

Tuesday, March 19

- I. Summary of findings from stakeholder meetings and interviews followed by questions and answers.
- II. Overview of proposed improvements presented by the Department followed by questions and answers.
- III. Small group discussion of unresolved questions/topics.

Wednesday, March 20

- I. The Department will present a proposed methodology for prioritizing the rulemaking agenda for discussion.

After completion of the workshop, the Department will review all of the findings and other recommendations. The Department plans to announce the initiatives it will undertake as a result of the appliance standards process improvement in April 1996.

The workshop will be professionally facilitated to encourage discussion and comments on the topics.

Copies of the interview findings, stakeholders' comments, and this notice are available in the DOE Freedom of Information Reading Room. A copy of the workshop transcript will be available in the DOE public reading room approximately 10 days after the workshop.

A briefing document will be sent to all participants that notify the Department in advance that they will attend. There will also be an opportunity to submit written comments after the workshop. Please notify Bryan Berringer at the above listed address of your intention to attend the workshop or if you have written comments.

Issued in Washington, DC February 14, 1996.

Brian T. Castelli,
Chief of Staff, Energy Efficiency and Renewable Energy.

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10 CFR Part 834

[Docket No. EH-RM-93-834]

RIN 1901-AA38

Radiation Protection of the Public and the Environment

AGENCY: Department of Energy.

ACTION: Notice of limited reopening of the comment period.

SUMMARY: On March 25, 1993, DOE published a Notice of Proposed Rulemaking to add a new part establishing standards for the protection

of the public and the environment against exposure to radiation from conduct of DOE activities. The purpose of this notice is to reopen the comment period for 30 days in order to solicit comments on an option being considered to protect terrestrial plants and animals from exposure to radiation. This option is being considered in light of comments received which recommended that radiation protection be required for terrestrial organisms in a manner similar to that proposed for aquatic organisms.

DATES: The comment period expires March 25, 1996. Comments received after this date will be considered if it is practical to do so, but the Department is able to ensure consideration of only those comments received on or before this date.

ADDRESSES: Written comments on 10 CFR Part 834 (11 copies) should be addressed to: PART 834, Mr. Andrew Wallo, U.S. Department of Energy, Office of Environment, Safety and Health, EH-412, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

PUBLIC READING ROOM: Copies of the March 25, 1993 Notice of Proposed Rulemaking; written comments received on the March 25, 1993 Notice; the August 31, 1995 Notice of Limited Reopening of Comment Periods; the draft regulatory language made available by the August 31, 1995 Notice; the September 13, 1995 corrected Notice; written comments received on the August 31, 1995 Notice; and the December 1995 Workshop Report are contained in Docket No. EH-RM-93-834. This docket is available for examination in DOE's Freedom of Information Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586-6020, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Andrew Wallo, or Mr. Harold T. Peterson, Jr., U.S. Department of Energy, Office of Environment, Safety and Health, EH-412, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586-2409, fax (202) 586-3915.

SUPPLEMENTARY INFORMATION:

Background

On March 25, 1993, the Department published a Notice of Proposed Rulemaking (58 FR 16268) to codify, in a new part, the Department's policies and procedures for protecting the public and the environment against exposure to radiation resulting from activities conducted by or for the Department (hereafter referred to as the Proposed

Rule). The Proposed Rule would adopt dose limits for exposure of members of the public to radiation and require the reporting of doses above specified levels. It would also require the assessment of all releases of radioactive material and all doses and potential doses to the public from DOE activities to ensure that they are managed in accordance with the Department's "as low as is reasonably achievable" (ALARA) policy.

Among the dose limits proposed were limits intended to protect native aquatic animal organisms. Subpart F proposed an absorbed dose limit of 1 rad/day (0.01 Gray/day) for aquatic animal organisms from exposure to radiation or radioactive material discharged in liquid waste to natural waterways. The limit was derived from the Department's order DOE 5400.5 and a report of the National Council on Radiation Protection and Measurements (NCRP).¹

A public hearing on proposed 10 CFR Part 834 was held on May 13, 1993 in Germantown, Maryland and the 60-day comment period closed on June 22, 1993.

Comments received on Subpart F of the Proposed Rule regarding aquatic organisms recommended expanding the rule to include terrestrial biota (both plant and animal organisms) in order to provide consistent regulation of radiation exposure to biota.

In June of 1994, DOE sponsored a Workshop on the Effects of Ionizing Radiation on Terrestrial Plants and Animals. This workshop was attended by experts in radiocology and ecological risk assessment. The purpose of the workshop was twofold: (1) to review a 1992 International Atomic Energy Agency (IAEA) report² on protecting terrestrial plants and animals from radiation and (2) to determine if there was sufficient information to support setting standards for protection of terrestrial biota from ionizing radiation. The workshop resulted in a published report summarizing its consensus findings and conclusions.³

¹ National Council on Radiation Protection and Measurements (NCRP), "Effects of Ionizing Radiation on Aquatic Organisms," NCRP Report No. 109 (August 30, 1991). Available for sale from the National Council on Radiation, Protection and Measurements, 7910 Woodmont Avenue, Bethesda, MD 20814.

² International Atomic Energy Agency (IAEA), "Effects of ionizing radiation on plants and animals at levels implied by current radiation protection standards," IAEA Technical Report No. 332, Vienna:IAEA (1992), Available for sale from UNIPUB, Inc., 4611-F Assembly Drive, Lanham, MD 20706-4391 (301-459-7666).

³ Barnhouse, L. W., "Effects of Ionizing Radiation on Terrestrial Plants and Animals: A Workshop Report." Martin Marietta Energy Systems. Oak

Continued

The workshop participants concluded that the 0.1 rad/day (0.001 Gray/day) limit for terrestrial animals and the 1 rad/day (0.01 Gray/day) limit for terrestrial plants recommended by the IAEA were adequately supported by the available scientific literature. The participants determined that existing data support the application of the dose limits for populations of terrestrial organisms to *representative* rather than *maximally exposed* individuals. Doses within the limits to representative members of a population would not be expected to cause adverse effects on such populations. Workshop participants further agreed with the IAEA report that protecting humans generally protects plants and animals except when: (1) Human access is restricted but access by biota is not restricted, (2) unique exposure pathways exist for plants and animals that do not affect exposure of humans, (3) rare or endangered species are present, or (4) other stresses on the population are significant. In such cases, site-specific evaluations were recommended to ensure that plants and animals were being protected.

On August 31, 1995, DOE published a Notice of Limited Reopening of Comment Periods (60 FR 45381), corrected September 13, 1995 (60 FR 47498), of the draft final rule, 10 CFR Part 834 (the Notice), for public review and comment. The Notice specifically requested comment on Subpart F, "Requirements for the Protection of Biota," concerning dose limits for aquatic animals. The regulatory language made available by the Notice reserved a section for requirements for the protection of terrestrial plants and a section for the protection of terrestrial animals. The comment period ended October 13, 1995.

Commenters on the dose limit in Subpart F agreed that populations of aquatic animal organisms would be protected under the draft final rule. Commenters also indicated, however, that similar protection for terrestrial organisms should be developed under this rule and that the currently reserved paragraphs, § 834.232 for terrestrial plants and § 834.233 for terrestrial animals, be included in the current rulemaking. The comments support the concepts in the current scientific literature which are summarized in the 1992 IAEA Report No. 332² and the DOE-sponsored workshop report.³

Based on comments received supporting the inclusion of terrestrial plants and animals and the findings and conclusions of the Workshop on the Effects of Ionizing Radiation on Terrestrial Plants and Animals, the Department is considering the option of including in 10 CFR Part 834 a section, 834.232, which would contain dose limits for the protection of terrestrial plants; a section, 834.233, which would contain dose limits for the protection of terrestrial animals; and a section, 834.234, which would require a demonstration of compliance. The demonstration of compliance section would allow for a graded approach for compliance with §§ 834.231, 834.232, and 834.233 to take into consideration various degrees of potential exposure of plants and animals to radionuclides in the aquatic and terrestrial environments. This approach recognizes the concept that if humans are protected, aquatic and terrestrial biota are protected as well and that special measures for protecting plants and animals are, therefore, not needed under such conditions. However, in situations where (1) the protection of humans is achieved by controlling access to contaminated areas without commensurate restrictions of access by biota, (2) unique exposure pathways exist for plants and animals that do not affect exposure of humans, (3) rare or endangered species are present, or (4) other stresses on the population are significant, additional evaluations or measures may be required to protect biota.

Based on the similarity of approach between the methods of regulating exposure to aquatic and terrestrial organisms, the Department is considering the option of including the requirements for protection of terrestrial organisms in the final rule in 10 CFR Part 834 at the same time as the final rule is issued.

Summary of Provisions for Protection of Biota

The Department is considering the option of including the following provisions in Subpart F of proposed 10 CFR Part 834 for the Protection of Biota. Under § 834.231, aquatic animals would be protected by requiring that a DOE activity shall be conducted in a manner such that the absorbed dose to aquatic animals (e.g., fish, mollusk, crustacean or any other aquatic invertebrate) would not exceed 1 rad (0.01 Gray) per day from exposure to radiation or radioactive material released into the aquatic environment.

Terrestrial plants, pursuant to § 834.232, would be protected by

requiring that a DOE activity shall be conducted in a manner such that the absorbed dose to terrestrial plants (e.g., fern, conifer, or flowering plant) would not exceed 1 rad (0.01 Gray) per day from exposure to radiation or radioactive material released into the terrestrial environment.

Terrestrial animals, pursuant to § 834.233, would be protected by requiring that a DOE activity shall be conducted in a manner such that the absorbed dose to terrestrial animals (e.g., amphibian, reptile, bird, or mammal) would not exceed 0.1 rad (0.001 Gray) per day from exposure to radiation or radioactive material released into the terrestrial environment.

Compliance under § 834.234(a) would be demonstrated by: (1) estimating the absorbed dose to a representative aquatic or terrestrial organism, or to models of hypothetical organisms chosen to represent populations or whole communities of such organisms; (2) using secondary effluent or environmental concentration-based screening criteria derived by calculating doses to a representative organism; or (3) meeting the conditions of § 834.234(c). Site-specific analyses would be required in some cases pursuant to § 834.234(a)(1) and (2).

Endangered species under § 834.234(b) would be protected (1) by providing that, unless the conditions of § 834.234(c) are met, potential doses to a hypothetical maximally exposed plant or animal shall be evaluated to confirm whether measures taken to protect populations of non-endangered species would be adequate for the protection of endangered species, or (2) if the requirements of § 834.234(b)(1) cannot be ensured, by implementing remedial measures.

Pursuant to § 834.234(c), no analysis of exposure to terrestrial or aquatic biota would need to be performed if the potential exposure to radionuclides in the aquatic or terrestrial environments were such that a human could continuously inhabit the location of the contaminated media, ingest the water and food grown on the media, and the potential dose would not exceed the limit for members of the general public (100 mrem or 1 mSv per year) in Subpart B of the Proposed Rule, § 834.101. If this dose limit is not exceeded, the biota may be considered protected and no analysis of exposure to the biota would need to be performed.

Request for Comments

Comments are invited on whether the proposed dose limits are adequate to protect terrestrial and aquatic

Ridge National Laboratory Report, ORNL/TM-13141 (December 1995). Copies are available for sale from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161. This report is also available in the docket for this rulemaking.

organisms. In evaluating these limits, it should be noted that the proposed dose limit for protection of members of the general public (100 mrem or 1 mSv per year) is equivalent to 0.00027 rad per day and, where exposure of humans can occur, would be far more restrictive than the proposed dose limits for terrestrial or aquatic organisms. The Department urges interested members of the public to comment on the important issues discussed above. Comments submitted previously in response to the Department's August 31, 1995 and September 13, 1995 Notices need not be resubmitted.

Issued in Washington, D.C. on February 15, 1996.

Tara O'Toole,

Assistant Secretary, Environment, Safety and Health.

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FEDERAL TRADE COMMISSION

16 CFR Part 305

Rule Concerning Disclosures Regarding Energy Consumption and Water Use of Certain Home Appliances and Other Products Required Under the Energy Policy and Conservation Act ("Appliance Labeling Rule")

AGENCY: Federal Trade Commission.

ACTION: Proposed rule and request for comments.

SUMMARY: The Federal Trade Commission ("Commission") proposes to amend its Appliance Labeling Rule ("the Rule"), 16 CFR Part 305 (1995), to permit the placement of energy use labels required by the Canadian and Mexican governments in a local "directly adjoining" the Rule's required "EnergyGuide" label. Currently, the Rule prohibits the affixation of non-required information "on or directly adjoining" the EnergyGuide. The relaxation of this prohibition would further the goal of the North American Free Trade Agreement ("NAFTA") to make compatible the standards-related measures of the signatories to facilitate trade in a good or service among the parties. Moreover, the amendment would result in considerable savings for the appliance manufacturing industry. The Commission seeks written data, views, and arguments concerning this proposal.

DATES: Written comments must be submitted on or before April 8, 1996.

ADDRESSES: Written comments should be submitted to the Office of the

Secretary, Federal Trade Commission, Room 159, Washington, D.C. 20580, 202-326-2506, and should be submitted, when feasible and not burdensome, in five copies. Envelops and comments should be marked: "Appliance Labeling Rule comment."

FOR FURTHER INFORMATION CONTACT: James G. Mills, Attorney, Division of Enforcement, Federal Trade Commission, Washington, D.C. 20580 (202-326-3035).

SUPPLEMENTARY INFORMATION: In a letter to the Commission's staff, the Whirlpool Corporation ("Whirlpool") requested permission to use hang tag EnergyGuide labels that have the corresponding "EnerGuide" appliance energy use label required by Canada printed on the reverse side. Whirlpool also asked to use a "same side" approach, which a Whirlpool representative clarified as meaning a single stick-on or hang tag label consisting of the Commission's EnergyGuide immediately next to (or above) the appropriately corresponding Canadian EnerGuide, or the appliance energy use label required by Mexico, or both labels.

In support of its request, Whirlpool stated that the continued existence of separate appliance labeling requirements among U.S., Canada, and Mexico represents an obstacle to free trade among the signatories to NAFTA. Whirlpool contended that the consolidation of the labels required by the different countries onto a single piece of label stock would eliminate that obstacle. Whirlpool also stated that using such labels would save Whirlpool significant resources by reducing the number of separate U.S. and Canadian models of appliances that Whirlpool produces and by reducing labeling expenses.

Section 305.11(a)(5)(i)(K) of the Rule, 16 CFR 305.11(a)(5)(i)(K), states that: No marks or information other than that specified in this Part shall appear on or directly adjoining [the EnergyGuide] label except for a part or publication number identification, as desired by the manufacturer. * * * [emphasis added]

The language in this section pertains to labels for refrigerators, refrigerator-freezers, freezers, dishwashers, clothes washers, water heaters, and room air conditioners. Identical language appears in two other sections relating to labels for furnaces and pool heaters (16 CFR 305.11(a)(5)(ii)(I) and central air conditioners (16 CFR 305.11(a)(5)(iii)(H)(1)). The purpose of this prohibition was to avoid having other information detract from the EnergyGuide label. The prohibition was

not specifically directed at labels required by other countries.¹

The Commission is considering whether permitting side-by-side or back-to-back labeling would be confusing to consumers, and thereby reduce the effectiveness of the EnergyGuide. For example, three labels side by side might create information overload, resulting in consumers ignoring the information. But, the Commission believes that consumers may realize that only one label is pertinent to U.S. consumers (because the Canadian label is in English and French, and the Mexican label is in Spanish²). The Commission's label also says in two places that the information on the label is derived from U.S. government standard tests and utility costs. Further, unlike in the past, the U.S. and Canada, and, to a slightly lesser extent, Mexico, now use compatible test procedures for identifying energy use, and require information to be reported in terms of kilowatt-hour use per year. Thus, the information being disclosed on each country's label is similar and this may make the possibility of confusion less likely.³ Moreover, U.S. consumers are already seeing Canadian labels on some appliances (especially in the northern states), and possibly Mexican labels, although not directly adjoining the EnergyGuide. And, on many packages, instruction manuals, and labels, it is common to see information presented in more than one language because the products are shipped to multiple countries. The Commission believes that, in this increasingly global marketplace, consumers may not be confused or misled by the presence of multiple appliance energy use labels, as long as they can clearly distinguish

¹ Although this language prohibits the types of labeling practices that Whirlpool has asked permission to use, manufacturers, of course, can place the appliance energy labels of other countries, or any other labels, in locations on their products that are not "on or directly adjoining" the EnergyGuide.

² To extent that U.S. residents speak and read only Spanish, the Mexican labels may convey useful information about energy consumption comparable to what is provided on the U.S. label.

³ As amended, the Commission's Rule now requires labels that show a primary energy use disclosure of kilowatt-hour use per year for all the products for which it formerly required the disclosure of estimated annual operating cost (refrigerators, freezers, clothes washers, dishwashers, and water heaters). And, the regulations of the three countries require disclosure of an energy efficiency number for room air conditioners. Thus, the appliance labeling regulations of all three NAFTA signatories now require the same primary descriptors of energy use. This reduces the possibility for consumers confusion resulting from labels on the same product that show energy use in different terms.