the agency can only estimate these dates. For current information on any action, please call the "Agency Contact" listed for the specific entry.

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USDA-FSIS 1902 Standards and Labeling Requirements for Mechanically Processed (Species) Product (MP(S)P) and Products in Which It Is Used					<———	F	———>								
DOC-NOAA 1690 Regulations Implementing a Fishery Management Plan for the Groundfish Fishery for the Bering Sea/Aleutian Island Area	<—F—>														
DOC-NOAA-OCZM 1692 Channel Islands National Marine Sanctuary Regulations; Point Reyes - Farallon Islands National Marine Sanctuary Regulations			<—F—>												
DOD-DOA 1697 Regulatory Program of the Corps of Engineers		<———	O	———>											
ED-OCR 1858 Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance							<—N—>								
ED-OCR 1859 Nondiscrimination on the Basis of Sex in Education Programs and Activities Receiving or Benefiting from Federal Financial Assistance							<—N—>								
ED-OPE 1860 Institutional Aid Programs		<—F—>													
ED-OSERS 1861 Assistance to States for Education of Handicapped Children					<—N—>										
DOE-CE 1670 Commercial and Apartment Conservation Service Program	REVISED NPRM -- SOON														

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DOE-CE Energy Conservation Program for Consumer Products Other Than Automobiles 1671	REVISED NPRM -- SOON														
DOE-CE Residential Conservation Service Program 1673	FINAL RULE -- AS SOON AS PRACTICABLE AFTER JAN. 20, 1982														
HHS-FDA Abbreviated New Drug Applications for New Drugs Approved After October 10, 1962, for Human Use 1765				<-N->											
HHS-FDA Chemical Compounds Used in Food-Producing Animals; Criteria and Procedures for Evaluating Assays for Carcinogenic Residues 1766								<-------O------->							
HHS-FDA Food Labeling; Declaration of Sodium Content of Foods and Label Claims for Foods on the Basis of Sodium Content 1769		<-------N------->													
HHS-FDA New Drug Approval Process; Revision of Regulations Governing the Clinical Investigation of Drugs and Approval for Marketing 1771				<-N->									<-N->		
HHS-FDA Prescription Drug Products; Patient Package Inserts Requirements 1773	OTHER -- TO BE DETERMINED														
HHS-HCFA Conditions of Participation for Nursing Homes 1774	NPRM -- TO BE DETERMINED														
HHS-HCFA Consolidation of Medicare and Medicaid Regulations for Survey and Certification of Health Care Facilities 1775					<-------N------->										

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HHS-HCFA 1777 End-Stage Renal Disease Program: Incentive Reimbursement for Dialysis Services	NPRM -- TO BE DETERMINED														
HHS-HCFA 1777 Medicaid Regulations Affecting States	NPRMS -- TO BE DETERMINED														
HHS-HRA 1778 Health Planning and Resources Development	MULTIPLE ACTIONS -- TO BE DETERMINED														
HHS-OHDS DOL-ETA 1862 Work Incentive Programs for Aid to Families with Dependent Children (AFDC) Recipients Under Title IV of the Social Security Act			<--O-->												
HUD-CPD 1865 Community Development Block Grants - Small Cities Program		<--O-->													
HUD-CPD 1864 Community Development Block Grants (CDBG) - Entitlement			<--O-->												
HUD-CPD 1866 Environmental Review Procedures for Title I, Community Development Block Grant Programs		<--O-->													
HUD-CPD 1698 Protection and Enhancement of Environmental Quality			<--O-->												
HUD-CPD 1780 Siting of HUD-Assisted Projects near Hazardous Operations Handling Conventional Fuels or Chemicals of an Explosive or Flammable Nature					<--F-->										
HUD-HOUS 1869 Income Eligibility and Rent for Public Housing, Section 8 Housing Assistance Payment Program, Section 236 Mortgage Insurance Program, and Section 101 Rent Supplement Program				<--O-->											

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HUD-HOUS 1781 Manufactured Home Construction and Safety Standards					<--N-->										
HUD-HOUS 1783 Minimum Property Standards for Multi-Family Dwellings	<--N-->														
HUD-HOUS 1870 Public Housing Lease and Grievance Procedures		<--N-->													
HUD-HOUS 1871 Revision to Public Housing Utility Allowances		<--O-->													
DOI-BLM 1699 Coal Management Regulations	N-->														
DOI-FWS 1702 Regulations Promulgated Under the Endangered Species Act (ESA) of 1973		<--O-->													
DOI-FWS DOC-NOAA 1700 Fish and Wildlife Coordination Act: Notice of Proposed Rulemaking and Availability of Draft Environmental Impact Statement	NEXT ACTION -- TO BE DETERMINED														
DOI-NPS 1704 Right-of-Way Regulations					<--N-->										
DOI-NPS 1705 Uniform Rules and Regulations for the Protection and Conservation of Archaeological Resources Located on Public and Indian Lands					<----F---->										
DOI-OSM 1709 Permanent Regulatory Program of the Surface Mining Control and Reclamation Act	----N---->														

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DOJ-CRD 1873 Coordination of Enforcement of Nondiscrimination in Federally Assisted Programs	<--N-->														
DOJ-CRD 1876 Regulation Prohibiting Discrimination on the Basis of Age in Federally Assisted Programs							<--F-->								
DOJ-CRD 1878 Regulation Prohibiting Discrimination on the Basis of Sex in Education and Training Programs Receiving Federal Financial Assistance							<--N-->								
DOJ-CRD EEOC 1875 Procedures for Complaints of Employment Discrimination Filed Against Recipients of Federal Funds		<--F-->													
DOL-ESA 1879 Defining and Delimiting the Terms "Any Employee Employed in a Bona Fide Executive, Administrative, or Professional Capacity"	OTHER -- SEE ENTRY FOR DETAILS														
DOL-ESA 1881 Labor Standards for Federal Service Contracts	OTHER -- SEE ENTRY FOR DETAILS														
DOL-ESA 1883 Labor Standards Provisions, Davis-Bacon and Related Acts	OTHER -- SEE ENTRY FOR DETAILS														
DOL-ESA 1884 Office of Federal Contract Compliance Programs, Government Contractors' Affirmative Action Requirements	OTHER -- SEE ENTRY FOR DETAILS														
DOL-LMSA-PWBP 1886 Definition of Plan Assets and Establishment of Trust	FINAL RULE -- TO BE DETERMINED														

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DOL-LMSA-PWBP 1887 Individual Benefit Reporting and Recordkeeping for Multiple Employer Plans	FINAL RULE -- TO BE DETERMINED														
DOL-LMSA-PWBP 1889 Individual Benefit Reporting and Recordkeeping for Single Employer Plans	FINAL RULE -- TO BE DETERMINED														
DOL-MSHA 1784 Civil Penalties for Violations of the Federal Mine Safety and Health Act of 1977	FINAL RULE -- TO BE DETERMINED														
DOL-MSHA 1786 Review of Metal and Nonmetal Standards		<--A-->													
DOL-OSHA 1786 Access to Employee Exposure and Medical Records			<--O-->												
DOL-OSHA 1789 Hazard Communication		<--N-->													
DOL-OSHA 1792 Hearing Conservation Amendment	OTHER -- TO BE DETERMINED														
DOL-OSHA 1794 Identification, Classification, and Regulation of Potential Occupational Carcinogens -- The "Cancer Policy"		<--A-->													
DOL-OSHA 1795 Methods of Compliance Hierarchy		<--A-->													
DOL-OSHA 1796 Occupational Exposure to Cotton Dust		<--A-->													
DOL-OSHA 1798 OSHA Commercial Diving Operations Standard	MULTIPLE ACTIONS -- SEE ENTRY FOR DETAILS														

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DOL-OSHA 1799 OSHA General Industry Standard for Walking and Working Surfaces, and Construction Safety Standards for Ladders and Scaffolding, Floor and Wall Openings, and Stairways					<——N——>										
DOL-OSHA 1801 Respirator Fit Testing Requirements of the Lead Standard	FINAL RULE -- TO BE DETERMINED														
DOL-OSHA 1803 Respiratory Protection		<—A—>													
DOL-OSHA 1804 Standard for Employee Exposures to Toxic Substances in Laboratories	ANPRM -- TO BE DETERMINED														
DOL-OSHA 1807 Standard for Occupational Exposure to Asbestos	ANPRM -- TO BE DETERMINED														
DOL-OSHA 1808 Standard for Occupational Exposure to Ethylene Oxide		<—A—>													
DOL-OSHA 1810 Standard for Occupational Exposure to Lead	<——A——>														
DOL-OSHA 1812 Standard for Occupational Exposure to Noise		<—A—>													
DOT-FHWA 1945 Design Standards for Highways -- Geometric Design Standards for Resurfacing, Restoration, and Rehabilitation (RRR) of Streets and Highways Other Than Freeways		<——F——>													
DOT-MARAD 1905 Construction-Differential Subsidy Repayment; Total Repayment Policy		<——F——>													

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DOT-NHTSA Bumper Standard	1813	FINAL RULE -- TO BE DETERMINED														
DOT-NHTSA Crashworthiness Ratings	1815	FINAL RULE -- TO BE DETERMINED														
DOT-NHTSA Uniform Tire Quality Grading System	1817	<-----A----->														
DOT-OST Nondiscrimination on the Basis of Handicap	1890		<-----N----->													
DOT-OST Special Air Traffic Rules and Airport Traffic Patterns	1948	FINAL RULE -- TO BE DETERMINED														
DOT-UMTA Buy America Requirements	1909	FINAL RULE ON REVISION -- TO BE DETERMINED														
DOT-USCG Construction and Equipment for Existing Self-Propelled Vessels Carrying Bulk Liquefied Gases	1819	NPRM -- TO BE DETERMINED														
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	1711	FINAL RULE -- TO BE DETERMINED														
TREAS-ATF Implementation of the Distilled Spirits Tax Revision Act of 1979	1911		<-----F----->													
TREAS-ATF Labeling and Advertising Regulations Under the Federal Alcohol Administration Act	1913														<-F-----	
TREAS-CUSTOMS Civil Aircraft Regulations	1915		<-F->													

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TREAS-CUSTOMS 1916 Importation of Motor Vehicles and Motor Vehicle Engines Under the Clean Air Act		<--F-->													
TREAS-CUSTOMS 1917 Interest Charges on Delinquent Accounts											<----------F---------->				
TREAS-IRS 1740 Dollar-Value LIFO Inventory		<--F-->													
TREAS-OCC 1742 Lending Limits; Unimpaired Surplus Fund	<--F-->														
TREAS-OCC 1744 Rules, Policies, and Procedures for Corporate Activities	MULTIPLE ACTIONS -- SEE ENTRY FOR DETAILS														
TREAS-OCC 1746 Use of Data Processing Equipment and Furnishing of Data Processing Services	NPRM -- TO BE DETERMINED														
EPA-OANR 1713 Controls Applicable to Gasoline Refineries, Lead Phasedown Regulations		<--N-->													
EPA-OANR 1820 Environmental Radiation Protection Standards for Management and Disposal of Spent Nuclear Fuel, High-Level and Transuranic Radioactive Wastes		<--N-->													
EPA-OANR 1822 Remedial Action Standards for Inactive Uranium Processing Sites				<--F-->											
EPA-OANR 1714 Review, and Possible Revision, of the National Ambient Air Quality Standard for Nitrogen Dioxide								<----------N---------->							

A = ANPRM N = NPRM F = FINAL RULE O = OTHER

INDEX II - DATE OF NEXT REGULATORY ACTION

AGENCY / TITLE OF REGULATION / PAGE NO.	DEC 81	JAN 82	FEB 82	MAR 82	APR 82	MAY 82	JUN 82	JUL 82	AUG 82	SEP 82	OCT 82	NOV 82	DEC 82	JAN 83	FEB 83 AND BEYOND
EPA-OANR 1715 Review, and Possible Revision, of the National Ambient Air Quality Standards for Carbon Monoxide		<—F—>													
EPA-OANR 1716 Review, and Possible Revision, of the National Ambient Air Quality Standards for Particulate Matter					<—N—>										
EPA-OANR 1718 Review, and Possible Revision, of the National Ambient Air Quality Standards for Sulfur Oxides (Sulfur Dioxide)											<—N—>				
EPA-OANR 1719 Standards of Performance To Control Atmospheric Emissions from Industrial Boilers	NPRM -- TO BE DETERMINED														
EPA-OANR-OMSAPC 1825 Fuels and Fuel Additives Protocols											<—A—>				
EPA-OANR-OMSAPC 1720 Gaseous Emission Regulations for 1985 and Later Model Year Light-Duty Trucks and 1986 and Later Model Year Heavy-Duty Engines											<—N—>				
EPA-OANR-OMSAPC 1721 Heavy-Duty Diesel Particulate Regulations															FINAL RULE NOVEMBER 1983
EPA-OLCE 1722 Consolidated Permit Regulations								<—N—>							
EPA-OPTS 1826 Pesticide Registration Guidelines	MULTIPLE ACTIONS -- SEE ENTRY FOR DETAILS														
EPA-OPTS 1829 Premanufacture Notification Requirements and Review Procedures															FINAL RULE APRIL 1983

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EPA-OPTS 1830 Toxic Substances Control Act (TSCA) Section 4 Test Rules	MULTIPLE ACTIONS -- SEE ENTRY FOR DETAILS														
EPA-OSWER 1834 Hazardous Waste Regulations: Phase II Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities	MULTIPLE ACTIONS -- SEE ENTRY FOR DETAILS														NPRM - MARCH 1983
EPA-OW 1723 A Review of Proposed Effluent Limitations Guidelines and Standards Controlling the Discharge of Pollutants from Steam Electric Power Plants							<-F->								
EPA-OW 1726 BCT Effluent Limitations Guidelines Controlling the Discharge of Pollutants from Pulp, Paper, and Paperboard Mills into Navigable Waterways									<-F->						
EPA-OW 1837 Control of Organic Chemicals in Drinking Water					<-A->										
EPA-OW 1728 Effluent Limitations Guidelines and Pretreatment Standards, and New Source Standards Controlling the Discharge of Pollutants from Metal Finishing Facilities		<-N->													
EPA-OW 1731 Effluent Limitations Guidelines and Standards Controlling the Discharge of Pollutants from Foundries to Navigable Waterways and the Pretreatment of Wastewaters Introduced into Publicly Owned Treatment Works									<-N->						

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EPA-OW Effluent Limitations Guidelines and Standards Controlling the Discharge of Pollutants from Iron and Steel Manufacturing Plants to Navigable Waterways and the Pretreatment of Wastewaters Introduced into Publicly Owned Treatment Works 1733		<--F-->													
EPA-OW Effluent Limitations Guidelines and Standards Controlling the Discharge of Pollutants from Organic Chemicals and Plastic/Synthetic Fibers to Navigable Waterways and the Pretreatment of Wastewaters Introduced into Publicly Owned Treatment Works 1736								<--N-->							
EEOC-OPI Guidelines on Discrimination Because of Sex; Sexual Harassment 1893	OTHER -- TO BE DETERMINED														
EEOC-OPI Uniform Guidelines on Employee Selection Procedures 1894	OTHER -- TO BE DETERMINED														
FEMA Review and Approval of State and Local Radiological Emergency Plans and Preparedness 1838	FINAL RULE -- TO BE DETERMINED														
FEMA Review of the National Flood Insurance Flood Plain Management Criteria for Flood-Prone Areas 1841	NPRM -- TO BE DETERMINED														
GSA-ADM Nondiscrimination in Federally Assisted Programs 1895		<--N-->													
GSA-FPRS National Defense Stockpile Disposal Regulations 1919				<--F-->											
GSA-PBS Federal Space Management 1899										<--F-->					

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INDEX II - DATE OF NEXT REGULATORY ACTION

AGENCY / TITLE OF REGULATION / PAGE NO.	DEC 81	JAN 82	FEB 82	MAR 82	APR 82	MAY 82	JUN 82	JUL 82	AUG 82	SEP 82	OCT 82	NOV 82	DEC 82	JAN 83	FEB 83 AND BEYOND
OPM-OPE Standards for a Merit System of Personnel Administration 1900	<--N-->														
CAB Elimination of the Mandatory Joint Fare System 1951		<----------F---------->													
CAB Essential Air Service Subsidy Guidelines 1953					<----------F---------->										
CAB Notice to Passengers of Conditions of Carriage 1955		<----------F---------->													
CFTC Gross Margining of Omnibus Accounts 1747	NPRM -- TO BE DETERMINED														
CFTC Large Trader Reporting to Exchanges and Reporting Open Positions 1748	REVISED NPRM -- TO BE DETERMINED														
CFTC Notice of Proposed Rulemaking for Options on Physical Commodities 1750	FINAL RULE -- TO BE DETERMINED														
CFTC Proposed Rule Concerning Special Calls for Information from Traders 1751	FINAL RULE -- TO BE DETERMINED														
CPSC Chronic Hazards Associated with Benzidine Congener Dyes in Consumer Dye Products 1845										<--O-->					
CPSC Consumer Products Containing Asbestos 1843							<--O-->								
CPSC Omnidirectional Citizens Band Base Station Antenna Standard 1846					<--F-->										

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CPSC Safety Requirements for Chain Saws	1848	NEW ANPRM -- TO BE DETERMINED														
CPSC Upholstered Furniture Cigarette Flammability Standard	1850	ANPRM -- TO BE DETERMINED														
CPSC Urea Formaldehyde Foam (UFF) Insulation	1852			<—O—>												
FCC Amendment of the Commission's Rules To Allocate Spectrum in the Frequency Band of 18 Gigahertz (GHz) for Microwave Radio Stations Called Digital Termination Systems and for Point-to-Point Microwave Stations for the Provision of Common Carrier, Private Radio, and Broadcast Auxiliary Services; and for the Private Radio Use of Digital Termination, etc.	1956															OTHER FIRST QUARTER 1983
FCC Authorization of Teletext Service by Broadcast Television Stations (Broadcast Docket No. 81-741)	1959								<———O———					———>		
FCC Deregulation of Competitive Domestic Telecommunications Market (Common Carrier Docket 79-252)	1960		<———O———		———>											
FCC Further Inquiry into the Problem of Radio Frequency Interference to Electronic Equipment (General Docket No. 78-369; FCC 81-267)	1962								<———O———		———>					
FCC Implementation of the Final Acts of the World Administrative Radio Conference, Geneva 1979 (General Docket No. 80-739)	1964		<———N———		———>											

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FCC — Inquiry into Creation of "New" Personal Radio Service (PR Docket 79-140) — 1965					<——N OR O——>										
FCC — Inquiry into the Development of Regulatory Policy for Direct Broadcast Satellites (General Docket No. 80-603) — 1966				<–O–>											
FCC — Inquiry into the Future Role of Low Power Television Broadcasting and Television Translators in the National Telecommunications System (Broadcast Docket No. 78-253; RM-1932; FCC 80-503) — 1968		<——O——>													
FCC — Procedures for Implementing the Deregulation of Customer Premises Equipment and Enhanced Services — 1969	NPRM -- TO BE DETERMINED														
FCC — Release, Allocation, and Criteria for Use of the 250 Remaining Channels in the 806-821/851-866 MHz Bands (PR Docket 79-191) — 1971											<——F——>				
FEC — Communications by Corporations or Labor Organizations — 1919		<——F——>													
FEC — Transfers of Funds; Collecting Agents, Joint Fundraising — 1921		<——F——>													
FERC — Blanket Certificates for Interstate Pipelines and Local Distribution Companies — 1674	FINAL RULE -- TO BE DETERMINED														
FERC — Construction Work in Progress for Public Utilities — 1676	FINAL RULE -- TO BE DETERMINED														

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FERC High-Cost Natural Gas: Production Enhancement Procedures	1678	OTHER -- TO BE DETERMINED														
FERC Procedures Governing Applications for Special Relief Under Sections 104, 106, and 109 of the Natural Gas Policy Act of 1978	1680	FINAL RULE -- TO BE DETERMINED														
FERC Rate of Return on Common Equity for Electric Utilities	1681	NPRM -- TO BE DETERMINED														
FERC Regulations Governing Applications for Major Unconstructed Projects	1684	OTHER -- TO BE DETERMINED														
FERC Regulations Implementing Section 110 of the Natural Gas Policy Act of 1978 and Establishing Policy Under the Natural Gas Act	1685	FINAL RULE -- TO BE DETERMINED														
FERC Revised Rules of Practice: Procedures To Expedite Trial-Type Proceedings	1688	FINAL RULE -- TO BE DETERMINED														
FHLBB Consumer Leasing by Federal Associations	1752		<--F-->													
FRS Simplification of Securities Credit Regulations	1753		<----------N---------->													
FTC Proposed Amendment to Eyeglasses Rule and Eyeglasses II	1922	NPRM -- TO BE DETERMINED														
FTC Proposed Rule on Standards and Certification	1927						<--O-->									

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AGENCY / TITLE OF REGULATION / PAGE NO.	DEC 81	JAN 82	FEB 82	MAR 82	APR 82	MAY 82	JUN 82	JUL 82	AUG 82	SEP 82	OCT 82	NOV 82	DEC 82	JAN 83	FEB 83 AND BEYOND
FTC 1930 Proposed Trade Regulation Rule Concerning Credit Practices			<--O-->												
FTC 1934 Proposed Trade Regulation Rule on Mobile Home Sales and Service					<--O-->										
FTC 1938 Review of Premerger Notification Rules and Report Form		<--O-->													
FTC 1939 Revision to Trade Regulation Rule Pertaining to Proprietary Vocational and Home Study Schools							<--O-->								
ICC 1972 Application Procedures for a Certificate To Construct, Acquire, or Operate Railroad Lines		<----F---->													
ICC 1974 Coal Rate Guidelines -- Nationwide				<--F-->											
ICC 1976 Railroad Consolidation Procedures	FINAL RULES -- TO BE DETERMINED														
PRC 1977 Electronic Mail Classification Proposal, Docket No. MC78-3 (Remand)	OTHER -- SEE ENTRY FOR DETAILS														
PRC 1978 Postal Rate Commission Docket No. MC80-1 -- E-COM Forms of Acceptance, 1980	TO BE DETERMINED														
PRC 1980 Postal Rate Commission Docket Nos. MC81-2 and R81-1 -- Attached Mail Proceeding, 1981		<----O---->													

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AGENCY / TITLE OF REGULATION / PAGE NO.	DEC 81	JAN 82	FEB 82	MAR 82	APR 82	MAY 82	JUN 82	JUL 82	AUG 82	SEP 82	OCT 82	NOV 82	DEC 82	JAN 83	FEB 83 AND BEYOND
SEC Proposed Revision of Form S-14 and Other Forms and Rules Relating to Disclosure in Connection with Business Combination Transactions 1754						<--N-->									
SEC Proposed Revision of Regulation S-K and Guides for the Preparation and Filing of Registration Statements and Reports 1756		<--F-->													
SEC Reproposal of Comprehensive Revision to System for Registration of Securities Offerings 1758		<--F-->													
SEC Simplification of Investment Company Prospectuses 1760		<--N-->													

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INDEX III - DATES FOR COMMENTS, HEARINGS, OR MEETINGS

This index graphically displays the dates of comment periods, meetings, and hearings on regulations under development that agencies describe in this edition of the Calendar. Where possible, we indicate the opening and closing dates of the comment periods, the dates and locations of hearings and meetings, and the next regulatory action for the entry.

The index is organized alphabetically by agency, by unit within the agency, and then by the title of the regulation.

Not all regulations described in the Calendar are included here; only those with present or future comment periods, hearings, or meetings. Those not listed usually had comment periods, meetings, or hearings that have passed or have not yet been scheduled.

For further information on each regulation, the reader should refer to the text of the entry in the appropriate chapter of the Calendar.

AGENCY / TITLE OF REGULATION / PAGE NO.	DEC 81	JAN 82	FEB 82	MAR 82	APR 82	MAY 82	JUN 82	JUL 82	AUG 82	SEP 82	OCT 82	NOV 82	NEXT REGULATORY ACTION	COMMENTS
ED-OSERS Assistance to States for Education of Handicapped Children 1861													NPRM	Public comment period following NPRM published in April 1982.
DOE-CE Residential Conservation Service Program 1673	<——H——> ——C——>												FINAL RULE	Public comment period closes January 20, 1982.
HHS-HCFA Consolidation of Medicare and Medicaid Regulations for Survey and Certification of Health Care Facilities 1775													NPRM	Public comment period 60 days following publication of NPRM in 2nd Quarter 1982.
HHS-HCFA End-Stage Renal Disease Program: Incentive Reimbursement for Dialysis Services 1777													NPRM	Public comment period 30 days from publication of NPRM (date not yet determined).
HHS-OHDS DOL-ETA Work Incentive Programs for Aid to Families with Dependent Children (AFDC) Recipients Under Title IV of the Social Security Act 1862		<——C——>		<——C——>									OTHER	Public comment period 45 days after publication of notice of intent in December. Public comment period 60 days following interim final regulations published on February 26, 1982.

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HUD-CPD Community Development Block Grants (CDBG) - Entitlement	1864				<C>									OTHER	Public comment period 60 days after publication of interim rule in February 1982.
HUD-CPD Environmental Review Procedures for Title I, Community Development Block Grant Programs	1866			<C>										OTHER	Public comment period 60 days following Revised Interim Rule published in Janussy 1982.
HUD-CPD Protection and Enhancement of Environmental Quality	1698													INTERIM RULE	Comment period ends April 3, 1982.
HUD-HOUS Income Eligibility and Rent for Public Housing, Section 8 Housing Assistance Payment Program, Section 236 Mortgage Insurance Program, and Section 101 Rent Supplement Program	1869					<C>								OTHER	Public comment period 60 days after Interim Rule published in March 1982.
HUD-HOUS Manufactured Home Construction and Safety Standards	1781						<C>							NPRM	Public comment period 60 days following publication of NPRM.
HUD-HOUS Minimum Property Standards for Multi-Family Dwellings	1783		<C>											NPRM	Public comment period 60 days following NPRM published in December 1981.
HUD-HOUS Public Housing Lease and Grievance Procedures	1870			<C>										NPRM	Comment period 60 days after publication of NPRM in January 1982.
HUD-HOUS Revision to Public Housing Utility Allowances	1871			<C>										INTERIM RULE	Public comment period 60 days following Interim Rule published January 1982.

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AGENCY / TITLE OF REGULATION	PAGE NO.	DEC 81	JAN 82	FEB 82	MAR 82	APR 82	MAY 82	JUN 82	JUL 82	AUG 82	SEP 82	OCT 82	NOV 82	NEXT REGULATORY ACTION	COMMENTS
DOI-BLM Coal Management Regulations	1699		<C> <M>	C>										NPRM	Public comment period 60 days following publication of NPRM in late December 1981; public meetings January 11, Salt Lake City, Utah; January 13, Casper, Wyoming; January 15, Farmington, New Mexico.
DOI-NPS Right-of-Way Regulations	1704						<C>	C>						NPRM	Public comment period 90 days following publication of NPRM on April 15, 1982.
DOI-OSM Permanent Regulatory Program of the Surface Mining Control and Reclamation Act	1709													NPRMS	Public hearings are scheduled for all of the rules. For information about particular rules, consult the NPRMs or contact the agency. Public comment period at least 30 days after publication of NPRM, and in some instances 45 to 60 days.
DOJ-CRD Coordination of Enforcement of Nondiscrimination in Federally Assisted Programs	1873		<C	C	C>									NPRM	Public comment period, minimum of 90 days following publication of NPRM on December 28, 1981.
DOJ-CRD Regulation Prohibiting Discrimination on the Basis of Sex in Education and Training Programs Receiving Federal Financial Assistance	1878								<C	C	C>			REVISED NPRM	Public comment period 90 days following publication of revised NPRM in June 1982.
DOL-MSHA Review of Metal and Nonmetal Standards	1785			<C	C>									ANPRM	Public comment period 60 days following ANPRM published in January 1982; notice regarding open conferences issued in January; open conferences on selected sections throughout 1982.

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DOL-OSHA Hazard Communication	1789													NPRM	Public comment period following NPRM, length to be determined.
DOL-OSHA OSHA Commercial Diving Operations Standard	1798		<——C——> <————C————>											NPRM	Public comment period 60 days following NPRM published in December 1981 (educational/scientific diving). Public comment period 90 days following ANPRM published in December (commercial diving).
DOL-OSHA OSHA General Industry Standard for Walking and Working Surfaces, and Construction Safety Standards for Ladders and Scaffolding, Floor and Wall Openings, and Stairways	1799													NPRM	Public comment period 120 days following NPRM to be published 2nd Quarter 1982; public hearings in at least three cities.
DOT-NHTSA Uniform Tire Quality Grading System	1817													ANPRM	Public comment period 60 days following publication of ANPRM in late 1981 or early 1982.
DOT-OST Nondiscrimination on the Basis of Handicap	1890													NPRM	Public comment period 60 to 90 days after publication of NPRM in 1st Quarter 1982.
EPA-OANR Controls Applicable to Gasoline Refineries, Lead Phasedown Regulations	1713			<——C——>										NPRM	Public comment period 60 days following publication of NPRM in January 1982.
EPA-OANR Environmental Radiation Protection Standards for Management and Disposal of Spent Nuclear Fuel, High-Level and Transuranic Radioactive Wastes	1820													NPRM	Public comment period 180 days following publication of NPRM in January 1982. Several public hearings during the comment period.

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AGENCY / TITLE OF REGULATION / PAGE NO.	DEC 81	JAN 82	FEB 82	MAR 82	APR 82	MAY 82	JUN 82	JUL 82	AUG 82	SEP 82	OCT 82	NOV 82	NEXT REGULATORY ACTION	COMMENTS
EPA-OANR 1714 Review, and Possible Revision, of the National Ambient Air Quality Standard for Nitrogen Dioxide													NPRM	Public comment period 60 days following NPRM published in 3rd Quarter 1983. Public hearing will be specified in NPRM.
EPA-OANR 1716 Review, and Possible Revision, of the National Ambient Air Quality Standards for Particulate Matter													NPRM	Public hearing 60 days following NPRM in 2nd Quarter 1982.
EPA-OANR 1718 Review, and Possible Revision, of the National Ambient Air Quality Standards for Sulfur Oxides (Sulfur Dioxide)													NPRM	Public hearing 60 days following publication of NPRM, public comment period to be specified in NPRM.
EPA-OANR-OMSAPC 1720 Gaseous Emission Regulations for 1985 and Later Model Year Light-Duty Trucks and 1986 and Later Model Year Heavy-Duty Engines				<--H-->									NPRM	Public hearing on ANPRM published January 19, 1981 will be held March 1982. Public comment period ends 30 days following public hearing.
EPA-OANR-OMSAPC 1721 Heavy-Duty Diesel Particulate Regulations													FINAL RULE	Public hearings after December 1981. Public comment period ends 30 days following public hearings.
EPA-OPTS 1826 Pesticide Registration Guidelines														Multiple comment periods; call Agency Contact for details.
EPA-OSWER 1833 Hazardous Waste Regulations: Phase II Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities													MULTIPLE	Public hearings and comment periods 2nd Quarter 1983.

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EPA-OW 1726 BCT Effluent Limitations Guidelines Controlling the Discharge of Pollutants from Pulp, Paper, and Paperboard Mills into Navigable Waterways													FINAL RULE	Public comment period on BCT will end 60 days after EPA proposes a change in POTW cost comparison figure.
EPA-OW 1837 Control of Organic Chemicals in Drinking Water													ANPRM	Public comment period 90 days following ANPRM published 2nd Quarter 1982.
EPA-OW 1728 Effluent Limitations Guidelines and Pretreatment Standards, and New Source Standards Controlling the Discharge of Pollutants from Metal Finishing Facilities		<—C—>											NPRM	Public comment period 60 days following publication of NPRM.
EPA-OW 1731 Effluent Limitations Guidelines and Standards Controlling the Discharge of Pollutants from Foundries to Navigable Waterways and the Pretreatment of Wastewaters Introduced into Publicly Owned Treatment Works										<—C—>			NPRM	Public comment period 60 days following publication of NPRM.
EPA-OW 1736 Effluent Limitations Guidelines and Standards Controlling the Discharge of Pollutants from Organic Chemicals and Plastic/Synthetic Fibers to Navigable Waterways and the Pretreatment of Wastewaters Introduced into Publicly Owned Treatment Works									<—C—>				NPRM	Public comment period 60 days following NPRM.
GSA-ADM 1895 Nondiscrimination in Federally Assisted Programs			<—C—>										NPRM	Public comment period 60 days following NPRM published in January 1982.
OPM-OPE 1900 Standards for a Merit System of Personnel Administration	<—C—>												NPRM	Public comment period December 1981 through January 1982.

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CPSC 1844 Consumer Products Containing Asbestos								<--C-->					NPRM	Public comment period 30 days following NPRM published in June 1982.
CPSC 1852 Urea Formaldehyde Foam (UFF) Insulation			<--M-->											Commission decision meeting on Final Rule -- February 8, 1982.
FCC 1956 Amendment of the Commission's Rules To Allocate Spectrum in the Frequency Band of 18 Gigahertz (GHz) for Microwave Radio Stations Called Digital Termination Systems and for Point-to-Point Microwave Stations for the Provision of Common Carrier, Private Radio, and Broadcast Auxiliary Services; and for the Private Radio Use of Digital Termination, etc.	----	C	---->											Public comment period ends January 14, 1982 for comments; ends March 1, 1982 for reply comments.
FCC 1959 Authorization of Teletext Service by Broadcast Television Stations (Broadcast Docket No. 81-741)	----	C	---->										OTHER	Comments on the NPRM are due by January 11, 1982, and replies are due by February 10, 1982.
FCC 1962 Further Inquiry into the Problem of Radio Frequency Interference to Electronic Equipment (General Docket No. 78-369; FCC 81-267)	----	C-->											OTHER	Reply comments due January 15, 1982.
FCC 1964 Implementation of the Final Acts of the World Administrative Radio Conference, Geneva 1979 (General Docket No. 80-739)													NPRM	Public comment period following NPRM published in 1st Quarter 1982.
FCC 1971 Release, Allocation, and Criteria for Use of the 250 Remaining Channels in the 806-821/851-866 MHz Bands (PR Docket 79-191)	----	C-->											FINAL RULE	Comments are due January 15, 1982.

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FRS 1753 Simplification of Securities Credit Regulations													REVISED NPRMS	Public comment period following revised NPRMs issued in 1st Quarter 1982.
FTC 1938 Review of Premerger Notification Rules and Report Form				<–C–>									OTHER	Request for public comment, March 1982.
PRC 1977 Electronic Mail Classification Proposal, Docket No. MC78-3 (Remand)													OTHER	Interested parties may intervene or send comments.
PRC 1978 Postal Rate Commission Docket No. MC80-1 -- E-COM Forms of Acceptance, 1980													TO BE DETERMINED	Interested parties may intervene or send comments.
PRC 1980 Postal Rate Commission Docket Nos. MC81-2 and R81-1 -- Attached Mail Proceeding, 1981													OTHER	Interested parties may intervene or send comments.
SEC 1754 Proposed Revision of Form S-14 and Other Forms and Rules Relating to Disclosure in Connection with Business Combination Transactions								<——C——>					NPRM	
SEC 1760 Simplification of Investment Company Prospectuses		<——C——>											NPRM	Public comment period 90 days following publication of NPRM on January 1, 1982.

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APPENDIX I: STATUS OF REGULATIONS FROM JUNE 1981 EDITION

This appendix provides information about those regulations that appeared as entries in the June 1981 edition of the **Calendar of Federal Regulations** but do not repeat in this current edition.

Many entries from the last edition repeat in this edition because the agencies are still developing those regulations. However, some entries do not repeat; for example, a regulation that an agency was developing in June may have been issued as a Final Rule, or the agency may have withdrawn it or taken some other action that makes it inappropriate to include in this edition of the Calendar. This appendix notes the actions the agencies have taken on such regulations. In addition, it notes any significant word changes in the titles of the regulations to help the reader locate entries that have been retitled since the last edition.

The appendix also includes the page number on which the entry appeared in the June 1981 **Federal Register** edition of the Calendar (46 FR 34004, June 30, 1981).

The appendix lists 36 regulations that appeared in the June 1981 edition of the Calendar but that do not repeat in this edition; another 12 entries in the appendix describe significant title changes of regulations from the last edition. Three more regulations are listed here because the promulgating agency has changed since the last edition.

Of the 36 entries that do not repeat from the last edition, 12, or approximately 33 percent, became Final Rules; 2, or about 6 percent, were dropped from the Calendar because they are undergoing policy review by the agency; for 5 of the dropped entries (14 percent) the agency expects no further action; and for another 8 (22 percent) no agency action is expected in the next 12 months. Five of the entries (14 percent) were dropped because the agency no longer considers them "major" rules suitable for inclusion in the Calendar; and for 4 entries (11 percent), the agency was uncertain about the next regulatory action.

APPENDIX I: STATUS OF REGULATIONS FROM JUNE 1981 EDITION

AGENCY	TITLE OF REGULATION	FR 6/30/81 PAGE NO.	ACTIVITY SINCE LAST EDITION
DOC-MarAd	Construction-Differential Subsidy Repayment; Total Repayment Policy	34159	Agency Change -- MarAd transferred from DOC to DOT, effective August 9, 1981. See DOT-MarAd entry of same name in this Calendar.
DOC-NOAA	Regulations on the Construction, Location, Ownership, and Operation of Ocean Thermal Energy Conversion (OTEC) Facilities and Plantships	34011	Final Rule -- 46 FR 39388, July 13, 1981.
DOC-NOAA	Regulations on the Mining of Deep Seabed Hard Mineral Resources	34036	Final Rule -- 46 FR 45890, September 15, 1981.
ED-OESE	Financial Assistance to Local and State Agencies to Meet Special Educational Needs; and Financial Assistance to Local Educational Agencies for Children with Special Educational Needs	34144	No action scheduled in next 12 months. These regulations have been superseded by the Education Consolidation and Improvement Act of 1981, P.L. 97-35, enacted August 13, 1981.
DOE-CE	Energy Performance Standards for New Buildings	34015	The authorizing legislation has been amended so that the revised NPRM will no longer meet E.O. 12291 criteria for a major rule.

APPENDIX I: STATUS OF REGULATIONS FROM JUNE 1981 EDITION

AGENCY	TITLE OF REGULATION	FR 6/30/81 PAGE NO.	ACTIVITY SINCE LAST EDITION
DOE-ERA	Natural Gas Curtailment Priorities for Interstate Pipelines	34016	Action uncertain; FERC is reviewing the NPRM, and action on the Final Rule by ERA must await FERC concurrence under § 404 of the DOE Organization Act.
DOE-FE	Variable Work Commitment Bidding System for Outer Continental Shelf Oil and Gas Lease Sales	34019	Final Rule -- 46 FR 35614, July 9, 1981.
HHS-FDA	New Drug and Antibiotic Drug Regulations; Revision of Regulations Governing Approval for Marketing	34093	Title Change -- is now New Drug Approval Process; Revision of Regulations Governing the Clinical Investigation of Drugs and Approval for Marketing.
HHS-HCFA	Uniform Reporting Systems for Health Services Facilities and Organizations	34094	No action anticipated during next 12 months.
HUD-HOUS	Minimum Property Standards for One- and Two-Family Dwellings	34146	Final Rule imminent, citation unavailable at time of publication.
DOI-HCRS	Uniform Rules and Regulations for the Protection and Conservation of Archaeological Resources Located on Public and Indian Lands	34038	Agency Change -- HCRS was abolished; regulations are now in the National Park Service (NPS).

APPENDIX I: STATUS OF REGULATIONS FROM JUNE 1981 EDITION

AGENCY	TITLE OF REGULATION	FR 6/30/81 PAGE NO.	ACTIVITY SINCE LAST EDITION
DOJ-CRD	Procedures for Complaints of Employment Discrimination Filed Against Recipients of Federal Funds	34149	This is now a joint action of DOJ-CRD and EEOC.
DOJ-INS	Admission of Refugees and Asylum Procedures	34152	Parts 207 and 209 -- Final Rule, 46 FR 45116, September 10, 1981 (effective October 12, 1981). Part 208 -- Final Rule postponed indefinitely pending development of proposed legislation.
DOT-FAA	Flammability Standards for Crewmember Uniforms	34096	Withdrawn -- the withdrawal of this proposal was published June 22, 1981 (46 FR 32409).
DOT-FHWA	Buy America Requirements	34161	Agency has determined that this regulation does not qualify as major under E.O. 12291.
DOT-FHWA	Hours of Service of Drivers	34098	Withdrawn -- a docket closing notice was published on September 3, 1981 (46 FR 44198).
DOT-NHTSA	Heavy-Duty Vehicle Brake Systems	34102	Next action date uncertain; research under way.
DOT-NHTSA	Occupant Crash Protection	34103	Final Rule -- 46 FR 53419, October 29, 1981.

APPENDIX I: STATUS OF REGULATIONS FROM JUNE 1981 EDITION

AGENCY	TITLE OF REGULATION	FR 6/30/81 PAGE NO.	ACTIVITY SINCE LAST EDITION
TREAS-OCC	Description of Office, Procedures, Public Information; Supplemental Application Procedures; Assessment of Fees; National Banks; District of Columbia Banks; Employee Stock Option and Stock Purchase Plans; Changes in Capital Structure; Change in Bank Control; Federal Branches and Agencies of Foreign Banks; Policy Statements	34067	Title Change -- is now Rules, Policies, and Procedures for Corporate Activities.
EPA-OANR	Policy and Procedures for Identifying, Assessing, and Regulating Airborne Substances Posing a Risk of Cancer	34107	Withdrawn -- no action anticipated in next 12 months.
EPA-OANR	Regulations for the Prevention of Significant Deterioration (PSD) from Set II Pollutants (Hydrocarbons, Carbon Monoxide, Nitrogen Oxide, Ozone, and Lead)	34044	Withdrawn -- no further action anticipated.
EPA-OANR -OMSAPC	Gaseous Emission Regulations for 1985 and Later Model Year Light-Duty Trucks and Heavy-Duty Engines	34051	Title Change -- is now Gaseous Emission Regulations for 1985 and Later Model Year Light-Duty Trucks and 1986 and Later Model Year Heavy-Duty Engines.
EPA-OPTS	Rules Restricting the Commercial and Industrial Use of Asbestos Fibers	34116	Withdrawn -- no action anticipated in next 12 months.

APPENDIX I: STATUS OF REGULATIONS FROM JUNE 1981 EDITION

AGENCY	TITLE OF REGULATION	FR 6/30/81 PAGE NO.	ACTIVITY SINCE LAST EDITION
EPA-OWWM (now EPA-OW)	Effluent Limitations Guidelines and Pretreatment Standards, and New Source Standards Controlling the Discharge of Pollutants from Pulp, Paper, and Paperboard Mills into Navigable Waterways	34057	Title Change -- is now BCT Effluent Limitations Guidelines Controlling the Discharge of Pollutants from Pulp, Paper, and Paperboard Mills into Navigable Waterways.
EPA-OWWM (now EPA-OW)	Effluent Limitations Guidelines and Standards Controlling the Discharge of Pollutants from Steam Electric Power Plants	34063	Title Change -- is now A Review of Proposed Effluent Limitations Guidelines and Standards Controlling the Discharge of Pollutants from Steam Electric Power Plants.
EPA-OWWM (now EPA-OSWER)	Hazardous Waste Regulations: Phase II-C Regulations Applicable to Hazardous Waste Disposal Facilities	34122	Title Change -- is now Hazardous Waste Regulations: Phase II Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities. Also subagency change (to OSWER).
EPA-OWWM (now EPA-OSWER)	Sewage Sludge Disposal Regulations	34125	Withdrawn -- Agency has determined that this regulation does not qualify as major under E.O. 12291.
GSA-HRO	Nondiscrimination in Federally Assisted Programs	34153	Agency Change -- now under the Office of the Administrator (ADM).

APPENDIX I: STATUS OF REGULATIONS FROM JUNE 1981 EDITION

AGENCY	TITLE OF REGULATION	FR 6/30/81 PAGE NO.	ACTIVITY SINCE LAST EDITION
GSA-NARS	Freedom of Information Act Requests for National Security Classified Information in the National Archives	34156	Agency has determined that this regulation does not qualify as major under E.O. 12291.
NCUA	Group Purchasing Activities of Federal Credit Unions	34072	Final Rule -- 46 FR 47435, September 28, 1981; effective April 1, 1982. (Notice of effective date published 46 FR 55922, November 13, 1981.)
SBA	Revision of Business Loan Policy; Business Loans and Guarantees	34188	Withdrawn pending Agency review.
SBA	Revision to Method of Establishing Size Standards and Definitions of Small Business	34157	Withdrawn pending Agency review.
CAB	Air Carrier Insurance and Liability	34190	Final Rule -- 46 FR 52572, October 27, 1981.
CFTC	Proposed Dealer Option Regulations	34075	No action currently anticipated.
CFTC	Proposed Rules Concerning Foreign Brokers and Traders	34077	Title Change -- is now Proposed Rule Concerning Special Calls for Information from Traders.

APPENDIX I: STATUS OF REGULATIONS FROM JUNE 1981 EDITION

AGENCY	TITLE OF REGULATION	FR 6/30/81 PAGE NO.	ACTIVITY SINCE LAST EDITION
CFTC	Review of Guideline No. 1 -- Criteria for Determining Whether a Board of Trade Meets the Economic Purpose and Public Interest Tests for Contract Market Designation	34078	No action currently anticipated.
FCC	Children's Television Programming and Advertising Practices (Docket 19142)	34194	Withdrawn from Calendar -- no action scheduled during next 12 months.
FCC	Creation of "New" Personal Radio Service (PR Docket 79-140)	34195	Title Change -- is now Inquiry into Creation of "New" Personal Radio Service (PR Docket 79-140).
FEC	Nonpartisan Communications by Corporations or Labor Organizations	34170	Title Change -- is now Communications by Corporations or Labor Organizations.
FERC	High-Cost Natural Gas Produced from Wells Drilled in Deep Waters	34021	Final Rule imminent, FR citation unavailable at time of publication.
FERC	Revision of Form 1 Annual Report by Electric Utilities	34031	Final Rule imminent, FR citation unavailable at time of publication.
FMC	Filing of Currency Adjustment Factors	34199	Withdrawn -- the rule proposed in Docket 80-19 is no longer under consideration.

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AGENCY	TITLE OF REGULATION	FR 6/30/81 PAGE NO.	ACTIVITY SINCE LAST EDITION
FTC	Residential Real Estate Brokerage Industry Practices	34180	Withdrawn from Calendar because staff does not anticipate that an ANPRM will be issued during calendar year 1982. A staff report and a public comment period on the findings of the investigation are planned during the 1982 calendar year.
ICC	Leasing Rules Modifications (Ex Parte No. MC-43 (Sub-No. 12))	34200	Final Rule imminent, date unavailable at time of publication.
ICC	Revision of Abandonment Regulations (Ex Parte No. 274 (Sub-No. 5))	34202	Final Rules -- 46 FR 45342, September 11, 1981.
NRC-RES	Disposal of High-Level Radioactive Waste in Geologic Repositories Regulation	34142	Agency has determined that this regulation does not qualify as major under E.O. 12291.
PRC	Postal Rate Commission Docket -- Attached Mail Proceeding, 1981	34203	Title Change -- is now Postal Rate Commission Docket Nos. MC 81-2 and R81-1 -- Attached Mail Proceeding, 1981.
PRC	Postal Rate Commission Docket -- E-COM Forms of Acceptance, 1980	34205	Title Change -- is now Postal Rate Commission Docket No. MC80-1--E-COM Forms of Acceptance, 1980.

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AGENCY	TITLE OF REGULATION	FR 6/30/81 PAGE NO.	ACTIVITY SINCE LAST EDITION
PRC	Postal Rate Commission Docket MC81-3, ZIP + 4 Subclasses of First-Class Mail	34206	Withdrawn -- no longer under consideration.
SEC	Classification of Issuers for Reducing or Modifying Certain Reporting Requirements	34079	Action postponed indefinitely; depends on action taken on Reproposal of Comprehensive Revision to System for Registration of Securities Offerings.
SEC	Proposed Comprehensive Revision to System for Registration of Securities Offerings	34081	Title Change -- is now Reproposal of Comprehensive Revision to System for Registration of Securities Offerings.

APPENDIX II: PUBLICATION DATES FOR AGENCY SEMIANNUAL AGENDAS

This appendix lists publication dates for the semiannual agendas that agencies are required to prepare each April and October, in response to Executive Order 12291, "Federal Regulation" (46 FR 13193, February 17, 1981), and/or the Regulatory Flexibility Act (P.L. 96–354). It provides the dates of each agency's last published semiannual agenda and the **Federal Register** citation to enable interested parties to gain quick access to the list of regulations the agency is considering or reviewing in addition to those that may be described in the Calendar.

All executive agencies, and those independent agencies that choose to, publish regulatory agendas in response to E.O. 12291. All agencies must publish regulatory flexibility agendas in response to §602 of P.L. 96–354.

The Act allows agencies to publish their regulatory flexibility agendas as part of other agendas, so many agencies publish a consolidated agenda in response to both requirements. Each agenda entry describes, at a minimum, the regulations agencies are considering and their objectives; the legal basis of the action the agency is taking; an approximate schedule for issuing the rules; and an agency contact. Subject to P.L. 96–354, the agency must, in addition, identify regulations that are likely to have a significant economic impact on a substantial number of small entities.

The Calendar describes more fully only the most important of the regulations that appear in these agendas.

AGENCY	PUBLICATION DATE OF LAST AGENDA	FEDERAL REGISTER CITATION
Executive Agencies		
Department of Agriculture	October 27, 1981	46 FR 52552
Department of Commerce	October 30, 1981	46 FR 54044
Department of Defense	October 30, 1981	46 FR 53697
Department of Education	November 3, 1981	46 FR 54574
Department of Energy	November 2, 1981	46 FR 54476
Department of Health and Human Services	November 10, 1981	46 FR 55612
Department of Housing and Urban Development	August 17, 1981	46 FR 41708
Department of the Interior	October 30, 1981	46 FR 53870
Department of Justice	April 29, 1981	46 FR 24128
Department of Labor	October 30, 1981	46 FR 53958
Department of State	October 19, 1981	46 FR 51258
Department of Transportation	October 1, 1981	46 FR 48422
Maritime Administration	November 19, 1981	46 FR 56988
Department of the Treasury	October 15, 1981	46 FR 50890
ACTION	April 23, 1981	46 FR 23087
International Development Cooperation Agency Agency for International Development	November 24, 1981	46 FR 57570
Committee for Purchase from Blind and Other Severely Handicapped	April 1, 1981	46 FR 19836
Environmental Protection Agency	October 30, 1981	46 FR 53990
Equal Employment Opportunity Commission	October 2, 1981	46 FR 48717
Farm Credit Administration	November 3, 1980	45 FR 72675
Federal Emergency Management Agency	November 2, 1981	46 FR 54386
Federal Mediation and Conciliation Service	October 21, 1981	46 FR 51621

General Services Administration	October 30, 1981	46 FR 53708
Joint Board for the Enrollment of Actuaries	October 19, 1981	46 FR 51258
National Aeronautics and Space Administration	October 13, 1981	46 FR 50392
National Credit Union Administration	April 30, 1981	46 FR 24514
National Foundation on the Arts and Humanities		
National Endowment for the Arts	October 30, 1981	46 FR 53725
National Endowment for the Humanities	October 8, 1981	46 FR 49913
National Science Foundation	October 26, 1981	46 FR 52142
Office of Personnel Management	July 31, 1981	46 FR 39150
Pennsylvania Avenue Development Corporation	October 30, 1981	46 FR 53703
Pension Benefit Guaranty Corporation	October 30, 1981	46 FR 53692
Railroad Retirement Board	January 30, 1981	46 FR 9963
Selective Service System	November 10, 1981	46 FR 55550
Small Business Administration	November 11, 1981	46 FR 55534
Veterans Administration	October 23, 1981	46 FR 51935
Independent Regulatory Agencies		
Civil Aeronautics Board	October 29, 1981	46 FR 53436
Commodity Futures Trading Commission	October 29, 1981	46 FR 53445
Consumer Product Safety Commission	November 19, 1981	46 FR 56811
Federal Communications Commission	November 12, 1981	46 FR 55726
Federal Deposit Insurance Corporation	October 30, 1981	46 FR 53670
Federal Energy Regulatory Commission	June 18, 1981	46 FR 31902
Federal Home Loan Bank Board	July 13, 1981	46 FR 35927
Federal Maritime Commission	November 20, 1981	46 FR 57066
Board of Governors of the Federal Reserve System	October 1, 1981	46 FR 48217
Federal Trade Commission	November 4, 1981	46 FR 54868
Interstate Commerce Commission	November 3, 1981	46 FR 54613
Nuclear Regulatory Commission	October 29, 1981	46 FR 53594
Securities and Exchange Commission	October 30, 1981	46 FR 53679

[FR Doc. 870 Filed 1-12-82; 8:45 am]
BILLING CODE 3194-01-C

OMB Approved Form 2000-0097
Expiration Date 07/31/82

COMMENT CARD

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CALENDAR OF FEDERAL REGULATIONS

The Calendar is intended to help readers learn about important regulations under development in the Federal Government and to help government decisionmakers better manage the development of these regulations. This is the sixth edition of the Calendar, which is published every six months. We hope to make each edition more useful to readers and therefore are asking for your comments. Please take a moment to answer the few questions below. We designed this comment card as a self-mailer—simply fold the page as indicated, so that our address is on the outside, tape, and mail.

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	Very useful	Useful	No opinion	Not very useful	Not at all useful
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