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## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

### 7 CFR Parts 272 and 273

[Amdt. No. 322]

### Food Stamp Program; Employment and Training (E&T) Requirements

**AGENCY:** Food and Nutrition Service (FNS), USDA.

**ACTION:** Final rule.

**SUMMARY:** A rulemaking was published on June 23, 1988 (53 FR 23638) which proposed several corrections and clarifications in Food Stamp Program employment and training (E&T) requirements set forth in program regulations at 7 CFR 273.1, 273.7, and 273.11. The changes were proposed in order to ensure proper interpretation and operation of food stamp employment and training requirements mandated by the Food Security Act of 1985 (Pub. L. 99-198). This rule incorporates comments received, and finalizes the proposed rulemaking.

**EFFECTIVE DATE:** The provisions of this rulemaking are effective October 15, 1990, and must be implemented no later than that date.

**FOR FURTHER INFORMATION CONTACT:** Ellen Henigan, Supervisor, Work Program Section, Food Stamp Program, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302, (703) 756-3762.

**SUPPLEMENTARY INFORMATION:**

#### Classification

*Executive Order 12291 and Secretary's Memorandum No. 1512-1*

This action has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1512-1. The annual effect of this rule on the economy will be less than $100 million. This rule will not significantly raise costs or prices for consumers, industries, government agencies or geographic regions. There will not be a significant adverse effect on competition, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, the Department has classified this action as "not-major".

*Executive Order 12372*

The Food Stamp Program is listed in the Category of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule in 7 CFR part 3015, subpart V and related Notice (48 FR 29115, June 24, 1983), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

*Regulatory Flexibility Act*

This action has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354, Stat. 1164, September 19, 1980). Betty Jo Nelsen, Administrator of the Food and Nutrition Service, has certified that this rule does not have a significant economic impact on a substantial number of small entities. State and local welfare agencies will be the most affected since they administer the Program.

Potential and current participants will be affected because they will have to fulfill the work requirements established by State agencies under the guidelines set forth in this rulemaking.

*Paperwork Reduction Act*

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the reporting and recordkeeping requirements contained in 7 CFR 273.7(o)(6) of this regulation have been approved by the Office of Management and Budget (OMB) under that Act. The OMB approval number for these requirements is 0584-0339. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Room 404-W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 0584-0339), Washington, DC 20503.

#### Background

The Department published a rulemaking on June 23, 1988 which proposed changes to the employment and training regulations found at 7 CFR 271.2, 273.1, 273.7, and 273.11 of the Food Stamp regulations and corrected a small number of typographical errors discovered in those sections. The rulemaking also addressed issues in 7 CFR 271.2 and 273.11. The Department accepted comments on this rulemaking through August 22, 1988. Twenty comment letters were received; most were from State welfare agencies, and the Department also heard from a State Employment Agency, and a local welfare agency. All comments were reviewed and given full consideration for inclusion in this final rulemaking.

*Income and Resources of Sanctioned Non-Heads of Households*

Current regulations at 7 CFR 273.7(g) specify that an individual other than the head of household who has refused or failed without good cause to comply with food stamp work requirements is to be ineligible for food stamp benefits for two months and the income and resources of the member are to be treated per section 7 CFR 273.11(d). 7 CFR 273.11(d) specifies that the income and resources of nonhousehold members not mentioned in paragraph 273.11(c) shall not be considered available to the household with whom they reside. It was the Department's intent that households containing an individual sanctioned for noncompliance with the work requirements of 7 CFR 273.7 should be subject to the procedures described in 7 CFR 273.11(c). That section addresses noncompliance of households containing an individual sanctioned for other Program noncompliance, such as an intentional program violation or failure to comply with a workfare obligation. The individual's income and resources should be considered available to the household. Therefore, the Department proposed to count all the income and resources of a household member disqualified for a work program violation as available to that person's household. Most commenters supported this proposal. One commenter considered the proposal punitive. The Department believes that the provision is equitable and will provide

consistency among sanction policies for persons who fail to fulfill Program requirements. E&T participants will have greater incentive to comply with work requirements as a result of the stricter penalty for noncompliance. Accordingly, this rule amends 7 CFR 273.11(c) to specify that all of the income and resources of a nonhousehold member disqualified for a work program violation be counted as available to the individual's household.

*Sanction for Non-Head of Household*

There were no comments concerning the proposed amendment to 7 CFR 273.7(g)(1) to clarify that noncompliant household members who join other households as non-heads of household are to be ineligible for two months. The proposal is adopted final by this rulemaking.

*Head of Household Definition*

Since passage of the Food Security Act of 1985 (Public Law 99-198), regulations draw a distinction in sanctioning action depending upon which household member failed to comply with a work requirement. If the head of household failed or refused to comply, the entire household is sanctioned. If someone other than the head of household failed or refused to comply, only that individual is ineligible for benefits. This distinction places a greater emphasis on the determination of who is the head of household. The current definition of head of household at 7 CFR 273.1(d) revolves around the concept of principal wage earner. However, if there is no principal wage earner, current regulations at 7 CFR 273.1(d)(2) permit the household to designate its head. This policy could result in circumvention of the work requirements by permitting households with no principal source of income to designate, as household head, someone other than the member who refuses to comply with the requirements. This would avert any period of ineligibility applied to the entire household. The current rules give households with no principal earner an advantage over those in which the head of household was defined by regulation. To prevent manipulation of the regulations after the fact, the Department proposed to modify language in 7 CFR 273.1(d)(2). Rather than permitting the household to make a designation after the violation occurs, the Department proposed that State agencies continue to consider as household head, the individual so designated at the time of the violation. Several commenters felt that households could be adversely affected by arbitrary selection of a head of household at the time of application when there is no principal wage earner.

The Department believes that prior designation is still more equitable than permitting the household to designate its head after a violation occurs. The proposal is adopted as final by this rulemaking.

*State Optional Workfare*

Current regulations at 7 CFR 273.1(d) applies the concept of principal wage earner as head of household for sanctioning purposes to the provisions of 7 CFR 273.7, work requirements, and 7 CFR 273.22, State optional workfare. However, section 20 of the Food Stamp Act of 1977, as amended, mandates that failure by any non-exempt member to comply with the State optional workfare provisions results in a sanction of the entire household for two months. Application of the head of household concept in 7 CFR 273.1(d) is not necessary in instances of State optional workfare violations. As there were no comments on this subject, this rulemaking finalizes the proposed change to 7 CFR 273.1(d)(2) that the principal wage earner as head of household concept is applicable only to workfare programs operated as components of an employment and training program. The concept is not applicable to participants in optional workfare programs under 7 CFR 273.22. A conforming amendment is made to 7 CFR 273.1(d)(2).

*Failure to Comply*

In light of the changing work requirements of the Aid to Families with Dependent Children (AFDC) Program, the proposed rule attempted to broaden a portion of the food stamp regulations dealing with comparable work requirements of other assistance programs. Current regulations at 7 CFR 273.7(g)(2) specify that failure to comply with a Work Incentive Program (WIN) or unemployment compensation work requirement by a recipient exempted from food stamp work registration pursuant to 7 CFR 273.7(b)(1) (iii) or (v) (because of their work obligations through those programs) is to be treated as failure to comply with the corresponding food stamp work requirements. Regulations at 7 CFR 273.7(g)(2) apply the comparability requirement only to the WIN program. However, section 6(d)(2) of the Food Stamp Act of 1977 (7 U.S.C. 2015(a)(2)) is more broad and applies the comparability requirement to any person subject to a work registration requirement under any title IV program the Social Security Act, as amended (42 U.S.C. 602). Therefore, the Department proposed to amend 7 CFR 273.7(g) to provide that failure to comply with the work requirements of title IV of the Social Security Act shall be considered the same as failure to comply with food stamp work requirements if the requirements were comparable to Food Stamp work registration or E&T requirements. Commenters supported this change. Similar references in 7 CFR 273.1(d)(2) is also being changed from WIN to title IV requirements. The Department is adopting the proposal as final by this rulemaking. A corresponding amendment is also made to 7 CFR 273.1(d)(2). Several commenters requested clarification of what constitutes a comparable work requirement. Comparable work requirements need not be exactly the same, but should involve similar levels of effort. We expect that with implementation of the Job Opportunity and Basic Skills Training (JOBS) Program, more and more State agencies will be combining Food Stamp and AFDC work requirements so that they may be very similar, if not identical.

*Counting Placements*

Current regulations at 7 CFR 273.7(o)(2) permit State agencies to count persons as "placed" in an employment and training program for purposes of performance standards, "if the person commences an E&T component, or fails to comply with E&T requirements and is denied certification or is sent a notice of adverse action (NOAA) for the noncompliance." The Department's original intent in allowing certification denials and NOAAs to be counted as placements was to recognize and credit State agency efforts to serve individuals who ultimately refuse or fail to begin a component. It was never the intention of the Department that State agencies count a single individual as "placed" several times for a single component. Multiple counting of such placements artificially inflates State agency success rates for performance. For that reason the Department proposed to amend 7 CFR 273.7(o)(2) to provide that an individual be considered as "placed" only one time for involvement with one component. Under the proposal, State agencies would have been allowed to count as "placed" those individuals who: (1) Are assigned, but refuse to begin an E&T component and are sent a NOAA or denied certification; or (2) actually begin a component. If a NOAA is sent for failure to comply subsequent to the individual's entrance into the component, an additional "placement" by the State agency would not be permissible. A number of

commenters were concerned that the proposal would require the tracking of actions taken on each individual for each component, necessitating costly data processing changes and more complicated tracking systems.

Since publication of the proposed regulation, the Hunger Prevention Act of 1988, P.L. 100-435, 102 Stat. 1645 (1988) was enacted. This Act mandated that the Department replace its current process-based performance measurement system with one which measures the outcomes of food stamp E&T programs. The upcoming changes, which must be implemented by State agencies no later than April 1, 1991, obviate the need to alter the definition of placement at this time. It is impractical to promulgate a policy which would be in effect only six months before the outcome-based measurement system would begin.

Therefore, through this regulation the Department is withdrawing its proposal to change the definition of placement for E&T performance measurement. Several commenters were concerned that the definition of "placed" in the proposed rule did not count persons who fail to appear for a scheduled initial assessment interview before assignment to an E&T component. Assessment alone is not an approvable E&T component. The State agency may still not count as "placed" an individual who fails to appear for an initial assessment interview to determine whether he or she should be subject to E&T. Individuals may be counted as "placed" if, after they are deemed E&T participants, they attend an assessment which is part of an E&T component, or fail to appear for a required assessment interview, and are subsequently sent a NOAA.

One commenter asked that the Department clarify that persons may be placed in more than one component over the course of the Federal fiscal year. Placement in multiple components is permissible.

*Counting the Base of Eligibles*

No commenters opposed the proposed change intended to provide internal regulatory consistency with the definition of "E&T mandatory participant" published in the December 31, 1986 final rule. That rule at 7 CFR 273.7(o)(3) stated that when computing the performance standard the base of eligibles included all work registrants in the month of October. This is incorrect. The base should include only non-exempt work registrants, i.e., E&T mandatories. Therefore, 7 CFR 273.7(o)(3) is amended to specify that mandatory E&T participants rather than work registrants are counted in the base of eligibles.

*Performance Data Collection*

The Department proposed to revise 7 CFR 273.7(o)(6) to clarify that the number of volunteers placed in a component, plus the number of non-exempt work registrants is to constitute the base of eligibles for performance calculations. No comments were received on this proposal. The proposed revision clarifies current policy, is not intended as a change, and is adopted as final by this rulemaking.

*Percentage of Persons To Be Placed*

Current regulations at 7 CFR 273.7(o)(7) specify that 35 percent of E&T mandatory participants shall be placed in an E&T program in the first quarter of Fiscal Year 1989 and that placements during the remainder of that year should average 35 percent. The regulations do not specify that volunteers may be included in the calculation of the number of persons placed. It was proposed that this section be amended to clarify that required placement percentages are to be applied to the total of E&T mandatory participants plus placed volunteers for specified performance reporting periods. No commenters objected to this change, which is adopted by this rulemaking.

*Proration of October 1988 Work Registrants*

The Department also proposed to amend 7 CFR 273.7(o)(3) to provide that the October 1988 count of non-exempt work registrants be prorated over the two Fiscal Year 1989 performance measurement periods in the following manner: The base of eligibles for the first performance measurement period would consist of only one-fourth of the total October 1988 count of non-exempt work registrants plus non-exempt persons newly work registered during the months of November and December 1988. The second performance measurement period base of eligibles would consist of three-fourths of the October 1988 count of non-exempt work registrants plus non-exempt persons newly work registered in the months of January through September 1989. This computational method is designed for use only in Fiscal Year 1989, to avoid requiring State agencies to meet an abnormally inflated standard for the first quarter of the year. This change merely proposed to correct what would have been an unintended stumbling block for State agencies in meeting their first quarter performance standard. No adverse comments were received. Therefore, proposal is adopted final by this rulemaking.

*Minor Corrections*

Corrections of typographical errors from the December 31, 1986 (51 FR 47378) rule are adopted final by this rulemaking. These changes can be found at 7 CFR 273.7(c)(2), (d)(1)(i)(F) and (f)(1). Two typographical errors at 7 CFR 273.7 (n)(1)(vi) which were published in a final rulemaking published on August 8, 1988 are corrected in this rulemaking. Also, a final rulemaking published on March 28, 1986 (51 FR 10764) inadvertently omitted two words at 7 CFR 273.7(b)(1)(vii). This rulemaking corrects this omission.

**List of Subjects**

*7 CFR Part 272*

Alaska, Civil Rights, Food stamps, Grant programs—social programs, Reporting and recordkeeping requirements.

*7 CFR Part 273*

Administrative practice and procedure, Aliens, Claims, Food Stamps, Fraud, Grant programs-social programs, Penalties, Reporting and recordkeeping requirements, Social security, Students.

Accordingly, 7 CFR parts 272 and 273 are amended as follows:

1. The authority citation for parts 272 and 273 continues to read as follows:

Authority: 7 U.S.C. 2011-2029.

## PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

3. In § 272.1 a new paragraph (g)(114) is added to read as follows:

**§ 272.1 General terms and conditions.**

* * * * *

(g) *Implementation.* * * *

(114) *Amendment No. 322.* The changes contained in this amendment are effective October 15, 1990 and shall be implemented no later than that date. The changes to 7 CFR 273.11 contained in this amendment will apply only to disqualifications imposed after the effective date of this rulemaking.

## PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

**§ 273.1 [Amended]**

4. In § 273.1, the second sentence of paragraph (d)(1) is amended by adding at the beginning of the sentence the words, "Except as provided in § 273.1(d)(2),"; the first sentence of paragraph (d)(2) is amended by adding the words "(to the extent that workfare programs, operated under this

paragraph, are included as components of State agency employment and training programs) the" between the reference "273.22" and the word "head"; the fourth sentence of paragraph (d)(2) is amended by removing the words "the work incentive program" and adding in their place the words "any work requirement" between the words "in" and "under"; and the next to the last sentence of paragraph (d)(2) is amended by removing the words "the household may designate the head of household." and adding in its place the words "the household member, documented in the casefile as the head of the household at the time of the violation, shall be considered the head of household."

**§ 273.7 [Amended]**

5. In § 273.7:

a. The last sentence of paragraph (c)(2) is amended by removing the word "Senate's" and adding in its place the words, "State agency's";

b. The first sentence of paragraph (d)(1)(i)(F) is amended by removing the word "of" between the words "State" and "local" and adding the word "or" in its place.

c. The second sentence of the introductory text of paragraph (f)(1) is amended by removing the word "contracts" and adding the word "contacts" in its place;

d. The sixth sentence of paragraph (g)(1) is amended by adding the words "ineligible for two months and shall be" between the words "be" and "considered";

e. The heading of paragraph (g)(2) is revised;

f. Paragraph (g)(2) is amended by removing the abbreviation "WIN", wherever it appears (eight occurrences), and adding in its place the words "title IV";

g. The introductory text of paragraph (h) is amended by removing the last sentence and by adding two sentences in its place;

h. The introductory text of paragraph (k)(1) is amended by removing the words "WIN registration" in the first sentence and adding in their place the word "work"; and by adding the words "under title IV of the Social Security Act" between the words "requirements" and "or";

i. Paragraph (k)(2) is amended by removing the words "required to register for work under WIN or" and adding in their place the words "program participants under title IV of the Social Security Act or registered for work under";

j. The first sentence in paragraph (n)(1)(vi) is amended by removing the word "applicant" and adding the word "application" in its place.

k. The next to the last sentence in paragraph (n)(1)(vi) is amended by removing the word "cause" and adding the word "caused" in its place.

l. Paragraph (o)(2) is amended by adding the words ", optional workfare," after the word "registration" in the second sentence.

m. Paragraph (o)(3) is amended by adding the word "nonexempt" between the words "all" and "work" in the first sentence; and by adding two new sentences at the end of the paragraph;

n. The introductory text of paragraph (o)(5) is amended by removing the "or" in the last sentence and adding the word "of" in its place;

o. Paragraph (o)(5)(ii) is amended by adding a sentence at the end of the paragraph; and

p. Paragraphs (o)(6) and (o)(7) are revised.

The additions and revisions read as follows:

**§ 273.7 Work requirements.**

* * * * *

(g) *Failure to comply*— * * *

(2) *Failure to comply with a work requirement under title IV of the Social Security Act, or unemployment compensation work requirement.* * * *

* * * * *

(h) *Ending disqualification.* * * * Eligibility may be reestablished by a household during a disqualification period and the household shall (if otherwise eligible) be permitted to resume participation if the head of the household becomes exempt from the work registration requirement, is no longer a member of the household, or complies with the appropriate requirement listed in paragraphs (h)(1) through (h)(5) of this section. An individual who has been disqualified for noncompliance may be permitted to resume participation during the disqualification period (if otherwise eligible) by becoming exempt from work registration or by complying with the following appropriate requirements:

* * * * *

(o) *Performance standards.* * * *

(3) *Counting the "base of eligibles".* * * * For purposes of computing the base of eligibles for the two performance standard reporting periods of Fiscal Year 1989 (first quarter and the remaining three quarters) the first quarter base of eligibles is the cumulative total of 25 percent of the number of E&T mandatory participants in the State in October 1988 (including persons in work registrant status carried over from the previous fiscal year), plus new E&T mandatory participants registered during November and December 1988, plus volunteers placed in E&T components during the quarter. The second performance period base of eligibles is the total of 75 percent of the October 1988 count of E&T mandatory participants plus new E&T mandatory participants registered during the months of January through September 1989, plus volunteers placed in E&T components during these same nine months.

* * * * *

(5) *Accounting for short-term participants.* * * *

(ii) * * * For Fiscal Year 1989, this 10 percent adjustment may be applied to the base of eligible totals for each reporting period resulting from the computations specified in paragraph (o)(3) of this section.

(6) *Performance data collection.* To determine the annual total in the base of eligibles (denominator), State agencies shall count the number of E&T mandatory participants (non-exempt work registrants) in the State during the month of October, including persons in that status who were work registered the prior year. The number of newly work registered E&T mandatory participants for each subsequent month should be added to the October count. Volunteers placed in components shall be added for each month of the fiscal year. Separate counts shall be maintained for E&T mandatory participants and volunteers. To determine the number of persons "placed" in an E&T program (numerator), the State agency shall count and add cumulatively every month non-exempt work registrants and volunteers who were "placed" in a component, as defined in paragraph (o)(2) of this section.

(7) *Percentage of persons to be placed.* In the first quarter of Fiscal Year 1989, 35% of the number of mandatory E&T participants, plus volunteers who participated, shall be placed in an E&T program; the same percentage shall be placed during the remainder of that fiscal year. In Fiscal Year 1990, 50% of the number of E&T mandatory participants plus volunteers who participated, shall be placed. Beyond Fiscal Year 1990, State agencies will receive instructions and standards from FNS.

* * * * *

**§ 273.11 [Amended]**

6. In § 273.11:

a. Introductory text of paragraph (c) is amended by adding the words "is ineligible because of noncompliance with a work requirement of § 273.7."

between the word "violation," and the word "is" in the first sentence;

b. Introductory text of paragraph (c)(1) is amended by revising the title as set forth below and by adding the words ", noncompliance with a work requirement of § 273.7," between the words "violation" and "or"; and

c. Paragraph (c)(3)(ii) is amended by revising the title as set forth below and by adding the words "is ineligible because of noncompliance with a work requirement of § 273.7," between the words "requirements," and "or" in the first sentence. The revisions read as follows:

**§ 273.11 Action on households with special circumstances.**

* * * * *

(c) *Treatment of income and resources of certain nonhousehold members.* * * *

(1) *Intentional Program violation disqualification, workfare, or work requirement sanction.* * * *

* * * * *

(3) * * *

(ii) *SSN or workfare disqualification, ineligible alien, or work requirement sanction.* * * *

* * * * *

Dated: August 6, 1990.

**Betty Jo Nelsen,**

*Administrator.*

[FR Doc. 90-15067 Filed 8-14-90; 8:45 am]

BILLING CODE 3410-30-M

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 90-NM-45-AD; Amdt. 39-6702]**

## Airworthiness Directives; Boeing Model 747SP Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747SP series airplanes, which requires the inspection of the wing front spar web over engine Numbers 2 and 3 for cracking, and repair, if necessary. This amendment is prompted by a recent report of a 26-inch crack of the front spar web. This condition, if not corrected, could result in fuel spillage on an engine and a subsequent fire.

**EFFECTIVE DATE:** September 21, 1990.

**ADDRESSES:** The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplant Directorate, 1601 Lind Avenue SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. Steven C. Fox, Seattle Aircraft Certification Office, Airframe Branch, ANM-120S; telephone (206) 227-2777. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to all Boeing Model 747SP series airplanes, which requires inspection of the wing front spar web over engine Numbers 2 and 3 for cracking, and repair, if necessary, was published in the Federal Register on May 2, 1990 (55 FR 18349).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The Air Transport Association (ATA) of America, on behalf of its member operators, had no objection to the proposed rule.

The manufacturer recommended that the rule be limited to only those Boeing Model 747SP series airplanes listed in Boeing Alert Service Bulletin 747-57A2259, rather than to all Boeing Model 747SP series airplanes. The FAA concurs that certain airplanes are not subject to the type of fatigue cracking addressed in this AD action. Nine Model 747SP airplanes have a different front spar web configuration at this location in order to enable other manufacturers' engines to be installed; therefore, these nine airplanes have been excluded from the applicability of the final rule. The economic analysis paragraph has also been revised to reflect this change.

Paragraph D. of the final rule has been revised to specify the current procedure for submitting requests for approval of alternate means of compliance.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described above. These changes will neither increase the economic burden on any operator nor increase the scope of the rule.

There are approximately 35 Model 747SP series airplanes of the affected design in the worldwide fleet. It is estimated that 15 airplanes of U.S. registry will be affected by this AD, that it will take approximately 16 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $9,600.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

## PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to all Model 747SP series airplanes, listed in Boeing Alert Service Bulletin 747-57A2259, dated February 15, 1990, certificated in any category. Compliance required as indicated, unless previously accomplished.

To detect cracks in the front spar web, accomplish the following:

A. Within the next six months after the effective date of this AD, perform a visual and an ultrasonic inspection of the front spar

web between front spar station (FSS) 638 and FSS 675 in accordance with Boeing Alert Service Bulletin 747-57A2259, dated February 15, 1990. Repeat these inspections at intervals not to exceed 1,000 landings.

B. If cracks are found, prior to further flight, repair in a manner approved by the Manager, Seattle Aircraft Certification Office, FAA, Transport Airplane Directorate; or accomplish the terminating modification described in paragraph C. of this AD.

C. Installation of the terminating modification in accordance with Boeing Alert Service Bulletin 747-57A2259, dated February 15, 1990, constitutes terminating action for the requirements of this AD.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal Inspector (PI).The PI will then forward comments or concurrence to the Seattle ACO.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment becomes effective September 21, 1990.

Issued in Renton, Washington, on August 6, 1990.

**Darrell M. Pederson,**
*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 90-19201 Filed 8-14-90; 8:45 am]

BILLING CODE 4910-13-M

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## 14 CFR Part 39

**[Docket No. 89-NM-120-AD; Amdt. 39-6705]**

## Airworthiness Directives; Boeing Model 747 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment supersedes an existing airworthiness directive (AD), applicable to all Boeing Model 747 series airplanes except the Model 747SP, which currently requires periodic inspections of both inboard and outboard trailing edge flap carriage spindles for cracks and corrosion, and overhaul or replacement, if necessary. This amendment requires periodic inspections to detect cracks or corrosion of all exposed surfaces of the carriage spindles, including inner bore, and aft links; and overhaul or replacement, if necessary. This amendment also shortens the current compliance intervals to ensure continued airworthiness. This amendment is prompted by reports of two aft link failures on one flap. This condition, if not corrected, could lead to the failure of the trailing edge flaps carriage spindles, which could reduce the ability of the pilot to safely control the airplane during landing.

**EFFECTIVE DATE:** September 21, 1990.

**ADDRESSES:** The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. Steven C. Fox, Airframe Branch, ANM-120S; telephone (206) 431-1923. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 88-04-06-R1, Amendment 39-6164 (54 FR 1172, March 17, 1989), applicable to Boeing Model 747 series airplanes to require periodic inspections to detect cracks or corrosion of all exposed surfaces of the carriage spindles, including inner bore, and aft links; and overhaul or replacement, if necessary, was published in the Federal Register on March 7, 1990 (55 FR 8149).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The Air Transport Association (ATA) of America, on behalf of its member operators, requested that the final rule be revised to allow credit for inspections previously accomplished in accordance with the existing AD within the last twelve months, since this is consistent with the repetitive inspections defined in the proposed rule. The FAA concurs and the final rule has been revised accordingly.

Two ATA members commented that the inspection thresholds, defined in paragraphs A. and B. have confusing conditional options and requested that these paragraphs be further clarified. The FAA concurs and the inspection schedule has been clarified in the final rule.

One ATA member requested that the initial threshold for the inspection be deleted and that the 12-month repetitive inspections be applied to all flap track spindles regardless of time-in-service. The FAA does not concur. In-service experience related to the Model 747 fleet indicates that new, or recently overhauled, spindles are not subject to corrosion pits immediately and the initial threshold of 30,000 flight hours or 8 years is not only warranted, but reduces the burden of unnecessary inspections. Any operator who feels that such inspections should be accomplished earlier than required by this AD may elect to do so at any time (without the direction of an AD).

Two ATA members requested that the repetitive inspection intervals for the detailed visual inspections be revised from 12 months to 15 months to be concurrent with normal airline maintenance periods (C-check). The FAA does not concur. The existing repetitive inspection requirement of 12 months has been determined to be the maximum that can be permitted for the purpose of detecting cracks and corrosion pits before they could result in failure of the spindle.

Another ATA member noted that the proposal would require repetitive general visual inspections if corrosion is found on either the spindle or the aft links of only one assembly on a flap track. The commenter requested that, "since strength loss due to corrosion damage in one part does not affect the load carrying capability of the other part," the rule be revised to require the general visual inspection only if corrosion is found on both the spindle and the aft links of that assembly. Further, the commenter suggested that if one spindle on a flap track is found corroded, the detailed visual inspection required of the other spindle on the same flap should be "reduced" to a general visual inspection. The FAA does not concur. The original AD action was prompted by a report of the failure of two spindles on one flap, which resulted in control problems during approach and landing; this AD action was prompted by two fractured aft links on one flap. The FAA has determined that a detailed visual inspection will better ensure that corrosion is initially detected in a timely manner. Therefore, continued detailed visual inspections of non-affected parts (where corrosion or cracking has not been found) is warranted. Likewise, a

repetitive general visual inspection of an assembly in which corrosion has been identified in one portion will adequately monitor the progression of corrosion until replacement or overhaul is accomplished.

The FAA notes, however, that the intended general visual inspection requirements of the rule apparently are not totally clear, as is evidenced by the previous comment and similar comments received. Therefore, these inspection requirements of paragraph A. have been revised to clarify under what conditions a general visual inspection is permitted. Specifically, if corrosion is found on any part of one spindle carriage/aft link assemblies on a flap track, but not on any other part of the assembly on the same flap track, a repetitive general visual inspection of that assembly is required at 2-month intervals. However, if corrosion is found in any part of both assemblies on the same flap track, the operator is required to overhaul, replace, or repair the parts prior to further flight.

Another ATA member requested that the proposed 30-day compliance provision of paragraph A. be extended since it may result in the unintentional grounding of most of the fleet due to parts availability problems, if all aft links with any amount of corrosion must be removed. This member stated that adoption of this provision would likely cause the removal of all links, unless recently installed, and the time required to refurbish such links varies between four and six weeks; this schedule is not compatible with a 30-day compliance period. The FAA does not concur that a parts availability problem exists. As discussed above, the compliance time in the final rule has been revised to account for previous inspections accomplished in accordance with the existing AD. Further, no new requirement for additional parts has been added.

An operator of Model 747 airplanes commented that the rule should be revised to specifically include inspection of the sleeve edges of the spindles since in-service failures have occurred at this location. The FAA does not concur with the suggestion, since these areas are covered by the requirements of the detailed visual inspection of the carriage spindles.

Paragraph C. of the final rule has been revised to specify the current procedures for submitting requests for approval of alternate means of compliance.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest requires the adoption of the rule with the changes described above. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 630 Model 747 series airplanes of the affected design in the worldwide fleet. It is estimated that 170 airplanes of U.S. registry will be affected by this AD, that it will take approximately 84 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $571,200.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

## PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

### § 39.13 [Amended]

2. Section 39.13 is amended by superseding AD 88-04-06-R1, Amendment 39-6164 (54 FR 11172; March 17, 1989), with the following new airworthiness directive:

**Boeing:** Applies to Model 747 series airplanes, except the Model 747SP, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent failure of the trailing edge flaps' carriage spindles, accomplish the following:

A. In accordance with the compliance schedule below, remove the aft link and thrust collars from the trailing edge flaps' carriage spindles and perform a detailed visual inspection of all exposed surfaces of the carriage spindles, including inner bore, and aft links to detect cracking and corrosion, in accordance with Boeing Service Bulletin 747-27-2280, Revision 3, dated November 30, 1989.

1. Perform the initial inspection at the later of the following, unless previously accomplished within the last 11 months:

a. Within 30 days after the effective date of this AD; or

b. Prior to the accumulation of 30,000 flight hours or 8 years on each new or previously overhauled flap carriage spindle, whichever occurs first.

2. If no cracking or corrosion is found, repeat the inspections required by paragraph A. of this AD, at intervals not to exceed 12 months until the carriage spindles are overhauled in accordance with paragraph B. of this AD.

3. If a cracked carriage spindle or aft link is found, prior to further flight, replace the part(s) in accordance with the service bulletin.

4. If corrosion is found on any part of the carriage spindle/aft link assembly, but not on the other assembly on the same flap perform a repetitive general visual inspection in accordance with the service bulletin at intervals not to exceed 2 months. Overhaul or replace corroded parts within 36 months after detection of the corrosion, but no later than 5 years after the effective date of this AD.

5. If corrosion is found on any part of both carriage spindle/aft link assemblies on the same flap, prior to further flight, overhaul or replace the part(s) in accordance with the service bulletin; or repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office, Transport Airplane Directorate.

B. In accordance with the schedule below, remove the carriage spindle and aft link, and overhaul in accordance with Boeing Service Bulletin 747-27-2280, Revision 3, dated November 30, 1989.

1. Perform the initial overhaul at the latest of the following:

a. Within 5 years after the effective date of this AD; or

b. Prior to the accumulation of 30,000 flight hours on any new or previously overhauled flap carriage spindle; or

c. Prior to the accumulation of 8 years on any new or previously overhauled flap carriage spindle.

2. Repeat this overhaul thereafter at intervals not to exceed 30,000 flight hours or 8 years, whichever occurs first.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager,

Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Seattle ACO.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

This amendment supersedes Amendment 39-6164, AD 88-04-06 R1.

This amendment becomes effective September 21, 1990.

Issued in Seattle, Washington, on August 6, 1990.

Darrell M. Pederson,

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 90-19202 Filed 8-14-90; 8:45 am]

BILLING CODE 4910-13-M

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**14 CFR Part 39**

**[Docket No. 90-NM-31-AD; Amdt. 39-6704]**

## Airworthiness Directives; Airbus Industrie Model A310 and A300-600 Series Airplanes, Equipped with Litton LTN 90 or LTN 90-100 Inertial Reference Units

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Industrie Model A310 and A300-600 series airplanes, which requires modification of the wiring in Zone 121 and installation of three modified inertial reference units (IRU) to protect against a change of calibration. This amendment is prompted by reports that the potential exists for losing all flight data provided by the IRU's due to disruption of the calibration of all three IRU's. This condition, if not corrected, could result in loss of accurate airplane attitude and heading information that is necessary for safe operation of the airplane.

**EFFECTIVE DATE:** September 21, 1990.

**ADDRESSES:** The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. Greg Holt, Standardization Branch, ANM-113; telephone (206) 431-1918. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to certain Airbus Industrie Model A310 and A300-600 series airplanes, which required modification of the wiring in Zone 121 and installation of three modified inertial reference units (IRU) to protect against a change of calibration; was published in the **Federal Register** on March 26, 1990 (55 FR 11026).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supported the rule.

Another commenter noted the inconsistency between the proposed rule and the French Airworthiness Directive (AD). Specifically, the French AD mandates a temporary modification of the airplanes to provide for a potential parts availability problem, in accordance with Airbus Industrie Service Bulletins A310-34-2053 and A300-34-6030, while the proposed rule mandates a permanent modification of the airplanes in accordance with Airbus Industrie Service Bulletins A300-34-2052 and A300-34-6029. The FAA does not concur. The FAA has determined that in consideration of the safety implications, requiring a temporary modification is not warranted merely to consider a potential parts availability problem. However, in the event that the availability of modification kits should become a problem for any individual operator, the FAA may consider any proposed alternate action in accordance with the provisions of paragraph B. of the final rule.

Paragraph B. of the final rule has been revised to specify the current procedure for submitting requests for approval of an alternate means of compliance.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

It is estimated that 10 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3.5 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. The required parts would be provided at no cost to the operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,400.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

### PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Airbus Industrie:** Applies to Model A310 and A300-600 series airplanes, equipped with Litton LTN 90 or LTN 90-100 Inertial Reference Units, certified in any category. Compliance is required within 45 days after the effective date of this AD, unless previously accomplished.

To prevent the loss of accurate attitude and heading information, accomplish the following:

A. Remove the three inertial reference units (IRU), modify the wiring in Zone 121, and install modified IRU's, in accordance with the following service bulletins:

| Airplane model | Service bulletin |
|---|---|
| A310 | A310-34-2052, Revision 1, dated December 7, 1989 |
| A300-600 | A300-34-6029, Revision 1, dated December 7, 1989 |

Note: These service bulletins reference Litton Service Bulletins 34-90-102 and 34-90-98 for additional instructions.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Standardization Branch, ANM-113, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective September 21, 1990.

Issued in Seattle, Washington, on August 6, 1990.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 90-19200 Filed 8-14-90; 8:45 am]

BILLING CODE 4910-13-M

## 14 CFR Part 71

**[Airspace Docket No. 89-AEA-16]**

## Establishment of Transition Area; Laurel, DE

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This notice establishes a new 700 foot Transition Area at Laurel, DE, to support a new VOR/DME Runway 32 Standard Instrument Approach Procedure to the Laurel Airport, Laurel, DE. This action establishes that amount of controlled airspace which is deemed necessary by the FAA to segregate aircraft operating under instrument flight rules from those operating under visual flight rules in controlled airspace. Additionally, the status of the airport is being changed from VFR to IFR.

**EFFECTIVE DATE:** 0901 u.t.c., October 18, 1990.

**FOR FURTHER INFORMATION CONTACT:** Mr. Curtis L. Brewington, Airspace Specialist, System Management Branch, AEA-530, Federal Aviation Administration, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 917-0857.

**SUPPLEMENTARY INFORMATION:**

### History

On May 25, 1990, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish a new 700 foot Transition Area at Laurel, DE, to support the establishment of a new VOR/DME Runway 32 SIAP (55 FR 25980). The proposed action would establish that amount of controlled airspace which is deemed necessary to contain aircraft operating under instrument flight rules (IFR) at the Laurel Airport, Laurel, DE.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments on the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6F, January 2, 1990.

### The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes a new 700 foot Transition Area at Laurel, DE, to support the establishment of a new VOR/DME Runway 32 SIAP to the Laurel Airport, Laurel, DE.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended as follows:

## PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 1349(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

**Laurel, DE [New]**

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the center, lat. 38°32'30" N., long. 75°35'30" W., of the Laurel Airport; within 4.5 miles either side of the Salisbury, MD, VORTAC 343° (T) 350° (M) radial extending from the 5-mile radius area to 8.5 miles south of the airport.

Issued in Jamaica, New York, on July 26, 1990.

**Gary W. Tucker,**

*Manager, Air Traffic Division.*

[FR Doc. 90-19203 Filed 8-14-90; 8:45 am]

BILLING CODE 4910-13-M

**14 CFR Part 71**

**[Airspace Docket No. 89-ASO-7]**

## Alteration of VOR Federal Airway V-437; FL

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment alters the description of VOR Federal Airway V-437 located in the vicinity of Melbourne, FL. The current alignment of V-437 is a dogleg segment to the west between Melbourne and Pahokee, FL. This action realigns that segment as a direct/straight-line airway between those points thereby saving fuel. This action improves the traffic flow in the Miami terminal area.

**EFFECTIVE DATE:** 0901 u.t.c., October 18, 1990.

**FOR FURTHER INFORMATION CONTACT:** Lewis W. Still, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9250.

**SUPPLEMENTARY INFORMATION:**

### History

On March 22, 1989, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter the description of VOR Federal Airway V-437 located in the vicinity of Melbourne, FL (54 FR 11741). The current alignment of V-437 is a dogleg segment to the west between Melbourne and Pahokee, FL. This action realigns that segment as a direct/straight-line airway between those points thereby saving fuel. This action improves the traffic flow in the Miami terminal area. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.123 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6F dated January 2, 1990.

### The Rule

This amendment to part 71 of the Federal Aviation Regulations alters the description of VOR Federal Airway V-437 by realigning a segment between Melbourne and Pahokee, FL. Pilots usually request a direct routing between these points. Since there is no operational advantage in having aircraft fly that dogleg, controllers permit direct routing between Melbourne and Pahokee. This action reduces controller workload.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 71

Aviation safety, VOR federal airways.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended, as follows:

## PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

**§ 71.123 [Amended]**

2. Section 71.123 is amended as follows:

**V-437 [Amended]**

By removing the words "INT Pahokee 352° and Melbourne, FL, 217° radials; Melbourne" and substituting the words "Melbourne, FL"

Issued in Washington, DC, on August 6, 1990.

**Harold W. Becker,**

*Manager, Airspace-Rules and Aeronautical Information Division.*

[FR Doc. 90-19204 Filed 8-14-90; 8:45 am]

BILLING CODE 4910-13-M

**SECURITIES AND EXCHANGE COMMISSION**

**17 CFR Part 211**

**[Rel. No. SAB-88]**

## Staff Accounting Bulletin No. 88

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Publication of staff accounting bulletin.

**SUMMARY:** This staff accounting bulletin expresses certain views of the staff regarding the requirements of Item 17 of Form 20-F which relate to reconciliation of financial measurements and disclosures in financial statements prepared on a comprehensive basis of accounting other than U.S. generally accepted accounting principles.

**DATES:** August 10, 1990.

**FOR FURTHER INFORMATION CONTACT:** Richard J. Reinhard, Office of the Chief Accountant (202-272-2130), or Robert A. Bayless or Teresa E. Iannaconi, Division of Corporation Finance (202-272-2553), Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

**SUPPLEMENTARY INFORMATION:** The statements in staff accounting bulletins are not rules or interpretations of the Commission nor are they published as bearing the Commission's official approval. They represent interpretations and practices followed by the Division of Corporation Finance and the Office of the Chief Accountant in administering the disclosure requirements of the Federal Securities laws.

August 10, 1990.

**Margaret H. McFarland,**

*Deputy Secretary.*

## PART 211—[AMENDED]

Accordingly, part 211 of title 17 of the Code of Federal Regulations is amended by adding Staff Accounting Bulletin No. 88 to the table found in subpart B.

The staff hereby adds section D.1. to topic 1 of the staff accounting bulletin series. Section D.1. of topic 1 sets forth the interpretive position of the Division of Corporation Finance and the Office of the Chief Accountant with respect to the requirements of Item 17 of Form 20-F to provide reconciliation of financial measurements and disclosures in financial statements prepared on a basis other than U.S. generally accepted accounting principles.

**Topic I. Financial Statements**

* * * * *

*D. Foreign Companies*

1. Disclosures required of companies complying with Item 17 of Form 20-F.

*Facts:* A foreign private issuer may use Form 20-F as a registration statement under section 12 or as an annual report under section 13(a) or 15(d) of the Exchange Act. The registrant must furnish the financial statements specified in Item 17 of that form. However, in certain circumstances, Forms F-3 and F-2 require that the annual report include financial statements complying with Item 18 of the form. Also, financial statements complying with Item 18 are required for registration of securities under the Securities Act in most circumstances. Item 17 permits the registrant to use its financial statements that are prepared on a comprehensive basis other than U.S. generally accepted accounting principles ("GAAP"), but requires quantification of the material differences in the principles, practices and methods of accounting. An issuer complying with Item 18 must satisfy the requirements of Item 17 and also must provide all other information required by U.S. GAAP and Regulation S-X.

*Question 1:* Assuming that the registrant's financial statements include a discussion of material variances from U.S. GAAP along with quantitative reconciliations of net income and material balance sheet items, does Item 17 of Form 20-F require other disclosures in addition to those prescribed by the standards and practices which comprise the comprehensive basis on which the registrant's primary financial statements are prepared?

*Interpretive Response:* No. The distinction between Items 17 and 18 is premised on a classification of the requirements of U.S. GAAP and Regulation S-X into those that specify the methods of measuring the amounts shown on the face of the financial statements and those prescribing disclosures that explain, modify or supplement the accounting measurements. Disclosures required by U.S. GAAP but not required under the foreign GAAP on which the financial statements are prepared need not be furnished pursuant to Item 17.

Notwithstanding the absence of a requirement for certain disclosures within the body of the financial statements, some matters routinely disclosed pursuant to U.S. GAAP may rise to a level of materiality such that their disclosure is required by Item 9 (Management's Discussion and Analysis) of Form 20-F. Among other things, this item calls for a discussion of any known trends, demands, commitments, events or uncertainties that are reasonably likely to affect liquidity, capital resources or the results of operations in a material way. Also, instruction 11 to this item requires "a discussion of any aspects of the difference between foreign and United States generally accepted accounting principles, not discussed in the reconciliation, that the registrant believes is necessary for an understanding of the financial statements as a whole." Matters that may warrant discussion in response to Item 9 include the following:

- Material undisclosed uncertainties (such as reasonably possible loss contingencies), commitments (such as those arising from leases), and credit risk exposures and concentrations;
- Material unrecognized obligations (such as pension obligations);
- Material changes in estimates and accounting methods, and other factors or events affecting comparability;
- Defaults on debt and material restrictions on dividends or other legal constraints on the registrant's use of its assets;
- Material changes in the relative amounts of constituent elements comprising line items presented on the face of the financial statements;
- Significant terms of financings which would reveal material cash requirements or constraints;
- Material subsequent events, such as events that affect the recoverability of recorded assets;
- Material related party transactions (as addressed by U.S. Financial Accounting Standard No. 57) that may affect the terms under which material revenues or expenses are recorded; and
- Significant accounting policies and measurement assumptions not disclosed in the financial statements, including methods of costing inventory, recognizing revenues, and recording and amortizing assets, which may bear upon an understanding of operating trends or financial condition.

[FR Doc. 90-19215 Filed 8-14-90; 8:45 am]
BILLING CODE 8010-01-M

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**Office of the Assistant Secretary for Housing—Federal Housing Commissioner**

**24 CFR Parts 25, 202, 203**

**[Docket No. R-90-1493; FR-2748-F-01]**

## Amendments to the Approval and Debarment of Mortgagees and Title I Lenders

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

**ACTION:** Final rule.

**SUMMARY:** On August 9, 1989, the Financial Institutions Reform Recovery Enforcement Act (FIRREA or S&L Bailout Bill, Pub. L. 101-73) was signed into law. The new law reorganizes some of the Federal banking agencies, abolishes the Federal Savings and Loan Insurance Corporation (FSLIC) and the Federal Home Loan Bank Board (FHLBB). This final rule amends the Department's Mortgagee Approval regulations to conform to the technical changes imposed by FIRREA. Therefore, the references to FSLIC in §§ 25.9(b), 202.3(b), 202.4(b), 203.3(b)(1) and 203.4(b)(3) are removed. These changes are purely technical and do not create or limit substantive rights of mortgagees or Title I lenders. Accordingly, these changes are being published for effect and the Department will not be seeking public comments pursuant to § 10.1.

**EFFECTIVE DATE:** September 17, 1990.

**FOR FURTHER INFORMATION CONTACT:** David E. Pinsky, Assistant General Counsel, Home Mortgage Division, Department of Housing and Urban Development, room 9258, 451 Seventh Street SW., Washington, DC 20410-0500; telephone (202) 708-0303. (This telephone number is not toll-free.)

**SUPPLEMENTARY INFORMATION:** In response to the recent Savings and Loan Associations failures, the Congress enacted the Financial Institutions Reform Recovery Enforcement Act. This Act abolished both the Federal Savings and Loan Insurance Corporation (FSLIC) and the Federal Home Loan Bank Board (FHLBB). Before its abolition, the FSLIC had both insurance and supervisory authorities over savings institutions. The new Act transferred this insurance authority to the Federal Deposit Insurance Corporation (FDIC). FSLIC's supervisory function was delegated to the Office of Thrift Supervision. Section 205 of FIRREA requires automatic insurance coverage for depository institutions provided they were insured

by the FSLIC. No change is needed to the Department's regulations with reference to Federal Home Loan Banks since FIRREA merely replaced the FHLBB with the Federal Housing Finance Board.

**Other Matters**

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive order on Federal Regulation issued by the President on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individuals, industries, Federal, State or local government, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities.

This final rule is not subject to environmental impact review because it is categorically excluded by § 50.20(k). This section generally excludes internal administrative procedures from environmental review where these procedures relate only to the performance of accounting, auditing or fiscal functions.

This rule was not listed in the Department's Semiannual Agenda of Regulations published on April 23, 1990 (55 FR 16226) under Executive Order 12291 and the Regulatory Flexibility Act.

*Executive Order 12612, Federalism.* The General Counsel, as the Designated Official under section 67(a) of Executive Order 12612, Federalism has determined that the policies contained in this proposed rule do not have Federalism implications and, thus, are not subject to review under the Order. The rule is limited to certain technical corrections to existing regulations. No programmatic or policy changes result from its promulgation which affect existing relationships between Federal and State and local governments.

*Executive Order 12606, the Family.* The General Counsel, as designated Official under Executive Order 12606, *The Family,* has determined that this rule does not have a potential significant impact on family formation, maintenance, and general well-being, and, thus is not subject to review under the Order. No significant change in existing HUD policies or programs will result from promulgation of this rule, as those policies and programs relate to family concerns.

**List of Subjects**

*24 CFR Part 25*

Mortgage Review Board.

*24 CFR Part 202*

Approval of lending institutions under Title I.

*24 CFR Part 203*

Mutual Mortgage Insurance and Rehabilitation Loans.

Accordingly, parts 25, 202 and 203 are amended as follows:

## PART 25—MORTGAGE REVIEW BOARD

1. The authority citation for 24 CFR part 25 continues to read as follows:

**Authority:** Secs. 211, National Housing Act (12 U.S.C 1715b; sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. In § 25.9, paragraph (b) is revised to read as follows:

**§ 25.9 Grounds for an administrative action.**

* * * * *

(b) The failure of a nonsupervised mortgagee to segregate all escrow funds received from mortgagors on account of ground rents, taxes, assessments and insurance premiums, or failure to deposit these funds in a special account with a financial institution whose accounts are insured by the Federal Deposit Insurance Corporation or by the National Credit Union Administration except as otherwise provided in writing;

* * * * *

## PART 202—APPROVAL OF LENDING INSTITUTIONS UNDER TITLE I

1. The authority citation for 24 CFR part 202 continues to read as follows:

**Authority:** Secs. 211, National Housing Act (12 U.S.C 1715b; sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. In § 202.3, paragraph (b) is revised to read as follows:

**§ 202.3 Eligible lenders.**

* * * * *

(b) *Supervised institutions.* A member of the Federal Reserve System, a lender whose accounts are insured by the Federal Deposit Insurance Corporation (FDIC) or the National Credit Union Administration (NCUA), or an institution which is subject to the inspection and supervision of a governmental agency which is required by law to make periodic examinations of its books and accounts;

* * * * *

3. In § 202.4, paragraph (b) is revised to read as follows:

**§ 202.4 (b) Approval requirements:**

* * * * *

(b) In addition to the general requirements applicable to all eligible lenders under paragraph (a) of this section, a supervised institution shall promptly notify the Secretary in the event of termination of its supervision by its supervising agency. Supervised institutions that are not members of the Federal Reserve System or whose accounts are not insured by the FDIC or NCUA shall have and maintain a net worth of not less than $100,000.00 in assets acceptable to the Secretary.

* * * * *

## PART 203—MUTUAL MORTGAGE INSURANCE AND REHABILITATION LOANS

1. The authority citation for 24 CFR part 203 continues to read as follows:

**Authority:** Secs. 203, 211, National Housing Act (12 U.S.C. 1709, 1715b); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)); In addition, subpart C is also issued under sec. 230, National Housing Act (12 U.S.C. 1715u).

2. In § 203.3, paragraph (b)(1) is revised to read as follows:

**§ 203.3 Supervised mortgagees.**

* * * * *

(b) * * *

(1) A member of the Federal Reserve System or an institution whose activities are insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration and that meets the requirements of § 203.2; or

* * * * *

3. In § 203.4, paragraph (b)(3) is revised to read as follows:

**§ 203.4 Nonsupervised mortgagees.**

* * * * *

(b) * * *

(3) It shall segregate escrow commitment deposits, work completion deposits, and all periodic payments received under insured mortgages on account of ground rents, taxes, assessments, and insurance premiums and shall deposit such funds in a special account or accounts with a financial institution whose accounts are insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration.

* * * * *

Dated: August 9, 1990.

James E. Schoenberger,

*Associate General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.*

[FR Doc. 90-19133 Filed 8-14-90; 8:45 am]

BILLING CODE 4210-27-M

## PENSION BENEFIT GUARANTY CORPORATION

## 29 CFR Part 2619

## Valuation of Plan Benefits in Single-Employer Plans; Amendment Adopting Additional PBGC Rates

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Final rule.

**SUMMARY:** This amendment to the regulation on Valuation of Plan Benefits in Single-Employer Plans contains the interest rates and factors for the period beginning September 1, 1990. The use of these interest rates and factors to value benefits is mandatory for some terminating single-employer pension plans and optional for others. The Pension Benefit Guaranty Corporation adjusts the interest rates and factors periodically to reflect changes in financial and annuity markets. This amendment adopts the rates and factors applicable to plans that terminate on or after September 1, 1990 and will remain in effect until the PBGC issues new interest rates and factors.

**EFFECTIVE DATE:** September 1, 1990.

**FOR FURTHER INFORMATION CONTACT:** J. Ronald Goldstein, Senior Counsel, Office of the General Counsel, Code 22500, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006, 202-778-8850 (202-778-8859 for TTY and TDD only). These are not toll-free numbers.

**SUPPLEMENTARY INFORMATION:** The Pension Benefit Guaranty Corporation's ("PBGC's") regulation on Valuation of Plan Benefits in Single-Employer Plans (29 CFR part 2619) sets forth the methods for valuing plan benefits of terminating single-employer plans covered under title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). Under ERISA section 4041(c), all plans wishing to terminate in a distress termination must value guaranteed benefits and "benefit liabilities", i.e., all benefits provided under the plan as of the plan termination date, using the formulas set forth in part 2619. Plans terminating in a standard termination may, for purposes of the Standard Termination Notice filed with PBGC, use these formulas to value benefit liabilities, although this is not required. (Such plans may value benefit liabilities that are payable as annuities on the basis of a qualifying bid obtained from an insurer.)

Appendix B in part 2619 sets forth the interest rates and factors that are to be used in the formulas contained in the regulation. Because these rates and factors are intended to reflect current conditions in the financial and annuity markets, it is necessary to update the rates and factors periodically.

The rates and factors currently in use have been in effect since July 1, 1990. This amendment adds to appendix B a new set of interest rates and factors for valuing benefits in plans that terminate on or after September 1, 1990, which set reflects an decrease of ¼ percent of the immediate interest rate from 7½ to 7¼ percent.

Generally, the interest rates and factors will be in effect for at least one month. However, any published rates and factors will remain in effect until such time as the PBGC publishes another amendment changing them. Any change in the rates normally will be published in the **Federal Register** by the 15th of the month preceding the effective date of the new rates or as close to that date as circumstances permit.

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest rates and factors promptly so that the rates can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation of benefits in plans that will terminate on or after September 1, 1990, and because no adjustment by ongoing plans is required by this amendment, the PBGC finds that good cause exists for making the rates set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this is not a "major rule" under the criteria set forth in Executive Order 12291, because it will not result in an annual effect on the economy of $100 million or more, a major increase in costs for consumers or individual industries, or significant adverse effects on competition, employment, investment, productivity, or innovation.

### List of Subjects in 29 CFR Part 2619

Employee benefit plans, Pension insurance, Pensions.

In consideration of the foregoing, part 2619 of chapter XXVI, title 29, Code of Federal Regulations, is hereby amended as follows:

## PART 2619—[AMENDED]

1. The authority citation for part 2619 is revised to read as follows:

**Authority:** 29 U.S.C. 1301(a), 1302(b)(3), 1314, 1344, and 1362 (1988).

2. Rate Set 85 of appendix B is revised and Rate Set 86 of appendix B is added to read as follows. The introductory text is republished for the convenience of the reader and remains unchanged.

### Appendix B—Interest Rates and Quantities Used to Value Immediate and Deferred Annuities

In the table that follows, the immediate annuity rate is used to value immediate annuities, to compute the quantity "Gy" for deferred annuities and to value both portions of a refund annuity. An interest rate of 5% shall be used to value death benefits other than the decreasing term insurance portion of a refund annuity. For deferred annuities, $k_1$, $k_2$, $k_3$, $n_1$, and $n_2$ are defined in § 2619.45.

| Rate set | For plans with a valuation date | | Immediate annuity rate (percent) | Deferred annuities | | | | |
|---|---|---|---|---|---|---|---|---|
| | On or after | Before | | $k_1$ | $k_2$ | $k_3$ | $n_1$ | $n_2$ |
| * * * | * | * | * | * | * | * | | |
| 85 | 7-1-90 | 9-1-90 | 7.50 | 1.0675 | 1.0550 | 1.0400 | 7 | 8 |
| 86 | 9-1-90 | | 7.25 | 1.0650 | 1.0525 | 1.0400 | 7 | 8 |

Diane E. Burkley,

*Deputy Executive Director, Pension Benefit Guaranty Corporation.*

[FR Doc. 90-19159 Filed 8-14-90; 8:45 am]

BILLING CODE 7708-01-M

## 29 CFR Part 2676

## Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal—Interest Rates

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Final rule.

**SUMMARY:** This is an amendment to the Pension Benefit Guaranty Corporation's regulation on Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal (29 CFR part 2676). The regulation prescribes rules for valuing benefits and certain assets of multiemployer plans under sections 4219(c)(1)(D) and 4281(b) of the Employee Retirement Income Security Act of 1974. Section 2676.15(c) of the regulation contains a table setting forth, for each calendar month, a series of interest rates to be used in any valuation performed as of a valuation date within that calendar month. On or about the fifteenth of each month, the PBGC publishes a new entry in the table for the following month, whether or not the rates are changing. This amendment adds to the table the rate series for the month of September 1990.

**EFFECTIVE DATE:** September 1, 1990.

**FOR FURTHER INFORMATION CONTACT:** Deborah C. Murphy, Attorney, Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006; 202-778-8820 (202-778-8859 for TTY and TDD). (These are not toll-free numbers.)

**SUPPLEMENTARY INFORMATION:** The PBGC finds that notice of and public comment on this amendment would be impracticable and contrary to the public interest, and that there is good cause for making this amendment effective immediately. These findings are based on the need to have the interest rates in this amendment reflect market conditions that are as nearly current as possible and the need to issue the interest rates promptly so that they are available to the public before the beginning of the period to which they apply. (*See* 5 U.S.C. 533 (b) and (d).) Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

The PBGC has also determined that this amendment is not a "major rule" within the meaning of Executive Order 12291 because it will not have an annual effect on the economy of $100 million or more; or create a major increase in costs or prices for consumers, individual industries, or geographic regions; or have significant adverse effects on competition, employment, investment, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

**List of Subjects in 29 CFR Part 2676**

Employee benefit plans and Pensions.

In consideration of the foregoing, part 2676 of subchapter H of chapter XXVI of title 29, Code of Federal Regulations, is amended as follows:

### PART 2676—VALUATION OF PLAN BENEFITS AND PLAN ASSETS FOLLOWING MASS WITHDRAWAL

1. The authority citation for part 2676 continues to read as follows:

**Authority:** 29 U.S.C. 1302(b)(3), 1399(c)(1)(D), and 1441(b)(1).

2. In § 2676.15, paragraph (c) is amended by adding to the end of the table of interest rates therein the following new entry:

**§ 2676.15 Interest.**

* * * * *

(c) *Interest rates.*

| For valuation dates occurring in the month | The values for $i_k$ are: | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | $i_1$ | $i_2$ | $i_3$ | $i_4$ | $i_5$ | $i_6$ | $i_7$ | $i_8$ | $i_9$ | $i_{10}$ | $i_{11}$ | $i_{12}$ | $i_{13}$ | $i_{14}$ | $i_{15}$ | $i_n$ |
| * * * | | | | | | | | | | | | | | | | |
| September 1990 | .0825 | .08 | .0775 | .075 | .0725 | .07 | .07 | .07 | .07 | .07 | .065 | .065 | .065 | .065 | .065 | .05875 |

Issued at Washington, DC, on this 9th day of August 1990.

Diane E. Burkley,

*Deputy Executive Director, Pension Benefit Guaranty Corporation.*

[FR Doc. 90-19158 Filed 8-14-90; 8:45 am]

BILLING CODE 7708-01-M

## DEPARTMENT OF DEFENSE

## Department of the Army

## 32 CFR Part 518

## Release of Information and Records From Army Files

**AGENCY:** Department of the Army, DoD.

**ACTION:** Final rule.

**SUMMARY:** The Department of Army announces an amendment to 32 CFR part 518, The Army Freedom of Information Act Program, by adding an additional Initial Denial Authority (IDA) to § 518.54. This IDA pertains to the realignment and closure of military installations records.

**EFFECTIVE DATE:** August 15, 1990.

**FOR FURTHER INFORMATION CONTACT:** Ms. Angela Petrarca, HQDA (SAIS-PS), Washington, DC 20310-0107, telephone (202) 697-5796.

**SUPPLEMENTARY INFORMATION:** Pursuant to the authority cited below, the Department of the Army amends 32 CFR Part 518 (revised at 55 FR 10870, March 23, 1990) which is derived from Army Regulation 340-17 which implements within the Department of the Army the provisions of Department of Defense Directives 5400.7-R and 5400.7 series, Department of Defense Freedom of Information Act Program (32 CFR part 286) pertaining to action on requests for release of departmental records.

*Compliance With Executive Order 12291 and the Regulatory Flexibility Act.* The Department of the Army has determined that this document is not a major rule under Executive Order 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*).

For the reasons set out in the preamble, the U.S. Army amends 32 CFR part 518 as set forth below.

### PART 518—[AMENDED]

1. The authority citation for part 518 continues to read as follows:

**Authority:** 5 U.S.C. 551, 552, 552a, 5101-5108, 5110-5113, 5115, 5332-5334, 5341-5342, 5504-5509, 7154; 10 U.S.C. 130, 1102, 2320-2321, 2328; 18 U.S.C. 798, 3500; 31 U.S.C. 3710; 35 U.S.C. 181-188; 42 U.S.C. 2162; 44 U.S.C. 33; and Executive Order 12600.

2. Section 518.54 Initial Denial Authority (IDA) is amended by adding the following information as paragraph (d)(25):

**§ 518.54 Initial Denial Authority (IDA).**

* * * * *

(d) * * *

(25) The Director, Management Directorate, Office, Director of the Army Staff, Pentagon, for records requested under the Freedom of Information Act pertaining to realignment and closure of military installations.

**Kenneth L. Denton,**

*Alternate Army Federal Register Liaison Officer.*

[FR Doc. 90-18994 Filed 8-14-90; 8:45 am]

BILLING CODE 3710-08-M

## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Part 117

**[CGD8-90-05]**

## Drawbridge Operation Regulations; La Carpe Bayou, LA

**AGENCY:** U.S. Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** At the request of the Louisiana Department of Transportation and Development (LDOTD), the Coast Guard is changing the regulation governing the operation of the vertical lift span bridge on State Route 661 across La Carpe Bayou, mile 7.5, at Houma, Terrebonne Parish, Louisiana, by permitting the draw to open on at least four hours advance notice during the time not covered by the existing regulation, which states that the draw need not be opened for the passage of vessels from 7 a.m. to 8:30 a.m. and from 4:30 p.m. to 6 p.m. Monday through Friday, except holidays. This additional regulation is being added because of a steady decline in vessel passages. This action will relieve the bridge owner of the burden of having a person constantly available at the bridge for operations of the draw, at a savings to the taxpayer, while still providing for the reasonable needs of navigation.

**EFFECTIVE DATE:** This regulation becomes effective on September 14, 1990.

**FOR FURTHER INFORMATION CONTACT:** Mr. John Wachter, Bridge Administration Branch, Eighth Coast Guard District, telephone (504) 589-2965.

**SUPPLEMENTARY INFORMATION:** On May 21, 1990, the Coast Guard published a proposed rule (55 FR 20805) concerning this amendment. The Commander, Eighth Coast Guard District, also published the proposal as a Public Notice dated June 5, 1990. In each notice interested parties were given until July 5, 1990 to submit comments.

### Drafting Information

The drafters of this regulation are Mr. John Wachter, project officer, and LT J.A. Wilson, project attorney.

### Discussion of Comments

Three letters of comment were received in response to public notification of the proposed rule change. The Federal Emergency Management Agency and the National Marine Fisheries Service offered no objection to the proposed change. One commentor suggested that industries in the area may need the bridge to open. Alternate routes to bypass the bridge are available in the immediate area and no comments from local industries were received. The commentor also suggested that a public hearing on the proposal be held. Because the proposal did not generate any significant controversy, a hearing was deemed unnecessary. Immediate access to the Gulf Intracoastal Waterway and the Houma Navigation Canal, from Bayou La Carpe, insures no great burden to vessels to bypass the bridge. Therefore, in the absence of significant objection to the proposal, the final rule is unchanged from the proposed rule.

### Federalism Implications

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

### Economic Assessment and Certification

This regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures [44 FR 11034, February 26, 1979].

The economic impact of this regulation is expected to be so minimal that a full regulatory evaluation is unnecessary. The basis for this conclusion is that few vessels use this bridge and vessels can still pass when the need arises by providing four hours notice. Since the economic impact of this regulation is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

The advance notice for opening of the draw can be given by placing a toll-free call at anytime to the LDOTD in Bridge City, Louisiana, telephone 1-800-256-1599. From afloat, this contact may be made by radiotelephone through a public coast station.

The LDOTD recognizes that there may be an unusual occasion to open the bridge on less than four hours notice for an emergency, or to operate the bridge on demand for an isolated but temporary surge in waterway traffic, and has committed to doing so if such an event should occur.

### List of Subjects in 33 CFR Part 117

Bridges.

### Regulation

In consideration of the foregoing, part 117 of title 33, Code of Federal Regulations, is amended as follows:

## PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46 and 33 CFR 1.05-1(g).

2. Section 117.460 is revised to read as follows:

**§ 117.460 La Carpe Bayou.**

The draw of the S661 bridge, mile 7.5, shall open on signal if at least four hours advance notice is given; except that, the draw need not be opened for the passage of vessels Monday through Friday except holidays from 7 a.m. to 8:30 a.m. and 4:30 p.m. to 6 p.m.

Dated: July 24, 1990.

**J. M. Loy,**

*Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.*

[FR Doc. 90-19149 Filed 8-14-90; 8:45 am]

BILLING CODE 4910-14-M

## POSTAL SERVICE

## 39 CFR Part 111

## Optional Use of Barcoded Sack Labels

**AGENCY:** Postal Service.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the Domestic Mail Manual (DMM) to provide for the optional use of barcoded sack labels for second-, third-, and fourth-class mail. The Postal Service plans to deploy to the Bulk Mail Centers (BMCs) barcode scanning systems in a

phase-in period between June and December 1990. The sack barcode scanning systems will improve the quality of mail distribution, which should result in improved service and reduce costs in rehandling mail. The Postal Service plans to start printing barcoded labels for this type of mail in August 1990. Mailers printing their own sack labels are encouraged to also print new labels with the barcode.

**EFFECTIVE DATE:** September 16, 1990.

**FOR FURTHER INFORMATION CONTACT:** George W. Shannon, 202-268-2244.

**SUPPLEMENTARY INFORMATION:** Currently, mail sacks are sorted by postal employees in BMCs. The operator must position the sack label and read the destination ZIP Code. This information is then entered on a keyboard. At some BMCs, the type of mail being sorted may also affect where it is to be routed by the operator for further sorting. For sack labels that are barcoded, the automated system will eliminate the reading, scheme memory translation, and keying. The automated system will still provide the capability to do manual entry for the sack labels without a barcode.

The sack barcode sortation system will improve the quality of the distribution of the mail. This will lead to the improvement of on-time service to customers and to savings in mail rehandling costs to the Postal Service.

Consequently, effective with Domestic Mail Manual Issue 36 (9/16/90), sections 446, 646, and 769 are added to include the optional use of barcoded sack labels for second-, third-, and fourth-class mail. The Postal Service plans to start printing barcoded labels for this type of mail in August 1990. Once stock on hand is exhausted, mailers printing their own sack labels are encouraged to print new labels with correctly prepared barcodes on them.

The new sack label will have a barcode added on its left side. The barcode will contain the 5-digit destination ZIP code and a 3-digit sack content identifier code. The Postal Service has defined the sack content identifier code to cover the categories of mail shipped in sacks.

Sections 441.321, 445.432, 641.133, 641.224, 641.323, 641.423, 644.332, 764.21, 767.23, 767.33, and 767.823 are also revised to include consistent language and correct references to the sections affected by the above changes.

Accordingly, the Postal Service adopts the following amendments to the Domestic Mail Manual, which is incorporated in the Code of Federal Regulations. See 39 CFR 111.1.

**List of Subjects in 39 CFR Part 111**

Postal service.

## PART 111—GENERAL INFORMATION ON POSTAL SERVICE

1. The authority citation for part 111 continues to read as follows:

**Authority:** 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001-3011, 3201-3219, 3403-3406, 3621, 5001.

Chapter 4—SECOND-CLASS MAIL

* * * * *

## PART 440—GETTING THE PUBLICATION READY FOR MAILING—PRESORTING

* * * * *

441 Required and Optional Preparation Requirements for the Basic Rates (Levels A, G, and J).

* * * * *

441.3 Sacking Requirements.

* * * * *

441.32 Sack, Bundle, and Pallet Label Preparation Requirements

* * * * *

441.321 General

* * * * *

2. Amend 441.321 by adding at the end the following:

g. Barcodes. It is preferred that sack labels include a barcode, prepared as required in 446.

* * * * *

445 Bundling and Palletizing

* * * * *

445.4 Palletizing Sacks

* * * * *

445.43 Sack Preparation

* * * * *

445.432 Sack Labeling

* * * * *

3. Revise 445.432 to read as follows:

445.432 Sack Labeling: Sacks must be labeled in accordance with the requirements in 441.31 a through g, 441.32, 443.31, 443.32, 443.33 444.31, 444.32, and 444.33.

* * * * *

4. Add 446 to read as follows:

446 Optional Use of Barcoded Sack Labels

446.1 General. Sack labels supplied by the Postal Service will be machine-printed with barcodes that enable scanning and sortation by automated equipment. Alternatively, mailers who produce their own sack labels are encouraged to prepare them with a barcoded label that meets the criteria in 446.2 and 446.3.

446.2 Sack Label Specifications

446.21 Color. Sack labels must be printed on pink-colored label stock.

446.22 Size. Sack labels must fall within the following tolerances:

a. Height (vertical): 0.965 of an inch +/−0.015 of an inch;

b. Length (horizontal): 3.312 inches +/−0.062 of an inch.

446.23 Stock. The paper stock used for sack labels must be 70 pounds or heavier.

446.24 Printed Text Lines. The preparation of the printed text lines must be in accordance with 441.321 and

441.322. Extraneous information as described in 441.323 may be printed on the label as long as it appears to the right of the "quiet zone" (see 446.35) and does not interfere with scanning and sorting by automated equipment.

446.25 Printing Density. The human-readable content of sack labels must be machine-printed at five lines per inch. The preferred machine printed pitch is 12 characters per inch. If the information to be contained on the label cannot be shortened using acceptable postal abbreviations, it may be printed at a pitch of up to 15 characters per inch, provided at least 22 human-readable characters fit on the label without interfering with the "quiet zone" (see 446.35). The minimum acceptable height for the destinating ZIP Code must be 0.111 of an inch (8 point). The minimum acceptable character height for all other information contained in lines 1, 2, and 3 must be 0.083 of an inch (6 point).

446.3 Barcode Specifications

446.31 Type. The barcode must be an interleaved 2-of-5 code in accordance with the Automatic Identification Manufacturers' Uniform Symbology Specification (AIM/USS-I 2/5) and the requirements of this section.

446.32 Barcode Location. The barcode must be located on the left side of the sack label. A clear space must be maintained between both the left edge of the sack label and the barcode and between the barcode and the printed text lines, in accordance with the requirements set forth in 446.35 (see Exhibit 446.32).

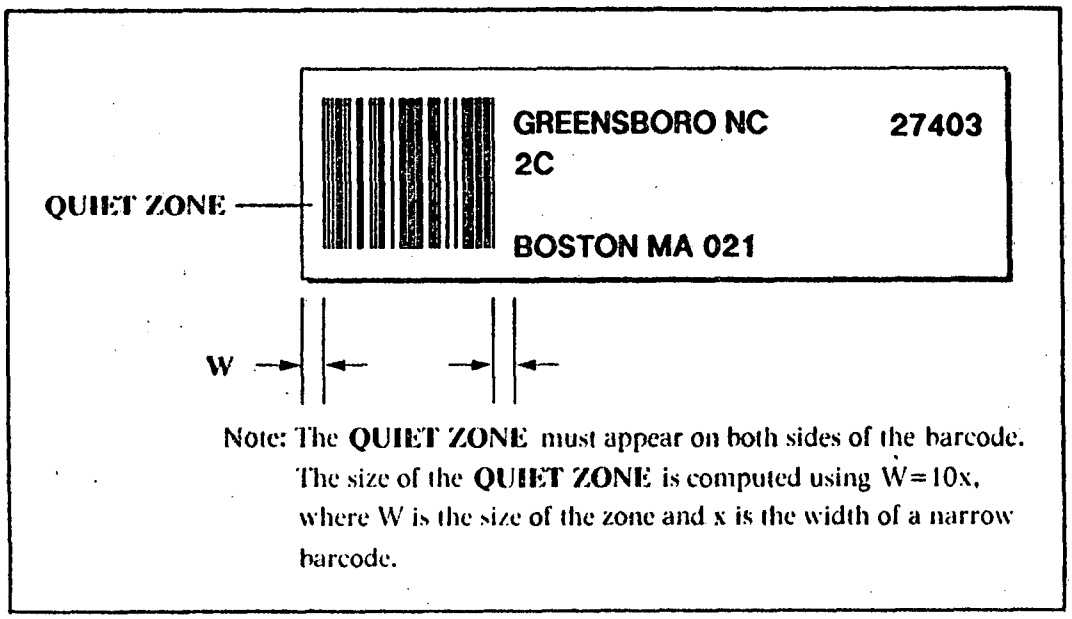


Exhibit 446.32

446.33 Dimensions. The nominal width of the bars and spaces ("X" dimension) must be between 0.010 of an inch and 0.015 of an inch. An "X" dimension of 0.010 of an inch is preferred. The tolerance of the width of all bars and spaces is ±/− 0.004 of an inch. The nominal wide to-narrow ratio for barcodes with an "X" dimension less than 0.013 of an inch is 3 to 1. The nominal wide-to-narrow ratio for barcodes with an "X" dimension between 0.013 of an inch and 0.015 of an inch is 2.3 to 1. The height of the barcode must be at least 0.700 of an inch.

446.34 Reflectance. When measured at 633 nanometers, the maximum bar reflectance must be less than 30 percent, and the minimum space reflectance must be 40 percent or greater. The minimum bar-to-space reflectance difference must be greater than 40 percent.

446.35 Clear Space (Quiet Zone). There must be a clear area (or "quiet zone") at each end of the barcode that is no less than 10 times the "X" dimension width and at least as high as the height of the bars in the barcode. The reflectance of the clear area must meet the requirement for minimum space reflectance (see 446.34).

446.36 Barcode Contents. The barcode on the sack labels must consist of eight numeric characters representing the 5-digit ZIP Code of the sack's destination (see 446.24) and the applicable 3-digit sack contents identifier code in Exhibit 446.36. When only a 3-digit ZIP Code prefix is required, it must be followed by two zeros. When the contents of the sack do not correspond to an available sack contents code, three zeros must be used.

EXHIBIT 446.36

| CI No. | mail type |
|---|---|
| 100 | NEWS |
| 101 | NEWS CR # |
| 102 | NEWS RR # |
| 103 | NEWS HCR # |
| 104 | NEWS BOX SEC # |
| 105 | NEWS GEN DEL # |
| 106 | NEWS CARRIER ROUTES |
| 107 | NEWS MIXED STATES |
| 108 | NEWS APO |
| 109 | NEWS FPO |
| 110 | NEWS DRX |
| 141 | NEWS ALABAMA |
| 142 | NEWS ALASKA |
| 143 | NEWS ARIZONA |
| 144 | NEWS ARKANSAS |
| 145 | NEWS CALIFORNIA |
| 146 | NEWS COLORADO |
| 147 | NEWS CONNECTICUT |
| 148 | NEWS DELAWARE |
| 149 | NEWS DIST OF COL |
| 150 | NEWS FLORIDA |
| 151 | NEWS GEORGIA |
| 152 | NEWS GUAM |
| 153 | NEWS HAWAII |
| 154 | NEWS IDAHO |
| 155 | NEWS ILLINOIS |
| 156 | NEWS INDIANA |

EXHIBIT 446.36—Continued

| CI No. | mail type |
|---|---|
| 157 | NEWS IOWA |
| 158 | NEWS KANSAS |
| 159 | NEWS KENTUCKY |
| 160 | NEWS LOUISIANA |
| 161 | NEWS MAINE |
| 162 | NEWS MARYLAND |
| 163 | NEWS MASSACHUSETTS |
| 164 | NEWS MICHIGAN |
| 165 | NEWS MINNESOTA |
| 166 | NEWS MISSISSIPPI |
| 167 | NEWS MISSOURI |
| 168 | NEWS MONTANA |
| 169 | NEWS NEBRASKA |
| 170 | NEWS NEVADA |
| 171 | NEWS NEW HAMPSHIRE |
| 172 | NEWS NEW JERSEY |
| 173 | NEWS NEW MEXICO |
| 174 | NEWS NEW YORK |
| 175 | NEWS NORTH CAROLINA |
| 176 | NEWS NORTH DAKOTA |
| 177 | NEWS OHIO |
| 178 | NEWS OKLAHOMA |
| 179 | NEWS OREGON |
| 180 | NEWS PENNSYLVANIA |
| 181 | NEWS PUERTO RICO |
| 182 | NEWS RHODE ISLAND |
| 183 | NEWS SOUTH CAROLINA |
| 184 | NEWS SOUTH DAKOTA |
| 185 | NEWS TENNESSEE |
| 186 | NEWS TEXAS |
| 187 | NEWS UTAH |
| 188 | NEWS VERMONT |
| 189 | NEWS VIRGINIA |
| 190 | NEWS VIRGIN ISLANDS |

EXHIBIT 446.36—Continued

| CI No. | mail type |
|---|---|
| 191 | NEWS WASHINGTON |
| 192 | NEWS WEST VIRGINIA |
| 193 | NEWS WISCONSIN |
| 194 | NEWS WYOMING |
| 195 | NEWS AMERICAN SAMOA |
| 196 | NEWS MICRONESIA |
| 197 | NEWS MARSHALL ISLANDS |
| 198 | NEWS MARIANA IS (CM) |
| 199 | NEWS PALAU |
| 200 | 2C |
| 201 | 2C CR # |
| 202 | 2C RR # |
| 203 | 2C HCR # |
| 204 | 2C BOX SEC # |
| 205 | 2C GEN DEL # |
| 206 | 2C CARRIER ROUTES |
| 207 | 2C MIXED STATES |
| 208 | 2C APO |
| 209 | 2C FPO |
| 210 | 2C DRX |
| 211 | PRINTS |
| 241 | 2C ALABAMA |
| 242 | 2C ALASKA |
| 243 | 2C ARIZONA |
| 244 | 2C ARKANSAS |
| 245 | 2C CALIFORNIA |
| 246 | 2C COLORADO |
| 247 | 2C CONNECTICUT |
| 248 | 2C DELAWARE |
| 249 | 2C DIST OF COL |
| 250 | 2C FLORIDA |
| 251 | 2C GEORGIA |
| 252 | 2C GUAM |
| 253 | 2C HAWAII |
| 254 | 2C IDAHO |
| 255 | 2C ILLINOIS |
| 256 | 2C INDIANA |
| 257 | 2C IOWA |
| 258 | 2C KANSAS |
| 259 | 2C KENTUCKY |
| 260 | 2C LOUISIANA |
| 261 | 2C MAINE |
| 262 | 2C MARYLAND |
| 263 | 2C MASSACHUSETTS |
| 264 | 2C MICHIGAN |
| 265 | 2C MINNESOTA |
| 266 | 2C MISSISSIPPI |
| 267 | 2C MISSOURI |
| 268 | 2C MONTANA |
| 269 | 2C NEBRASKA |
| 270 | 2C NEVADA |
| 271 | 2C NEW HAMPSHIRE |
| 272 | 2C NEW JERSEY |
| 273 | 2C NEW MEXICO |
| 274 | 2C NEW YORK |
| 275 | 2C NORTH CAROLINA |
| 276 | 2C NORTH DAKOTA |
| 277 | 2C OHIO |
| 278 | 2C OKLAHOMA |
| 279 | 2C OREGON |
| 280 | 2C PENNSYLVANIA |
| 281 | 2C PUERTO RICO |
| 282 | 2C RHODE ISLAND |
| 283 | 2C SOUTH CAROLINA |
| 284 | 2C SOUTH DAKOTA |
| 285 | 2C TENNESSEE |
| 286 | 2C TEXAS |
| 287 | 2C UTAH |
| 288 | 2C VERMONT |
| 289 | 2C VIRGINIA |
| 290 | 2C VIRGIN ISLANDS |
| 291 | 2C WASHINGTON |
| 292 | 2C WEST VIRGINIA |
| 293 | 2C WISCONSIN |
| 294 | 2C WYOMING |
| 295 | 2C AMERICAN SAMOA |
| 296 | 2C MICRONESIA |
| 297 | 2C MARSHALL ISLANDS |
| 298 | 2C MARIANA IS (CM) |

EXHIBIT 446.36—Continued

| CI No. | mail type |
|---|---|
| 299 | 2C PALAU |
| 300 | 3C FLATS |
| 301 | 3C FLTS CR # |
| 302 | 3C FLTS RR # |
| 303 | 3C FLTS HCR # |
| 304 | 3C FLTS BOX SEC # |
| 305 | 3C FLTS GEN DEL # |
| 306 | 3C FLTS MXD CR RTS |
| 307 | 3C FLTS MXD 5-DG PKGS |
| 308 | 3C FLTS MIXED STATES |
| 312 | 3C IPP |
| 313 | 3C COMM IRREG |
| 314 | 3C MACH |
| 341 | 3C FLTS ALABAMA |
| 342 | 3C FLTS ALASKA |
| 343 | 3C FLTS ARIZONA |
| 344 | 3C FLTS ARKANSAS |
| 345 | 3C FLTS CALIFORNIA |
| 346 | 3C FLTS COLORADO |
| 347 | 3C FLTS CONNECTICUT |
| 348 | 3C FLTS DELAWARE |
| 349 | 3C FLTS DIST OF COL |
| 350 | 3C FLTS FLORIDA |
| 351 | 3C FLTS GEORGIA |
| 352 | 3C FLTS GUAM |
| 353 | 3C FLTS HAWAII |
| 354 | 3C FLTS IDAHO |
| 355 | 3C FLTS ILLINOIS |
| 356 | 3C FLTS INDIANA |
| 357 | 3C FLTS IOWA |
| 358 | 3C FLTS KANSAS |
| 359 | 3C FLTS KENTUCKY |
| 360 | 3C FLTS LOUISIANA |
| 361 | 3C FLTS MAINE |
| 362 | 3C FLTS MARYLAND |
| 363 | 3C FLTS MASSACHUSETTS |
| 364 | 3C FLTS MICHIGAN |
| 365 | 3C FLTS MINNESOTA |
| 366 | 3C FLTS MISSISSIPPI |
| 367 | 3C FLTS MISSOURI |
| 368 | 3C FLTS MONTANA |
| 369 | 3C FLTS NEBRASKA |
| 370 | 3C FLTS NEVADA |
| 371 | 3C FLTS NEW HAMPSHIRE |
| 372 | 3C FLTS NEW JERSEY |
| 373 | 3C FLTS NEW MEXICO |
| 374 | 3C FLTS NEW YORK |
| 375 | 3C FLTS NORTH CAROLINA |
| 376 | 3C FLTS NORTH DAKOTA |
| 377 | 3C FLTS OHIO |
| 378 | 3C FLTS OKLAHOMA |
| 379 | 3C FLTS OREGON |
| 380 | 3C FLTS PENNSYLVANIA |
| 381 | 3C FLTS PUERTO RICO |
| 382 | 3C FLTS RHODE ISLAND |
| 383 | 3C FLTS SOUTH CAROLINA |
| 384 | 3C FLTS SOUTH DAKOTA |
| 385 | 3C FLTS TENNESSEE |
| 386 | 3C FLTS TEXAS |
| 387 | 3C FLTS UTAH |
| 388 | 3C FLTS VERMONT |
| 389 | 3C FLTS VIRGINIA |
| 390 | 3C FLTS VIRGIN ISLANDS |
| 391 | 3C FLTS WASHINGTON |
| 392 | 3C FLTS WEST VIRGINIA |
| 393 | 3C FLTS WISCONSIN |
| 394 | 3C FLTS WYOMING |
| 395 | 3C FLTS AMERICAN SAMOA |
| 396 | 3C FLTS MICRONESIA |
| 397 | 3C FLTS MARSHALL ISLANDS |
| 398 | 3C FLTS MARIANA IS (CM) |
| 399 | 3C FLTS PALAU |
| 400 | 3C LTRS |
| 401 | 3C LTRS CR # |
| 402 | 3C LTRS RR # |
| 403 | 3C LTRS HCR # |
| 404 | 3C LTRS BOX SEC # |
| 405 | 3C LTRS GEN DEL # |
| 406 | 3C LTRS MXD CR RTS |

EXHIBIT 446.36—Continued

| CI No. | mail type |
|---|---|
| 407 | 3C LTRS MXD 5-DG PKGS |
| 408 | 3C LTRS MIXED STATES |
| 441 | 3C LTRS ALABAMA |
| 442 | 3C LTRS ALASKA |
| 443 | 3C LTRS ARIZONA |
| 444 | 3C LTRS ARKANSAS |
| 445 | 3C LTRS CALIFORNIA |
| 446 | 3C LTRS COLORADO |
| 447 | 3C LTRS CONNECTICUT |
| 448 | 3C LTRS DELAWARE |
| 449 | 3C LTRS DIST OF COL |
| 450 | 3C LTRS FLORIDA |
| 451 | 3C LTRS GEORGIA |
| 452 | 3C LTRS GUAM |
| 453 | 3C LTRS HAWAII |
| 454 | 3C LTRS IDAHO |
| 455 | 3C LTRS ILLINOIS |
| 456 | 3C LTRS INDIANA |
| 457 | 3C LTRS IOWA |
| 458 | 3C LTRS KANSAS |
| 459 | 3C LTRS KENTUCKY |
| 460 | 3C LTRS LOUISIANA |
| 461 | 3C LTRS MAINE |
| 462 | 3C LTRS MARYLAND |
| 463 | 3C LTRS MASSACHUSETTS |
| 464 | 3C LTRS MICHIGAN |
| 465 | 3C LTRS MINNESOTA |
| 466 | 3C LTRS MISSISSIPPI |
| 467 | 3C LTRS MISSOURI |
| 468 | 3C LTRS MONTANA |
| 469 | 3C LTRS NEBRASKA |
| 470 | 3C LTRS NEVADA |
| 471 | 3C LTRS NEW HAMPSHIRE |
| 472 | 3C LTRS NEW JERSEY |
| 473 | 3C LTRS NEW MEXICO |
| 474 | 3C LTRS NEW YORK |
| 475 | 3C LTRS NORTH CAROLINA |
| 476 | 3C LTRS NORTH DAKOTA |
| 477 | 3C LTRS OHIO |
| 478 | 3C LTRS OKLAHOMA |
| 479 | 3C LTRS OREGON |
| 480 | 3C LTRS PENNSYLVANIA |
| 481 | 3C LTRS PUERTO RICO |
| 482 | 3C LTRS RHODE ISLAND |
| 483 | 3C LTRS SOUTH CAROLINA |
| 484 | 3C LTRS SOUTH DAKOTA |
| 485 | 3C LTRS TENNESSEE |
| 486 | 3C LTRS TEXAS |
| 487 | 3C LTRS UTAH |
| 488 | 3C LTRS VERMONT |
| 489 | 3C LTRS VIRGINIA |
| 490 | 3C LTRS VIRGIN ISLANDS |
| 491 | 3C LTRS WASHINGTON |
| 492 | 3C LTRS WEST VIRGINIA |
| 493 | 3C LTRS WISCONSIN |
| 494 | 3C LTRS WYOMING |
| 495 | 3C LTRS AMERICAN SAMOA |
| 496 | 3C LTRS MICRONESIA |
| 497 | 3C LTRS MARSHALL ISLANDS |
| 498 | 3C LTRS MARIANA IS (CM) |
| 499 | 3C LTRS PALAU |
| 500 | 4C MACH |
| 501 | 4C MACH PP CR # |
| 502 | 4C MACH PP—MXD CR RTS |
| 503 | 4C MACH PP—MIXED STATES |
| 541 | 4C MACH PP—AL |
| 542 | 4C MACH PP—AK |
| 543 | 4C MACH PP—AZ |
| 544 | 4C MACH PP—AR |
| 545 | 4C MACH PP—CA |
| 546 | 4C MACH PP—CO |
| 547 | 4C MACH PP—CT |
| 548 | 4C MACH PP—DE |
| 549 | 4C MACH PP—DC |
| 550 | 4C MACH PP—FL |
| 551 | 4C MACH PP—GA |
| 552 | 4C MACH PP—GU |
| 553 | 4C MACH PP—HI |
| 554 | 4C MACH PP—ID |

EXHIBIT 446.36—Continued

| CI No. | mail type |
|---|---|
| 555 | 4C MACH PP—IL |
| 556 | 4C MACH PP—IN |
| 557 | 4C MACH PP—IA |
| 558 | 4C MACH PP—KS |
| 559 | 4C MACH PP—KY |
| 560 | 4C MACH PP—LA |
| 561 | 4C MACH PP—ME |
| 562 | 4C MACH PP—MD |
| 563 | 4C MACH PP—MA |
| 564 | 4C MACH PP—MI |
| 565 | 4C MACH PP—MN |
| 566 | 4C MACH PP—MS |
| 567 | 4C MACH PP—MO |
| 568 | 4C MACH PP—MT |
| 569 | 4C MACH PP—NE |
| 570 | 4C MACH PP—NV |
| 571 | 4C MACH PP—NH |
| 572 | 4C MACH PP—NJ |
| 573 | 4C MACH PP—NM |
| 574 | 4C MACH PP—NY |
| 575 | 4C MACH PP—NC |
| 576 | 4C MACH PP—ND |
| 577 | 4C MACH PP—OH |
| 578 | 4C MACH PP—OK |
| 579 | 4C MACH PP—OR |
| 580 | 4C MACH PP—PA |
| 581 | 4C MACH PP—PR |
| 582 | 4C MACH PP—RI |
| 583 | 4C MACH PP—SC |
| 584 | 4C MACH PP—SD |
| 585 | 4C MACH PP—TN |
| 586 | 4C MACH PP—TX |
| 587 | 4C MACH PP—UT |
| 588 | 4C MACH PP—VT |
| 589 | 4C MACH PP—VA |
| 590 | 4C MACH PP—VI |
| 591 | 4C MACH PP—WA |
| 592 | 4C MACH PP—WV |
| 593 | 4C MACH PP—WS |
| 594 | 4C MACH PP—WY |
| 595 | 4C MACH PP—AS |
| 596 | 4C MACH PP—CM |
| 597 | 4C MACH PP—TT |
| 600 | 4C IRREG |
| 601 | 4C IRREG PP CR # |
| 602 | 4C IRREG PP—MXD CR RTS |
| 603 | 4C IRREG PP—MIXED STATES |
| 641 | 4C IRREG PP—AL |
| 642 | 4C IRREG PP—AK |
| 643 | 4C IRREG PP—AZ |
| 644 | 4C IRREG PP—AR |
| 645 | 4C IRREG PP—CA |
| 646 | 4C IRREG PP—CO |
| 647 | 4C IRREG PP—CT |
| 648 | 4C IRREG PP—DE |
| 649 | 4C IRREG PP—DC |
| 650 | 4C IRREG PP—FL |
| 651 | 4C IRREG PP—GA |
| 652 | 4C IRREG PP—GU |
| 653 | 4C IRREG PP—HI |
| 654 | 4C IRREG PP—ID |
| 655 | 4C IRREG PP—IL |
| 656 | 4C IRREG PP—IN |
| 657 | 4C IRREG PP—IA |
| 658 | 4C IRREG PP—KS |
| 659 | 4C IRREG PP—KY |
| 660 | 4C IRREG PP—LA |
| 661 | 4C IRREG PP—ME |
| 662 | 4C IRREG PP—MD |
| 663 | 4C IRREG PP—MA |
| 664 | 4C IRREG PP—MI |
| 665 | 4C IRREG PP—MN |
| 666 | 4C IRREG PP—MS |
| 667 | 4C IRREG PP—MO |
| 668 | 4C IRREG PP—MT |
| 669 | 4C IRREG PP—NE |
| 670 | 4C IRREG PP—NV |
| 671 | 4C IRREG PP—NH |
| 672 | 4C IRREG PP—NJ |

EXHIBIT 446.36—Continued

| CI No. | mail type |
|---|---|
| 673 | 4C IRREG PP—NM |
| 674 | 4C IRREG PP—NY |
| 675 | 4C IRREG PP—NC |
| 676 | 4C IRREG PP—ND |
| 677 | 4C IRREG PP—OH |
| 678 | 4C IRREG PP—OK |
| 679 | 4C IRREG PP—OR |
| 680 | 4C IRREG PP—PA |
| 681 | 4C IRREG PP—PR |
| 682 | 4C IRREG PP—RI |
| 683 | 4C IRREG PP—SC |
| 684 | 4C IRREG PP—SD |
| 685 | 4C IRREG PP—TN |
| 686 | 4C IRREG PP—TX |
| 687 | 4C IRREG PP—UT |
| 688 | 4C IRREG PP—VT |
| 689 | 4C IRREG PP—VA |
| 690 | 4C IRREG PP—VI |
| 691 | 4C IRREG PP—WA |
| 692 | 4C IRREG PP—WV |
| 693 | 4C IRREG PP—WS |
| 694 | 4C IRREG PP—WY |
| 695 | 4C IRREG PP—AS |
| 696 | 4C IRREG PP—CM |
| 697 | 4C IRREG PP—TT |
| 700 | 4C FLTS |
| 701 | 4C FLTS CR # |
| 702 | 4C FLTS MXD CR RTS |
| 703 | 4C FLTS MIXED STATES |
| 741 | 4C FLTS ALABAMA |
| 742 | 4C FLTS ALASKA |
| 743 | 4C FLTS ARIZONA |
| 744 | 4C FLTS ARKANSAS |
| 745 | 4C FLTS CALIFORNIA |
| 746 | 4C FLTS COLORADO |
| 747 | 4C FLTS CONNECTICUT |
| 748 | 4C FLTS DELAWARE |
| 749 | 4C FLTS DIST OF COL |
| 750 | 4C FLTS FLORIDA |
| 751 | 4C FLTS GEORGIA |
| 752 | 4C FLTS GUAM |
| 753 | 4C FLTS HAWAII |
| 754 | 4C FLTS IDAHO |
| 755 | 4C FLTS ILLINOIS |
| 756 | 4C FLTS INDIANA |
| 757 | 4C FLTS IOWA |
| 758 | 4C FLTS KANSAS |
| 759 | 4C FLTS KENTUCKY |
| 760 | 4C FLTS LOUISIANA |
| 761 | 4C FLTS MAINE |
| 762 | 4C FLTS MARYLAND |
| 763 | 4C FLTS MASSACHUSETTS |
| 764 | 4C FLTS MICHIGAN |
| 765 | 4C FLTS MINNESOTA |
| 766 | 4C FLTS MISSISSIPPI |
| 767 | 4C FLTS MISSOURI |
| 768 | 4C FLTS MONTANA |
| 769 | 4C FLTS NEBRASKA |
| 770 | 4C FLTS NEVADA |
| 771 | 4C FLTS NEW HAMPSHIRE |
| 772 | 4C FLTS NEW JERSEY |
| 773 | 4C FLTS NEW MEXICO |
| 774 | 4C FLTS NEW YORK |
| 775 | 4C FLTS NORTH CAROLINA |
| 776 | 4C FLTS NORTH DAKOTA |
| 777 | 4C FLTS OHIO |
| 778 | 4C FLTS OKLAHOMA |
| 779 | 4C FLTS OREGON |
| 780 | 4C FLTS PENNSYLVANIA |
| 781 | 4C FLTS PUERTO RICO |
| 782 | 4C FLTS RHODE ISLAND |
| 783 | 4C FLTS SOUTH CAROLINA |
| 784 | 4C FLTS SOUTH DAKOTA |
| 785 | 4C FLTS TENNESSEE |
| 786 | 4C FLTS TEXAS |
| 787 | 4C FLTS UTAH |
| 788 | 4C FLTS VERMONT |
| 789 | 4C FLTS VIRGINIA |
| 790 | 4C FLTS VIRGIN ISLANDS |

EXHIBIT 446.36—Continued

| CI No. | mail type |
|---|---|
| 791 | 4C FLTS WASHINGTON |
| 792 | 4C FLTS WEST VIRGINIA |
| 793 | 4C FLTS WISCONSIN |
| 794 | 4C FLTS WYOMING |
| 795 | 4C FLTS AMERICAN SAMOA |
| 796 | 4C FLTS MICRONESIA |
| 797 | 4C FLTS MARSHALL ISLANDS |
| 798 | 4C FLTS MARIANA IS (CM) |
| 799 | 4C FLTS PALAU |

* * * * *

**CHAPTER 6—THIRD-CLASS MAIL**

* * * * *

640 Bulk Mail Presort Requirements

* * * * *

641 Standard Packaging and Sacking Requirements

* * * * *

641.1 Basic Rate Presort Requirements for Letter-Size, Flat-Size, or Irregular Parcel Mailings

* * * * *

641.13 Sacking Requirements

* * * * *

641.133 Sack Label Preparation

* * * * *

5. Amend 641.133 by adding at the end the following:

j. Barcodes. It is preferred that sack labels include a barcode, prepared as required in 646.

* * * * *

641.2 Machinable Parcel Preparation Requirements

* * * * *

641.22 Sacking Requirements for Basic Rate

* * * * *

641.224 Sack Label Preparation

* * * * *

6. Amend 641.224 by adding at the end the following:

j. Barcodes. It is preferred that sack labels include a barcode, prepared as required in 646.

* * * * *

641.3 Five-Digit Presort Level Rate Requirements for Letter-Size, Flat-Size, or Irregular Parcel Mailings

* * * * *

641.32 Sacking

* * * * *

641.323 Sack Label Preparation

* * * * *

7. Amend 641.323 by adding at the end the following:

j. Barcodes. It is preferred that sack labels include a barcode, prepared as required in 646.

* * * * *

641.4 Carrier Route Presort Level Rate Presort Requirements

* * * * *

641.42 Sacking

* * * * *

641.423 Sack Label Preparation

* * * * *

8. Amend 641.423 by adding at the end the following:

j. Barcodes. It is preferred that sack labels include a barcode, prepared as required in 646.

* * * * *

644 Palletization Requirements

* * * * *

644.3 Palletizing Sacks

* * * * *

644.33 Sack Preparation

* * * * *

9. Revise 644.332 to read as follows:

644.332 **Sack Labeling.** Sacks must be labeled in accordance with the requirements in 641.13, 641.22, 641.32, and 641.42, as appropriate. It is preferred that sack labels include a barcode, prepared as required in 646.

* * * * *

10. Add 646 to read as follows:

646 Optional Use of Barcoded Sack Labels

646.1 General. Sack labels supplied by the Postal Service will be machine-printed and contain barcodes that enable scanning and sortation by automated equipment. Alternatively, mailers who produce their own sack labels are encouraged to prepare them with a barcoded label that meets the criteria in 646.2 and 646.3.

646.2 Sack Label Specifications

646.21 Color. Sack labels must be printed on white or manila-colored label stock.

646.22 Size. Sack labels must fall within the following tolerances:

a. Height (vertical): 0.965 of an inch +/−0.015 of an inch;

b. Length (horizontal): 3.312 inches +/−0.062 inch.

646.23 Stock. The paper stock used for sack labels must be 70 pounds or heavier.

646.24 Printed Text Lines. The preparation of the printed text lines must be in accordance with 641.133, 641.224, and 641.423. Extraneous information as described in 441.323 may be printed on the label as long as it appears to the right of the "quiet zone" (see 646.35) and does not interfere with scanning and sorting by automated equipment.

646.25 Printing Density. The human-readable content of sack labels must be machine-printed at five lines per inch. The preferred machine-printed pitch is 12 characters per inch. If the information to be contained on the label cannot be shortened using acceptable postal abbreviations, it may be printed at a pitch of up to 15 characters per inch, provided at least 22 human-readable characters fit on the label without interfering with the "quiet zone" (see 646.35). The minimum acceptable height for the destinating ZIP Code must be 0.111 of an inch (8 point). The minimum acceptable character height for all other information contained in lines 1, 2, and 3 must be 0.083 of an inch (6 point).

646.3 Barcode Specifications

646.31 Type. The barcode must be an interleaved 2-of-5 code in accordance with the Automatic Identification Manufacturers' Uniform Symbology Specification (AIM/USS–I 2/5) and the requirements of this section.

646.32 Barcode Location. The barcode must be located on the left side of the sack label. A clear space must be maintained between both the left edge of the sack label and the barcode and between the barcode and the printed text lines, in accordance with the requirements set forth in 646.35 (see Exhibit 646.32).

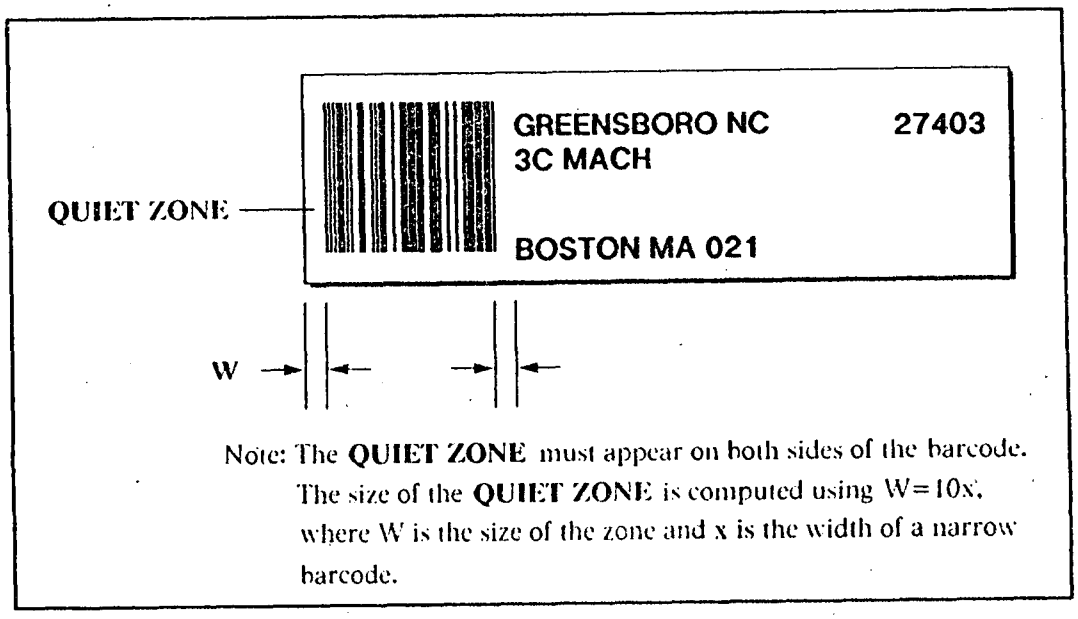


Exhibit 646.32

646.33 Dimensions. The nominal width of the bars and spaces ("X" dimension) must be between 0.010 of an inch and 0.015 of an inch. An "X" dimension of 0.010 of an inch is preferred. The tolerence of the width of all bars and spaces is +/− 0.004 of an inch. The nominal wide-to-narrow ratio for barcodes with an "X" dimension less than 0.013 of an inch is 3 to 1. The nominal wide-to-narrow ratio for barcodes with an "X" dimension between 0.013 of an inch and 0.015 of an inch is 2.3 to 1. The height of the barcode must be at least 0.700 of an inch.

646.34 Reflectance. When measured at 633 nanometers, the maximum bar reflectance must be less than 30 percent, and the minimum space reflectance must be greater than 40 percent. The minimum bar-to-space reflectance difference must be greater than 40 percent.

646.35 Clear Space (Quiet Zone). There must be a clear area (or "quiet zone") at each end of the barcode that is no less than 10 times the "X" dimension width and at least as high as the height of the bars in the barcode. The reflectance of the clear area must meet the requirement for minimum space reflectance (see 646.34).

646.36 Barcode Contents. The barcode on the sack labels must consist of eight numeric characters representing the 5-digit ZIP Code of the sack's destination (see 646.24) and the applicable 3-digit sack contents identifier code in Exhibit 446.36. When only a 3-digit ZIP Code prefix is required, it must be followed by two zeros. When the contents of the sack do not correspond to an available sack contents code, three zeros must be used.

* * * * *

## CHAPTER 7—FOURTH CLASS MAIL

* * * * *

760 Preparation Requirements

* * * * *

764 Preparation of Special Fourth-Class Mail

* * * * *

764.2 Sack Labeling requirements for Presort Rate Mail

* * * * *

764.21 General

* * * * *

11. Amend 764.21 by adding at the end of the following:

j. Barcodes. It is preferred that sack labels include a barcode, prepared as required in 769.

* * * * *

767 Preparation of Bound Printed Matter

* * * * *

767.2 Standard Preparation Requirements

* * * * *

767.23 Sack Label Preparation

* * * * *

12. Amend 767.23 by adding at the end of the following:

j. Barcodes. It is preferred that sack labels include a barcode, prepared as required in 769.

* * * * *

767.3 Machinable Parcel Preparation Requirements

* * * * *

767.33 Sack Preparation

* * * * *

13. Amend 767.33 by adding at the end the following:

j. Barcodes. It is preferred that sack labels include a barcode, prepared as required in 769.

* * * * *

767.8 Preparation requirements for Carrier Route Bound Printed Matter Rate

* * * * *

767.82 Sacking

* * * * *

767.823 Sack Label Preparation

* * * * *

14. Amend 767.823 by adding at the end the following:

j. Barcodes. It is preferred that sack labels include a barcode, prepared as required in 769.

* * * * *

15. Add 769 to read as follows:

769 Optional Use of Barcoded Sack Labels

769.1 General. Sack labels supplied by the Postal Service will be machine-printed with barcodes that enable scanning and sortation by automated equipment. Alternatively, mailers who produce their own sack labels are encouraged to prepare them with a barcoded label that meets the criteria in 769.2 and 769.3.

769.2 Sack Label Specifications

769.21 Color. Sack labels must be printed on white or manila-colored label stock.

769.22 Size. Sack labels must fall within the following tolerances:

a. Height (vertical): 0.965 of an inch +/−0.015 of an inch;

b. Length (horizontal): 3.312 inches +/−0.062 of an inch.

769.23 Stock. The paper stock used for sack labels must be 70 pound or heavier.

769.24 Printed Text Lines. The preparation of the printed text lines must be in accordance with 764.21, 767.23, 767.33, and 767.823, as applicable. Extraneous information as described in 441.323 may be printed on the label as long as it appears to the right of the "quiet zone" (see 769.35) and does not interfere with scanning and sorting by automated equipment.

769.25 Printing Density. The human-readable content of sack labels must be machine-printed at five lines per inch. The preferred machine-printed pitch is 12 characters per inch. If the information to be contained on the label cannot be shortened using acceptable postal abbreviations, it may be printed at a pitch of up to 15 characters per inch, provided at least 22 human-readable characters fit on the label without interfering with the "quiet zone" (see 769.35). The minimum acceptable height for the destinating ZIP Code must be 0.111 of an inch (8 point). The minimum acceptable character height for all other information contained in lines 1, 2, and 3 must be 0.083 of an inch (6 point).

769.3 Barcode Specifications.

769.31 Type. The barcode must be an interleaved 2-of-5 code in accordance with the Automatic Identification Manufacturers' Uniform Symbology Specification (AIM/USS–I 2/5) and the requirements of this section.

769.32 Barcode Location. The barcode must be located on the left side of the sack label. A clear space must be maintained between both the left edge of the sack label and the barcode, and between the barcode and the printed text lines in accordance with the requirements in 769.35 (see Exhibit 769.32).

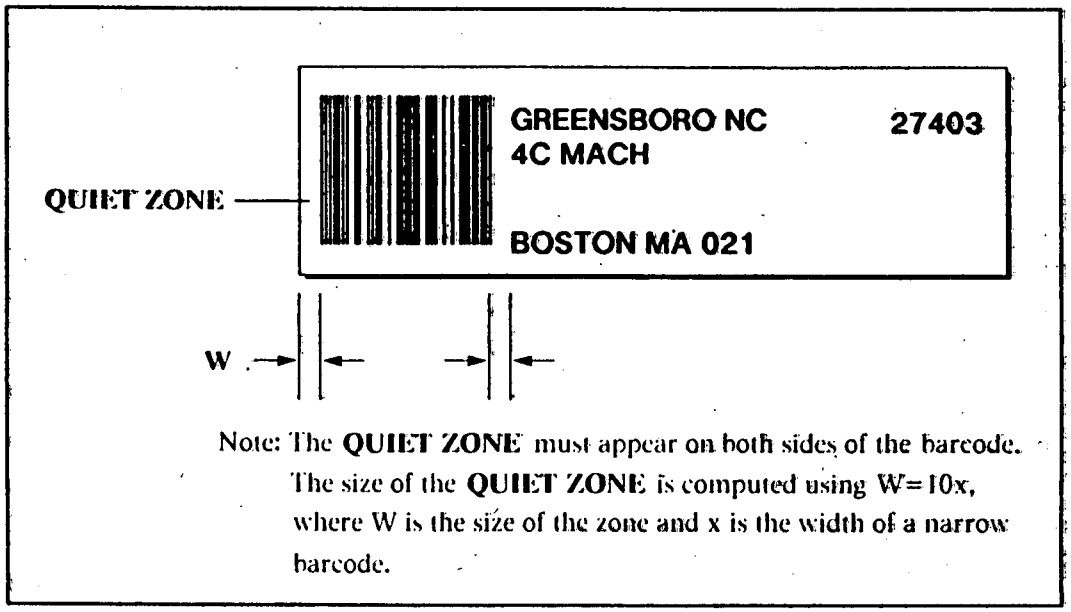


Exhibit 769.32

769.33 Dimensions. The nominal width of the bars and spaces ("X" dimension) must be between 0.010 of an inch and 0.015 of an inch. An "X" dimension of 0.010 of an inch is preferred. The tolerance of the width of all bars and spaces is +/− 0.004 of an inch. The nominal wide-to-narrow ratio for barcodes with an "X" dimension less than 0.013 of an inch is 3 to 1. The nominal wide-to-narrow ratio for barcodes with an "X" dimension between 0.013 of an inch and 0.015 of an inch is 2.3 to 1. The height of the barcode must be at least 0.700 of an inch.

769.34 Reflectance. When measured at 633 nanometers, the maximum bar reflectance must be less than 30 percent, and the minimum space reflectance must be 40 percent or greater. The minimum bar-to-space reflectance difference must be greater than 40 percent.

769.35 Clear Space (Quiet Zone). There must be a clear area (or "quiet zone") at each end of the barcode that is no less than 10 times the "X" dimension width and at least as high as the height of the bars in the barcode. The reflectance of the clear area must meet the requirement for minimum space reflectance (see 769.34).

769.36 Barcode Contents. The barcode on the sack labels must consist of eight numeric characters representing the 5-digit ZIP Code of the sack's destination (see 769.24) and the applicable 3-digit sack contents identifier code in Exhibit 769.32. When only a 3-digit ZIP Code prefix is required, it must be followed by two zeros. When the contents of the sack do not correspond to an available sack contents code, three zeros must be used.

A transmittal letter making the changes in the pages of the Domestic Mail Manual will be published and transmitted to subscribers. Notice of issuance of the transmittal letter will be published in the **Federal Register** as provided by 39 CFR 111.3.

Stanley F. Mires,

*Assistant General Counsel, Legislative Division.*

[FR Doc. 90-19068 Filed 8-14-90; 8:45 am]

BILLING CODE 7710-12-M

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 721

[OPTS-50582; FRL-3741-8]

RIN 2070-Ab27

## Significant New Uses of Certain Chemical Substances

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is promulgating significant new use rules (SNURs) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for several chemical substances which were the subject of premanufacture notices (PMNs) and subject to TSCA section 5(e) consent orders issued by EPA. Today's action requires certain persons who intend to manufacture, import, or process these substances for a significant new use to notify EPA at least 90 days before commencing the manufacturing or processing activity designated by this SNUR as a significant new use. The required notice will provide EPA with the opportunity to evaluate the intended use, and if necessary, to prohibit or limit that activity before it occurs. EPA is promulgating this SNUR using direct final procedures.

**DATES:** The effective date of this rule is October 15, 1990. If EPA receives notice before September 14, 1990 that someone wishes to submit adverse or critical comments on EPA's action in establishing a SNUR for one or more of the chemical substances subject to this rule, EPA will withdraw the SNUR for the chemical for which the notice of intent to comment is received and will issue a proposed SNUR providing a 30-day period for public comment.

**ADDRESSES:** Each comment or notice of intent to submit adverse or critical comment must bear the docket control number OPTS-50582 and the name(s) of the chemical substance(s) subject to the comment. Since some comments may contain confidential business information (CBI), all comments should be sent in triplicate to: TSCA Document Receipt Office (TS-790), Office of Toxic Substances, Environmental Protection Agency, Rm. E-105, 401 M St., SW., Washington, DC 20460. Nonconfidential

versions of comments on this rule will be placed in the rulemaking record and will be available for public inspection. The Supplementary Information section of this preamble contains additional information on submitting comments containing CBI.

**FOR FURTHER INFORMATION CONTACT:** Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543-B, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554-1404, TDD: (202) 554-0551.

**SUPPLEMENTARY INFORMATION:** This SNUR will require persons to notify EPA at least 90 days before commencing any activity designated by this SNUR as a significant new use. The supporting rationale and background to this rule are more fully set out in the preamble to EPA's first direct final SNURs at 55 FR 17376 on April 24, 1990. Consult that preamble for further information on the objectives, rationale, and procedures for the rules and on the basis for significant new use designations including provisions for developing test data.

## I. Authority

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule after considering all relevant factors, including those listed in section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, section 5(a)(1)(B) of TSCA requires persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the substance for that use. The mechanism for reporting under this requirement is established under 40 CFR 721.10.

## II. Applicability of General Provisions

General provisions for SNURs appear under subpart A of 40 CFR part 721. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the final rule. Rules on user fees appear at 40 CFR part 700. Persons subject to this SNUR must comply with the same notice requirements and EPA regulatory procedures as submitters of PMNs under section 5(a)(1)(A) of TSCA. In particular, these requirements include the information submission requirements of section 5(b) and 5(d)(1), the exemptions authorized by section 5(h)(1), (2), (3), and (5), and the regulations at 40 CFR part 720. Once EPA receives a SNUR notice, EPA may take regulatory action under section 5(e), 5(f), 6, or 7 to control the activities on which it has received the SNUR notice. If EPA does not take action, EPA is required under section 5(g) to explain in the **Federal Register** its reasons for not taking action. Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret section 12(b) appear at 40 CFR part 707. Persons who intend to import a chemical substance identified in a final SNUR are subject to the TSCA section 13 import certification requirements, which are codified at 19 CFR 12.118 through 12.127 and 127.28 and must certify that they are in compliance with the SNUR requirements. The EPA policy in support of the importation certification appears at 40 CFR part 707.

## III. Substances Subject to This Rule

EPA is establishing significant new use and recordkeeping requirements for the following chemical substances under 40 CFR part 721 subpart E. In this unit, EPA provides a brief description for each substance, including its PMN number, chemical name (generic name if the specific name is claimed as CBI), CAS number (if assigned), basis for the action taken by EPA in the section 5(e) consent order for the substance (including the statutory citation and specific finding), and the CFR citation assigned in the regulatory text section of this rule. The specific uses which are designated as significant new uses are cited in the regulatory text section of the rule by reference to 40 CFR part 721 subpart B where the significant new uses are described in detail. Certain new uses, including production limits and other uses designated in the rule, are also claimed as CBI. The procedure for obtaining confidential information is set out in Unit VII.

Where the underlying section 5(e) order prohibits the PMN submitter from exceeding a specified production limit without performing specific tests to determine the health or environmental effects of a substance, the tests are described in this unit. As explained further in Unit VI., the SNUR for such substances contains the same production limit, and exceeding the production limit is defined as a significant new use. Persons who intend to exceed the production limit must notify the Agency by submitting a significant new use notice at least 90 days in advance. In addition, this unit describes tests that are recommended by EPA to provide sufficient information to evaluate the substance, but for which no production limit has been established in the section 5(e) order. Descriptions of recommended tests are provided for informational purposes.

The SNURs for the following PMN substances, P-87-794, P-88-217, P-88-1460, P-88-1540, P-88-1617, P-89-576, and P-89-577 regulate chemical substances subject to section 5(e) orders where the finding under TSCA is based solely on substantial production volume and substantial human or environmental exposure. In each of these cases there was limited or no toxicity data available for the PMN substance, a potentially substantial production volume, and a potentially substantial human or environmental exposure. In such cases EPA regulates new chemicals under section 5(e) by requiring certain toxicity tests. For instance, chemicals with potentially substantial releases to surface waters would be subject to toxicity testing of aquatic organisms and chemicals with potentially substantial human exposures would be subject to health effects testing for mutagenicity, acute effects, and subchronic effects.

Some of the earlier section 5(e) orders contain provisions that required wording changes to be converted into SNURs. In some instances, the SNUR text is merely more detailed (e.g., the provision for a written hazard communication program in § 721.72(a) is more detailed than the hazard communication provisions in some earlier orders or the provision for dermal protection in § 721.63(a)(1) and (a)(3) is worded differently from dermal protection provisions in some earlier orders). In such cases, EPA considers the SNUR and section 5(e) provisions to be generally equivalent. Moreover, the companies which entered into the more limited hazard communication provisions of the earlier section 5(e) orders, as well as those companies covered by the SNURs, are now generally subject to the requirements of OSHA's hazard communication standard at 29 CFR 1910.1200. Therefore EPA believes it equitable and minimally burdensome to include in the SNUR those requirements of the hazard communication standard that are generally considered to be acceptable in informing workers of potential chemical hazards. In some instances, a particular requirement may be so differently worded from the corresponding section 5(e) consent order provision that the basis of the SNUR provision is not evident. Where this occurs, the preamble below explains why the SNUR provision was chosen.

Some of the SNURs that contain worker protection or hazard communication provisions, the substances designated P-83-603, P-84-527, P-84-537, P-86-1263, P-86-1634, P-86-1692, P-87-90, and P-88-864, provide an exemption from such provisions if the substances are present at low levels and are not expected to reconcentrate in mixtures. The exemptions are provided in § 721.63(b) and § 721.72(e) and will make these SNURs consistent with those based on more recent section 5(e) orders. If a substance was determined to pose a cancer concern by structural activity analysis or actual data (as described in this manner in the preamble that follows), it is exempt only if the level of the substance in the mixture is 0.1 percent or less. All other substances must not exceed a 1.0 percent level in a mixture in order to qualify for the exemption. EPA's decision to allow exemptions at these levels was based on the Occupational Safety and Health Administration's Hazard Communication Standard exemption of MSDS requirements § 1910.1200(g)(2)(i)(C)(*1*) and (*2*) when substances are present at such low levels in mixtures. In addition, a number of section 5(e) orders restrict manufacturing, processing, or use based on a determination that the substance may present ecotoxicity or human health concerns if released to surface waters at concentrations above a certain concern level, and that use at alternative sites could result in releases above such level. In these cases, EPA has not included the identical restrictions in the SNUR, but instead has defined a new use for the substance to include any release to surface waters or any release to surface waters that exceeds the identified concern level, as provided in § 721.90.

**PMN Number P-83-603**

*Chemical name:* (generic) Substituted nitrile.

*CAS number:* Not available.

*Effective date of section 5(e) consent order:* September 29, 1983.

*Basis for section 5(e) consent order:* The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health and the environment.

*Toxicity concerns:* Toxicity tests of this chemical have shown it to cause neurotoxicity in laboratory animals and toxicity to aquatic organisms.

*Recommended testing:* None.

*CFR citation:* 40 CFR 721.1475.

**PMN Number P-84-527**

*Chemical name:* (generic) Unsaturated amino alkyl ester salt.

*CAS number:* Not available.

*Effective date of section 5(e) consent order:* October 30, 1984.

*Basis for section 5(e) consent order:* The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.

*Toxicity concerns:* Similar chemicals have caused cancer in laboratory animals.

*Recommended testing:* A 2-year two-species rodent bioassay to help characterize possible cancer effects.

*CFR citation:* 40 CFR 721.983.

**PMN Number P-84-537**

*Chemical name:* (generic) Unsaturated amino ester salt.

*CAS number:* Not available.

*Effective date of section 5(e) consent order:* October 30, 1984.

*Basis for section 5(e) consent order:* The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.

*Toxicity concerns:* Similar chemicals have caused cancer in laboratory animals.

*Recommended testing:* A 2-year two-species rodent bioassay to help characterize possible cancer effects.

*CFR citation:* 40 CFR 721.980.

**PMN Number P-86-1263**

*Chemical name:* (specific) Phosphoric acid, 1,2-ethanediyl tetrakis(2-chloro-1-methylethyl) ester.

*CAS number:* Not available.

*Effective date of section 5(e) consent order:* December 9, 1986.

*Basis for section 5(e) consent order:* The Order was issued under section 5(e)(1)(A)(i), (ii)(I), and (ii)(II) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health and is expected to be produced in substantial quantities and there may be substantial human exposures.

*Toxicity concerns:* Toxicity tests of this chemical have shown it to cause neurotoxicity in laboratory animals. Similar chemicals have been shown to cause cancer in test animals.

*Recommended testing:* A 2-year two-species rodent bioassay to help characterize possible cancer effects.

*CFR citation:* 40 CFR 721.1611.

**PMN Number P-86-1634**

*Chemical name:* (generic) Substituted dialkyl oxazolone.

*CAS number:* Not available.

*Effective date of section 5(e) consent order:* August 26, 1987.

*Basis for section 5(e) consent order:* The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.

*Toxicity concerns:* Similar chemicals have been shown to cause cancer, heritable mutagenicity, neurotoxicity, and reproductive and developmental effects in laboratory animals.

*Recommended testing:* A 2-year two-species oral rodent bioassay to help characterize potential carcinogenicity, a dominant lethal assay to evaluate potential heritable mutagenicity and reproductive and developmental effects, a 90-day oral rodent bioassay with a functional observational battery and with screening neuropathology to characterize potential neurotoxicity. The PMN submitter has agreed not to exceed the production volume limit without performing the dominant lethal assay and the 90-day rodent study. Data on potential exposures or releases of the substance, testing other than that specified in the section 5(e) order for the substance, or studies on analogous substances, which may demonstrate that the significant new uses being reported do not present an unreasonable risk, may be included with significant new use notification.

*CFR citation:* 40 CFR 721.1491.

**PMN Number P-86-1692**

*Chemical name:* (generic) Benzene, substituted, alkyl acrylate derivative.

*CAS number:* Not available.

*Effective date of section 5(e) consent order:* April 15, 1987.

*Basis for section 5(e) consent order:* The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.

*Toxicity concerns:* Similar chemicals have been shown to cause cancer and neurotoxicity in test animals.

*Recommended testing:* A 2-year two-species rodent bioassay to help characterize possible cancer effects of the substance and a 90-day dermal rodent assay to characterize neurotoxicity effects.

*CFR citation:* 40 CFR 721.467.

**PMN Number P-87-90**

*Chemical name:* (generic) Methylenebistrisubstituted aniline.

*CAS number:* Not available.
*Effective date of section 5(e) consent order:* April 25, 1988.
*Basis for section 5(e) consent order:* The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
*Toxicity concerns:* Similar chemicals have been shown to cause cancer, reproductive toxicity, liver toxicity, and retinopathy in test animals.
*Recommended testing:* A 2-year two-species rodent bioassay to help characterize possible cancer effects, a 90-day oral subchronic study in rats including histopathological examination of the male and female reproductive organs and the eyes, to help characterize liver effects, reproductive effects, and retinotoxicity and a retinopathy study in cats to help characterize retinotoxicity. The PMN submitter has agreed not to exceed the production volume limit without performing the 90-day subchronic and retinopathy tests. Data on potential exposures or releases of the substance, testing other than that specified in the section 5(e) order for the substance, or studies on analogous substances, which may demonstrate that the significant new uses being reported do not present an unreasonable risk, may be included with significant new use notification.
*CFR citation:* 40 CFR 721.1395.

**PMN Number P-87-794**

*Chemical name:* (generic) Acrylamide, polymer with substituted alkylacrylamide salt.
*CAS number:* Not available.
*Effective date of section 5(e) consent order:* November 30, 1989.
*Basis for section 5(e) consent order:* The Order was issued under section 5(e)(1)(A)(i) and (ii)(II) of TSCA based on a finding that this substance is expected to be produced in substantial quantities and there may be substantial environmental exposures.
*Toxicity concerns:* Toxicity tests of this chemical have shown it to cause toxicity in aquatic organisms.
*Recommended testing:* EPA has determined that a 30-day static study in tadpoles with the PMN substance added to the sediment will characterize the potential toxicity of the substance.
*CFR citation:* 40 CFR 721.266.

**PMN Number P-87-1337**

*Chemical name:* (generic) Disulfonic acid rosin amine salt of amine salt of a benzidine derivative.
*CAS number:* Not available.
*Effective date of section 5(e) consent order:* October 25, 1989.
*Basis for section 5(e) consent order:* The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
*Toxicity concerns:* Similar chemicals have been shown to cause cancer in test animals.
*Recommended testing:* A 2-year rodent bioassay to help characterize possible carcinogenicity of the substance.
*CFR citation:* 40 CFR 721.567.

**PMN Number P-87-1760**

*Chemical name:* (specific) Phenol, 4,4'-[methylenebis(oxy-2,1-ethanediylthio)]bis-.
*CAS number:* 93589-69-6.
*Effective date of section 5(e) consent order:* July 14, 1988.
*Basis for section 5(e) consent order:* The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to the environment.
*Toxicity concerns:* Similar chemicals have been shown to cause toxicity in aquatic organisms.
*Recommended testing:* Chronic fish (early life stage) and daphnid (21-day) toxicity tests as given by 40 CFR 797.1600 and 797.1330.
*CFR citation:* 40 CFR 721.1540.

**PMN Number P-88-217**

*Chemical name:* (specific) Epoxidized polybutene.
*CAS number:* Not available.
*Effective date of section 5(e) consent order:* May 31, 1988.
*Basis for section 5(e) consent order:* The Order was issued under section 5(e)(1)(A)(i) and (ii)(II) of TSCA based on a finding that this substance is expected to be produced in substantial quantities and there may be substantial human exposures.
*Recommended testing:* EPA has determined that the results of an acute oral toxicity test (40 CFR 798.1175), an Ames assay (40 CFR 798.5265), a mouse micronucleus assay by the intraperitoneal route (40 CFR 798.5395), and a 28-day repeated dose oral study in rats (OECD Guideline No. 407) would help characterize possible effects of the substance. The PMN submitter has agreed not to exceed the production volume limit without performing these tests.
*CFR citation:* 40 CFR 721.1621.

**PMN Number P-88-864**

*Chemical name:* (specific) Phenol, 4,4'-methylenebis(2,6-dimethyl-.
*CAS number:* 5384-21-4.
*Effective date of section 5(e) consent order:* March 21, 1990.
*Basis for section 5(e) consent order:* The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health and the environment.
*Toxicity concerns:* Similar chemicals have been shown to cause toxicity to aquatic organisms, and liver, kidney, and lung toxicity in test animals.
*Recommended testing:* EPA has determined that a 90-day oral subchronic study (40 CFR 798.2650) will characterize internal organ effects. The PMN submitter has agreed not to exceed the production volume limit without performing the 90-day study. EPA has determined that the results of a chronic fish (early life stage) (40 CFR 797.1600) and a daphnid (21-day) toxicity test (40 CFR 797.1330) would help characterize possible environmental effects of the substance. Data on potential exposures or releases of the substance, testing other than that specified in the section 5(e) order for the substance, or studies on analogous substances, which may demonstrate that the significant new uses being reported do not present an unreasonable risk, may be included with significant new use notification.
*CFR citation:* 40 CFR 721.1537.

**PMN Number P-88-972**

*Chemical name:* (specific) 3,3',5,5'-Tetramethylbiphenyl-4,4'-diol.
*CAS number:* Not available.
*Effective date of section 5(e) consent order:* December 26, 1989.
*Basis for section 5(e) consent order:* The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health and the environment.
*Toxicity concerns:* Similar chemicals have been shown to cause toxicity to aquatic organisms, and developmental toxicity, liver and kidney toxicity, and retinopathy in test animals. Toxicity tests of this chemical have shown it to cause mutagenicity in laboratory animals.
*Recommended testing:* EPA has determined that an *in vivo* chromosome aberration study (40 CFR 798.5385), an *in vivo* chromosome analysis in germ cells (mice or rats), a heritable mutation assay, a 90-day oral subchronic study (gavage, rats) (40 CFR 798.2450), and a developmental toxicity study (rats and mice). The PMN submitter has agreed not to exceed the production volume limit without performing these tests. EPA has determined that the results of an acute algal study (40 CFR 797.1050),

acute daphnid study (40 CFR 797.1300), and acute fish study (40 CFR 797.1400) would help characterize possible environmental effects of the substance. Data on potential exposures or releases of the substance, testing other than that specified in the section 5(e) order for the substance, or studies on analogous substances, which may demonstrate that the significant new uses being reported do not present an unreasonable risk, may be included with significant new use notification.
*CFR citation:* 40 CFR 721.2155.

**PMN Number P-88-1460**

*Chemical name:* (generic) 2,5-Dimercapto-1,3,4-thiadiazole, alkyl polycarboxylate.
*CAS number:* Not available.
*Effective date of section 5(e) consent order:* February 2, 1988.
*Basis for section 5(e) consent order:* The Order was issued under section 5(e)(1)(A)(i) and (ii)(II) of TSCA based on a finding that this substance is expected to be produced in substantial quantities and there may be substantial human exposures.
*Recommended testing:* EPA has determined that the results of an acute oral toxicity test (40 CFR 798.1175), an Ames assay (40 CFR 798.5265), a mouse micronucleus assay by the intraperitoneal route (40 CFR 798.5395), and a 28-day repeated dose oral study in rats (OECD Guideline No. 407) would help characterize possible effects of the substance. The PMN submitter has agreed not to exceed the production volume limit without performing these tests.
*CFR citation:* 40 CFR 721.821.

**PMN Number P-88-1540**

*Chemical name:* (generic) Polymer of maleic anhydride, benzenedicarboxylic acid and disubstituted alkylamine.
*CAS number:* Not available.
*Basis for section 5(e) consent order:* The Order was issued under section 5(e)(1)(A)(i) and (ii)(II) of TSCA based on a finding that this substance is expected to be produced in substantial quantities and there may be substantial human exposures.
*Recommended testing:* EPA has determined that the results of an Ames assay (40 CFR 798.5265), a mouse micronucleus assay by the intraperitoneal route (40 CFR 798.5395), and a 28-day repeated dose oral study in rats (OECD Guideline No. 407) would help characterize possible effects of the substance. The PMN submitter has agreed not to exceed the production volume limit without performing these tests.
*CFR citation:* 40 CFR 721.1645.

**PMN Number P-88-1616**

*Chemical name:* (generic) Polymer of substituted alkylphenol formaldehyde and phthalic anhydride, acrylate.
*CAS number:* Not available.
*Effective date of section 5(e) consent order:* January 5, 1989.
*Basis for section 5(e) consent order:* The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
*Toxicity concerns:* Similar chemicals have been shown to cause cancer and neurotoxicity in test animals.
*Recommended testing:* A 2-year, two-species oral rodent bioassay (40 CFR 798.3300) to assess potential carcinogenicity. A 90-day oral subchronic study in rats (40 CFR 798.2650) with functional observational battery and neuropathy to help characterize potential neurotoxicity of the substance.
*CFR citation:* 40 CFR 721.1638.

**PMN Number P-88-1617**

*Chemical name:* (generic) Terpenes and terpenoids, limonene fraction, polymer with substituted carbopolycycles.
*CAS number:* Not available.
*Effective date of section 5(e) consent order:* February 6, 1989.
*Basis for section 5(e) order:* The Order was issued under section 5(e)(1)(A)(i) and (ii)(II) of TSCA based on a finding that this substance is expected to be produced in substantial quantities and there may be significant and substantial human exposure.
*Recommended testing:* EPA has determined that the results of a 28-day oral study (OECD Guideline No. 407) would help characterize possible effects of the substance. The PMN submitter has agreed not to exceed the production volume limit without performing this test.
*CFR citation:* 40 CFR 721.2075.

**PMN Number P-88-1753**

*Chemical name:* (generic) Bis(substituted)carbomonocyclic azocarbomonocylicol.
*CAS number:* Not available.
*Effective date of section 5(e) consent order:* December 27, 1989.
*Basis for section 5(e) consent order:* The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to the environment.
*Recommended testing:* EPA has determined that the results of an acute algal study (40 CFR 797.1050), acute daphnid study (40 CFR 797.1300), acute fish study (40 CFR 797.1400), early life stage toxicity test in fish (40 CFR 797.1600), and chronic daphnid study (40 CFR 797.1350) would help characterize possible effects of the substance. The PMN submitter has agreed not to exceed the production volume limit without performing these tests.
*CFR citation:* 40 CFR 721.766.

**PMN Number P-88-1889**

*Chemical name:* (generic) Fatty acid, amine salt.
*CAS number:* Not available.
*Effective date of section 5(e) consent order:* September 12, 1989.
*Basis for section 5(e) consent order:* The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to the environment. The 5(e) order prohibited distribution of formulations containing more than 4 percent of the PMN substance; this provision is not contained in the SNUR. Instead, the designation of 40 CFR 721.80 (k) and (q) as significant new uses will adequately protect the environment.
*Recommended testing:* EPA has determined that the results of an acute algal study (40 CFR 797.1050), acute daphnid study (40 CFR 797.1300), and acute fish study (40 CFR 797.1400) would help characterize possible effects of the substance. The PMN submitter has agreed not to exceed the production volume limit without performing these tests.
*CFR citation:* 40 CFR 721.1040.

**PMN Number P-88-2582**

*Chemical name:* (specific) 2-Oxepanone, polymer with 4,4'-(1-methylethylidene)bisphenol and 2,2-[(1-methylethylidene)bis(4,1-phenyleneoxymethylene)]bisoxirane, graft.
*CAS number:* Not available.
*Effective date of section 5(e) consent order:* December 27, 1989.
*Basis for section 5(e) consent order:* The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) and (II) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health and is expected to be produced in substantial quantities and there may be substantial environmental and human exposures.
*Recommended testing:* EPA has determined that the results of an Ames assay (40 CFR 798.5265), a mouse micronucleus assay by the intraperitoneal route (40 CFR 798.5395), a 28-day repeated dose oral study in rats (OECD Guideline No. 407), with the following modifications: (a) for all test

doses, a neurotoxicity functional observational battery (40 CFR 798.6050), and (b) for the highest test dose group only, histopathologic examination extended to include the testes/ovaries and lungs, plus neuropathology (40 CFR 798.6400), a 90-day subchronic oral study in rats (40 CFR 798.2650), a 2-year two-species rodent bioassay(40 CFR 798.3300) would help characterize possible effects of the substance. The consent order contains two production volume limits. The PMN submitter has agreed not to exceed the first production limit without performing the Ames assay, the micronucleus assay, and the 28-day repeated dose oral study. The PMN submitter has also agreed not to exceed the second higher production volume limit without performing the 90-day study and the 2-year bioassay.

*CFR citation:* 40 CFR 721.1495.

**PMN Number P-89-483**

*Chemical name:* (generic) Polyalkylenepolyol alkylamine.

*CAS number:* Not available.

*Effective date of section 5(e) consent order:* December 20, 1989.

*Basis for section 5(e) order:* The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to human health.

*Toxicity concerns:* Similar chemicals have been shown to cause blood effects, neurotoxicity, reproductive effects, developmental effects, and developmental neurotoxicity.

*Recommended testing:* EPA has determined that a 90-day oral rat subchronic study (40 CFR 798.2650), an oral developmental toxicity study in rats and rabbits, and a two-generation reproductive study in rats would help characterize possible blood effects, reproductive effects, and reproductive effects. The PMN submitter has agreed not to exceed the production volume limit without performing these tests. EPA has determined that the results of a developmental neurotoxicity study (53 FR 5932) would help characterize possible adult and developmental neurotoxicity effects of the substance. Data on potential exposures or releases of the substance, testing other than that specified in the section 5(e) order for the substance, or studies on analogous substances, which may demonstrate that the significant new uses being reported do not present an unreasonable risk, may be included with significant new use notification.

*CFR citation:* 40 CFR 721.1616.

**PMN Number P-89-576 and P-89-577**

*Chemical name:* (generic) Metal salt of a complex inorganic oxyacid.

*CAS number:* Not available.

*Effective date of section 5(e) consent order:* January 8, 1990.

*Basis for section 5(e) consent order:* The Order was issued under section 5(e)(1)(A)(i) and (ii)(II) of TSCA based on a finding that this substance is expected to be produced in substantial quantities and there may be substantial environmental exposure and significant or substantial human exposure.

*Recommended testing:* A 28-day oral rat toxicity study (OECD Guideline No. 407), with the following modifications: (a) For all test doses, a neurotoxicity functional observational battery (40 CFR 798.6050), and (b) for the highest test dose group only, histopathologic examination extended to include the testes/ovaries and lungs, plus neuropathology (40 CFR 798.6400) on either the substance described in P-89-576 or in P-89-577 would help characterize possible effects of the substances. The PMN submitter has agreed not to exceed the production volume limit without performing this test.

*CFR citation:* 40 CFR 721.1265.

**PMN Number P-89-632**

*Chemical name:* (specific)1,3-Propanediamine, *N,N'*-1,2-ethanediylbis-, polymer with 2,4,6-trichloro-1,3,5-triazine, reaction products with *N*-butyl-2,2,6,6-tetramethyl-4-piperidinamine.

*CAS number:* Not available.

*Effective date of section 5(e) consent order:* December 29, 1989.

*Basis for section 5(e) consent order:* The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.

*Toxicity concerns:* This chemical has been shown to cause severe eye irritation and similar chemicals have been shown to cause immunotoxicity, reproductive system toxicity and adverse effects to the blood, liver, and gastrointestinal tract in test animals. Chemicals similiar to the PMN chemical have also been shown to cause toxicity to aquatic organisms.

*Recommended testing:* The Agency believes that the results of a 90-day oral toxicity study would help characterize possible health effects of the substance (40 CFR 798.2650). Furthermore, if a SNUR notice submitter intends to release the substance to water, the Agency believes that the results of an algal acute toxicity test (40 CFR 797.1050), a daphnid chronic toxicity test (40 CFR 797.1330) and a fish early life stage toxicity test (40 CFR 797.1600), performed prior to any release of the substance, would help characterize possible environmental effects of the substance. The PMN submitter has agreed not to exceed the production volume limit without performing the 90-day study. Data on potential exposures or releases of the substance, testing other than that specified in the section 5(e) order for the substance, or studies on analogous substances, which may demonstrate that the significant new uses being reported do not present an unreasonable risk, may be included with significant new use notification.

*CFR citation:* 40 CFR 721.1795.

## IV. Objectives and Rationale of the Rule

During review of the PMNs submitted for the chemical substances that are subject to this SNUR, EPA concluded that for all of the substances, regulation was warranted under section 5(e) of TSCA pending the development of information sufficient to make reasoned evaluations of the health or environmental effects of the substances. The basis for such findings is outlined in Unit III. of this preamble. Based on these findings, section 5(e) consent orders requiring the use of appropriate controls were negotiated with the PMN submitters; the SNUR provisions for these substances designated herein are consistent with the provisions of the section 5(e) orders.

EPA is issuing this SNUR for specific chemical substances which have undergone premanufacture review to ensure the following objectives: That EPA will receive notice of any company's intent to manufacture, import, or process a listed chemical substance for a significant new use before that activity begins; that EPA will have an opportunity to review and evaluate data submitted in a SNUR notice before the notice submitter begins manufacturing, importing, or processing a listed chemical substance for a significant new use; that, when necessary to prevent unreasonable risks, EPA will be able to regulate prospective manufacturers, importers, or processors of a listed chemical substance before a significant new use of that substance occurs; and that all manufacturers, importers, and processors of the same chemical substance which is subject to a section 5(e) order are subject to similar requirements.

## V. Direct Final Procedure

EPA is issuing these SNURs as direct final rules, as described in 40 CFR

721.160(c)(3) and 721.170(d)(4). In accordance with 40 CFR 721.160(c)(3)(ii), this rule will be effective October 15,1990, unless EPA receives a written notice by September 14, 1990 that someone wishes to make adverse or critical comments on EPA's action. If EPA receives such notice, EPA will publish a notice to withdraw the direct final SNUR(s) for the specific substance(s) to which the adverse or critical comments apply. EPA will then propose a SNUR for the specific substance(s) providing a 30-day comment period. This action establishes SNURs for several chemical substances. Any person who submits a notice of intent to submit adverse or critical comments must identify the substance and the new use to which it applies. EPA will not withdraw a SNUR for a substance not identified in a notice.

## VI. Test Data and Other Information

EPA recognizes that section 5 of TSCA does not require developing any particular test data before submission of a SNUR notice. Persons are required only to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them. In cases where a section 5(e) order requires or recommends certain testing, Unit III. of this preamble lists those recommended tests. The recommended studies may not be the only means of addressing the potential risks of the substance. However, SNUR notices submitted for significant new uses without any test data may increase the likelihood that EPA will take action under section 5(e), particularly if satisfactory test results have not been obtained from a prior submitter. EPA recommends that potential SNUR notice submitters contact EPA early enough so that they will be able to conduct the appropriate tests. SNUR notice submitters should be aware that EPA will be better able to evaluate SNUR notices which provide detailed information on: (1) Human exposure and environmental release that may result from the significant new use of the chemical substances; (2) potential benefits of the substances; and (3) information on risks posed by the substances compared to risks posed by potential substitutes.

## VII. Procedural Determinations

EPA is establishing through this rule some significant new uses which have been claimed as CBI. EPA has decided it is appropriate to keep this information confidential to protect the interest of the original PMN submitter. EPA promulgated a procedure to deal with the situation where a specific significant new use is CBI. This procedure appears in 40 CFR 721.575(b)(1) and is similar to that in § 721.11 for situations where the chemical identity of the substance subject to a SNUR is CBI. This procedure is cross-referenced in each of these SNURs.

A manufacturer or importer may request EPA to determine whether a proposed use would be a significant new use under this rule. Under the procedure incorporated from § 721.575(b)(1), a manufacturer or importer must show that it has a *bona fide* intent to manufacture or import the substance and must identify the specific use for which it intends to manufacture or import the substance. If EPA concludes that the person has shown a *bona fide* intent to manufacture or import the substance, EPA will tell the person whether the use identified in the *bona fide* submission would be a significant new use under the rule. Since most of the chemical identities of the substances subject to these SNURs are also CBI, manufacturers and processors can combine the *bona fide* submission under the procedure in § 721.575(b)(1) with that under § 721.11 into a single step.

If a manufacturer or importer is told that the production volume identified in the *bona fide* submission would not be a significant new use, i.e. it is below the level that would be a significant new use, that person can manufacture or import the substance as long as the aggregate amount does not exceed that identified in the *bona fide* submission to EPA. If the person later intends to exceed that volume, a new *bona fide* submission would be necessary to determine whether that higher volume would be a significant new use. EPA is considering whether to adopt a special procedure for use when CBI production volumes are designated as significant new uses. Under that procedure, if a person showed a *bona fide* intent to manufacture or import the substance, under the procedure described in § 721.11, the person would automatically be told any production volume that would be a significant new use. Thus the person would not have to make multiple *bona fide* submissions to EPA for the same substance to remain in compliance with the SNUR, as could be the case under the procedures in § 721.575(b)(1).

## VIII. Applicability of Rule to Uses Occurring Before Effective Date of the Final Rule

To establish a significant "new" use, EPA must determine that the use is not ongoing. The chemical substances subject to this rule have recently undergone premanufacture review. Section 5(e) orders have been issued in all cases and notice submitters are prohibited by the section 5(e) orders from undertaking activities which EPA is designating as significant new uses. In cases where EPA has not received a Notice of Commencement (NOC) and the substance has not been added to the Inventory, no other person may commence such activities without first submitting a PMN. For substances for which an NOC has not been submitted, at this time, EPA has concluded that the uses are not ongoing. However, EPA recognizes in cases when chemical substances identified in this SNUR are added to the Inventory prior to the effective date of the rule, the substances may be manufactured, imported, or processed by other persons for a significant new use as defined in this rule before the effective date of the rule. However, 17 out of the 23 substances contained in this rule have CBI chemical identities, and since EPA has received no corresponding post-PMN *bona fide* submissions, the Agency believes that it is highly unlikely that many, if any, of the significant new uses described in the following regulatory text are ongoing. EPA has decided that the intent of section 5(a)(1)(B) is best served by designating a use as a significant new use as of this date of publication rather than as of the effective date of the rule. Thus, persons who begin commercial manufacture, import, or processing of the substances regulated through this SNUR will have to cease any such activity before the effective date of this rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

EPA has promulgated provisions to allow persons to comply with this SNUR before the effective date. If a person were to meet the conditions of advance compliance in § 721.45(h) (53 FR 28354, July 17, 1988), the person will be considered to have met the requirements of the final SNUR for those activities. If persons who begin commercial manufacture, import, or processing of the substance between publication and the effective date of the SNUR do not meet the conditions of advance compliance, they must cease that activity before the effective date of the rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

## IX. Economic Analysis

EPA has evaluated the potential costs of establishing significant new use

notice requirements for potential manufacturers, importers, and processors of the chemical substance subject to this rule. EPA's complete economic analysis is available in the public record for this rule (OPTS-50582).

**X. Rulemaking Record**

EPA has established a record for this rulemaking (docket control number OPTS-50582). The record includes information considered by EPA in developing this rule. A public version of this record containing nonconfidential materials is available for reviewing and copying from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, located at Rm. NE-G004, 401 M St., SW., Washington, DC.

**XI. Regulatory Assessment Requirements**

*A. Executive Order 12291*

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this rule will not be a "major" rule because it will not have an effect on the economy of $100 million or more, and it will not have a significant effect on competition, costs, or prices. While there is no precise way to calculate the total annual cost of compliance with this rule, EPA estimates that the cost for submitting a significant new use notice would be approximately $4,500 to $11,000, including a $2,500 user fee payable to EPA to offset EPA costs in processing the notice. EPA believes that, because of the nature of the rule and the substances involved, there will be few SNUR notices submitted. Furthermore, while the expense of a notice and the uncertainty of possible EPA regulation may discourage certain innovation, that impact will be limited because such factors are unlikely to discourage an innovation that has high potential value.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

*B. Regulatory Flexibility Act*

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that this rule would not have a significant impact on a substantial number of small businesses. EPA has not determined whether parties affected by this rule would likely be small businesses. However, EPA expects to receive few SNUR notices for the substances. Therefore, EPA believes that the number of small businesses affected by this rule will not be substantial, even if all of the SNUR notice submitters were small firms.

*C. Paperwork Reduction Act*

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and have been assigned OMB control number 2070-0012.

Public reporting burden for this collection of information is estimated to vary from 30 to 170 hours per response, with an average of 100 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to Office of Management and Budget, Paperwork Reduction Project (2070-0012), Washington, DC 20503.

**List of Subjects in 40 CFR Part 721**

Chemicals, Environmental protection, Hazardous materials, Reporting and recordkeeping requirements, Significant new uses.

Dated: August 6, 1990.

**Victor J. Kimm,**

*Acting Assistant Administrator for Pesticides and Toxic Substances.*

Therefore, 40 CFR part 721 is amended as follows:

## PART 721—[AMENDED]

1. The authority citation for part 721 continues to read as follows:

**Authority:** 15 U.S.C. 2604 and 2607.

2. By adding new § 721.266 to subpart E to read as follows:

**§ 721.266 Acrylamide, polymer with substituted alkylacrylamide salt (generic name).**

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified generically as acrylamide, polymer with substituted alkylacrylamide salt (PMN P-87-794) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(p) (limit set at 216,700 kg).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: Recordkeeping requirements specified in § 721.125(a), (b), (c), and (i).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

3. By adding new § 721.467 to subpart E to read as follows:

**§ 721.467 Benzene, substituted, alkyl acrylate derivative (generic name).**

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified generically as a benzene, substituted, alkyl acrylate derivative (PMN P-86-1692) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(iii), (g)(1)(vii), (g)(2)(i), (g)(2)(v), and (g)(5). The provision of § 721.72(d) requiring that employees be provided with information on the location and availability of MSDSs does not apply when an MSDS was not required under § 721.72(c). The provision of § 721.72(g) requiring placement of specific information on an MSDS does not apply when an MSDS is not required under § 721.72(c).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k)

(iv) *Disposal.* § 721.85 (a)(1), (a)(2), (b)(1), (b)(2), (c)(1), and (c)(2).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a) through (g), (i), and (j).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

4. By adding new § 721.567 to subpart E to read as follows:

**§ 721.567 Disulfonic acid rosin amine salt of a benzidine derivative (generic name).**

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as disulfonic acid rosin amine salt of a benzidine derivative (PMN P-87-1337) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (v)(1), (w)(1), and (x)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), (c), and (i).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

5. By adding new § 721.766 to subpart E to read as follows:

**§ 721.766 Bis(substituted)carbomonocyclic azocarbomonocylicol (generic name).**

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified generically as bis(substituted)carbomonocyclic azocarbomonocylicol (PMN P-88-1753) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (f), (g)(3)(i), (g)(3)(ii), and (g)(4)(i).

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(p) (limits set at 113,000 kg and 226,000 kg).

(iii) *Disposal.* Requirements as specified in § 721.85(a)(1), (a)(2), (b)(1), (b)(2), (c)(1), and (c)(2).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), (c), (f) through (j).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

6. By adding new § 721.821 to subpart E to read as follows:

**§ 721.821 2,5-Dimercapto-1,3,4-thiadiazole, alkyl polycarboxylate (generic name).**

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified generically as 2,5-dimercapto-1,3,4-thiadiazole, alkyl polycarboxylate (PMN P-88-1460) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), (c), and (i).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

7. By adding new § 721.980 to subpart E to read as follows:

**§ 721.980 Unsaturated amino ester salt (generic name).**

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified generically as an unsaturated amino ester salt (PMN P-84-537) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b)(2), (d), (e), (f) (concentration set at 0.1 percent), (g)(1)(vii), (g)(2)(i), (g)(2)(v), and (g)(5). The provision of § 721.72(d) requiring that employees be provided with information on the location and availability of MSDSs does not apply when an MSDS was not required under § 721.72(c). The provision of § 721.72(g) requiring placement of specific information on an MSDS does not apply when an MSDS is not required under § 721.72(c).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(g).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a) through (g) and (i).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

8. By adding new § 721.983 to subpart E to read as follows:

**§ 721.983 Unsaturated amino alkyl ester salt(generic name).**

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified generically as an unsaturated amino alkyl ester salt (PMN P-84-527) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b)(2), (d), (e), (f) (concentration set at 0.1 percent), (g)(1)(vii), (g)(2)(i), (g)(2)(v), and (g)(5). The provision of § 721.72(d)

requiring that employees be provided with information on the location and availability of MSDSs does not apply when an MSDS was not required under § 721.72(c). The provision of § 721.72(g) requiring placement of specific information on an MSDS does not apply when an MSDS is not required under § 721.72(c).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(g).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a) through (g) and (i).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

9. By adding new § 721.1040 to subpart E to read as follows:

**§ 721.1040 Fatty acid amine salt (generic name).**

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as fatty acid amine salt (PMN P-88-1889) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* Requirements as specified in § 721.72(b)(2), (c), (f), and (g)(3)(ii). The provisions of § 721.72(g) would require the following warning language on the label: Minimize releases to the environment.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) and (q).

(iii) *Release to water.* Requirements as specified in § 721.90(a)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), (c), (f), (g), (h), (i), and (k).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

10. By adding new § 721.1265 to subpart E to read as follows:

**§ 721.1265 Metal salts of complex inorganic oxyacids (generic name).**

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substances identified generically as metal salts of complex inorganic oxyacids (PMNs P-89-576 and P-89-577) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), (c), and (i).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

11. By adding new § 721.1395 to subpart E to read as follows:

**§ 721.1395 Methylenebistrisubstituted aniline (generic name).**

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substances identified generically as methylenebistrisubstituted aniline (PMN P-87-90) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (a)(4), (a)(5)(iv), (a)(5)(v), (a)(5)(vi), (a)(6)(i), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b)(2), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(iv), (g)(1)(vi), (g)(1)(vii), (g)(2)(i), (g)(2)(ii), (g)(2)(iv), and (g)(2)(v).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(g) and (q).

(iv) *Disposal.* Section 721.85 (a)(1), (a)(2), (b)(1), (b)(2), (c)(1), and (c)(2).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a) through (j).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

12. By adding new § 721.1475 to subpart E to read as follows:

**§ 721.1475 Substituted nitrile (generic name).**

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified generically as as a substituted nitrile (PMN P-83-603) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (a)(4), (a)(5)(i), (a)(5)(ii), (a)(5) (iii), (a)(6)(v), (b) (concentration set at 1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b)(1), (d), (e) (concentration set at 1 percent), (f), (g)(1)(iii), (g)(1)(vii), (g)(2)(i), (g)(2)(ii), (g)(2)(iii), (g)(2)(iv), (g)(2)(v), (g)(3)(ii), and (g)(4)(1). The provision of § 721.72(d) requiring that employees be provided with information on the location and availability of MSDSs does not apply when an MSDS was not required under § 721.72(c). The provision of § 721.72(g) requiring placement of specific information on an MSDS does not apply when an MSDS is not required under § 721.72(c).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k).

(iv) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (level set at 1 ppb).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a) through (g), (i), and (k).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

13. By adding new § 721.1491 to subpart E to read as follows:

**§ 721.1491 Substituted dialkyl oxazolone (generic name).**

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified generically as substituted dialkyl oxazolone (PMN P-86-1634) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (a)(4), (a)(5)(xi), (a)(6)(v), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b)(2), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(iii), (g)(1)(vi), (g)(1)(vii), (g)(1)(ix), (g)(2)(i), (g)(2)(ii), (g)(2)(iv), and (g)(2)(v).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q).

(iv) *Disposal.* Requirements as specified in § 721.85(a)(1), (a)(2), (b)(1), (b)(2), (c)(1), and (c)(2).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a) through (j).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

14. By adding new § 721.1495 to subpart E to read as follows:

**§ 721.1495 2-Oxepanone, polymer with 4,4'-(1-methylethylidene)bisphenol and 2,2-[(1-methylethylidene)bis(4,1-phenyleneoxymethylene)]bisoxirane, graft.**

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance 2-oxepanone, polymer with 4,4'(1-methylethylidene)bisphenol and 2,2-[(1-methylethylidene) bis(4,1-phenyleneoxymethylene)]bisoxirane, graft (PMN P-88-2582) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(1), (a)(3), (a)(4), (a)(5)(i),(a)(5)(ii), (a)(5)(iii), (a)(5)(viii), (a)(5)(ix), (a)(5)(x), (a)(5)(xi), (a)(6)(ii), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(iv), (g)(1)(vi), (g)(1)(vii), (g)(2)(i), (g)(2)(ii), (g)(2)(iii), (g)(2)(iv), (g)(2)(v), and (g)(5).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(l) and (q).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a) through (i).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

15. By adding new § 721.1537 to subpart E to read as follows:

**§ 721.1537 Phenol, 4,4'-methylenebis(2,6-dimethyl-.**

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance phenol, 4,4'-methylenebis(2,6-dimethyl-, (PMN P-88-864) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(iii), (a)(2)(iv), (a)(3), (a)(4), (a)(5)(iii), (a)(5)(iv), (a)(5)(v), (a)(6)(i), (b) (concentration set at 1 percent), (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b)(1), (d), (e) (concentration set at 1 percent), (f), (g)(1)(iv), (g)(2)(i), (g)(2)(ii), (g)(2)(iv), (g)(2)(v), and (g)(4)(iii). The provision of § 721.72(d) requiring that employees be provided with information on the location and availability of MSDSs does not apply when an MSDS was not required under § 721.72(c). The provision of § 721.72(g) requiring placement of specific information on an MSDS does not apply when an MSDS is not required under § 721.72(c).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(g) and (q).

(iv) *Release to water.* Requirements as specified in § 721.90(a)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a) through (g), (i), (k).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

16. By adding new § 721.1540 to subpart E to read as follows:

**§ 721.1540 Phenol, 4,4'-[methylenebis(oxy-2,1-ethanediylthio)]bis-.**

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance phenol, 4,4'-[methylenebis(oxy 2,1-ethanediylthio)]bis- (PMN P-87-1760) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* Requirements as specified in § 721.72(b)(2), (f), (g)(3)(ii), and (g)(4)(iii). The provision of § 721.72(g) requiring placement of specific information on an MSDS does not apply when an MSDS is not required under § 721.72(c).

(ii) *Release to water.* Requirements as specified in § 721.90(a)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: Recordkeeping requirements specified in § 721.125(a), (b), (c), (f), (g), and (j).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

17. By adding new § 721.1611 to subpart E to read as follows:

**§ 721.1611 Phosphoric acid, 1,2-ethanediyl tetrakis(2-chloro-1-methylethyl) ester.**

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified as phosphoric acid, 1,2-ethanediyl tetrakis(2-chloro-1-methylethyl) ester (PMN P-861263) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (a)(4), (a)(5)(iii), (a)(6)(v), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b)(2), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(iii), (g)(1)(vii), (g)(2)(i), (g)(2)(ii), (g)(2)(iv), and (g)(2)(v).

(iii) *-Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) (use other than as a flame retardant for polyurethane foams).

(iv) *Disposal.* Requirements as specified in § 721.85 (a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a) through (j).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

18. By adding new § 721.1616 to subpart E to read as follows:

**§ 721.1616 Polyalkylenepolyol alkylamine. (generic name).**

(a) *Chemical substance and significant new uses subject to reporting.*(1) The chemical substance identified generically as polyalkylenepolyol alkylamine (PMN P-89-483) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(1), (a)(3), (b) (concentration set at 1.0 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 1.0 percent), (f), (g)(1)(iii), (g)(1)(iv), (g)(1)(vi), (g)(i)(ix), (g)(2)(i), (g)(2)(iii), (g)(2)(v), and (g)(5).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(l) and (q).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, andprocessors of this substance, as specified in § 721.125(a) through (i).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

19. By adding new § 721.1621 to subpart E to read as follows:

**§ 721.1621 Epoxidized polybutene.**

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified as epoxidized polybutene. (PMN P-88-217) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), (c), and (i).

(2) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(3) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

20. By adding new § 721.1638 to subpart E to read as follows:

**§ 721.1638 Polymer of substituted alkylphenol formaldehyde and phthalic anhydride, acrylate (generic name).**

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identifed generically as polymer of substituted alkylphenol formaldehyde and phthalic anhydride, acrylate, (PMN P-88-1616) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(1), (a)(2)(iii), (a)(2)(iv), (a)(3), (a)(4), (a)(5)(xi), (a)(6)(ii), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(iii), (g)(1)(vii), (g)(2)(i), (g)(2)(ii), (g)(2)(iv), (g)(2)(v), and (g)(5).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a) through (i).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

21. By adding new § 721.1645 to subpart E to read as follows:

**§ 721.1645 Polymer of maleic anhydride, benzenedicarboxylic acid and disubstituted alkylamine (generic name).**

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a polymer of maleic anhydride, benzenedicarboxylic acid and disubstituted alkylamine (P-88-1540) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), (c), and (i).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

22. By adding new § 721.1795 to subpart E to read as follows:

**§ 721.1795 1,3-Propanediamine, N,N'-1,2-ethanediylbis-, polymer with 2,4,6-trichloro-1,3,5-triazine, reaction products with N-butyl-2,2,6,6-tetramethyl-4-piperidinamine.**

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as 1,3-propanediamine, *N,N'*-1,2-ethanediylbis-, polymer with 2,4,6-trichloro-1,3,5-triazine, reaction products with *N*-butyl-2,2,6,6-tetramethyl-4-piperidinamine, (PMN P-89-632) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(1), (a)(2)(iii), (a)(3), (a)(4), (a)(5)(i), (a)(5)(ii), (a)(6)(i), (a)(6)(ii), (b) (concentration set at 1.0 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e), (f), (g)(1)(iv), (g)(1)(v), (g)(1)(viii), (g)(2)(i), (g)(2)(ii), (g)(2)(iii), (g)(2)(iv), (g)(2)(v), (g)(3)(ii), (g)(4)(iii), and (g)(5).

(iii) *Industrial, commercial, and consumer activites.* Requirements as specified in § 720.80(q).

(iv) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a) through (i) and (k).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

23. By adding new § 721.2075 to subpart E to read as follows:

**§ 721.2075 Terpenes and terpenoids, limonene fraction, polymer with substituted carbopolycycles (generic name).**

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as terpenes and terpenoids, limonene fraction, polymer with substituted carbopolycycles (PMN P-88-1617) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), (c), and (i).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

24. By adding new § 721.2155 to subpart E to read as follows:

**§ 721.2155 3,3',5,5'-Tetramethylbiphenyl-4,4'-diol.**

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified as 3,3',5,5'-tetramethylbiphenyl-4,4'-diol (PMN P-88-972) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(4), (a)(5)(vii), (a)(6)(i), (a)(6)(ii), (a)(6)(iv), (b) (concentration set at 1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 1 percent), (f), (g)(1)(iv), (g)(1)(ix), (g)(2)(ii), (g)(2)(iv), and (g)(5).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) (monomer for epoxy resins and engineering plastics or an antioxidizing agent for lubricating oils) and (p) (level set at 42,000 kg and 366,000 kg).

(iv) *Disposal.* Requirements as specified in § 721.85 (a)(1), (a)(2), (b)(1), (b)(2), (c)(1); and (c)(2).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a) through (j).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

[FR Doc. 90-19185 Filed 8-14-90; 8:45am]

BILLING CODE 6560-50-F

## GENERAL SERVICES ADMINISTRATION

### 41 CFR Part 101-26

**[FPMR Temp. Reg. E-90, Supp. 2]**

### Federal Property Management; Ordering Items From the GSA Supply Catalog

**AGENCY:** Federal Supply Service, GSA.

**ACTION:** Temporary regulation.

**SUMMARY:** FPMR Temporary Regulation E-90 was issued to revise the policy on ordering items from GSA. The regulation applies only to the stock and special order programs, not to the Federal Supply Schedule program. This supplement extends the expiration date of FPMR Temporary Regulation E-90 to July 31, 1991.

**DATES:**

*Effective date:* August 1, 1990.

*Expiration date:* July 31, 1991.

**FOR FURTHER INFORMATION CONTACT:** J.B. Willis or Janet King, Strategic Planning Division, (703-557-7571).

**SUPPLEMENTARY INFORMATION:** GSA has determined that this is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for and consequences of this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

**List of Subjects in 41 CFR Part 101-26**

Government property management.

Accordingly, 41 CFR chapter 101 is amended as set forth below.

### PART 101-26—[AMENDED]

1. The authority citation for part 101-26 continues to read as follows:

Authority: Section 205(c) 63 Stat. 390; 40 U.S.C. 486(c).

2. In title 41 of the Code of Federal Regulations, supplement 2 to FPMR Temp. Reg. E-90 is added to the appendix at the end of subchapter E to read as follows:

**Federal Property Management Regulations, Temporary Regulation E-90, Supplement 2**

*To:* Heads of Federal agencies

*Subject:* Ordering items from the GSA Supply Catalog

1. *Purpose.* This supplement extends the expiration date of FPMR Temporary Regulation E-90.

2. *Effective date.* This regulation is effective on August 1, 1990.

3. *Expiration date.* This supplement expires on July 31, 1991.

4. *Background.* FPMR Temporary Regulation E-90 was issued to revise the policy on ordering items from GSA. The regulation applies only to the stock and special order programs, not to the Federal Supply Schedule program.

5. *Explanation of change.* The expiration date in paragraph 3 of FPMR Temporary Regulation E-90 is extended to July 31, 1991.

Dated: June 28, 1990.

**Richard G. Austin,**

*Administator of General Services.*

[FR Doc. 90-18578 Filed 8-14-90; 8:45 am]

BILLING CODE 6820-24-M

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### 44 CFR Part 64

**[Docket No. FEMA 6886]**

### Suspension of Community Eligibility

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Final rule.

**SUMMARY:** This rule lists communities where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), but will be suspended on the effective date shown in this rule because of noncompliance with the revised floodplain management criteria of the NFIP. If FEMA receives documentation that the community has adopted the required revisions prior to the effective suspension date given in this rule, then the community will not be suspended and the suspension will be withdrawn by publication in the **Federal Register**.

**EFFECTIVE DATE:** As shown in the fifth column.

**FOR FURTHER INFORMATION CONTACT:** Mr. Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, Federal Center Plaza, 500 C Street SW., Room 416, Washington, DC 20472, (202) 646-2717.

**SUPPLEMENTARY INFORMATION:** The NFIP enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at saving lives and protecting new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the NFIP (42 U.S.C. 4001-4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures.

On August 25, 1986, FEMA published a final rule in the **Federal Register** that revised the NFIP floodplain management criteria. The rule became effective on October 1, 1986. As a condition for continued eligiblity in the NFIP, and NFIP criteria at 44 CFR 60.7 require communities to revise their floodplain management regulations to make them consistent with any revised NFIP regulation within 6 months of the effective date of that revision or be subject to suspension from participation in the NFIP.

The communities listed in this notice have not amended or adopted floodplain management regulations that incorporate the rule revision. Accordinly, the communities are not compliant with NFIP criteria and will be suspended on the effective date shown in this final rule. However, some of these communities may adopt, and submit the required documentation of, legally enforceable revised floodplain management regulations after this rule is published but prior to the actual suspension date. These communites will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**. In the interim, if you wish to determine whether or not a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

The Administrator, Federal Insurance Administration, FEMA, finds that notice and public procedures under 5 U.S.C. 533(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 90-day and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, FEMA, hereby certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As stated in section 2 of the Flood Disaster

Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses on both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to adopt adequate floodplain management measures, thus placing itself in noncompliance with the Federal standards required for community participation.

**List of Subjects in 44 CFR Part 64**

Flood insurance and Floodplains.

**PART 64—[AMENDED]**

1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

**§ 64.6 List of eligible communities.**

| State | Community name | County | Community No. | Effective date |
|---|---|---|---|---|
| Regular Program Communities: | | | | |
| West Virginia | Richwood, City of | Nicholas | 540147 | August 15, 1990. |
| Do | Ritchie County | Unincorporated Areas | 540224 | Do. |
| Do | Shepherdstown, Town of | Jefferson | 540069 | Do. |
| Do | Spencer, City of | Roane | 540185 | Do. |
| Do | Star City, Town of | Monongalia | 540273 | Do. |
| Do | Thomas, City of | Tucker | 540261 | Do. |
| Do | Triadelphia, Town of | Ohio | 540150 | Do. |

Issued: August 9, 1990.

**C.M. "Bud" Schauerte,**

*Administrator, Federal Insurance Administration.*

[FR Doc. 90-19285 Filed 8-14-90; 8:45 am]

BILLING CODE 6718-02-M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[MM Docket No. 89-563; RM-6953]**

### Radio Broadcasting Services; Walsenburg, CO

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document substitutes Channel 272C3 for Channel 272A at Walsenburg, Colorado, and modifies the Class A license of Hargrave Broadcasting Corporation for Station KSPK(FM), as requested, to specify operation on the higher power channel, thereby providing that community with its first wide coverage area FM service. See 54 51425, December 15, 1989. Coordinates used for Channel 272C3 at Walsenburg are 37-37-39 and 104-49-17. With this action, the proceeding is terminated.

**EFFECTIVE DATE:** September 24, 1990.

**FOR FURTHER INFORMATION CONTACT:** Nancy Joyner, Mass Media Bureau (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 89-563, adopted July 26, 1990, and released August 10, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments for Colorado, is amended by amending the entry for Walsenburg, by removing Channel 272A and adding Channel 272C3.

Federal Communications Commission.

**Kathleen B. Levitz,**

*Deputy Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 90-19138 Filed 8-14-90; 8:45 am]

BILLING CODE 6712-01-M

### 47 CFR Part 73

**[MM Docket No. 89-565; RM-6950]**

### Radio Braodcasting Services; Tahoe City, CA

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document substitutes Channel 243C1 for Channel 243C2 at Tahoe City, California, and modifies the license of Mid-South Broadcasting Company for Station KRZQ-FM, as requested, to specify operation on the higher power channel, thereby providing that community with its first wider coverage area FM service. See 54 FR 52422, December 21, 1989. Coordinates used for Channel 243C1 at Tahoe City are 39-16-22 and 119-42-13. With this action, the proceeding is terminated.

**EFFECTIVE DATE:** September 24, 1990.

**FOR FURTHER INFORMATION CONTACT:** Nancy Joyner, Mass Media Bureau (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 89-565, adopted July 26, 1990, and released August 10, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments for California, is amended by amending the entry for Tahoe City, by removing Channel 243C2 and adding Channel 243C1.

Federal Communications Commission.

**Kathleen B. Levitz,**

*Deputy Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 90-19137 Filed 8-14-90; 8:45 am]

BILLING CODE 6712-01-M

## 47 CFR Part 73

[MM Docket No. 89-366; RM-6824]

## Radio Broadcasting Services; Knoxville, IA

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of Leighton Enterprises, Inc., substitutes Channel 221C3 for Channel 221A at Knoxville, Iowa, and modifies its license for Station KRLS to specify operation on the higher powered channel. Channel 221C3 can be allotted to Knoxville in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for this allotment are North Latitude 41-19-12 and West Longitude 93-05-42. With this action, this proceeding is terminated.

**EFFECTIVE DATE:** September 24, 1990.

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 89-366, adopted July 31, 1990, and released August 10, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

### List of Subjects in 47 CFR Part 73

Radio broadcasting.

### PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments under Iowa is amended by removing Channel 221A and adding Channel 221C3 at Knoxville.

Federal Communications Commission.

**Kathleen B. Levitz,**

*Deputy Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 90-19139 Filed 8-14-90; 8:45 am]

BILLING CODE 6712-01-M

## 47 CFR Part 73

[MM Docket No. 89-346; RM-6742]

## Radio Broadcasting Services; Gold Beach, OR

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of St. Marie Communications, Inc., substitutes Channel 224C1 for Channel 224A at Gold Beach, Oregon, and modifies its license for Station KGBR (FM) to specify operation on the higher powered channel. *See* 54 FR 33720, published August 16, 1989. Channel 224C1 can be allotted to Gold Beach in compliance with the Commission's minimum distance separation requirements and can be used at the station's present transmitter site. The coordinates for this allotment are North Latitude 42-23-50 and West Longitude 124-21-50. With this action, this proceeding is terminated.

**EFFECTIVE DATE:** September 24, 1990.

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 89-346, adopted July 26, 1990, and released August 10, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

### List of Subjects in 47 CFR Part 73

Radio broadcasting.

### PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments under Oregon is amended by removing Channel 224A and adding Channel 224C1 at Gold Beach.

Federal Communications Commission.

**Kathleen B. Levitz,**

*Deputy Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 90-19140 Filed 8-14-90; 8:45 am]

BILLING CODE 6712-01-M

## DEPARTMENT OF ENERGY

## 48 CFR Parts 917 and 935

## Acquisition Regulation; Issuance of Broad Agency Announcements for Research Acquisition

**AGENCY:** Department of Energy.

**ACTION:** Final rule.

**SUMMARY:** The Department of Energy (DOE) today adopts a final rule which amends the Department of Energy's Acquisition Regulation (DEAR) to provide for the issuance of broad agency announcements for the acquisition of research as permitted by the Competition in Contracting Act of 1984 (CICA) (Pub. L. 98-369) and the Federal Acquisition Regulation (FAR) 6.102(d)(2), and FAR 35.016. The amendments set forth in this final rule implement policies and procedures concerning the solicitation, evaluation, and selection of basic and applied research proposals by DOE through the use of broad agency announcements. DOE has concluded that specific regulatory coverage of the broad agency announcement mechanism is needed to allow for procedural distinctions between this type of competitive procedure and those other forms of competitive solicitations (such as Program Research Development Announcements (PRDAs) and Program Opportunity Notices (PONs)) through which DOE can contract for its research needs. These amendments are added in the DEAR as a new section 935.016 and a revised section 917.7301.

This final rule is issued subsequent to a Notice of Proposed Rulemaking (NOPR) published in the **Federal Register** (54 FR 29757) on July 14, 1989.

**EFFECTIVE DATE:** This final rule will be effective September 14, 1990.

**FOR FURTHER INFORMATION CONTACT:** Edward Simpson, Procurement Policy Division (PR-12), Office of Procurement and Assistance Management, U.S. Department of

Energy, Washington, DC 20585, (202) 586-8246.
Christopher T. Smith, Office of the Assistant General Counsel for Procurement and Finance (GC-34), U.S. Department of Energy, Washington, DC 20585, (202) 586-1526.

**SUPPLEMENTARY INFORMATION:**

I. Background.
II. Procedural Requirements.
A. Review Under Executive Order 12291.
B. Review Under the Regulatory Flexibility Act.
C. Review Under the Paperwork Reduction Act.
D. Review Under the National Environmental Policy Act.
E. Review Under Executive Order 12612.
III. Public Comments.
IV. Other Changes.

## I. Background

In establishing a standard of full and open competition, CICA recognized the use of a general announcement of an agency's research interest in conjunction with a peer or scientific review of proposals as a competitive procedure for the acquisition of research (41 U.S.C. 259(b)(2)). The Federal Acquisition Regulation (FAR) originally implemented this portion of CICA in FAR 6.102(d)(2). Further, a final rule was published in the Federal Register on July 20, 1988 (53 FR 27460) which establishes, in the Federal Acquisition Regulation at FAR 35.016, general procedures (in addition to those previously set forth in FAR 6.102(d)(2)) for the use of broad agency announcements. The DOE, today, amends the DEAR to supplement the FAR and implement DOE's policies, procedures, and requirements for the use of Research Opportunity Announcements (ROAs) as the specific form of broad agency announcements to be used by DOE.

DOE has concluded that specific regulatory coverage of the broad agency announcement mechanism is needed to allow for procedural distinctions between this type of competitive procedure and those other forms of competitive solicitations (such as Program Research Development Announcements (PRDAs) and Program Opportunity Notices (PONs)) through which DOE can contract for its research needs.

The amendments set forth in this final rule add a new § 935.016, Research Opportunity Announcements, to the DEAR. This section establishes the requirements for the synopsis and content of announcements, proposal preparation instructions, proposal evaluation criteria and procedures, and the selection and award of contracts for basic and applied research using the broad agency announcement solicitation mechanism.

As a result of the implementation of the ROA as a solicitation mechanism within DOE, an amendment to DEAR subpart 917.73 is needed to clarify the use of PRDAs as a solicitation form. The current DEAR coverage prescribes the use of PRDAs under certain circumstances (see DEAR 917.7301). These circumstances when read in light of the proposed objectives and uses of the ROA may be interpreted similarly, thereby causing conflict in the determination as to which solicitation mechanism may be more appropriate under apparently like situations. In order to distinguish the two solicitation forms, DEAR 917.7301 is being amended so that PRDAs will be used to acquire research and development in support of a specific project area within an energy program, while the ROA will be used to acquire basic and applied research in support of broad mission- and program-level objectives.

## II. Procedural Requirements

### *A. Review Under Executive Order 12291*

This Executive order, entitled "Federal Regulation," requires that certain regulations be reviewed by the Office of Management and Budget (OMB) prior to their promulgation. The OMB has decided that agency implementations of the CICA warrant review. Accordingly, this rule was submitted to OMB for review in accordance with Executive Order 12291 and OMB Bulletin 85-7. OMB has completed its review and approved publication.

### *B. Review Under the Regulatory Flexibility Act*

This final rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96-354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. DOE certifies that this rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

### *C. Review Under the Paperwork Reduction Act*

No new information collection or recordkeeping requirements are imposed by this rulemaking. Accordingly, no OMB clearance is required under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*).

### *D. Review Under the National Environmental Policy Act*

DOE has concluded that promulgation of this rule would not represent a major Federal action having significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.* (1976)), or the Council on Environmental Quality regulations (40 CFR parts 1500-1508), and the DOE Guidelines (10 CFR part 1021), and, therefore, does not require an environmental impact statement or an environmental assessment pursuant to NEPA.

### *E. Review Under Executive Order 12612*

Executive Order 12612 requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the national government and the States, or in the distribution of power and responsibilities among the various levels of government. If there are sufficient substantial direct effects, then the Executive order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action.

Today's final rule implements and supplements certain policy and procedural requirements established in the Competition in Contracting Act and in the Federal Acquisition Regulations relating to the use of broad agency announcements. States which contract with DOE will be subject to this rule. However, DOE has determined that this rule will not have a substantial direct effect on the institutional interests or traditional functions of the States.

## III. Public Comments

Interested persons were invited to participate in the rulemaking process by submitting data, views, or arguments with respect to the DEAR amendments set forth in a NOPR published in the Federal Register (54 FR 29757) on July 14, 1989. Based upon that July 14, 1989, publication date, the public comment period closed on September 12, 1989, a period of forty-three (43) days. During that period, DOE received one comment from an interested party. That comment, and DOE's response thereto, are as set forth below.

*Comment.* The commenter, a university operating a DOE laboratory under contract, objects to the prohibition found at § 935.016(2)(b)(2) on the use of Research Opportunity Announcement (ROA) to solicit proposals from, or award contracts to, "any specific entity which operates a Government-owned or -controlled

research, development, special production, or testing establishment, such as DOE's management and operating contractor facilities, Federally Funded Research and Development Centers (FFRDCs) chartered by other agencies, or other such entities."

The commenter, in support of its objection, believes that such a prohibition is not founded in either the Competition in Contracting Act (CICA) or the current Federal Acquisition Regulation (FAR) coverage at 6.102(d)(2) concerning broad agency announcements. Furthermore, the commenter states that the prohibition is contrary to a March 1988, report published by the General Accounting Office (GAO) entitled, "Competition: Issues on Establishing and Using Federally Funded Research and Development Centers." Specifically, the commenter interpreted the GAO report to conclude that the restriction on FFRDCs' competing on agency Requests for Proposal (RFP) does not apply to broad agency announcements.

Lastly, the commenter expressed a concern that the language in question could be subject to misinterpretation with regard to the meaning of the words "any specific entity which operates," thereby serving to bar the parent and/or subsidiaries of that entity from submitting proposals and receiving contract awards under ROAs.

*DOE Response:* DOE disagrees with the commenter's position that there is no basis for prohibiting contractors managing FFRDCs or similar facilities from participating in the ROA program. CICA clearly states that a broad agency announcement is a competitive procedure involving a solicitation. The FAR, at § 35.017(a)(2), states that "(i)t is not the Government's intent that an FFRDC use its privileged information or access to facilities to compete with the private sector". In addition, OFPP Policy Letter 84–1 specifically provides that sponsoring agencies may expand prohibitions against an FFRDC competing with any non-FFRDC concern as determined by the sponsoring agency to be necessary and appropriate (see paragraph 6.c.(1)(c)).

DOE believes, based on the facts that contractors operating these facilities have all of their allowable costs paid by the Government, and the facilities themselves are Government-owned and Government financed with the contractor investing none of its own capital, that it would be unfair for the contractor operating such a facility to compete under an open solicitation against other entities. Stated another way, the purpose underpinning this policy is to maximize competition by allowing individual researchers, educational institutions, non-profit organizations, and for-profit entities to compete for Federal support without having to compete with Federally-funded and -equipped contractors. DOE believes that this prohibition is necessary to prevent these potential proposers from being discouraged and from deciding not to make the commitment necessary to develop a proposal.

With regard to the prohibition in DEAR 936.016–2(b)(2) and generally, DOE treats Government-owned or -controlled research, development, special production, or testing establishments, including FFRDCs, the same because they all have the advantages discussed above which would interfere with DOE's objective of stimulating research initiatives.

Concerning the GAO report cited by the commenter, the commenter appears to be incorrectly applying the findings and recommendations of the GAO to this particular action. In its report, GAO found that agencies using FFRDCs to perform research are faced with the possibility of not knowing whether the specific work performed by the FFRDC could be obtained under competitive procedures at a lower cost and at a higher quality. To address this question, GAO considered the use of a broad agency announcement as a way in which an agency could solicit and evaluate the private sector's ability to perform the FFRDC's research agenda before assigning the FFRDC any work to meet an agency need. Ultimately, GAO recommended that the Secretary of Defense implement a test program to improve DOD's ability to assess the effectiveness of FFRDCs in meeting DOD's research needs. This report does not address the issue of FFRDCs responding to broad agency announcements. Based upon the foregoing, DOE will not change the restriction that prohibits entities which operate certain types of Government-owned or -controlled establishments from responding to ROAs.

Finally, the commenter expressed a concern that the language restricting FFRDCs from participating in the ROA process might be misinterpreted to exclude the parent and subsidiary organizations of the contractor operating the Government-owned or -controlled facility. It is not DOE's intent to exclude those other portions of an organization not directly responsible for the management and operation of the Government-owned or -controlled establishment from submitting a proposal under a ROA. Clarifying language has been added to § 935.016(2)(b)(2) to indicate that the parent to the organization which manages and operates a Goverment-owned or -controlled facility, its subsidiaries, other divisions, or other related business affiliates are not precluded from receiving awards under DOE's ROA solicitations, provided that any proposed resources (personnel, facilities, and other resources) used in the management and operation of the Government-owned or -controlled facility have been approved for use in the ROA effort by the sponsoring agency.

## IV. Other Changes

This final rule contains minor editorial corrections due either to errors discovered by DOE after publication of the proposed rule in the **Federal Register**, or to minor changes in wording deemed appropriate for purposes of clarification and understanding. These changes do not affect the meaning or intent of the rule. In addition, one change was made to the proposed rule as a result of recently passed legislation. An explanation as to the nature of the changes follows.

The word "contract," found in the third line of section 935.106–4(b)(9) in the proposed rule, has been corrected to now read "contact". The word "imprtance", found in the sixth line of section 935.016–4(b)(10) in the proposed rule, has been corrected to now read "importance". Section 935.015–8(d) has been modified to add a sentence to clarify the role of contracting personnel in the conduct of debriefings. The reference to FAR 3.104 pertaining to the requirements of procurement integrity, found at section 935.016–6(a) of the proposed rule, has been deleted.

In addition, other clarifying and procedural changes appear in this final rule as a result of comments received from within DOE from its contracting and program activities. The types of changes made in response to internally-generated comments are such things as:

(1) Section 935.104–4(d) was changed to allow for multiple evaluation plans where research proposals could not be objectively evaluated under one plan because of differences in the nature of the research areas of the DOE program.

(2) Section 935.016–4(f) was changed to remove the firm requirement that the open period of the ROA not exceed one year, when, due to administrative delays, the issuance of a succeeding ROA would not occur without the passage of an open period between the closing date of the predecessor ROA and the succeeding ROA.

(3) Section 935.016–6(c) was changed to allow for the evaluation of a late proposal under a follow-on ROA when certain conditions are met.

(4) In Section 935.016–7(a), a change was made to place the responsibility for administration of the ROA with an organizational element of the DOE program office. The proposed rule placed that responsibility with an individual in the DOE program office.

(5) The wording of the restrictions placed on individuals that could serve as scientific or peer reviewers, found in section 935.016–7(d), was changed to more closely resemble similar language found in DOE's Assistance Regulations at 10 CFR 600.16(b)(3).

**List of Subjects**

*48 CFR Part 917*

Government contracts, Government procurement, Special contracting methods.

*48 CFR Part 935*

Government contracts, Government procurement, Research and development.

For the reasons set out in the preamble, parts 917 and 935 of title 48 of the Code of Federal Regulations are amended as set forth below.

**Berton J. Roth,**

*Acting Director, Office of Procurement and Assistance Management.*

48 CFR chapter 9 is amended as set forth below:

1. The authority citation for parts 917 and 935 continues to read as follows:

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c).

## PART 917—[AMENDED]

2. Section 917.7301–1 is amended by revising paragraph (c)(1) to read as follows:

**917.7301–1 General.**

* * * * *

(c) * * *

(1) Research and development is required in support of a specific project area within an energy program with the objective of advancing the general scientific and technological base, and this objective is best achieved through:

(i) A diversity of possible approaches, within the current state of the art, available for solving the problems;

(ii) The involvement of a broad spectrum of organizations in seeking out solutions to the problems posed;

(iii) The application of the unique qualifications or specialized capabilities of many individual proposers which will enable them to perform portions of the research project (without necessarily possessing the qualifications to perform the entire project) so that the overall support may be broken into segments which cannot be ascertained in advance; and,

(iv) The fostering of new and creative solutions.

* * * * *

## PART 935—[AMENDED]

3. Part 935 is amended by adding sections 935.016 and 935.016–1 through 935.016–9 to read as follows:

**935.016 Research opportunity announcements.**

**935.016–1 Scope.**

(a) Sections 935.016 and 935.016–1 through 935.016–9 set forth the policies and procedures for contracting for research through the use of broad agency announcements as authorized by the Competition in Contracting Act of 1984 (CICA) (41 U.S.C. 259(b)(2)) and Federal Acquisition Regulation (FAR) 6.102(d)(2). Within DOE, broad agency announcements will be designated as Research Opportunity Announcements (ROAs).

(b) Research Opportunity Announcements are a form of competitive solicitation under which DOE's broad mission- and program-level research objectives are defined; proposals which offer meritorious approaches to those objectives are requested from all offerors capable of satisfying the Government's needs; those proposals are evaluated by scientific or peer review against stated specific evaluation criteria; and selection of proposals for possible contract award is based upon that evaluation, the importance of the research to the program objectives, and the funds availability.

**935.016–2 Applicability.**

(a) Sections 935.016 and 935.016–1 through 935.016–9 apply to all DOE Headquarters and field program organizations which, by virtue of their statutorily mandated mission or other such authority as may exist, support energy or energy-related research activities through contractual relationships.

(1) The ROA may be used as a competitive solicitation procedure through which DOE acquires basic and applied research in support of its broad mission- and program-level research objectives, and these objectives may be best achieved through relationships where contractors pursue diverse and dissimilar solutions and approaches to scientific and technological areas related to DOE's missions and programs.

(2) The ROA shall not be used as a solicitation method when one or more of the following conditions exist:

(i) In accordance with the Federal Grant and Cooperative Agreement Act, Public Law 97–258, the principal purpose of the relationship will be assistance;

(ii) The purpose of the research is to accelerate the demonstration of the technical, operational, economic, and commercial feasibility and environmental acceptability of particular energy technologies, systems, subsystems, and components that would appropriately be acquired by Program Opportunity Notices (PONs) in accordance with subpart 917.72;

(iii) The research is required in support of a specific project area within an energy program which appropriately would be acquired by Program Research and Development Announcements (PRDAs) in accordance with subpart 917.73;

(iv) The research requirements can be sufficiently defined to allow the use of contracting by negotiation in accordance with Federal Acquisition Regulation (FAR) part 15;

(v) The purpose of the research is the acquisition of goods and services related to the development of a specific system or hardware acquisition; or,

(vi) Any funds to be obligated to a resulting contract will be used to conduct or support a conference or training activity.

(b) The following limitations are applicable to the use of ROAs:

(1) The use of broad agency announcements for the acquisition of that part of development not related to the development of a specific system or hardware is authorized by FAR 35.016(a). Notwithstanding that authorization, ROAs shall be used within DOE only to acquire basic and applied research.

(2) Proposals shall not be solicited from, and contracts shall not be awarded to, any specific entity which operates a Government-owned or -controlled research, development, special production, or testing establishment, such as DOE's management and operating contractor facilities, Federally Funded Research and Development Centers chartered by other agencies, or other such entities. This limitation shall not be used to preclude the parent organization of the entity operating the Government-owned or -controlled facility, its subsidiaries, other divisions, or other related business affiliates from proposing, or receiving awards, under DOE's ROA solicitations, provided that any proposed resources (personnel, facilities, and other

resources) used in the management and operation of the Government-owned or -controlled facility have been approved for use in the ROA effort by the sponsoring agency.

**935.016-3 Definitions.**

*Awarding Contracting Activity*, for purposes of §§ 935.016 and 935.016-1 through 935.016-9, means any DOE Contracting Activity assigned to negotiate, award, and administer a resultant contract, and otherwise perform related post-selection acquisition functions.

*Cognizant Contracting Activity* and "Contracting Activity", for purposes of sections 935.016 and 935.016-1 through 935.016-9, mean the DOE Contracting Activity assigned to perform all acquisition functions from the initiation of the ROA requirement through completion of the selection process. The Cognizant Contracting Activity ("Contracting Activity") shall be that DOE Contracting Activity which is anticipated to be the primary and predominant Awarding Contracting Activity for the negotiation, award, and administration of resultant contracts. However, the initial assignment of a Contracting Activity as the "Cognizant Contracting Activity" for the ROA does not preclude the designation of additional Contracting Activities as Awarding Contracting Activities after the selection decision(s).

*Cognizant DOE Program Office, DOE Program Office*, and *Program Office* mean the Headquarters or field office element with direct responsibility for issuance of the ROA and the subsequent evaluation and selection of proposals.

*Objective review* means a thorough, consistent and independent examination and evaluation of a proposal by persons knowledgeable in the field of endeavor for which support is requested; such review is conducted to provide facts and advice to the selection official based upon the evaluation criteria established in the ROA.

*Peer reviewer* means a professional individual not employed by the Government selected to conduct an objective review of a research proposal, because that individual has expertise in the same or related scientific or technical field as the research area set forth in the proposal and is recognized in the scientific or technical community.

*Scientific reviewer* means a professional Government employee selected to conduct an objective review of a research proposal because that individual has expertise in the same or related scientific or technical field as the research area set forth in the proposal.

*Selection Official* means the Senior Program Official or designee having the authority to select for award those proposals received in response to an ROA which were determined to be meritorious in relation to the evaluation criteria and the program policy factors set forth in the ROA.

*Senior Program Official*, for purposes of sections 935.016 and 935.016-1 through 935.016-9, means, in addition to those individuals listed in 902.100, Managers of DOE Operations Offices, and Directors of DOE Energy Technology Centers.

**935.016-4 Issuance of Research Opportunity Announcements.**

(a) In order to maintain a comprehensive and well-integrated research program, the cognizant DOE program office shall be responsible for issuance of the ROA and the subsequent evaluation and selection of proposals.

(b) Each ROA shall consist of the following:

(1) An ROA identification number and the statutory and/or regulatory authority for the issuance of the ROA;

(2) The title of the ROA;

(3) A description of the program objectives and, where appropriate, a statement of the intended uses by DOE of the results of the research;

(4) A summary of the research agenda or potential areas for research initiatives, including any areas requiring additional research or any other information which identifies research areas in which contracts may be awarded;

(5) The period of time during which proposals will be accepted from offerors for evaluation and other information concerning the consideration and disposition of late porposals;

(6) The total amount of money available or estimated to be available for potential contract awards;

(7) The name and address of the DOE program office responsible for issuance of the ROA;

(8) The address for receipt of proposals;

(9) The name of the DOE official within the program office to serve as a point of contact for:

(i) Additional information,

(ii) The list of any specific proposal forms to be used by the offeror in submitting a proposal, and

(iii) The address where those forms may be obtained;

(10) All business, technical, and/or cost evaluation (including any requirement for cost participation by the offeror) criteria, including any additional criteria to those set forth in this subpart, the relative importance of the evaluation criteria, and other appropriate proposal preparation instructions;

(11) Any factors to be considered in determining the importance of any proposed research to the program objectives;

(12) A statement that DOE is under no obligation to reimburse the offeror for any costs associated with the preparation or submission of proposals;

(13) A statement that DOE reserves the right to fund, in whole or in part, any, all or none of the proposals submitted;

(14) A statement that DOE is not required to return to the offeror a proposal which is not selected;

(15) A statement that each proposal will be objectively reviewed on its own merit against the evaluation criteria stated in the ROA using scientific and/or peer reviewers, and that selection of a proposal will be made in consideration or that evaluation, the importance of the proposed research to the program objectives, and funds availability;

(16) A statement that DOE is not obligated to award a contract to an offeror merely because the offeror's proposal was accepted by DOE for evaluation.

(c) The Senior Program Official of the cognizant DOE program office shall determine in writing, after consultation with the responsible Contracting Officer at the Cognizant Contracting Activity, that the use of a ROA is both necessary and appropriate as a solicitation instrument in meeting program objectives. This determination shall be made prior to the issuance of the ROA, and shall be based upon facts and explanations which address the conditions stated in 935.016-1 (a) and (b), and any other pertinent information.

(d) Prior to the synopsis and issuance of the ROA, a confidential plan(s) establishing a common basis for the evaluation of proposals shall be developed. This plan shall directly correspond to the evaluation criteria that will be specified in the ROA.

(e) Review of the ROA solicitation prior to its issuance will be consistent with solicitation review procedures established by the cognizant Contracting Activity.

(f) Each ROA issued will provide for a proposal submission period of a least ninety (90) days but not greater than one year. However, in instances where the Program Office intends to issue a succeeding ROA, and such issuance may become unduly delayed because of administrative procedures, the program office may amend the current ROA to

extend the open period for up to an additional sixty (60) days. ROAs may be reissued by the program office at any time to become effective after the original ROA proposal submission period has elapsed, subject to the same requirements of this subpart as a new ROA.

(g) The full text of the ROA will be published in the **Federal Register**. The Contracting Officer will announce the availability of the ROA in the "Commerce Business Daily" in accordance with FAR 35.016(c). Information concerning the availability of the ROA may also be published in scientific, technical, or engineering publications. The full text of any amendments to the ROA shall be published in the **Federal Register** and concurrently announced in the "Commerce Business Daily."

**935.016-5 Content of proposal submissions.**

Each ROA shall require that a proposal (whether a new proposal or a proposal for the continuation of research previously funded by DOE as a contract) will be submitted by the offeror in the quantities specified in the ROA to the place designated in the ROA as the place for receipt of proposals. Each proposal will contain three sections which, at a minimum, provide the following information:

(a) Section I: Offeror Information:

(1) Name and address of the offeror;

(2) The ROA solicitation number;

(3) The date of submission of the proposal and the offer acceptance period;

(4) The names and addresses of any other Federal, State, or local government agency, or any other public or private entity who has in the past, or is currently, or expects, in the future, to provide funds for the same or similar research activities of the offeror;

(5) A proposal cover sheet signed by an individual authorized to contractually obligate the offeror.

(b) Section II: Technical Proposal:

(1) A detailed description of the proposed research, including the objectives of the research, the methodology and approaches for accomplishing those objectives, the anticipated results of the research, and, where appropriate, a schedule depicting key research milestones with a description of the milestones and the relationship of the proposed research to the program objectives and evaluation criteria stated in the ROA. This description should also include:

(i) A listing and a discussion of any previous or on-going research performed by the offeror in areas related to those contemplated by the ROA, and

(ii) Where appropriate, a discussion of how the intened results of the research will achieve the use intended by DOE;

(2) Resumes for the proposed principal investigator(s) or other key individuals addressing the qualification, experience, and capabilities of these individuals;

(3) A description of the facilities and other resources of the offeror which will be used by the offeror in performance of the proposed research;

(4) A description of any facilities and other non-monetary resources requested to be furnished by the Government for use by the offeror in performance of the proposed research; and,

(5) A description of the structure and lines of the authority (both technical and administrative) of the offeror's organization and the relation thereto to the proposed research effort.

(c) Section III: Cost Proposal:

(1) A fully executed Standard Form (SF) 1411;

(2) Any supporting cost exhibits as may be required by the ROA.

**935.016-6 Receipt and handling of proposals and late proposal submission.**

(a) The cognizant DOE program office, with the concurrence of the Contracting Officer, shall establish formal administrative procedures for accountability, control of receipt and distribution, evaluation, and disposition of proposals received in response to an ROA to insure that proposal information, in whole or in part, is properly safeguarded from unauthorized disclosure or use. These administrative procedures shall be consistent with the policies and procedures set forth in FAR 15.411 and 15.413, and in DEAR 915.413 and subpart 927.70. Where a program office has established a system for objective merit review of financial assistance applications pursuant to 10 CFR 600.16, the procedures of such a system can be adopted by the program office for use under the ROA, provided that any conflicts, inconsistencies, or ambiguities between the system for objective merit review and the requirements of the FAR and the DEAR shall be resolved in favor of the FAR and the DEAR requirements.

(b) The Senior Program Official for the cognizant program office shall be responsible for ensuring that the procedures concerning unauthorized disclosure or use of proposal information are consistently complied with by the evaluators assigned to the ROA.

(c) Proposals received for evaluation subsequent to the close of the proposal submission period will be considered in accordance with FAR 15.412. Proposals determined to have been received subsequent to the close of the proposal submission period may be considered and evaluated under a succeeding ROA issued by the program office, provided that the offeror so affirms, in writing, that it desires evaluation of its proposal under the succeeding ROA, and provides the program office, as part of its affirmation, any needed updated information relating to its original proposal.

(d) Proposals may be withdrawn by the offeror at any time prior to award of a resultant contract by written notice to the cognizant program office.

**935.016-7 Evaluation of proposals.**

(a) The Senior Program Official for the cognizant DOE program office shall, by written delegation, appoint an organization within that program office to be responsible for the conduct and administration of the proposal evaluation process. This organization shall:

(1) Serve as the primary point of contact on all matters concerning the ROA;

(2) Ensure that a confidential evaluation plan(s) based directly upon the evaluation criteria set forth in the ROA is developed;

(3) Ensure that an initial review of proposals is conducted in accordance with paragraph (c) of this subsection;

(4) Select the scientific and/or peer reviewers and administer the evaluation of each proposal;

(5) Ensure that a consolidated report of the evaluation findings for each proposal and other needed information are prepared and provided for use as an advisory report to the Selection Official; and

(6) Perform other administrative duties (e.g., conduct debriefings, notify offerors) as may be necessary to facilitate the evaluation process.

(b) The evaluation of each proposal shall begin upon its receipt, or as soon as possible thereafter.

(c) All proposals will undergo an initial review to determine:

(1) The responsiveness and completeness of the proposal to the requirements of the ROA, including the appropriateness of the research to the intended uses by DOE, and

(2) The relevance of the proposed effort to the broad areas of research contemplated by the ROA.

If, after completion of the initial review, a proposal is determined not to meet the requirements stated in paragraphs (c) (1) and (2) of this subsection, the offeror shall be promptly notified that its

proposal has been eliminated from any further evaluation under the ROA and the general basis for such a determination.

(d) Proposals which survive the initial review shall generally be reviewed by at least three scientific and/or peer reviewers. The composition of the group may be any mix of scientific and peer reviewers. To the extent possible, individuals to be used as scientific or peer reviewers should not be individuals who perform, or are likely to perform, any of the following activities for any of the offerors or on behalf of the Government:

(1) Providing substantive technical assistance to the offeror;

(2) Approving/disapproving or having any decision-making role regarding the proposal;

(3) Serving as the project manager/officer or otherwise monitoring or evaluating the offeror's contractual performance;

(4) Serving as the Contracting Officer, the Contracting Officer's Representative, or otherwise monitoring or evaluating the offeror's performance under the program; or

(5) Auditing the offeror or the contract.

Anyone who has line authority over a person who is ineligible to serve as a reviewer because of the above limitations is also ineligible to serve as a reviewer. In instances where the cognizant program office has established a procedure for the review of financial assistance applications using a published merit review system (see 10 CFR part 600), the types of review groups allowed by 10 CFR 600.16(d) may be used for purposes of satisfying the requirements for scientific and/or peer review under this subpart, subject to any other requirements stated herein.

(e) Proposals will be evaluated against the criteria set forth in the ROA to determine such issues as the following:

(1) The overall scientific and technical merit of the proposal including the merit and value of related research performed by the offeror under previous or existing contracts or other arrangements;

(2) The appropriateness of the proposed method or approach;

(3) The qualifications, capabilities, experience, and demonstrated past performance of the offeror, principal investigator, and/or key personnel;

(4) The adequacy of the offeror's facilities and resources; and,

(5) The realism of the proposed costs.

(f) Proposals received in response to the ROA should not be evaluated against each other since they are not submitted in accordance with a common statement of work. Competitive range determinations shall not be made, and best and final offers shall not be requested.

(g) During the evaluation process, communications with an offeror should occur only for purposes of clarification of that offeror's proposal. Communication may be accomplished either in writing or orally, provided that, in instances where oral communications occur, a written record of such communication is maintained.

(h) A proposal which provides for the continuation of research previously funded by DOE as a contract awarded as a result of either a previously issued ROA or an unsolicited proposal may be evaluated and considered for selection and award under the instant ROA, provided that:

(1) The proposed research is within the specific areas of research contemplated by the ROA;

(2) The proposal is received during the open period of the ROA; and

(3) The proposal is fully responsive to the requirements of the ROA.

(i) An unsolicited proposal for new work not specifically submitted in response to the ROA may be evaluated and considered for selection and award under the instant ROA, provided that:

(1) The conditions stated in paragraphs (h)(1) and (h)(2) of this subsection are met; and,

(2) The offeror, after written notification from the Program Office that the unsolicited proposal falls within the scope of the ROA, expressly states, in writing, that the unsolicited proposal is now to be considered a submission under the instant ROA; and,

(3) The offeror is otherwise able to provide, within the open period of the ROA, any additional information required by the ROA to allow for an evaluation of that offeror's proposal.

(j) For each proposal, a consolidated written report shall be prepared and shall include the findings of all reviewers. The report shall contain sufficient detail to indicate that the proposal was evaluated fairly and objectively against the evaluation criteria. This report shall be submitted to the Selection Official as an advisory report to be used in selecting proposals.

**935.016-6 Selection of Proposals.**

(a) After considering the evaluation findings, the importance of the proposed research to the program objectives, and funds availability, the Selection Official shall determine whether a specific proposal warrants selection for negotiation and award of a contract. The decision of the Selection Official shall be documented in writing and shall address, as appropriate, such issues as:

(1) The scientific and technical merit of the proposal in relation to the ROA evaluation criteria;

(2) The qualifications, capabilities, and experience of the proposed personnel; technical approach; facilities; and where applicable, cost participation by the offeror (or any combination of the above);

(3) The importance of the proposed research to the program objectives;

(4) Which areas of the proposal, whether in whole or in part, have been selected for funding, and the amount of that funding; and,

(5) Assurances that any other requirements which are imposed by statute, regulation, or internal directives relating to the specific research activities and which are properly the responsibility of the Program Office have been satisfied.

(b) Absent extenuating circumstances, selection decisions regarding any individual proposal should be made within six (6) months after receipt of the proposal. Proposals which have been evaluated may be accumulated to allow for a consolidated selection decision so long as not more than six (6) months have passed since the receipt of any of the proposals so accumulated.

(c) The cognizant DOE program official shall notify successful and unsuccessful offerors of any selection/non-selection decisions. These notices shall be made in writing promptly after the decision is made, and shall, at a minimum, state in general terms, the basis for the determination. In the case of notices to successful offerors, the notices shall state:

(1) General information regarding the subsequent activities of the process leading to contract negotiation and award, and the identity of the awarding contracting activity,

(2) That the proposal has been selected subject to negotiation and execution of a satisfactory contract,

(3) That DOE assumes no obligation, financial or otherwise, until such time as a contract is executed, and

(4) That the offeror shall not begin performance of the effort, or any part thereof, until such time as a contract has been awarded.

Notices to unsuccessful offerors should provide the general basis for elimination of that offeror's proposal from further competition, and should state that revisions to the unsuccessful proposal will not be considered under the instant ROA.

(d) The program office shall conduct any requested debriefings and document the proceedings in accordance with FAR 15.1003. If deemed necessary and appropriate, program office personnel may request the participation of contracting personnel in the debriefing proceedings.

(e) Upon completion of a selection decision, the program office shall furnish the following information to the awarding Contracting Activity(ies):

(1) A completed Procurement Request (DOE F 4200.33);

(2) The complete original proposal;

(3) A statement of work representing the effort to be funded and any reporting requirements relating thereto;

(4) The original selection decision document;

(5) The findings of the evaluation team;

(6) Copies of any correspondence relating to the ROA;

(7) Any recommendations regarding property to be either furnished by the Government or purchased by the contractor with Government funds as a direct charge to the contract;

(8) Indicate whether restricted data or other classified information is likely to be used or developed in performance of the effort, and specify such classification and security requirement determinations, as may be appropriate;

(9) A technical evaluation of the proposed costs to determine the realism of the type and extent of labor and materials proposed;

(10) Any other determinations or approvals that may be required by law, regulation, or Departmental directives relating to the specific research activities and which are properly the responsibility of the Program Office; and

(11) Any additional information that may assist the cognizant Contracting Activity in the negotiation, award, and administration of the contract.

**935.016-9 Responsibilities of the awarding contracting activity.**

Upon receipt of the Procurement Request and the other information specified in 935.016-8(e), the awarding Contracting Activity shall:

(a) Advise the selected offeror that the Government contemplates entering into negotiations; the type of contract contemplated to be awarded; and the estimated award date, scope of the effort, and performance/delivery schedule;

(b) Send the selected offeror a draft contract, if necessary, including modifications contemplated in the offeror's statement of work, and request agreement or identification of any exceptions;

(c) Request the selected offeror to complete and/or update and return the SF 1411 (with supporting documents), the offeror representations and certifications, and other appropriate forms, as needed;

(d) Conduct negotiations in accordance with FAR subparts 15.8 and 15.9, and DEAR subparts 915.8 and 915.9, as applicable;

(e) Award a contract with reasonable promptness to the successful offeror; and,

(f) Comply with FAR subparts 4.6 and 5.3 on contract reporting and synopses of contract awards, to the extent required by those subparts.

[FR Doc. 90-19169 Filed 8-14-90; 8:45 am]

BILLING CODE 6450-01-M

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

### 49 CFR Part 571

[Docket No. 87-04; Notice 7]

RIN 2127-AC 73

### Federal Motor Vehicle Safety Standards Air Brake Systems

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

**ACTION:** Final rule; partial response to petitions for reconsideration; delay of effective date.

**SUMMARY:** In a final rule published in the **Federal Register** (53 FR 7931) on March 11, 1988, NHTSA amended Standard No. 121, Air Brake Systems, to clarify the standard's parking brake requirements. The amendments permitted manufacturers to comply with the new requirements as an alternative to complying with the requirements being superseded effective April 11, 1988, and required mandatory compliance with those requirements effective September 7, 1988 (180 days after publication).

NHTSA received two petitions for reconsideration of that final rule, from Navistar International Corporation and Volvo GM Heavy Truck Corporation. In partial response to the two petitions for reconsideration, NHTSA extended the period for which manufacturers may comply with either the earlier or new requirements, first to September 7, 1989, and later to September 7, 1990. In February 1990, NHTSA provided a further response to the petitions and proposed revisions to the requirements at issue. This notice amends Standard No. 121 by extending the period for which manufacturers may comply with either the earlier or new requirements for one more year, i.e., until September 7, 1991. This extension will permit the agency to complete its analysis of the comments on the February 1990 notice of proposed rulemaking, and reach a decision of whether to go forward with the proposed changes, prior to the time the 1988 amendments become effective on a mandatory basis.

**DATES:** The amendments made by this rule are effective September 7, 1990. Petitions for reconsideration must be received by September 14, 1990.

**ADDRESSES:** Petitions for reconsideration should be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Mr. Scott Shadle, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC (202-366-5273).

**SUPPLEMENTARY INFORMATION:** In a final rule published in the **Federal Register** (53 FR 7931) on March 11, 1988, NHTSA amended Standard No. 121, Air Brake Systems, to clarify the standard's parking brake requirements. The amendments required actuation of a mechanical means for holding the parking brakes within three seconds after operation of the parking brake control. (For trailers, such actuation was required within three seconds after venting to the atmosphere of the front supply line connection is initiated.) In addition, vehicles were required to be capable of meeting requirements related to parking brake retardation force within the three second period. The amendments also required that the grade holding test (or alternative drawbar test) be met with only the mechanical means of holding the parking brakes in operation. The amendments required mandatory compliance effective September 7, 1988 (180 days after publication), while permitting manufacturers to comply with the new requirements as an alternative to complying with the requirements being superseded effective April 11, 1988.

The agency stated in the March 1988 notice that it believed all parking brakes currently being sold complied with the amendments being adopted. The agency also stated its belief that since any necessary certification could be accomplished by engineering analysis

and simple tests, 180 days provided a sufficient time for that purpose.

NHTSA received two petitions for reconsideration. One of the petitioners, Volvo GM Heavy Truck Corporation, requested that the agency rescind the application of the timing amendment to tandem trucks with spring brakes, and that one of the specified conditions for the timing tests (initial reservoir system pressure of 100 psi) be removed. That company asserted that compliance with the standard as amended is not practicable and is unreasonable. Volvo GM suggested that NHTSA was generally correct in stating that the rule did not affect parking brakes currently being sold, but that the agency had overlooked a significant segment of the vehicle population, heavy tandem trucks. That company submitted test results for two heavy trucks. According to Volvo GM, "one exceeds the limit and the other does not contain compliance margins sufficient to accomodate manufacturing tolerances." That company also argued that the test condition which specifies initial reservoir system pressure of 100 psi is design restrictive.

The other petitioner, Navistar International Transportation Corporation, stated that it has confirmed that in its parking brake systems the air pressure drops to zero within the allotted time. That company stated that based upon this fact and the agency's statements in the preamble, it believes that its vehicles comply with the timing requirements of the final rule. Navistar International added, however, that after actuation of the control knob, experience has shown that as much as one revolution of the braked wheels may be necessary to permit the brake shoes to be sufficiently energized to reach peak torque. That company stated that this "wrap up" process can take several seconds, depending on brake characteristics and driver finesse. Navistar International stated that should this "wrap up" movement not be considered permissible by the agency, it requested that its submission be considered a petition for reconsideration of the final rule, to permit the "wrap up" movement.

As is clear from the preamble to the March 1988 final rule, NHTSA did not believe that the amendments would require changes in any parking brakes currently being sold. NHTSA was therefore concerned that the petitions raised the possibility that, contrary to the agency's belief in establishing the March 1988 final rule, some current parking brakes did not comply with the amended requirements.

In partial response to the two petitions for reconsideration, NHTSA extended the period for which manufacturers may comply with either the earlier or new requirements, first to September 7, 1989 (53 FR 35075; September 9, 1988), and later to September 7, 1990 (54 FR 25460; June 15, 1989). In February 1990, NHTSA provided a further response to the petitions and proposed revisions to the requirements at issue. (55 FR 4447, February 8, 1990.)

NHTSA is now in the process of reviewing the comments submitted in response to the February 1990 NPRM. The agency expects to complete its analysis of the comments and reach a decision of whether to go forward with the proposed changes no later than the first half of next year. However, mandatory compliance with the March 1988 requirements is scheduled to become effective on September 7, 1990. Without a delay in the effective date, some manufacturers may not be able to certify that certain vehicles comply with Standard No. 121.

Accordingly, in partial response to the two petitions for reconsideration, NHTSA has decided to delay, for one additional year, the time the amendments become effective on a mandatory basis. This delay in effective date will permit the agency to complete its analysis of the comments on the February 1990 NPRM, and reach a decision of whether to go forward with the proposed changes, prior to the time the 1988 amendments become effective on a mandatory basis. Thus, manufacturers may continue until September 7, 1991, to comply with either the March 1988 requirements or the requirements that were superseded by that notice.

NHTSA finds for good cause that it is in the public interest to establish an effective date less than 30 days after the publication of this notice for the amendments made by today's notice. In the absence of an effective date of September 7, 1990 or before, manufacturers may be unable to certify that some of their vehicles currently being produced comply with Standard No. 121. The amendments impose no new requirements but instead increase manufacturer flexibility by extending the time they may comply with the alternative parking brake requirements. As discussed above, the one-year extension will permit the agency to complete its analysis of the comments on the February 1990 NPRM, and reach a decision of whether to go forward with the proposed changes, prior to the time the 1988 amendments become effective on a mandatory basis.

The agency has analyzed these amendments and determined that they are neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. The agency has determined that the economic effects of the amendments are so minimal that a full regulatory evaluation is not required. Since the amendments impose no new requirements but simply add compliance alternatives until September 7, 1991, any cost impacts would be in the nature of slight, nonquantifiable cost savings.

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this action on small entities. Based upon this evaluation, I certify that the amendments will not have a significant economic impact on a substantial number of small entities. For the reasons discussed above, the only impacts of the amendments will be in the nature of slight, nonquantifiable cost savings. Thus, neither manufacturers of motor vehicles, nor small businesses, small organizations, and small governmental units which purchase motor vehicles, will be significantly affected by the amendments. Accordingly, no regulatory flexibility analysis has been prepared.

The agency has also analyzed this rule for the purpose of the National Environmental Policy Act, and determined that it will not have any significant impact on the quality of the human environment.

Finally, this rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

**List of Subjects in 49 CFR Part 571**

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

## PART 571—[AMENDED]

In consideration of the foregoing, 49 CFR part 571 is amended as follows:

1. The authority citation for part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407, delegation of authority at 49 CFR 1.50.

**§ 571.121 [Amended]**

2. S5.6.3 of § 571.121 is revised to read as follows:

S5.6.3 *Application and holding.* Each parking brake system shall meet the requirements of S5.6.3.1 through S5.6.3.4, except that, at the option of the manufacturer, vehicles manufactured before September 7, 1991 may meet the requirements specified in S5.6.3.5.

S5.6.3.1 The parking brake system shall be capable of achieving the minimum performance specified either in S5.6.1 or S5.6.2 with any single leakage-type failure, in any other brake system, of a part designed to contain compressed air or brake fluid (except failure of a component of a brake chamber housing).

S5.6.3.2 For trucks and buses, with an initial reservoir system pressure of 100 psi and, if designed to tow a vehicle equipped with air brakes, with a 50 cubic inch test reservoir connected to the supply line coupling, at all times after three seconds from the time of actuation of the parking brake control, the parking brake system shall achieve the minimum parking retardation performance specified in S5.6.3.1. For trailers, with an initial supply line pressure of 100 psi and, if designed to tow a vehicle equipped with air brakes, with a 50 cubic inch test reservoir connected to the supply line coupling, at all times after three seconds from the time venting to the atmosphere of the front supply line connection is initiated, the parking brake system shall achieve the minimum retardation performance specified in S5.6.3.1.

S5.6.3.3 A mechanical means shall be provided which is capable, with zero air pressure and zero fluid pressure in the vehicle and without electrical power, of holding the parking brake application at a level meeting the minimum parking retardation performance specified in S5.6.3.1.

S5.6.3.4 For trucks and buses, with an initial reservoir system pressure of 100 psi and, if designed to tow a vehicle equipped with air brakes, with a 50 cubic inch test reservoir connected to the supply line coupling, no later than three seconds from the time of operation of the parking brake control, the mechanical means referred to in S5.6.3.3 shall be actuated. For trailers, with an initial supply line pressure of 100 psi and, if designed to tow a vehicle equipped with air brakes, with a 50 cubic inch test reservoir connected to the supply line coupling, no later than three seconds from the time venting to the atmosphere of the front supply line connection is initiated, the mechanical means referred to in S5.6.3.3 shall be actuated.

S5.6.3.5 *(Optional requirement for vehicles manufactured before September 7, 1991).* The parking brake system shall be capable of achieving the minimum performance specified either in S5.6.1 or S5.6.2 with any single leakage-type failure, in any other brake system, of a part designed to contain compressed air or brake fluid (except failure of a component of a brake chamber housing). Once applied, the parking brakes shall be held in the applied position solely by mechanical means.

Issued on August 9, 1990.

**Jeffrey R. Miller,**

*Deputy Administrator.*

[FR Doc. 90-19131 Filed 8-14-90; 8:45 am]

BILLING CODE 4910-59-M

# Proposed Rules

Federal Register
Vol. 55, No. 158
Wednesday, August 15, 1990

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 TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 90-NM-143-AD]**

### Airworthiness Directives; Airbus Industrie Model A300, A310, and A300-600 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Airbus Industrie Model A300, A310, and A300-600 series airplanes, which would require repetitive inspections to detect corrosion in the main landing gear (MLG) bogie beam, and repair or replacement of the MLG bogie beam, if necessary. This proposal is prompted by reports of in-service airplanes showing signs of deterioration to the protective paint and cadmium coating, corrosion, and cracking in both MLG bogie beams. This condition, if not corrected, could result in a ruptured MLG bogie beam and possible collapse of the MLG.

**DATES:** Comments must be received no later than October 9, 1990.

**ADDRESSES:** Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-143-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, Franc. This information may be examined at the FAA Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. Greg Holt, Standardization Branch, ANM-113; telephone (206) 431-1918. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South C-68966, Seattle, Washington 98168.

**SUPPLEMENTARY INFORMATION:** Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90-NM-143-AD." The post card will be date/time stamped and returned to the commenter.

#### Discussion

The Direction Generale de l'Aviation Civile (DGAC), which is the airworthiness authority of France, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain Airbus Industrie Model A300, A310, and A300-600 series airplanes. There have been several reports of in-service airplanes showing signs of deterioration to the protective paint and cadmium coating, corrosion, and cracking in both main landing gear (MLG)-bogie beams. This condition, if not corrected, could result in a ruptured MLG bogie beam and possible collapse of the MLG.

Airbus Industrie has issued Service Bulletins A300-32-394, Revision 1; A310-32-2053; and A300-32-6031; all dated January 18, 1990, which describe procedures for inspection of the MLG bogie beams, and repair or replacement of bogie beams, if necessary. These service bulletins referenced Messier Hispano Bugatti (MHB) Service Bulletin 470-32-659 for additional instructions. The DGAC has classifed these bulletins as mandatory, and has issued Airworthiness Directive 90-005-101(B)R1 addressing this subject.

Airbus Industrie has also issued Service Bulletins A300-32-396, A310-32-2054, and A300-32-6032, all dated January 25, 1990, which describe procedures for modification of the MLG bogie beams which consists of reinforcing the inner protection of the bogie beam by applying an anti-corrosion coating, and filling the gap between the shock absorber/bogie beam link pin and anti-rotation lockbolt. These service bulletins reference MHB Service Bulletin 470-32-672 for additional instructions. Accomplishment of the modification described in these service bulletins terminates the requirement for repetitive inspections. The DGAC has not classified these service bulletins as mandatory.

This airplane model is manufactured in France and type certificated in the United States under the provisions of section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require repetitive inspections of the MLG bogie beams, and repair or replacement, if necessary, in accordance with the service bulletins previously described.

It is estimated that 113 airplanes of U.S. registry would be affected by this AD, that it would take approximately 35 manhours per airplane to acomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $158,200.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship

between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, Febuary 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

**List of Subjects in 14 CFR Part 39:**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

## PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Airbus Industrie:** Applies to Model A300 B4-100 and B4-200, A310-200 and -300, and A300-600 B4-600 series airplanes, without Messier Hispano Bugatti (MHB) Modification 784, certificated in any category. Compliance is required as indicated, unless proviously accomplished.

To detect and prevent corrosion and protection deterioration (paint and cadmium coating) and subsequent rupture of the main landing gear (MLG) bogie beam accomplish the following:

A. Perform an inspection of the inner side of the bogie beam between the two axles in accordance with Airbus Industrie Service Bulletins A300-32-394, Revision 1 (for Model A300 Series Airplanes); A310-32-2053 (for Model A310 series airplanes); or A300-32-6031 (for Model A300-600 series airplanes); all dated Janury 18, 1990, as follows:

1. For bogie beams which have never been subject to a general overhaul, within 6 months after the effective date of this AD or prior to reaching 6 years and 6 months since new, whichever occurs later; or

2. For bogie beams which have been subject to a general overhaul, within 6 months after the effective date of this AD or prior to reaching 3 years and 6 months since overhaul, whichever occurs later.

**Note.** These service bulletins reference NHB Service Bulletin 470-32-659 for additional instructions.

B. If cracks or corrosion are found, prior to further flight, repair or replace bogie bean in accordance with Airbus Industrie Service Bulletins A300-32-394, Revision 1 (for Model A300 Series Airplanes); A310-32-2053 (for Model A310 Series Airplanes); or A300-32-6031 (for Model A300-600 Series Airplanes), all dated Janury 18, 1990.

**Note:** These service bulletins reference MHB Service Bulletin 470-32-659 for additional instructions.

C. For bogie beams with traces of corrosion in a critical area, as defined in HMB Service Bulletin 470-32-659, Revision 1, dated January 8, 1990, replace bogie beam within 10 months following the repair or since the reinstallation on the airplane, whichever occurs later.

D. For bogie beans having had paint restoration in a critical area, as defined in MHB Service Bulletin 470-32-659, Revision 1, dated January 8, 190, perform repetitive inspections at intervals not to exceed 18 months.

E. If no corrosion or defects are found, repeat the inspection, required by paragraph A., of this AD, at intervals not to exceed 3 years and 6 months.

F. Incorporation of MHB Modification 784, in accordance with MHB Service Bulletin 470-32-672, dated January 23, 1990, constitutes terminating action for the inspections required by paragraphs A., D., and E., of this AD.

G. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standarization Branch, ANM-113, FAA, Transport Airplane Directorate.

**Note.** The request should be submitted directly to the Manager, Standardization Branch, ANM-113, and a copy sent to the cognizant FAA Principal Inspection (PI). The PI will then forward comments or concurrence to the Manager, Standardization Branch.

H. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Divison, Avenue Didier Daurat, 31700 Blagnac, France. These documents may be examined at the FAA, Nothwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Maginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on August 6, 1990.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR 90-19205 Filed 8-14-90 8:45 am]

BILLING CODE 4910-13-M

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## 14 CFR Part 39

**[Docket No. 90-NM-145-AD]**

## Airworthiness Directives; Boeing Model 747 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This notice proposes to supersede an existing airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, which currently requires inspection for cracks in the area of the inboard elevator control rods, inboard elevator power control package (PCP) input rods, and elevator aft quadrant tube; and replacement, if necessary. This action would require more detailed and frequent inspections than those required by the existing AD. This proposal is prompted by a structural review of this airplane model and a subsequent determination that additional inspections are necessary in order to ensure the continued structural integrity of aging Model 747 series airplanes. This condition, if not corrected, could result in loss of redundancy in the elevator control.

**DATES:** Comments must be received no later than October 9, 1990.

**ADDRESSES:** Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-145-AD, 1601 Lind Avenue, SW., Renton, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. Steven C. Fox, Seattle Aircraft Certification Office, Airframe Branch, ANM-120S; telephone (206) 227-2777.

Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

**SUPPLEMENTARY INFORMATION:** Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90-NM-145-AD." The post card will be date/time stamped and returned to the commenter.

## Discussion

On June 13, 1985, the FAA issued AD 85-13-01, Amendment 39-5084 (50 FR 25545, June 20, 1985), to require inspection for cracks in the area of the inboard elevator control rods, inboard elevator power control package (PCP) input rods, and elevator aft quadrant on Boeing Model 747 series airplanes. That action was prompted by reports of 12 cracked rods. This condition, if not corrected, could result in loss of redundancy in the elevator control.

Since issuance of that AD, the FAA, in conjunction with the FAA-sponsored Aging Aircraft Task Force, has conducted a structural review of the Model 747 and has determined that the area requires more detailed and frequent inspections than those required by the previously issued airworthiness directive. No new in-service event has occurred. However, with the implementation of the proposed inspection schedule, cracking will be detected in a more timely manner, thus ensuring the continued structural integrity of aging Model 747 series airplanes.

The FAA has reviewed and approved Boeing Alert Service Bulletin 747-27A2253, Revision 4, dated January 25, 1990, which describes procedures to inspect the inboard elevator control rods, inboard elevator PCP input rods, and elevator aft quadrant for corrosion, cracking, and deformation; and replacement, if necessary. This inspection is a more detailed inspection than that specified in the previous revisions to the service bulletin, involving removal of the inboard elevator PCP input rods and the inboard elevator control rods, and use of a borescope. A modification is described in the service bulletin which consists of replacement of the inboard elevator control rods, inboard elevator PCP input rods, and elevator aft quadrant with new improved production parts.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would supersede AD 85-13-01 with a new airworthiness directive that would require more frequent and more detailed inspections for corrosion, cracking, and deformation of the inboard elevator control rods, inboard elevator PCP input rods, and elevator aft quadrant, and replacement, if necessary, in accordance with the service bulletin previously described.

There are approximately 635 Model 747 series airplanes of the affected design in the worldwide fleet. It is estimated that 174 airplanes of U.S. registry would be affected by this AD, that it would take approximately 5 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $34,800.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

## List of Subjects in 14 CFR Part 39:

Air transportation, Aircraft, Aviation safety, Safety.

## The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

## PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C.. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

### § 39.13 [Amended]

2. Section 39.13 is amended by superseding Amendment 39-5084 (50 FR 25545, June 20, 1985), AD 85-13-01, with the following new airworthiness directive:

Boeing: Applies to Model 747 series airplanes, line numbers 001 through 635, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent loss of redundancy in the elevator control, accomplish the following:

A. For airplanes identified as Group 1 in Boeing Alert Service Bulletin 747-27A2253, Revision 4, dated January 25, 1990, accomplish the following inspections, in accordance with the service bulletin:

1. Prior to the accumulation of 6 years time-in-service, or within the next 6 months after the effective date of this AD, whichever occurs later, visually inspect the inboard elevator power control package (PCP) input rods, inboard elevator control rods, and elevator aft quadrant for corrosion, cracking, and deformation; and repeat thereafter at intervals not to exceed 15 months.

2. Within 15 months after the visual inspection required by paragraph A.1. of this AD, internally borescope inspect the inboard elevator PCP input rods, inboard elevator control rods, and elevator aft quadrant tube for corrosion, cracking, and deformation; and repeat thereafter at intervals not to exceed 30 months.

B. For airplanes identified as Group 2 in Boeing Alert Service Bulletin 747-27A2253, Revision 4, dated January 25, 1990, accomplish the following inspections, in accordance with the service bulletin:

1. Prior to the accumulation of 6 total years time-in-service, or within the next 6 months after the effective date of this AD, whichever occurs later, visually inspect the inboard elevator control rods and elevator aft

quadrant for corrosion, cracking, and deformation; and repeat thereafter at intervals not to exceed 15 months.

2. Within 15 months after the visual inspection required by paragraph B.1. of this AD, internally borescope inspect the inboard elevator control rods, and elevator aft quadrant tube for corrosion, cracking, and deformation; and repeat thereafter at intervals not to exceed 30 months.

C. For airplanes identified as Group 3 in Boeing Alert Service Bulletin 747-27A2253, Revision 4, dated January 25, 1990, accomplish the following inspections, in accordance with the service bulletin:

1. Prior to the accumulation of 6 total years time-in-service, or within the next 6 months after the effective date of this AD, whichever occurs later, visually inspect the elevator aft quadrant for corrosion, cracking, and deformation; and repeat thereafter at intervals not to exceed 15 months.

2. Within 15 months after the visual inspection required by paragraph C.1. of this AD, internally borescope inspect the elevator aft quadrant tube for corrosion, cracking, and deformation; and repeat thereafter at intervals not to exceed 30 months.

D. If corrosion is found as a result of the inspections required by paragraphs A., B., or C. of this AD, prior to further flight, accomplish the following:

1. If corrosion is found to be in excess of the allowable limits specified in Boeing Alert Service Bulletin 747-27A2253, Revision 4, dated January 25, 1990, accomplish the terminating modification for the affected component specified in paragraph F. of this AD.

2. If corrosion is found to be within the allowable limits specified in Boeing Alert Service Bulletin 747-27A2253, Revision 4, dated January 25, 1990, refinish in accordance with the service bulletin.

E. If cracks or deformations are found as a result of the inspections required by paragraphs A., B., or C. of this AD, prior to further flight, accomplish the terminating modification for the affected component defined in paragraph F. of this AD.

F. Accomplishment of the terminating modification for all affected components, as specified in Boeing Alert Service Bulletin 747-27A2253, Revision 4, dated January 25, 1990, constitutes termination for the inspections required by paragraphs A., B., or C. of this AD.

G. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Seattle ACO.

H. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

Issued in Renton, Washington, on August 6, 1990.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 90-19206 Filed 8-14-90; 8:45 am]

BILLING CODE 4910-13-M

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**[Airspace Docket No. 90-AAL-6]**

## 14 CFR Part 71

## Proposed Revocation of Shishmaref, AK, Transition Area and Establishment of the New Shishmaref, AK, Transition Area

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to revoke the existing Shishmaref, AK, Transition Area and establish a new transition area in the vicinity of the New Shishmaref, AK, airport. With the closure of Shishmaref (SHH) airport and the establishment of the NDB RWY 5 Original and NDB RWY 23 Original Standard Instrument Approach Procedures to New Shishmaref (K09) airport there is a need to revoke the Shishmaref, AK, Transition Area and establish New Shishmaref transition airspace at 700 feet above the surface so that aircraft conducting flight under instrument flight rules (IFR) would have exclusive use of that airspace when the visibility is less than 3 miles and thereby enhancing the safety of such operations. This proposal would change the New Shishmaref airport status for VFR to IFR.

**DATES:** Comments must be received on or before September 20, 1990.

**ADDRESSES:** Send comments on the proposal in triplicate to: Manager, Air Traffic Division, AAL-500, Docket No. 90-AAL-6, Federal Aviation Administration, 222 West 7th Ave., Box 14, Anchorage, AK 99513-7587.

The official docket may be examined in the FAA Rules Docket, Office of the Assistant Chief Counsel, Third Floor, Module F, Federal Building U.S. Courthouse, 222 West 7th Ave., Anchorage, Alaska.

An informal docket may also be examined during normal business hours at the Regional Air Traffic Division, Third Floor, Module B, Federal Building U.S. Courthouse, 222 West 7th Ave., Anchorage, AK.

**FOR FURTHER INFORMATION CONTACT:** Robert C. Durand, Airspace and Procedures Specialists (AAL-531), Air Traffic Division, Federal Aviation Administration , 222 West 7th Ave., Box 14, Anchorage, AK, 99513-7587; telephone: (907) 271-5898.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 90-AAL-6." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Regional Air Traffic Division, Third Floor, Module B, Federal Building U.S. Courthouse, 222 West 7th Ave., Anchorage, AK, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

### Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, System Management Branch, Air Traffic Division, Alaskan Region, 222 West 7th Ave., Box 14, Anchorage, AK 99513-7587 or by calling (907) 271-5898. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also

request a copy of Advisory Circular No. 11-2A which describes the application procedure.

**The Proposal**

The FAA is considering an amendment to § 71.181 of part 71 of the Federal Aviation Regulations (14 CFR part 71) to revoke the Shishmaref, AK, Transition Area and to establish the base of controlled airspace at 700 feet above the surface in a rectangular area 37 statute miles by 14 statute miles over the New Shishmaref AK, Airport. While this airspace designation would exclude aircraft from conducting flight under Visual Flight Rules (VFR) when the visibility is less than 3 miles, it would enhance the safety of aircraft conducting flight under Instrument Flight Rules (IFR). Section 71.181 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6F dated January 2, 1990.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Aviation safety, Transition areas.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

## PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. Section 71.181 is amended as follows:

**Shishmaref, AK [Removed]**

**New Shishmaref, AK [New]**

That airspace extending upward from 700-feet above the surface within 4.5 miles south and 9.5 miles north of the Shishmaref NDB (lat. 66°15'32" N., long.166° 02' 59" W.) 057° bearing extending from the NDB to 18.5 miles northeast of the NDB; and within 4.5 miles south and 9.5 miles north of the Shishmaref NDB 242° bearing extending from the NDB to 18.5 miles southwest of the NDB.

Issued in Anchorage, Alaska on August 1, 1990.

Henry A. Elias,

*Manager, Air Traffic Division.*

[FR Doc. 90-19207 Filed 8-14-90; 8:45 am]

BILLING CODE 4910-13-M

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## DEPARTMENT OF THE TREASURY

## Customs Service

## 19 CFR Part 10

[RP 88-26 ADM-9-03-CO:R:P:R 911374 ptl]

## Proposed Customs Regulations Amendment Regarding Enforcement of the Automotive Products Trade Act; Extension of Time for Comments

**AGENCY:** U.S. Customs Service, Department of the Treasury.

**ACTION:** Extension of time for comments.

**SUMMARY:** This notice extends the period of time within which interested members of the public may submit comments concerning the proposed amendment to the Customs Regulations regarding enforcement of the Automotive Products Trade Act. A notice inviting public comment on the proposal was published in the Federal Register on June 18, 1990 (55 FR 24582), and comments were to have been received on or before August 17, 1990. A request has been received to extend the comment period and accept comments for a period of 60 additional days. The request points out that the issue and subject matter are complex and that the current deadline falls during an exceptionally busy period for members of the automobile industry whose expertise is needed to prepare a responsive comment.

The additional comment period will provide an opportunity for organizational and individual comment. In view of the arguments presented, the request is granted.

**DATES:** Comments will be accepted if received on or before October 16, 1990.

**ADDRESSES:** Comments (preferably in triplicate) should be submitted to and may be inspected at the Regulations and Disclosure Law Branch, U.S. Customs Service, Room 2119, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229.

**FOR FURTHER INFORMATION CONTACT:**

*Legal Matters:* James Seal, General Classification Branch, (202) 566-8181;

*Operational and CFTA Matters:* Maria Reba, Office of trade Operations, (202) 566-7060;

*Audit Matters:* Eugene Sheskin, Office of Regulatory Audit, (202) 566-2812.

Dated: August 10, 1990.

Harvey B. Fox,

*Director, Office of Regulations and Rulings.*

[FR Doc. 90-19214 Filed 8-4-90; 8:45 am]

BILLING CODE 4820-02-M

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## DEPARTMENT OF TRANSPORTATION

## Federal Highway Administration

## 23 CFR Part 655

[FHWA Docket No. 89-1, Notice No. 4]

## National Standards for Traffic Control Devices; Manual on Uniform Traffic Control Devices; Work Zone Traffic Control Standards Revision

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Reopening of comment period.

**SUMMARY:** The Manual on Uniform Traffic Control Devices (MUTCD) is incorporated by refernce in 23 CFR part 655, subpart F and recognized as the national standard for traffic control devices on all public roads. The FHWA has been cosidering options for restructing and reformatting part VI of the MUTCD with the objective of improving the application of effective traffic control devices in a work zone. Initial recommendations from this effort were made available to the public for review and comment on December 23, 1988, at 53 FR 51826 followed by a second set of recommendations on June 5, 1989, at 54 FR 23990. The comment period for the second set of recommendations was reopened on April 26, 1990 until August 1, 1990, at 55 FR 17634. Several potential commenters have expressed the need for addtional time to complete reviews, to consolidate comments, and to prepare responses. The comment period for the second Public Information Package is, therefore, being extended to March 31, 1991. The information in the second Public Information Package has not changed and the purposes of this notice is merely to provide additional time for comments.

**DATES:** Comments must be received on or before March 31, 1991.

Comments received after that date will be considered to the extent practicable.

**ADDRESSES:** Submit written, signed comments to FHWA Docket 89-1, Notice No. 4, Federal Highway Administration, HCC-10, 400 Seventh Street SW., Washington, DC 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., e.t., Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

**FOR FURTHER INFORMATION CONTACT:** For information or a copy of the public information package contact: Mr. Philip O. Russell, Office of Traffic Operations, (202) 366-2184, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

**SUPPLEMENTARY INFORMATION:** The Manual on Uniform Traffic Control Devices (MUTCD) is approved by the Federal Highway Administration as the national standard for traffic contol devices on all public roads. Part VI "Traffic Controls for Street and Highway Construction and Maintenance Operations" of the MUTCD sets forth basic principles and prescribes standards for traffic control during construction and maintenance operations on streets and highways in the United States. It has been determined that part VI needs to be revised to better serve the highway community. The title of part VI is being changed to "Traffic Controls for Street and Highway Construction, Maintenance, Utility and Emergency Operations." A contractor was retained by the FHWA to review and prepare recommended changes to part VI. The text of part VI is to be expanded to include "utility" and "emergency" subject areas as well as to include recent research results and other areas not adequately covered in the MUTCD. Also improved graphics will be added along with the clarification of ambiguous language. The contract is completed and recommended changes have been made available to the public for comment. The FHWA is currently reviewing and evaluating docket comments and will continue to receive comments until March 31, 1991. This notice is being published to inform the public of the status of the rewrite of part VI to the MUTCD and to extend the comment period.

The MUTCD is available for inspection and copying as prescribed in 49 CFR part 7, appendix D. It may be purchased for $22.00 (domestic price) from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, Stock No. 050-001-00308-2. The FHWA both receives and initiates requests for amendments to the MUTCD. The MUTCD is a promulgation of uniform national traffic control devices standards and applications for use on all streets and highways open to public travel regardless of type of class or the governmental agency having jurisdiction.

Authority: 23 U.S.C. 315; 49 CFR 1.48.

Issued on: August 6, 1990.

T. D. Larson,

*Administrator.*

[FR Doc. 90-19115 Filed 8-14-90; 8:45 am]

BILLING CODE 4910-22-M

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## DEPARTMENT OF THE INTERIOR

### Minerals Management Service

### 30 CFR Part 250

### RIN 1010-AB50

### Oil and Gas and Sulphur Operations in the Outer Continental Shelf

**AGENCY:** Minerals Management Service (MMS), Interior.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule amends rules governing oil and gas and sulphur operations in the Outer Continental Shelf (OCS), Subpart D—Drilling Operations, § 250.67 Hydrogen sulfide, to revise the requirements for visual and audible warning systems, personnel protection, hydrogen sulfide ($H_2S$) detection and monitoring, sulphur dioxide ($SO_2$) detection and monitoring, and the criteria for the activation of visual and audible warning systems. Most of these amendments are necessary for consistency with new personnel exposure limits (PEL) for $H_2S$ and $SO_2$ which were promulgated by the Occupational Safety and Health Administration (OSHA) on January 19, 1989 (54 FR 2332). Other revisions pertaining to training requirements, calibration of $H_2S$ sensors, $H_2S$ sensors on production facilities, $H_2S$ sensors in drilling mud, visual warning signs, helicopter flights, resuscitators, metallurgy, and disposal of water containing $H_2S$, have been proposed as a result of comments from lease operators and MMS field personnel.

**DATES:** Comments must be hand delivered or postmarked no later than October 15, 1990.

**ADDRESSES:** Written comments must be mailed or hand delivered to the Department of the Interior; Minerals Management Service; 381 Elden Street; Mail Stop 4700; Herndon, Virginia 22070; Attention: Gerald D. Rhodes.

**FOR FURTHER INFORMATION CONTACT:** E.P. Danenberger, telephone (703) 787-1596 of (FTS) 393-1596 or Lloyd M. Tracey, (703) 787-1544 or (FTS) 393-1544.

**SUPPLEMENTARY INFORMATION:**

### Background

The OSHA of the Department of Labor has amended its regulations at 29 CFR 1910.1000 pertaining to air contaminants and PEL as published in the **Federal Register**, Vol. 54, No. 12, on January 19, 1989 (54 FR 2332). Since these new regulations have an effective date of March 1, 1989, and set new time weighted average (TWA) and short-term exposure limits (STEL) for personnel exposed to $H_2S$ and $SO_2$, MMS has determined that it is necessary to revise its regulations at 30 CFR part 250, Subpart D—Drilling, § 250.67 Hydrogen sulfide to be consistent with the new OSHA's PEL.

Due to several comments from lease operators and MMS field personnel, the proposed revisions also include some revisions to the training requirement.

Because of questions raised by lease operators, additional information is being requested regarding the calibration frequency of $H_2S$ sensors.

The MMS has determined that more descriptive language is required on visual $H_2S$ warning signs because it has recognized that many fishermen and recreational boaters are not familiar with the dangers of $H_2S$ and are unaware of the purpose of the red flag displays. The proposed new requirements for visual warning signs are consistent with requirements proposed by the Bureau of Land Management (BLM) for its proposed Onshore Oil and Gas Order No. 6—Hydrogen Sulfide Operations (54 FR 21075, May 16, 1989).

New requirements have been proposed for $SO_2$ sensors, because it has been recognized that $SO_2$ is produced as a product of combustion when $H_2S$ is intentionally or accidentally burned and that $SO_2$ concentrations in the atmosphere must be monitored in order to comply with OSHA's PEL.

As a result of field research, it has been proposed to allow (and in some cases require) the use of an in-the-mud sensor in the mud-return-line receiver tank (possum belly) in lieu of the in-the-

air sensor presently required at the bell nipple.

New materials and technology require approval by the District Supervisor for exceptions to the use of materials and procedures documented in the National Association of Corrosion Engineers (NACE) Standard MR-01-75, Material Requirement, Sulfide Stress Cracking Resistant Metallic Material for Oil Field Equipment. Therefore, it has been proposed to revise the metallurgical properties of equipment requirement to make it clear that equivalent or better materials may be approved by the District Supervisor.

**Discussion of Specific Proposed Changes**

*Section 250.67(b) Definitions*

Section 250.67(b), Definitions, is proposed to be revised to change the 20 parts per million (ppm) $H_2S$ concentration criteria in the definitions for "Zones known to contain $H_2S$" and "Zones where the absence of $H_2S$ has been confirmed" to 15 ppm. The 20 ppm criteria was based on OSHA's acceptable ceiling concentration of not to exceed 20 ppm at any time during an 8-hour shift. The OSHA has now changed this ceiling to a short-term (15 minutes) exposure limit of 15 ppm. Further discussion of OSHA's permissible exposure limits is contained in the discussion of revisions to § 250.67(h)(1) $H_2S$ Contingency Plan as set forth below.

*Section 250.67(f) Production Operations in Zones Known To Contain $H_2S$*

Section 250.67(f), Production operations in zones known to contain $H_2S$, is proposed to be revised to correct a typographical error reference to paragraph (m)(16) which should be (m)(15). (There is no paragraph (m)(16).)

*Section 250.67(h)(1) $H_2S$ Contingency Plan*

Section 250.67(h)(1), $H_2S$ Contingency Plan, paragraph (iii) is proposed to be revised to require the contingency plan to address duties, responsibilities, and operating procedures; to be initiated when the concentration of $H_2S$ in the atmosphere reaches 10 ppm and 15 ppm; and to require the operating procedures to include a description of the audible and visual alarms to be activated at each alert level.

These changes are necessary to be consistent with OSHA's TWA personnel exposure limit of 10 ppm and their new STEL of 15 ppm (54 FR 2940). Since the STEL has been reduced from 50 ppm to 15 ppm, the 50-ppm alert level currently in paragraph (iii) is no longer appropriate. The new TWA of 10 ppm means that an employee's average exposure in any 8-hour workshift of a 40-hour workweek must not exceed 10 ppm. The new STEL of 15 ppm means that an employee's 15-minutes TWA of 15 ppm must not be exceeded at any time during a workday. The MMS believes that in an actual $H_2S$ alert these limits would be reached in a very short time. Therefore, MMS is proposing to use these limits as criteria to actuate visual and audible alarms, implement $H_2S$ operating procedures, and require the donning of protective-breathing apparatus.

Section 250.67(h)(1), $H_2S$ Contingency Plan, paragraph (iv) is proposed to be revised to require designation of briefing areas as locations for assembly of personnel during a condition of 15-ppm concentration of $H_2S$ and to delete the reference 50-ppm concentration. As stated in the discussion for paragraph (h)(1)(iii), these revisions are necessary to be consistent with the new OSHA's PEL.

The last sentence of paragraph (h)(1)(v) requires the contingency plan to address "* * * the provisions for protective-breathing equipment for personnel." It is proposed to clarify this requirement by adding a comma after the word "personnel" and the words "including contractors and visitors" at the end of the last sentence.

Due to the flammability of $H_2S$ and the associated natural gas and the potential for inducing turbulence and $H_2S$ upwellings (into safe briefing areas), helicopter takeoffs or landings may be hazardous during $H_2S$ alerts. The types of $H_2S$ emergencies during which the risk of helicopter activity would be deemed acceptable should be described in the $H_2S$ Contingency Plan. The precautions to be taken during such flights should also be described. Therefore, it is proposed that the following sentence should be added after the last sentence of paragraph (h)(1)(v):

* * * The procedures shall also address the types of $H_2S$ emergencies during with the risk of helicopter activity would be deemed acceptable, and the precautions to be taken during such flights shall be described.

The MMS has recognized that the $SO_2$ which is produced when $H_2S$ is intentionally or accidentally ignited is also dangerous; therefore, it is proposed that the following new paragraphs (h)(1)(viii) and (ix) should be added to § 250.67(h)(1):

(viii) A complete description of portable $SO_2$ monitor(s) to be used in the event that gas containing $H_2S$ is burned.

(ix) A description of the monitoring procedures and personnel protection measures to be initiated when the $SO_2$ concentration in the atmosphere reaches 2 ppm and 5 ppm.

*Section 250.67(h)(2) Training Program*

Several operators have commented that the requirement for subsequent weekly training after the initial training is unnecessary. Considering that the required weekly drills are also training exercises, we concur that the amount of training is excessive. Other operators have commented that paragraph (h)(2)(vii)(B) is ambiguous because the required number of resuscitators is not specified. Some operators have stated in their contingency plans that three resuscitators will be available on the platform. The MMS agrees that it is reasonable that the capability to handle three respiratory casualties simultaneously provide a reasonable margin of safety. Therefore, it is proposed that paragraph (h)(2) Training program be revised and reorganized, and a new paragraph (h)(3) be added as follows:

(2) *Training program.* All operator and contract personnel must complete and $H_2S$ training program, as described in the operator's approved $H_2S$ Contingency Plan, before beginning work at an OCS facility. Written documentation of this training must be maintained at the facility where the individual is employed. Alternatively, the employee may carry a training completion card. The $H_2S$ training program described below must be repeated within 1 year after completion of the previous class. If the employee or contractor is transferred to another facility, a supplemental briefing on $H_2S$ equipment and procedures at that facility is required before the employee begins duty. Visitors (i.e., those individuals who are not temporarily or permanently employed at the facility and will be departing on the day of arrival) must, upon arrival, receive a briefing on the location and use of an assigned respirator, the safe briefing areas, the alarm system, and their responsibilities in the event of an $H_2S$ release. Safety information shall be prominently posted on the facility and on vessels serving the facility. The training program shall include the following:

(i) Instruction on the hazards of $H_2S$ and $SO_2$ and the provisions for personnel safety contained in the $H_2S$ Contingency Plan.

(ii) Instruction in the proper use of safety equipment which the employee may be required to use.

(iii) Information on the location of protective-breathing equipment, $H_2S$ detectors and alarms, ventilation equipment, briefing areas, warning systems, evacuation procedures, and the direction of the prevailing winds.

(iv) Restrictions and corrective measures concerning beards, spectacles, and contact lenses in conformance with the American

National Standard Institute (ANSI), Practices for Respiratory Protection (ANSI Z88.2).

(v) Instruction in basic first-aid procedures applicable to victims of $H_2S$ exposure. During all drills and training sessions, procedures for rescue and first aid for $H_2S$ victims shall be addressed. Each facility shall have the following equipment readily available, and personnel shall be instructed as to the location and use of following items:

(A) A first-aid kit of appropriate size and content for the number of personnel on the facility;

(B) At least three resuscitators complete with face masks, oxygen bottles, and spare oxygen bottles; and

(C) At least one litter or an equivalent device.

(vi) Personnel shall be informed of the meaning of all warning signals.

(3) *Drills.* A drill shall be conducted for each person at the facility within 24 hours after duty begins at least once during every subsequent 7-day period. A discussion of drill performance, new $H_2S$ considerations at the facility, and other updated $H_2S$ information shall, at least monthly, be topics at facility safety meetings. Records of attendance for drilling, well-completion, and well-workover operations shall be kept at the facility until operations are completed. Records of attendance for production operations shall be maintained at the facility or at the nearest field office for a period of 1 year.

It should be noted that the addition of separate paragraph (h)(3), Drills, will require subsequent existing paragraphs (h)(3) through (h)(9) to be redesignated.

*Section 250.67(h)(4) Visual Warning System* (formerly paragraph (h)(3))

The MMS believes that many fishermen and recreational boaters are not familiar with the dangers of $H_2S$ and are unaware of the purpose of the red flags. Therefore, the following revision of paragraph (h)(4)(ii)(A) is proposed:

(A) Each sign shall be of a minimum width of 8 feet and a minimum height of 4 feet and shall be a high-visibility yellow color with black lettering of a minimum of 12 inches in height reading as follows:

DANGER—POISONOUS GAS—HYDROGEN SULFIDE and in smaller lettering:

Do not approach if red flag is flying.

This revision is also consistent with the warning signs proposed by the BLM (54 FR 21075, May 16, 1989).

In order to be consistent with OSHA's new PEL's, it is proposed to revise paragraph (h)(4)(ii)(D) (formerly (h)(3)(ii)(D)) as follows:

(D) Signs shall be displayed in cases where the concentration in the atmosphere reaches 10 ppm. Signs, visual and audible alarms, and flags shall be displayed and activated when the atmospheric concentration reaches 15 ppm.

*Section 250.67(h)(5) Audible Warning System* (formerly paragraph (h)(4))

In order to be consistent with OSHA's STEL, it is proposed to revise the second sentence of paragraph (h)(5), Audible warning system (formerly paragraph (h)(4)), to require the activation of warning devices at an $H_2S$ concentration of 15 ppm as follows:

* * * The warning devices (audible and visual) shall be suitable for the electrical classification of the area and shall be activated by the $H_2S$-detection and $H_2S$-monitoring equipment when the atmospheric concentration reaches 15 ppm.

*Section 250.67(h)(6) $H_2S$-Detection and $H_2S$-Monitoring Equipment* (formerly paragraph (h)(5))

In order to be consistent with OSHA's STEL, it is proposed that the first sentence of paragraph (h)(6)(i) (formerly paragraph (h)(5)(i)) be revised to require $H_2S$-detection and $H_2S$-monitoring system to activate audible and visual alarms when the atmospheric concentration reaches 15 ppm.

The MMS field inspection personnel have commented that the currently effective regulations do not address required sensing points for $H_2S$ detectors on production facilities. Therefore, it is proposed that the following sentence should be inserted after the second sentence of paragraph (h)(6)(i) formerly (h)(5)(i)):

On production facilities, sensing points shall be located in the well bay areas, production equipment areas, enclosed metering facilities, and other areas where $H_2S$ may accumulate. Sufficient numbers of sensors shall be installed to detect $H_2S$ without delay.

A review of technical literature and several comments received indicate that devices which measure the total soluble sulfides concentration in water-based drilling mud can provide an early warning prior to the release of $H_2S$ and allow for corrective action such as the use of scavengers and hydrogen-ion control to prevent the release of $H_2S$. Further, operational problems have been experienced with the air sensors at the bell nipple due to contamination by splashed mud and rig floor wash water. Therefore, it is proposed that the following sentences should be added after the last sentence of redesignated paragraph (h)(6)(i):

* * * $H_2S$-detection and monitoring systems, which measure hydrogen-ion (pH), hydrosulfide-ion ($HS^-$), and sulfide-ion ($S^=$) concentrations in the mud and calculate and display the theoretical concentration of $H_2S$ that could exist in the air above the mud, are acceptable for use in water-based muds. This type of sensor may be used in the mud-return-line receiver tank (possum belly) in lieu of an air sensor at the bell nipple provided air sensors are used at the other sensing points specified in the preceding paragraph. The District Supervisor may require such a mud sensor in cases where the air sensor at the bell nipple proves ineffective due to contamination by splashed mud and rig floor wash water.

Some commenters have expressed concerns that the calibration frequencies for $H_2S$-detection and $H_2S$-monitoring equipment as required by the currently effective paragraph (h)(5)(ii) are excessive and unjustified. Therefore, MMS hereby requests comments on alternatives to the following calibration requirements:

(ii) The $H_2S$-detection and $H_2S$-monitoring equipment shall be calibrated at least once every 24 hours when drilling approaches a potential $H_2S$-bearing zone and at least once every 12 hours when drilling, well-completion, and/or well-workover operations are being conducted in an $H_2S$ environment. The $H_2S$ detectors for production operations shall be calibrated at a frequency such that no more than 7 days shall elapse between calibrations. The calibration shall be conducted by a person trained to calibrate the particular $H_2S$-detection and $H_2S$-monitoring equipment being used. All calibrations shall be recorded in the driller's or production operations report, as applicable.

In order to comply with OSHA's TWA for $H_2S$, it is proposed to revise the first sentence of paragraph (h)(6)(iii) as follows:

(iii) $H_2S$-detection ampoules or any other comparable $H_2S$-monitoring devices capable of detecting 10 ppm shall be available for use by all personnel. * * *

*Section 250.67(h)(7) $SO_2$-Detection and $SO_2$-Monitoring Equipment* (new paragraph (h)(7))

In order to comply with OSHA's PEL for $SO_2$, it is proposed to add the following new paragraph (h)(7) $SO_2$-detection and $SO_2$-monitoring equipment:

(7) *$SO_2$-detection and $SO_2$-monitoring equipment.* In the event that gas containing $H_2S$ is accidentally or intentionally burned, the operator shall monitor the $SO_2$ concentration in the air with a portable monitor capable of detecting a minimum of 2 ppm of $SO_2$. If the $SO_2$ concentration reaches 5 ppm, all nonessential personnel shall be evacuated, and essential personnel shall don protective-breathing apparatus.

It should be noted that the addition of new paragraph (h)(7) will require that subsequent paragraphs be renumbered as (h)(8) through (h)(11).

*Section 250.67(h)(8) Protective-Breathing Equipment.* (formerly paragraph (h)(6))

Paragraph (h)(8)(i) requires "Personnel on a facility operating in known or unknown $H_2S$ zones shall have immediate access to pressure-demand-type respirators." It is proposed to clarify this requirement by adding a comma after the word "personnel" and the words "including contractors and visitors."

As previously stated above under the suggested revisions for the $H_2S$ Contingency Plan, due to the flammability of $H_2S$ and the associated natural gas and the potential for inducing turbulence and $H_2S$ upwellings (into safe briefing areas), helicopter takeoffs or landings may be hazardous during $H_2S$ alerts. Therefore, it is suggested that paragraph (h)(8)(v) (former paragraph (h)(6)(v)) should be revised as follows:

(v) Helicopter flights to and from facilities during $H_2S$ alerts shall be limited to the conditions specified in the $H_2S$ Contingency Plan. During such authorized flights, pressure-demand-type respirators shall be utilized as required by the plan. All members of flight crews shall be trained in the use of the particular type(s) of respirator equipment made available.

It should be noted that the following sentence has been deleted from paragraph (h)(8)(v) above: "Facilities operating in unknown $H_2S$ zones shall store pressure-demand-type respirators immediately accessible to the heliport for the use of flight crews." The incorporation of the words "including contractors and visitors" in paragraphs (h)(1)(v) and (h)(8)(i) makes it clear that all personnel are to have access to respirators in known locations.

*Section 250.67(h)(9) Additional Personnel-Safety Equipment* (formerly paragraph (h)(7))

Several operators have commented that paragraph (h)(9)(v) is ambiguous because the number of resuscitators is not specified. As previously stated under the discussion of paragraph (h)(2) above, some operators have stated in their contingency plans that three resuscitators will be available on the platform. The MMS agrees that the capability to handle three respiratory casualties simultaneously provides a reasonable margin of safety. Therefore, paragraph (h)(9)(v) has been revised to read as follows:

(v) At least three resuscitators.

*Section 250.67(h)(11) Notification of Regulatory Agencies* (formerly paragraph (h)(9))

In order to be consistent with OSHA's 15-ppm STEL, it is proposed to revise paragraph (h)(11) (former paragraph (h)(9)) to reflect the 15-ppm STEL and delete the reference to the 50-ppm level as follows:

(11) *Notification of regulatory agencies.* The MMS and the U.S. Coast Guard shall be notified as soon as possible in the event of a nonroutine release of $H_2S$ which results in an atmospheric concentration of 15 ppm.

*Section 250.67(i)(2) Well-Control Fluid Testing*

In order to be consistent with OSHA's 15-ppm STEL, it is proposed to revise paragraph (i)(2) to change the 20-ppm criteria to 15 ppm as follows:

(2) *Well-control fluid testing.* If water-base, well-control fluids are used and if $H_2S$ is detected by air sensors, either the Garrett-Gas-Train test or comparable test techniques for soluble sulfides shall be conducted immediately to confirm the presence of $H_2S$. If the concentration detected by air sensors is in excess of 15 ppm, personnel conducting the test shall don protective-breathing equipment conforming to paragraph (h)(7)(i) of this section.

*Section 250.67(k) Well Testing in a Zone Known To Contain $H_2S$*

In order to be consistent with OSHA's STEL for $SO_2$, it is proposed to revise paragraph (k)(3) as follows:

(3) All produced gases shall be flared using a system which meets the requirements of paragraph (m)(7) of this section. Prior to flaring gas containing $H_2S$, portable $SO_2$ monitoring equipment shall be activated. If $SO_2$ in excess of 5 ppm is detected, personnel monitoring the well test shall don protective-breathing apparatus. Gases from stored test fluids shall be vented into the flare outlet.

*Section 250.67(l) Metallurgical Properties of Equipment for Use in a Zone Known To Contain $H_2S$—(1) General Provisions*

This paragraph currently requires the use of materials which conform to the NACE Standard MR-01-75, Material Requirement, Sufide Stress Cracking Resistant Metallic Material for Oil Field Equipment. In offshore operations, MMS allows no deviation from this requirement. This presents a problem for high alloy materials which have not been included in the current issue of the standard but for which metallurgical data exist to show resistance to sulfide-stress cracking. It is also inferred by the standard that if material is listed, it is suitable for use in all $H_2S$ environments; however, some of the materials listed would not be suitable in $H_2S$ environments containing high chlorides. Therefore, it is necessary to correct these deficiencies by revising paragraph (l)(1) as follows:

(1) *General Provisions.* Equipment used in $H_2S$ environments shall be constructed of materials whose metallurgical properties resist or prevent sulfide stress cracking (also known as hydrogen embrittlement, stress-corrosion cracking, and/or $H_2S$ embrittlement). The National Association of Corrosion Engineers (NACE) Standard MR-01-75, Material Requirement, Sulfide Stress Cracking Resistant Metallic Material for Oil Field Equipment, defines $H_2S$ environments and gives guidance on the selection of materials for use in these environments. For purposes of material selection, the $H_2S$ environments defined in section 1: General of MR-01-75 shall apply. Proposals for the use of equivalent or better procedures or materials may be submitted to the District Supervisor for approval in accordance with § 250.3 of this Title. In the selection of materials, failure modes other than sulfide-stress cracking, such as chloride-stress cracking and hydrogen-induced cracking shall be considered. Corrosion inhibition procedures or material selection to mitigate these types of failures shall be submitted to the District Supervisor for approval.

*Section 250.67(l)(2) Tubulars and Other Equipment*

The present reference in § 250.67(l)(2) to Table 4 includes carbon steel materials only. Alloy materials are acceptable; therefore, it is proposed to delete this reference. Further, section 5: Fabrication of MR-01-75 specifies welding procedures for tubular goods; therefore, it is not necessary for the District Supervisor to approve field welding on a case-by-case basis as currently required by the last sentence of paragraph (l)(2). It is proposed to revise the first sentence of paragraph (l)(2) and delete the second sentence as follows:

(2) *Tubulars and other equipment.* Tubulars and other equipment, casing, tubing, drill pipe, couplings, flanges, and related equipment shall be designed for $H_2S$ service.

*Section 250.67(l)(6) Installation or Modification*

Paragraph (l)(6) as written can be construed as conflicting with MR-01-75 which allows welding without stress relieving and should be removed. Therefore, it is proposed to retitle and revise paragraph (l)(6) as follows:

(6) *Welding.* Welding shall be done to ensure resistance to sulfide-stress cracking.

*Section 250.67(m)(4) Stripping Operations*

In order to be consistent with OSHA's 15-ppm STEL for $H_2S$, it is proposed to revise paragraph (m)(4) as follows:

(4) *Stripping operations.* Displaced well-control fluid returns shall be monitored, and protective-breathing equipment shall be worn by those personnel in the working area when the atmospheric concentration of the $H_2S$ reaches 15 ppm or if the well is under pressure.

*Section 250.67(m)(13) Water Disposal*

In the Pacific and Gulf of Mexico OCS Regions, produced water is being discharged into the ocean, and the question of allowable $H_2S$ content of discharged water has been raised. Therefore, it is proposed that paragraph (m)(13) should be revised as follows:

(13) *Water disposal.* For produced water disposed of by means other than subsurface injection, an analysis of the anticipated $H_2S$ content of the water at the final treatment vessel and at the discharge point shall be submitted to the District Supervisor. The District Supervisor may require that the water be treated for the removal of $H_2S$.

**Executive Order 12291**

The Department of the Interior (DOI) has determined that this document does not constitute a major rule under Executive Order 12291 because it will not result in a cost impact of more than $100 million annually. Therefore, a Regulatory Impact Analysis is not required.

**Executive Order 12630**

The DOI certifies that the proposed rule does not represent a governmental action capable of interference with constitutionally protected property rights. Thus, a Takings Implication Assessment need not be prepared pursuant to Executive Order 12630, Government Action and Interference with Constitutionally Protected Property Rights.

**National Environmental Policy Act**

The MMS has determined that this action does not constitute a major Federal action affecting the quality of the human environment; therefore, preparation of an Environmental Impact Statement is not required.

**Regulatory Flexibility Act**

The DOI has also determined that this document will not have a significant economic effect on a substantial number of small entities because, in general, the entities that engage in activities offshore are not considered small due to the technical complexities and financial resources necessary to conduct such activities.

**Paperwork Reduction**

This proposed rule adds new information collection requirements, as defined by the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), that have not been approved by the Office of Management and Budget (OMB). The proposed rule would require lessees to include additional information in their $H_2S$ Contingency Plans. This new information addresses helicopter activities during $H_2S$ emergencies, descriptions of portable $SO_2$ monitors used in the event $H_2S$ gas is burned, and monitoring procedures and personnel protection measures initiated when the $SO_2$ concentration in the atmosphere reaches 2 and 5 ppm. Another revision to the section requires lessees to submit an analysis of the anticipated $H_2S$ content of produced water that will be discharged into OCS waters.

The collection of information contained in this rule has been submitted to OMB for approval as required by 44 U.S.C. 3501 *et seq.* The collection of this information will not be required until it has been approved by the OMB. Public reporting burden for this collection of information is estimated to average 1.1 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Information Collection Clearance Officer; Minerals Management Service; Mail Stop 2300, Parkway Atrium; 381 Elden Street; Herndon, Virginia 22070–4817; and the Office of Management and Budget, Paperwork Reduction Project 101–0053; Washington, DC 20503.

**Authors**

The principal authors of this proposed rule are E.P. Danenberger and Lloyd M. Tracey, Offshore Rules and Operations Division, MMS.

**List of Subjects in 30 CFR Part 250**

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Incorporation by reference, Investigations, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Penalties, Pipelines, Public lands-mineral resources, Public lands-rights-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

Dated: July 2, 1990.

**Barry Williamson,**

*Director, Minerals Management Service.*

For the reasons set out in the preamble, it is proposed to amend title 30, chapter II, subchapter B, subpart D, of the Code of Federal Regulations, as follows:

## PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

1. The authority citation for part 250 continues to read as follows:

**Authority:** Sec. 204, Pub. L. 95–372, 92 Stat. 629 (43 U.S.C. 1334).

2. In section 250.67, redesignate paragraphs (h)(3), (h)(4), (h)(5), (h)(6), (h)(7), (h)(8), and (h)(9) as paragraphs (h)(4), (h)(5), (h)(6), (h)(8), (h)(9), (h)(10), and (h)(11), respectively; add paragraphs (h)(1) (viii) and (ix) and new paragraphs (h)(3) and (h)(7); revise the definitions "Zones known to contain $H_2S$" and "Zones where the absence of $H_2S$ has been confirmed" in paragraph (b), revise paragraph (f), paragraphs (h)(1) (iii) and (iv), and the second sentence of (h)(1)(v), paragraph (h)(2), redesignated paragraphs (h)(4)(ii) (A) and (D), redesignated paragraph (h)(5), redesignated paragraphs (h)(6)(i) and the first sentence of (h)(6)(iii), redesignated paragraphs (h)(8) (i) (first sentence) and (v), redesignated paragraph (h)(9)(v), redesignated paragraph (h)(11), paragraph (i)(2), paragraph (k)(3), paragraphs (l)(1), (l)(2), and (l)(6), and paragraphs (m)(4) and (m)(13) as follows:

**§ 250.67 Hydrogen sulfide.**

* * * * *

(b) * * *

"*Zones known to contain $H_2S$*" means geologic formations where prior drilling operations or logging, coring, testing, or producing operations have confirmed that $H_2S$-bearing zones will be encountered that could potentially result in atmospheric concentrations of 15 parts per million (ppm) or more of $H_2S$.

"*Zones where the absence of $H_2S$* has been confirmed" means one of the following:

(1) Geologic formations where prior drilling operations or logging, coring, testing, or producing operations have indicated that $H_2S$-bearing zones have not been encountered that could potentially result in atmospheric concentrations of 15 ppm or more of $H_2S$;

(2) Geologic formations where analysis of produced gas samples have indicated the absence of $H_2S$ in

concentrations that could potentially result in atmospheric concentrations of 15 ppm or more of $H_2S$; or

* * * * *

(f) *Production operations in zones known to contain $H_2S$.* Production operations in zones known to contain $H_2S$ shall comply with the requirements in paragraphs (b), (l) (1) through (6), and (m) (7) through (15) of this section.

* * * * *

(h) * * *

(1) * * *

(iii) Duties, responsibilities, and operating procedures, to be initiated when the concentration of $H_2S$ in the atmosphere reaches 10 ppm and 15 ppm. The operating procedures shall include a description of the audible and visual alarms to be activated at each alert level.

(iv) Designation of briefing areas as locations for assembly of personnel during a condition of 15-ppm concentration of $H_2S$. At least two briefing areas shall be established on each facility. The briefing area that is upwind of the $H_2S$ source at any given time shall be the designated briefing area.

(v) * * * The procedures shall address the positioning of all vessels attendant to the facility, their reactions to an emergency, and provisions for protective-breathing equipment for personnel, including contractors and visitors. The procedures shall also address the types of $H_2S$ emergencies during which the risk of helicopter activity would be deemed acceptable and the precautions to be taken during such flights shall be described.

* * * * *

(viii) A complete description of portable $SO_2$ monitor(s) to be used in the event that gas containing $H_2S$ is burned.

(ix) A description of the monitoring procedures and personnel protection measures to be initiated when the $SO_2$ concentration reaches 2 ppm and 5 ppm.

(2) *Training program.* All operator and contract personnel must complete an $H_2S$ training program, as described in the operator's approved $H_2S$ Contingency Plan before beginning work at an OCS facility. Written documentation of this training must be maintained at the facility where the individual is employed. Alternatively, the employee may carry a training completion card. The $H_2S$ training program described below must be repeated within 1 year after completion of the previous class. If the employee or contractor is transferred to another facility, a supplemental briefing of $H_2S$ equipment and procedures at that facility is required before the employee begins duty. Visitors (i.e., those individuals that are not temporarily or permanently employed at the facility and will be departing on the day of arrival) must, upon arrival, receive a briefing on the location and use of an assigned respirator, the safe briefing areas, the alarm system, and their responsibilities in the event of an $H_2S$ release. Safety information shall be prominently posted on the facility and on vessels serving the facility. The training program shall include the following:

(i) Instruction on the hazards of $H_2S$ and $SO_2$ and the provisions for personnel safety contained in the $H_2S$ Contingency Plan.

(ii) Instruction in the proper use of safety equipment which the employee may be required to use.

(iii) Information on the location of protective-breathing equipment, $H_2S$ detectors and alarms, ventilation equipment, briefing areas, warning systems, evacuation procedures, and the direction of the prevailing winds.

(iv) Restrictions and corrective measures concerning beards, spectacles, and contact lenses in conformance with American National Standard Institute's (ANSI), Practices for respiratory Protection (ANSI Z88.2).

(v) Instruction in basic first-aid procedures applicable to victims of $H_2S$ exposure. During all drills and training sessions, procedures for rescue and first aid for $H_2S$ victims shall be addressed. Each facility shall have the following equipment readily available, and personnel shall be instructed as to the location and use of the following items:

(A) A fist-aid kit of appropriate size and content for the number of personnel on the facility;

(B) At least three resuscitators complete with face masks, oxygen bottles, and spare oxygen bottles; and

(C) At least one litter or an equivalent device.

(vi) Personnel shall be informed of the meaning of all warning signals.

(3) *Drills.* A drill shall be conducted for each person at the facility within 24 hours after duty begins and at least once during every subsequent 7-day period. A discussion of drill performance, new $H_2S$ considerations at the facility, and other updated $H_2S$ information shall, at least monthly, be topics at facility safety meetings. Records of attendance for drilling, well-completion, and well-workover operations shall be kept at the facility until operations are completed. Records of attendance for production operations shall be maintained at the facility or at the nearest field office for a period of 1 year.

(4) * * *

(ii) * * *

(A) Each sign shall be of a minimum width of 8 feet and a minimum height of 4 feet and shall be a high-visibility yellow color with black lettering of a minimum of 12 inches in height reading as follows:

DANGER—POISONOUS GAS—HYDROGEN SULFIDE
and in smaller lettering:
Do not approach if red flag is flying.

* * * * *

(D) Signs shall be displayed in cases where the concentration in the atmosphere reaches 10 ppm. Signs, visual and audible alarms, and flags shall be displayed and activated when the atmospheric concentration reaches 15 ppm.

* * * * *

(5) *Audible warning system.* A public address system and a siren, horn, or other similar warning devices with a unique sound used only for $H_2S$ warnings shall be installed at appropriate locations on the facility. The warning devices (audible and visual) shall be suitable for the electrical classification of the area and shall be activated by the $H_2S$-detection and $H_2S$-monitoring equipment when the atmospheric concentration reaches 15 ppm. When the warning devices are activated, the designated responsible persons shall inform personnel of the level of danger and issue instructions on the initiation of appropriate protective measures.

(6) *$H_2S$-detection and $H_2S$-monitoring equipment.* (i) Each facility shall have an $H_2S$-detection and $H_2S$-monitoring system which activates audible and visual alarms when the atmospheric concentration reaches 15 ppm. The detection system shall be capable of sensing a minimum 10 ppm of $H_2S$ in the atmosphere with sensing points located at the bell nipple, shale shaker, well-control fluid pit area, driller's station, living quarters, and all areas as appropriate including those which are low, poorly ventilated, or confined where $H_2S$ may accumulate. On production facilities, sensing points shall be located in the well bay areas, production equipment areas, enclosed metering facilities and other areas where $H_2S$ may accumulate. Sufficient numbers of sensors shall be installed to detect HS without delay. HS-detection and $H_2S$-monitoring systems which measure Hydrogen-ion (ph) and hydrosulfide-ion ($HS^-$) and sulfide-ion ($S^=$) concentrations in the mud and calculate and display the theoretical concentration of $H_2S$ that could exist in

the air above the mud are acceptable for use in water-based muds. This type of sensor may be used in the mud-return line receiver tank (possm belly) in lieu of an air sensor at the bell nipple provided air sensors are used at the other sensing points specified in this paragraph. The District Supervisor may require such a mud sensor in cases where the air sensor at the bell nipple is habitually inoperative due to contamination by splashed mud and rig floor wash water.

* * * * *

(iii) $H_2S$-detection ampoules or any other comparable $H_2S$-monitoring devices capable of detecting 10 ppm shall be available for use by all personnel. * * *

(7) *$SO_2$-detection and $SO_2$-monitoring equipment.* In the event that gas containing $H_2S$ is accidentally or intentionally burned, the operator shall monitor the $SO_2$ concentration in the air with a portable monitor capable of detecting a minimum of 2 ppm of $SO_2$. If the $SO_2$ concentration reaches 5 ppm, all nonessential personnel shall be evacuated, and essential personnel shall don protective-breaching apparatus.

(8) * * *

(i) Personnel, including contractors and visitors on a facility operating in known or unknown $H_2S$ zones shall have immediate access to pressure-demand-type respirators. * * *

* * * * *

(v) Helicopter flights to and from facilities during $H_2S$ alerts shall be limited to the conditons specified in the $H_2S$ Contingency Plan. During such authorized flights, pressue-demand-type respirators shall be utilized as required by the plan. All members of flight crews shall be trained in the use of the particular type(s) of respirator equipment made available.

* * * * *

(9) * * *

(v) At least three resuscitators.

* * * * *

(11) *Notification of regulatory agencies.* The MMS and the U.S. Coast Guard shall be notified as soon as possible in the event of a nonroutine release of $H_2S$ which results in an atmospheric concentration of 15 ppm.

(i) * * *

(2) *Well-control fluid testing.* If water-base, well-control fluids are used and if $H_2S$ is detected by air sensors, either the Garrett-Gas Train test or comparable test techniques for soluble sulfides shall be conducted immediately to confirm the presence of $H_2S$. If the concentration detected by air sensors is in excess of 15 ppm, personnel conducting the test shall don protective-breathing equipment conforming to paragraph (h)(8)(i) of this section.

* * * * *

(k) * * *

(3) All produced gases shall be vented and burned through a flare which meets the requirements of paragraph (m)(7) of this section. Prior to igniting flared gas containing $H_2S$, portable $SO_2$ monitoring equipment shall be activated. If $SO_2$ in excess of 5 ppm is detected, personnel monitoring the well test shall don protective-breathing apparatus. Gases from stored test fluids shall be vented into the flare outlet.

* * * * *

(1) *Metallurical properties of equipment for use in a zone known to contain $H_2S$*—(1) *General provisions.* Equipment used in $H_2S$ environments shall be constructed of materials whose metallurgical properties resist or prevent sulfie-stress cracking (also known as hydrogen embrittlement, stress-corrosion cracking, and/or $H_2S$ embrittlement). The National Association of Corrosion Engineers (NACE) Standard MR-01-75, Material Requirement, Sulfide Stress Cracking Resistant Metallic Material for Oil Field Equipment, defines $H_2S$ environments and gives guidance on the selection of materials for use in these environments. For purposes of material selection, the $H_2S$ environments defined in Section 1: General of MR-01-75 shall apply. Proposals for the use of equivalent or better procedures or materials may be submitted to the District Supervisor for approval in accordance with § 250.3 of this Title. In the selection of materials, failure modes other than sulfide-stress cracking, such as chloride-stress cracking and hydrogen-induced cracking, shall be considered. Corrosion inhibition procedures or material selection to mitigate these types of failures shall be submitted to the District Supervisor for approval.

(2) *Tubulars and other equipment.* Tubulars and other equipment, casing, tubing, drill pipe, couplings, flanges, and related equipment shall be designed for $H_2S$ service.

* * * * *

(6) *Welding.* Welding shall be done to ensure resistance to sulfide-stress cracking.

(m) * * *

(4) *Stripping operations.* Displaced well-control fluid returns shall be monitored, and protective-breathing equipment shall be worn by those personnel in the working area when the atmospheric concentration of the $H_2S$ reaches 15 ppm or if the well is under pressure.

* * * * *

(13) *Water disposal.* For produced water disposed of by means other than subsurface injection, an analysis of the anticipated $H_2S$ content of the water at the final treatment vessel and at the discharge point shall be submitted to the District Supervisor. The District Supervisor may require that the water be treated for the removal of $H_2S$.

* * * * *

[FR Doc. 90-18956 Filed 8-14-90; 8:45 am)
BILLING CODE 4310-MR-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

[OPP-300219; FRL-3739-6]

### Calcium Arsenate; Revocation of Tolerances

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes to remove the tolerances listed in 40 CFR 180.192 for the use of calcium arsenate, which was used as an insecticide, in or on various raw agricultural commodities. This action is being taken because registrations for the food uses of calcium arsenate were suspended, and subsequently cancelled in 1988.

**DATES:** Written comments, identified by the OPP document control number [OPP-300219], must be received on or before October 15, 1990.

**ADDRESSES:** By mail, submit comments to: Public Docket and Freedom of Information Section, Field Operations Division (H7506C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 246, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment concerning this document may be claimed confidential by marking any or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m until 4 p.m., Monday through Friday, except legal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lisa Engstrom, Special Review and Reregistration Division (H7508C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Special Review Branch, Rm. 1006, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703)-557-7245.

**SUPPLEMENTARY INFORMATION:** EPA is proposing to revoke the tolerances under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA) for calcium arsenate. This revocation action is being proposed because the registered uses of calcium arsenate have been cancelled by EPA due to, among other things, the unreasonable risk calcium arsenate posed to the general public. A discussion of EPA's evaluation of the risks and benefits of calcium arsenate is presented in the the June 30, 1988 Notice of Intent to Cancel (53 FR 24787). Tolerances for residues of calcium arsenate, expressed in parts per million (ppm) combined arsenic trioxide ($As_2O_3$), in or on raw agricultural commodities are listed at 40 CFR 180.192. A tolerance of 3.5 ppm of combined arsenic trioxide is set for residues of calcium arsenate in or on asparagus, beans, blackberries, blueberries, (huckleberries), boysenberries, broccoli, brussels sprouts, cabbage, carrots, cauliflower, celery, collards, corn, cucumbers, dewberries, eggplant, kale, kohlrabi, loganberries, melons, peppers, pumpkins, raspberries, rutabagas (with or without tops) or rutabaga tops, spinach, squash, strawberries, summer squash, tomatoes, turnips (with or without tops) or turnip greens, and youngberries.

EPA issued a Special Review (previously referred to as a Rebuttable Presumption Against Registration) for the wood preservative and nonwood preservative uses of the inorganic arsenicals, which was published in the **Federal Register** October 18, 1978 (43 FR 48267). EPA determined that the use of inorganic arsenicals met or exceeded the risk criteria for carcinogenicity, developmental toxicity and mutagenicity under 40 CFR 162.11 (these criteria are now found at 40 CFR 154.7). Acute toxicity also became a concern after the receipt of adverse effects data.

For the nonwood preservative uses of inorganic arsenicals, a Preliminary Determination (PD 2/3) was issued on January 2, 1987 (52 FR 132), proposing to cancel most registrations based on carcinogenicity risks to workers and acute toxicity to the general public. On June 30, 1988, EPA issued a Notice of Intent to Cancel (53 FR 24787) the registrations of the insecticidal and molluscicidal uses of calcium arsenate. It was noted that the uses of calcium arsenate as an insecticide and molluscicide had been suspended for failure of the registrant to comply with required data submission pursuant to section 3(c)(2)(b) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Benefits and use information on calcium arsenate available to EPA indicated that prior to suspension, there had been no usage of calcium arsenate for many years. The cancellation of the insecticidal and molluscicidal uses of calcium arsenate became effective August 1, 1988.

EPA believes there would be insignificant or no adverse economic impact related to the revocation of tolerances for calcium arsenate. Since at least 19 months have passed since the cancellation of calcium arsenate as an insecticide and molluscicide, with no known use prior to that for many years, EPA believes there has been adequate time for legally treated raw agricultural commodities to have gone through the channels of trade.

Since residues of arsenic trioxide from the use of calcium arsenate as an insecticide are not expected to be detected in raw agricultural commodities harvested from previously treated fields above background levels, no action levels will be recommended to replace the tolerances upon their revocation.

Any person who has registered or submitted an application for the registration of a pesticide under FIFRA, as amended, which contains calcium arsenate, may request within 30 days after publication in the **Federal Register** that this proposal to revoke the calcium arsenate tolerances listed at 40 CFR 180.192 be referred to an advisory committee on accordance with section 408(e) of FFDCA.

Interested persons are invited to submit written comments, information or data in response to this proposed rule. Comments must be submitted by October 15, 1990. Comments must bear a notation indicating the document control number (OPP-300219). Three copies of the comments should be submitted to the address listed under "addresses" above.

All written comments filed pursuant to this document will be available for public inspection in Rm. 246, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, between 8 a.m. and 4 p.m., Monday through Friday, except public holidays.

In order to satisfy requirements for analysis specified by Executive Order 12291 and the Regulatory Flexibility Act, EPA has analyzed the costs and benefits of this proposal. This analysis is available for public inspection in Rm. 246 at the address given above.

**Executive Order 12291**

Under Executive Order 12291, EPA must determine whether a proposed regulatory action is "major" and therefore subject to the requirements of a Regulatory Impact Analysis. EPA has determined that this proposed rule is not a major regulatory action, i.e., it will not cause a major increase in prices, and will not have a significant adverse effect on competition or the ability of U.S. enterprises to compete with foreign enterprises.

This proposed rule has been reviewed by the Office of Management and Budget as required by E.O. 12291.

**Regulatory Flexibility Act**

This proposed rule has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601 et seq.), and it has been determined that it will not have a significant economic impact on a substantial number of small businesses, small governments, or small organizations.

Because calcium arsenate was cancelled in 1988, and because it is estimated that all existing stocks have been exhausted, EPA anticipates little or no economic impact would occur at any level of business enterprise if these tolerances were revoked.

Accordingly, I certify that this proposed rule does not require a separate regulatory flexibility analysis under the Regulatory Flexibility Act.

**Paperwork Reduction Act**

This proposed regulatory action does not contain any information collection requirements subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

(Section 408(m) of the FFDCA (21 U.S.C. 346a(m))}

**List of Subjects in 40 CFR Part 180**

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

**Dated:** August 7, 1990.

**Linda J. Fisher,**

*Assistant Administrator for Pesticides and Toxic Substances.*

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

## PART 180—[AMENDED]

1.The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

### § 180.192 [Removed]

2. By removing § 180.192 Calcium arsenate.

[FR Doc. 90-19186 Filed 8-14-90; 8:45 a.m.]

BILLING CODE 6560-50-F

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## 40 CFR Part 180

[OPP-300217; FRL-3738-7]

## Lead Arsenate; Revocation of Tolerances

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes to revoke the tolerances listed in 40 CFR 180.194 for residues of lead arsenate as follows: (1) Residues of combined lead resulting from the use of lead arsenate as an insecticide in or on various raw agricultural commodities; and (2) residues of combined lead resulting from the use of lead arsenate as a growth regulator in or on citrus fruits. This action is being taken because the registration for the growth regulator use on citrus was voluntarily cancelled in 1987, while all other food use registrations of lead arsenate were cancelled June 30, 1988.

**DATES:** Written comments, identified by the OPP document control number [OPP-300217], must be received on or before October 15, 1990.

**ADDRESSES:** By mail, submit comments to: Public Docket and Freedom of Information Section, Field Operations Division (H7506C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 246, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment concerning this document may be claimed confidential by marking any or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. until 4 p.m., Monday through Friday, except legal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lisa Engstrom, Special Review and Reregistration Division (H7508C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number, Special Review Branch, Rm. 1006, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703)-557-7245.

**SUPPLEMENTARY INFORMATION:** EPA is proposing to revoke the tolerances under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA) for lead arsenate, expressed as combined lead. Tolerances for residues of lead arsenate in or on raw agricultural commodities, expressed in parts per million (ppm) of combined lead, are listed at 40 CFR 180.194. A tolerance of 7 ppm of combined lead is set in or on apples, apricots, asparagus, avocadoes, blackberries, blueberries (huckleberries), boysenberries, celery, cherries, cranberries, currants, dewberries, eggplant, gooseberries, grapes, loganberries, mangoes, nectarines, peaches, pears, peppers, plums (fresh prunes), quinces, raspberries, strawberries, tomatoes and youngberries. For citrus, a tolerance of 1 ppm of combined lead is listed.

The Environmental Protection Agency issued a Special Review (previously referred to as a Notice of Rebuttable Presumption Against Registration) for the wood preservative and nonwood preservative uses of the inorganic arsenicals, which was published in the **Federal Register** of October 18, 1978 (43 FR 48267). EPA determined that the use of inorganic arsenicals met or exceeded the risk criteria for carcinogenicity, developmental toxicity and mutagenicity under 40 CFR 162.11 (these criteria are now found at 40 CFR 154.7). Acute toxicity also became a concern after receipt of adverse effect data.

For the non-wood preservative uses of the inorganic arsenicals, a Preliminary Determination (PD 2/3) was issued on January 2, 1987 (52 FR 132), proposing to cancel most registrations, including the insecticidal uses of lead arsenate, based on carcinogenicity risks to workers and acute toxicity to the general public.

As an insecticide, lead arsenate was registered as a foliar spray on fruit trees, small fruits and berries, certain vegetable crops and ornamentals. On June 30, 1988, EPA issued the Final Notice of Intent to Cancel, or PD 4 (53 FR 24787). In that Notice, any sale, distribution or use of products containing lead arsenate except the growth regulator use on citrus were prohibited, effective August 1, 1988. A provision for the sale and/or use of existing stocks was not made since it was determined that the risk posed by continued insecticidal use of lead arsenate outweighed the limited benefits. It was also indicated that all of the registrations for end-use products of lead arsenate labelled for insecticidal use had been suspended prior to the Notice of Intent to Cancel for failure to submit proper data in response to a section 3(c)(2)(B) requirement, or had been voluntarily cancelled. It was therefore concluded that there would be no economic impact as a result of cancellation of the registrations.

Since at least 19 months have passed since the cancellation of lead arsenate as an insecticide, EPA believes there has been adequate time for legally treated agricultural commodities to have gone through the channels of trade.

As a growth regulator, lead arsenate was registered by Microflo Chemical Company, the sole producer of lead arsenate. It was only used on citrus grown in Florida. Rather than comply with section 3(c)(2)(B) data requirements, Microflo Chemical Co. requested voluntary cancellation of its lead arsenate registration on July 28, 1987. The voluntary cancellation was subsequently granted and the use of existing stocks was allowed until stocks were depleted. At the time of the voluntary cancellation, it was estimated that approximately 100,000 pounds of stocks existed. EPA believes that most of the stocks, 90,000 pounds, were used during the 1988 growing season and any of the remaining 10,000 pounds of stock were depleted during the spring of 1989. Given that lead arsenate would have been used during the spring for the early season citrus crop, there is currently little likelihood of treated fruit in the channels of trade. Last year, the Florida Department of Citrus issued a Fact Sheet in which it said, "lead arsenate is not available today and for all practical purposes, is not being used on Florida grapefruit." The Department of Citrus, in recent communication, affirms that there are no longer any available stocks of lead arsenate.

As there are no other pesticides registered for use on citrus that yield residues of lead, revocation of the tolerance would affect lead arsenate only. Furthermore, since the registrant decided voluntarily to cancel the registration rather than fulfill data requirements needed to support a

tolerance, there is little likelihood that the lead arsenate citrus use will be registered again in the future.

Based on the June 30, 1988 **Federal Register** document which cancelled the insecticidal registrations, and the voluntary cancellation of the growth regulator use, there are no remaining active registrations for the use of lead arsenate. Therefore, since a tolerance is generally not needed for a pesticide which is not registered for a particular food use, and based on the information set forth in this document and in the Final Notice of Intent to Cancel (53 FR 24787), EPA now proposes to revoke tolerances listed in 40 CFR 180.194 for residues of lead arsenate in or on the commodities listed above.

Since lead is not expected to be detected in crops from previously treated fields and orchards above background levels, no action levels will be recommended to replace the tolerances upon their revocation.

Any person who has registered or submitted an application for the registration of a pesticide under FIFRA, as amended, which contains lead arsenate, may request within 30 days after publication in the **Federal Register** that this proposal to revoke the lead arsenate tolerances listed at 40 CFR 180.194 be referred to an advisory committee in accordance with section 408(e) of the FFDCA.

Interested persons are invited to submit written comments, information or data in response to this proposed rule. Comments must be submitted by Ocotber 15, 1990. Comments must bear a notation indicating the document control number OPP- 300217. Three copies of the comments should be submitted to the address listed under "address" above.

All written comments filed pursuant to this document will be available for public inspection in Rm. 246, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, between 8 a.m. and 4 p.m., Monday through Friday, except for legal holidays.

### Executive Order 12291

Under Executive Order 12291, EPA must determine whether a proposed regulatory action is "major" and therefore subject to the requirements of a Regulatory Impact Analysis. EPA has determined that this proposed rule is not a major regulatory action, i.e., it will not have an annual effect on the economy of at least $100 million, will not cause a major increase in prices, and will not have a significant adverse effect on competition or the ability of U.S. enterprises to compete with foreign enterprises.

This proposed rule has been reviewed by the Office of Management and Budget as required by E.O. 12291.

### Regulatory Flexibility Act

This proposed rule has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96-354; 94 Stat. 1164, 5 U.S.C. 601 et seq.), and it has been determined that it will not have a significant economic impact on a substantial number of small businesses, small governments, or small organizations.

Because the registrations of lead arsenate were voluntarily cancelled during or before 1987, and because it is estimated that all existing stocks have been exhausted, EPA anticipates that little or no economic impact would occur at any level of business enterprise if these tolerances were revoked.

Accordingly, I certify that this proposed rule does not require a separate regulatory flexibility analysis under the Regulatory Flexibility Act.

### Paperwork Reduction Act

This proposed regulatory action does not contain any information collection requirements subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

(Section 408(m) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346 (m)))

### List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 7, 1990.

Linda J. Fisher,

*Assistant Administrator for Pesticides and Toxic Substances.*

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

## PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

### § 180.194 [Removed]

2. By removing § 180.194 Lead arsenate.

[FR Doc. 90-19187 Filed 8-14-90; 8:45 am]

BILLING CODE 6560-50-F

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 97

[PR Docket No. 90-356; FCC 90-280]

## Amendment of the Amateur Radio Service Rules To Make the Amateur Service More Accessible to Persons With Handicaps

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This action proposes to amend the Amateur Service Rules to exempt severely handicapped persons who desire to participate more fully in amateur service activities from the higher speed telegraphy examinations. The proposal is necessary in order to accommodate those persons, who, because of their severe handicaps, have extraordinary difficulty in passing the higher speed Morse code telegraphy examinations for amateur operator licenses. The effect of the proposal is to make the amateur service more accessible to handicapped persons.

**DATES:** Comments are due on or before September 24, 1990. Reply comments are due on or before October 9, 1990.

**ADDRESSES:** Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Maurice J. DePont, Federal Communications Commission, Private Radio Bureau, Washington, DC 20554, (202) 632-4964.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, adopted August 1, 1990, and released August 9, 1990. The complete text of this Notice of Proposed Rule Making, including the proposed rule amendments, is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 239) 1919 M Street, NW., Washington, DC. The complete text of this Notice of Proposed Rule Making, including the proposed rule amendments, may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

### Summary of Notice of Proposed Rule Making

1. The Commission's proposal would make the amateur service more accessible to persons with severe handicaps. Specifically, the Commission proposes to exempt severely

handicapped individuals (who hold current or renewable Novice, Technician, General, or Advanced Class operator licenses) from the higher speed telegraphy examinations. Applications for such exemptions would be handled in the existing volunteer examination system.

2. The Commission proposes to define the term "severly handicapped individual" as a person having a severe physical or mental disability which seriously limits one or more functional capacities. Under the proposed rules, the volunteer examiners (VEs) would give examination credit to severely handicapped licensees seeking exemption from the 13 words per minute (wpm) or the 20 wpm telegraphy examination. In order to assure the Commission that the request is valid, the examinees would be required to submit an authentic certification signed by a physicain attesting that such examinees cannot pass the higher speed examinations because of physical or mental disabilities.

3. The Commission requests comments on its proposal. Commenters are also invited to submit their views as to whether the special procedures now used by the volunteer examiners provide sufficient accommodation for severely handicapped individuals seeking to pass the minimum speed 5 wpm examination. Commenters who believe that the present special procedures are insufficient are invited to suggest improvements or rule changes that would adequately accommodate severely handicapped persons, while still satisfying the Morse code requirements of the international Radio Regulations.

4. The proposed rules are set forth at the end of this document.

5. This is a non-restricted notice and comment rule making proceeding. *See* § 1.1206(a) of the Commission's Rules, 47 CFR 1.1206(a), for provisions governing permissible *ex parte* contracts.

6. In accordance with section 605 of the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, the Commission certifies that these rule changes would not, if promulgated, have a significant economic impact on a substantial number of small entities. The Amateur Radio Service may not be used to transmit any communication to facilitate the business or commercial affairs of any party. *See* 47 CFR 97.113(a).

7. The following collection information contained in this proposed rule has been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act. Copies of the submission may be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037. Persons wishing to comment on this information collection should direct their comments to Eyvette Flynn, (202) 395-3785, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503. A copy of any comments should be sent to the Federal Communications Commission, Office of Managing Director, Washington, DC 20554. For further information contact Jerry Cowden, Federal Communications Commission, (202) 632-7513.

*OMB number:* None.
*Title:* Amendment of the Amateur Radio Service Rules to Make the Amateur Service More Accessible to Persons with Handicaps
*Action:* Proposed New Collection.
*Respondents:* Individuals with severe handicaps.
*Frequency of response:* On occasion.
*Estimated annual burden:* 1,000 responses; 330 hours total; 20 minutes average burden per response.
*Needs and uses:* The information collection is required to assure the Commission that persons applying for exemption from the telegraphy examinations do, in fact, have severe handicaps that prevent them from passing such examinations. The information is required from a physician, a person qualified to certify that a person's severe handicap prevents that person from passing the required telegraphy examination.

8. This Notice of Proposed Rule Making and the proposed rule amendments are issued under the authority of section 4(i) and (303)(l)(1) and (r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(l)(1) and r.

9. A copy of this Notice of Proposed Rule Making will be forwarded to the Chief Counsel for Advocacy of the Small Business Administration.

**List of Subjects in 47 CFR Part 97**

Amateur Radio License, Examinations, Radio, Volunteers.

Federal Communications Commission.

William F. Caton,
*Acting Secretary.*

**Proposed Rule Changes**

Part 97 of chapter I of title 47 of the Code of Federal Regulations is proposed to be amended as follows:

**PART 97—[AMENDED]**

1. The authority citation for part 97 continues to read as follows:

**Authority:** 48 Stat. 1066, 1082, as amended; 47 U.S.C. 303. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 301–609, unless otherwise noted.

2. Section 97.3 is amended by redesignating present paragraphs (a)(29) through (a)(40) as (a)(30) through (a)(41) and adding new paragraph (a)(29) as follows:

**§ 97.3 Definitions.**

(a) * * *

(29) *Physician.* For the purpose of this part, a person who is licensed to practice in a place where the amateur service is regulated by the FCC, as either a Doctor of Medicine (M.D.) or a Doctor of Osteopathy (D.O.).

* * * * *

3. Section 97.505 is amended by adding paragraph (a)(5), as follows:

**§ 97.505 Element credit.**

(a) * * *

(5) A current, or expired but within the grace period for renewal, Novice, Technician, General, or Advanced Class operator license and a physician's written statement over his or her signature certifying that because the person is an individual with a severe handicap, as defined at 29 U.S.C. 706(15)(A), the person is unable to pass a 13 or 20 words-per-minute telegraphy examination. In addition, the certification must contain the physician's name, address, and office telephone number, either typed or printed: Element 1(C).

* * * * *

4. Section 97.511 is amended by revising paragraph (f) to read as follows:

**§ 97.511 Technician, General, Advanced and Amateur Extra Class operator license examination.**

* * * * *

(f) Within 10 days of the administration of a successful examination for the Technician, General, Advanced or Amateur Extra Class operator license, the administering VEs must submit the application to the coordinating VEC. If telegraphy element credit is claimed under § 97.505 (a)(5), the physician's written statement must be attached to the application.

[FR Doc. 90-19141 Filed 8-14-90; 8:45 am]
BILLING CODE 6712-01-M

## ENVIRONMENTAL PROTECTION AGENCY

### 48 CFR Part 1536

[FRL 3821-5]

### Acquisition Regulation Concerning Construction Contracts with Architect-Engineer Firms; Applicability to Subcontractors

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule with request for comment.

**SUMMARY:** This proposed rule clarifies the applicability of the Federal Acquisition Regulation's provisions on construction contracts with architect-engineer firms regarding their applicability to subcontractors. Under the proposed rule, subcontractors performing treatability studies will not be prohibited from award on the construction of a project. Other subcontractors will also not be prohibited from award on the construction of a project unless their work materially affects the course of the design. For prime contractors, and subcontractors whose input materially affects the course of the design work, approval of the Responsible Associate Director is necessary before they may be awarded the construction contract.

**DATES:** Comments must be received on or before September 14, 1990.

**ADDRESSES:** Comments should be addressed to: Environmental Protection Agency, Procurement and Contracts Management Division (PM-214F), 401 M Street SW, Washington, DC 20460, attn: Joseph Nemargut, Jr or telefaxed to (202) 245-3881.

**FOR FURTHER INFORMATION CONTACT:** Joseph Nemargut, Jr. at (202) 382-5019 (FTS 382-5019).

**SUPPLEMENTARY INFORMATION:**

#### A. Background

The Federal Acquisition Regulation (FAR) 36.209 prohibits contracts for the construction of a project to be awarded to the firm that designed the project without special Agency approval. This FAR provision has been interpreted by firms as limiting their ability to assist as subcontractors in the design of a project and to later bid on the construction of the project. This has ben especially troublesome at EPA in attempts to test innovative treatment technologies at hazardous waste sites requiring remedial action.

The proposed EPA Acquisition Regulation (EPAAR) clarifies that FAR 36.209 does not apply to firms participating as subcontractors to perform treatability studies. The proposed EPAAR also clarifies that the FAR provision also does not apply to other subcontractors unless their work materially affects the course of the design work. The proposed change also lists factors which may be considered by the Responsible Associate Director in reviewing requests for approval under FAR 36.209.

#### B. Executive Order 12291

OMB Bulletin No. 85-7, dated December 14, 1984, establishes the requirements for Office of Management and Budget (OM) review of agency procurement regulations. This proposed regulation does not fall within any of the categories cited in this Bulletin requiring OMB review.

#### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this proposed rule does not propose any information collection requirements, which would require the approval of OMB under 44 U.S.C. 3501, *et seq.*

#### D. Regulatory Flexibility Act

The EPA certifies this proposed rule does not exert a significant economic impact on a substantial number of small entities. The proposed changes merely clarify the applicability of the FAR and provide factors for consideration by the Head of the Contracting Activity in granting approvals under FAR 36.209.

#### List of Subjects in 48 CFR Part 1536

Government Procurement, Construction and Architect-Engineer Contracts.

For the reasons set out in the preamble, chapter 15 of title 48 Code of Federal Regulations is proposed to be amended as set forth below:

### PART 1536—[AMENDED]

1. The authority citation for part 1536 continues to read as follows:

**Authority:** Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

2. Section 1536.209 is revised to read as follows:

**1536.209 Construction contracts with architect-engineer firms.**

(a) The provisions of FAR 36.209 do not apply to subcontractors performing treatability studies.

(b) The provisions of FAR 36.209 also do not apply to subcontractors whose input during the design phase does not materially affect the course of the design work.

(c) No contract for the construction of a project, including remedial action for a Superfund project, shall be awarded to subcontractors whose work materially affected the course of the design or to prime contractors that designed the project, including their subsidiaries or affiliates, without approval of the Responsible Associate Director (RAD). In reviewing requests for such approval, the RAD shall consider such factors as the availability of other firms to perform the necessary construction or Superfund remedial action work, the estimated cost to the Government, and the policy of the Agency to promote the use of innovative technology.

Dated: August 1, 1990.

**John C. Chamberlain,**

*Director, Office of Administration.*

[FR Doc. 90-19190 Filed 8-14-90; 8:45 am]

BILLING CODE 6560-50-M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 647

[Docket No. 900805-0205]

RIN 0648-AD17

### Atlantic Coast Red Drum Fishery

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Proposed rule.

**SUMMARY:** NOAA issues this proposed rule to implement the Atlantic Coast Red Drum Fishery Management Plan (FMP). This rule would prohibit the harvest of red drum in the Exclusive Economic Zone (EEZ) off the Atlantic coastal states south of the New Jersey/New York border. The intended effect of this rule is to conserve the red drum resource off the Atlantic coastal states.

**DATES:** Comments must be received on or before September 24, 1990.

**ADDRESSES:** Comments on the proposed rule and requests for copies of the FMP, draft Environmental Impact Statement, and draft Regulatory Impact Review should be sent to Rodney C. Dalton, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, FL 33702.

**FOR FURTHER INFORMATION CONTACT:** Rodney C. Dalton, 813-893-3722.

**SUPPLEMENTARY INFORMATION:** The FMP was prepared by the South Atlantic Fishery Management Council in cooperation with the Mid-Atlantic Fishery Management Council. The

management unit is the population of red drum occurring off the Atlantic coastal states from the east coast of Florida to the New Jersey/New York border. This proposed rule regulates only the EEZ portion of the management unit; however, recommendations for management in applicable state waters are included in the FMP. A notice of the FMP's availability was published in the **Federal Register** on July 23, 1990 (55 FR 29868).

**Background**

Fisheries for red drum in the northern mid-Atlantic have disappeared due possibly to environmental changes, impacts of pollution, change in range, declines in stock size, or some combination of these factors. Recreational and commercial red drum fisheries along the Atlantic coast are prosecuted almost exclusively in state waters. Recreational catches are at their highest recorded levels. Commercial landings have risen in recent years, with seven of the last nine years exceeding the 26-year average. However, the recreational and commercial fisheries harvest a large portion of a year class as it enters the fishery, that is, before the red drum have spawned, and indices of abundance have declined in the last two years for which full data are available.

**Problems in the Fishery**

The FMP identifies the following problems in the fishery. First, intense fishing mortality on juvenile red drum, predominantly in state waters, has resulted in significantly decreased recruitment to the spawning stock. The 1989 stock assessment report indicates that the red drum stock is overfished with a present spawning stock biomass per recruit (SSBR) ratio between 2 and 3 percent. (See below under Optimum Yield for an explanation of SSBR.) In addition, the potential exists for development of a directed fishery in the EEZ which could result in rapid reduction of the spawning stock. High juvenile mortality, alone, or in combination with the development of a directed fishery in the EEZ, could eventually contribute to recruitment failure. Second, lack of Federal regulations, in addition to inconsistency and incompatibility among state regulations, makes enforcement difficult and may result in inadequate protection of the red drum resource. Third, there is a need for additional biological, economic, and sociological data to monitor effectively and assess the status of the resource and management efforts.

**Management Objectives**

Objectives of the FMP, by working cooperatively with the states, are: (1) To provide 30 percent escapement of juvenile red drum to the spawning stock and to control fishing mortality to achieve at least a 30 percent SSBR level, thus maintaining a spawning stock biomass sufficient to prevent recruitment failure; (2) to provide a management system to address incompatibility and inconsistency among state and Federal regulations; and (3) to promote cooperative collection of the biological, economic, and sociological data required to effectively monitor and assess the status of the red drum resource and evaluate management efforts.

**Optimum Yield (OY)**

Under the FMP, OY in the Atlantic coast red drum fishery would be the amount of harvest that can be taken by U.S. fishermen while maintaining the SSBR level at or above 30 percent of the level that would result if there were no fishing mortality. SSBR is an index of the impact of fishing mortality on the lifetime reproductive potential of recruits to the population. With no fishing mortality, the SSBR is 100 percent. Combinations of fishing mortality and the average age at which a year class becomes subject to exploitation in the fishery give rise to lower levels of SSBR, all of which can be expressed as percentages of the maximum. Thus, the estimate of SSBR can be used to evaluate the condition of a stock.

**Overfished and Overfishing**

Under the FMP, overfishing is defined as a fishing mortality rate that will, if continued, reduce the SSBR below 30 percent of the level that would exist at equilibrium without fishing. The Atlantic coast red drum stock will be considered overfished when the SSBR is below 30 percent of the level that would have existed in the absence of fishing.

**Condition of the Fishery**

The most recent stock assessment for Atlantic red drum shows that the best estimate of SSBR for recent years (1986–1988) is 2 to 3 percent, substantially below the 30 percent SSBR level selected by the Council as necessary to prevent overfishing and maintain an adequate spawning stock. Thus, by the Council's definition the stock is overfished.

**Closure of the EEZ**

Because the stock is overfished and overfishing is occurring, this rule proposes to close the EEZ to all harvest of red drum to prevent further reduction of the existing spawning stock that occurs predominantly in the EEZ. The closure would remain in effect until a 30 percent SSBR level is attained and until such time as an allowable catch is specified by an amendment to the FMP.

Currently, there is no directed fishery in the EEZ for red drum. Recreational catches of red drum are reportedly incidental catches during trips that target other species, and amounted in 1987 to approximately 6,000 fish in the Atlantic Ocean south of Virginia and less than 3,000 fish off Virginia and more nothern states. The commercial red drum catch in the Atlantic Ocean EEZ, which is taken as bycatch in other fisheries, totaled 1,149 and 991 pounds (521 and 450 kilograms) in 1987 and 1988, respectively. Because the recreational and commercial catches from the EEZ are minimal, the economic impacts of the closure of the EEZ are expected to be minimal.

**Recommendations to the States**

A cooperative state/Federal management approach is essential to effective and successful management of the red drum resource because of the interdependent relationship of nearshore and offshore stocks—juvenile red drum occur in nearshore and inshore waters, while mature adults generally occur offshore. Overfishing of either group adversely impacts the resource in both areas. Insufficient recruitment of juveniles to the offshore spawning stock results in too few spawners to replenish the population in nearshore waters.

Using the data and conclusions regarding the current mortality and disappearance rates of juvenile red drum from state waters, the FMP recommends that the states within the management unit adopt a level of escapement needed to achieve the selected SSBR level of at least 30 percent. The best available information conveyed to the Council by NMFS stock assessment scientists is that a 30 percent escapement level is needed to achieve a 30 percent SSBR ratio in the adult population. The FMP also requests that states, through adoption of an amended Atlantic States Marine Fisheries Commission Red Drum Fishery Management Plan, achieve 30 percent escapement of juvenile fish to the adult stock by reducing the rate of fishing mortality in state waters through such actions as gear restrictions, closed seasons, quotas, size limits, bag limits, and/or combinations of minimum and maximum size limits so as to reduce the length of time the fish are exposed to the

fishery. The FMP requests that states report annually to the Council the level of escapement of juvenile fish to the adult stock from their waters and what actions they have taken to achieve the needed level of escapement. If all the states followed this request, the Council would receive eight reports each year.

**Classification**

Section 304 (a)(1)(D)(ii) of the Magnuson Act, as amended by Public Law 99-659, requires the Secretary of Commerce (Secretary) to publish regulations proposed by the Council within 15 days of receipt. At this time the Secretary has not determined that the FMP this rule would implement is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making that determination, will take into account the data, views, and comments received during the comment period.

This proposed rule is exempt from the procedures of E.O. 12219 under section 8(a)(2) of that order. It is being reported to the Director, Office of Management and Budget, with an explanation of why it is not possible to follow the procedures of that order.

The Assistant Administrator for Fisheries, NOAA, has initially determined that this proposed rule is not a "major rule" requiring the preparation of a regulatory impact analysis under E.O. 12291. This proposed rule, if adopted, is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Council prepared a draft regulatory impact review (RIR) that concludes that this rule will have minimal adverse economic effects because the recreational and commercial catches of red drum in the EEZ are minimal. A copy of the RIR may be obtained at the address listed above.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities because no entities conduct a directed fishery for red drum in the Atlantic Ocean EEZ. As a result, a regulatory flexibility analysis was not prepared.

The Council prepared a draft environmental impact statement (EIS) that discusses the impact on the environment as a result of this rule. A copy of the EIS may be obtained at the address listed above and comments on it are requested.

The Council determined that this proposed rule will be implemented in a manner that is consistent to the maximum extent practicable with this approved coastal zone management programs of the states in the management unit (New Jersey, Deleware, Maryland, Virginia, North Carolina, South Carolina and Florida). Georgia does not participate in the coastal zone management program. This determination has been submitted for review by the responsible state agencies under section 307 of the coastal Zone Management Act.

This proposed rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

**List of Subjects in 50 CFR Part 647**

Fisheries, Fishing.

Dated: August 9, 1990.

**Samuel W. McKeen,**

*Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.*

For the reasons set forth in the preamble, 50 CFR is proposed to be amended by adding a new part 647 to read as follows:

## PART 647—ATLANTIC COAST RED DRUM

### Subpart A—General Provisions

Sec.
647.1 Purpose and scope.
647.2 Definitions.
647.3 Relation to other laws.
647.4 Permits and fees. [Reserved]
647.5 Reporting requirements. [Reserved]
647.6 Vessel identification. [Reserved]
647.7 Prohibitions.
647.8 Facilitation of enforcement.
647.9 Penalties.

### Subpart B—Management Measures

647.20 Closure.
647.21 Specifically authorized activities.

**Authority:** 16 U.S.C. 1801 *et seq.*

### Subpart A—General Provisions

**§ 647.1 Purpose and scope.**

(a) The purpose of this part is to implement the Atlantic Coast Red Drum Fishery Management Plan prepared by the South Atlantic Fishery Management Council in cooperation with the Mid-Atlantic Fishery Management Council.

(b) This part governs conservation and management of red drum in or from the EEZ off the Atlantic coastal states south of the New Jersey/New York border.

**§ 647.2 Definitions.**

In addition to the definitions in the Magnuson Act, and in § 620.2 of this chapter, the terms used in this part have the following meanings:

*Management unit* means the waters from the boundary between New Jersey and New York, and extension thereof to the outer limit of the EEZ, to the boundary between the Gulf of Mexico and the Atlantic Ocean, as specified at 50 CFR 601.11(c). The extension of the New Jersey/New York boundary to the outer limit of the EEZ is a line extending in a direction of 115° from true north commencing at a point at 40°29.6'N. latitude, 73°54.1'W. longitude, such point being the intersection of the New Jersey/New York boundary with the three nautical mile line denoting the seaward limit of state waters.

*Red drum* means *Sciaenops ocellatus*, also called redfish or channel bass.

**§ 647.3 Relation to other laws.**

(a) The relation of this part to other laws is set forth in § 620.3 of this chapter and paragraph (b) of this section.

(b) These regulations apply within the EEZ portion of the following National Marine Sanctuaries and National Parks unless regulations of statutes establishing such sanctuary or park prohibit their application:

(1) Looe Key National Marine Sanctuary (15 CFR part 937);

(2) Key Largo Coral Reef Marine Sanctuary (15 CFR part 929);

(3) Biscayne National Park (Title 16 U.S.C. 410gg);

(4) Gray's Reef National Marine Sanctuary (15 CFR part 938); and

(5) Monitor Marine Sanctuary (15 CFR part 924).

**§ 647.4 Permits and fees. [Reserved]**

**§ 647.5 Reporting requirements. [Reserved]**

**§ 647.6 Vessel identification. [Reserved]**

**§ 647.7 Prohibitions.**

In addition to the general prohibitions specified in § 620.7 of the chapter, it is unlawful for any person to do any of the following:

(a) Harvest or possess red drum in or from the EEZ, as specified in § 647.20(a).

(b) Fail to release red drum, as specified in § 647.20(b).

(c) Interfere with, obstruct, delay, or prevent by any means a lawful investigation or search in the process of enforcing this part.

**§ 647.8 Facilitation of enforcement.**

See § 620.8 of this chapter.

**§ 647.9 Penalties.**

See § 620.9 of this chapter.

## Subpart B—Management Measures

**§ 647.20 Closure.**

(a) No red drum may be harvested or possessed in or from the EEZ in the management unit.

(b) Red drum caught in the EEZ in the management unit must be released immediately with a minimum of harm.

**§ 647.21 Specifically authorized activities.**

The Secretary may authorize, for the acquisition of information and data, activities otherwise prohibited by these regulations.

[FR Doc. 90-19122 Filed 8-9-90; 4:50 pm]
BILLING CODE 3510-22-M

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## 50 CFR Parts 611, 672 and 675

## Groundfish of the Gulf of Alaska and Groundfish of the Bering Sea and Aleutian Islands Area

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Notice of availability of amendments to fishery management plans and request for comments.

**SUMMARY:** NOAA issues this notice that the North Pacific Fishery Management Council (Council) has submitted Amendment 16 to the Fishery Management Plan for Groundfish of the Bering Sea/Aleutian Islands Area (BSAI FMP) and Amendment 21 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA FMP) for Secretarial review and is requesting comments from the public. Copies of the amendments, the environmental assessment (EA), and the regulatory impact review/initial regulatory flexibility analysis (RIR/IRFA) may be obtained from the address below.

**DATES:** Comments on the plan amendments should be submitted on or before October 9, 1990.

**ADDRESSES:** All comments should be sent to Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802.

Copies of the amendments and the EA and the RIR/IRFA are available upon request from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, Alaska 99510.

**FOR FURTHER INFORMATION CONTACT:** Ron Berg, Alaska Region, National Marine Fisheries Service, (907) 871-7230.

**SUPPLEMENTARY INFORMATION:** The Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) requires that each regional fishery management council submit any fishery management plan or plan amendment it prepares to the Secretary of Commerce (Secretary) for review and approval or disapproval. The Magnuson Act also requires that the Secretary, upon reviewing the plan or amendment, must immediately publish a notice that the plan or amendment is available for public review and comment. The Secretary will consider the public comments received during the comment period in determining whether to approve Amendments 16 and 21. Amendment 16 will make the following changes to the BSAI FMP: (1) Extend and modify crab and halibut bycatch management measures, including the adoption of an incentive program to impose sanctions on vessels with excessively high bycatch rates; (2) amend the definition of overfishing; (3) establish a procedure to specify interim harvest levels until superseded by publication of final annual groundfish specifications in the **Federal Register**; and (4) permit legal fishing gear to be defined by regulatory amendment.

Amendment 21 will make the following changes to the GOA FMP: (1) Amend the definition of overfishing; (2) establish a procedure to specify interim harvest levels until superseded by publication of final groundfish specifications in the **Federal Register**; (3) provide limited authority to the State of Alaska to manage the demersal shelf rockfish fishery with Council oversight; (4) permit legal fishing gear to be defined by regulatory amendment; and (5) clarify and expand the existing framework for managing halibut bycatch, including the adoption of an incentive program to impose sanctions on vessels with excessively high bycatch rates.

Regulations proposed by the Council and based on these amendments are scheduled to be published within 15 days.

### List of Subjects

*50 CFR Part 611*

Fisheries, Foreign fishing.

*50 CFR Parts 672 and 675*

Fisheries, Reporting and recordkeeping requirements.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: August 9, 1990.

**Richard H. Schaefer,**

*Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 90-19123 Filed 8-9-90; 4:50 pm]
BILLING CODE 3510-22-M

# Notices

Federal Register
Vol. 55, No. 158
Wednesday, August 15, 1990

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.

## DEPARTMENT OF AGRICULTURE

### Soil Conservation Service

### Small Dams Alternative to Structure #11, Second Broad River Watershed, NC

**AGENCY:** Soil Conservation Service, USDA.

**ACTION:** Notice of availability of a record of decision.

**SUMMARY:** Bobbye J. Jones, responsible Federal official for projects administered under the provisions of Public Law 83-566, 16 U.S.C. 1001-1008, in the State of North Carolina, is hereby providing notification that a record of decision to proceed with the installation of the small dams alternative to Structure #11, Second Broad River Watershed project is available. Single copies of this record of decision may be obtained from Bobbye J. Jones at the address shown below.

**FOR FURTHER INFORMATION CONTACT:** Bobbye J. Jones, State Conservationist, Soil Conservation Service, 4405 Bland Road, Raleigh, North Carolina 27609 Telephone 919/790-2898.

Dated: August 1, 1990.

**Bobbye J. Jones,**

*State Conservationist.*

[FR Doc. 90-19107 Filed 8-14-90; 8:45 am]

BILLING CODE 3410-16-M

## COMMISSION ON CIVIL RIGHTS

### Agenda and Notice of Public Meeting; Minnesota Advisory Committee

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 Minnesota Advisory Committee to the Commission will convene at 8:30 a.m. and adjourn at 5 p.m., on September 6, 1990, at the Kelly Inn, 161 St. Anthony Avenue, St. Paul, Minnesota. The purpose of the factfinding meeting is to receive information on equal educational opportunities in Minnesota with a focus on alternative education for American Indians.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Mary Ryland or Ascension Hernandez, Civil Rights Analyst of the Central Regional Division (816) 426-5253, (TDD 816 426-5009). Hearing imparied persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 10, 1990.

**Wilfredo J. Gonzalez,**

*Staff Director.*

[FR Doc. 90-19199 Filed 8-14-90; 8:45 am]

BILLING CODE 6333-01-M

## DEPARTMENT OF COMMERCE

### International Trade Administration

[C-301-601]

### Miniature Carnations From Colombia; Preliminary Results of Countervailing Duty Administrative Review

**AGENCY:** International Trade Administration/Import Administration, Department of Commerce.

**ACTION:** Notice of preliminary results of countervailing duty administrative review.

**SUMMARY:** The Department of Commerce has conducted an administrative review of the agreement suspending the countervailing duty investigation on miniature carnations from Colombia. The review covers the period January 1, 1988 through December 31, 1988 and ten programs. We preliminarily determine that Colombian miniature carnation exporters have complied with the terms of the suspension agreement. We invite interested parties to comment on these results.

**EFFECTIVE DATE:** August 15, 1990.

**FOR FURTHER INFORMATION CONTACT:** Robert Bolling or Linda Pasden, Office of Agreements Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-3793.

**SUPPLEMENTARY INFORMATION:**

#### Background

On January 11, 1989, the Department of Commerce ("The Department") published a notice of "Opportunity to Request an Administrative Review" (54 FR 7 ) of the agreement suspending the countervailing duty investigation on miniature carnations from Colombia (52 FR 8; January 13, 1987). On January 30, 1989, the petitioner, the Floral Trade Council, requested an administrative review of the suspension agreement. We initiated the review, covering January 1, 1988 through December 31, 1988, on March 8, 1989 (54 FR 9868). The Department has now conducted this review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act"). The final results of the last administrative review in this case were published in the **Federal Register** on February 13, 1990 (55 FR 5042).

#### Scope of Review

Imports covered by these reviews are shipments of miniature carnations from Colombia. During the period of review, such merchandise was classifiable under item 192.1700 of the *Tariff Schedules of the United States Annotated.* This merchandise is currently classifiable under HTS item 0603.10.30. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period January 1, 1988 through December 31, 1988 and ten programs. The producers and exporters listed in Appendix I, accounting for more than eighty-five (85) percent of the total exports of miniature carnations from Colombia to the United States, are signatories to the suspension agreement.

#### Analysis of Programs

*(1) Tax Rebate Certificate*

On April 1, 1984, the Colombian government pursuant to Law 48/83, established the Tax Rebate Certificate ("CERT"), which replaced the Tax Reimbursement Certificate Program ("CAT"). According to the Colombian government, the CERT rebated all or

part of the indirect taxes paid by exporters. The CERT is freely negotiable on the stock market and can be used for paying a variety of taxes.

Before the suspension agreement, the Colombian government provided payment to exporters of miniature carnations in the form of CERT. Rebates were calculated as a percentage of the value of the exported product attributable to the domestic value-added content.

As a term of the suspension agreement, the Colombian government terminated CERT payments on exports of miniature carnations to the United States. The response to the Department's questionnaire stated that none of the signatory producers and exporters received benefits under this program for shipments of miniature carnations to the United States during the review period. Therefore, we preliminarily determine that this program does not provide any countervailable benefits to the miniature carnations exporters that the signatories have complied with the terms of the agreement.

*(2) Working Capital Resolutions*

Resolution 59

Resolution 59/72 provided working capital financing at preferential rates to firms that manufacture, store or sell products destined for export. This program was updated by Resolution 22/84. All industries were eligible, except producers of coffee, petroleum, and petroleum by-products. Resolution 22/84 loans are administered by the Export Promotion Fund ("PROEXPO"), an agency of the Colombian government. The loans are for 180 days and the interest is paid quarterly, in advance. In December 1986, the maximum interest rate was 22.0 percent.

Since we found this program to be countervailable in the agreement suspending the countervailing duty investigation on certain textile mill products and apparel from Colombia (50 FR 9863; March 12, 1985), we included it in the January 13, 1987 suspension agreement. At that time, we established a short-term benchmark interest rate of 22.5 percent, which was the average rate of the Fondo Financiero Agropecuario ("FFA") and the Agrarian Fund as of March 31, 1986. The suspension agreement required that the miniature carnation exporters not apply for, or receive, any short-term export financing provided by PROEXPO other than that offered at or above the short-term benchmark interest rate of 22.5 percent.

Resolution 3/87, which is an update to Resolution 22/84, was passed by PROEXPO on February 26, 1987. Resolution 3/87 changed the short-term rate to 22.5 percent.

The questionnaire response stated that no exporter of the subject merchandise applied for, or received, any short-term working capital financing under this resolution for products destined for export. Therefore, we preliminarily determine that the signatories have complied with the terms of the agreement.

Resolution 11

Resolution 11/87 provides pre-shipment working capital loans. Resolution 11/87 established interest rates at either 22.5 percent per year prepaid quarterly or the certificate of deposit rate (DTF) paid at the end of the quarter, whichever is higher. The certificates of deposit rate is a market-determined rate. On October 13, 1988, PROEXPO passed Resolution 009/88, which updated Resolution 11/87 and set the benchmark interest rate at 22.5 percent or the DTF rate, whichever is higher, payable at the end of each quarter.

During the Department's last final administrative review (55 FR 5042; February 13, 1990), the Department determined the appropriate market rate indicator to be the DTF interest rate for pre-shipment and post-shipment financing. The Department determined that the Colombian government has moved away from the fixed-rate PROEXPO financing to the DTF rate, which more accurately reflects interest rate fluctuations in the market.

The questionnaire response stated that exporters received pre-shipment working capital loans under Resolution 11/87. During the review period, the average DTF rate of 28.4 percent was higher than the benchmark rate of 22.5 percent. The questionnaire response stated that no exporter of the subject merchandise received any loans at a rate below the DTF rate. Therefore, we preliminarly determine that the signatories have complied with the terms of the agreement.

Resolution 14

Resolution 14/87 provides working capital financing to export companies for various products, including miniature carnations. Resolution 14/87 established financing to miniature carnation exporters by setting the base rate at 25.0 percent prepaid quarterly or the DTF rate, whichever is higher. The actual rate charged varies depending on the size of the company. On October 13, 1988, PROEXPO passed Resolution 009/88, which updated Resolution 14/87 and set the benchmark interest rate at 25.0 percent or applicable interest rate according to company size (as defined under Article 8 of Resolution 14), whichever is higher, payable at the end of each quarter. The questionnaire response stated that no exporter of the subject merchandise applied for, or received, any working capital financing under this resolution. Therefore, we preliminarily determine that the signatories have complied with the terms of the agreement.

*(3) Fixed Capital Resolution*

Resolution 40

Resolution 40/78 was approved under Decree 2366 of 1974. Decree 2366/74 provides exporters with fixed asset financing. On February 26, 1987, PROEXPO passed Resolution 4/87, which updated Resolution 40/78 and changed the interest rate to 21.0 percent. On December 21, 1987, PROEXPO passed Resolution 13/87 which set the benchmark interest rate at 25.0 percent per year prepaid quarterly or the DTF rate, whichever is higher. The actual rate charged varies depending on the size of the company. On October 13, 1988, PROEXPO passed Resolution 009/88, which updated Resolution 13/87 and set the benchmark interest rate at 25.0 percent or applicable interest rate according to company size (as defined under Article 7 of Resolution 13), whichever is higher, payable at the end of each quarter.

During the Department's last final administrative review (55 FR 5042; February 13, 1990), the Department determined the appropriate market rate indicator to be the DTF interest rate for pre-shipment and post-shipment financing. The Department determined that the Colombian government has moved away from the fixed-rate PROEXPO financing, to the DTF rate which more accurately reflects interest rate fluctuations in the market.

The questionnaire response stated that exporters received fixed asset financing under this resolution. During the review period, the average DTF rate of 28.4 percent was higher than the benchmark rate of 25.0 percent. The questionnaire response stated that no exporter of the subject merchandise received any loans at a rate below the DTF rate. Therefore, we preliminarily determine that the signatories have complied with the terms of the agreement.

*(4) Duty and Tax Exemptions under Plan Vallejo*

Plan Vallejo exempts exporters from import duties on imported raw

materials, intermediate products, and capital goods used to produce exported products. The exemption of customs duties and indirect taxes on imported inputs physically incorporated into exports is not countervailable. Exemptions on non-physically incorporated inputs, such as imported capital goods, are countervailable when the exemption is conditional upon exportation. Additionally, on July 22, 1988, an operational modification was established under Resolution 2601/88. The new resolution provides that a bank guarantee can now be provided at the time the imported goods clear customs.

On December 15, 1986, we revised the suspension agreement to include renunciation of duty and tax exemptions for imported capital equipment under Plan Vallejo. As a term of the suspension agreement, the Colombian government agreed to no longer provide Plan Vallejo contracts to imported capital goods that are used in the production of miniature carnations exported to the United States. The questionnaire response stated that none of the signatory producers and exporters received any Plan Vallejo benefits for shipments of miniature carnations to the United States during the review period. Therefore, we preliminarily determine that the signatories have complied with the terms of the agreement.

*(5) Resolution 10*

The flower exporters, on a voluntary basis, allowed the Banco de la Republica to withhold a certain percentage of their CAT/CERT rebates earned on non-U.S. exports. As a result of the suspension agreement on roses and other cut flowers, the Banco de la Republica also held all CAT/CERT rebates that would have been paid on exports of the flowers subject to the suspension agreement from January 1983 until November 1985, when the rebate rate on those exports was reduced to zero. PROEXPO issued Resolution 10, effective July 23, 1986, to use these funds for the diversification and development of flowers and vegetables for external markets; transport and control procedures to prevent drug and narcotic traffic in exports of flowers and vegetables; development of new markets; and payment of local and technical services required in Colombia and abroad. The resolution requires that any funds expended under this program be disbursed in a manner consistent with the suspension agreement.

During the period of review, the questionnaire response stated that two projects were initiated under this program to research two fungal diseases afflicting carnations. The research will be conducted by the Universidad Nacional and the Universidad de los Andes and all findings will be made public. The questionnaire response stated that no exporter of miniature carnations received any expenditures from the fund. Therefore, we preliminarily determine that exports of miniature carnations to the United States did not receive a countervailable benefit from this program.

*(6) Other Programs*

The questionnaire response indicated that exporters of miniature carnations did not use the following programs during the period of review:

(a) Fund for Agricultural Financing;
(b) Fund for Industrial Financing;
(c) Benefits to Free Industrial Zones;
(d) Preferential Export Insurance; and
(e) Countertrade.

**Preliminary Results of Review**

As a result of our review, we preliminarily determine that the signatories complied with the terms of the suspension agreement during the period January 1, 1988 through December 31, 1988.

The agreement can remain in force only as long as shipments from the signatories account for at least 85 percent of imports of the subject merchandise into the United States. The questionnaire response indicated that the signatories accounted for over 90 percent of imports of this merchandise into the United States during the period of review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 44 days after the date of publication or the first workday thereafter. Rebuttal briefs and rebuttals to written comments, limited to issues in those comments, must be filed not later than 37 days after the date of publication. Any request for an administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of its analysis of issues raised in any such written comments or at a hearing.

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 19 CFR 355.22.

Dated: August 2, 1990.

**Eric I. Garfinkel,**

*Assistant Secretary for Import Administration.*

Agro Koralia Ltda.
Agricola La Corsaria
Agricola La Maria Ltda.
Agricola Los Arboles
Agricola Guacatai
Agrodex Ltda.
Agroindustria Del Rio Frio
Agrosuba
Agropecuaria Mercantil (Agronec)
Benavides Melo Oscar (F. La Loma)
Claveles Colombianos Ltda.
Claveles De Los Alpes
Deflor Ltda.
Fantasia Flowers Ltda.
Floramerica
Flora Bellisina
Flores Aguila Ltda.
Flores Alfaya Ltda.
Flores Altamira
Flores Colon Ltda.
Flores De Funza S.A.
Flores De Los Amigos Ltda.
Flores Del Bosque
Flores Del Campo Ltda.
Flores Del Pinar
Flores Del Potrero Ltda.
Flores El Danubio Ltda.
Flores El Zorro
Flores Generales Ltda.
Flores Gicro
Flores La Union
Flores Sausalito
Flores Tiba Ltda.
Flores Tibati Ltda.
Floresa
Florex S.A.
Horticultura Del La Sabana
Innovacion Andina
Inverflores
Inversiones Oro Verde
Inversiones Santa Rita Ltda.
Iturrama
Jardines Matalia
Linda Colombiana
Las Amalias S.A.
M.G. Consultores
Pompones Ltda.
Productos Alinenticios
Sandra Patricia Rey
Santa Helena S.A.
Santana Flowers Ltda.
Universal De Flores Ltda.
Valencia Botero Jaime (Agrobarbo)

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BILLING CODE 3510-DS-M

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[C-301-003]

## Roses and Other Cut Flowers From Colombia; Preliminary Results of Countervailing Duty Administrative Review

**AGENCY:** International Trade Administration/Import Administration, Department of Commerce.

**ACTION:** Notice of peliminary results of countervailing duty administrative review.

**SUMMARY:** The Department of Commerce has conducted an administrative review of the agreement suspending the countervailing duty

investigation on roses and other cut flowers from Colombia. The review covers the period January 1, 1988 through December 31, 1988 and eleven programs. We preliminarily determine that Colombian cut flower exporters have complied with the terms of the suspension agreement. We invite interested parties to comment on these results.

**EFFECTIVE DATES:** August 15, 1990.

**FOR FURTHER INFORMATION CONTACT:** Robert Bolling or Linda Pasden, Office of Agreements Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-3793.

**SUPPLEMENTARY INFORMATION:**

## Background

On February 13, 1990, the Department of Commerce ("the Department") published in the **Federal Register** (55 FR 5042) the final results of its last administrative review of the agreement suspending the countervailing duty investigation on roses and other cut flowers from Colombia (48 FR 2158; January 18, 1983). On January 11, 1989, the Department published a notice of "Opportunity to Request an Administrative Review" (54 FR 7) for this period. On January 30, 1989, the petitioner, the Floral Trade Council, requested an administrative review of the suspension agreement. We initiated the review, covering January 1, 1988 through December 31, 1988, on March 8, 1989 (54 FR 9868). The Department has now conducted this review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

## Scope of Review

Imports covered by this review are shipments of roses and other cut flowers from Colombia. During the period of review, such merchandise was classifiable under items 192.1810 through 192.2192 of the *Tariff Schedules of the United States Annotated.* This merchandise is currently classifiable under HTS items 0603.10.60, 0603.10.70, 0603.10.80, and 0603.90.00. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period January 1, 1988 through December 31, 1988 and eleven programs. The producers and exporters listed in Appendix I, accounting for more than eighty-five (85) percent of the total exports of roses and other cut flowers (excluding minature carnations) from Colombia to the United States, are signatories to the suspension agreement.

## Analysis of Programs

### *(1) Tax Rebate Certificate*

On April 1, 1984, the Colombian government pursuant to Law 48/83, established the Tax Rebate Certificate ("CERT"), which replaced the Tax Reimbursement Certificate Program ("CAT"). According to the Colombian government, the CERT rebated all or part of the indirect taxes paid by exporters. The CERT is freely negotiable on the stock market and can be used for paying a variety of taxes.

Before the suspension agreement, the Colombian government provided payment to exporters of roses and other cut flowers in the form of a CERT. Rebates were calculated as a percentage of the value of the exported product attributable to the domestic value-added content.

As a term of the suspension agreement, the Colombian government terminated CERT payments on exports of roses and other cut flowers to the United States. The response to the Department's questionnaire stated that none of the signatory producers and exporters received benefits under this program for shipments of roses and other cut flowers to the United States during the review period. Therefore, we preliminarily determine that this program does not provide any countervailable benefits to the roses and cut flower exporters and that the signatories have complied with the terms of the agreement.

### *(2) Air Freight Rates*

The Civil Aeronautics Board (DAAC), an agency of the Colombian government established in Resolution 5833 air freight rates for a variety of products, including cut flowers. Resolution 6333 of September 25, 1981, which updates Resolution 5833, set a minimum air freight rate of U.S. $0.45 per kilo and a maximum rate of U.S. $0.62 per kilo for flowers exported to the United States. The rates established under Resolution 6333 were in effect during the period of review.

Section D(3) of the suspension agreement (48 FR 2158), states that the Department may consider rescinding the agreeement if the air freight rates paid by cut flower exporters approach government mandated maximum rates set by the DAAC. If we found such rates, we might consider them indicative of government control rather than the result of competitive forces. We found that rates ranged from U.S. $0.57 per kilo to U.S. $0.62 per kilo, including a U.S. $0.05 charge for handling and cooling services. Handling and cooling charges are not regulated by DAAC. Also, shipments from Medellin carry an additional U.S. $0.02 air-freight rate. The questionnaire response indicated that the rates negotiated between cut flower exporters and air freight companies were competitively priced. Therefore, we preliminarily determine that this program does not provide any countervailable benefits to the roses and other cut flower exporters and that the signatories have complied with the terms of the agreement.

### *(3) Working Capital Resolutions*

#### Resolution 59

Resolution 59/72 provided working capital financing at preferential rates to firms that manufacture, store or sell products destined for export. This program was updated by Resolution 22/84. All industries were eligible, except producers of coffee, petroleum, and petroleum by-products. Resolution 22/84 loans are administered by the Export Promotion Fund ("PROEXPO"), an agency of the Colombian government. The loans are for 180 days and the interest is paid quarterly, in advance. In December 1986, the maximum interest rate was 22.0 percent.

Since we found this program to be countervailable in the agreement suspending the countervailing duty investigation on certain textile mill products and apparel from Colombia (50 FR 9863; March 12, 1985), we included it in the December 15, 1986 revised suspension agreement. At that time, we established a short-term benchmark interest rate of 22.5 percent, which was the average rate of the Fondo Financiero Agropecuario (FFA) and the Agrarian Fund as of March 31, 1986. The revised suspension agreement required that the cut flower exporters not apply for, or receive, any short-term export financing provided by PROEXPO other than that offered at or above the short-term benchmark interest rate of 22.5 percent.

Resolution 3/87 which is an update to Resolution 22/84, was passed by PROEXPO on February 26, 1987. Resolution 3/87 changed the short-term interest rate to 22.5 percent. The questionnaire response stated that no exporter of the subject merchandise applied for, or received, any short-term working capital financing under this products destined for export. Therefore, we preliminarily determine that the signatories have complied with the terms of the agreement.

#### Resolution 11

Resolution 11/87 provides pre-shipment working capital loans. Resolution 11/87 established interest

rates at either 22.5 percent per year prepaid quarterly or the certificate of deposit rate (DTF) paid at the end of the quarter, whichever is higher. The certificates of deposit rate is a market-determined rate. On October 13, 1988, PROEXPO passed Resolution 009/88, which updated Resolution 11/87 and set the benchmark interest rate at 22.5 percent or the DTF rate, whichever is higher, payable at the end of each quarter.

During the Department's last final administrative review (55 FR 5042; February 13, 1990), the Department determined the appropriate market rate indicator to be the DTF interest rate for pre-shipment and post-shipmate financing. The Department determined that the Colombian government has moved away from the fixed-rate PROEXPO financing to the DTF rate, which more accurately reflects interest rate fluctuations in the market.

The questionnaire response stated that exporters received pre-shipment working capital loans under Resolution 11/87. During the review periods, the average DTF rate of 28.4 percent was higher than the benchmark rate of 22.5 percent. The questionnaire response stated that no exporters of the subject merchandise received any loans at a rate below the DTF rate. Therefore, we preliminarily determine that the signatories have complied with the terms of the agreement.

Resolution 14

Resolution 14/87 provides working capital financing to export companies for various products, including cut flowers. Resolution 14/87 established financing to flower exporters by setting the base rate at 25.0 percent prepaid quarterly or the DTF rate, whichever, is higher. The actual rate charged varies depending on the size of the company. On October 13, 1988, PROEXPO passed Resolution 009/88, which updated Resolution 14/87 and set the benchmark interest rate at 25.0 percent or the applicable interest rate according to company size (as defined under Article 8 of Resolution 14), whichever is higher, payable at the end of each quarter. The questionnaire response stated that no exporter of the subject merchandise applied for, or received, any working capital financing under this resolution. Therefore, we preliminarily determine that the signatories have complied with the terms of the agreement.

*(4) Fixed Capital Resolution*

Resolution 40

Resolution 40/78 was approved under Decree 2366 of 1974. Decree 2366/74 provides exporters with fixed asset financing. On February 26, 1987, PROEXPO passed Resolution 4/87, which updated Resolution 40/78 and changed the interest rate to 21.0 percent. On December 21, 1987, PROEXPO passed Resolution 13/87 which set the benchmark interest rate at 25.0 percent per year prepaid quarterly or the DTF rate, whichever is higher. The actual rate charged varies depending on the size of the company. On October 13, 1988, PROEXPO passed Resolution 009/88, which updated Resolution 13/87 and set the benchmark interest rate at 25.0 percent or the applicable interest rate according to company size (as defined under Article 7 of Resolution 13), whichever is higher, payable at the end of each quarter.

During the Department's last final administrative review (55 FR 5042; February 13, 1990), the Department determined the appropriate market rate indicator to be the DTF interest rate for pre-shipment and post-shipment financing. The Department determined that the Colombian government has moved away from the fixed-rate PROEXPO financing, to the DTF rate which more accurately reflects interest rate fluctuations in the market.

The questionnaire response stated that exporters received fixed asset financing under this resolution. During the review period, the average DTF rate of 28.4 percent was higher than the benchmark rate of 25.0 percent. The questionnaire response stated that no exporter of the subject merchandise received any loans at a rate below the DTF rate. Therefore, we preliminarily determine that the signatories have complied with the terms of the agreement.

*(5) Duty and Tax Exemptions under Plan Vallejo*

Plan Vallejo exempts exporters from import duties on imported raw materials, intermediate products, and capital goods used to produce exported products. The exemption of customs duties and indirect taxes on imported inputs physically incorporated into exports is not countervailable. Exemptions on non-physically incorporated inputs, such as imported capital goods, are contervailable when the exemption is conditional upon exportation. Additionally, on July 22, 1988, an operational modification was established under Resolution 2601/88. The new resolution provides that a bank guarantee can now be provided at the time the imported goods clear customs.

On December 15, 1986, we revised the suspension agreement to include renunciation of duty and tax exemptions for imported capital equipment under Plan Vallejuo. As a term of the revised suspension agreement, the Colombian government agreed to no longer provide Plan Vallejo contracts to imported capital goods that are used in the production of roses and other cut flowers exported to the United States. The questionnaire response stated that none of the signatory producers and exporters received any Plan Vallejo benefits for shipments of roses and other cut flowers to the United States during the review period. Therefore, we preliminarily determine that the signatories have complied with the terms of the agreement.

*(6) Resolution 10*

The flower exporters, on a voluntary basis, allowed the Banco de la Republica to withhold a certain percentage of their CAT/CERT rebates earned on non-U.S. exports. The Banco de la Republica also held all CAT/CERT rebates that would have been paid on exports of roses and other cut flowers to the United States from January 1983, the effective date of the suspension agreement, until November 1985, when the established rebate rate for roses and cut flowers subject to suspension agreement was reduced to zero. PROEXPO issued Resolution 10, effective July 23, 1986, to use these funds for the diversification and development of flowers and vegetables for external markets; transport and control procedures to prevent drug and narcotic traffic in exports of flowers and vegetables; development of new markets; and payment of local and technical services required in Colombia and abroad. The resolution requires that any funds expended under this program be disbursed in a manner consistent with the suspension agreement.

During the period of review, the questionnaire response stated that two projects were initiated under this program to research two fungal diseases afflicting carnations. The research will be conducted by the Universidad Nacional and the Universidad de los Andes and all findings will be made public. The questionnaire response stated that no exporter of cut flowers received any expenditures from the fund. Therefore, we preliminarily determine that exports of roses and other cut flowers to the United States did not receive a countervailable benefit from this program.

*(7) Other Programs*

The questionnaire response indicated that exporters of cut flowers did not use

the following programs during the period of review:

(a) Fund for Agricultural Financing;
(b) Fund for Industrial Financing;
(c) Benefits to Free Industrial zones;
(d) Preferential Export Insurance; and,
(e) Countertrade.

**Preliminary Results of Review**

As a result of our review, we preliminarily determine that the signatories complied with the terms of the suspension agreement during the period January 1, 1988 through December 31, 1988.

The agreement can remain in force only as long as shipments from the signatories account for at least 85 percent of imports of the subject merchandise into the United States. The questionnaire response indicated that the signatories accounted for over 90 percent of imports of this merchandise into the United States during the period of review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 44 days after the date of publication or the first workday thereafter. Rebuttal briefs and rebuttals to written comments, limited to issues in those comments, must be filed not later than 37 days after the date of publication. Any request for an administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of its analysis of issues raised in any such written comments or at a hearing.

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 19 CFR 355.22.

Dated: April 2, 1990.

**Eric I. Garfinkel,**

*Assistant Secretary for Import Administration.*

**Appendix I**

*Company*

Abaco Tulipanes de Colombia S.A.
Achalay Ltda.
Agricola Benilda Ltda.
Agricola Bojaca Ltda.
Agricola Bonanza Ltda.
Agricola De La Fontanta Y Cia Ltda.
Agricola De Los Alisos Ltda.
Agricola De Occidente
Agricola Del Monte Ltda.
Agricola El Cactus S.A.
Agricola El Jardin
Agricola El Mortino Ltda.
Agricola El Redil
Agricola Floral Ltda.
Agricola Guaictany
Agricola Guali Ltda.
Agricola La Corsaria Ltda.
Agricola La Floresta Ltda.
Agricola La Maria Ltda.
Agricola Las Cuadras Ltda.
Agricola Los Arboles
Agricola Los Gaques Ltda.
Agricola Malqui Ltda.
Agricola Papagayo Ltda.
Agro Koralia Ltda.
Agrodex Ltda.
Agroinustias De Narion Ltda.
Agromec Ltda Agromonte Ltda.
Agroindustrias De Narino Ltda.
Agromec Ltda.
Agromonte Ltda.
Agronindustrias De Narino Ltda.
Agromec Ltda.
Agromonte Ltda.
Agroindustria Del Rio Frio Ltda.
Agropecuria Cuernavaca
Agrorosas S.A.
Agrosuba Ancas Ltda.
Anna Flowers Ltda.
Arboles Azules Ltda.
Astro Ltda.
Astroflores Ltda.
Azulejos Flowers
Becerra Castellanos Y Cia
Bogota Flowers Ltda.
Canoas Ltda.
Cardinal Flowers Ltda.
Ciatex Ltda.
Cienfuegoa Ltda.
Claveles Comobianos Ltda.
Claveles De Lossipes Ltda.
Claveles De Los Alpes Ltda.
Colings Ltda.
Conbiflor
Conflores Ltda.
Crop S.A.
Cult. Del Caribe Ltda. "Florcaribe"
Cultivos Buenavista Ltda. Cultivos El Lago
Cultivos Medellin Ltda.
Cultivos Miramonte S.A.
Dalflor Ltda.
De La Pava Guevara E Hinos Ltda.
Del Tropico Ltda.
Dianticola Colombiana Ltda.
Edir Ltda.
El Antelio S.A.
El Rancho Ltda.
El Timbul Ltda.
Exportaciones Bochica S.A.
Floming Flowers Ltda.
Flora Bellisma Ltda.
Flora Intercontinental Ltda.
Floral Ltda.
Floralex Ltda.
Floramerica Florandia Herrera Camacho Y Cia
Floreales Ltda.
Florenal Ltda.
Flores Acuarela S.A
Flores Aguaclara Ltda.
Flores Aguila Ltda.
Flores Alborada S.A.
Flores Alcala Ltda.
Flores Alfaya Ltda.
Flores Andinas Ltda.
Flores Aurora Ltda.
Flores Bachue Ltda.
Flores Balu Ltda.
Flores Cajibio
Flores Catalina Ltda.
Flores Cigarral Ltda.
Flores Chibchala Ltda.
Flores Colombianas Ltda.
Flores Colon Ltda.
Flores Condor De Colombi Ltda.
Flores Corinto
Flores De Cota Ltda.
Flores De Funza S.A.
Flores De Guasca S.A.
Flores De Hacaritama
Flores De Hunza Ltda.
Flores De La Pradera Ltda.
Flores De La Sabana
Flores De La Vega Ltda. "Vegaflor"
Flores De Las Mercedes Ltda
Flores De Los Amigos Ltda.
Flores De Los Andes
Flores De Los Arrayanes Ltda.
Flores De Nemocon Ltda.
Flores De Oriente Ltda.
Flores De Pueblo Viejo
Flores De Serrizuela S.A.
Flores De Suba Ltda.
Flores De Suesca
Flores De Tenjo
Flores De Tenjo (Ciba Geigy)
Flores De Ubate Ltda.
Flores Del Bosque
Flores Del Campo Ltda.
Flores Del Cauca
Flores Del Cielo Ltda.
Flores Del Cortino
Flores Del Gallinero Ltda.
Flores Del Lago Ltda.
Flores Del Monte Ltda.
Flores Del Pinar Ltda.
Flores Del Prado Ltda.
Flores Del Pretrero Ltda.
Flores Del Rio
Flores Del Tambo Ltda.
Flores Del Vino Ltda.
Flores Delray
Flores Depina Ltda.
Flores Dos Hectareas Ltda.
Flores Ebenezer
Flores El Chircal Ltda.
Flores El Danubio Ltda.
Flores El Lobo Ltda.
Flores El Puente Ltda.
Flores El Rosal Ltda.
Flores El Talisman
Flores El Trention Ltda.
Flores Esmeralda S.A.
Flores Estrella Ltda.
Flores Galia Ltda.
Flores Generales Ltda.
Flores Gigro
Flores Guaicata Ltda.
Flores Hana Ichi De Col.
Flores Horizonte (Flores Monte Verde)
Flores Internacionales Ltda.
Flores Juananbu Ltda.
Flores Juncalito Ltda.
Flores La Conchita
Flores La Conejera Ltda.
Flores La Estrancia Ltda.
Flores La Fragancia S.A.
Flores La Macarena
Flores La Maria Ltda.
Flores La Parcelita
Flores La Pampa Ltda.
Flores La Quinta Ltda.
Flores La Union S.A.
Flores La Valvanera Ltda.
Flores Lana Grande Ltda.
Flores Las Palmas Ltda.

Flores Las Caicas-Davila Arbelaez Cia S.S.
Flores Los Pantamos
Flores Magara (Carlos Cabcza)
Flores Marandua Ltda.
Flores Maria Elisa Ltda.
Flores Monserrate Ltda.
Flores Moungar Ltda.
Flores Palimana
Flores Petaluma Ltda.
Flores Petaluma Ltda.
Flores Ramo Ltda.
Flores Ruizort
Flores San Carlos
Flores San Ernesto Ltda.
Flores Sagaro Ltda.
Flores Santa Fe Ltda.
Flores Santa Roa Ltda.
Flores Sausalito
Flores Selectas
Flores Sindamonoi Ved Ltda.
Flores Tairona Ltda.
Flores Tecnicas
Flores Tejas Verdes Ltda.
Flores Tenerife Ltda.
Flores Tiba Ltda.
Flores Tibati Ltda.
Flores Timana Ltda.
Flores Tocarinda Ltda.
Flores Tokay H.I.S.A.
Flores Tomine Ltda.
Flores Tropicales Ltda.
Floresa
Florex S.A.
Florexpo Ltda.
Floricola La Gaitana
Floricultores Asociados Lorena "Lorena Ltda."
Florinda Ltda.
Frutales Cicilia
Frutas Rico Ltda.
Gabriel Ronderos Duram
Garden and Flowers Ltda.
Fonzalez Quintero Silvano
Croex Ltda.
Gyorfi Istvan
Hacienda Curubital
Hacienda La Embarrada Ltda.
Happy Candy Ltda.
Happy Flowers
Hollan Flowers Ltda.
Horticultura De La Sabana
Hurtado Nejia
Industrial Agricola Ltda.
Ingro Ltda.
Inv. Cubivan Ltda.
Inv. Mejia Landucci Y Cia S.C.
Inv. Rodaz Ltda.
Internacional De Flores Ltda. "Interflores"
Invernavas
Inverpalmas Ltda.
Inverflores Ltda.
Inversiones Agricolas M.T. Ltda.
Inversiones Almer Ltda.
Inversiones Cota Ltda.
Inversiones El Bambu Ltda.
Inversiones Floracol
Inversiones Istra Ltda.
Inversiones Kluar Ltda.
Inversiones Lasser
Inversiones Marcote Ltda.
Inversiones Maria Alejandra
Inversiones Miraflores Ltda.
Inversiones Nativa Ltda.
Inversiones Patxi Ltda.
Inversiones Penas Blancas Ltda.
Inversiones Santa Rosa S.R.W. Ltda.
Inversiones Targa S.A.
Inversiones La Serena
Inversiones Santa Rita Ltda.
Iturrama S.A.
Jaramillo and Daza Ltda.
Jardines Bacata
Jardines Chuntame
Jardines De Chia Ltda.
Jardines De Colombia Ltda.
Jardines De Los Andes
Jardines Del Muna
Jardines Fredonia Ltda.
Jardines La Aurora S.S.
Jardines La Florida Ltda.
Jardines Natalia Ltda.
Jose Visente Celedonio Putman
Kingdom S.A.
La Fleurette De Colombia S.A.
La Nueva Rosa Ltda.
La Plazoleta Ltda.
Las Amalias S.A.
Las Flores Ltda.
Linda Colombia Ltda.
Lopez Cardona LLuis (Colibri Flowers)
Los Geranios Ltda.
Luma Pena Anselmo
Mac Flowers Ltda.
Manrique Fajardo Luciano
Marketing and Trade Company Ltda.
Martinez Zurbachen & Cia
Medellin Ltda.
Mejia Sendoya Y Cia Sen C.
M.G. Consultores Ltda.
Microplantas Ltda.
Monteverde Ltda.
Monte Molino
Multiflores Ltda.
Nahecha Bustos Humberto
Orquideas Acatayma Ltda.
Pelaez Arango Luis E.
Petalos De Colombia Ltda.
Pineros Putman Enrique
Pisochago Ltda.
Plantachiones Delta Ltda.
Plantas Ornamentales De Col.
Plantas S.A.
Pompones Ltda.
Productos El Rosal Ltda.
Proflores
Propagar Plantas S.A.
Puyo Tibaquira Flor H.
Rene Salananca Benavidez
Rocicler Ltda.
Roselandia Ltda.
Rosaflor Ltda.
Rosales De Colombia "Rosalco"
Rosas Colombians Ltda.
Rosas De Colombia Ltda.
Rosas De Exportacion "Rosex"
Rosas Ed Juncal Ltda.
Rosas Sabanilla
Rosas Sausalito Ltda.
Rosas Y Flores Ltda.
Rosas Y Jardines Del Tropico Ltda.
Rosas Tesalia
Royal Carnation
San Flor Y Cia, S En C.
Sanchez Hernandez Gonzalo
Sandra Patricia Rey
Sansa Flowers Ltda.
Santa Helena S.A.
Santana Flowers Ltda.
Sitco Ltda.
Sociedad Arawac S.A.
Spendid Flowers Ltda.
Sua Graciela
Sun Flowers Ltda.
Sunset Farms Ltda.
Super Fosa Ltda.
Taganga Ltda.
Tara Flowers
Tec. Agricola Ganadera Tag Ltda.
Tecniflores Ltda.
Tegeiro Repres. Internales. "Terinter"
The Beall Company
Tropiflora Company
Tuchany S.A.
Uniflor
Universal De Flores Ltda.
Universal Flowers
Velez De Monchaux E Hijos Y Cia S. En C.
Villa Diana Ltda.

[FR Doc. 90-19212 Filed 8-14-90; 8:45 am]

BILLING CODE 3510-DS-M

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## National Oceanic and Atmospheric Administration

## National Fish and Seafood Promotional Council; Public Meeting

*Agency:* National Marine Fisheries Service (NMFS), NOAA, Commerce.

*Time and Date:* The meeting will convene at 9 a.m. on Wednesday, September 12, and adjourn approximately 5 p.m. on Thursday, September 13, 1990.

*Place:*
Lake Arrowhead Hilton,
17984 Highway 189,
Lake Arrowhead, CA 92352.

*Status:* NOAA announces a meeting of the National Fish and Seafood Promotional Council (NFSPC). The NFSPC, consisting of 15 industry members and the Secretary of Commerce as a non-voting member, was established by the Fish and Seafood Promotion Act of 1986 to carry out programs to promote the consumption of fish and seafood and to improve the competitiveness of the U.S. fishing industry.

The NFSPC is required to submit an annual marketing plan and budget to the Secretary of Commerce for his approval that describes the marketing and promotion activities the NFSPC intends to carry out. Funding for NFSPC activities is provided through Congressional appropriations.

### Matters to be Considered

*Portion Opened to the Public:*

*September 12, 1990*

9 a.m.–5 p.m.—Chairman's opening remarks; approval of minutes from previous meeting; review of meeting agenda and objectives; update on the Council's future; recap of the national trade (retail and foodservice) advertising program, and the seafood grilling media tour; review, critique and

discussion of the total advertising and public relations program since the campaign's inception; Administrative Team update; and budget review.

*September 13, 1990*

9 a.m.–5 p.m.—Review of the legislative situation facing the Council and discussion of future options if (a) the Council is reauthorized; or (b) if no authorization is forthcoming (would include plans for disposition of Council materials); and general business.

*Portion Closed to the Public:* Note.

*For Further Information Contact:* Jeanne M. Grasso, Program Manager, National Fish and Seafood Promotional Council, 1825 Connecticut Avenue, NW., room 620, Washington, DC 20235. Telephone: (202) 673–5237.

Dated: August 9, 1990.

**Richard H. Schaefer,**

*Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 90–19124 Filed 8–14–90; 8:45 am]

BILLING CODE 3510-22-M

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Settlement on Imports Limits for Certain Man-Made Fiber Textile Products Produced or Manufactured in the United Mexican States

August 10, 1990.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs amending limits.

**EFFECTIVE DATE:** August 10, 1990.

**FOR FURTHER INFORMATION CONTACT:** Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 535–9481. For information on embargoes and quota re-openings, call (202) 377–3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Executive Order 11651 of March 3, 1972, as amended; sec. 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854)

The Governments of the United States and the United Mexican States have agreed to amend the current bilateral textile agreement to establish new limits for Categories 604–A and 604–O/607–O.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989). Also see 54 FR 51446, published on December 15, 1989.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

**Auggie D. Tantillo,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

August 10, 1990.

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229*

Dear Commissioner: This directive amends, but does not cancel, the directive of December 11, 1989 issued to you by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in the United Mexican States and exported during the twelve-month period which began on January 1, 1990 and extends through December 31, 1990.

Effective on August 10, 1990, the directive of December 11, 1989 is amended further to include amended limits for man-made fiber textile products in the following categories:

| Category | Amended 12-mo. limit [1] |
|---|---|
| 604–A [2] | 1,782,339 kilograms. |
| 604–O/607–O [3] | 1,055,448 kilograms. |

[1] The limits have not been adjusted to account for any imports exported after December 31, 1989.
[2] Category 604–A: only HTS number 5509.32.0000.
[3] Category 604–O: all HTS numbers except 5509.32.000; Category 607–O: all HTS numbers except 5509.53.0030 and 5509.53.0060.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

**Auggie D. Tantillo,**

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 90–19146 Filed 8–14–90; 8:45 am]

BILLING CODE 3510-DR-M

## DEPARTMENT OF DEFENSE

### Department of the Army

### Environmental Assessment; Strategic Target System (STARS) Program

**AGENCIES:** U.S. Army Strategic Defense Command (USASDC) *Cooperating Agency:* Strategic Defense Initiative Organization, DOD U.S. Department of the Navy, DOD.

**ACTION:** Notice of availability of finding of no significant impact.

**SUMMARY:** Pursuant to the Council on Environmental Quality regulations for implementing the procedural provisions of the National Environmental Policy Act (40 CFR parts 1500–1508), Army Regulation 200–2, Chief of Naval Operations Instruction 5090.1, and the Department of Defense (DOD) Directive 6050.1 on Environmental Effects in the United States of DOD actions, the USASDC has conducted an assessment of the potential environmental consequences of the STARS program activities for the Strategic Defense Initiative Organization. The Environmental Assessment considered all potential impacts of the proposed action alone and in conjunction with ongoing activities. The finding of no significant impact summarizes the results of the evaluations of STARS activities at the proposed installations. The discussion focuses on those locations where there was a potential for significant impacts and mitigation measures that would reduce the potential impact to a level of no significance. Alternatives to the STARS launch facility were examined early in the siting process but were eliminated as unreasonable. A non-action alternative was also considered. The Environmental Assessment resulted in a finding of no significant impacts.

**DATES:** Comments are required by September 14, 1990.

**POINT OF CONTACT:** Mr. D.R. Gallien, (205) 895–3616, *Address:* U.S. Army Strategic Defense Command, CSSD-EN, Post Office Box 1500, Huntsville, Alabama 35807–3801.

**SUPPLEMENTARY INFORMATION:** The STARS program calls for design and development of the STARS booster and ground support handling and test equipment. A study of available booster assets, their condition, and quantities available was undertaken, resulting in a decision to utilize boosters from the retired Polaris A3 system to provide this ongoing launch capability. The A3 first- and second-stage boosters, together with a third-stage ORBUS 1 motor to

provide maneuvering capability, will be used to deliver various experimental payloads through or near space to U.S. Army Kwajalein Atoll, These payloads will be sensors or targets that simulate re-entry vehicles. This program would involve launching the STARS booster from the Kauai Test Facility (KTF), located on the Pacific Missile Range Facility (PMRF), Kauai, Hawaii. The PMRF security force would clear, close, and monitor traffic to portions of the beach area and roads to ensure public safety. The booster would deliver target vehicles to the U.S. Army Kwajalein Atoll, Republic of the Marshall Islands, where existing sensors can collect data on the payloads.

The STARS program would include a number of activities to be conducted at seven different sites. These activities are categorized as design, booster motor refurbishment and testing, fabrication/assembly/testing, construction, flight preparation, launch/flight/data collection, and data analysis. The locations and types of STARS activities are: Aerojet Solid Propulsion Division, Sacramento, California, booster motor refurbishment and testing; United Technologies Chemical System Division, San Jose, California, design, fabrication/assembly/testing; Pacific Missile Range Facility, Kauai, Hawaii, construction in previously disturbed area, flight preparation, launch/flight/data collection; Sandia National Laboratories, New Mexico, design, fabrication/assembly/testing, data analysis; U.S. Army Kwajalein Atoll, Republic of the Marshall Islands, flight preparation, flight/data collection;Hill Air Force Base, Utah, booster motor refurbishment and testing; and Hercules Incorporated, Magna, Utah, booster motor refurbishment and testing.

To determine the potential for significant environmental impacts as a result of the STARS program, the magnitude and frequency of the tests that would be conducted at the proposed locations were compared to the current activities and existing conditions at those locations. To assess possible impacts, each activity was evaluated in the context of the following environment components: air quality, biological resources, cultural resources, hazardous materials, infrastructure, land use, noise, public health and safety, socioeconomics, and water quality.

**FINDINGS:** Environmental consequences were determined not to be significant for all activities at U.S. Army Kwajalein Atoll, Sandia National Laboratories, Hill Air Force Base,Aerojet Solid Propulsion Division, Hercules Incorporated, and United Technologies Chemical Systems Division.

Potential adverse effects to subsurface cultural resources as a result of construction of the liquid propellant holding area at the KTF on PMRF would be addressed by preconstruction archaeological survey and testing, and a monitoring program. Although no significant cultural resources were observed during previous surface surveys of the affected area, an archaeological testing program will be implemented prior to all ground-disturbing construction activities. Should any cultural resources be found during the testing phase, impacts will be mitigated by implementing an archaeological sampling and data recovery program and/or by avoidance. An archaeological monitoring program will also be implemented to address grounddisturbing activities during construction. Should cultural resources bediscovered during this phase, impacts will be mitigated by carrying out a pre-established archaeological sampling and data recovery plan.

The Newell's shearwater, a Federally listed threatened bird species, may be attracted to STARS program floodlights during construction and operational activities. Mitigation will consist of using U.S. Fish and Wildlife Service-approved lighting that would minimize upward glare. Potentially significant impacts on the Category 1 candidate endangered plant *Ophioglossum concinnum* will be avoided by monitoring the construction site, avoiding proximity to any observed concentrations of these plants, and transplanting individuals from the construction site to any appropriate habitat within PMRF.

Liquid propellant hydrazines and $N_2O_4$ (less than 57 liters [15 gallons] of each) would be used on some STARS playloads. These propellants are highly toxic and injurious to humans, plants, and animal life and may cause respiratory distress in humans if a spill or leak occurs. Measures to reduce impacts on humans and biological resources include (1) building holding and fueling areas with catchment basins to contain spills, (2) minimizing the quantities of propellants and oxidizers stored at KTF, (3) safety procedures such as those defined in AR 200-1, NASA and Air Force Regulations which include quickly stopping any leaks that may develop and cleaning up any spills that may occur to minimize exposure to humans, vegetation, and wildlife, and (4) use of personnel protective equipment and engineering controls. During re-entry the liquid propellant tanks would break up, dispensing the remaining propellant in the atmosphere. This release is minor and would not affect the global natural resources.

Because the high temperatures associated with a STARS launch could ignite adjacent vegetation, a portable blast deflector shield of appropriate metal or concrete will be constructed adjacent to the launch pad to protect vegetation. The potential for starting a fire would be further reduced by clearing all dead brush from around the launch pad. Additional measures to avoid impacts to vegetation, wildlife, and cultural resources are: (1) Spraying the vegetation adjacent to the launch pad with water just before launch to reduce the risk of ignition, (2) Having emergency fire crews available during all STARS launches to quickly extinguish fires, (3) Using an open (spray) fire nozzle, rather than a directed stream, when possible in extinguishing fires to avoid erosional damage to sand dunes and prevent possible destruction of cultural resources in the dune area.

Implementation of proposed mitigations will result in reduction of these impacts to a not significant level.

**Lewis D. Walker,**

*Deputy Assistant Secretary of the Army, Environmental, Safety, and Occupational Health (OASA (IL&E)).*

[FR Doc. 90-14217 Filed 8-14-90; 8:45 am]

BILLING CODE 3710-08-M

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## Corps of Engineers, Department of the Army

## Federal Manual for Identifying and Delineating Jurisdictional Wetlands; Technical Review

**AGENCIES:** Army Corps of Engineers, Environmental Protection Agency, Fish and Wildlife Service, Soil Conservation Service.

**ACTION:** Notice of extension of comment period.

**SUMMARY:** This notice extends the deadline for submitting comments on the technical aspects of the Federal Manual for Identifying and Delineating Jurisdictional Wetlands (Manual) to September 28, 1990.

**FOR FURTHER INFORMATION CONTACT:** Michael Davis, Regulatory Branch (CECW-OR), U.S. Army Corps of Engineers, 20 Massachusetts Ave. NW., Washington, DC 20314-1000, (202) 272-0201; Bill Sipple, U.S. Environmental Protection Agency, A104-F, 401 M Street

SW., Washington, DC 20460, (202) 382-5066; Dan Smalley, U.S. Fish and Wildlife Service, ARLSQ MS400, 18th and C Street NW., Washington, DC 20240, (703) 358-2183; or Billy Teels, U.S. Soil Conservation Service, P.O. Box 2890, Washington, DC 20013, (202) 447-5991.

**SUPPLEMENTARY INFORMATION:** At the Federal level, four agencies involved with identification and delineation of jurisdictional wetlands, developed over the years, their own techniques for identifying and delineating wetlands. These agencies are the Army Corps of Engineers (Corps), the Environmental Protection Agency (EPA), the U.S. Fish and Wildlife Service (FWS), and the Soil Conservation Service (SCS). Recognizing the inefficiency and increased regulatory burden on the public caused by these differing agency approaches, the four agencies initiated discussions on the possibility of merging the four Federal methods into a joint interagency wetland delineation manual. In May 1988, the first of several interagency meetings was held to discuss the differences between each agency's approach to delineating wetlands. This interagency committee reached agreement and on January 10, 1989, the Corps, FWS, EPA and SCS adopted the Manual as the recommended method for identifying and delineating jurisdictional wetlands in the United States. The manual was implemented by the Corps, FWS and EPA on 20 March 1989. The Manual describes the technical criteria, field indicators, and other sources of information necessary for each agency to make consistent wetland delineations.

Now that the Manual has been in use for a full year, the interagency committee has initiated discussions on the need for clarification and/or technical changes. Part of this review will include an evaluation of technical comments obtained from four recent public meetings held to discuss the Manual. In order to afford the public additional opportunity to provide written comments, the deadline has been extended from August 3, 1990, to September 28, 1990 (see prior notice published June 14, 1990 at 55 FR 24138). Written comments should be submitted to Mr. Michael L. Davis at the address above.

Copies of the Manual, which cost $7.50 each, may be obtained by writing the:

Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402-9325.

Each order should include the complete title of the Manual and the following stock number: 024-010-00-683-8.

Dated: August 13, 1990.

**Wilbur T. Gregory, Jr.,**

*Colonel, U.S. Army, Executive Director of Civil Works.*

[FR Doc. 90-19312 Filed 8-14-90; 8:45 am]

BILLING CODE 3710-92-M

## DEPARTMENT OF EDUCATION

### Indian Education National Advisory Council; Committee Meeting

**AGENCY:** National Advisory Council on Indian Education, ED.

**ACTION:** Notice of partially closed meeting.

**SUMMARY:** This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Executive Committee of the National Advisory Council on Indian Education. This notice also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend the open portions of the meeting.

**DATES:** August 30-31, 1990, 9:30 a.m. until conclusion of business each day.

**ADDRESSES:** 330 C Street SW., Room 4409-C, Switzer Building, Washington, DC 202-732-1353.

**FOR FURTHER INFORMATION CONTACT:** Jo Jo Hunt, Executive Director, National Advisory Council on Indian Education, 330 C Street SW., Room 4072, Switzer Building, Washington, DC 20202-7556 (202-732-1353).

**SUPPLEMENTARY INFORMATION:** The National Advisory Council on Indian Education is established under section 5342 of the Indian Education Act of 1988 (25 U.S.C. 2642). The Council is established to, among other things, assist the Secretary of Education in carrying out responsibilities under the Indian Education Act of 1988 (part C, title VI, Pub. L. 100-297) and to advise Congress and the Secretary of Education with regard to federal education programs in which Indian children or adults participate or from which they can benefit.

On August 30, 1990, the Executive Committe of the Council will meet in closed session starting at approximately 9:30 a.m. and will end at the noon lunch break. The agenda will consist of a performance evaluation of the Council's Executive Director and discussion of outstanding executive personnel issues.

On August 30, 1990, the Executive Committee of the Council will meet in open session starting at approximately 1:30 p.m. and will end at the conclusion of business at approximately 5:00 p.m. The agenda includes reports by the Chairman and Executive Director; reports on planning activities for the White House Conference on Indian Education and activities of the Indian Nations At Risk Task Force; report on the fiscal year 1990 Council budget; and approval of the 1991 revised budget proposal and the 1992 proposed budget for the Council.

On August 31, 1990, the Executive Committee will meet in open session starting at approximately 9:30 a.m. and will end at the conclusion of business at approximately 5:00 p.m. The agenda includes staff reports on legislation and meetings with other agencies; planning of Council activities for fiscal year 1991; and planning of the agenda of the full Council meeting to be held in October 1990 in conjunction with the meeting of the National Indian Education Association in San Diego, California, and any site visits in California.

The closed portion of the meeting of the Executive Committee of the National Advisory Council on Indian Education will touch upon matters that relate solely to the internal personnel rules and practices of an agency and will disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session. Such matters are proteced by exemptions (2) and (6) of section 552(c) of the Government in the Sunshine Act (Public Law 94-409; 5 U.S.C. 552(b)).

A summary of the activities of the closed portion of the meeting and related matters which are informative to the public consistent with the policy of title 5 U.S.C. 552b will be available to the public within 14 days of the meeting.

Records shall be kept of all Council proceedings and shall be available for public inspection at the Office of the National Advisory Council on Indian Education located at 330 C Street SW., Room 4072, Washington, DC 202021-7556.

Dated: August 13, 1990.

**Jo Jo Hunt,**

*Executive Director, National Advisory Council on Indian Education.*

[FR Doc. 90-19299 Filed 8-14-90; 8:45 am]

BILLING CODE 4000-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket Nos. CP90-1831-000, et al.]**

### Natural Gas Certificate Filings; Algonquin Gas Transmission Co., et al.

Take notice that the following filings have been made with the Commission:

**1. Algonquin Gas Transmission Co.**

[Docket No. CP90-1831-000]

August 1, 1990.

Take notice that Algonquin Gas Transmission Company, 1284 Soldiers Field Road, Boston, Massachusetts 02135, (Applicant), filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP89-948-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.

Information applicable to each transaction has been provided by Applicant and is sumarized in the attached appendix.

*Comment date:* September 13, 1990, in accordance with Standard Paragraph G at the end of this notice.

| Docket number (date filed) | Shipper name (type) | Peak day average day | Points of | | Contract date rate schedule | Related docket,[1] |
|---|---|---|---|---|---|---|
| | | | Receipt | Delivery | | |
| CP90-1831-000 (7-27-90) | Phibro distributors Corp. (Marketer). | 300,000 300,000 109,500,000 | NJ, NY, CT, MA | RI, CT, MA, NY | 8-16-89, AIT-1, Interruptible | ST90-4020, ST90-4021, ST90-4016, ST90-4023, 5-1-90. |

[1] ST90-4024 (4-1-90), ST90-4019 (4-20-90).

**2. Columbia Gulf Transmission Co.; Texas Eastern Transmission Corp.; Columbia Gulf Transmission Co.**

[Docket Nos. CP90-1829-000, CP90-1830-000 and CP90-1832-000]

August 1, 1990.

Take notice that Columbia Gulf Transmission Company, 3805 West Alabama, Houston, Texas 77027, and Texas Eastern Transmission Corporation, P.O. Box 2521, Houston, Texas 77252, (Applicants), filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under the blanket certificates issued in Docket No. CP86-289-000 and Docket No. CP88-136-000, as amended, respectively, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[1]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under Section 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix.

*Comment date:* September 13, 1990, in accordance with Standard Paragraph G at the end of this notice.

| Docket No. (dated filed) | Shipper name (type) | Peak day average day annual MMBtu | Points of | | Contract date rate schedule service type | Related docket, start up date |
|---|---|---|---|---|---|---|
| | | | Receipt [1] | Delivery | | |
| CP90-1829-000 (7-27-90) | Centran Corporation, (Marketer). | 30,000, 10,000, 3,650,000 | OLA | LA | 8-10-89, ITS-2, Interruptible | ST90-3753, 6-20-90. |
| CP90-1830-000 (7-27-90) | Industrial Energy Services Company, (Broker). | 3,000, 3,000, 1,095,000 | Various | PA | 6-8-90, IT-1, Interruptible | ST90-3579, 6-13-90. |
| CP90-1832-000 (7-27-90) | Columbia Gas Development, (Producer). | 250,000, 30,000, 91,250,000 | OLA, LA | OLA, MS, TN, LA | 1-9-90, ITS-1, 2, Interruptible | ST90-3829, 7-1-90. |

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.

**Williston Basin Interstate Pipeline Company**

[Docket No. CP90-1835-000]

August 1, 1990.

Take notice that on July 30, 1990, Williston Basin Interstate Pipeline Company (Williston), Suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, filed in Docket No. CP90-1835-000 a request pursuant to §§ 157.205 and 157.216(b) of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.216(b)) for authorization to abandon a sales tap and appurtenant facilities located in Bowman County, North Dakota under its blanket certificate issued in Docket no. CP82-487-000 pursuant to section 7(b) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Williston proposes to abandon a sales tap and appurtenant facilities located on

[1] These prior notice requests are not consolidated.

its natural gas transmission system. It is stated that the customer, Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc. (Montana-Dakota), no longer requires service through the facilities but would continue service to the affected end users through extensions of Montana-Dakota's distribution gas lines. Williston indicates that the sales tap would be abandoned in place on the existing transmission right-of-way and that the surface regulator set would be removed and capped. Williston estimates removal costs of $150.

*Comment date:* September 13, 1990, in accordance with Standard Paragraph G at the end of this notice.

**4. ANR Pipeline Company**

[Docket Nos. CP90-1841-000, CP90-1842-000, CP90-1843-000, CP90-1844-000, and CP90-1845-000]

August 1, 1990.

Take notice that ANR Pipeline Company, 500 Renaissance Center, Detroit, Michigan 48243, (Applicant), filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP88-532-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[2]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

| Docket No. (date filed) | Shipper name (type) | Peak day average day annual Dth | Point of | | Contract date rate schedule service type | Related docket, start up date |
|---|---|---|---|---|---|---|
| | | | Receipt | Delivery | | |
| CP90-1841-000 (7-30-90) | City of Warren (End-user) | 1,000<br>1,000<br>365,000 | LA, OK, KS, TX, OLA, OTX | MI | 11-3-88, ITS, Interruptible. | ST90-3598-000, 6-1-90 |
| CP90-1842-000 (7-30-90) | Reliable Galvanizing Company (End-user). | 150<br>150<br>54,750 | LA, OK, KS, TX, MI, OLA, OTX | IL | 6-29-89, ITS, Interruptible. | ST90-3592-000, 6-1-90 |
| CP90-1843-000 (7-30-90) | Manville Sales Corporation (End-user). | 10,000<br>10,000<br>3,650,000 | LA, OK, KS, TX, OLA, OTX | OK | 1-9-89, ITS, Interruptible. | ST90-3596-000, 6-1-90 |
| CP90-1844-000 (7-30-90) | A.O. Smith Automotive Products Co. (End-user). | 9,500<br>9,500<br>3,467,500 | LA, OK, KS, TX, OLA, OTX | WI | 4-5-89, ITS, Interruptible. | ST90-3599-000, 6-1-90 |
| CP90-1846-000 (7-30-90) | Citizens Gas Supply Corporation (Marketer). | 75,000<br>75,000<br>27,375,000 | LA, OK, KS, TX, OLA, OTX | IL, IN | 3-8-89, ITS, Interruptible. | ST90-3591-000, 6-1-90 |

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.

**5. Florida Gas Transmission Company**

[Docket No. CP89-556-001]

August 2, 1990.

Take notice that on June 29, 1990, Florida Gas Transmission Company (Florida Gas), P.O. Box 1188, Houston, Texas, submitted the following information regarding the sale of natural gas to be made to an affiliate under Florida Gas' Rate Schedule ISS-1, pursuant to the authorization granted by order in Docket Nos. RP89-50-000, *et al.*, issued June 15, 1990 (51 FERC ¶ 61,309).

(1) Name of Buyer: Citrus Marketing, Inc.

(2) Location of Buyer: Houston, Texas.

(3) Affiliation between Florida Gas and Buyer: Both Citrus Marketing and Florida Gas are wholly-owned subsidiaries of Citrus Corp., which, in turn, is a jointly-owned subsidiary of Enron Corp and SoNat Corp.

(4) Nature of involvement of affiliate: Brokerage.

(5) Term of Sale: August 1, 1990, through August 1, 2005, and month to month thereafter.

(6) Estimated Total and Maximum Daily Quantities: Maximum Daily Quantity: 400,000 MMBtu Estimated Total: 146 Bcf per year.

(7) Rates: Maximum: $2.2143/MMBtu, minimum: $1.9572/MMBtu, charged during Billing Period: $2.2143/MMBtu.

[CP89-556-002]

Take notice that on June 29, 1990, Florida Gas Transmission Company (Florida Gas), P.O. Box 1188, Houston, Texas, submitted the following information regarding the sale of natural gas to be made to an affiliate under Florida Gas' Rate Schedule ISS-1, pursuant to the authorization granted by order in Docket Nos. RP89-50-000, *et al.*, issued June 15, 1990 (51 FERC ¶ 61,309).

(1) Name of Buyer: Citrus Trading Corporation.

(2) Location of Buyer: Houston, Texas.

(3) Affiliation between Florida Gas and Buyer: Both Citrus Trading and Florida Gas are wholly-owned subsidiaries of Citrus Corp., which, in turn, is a jointly-owned subsidiary of Enron Corp and SoNat Inc.

(4) Nature of involvement of affiliate: Brokerage.

(5) Term of Sale: August 1, 1990, through August 1, 2005, and month to month thereafter.

(6) Estimated Total and Maximum Daily Quantities: Maximum Daily Quantity: 400,000 MMBtu, estimated Total: 146 Bcf per year.

(7) Rates: Maximum: $2.2143/MMBtu, minimum: $1.9572/MMBtu, charged during Billing Period: $2.2143/MMBtu.

[CP89-556-003]

(1) Name of Buyer: Citrus Industrial Sales Company, Inc.

(2) Location of Buyer: Houston, Texas.

(3) Affiliation between Florida Gas and Buyer: Both Citrus Industrial and Florida Gas are wholly-owned subsidiaries of Citrus Corp., which, in turn, is a jointly-owned subsidiary of Enron Corp and SoNat Inc.

[2] These prior notice requests are not consolidated.

(4) Nature of involvement of affiliate: Brokerage.

(5) Term of Sale: August 1, 1990, through August 1, 2005, and month to month thereafter.

(6) Estimated Total and Maximum Daily Quantities: Maximum Daily Quantity: 400,000 MMBtu, estimated Total: 146 Bcf per year.

(7) Rates: Maximum: $2.2143/MMBtu, minimum: $1.9572/MMBtu, charged during Billing Period: $2.2143/MMBtu.

[CP89-556-004]

Take notice that on June 29, 1990, Florida Gas Transmission Company (Florida Gas), P.O. Box 1188, Houston, Texas, submitted the following information regarding the sale of natural gas to be made to an affiliate under Florida Gas' Rate Schedule ISS-1, pursuant to the authorization granted by order in Docket Nos. RP89-50-000, *et al.*, issued June 15, 1990 (51 FERC ¶ 61,309).

(1) Name of Buyer: Enron Gas Marketing, Inc.

(2) Location of Buyer: Houston, Texas.

(3) Affiliation between Florida Gas and Buyer: Both Enron Gas Marketing and Florida Gas are wholly-owned subsidiaries of Citrus Corp., which, in turn, is a jointly-owned subsidiary of Enron Corp and SoNat Inc.

(4) Nature of involvement of affiliate: Brokerage.

(5) Term of Sale: August 1, 1990, through August 1, 2005, and month to month thereafter.

(6) Estimated Total and Maximum Daily Quantities: Maximum Daily Quantity: 565,260 MMBtu, estimated Total: 206.32 Bcf per year.

(7) Rates: Maximum: $2.2143/MMBtu, minimum: $1.9572/MMBtu, charged during Billing Period: $2.2143/MMBtu.

An interested party desiring to make any protest with reference to this sale of natural gas should file with the Federal Energy Regulatory Commission, Washington, DC 20426, within 30 days after issuance of the instant notice by the Commission, pursuant to the order of July 15, 1990. If no protest is filed within that time or the Commission denies the protests, the proposed sale may continue until the underlying contract expires. If a protest is filed, Florida Gas may sell gas for 120 days from the date of commencement of service or until a termination order is issued, whichever is earlier.

**6. K N Energy, Inc.**

[Docket No. CP90-1834-000]

August 2, 1990.

Take notice that on July 30, 1990, K N Energy, Inc. (K N), P. O. Box 150265, Lakewood, Colorado, 80215, filed in Docket No. CP90-1834-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR § 157.205 for authorization to construct and operate five sales taps for the delivery of gas to end users under K N's blanket certificate issued in Docket Nos. CP83-140-000, CP83-140-001, and CP83-140-002 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

K N requests authorization to construct and operate sales taps to five end users located along its jurisdictional pipeline in Kansas and Nebraska. K N states that the gas will be used for domestic and commercial purposes and that it estimates total peak day sales to be 10 Mcf and total annual sales to be 600 Mcf. K N further states that the proposed sales taps are not prohibited by any of its existing tariffs and that the additional taps will have no significant impact on its peak day and annual deliveries.

*Comment date:* September 17, 1990, in accordance with Standard Paragraph G at the end of this notice.

**7. Southern Natural Gas Company**

[Docket No. CP90-1845-000]

August 2, 1990.

Take notice that on July 30, 1990, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP90-1845-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide transportation service for Centran Corporation (Centran), a marketer of natural gas, under Southern's blanket certificate issued in Docket No. CP88-316-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open for public inspection.

Southern requests authorization to transport, on an interruptible basis, up to a maximum of 10,000 MMBtu of natural gas per day for Centran pursuant to a transportation agreement dated June 1, 1990. Southern states that it would transport the gas from receipt points located in Offshore Louisiana, Offshore Texas, Mississippi, Alabama, Louisiana and Texas to delivery points located in Georgia. Southern indicates that the total volume of gas to be transported for Centran on a peak day would be 10,000 MMBtu; on an average day would be 1,500 MMBtu; and on an annual basis would be 547,500 MMBtu.

Southern states that it commenced the transportation of natural gas for Centran on June 3, 1990, at Docket No. ST90-3646-000 for a 120-day period pursuant to § 284.223(a)(1) of the Commission's Regulations. Southern indicates that it proposes no new facilities in order to provide this transportation service.

*Comment date:* September 17, 1990, in accordance with Standard Paragraph G at the end of this notice.

**8. Williston Basin Interstate Pipeline Company**

[Docket No. CP90-1836-000]

August 2, 1990.

Take notice that on July 30, 1990, Williston Basin Interstate Pipeline Company, (Williston), Suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, filed in Docket No. CP90-1836-000 a request pursuant to § 157.205 of the Commission's Regulations for permission and approval to abandon in place and by removal a sales tap and appurtenant facilities located in Dawson County, Montana under Williston's blanket certificate issued in Docket No. CP82-487-000, a pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Williston proposes to abandon the sales tap, in place, on the existing right-of-way and the surface regulator set, by removal, serving Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc. (Montana-Dakota) located in Dawson County, Montana. Williston states that Montana-Dakota no longer requires service through this tap because its end-use customer would now receive service through extensions of Montana-Dakota's distribution gas lines.

*Comment date:* September 17, 1990, in accordance with Standard Paragraph G at the end of this notice.

**9. Northern Natural Gas Company, Division of Enron Corp.**

[Docket No. CP90-1838-000]

August 2, 1990.

Take notice that on July 30, 1990, Northern Natural Gas Company, Division of Enron Corp., (Northern) filed in the above referenced docket, a prior notice request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of Centran Corporation (Centran) under its blanket certificate issued in Docket No. CP86-435-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice request which is on file with

the Commission and open to public inspection and in the attached appendix.

Information applicable to the transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the docket number and initiation date of the 120-day transaction under § 284.223 of the Commission's Regulations has been provided by Northern and is included in the attached appendix.

Northern also states that it would provide the service for Centran under an executed transportation agreement, and that it would charge a rate and abide by the terms and conditions of the referenced transportation rate schedule.

*Comment date:* September 17, 1990, in accordance with Standard Paragraph G at the end of this notice.

| Docket No. (date filed) | Applicant | Shipper name | Peak day [1] avg. annual | Points of | | Start up date rate schedule | Related [2] dockets |
|---|---|---|---|---|---|---|---|
| | | | | Receipt | Delivery | | |
| CP90-1838-000 | Northern Natural Gas Company, Division of Enron Corp. 1400 Smith St., P.O. Box 1188, Houston, Texas 77251-1188. | Centran Corporation. | 50,000<br>37,500<br>18,250,000 | OK, TX, KS, NM, IA, WI, SD, MN, NE, IL | IA, WI, MN, NE, SD, MI, TX. | 5-22-90, IT-1 | CP86-435-000, ST90-3307-000. |

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

**10. United Gas Pipe Line Company**

[Docket No. CP90-1894-000]

August 3, 1990.

Take notice that on August 2, 1990, United Gas Pipeline Company (United), P.O. Box 1478, Houston, Texas 77251, filed in Docket No. CP90-1894-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP88-6-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United proposes to transport natural gas on an interruptible basis for FRM, Inc. (FRM). United explains that service commenced May 24, 1990, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST90-4033-000. United explains that the peak day quantity would be 15,450 MMBtu, the average daily quantity would be 15,450 MMBtu, and that the annual quantity would be 5,639,250 MMBtu. United explains that it would receive natural gas for FRM's account at various receipt points in the states of Louisiana, Texas, and Mississippi United states that it would redeliver the gas at delivery points in the state of Mississippi.

*Comment date:* September 17, 1990, in accordance with Standard Paragraph G at the end of this notice.

**11. Green Canyon Pipe Line Company**

[Docket No. CP90-1839-000]

August 3, 1990.

Take notice that on July 30, 1990, Green Canyon Pipe Line Company (Green Canyon), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP90-1839-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide transportation for LL&E Gas Marketing, Inc. (LL&E Gas), a marketer of natural gas, under Green Canyon's blanket certificate issued in Docket No. CP89-515-000 under section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Green Canyon states that the total volume of gas to be transported for LL&G Gas on a peak day would be 20,000 Dt; on an average day would be 10,000 Dt; and on an annual basis would be 7,300,000 Dt.

Green Canyon states it would receive the gas at South Marsh Island Block 175/174 in offshore Louisiana. Green Canyon further states it would deliver the gas to South Marsh Island Block 106 in offshore Louisiana.

Green Canyon states that the transportation of natural gas for LL&G Gas commenced on June 1, 1990, as reported in Docket No. ST90-3539-000, for a 120-day period pursuant to § 284.223(a)(1) of the Commission's Regulations and the blanket certificate issued to Green Canyon in Docket No. CP89-515-000.

*Comment date:* September 17, 1990, in accordance with Standard Paragraph G at the end of this notice.

**12. Columbia Gulf Transmission Company**

[Docket No. CP90-1826-000]

August 3, 1990.

Take notice that on July 26, 1990, Columbia Gulf Transmission Company (Columbia Gulf), 1700 MacCorkle Avenue SE., Charleston, West Virginia 25314, filed in Docket No. CP90-1826-000 a request pursuant to §§ 157.205 and 157.208 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.208) for authorization to construct and operate certain natural gas pipeline facilities in Federal Waters Offshore Louisiana under Columbia Gulf's blanket certificate issued in Docket No. CP83-496-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Columbia Gulf seeks to construct 20.46 miles of 16-inch pipeline from West Cameron Block 485 to East Cameron Block 313 as well as associated piping and measurement facilities. It is stated that the pipeline would transport additional gas supplies committee to Columbia Gas Transmission Corporation under contracts approved in Docket Nos. CI79-104 (Columbia Gas Development); CI75-438 (COLEVE); and CI75-540 (Forest Oil Corporation). Columbia Gulf estimates that the total cost of the facilities would be $10,082,000 and plans to finance this cost with internally generated funds.

*Comment date:* September 17, 1990, in accordance with Standard Paragraph G at the end of this notice.

**13. Northern Natural Gas Company, Division of Enron Corp.**

[Docket No. CP90-1837-000]

August 3, 1990.

Take notice that on July 30, 1990, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP90-1837-000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act for authorization to operate and maintain an existing delivery point and appurtenant facilities as a jurisdictional sales facility to accommodate jurisdictional natural gas deliveries to Peoples Natural Gas Company, Division of Utilicorp United Inc. (Peoples), all as more fully set forth in request on file with the Commission and open to public inspection.

Specifically, Northern requests authority to operate and maintain the existing delivery point as a jurisdictional sales facility to accommodate natural gas deliveries to Montezuma Feeders to be served by Peoples. It is stated that the required volumes for Montezuma Feeders will be served from the total firm entitlements currently designated by Peoples for delivery from the firm entitlements assigned to "Rural Tap Sales (gathering lines)." It is further stated that there will not be any firm entitlements assigned to the delivery point for service to Montezuma Feeders.

Northern states that no change in Peoples' total volumes is proposed by this request. Northern further states that it has sufficient capacity to accommodate the deliveries that it proposes without detriment or disadvantage to Northern's other customers.

*Comment date:* September 17, 1990, in accordance with Standard Paragraph G at the end of this notice.

**14. Tennessee Gas Pipeline Company, Natural Gas Pipeline Company of America**

[Docket Nos. CP90-1850-000, CP90-1851-000]

August 3, 1990.

Take notice that on July 31, 1990, Tennessee Gas Pipeline Company, P.O. Box 2511, Houston, Texas 77252, and Natural Gas Pipeline Company of America, 701 East 22nd Street, Lombard, Illinois 60148, (Applicants), filed requests with the Commission in the above-referenced dockets pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to transport natural gas on behalf of various shippers under the blanket certificates issued in Docket No. CP87-115-000 and Docket No. CP86-582-000, respectively, pursuant to Section 7 of the NGA, all as more fully set forth in the requests which are open to public inspection.[3]

The Applicants have provided applicable information for each transaction, including the shipper's identity; the peak day, average day, and annual volumes; the receipt and delivery points; the appropriate transportation rate schedule for the service; the related ST docket numbers and service initiation dates of the 120-day transactions under § 284.223(a) of the Regulations, as summarized in the attached appendix.

*Comment date:* September 17, 1990, in accordance with Standard Paragraph G at the end of this notice.

| Docket No. | Shipper (type) | Peak day average day annual MMBtu | Points of | | Contract date rate schedule service type | Related docket, start up date |
|---|---|---|---|---|---|---|
| | | | Receipt | Delivery | | |
| CP90-1850-000 | Western Gas Marketing USA Limited (Marketer) | 144,640<br>144,640<br>52,793,600 | NY, OH, PA, WV | MA, NY | 4-19-90, IT, Interruptible. | ST90-3250, 6-1-90. |
| CP90-1851-000 | Green Valley Chemical Corporation (End-user) | 3,800<br>3,800<br>[1] 1,377,000 | OK, TX | IA | 4-16-90, FTS, Firm | ST90-3658, 6-1-90. |

[1] Dekatherms.

**15. Green Canyon Pipe Line Company, Equitrans, Inc., Equitrans, Inc., Equitrans, Inc.**

Docket No. CP90-1871-000, CP90-1872-000, CP90-1873-000, and CP90-1875-000

August 3, 1990.

Take notice that Green Canyon Pipe Line Company, P.O. Box 1396, Houston, Texas 77251, and Equitrans, Inc., 3500 Park Lane, Pittsburgh, Pennsylvania 15275, (Applicants), filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under the blanket certificates issued in Docket No. CP89-515-000 and Docket No. CP86-553-000, respectively, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[4]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix.

*Comment date:* September 17, 1990, in accordance with Standard Paragraph G at the end of this notice.

| Docket No. (date filed) | Shipper name | Peak day average day annual MMBtu | Points of | | Contract date rate schedule service type | Related docket, start up date |
|---|---|---|---|---|---|---|
| | | | Receipt [1] | Delivery | | |
| CP90-1871-000 (8-1-90) | OXY USA, Inc. | [2] 25,000<br>25,000<br>9,125,000 | OLA | OLA | 1-10-90, IT, Interruptible. | ST90-3538-000, 6-1-90 |

[3] These prior notice requests are not consolidated.

[4] These prior notice requests are not consolidated.

| Docket No. (date filed) | Shipper name | Peak day average day annual MMBtu | Points of | | Contract date rate schedule service type | Related docket, start up date |
|---|---|---|---|---|---|---|
| | | | Receipt [1] | Delivery | | |
| CP90-1872-000 (8-1-90) | Virginia Electric & Power Company | 43,400<br>11,727<br>727,074 | PA | PA, WV | 6-29-90, ITS, Interruptible. | ST90-3993-000, 7-1-90 |
| CP90-1873-000 (8-1-90) | Columbia Gas of Pennsylvania | 18,026<br>18,026<br>3,605,200 | PA | PA, WV | 6-25-90, FTS, Firm. | ST90-3992-000, 7-1-90 |
| CP90-1875-000 (8-1-90) | Access Energy Corporation | 30,723<br>50<br>150,000 | PA, WV | PA, WV | 7-2-90, ITS, Interruptible. | ST90-4010-000, 6-30-90 |

[1] Offshore Louisiana is shown as OLA.
[2] Green Canyon's quantities are in dekatherms.

**16. K N Energy, Inc.**

[Docket No. CP90-1865-000

August 3, 1990.

Take notice that on August 1, 1990, K N Energy, Inc. (K N) Post Office Box 150265, Lakewood, Colorado 80215, filed in Docket No. CP90-1865-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of a certain pipeline facilities and to make a sale-for-resale of natural gas to the City of Morland, Kansas, all as more fully set forth in the aplication which is on file with the Commission and open to public inspection.

K N proposes to sell up to 427 Mcf per day of natural gas or up to 33,754 Mcf annual of natural gas to the City of Morland, from its pipeline system in Kansas. The gas would be sold to Morland at the applicable rate under Rate Schedule CD-1 of K N's FERC Gas Tariff, Third Revised Volumes No. 1.

It is alleged that the City of Morland has requested that K N construct certain facilities and make a sale for resale to the City. The City states that the difference in cost between propane and natural gas is sufficient to finance construction of the proposed natural gas system to serve Morland and Penokee, Kansas. Once construction costs are recovered, the City of Morland projects that the residents of Morland and Penokee would experience a decrease in their heating bills.

K N contends that it has sufficient gas reserves and deliverability to make the proposed sales to Morland without adversely affecting K N's ability to serve its existing customers.

K N proposes to make the sale of Morland through a new delivery point to be established on its existing mainline facilities in Section 24, Township 8 South, Range 32 West, Graham County, Kansas. The cost of the proposed facilities are estimated to be $23,400.

The City of Morland requests that K N provide natural gas service by this winter. It is alleged that since installation of the facilities must be completed by the 1990-1991 winter hearing season, K N requests the certificate be issued by September 1, 1990.

*Comment date:* August 24, 1990, in accordance with Standard Paragraph F at the end of this notice.

**17. Columbia LNG Corporation**

[Docket No. CP86-304-003]

August 6, 1990.

Take notice that on July 30, 1990,[5] Columbia LNG Corporation (Columbia), 20 Montchanin Road, Wilmington, Delaware 19807, filed in Docket No. CP86-304-003 a petition to amend further the order issued April 28, 1986, in Docket No. CP86-304-000 pursuant to section 7(c) of the Natural Gas Act so as to provide three new delivery points for Washington Gas Light Company (Washington), construct and operate two taps and modify its Rate Schedule X-2 to incorporate the new delivery points, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

It is stated that by order issued April 28, 1986, Columbia was authorized to transport up to 300,000 dekatherms of natural gas for Washington under its Rate Schedule X-2. It is also stated that on May 16, 1988, the order was amended in Docket No. CP86-304-002 to authorize additional delivery points.

Columbia requests authorization in Docket No. CP86-304-003 to construct and operate a 6-inch tap and an 8-inch tap on its Cove Point Pipeline in order to provide two new points of delivery to be used by Washington, to serve new markets in Calvert and St. Mary's Counties, Maryland.

In addition, Columbia requests authorization to add an existing right-of-way grantor located in Charles County, Maryland, as a new transportation point of delivery for Washington on the Cove Point Pipline. It is stated that at present, the gas used to serve this customer is purchased by Washington from Columbia Gas Transmission Corporation (Columbia Transmission). Columbia states that the right-of-grantor currently uses, on average, less than 15 dekatherms of natural gas per year and is the only right-of-way grantor on the Cove Point Pipeline and permitting Washington the option to serve this customer through the use of transportation gas would simplify the current arrangements among Washington, Columbia Transmission and Columbia with respect to this small amount of gas. It is also stated that no new construction would be required to add this customer as a new point of delivery to Washington under Columbia's Rate Schedule X-2.

Columbia submits that it will transport and redelivery gas to Washington at the three new delivery points within existing contractual obligations and at the transportation rate set forth in Columbia's Rate Schedule X-2.

Columbia estimates the cost of constructing the 6-inch and 8-inch taps to be $64,818. It is stated that Washington will reimburse Columbia for all expenses incurred in the construction and installation of the taps, for remote supervisory control at Columbia's Loudoun Measurement Station and for all filing fees incurred by Columbia.

*Comment date:* August 27, 1990, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

[5] The request was tendered for filing on July 27, 1990; however, the fee required by § 381.027 of the Commission's Rules was not paid until July 30, 1990. Section 381.103 of the Commission's Rules provides that the filing date is the date on which the fee is paid.

**18. Kern River Gas Transmission Company**

[Docket No. CP90-1806-000]

August 6, 1990.

Take notice that on July 24, 1990, Kern River Gas Transmission Company (Kern River), located at P.O. Box 2511, Houston, Texas, filed in Docket No. CP90-1806-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorization to provide a firm transportation service for Union Pacific Fuels, Inc. (Union Pacific), a Delaware corporation, under Kern River's blanket transportation certificate issued in Docket No. CP89-2047-000 pursuant to section 7(c) of the Natural Gas Act, as more set forth in the request that is on file with the Commission and open to public inspection.

Kern River states that it proposes to transport up to 100,00 Mcf of natural gas per day for Union Pacific on a firm basis pursuant to a Transportation Service Agreement dated December 15, 1989, as amended, Service shall begin upon the commencement of operations of Kern River's proposed interstate pipeline system, authorized in Docket No. CP89-2048, and shall continue for a term of 15 years, and year to year thereafter.

Kern River proposes to transport the gas through its authorized pipeline system to a delivery point at a point of interconnection with the facilities of Southern California Gas Company in Kern County, California.

Kern River states that the transportation contract with Union Pacific is the product of negotiations in a competitive environment in which several pipelines were available to serve Union Pacific's requirements. In order to accommodate Union Pacific's specific requirements, the negotiations between the parties resulted in Transportation Service Agreements which differ in some minor respects from the standard service agreement in Kern River's pro forma tariff as approved by the Commission in Kern River's Certificate Order.

In its Certificate Order, the Commission recognized that competition could result in negotiated terms and conditions with individual shippers. Accordingly, concurrent with this prior notice request, Kern River is filing with the Commission its negotiated contracts, including the Transportation Service Agreements executed with Union Pacific, and is requesting in that filing any necessary waivers related to the individually negotiated terms.

*Comment date:* September 20, 1990, in accordance with Standard Paragraph G at the end of this notice.

**19. Kern River Gas Transmission Company**

[Docket No. CP90-1810-000]

August 6, 1990.

Take notice that on July 24, 1990, Kern River Gas Transmission Company (Kern River), located at P.O. Box 2511, Houston, Texas 77252 and P.O. Box 58900, Salt Lake City, Utah 84158-0900, filed in Docket No. CP90-1810-000 a request pursuant to §§ 157.205, 157.211 and 284.223 of the Commission's Regulations for authorization to provide a firm transportation service for Mobil Natural Gas Inc. (Mobil), a Delaware corporation, and to construct and operate interconnecting facilities under Kern River's blanket transportation certificate and blanket facilities certificate issued in Docket Nos. CP89-2047-000 and CP89-2048-000 pursuant to section 7(c) of the Natural Gas Act, as more fully set forth in the request that is on file with the Commission and open to public inspection.

Kern River states that it proposes to transport up to 85,000 Mcf of natural gas per day for Mobil on a firm basis pursuant to a Transportation Service Agreement dated December 20, 1989, as amended. Service shall begin upon the commencement of operations of Kern River's proposed interstate pipeline system, authorized in Docket No. CP89-2048, and shall continue for a primary term of 15 years, and year to year thereafter.

Kern River proposes to transport the gas through its authorized pipeline system to delivery points in the Kern County oil fields and at a point of interconnection with the facilities of Southern California Gas Company in Kern County, California.

Kern River also requests authorization for the construction and operation of the metering and interconnecting facilities required to deliver gas to Mobil at the delivery points in the Kern County oil fields.

Kern River states that the transportation contract with Mobil is the product of negotiations in a competitive environment in which several pipelines were available to serve Mobil's requirements. In order to accommodate Mobil's specific requirements, the negotiations between the parties resulted in Transportation Service Agreements which differ in some minor respects from the standard service agreement in Kern River's pro forma tariff as approved by the Commission in Kern River's Certificate Order.

In its Certificate Order, the Commission recognized that competition could result in negotiated terms and conditions with individual shippers. Accordingly, concurrent with this prior notice request, Kern River is filing with the Commission its negotiated contracts, including the Transportation Service Agreements executed with Mobil, and is requesting in that filing any necessary waivers related to the individually negotiated terms.

*Comment date:* September 20, 1990, in accordance with Standard Paragraph G at the end of this notice.

**20. Northern Border Pipeline Company**

[Docket No. CP90-1828-000]

August 6, 1990.

Take notice that on July 27, 1990, Northern Border Pipeline Company (Northern Border), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP90-1828-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act, to provide transportation service for Western Gas Processors, Ltd. (Western Gas Processors), a producer, under its blanket certificate issued in Docket No. CP86395-000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northern Border states that it would receive the gas at various existing points of receipt to delivery points interconnecting Northern Border and Northern Natural Gas Company. Northern Border indicates that it commenced service for Western Gas Processors June 1, 1990, under § 284.223 as reported in Docket No. ST89-3933-000.

*Comment date:* September 20, 1990, in accordance with Standard Paragraph G at the end of this notice.

**21. ANR Pipeline Company**

[Docket Nos. CP90-1856-000, CP90-1857-000, CP90-1858-000, CP90-1859-000 and CP90-1861-000]

August 6, 1990.

Take notice that on July 31, 1990, ANR Pipeline Company (ANR) 500 Rennaissance Center, Detroit, Michigan 48243, filed in the reference prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under ANR's blanket certificate issued in Docket No. CP88-532-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[6]

[6] These prior notice requests are not consolidated.

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by ANR and is summarized in the attached appendix.

ANR states that each of the proposed services would be provided under an executed transportation agreement, and that ANR would charge the rates and abide by the terms and conditions of the referenced transportation rate schedules.

*Comment date:* September 20, 1990, in accordance with Standard Paragraph G at the end of this notice.

| Docket No. | Shipper name | Peak day [1] avg. annual | Points of receipt and delivery | Start-up date rate schedule | Related [2] dockets |
|---|---|---|---|---|---|
| CP90-1856-000 | Mazda Motor Manufacturing | 15,000<br>15,000<br>5,475,000 | LA, OK, KS, TX, Offshore LA & TX. | 6-1-90 | ST90-3588, ITS |
| CP90-1857-000 | Kohler Co. | 13,500<br>13,500<br>4,927,500 | LA, OK, KS, TX, MI, WI, Offshore LA & TX. | 6-1-90 | ST90-3586, ITS |
| CP90-1858-000 | Semco Energy Services | 10,000<br>10,000<br>3,650,000 | LA, OK, KS, TX, Offshore LA & TX. | 6-1-90, ITS | ST90-3585 |
| CP90-1859-000 | Phillips Petroleum | 7,000<br>7,000<br>2,555,000 | Offshore LA | 6-1-90, ITS | ST90-3587 |
| CP90-1861-000 | Illinois Institute | 2,500<br>2,500<br>912,000 | LA, OK, KS, TX, MI | 6-1-90, ITS | ST90-3597 |

[1] Quantities are shown in dt equivalent.
[2] ANR reported its 120-day transportation service in the referenced ST dockets.

**22. Kern River Gas Transmission Company**

[Docket Nos. CP90-1794-000, CP90-1796-000, CP90-1797-000, CP90-1799-000, CP90-1802-000, CP90-1804-000, CP90-1805-000, CP90-1807-000, CP90-1808-000, and CP90-1809-000]

August 6, 1990.

Take notice that on July 24, 1990, Kern River Gas Transmission Company (Kern River), P.O. Box 2511, Houston, Texas 77252 and P.O. Box 58900, Salt Lake City, Utah 8451-0500, filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under Kern River's blanket certificate issued in Docket No. CP89-2047-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Kern River and is summarized in the attached appendix.

Kern River states that each of the proposed services would be provided under an executed transportation agreement, and that Kern River would charge the rates and abide by the terms and conditions of the referenced transportation rate schedules.

Kern River states that the transportation contracts with each shipper is the product of negotiations in a competitive environment in which several pipelines were available to serve the shippers requirements. In order to accommodate the shippers specific requirements, the negotiations between the parties resulted in Transportation Service Agreements which differ in some minor respects from the standard service agreement in Kern River's pro forma tariff as approved by the Commission in Kern River's Certificate Order.

In its Certificate Order, the Commission recognized that competition could result in negotiated terms and conditions with individual shippers. Accordingly, concurrent with this prior notice request, Kern River is filing with the Commission its negotiated contracts, including the Transportation Service Agreements executed with the shippers, and is requesting in that filing any necessary waivers related to the individually negotiated terms.

*Comment date:* September 20, 1990, in accordance with Standard Paragraph G at the end of this notice.

| Docket No. | Shipper name | Peak day [1] avg. annual | Points of receipt and delivery | Start-up date [2] rate schedule |
|---|---|---|---|---|
| CP90-1794-000 | Williams Gas Marketing Co. | 30,000<br>30,000<br>10,402,500 | WY, CA | KRF-1 |
| CP90-1796-000 | Westcoast Resources, Inc. | 45,000<br>45,000<br>15,603,750 | WY, CA | KRF-1 |
| CP90-1797-000 | City of Burbank California | 5,000<br>5,000<br>1,733,750 | WY, CA | KRF-1 |
| CP90-1799-000 | Petro-Canada Hydrocarbons, Inc | 60,000<br>60,000<br>20,805,000 | WY, CA | KRF-1 |

| Docket No. | Shipper name | Peak day [1] avg. annual | Points of receipt and delivery | Start-up date [2] rate schedule |
|---|---|---|---|---|
| CP90-1802-000 | Amoco Energy Trading Corp. | 50,000<br>50,000<br>17,337,000 | TBD [3], TBD | KRF-1 |
| CP90-1804-000 | Tenngasco Corp. | 50,000<br>50,000<br>17,337,000 | WY, CA | KRF-1 |
| CP90-1805-000 | City of Glendale Califorina | 5,000<br>5,000<br>1,733,750 | WY, CA | KRF-1 |
| CP90-1807-000 | Salmon Resources, Ltd. | 30,000<br>30,000<br>10,402,500 | WY, CA | KRF-1 |
| CP90-1808-000 | City of Pasedena California | 5,000<br>5,000<br>1,733,750 | WY, CA | KRF-1 |
| CP90-1809-000 | Department of Water & Power City of Los Angeles | 100,000<br>100,000<br>34,665,000 | WY, CA | KRF-1 |

[1] Quantities are shown in MMcf.
[2] Upon construction of the facilities authorized in Docket No. CP89-2048 for a period of 15 years.
[3] To be determined.

**Kern River Gas Transmission Company**

Docket Nos. CP90-1795-000, CP90-1800-000 and CP90-1801-000

August 6, 1990.

Take notice that on July 24, 1990, Kern River Gas Transmission Company (Kern River), P.O. Box 2511, Houston, Texas 77252 and P.O. Box 58900, Salt Lake City, Utah 8451-0500, filed in the respective dockets prior notice requests pursuant to §§ 157.205, 157.211 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers and for the construction and operation of metering and interconnecting facilities under Kern River's blanket transportation certificate and blanket facilities certificate issued in Docket Nos. CP89-2047-000 and CP89-2048-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related docket numbers of the 120-day transaction's under § 284.223 of the Commission's Regulations, has been provided by Kern River and is summarized in the attached appendix.

Kern River states that each of the proposed services would be provided under an executed transportation agreement, and that Kern River would charge the rates and abide by the terms and conditions of the referenced transportation rate schedules.

Kern River states that the transportation contracts with each shipper is the product of negotiations in a competitive environment in which several pipelines were available to serve the shippers requirements. In order to accommodate the shippers specific requirements, the negotiations between the parties resulted in Transportation Service Agreements which differ in some minor respects from the standard service agreement in Kern River's pro forma tariff as approved by the Commission in Kern River's Certificate Order.

In its Certificate Order, the Commission recognized that competition could result in negotiated terms and conditions with individual shippers. Accordingly, concurrent with this prior notice request, Kern River is filing with the Commission its negotiated contracts, including the Transportation Service Agreements executed with the shippers, and is requesting in that filing any necessary waivers related to the individually negotiated terms.

*Comment date:* September 20, 1990, in accordance with Standard Paragraph G at the end of this notice.

| Docket No. | Shipper name | Peak day [1] avg. annual | Points of receipt and delivery | Startup date [2] rate schedule |
|---|---|---|---|---|
| CP90-1795-000 | Williams Power Co | 30,000<br>30,000<br>10,402,500 | WY, CA | KRF-1 |
| CP90-1800-000 | Bonneville, Nevada | 40,000<br>40,000<br>13,870,000 | WY, CA, NV | KRF-1 |
| CP90-1801-000 | M.H. Whittier | 4,500<br>4,500<br>1,560,375 | WY, CA | KRF-1 |

[1] Quantities are shown in MMcf.
[2] Upon construction of the facilities authorized in Docket No. CP89-2048 for a period of 15 years.

**24. Kern River Gas Transmission Company**

[Docket No. CP90-1798-000]

August 6, 1990.

Take notice that on July 24, 1990, Kern River Gas Transmission Company (Kern River), located at P.O. Box 2511, Houston, Texas 77252 and P.O. Box 58900, Salt Lake City, Utah 84158-0900, filed in Docket No. CP90-1798-000 a request pursuant to §§ 157.205, 157.211 and 284.223 of the Commission's Regulations for authorization to provide a firm transportation service for Chevron U.S.A. (Chevron), a Pennsylvania corporation, and to construct and operate interconnecting facilities under Kern River's blanket transportation certificate and blanket facilities certificate issued in Docket Nos. CP89-2047-000 and CP89-2048-000 pursuant to section 7(c) of the Natural Gas Act, as more fully set forth in the request that is on file with the Commission and open to public inspection.

Kern River states that it proposes to transport up to 125,000 Mcf of natural gas per day for Chevron on a firm basis pursuant to a Transportation Service Agreement dated June 27, 1988, as amended. Service shall begin upon the commencement of operations of Kern River's proposed interstate pipeline system, authorized in Docket No. CP89-2048, and shall continue for a primary term of 15 years, and year to year thereafter.

Kern River proposes to transport the gas through its authorized pipeline system to delivery points on Kern River's East Side Lateral and West Side Lateral in the heavy oil fields in Kern County, California and at an interconnection with the facililties of Southern California Gas Company in California.

Kern River also requests authorization for the construction and operation of the metering and interconnecting facilities required to deliver gas to Chevron at the delivery points in Kern County.

Kern River states that the transportation contract with Chevron is the product of negotiations in a competitive environment in which several pipelines were available to serve Chevron's requirements. In order to accommodate Chevron's specific requirements, the negotiations between parties resulted in Transportation Service Agreement which differs in some minor respects from the standard service agreement in Kern River's pro forma tariff as approved by the Commission in Kern River's Certificate Order.

In its Certificate Order, the Commission recognized that competition could result in negotiated terms and conditions with individual shippers. Accordingly, concurrent with this prior notice request, Kern River is filing with the Commission its negotiated contracts, including the Transportation Service Agreements executed with Chevron, and is requesting in that filing any necessary waivers related to the individually negotiated terms.

*Comment date:* September 20, 1990, in accordance with Standard Paragraph G at the end of this notice.

**25. United Gas Pipe Line Company**

[Docket No. CP90-1786-000]

August 6, 1990.

Take notice that on July 23, 1990, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP90-1786-000, an application pursuant to section 7(b) of the Natural Gas Act (NGA) for permission and approval to abandon the exchange of natural gas with Shell Oil Company (Shell), all as more fully set forth in the application which is of file with the Commission and open to public inspection.

It is alleged that by Gas Transportation Agreement (Agreement) dated October 28, 1989, and order issued December 2, 1981, 17 FERC ¶ 62,333 United was authorized to transport up to 10,000 Mcf of natural gas per day for Shell. Shell obtained such gas from Shell Onshore Partnership in Robeline Field, Natchitoches Parish, Louisiana, and delivered to United at a mutually agreeable point in Natchitoches Parish. United then redeliveries the gas to Shell at four places: (1) The outlet of United's existing measuring station at Shell's Norco Refinery, St. Charles Parish, Louisiana; (2) at a point on United's system in South Pisgah Field in Rankin County, Mississippi; (3) at a point on United's system in McKay Field, Rankin County, Mississippi; and (4) at the outlet of United's existing measuring station near La Pice Field, St. James Parish and Assumption Parish, Louisiana. United asserts that it provides this transportation service pursuant to its Rate Schedule X-143 in its FERC Gas Tariff Volume No. 2.

It is averred that on May 11, 1984, United and Shell entered into an amendment to the Agreement allowing deliveries of gas to Mobile Gas Service Corporation, a local distribution company connected to United's system at various points in Mobile County, Alabama. The additional delivery points were authorized by Commission order in Docket No. CP81-212-002, 30 FERC ¶ 62.005.

The Agreement expired pursuant to its own terms on June 1, 1990, and United alleges that the abandonment of the Agreement is warranted by the present of future public convenience or necessity. It is alleged that Shell has not utilized the Agreement since May, 1987, so therefore, United requests abandonment of its Rate Schedule X-143. United claims that it can provide alternative service under its open access blanket certificate in Docket No. CP88-6-000, 42 FERC ¶ 62,027, pursuant to Rate Schedule ITS.

United alleges that it is not requesting the abandonment of any facilities in this proposal. However, the La Pice Field facilities are uncertificated gathering facilities and are being abandoned in conjunction with the Baton Rouge/New Orleans Phase III replacement project authorized by the Commission in Docket No. CP87-214-000, 43 FERC ¶61,269. Delivery of gas at the La Pice Field was the purpose of gas lift operations for Shell. United request expedited Commission action since there is a construction deadline of November 19, 1990, for United to complete the Baton Rouge-New Orleans Phase III project. All of the other related facilities will remain in place to accommodate either future transportation services or new sales service if appropriate contractural arrangements are concluded.

*Comment date:* August 27, 1990, in accordance with Standard Paragraph F at the end of this notice.

**26. Northern Natural Gas Company, Division of Enron Corp.**

[Docket No. CP90-1862-000]

August 6, 1990.

Take notice that on July 31, 1990, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP90-1862-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Inland Steel Company (Inland), under the authorization issued in Docket No. CP86-435-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern would perform the proposed firm transportation service for Inland, pursuant to a firm transportation service agreement dated May 13, 1990. The term of the transportation agreement is from June 1, 1990, and shall remain effective

through May 31, 1993. Northern proposes to transport on a peak day up to 10,261 MMBtu; on an average day up to 7,688 MMBtu; and on an annual basis up to 3,745,265 MMBtu of natural gas for Inland. Northern states that it would receive the gas at various points of receipt in Iowa for transportation to various delivery points in Iowa. It is alleged the rate to be charged Inland for the proposed transportation service shall be in accordance with Northern's FT-1 rate schedule. Northern avers that construction of facilities would not be required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self-implementing provision of § 284.223(a)(1) of the Commission's regulations. Northern commenced such self-implementing service on June 1, 1990, as reported in Docket No. ST90-3935-000.

*Comment date:* September 20, 1990, in accordance with Standard paragraph G at the end of this notice.

**27. Kern River Gas Transmission Company**

[Docket No. CP90-1803-000]

August 6, 1990.

Take notice that on July 24, 1990, Kern River Gas Transmission Company (Kern River), located at P.O. Box 2511, Houston, Texas 77252 and P. O. Box 58900, Salt Lake City, Utah 84158-0900, filed in Docket No. CP90-1803-000 a request pursuant to §§ 157.205 , 157.211 and 284.223 of the Commission's Regulations for authorization to provide a firm transportation service for Shell Western E&P Inc. (SWEPI), a Delaware corporation and to construct and operate interconnection facilities under Kern River's blanket transportation certificate and blanket facilities certificate issued in Docket Nos. CP89-2047-000 and CP89-2048-000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Kern River states that it proposes to transport up to 100,000 Mcf of natural gas per day for SWEPI on a firm basis pursuant to a Firm Transportation Service Agreement dated October 2, 1989, as amended by Agreement dated July 19, 1990. Service shall begin upon the commencement of operations of Kern River's proposed interstate pipeline system, authorized in Docket No. CP89-2048, and shall continue for a primary term of 15 years, subject to extension by SWEPI under certain conditions.

Kern River proposes to transport the gas through its authorized pipeline system to delivery points in Kern County, California.

Kern River also requests authorization for the construction and operation of the metering and interconnecting facilities required to deliver gas to SWEPI at the delivery points in Kern County.

Kern River states that the transportation contract with SWEPI is the product of negotiations in a competitive environment in which several pipelines were available to serve SWEPI's requirements. In order to accommodate the SWEPI's specific requirements, the negotiations between the parties resulted in Transportation Service Agreement which differs in some minor respects from the standard services agreement in Kern River's pro forma tariff as approved by the Commission in Kern River's Certificate Order.

In its Certificate Order, the Commission recognized that competition could result in negotiated terms and conditions with individual shippers. Accordingly, concurrent with this prior notice request, Kern River is filing with the Commission its negotiated contracts, including the Transportation Service Agreements executed with SWEPI, and is requesting in that filing any necessary waivers related to the individually negotiated terms.

*Comment date:* September 20, 1990, in accordance with Standard paragraph G at the end of this notice.

**28. Transwestern Pipeline Company**

[Docket Nos. CP90-1912-000, CP90-1913-000, and CP90-1914-000]

August 7, 1990.

Take notice that Transwestern Pipeline Company, 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, (Transwestern), filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP88-133-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[7]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Transwestern and is summarized in the attached appendix.

*Comment date:* September 21, 1990, in accordance with Standard paragraph G at the end of this notice.

| Docket No. (date filed) | Shipper name | Peak day, average day, annual MMBtu | Points of | | Contract date, rate schedule, service type | Related docket, start up date |
|---|---|---|---|---|---|---|
| | | | Receipt | Delivery | | |
| CP90-1912-000 (8-6-90) | NGC Transportation, Inc. (Marketer) | 100,000<br>75,000<br>36,500,000 | Various | OK | 6-28-90, ITS, Interruptible. | ST90-4082-000, 7-2-90. |
| CP90-1913-000 (8-6-90) | Texaco Gas Marketing, Inc. (Marketer) | 10,000<br>7,500<br>3,650,000 | Various | OK | 5-18-90, ITS, Interruptible. | ST90-4083-000, 7-7-90. |
| CP90-1914-000 (8-6-90) | Plains Gas Farmers CO-OP (End-user) | 5,000<br>3,750<br>1,825,000 | Various | TX | 6-25-90, ITS, Interruptible. | ST90-4081-000, 7-1-90. |

[7] These prior notice requests are not consolidated.

## 29 ANR pipeline Company

Docket No. CP90-1866-000, CP90-1867-000, CP90-1868-000, CP90-1869-000 and CP90-1870-000

August 7, 1990.

Take notice that on August 1, 1990, ANR Pipeline Company (Applicant), 500 Renaissance Center, Detroit, Michigan 48243, filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP88-532-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[8]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by the Applicant and is summarized in the attached appendix

Applicant states that each of the proposed services would be provided under an executed transportation agreement, and that Applicant would charge the rates and abide by the terms and conditions of the referenced transportation rate schedules.

*Comment date:* September 21, 1990, in accordance with Standard Paragraph G at the end of this notice.

[8] These prior notice request not consolidated.

| Docket No. (date filed) | Shipper name | Peak day [1] avg. annual | Points of | | Start up date rate schedule | Related [2] dockets |
|---|---|---|---|---|---|---|
| | | | Receipt | Delivery | | |
| CP90-1866-000 8-1-90 | Briggs & Stratton Corp | 11,880<br>11,791<br>4,303,715 | On LA, Off LA, Off TX, MI | MI, WI | 6-1-90, ITS | ST90-3625-000 |
| CP90-1867-000 8-1-90 | Kohler Co | 33,942<br>33,690<br>12,296,850 | On LA, Off LA, On TX, Off TX, KS, OK, MI, IL, WI. | MI, IL, WI | 6-1-90, ITS | ST90-3621-000 |
| CP90-1868-000 8-1-90 | Union Oil Company of California. | 5,000<br>5,000<br>1,825,000 | On LA, Off LA, On TX, Off TX, KS, OK. | OK | 6-1-90, ITS | ST90-3619-000 |
| CP90-1869-000 8-1-90 | Froedtert Malt Corp | 1,200<br>1,200<br>438,000 | On LA, Off LA | WI | 6-1-90, FTS-1 | ST90-3624-000 |
| CP90-1870-000 8-1-90 | Unifield Natural Gas Group | 20,000<br>20,000<br>7,300,000 | On LA, Off LA, On TX, Off TX, KS, OK, MI. | OH | 6-1-90, ITS | ST90-3620-000 |

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

## 30. Trunkline Gas Company

[Docket Nos. CP90-1847-000, CP90-1848-000]

August 7, 1990.

Take notice that the above referenced companies (Applicants) filed in respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[9]

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicants and is included in the attached appendix.

The Applicants also state that each would provide the service for each shipper under an executed transportation agreement, and that the Applicants would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

*Comment date:* September 21, 1990, in accordance with Standard Paragraph G at the end of this notice.

[9] These prior notice requests are not consolidated

| Docket no. (date filed) | Applicant | Shipper name | Peak day [1] avg. annual | Points of | | Start up date rate schedule | Related [2] dockets |
|---|---|---|---|---|---|---|---|
| | | | | receipt | delivery | | |
| CP90-1847-000 7/30/90 | Trunkline Gas Company, P.O. Box 142, Houston, TX 772351-1642. | Entrade Corp. | 100,000<br>60,000<br>21,840,000 | IL, LA, TX, TN | IL | PT Interruptible 12-13-89. | ST90-1533-000 |
| CP90-1848-000 7/30/90 | Trunkline Gas Company, P.O. Box 1642, Houston, TX 77251-1642. | | 50,000<br>50,000<br>18,250,000 | IL, LA, TX, TN | TN | PT Interruptible 2-3-90. | ST90-2108-000 |

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

**31. Natural Gas Pipeline Company of America**

Docket Nos. CP90-1852-000, CP90-1853-000, CP90-1854-000 and CP90-1855-000

August 7, 1990.

Take notice that on July 31, 1990, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, IL 60148, filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP88-582-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[10]

A summary of each transportation service which includes the shippers identity, the peak day, average day and annual volumes, the receipt point(s), the delivery point(s), the applicable rate schedule, and the docket number and service commencement date of the 120-day automatic authorization under Section 284.223 of the Commission's Regulations is provided in the attached appendix.

*Comment date:* September 21, 1990, in accordance with Standard Paragraph G at the end of this notice.

[10] These prior notice requests are not consolidated.

| Docket No. (date filed) | Applicant | Shipper name | Peak day [1] Average annual | Points of | | | |
|---|---|---|---|---|---|---|---|
| | | | | Receipt | Delivery | Start up date, rate schedule | Related [2] dockets |
| CP90-1852-000 (7-31-90) | Natural Gas Pipeline Company of America. | Centran Corporation. | 30,000 15,00 5,475,000 | Offshore TX & LA, TX, LA, IL, AR. | Offshore TX & LA, IL, TX, LA, KS, IA. | 6-1-90, ITS | CP86-582-000. ST90-3663-000. |
| CP90-1853-000 (7-31-90) | Natural Gas Pipeline Company of America. | Barbara Fasken | 4,562 4,562 1,665.130 | NM | NM | 6-1-90, ITS | CP86-582-000. ST90-3657-000. |
| CP90-1854-000 (7-31-90) | Natural Gas Pipeline Company of America. | Exxon Corporation. | 75,000 30,000 10,950,000 | LA, TX, OK, NM | LA, TX, IL, OK, MN, IA. | 6-1-90, ITS | CP86-582-000. ST90-3655-000. |
| CP90-1855-000 (7-31-90) | Natural Gas Pipeline Company of America. | Arcadian Corporation. | 150,000 50,000 18,250,000 | Offshore TX & LA, AR, CO, IA, IL, KS, LA, MO, NE, NM, OK, TX. | Offshore LA & TX, LA, TX, IA, IL, AR, OK, CO, NM, KS. | 6-1-90, ITS | CP86-582-000. ST90-3664-000. |

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120—day transportation service was reported in it.

**32. Transcontinental Gas Pipe Line Corporation**

[Docket No. CP90-1833-000]

August 7, 1990.

Take notice that on July 27, 1990, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP90-1833-000 an application pursuant to § 157.205 of the Commission's Regulations (18 CFR 157.205) under the Natural Gas Act requesting authorization to construct and operate certain pipeline and appurtenant facilities under Transco's blanket certificate issued in Docket No. CP82-426-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Transco proposes to construct and operate approximately 9.42 miles of 10¾-inch pipeline in the High Island Area of offshore Texas, extending from Block A-384 to Block A-573, and a meter and regulatory station on the producer platform at Block A-384. It is stated that the facilities would be constructed to attach gas supplies that Transco is purchasing in High Island Block A-384 and Garden Banks Block 224. It is estimated that the cost of the proposed facilities would be $6,304,520, to be financed initially through short-term loans and available cash.

*Comment date:* September 21, 1990, in accordance with Standard Paragraph G at the end of this notice.

**33. Texas Eastern Transmission Corporation, El Paso Natural Gas Company**

[Docket Nos. CP90-1876-000, CP90-1877-000]

August 7, 1990.

Take notice that on August 1, 1990, Texas Eastern Transmission Corporation (TETCO), 5400 Westheimer Court, Houston, Texas, and El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed in Docket Nos. CP90-1876-000 and CP90-1877-000, respectively, requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on an interruptible basis on behalf of various shippers under TETCO's blanket certificate issued in Docket No. CP88-136-000, as amended in Docket No. CP88-136-007, and El Paso's blanket certificate issued in Docket No. CP88-433-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[1]

Information applicable to each transaction, including the identity of the shipper, the relative rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by TETCO and El Paso and is summarized in the attached appendix. TETCO explains that it would receive gas from existing points on its system and delivery the gas to existing points on its system. El Paso explains that it would transport the gas from any point on its system to delivery points located in the state of Texas.

*Comment date:* September 21, 1990, in accordance with Standard Paragraph G at the end of this notice.

[1] These prior notice requests are not consolidated.

| Docket No. | Shipper | Volumes—Dth peak, average, annual | Related docket [1] | Commencement date | Rate schedule |
|---|---|---|---|---|---|
| CP90-1876-000 | Fina Oil & Chemical Company | 160,000<br>160,000<br>58,400,000 | ST90-3853 | 6/26/90 | IT-1 |
| CP90-1877-000 | Westar Transmission Company | 149,999<br>30,000<br>10,950,000 | ST90-3607 | 6/1/90 | T-1 |

[1] TETCO and El Paso reported the 120-day transportation service in the referenced ST dockets.

**34. Northern Natural Gas Company, Division of Enron Corporation, Tennessee Gas Pipeline Company, Midwestern Gas Transmission Company, Columbia Gulf Transmission Company**

[Docket Nos. CP90-1878-000[12], CP90-1883-000, CP90-1884-000, CP90-1885-000]

August 7, 1990.

Take notice that the above referenced companies (Applicants) filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under their blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection and in the attached appendix.

Information applicable to each transaction, including the identify of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by the Applicants and is included in the attached appendix.

The Applicants also state that each would provide the service for each shipper under an executed transportation agreement, and that the Applicants would charge the rates and abide by the terms and conditions of the referenced transportation rate schedules.

*Comment date:* September 21, 1990, in accordance with Standard Paragraph G at the end of this notice.

[12] These prior notices requests are not consolidated.

| Docket No. (date filed) | Applicant | Shipper name | Peak day average [1] annual | Points of Receipt | Points of Delivery | Start up date, rate schedule | Related Dockets [2] |
|---|---|---|---|---|---|---|---|
| CP90-1878-000 (8-02-90) | Northern Natural Gas Company, Division of Enron Corp. | Coastal Gas Marketing Company. | 100,000<br>75,000<br>36,500,000 | OK, KS, TX, NM, IA, WI, NE, IL, MN. | OK, KS, TX, NM, WI, IA, NE, IL, MN. | 6-12-90, IT-1 | ST90-3701-000. |
| CP90-1883-000 (8-02-90) | Tennessee Gas Pipeline Company. | Aluminum Company of America. | 50,000<br>50,000<br>18,250,000 | Offshore LA | PA | 7-1-90, IT | ST90-4046-000. |
| CP90-1884-000 (8-02-90) | Midwestern Gas Transmission Company. | Trinity Pipeline Corporation. | 100,000<br>100,000<br>36,500,000 | OK, TX, LA, CO, WY. | TN, IL, IN, KY | 6-30-90, ITS | ST90-4116-000. |
| CP90-1885-000 (8-02-90) | Columbia Gulf Transmission Company. | Texaco Gas Marketing, Inc. | 25,000<br>20,000<br>7,300,000 | Offshore TX | Offshore TX, TX | 7-16-90, ITS-2 | ST90-3825-000. |

[1] Quantities are shown in MMBtu for Northern Natural and Columbia Gulf; and in dt for Tennessee and Midwestern.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

**35. Superior Offshore Pipeline Company**

[Docket No. CP90-1840-000]

August 7, 1990.

Take notice that on July 30, 1990, Superior Offshore Pipeline Company (SOPCO), 9 Greenway Plaza, suite 2700, Houston, Texas 77046, filed in Docket No. CP90-1840-000 a petition for waiver of the filing requirement of Section 260.1 Annual Report for Major National Gas Companies (Form No. 2), all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

SOPCO states that it owns the West Cameron Mainline which extends from production platforms located in the West Cameron Parish, Offshore Louisiana, across the OCS boundary into Louisiana State waters to the Deep Lake Reseparation Center of MEPU and the inlet side of the Lowry Natural Gas Liquids Extraction Plant in Cameron Parish, Louisiana. It is stated that SOPCO transports natural gas on behalf of Mobil Corporation (Mobil), Exxon Corporation, Stone Oil Company and Amerada Hess Corporation. It is further stated that SOPCO does not purchase, sell or resell any natural gas.

SOPCO states that it is owned by Mobil Exploration and Production North America Inc., a subsidiary of Mobil. SOPCO also states that it is a small operation with limited annual revenues of less than $1,000,000. SOPCO further states that it transported less than 50,000 MMcf in 1989, as set forth in Part 201 of the Commission Regulations and is therefore misclassified as a major company. SOPCO states that its administrative activities are performed by employees of other Mobil entities which do not maintain their books in accordance with the Uniform System of Accounts.

SOPCO states that in its Order No. 436 blanket certificate of public convenience and necessity for the transportation of natural gas, Superior Offshore Pipeline Company, 36 FERC ¶ 62,201 (1986), the initial SOPCO 1 cent

transportation rate which was based upon Commission allowed 1 cent add on to the nation-wide rate for natural gas producers for delivery of offshore gas onshore was reapproved after it was cost justified. SOPCO submits that it would be grossly inequitable and unduly burdensome to require SOPCO to file the Form 2 annual report in lieu of the abbreviated Form 2-A solely on the basis of that order.

SOPCO further maintains that any SOPCO rate filing can be properly analyzed by Commission Staff by using the reconciliation chart filed as part of a previous audit of SOPCO. It is asserted that the limited transportation only operations of SOPCO, coupled with the fact that it does not have any natural gas reserves, no long term debt, no natural gas sales, no peaking facilities, no production lines, no extraction operations and no storage projects make filing Form No. 2 inappropriate as it serve no regulatory purpose whatsoever.

*Comment date:* August 28, 1990, in accordance with the first subparagraph of Standard paragraph F at the end of this notice.

**36. K N Energy, Inc.**

Docket Nos. CP90-1879-000, [13] CP90-1880-000, CP90-1881-000, CP90-1882-000]

August 7, 1990.

Take notice that on August 2, 1990, K N Energy, Inc. (K N), P.O. Box 150265, Lakewood, Colorado 80215 filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under K N's blanket certificate issued in Docket No. CP89-1043-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to the public inspection and in the attached appendix.

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by K N and is included in the atttached appendix.

K N also states that it would provide the service for each shipper under an executed transportation agreement, and that K N would charge rates and abide by the terms and conditions of the referenced transportation rate schedule(s).

*Comment date:* September 21, 1990, in accordance with Standard Paragraph G at the end of this Notice.

[13] These prior notice requests are not consolidated.

| Docket No. | Shipper name | Peak day [1] average annual | Points of | | Start up date, rate schedule | Related [2] dockets |
|---|---|---|---|---|---|---|
| | | | Receipt | Delivery | | |
| CP90-1879-000 | Quivira Gas Co. | 35,000<br>35,000<br>12,775,000 | Mainline System | KS, NE, CO, WY | 6-1-90, IT-1, IT-2, IT-3. | ST90-3564-000. |
| CP90-1880-000 | Williams Gas Marketing Co.. | 80,000<br>60,000<br>29,200,000 | Buffalo Wallow System | TX, OK | 6-4-90, IT-1, IT-2, IT-3. | ST90-3930-000. |
| CP90-1881-000 | Sun Gas Gas Trans. L.P. | 130,000<br>40,000<br>14,600,000 | Buffalo Wallow System | TX, OK | 6-30-90, IT-1, IT-2, IT-3. | ST90-3931-000. |
| CP90-1882-000 | Maxus Exploration Co. | 50,000<br>50,000<br>18,250,000 | Buffalo Wallow System | TX, OK | 6-4-90, IT-1, IT-2, IT-3. | ST90-3932-000. |

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

**Standard Paragraphs**

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instance notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for

authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

*Secretary.*

[FR Doc. 90-19132 Filed 8-14-90; 8:45 am]

BILLING CODE 6717-01-M

## Office of Fossil Energy

[FE Docket No. 90-35-NG]

### Amoco Energy Trading Corp.; Application for Blanket Authorization To Import Natural Gas From Canada

**AGENCY:** Department of Energy, Office of Fossil Energy.

**ACTION:** Notice of application for blanket authorization to import natural gas from Canada.

**SUMMARY:** The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on May 30, 1990, of an application filed by Amoco Energy Trading Corporation (Amoco Energy), requesting that their existing authorization issued by the Economic Regulatory Administration (ERA) under DOE/ERA Opinion and Order No. 238 (Order No. 238) on April 26, 1988, be extended for two years from the expiration date. Amoco Energy also requests that the import volume allowed be 300 Bcf over the two year extension. Amoco Energy would use existing pipeline facilities for the importation and transportation of the requested volumes and will continue to submit quarterly reports giving details of individual transactions.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention and written comments are invited.

**DATES:** Protests, motions to intervene or notice of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., e.d.t., September 14, 1990.

**ADDRESSES:**

Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, FE-50, 1000 Independence Avenue, SW., Washington, DC 20585.

**FOR FURTHER INFORMATION CONTACT:**

Frank Duchaine, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3H-087, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-8233.

Michael T. Skinker, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

**SUPPLEMENTARY INFORMATION:** Amoco Energy is a Delaware corporation with its principal place of business in Chicago, Illinois. Amoco Energy is a wholly owned subsidiary of Amoco Production Company, which is a wholly owned subsidiary of Amoco Company which is wholly owned by Amoco Corporation, an Indiana corporation.

Amoco Energy requests that Order No. 238 be extended for a two-year period to commence on September 23, 1990, and that the previously authorized 300 Bcf of natural gas be allowed during the requested period. Order No. 238 expires on September 23, 1990.

Amoco Energy states that the gas to be imported by Amoco Energy will be supplied by individual producers, producer groups, associations, and pipeline companies. Also, that the specific terms of each supply contract will be the product of negotiations between Amoco Energy and the Canadian supplier, and that the terms of each supply contract will be dependent on the current market demand for natural gas as well as their contract arrangements with U.S. purchasers. Amoco Energy asserts that the terms of each supply contract will include the price paid to the supplier, the volume, the duration of the agreement and, where applicable, contract adjustment and take provisions.

Amoco Energy may act as a broker for U.S. purchasers, individual Canadian producers, Canadian producer groups and associations, and Canadian pipelines. Amoco Energy may also act on its own behalf as importer of natural gas for sale to U.S. purchasers. The U.S. purchasers of Canadian natural gas from Amoco Energy are expected to include, but are not limited to, industrial end users, agricultural users, electric utilities, pipelines, and distribution companies. It is expected that the majority of short-term and spot sales of Canadian natural gas sold to U.S. purchasers will be used to displace higher priced energy supplies.

The decision on the application for import authority will be made consistent with DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines.

The applicant asserts that this import arrangement will be competitive and thus in the public interest. Parties opposing the arrangement bear the burden of overcoming this assertion. All parties should be aware that if this blanket import authorization is granted, the authorization may permit the import of the gas at any point of entry on the international border between the United States and Canada where existing pipeline facilities are located.

#### NEPA Compliance

The National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

#### Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should

explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, a notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Amoco Energy's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on August 9, 1990.

**Clifford P. Tomaszewski,**

*Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.*

[FR Doc. 90-19175 Filed 8-14-90; 8:45 am]

BILLING CODE 6450-01-M

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**[FE Docket No. 90-11-NG]**

## Encogen Four Partners Limited; Application To Import Natural Gas From Canada

**AGENCY:** Department of Energy, Office of Fossil Energy.

**ACTION:** Notice of application for long-term authorization to import natural gas from Canada.

**SUMMARY:** The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on February 26, 1990, of an application filed by Encogen Four Partners L.P. (Encogen), for authorization to import up to 14,800 Mcf of Canadian natural gas per day for a period of 15 years. The gas would be used to fuel Encogen's new 62 megawatt (MW) cogeneration plant to be constructed and operated in Buffalo, New York. Encogen requests that the authorization commence upon the commercial operation of the project, which is expected to occur in November 1991.

The application is filed under section 3 of the Natural Gas Act (NGA) and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention, and written comments are invited.

**DATES:** Protests, motions to intervene, or notices of intervention, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., e.d.t., September 14, 1990.

**ADDRESSES:**

Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, FE-50, 1000 Independence Avenue, SW., Washington, DC 20585.

**FOR FURTHER INFORMATION CONTACT:**

Frank Duchaine, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3H-087, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-8233.

Diane J. Stubbs, Natural Gas and Mineral Leasing, Office of General Consel, U.S. Department of Energy, Forrestal Building, room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

**SUPPLEMENTARY INFORMATION:** Encogen is a Delaware limited partnership. The managing general partner of the applicant is EDC Four, Inc., which is a wholly owned subsidiary of Enserch Development Corporation.

The gas purchase contract submitted as part of the application provides for the purchase by Encogen from Sceptre Resources Limited (Sceptre) of a supply of natural gas to be used as fuel in the 62 megawatt gas fired cogeneration plant to be built on a site located in Buffalo, New York. Encogen's cogeneration facility has been certified as a "qualifying facility" under the Public Utility Regulatory Policies Act of 1978. Electricity produced by the cogeneration facility will be sold to Niagara Mohawk Power Corporation under a long-term power purchase agreement. Thermal energy produced by the facility will be sold to the American Brass Company under a long-term thermal sales agreement.

Sceptre is to arrange for the proposed imported gas to be transported through the facilities of Transgas PipeLines Limited (Transgas) within the Province of Saskatchewan and through the facilities of Nova Corporation of Alberta (Nova) within the Province of Alberta. Encogen is to reimburse Sceptre for all fees incurred in connection with this transportation except to the extent, if any, that the transportation charges on the Nova system exceed the transportation charges for which Encogen would be responsible had the gas delivered on the Nova System been delivered on the Transgas system, in which case Sceptre is responsible for any such excess. Title to the natural gas is to pass from Sceptre to Encogen at the point(s) at which the gas first enters the pipeline of TransCanada PipeLines Limited (TransCanada) either at any of its existing interconnections with Transgas, located at or near Success, Liebenthal and Bayhurst in the Province of Saskatchewan, or at the point of its existing interconnection with Nova at or near Empress, Alberta, Canada. Encogen will bear the cost of transportation by TransCanada to a point of interconnection at the international border with the facilities of National Fuel Gas Supply Corporation (National Fuel) located at Grand Island, New York. Encogen states that the transportation charge in U.S. dollars to be paid to Trans Canada at the international border, given the current U.S./Canadian monetary exchange rate, will be approximately $.89 per MMBtu. From there, the gas will be transported at Encogen's expense through the facilities of National Fuel and National Fuel Gas Distribution Corporation to the cogeneration plant.

Encogen states that transportation of their gas through the facilities of National Fuel will likely require the construction of additional facilities, and if so, it is Encogen's understanding that National Fuel will seek permission from the FERC for the construction of the necessary facilities.

According to its application, Encogen will pay Sceptre $1.65 per MMBtu in U.S. dollars for gas supply (exclusive of transportation charges) from the start-up date of the cogeneration plant to and including December 31, 1992. The price for all gas purchased from January 1, 1993, to and including June 30, 2009, would escalate at the beginning of each accounting period in accordance with a schedule set forth in the gas purchase contract. At the beginning of the last accounting period, the price of the gas would have escalated to $6.26 per MMBtu. The gas purchase contract provides that Encogen shall not be obligated to either take or pay for any gas made available by Sceptre which is not requested by Encogen. Encogen states that the contract resulted from arms-length bargaining and was negotiated to meet the discrete requirements of Encogen's cogeneration

plant. Encogen states that the corporate warranty and gas supply data confirming the existence and size of the reserves provided by Sceptre establish the security of gas supply of the requested importation. Encogen states that the arrangement with Sceptre is and will remain competitive over the term of the agreement. On July 30, 1990, Encogen filed a Certification of Compliance with the coal capability requirement for proposed new electric powerplants pursuant to the Powerplant and Industrial Fuel Use Act of 1978 (FUA) (10 USC 3801 *et seq.*, as amended; 53 FR 35544, September 14, 1988).

The decision on Encogen's application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Other matters that must be considered in making a public interest determination in a long-term import proposal such as this include need for the gas, and security of the long-term supply. Parties that may oppose this application should comment in their responses on the issues of competitiveness, need for the gas, and security of supply as set forth in the policy guidelines. The applicant asserts that this import arrangement is in the public interest because it is competitive and its gas source will be secure. Parties opposing the import arrangement bear the burden of overcoming these assertions.

All parties should be aware that if the requested import is approved, the authorization would be conditioned on the filing of quarterly reports indicating volumes imported and the purchase price.

**NEPA Compliance**

The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) requires the DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until the DOE has met its NEPA responsibilities.

**Public Comment Procedures**

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable and written comments. Any person wishing to become a party to the proceeding and to have written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although the protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of invervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, request for additional procedures, and written comments should be filed at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties' including the parties, written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a conditional or final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Encogen's application is available for inspection and copying in the Office of Fuels Programs Docket room, 3F-056, at the above address, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, August 9, 1990.

**Clifford P. Tomaszewski,**

*Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.*

[FR Doc. 90-19171 Filed 8-14-90; 11:25 am]

BILLING CODE 6450-01-M

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**[FE Docket No. 90-51-NG]**

## ICG Utilities (Ontario) Ltd.; Application to Amend Authorization To Import Natural Gas From Canada and Export Natural Gas to Canada

**AGENCY:** Department of Energy, Office of Fossil Energy.

**ACTION:** Notice of application to amend long-term authorization to import natural gas from Canada and export natural gas to Canada.

**SUMMARY:** The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on May 18, 1990, of an application filed by ICG Utilities (Ontario) Ltd. (ICG) to amend the authorization granted to ICG by DOE/FE Opinion and Order No. 332 (Order 332) on September 12, 1989. Order 332 authorized ICG to import up to 8,267,250 Mcf (8,267 MMcf) of natural gas per year from Canada, and to subsequently export the same gas back to Canada as part of a transportation arrangement to supply natural gas to a new cogeneration facility at Fort Francis, Ontario, Canada, beginning on November 1, 1990, and ending on October 31, 2005. Under the proposed amendment, ICG seeks to increase the volumes imported and exported annually from up to 8,267 MMcf to up to 10,220 MMcf. All other terms of ICG's existing import and export authorization would remain the same. The increased volumes would be imported and exported using existing pipeline facilities and would not result in a net import of gas into the U.S.

The application is filed pursuant to section 3 of the Natural Gas Act (NGA) and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention, and written comments are invited.

**DATES:** Protests, motions to intervene, notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., e.d.t., September 14, 1990.

**ADDRESSES:**

Office of Fuels Programs, Office of Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, FE-50, 1000 Independence Avenue, SW., Washington, DC 20585.

**FOR FURTHER INFORMATION CONTACT:**

Stanley C. Vass, Office of Fuels Programs, Office of Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-094, 1000 Independence Avenue, SW., Washington, DC 20585, (301) 353-3168 or (202) 586-9482.

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, room 6E-042, GC-32, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

**SUPPLEMENTARY INFORMATION:** ICG, a Canadian corporation having its principal place of business in North York, Ontario, is a large natural gas distribution company serving customers in more than 100 communities in northwestern and eastern Ontario, Canada. ICG states that it is seeking to increase authorized volumes from up to 8267 MMcf per year to 10,220 MMcf per year to meet existing customer needs. The additional gas would be used primarily to fuel ICG's system supply in the Fort Francis, Canada, area and the new cogeneration facility to be built at Fort Francis, Ontario.

ICG asserts that the increased volumes of natural gas for import into the U.S., and subsequent export to Canada would be purchased from fields in the Canadian provinces of Alberta and Saskatchewan and supplied by Canadian Hydrocarbons Marketing Inc., North Canadian Marketing Inc., and Western Gas Marketing Ltd. As under ICG's existing authorization, the increased volumes would be imported into the U.S. near Sprague, Manitoba, for transit via the existing facilities of Inter-City Minnesota Pipelines Ltd., Inc. (Inter-City), across the State of Minnesota and then exported back to Canada near Baudette, Minnesota.

In support of its application, ICG asserts that since its application is for an import and an export of natural gas without any effect on the domestic gas supply market, considerations such as competitive prices, security of supply and the need for the natural gas are not relevant in this proceeding.

Since, according to the application, the same gas would be imported and exported solely as part of a transportation arrangement and would not be sold or stored in the U.S., the DOE does not believe that it is necessary to consider in its evaluation competitiveness, need for the gas and security of supply with respect to the proposed import, nor domestic need for the gas with respect to the proposed export. The DOE will consider the impact of transportation of the gas in the U.S. through Inter-City pipeline facilities, including any effect on the availability of gas supplies in markets served by Inter-City.

All parties should be aware that if the requested import and export is approved, the authorization would be conditioned on the filing of quarterly reports indicating volumes imported and exported.

**NEPA Compliance**

The National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) requires the DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until the DOE has met its NEPA responsibilities.

**Public Comment Procedures**

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application.

All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of ICG's application is available for inspection and copying in the Office of Fuels Programs Docket room, 3F-056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, August 9, 1990.

**Clifford P. Tomaszewski,**

*Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.*

[FR Doc. 90-19172 Filed 8-14-90; 8:45 am]

BILLING CODE 6450-01-M

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**[FE Docket No. 90-46-NG]**

## Pacific Gas and Electric Co., Application for Blanket Authorization To Import Natural Gas From Canada

**AGENCY:** Department of Energy, Office of Fossil Energy.

**ACTION:** Notice of application for blanket authorization to import natural gas from Canada.

**SUMMARY:** The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on May 15, 1990, of an application filed by Pacific Gas and Electric Company (PG&E) requesting blanket authorization to import up to 100 MMcf per day and up to a maximum of 73 Bcf of Canadian natural gas over a two-year period beginning on the date of first delivery. The proposed import would utilize the Pacific Gas Transmission Company (PGT)/PG&E Expansion Project for which an application for a Certificate of Public Convenience and Necessity (CP89-460) has been filed and is pending at the Federal Energy Regulatory Commission. PG&E agrees to make quarterly reports detailing each import transaction.

The application is filed under section 3 of the National Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention and written comments are invited.

**DATES:** Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed at the address listed below no later than 4:30 p.m., e.d.t., September 14, 1990.

**ADDRESSES:**

Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F-056, FE-50, 1000 Independence Avenue, SW., Washington, DC 20585.

**FOR FURTHER INFORMATION CONTACT:**

Frank Duchaine, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3H-087, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-8233

Michael T. Skinker, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667

**SUPPLEMENTARY INFORMATION:** PG&E, a California corporation is engaged in the business of local transmission and distribution of natural gas and electricity in Northern and Central California.

PG&E states the the requested authorization is neeeded in blanket form in order to allow PG&E to import gas on its own behalf. According to PG&E, the proposed import would be transported using: (1) The proposed PGT-PGE Expansion Project; (2) new or existing facilities in Canada belonging to NOVA Corporation, Foothills Pipelines, Ltd., and Alberta Natural Gas Company, and (3) PG&E's local distribution company facilities within California. The point of import will be near Kingsgate, British Columbia.

PG&E asserts that all of the transactions under the requested authorization will be conducted pursuant to market-responsive contract terms. In addition to this application for blanket authorization, PG&E also contemplates the filing of one or more applications for authority to import natural gas from Canada pursuant to gas purchase agreements for periods in excess of two years. Such applications will be made promptly upon the final completion of such longer term agreements, currently under negotiation.

In support of its application, PG&E asserts that the proposed gas imports would be limited to a term of two years and that Canada is a long-term and reliable supply source. PG&E further asserts that because of the quarterly filing requirements, FE will be able to assure that PG&E's imports remain competitive over the term of its contracts. In addition, PG&E states that the contemplated import transactions will be competitive because they will be voluntarily negotiated at arms length with sales prices determined on the basis of competitive factors in the gas market. On the basis of such terms and the availability of competing supplies, PG&E will not purchase the gas to import unless it has a need for the gas. Also, PG&E maintains that the requested authorization would enhance throughput on U.S. pipelines and will serve the public interest by improving the availability of competitive gas supplies to meet PG&E's large demand for gas.

The decision on the application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties, especially those that may oppose this application, should comment in their responses on these matters as they related to the requested import authority. The applicant asserts that this import arrangement will be competitive and in the public interest. Parties opposing the arrangement bear the burden of overcoming this assertion. All parties should be aware that if this authorization is granted, a total amount of authorized volumes may be designated for the two-year term rather than a daily or annual limit, to provide the applicant with maximum flexibility of operation.

**NEPA Compliance:**

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires the DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until the DOE has met its NEPA responsibilities.

**Public Comment Procedures:**

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590.

Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice to all parties will be provided. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of PG&E's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, at the above address, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, August 8, 1990

Clifford P. Tomaszewski,

*Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.*

[FR Doc. 90-19170 Filed 8-14-90; 8:45 am]

BILLING CODE 6450-01-M

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[FE Docket No. 90-56-NG]

## V.H.C. Gas Systems, L.P.; Application for Blanket Authorization To Import and Export Natural Gas and Liquefied Natural Gas

**AGENCY:** Department of Energy, Office of Fossil Energy.

**ACTION:** Notice of application for blanket authorization to import and export natural gas and liquefied natural gas

**SUMMARY:** The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on June 21, 1990, of an application filed by V.H.C. Gas Systems, L.P. (V.H.C. Gas Systems), for blanket authorization to import up to 150 Bcf, and to export up to 150 Bcf of natural gas, including liquefied natural gas (LNG), over a two-year beginning on the date of first import or export. V.H.C. Gas Systems intends to utilize existing pipeline and LNG facilities for the processing and transportation of the volumes to be imported or exported and to submit quarterly reports detailing each transaction.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention, and written comments are invited.

**DATES:** Protests, motions to intervene, or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., e.d.t., September 14, 1990.

**ADDRESSES:**

Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, FE-50, 1000 Independence Avenue, SW., Washington, DC 20585.

**FOR FURTHER INFORMATION CONTACT:**

Larine A. Moore, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, FE-53, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478.

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, room 6E-042, GC-32, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

**SUPPLEMENTARY INFORMATION:** V.H.C. Gas Systems, a Delaware limited partnership, with its principal place of business in San Antonio, Texas, is an affiliate of Valero Transmission, L.P. Applicant purchases and sells natural gas in the spot market in Texas and various other states. Under the blanket authority sought, V.H.C. Gas Systems contemplates importing and exporting natural gas and LNG secured from a variety of foreign and domestic suppliers for sale to various foreign and domestic purchasers on a short-term or spot market basis. Although V.H.C. Gas Systems is primarily interested in imports from and exports to Canada for sale or for storage, it is requesting authority to export and import natural gas and LNG to and from any foreign country to have maximum competitive flexibility.

V.H.C. Gas systems currently is negotiating with a number of Canadian producers to import gas for sale in the United States spot market and has discussed with various parties the possibility of shipping domestic gas to Canada for storage and redelivery in the United States as well as shipping domestic gas through Canada to United States markets. V.H.C. Systems would import and export natural gas and LNG both for its own account as well as for the accounts of others. The specific terms of each import and export arrangement would be negotiated at arms length in response to market conditions.

The decision on the application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In reviewing natural gas export applications, domestic need for the gas to be exported is considered, and any other issues determined to be appropriate in a particular case, including whether the arrangement is consistent with the DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that the proposed imports will make competitively priced gas available to U.S. markets while the short-term nature of the transactions will minimize the potential for undue long-term dependence on foreign sources of energy.

### NEPA Compliance

The National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) requires the DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until the DOE has met its NEPA responsibilities.

### Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there

are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of V.H.C. Gas System's application is available for inspection and copying in the Office of Fuels Programs Docket room, 3F-056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, August 9, 1990.

**Clifford P. Tomaszewski,**

*Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.*

[FR Doc. 90-19174 Filed 8-14-90; 8:45 am]

BILLING CODE 6450-01-M

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[FE Docket No. 90-55-NG]

## Western Gas Marketing U.S.A. LTD.; Application for Blanket Authorization To Import Natural Gas Form Canada and Export Natural Gas to Canada

**AGENCY:** Department of Energy, Office of Fossil Energy.

**ACTION:** Notice of application for blanket Authorization to import natural gas and to export natural gas to Canada.

**SUMMARY:** The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on June 7, 1990, of an application filed by Western Gas Marketing U.S.A. Ltd. (Western) requesting blanket authority to import up to 300 Bcf of Canadian natural gas and to export up to 100 Bcf of natural gas over a two-year period beginning on the date of first delivery after the expiration of its current import and export authorization granted on August 4, 1988, in DOE/ERA Opinion and Order No. 263 (Order 263). Western intends to utilize existing pipeline facilities for transportation of the volumes to be imported and exported, and indicates that they will submit quarterly reports detailing each transaction.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention, and written comments are invited.

**DATES:** Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., e.d.t., September 14, 1990.

**ADDRESSES:**

Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F-056, FE-50, 1000 Independence Avenue, SW., Washington, DC 20585.

**FOR FURTHER INFORMATION CONTACT:**

Stanley C. Vass, Office of Fuel Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, 1000 Independence Avenue, SW., Washington, DC 20585, (301) 353-3168.

Diane J. Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy,, Forrestal Building, room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

**SUPPLEMENTARY INFORMATION:** Western is a wholly-owned subsidiary of TransCanada Pipelines Limited. Western was initially granted a blanket import authorization in November 1986, by DOE/ERA Opinion and Order No. 152 to import up to 300 Bcf of natural gas over a two-year period. In 1988, the DOE issued Order 263 which granted Western a two-year blanket authorization to import up to 300 Bcf of natural gas through November 3, 1990, and to export up to 100 Bcf through October 31, 1990. Western seeks a new import and export authorization at the same volume levels beginning on the date of first delivery following expiration of the import and export authorizations granted by Order 263. Western asks that the import and export authorizations be granted without a daily or annual volume limitation.

The decision on the application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whehter it is in the public interest (49 FR 6684, February 22, 1984). In reviewing natural gas export applications, domestic need for the gas to be exported in considered, and any other issues determined to be appropriate in a particular case, including whether the arrangement is consistent with the DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. Western asserts that the proposed imports will make competitively priced gas available to U.S. markets while the short-term nature of the transactions will minimize the potential for undue long-term dependence on foreign sources of energy. Western also asserts that the proposed export encouraged a bidirectional flow of natural gas across the US/Canadian border at competitive prices and furthers DOE's policy of reducing trade barriers and encouraging market forces to achieve a more competitive distribution of goods between the U.S. and Canada. Western also asserts that the proposed export will have a beneficial impact on the U.S. trade balance. Parties opposing this arrangement have the burden of overcoming these assertions.

### NEPA Compliance

The National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) requires DOE to give appropriate consideration to the environmental effectis of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

### Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant to party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including parties' written comments and replies thereto.

Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments, should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Western's application is available for inspection and copying in the Office of Fuels Programs Docket room, 3F-056 at the above address. The Docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on August 9, 1990.

**Clifford P. Tomaszewski,**

*Acting Deputy Assistant Secretary for Fuel Programs, Office of Fossil Energy.*

[FR Doc. 90-19173 Filed 8-14-90; 8:45 am]

BILLING CODE 6450-01-M

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-3820-8]

## Underground Injection Control Program; Hazardous Waste Disposal Injection Restrictions Petition for Exemption—Class I Hazardous Waste Injection Arcmo Steel Company, L.P., Middletown, OH

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of final decision on petition.

**SUMMARY:** Notice is hereby given by the United States Environmental Protection Agency (USEPA) that an exemption to the land disposal restrictions under the 1984 Hazardous and Solid Waste Amendments (HSWA) to the Resource Conservation and Recovery Act (RCRA) has been granted to Armco Steel Co. (Armco) of Middletown, Ohio, for two Class I injection wells located in Middletown, Ohio. As required by 40 CFR part 148, Armco has demonstrated, to a reasonable degree of certainty, that there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. This final decision allows the continued underground injection by Armco of a specific restricted waste, Waste Pickle Liquor, (code K062 under 40 CFR part 261), into two Class I hazardous waste injection wells specifically identified as Waste Disposal Wells No. 1 and No. 2, at the Middletown facility. This decision constitutes a final USEPA action for which there is no Administrative Appeal.

### Background

Armco submitted a petition for exemption from the land disposal restrictions of hazardous waste on February 9, 1989. USEPA and Ohio EPA personnel reviewed all data pertaining to the petition, including, but not limited to, well construction, regional and local geology, seismic activity, penetrations of the confining zone, and the mathematical models. The USEPA has determined that the geological setting at the site as well as the construction and operation of the wells are adequate to prevent fluid migration out of the injection zone within 10,000 years, as required under 40 CFR part 148. The injection zone at this site is the upper Middle Run Formation, the Mt. Simon Sandstone, and the Eau Claire Formation, at a depth of 2423 feet to 3296 feet below ground level. The confining zone is the Knox Dolomite at a depth of 1172 feet to 2423 feet below ground level. The confining zone is separated from the lowermost underground source of drinking water (at a depth of 522 feet below ground level) by a sequence of permeable and less permeable sedimentary rocks, which provide additional protection from fluid migration into drinking water sources. A fact sheet containing a more complete summary of the proposed decision was published in the **Federal Register** on May 23, 1990 (55 FR 21236).

A public notice was issued on May 19, 1990, pursuant to 40 CFR 124.10, and public meetings and public hearings were subsequently held in Middletown on June 11th and 18th, 1990, respectively. The public comment period expired on July 2, 1990. USEPA did not receive comments on the proposed exemption granted to Armco, and has determined that its reasons for granting the exemption as set forth in the original fact sheet remain valid. A final exemption is therefore granted as proposed.

### Condition

As a condition of this exemption, Armco must meet the following conditions:

(1) The combined monthly average injection rate for both wells must not exceed 90 gallons per minute;

(2) Injection shall occur only into the lower Eau Claire Formation, the Mt. Simon Sandstone, and the upper Middle Run Formation in the interval from 2900 feet to 3296 feet; and

(3) Armco must be in full compliance with all conditions of its permit. Other conditions relating to the exemption may be found in 40 CFR parts 148.23 and 148.24.

**DATES:** This action is effective as of July 30, 1990.

**FOR FURTHER INFORMATION CONTACT:** Allen Melcer, Lead Petition Reviewer, USEPA, Region V, telephone (312) 886-1498. Copies of the petition and all pertinent information relating thereto are on file and are part of the Administrative Record. It is recommended that you contact the lead reviewer prior to reviewing the Administrative Record.

**Jerri-Anne Garl**

*Acting Director, Water Division*

[FR Doc. 90-19191 Filed 8-14-90; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3821-4]

## Final Exemption Granted to Midwest Steel Division of National Steel Corporation, Portage, IN, for the Continued Injection of Hazardous Waste

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of final decision on petition.

**SUMMARY:** Notice is hereby given by the United States Environmental Protection Agency (USEPA) that an exemption to the land disposal restrictions under the 1984 Hazardous and Solid Waste Amendments (HSWA) to the Resource Conservation and Recovery Act (RCRA) has been granted to Midwest Steel Division of National Steel Corporation, for its Class I injection well located in Portage, Indiana. As required by 40 CFR part 148 Midwest Steel has

demonstrated, with a reasonable degree of certainty, that there will be no migration of hazardous constituents from the infection zone for as long as the waste remains hazardous. This final decision allows the continued underground injection by Midwest Steel of a specific restricted hazardous waste, Spent Pickle Liquor, (code K062 under 40 CFR Part 261), into a Class I hazardous waste injection well specifically identified as Waste Disposal Well Number 2, at the Portage facility. This decision constitutes a final USEPA action for which there is no Administrative Appeal.

**Background**

Midwest Steel submitted a petition for exemption from the land disposal restrictions of hazardous waste on August 8, 1988. USEPA personnel reviewed all data pertaining to the petition, including, but not limited to, well construction, regional and local geology, seismic activity, penetrations of the confining zone, and the mathematical models. The USEPA has determined that the geological setting at the site as well as the construction and operation of the well are adequate to prevent fluid migration out of the injection zone within 10,000 years, as required under 40 CFR part 148. The injection zone at this site is the Mt. Simon Sandstone, and the immediate confining zone is the Eau Claire Formation, at a depth of 1934 feet to 2460 feet below ground level. The confining zone is separated from the lowermost underground source of drinking water (at a depth of 720 feet below ground level) by a sequence of permeable and less permeable sedimentary rocks, which provide additional protection from fluid migration into drinking water sources. A fact sheet containing a more complete summary of the proposed decision was published in the **Federal Register** on January 26, 1990 at 55 FR 2691.

A public notice was issued on January 12, 1990, pursuant to 40 CFR 124.10, and a public hearing was subsequently held in Valparaiso, Indiana, on February 15, 1990. The public comment period expired on February 26, 1990. A number of comments were received and all comments have been considered in making the final decision. A responsiveness summary has been mailed to all commentors and to all who signed in at the public hearing. This summary is included as part of the Administrative Record relating to this decision.

The proposed decision on Page 2695 required modifications of the existing monitoring well to be completed before the final exemption would be effective. Midwest completed the modifications specified in the condition; however, a leak in the casing was detected during mechanical integrity testing at a depth of 1650 feet, about 250 feet above the monitored interval. The plan for modifications of the monitoring well construction has therefore been further modified, and a new condition required compliance therewith has been imposed.

**Conditions**

General conditions of this exemption may be found in 40 CFR 148.23 and 148.24. In addition, Midwest Steel must meet the following conditions:

1. Midwest Steel may inject to to 80 gallong per minute based on a monthly average;
2. Midwest Steel may inject Spent Pickle Liquor only into the lower Mt. Simon Sandstone below the "B" Cap shales;
3. No later than August 15, 1990, Midwest Steel must complete the approved modified construction plan for the monitoring well appearing in a letter dated August 3, 1990;
4. Midwest Steel must implement the approved Groundwater Monitoring Plan found in Attachment E of its Underground Injection Control permit; and
5. Midwest Steel must comply with its Underground Injection Control permit.

**DATES:** The action is effective as of August 7, 1990.

**FOR FURTHER INFORMATION CONTACT:** Dr. Leah Haworth, Lead Petition Reviewer, USEPA, Region V, telephone (312) 886-6556. Copies of the petition and all pertinent information relating thereto are on file and are part of the Administrative Record. It is recommended that you contact the lead reviewer prior to reviewing the Administrative Record.

**Jerri-Anne Garl,**

*Acting Director, Water Division.*

[FR Doc. 90-19192 Filed 8-14-90; 8:45 am]

BILLING CODE 6560-50-M

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[FRL-3821-1]

## Underground Injection Control Program; Hazardous Waste Disposal Injection Restrictions; Petition for Exemption—Class I Hazardous Waste Injection Rubicon, Inc., Geismar, Louisiana Petition

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of final decision on petition.

**SUMMARY:** Notice is hereby given that an exemption to the land disposal restrictions under the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act has been granted to Rubicon, Inc., for the Class I injection wells located at Rubicon, Inc., Geismar, Louisiana. As required by 40 CFR part 148, the company has adequately demonstrated to the satisfaction of the Environmental Protection Agency by petition and supporting documentation that, to a reasonable degree of certainty, there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. This final decision allows the underground injection by Rubicon, Inc., of the specific restricted hazardous waste identified in the petition, into the Class I hazardous waste injection wells at the Geismar, Louisiana, facility specifically identified in the petition, for as long as the basis for granting an approval of the petition remains valid, under provisions of 40 CFR 148.24. As required by 40 CFR 124.10, a public notice was issued May 25, 1990. A public hearing was held June 25, 1990, and a public comment period ended on July 10, 1990. All comments have been addressed and have been considered in the final decision. This decision constitutes final Agency action and there is no Administrative appeal.

**DATES:** This action is effective as of August 7, 1990, for Well Nos. 1, 2, and 3 identified in Underground Injection Control Permit WD 86-6. This action for Well No. 4, identified in Underground Injection Control Permit WD 88-3, is contingent on modification of the permit to authorize disposal in the injection zone identified in the petition, i.e., an injection zone ranging in depth from 2,690 feet to 5,500 feet, and will not become effective until and unless said permit modification becomes effective.

**ADDRESSES:** Copies of the petition and all pertinent information relating thereto are on file at the following location: Environmental Protection Agency, Region 6, Water Management Division, Water Supply Branch (6W-SU), 1445 Ross Avenue, Dallas, Texas 75202-2733.

**FOR FURTHER INFORMATION CONTACT:** Oscar Cabra, Jr., Chief Water Supply Branch, EPA—Region 6, telephone (214) 655-7150, (FTS) 255-7150.

**Kenton Kirkpatrick,**

*Acting Director, Water Management Division (6W).*

[FR Doc. 90-19193 Filed 8-14-90; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3821-3]

## Underground Injection Control Program; Hazardous Waste Disposal Injection Restrictions Petition For Exemption—Class I Hazardous Waste Injection Vulcan Chemicals, Wichita, KS

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of final decision on petition.

**SUMMARY:** Notice is hereby given that an exemption to the land disposal restrictions under the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act has been granted to Vulcan Chemicals for their Class I injection wells located at Wichita, Kansas. As required by title 40 Code of Federal Regulations part 148, the company has adequately demonstrated to the satisfaction of the Environmental Protection Agency by petition and supporting documentation that, to a reasonable degree of certainty, there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. This final decision allows the underground injection by Vulcan Chemicals of the specific restricted hazardous waste, identified in the petition, into the Class I hazardous waste injection wells at the Wichita, Kansas facility specifically identified in the petition, for as long as the basis for granting an approval of the petition remains valid, under provisions of title 40 Code of Federal Regulations 148.24. As required by title 40 Code of Federal Regulations section 124.10, a public notice was issued June 1, 1990. A public hearing was held on July 10, 1990, and a public comment period ended on July 17, 1990. All comments have been addressed and have been considered in the final decision. This decision constitutes final Agency action and there is no administrative appeal process that can be applied to a final petition decision.

**EFFECTIVE DATE:** This action is effective as of August 8, 1990.

**ADDRESSES:** Copies of the petition and all pertinent information relating thereto, including the Agency's response to comments, are on file at the following location: Environmental Protection Agency, Region VII, Water Management Division, Drinking Water Branch, 726 Minnesota Avenue, Kansas City, Kansas, 66101.

**FOR FURTHER INFORMATION CONTACT:** Ralph N. Langemeier, Chief, Drinking Water Branch, Environmental Protection Agency, Region VII. Phone (813) 551-7032, (FTS) 276-7032.

Dated: August 7, 1990.

Morris Kay,

*Regional Administrator.*

[FR Doc. 90-19194 Filed 8-14-90; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3820-9]

## Withdrawal of No Migration Petition

**AGENCY:** Region 6, EPA.

**ACTION:** Informational Notice.

**SUMMARY:** Notice is hereby given that Chemical Resources, Incorporated (CRI), which owns and operates a Class I hazardous waste injection well in Tulsa, Oklahoma, has withdrawn a "no migration" petition it submitted to EPA Region 6 on March 29, 1989. Accordingly, EPA will take no further action on that petition.

**ADDRESSES:** EPA's administrative record in this matter is available for inspection at: EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202.

**FOR FURTHER INFORMATION CONTACT:** Oscar Cabra (6W-S), Chief of the Water Supply Branch in EPA Region 6. Mr. Cabra may be contacted at the above address or at (214) 655-7150.

**SUPPLEMENTARY INFORMATION:** Section 3004 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6924, bans disposal of certain restricted hazardous wastes into a Class I injection well unless the owner/operator of the well demonstrates to EPA that there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. Injection well operators seeking approval of such demonstrations file "no migration" petitions with the Agency. EPA promulgated regulations, now codified at 40 CFR part 148, setting minimum standards for no migration demonstrations and their reviews at 53 FR 28118 (July 26, 1988). In relevant part, those regulations allow injection well operators to demonstrate no migration through appropriate mathematical modeling using site specific geotechnical data or, if such data is unavailable, conservative assumptions.

CRI owns and operates a Class I injection well (WDW-1) in Tulsa, Oklahoma. Desiring to continue injection of hazardous wastes into this well and proposing future injection into another well (WDW-2), CRI submitted a "no migration" petition to EPA Region 6 on March 22, 1989. After technical review of that submission, Region 6 concluded CRI's demonstration did not meet the requirements of 40 CFR part 148, largely because it relied on a noncalibrated model for predicting subsurface waste plume movement and on an unduly optimistic assumption that numerous abandoned wells in the area of review were properly plugged. See 40 CFR 148.20(a)(2)(ii); 40 CFR 148.31(a)(3). The Agency therefore proposed to deny the petition in a June 5, 1990, letter to CRI. On June 7, 1990, EPA published notice of its proposed decision and solicited comment thereon in the "Tulsa World," a newspaper of general circulation in the Tulsa area. Additional public notice was provided by means of public service announcements on KRMG, a Tulsa radio station.

By letter dated June 27, 1990, CRI withdrew its petition. Accordingly, EPA will take no further action in this matter and CRI will remain subject to the prohibitions of RCRA & 3004. If CRI files another no migration petition seeking exemption from the "land ban" requirements of RCRA, EPA will provide new public notice of its proposed decision after reviewing that petition.

Dated: August 8, 1990.

Kenton Kirkpatrick,

*Acting Director, Water Management Division, EPA Region 6.*

[FR Doc. 90-19196 Filed 8-4-90; 8:45 am]

BILLING CODE 6560-50-M

[OPP-30305; FRL-3766-1]

## Benomyl; Receipt of Request to Amend Benomyl Registrations to Delete Postharvest Uses

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of receipt.

**SUMMARY:** This notice, pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq., announces EPA's receipt of a request from the E.I. duPont de Nemours & Company to amend the registration of their benomyl pesticide products to delete all postharvest uses. The effected end-use products are marketed under the tradenames Benlate® Fungicide WP (EPA Registration No. 352-354) and Benlate® 50 DF Fungicide (EPA Registration No. 352-447). The registration of the technical grade product, Benomyl Technical (EPA Registration No. 352-377), shall be amended to limit use to formulating products for preharvest applications only. The products contain the active ingredient benomyl. Additionally, this notice announces that EPA intends to approve and give effect to this request, thereby amending

affected registrations of duPont products containing benomyl to delete all postharvest uses.

**DATES:** The modification of registrations shall be effective September 14, 1990 and all future distribution or sale, or use of affected benomyl products shall be in accordance with the terms and conditions described herein.

**FOR FURTHER INFORMATION CONTACT:** Susan Lewis, Product Manager (PM) 21, Registration Division (H7505C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM #2, Environmental Protection Agency, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1900).

**SUPPLEMENTARY INFORMATION:** On September 22, 1989, the E. I. dupont de Nemours & Company (duPont) submitted a request to EPA for amendment of registrations and labels of Benlate® Fungicide WP and Benlate® 50 DF Fungicide. The current labels allow for postharvest use of these products on apples, bananas, citrus, pears, pineapples, and stone fruit. Along with their request, the registrant submitted amendments to registration and labeling reflecting the deletion of postharvest uses and relevant use directions for the affected end-use products. In addition, the company submitted amended labeling for their technical grade product, Benomyl Technical, which specifies use in formulating products for preharvest use only.

Along with their request to delete postharvest uses, duPont indicated that the amended labeling showing the deletions would be placed on all new production of end-use products and on all new production of technical products after EPA approval of the amended labels. Moreover, duPont stated that it would relabel all existing stock of end-use products and of all existing stock of technical product at warehouses and at distributors within 1 month from the date of EPA approval of the amended label.

DuPont is the sole registrant involved in this action.

DuPont submitted applications to amend the registration and label of each of its affected products. Revised labeling submitted for affected end-use products reflects postharvest use deletions and appropriately revised directions for use language. Revised labeling submitted for the technical product reflects deletion of postharvest use for products to be formulated, i.e., "For the Manufacture of Preharvest Use Fungicides Only."

EPA has received and expects to approve the request described above effective September 14, 1990, incorporating the requested labeling and registration amendments and the existing stocks provisions, as described above, and concludes that the registrant may proceed according to the plan described in its request for deletion of all postharvest uses of benomyl.

After 30 days following the issuance of this notice, all new production and existing stocks of the products listed below that are in warehouses and with distributors will bear new labels with postharvest uses deleted:

| Product Name | EPA Registration Number |
|---|---|
| Benomyl Technical | 352-377 |
| Benlate® Fungicide WP | 352-354 |
| Benlate® 50 DF Fungicide | 352-447 |

Dated: August 3, 1990.

**Anne E. Lindsay,**

*Director, Registration Division.*

[FR Doc. 90-19080 Filed 8-14-90; 8:45 am]

BILLING CODE 6560-50-F

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**[OPP-30298B; FRL-3775-3]**

## Ecogen, Inc.; Approval of a Pesticide Product Registration

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces Agency approval of an application submitted by Ecogen, Inc., to conditionally register the pesticide product Foil OF containing a new active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(7) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

**FOR FURTHER INFORMATION CONTACT:** By mail: Phil Hutton, Product Manager (PM) 17, Registration Division (H7505C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 207, CM #2, Environmental Protection Agency, 1921 Jefferson Davis Hwy, Arlington, VA 22202, (703-557-2690).

**SUPPLEMENTARY INFORMATION:** EPA issued a notice, published in the **Federal Register** of April 27, 1989 (54 FR 18151), which announced that Ecogen, Inc., 2005 Cabot Blvd West, Langhorne, PA 19047-1810, had submitted an application to conditionally register the pesticide product Foil OF (EPA File Symbol 55638-RN), containing the active ingredient *Bacillus thuringiensis* var. *kurstaki* strain 2424 protein toxic at 7.5 percent; an active ingredient not included in any previously registered product.

The chemical name for the product Foil OF, "*Bacillus thuringiensis* var. *kurstaki* strain 2424 protein toxic" was changed to "*Bacillus thuringiensis* subspecies *kurstaki* strain 2424 lepidopteran and coleopteran active toxins."

The application was approved on April 6, 1990, for general use for the product Foil OF to control the lepidopteran and coleopteran pests on a variety of crops, and was assigned EPA Registration Number 55638-10.

A conditional registration may be granted under section 3(c)(7)(C) of FIFRA for a new active ingredient where certain data are lacking, on condition that such data are received by the end of the conditional registration period and do not meet or exceed the risk criteria set forth in 40 CFR 154.7; that use of the pesticide during the conditional registration period will not cause unreasonable adverse effects; and that use of the pesticide is in the public interest.

The Agency has considered the available data on the risks associated with the proposed use of *Bacillus thuringiensis* subspecies *kurstaki* strain EG2424 lepidopteran and coleopteran active toxins and information on social, economic, and environmental benefits to be derived from such use. Specifically, the Agency has considered the nature of the microbe and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of *Bacillus thuringiensis* subspecies *kurstaki* strain EG 2424 lepidopteran and coleopteran active toxins during the period of conditional registration will not cause any unreasonable adverse effect on the environment, and that use of the pesticide is, in the public interest.

This conditional registration will automatically expire on March 15, 1992.

Consistent with section 3(c)(7)(C), the Agency has determined that these conditional registrations are in the public interest. Use of the pesticides are of significance to the user community, and appropriate labeling, use directions, and other measures have been taken to ensure that use of the pesticides will not result in unreasonable adverse effects to man and the environment.

A copy of the *Bacillus thuringiensis* fact sheet may be obtained from the Natural Technical Information Service

(NTIS), 5285 Port Royal Road, Springfield, VA 22161.

In accordance with section 3(c)(2) of FIFRA, 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 material specifically protected by section 10 of FIFRA, are available for public inspection in the Public Docket, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 246, CM #2, Arlington, VA 22202 (703-557-4456). 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), 401 M St., SW., Washington, D.C. 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

**Authority:** 7 U.S.C. 136.

Dated: July 27, 1990.

**Douglas D. Campt,**

*Director, Office of Pesticide Programs.*

[FR Doc. 90-19081 Filed 8-14-90; 8:45 am]

BILLING CODE 6560-50-F

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[OPP-30298A; FRL-3689-9]

## Ecogen, Inc.; Approval of Pesticide Product Registrations

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces Agency approval of applications submitted by Ecogen, Inc., to conditionally register the pesticide products Cutlass OF, Cutlass WP, and Condor OF containing new active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(7) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

**FOR FURTHER INFORMATION CONTACT:** By mail: Phil Hutton, Product Manager (PM) 17, Registration Division (H7505C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 207, CM #2, Environmental Protection Agency, 1921 Jefferson Davis Hwy, Arlington, VA 22202, (703-557-2690).

**SUPPLEMENTARY INFORMATION:** EPA issued a notice, published in the **Federal Register** of April 27, 1989 (54 FR 18151), which announced that Ecogen, Inc., 2005 Cabot Blvd West, Langhorne, PA 19047-1810, had submitted applications to conditionally register the pesticide products Cutlass OF, Cutlass WP, and Condor OF, (EPA File Symbols 55638-O, 55638-I, and 55638-T), containing the active ingredient *Bacillus thuringiensis* var. *kurstaki* strain 2371 toxic protein for both Cutlass products and *Bacillus thuringiensis* var. *kurstaki* toxic protein for Condor OF at 7.5, 10.0, and 7.5 percent respectively; active ingredients not included in any previously registered products.

The chemical name for the products Cutlass OF and Cutlass WP, "*Bacillus thuringiensis* var. *kurstaki* strain 2371 toxic protein" was changed to "*Bacillus thuringiensis* subspecies *kurstaki* strain 2371 lepidopteran active toxin" and the chemical for the product Condor OF "*Bacillus thuringiensis* var. *kurstaki toxic protein* " was changed to "*Bacillus thuringiensis* subspecies *kurstaki* strain EG2348 lepidopteran active toxin."

These applications were approved on September 21, 1989, for general use for the following products:

1. EPA Reg. No. 55638-9. Product name: Cutlass OF 7.5%. Use: For the control of lepidopteran pests on a variety of crops.
2. EPA Reg. No. 55638-8. Product name: Cutlass WP 10.0%. Use: For the control of lepidopteran pests on a variety of crops.
3. EPA Reg. No. 55638-7. Product name: Condor OF 7.5%. Use: To control the Gypsy moth and Spruce budworm on forests, shade trees, and shrubs.

A conditional registration may be granted under section 3(c)(7)(C) of FIFRA for a new active ingredient where certain data are lacking, on condition that such data are received by the end of the conditional registration period and do not meet or exceed the risk criteria set forth in 40 CFR 154.7; that use of the pesticide during the conditional registration period will not cause unreasonable adverse effects; and that use of the pesticide is in the public interest.

The Agency has considered the available data on the risks associated with the proposed use of *Bacillus thuringiensis* subspecies *kurstaki* strain EG2371 lepidopteran active toxin and *Bacillus thuringiensis* subspecies *kurstaki* strain EG2348 lepidopteran active toxin and information on social, economic, and environmental benefits to be derived from such use. Specifically, the Agency has considered the nature of the microbe and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of *Bacillus thuringiensis* subspecies *kurstaki* strain EG 2371 lepidopteran active toxin and *Bacillus thuringiensis* subspecies *kurstaki* strain EG2348 lepidopteran active toxin during the period of conditional registration will not cause any unreasonable adverse effect on the environment, and that use of the pesticide is, in the public interest.

These conditional registrations will automatically expire on September 20, 1991.

Consistent with section 3(c)(7)(C), the Agency has determined that these conditional registrations are in the public interest. Use of the pesticides are of significance to the user community, and appropriate labeling, use directions, and other measures have been taken to ensure that use of the pesticides will not result in unreasonable adverse effects to man and the environment.

A copy of the *Bacillus thuringiensis* fact sheet, may be obtained from the Natural Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

In accordance with section 3(c)(2) of FIFRA, 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 material specifically protected by section 10 of FIFRA, are available for public inspection in the Public Docket, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 246, CM #2, Arlington, VA 22202 (703-557-4456). 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), 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.

**Authority:** 7 U.S.C. 136.

Dated: July 27, 1990.

**Douglas D. Campt,**

*Director, Office of Pesticide Programs.*

[FR Doc. 90-19082 Filed 8-14 90; 8:45 am]

BILLING CODE 6560-50-F

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[OPP-180832; FRL 3793-4]

## Emergency Exemptions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has granted specific exemptions for the control of various pests to the 26 States as listed below, and one by the United States Department of Agriculture. Crisis exemptions were initiated by seven States. These exemptions, issued during the months of April and May, are subject to application and timing restrictions and reporting requirements designed to protect the environment to the maximum extent possible. Information on these restrictions is available from the contact persons in EPA listed below.

**DATES:** See each specific and crisis exemption for its effective date.

**FURTHER INFORMATION CONTACT:** See each emergency exemption for the name of the contact person. The following information applies to all contact persons: By mail: Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-1806).

**SUPPLEMENTARY INFORMATION:** EPA has granted specific exemptions to the:

1. Arkansas State Plant Board for the use of triclopyr on rice to control broadleaf weeds; May 11, 1990, to August 1, 1990. (Jim Tompkins)

2. California Department of Food and Agriculture for the use of fosetyl-aluminum (Aliette) on spinach to control phytophthora blight; May 4, 1990, to February 28, 1991. California had initiated a crisis exemption for this use. (Susan Stanton)

3. Delaware Department of Agriculture for the use of chlorothalonil on mushrooms to control verticillium diseases; May 31, 1990, to May 30, 1991. (Susan Stanton)

4. Delaware Department of Agriculture for the use of clomazone on cucumbers to control broadleaf weeds and grasses; May 31, 1990, to August 30, 1990. (Susan Stanton)

5. Delaware Department of Agriculture for the use of cryolite on potatoes to control Colorado potato beetles; May 23, 1990, to October 31, 1990. (Libby Pemberton)

6. Idaho Department of Agriculture for the use of pendimethalin on alfalfa grown for seed to control dodder; April 11, 1990, to June 15, 1990. (Jim Tompkins)

7. Idaho Department of Agriculture for the use of fluazifop-p-butyl on mint to control grasses; May 23, 1990, to June 15, 1990. (Jim Tompkins)

8. Kansas State Board of Agriculture for the use of chlorpyrifos on wheat to control Russian wheat aphids; May 4, 1990, to June 30, 1990. (Robert Forrest)

9. Louisiana Department of Agriculture for the use of triclopyr on rice to control broadleaf weeds; May 11, 1990, to August 1, 1990. (Jim Tompkins)

10. Maine Department of Agriculture and Rural Resources for the use of linuron on sweet white lupines to control mustard species; May 14, 1990, to May 30, 1990. (Jim Tompkins)

11. Maryland Department of Agriculture for the use of cryolite on potatoes to control Colorado potato beetles; May 23, 1990, to October 31, 1990. (Libby Pemberton)

12. Maryland Department of Agriculture for the use of clomazone on cucumbers to control broadleaf weeds and grasses; May 31, 1990, to August 20, 1990. Maryland had initiated a crisis exemption for this use. (Susan Stanton)

13. Michigan Department of Agriculture for the use of cryolite on potatoes to control Colorado potato beetles; May 23, 1990, to October 31, 1990. (Libby Pemberton)

14. Minnesota Department of Agriculture for the use of pendimethalin on dry bulb onions grown on organic soil to control broadleaf weeds; April 17, 1990, to June 30, 1990. (Jim Tompkins)

15. Mississippi Department of Agriculture for the use of triclopyr on rice to control broadleaf weeds; May 11, 1990, to August 1, 1990. (Jim Tompkins)

16. Montana Department of Agriculture for the use of sethoxydim on canola to control volunteer grains and grasses; May 4, 1990, to July 15, 1990. (Susan Stanton)

17. Nebraska Department of Agriculture for the use of chlorpyrifos on wheat to control Russian wheat aphids; May 18, 1990, to December 15, 1990. Nebraska had initiated a crisis exemption for this use. (Robert Forrest)

18. New Jersey Department of Environmental Protection for the use of cryolite on potatoes to control Colorado potato beetles; May 23, 1990, to October 31, 1990. (Libby Pemberton)

19. New Jersey Department of Environmental Protection for the use of fluazifop-p-butyl on parsley to control grasses; May 23, 1990, to November 31, 1990. (Jim Tompkins)

20. New Jersey Department of Environmental Protection for the use of metalaxyl on cranberries to control root rot; May 7, 1990, to December 31, 1990. (Robert Forrest)

21. New Jersey Department of Environmental Protection for the use clomazone on squash to control broadleaf weeds; May 7, 1990, to October 31, 1990. (Libby Pemberton)

22. New Jersey Department of Environmental Protection for the use of linuron on parsley to control broadleaf weeds; May 15, 1990, to September 15, 1990. (Jim Tompkins)

23. New York Department of Environmental Conservation for the use of cryolite on potatoes to control Colorado potato beetles; May 23, 1990, to October 31, 1990. (Libby Pemberton)

24. New York Department of Environmental Conservation for the use of pendimethalin on dry bulb onions to control broadleaf weeds; April 17, 1990, to June 30, 1990. (Jim Tompkins)

25. New York Department of Environmental Protection for the use of vinclozolin on snap beans to control white mold; May 31, 1990, to October 31, 1990. (Libby Pemberton)

26. North Dakota Department of Agriculture for the use of sethoxydim on canola to control volunteer grains and grasses; May 18, 1990, to July 31, 1990. (Susan Stanton)

27. Ohio Department of Agriculture for the use of linuron on parsley to control broadleaf weeds; May 15, 1990, to September 15, 1990. (Jim Tompkins)

28. Oregon Department of Agriculture for the use of permethrin on red raspberries to control weevils; May 15, 1990, to August 10, 1990. (Robert Forrest)

29. Oregon Department of Agriculture for the use of vinclozolin on snap beans to control white mold and gray mold; May 31, 1990, to October 31, 1990. (Libby Pemberton)

30. Oregon Department of Agriculture for the use of pendimethalin on dry bulb onions grown on organic soil to control broadleaf weeds; April 17, 1990, to June 30, 1990. (Jim Tompkins)

31. Pennsylvania Department of Agriculture for the use of cryolite on potatoes to control Colorado potato beetles; May 23, 1990, to October 31, 1990. (Libby Pemberton)

32. Rhode Island Department of Environmental Management for the use of cryolite on potatoes to control Colorado potato beetles; May 23, 1990, to October 31, 1990. (Libby Pemberton)

33. South Carolina Division of Fertilizer and Pesticide Control for the use of acephate on fresh market tomatoes to control stinkbugs; May 15, 1990, to December 1, 1990. South Carolina had initiated a crisis exemption for this use. (Jim Tompkins)

34. Texas Department of Agriculture for the use of chlorothalonil on mushrooms to control verticillium diseases; May 31, 1990, to May 30, 1991. (Susan Stanton)

35. Virginia Department of Agriculture and Consumer Services for the use of cryolite on potatoes to conrol Colorado potato beetles; May 23, 1990, to October 31, 1990. (Libby Pemberton)

36. Washington Department of Agriculture for the use of permethrin on red raspberries to control weevils; May 15, 1990, to August 10, 1990. (Robert Forrest)

37. Washington Department of Agriculture for the use of vinclozolin on snap beans to control white and gray mold; May 31, 1990, to October 31, 1990. (Libby Pemberton)

38. Washington Department of Agriculture for the use of fluazifop-p-butyl on mint to control grasses; May 23, 1990, to June 15, 1990. (Jim Tompkins)

39. Wisconsin Department of Agriculture, Trade, and Consumer Protection for the use of vinclozolin on snap beans to control white mold; May 31, 1990, to October 31, 1990. (Libby Pemberton)

40. Wisconsin Department of Agriculture, Trade, and Consumer Protection for the use of fluazifop-p-butyl on mint to control grasses; May 23, 1990, to June 15, 1990. (Jim Tompkins)

41. Wisconsin Department of Agriculture, Trade, and Consumer Protection for the use pendimethalin on dry bulb onions grown on organic soil to control broadleaf weeds; April 17, 1990, to June 30, 1990. (Jim Tompkins)

42. Wyoming Department of Agriculture for the use of chloropyrifos on wheat to control Russian wheat aphid; May 4, 1990, to December 1, 1990. (Robert Forrest)

43. United States Department of Agriculture for the use of methyl bromide on export logs to control oak wilt; May 9, 1990, to May 8, 1991. (Libby Pemberton)

Crisis exemptions were initiated by the:

1. Arkansas State Plant Board on May 28, 1990, for the use of sodium chlorate on winter wheat to control broadleaf weeds. This program has ended. (Susan Stanton)

2. Illinois Department of Agriculture on April 25, 1990, for the use of oxyfluorfen on horseradish to control weeds. This program has ended. (Libby Pemberton)

3. Louisiana Department of Agriculture and Forestry on May 12, 1990, for the use of sodium chlorate on winter wheat to control broadleaf weeds. This program has ended. (Susan Stanton)

4. Michigan Department of Agriculture on May 14, 1990, for the use of avermectin $B_1$ on pears to control pear psylla. This program is expected to last until September 31, 1990. (Libby Pemberton)

5. Michigan Department of Agriculture on May 13, 1990, for the use of pendimethalin on dry bulb onions to control grasses, broadleaves, and prostrate spurse. This program has ended. (Jim Tompkins)

6. Mississippi Department of Agriculture and Commerce on May 25, 1990, for the use of sodium chlorate on wheat and oats to control broadleaf weeds. This program has ended. (Susan Stanton)

7. Montana Department of Agriculture on April 30, 1990, for the use of esfenvalerate on wheat and barley to control Russian wheat aphid. This program is expected to last until November 1, 1990. (Libby Pemberton)

8. Texas Department of Agriculture on May 25, 1990, for the use of sodium chlorate on winter wheat to control broadleaf weeds. This program has ended. (Susan Stanton)

**Authority:** 7 U.S.C. 136.

Dated: July 27, 1990.

**Douglas D. Campt,**

*Director, Office of Pesticide Programs.*

[FR Doc. 90-19083 Filed 8-14-90; 8:45 am]

BILLING CODE 6560-50-F

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[FRL-3821-2]

## Proposed Administrative Settlement; U.S. Polymers Corp.

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice; request for public comment.

**SUMMARY:** In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended by Superfund Amendments and Reauthorization Act (SARA) notice is hereby given that a proposed administrative (CERCLA) cost recovery settlement concerning the U.S. Polymers Corporation Site in St. Louis, Missouri was issued by the Agency on June 29, 1990. The settlement resolves an EPA claim under "Section 107 of CERCLA" for a section 122(h)(1) agreement; against Grow Group, Incorporated. The settlement requires the settling party to pay $40,000 to the Hazardous Substances Superfund.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency's response to any comments received will be available for public inspection at 726 Minnesota Avenue, Kansas City, Kansas, 66101.

**DATES:** Comments must be submitted on or before September 14, 1990.

**ADDRESSES:** The proposed settlement and additional background information relating to the settlement are available for public inspection at 726 Minnesota Avenue, Kansas City, Kansas 66101. A copy of the porposed settlement may be obtained from Linda McKenzie, 726 Minnesota Avenue, Kansas City, Kansas 66101, telephone (913) Minnesota Avenue, Kansas City, Kansas 66101, telephone (913)-551-7477. Comments should reference the U.S. Polymers Corporation Site, St. Louis, Missouri and EPA Docket No. V11-90-F-0018 and should be addressed to Linda McKenzie, 726 Minnesota Avenue, Kansas City, Kansas 66101.

**FOR FURTHER INFORMATION CONTACT:** Joseph E. Sheehy, 726 Minnesota Avenue, Kansas City, Kansas 66101, telephone (913) 551-7643.

Dated: July 9, 1990

**David A. Wagoner,**

*Director, Waste Management Division.*

[FR Doc. 90-19195 Filed 8-14-90; 8:45 am]

BILLING CODE 6560-50-M

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## FEDERAL COMMUNICATIONS COMMISSION

### Francis G. Toce et al.; Applications

1. The Commission has before it the following mutually exclusive applications for 5 new FM stations:

| Applicant, City and State | File No. | MM docket No. |
|---|---|---|
| I | | |
| A. Francis G. Toce; Bridgeport, NY. | BPH-89011OMB | 90-343 |
| B. Wayne County Professional Broadcasters; Bridgeport, NY. | BPH-890112MA | |
| C. Bridgeport Minority Women Broadcasters, Inc.; Bridgeport, NY. | BPH-890112MG | |
| D. Edwards—Gray Communications, Inc.; Bridgeport, NY. | BPH-890112MI | |
| E. Programmed Communications, Inc.; Bridgeport, NY. | BPH-890112MO | |
| F. Valerie E. Wooten Broadcasting Company, Ltd.; Bridgeport, NY. | BPH-890112MP | |
| G. Elizabeth Lee Stackiewicz; Bridgeport, NY. | BPH-890112MR | |
| *Issue heading and applicants* | | |

| Applicant, City and State | File No. | MM docket No. |
|---|---|---|
| 1. Comparative, A,B,C,D,E,F,G<br>2. Ultimate, A,B,C,D,E,F,G | | |
| **II** | | |
| A. Body of Christ Cincinnati; Lebanon, OH. | BPH-880816MJ | 90-344 |
| B. William L. Combs d/b/a Combs Communications; Lebanon, OH. | BPH-880816MQ | |
| C. Julia A. Moore; Lebanon, OH. | BPH-880816MX | |
| D. John E. Morris & Lawrence R. Baker, d/b/a Morbak Communications; Lebanon, OH. | BPH-880816NX | |
| E. William L. Carroll; Lebanon, OH. | BPH-880816OA | |
| F. Lebanon Communications Limited Partnership; Lebanon, OH. | BPH-880816OF | |
| G. Michael A. McMurray & Marilyn A. McMurray, a General Partnership, d/b/a McMurray Communications; Lebanon, OH. | BPH-880816OI | |
| H. The Living Word, Inc.; Lebanon, OH. | BPH-880816OJ | |
| I. Nancy A. Fenton; Lebanon, OH. | BPH-880816NE (Dismissed herein) | |
| *Issue heading and applicants*<br>1. Air Hazard, D,H<br>2. Comparative, A-H<br>3. Ultimate, A-H | | |
| **III** | | |
| A. Lowrey Communications, L.P.; Dalton, GA. | BPH-881026MC | 90-342 |
| B. North Georgia Radio II, Inc.; Dalton, GA. | BPH-881026MD | |
| C. Radio Center Dalton, Inc.; Dalton, GA. | BPH-881026MK | |
| *Issue heading and applicants*<br>1. Comparative, A-C<br>2. Ultimate, A-C | | |
| **IV** | | |
| A. Great Plains Christian Radio, Inc.; Copeland, Kansas. | BPED-880823MA | 90-363 |
| B. Sound Broadcasting, Inc.; Copeland, Kansas. | BPED-880823OC | |
| *Issue heading and applicants* | | |
| 1. Comparative, All<br>2. Ultimate, All | | |
| **V** | | |
| A. Entainment Communications, Inc.; Five Points, Fl. | BPH-890110MF | |
| B. Suwannee Valley Broadcasting, Inc.; Five Points, Fl. | BPH-890112MB | |
| C. Carol Jean Lamons; Five Points, Fl. | BPH-890112MK | |
| *Issue heading and applicants*<br>1. Financial, B<br>2. Comparative, A,B,C<br>3. Ultimate, A,B,C | | |

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

3. If there are any non-standardized issues in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857-3800).

**W. Jan Gay,**

*Assistant Chief, Audio Services Division, Mass Media Bureau.*

[FR Doc. 90-19142 Filed 8-14-90; 8:45 am]

BILLING CODE 6712-01-M

## FEDERAL TRADE COMMISSION

**[File No. 892 3178]**

## United States Sales Corporation; Proposed Consent Agreement with Analysis To Aid Public Comment

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreement.

**SUMMARY:** In settlement of alleged violations of the Textile Fiber Products Identification Act, and of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a California mail order company from failing to disclose that the textile fiber products its advertises and offers for sale in mail order catalogs, are processed or manufactured in the United States, or imported, or both.

**DATES:** Comments must be received on or before October 15, 1990.

**ADDRESSES:** Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pennsylvania Ave., NW., Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** Robert E. Easton, FTC/S-4630, Washington, DC 20580. (202) 326-3029.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

In the matter of United States sales Corporation (formerly United States Sales Corp.), a corporation, doing business as United States Purchasing Exchange; File No. 892-3178.

### Agreement Containing Consent Order To Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of United States Sales Corporation (formerly United States Sales Corp.) a corporation, doing business as United States Purchasing Exchange (hereinafter referred to as United States Sales Corporation or proposed respondent) and it now appearing that United States Sales Corporation is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

*It is hereby agreed* by and between United States Sales Corporation, by is duly authorized officer and counsel for the Federal Trade Commission that:

1. Respondent United States Sales Corporation (formerly United States Sales Corp.) is a corporation organized, existing and doing business under and by virtue of the laws of the State of California with its office and principal place of business presently located at 8550 Balboa Boulevard, Northridge, California. It also does business under the name of United States Purchasing Exchange. All stock in respondent is owned by Ronald D. Goldman and Theodore J. Slavin who are officers of said corporation.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order will become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any rights it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after the order becomes final.

*Order*

*It is ordered* That respondent United States Sales Corporation (formerly United States Sales Corp.), a corporation, its successors and assigns, trading under its own name or as United States Purchasing Exchange or under any other name or names, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale or sale by mail order catalog or mail order promotional material of any textile fiber product (as this term is defined in the Textile Fiber Products Identification Act (15 U.S.C. 70)) do forthwith cease and desist from:

Offering for sale, selling or advertising any such textile fiber product in any mail order catalog or mail order promotional material which is used in the direct sale or direct offering for sale of any such textile fiber product, without stating in the description of such textile fiber product in a clear and conspicuous manner that such textile fiber product is processed or manufactured in the United States of America, or imported, or both.

*It is further ordered* That respondent notify the Commission at least thirty (30) days prior to any proposed change in the respondent such as dissolution, assignment or sale resulting in the emergency of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

*It is further ordered* That respondent shall forthwith distributes a copy of this order to each of its operating divisions.

*It is further ordered* That respondent herein shall within sixty (60) days after service upon it of this order, file with he Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

*Analysis of Proposed Consent Order to Aid Public Comment*

The Federal Trade Commission has accepted an agreement to a proposed consent order from United States Sales Corporation.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

United States Sales Corporation is a large company that uses the mail to sell many things to people and uses the name United States Purchasing Exchange for its business. The complaint claims that United States Sales Corporation in selling clothing, towels and other textile products through mail order catalogs did not tell consumers whether the products were made in the United States or imported. The Federal Trade Commission claims that this is illegal because several years ago, in 1984, Congress passed a law that changed the Textile Act and told companies which sell by catalog, like United States Sales Corporation, that they must let people know where textile products are made.

The proposed order tells United States Sales Corporation that it has to let customers know where the textile products it sells by mail are made. White United States Sales Corporation does not admit that it did anyting wrong, the company agrees to give the inforamtion in the future.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of

the agreement and proposed order or to modify in any way their terms.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 90-15118 Filed 8-14-90; 8:45 am]

BILLING CODE 6750-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control

[Program Announcement 042]

### Cooperative Agreement for Breast and Cervical Cancer Public Education; Technical Assistance and Training; Correction

A notice announcing the availability of Fiscal Year 1990 funds for one competing cooperative agreement for breast and cervical cancer public education technical assistance and training was published in the **Federal Register** on Wednesday, July 25, 1990, (55 FR 30275).

This notice is corrected as follows:

On page 30277, column one, under the heading Application Submission and Deadline, under A, number 2, first line, the date is corrected from August 1, 1990 to read September 7, 1990.

All other information and requirements in the notice remain the same.

Dated: August 9, 1990.

**Robert L. Foster,**

*Acting Director, Office of Program Support, Centers for Disease Control.*

[FR Doc. 90-19165 Filed 8-14-90; 8:45 am]

BILLING CODE 4160-18-M

[Program Announcement No. 055]

### Environmental Health Epidemiology Research Program for the Latin American and Caribbean Countries

#### Introduction

The Centers for Disease Control (CDC) announces the availability of Fiscal Year 1990 funds for a cooperative agreement with the Pan American Health Organization (PAHO) to further develop an environmental epidemiology and surveillance research program for the Latin American and Caribbean countries.

#### Authority

This program is authorized under section 301 of the Public Health Service Act, section 5 of the International Health Research Act of 1960 (22 U.S.C. 2101-2104), and section 104 of the Foreign Assistance Act of 1961 (22 U.S.C. 2151b).

#### Eligible Applicant

Assistance will be provided only to the Pan American Health Organization (PAHO) for this project. No other applications will be solicited or will be accepted.

The Pan American Health Organization (PAHO) is the most appropriate and qualified agency to provide the services specified under this cooperative agreement because:

A. PAHO coordinates international health activities for countries and territories of Latin America. Their access to member States and their public health programs is unique in this region. PAHO has outlined its research needs, goals, and objectives for environmental health in Latin America in the document Health for All by the Year 2000.

B. The Pan American Center for Human Ecology and Health (ECO) of PAHO has the lead in advancing environmental public health in Latin America. PAHO/ECO is the only organization serving Latin America with a focus on the health impact of agricultural and industrial development. To help reach the goal of Health for All by the Year 2000, it is PAHO/ECO's intent to provide epidemiologic and toxicologic risk assessment and support required for the prevention of health risks associated with toxic wastes and their air and water pollution by-products, food contamination, and other environmental health and occupational hazards and diseases; and to implement the necessary research programs to support the development of strong continuing environmental health programs.

C. PAHO has longstanding expertise in regional (Latin America and the Caribbean) disease surveillance, application of technology in different settings, development of training methods for health personnel, use of research to clarify and resolve health problems, and integration of different health programs to achieve maximum efficiency and effectiveness.

D. The proposed program is strongly supportive of and directly related to the achievement of PAHO/ECO and the CDC Center for Environmental Health and Injury Control research and development programs in environmental health epidemiology and surveillance.

The results of international collaborative scientific work will not only help the PAHO member countries formulate strategies for mitigating any health problems that may be identified, but the scientific knowledge gained will provide reciprocal benefits to the U.S., yielding important data to strengthen the scientific basis for the formulation of preventive health strategies.

#### Availability of Funds

It is anticipated that approximately $110,000 will be available in Fiscal Year 1990 to fund the cooperative agreement beginning September 30, 1990, for a 12-month budget period within a 5-year project period. Continuation awards within the project period will be made on the basis of satisfactory progress and availability of funds.

#### Purpose

The purpose of this cooperative agreement is to assist, collaboratively with the Pan American Health Organization (PAHO), in the establishment of a strengthened environmental health epidemiology and surveillance research program in Latin America and Caribbean countries.

#### Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for conducting activities under A. below and CDC shall be responsible for conducting activities under B. below:

*A. Recipient Activities*

1. Assign a medical epidemiologist to ECO and provide the necessary administrative supervision.

2. Identify environmental problem areas in need of epidemiologic study, specifically, problems related to human health risks from air pollution and pesticides.

3. Provide or assist in obtaining the proper administrative framework and clearances, necessary to data sources, and communications needed to conduct environmental health epidemiology projects and surveillance activities of interest to PAHO/ECO and CDC.

4. Design, in collaboration with CDC, environmental health epidemiologic studies and surveillance programs, that specifically address air pollution and pesticide exposure problems and related risk assessment concerns in Latin America.

5. Support and oversee the conduct of environmental epidemiology and surveillance studies and collaboratively with CDC, prepare and provide reports of results.

*B. Centers for Disease Control Activities*

1. Collaborate in the development of environmental epidemiology and surveillance program plans to be conducted under the cooperative agreement.

2. Provide technical and scientific consultation and assistance for the implementation of all epidemiologic and surveillance activities conducted under the cooperative agreement.

3. Provide epidemiologic training/education materials and on-site consultation to the PAHO epidemiologist and other scientific staff working on the cooperative agreement activities as needed.

4. Provide guidance on program management and administrative matters related to conduct of the scientific aspects of the cooperative agreement.

5. Collaborate in the definition and preparation of reports that may result from the cooperative agreement supported activities.

**Evaluation Criteria**

The application will be reviewed and evaluated to the following criteria:

*1. Technical Approach—40%*

The adequacy of the description and plan to carry out the overall environmental epidemiology and surveillance research program specified in the program announcement, including: (1) The specific projects and studies to be implemented, (2) the necessary collaborative arrangements with other health and environmental organizations and political subdivisions, and (3) the identification of the administrative, laboratory, and computer/data processing services necessary to conduct the research program.

*2. Understanding of the Problem—30%*

The applicant's understanding of the requirements, objectives, research intent, problems, complexities, and interactions required for the conduct of a successful program.

*3. Program Personnel—30%*

The extent of which the proposal has described: (1) The qualifications and commitment of the applicant professional and support staff, and (2) the allocation of time and effort of key program staff to agreed upon program activities.

**Other Requirements**

*Human Subjects*

This program involves research on human subjects, therefore, the applicant must comply with the Department of Health and Human Services regulations regarding the protection of human subjects. Assurance must be provided that demonstrates that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing such assurance in accordance with appropriate guidelines and form provided in the application kit.

*Paperwork Reduction Act*

Projects funded through a cooperative agreement that involve collection of information from 10 or more individuals will be subject to review under the Paperwork Reduction Act.

**Executive Order 12372 Review**

The Application is not subject to review under Executive Order 12372.

**Catalog of Federal Domestic Assistance Number**

The Catalog of Federal Domestic Assistance (CFDA) Number for this program is 13.283.

**Application Submission and Deadline**

The applicant should follow the guidance provided in PHS form 5161-1 (Revised 3/89) in preparing the cooperative agreement application. The original and two copies must be submitted on or before August 31, 1990, to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 300, Atlanta, Georgia 30305.

**Where To Obtain Additional Information**

If you are interested in obtaining additional information regarding this project, please reference Announcement Number 055, entitled "Environmental Health Epidemiology Research Program for the Latin American and Caribbean Countries," and contact Carole J. Tully, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, Mailstop E-14, 255 East Paces Ferry Road, NE., Room 300, Atlanta, Georgia 30305, or by calling (404) 842-6630 (FTS: 236-6630).

Technical assistance may be obtained from Ruth A. Etzel, M.D., Ph.D., Scientific Advisor, Health Studies Branch, Division of Environmental Hazards and Health Effects, Center for Environmental Health and Injury Control, Centers for Disease Control, 1600 Clifton Road, Atlanta, Georgia 30333, or by calling (404) 488-4682.

Dated: August 9, 1990.

**Robert L. Foster,**

*Acting Director, Office of Program Support, Centers for Disease Control.*

[FR Doc. 90-19164 Filed 8-14-90; 8:45 am]

BILLING CODE 4160-18-M

## Food and Drug Administration

**[Docket No. 87F-0097]**

## Union Carbide Corp.; Withdrawal of Food Additive Petition

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of a food additive petition (FAP 7B3985) proposing that the food additive regulations be amended to provide for the safe use of vinyl chloride-acetate hydroxyl-modified copolymer, reacted with styrene-maleic anhydride copolymer, as a coating or component of coating of articles intended for use in contact with food.

**FOR FURTHER INFORMATION CONTACT:** Vir D. Anand, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of April 20, 1987 (52 FR 12969), FDA published a notice that a petition (FAP 7B3985) had been filed by Union Carbide Corp., P.O. Box 670, Bound Brook, NJ 08805, proposing that the food additive regulations be amended to provide for the safe use of vinyl chloride-acetate hydroxyl-modified copolymer, reacted with styrene-maleic anhydride copolymer, as a coating or component of coating of articles intended for use in contact with food. Union Carbide Corp. has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: August 2, 1990.

**Fred R. Shank,**

*Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 90-19147 Filed 8-14-90; 8:45 am]

BILLING CODE 4160-01-M

**[Docket No. 90N-0259]**

## Drug Export; Nitrendipine Tablets

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that Miles, Inc., has filed an application requesting approval for the export of the human drug Nitrendipine Tablets to Canada.

**ADDRESSES:** Relevant information on this application may be directed to the

Dockets Management Branch (HFA-305), Food and Drug Administration, room 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

**FOR FURTHER INFORMATION CONTACT:** Frank R. Fazzari, Division of Drug Labeling Compliance (HFD-313), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8073.

**SUPPLEMENTARY INFORMATION:** The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Miles, Inc., 400 Morgan Lane, West Haven, CT 06516, has filed an application requesting approval for the export of the drut Nitrendipine Tablets, to Canada. This drug product is used in the treatment of hypertension. The application was received and filed in the Center for Drug Evaluation and Research on June 28, 1990, which shall be considered the filing date for purposes of the act.

Interested parties may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by August 27, 1990, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: August 8, 1990.

Samme R. Young,

*Deputy Director, Office of Compliance, Center for Drug Evaluation and Research.*

[FR Doc. 90-19148 Filed 8-14-90; 8:45 am]

BILLING CODE 4160-01-M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N-90-3090; FR-2765-N-02]

### Supplement to Notice of Fund Availability, Invitation for Applications: Public Housing Development/Major Reconstruction of Obsolete Public Housing, Fiscal Year 1990—Extension of Demolition/Disposition Approval

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Supplementary notice; extension of demolition/disposition approval deadline.

**SUMMARY:** The purpose of this document is to extend the approval deadline date for applications for demolition or disposition of public housing projects, and units sold to residents for homeownership, that was announced in the notice of FY 1990 fund availability for public housing development and major reconstruciton of obsolete public housing, published in the **FEDERAL REGISTER** on June 18, 1990 (55 FR 24816).

**FOR FURTHER INFORMATION CONTACT:** Thomas Sherman, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., room 4204, Washington, DC 20410. Telephone (202) 708-1380. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** On June 13, 1990 (55 FR 24816), the Department published in the **FEDERAL REGISTER** a notice announcing the availability of FY 1990 funding, and inviting eligible entities to submit applications, for public housing development, or for the Major Reconstruction of Obsolete Public Housing (MROP) program, or for both programs. The notice stated that threshold approvable applications for replacement of public housing lost through (1) the demolition or disposition of public houisng projects pursuant to section 18 of the United States Housing Act of 1937 (Act), or (2) the sale of units to residents for homeownership, and both of which were approved by the Department's self-imposed deadline of July 27, 1990, would be funded from the Fair Share Exempt and Headquarters Reserve categories before the fair share allocations are determined. As a result of a heavy workload, the Department has been unable to complete processing of these applications by the July 27, 1990 deadline.

Accordingly, the Department announces that the July 27, 1990 application approval deadline is withdrawn. The Department further announces that decisions on applications for replacement units in connection with demolition or disposition of units under section 18 of the Act, and for units sold to residents for homeownership, will be made, and those applications approved will be funded from the Fair Share Exempt and Headquarters Reserve categories, before the fair share allocations are determined.

Dated: August 9, 1990.

Michael B. Janis,

*General Deputy Assistant Secretary for Public and Indian Housing.*

[FR Doc. 90-19135 Filed 8-14-90; 8:45 am]

BILLING CODE 4210-33-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[WY-060-90-4760-11]

### Closure of Public Lands; Wyoming

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Emergency closure of public lands.

**SUMMARY:** In order to protect public health and safety and to protect public lands and resources, this order temporarily closes to access, use, crossing, or other purposes, public lands described herein.

Authority: This closure is issued by the undersigned in accordance with 43 CFR 8364.1(a).

**DURATION OF CLOSURE:** The closure is effective beginning August 3, 1990, and will terminate automatically on September 3, 1990, unless earlier terminated.

**USES RESTRICTED:** All public access to and use of the subject lands is hereby restricted during the duration of this order.

**PERSONS AUTHORIZED TO ENTER THE CLOSED AREA:** The persons authorized to enter the closed public lands are employees of the Bureau of Land Management; employees of the Environmental Protection Agency; certain employees of the Wyoming State Department of Environmental Quality; and, contractors of any of these named agencies. Private citizens are not allowed access without written approval of the undersigned.

**DESCRIPTION OF CLOSED LANDS:** The following public lands in Natrona County, Wyoming, are affected by this order: The NW NE, Section 10, Township 37 North, Range 85 West, 6th Principal Meridian.

**PENALTIES:** Any person who violates this closure order may, upon conviction, be subject to a fine not to exceed $1,000 and/or imprisonment not to exceed twelve (12) months.

Dated: August 6, 1990.

**James W. Monroe,**

*District Manager.*

[FR Doc. 90-19108 Filed 8-14-90; 8:45 am]

BILLING CODE 4310-22-M

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[CO-070-0-4410-13]

## Grand Junction District Advisory Council Meeting

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of meeting of Grand Junction District Advisory Council.

**SUMMARY:** Notice is hereby given that a meeting of the Grand Junction District Advisory Council will be held on Thursday, September 20, 1990. The meeting will convene in the conference room at the Bureau of Land Management Office, 764 Horizon Drive, Grand Junction, Colorado, at 9 a.m.

**FOR FURTHER INFORMATION CONTACT:** Bruce Conrad, District Manager, Grand Junction District Office, Bureau of Land Management, 764 Horizon Drive, Grand Junction, CO 81506 or (303) 243-6552.

**SUPPLEMENTARY INFORMATION:** The agenda for the meeting will include (1) Introductions (2) opening remarks by District Manager, (3) Glenwood Springs Resource Area update, (4) Grand Junction Resource Area update, (5) public presentation, and (6) field tour of selected project areas.

The meeting is open to the public. Interested persons may make oral statements to the Council between 11 and 11:30 a.m. to file written statements for the Council's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 764 Horizon Drive, Grand Junction, Colorado 81506 by September 14, 1990. 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 Council meeting will be maintained in the District Office and be available for public inspection and reproduction (during regular business hours) after thirty (30) days following the meeting.

**Bruce Conrad,**

*District Manager.*

[FR Doc. 90-19109 Filed 8-14-90; 8:45 am]

BILLING CODE 4310-JB-M

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[MT-020-09-4410-01]

## Montana; Miles City District Office; Meeting

**AGENCY:** Bureau of Land Management, Miles City District Office, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** The Miles City District Advisory Council will tour the Brewer Ranch area near Broadus Wednesday, September 26, and meet Thursday, September 27, at 8 a.m. in Miles City. The meeting will be held in the District Office Conference Room on Garryowen Road in Miles City, Montana.

The agenda will include:

FY91 Budget Outlook

Briefings on:

- Cherry Creek Dam Project
- Pompeys Pillar
- Oil & Gas EIS
- Bull Mountain Exchange EIS
- Big Dry RMP
- Powder River Economic & Social EIS
- Monitoring Policy & Evaluations

The meeting is open to the public. The public may make oral statements before the Council or file written statements for the Council to consider. Depending on the number of persons wishing to make an oral statement, a per person time limit may be established. Summary minutes of the meeting will be available for public inspection and reproduction during regular business hours within 30 days following the meeting.

**FOR FURTHER INFORMATION CONTACT:** Mat Millenbach, District Manager, Miles City District, Bureau of Land Management, P.O. Box 940, Miles City, Montana 59301 or phone (406) 232-4331.

**Mat Millenbach,**

*District Manager.*

[FR Doc. 90-19110 Filed 8-14-90; 8:45 am]

BILLING CODE 4310-DN-M

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[MT-020-09-4320-02]

## Montana; Miles City District Office Meeting

**AGENCY:** Bureau of Land Management, Miles City District Office, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** The Miles City District Grazing Advisory Board will meet at 9:30 a.m. at the Powderville Hall north of Broadus to tour the Brewer Ranch area and hold a public meeting Tuesday, September 11, 1990.

The agenda follows;

9:30 a.m.—Meet at Powderville Hall for Tour

1 p.m.—Meeting at Hall

FY91 Range Improvement Projects
FY91 Budget Outlook
Monitoring
- District Policy
- GAO Evaluation
- MSO Evaluation

The meeting is open to the public. The public may make oral statements before the Grazing Advisory Board or file written statements for the Board to consider. Depending on the number of persons wishing to make an oral statement, a per person time limit may be established. Summary minutes of the meeting will be available for public inspection and reproduction during regular business hours within 30 days following the meeting.

**FOR FURTHER INFORMATION CONTACT:** District Manager, Miles City District, Bureau of Land Management, P.O. Box 940, Miles City, Montana 59301.

**Mat Millenbach,**

*District Manager.*

[FR Doc. 90-19111 Filed 8-14-90; 8:45 am]

BILLING CODE 4310-DN-M

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[ES-940-4520-13; ES-043000, Group 47]

## Alabama; Filing of Plat of Retracement, Extension and Survey of Islands

August 8, 1990.

1. The plat of the retracement of a portion of the State Boundary between Alabama and Mississippi in Townships 7 and 8 South, Range 4 West, a retracement of a portion of the subdivisional lines in Township 7 South, Range 4 West, and extension survey of the fourth meridian of Township 7 South, Range 4 into Franctional Township 8 South, Range 4 West to include that portion of South Rigolets Island omitted from the original survey, and the survey of other islands in

Townships 7 and 8 South, Range 4 West, St. Stephens Meridian, Alabama will be filed in the Eastern States Office, Alexandria, Virginia at 7:30 a.m., on September 24, 1989.

2. The retracement, extension survey and survey of islands was made at the request of the State of Alabama.

3. All inquiries or protests concerning the technical aspects of the retracement, extension survey and survey of islands must be sent to the Deputy State Director for Cadastral Survey, Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 2304, prior to 7:30 a.m., September 24, 1989.

4. Copies of the plat will be made available upon request and prepayment of the reproduction fee of $4.00 per copy.

**Stephen G. Kopach,**

*Deputy State Director for Cadastral Survey*

[FR Doc. 90-19112 Filed 8-14-90; 8:45 am]

BILLING CODE 4350-01-M

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**[ES-940-4950-13-9443 (ES-043002, Group 153)]**

## Minnesota; Filing of Plat of Corrective Dependent Resurvey and Subdivision of Section 19

August 8, 1990.

1. The plat of the corrective dependent resurvey of a portion of the subdivisional lines and the corrective survey and additional survey of the subdivision of section 19 of Township 141 North, Range 38 West, Fifth Principal Meridian, Minnesota will be officially filed in the Eastern States Office, Alexandria, Virginia at 7:30 a.m., on September 24, 1989.

2. The corrective dependent resurvey was made at the request of the Bureau of Indian Affairs.

3. All inquiries or protests concerning the technical aspects of the corrective dependent resurvey must be sent to the Deputy State Director for Cadastral Survey, Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304, prior to 7:30 a.m., September 24, 1990.

4. Copies of the plat will be made available upon request and prepayment of the reproduction fee of $4.00 per copy.

**Stephen G. Kopach,**

*Deputy State Director for Cadastral Survey.*

[FR Doc. 90-19113 Field 8-14-90; 8:45 am]

BILLING CODE 4310-GJ-M

**[ES-940-4950-13-9443; ES-042999, Group 108]**

## Minnesota, Filing of Plat of Corrective Dependent Resurvey and Subdivision of Sections 2 and 3

August 8, 1990.

1. The plat of the corrective dependent resurvey of a portion of the north boundary, a portion of the subdivisional lines and the corrective survey and additional survey of the subdivision of sections 2 and 3, Township 144 North, Range 38 West, Fifth Principal Meridian, Minnesota will be officially filed in the Eastern States Office, Alexandria, Virginia at 7:30 a.m., on September 24, 1989.

2. The corrective dependent resurvey was made at the request of the Bureau of Indian Affairs.

3. All inquiries or protests concerning the technical aspects of the corrective dependent resurvey must be sent to the Deputy State Director for Cadastral Survey, Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304, prior to 7:30 a.m., September 24, 1989.

4. Copies of the plat will be made available upon request and repayment of the reproduction fee of $4.00 per copy.

**Stephen G. Kopach,**

*Deputy State Director for Cadastral Survey.*

[FR Doc. 90-19114 Filed 8-14-90; 8:45 am]

BILLING CODE 4310-GJ-M

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# National Park Service

## National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before August 4, 1990. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comment should be submitted by August 30, 1990.

**Marily W. Nickels,**

*Acting Chief of Registration, National Register.*

**ARKANSAS**

**Faulkner County**

*Blessing Farmstead*, N. of Enola, Barney vicinity, 90001369

**Lawrence County**

*Clover Bend Historic District*, Jct. of AR 228 and County Rd. 1220, CLover Bend, 90001368

**CALIFORNIA**

**Mendocino County**

*Arena Cove Historic District (Point Arena MPS)*, Arena Cove, Point Arena, 90001363

*Buckridge Ranch House (Point Arena MPS)*, On the Garcia River near Buckridge Rd., Point Arena vicinity 90001359

*Gillmore, E. P. and Clara, House (Point Arena MPS)*, 40 Mill St., Point Arena, 90001355

*Groshon, Sid, House (Point Arena MPS)*, 50 Mill St., Point Arena, 90001356

*Hoyt—Scott House (Point Arena MPS)*, 1) Riverside Dr., Point Arena, 90001354

*Italian Hotel (Point Arena MPS)*, 105 Main St., Point Arena, 90001361

*Iverson House (Point Arena MPS)*, 40 Iverson Ave., Point Arena, 90001353

*Ketchum, Billy, House (Point Arena MPS)*, 10 Scott Pl., Point Arena, 90001358

*Main Street Historic Commercial District (Point Arena MPS)*, 165—265 Main St., Point Arena, 90001364

*Morse, LeGrand, House (Point Arena MPS)*, 365 Main St., Point Arena, 90001362

*Palmer, Annie, House (Point Arena MPS)*, 284 Main St., Point Arena, 90001357

*Point Arena High School (Point Arena MPS)*, 200 Lake St., Point Arena, 90001365

*Point Arena Rancheria Roundhouse (Point Arena MPS)*, On the Garcia River at end of Rancheria Rd., Point Arena vicinity, 90001360

*St. Paul's Methodist Episcopal Church (Point Arena MPS)*, 40 School St., Point Arena, 90001366

**COLORADO**

**Denver County**

*Denver Civic Center Classroom Building*, 1445 Cleveland Pl., Denver, 90001346

*Denver Public Library*, 1357 Broadway, Denver, 90001345

**MARYLAND**

**Dorchester County**

*Cambridge Historic District, Wards I and III*, Roughly bounded by Glasgow, Glenburn, Poplar, Race, and Gay Sts. and the Choptank River, Cambridge, 90001370

**MASSACHUSETTS**

**Worcester County**

*Prospect Heights Historic District*, Roughly bounded by Prospect Heights, Prospect, and Water Sts., Milford, 90001344

**NEW HAMPSHIRE**

**Hillsborough County**

*Grasmere Schoolhouse #9 and Town Hall*, 87 Center St., Goffstown, 90001350

**Merrimack County**

*Loudon Town Hall*, Clough Hill and Youngs Hill Rds., Loudon, 90001351

**OKLAHOMA**

**Oklahoma County**

*Buttram, Frank and Merle, House and Grounds*, 7316 Nichols Rd., Nichols Hills, 90001367

RHODE ISLAND

Providence County

*Allen Street Historic District (Woonsocket MPS)*, Allen St., Woonsocket, 90001349
*Burrows Block*, 735–745 Westminister St., Providence, 90001347
*Island Place Historic District (Woonsocket MPS)*, Island Place and S. Main St. at Market Square, Woonsocket, 90001348

The following property was erroneously omitted from the pending list of July 28, 1990:

NEW YORK

Jefferson County

*Wheeler, Menzo, House (Lyme MRA)*, Main and Depot Sts., Chaumont vicinity, 90001335

[FR Doc. 90–19162 Filed 8–14–90; 8:45 am]

BILLING CODE 4310–70–M

## INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

### Overseas Private Investment Corporation

### Agency Report Forms Under OMB Review

**AGENCY:** Overseas Private Investment Corporation, IDCA.

**ACTION:** Request for comments.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the Agency has made such a submission. The proposed form under review is summarized below.

**DATES:** Comments must be received within 14 calendar days of this notice. If you anticipate commenting on the form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Submitting Officer of your intent as early as possible.

**ADDRESSES:** Copies of the subject form and the request for review submitted to OMB may be obtained from the Agency Submitting Officer. Comments on the form should be submitted to the Agency Submitting Officer and the OMB Reviewer.

**FOR FURTHER INFORMATION CONTACT:** OPIC Agency Submitting Officer: Valerie J. Settles, Office of Personnel and Administration, Overseas Private Investment Corporation, 1615 "M" Street, NW., suite 461, Washington, DC 20527; Telephone (202) 457–7152.

OMB Reviewer: C. Marshall Mills, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; (202) 395–7340.

**Summary of Form Under Review**

*Type of Request:* Revision.
*Title:* Investment Missions Application Form.
*Form Number:* OPIC—78.
*Frequency of Use:* Other—once per investor per project.
*Type of Respondent:* Business or other institutions (except farms).
*Reporting Hours:* 1 hr. per application.
*Federal Cost:* $3,750.
*Authority for Information Collection:* Section 234(d) of the Foreign Assistance Act of 1961, as amended.
*Abstract (Needs and Uses):* The Investment Missions Application Form is completed by U.S. companies interested in participating in an OPIC sponsored investment mission. The form provides the necessary information for internal evaluation of a U.S. firm's capability and resources to undertake an overseas project.

Dated: August 2, 1990.

**James R. Offutt,**
*Office of the General Counsel.*

[FR Doc. 90–19136 Filed 8–14–90; 8:45 am]

BILLING CODE 3210–01–M

## INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–309]

### Certain Athletic Shoes With Viewing Windows; Decision Not To Review an Initial Determination Terminating the Investigation on the Basis of a Settlement Agreement

**AGENCY:** International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the Commission has determined not to review the presiding administrative law judge's (ALJ's) initial determination (ID) granting a joint motion by complaint Autry Industries and respondents Reebok International and H.S. Corporation for termination of the above-captioned investigation on the basis of a settlement agreement.

**FOR FURTHER INFORMATION CONTACT:** William T. Kane, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436; telephone: (202) 252–1116. Copies of the nonconfidential version of the ID and settlement agreement, and all other nonconfidential documents filed in connection with this investigation, are available for 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, 500 E Street, SW., Washington, DC 20436; telephone: (202) 252–1000. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at (202) 252–1810.

**SUPPLEMENTARY INFORMATION:** The Commission voted to institute this investigation on January 16, 1990. The notice of investigation was published in the **Federal Register** on January 24, 1990 (55 FR 2421–2). The complaint alleged a violation of subsection (a)(1)(B)(i) of section 337 in the importation, sale for importation, or sale after importation of certain athletic shoes by reason of direct and induced infringement of all nine claims of U.S. Letters Patent 4,845,863 (the '863 patent). On February 23, 1990, the ALJ issued an ID granting complainant's motion to amend several paragraphs of the complaint to correct certain factual assertions (Order No. 3). The Commission determined not to review the ID. 55 FR 12566 (Apr. 4, 1990).

On June 12, 1990, Autry, Reebok, and H.S. Corporation filed a joint motion (Motion Docket No. 309–5) for termination of the investigation on the basis of a settlement agreement. On June 21, 1990, the Commission investigative attorney filed a statement in support of the joint motion. On July 5, 1990, the presiding ALJ issued an ID (ALJ Order No. 14) granting the motion. No petitions for review or agency or public comments were received.

This action is taken pursuant to section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and Commission interim rule 210.53 (19 CFR 210.53, as amended).

Issued: August 7, 1990.

By order of the Commission.

**Kenneth R. Mason,**
*Secretary.*

[FR Doc. 90–19176 Filed 8–14–90; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–308]

### Certain Key Blanks For Keys of High Security Cylinder Locks; Decision Not To Review an Initial Determination Terminating Investigation As to Respondent Korea Trading International, Inc. on the Basis of a Consent Order; Issurance of Consent Order

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) (Order No. 9) issued on July 10, 1990, by the presiding administrative law judge (ALJ) in the above-captioned investigation terminating the investigation as to respondent Korea Trading International, Inc. on the basis of a consent order.

**FOR FURTHER INFORMATION CONTACT:** Marc A. Bernstein, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202-252-1087.

**SUPPLEMENTARY INFORMATION:** On July 10, 1990, the ALJ issued an ID granting the joint motion of complainant Medeco Security Locks, Inc. and respondent Korea Trading International, Inc. ("KTI") to terminate the investigation as to KTI on the basis of a proposed consent order. Notice of the ID was published in the **Federal Register** and comments of interested persons were solicited. 55 FR 29275 (July 18, 1990). No petitions for review of the ID were filed and no government agencies or members of the public submitted comments. This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and Commission interim rule 210.53(h), 19 CFR 210.53(h).

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for 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, 500 E Street SW., Washington, DC 20436, telephone 202-252-1000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

Issued: August 6, 1990.

By order of the Commission.

**Kenneth R. Mason,**

*Secretary.*

[FR Doc. 90-19180 Filed 8-14-90; 8:45 am]

BILLING CODE 7020-02-M

## Certain Plastic Encapsulated Integrated Circuits; Investigation

**[Investigation No. 337-TA-315]**

**AGENCY:** 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 July 19, 1990, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Texas Instruments Incorporated, 13500 North Central Expressway, Dallas, Texas 75265. The complaint alleges violations of section 337 in the importation into the United States and the sale within the United States after importation of certain plastic encapsulated integrated circuits that are manufactured, produced and assembled by means of a process that infringes one or more of claims 12, 14 and 17 of U.S. Letters Patent 4,043,027, and that there exists an industry in the United States as required by subsection (a)(2) of section 337.

The complaint requests that the Commission institute an investigation and, after a full investigation, issue a permanent limited exclusion order and permanent cease and desist orders.

**ADDRESSES:** The complaint, except for any confidential information contained therein, is available for 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, 500 E Street SW, Room 112, Washington, DC 20436, telephone 202-252-1802. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

**FOR FURTHER INFORMATION CONTACT:** Deborah J. Kline, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202-252-1576.

**Authority:** The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.12 of the Commission's Interim Rules of Practice and Procedure, 19 CFR § 210.12.

**SCOPE OF INVESTIGATION:** Having considered the complaint, the U.S. International Trade Commission, on August 7, 1990, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain plastic encapsulated integrated circuits that are manufactured, produced, or assembled abroad by a process covered by claims 12, 14 or 17 of U.S. Letters Patent 4,043,027 and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this Notice of Investigation shall be served:

(a) The complainant is:

Texas Instruments Incorporated, P.O. Box 225474, 13500 North Central Expressway, Dallas, Texas 75265.

(b) The respondents are the following companies alleged to be in violation of section 337, and the parties upon which the complaint is to be served:

Analog Devices, Inc., One Technology Way, Norwood, Massachusetts 02062-9106

Integrated Device Technology, Inc., 2975 Stender Way, Santa Clara, California 95054

LSI Logic Comporation, 1551 McCarthy Boulevard, Milpitas, California 95035

VLSI Technology, Inc., 1109 McKay Drive, San Jose, California 95131

Cypress Semiconductor Corporation, 3901 North First Street, San Jose, California 95134-1599.

(c) Deborah J. Kline, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Room 401 M, Washington, DC. 20436, shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. Inernational Trade Commission, shall designate the presding administrative law judge.

Responses to the complaint and the Notice of Investigation must be submitted by the named respondents in accordance with section 210.21 of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.21. Pursuant to § 201.16(d) and 210.21(a) of the Commission's Rules, 19 CFR 201.169d) and 210.21(a), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint and this Notice of Investigation. Extensions of time for submitting responses to the complaint and Notice of Investigation will not be granted unless good cause thereunder 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 administrative law judge and the Commission, without further notice of the respondent, to find the facts to be as

alleged in the complaint and this Notice, and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order, or a cease and desist order, or both, directed against such respondent.

Issued: August 8, 1990.

By order of the Commission.

Kenneth R. Mason,

*Secretary.*

[FR Doc. 90-19177 Filed 8-14-90; 8:45 am]

BILLING CODE 7020-02-M

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[Investigation No. 337-TA-316]

## Certain Power Transmission Chains, Chain Assemblies, Components Thereof, and Products Containing the Same; Investigation

**AGENCY:** 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 July 9, 1990, under section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, on behalf of Borg-Warner Corporation, 200 South Michigan Avenue, Chicago, Illinois 60604 and Borg-Warner Automotive, Inc., 6700 18-1/2 Mile Road, Sterling Heights, Michigan 48311-8022. The complaint was supplemented and amended on July 13, 17 and 25, 1990. The complaint, as supplemented and amended, alleges (1) violations of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain power transmission chains, chain assemblies, components thereof, and products containing the same by reason of direct infringement of claims 7, 9, 15, 17, 19, 21 and 24, contributory infringement of claims 1, 4, 10, 13, 22, and 23, and induced infringement of claims 1, 4, 7, 9, 10, 13, 15, 17, 19, 21, 22, 23 and 24, of U.S. Letters Patent 4,342,560, and (2) that there exists an industry in the United States as required by subsection (a)(2) of section 337.

The complaint requests that the Commission institute an investigation and, after a full investigation, issue a permanent exclusion order and permanent cease and desist orders.

**ADDRESSES:** The complaint, the amendments to the complaint, and the accompanying exhibits, except for exhibits claimed to contain confidential business information, are available for 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, 500 E Street SW., room 112, Washington, DC 20436, telephone 202-252-1802. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

**FOR FURTHER INFORMATION CONTACT:** George C. Summerfield, Esq., or John R. Kroeger, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202-252-1573.

**Authority:** The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in § 210.12 of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.12.

**SCOPE OF INVESTIGATION:** Having considered the complaint, the U.S. International Trade Commission, on August 7, 1990, *Ordered That*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B)(i) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain power transmission chains, chain assemblies, components thereof, and products containing same by reason of alleged direct, contributory, or induced infringement of claims 1, 4, 7, 9, 10, 13, 15, 17, 19, 21, 22, 23 or 24 of U.S. Letters Patent 4,342,560, and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this Notice of Investigation shall be served:

(a) The complainants are:

Borg-Warner Corporation, 200 South Michigan Avenue, Chicago, Illinois 60604.

Borg-Warner Automotive, Inc., 6700 18-1/2 Mile Road, Sterling Hts., MI 48311-8022.

(b) The respondents are the following entities alleged to be in violation of section 337, and the parties upon which the complaint is to be served:

Magna International Inc., 36 Applecreek Boulevard, Markham, Ontario L3R 4Y4, Canada.

Tesma International Inc., 370 North Rivermede Road, Concord, Ontario L4K 3N2, Canada.

Maple Technologies, 370 North Rivermede Road, Concord, Ontario L4K 3N2, Canada.

Magna International of America Inc., 1200 Chicago, Troy, Michigan 48083.

Mimco Inc., 2445 Northwest Highway, Southfield, Michigan 48075.

(c) George C. Summerfield, Esq., and John R. Kroeger, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., room 401K, Washington, DC 20436, shall be the Commission investigative attorneys, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding administative law judge.

Responses to the complaint and the Notice of Investigation must be submitted by the named respondents in accordance with § 210.21 of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.21. Pursuant to §§ 201.16(d) and 210.21(a) of the Commission's Rules, 19 CFR 201.16(d) and 210.21(a), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint and this Notice of Investigation. Extensions of time for submitting responses to the complaint and Notice of Investigation 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 administrative law judge 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 an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order, or a cease and desist order, or both, directed against such responent.

Issued: August 8, 1990.

By order of the Commission.

Kenneth R. Mason,

*Secretary.*

[FR Doc. 90-19178 Filed 8-14-90; 8:45 am]

BILLING CODE 7020-02-M

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## DEPARTMENT OF JUSTICE

### Antitrust Division

### National Cooperative Research Notifications; Semiconductor Research Corporation.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15

U.S.C. § 4301 *et seq.* ("Act"), the Semiconductor Research Corporation ("SRC"), on July 18, 1990, filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notification was filed for the purpose of maintaining the protections of the Act limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

The following companies have been added as affiliate members of SRC: Jamar Technology Co.; nChip Corporation; and Techware Systems Corporation. No other changes have been made in either the membership or planned activities of SRC.

On January 7, 1985, SRC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** purusant to Section 6(b) of the Act on January 30, 1985, 50 FR 4281. The most recent notification of SRC membership changes published in the Federal Register with a then current and complete membership list was filed by SRC on October 25, 1989, and published by the Department on November 29, 1989, 54 FR 49123–24. Subsequent notifications filed on February 20, 1990, and May 16, 1990, were published on April 5, 1990, 55 FR 12750, and June 13, 1990, 55 FR 23989, respectively, disclosing only membership changes.

**Joseph H. Widmar,**

*Director of Operations, Antitrust Division.*

[FR Doc. 90–19150 Filed 8–14–90; 8:45 am]

BILLING CODE 4410–01–M

## DEPARTMENT OF LABOR

### Office of the Secretary

### Advisory Commission on United Mine Workers of America (UMWA) Retiree Health Benefits; Open Meeting

**SUMMARY:** The Commission was established on March 12, 1990 to advise the Secretary of Labor on matters concerning health care issues arising from the United Mine Workers of America (UMWA) 1950 and 1974 Benefit Trusts and the effects of resolving these issues on the coal industry as a whole.

**TIME AND PLACE:** At 9:00 a.m. on Thursday, August 30, 1990 a meeting of the Advisory Commission on United Mine Workers of America Retiree Health Benefits will be held at the Frances Perkins Building, 200 Constitution Avenue NW., Conference Room S–2508, Washington, DC 20210–0001.

**AGENDA:** The purpose of this meeting will be to consider the items listed below:

1. Receive and discuss subgroup report on projections of benefit obligations and funding of the 1950 and 1974 benefit plans.
2. Receive and discuss subgroup report on funding status of the 1950 and 1974 pensions plans.
3. Receive and discuss subgroup report on visit to ALTA site.
4. Receive and discuss alternative structures for benefits and financing.

**PUBLIC PARTICIPATION:** The meeting will be open to the public. Approximately 50 seats will be available for the public, including five seats reserved for the media. Seats will be available on a first-come first-serve basis.

**SUBMISSIONS:** Anyone may submit information or position papers to the Commission. Submissions shall be made by sending 20 copies to:

Executive Director, Coal Commission, Room S–2508, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210–0001.

- Submissions must identify the interest asserted by the submitter.
- Submissions shall be accompanied by a computer readable copy of the submission on a 5¼" or 3½" magnetic disk (floppy disk) in either ASCII or Word Perfect format.
- The label on the diskette must identify the submitter, the date, the file name or names, and the format of the file.
- A 5¼" or 3½" magnetic disk need *not* accompany paper submissions, if a brief statement is attached to the paper explaining why forwarding a computer readable copy of the submission on a floppy disk is an unreasonable burden on the submitter.
- Submissions not exceeding "five typed pages" also may be sent to the Commission by electronic mail.
- Electronic mail submissions should be sent to the Coal Commission via CompuServe, account number: 21617,10
- Submissions also may be forwarded to the Commission by fax. Submissions sent to the Commission's fax number, 202–523–3442, must be followed by mailing to the Commission a copy of the submission on a 5¼" or 3½" magnetic disk, or by forwarding a copy of the submission to the Commission by electronic mail in the manner described above.

Submissions received on or before Monday, August 27, 1990 will be accepted and included in the record of the meeting.

**FOR FURTHER INFORMATION CONTACT:** Jan Horbaly, Executive Director, Advisory Commission on UMWA Retiree Health Benefits, U.S. Department of Labor, 200 Constitution Avenue NW., Room S–2508, Washington, DC 20210–0001, Telephone (202) 523–8271.

Signed at Washington, DC, this 9th day of August, 1990.

**Elizabeth Dole,**

*Secretary of Labor.*

[FR Doc. 90–19143 Filed 8–14–90; 8:45 am]

BILLING CODE 4510–23–M

### Office of the Assistant Secretary for Veterans' Employment and Training

### Secretary of Labor's Committee on Veterans' Employment; Meeting

The Secretary's Committee on Veterans' Employment was established under section 308, Title III, Public Law 97–306 "Veterans Compensation, Education and Employment Amendments of 1982," to bring to the attention of the Secretary, problems and issues relating to veterans' employment.

Notice is hereby given that the Secretary of Labor's Committee on Veterans' Employment will meet on Tuesday, September 12, 1990 at 10 a.m. in rooms N3437B and C of the Frances Perkins Building.

Written comments are welcome and may be submitted by addressing them to: Veterans' Employment and Training, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

The agenda items include the Bureau of Labor Statistics Study on Vietnam Veterans Employment and the Transition Assistance Program for separating servicemembers.

The public is invited.

Signed at Washington, DC, this 3d day of August 1990.

**Thomas E. Collins,**

*Assistant Secretary for Veterans' Employment and Training.*

[FR Doc. 90–19144 Filed 8–14–90; 8:45 am]

BILLING CODE 4510–79–M

## NUCLEAR REGULATORY COMMISSION

[Docket No. 50–317 and 50–318]

### Baltimore Gas and Electric Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of 10 CFR part 50, Appendix R, Section III.J,

"Emergency Lighting," to the Baltimore Gas and Electric Company (BG&E/licensee) for the Calvert Cliffs Nuclear Power Plant, Units 1 and 2, located at the licensee's site in Calvert County, Maryland.

**Environmental Assessment**

*Identification of Proposed Action*

The licensee would be exempted from the requirements of 10 CFR part 50, appendix R, section III.J, to the extent the 8-hour portable handlights, kept in a charged state, would be available for exclusive use of the operations staff during a post-fire emergency in lieu of permanently installed 8-hour emergency lighting in specified areas withn Unit 1 and Unit 2 containments.

*The Need for The Proposed Action*

The proposed exemption is needed as the result of the licensee's investigation of the deficiencies identified in its Licensee Event Report (LER) 50-317/89-09. Several deficiencies were noted in the existing post-fire alternative safe shutdown procedure (AOP-9), resulting in additional areas being identified, inside the containments of both units, which require emergency lighting to allow operators to access necessary equipment for safely shutting down the units subsequent to a fire in accordance with the revised AOP-9. Specifically, it is necessary to operate auxiliary spray valves, loop; charging isolation valves, safety injection tank isolation valves, and shutdown cooling return isolation valves. The actions occur at various times during post-fire shutdown activities with the first containment entry occurring approximately 4 hours after the initiation of the event. In order to comply with the section III.J requirement, emergency lighting would need to be installed to illuminate both the valves and the access paths to them.

The licensee has proposed providing portable handlights for use in containment but which would be staged outside of the containments. Specifically, the portable handlights will be of the rechargeable type with an 8-hour duration. The portable handlights will be kept in recharging units, and subjected to a constant charge. Access to the portable handlights will be physically and administratively limited to operations, personnel for emergency use. The portable handlights will be tested on the same frequency as the other emergency lights at the facility.

*Environmental Impacts of the Proposed Action*

The proposed exemption will provide a degree of fire protection that is equivalent to that required by Appendix R for the affected areas of the plant such that there is no increase in the risk of fires at this facility. Consequently, the probability of fires has not been increased and the post-fire radiological releases will not be greater than previously determined, nor does the proposed exemption otherwise affect radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impact associated with this proposed exemption.

With regard to potential non-radiological impacts, the proposed exemption involves features located entirely within the restricted area as defined in 10 CFR part 20. They do not affect non-radiological plant effluents and have no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemption.

*Alternatives to the Proposed Action*

Since the Commission has concluded there are no measurable environmental impacts associated with the proposed exemption, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to the exemption would be to require rigid compliance with the applicable portions of Section III.J of the Appendix R requirements. Such action would not enhance the protection of the environment. Installation of fixed emergency lighting in the containment is not consistent with the goals of reducing radiation exposure, ALARA, in terms of installation, surveillance, and maintenance. The increased level of exposure and generated waste is not justified when a more reliable option clearly exists.

This action involves no use of resources not previously considered in the Final Environmental Statement for the Calvert Cliffs Nuclear Power Plant, Units 1 and 2, dated April, 1973.

**Finding of No Significant Impact**

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, the staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this proposed action, see the licensee's letter dated June 29, 1990. This letter is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the Calvert County Library, Prince Frederick, Maryland.

Dated in Rockville, Maryland, this 8th day of August 1990.

For the Nuclear Regulatory Commission.

**Robert A. Capra,**

*Director, Project Directorate I-1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 90-19166 Filed 8-14-90; 8:45 am]

BILLING CODE 7590-01-M

## OFFICE OF MANAGEMENT AND BUDGET

### Cumulative Report on Rescissions and Deferrals

August 1, 1990.

This report is submitted in fulfillment of the requirement of section 1014(e) of the Congressional Budget and Impoundment Control Act of 1974 (Pub. L. 93-344). Section 1014(e) requires a monthly report listing all budget authority for this fiscal year for which, as of the first day of the month, a special message has been transmitted to Congress.

This report gives the status, as of August 1, 1990, of 28 deferrals and eleven rescission proposals contained in seven special messages for FY 1990. These messages were transmitted to Congress on October 2, 1989, January 29, 1990, February 6, 1990, April 18, 1990, April 23, 1990, June 26, 1990 and June 28, 1990.

**Rescissions (Table A and Attachment A)**

As of August 1, 1990, eight rescission proposals totalling $327.4 million were pending before Congress.

**Deferrals (Table B and Attachment B)**

As of August 1, 1990, $3,190.7 million in budget authority was being deferred from obligation. Attachment B shows the history and status of each deferral reported during FY 1990.

**Information from Special Messages**

The special messages containing information on deferrals and rescissions that are covered by this cumulative report are printed in the **Federal Register** as cited below:

55 FR 41410, Friday, October 6, 1989
55 FR 3860, Monday, February 5, 1990
55 FR 5388, Wednesday, February 14, 1990

55 FR 17364, Tuedsay, April 24, 1990
55 FR 18276, Tuedsay, May 1, 1990
55 FR 27974, Friday, July 6, 1990
55 FR 28584, Wednesday, July 11, 1990

**Richard G. Darman,**
*Director.*

BILLING CODE 3110-01-M

TABLE A

STATUS OF FY 1990 RESCISSIONS

| | Amounts (In millions of dollars) |
|---|---|
| Rescissions proposed by the President | 554.3 |
| Accepted by the Congress | 0 |
| Funding made available | -45.1 |
| Funding never withheld | -181.8 |
| Pending before the Congress | 327.4 |

**********

TABLE B

STATUS OF FY 1990 DEFERRALS

| | Amounts (In millions of dollars) |
|---|---|
| Deferrals proposed by the President | 11,071.5 |
| Routine Executive releases through August 1, 1990 (OMB/Agency releases of $7,916.8 million, partly offset by cumulative positive adjustments of $36.0 million.) | -7,880.8 |
| Overturned by the Congress | 0 |
| Currently before the Congress | 3,190.7 |

Attachments

ATTACHMENT A
Status of FY 1990 Rescissions
(Amounts in thousands of dollars)

| As of August 1, 1990 Agency/Bureau/Account | Rescission Number | Amount: Previously Considered by Congress | Amount: Currently before Congress | Date of Message | Amount Rescinded | Amount Made Available | Date Made Available | Congressional Action |
|---|---|---|---|---|---|---|---|---|
| DEPARTMENT OF AGRICULTURE | | | | | | | | |
| Agricultural Research Service | | | | | | | | |
| Buildings and facilities | R90-1 | 4,075 | | 04-23-90 | | 4,075 | 06-18-90 | |
| Cooperative State Research Service | | | | | | | | |
| Buildings and facilities | R90-2 | 41,008 | | 04-23-90 | | 41,008 | 06-18-90 | |
| DEPARTMENT OF COMMERCE | | | | | | | | |
| Economic Development Administration | | | | | | | | |
| Economic development assistance program | R90-3 | 181,800 | | 04-23-90 | | (See note below.) | | |
| DEPARTMENT OF DEFENSE, MILITARY | | | | | | | | |
| Military Construction, Army | R90-4 | | 155,745 | 06-28-90 | | | | |
| Military Construction, Navy | R90-5 | | 6,200 | 06-28-90 | | | | |
| Military Construction, Air Force | R90-6 | | 27,290 | 06-28-90 | | | | |
| Military Construction, Defense Agencies | R90-7 | | 68,119 | 06-28-90 | | | | |
| Family Housing, Army | R90-8 | | 12,664 | 06-28-90 | | | | |
| Family Housing, Navy | R90-9 | | 11,037 | 06-28-90 | | | | |
| Family Housing, Air Force | R90-10 | | 46,020 | 06-28-90 | | | | |
| Family Housing, Defense Agencies | R90-11 | | 300 | 06-28-90 | | | | |
| TOTAL, RESCISSIONS PROPOSED | | 226,883 | 327,375 | | | 45,083 | | |

NOTE: The $181.8 million proposed for rescission in Rescission Proposal No. 90-3 was never withheld from obligation. Therefore, there was no need to release the funds.

ATTACHMENT B
Status of FY 1990 Deferrals - As of August 1, 1990
(Amounts in thousands of dollars)

| Agency/Bureau/Account | Deferral Number | Amounts Transmitted: Original Request | Amounts Transmitted: Subsequent Change (+) | Date of Message | Releases(-): Cumulative OMB/ Agency | Releases(-): Congressionally Required | Congressional Action | Cumulative Adjustments (+) | Amount Deferred as of 8-1-90 |
|---|---|---|---|---|---|---|---|---|---|
| FUNDS APPROPRIATED TO THE PRESIDENT | | | | | | | | | |
| International Security Assistance | | | | | | | | | |
| Economic support fund | D90-1 | 271,000 | | 10-02-89 | | | | | |
| | D90-1A | | 1,798,079 | 01-29-90 | | | | | |
| | D90-1B | | 19,831 | 04-18-90 | | | | | |
| | D90-1C | | 383,950 | 06-26-90 | 1,765,153 | | | | 707,706 |
| Foreign military financing | D90-8 | 4,156,642 | | 01-29-90 | 3,526,883 | | | | 629,759 |
| International military education and training | D90-9 | 23,293 | | 01-29-90 | 23,293 | | | | 0 |
| DEPARTMENT OF AGRICULTURE | | | | | | | | | |
| Forest Service | | | | | | | | | |
| Expenses, brush disposal | D90-2 | 188,680 | | 10-02-89 | 52,726 | | | | 135,954 |
| Cooperative work | D90-3 | 410,189 | | 10-02-89 | | | | | |
| | D90-3A | | 367,148 | 01-29-90 | 322,896 | | | 36,000 | 490,441 |
| DEPARTMENT OF DEFENSE - MILITARY | | | | | | | | | |
| Aircraft Procurement, Army | D90-10 | 16,000 | | 02-06-90 | 16,000 | | | | 0 |
| Procurement of Ammunition, Army | D90-11 | 310,000 | | 02-06-90 | 310,000 | | | | 0 |
| Procurement of Ammunition, Army | D90-12 | 90,000 | | 02-06-90 | 90,000 | | | | 0 |
| Other Procurement, Army | D90-13 | 11,000 | | 02-06-90 | 11,000 | | | | 0 |

ATTACHMENT B

Status of FY 1990 Deferrals - As of August 1, 1990

(Amounts in thousands of dollars)

| Agency/Bureau/Account | Deferral Number | Amounts Transmitted: Original Request | Amounts Transmitted: Subsequent Change (+) | Date of Message | Releases(-): Cumulative OMB/ Agency | Releases(-): Congressionally Required | Congressional Action | Cumulative Adjustments (+) | Amount Deferred as of 8-1-90 |
|---|---|---|---|---|---|---|---|---|---|
| Aircraft Procurement, Navy | D90-14 | 200,000 | | 02-06-90 | 200,000 | | | | 0 |
| Weapons Procurement, Navy | D90-15 | 13,900 | | 02-06-90 | 13,900 | | | | 0 |
| Shipbuilding and Conversion, Navy | D90-16 | 592,398 | | 02-06-90 | 592,398 | | | | 0 |
| Shipbuilding and Conversion, Navy | D90-17 | 324,800 | | 02-06-90 | 324,800 | | | | 0 |
| Aircraft Procurement, Air Force | D90-18 | 181,700 | | 02-06-90 | 181,700 | | | | 0 |
| Missile Procurement, Air Force | D90-19 | 131,000 | | 02-06-90 | 131,000 | | | | 0 |
| Other Procurement, Air Force | D90-20 | 70,000 | | 02-06-90 | 70,000 | | | | 0 |
| National Guard and Reserve Equipment, Defense | D90-21 | 40,900 | | 02-06-90 | 40,900 | | | | 0 |
| Research, Development, Test and Evauation, Air Force | D90-22 | 100,000 | | 02-06-90 | 100,000 | | | | 0 |
| Research, Development, Test and Evaluation, Defense Agencies | D90-23 | 21,000 | | 02-06-90 | 21,000 | | | | 0 |
| Military Construction, Army | D90-24 | 3,200 | | 02-06-90 | 3,200 | | | | 0 |
| Military Construction, Army | D90-25 | 16,150 | | 02-06-90 | 16,150 | | | | 0 |
| Military Construction, Army National Guard | D90-26 | 18,301 | | 02-06-90 | 18,301 | | | | 0 |
| Military Construction, Air National Guard | D90-27 | 36,841 | | 02-06-90 | 36,841 | | | | 0 |
| Military Construction, Army Reserve | D90-28 | 16,660 | | 02-06-90 | 16,660 | | | | 0 |
| DEPARTMENT OF DEFENSE - CIVIL | | | | | | | | | |
| Wildlife Conservation, Military Reservations | | | | | | | | | |
| Wildlife conservation, Defense | D90-4 | 1,047 | | 10-02-89 | | | | | |
| | D90-4A | | 450 | 04-18-90 | 47 | | | | 1,450 |

ATTACHMENT B

Status of FY 1990 Deferrals - As of August 1, 1990

(Amounts in thousands of dollars)

| Agency/Bureau/Account | Deferral Number | Amounts Transmitted: Original Request | Amounts Transmitted: Subsequent Change (+) | Date of Message | Releases(-): Cumulative OMB/ Agency | Releases(-): Congressionally Required | Congressional Action | Cumulative Adjustments (+) | Amount Deferred as of 8-1-90 |
|---|---|---|---|---|---|---|---|---|---|
| DEPARTMENT OF HEALTH AND HUMAN SERVICES | | | | | | | | | |
| Social Security Administration | | | | | | | | | |
| Limitation on administrative expenses (construction)..... | D90-5 | 7,078 | | 10-02-89 | | | | | |
| | D90-5A | | 49 | 04-18-90 | | | | | 7,127 |
| DEPARTMENT OF STATE | | | | | | | | | |
| Bureau for Refugee Programs | | | | | | | | | |
| United States emergency refugee and migration assistance fund, executive.... | D90-6 | 44 | | 10-02-89 | | | | | |
| | D90-6A | | 49,785 | 01-29-90 | | | | | |
| | D90-6B | | 25,000 | 01-29-90 | 31,950 | | | | 42,879 |
| DEPARTMENT OF TRANSPORTATION | | | | | | | | | |
| Federal Aviation Administration | | | | | | | | | |
| Facilities and equipment (Airport and airway trust fund)..... | D90-7 | 502,361 | | 10-02-89 | | | | | |
| | D90-7A | | 673,064 | 01-29-90 | | | | | 1,175,425 |
| TOTAL, DEFERRALS..... | | 7,754,185 | 3,317,355 | | 7,916,798 | 0 | | 36,000 | 3,190,742 |

BILLING CODE 3110-01-M

[FR Doc. 90-19213 Filed 8-14-90; 8:45 am]

BILLING CODE 3110-01-C

## SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34-28321; File No. SR-AMEX-90-14]

## Self-Regulatory Organizations; Filing of Proposed Rule Change by the American Stock Exchange, Inc., Relating to the Listing of Long-Term Options on a Reduced Value Major Market Index

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 18, 1990, the American Stock Exchange, Inc. ("Amex" or "Exchange") files with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in items I, II and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The AMEX proposes to list long-term put and call options (with expirations up to 36 months) on a broad market index which will be computed at one-twentieth the value of the Exchange's Major Market Index. These long-term options on the reduced value index will trade independent of, and in addition to, regular Major Market Index ("XMI") options traded on the Exchange and will subject to the same rules that govern the trading of Exchange index options.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

*(A) Self-Regulatory Organization's Statement of the Proposs or,and Statutory Basis for, the Proposed Rule Change*

Since 1983, the AMEX has been trading options on the XMI, a broad-based stock index based on twenty leading blue chip stocks. The Exchange's policy has been to ensure that three consecutive expiration months are available for XMI options at any given time, *e.g.*, August, September and October. In 1987, the Commission approved a rule change to allow the AMEX to list long-term options, having up to 36 months to expiration, on any of the Exchange's broad-based index options.[1] At the present time, however, the Exchange lists such long-term options only on its Institutional Index.

The AMEX now purposes to use its authority under the Long-Term Options Approval Order to list long-term options on a reduced value index which would be computed at one-twentieth the level of the XMI. Other than the reduced value given to the new index, all other specifications and calculations for the XMI Index remain exactly the same. As noted herein, these options would have expirations up to 36 months from the time of their introduction.

Based in part on the experience gained from the trading of index warrants, the Exchange believes that the listing of long-term options on a reduced value XMI particularly fit the needs of retail investors. Among other things, the Exchange believes that the reduced dollar value of the underlying index and the relative long-term duration of the proposed options would combine to offer investors the opportunity to obtain long-term portfolio protection at an affordable price. In addition, since the XMI correlates closely to the Dow Jones Industrial Average ("DJIA"), the proposed reduced value index should correspond to approximately a level of 1% of the DJIA. For example, the reduced value index on July 16, 1990, closed at 29.93 while 1% of the DJIA computed at 29.99. Thus, with the new Index, investors will enjoy an ease of comparison between the underlying index number and one of the country's most recognized equity market level indicators.

The Exchange proposes that the long-term reduced value options (which will be given an appropriate name prior to the start-up of trading) will be subject to the same rules that presently govern the trading of index options, including sales practice rules, margin requirements, floor trading procedures and, except as noted herein, position and exercise limits. With regard to position limits, the Exchange would advise its members that "regular" XMI options must be aggregated with positions in the new options for position limit aggregating purposes.

Like XMI options, these new options would feature European-style exercise (restricting exercise only to the last day of trading) and, as in the case of all other indexes, the Exchange will continuously calculate and disseminate the underlying index value in addition to the XMI value

Upon Commission approval of this proposal, the Exchange intends to list initial options series on the new reduced value index with a December 1992 expiration. (This initial series would have less than 36 months to expiration.) Thereafter, options with 36-month expirations would be introduced at each December expiration, so that, for example, a December 1993 expiration would be introduced at the December 1990 expiration and a December 1994 expiration would be introduced at the December 1991 expiration.

The Exchange proposes to retain flexibility in the listing of new strike prices at each December expiration. Either one or two strike prices would be listed near or bracketing the then current index level. Standardized puts and calls would be listed for each strike price. However, the Exchange may list only a put or a call if two strike prices are introduced. The Exchange proposes to add additional strike prices when the index (and thus the overall market) makes significant moves of approximately 10–15%. Based on current levels, a 10–15% move would correspond to approximately a 300–450 point market move as measured by the DJIA. This procedure should result in the listing of only a limited number of series for any expiration, thereby eliminating any confusion that might otherwise be caused by a myriad of strike prices and expirations.

The Exchange expects that its proposed policy of listing strike prices on its new index will permit the offering of long-term options at premiums between $3 and $7 ($300 to $700 per contract) based on current market volatility and normal pricing considerations. Such premiums appear to be in the desired range of prices that investors have favored in trading index warrants. Such premiums could not be achieved by using "full size" XMI options without the listing of strike prices so deeply out-of-the-money and away from the current prices of the index as to offer investors limited ability to participate in the market or protect their portfolio.

The Exchange believes that the proposed rule change is consistent with section 6(b)(5) of the Act because the listing of long-term put and call options on a reduced value XMI index will

[1] *See* Securities Exchange Act Release No. 25041 (October 16, 1987), 52 FR 40008 ("Long-Term Options Approval Order").

facilitate transactions in securities and protect investors and the public interest. Specifically, the Exchange believes that the proposed rule change is consistent with the requirement under section 6(b)(5) that the rules of the Exchange be designed to promote just and equitable principles of trade and to protect the investing public.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

The AMEX believes that the proposed rule change will not impose a burden on competition.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

No written comments were solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and published its reasons for so finding or (ii) As to which the self-regulatory organization consents, the Commission will:

(a) By order approve the proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 5, 1990.

Dated: August 8, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 90-19216 Filed 8-14-90; 8:45 am]

BILLING CODE 8010-01-M

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**[Rel. No. 34-28318; File No. SR-NYSE-90-35]**

## Self-Regulatory Organizations; Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to the Listing of Index Warrants Based on the Deutscher Aktienindex (DAX)

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 1, 1990, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The NYSE proposes to approve for listing and trading under § 703.17 of its Listed Company Manual index warrants based on the Deutscher Aktienindex ("DAX") ("Index warrants"). In accordance with the requirements set forth in Securities Exchange Act Release No. 28153 (June 26, 1990) ("index warrant approval order"), 55 FR 27734, the NYSE has submitted this filing pursuant to rule 19b-4 under the Act to obtain Commission approval to list these warrants.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

In the index warrant approval order, the Commission approved amendments to the NYSE's rules permitting the listing of index warrants based on established market indexes, foreign and domestic.

In approving the aforementioned amendments, the Commission expressed interest in the impact of additional index products on U.S. markets, and stated that the NYSE would be required to submit for Commission approval any specific index warrants that it proposed to trade. The NYSE is now proposing to list index warrants based on the DAX index, an internationally recognized, capitalization-weighted index consisting of 30 leading stocks listed and traded on the Frankfurt Stock Exchange ("FSE"). The DAX Index is calculated by the FSE and is updated on a continuous basis during the trading session. Changes in the composition of the DAX are made by the FSE in consultation with the Federation of German Stock Exchanges and the *Borsen-Zeitung*. The stocks included on the DAX are among the largest German corporations, whose shares are among the most actively traded German issues.

The NYSE represents that such index warrant issues will conform to the listing guidelines under section 703.17, which provide that (1) The issuer shall have assets in excess of $100,000,000 and otherwise substantially exceed the size and earnings requirements in § 102.01 of the Listed Company Manual; (2) the term of the warrants shall be for a period of at least one year from the date of issuance; and (3) the minimum public distribution of such issues shall be 1,100,000 warrants together with a minimum of 400 public holders, and the warrants shall have an aggregate market value of $4,000,000.

DAX Index warrants will be direct obligations of their issuer subject to cash-settlement during their term, and either exercisable throughout their life (*i.e.*, American style) or exercisable only on their expiration date (*i.e.*, European style). Upon exercise, or at the warrant expiration date (if not exercisable prior to such date), the holder of a warrant structured as a "put" would receive payment in U.S. dollars to the extent that the DAX has declined below a pre-stated cash settlement value. Conversely, holders of a warrant structured as a "call" would, upon exercise or at expiration, receive

payment in U.S. dollars to the extent that the DAX has increased above the pre-stated cash settlement value. If "out-of-the-money" at the time of expiration, the warrants would expire worthless.

The NYSE has adopted suitability standards applicable to recommendations to customers of index warrants and transactions in customer accounts. Specifically, Exchange Rule 405, Supplementary Material .30 applies the options suitability standard in Exchange Rule 723 to recommendations regarding Index warrants. The Exchange also recommends that Index warrants be sold only to options-approved accounts. In addition, Exchange Rule 408, Supplementary Material .10 requires a Senior Registered Options Principal or a Registered Options Principal to approve and initial a discretionary order in Index warrants on the day the order is entered. Finally, the NYSE, prior to the commercement of trading in DAX Index warrants, will distribute a circular to its membership calling attention to specific risks associated with warrants on the DAX Index.

In the index warrant approval order, the Commission noted that, with respect to foreign index warrants, there should be an adequate mechanism for sharing surveillance information with respect to the index's component stocks. In this regard, the NYSE is actively engaged in discussions with representatives of the FSE to ensure that there is an adequate mechanism for the sharing of surveillance information with respect to the DAX's component stocks.

The Exchange believes that the proposed rule change is consistent with the requirements of the Act, and, in particular, section 6(b)(5), as the rules governing warrants are designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade, and are not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The NYSE does not believe that the proposed rule change will impose an inappropriate burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) As to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 5, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: August 8, 1990.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 90-19125 Filed 8-14-90; 8:45 am]

BILLING CODE 8010-01-M

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**[Rel. No. 34-28319; File No. SR-NYSE-90-36]**

## Self-Regulatory Organizations; Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to the Listing of Index Warrants Based on the CAC-40 Index

Pursant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 1, 1990, the New York Stock Exchange, Inc. ("NYSE" or 'Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The NYSE proposes to approve for listing and trading under § 703.17 of its Listed Company Manual index warrants based on the CAC-40 Index ("Index warrants"). In accordance with the requirements set forth in Securities Exchange Act Release No. 28153 (June 26, 1990) ("index warrant approval order"), 55 FR 27734, the NYSE has submitted this filing pursuant to rule 19b-4 under the Act to obtain Commission approval to list these warrants.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments if received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

In the index warrant approval order, the Commission approved amendents to the NYSE's rules permitting the listing of index warrants based on established market indexes, foreign and domestic.

In approving the aforementioned amendments, the Commission expressed interest in the impact of additional index products on U.S. markets, and stated that the NYSE would be required to submit for Commission approval any specific index warrants that it proposed to trade. The NYSE is now proposing to list index warrants based on the CAC-40 Index, an internationally recognized,

capitalization-weighted index, variations in which correspond to an average of the price variations of the Index's component stocks, weighted according to their market value. The CAC–40 consists of 40 leading stocks listed and traded on the Paris Bourse which is both calculated and managed by the Societe des Bourses Francaises.

Such Index warrant issues will conform to the listing guidelines under § 703.17, which provide that (1) The issuers shall have assets in excess of $100,000,000 and otherwise substantially exceed the size and earnings requirements in § 102.01 of the Listed Company Manual; (2) the term of the warrants shall be for a period of at least one year from the date of issuance; and (3) the minimum public distribution of such issues shall be 1,100,000 warrants together with a minimum of 400 public holders, and the warrants shall have an aggregate market value of $4,000,000.

CAC–40 Index warrants will be direct obligations of their issuer subject to cash-settlement during their term, and either exercisable throughout their life (*i.e.*, American style) or exercisable only on their expiration date (*i.e.*, European style). Upon exercise, or at the warrant expiration date (if not exercisable prior to such date), the holder of a warrant structured as a "put" would receive payment in U.S. dollars to the extent that the CAC–40 Index has declined below a pre-stated cash settlement value. Conversely, holders of a warrant structured as a "call" would, upon exercise or at expiration, receive payment in U.S. dollars to the extent that the CAC–40 Index has increased above the pre-stated cash settlement value. If "out-of-the-money" at the time of expiration, the warrants would expire worthless.

The NYSE has adopted suitability standards applicable to recommendations to customers of index warants and transactions in customer accounts. Specifically, Exchange Rule 405, Supplementary Material .30 applies the options suitablity standard in Exchange Rule 723 to recommendations regarding Index warrants. The Exchange also recommends that Index warants be sold only to options-approved accounts. In addition, Exchange Rule 408, Supplementary Material .10 requires a Senior Registered Options Principal or a Registered Options Principal to approve an initial a discretionary order in Index warrants on the day the order is entered. Finally, the NYSE, prior to the commencement of trading in CAC–40 Index warrants, will distribute a circular to its membership calling attention to specific risks associated with warrants on the CAC–40 Index.

In the index warrant approval order, the Commission noted that, with respect to foreign index warrants, there should be an adequate mechanism for sharing surveillance information with respect to the index's component stocks. In this regard, the NYSE is actively engaged in discussions with representatives of the Societe des Bourses Francaises to ensure that there is an adequate mechanism for the sharing of surveillance information with respect to the CAC–40 Index's component stocks.

The Exchange believes that the proposed rule change is consistent with the requirements of the Act, and, in particular, section 6(b)(5), as the rules governing warrants are designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade, and are not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The NYSE does not believe that the proposed rule change will impose an inappropriate burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Receved from Members, Participants, or Others*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer periods to be appropriate and publishes its reasons for so finding or (ii) As to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Coments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person other that those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 5, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: August 8, 1990.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 90–19126 Filed 8–14–90; 8:45 am]

BILLING CODE 8010–01–M

## SMALL BUSINESS ADMINISTRATION

### Reporting and Recordkeeping Requirements Under OMB Review

**AGENCY:** Notice of reporting requirements submitted for review.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the Federal Register notifying the public that the agency has made such a submission.

**DATES:** Comments should be submitted September 14, 1990. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

**COPIES:** Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

**FOR FURTHER INFORMATION CONTACT:** Agency Clearance Officer: William Cline, Small Business Administration, 1441 L Street, NW., Room 200, Washington, DC 20416, Telephone: (202) 653–8538.

OMB Reviewer: Gary Waxman, Office of Information and Regulatory Affairs, Office of Information and Budget, New Executive Office Building, Washington, DC 20503, Telephone: (202) 395-7340.

*Title:* Secondary Market Disclosure and Assignment Form

*Form No.:* 1088

*Frequency:* on occasion

*Description of respondents:* SBA participating Lenders

*Annual responses:* 5,000

*Annual burden hours:* 10,000

**William Cline,**

*Chief, Administrative Information Branch.*

[FR Doc. 90-19127 Filed 8-14-90; 8:45 am]

BILLING CODE 8025-01-M

## National Advisory Council Executive Committee; Public Meeting

The U.S. Small Business Administration Advisory Council Executive Committee Meeting will be held 9 a.m. to 5 p.m. on Tuesday, August 28, at the Westin St. Francis Hotel, Elizabethan A Room, Union Square, San Francisco, California, to discuss such matters as may be presented by members, staff of the Small Business Administration and others present.

For further information, write or call Jean M. Nowak, Director, Office of Advisory Councils, U.S. Small Business Administration, 1441 L Street, NW., Room 503E, Washington, DC 20416, telephone (202) 653-6748.

Dated: August 6, 1990.

**Jean M. Nowak,**

*Director, Office of Advisory Councils.*

[FR Doc. 90-19130 Filed 8-14-90; 8:45 am]

BILLING CODE 8025-01-M

**[Declaration of Disaster Loan Areas #2442]**

## Kansas; Declaration of Disaster Loan Area

Sedgwick County and the contiguous Counties of Butler, Cowley, Harvey, Kingman, Reno, and Sumner in the State of Kansas constitute a disaster area as a result of damages from high winds and tornadoes which occurred on June 18-19, 1990. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on October 1, 1990 and for economic injury until the close of business on May 2, 1991 at the address listed below:

Disaster Area 3 Office, Small Business Administration, 4400 Amon Carter Blvd., Suite 102, Ft. Worth, TX 76155.

or other locally announced locations.

| | Percent |
|---|---|
| The interest rates are: | |
| For physical damage: | |
| Homeowners with credit available elsewhere | 8.000 |
| Homeowners without credit available elsewhere | 4.000 |
| Businesses with credit available elsewhere | 8.000 |
| Businesses and non-profit organizations without credit available elsewhere | 4.000 |
| Others (including non-profit organizations) with credit available elsewhere | 9.250 |
| For economic injury: | |
| Business and small agricultural cooperatives without credit available elsewhere | 4.000 |

The number assigned to this disaster for physical damage is 244212 and for economic injury the number is 710400.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: August 2, 1990.

**Kay Bulow,**

*Acting Administrator.*

[FR Doc. 90-19128 Filed 8-14-90; 8:45 am]

BILLING CODE 8025-01-M

**[Declaration of Disaster Loan Area #2432]**

## Ohio; Amendment #3; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with amendments dated July 20 an 24, 1990, to the President's major disaster declaration of June 6, to include the Counties of Columbiana, Mahoning, and Trumbull as a disaster area as a result of damages caused by severe storms, flooding, and tornadoes beginning on May 28 and continuing through June 25, 1990. This amendment also extends the filing deadline for victims affected by additional flooding that occured July 5, 12, and 14, 1990.

In addition, applications for economic injury loans from small businesses located in the contiguous Counties of Ashtabula, Geauga, Portage, and Stark in the State of Ohio and Beaver, Crawford, Lawrence, and Mercer Counties in the State of Pennsylvania may be filed until the specified date at the previously designated location.

Any counties contiguous to the above-named primary counties and not listed herein have previously been named as contiguous or primary counties for the same occurrence.

For those victims affected by the flooding that occurred during the period July 5 through July 14, 1990 in the counties of Belmont, Columbiana, Harrison, Jefferson, Licking, Mahoning, Trumbull, and Vinton, the deadline for filing applications for physical damage will be September 6, 1990, 30 days from the date of this notice. For all others, the deadline for physical applications remains August 6, 1990. For economic injury the filing deadline is March 6, 1991. The numbers of economic injury are 708100 for the State of Ohio and 709300 for the State of Pennsylvania.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 6, 1990.

**Michael E. Deegan,**

*Acting Assistant Administrator for Disaster Assistance.*

[FR Doc. 90-19129 Filed 8-14-90; 8:45 am]

BILLING CODE 8025-01-M

# DEPARTMENT OF TRANSPORTATION

## Coast Guard

**[CGD8 90-19]**

## Lower Mississippi River Waterway Safety Advisory Committee; VTS Subcommittee Meetings

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. app. I) notice is hereby given of two meetings of the VTS Subcommittee of the Lower Mississippi River Waterway Safety Advisory Committee. The first meeting will be held on Tuesday, September 11, 1990. The second meeting will be held on Thursday, September 20, 1990. The meetings will be held at the Crescent River Port Pilots' Office, 409 Belle Chasse Highway South, Belle Chasse, Louisiana. The meetings are scheduled to begin at 9 a.m. The agenda for the meetings consists of the following items:

1. Call to order.
2. Recommendations for a proposed New Orleans Vessel Traffic Service.
3. Adjournment.

The meetings are open to the public. Members of the public may present written or oral statements at the meetings.

Additional information may be obtained from Commander C.T. Bohner, USCG, Executive Secretary, Lower Mississippi River Waterway Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (oan), room 1209, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130-3396, telephone number (504) 589-3074.

Dated: August 7, 1990.

J.M. Loy,

*Rear Admiral, USCG Commander, Eighth Coast Guard District.*

[FR Doc. 90-19117 Filed 8-14-90; 8:45 am]

BILLING CODE 4910-14-M

## Federal Aviation Administration

### Meetings: Aviation Security Advisory Committee

**AGENCY:** Federal Aviation Administration, Transportation.

**ACTION:** Notice of Aviation Security Advisory Subcommittee meeting.

**SUMMARY:** Notice is hereby given of a meeting of the Policy and Procedures Subcommittee of the Aviation Security Advisory Committee.

**DATES:** The meeting will be held August 24, 1990, from 9 a.m. to 5 p.m..

**ADDRESSES:** The meeting will be held in the MacCracken Room, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** The Office of Civil Aviation Security, ACS, 800 Independence Avenue, SW., Washington, DC 20591, telephone 202-267-7107.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Policy and Procedures Subcommittee of the Aviation Security Advisory Committee to be held August 24, 1990, in the MacCracken Room, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC.

The Policy and Procedures Subcommittee is co-chaired by the Airport Operators Council International (AOCI), the American Association of Airport Executives (AAAE), and the Air Transport Association of America (ATA). The agenda for the meeting will focus on several of the recommendations of Presidential Commission on Aviation Security and Terrorism published May 15, 1990, and parallel provisions of legislative proposals presently before the United States Congress.

These agenda items will include the perceived need for stronger airport security controls; responsibilities of the government, the airports and airlines; a proposal to create the position of Federal Security Manager at major airports; and, a requirement for criminal background checks on aviation industry employees. Agenda items may be added or deleted as time permits. Recommendations arising from this meeting will be reported back to the full Aviation Security Advisory Committee no later than October 1, 1990.

Attendance at the August 24 meeting is open to the public, but limited to space available. Oral statements are not anticipated, but written statements may be submitted anytime. Persons wishing to present statements or information should contact the Office of Civil Aviation Security, ACS, 800 Independence Avenue, SW., Washington, DC 20591, telephone 202-267-7107.

Interested parties who wish to suggest additional agenda items, or make suggestions as to working group topics or other matters, should submit them in writing to one of the co-chair organizations no later than August 21, 1990.

AOCI, 1220 19th street, NW., suite 200, Washington, DC 20036 telephone 202-293-8500.

AEEE, 4212 King Street, Alexandria, VA 22302, telephone 703-824-0500.

ATA, 1709 New York Avenue, NW., Washington, DC 20006, telephone 202-626-4000.

Issued in Washington, DC, on August 1, 1990.

Monte R. Belger,

*Acting Assistant Administrator for Civil Aviation Security.*

[FR Doc. 90-19208 Filed 8-14-90; 8:45 am]

BILLING CODE 4910-13-M

## DEPARTMENT OF THE TREASURY

### Public Information Collection Requirements Submitted to OMB for Review

Date: August 8, 1990.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub.L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

**Internal Revenue Service**

*OMB Number:* 1545-0901
*Form Number:* IRS Form 1098
*Type of Review:* Revision
*Title:* Mortgage Interest Statement
*Description:* Form 1098 is used by mortgagors to report $600 or more of mortgage interest from an individual in a trade or business.
*Respondents:* Individuals or households, Businesses or other for-profit
*Estimated Number of Respondents:* 156,000
*Estimated Burden Hours Per Respondent:* 7 minutes
*Frequency of Response:* Annually
*Estimated Total Reporting Burden:* 6,000,000 hours

Clearance Officer: Garrick Shear, (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

*Departmental Reports, Management Officer.*

[FR Doc. 90-19160 Filed 8-14-90; 8:45 am]

BILLING CODE 4830-01-M

### Public Information Collection Requirements Submitted to OMB for Review

Date: August 8, 1990.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be furnished to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

**U.S. Customs Service**

*OMB Number:* 1515-0130
*Form Number:* None
*Type of Review:* Extension
*Title:* Free Admittance Under Conditions of Emergency
*Description:* This information is used to monitor goods temporarily admitted under conditions of national emergency or catastrophe for the purpose of rescue or relief. Expected affected public would be nonprofit assistance organizations.
*Respondents:* Non-profit institutions
*Estimated Number of Respondents:* 1
*Estimated Burden Hours Per Response:* 1 hour
*Frequency of Response:* On occasion

*Estimated Total Reporting Burden*: 1 hour

*Clearance Officer*: Dennis Dore (202) 535-9267, U.S. Customs Service, Paperwork Management Branch, Room 6316, 1301 Constitution Avenue, NW., Washington, DC 20229

*OMB Reviewer*: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports Management Editor.*

[FR Doc. 90-19161 Filed 8-14-90; 8:45 am]

BILLING CODE 4820-02-M

## DEPARTMENT OF VETERANS AFFAIRS

### Information Collection Under OMB Review

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) The Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) the indication of whether section 3504(h) of Public Law 96-511 applies.

**ADDRESSES:** Copies of the proposed information collection and supporting documents may be obtained from John Turner, Veterans Administration, (23), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233-2744.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395-7316. Please do not send applications for benefits to the above addressees.

**DATES:** Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: August 1, 1990.

By direction of the Secretary.

**Frank E. Lalley,**

*Director, Office of Information Resources Policy.*

**Extension**

1. Veterans Benefits Administration.
2. Notice of Lapse.
3. VA Forms 29-389 and 29-389-1.
4. The forms are used to advise policyholders of the lapse of their insurance policies and the requirements for reinstatement. The information is used to determine eligibility for reinstatement.
5. On occasion.
6. Individuals and households.
7. 23,352 responses.
8. ⅙ hour.
9. Not applicable.

[FR Doc. 90-19152 Filed 8-14-90; 8:45 am]

BILLING CODE 8320-01-M

### Information Collection Under OMB Review

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form numbers(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96-522 applies.

**ADDRESSES:** Copies of the proposd information collection and supporting documents may be obtained from Patti Viers, VA Clearance Officer (723), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233-3172.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395-7316. Do not send requests for benefits to this address.

**DATES:** Comments on the information collection should be directed to the OMB Desk Officer on or before September 14, 1990.

Dated: August 3, 1990.

By direction of the Secretary.

**Frank E. Lalley,**

*Director, Office of Information Resources Policies.*

**Extension**

1. Board of Veterans Appeals.
2. Statement of Accredited Representative in Appealed Case.
3. VA Form 1-646.
4. This form is used by accredited representatives of veteran's service organizations to present argument to the Board of Veterans Appeals on behalf of appellants whom the service organization represents.
6. Non-profit institutions.
7. 40,500 responses.
8. 1 hour.
9. Not applicable.

[FR Doc. 90-19153 Filed 8-14-90; 8:45 am]

BILLING CODE 8320-01-M

### Information Collection Under OMB Review

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96-511 applies.

**ADDRESSES:** Copies of the proposed information collection and supporting documents may be obtained from John Turner, Veterans Benefits Administration, (23), Departments of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-2744.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC

20503, (202) 395-7316. Please do not send applications for benefits to the above addresses.

**DATES:** Comments on the information collection should be directed to the OMB Desk Officer on or before September 14, 1990.

Dated: August 3, 1990.

By direction of the Secretary.

**Frank E. Lalley, Director,**

*Office of Information Resources Policies.*

**Extension**

1. Veterans Benefits Administration.
2. Pension Claim Questionnaire for Farm Income.
3. VA Form 21-4165.
4. The form is used to obtain income and asset information required to determine VA payment eligibility of veterans and dependents engaged in farming.
5. On occasion.
6. Individuals or households.
7. 25,000 responses.
8. ½ hour.
9. Not applicable.

[FR Doc. 90-19154 Filed 8-14-90; 8:45 am]

BILLING CODE 8320-01-M

## Information Collection Under OMB Review

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96-511 applies.

**ADDRESSES:** Copies of the proposed information collection and supporting documents may be obtained from John Turner, Veterans Benefits Administration, (23), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 (202) 233-2744.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395-7316. Please do not send applications for benefits to the above addressees.

**DATES:** Comments on the information collection should be directed to the OMB Desk Officer on or before September 14, 1990.

Dated: August 3, 1990.

By direction of the Secretary.

**Frank E. Lalley,**

*Director, Office of Information Resources Policies.*

**Extension**

1. Veterans Benefits Administration.
2. Notice to Department of Veterans Affairs of Veteran or Beneficiary Incarcerated in Penal Institution.
3. VA Form 21-4193.
4. This form is used to gather the necessary information to adjust or discontinue the award of any person in receipt of compensation or pension who has been incarcerated in a penal institution in excess of 60 days.
5. On occasion.
6. Individuals or households.
7. 1,664 responses.
8. ¼ hour.
9. Not applicable.

[FR Doc. 90-19155 Filed 8-14-90; 8:45 am]

BILLING CODE 8320-01-M

# Sunshine Act Meetings

Federal Register
Vol. 55, No. 158
Wednesday, August 15, 1990

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).

**MISSISSIPPI RIVER COMMISSION:**

**TIME AND DATE:** 9:00 a.m. September 10, 1990.

**PLACE:** On board MV Mississippi at foot of Eighth Street, Cairo, IL

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:** (1) Report by president on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting; (2) Views and suggestins from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project; and (3) District Commander's report on the Mississippi River and Tributaries Project in Memphis District.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Rodger D. Harris, telephone 601-634-5766.

Rodger D. Harris,
*Executive Assistant, Mississippi River Commission.*

[FR Doc. 90-19317 Filed 8-13-90; 4:00 pm]

BILLING CODE 3710-GX-M

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**MISSISSIPPI RIVER COMMISSION**

**TIME AND DATE:** 9:00 a.m. September 11, 1990.

**PLACE:** On board MV *Mississippi* at City Front, Memphis, TN.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:** (1) Report by president on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting; (2) Views and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Rodger D. Harris, telephone 601-634-5766.

Rodger D. Harris,
*Executive Assistant, Mississippi River Commission.*

[FR Doc. 90-19318 Filed 8-13-90; 4:00 pm]

BILLING CODE 3710-GX-M

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**MISSISSIPPI RIVER COMMISSION:**

**TIME AND DATE:** 3:30 p.m., September 12, 1990.

**PLACE:** On board MV *Mississippi* at City Front, foot of Crawford Street, Vicksburg, MS.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:** (1) Report by president on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting; (2) Views and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project; and (3) District Commander's report on the Mississippi River and Tributaries Project in Vicksburg District.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Rodger D. Harris, telephone 601-634-5766.

Rodger D. Harris,
*Executive Assistant, Mississippi River Commission.*

[FR Doc. 90-19319 Filed 8-13-90; 4:00 pm]

BILLING CODE 3710-GX-M

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**MISSISSIPPI RIVER COMMISSION:**

**TIME AND DATE:** 9:00 a.m. September 14, 1990.

**PLACE:** On board MV *Mississippi* at City Front, Morgan City, LA.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:** (1) Report on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting; (2) Views and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project; and (3) District Commander's report on the Mississippi River and Tributaries Project in New Orleans District.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Rodger D. Harris, telephone 601-634-5766.

Rodger D. Harris,
*Executive Assistant, Mississippi River Commission.*

[FR Doc. 90-19320 Filed 8-13-90; 4:00 pm]

BILLING CODE 3710-GX-M

# Corrections

Federal Register
Vol. 55, No. 158
Wednesday, August 15, 1990

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF AGRICULTURE

### Food Safety and Inspection Service

### 9 CFR Parts 312, 322, 327, and 381

[Docket No. 90-004P]

### Imported Canadian Product; Further Implementation of the United States-Canada Free-Trade Agreement

*Correction*

In proposed rule document 90-18228 appearing on page 31840, in the issue of Monday, August 6, 1990, make the following correction:

On page 31840 in the third column, in the tenth line, the number of additional days mentioned should be "30".

BILLING CODE 1505-01-D

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

### 42 CFR Part 434

[BPD-306-F]

RIN 0938-AB54

### Waiver of Certain Membership Requirements for Certain Health Maintenance Organizations (HMOs), and State Option for Disenrollment Restrictions for Certain HMOs Under Medicaid

*Correction*

In rule document 90-13543 beginning on page 23738, in the issue of Tuesday, June 12, 1990, make the following correction:

§ 434.27 [Corrected]

On page 23744, in § 434.27(b)(2), in the third column, in the fifth line, "paragraph (c)" should read "paragraph (e)".

BILLING CODE 1505-01-D

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[AZ-020-00-4212-13; AZA 24634]

### Direct Sales of Public Lands in Arizona

*Correction*

In notice document 90-17449 beginning on page 30525, in the issue of Thursday, July 26, 1990, make the following correction:

On page 30525, in the second column, in the third line from the bottom, (in the land description) "and" should read "to".

BILLING CODE 1505-01-D

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[UT-060-00-4214-11; UTU-64644, UTU-64646]

### Final Decision on Plan Amendment for Price River Resource Area Management Framework Plan

*Correction*

In notice document 90-16920 beginning on page 29430, in the issue of Thursday, July 19, 1990, make the following corrections:

1. On page 29430, in the third column, under **SUMMARY**, the 10th line, should read "Public Land Sale UTU 64644".

2. On the same page, in the same column, the next to last line, should read "Public Land Sale UTU 64646".

BILLING CODE 1505-01-D

federal register

Wednesday
August 15, 1990

Part II

# Department of Housing and Urban Development

## Office of the Assistant Secretary for Fair Housing and Equal Opportunity

## Community Housing Resource Board Program; Funds Availability; Notice

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Assistant Secretary for Fair Housing and Equal Opportunity

[Docket No. N-90-3107; FR-2823-N-01]

### Community Housing Resource Board Program; Notice of Funds Availability

**AGENCY:** Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

**ACTION:** Notice of funds availability.

**SUMMARY:** This Notice announces the availability of funds for applications from eligible Community Housing Resource Boards (CHRBs). CHRBs must meet certain eligibility criteria, set out in 24 CFR part 120 and in this Notice, in order to qualify for consideration. The program has two categories of funding: (1) First-time funding for CHRBs that have never obtained previous Federal CHRB funding; and (2) refunding for CHRBs that have obtained previous Federal CHRB funding, except as described in this Notice.

**APPLICATION DUE DATE:** October 15, 1990.

**FOR FURTHER INFORMATION AND A COPY OF THE APPLICATION KIT CONTACT:** Karen Williams, Office of Procurement and Contracts, Office of the Assistant Secretary for Administration, Department of Housing and Urban Development, Room 5252, 451 Seventh Street SW., Washington, DC 20410. Applications Kits will be sent only upon written request to the Office of Procurement and Contracts at the above address. Telephone requests for Application Kits will not be accepted.

**SUPPLEMENTARY INFORMATION:** The collection of information requirements for the CHRB program were submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act of 1980 and were approved under OMB control number 2529-0022, expiration date March 31, 1992.

### I. Program Background

Section 808(e) of Title VIII of the Civil Rights Act of 1968 (the Act) (42 U.S.C. 3608(e)) requires the Secretary to "cooperate with and render technical assistance to Federal, State, local and other public or private agencies, organizations, and institutions which are formulating or carrying on programs to prevent or eliminate discriminatory housing practices" and to "administer the programs and activities relating to housing and urban development in manner affirmatively to further the policies of this title." Section 809 of the Act further directs the Secretary to conduct educational and conciliatory activities to further the purposes of the Act, call conferences of persons in the housing industry and others to acquaint them with the provisions of the Act and ways of implementing its provisions, seek their cooperation for programs of voluntary compliance and of enforcement.

In order to achieve the directives cited above, HUD developed the Voluntary Affirmative Marketing Agreement (VAMA) Program. This nationwide program focuses on local efforts to assure nondiscrimination in the sale, rental, and financing of housing and in the provision of services and facilities associated with those activities. The goal of the VAMA program is to assure that individuals of similar income levels in the same housing market have available to them a similar range of choices in housing regardless of their race, color, religion, sex, handicap, familial status, or national origin.

Consistent with its responsibilities under title VIII of the Act, HUD has negotiated voluntary agreements with the National Association of Realtors, the National Association of Real Estate Brokers, the National Association of Real Estate License Law Officials, and the National Association of Home Builders, as well as a model agreement for adoption by local apartment associations. These voluntary agreements, of VAMAs, are intended to promote a broad equal opportunity program designed to assure that housing will be marketed on a nondiscriminatory basis. Signatories to a VAMA agree to conduct certain programs and activities to acquaint communities with equal housing opportunity, to establish office procedures ensuring that there is no denial of equal professional service, and to make available materials that explain the commitment of signatories to the goal of fair housing. The VAMAs, approved by national housing industry associations, are implemented by local member firms of those associations. The model agreement approved by the National Association of Real Estate License Law Officials is implemented by the individual State agencies concerned with Real Estate licensing.

HUD's commitment under the VAMAs is to provide technical assistance to local housing industry groups that are signatories to the agreements. This assistance is provided through CHRBs, which were established by HUD to assist the local housing industry groups in implementing VAMA commitments. CHRBs are composed of volunteer representatives of community organizations dedicated to equal housing opportunity.

In 1981, Congress appropriated funds to assist CHRBs in carrying out their responsibility to assess the progress of local housing industry groups in implementing the goals of the VAMAs. From 1982 to 1988, 545 one-year grants, ranging from $15,000 to $25,000, were awarded to 366 local CHRBs. For Fiscal Year 1989, 23 grants totaling $950,000, with maximum grants of $50,000, were awarded. CHRBs have used these funds for a variety of activities that assist the local housing industry groups to achieve the goals of the VAMAs. CHRBs carry on activities that are useful to the local industry group signatories and effective in their local communities in advancing equal housing opportunity.

The 1990 funding round will continue program modifications adopted in 1989. These modifications are: (1) Increased grant amounts tied to the grantee's proposed activities; (2) longer time for program implementation; (3) selection of grantees conducted by the Headquarters Office of Fair Housing and Equal Opportunity; and (4) improved accounting and contracting procedures. The level of funding in 1990 is $972,000.

The 1989 Notice of Funds Availability for the CHRB Program stated that the Department intended to revamp the program before additional funds would be made available. In accordance with this statement, HUD has reassigned certain duties from regional offices to the Headquarters to provide for more consistent monitoring of grantees, developed new requirements and guidance on fiscal accountability and grantee performance, and trained HUD regional and field office staff on the revised guidance and accountability monitoring procedures. Additionally, the Department has decided not to seek funds for the CHRB Program as a separate line item in future budgets. CHRBs will instead be eligible applicants under the education and outreach component of the Fair Housing Initiatives Program (FHIP).

### II. Eligible Applicants for Funding

In order to participate in the CHRB program for the first time, an applicant must be a CHRB as described in 24 CFR 120.20 and must otherwise meet the criteria contained in part 120, including having been in existence for at least six months before the publication date of this Notice.

A previously funded applicant must meet the first-time eligibility criteria described above, and must submit evidence that it accomplished at least

two of the following activities during the grant year for which it received funding:

(1) Completed two activities, described in the Application Kit, that addressed specifically the objectives of the VAMA to provide information and services that will enable all buyers and renters to have a free housing choice;

(2) Assessed local housing industry group performance under the VAMA; and

(3) Engaged in the identification of local problems and issues that impeded equal housing opportunity.

Since one of the purposes of the VAMA/CHRB program is the promotion of cooperation between the housing industry and the public, CHRBs may not sponsor, conduct, or fund programs of real estate testing.

With respect to previously funded CHRBs, HUD will consider only applicants that have successfully completed previous grant work or corrected any events or conditions that resulted in the termination of a prior CHRB grant for cause. CHRBs funded in fiscal years 1982, 1983, 1984, 1985, 1986, 1987, and 1988 are eligible for refunding. CHRBs funded in 1989 are not eligible for funding in 1990. In addition, CHRBs that received grants in prior years must ensure that final payment of grant funds for such years has been approved by the application deadline date, or they will be deemed ineligible to compete for funds under this Notice.

## III. Application Requirements

The grant period for projects funded under this Notice will be 18 months. Grant amounts may vary, depending on the activities proposed.

Training is an essential part of the CHRB program. Therefore, all CHRBs selected for funding must set aside at least five percent of the grant funds for training purposes. HUD will provide further instructions on training requirements during the funding period.

To assure that maximum use of CHRB program funds is realized, grantees must use at least 51 percent of the funds for program costs rather than for administrative costs. CHRBs selected for funding that have excessive administrative costs in their budgets will be required to make budget adjustments in compliance with program policy. Moreover, grantees are encouraged to seek funds from other sources for continuing projects.

CHRBs applying for 1990 funding must follow the format and content requirements contained in the Application Kit.

## IV. Distribution of Funding

Applicants for first-time funding will be evaluated separately from applicants for refunding to avoid any penalty to less experienced CHRBs. Sixty percent of the funds will be designated for applicants for first-time funding, and 40 percent will be designated for applicants for refunding. Any remaining funds will be used to supplement funding in either category. An applicant must identify the category under which it is applying upon submission of the application.

## V. Selection Criteria

Applications will be reviewed, scored, and ranked by selected staff from HUD/FHEO Headquarters and Field Offices. Projects will be ranked on the basis of the following five criteria:

*1. The Relationship of the Proposed Project to the Goals of the VAMA*

The principal purpose of the CHRB is to assess progress under the VAMA, provide technical assistance, and recommend and promote solutions to problems associated with the implemention of the VAMA. Accordingly, all applications must contain a project that seeks to assess the level of local VAMA implementation. Applications that do not contain information related to this project will receive a minimum number of points under this criterion. Conversely, eligible projects that can earn the maximum number of points under this first criterion are those that:

(a) Assess the effectiveness of the VAMA on the local community;

(b) Seek cooperative solutions to problems associated with implementation of the VAMA and provide assistance to the local housing industry group;

(c) Work with local VAMA signatories to develop programs that result in the expansion of minority involvement in the industry;

(d) Require participation with HUD in the annual evaluation of the effectiveness of VAMA implementation and development of follow-up evaluation materials.

The following activities are of a lower priority:

(a) Informing the public regarding the goals of fair housing and the VAMA;

(b) Assessing community fair housing needs and problems or successes;

(c) Expanding public awareness of housing opportunities in the community; and

(d) Seeking expanded use of the HUD Fair Housing Publisher's Notice in major newspapers.

Since the VAMA does not permit CHRBs to sponsor, conduct, or fund programs of real estate testing, projects relating to that activity are not acceptable and will not be funded.

2. The extent to which the proposed project(s) will assist local housing industry groups in achieving the goal of the VAMAS.

3. The commitment of the CHRB members, as indicated by the following:

(a) Regular attendance at meetings (attendance must be verified by copies of meeting minutes);

(b) Demonstrated results of activities (verified by correspondence, news reports, editorials, testimonials, etc.); and

(c) Expected results of activities (demonstrated by analysis of problems and goals).

4. The amount of relevant professional or organizational experience available to the CHRB among its membership, its community contacts and working relationships, or staff to implement the proposed projects.

5. The extent to which the proposed project does not duplicate other community fair housing efforts.

RELATIVE WEIGHTS OF THE SELECTION CRITERIA

| Funding criteria | Points |
|---|---|
| Relationship of projects to VAMA goals | 30 |
| Extent to which proposed projects will affect the groups the VAMAs are designed to reach | 25 |
| Documentation of Resource Board commitment | 15 |
| Experience available to implement projects | 20 |
| Extent to which projects do not duplicate other community efforts | 10 |
| Total | 100 |

## VII. Notification of Applicants

HUD will notify all successful applicants upon selection. Unsuccessful applicants will be notified after the awards have been made. No information will be made available to applicants during the period of HUD review and evaluation, except for notification to those applicants that are declared ineligible or late.

## VIII. Certifications

*Certification Regarding Lobbying*

On February 26, 1990, at 55 FR 6736, the Department joined in the issuance of a governmentwide interim rule advising recipients and subrecipients of Federal contracts, grants, cooperative agreements and loans of a new prohibition regarding the use of

appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. In general, this rule prohibits the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. In addition, the recipient must also file a disclosure if it has made or has agreed to make any payment with nonappropriated funds that would be prohibited if paid with appropriated funds. Potential grantees should refer to the governmentwide rule for the language for the certification and disclosure. As indicated in this certification and disclosure, the law provides substantial monetary penalties for failure to file the required certification or disclosure.

*Certification Regarding Drug-Free Workplace*

The Drug-Free Workplace Act of 1988 requires grantees of Federal agencies to certify that they will provide drug-free workplaces. Thus, each potential grantee must certify that it will comply with drug-free workplace requirements in accordance with 24 CFR part 24, subpart F.

## VIII. Other Matters

The collection of information requirements contained in the Application and announced in this Notice were submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980 and approved under control number 2529-0022, expiration date March 31, 1992. Information on the reporting burden is provided as follows:

| Description of burden | No. of respondents | Frequency of response | Hours per response | Burden hours |
|---|---|---|---|---|
| Applications | 110 | 1 | 180 | 19,800 |

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street SW., Washington, DC 20410.

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that the policies announced in this Notice may have a significant impact on the formation, maintenance, and general well-being of families to the extent that the technical assistance provided to local housing industry groups through the CHRB program encourages efforts by those groups to assure nondiscrimination in the sale, rental, and financing of housing. Providing families with a choice in housing regardless of race, color, religion, sex, handicap, familial status, or national origin supports family values by helping families remain together and by enabling them to live in decent, safe, and sanitary housing.

The General Counsel has determined, as the Designated Official for HUD under section 6(a) of Executive Order 12612, Federalism, that the policies contained in this Notice will not have federalism implications and, thus, are not subject to review under the Order. The CHRB program assists local housing industry groups, which are private businesses, in their efforts to encourage voluntary compliance with Title VIII of the Civil Rights Act of 1968.

This program is listed in the catalog of Federal Domestic Assistance under program number 14.403, Community Housing Resource Program.

Dated: August 8, 1990.

**Gordon Mansfield,**

*Assistant Secretary for Fair Housing and Equal Opportunity.*

[FR Doc. 90-19134 Filed 8-14-90; 8:45 am]

BILLING CODE 4210-28-M

federal register

Wednesday
August 15, 1990

Part III

# Department of Health and Human Services

## Office of Child Support Enforcement

45 CFR Parts 302 and 303

**Child Support Enforcement Program; Immediate Income Withholding; Review and Modification of Orders; Notice of Assigned Support Collected; Notice of Proposed Rulemaking**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Office of Child Support Enforcement**

**45 CFR Parts 302 and 303**

**RIN 0970-AA63**

# Child Support Enforcement Program; Immediate Income Withholding; Review and Modification of Orders; Notice of Assigned Support Collected

**AGENCY:** Office of Child Support Enforcement (OCSE), FSA, HHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** These proposed regulations would implement three provisions of the Family Support Act of 1988 (Pub. L. 100-485). Section 101 of this Act requires immediate wage withholding, with certain exceptions, in the case of support orders issued or modified on or after November 1, 1990, and being enforced under the IV-D State plan. Immediate wage withholding begins January 1, 1994, for orders issued on or after that date, if the case is not being enforced by the IV-D program. Section 103(c) of this Act requires periodic review of support orders and modification, if appropriate, in accordance with State guidelines for support award amounts, effective October 13, 1990. Effective October 13, 1993, requirements for review become more specific. Section 104 of this Act requires monthly notices of collections to individuals who have assigned their rights to support to the State. Monthly notices are required beginning January 1, 1993, unless the State obtains a waiver in order to send quarterly notices.

**DATES:** Consideration will be given to written comments received by October 15, 1990.

**ADDRESSES:** Address comments to: Office of Child Support Enforcement, Department of Health and Human Services, 370 L'Enfant Promenade SW., Washington, DC 20447, Attention: Director, Policy and Planning Division. Comments will be available for public inspection Monday through Friday, 8:30 a.m. to 5:00 p.m. on the 4th floor of the Department's offices at the above address.

**FOR FURTHER INFORMATION CONTACT:**

Andrew Hagan, (202) 252-5375, regarding review and modification of orders

Lourdes Henry, (202) 252-5440, regarding monthly notice of support collected

Craig Hathaway, (202) 252-5367, regarding immediate wage withholding.

**SUPPLEMENTARY INFORMATION:**

## Paperwork Reduction Act

Public reporting burden for the collection of information requirements in this proposed regulation, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information, is estimated as follows:

| Requirement | Average time per response |
|---|---|
| § 302.54(b) (1) and (2): notices. | 30 seconds. |
| § 302.54(c): waiver | 1 hour, one time. |
| § 302.70(a)(10): procedures. | 8 hours, one time. |
| § 303.8(b)(1): plan | 8 hours, one time. |
| (d): notices | 30 seconds. |
| § 303.100(b)(3): agreement. | 1 minute. |
| (f)(1)(ii): payment | 30 ssconds. |

Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Child Support Enforcement, Family Support Administration, 370 L'Enfant Promenade SW., Washington, DC., 20447, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

## Statutory Authority

These proposed regulations are published under the authority of the following provisions of the Social Security Act (the Act), as amended by Pub. L. 100-485: sections 466(a)(8) and (b)(3) with respect to immediate income withholding; section 466(a)(10) with respect to periodic review of individual support award amounts; and section 454(5)(A) covering timing of notice of support collections. These proposed regulations are also published under the general authority of section 1102 of the Act, which requires the Secretary to publish regulations that may be necessary for the efficient administration of the functions for which he is responsible under the Act.

## Background and Description of Regulatory Provisions

### *1. Notice of Assigned Support Collected*

Currently, 45 CFR 302.54 requires States, at least annually, to provide notice of the amount of support payments collected during the past year to individuals who have assigned rights to support under 45 CFR 232.11. The notice must list separately payments collected from each absent parent when more than one absent parent owes support to the family and indicate the amount of support collected which was paid to the family. This regulation implemented section 454(5) of the Act as amended by the Child Support Enforcement Amendments of 1984.

Section 104 of the Family Support Act of 1988 amended section 454(5)(A) of the Act to require States to send a monthly notice of support payments to individuals who have assigned support rights to the State. A State may provide quarterly notices if the Secretary determines that a monthly notice would impose an unreasonable administrative burden on the State.

To implement these statutory changes, we propose to redesignate the current § 302.54 (a) and (b) as new paragraphs (a) (1) and (2) which remain in effect until December 31, 1992.

We are proposing a new paragraph (b) which, effective January 1, 1993, provides that the State have in effect procedures for issuing monthly notices. Paragraph (b)(1) would require the IV-D agency to notify individuals who have assigned rights to support under § 232.11, with respect to whom a support obligation has been established, that a monthly notice will be provided containing the information set forth in the proposed § 302.54(b)(3) for each month in which support payments are collected. Thus, each individual covered by this paragraph will be informed of State notification policies. It has come to our attention that some States may be interested in providing monthly notice to individuals through an automated voice response system. Through such a system, an individual would place a toll free call to a specified telephone number, provide certain personal identification information to guarantee confidentiality, and through a recording prepared by the State or local child support office, receive a verbal message over the telephone regarding the amount of support collected during the month on his or her behalf. We agree that a system of this type has merit, and it will meet the requirements for monthly notice, if it is designed to be simple, effective, and efficient and provides all of the information required by these proposed regulations.

Under the proposed paragraph (b)(2), the IV-D agency would be required to provide a monthly notice of the amount of support payments collected for each month to individuals who have assigned rights to support under § 232.11, unless no collection is made in the month, the assignment is no longer in effect, or the condition for issuance of a quarterly notice set forth in paragraph (c) is met.

If, in a former AFDC case which continues to receive IV-D services, a State is collecting support for a previous period for which the assignment remains in effect in accordance with § 302.51(f), the State must send a monthly notice to the family.

The proposed paragraph (b)(3) would require the monthly notice to list separately payments collected from each absent parent when more than one absent parent owes support to the family and indicate the amount of current support and arrearages collected and the amount of support collected which was paid to the family. If no support collection is made during a month, the State is not required to provide a notice to the family. Current policy requires an annual notice even if no collections are made during the year. We would revise current policy to reduce the burden on States of providing notice of no collections since, we believe, the statute technically requires only a notice when collections are made. However, a State may provide a monthly notice when no support collections are received, if that is considered to be of some value to the families.

Under the proposed paragraph (c), until September 30, 1995, a State may provide quarterly, rather than monthly, notices if the State does not have an automated system that performs child support enforcement program activities, or has an automated system that is unable to generate monthly notices. Effective October 1, 1995, States are required to have in effect automated systems that perform child support enforcement activities, and all States must then provide monthly notices. A State will be granted a waiver to send quarterly notices throughout the State until October 1, 1995, if it can demonstrate that the monthly notice requirement would impose an administrative burden, either due to the lack of an automated system that performs child support enforcement activities, or that its automated system is unable to generate monthly notices. A quarterly notice must be sent in accordance with conditions set forth in paragraph (b)(2) and must contain the information specified in paragraph (b)(3) of this section. States must submit requests for waivers, including justification, to the appropriate Regional Office.

*2. Mandatory Automated Systems*

Section 123 of Public Law 100-485 makes several changes regarding automated systems. Proposed rules implementing this provision will be published separately.

*3. Review and Modification of Child Support Obligations*

Beginning with the enactment of the Child Support Enforcement Amendments of 1984 (Pub. L. 98-378), each State had to establish guidelines for child support award amounts in the State, as a condition for State IV-D plan approval. These guidelines were not binding, but had to be made available to all judges and other officials with authority to determine award amounts.

Under section 103 of Public Law 100-485, Congress required the use of State guidelines and created a rebuttable presumption that the amount of the award computed according to the guidelines is the correct amount to be awarded. A written or specific finding on the record that the application of the guidelines would be unjust or inappropriate in a particular case, as determined by State criteria, is sufficient to rebut the presumption in that case. To ensure further that the use of the guidelines will result in appropriate support award amounts, section 103 requires that the guidelines be reviewed at least once every four years. Proposed regulations governing these aspects of section 103 are being published separately.

Use of guidelines does not ensure that orders, over time, continue to meet the support standards set by the guidelines. To address this problem, section 103 of Public Law 100-485 phases in a requirement for the periodic review and adjustment of support orders, in accordance with the support guidelines in the State.

Under section 103, the Act is amended by inserting a new section 466(a)(10). Section 466(a)(10)(A), effective October 13, 1990, requires State procedures for review and adjustment of orders, consistent with a State plan indicating how and when review and adjustment would occur. Review may take place at the request of either parent subject to the order or may be initiated by the State itself. An adjustment to the award is required, as appropriate, if the award amount is found not to be in accordance with the State's guidelines, which must be used as a rebuttable presumption in establishing or modifying support obligations in the State.

The new section 466(a)(10)(B), effective October 13, 1993 (or earlier at State option), requires the State to have implemented a process whereby orders enforced under title IV-D will be reviewed within 36 months after establishment of the order or the most recent review of the order and modified in accordance with the State's guidelines for support award amounts. Review is required in an AFDC case unless the State has determined that it would not be in the best interests of the child and neither parent has requested a review. Review is required in a non-AFDC case at least once every 36 months only if a parent requests it. In all IV-D cases, if a review indicates that modification is appropriate, the State must proceed with the modification.

This section effectively requires that orders in AFDC cases that were entered or last modified before October 13, 1990 must be reviewed before October 13, 1993, upon request of either parent or a State child support enforcement agency. Analysis done by the HHS Office of the Inspector General (OIG) suggests that States and AFDC recipients would benefit substantially if State IV-D agencies reviewed support orders of $50 a month or less in cases in which State and/or Federal wage data indicates that the absent parent's income is more than $10,000 a year (see OAI-05-87-00035, dated August 1987). In addition, in accordance with section 103(e) of Public Law 100-485, OCSE is conducting demonstration projects in Delaware, Colorado, Illinois, Florida and Oregon, to test and evaluate model procedures for reviewing child support award amounts. We urge interested parties to review the OIG study and follow the demonstration projects closely.

The new section 466(a)(10)(C) requires States to have procedures for notifying each parent subject to an order in effect in the State, that is being enforced under the State plan, of their rights concerning reviews and proposed adjustments. Each parent must be notified: Of the right to request the State to review the order; of any review, at least 30 days before it commences; and of a proposed adjustment or of a determination that there should be no change in the award amount. In the latter case, the parent must have at least 30 days after notification to initiate proceedings to challenge the proposed adjustment or determination.

The OIG analysis discussed above suggests that non-AFDC families would benefit substantially if State IV-D agencies determined absent parents' income from State and/or Federal wage data in non-AFDC cases with low support orders and informed custodial parents how a modification might affect the amount of support awarded. Again, we urge States to follow our demonstration projects closely and consider what assistance they might give parents in deciding whether to request a review of a support award.

Currently, regulations at 45 CFR 302.70 require that States enact certain laws

and implement certain procedures designed to improve the effectiveness of the Child Support Enforcement program. We propose to add a new § 302.70(a)(10) that would require States to enact necessary laws and have procedures in effect for the periodic review and modification of child support orders in accordance with the requirements of a new proposed 45 CFR 303.8. As specified in the statute, some of these procedures would be effective on October 13, 1990 and others would be effective no later than October 13, 1993.

The proposed § 303.8(a)(1) would reiterate that the State must implement procedures for the periodic review and modification of child support orders in effect in the State and being enforced under the Child Support Enforcement program. The proposed paragraphs (a)(2) and (a)(3) contain definitions designed to clarify two key aspects of the review and modification process. Paragraph (a)(2) defines "modification" to include only support provisions of an order, since that conveys the intent of Congress in enacting these provisions for modification of orders consistent with guidelines for support award amounts. These regulations are not meant to create an avenue under the IV-D program for review and modification of ancillary provisions of orders, such as custody or visitation rights. Paragraph (a)(3) defines "parent" for purposes of § 303.8 to include any custodial beneficiary of the support order, such as a grandparent. This will ensure that the appropriate persons who are affected by a review and/or modification will be contacted during the process.

The proposed paragraph (b) of this section would contain the requirements that take effect on October 13, 1990. Under paragraph (b)(1), the State must determine whether an order being enforced under the program should be reviewed for possible modification pursuant to a written and publicly available State plan for the periodic review and modification of orders. The plan must target for review, and modification, if appropriate, orders in IV-D cases in which there is an assignment of support rights to the State, and show the commitment of resources necessary to review orders in all IV-D cases upon the request of either parent subject to the order or of a State child support enforcement agency. Under paragraph (b)(2), the State must initiate a review, in accordance with its plan, at the request of either parent subject to the order or of a IV-D agency. Under paragraph (b)(3), the review, and modification, if appropriate, must be accomplished in accordance with the State's guidelines for setting support award amounts.

Under the requirements of paragraph (b) outlined above, each State would be required to develop and implement a plan for the review and modification of orders by October 13, 1990. The plan would indicate how and when child support orders in effect in the State are to be looked at. Thus, between October 13, 1990 and October 13, 1993, each State's plan would specify the conditions for triggering a review and, if desired, time frames or other schedules for accomplishing the reviews. Because more specific requirements for review and modification of support award amounts come into play in 1993, we advise States to consider implementing these requirements from the very beginning in both statute, where needed, and in the State's plan for review. This would ensure a minimum of disruption from an administrative standpoint, as well as encourage a more rapid implementation of the program changes that Congress envisioned. Between now and 1993, States must address and target for review their existing backlog of IV-D cases in which support is assigned to the State in anticipation of the proposed requirement that, effective October 13, 1993, the State must review, in accordance with new requirements, and modify if appropriate, most orders in IV-D cases in which support is assigned to the State and which have not been reviewed or modified in 36 months.

The proposed § 303.8(c) contains the requirements that become effective on October 13, 1993 or earlier at State option. Beginning at that time, under paragraph (c)(1), in a IV-D case in which there is an assignment of support rights to the State, with certain exceptions discussed later under paragraph (c)(4), a review of each order must take place no less frequently than 36 months after the establishment of the order or the most recent review. In a case in which there is no such assignment of support rights, a review must occur as described above only if one of the parents requests it. Although the new statute only refers to AFDC and non-AFDC cases, we are using our authority under section 1102 of the Act to publish regulations that are necessary for the efficient administration of the IV-D program to include all IV-D cases in which support rights have been assigned to the State. We believe that all IV-D cases in which support is assigned to the State, including title IV-E foster care cases and Medicaid cases in addition to AFDC cases, should be targeted by States for review and modification, if appropriate.

Although States are not required to conduct reviews more frequently than every 36 months, there are certainly circumstances which would warrant a review sooner than 36 months after an order is established or the most recent review. For example, if a minimum support amount is ordered because the absent parent is unemployed or employed part time at the time the order is entered, and the custodial parent or IV-D agency learns one year later that the absent parent has secured significantly higher paying employment, a review would be warranted. Or if an absent parent becomes permanently disabled and three years has not passed since the last review, a review would be warranted. By the same token, States should be able to deny frivolous requests for review, for example, if the absent parent's income has increased or decreased by a minimal amount, or the absent parent is temporarily out of work or injured and unable to work. Because States will be faced with requests for review more frequently than once every three years, we believe they should establish well-formulated grounds for determining whether to respond favorably or unfavorably to a request for review that occurs within the three-year timeframe. Therefore, we propose that States must establish procedures specifying the circumstances under which orders will be reviewed more frequently than every 36 months.

"Review" is defined in paragraph (c)(2) as an objective evaluation of complete, accurate, up-to-date information necessary for the application of the State's guidelines for support. Paragraph (c)(2) further states that the State must require a parent to provide any necessary information otherwise unavailable to the State. This could be done by making the provision of information a condition of the support order. This definition and the related provision for requiring a parent to respond with needed information have been added to the proposed regulation to make clear that the State must make every effort to obtain and use in its determination as much information as is available consistent with the requirements of the State's own guidelines. States should first attempt to secure the necessary information by accessing employment security or other records rather than by relying totally on the absent parent providing the information. It is important to note that submitted information should be shared between the parties, so that informed decisions can be made regarding challenges to any proposed modification to the order.

In all cases, orders would be required to be modified, if appropriate, in accordance with the State's guidelines for support award amounts and within the timeframe specified in § 303.4(d). To ensure that States are subject to timeframes for modifying, or petitioning to modify support orders, we propose to add reference to modification in § 303.4(d), which was added by final regulations establishing timeframes for processing cases, published August 4, 1989 (54 FR 32284). Proposed § 303.4(d) would require States to establish or modify an order for support, or complete service of process necessary to commence proceedings to establish or modify a support order, within 90 days of locating an absent parent or of establishing paternity. In this way, if a review indicates modification is warranted and the absent parent has been located, a State would be required to take action to modify the order within 90 days of locating the absent parent. We are proposing a similar change to § 303.101, governing expedited processes for the establishment and enforcement of support orders, to explicitly include reference to modification of orders.

The proposed § 303.8(c)(3) provides that inconsistency with the State's guidelines for support must be adequate grounds for petitioning for a modification of an order regardless of whether the order was originally established under the guidelines, unless the inconsistency is considered negligible under the State's procedures. Proposed paragraph (c)(3) would also require a State's procedures to treat the availability of reasonably-priced health insurance coverage, as defined in § 306.51(a)(1), as adequate grounds to petition for modification of the order.

These proposed requirements address a problem in some States where modification of orders is extremely difficult to initiate because the basis for access to the courts for modification is very narrowly defined. In these situations, without the proposed paragraph (c)(3), the intent of the statute on review and modification of orders would be frustrated and the benefits of the new requirements would be lost. The availability of additional income to a parent should be adequate grounds for reviewing the order and if that additional income results in an inconsistency in the amount of support under the guidelines, petitioning for modification should be warranted. However, to avoid unnecessary effort on the part of the State and to discourage frivolous requests for review and modification, we have included the proviso that a petition for modification is not necessary if the inconsistency with the State's guidelines is negligible, as defined by the State's procedures. In addition, because of the value of providing medical support for children, we believe that States' procedures must define the availability of health insurance coverage as sufficient to warrant seeking modification of the order. We advise States that are affected by the proposed paragraph (c)(3) not to wait until 1993 to require inconsistency with the State's guidelines for support to be adequate grounds to seek modification of orders in the State.

We believe that orders entered prior to adoption of guidelines should also be subject to the guidelines during any modification. Because guidelines serve as a rebuttable presumption of the amount of support which should be awarded, inconsistency with the guidelines may require increasing or decreasing the amount of the order. Conditions which warranted a prior award amount which is inconsistent with any newly mandated guidelines may still be sufficient to rebut the presumption that the guidelines amount is the correct amount of support during any review process.

The proposed paragraph (c)(4) requires that, in a IV-D case in which there is an assignment of support rights to the State, the State need not conduct a review if neither parent has requested it and the State has determined that a review would not be in the best interests of the child. We are also proposing that, in IV-D cases in which there is such an assignment, an increase in support or the availability of health insurance must be considered to be in the best interests of the child, unless either parent demonstrates, after a hearing in accordance with paragraph (d), that it would not be in the child's interests. This is consistent with the goal of enabling AFDC, title IV-E foster care and Medicaid recipients to gain self-sufficiency by securing adequate cash and medical support and, thereby, eliminating the need for public assistance.

We have not otherwise defined the best interests of the child in the proposed rule, and solicit comments regarding this provision. One approach to establishing a complete definition of the best interests of the child would be to tie the definition to that contained in AFDC regulations at 45 CFR 232.41 for refusal to cooperate. Another approach would allow States to establish criteria, within the constraints of paragraph (c)(4), which would define the best interests of the child for purposes of reviewing an order, since a review and modification of a previously established order may not necessitate the cooperation of the custodial parent.

Proposed paragraph (d) of § 303.8 specifies the requirements for notice that States must meet as part of the review and modification process. The State must notify each parent subject to a child support order in the State that is being enforced under the Child Support Enforcement program of the following: (1) That they have the right to request a review of the order; (2) that a review will occur; and (3) that a modification is being proposed or a determination has been made that there should be no change in the order, and they have the right to initiate proceedings to challenge the modification or determination. In the second instance, notice must be given at least 30 calendar days before commencement of the review. In the third instance, the parent must have 30 calendar days after notification to initiate proceedings to challenge the proposed modification or determination. These notice provisions are effective beginning October 13, 1990, and continue in effect after October 13, 1993. We have not specified in these proposed regulations any conditions for challenging a modification or related determination since, under section 467(b)(2) of the Act, States must develop their own criteria for rebutting the amount of support proposed in accordance with the guidelines.

When the requirements for notice become effective in 1990, States may find it expeditious to request that courts and administrative authorities include a notice in new orders apprising each parent of his or her right to request a review of the order consistent with the requirements of § 303.8 or States may send a one-time notice to each parent. These options are specified in paragraph (e) of § 303.8, along with a requirement for regularly publicizing this right as part of the services provided under the program, consistent with regulations at 45 CFR 302.30.

With the enactment of the Family Support Act of 1988, States will be required to refocus their thinking and their efforts in the area of support awards. For the first time, emphasis will be placed on ensuring the continued appropriateness of the amount of support awarded. The State will have discretion concerning whether or not a review is warranted during the period before October 1, 1993, consistent with its plan for review and modification of orders. After that time, in each IV-D case in which support is assigned to the State, the State will have to ensure that a review takes place no less frequently

than 36 months after the establishment of the order or the most recent review, unless the State determines it is not in the best interest of the child and neither parent requests review. In each IV-D case in which there is no such assignment, the State must publicize the availability of the service and must review on the same schedule, but only if a parent requests it. The State must establish procedures specifying the circumstances under which orders will be reviewed more recently than every 36 months. For instance, if information becomes available that an absent parent now has a higher paying job and less than 36 months have elapsed since the last review, the State would be required to use its procedures to determine whether a review should be conducted. As a result of these changes, States can expect both upward and downward modifications of ordered support amounts. This would be consistent with the increased emphasis being placed on the guidelines for support amounts in the provisions of the Family Support Act.

To bring regulations at 45 CFR 303.4 in line with these new requirements, we propose to amend paragraph (c) of this section to eliminate the requirement for State IV-D agencies to initiate a review when they become aware of changes in factors affecting the support award amount. This deletion does not preclude reviews performed more frequently than every three years, if, based on the State's procedures, circumstances warrant it. If, for example, a parent subject to an order brings to the State's attention a significant increase in the obligor's income which under the State's guidelines would likely lead to an increase in the support award amount, the State would be required to use its procedures to determine whether or not to proceed with a review regardless of the time elapsed since the last review or modification.

In the next few paragraphs, we discuss issues related to the implementation of review and modification of support orders, specifically, the requests of absent parents, interstate cases, and the question of *guardian ad litem*.

First, we believe States may have questions regarding the significant provision that they respond to requests by absent parents for review and modification of support orders. While the statute clearly requires the IV-D agency to respond to such requests, one concern may be the perception that there is a conflict of interests in providing "services" to both absent and custodial parents.

Our longstanding position has been that the IV-D agency does not provide legal services *per se*. Support rights are assigned to the State in AFDC cases, and even in non-AFDC cases the traditional attorney-client type of relationship does not exist. Custodial parents have no right, for instance, to dictate what enforcement actions are taken in the case. When arrearages for current and former AFDC recipients are recovered, the State may take its share of the recovery first and the custodial parent may be left with only the current support payment. Clearly the State does not always have interests which are identical to the custodial parent's. Where good cause for noncooperation is claimed, for example, the State may be enforcing the support obligation of the absent parent over the custodial parent's express objection.

As States move away from an adversarial method of establishing, reviewing and modifying orders, and toward an expeditious process based on application of objective guidelines, the less there should be an issue of apparent "conflict of interest." We encourage States to establish a simple *pro se* process for establishment and modification of orders whereby the parents may essentially represent themselves. Some States already have successfully implemented such a process.

There is an immediate need to educate and convince those involved in child support enforcement—courts, administrative agencies, IV-D agencies, and absent and custodial parents—that it is in all of their best interests, and especially in the interests of the children involved, that non-adversarial processes be put in place to equitably establish and modify orders. States must prepare to respond to absent parent requests which may result in downward modification of orders because Congress has required them to do so. How States respond to the challenge of developing a system to accomplish this requirement will determine its impact on children and the IV-D program.

Other questions may arise regarding the treatment of reviews in interstate cases. If a State is enforcing an order from another State and a review is requested by the absent parent or the enforcing State otherwise determines a review is warranted because of some change in the absent parent's circumstances, the responding State should contact the State with the order, provide pertinent information, and request that the State with the order conduct the review. The State with the order should conduct the review, according to its guidelines for setting support award amounts, and modify the order, if appropriate. In addition, the State with the order in an interstate case should conduct reviews in accordance with the requirements of § 303.8 and its procedures for review and modification of orders in its intrastate cases. The State conducting the review is responsible for sending the required notices to the parents involved and for notifying the other State of the results of any review and modification.

We believe an additional concern may center on the recovery of costs incurred by the State under these regulations. Recovery of costs is permissible under 45 CFR 302.33(d) in non-AFDC cases, either from the custodial parent or the absent parent. If a State chooses to recover costs under the IV-D program, it would do so subject to the regulatory provisions cited above in the case of review and modification costs.

We are also aware that questions may be raised regarding whether we consider a *guardian ad litem* to be necessary to protect the interests of the child, for example, when an absent parent requests a review and a downward modification of a support order may be warranted. In our view, a *guardian ad litem* is unnecessary with the advent of support award guidelines in each State and the rebuttable presumption that the guidelines result in a correct and appropriate computation of the support award amount. Assuming income verification, we believe the IV-D agency is not in a position to second guess the amount of an award computed under its State guidelines for support and should view its role as ensuring that the maximum appropriate award is obtained. We stress, however, the need for income verification to determine that the information presented is accurate before any modification takes place.

*4. Wage or Income Withholding*

Section 3 of the Child Support Enforcement Amendments of 1984 (Pub. L. 98-378) added sections 454(20) and 466 of the Act to require all States to implement certain mandatory procedures which had been proven to noticeably increase the effectiveness of State programs, including procedures for wage withholding.

Section 466 required that States have in effect two distinct procedures for carrying out a program for wage withholding. The first, required under section 466 (a)(1) and (b) of the Act, pertained only to cases being enforced through the IV-D agency. Under this requirement, States must have and use a

procedure under which wages of an absent parent shall be subject to withholding in IV-D cases on the date the absent parent fails to make payments in an amount equal to one-month's support obligation. States were also required to implement the withholding at any earlier date that is in accordance with State law or that the absent parent may request. Withholding was to begin without amendment to the order or further action by the court. The Act also specified other elements of the withholding system for IV-D cases such as requirements for prior notice to the absent parent, basis for appeal, restrictions on the maximum amounts to be withheld, notice to the employer, and interstate withholding. These requirements were implemented in regulations at 45 CFR 303.100 (a) through (g).

The second procedure, required by section 466(a)(8) of the Act, and implemented at § 303.100(h), provided that all new or modified orders issued in the State include a provision for wage withholding when an arrearage occurs, in order to ensure that withholding is available without the necessity of filing an application for IV-D services.

Section 101 of Public Law 100-485 amends section 466 of the Act to require that States enact laws and implement procedures for immediate income withholding in certain cases. Under amended section 466(b)(3), a new subparagraph (A) provides that immediate withholding is required, effective November 1, 1990, for all IV-D cases with new or modified orders on the effective date of the order, unless one of the parties demonstrates, and the court or other administrative process finds good cause not to require the withholding, or a written agreement is reached between both parties which provides for an alternative arrangement.

For cases being enforced by the IV-D agency which are not subject to immediate withholding, section 101 of Public Law 100-485 amends the current requirements at section 466(b)(3) by creating a new subparagraph (B) which provides that the absent parent's wage shall be subject to withholding on the earliest of: The date on which arrearages occur which are at least equal to the support payable for one month; the date on which the absent parent requests that withholding begin; the date on which the custodial parent requests that withholding begin (in accordance with the standards and procedures the State may establish); or an earlier date the State may select.

Section 101 of Public Law 100-485 also amends section 466(a)(8) of the Act by revising the current language as redesignated subparagraph (A) to require that child support orders not described in subparagraph (B) contain wage withholding provisions, and creating a new subparagraph (B) to require that, effective January 1, 1994, States have procedures providing for withholding in all support orders not being enforced by the IV-D agency, regardless of whether support payments are in arrears, on the effective date of the order.

To address these statutory changes we are proposing the following regulatory amendments:

We propose to amend § 303.100 to reiterate the statutory changes outlined above by revising paragraph (a) so that it will now cover withholding requirements which are common to all orders being enforced under the IV-D State plan, and redesignating paragraphs (b) and (c) as new paragraphs (d) and (e), to provide for advance notice to the absent parent and for procedures when the absent parent contests the withholding in cases where it is not immediate (i.e., initiated withholding). We propose to create a new paragraph (b) providing for immediate withholding for those orders which are issued or modified on or after November 1, 1990, and a new paragraph (c) providing for initiated withholding for orders not subject to immediate withholding under paragraph (b). We also propose to redesignate paragraphs (d), (e) and (g) as new paragraphs (f), (g), and (h) to provide for, in both immediate and initiated IV-D withholding, notice to the employer, procedures for administration, and interstate withholding. Current paragraph (f), which allows States the option to extend withholding to other forms of income, has been moved to a new paragraph (a)(9) since it is applicable to all types of withholding. We propose to create a new paragraph (i) providing for immediate withholding in all non-IV-D child support orders, issued on and after January 1, 1994, and to redesignate paragraph (h) as new paragraph (j) to address provision for withholding in other non-IV-D child support orders. Finally, we propose to amend § 302.70(a)(8) governing withholding in non-IV-D cases for consistency with the revised section 466(a)(8) of the Act and to refer to proposed § 303.100 (i) and (j).

General Withholding Requirements

We propose to consolidate the requirements which are common to all IV-D withholdings in proposed § 303.100(a) using the unchanged statutory authority of section 466(b) of the Act. Proposed paragraphs (a) (1) and (2) remain unchanged from the current regulations, and will continue to require that States must provide for wage withholding for all IV-D cases for both current and overdue support. Current paragraph (a)(3) establishes limits of amounts to be withheld in all IV-D cases, as required by the Consumer Credit Protection Act (hereinafter CCPA). We propose to replace the reference to fees which may be withheld by employers under paragraph (d)(1)(iii) with reference to the new citation regarding fees at paragraph (f)(1)(iii). Paragraph (a)(4) would be revised by retaining the first sentence requiring that withholding in all IV-D cases occur without the need for any amendment to the order, and moving the rest of the paragraph, with revised language establishing conditions which would initiate withholding, to proposed paragraph (c)(1). Current paragraph (a)(5), which establishes that the only basis for contesting withholding is a mistake of fact, is moved to new paragraph (c)(2), as we believe that this requirement, at section 466(b)(4) of the Act, applies only to delinquency initiated withholding, since the procedures for immediate withholding afford the absent parent opportunity to contest any mistakes of fact during the establishment or modification of the order itself.

Current paragraph (a)(6), providing that the State allocate support to each family when there is more than one withholding in a case, is redesignated as paragraph (a)(5) and revised to require that States must develop procedures for allocation of support among families but in no case shall the allocation result in a withholding for one of the support obligations not being implemented. This proposed revision is not specified in the statute. However, we are using the authority granted to the Secretary at section 1102 of the Act to publish regulations not inconsistent with the Act which may be necessary to efficiently administer the Secretary's functions under the Act. Upon publication of the current requirement in 1985, we stated that, in response to comments received on the proposed rule, we had changed the requirement that the employer respond to multiple withholdings on a first-come-first-served basis to one in which the State would allocate among the families. We also suggested several mechanisms States could use in allocating amounts to be withheld, one of which was to give top priority to AFDC cases. We have since become aware that some States may have implemented this suggestion by deciding to allocate all available withholding up to the CCPA limit to the AFDC family,

leaving no amounts available for a second non-AFDC family. This was not our intent, and this language clarifies that, although a State may give priority to AFDC families, the resulting allocation should not mean that another non-AFDC family gets no collection through the withholding process.

Current paragraph (a)(7), requiring that IV-D withholdings be carried out in full compliance with all procedural and due process requirements of the State, is redesignated as paragraph (a)(6). Paragraph (a)(8), providing that payment of overdue support upon receiving notice of withholding may not be the sole basis for not implementing withholding, is redesignated as new paragraph (c)(3) since overdue support is only an issue for initiated withholding.

Current paragraph (a)(9), requiring that the State have procedures for promptly terminating withholding but in no case should the payment of overdue support be the sole basis for termination, is revised and redesignated as new paragraph (a)(7). The new paragraph (a)(7) requires the State to have procedures for promptly terminating withholding when: (i) There is no longer a current order and all arrearages have been satisfied; or, (ii) the absent parent requests termination and withholding has never been terminated previously and subsequently initiated; and, the absent parent meets the condition for an alternative arrangement set forth under paragraph (b)(3). Proposed paragraph (b)(3) requires an absent parent, under an agreement not to implement withholding, at least (in addition to other conditions the parties agree to) to keep the IV-D agency apprised of his or her current employer and information on employment-related health insurance coverage to which the absent parent has access. Under this proposed requirement, if, subsequent to initiation of withholding, both parents, and, at State option, the State in IV-D cases in which there is an assignment of support rights to the State, agree to an alternative arrangement that meets these conditions, withholding may be terminated.

Current paragraph (a)(10), providing that the State must have procedures for promptly refunding amounts improperly withheld, is redesignated as new paragraph (a)(8). Current paragraph (f), permitting a State to extend its withholding system to include forms of income other than wages, has been moved and redesignated as paragraph (a)(9), since this option is available in all withholding situations covered by these regulations.

Under proposed paragraph (a)(10), support orders issued or modified in IV-D cases must require absent parents to keep the IV-D agency informed of the name and address of his or her current employer, whether the absent parent has access to employment-related health insurance coverage and, if so, the health insurance policy information. This will simplify implementation of withholding.

Immediate Withholding in IV-D Cases

We propose to implement section 466(b)(3)(A) of the Act by creating a new § 303.100(b) providing for immediate wage withholding. Proposed paragraph (b)(1) requires that, in the case of a support order being enforced under title IV-D that is issued or modified on or after November 1, 1990, the wages of an absent parent shall be subject to withholding, regardless of whether support payments are in arrears, on the effective date of the order, except that such wages shall not be subject to withholding in any case where one of the parties demonstrates, and the court or administrative process finds, that there is good cause not to require immediate withholding, or a written agreement is reached between the parties which provides for an alternative arrangement.

We are aware that some States currently have a form of immediate wage withholding in force, and that some of these States do not provide for good cause and/or alternative arrangements. Our reading of the Federal statute is that the good cause and alternative arrangement provisions are mandatory, and we have therefore included these requirements in the proposed regulations. However, we would note that the provision for exemptions established at section 466(d) of the Act will apply to these new wage withholding requirements. States will have the option of applying for such an exemption if they can demonstrate that the enactment of any withholding provision would not increase the effectiveness and efficiency of the State Child Support Enforcement program (see OCSE-AT-88-12 dated December 12, 1988, for instructions for applying for an exemption).

We are proposing that paragraphs (b)(2) and (b)(3) establish the meanings of "good cause" and "written agreement." Although not specified in the statute, we are using our authority under section 1102 of the Act to set these requirements because we believe that Congress intended that immediate withholding would be implemented in most cases. Consequently, proposed paragraph (b)(2) provides that a finding of good cause by the court or administrative authority must be based on, at a minimum: (i) A written determination and explanation of why implementing immediate withholding would not be in the best interests of the child; (ii) proof of timely payment of previously ordered support in cases involving the modification of support orders; and (iii) agreement by the absent parent to keep the IV-D agency apprised of his or her current employer and information on any employment-related health insurance coverage to which the absent parent has access. We believe that for all support issues the best interests of the child should remain paramount and other concerns secondary. Certainly, payment of past-ordered support will provide a measure of the absent parent's good faith. Providing employer and health insurance information will help to ensure that the absent parent takes his or her obligation seriously. In modification proceedings, States may choose not to allow past timely payment to justify avoiding immediate withholding.

These criteria were formulated to exclude certain other considerations. For example, we do not believe that good cause would be demonstrated if the absent parent objects to immediate withholding on the grounds that it would be inconvenient, since the purpose of the support order and withholding is to provide for the best interests of the child. Payroll deduction is a convenient means of paying debts. Moreover, the overall thrust of the immediate withholding provisions have, in effect, removed any reason for an employer to believe that the employee is not meeting his or her obligations in a responsible manner, since all child support orders (IV-D and non-IV-D) will eventually be subject to this automatic provision. This also means that a demonstration by the absent parent that he or she has established a good credit rating should not qualify for good cause, since the imposition of immediate withholding contains no assumption that the absent parent would default on support payments. Also, a credit rating may or may not take into consideration an absent parent's support obligation, or that obligation may not be heavily weighted.

It should also be noted that a finding of good cause not to require immediate withholding should not be construed in any way as a "termination" of withholding, since a good cause finding is subject to revocation with subsequent implementation of withholding as discussed below under the provisions of paragraph (c).

Proposed paragraph (b)(3) provides that a "written agreement" means a written alternative arrangement signed by both parents, and, at State option, the State in IV-D cases in which there is an assignment of support rights to the State, and reviewed and entered in the record by the court or by an administrative authority which provides that the absent parent shall at least (in addition to other conditions the parties agree to) keep the IV-D agency apprised of his or her current employer and information on employment-related health insurance coverage to which the absent parent has access. We propose to give the States the option in IV-D cases in which there is an assignment of support rights to the State to be a party to any alternative arrangement between the absent and custodial parents which meets the above condition because of the State and Federal interest in securing support for those in need of public assistance. We solicit comments on whether the State should be a required party in any alternative agreement. We have proposed that such written agreement be reviewed and entered in the record by the court or administrative authority for protection of the best interests of the child as well as the parents. Such an agreement may contain stipulations between the custodial and absent parents, and, at State option, the State in IV-D cases in which support rights have been assigned, which are in addition to that required under this paragraph. We particularly request public comment on the proposed requirements regarding the agreements.

A number of States allow absent parents to set up an escrow account to avoid income withholding. Such accounts ensure that current support is available if the absent parent misses a payment. While we have not proposed such an approach as a condition of an alternative arrangement, or good cause finding, we are specifically soliciting comments on whether or not such a condition is warranted in IV-D cases, and on individual or State experience with such an approach, as well as alternative approaches States have required or allowed.

A question has arisen concerning whether a parent may claim good cause or whether the parents may enter into a written agreement as an alternative to wage withholding after wage withholding has been implemented as described in paragraph (b). Our position is that an agreement may be entered into subsequent to initiation of wage withholding if the requirements of paragraphs (a)(7) with respect to termination of withholding and (b) with respect to not implementing withholding are met. We are interested in receiving comments on this issue, however, particularly with respect to the administrative burden this process might entail.

Finally, where the absent parent does not have income which can be reached through withholding at the time the support order is entered, the order must require immediate withholding, and the State must implement withholding without further action by the court or administrative authority which entered the order, when it determines the obligor has income that can be withheld.

Initiated Wage Withholding

We propose to implement revised section 466(b)(3)(B) of the Act by creating a new § 303.100(c) for initiated wage withholding in cases where immediate withholding, as set forth in proposed § 303.100(b), would not apply because the support order was issued before, and not modified after, November 1, 1990. Proposed paragraph (c), in conjunction with proposed paragraphs (a), (d), (e) and (f) would continue, with some modification, the original wage withholding requirements contained in Public Law 98-378 for existing orders being enforced under title IV-D.

Proposed § 303.100(c) would set forth requirements with respect to cases in which wages are not subject to immediate withholding in proposed paragraph (b), including cases subject to a good cause finding or a written agreement. Under the proposal, the wages of the absent parent shall become subject to withholding on the date on which payments which the absent parent has failed to make under a support order are at least equal to the support payable for one month or, if earlier, and without regard to whether there is an arrearage, the earliest of: (i) The date on which the absent parent requests that withholding begin; (ii) The date on which the custodial parent requests that withholding begin, if the State determines, in accordance with such procedures and standards as it may establish, that the request should be approved; or (iii) Such earlier date as State law or procedure may provide. In the latter instance, we have specified that the State may select an earlier date via law or procedure to indicate that this would apply on an across-the-board, rather than a case-by-case basis. For example, a State may wish to set a lower trigger of, say, one week's support delinquency, rather than the outside limit of a month's delinquency required by statute and regulation. The State may not apply a tougher standard on an individual case basis, but must apply it to all cases if this approach is selected.

These provisions parallel the requirements of Public Law 98-378 with one important exception. The new requirement at section 466(b)(3)(B)(ii) of the Act and at proposed § 303.100(c)(1)(ii) now allows the custodial parent to request that withholding be imposed without regard to whether support payments are in arrears, if the State agrees based on procedures to determine when this is appropriate. Under this proposal, custodial parents could request withholding if an absent parent is not meeting the terms of a written agreement for an alternative arrangement. This provision will also enable States which desire to do so to bridge the gap between the original initiated withholding mandated in Public Law 98-378 and the new immediate withholding requirements of Public Law 100-485 by incorporating either some, or all, of the new immediate withholding provisions on behalf of their existing initiated withholding caseload if due process is accarded the absent parent.

Proposed paragraph (c)(2) would require the State to send the advance notice required under paragraph (d) to the absent parent within 5 working days of the appropriate date under paragraph (c)(1) if the absent parent's address is known on that date, or, if the absent parent's address is not known on that date, within 5 working days of locating the absent parent.

Proposed paragraph (c)(3) would require that, if there has been a determination of good cause not to require immediate withholding under paragraph (b), a State may not take steps to implement withholding upon request of a custodial parent under paragraph (c)(1)(ii) unless the court or administrative authority removes its determination of good cause not to initiate immediate withholding. States may not use their authority to select an earlier date to take steps to initiate withholding in cases in which there is no arrearage and good cause not to initiate withholding has been claimed and determined unless and until the court or administrative authority has determined that good cause no longer exists.

Proposed paragraph (c)(4) has been moved from current paragraph (a)(5) and requires that the only basis for contesting an initiated withholding is a mistake of fact, defined as an error in identity of the absent parent or in the amount of support due. Current paragraph (a)(8), which provides that

payment of overdue support upon receiving notice of withholding may not be the sole basis for not implementing withholding, would be deleted by these proposed regulations, since under the new statute on wage withholding, we believe there is no basis for not triggering withholding unless the conditions of paragraphs (b) and (c) are met.

Advance Notice to the Absent Parent in Cases of Initiated Withholding

Proposed § 303.100(d) incorporates all the provisions of current § 303.100(b) for providing timely advance notice to the absent parent in cases of initiated withholding. Several citations within the paragraph have been changed to reflect the redesignation of other paragraphs in this publication. We propose to revise paragraph (d)(1) by inserting the phrase "On the date specified in paragraph (c)(2) of this section," at the beginning of the first sentence. This revision was added in order to make clear that advance notice to the absent parent is within the timeframe specified in paragraph (c)(2). We propose to add "if appropriate" after "the amount of overdue support" in paragraph (d)(1)(i) because withholding may be triggered under paragraph (c) if there is no arrearage.

We propose to change the citation in paragraph (d)(2)(i) from the current reference to paragraph (b)(1) to the new paragraph (d)(1), and in the same sentence change the citation of paragraph (c) to paragraph (e). We also propose to establish a timeframe, in paragraph (d)(2)(ii), for sending notice to the employer in States which are not required to provide advance notice to the absent parent because they had a withholding system in effect on August 16, 1984, which provides any other procedures necessary to meet the procedural due process requirements of State law.

Under that timeframe, a State would be required to send notice to the employer under paragraph (f) within 5 working days of the appropriate date specified in paragraph (c)(1) if the employer's address is known on that date, or, if the employer's address is not known on that date, within 5 working days of locating the employer's address.

State Procedures When the Absent Parent Contests Initiated Withholding in Response to the Advance Notice

Proposed § 303.100(e) incorporates all the provisions of current § 303.100(c) for State procedures to be followed when the absent parent contests a proposed initiated withholding. We propose to change the citations within this paragraph to reflect the redesignation of other paragraphs in this section. We propose to change the citation in the second sentence of proposed paragraph (e) referring to advance notice to the absent parent in initiated withholding cases from current paragraph (b) to redesignated paragraph (d). In addition, we propose to change the citations in proposed paragraphs (e)(3) and (4) referring to notice to the employer from current paragraph (d) to redesignated paragraph (f).

Notice to the Employer for Immediate and Initiated Withholding

Proposed § 303.100(f) incorporates most of the provisions of current § 303.100(d) providing for notice to the employer. We propose to indicate in the heading of this paragraph that it will apply to both immediate and initiated wage withholding. We are also proposing to make revisions in this paragraph which require specific timeframes for the issuance of notices, a revision involving employer reporting to the State, and notice to the employer of health insurance coverage, if it has been required under the court order. These proposals are consistent with our current policy which is designed to minimize the burden on employers of withholding wages to meet support obligations. States are encouraged to develop innovative ways to help employers, especially small employers, meet withholding requirements. Finally, we propose to change citations within this paragraph to reflect the redesignation of other paragraphs in this section.

We propose to change the citation in paragraph (f)(1)(i) referring to the fee specified later in the section from the current (d)(1)(iii) to redesignated (f)(1)(iii). In paragraph (f)(1)(ii), we propose to add a requirement that the employer report to the State the date on which the amount sent to the State was withheld from the absent parent's wages. This date is needed by the State to ensure proper distribution of support under current statute and regulations.

We are proposing in paragraph (xi) to require the State to notify the employer if the absent parent is required under a support order to provide health insurance coverage for his or her child or child(ren). Clearly Congress intended for employers to remit support on behalf of employees. Though Congress focused on cash support, we believe that Congressional intent extends to all support employees owe, including medical support. For many children, medical support is as vital as cash support.

We also propose to create a new paragraph (f)(2) and to redesignate the current paragraphs (d)(2) and (d)(3) as new paragraphs (f)(3) and (f)(4). New paragraph (f)(2) requires that, in the case of an immediate wage withholding under paragraph (b) of this section, the State must issue the notice to the employer specified in paragraph (f)(1) of this section within 5 working days from the effective date of the support order if the employer's address is known on that date, or, if the address is unknown on that date, within 5 working days of locating the employer's address. We believe that a 5-day turnaround is consistent with the intent of immediate wage withholding. We propose that redesignated paragraph (f)(3), which requires that, if the absent parent fails to contact the State to express intent to contest withholding within the period specified, the State must immediately send the notice to the employer, be revised to require that the notice be sent within 5 working days of the end of the contact period if the employer's address is known on that date, or, if the address is unknown on that date, within 5 working days of locating the employer's address. This is consistent with revised paragraph (f)(2) and with the general intent of the phrase "immediately."

Administration of Withholding

Proposed § 303.100(g), providing for certain administrative actions by the States, incorporates most of the provisions of current § 303.100(e) and will be applicable to both immediate and initiated withholding.

With the technology available to transfer funds electronically, many employers have payroll systems (or contract with service bureaus) which can automatically deposit wages in more than one financial account. We encourage employers, who currently have the capability to do so, to being remitting withheld wages electronically as soon as possible to any State's withholding agency which has the capability to receive such funds electronically on the same day funds are deposited in employees' bank accounts. OCSE is developing model procedures for electronic transfer of child support and will keep States informed of efforts in this area. In anticipation of the requirement that all States have operational automated child support enforcement systems by October 1, 1995, in accordance with section 123 of Public Law 100-485, we propose in paragraph (g)(2) that, effective October 1, 1995, the State must be capable of receiving withheld amounts and accounting information which are electronically

transmitted by the employer to the State. This will greatly reduce the time it takes for support payments to reach families in need of them.

Currently, under § 303.100(g), States are allowed to designate more than one public or private entity to administer withholding on a State or local basis under the supervision of the State withholding agency. However, because of the need to reduce the burden on employers and to simplify procedures for electronic transfer of withheld amounts, we encourage States to designate a single public agency to administer withholding in IV-D cases. This will simplify withholding for employers in both intrastate and interstate cases whether it is accomplished through electronic transfer or other means, and is essential to ensure a simple process for electronic transfer of withheld child support obligations.

We also encourage States to use electronic funds transfer for withholding wages in non-IV-D cases. In many States, funds paid through wage withholding could be deposited directly in custodial parents' bank accounts. Custodial parents' bank account statements would provide good documentation of payments received.

Using direct deposit in non-IV-D cases would enable States to implement wage withholding easily in non-IV-D cases. (Payment in IV-D cases must go through the IV-D system rather than directly to custodial parents' accounts because of additional information needed in IV-D cases.)

Interstate Withholding

Proposed § 303.100(h), requiring that State law must provide for procedures to extend the State's withholding system so that system will include interstate cases, incorporates all the provisions of current § 303.100(g) and will be applicable to immediate and initiated withholding. Proposed paragraph (h)(1) has been revised to provide that a responding State may register orders for purposes of withholding only if registration is for the sole purpose of obtaining jurisdiction for enforcement of the order; does not confer jurisdiction on the court or agency for any other purpose (such as modification of the original support order or resolution of custody or visitation disputes); and does not delay implementation of withholding. This is a formal statement in the regulations of our policy since wage withholding was originally enacted in 1984.

In addition, we propose to revise certain parts of this paragraph to provide for more specific time frames, as well as correct citations as required by the redesignation of other paragraphs in this section. We propose to revise paragraph (h)(3) by deleting the general language in the first part of the first sentence and substituting the requirement that the State must act within 5 working days of a determination that withholding is required, unless information from the State where the order was entered is necessary. Therefore, we also propose to revise the last sentence of paragraph (h)(3) by requiring that, if necessary, the State where the support order is entered must provide the information necessary to carry out the withholding within 30 calendar days of receipt of the request for information.

Finally, we propose to revise paragraph (h)(5)(i) to require that the State where the absent parent is employed must, within 5 working days of location of the absent parent and his or her employer, send notice to the absent parent. We believe that these proposed changes are consistent with the overall statutory requirements that withholding be provided on a timely basis.

Provision for Immediate Withholding in Non-IV-D Child Support Orders

We propose to implement section 466(a)(8)(B) of the Act by creating a new § 303.100(i), providing for immediate wage withholding in child support orders which are initially issued in the State on or after January 1, 1994, and are not being enforced under the State plan. We propose to implement 466(a)(8)(B)(i) with proposed paragraph (i)(1), which requires that the wages of an absent parent shall be subject to withholding, regardless of whether support payments are in arrears, on the effective date of the order, except that such wages shall not be subject to withholding under this paragraph in any cases where: (i) One of the parties demonstrates, and the court or administrative process finds, that there is good cause not to require immediate withholding; or (ii) A written agreement is reached between both parties which provides for an alternative arrangement. One of the advantages of wage withholding is the clear record of payment. In case where support is not paid by wage withholding or through a public agency, documentation of payments made or missed may not be as clear. These cases may become IV-D cases at any time. We request comments on whether these alternative arrangements that do not include payment through a public agency should specify the type of documentation that will be considered acceptable evidence of payment or non-payment.

States may choose to extend this wage withholding requirement to apply to non-IV-D cases in which orders are modified after January 1, 1994, in addition to orders issued after that date. In response to concerns which have been raised about protecting absent parents' due process rights in such cases, we urge States to ensure the protection of those rights for absent parents who may become subject to withholding as a result of implementation of such a requirement.

We propose to implement section 466(a)(8)(B)(ii) with proposed paragraphs (i)(2) and (i)(3) which require that, in addition to the amount withheld to pay the current month's obligation, the amount to be withheld must include an amount to be applied toward liquidation of any arrearages, and that the total amount to be withheld, including any employer fee, may not exceed the maximum amount permitted under the CCPA.

We propose to implement section 466(a)(8)(B)(iii) with proposed paragraphs (i)(4) through (i)(10). Section 466(a)(8)(B)(iii) applies the requirements for IV-D withholding in section 466(b)(2), (5), (6), (7), (8), (9) and (10), where applicable, to these non-IV-D cases.

We propose to implement the requirements of section 466(b)(2) in new paragraph (i)(4) by providing that the withholding must be provided without the need for any amendment to the order or for any other action by the court or entity that issued it. The wording of section 466(b)(2) specifies that withholding "must be provided in accordance with this subsection on the basis of an application for services under the State plan in the case of any other child in whose behalf a support order has been issued or modified in the State." We believe this reference was intended to cover only voluntary applications for IV-D services and not intended to make the IV-D application a prerequisite for receiving wage withholding services in a State. Section 466(a)(8)(B)(iii) on wage withholding in non-IV-D cases refers to section 466(b)(2) "where applicable." In our view, the IV-D application reference could not logically apply to these cases or Congress would have simply designed the statute to treat all cases, whether IV-D or non-IV-D, the same for purposes of wage withholding.

Proposed paragraph (i)(5) implements the requirements of section 466(b)(5) by requiring that the State must designate a public agency to administer wage withholding. Proposed paragraph (i)(6) implements the requirements of section 466(b)(6) by requiring the State to

provide for notice to the employer to initiate wage withholding. Proposed paragraph (i)(7) implements the requirements of section 466(b)(7) by requiring that withholding shall have priority over any other legal process under State law against the same wages. Proposed paragraph (i)(8) implements the requirements of section 466(b)(8) by requiring that the State may extend its system of withholding to include withholding from forms of income other than wages. Proposed paragraph (i)(9) implements the requirements of section 466(b)(9) by requiring that the State must extend its withholding system so that the system will include withholding from income or wages derived within the State in cases where the applicable support orders were issued in other States. Proposed paragraph (i)(10) implements the requirements of section 466(b)(10) by requiring that the State must have procedures for promptly terminating withholding.

Provision for Withholding in Other Non-IV-D Child Support Orders

Proposed paragraph (j) amends the current requirement in 45 CFR 303.100(h) which implements the requirement in section 466(a)(8) of the Act that all child support orders include provision for withholding, to assure that withholding is available if arrearages occur, without the necessity of filing application for IV-D services. In requiring all non-IV-D orders issued after January 1, 1994, to be subject to immediate withholding, section 101(b) of Public Law 100-485 redesignated prior section 466(a)(8) (which was effective October 1, 1985) as section 466(a)(8)(A) and limited its applicability to orders not covered under the immediate withholding requirement for all non-IV-D orders. Therefore, since prior section 466(a)(8) was effective October 1, 1985, we propose to limit the applicability of 45 CFR 303.100(j) to orders in non-IV-D cases which were issued between October 1, 1985 and January 1, 1994, or are modified on or after January 1, 1994.

**Executive Order 12291**

The Secretary has determined, in accordance with Executive Order 12291, that this proposed rule does not constitute a "major" rule. A major rule is one that is likely to result in:

(1) An annual effect on the economy of $100 million;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This proposed rule implements specific requirements of Public Law 100-485 and we expect the additional costs to the States will be less than $100 million. Any costs will be administrative and can be minimized although we are not able to provide an estimate. We believe increased collections as a result of modifications and immediate wage withholding will exceed increased administrative costs.

**Regulatory Flexibility Analysis**

The Secretary certifies, under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96-354), that this proposed regulation will not result in a significant impact on a substantial number of small entities. The primary impact is on State governments and individuals, which are not considered small entities under the Act.

**List of Subjects**

*45 CFR Part 302*

Child support, Grant programs—social programs, Penalties, Reporting and recordkeeping requirements, Unemployment compensation.

*45 CFR Part 303*

Child support, Grant programs—social programs, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Program No. 13.783, Child Support Enforcement Program)

Dated: June 18, 1990.

**Jo Anne B. Barnhart,**

*Director, Office of Child Support Enforcement.*

Dated: July 5, 1990.

**Louis W. Sullivan,**

*Secretary.*

For the reasons set out in the preamble, we propose to amend 45 CFR chapter III as follows:

## PART 302—STATE PLAN REQUIREMENTS

1. The authority citation for part 302 continues to read as follows:

Authority: 42 U.S.C. 651 through 658, 660, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p) and 1396(k).

2. Section 302.54 is revised to read as follows:

**§ 302.54 Notice of collection of assigned support.**

(a) Until December 31, 1992, the State plan shall provide as follows:

(1) The IV-D agency, at least annually, must send a notice of the amount of support payments collected during the past year to individuals who have assigned rights to support under § 232.11 of this title.

(2) The notice must list separately payments collected from each absent parent when more than one absent parent owes support to the family and must indicate the amount of support collected which was paid to the family.

(b) Effective January 1, 1993, the State plan shall provide that the State has in effect procedures for issuing monthly notices of collections as follows:

(1) The IV-D agency must notify individuals who have assigned rights to support under § 232.11 of this title, with respect to whom a support obligation has been established, that a monthly notice will be provided as described in paragraph (b)(3) of this section for each month in which support payments are collected.

(2) The IV-D agency must provide a monthly notice of the amount of support payments collected for each month to individuals who have assigned rights to support under § 232.11 of this title, unless no collection is made in the month, the assignment is no longer in effect, or the condition in paragraph (c) of this section is met.

(3) The monthly notice must list separately payments collected from each absent parent when more than one absent parent owes support to the family and must indicate the amount of current support and arrearages collected and the amount of support collected which was paid to the family.

(c) The Office may grant a waiver effective through September 30, 1995, to permit a State to provide quarterly, rather than monthly, notices, if the State does not have an automated system that performs child support enforcement activities consistent with § 302.85 of this part or has an automated system that is unable to generate monthly notices. A quarterly notice must be provided in accordance with conditions set forth in paragraph (b)(2) of this section and must contain the information set forth in paragraph (b)(3) of this section.

3. Section 302.70 is amended by revising the text up to and including the second comma of paragraph (a) introductory text, by revising paragraph (a)(8) and adding a new paragraph (a)(10) to read as follows:

**§ 302.70 Required State laws.**

(a) *Required laws.* Unless otherwise indicated, effective October 1, 1985,

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* * * * *

(8) Procedures under which all child support orders which are issued or

modified in the State will include provision for withholding from wages, in order to assure that withholding as a means of collecting child support is available without the necessity of filing an application for services under § 302.33 of this part, in accordance with § 303.100 (i) and (j) of this chapter;

* * * * *

(10) Effective October 13, 1990 or October 13, 1993, as appropriate, procedures for the review and modification of child support orders, in accordance with the requirements of § 303.8 of this chapter.

* * * * *

## PART 303—STANDARDS FOR PROGRAM OPERATIONS

4. The authority citation for part 303 continues to read as follows:

**Authority:** 42 U.S.C. 651 through 658, 660, 663, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p) and 1396(k).

5. In § 303.4, paragraph (c) is revised and paragraph (d) is added to read as follows:

### § 303.4 Establishment of support obligations.

* * * * *

(c) Periodically review and modify the support obligation, as appropriate, in accordance with § 302.70(a)(10) of this chapter and § 303.8 of this part.

(d) Within 90 calendar days of locating an absent parent or of establishing paternity, establish or modify an order for support, or complete service of process necessary to commence proceedings to establish or modify a support order (or document unsuccessful attempts to serve process, in accordance with the State's guidelines defining diligent efforts under § 303.3(c)).

6. A new § 303.8 is added to read as follows:

### § 303.8 Review and modification of child support obligations.

(a)(1) The State must implement procedures for the periodic review and modification of child support orders being enforced under this chapter.

(2) For purposes of this section, "modification" applies only to support provisions of the order.

(3) For purposes of this section, "parent" includes any custodial beneficiary of the support order.

(b) Effective on October 13, 1990: (1) The State must determine whether an order being enforced under this chapter should be reviewed pursuant to a written and publicly available State plan for the periodic review and modification of orders. The plan must target for review, and modification, if appropriate, orders in IV-D cases in which there is an assignment of support rights to the State and show the commitment of resources necessary to review orders in all IV-D cases upon the request of either parent subject to the order or of a State child support enforcement agency;

(2) The State must initiate a review, in accordance with its plan, at the request of either parent subject to the order or of a IV-D agency; and

(3) The review, and modification if appropriate, must be accomplished in accordance with the State's guidelines for support described in § 302.56 of this chapter.

(c) Effective on October 13, 1993 or an earlier date the State may select: (1) Except as specified in paragraph (c)(4) of this section, in IV-D cases in which there is an assignment of support rights to the State, a review of each order must take place no less frequently than 36 months after the establishment of the order or the most recent review. In IV-D cases in which there is no such assignment of support rights to the State, a review of the order must take place no less frequently than 36 months after the establishment of the order or the most recent review at the request of either parent. The State must establish procedures specifying circumstances under which orders will be reviewed more frequently than every 36 months. In all IV-D cases, orders must be modified, if appropriate, in accordance with the State's guidelines for support and within the timeframe specified in § 303.4(d) of this part.

(2) "Review" means an objective evaluation of complete, accurate, up-to-date information necessary for application of the State's guidelines for support. The State must require a parent to provide any necessary information otherwise unavailable to the State.

(3) Inconsistency with the State's guidelines for support must be adequate grounds for petitioning for modification of an order regardless of whether the order was established under the guidelines, unless the inconsistency is considered negligible under the State's procedures. A State's procedures must treat the availability of reasonably-priced health insurance coverage, as defined in § 306.51(a), as adequate grounds for petitioning for modification of the order.

(4) Exception. In a IV-D case in which there is an assignment of support rights to the State, the State need not conduct a review if neither parent has requested a review and the State has determined that a review would not be in the best interests of the child. In these cases, an increase in support or the availability of health insurance must be considered to be in the best interests of the child, unless either parent demonstrates it would not be in the child's interests after a hearing in accordance with paragraph (d) of this section.

(d) The State must notify each parent subject to a child support order in the State that is being enforced under this chapter:

(1) Of the right to request a review of the order;

(2) Of any review of the order at least 30 calendar days before commencement of the review;

(3) Of a proposed modification (or determination that there should be no change) in the order, and of their right to initiate proceedings to challenge the modification or determination within 30 calendar days after notification.

(e) The State may meet the requirements of paragraph (d)(1) of this section, by sending a one-time notice to each parent or requesting that the court or administrative authority provide a similar one-time notice in the order. The State must also periodically publicize the right to request a review as part of its support enforcement services as required under § 302.30 of this chapter.

7. Section 303.100 is revised to read as follows:

### § 303.100 Procedures for wage or income withholding.

(a) *General withholding requirements.* (1) The State must ensure that in the case of each absent parent against whom a support order is or has been issued or modified in the State, and is being enforced under the State plan, so much of his or her wages must be withheld, in accordance with this section, as is necessary to comply with the order.

(2) In addition to the amount to be withheld to pay the current month's obligation, the amount to be withheld must include an amount to be applied toward liquidation of overdue support.

(3) The total amount to be withheld under paragraphs (a)(1), (a)(2) and, if applicable, (f)(1)(iii) of this section may not exceed the maximum amount permitted under section 303(b) of the Consumer Credit Protection Act (15 U.S.C. 1673(b)).

(4) In the case of a support order being enforced under the State plan, the withholding must occur without the need for any amendment to the support order involved or any other action by the court or entity that issued it.

(5) If there is more than one notice for withholding against a single absent parent, the State must allocate amounts

available for withholding giving priority to current support up to the limits imposed under section 303(b) of the Consumer Credit Protection Act (15 U.S.C. 1673(b)). The State must establish procedures for allocation of support among families, but in no case shall the allocation result in a withholding for one of the support obligations not being implemented.

(6) The withholding must be carried out in full compliance with all procedural due process requirements of the State.

(7) The State must have procedures for promptly terminating the withholding when:

(i) There is no longer a current order for support and all arrearages have been satisfied; or,

(ii) The absent parent requests termination and withholding has not been terminated previously and subsequently initiated; and, the absent parent meets the conditions for an alternative arrangement set forth under paragraph (b)(3) of this section.

(8) The State must have procedures for promptly refunding to absent parents amounts which have been improperly withheld.

(9) The State may extend its withholding to include withholding from forms of income other than wages.

(10) Support orders issued or modified in IV-D cases must include a provision requiring the absent parent to keep the IV-D agency informed of the name and address of his or her current employer, whether the absent parent has access to employment-related health insurance coverage and, if so, the health insurance policy information.

(b) *Immediate withholding in IV-D cases.* (1) In the case of a support order being enforced under this part that is issued or modified on or after November 1, 1990, the wages of an absent parent shall be subject to withholding, regardless of whether support payments by such parent are in arrears, on the effective date of the order, except that such wages shall not be subject to withholding under this paragraph in any case where:

(i) Either the absent or custodial parent demonstrates, and the court or administrative authority finds, that there is good cause not to require immediate withholding; or

(ii) A written agreement is reached between the absent and custodial parent, and, at State option, the State in IV-D cases in which there is an assignment of support rights to the State, which provides for an alternative arrangement.

(2) For the purposes of this paragraph, any finding that there is good cause not to require immediate withholding must be based on at least:

(i) A written determination that, and explanation by the court or administrative authority of why, implementing immediate wage withholding would not be in the best interests of the child;

(ii) Proof of timely payment of previously ordered support in cases involving the modification of support orders; and

(iii) Agreement by the absent parent that he or she shall keep the IV-D agency apprised of his or her current employer and information on any employment-related health insurance coverage to which the absent parent has access.

(3) For purposes of this paragraph, "written agreement" means a written alternative arrangement signed by both the custodial and absent parent, and, at State option, by the State in IV-D cases in which there is an assignment of support rights to the State, and reviewed and entered in the record by the court or administrative authority which provides that the absent parent shall at least (in addition to other conditions the parties agree to) keep the IV-D agency apprised of his or her current employer and information on employment-related health insurance coverage to which the absent parent has access.

(c) *Initiated withholding in IV-D cases.* In the case of wages not subject to immediate withholding under paragraph (b) of this section, including cases subject to a finding of good cause or to a written agreement:

(1) The wages of the absent parent shall become subject to withholding on the date on which the payments which the absent parent has failed to make under a support order are at least equal to the support payable for one month or, if earlier, and without regard to whether there is an arrearage, the earliest of:

(i) The date on which the absent parent requests that withholding begin;

(ii) The date on which the custodial parent requests that withholding begin, if the State determines, in accordance with such procedures and standards as it may establish, that the request should be approved; or

(iii) Such earlier date as State law or procedure may provide.

(2) The State must send the advance notice required under paragraph (d) of this section to the absent parent within 5 working days of the appropriate date under paragraph (c)(1) of this section if the absent parent's address is known on that date, or, if the absent parent's address is not known on that date, within 5 working days of locating the absent parent.

(3) If there has been a determination of good cause not to require immediate withholding under paragraph (b) of this section, a State may not take steps to implement withholding under paragraph (c)(1)(ii) of this section unless the court or administrative authority changes its determination of good cause not to initiate immediate withholding.

(4) The only basis for contesting a withholding under this paragraph is a mistake of fact, which for purposes of this paragraph means an error in the amount of current or overdue support or in the identity of the alleged absent parent.

(d) *Advance notice to the absent parent in cases of initiated withholding.* (1) On the date specified in paragraph (c)(2) of this section, the State must send advance notice to the absent parent regarding the initiated withholding. The notice must inform the absent parent:

(i) Of the amount of overdue support that is owed, if any, and the amount of wages that will be withheld;

(ii) That the provision for withholding applies to any current or subsequent employer or period of employment;

(iii) Of the procedures available for contesting the withholding and that the only basis for contesting the withholding is a mistake of fact;

(iv) Of the period within which the absent parent must contact the State in order to contest the withholding and that failure to contact the State within the specified time limit will result in the State notifying the employer to begin withholding; and

(v) Of the actions the State will take if the individual contests the withholding, including the procedures established under paragraph (e) of this section.

(2)(i) The requirements for advance notice to the absent parent under paragraph (d)(1) of this section and for State procedures when the absent parent contests the withholding in response to the advance notice under paragraph (e) of this section do not apply in the case of any State which had a withholding system in effect on August 16, 1984 if the system provided on that date, and continues to provide, any other procedures as may be necessary to meet the procedural due process requirements of State law.

(ii) Any State in which paragraph (d)(2)(i) of this section applies must meet all other requirements of this section and must send notice to the employer under paragraph (f) of this section within 5 working days of the appropriate date specified in paragraph (c)(1) of this section if the employer's address is known on that date, or, if the employer's address is not known on that date,

within 5 working days of locating the employer's address.

(e) *State procedures when the absent parent contests initiated withholding in response to the advance notice.* The State must establish procedures for use when an absent parent contests the withholding. Within 45 calendar days of sending advance notice to the absent parent under paragraph (d) of this section, the State must:

(1) Provide the absent parent an opportunity to present his or her case to the State;

(2) Determine if the withholding shall occur based on an evaluation of the facts, including the absent parent's statement of his or her case;

(3) Notify the absent parent whether or not the withholding is to occur and, if it is to occur, include in the notice the time frames within which the withholding will begin and the information given to the employer in the notice required under paragraph (f) of this section; and

(4) If withholding is to occur, send the notice required under paragraph (f) of this section.

(f) *Notice to the employer for immediate and initiated withholding.* (1) To initiate withholding, the State must send the absent parent's employer a notice which includes the following:

(i) The amount to be withheld from the absent parent's wages, and a statement that the amount actually withheld for support and other purposes, including the fee specified under paragraph (f)(1)(iii) of this section, may not be in excess of the maximum amounts permitted under section 303(b) of the Consumer Credit Protection Act (15 U.S.C. 1673(b));

(ii) That the employer must send the amount to the State within 10 working days of the date the absent parent is paid, unless the State directs that payment be made to another individual or entity, and must report to the State (or to such other individual or entity as the State may direct) the date on which the amount was withheld from the absent parent's wages;

(iii) That, in addition to the amount withheld for support, the employer may deduct a fee established by the State for administrative costs incurred for each withholding, if the State permits a fee to be deducted;

(iv) That the withholding is binding upon the employer until further notice by the State;

(v) That the employer is subject to a fine to be determined under State law for discharging an absent parent from employment, refusing to employ, or taking disciplinary action against any absent parent because of the withholding;

(vi) That, if the employer fails to withhold wages in accordance with the provisions of the notice, the employer is liable for the accumulated amount the employer should have withheld from the absent parent's wages;

(vii) That the withholding under this section shall have priority over any other legal process under State law against the same wages;

(viii) That the employer may combine withheld amounts from absent parents' wages in a single payment to each appropriate agency requesting withholding and separately identify the portion of the single payment which is attributable to each individual absent parent;

(ix) That the employer must implement withholding no later than the first pay period that occurs after 14 working days following the date the notice was mailed;

(x) That the employer must notify the State promptly when the absent parent terminates employment and provide the absent parent's last known address and the name and address of the absent parent's new employer, if known, and;

(xi) That the absent parent is required under a support order to provide health insurance coverage, as defined in § 306.51(a), for his or her child or child(ren), if appropriate.

(2) In the case of an immediate wage withholding under paragraph (b) of this section, the State must issue the notice to the employer specified in paragraph (f)(1) of this section within 5 working days of the effective date of the support order if the employer's address is known on that date, or, if the address is unknown on that date, within 5 working days of locating the employer's address.

(3) If the absent parent fails to contact the State to contest withholding within the period specified in the advance notice in accordance with the requirements of paragraph (d)(1)(iv) of this section, the State must send the notice to the employer required under paragraph (f)(1) of this section within 5 working days of the end of the contact period if the employer's address is known on that date, or, if the address is unknown on that date, within 5 working days of locating the employer's address.

(4) If the absent parent changes employment within the State when a withholding is in effect, the State must notify the absent parent's new employer, in accordance with the requirements of paragraph (f)(1) of this section, that the withholding is binding on the new employer.

(g) *Administration of withholding.* (1) The State must designate a public agency to administer withholding in accordance with procedures specified by the State for keeping adequate records to document, track, and monitor support payments.

(2)(i) The State may designate public or private entities to administer withholding on a State or local basis under the supervision of the State withholding agency if the entity or entities are publicly accountable and follow the procedures specified by the State; and

(ii) The State may designate only one entity to administer withholding in each jurisdiction.

(3) Effective October 1, 1995, the State must be capable of receiving withheld amounts and accounting information which are electronically transmitted by the employer to the State.

(4) Amounts withheld must be distributed in accordance with section 457 of the Act and §§ 302.32, 302.51 and 302.52 of this chapter.

(5) The State must reduce its IV-D expenditures by any interest earned by the State's designee on withheld amounts.

(h) *Interstate withholding.* (1) The State law must provide for procedures to extend the State's withholding system so that the system will include withholding from income or wages derived within the State in cases where the applicable support orders were issued in other States. A State may register orders from other States for purposes of withholding only if registration is for the sole purpose of obtaining jurisdiction for enforcement of the order; does not confer jurisdiction on the court or agency for any other purpose (such as modification of the original support order or resolution of custody or visitation disputes); and does not delay implementation of withholding.

(2) The State law must require employers to comply with a withholding notice issued by the State.

(3) Within 5 working days of a determination that withholding is required in a particular case, and, if appropriate, receipt of any information necessary to carry out withholding addressed under the last sentence of this paragraph, the initiating State must notify the IV-D agency of the State in which the absent parent is employed to implement interstate withholding. The notice must contain all information necessary to carry out the withholding, including the amount requested to be withheld, a copy of the support order and a statement of arrearages, if appropriate. If necessary, the State where the support order is entered must

provide the information necessary to carry out the withholding within 30 calendar days of receipt of a request for information by the initiating State.

(4) The State in which the absent parent is employed must implement withholding in accordance with paragraph (h)(5) of this section upon receipt of the notice required in paragraph (h)(3) of this section.

(5) The State in which the absent parent is employed must:

(i) Within 5 working days of location of the absent parent and his or her employer, send notice to the absent parent in accordance with the requirements of paragraph (d) of this section;

(ii) Provide the absent parent with an opportunity to contest the withholding in accordance with paragraph (e) of this section;

(iii) Send notice to the employer in accordance with the requirements of paragraph (f) of this section; and

(iv) Notify the State in which the custodial parent applied for services when the absent parent is no longer employed in the State and provide the name and address of the absent parent and new employer, if known.

(6) The withholding must be carried out in full compliance with all procedural due process requirements of the State in which the absent parent is employed.

(7) Except with respect to when withholding must be implemented which is controlled by the State where the support order was entered, the law and procedures of the State in which the absent parent is employed shall apply.

(i) *Provision for immediate withholding in non-IV-D child support orders.* With respect to all child support orders which are initially issued in the State on or after January 1, 1994, and are not being enforced under the State plan, the following requirements apply:

(1) The wages of an absent parent shall be subject to withholding, regardless of whether support payments by such parent are in arrears, on the effective date of the order, except that such wages shall not be subject to withholding under this paragraph in any case where:

(i) One of the parties demonstrates, and the court or administrative process finds, that there is good cause not to require immediate withholding; or

(ii) A written agreement is reached between both parties which provides for an alternative arrangement;

(2) In addition to the amount to be withheld to pay the current month's obligation, the amount to be withheld must include an amount to be applied toward liquidation of any overdue support;

(3) The total amount to be withheld under paragraphs (i)(1), (i)(2) and, if applicable, (f)(1)(iii) of this section may not exceed the maximum amount permitted under section 303(b) of the Consumer Credit Protection Act (15 U.S.C. 1673(b));

(4) Withholding must be provided without the need for any amendment to the order or for any further action by the court or entity that issued it;

(5) The State must designate a public agency to administer wage withholding under this paragraph;

(6) The State must provide for notice to the employer to initiate wage withholding;

(7) The withholding shall have priority over any other legal process under State law against the same wages;

(8) The State may extend its system of withholding to include withholding from forms of income other than wages;

(9) The State must extend its withholding system under this paragraph so that the system will include withholding from income or wages derived within the State in cases where the applicable support orders were issued in other States; and

(10) The State must have procedures for promptly terminating withholding.

(j) *Provision for withholding in other non-IV-D child support orders.* Child support orders issued or modified in the State between October 1, 1985, and January 1, 1994, or are modified on or after January 1, 1994, must have a provision for withholding of wages, in order to ensure that withholding as a means of support is available if arrearages occur without the necessity of filing an application for IV-D services. This requirement does not alter the requirement governing all IV-D cases in paragraph (a)(4) of this section that enforcement under the State plan must proceed without the need for a withholding provision in the order.

**§ 303.101 [Amended]**

8. Section 303.101 is amended by adding ", modify," after the word "establish" in paragraphs (b) (1) and (2); by adding the words "or modified" after the word "established" wherever it appears in paragraph (c)(1); and by adding ", modification," after the word "issuance" in paragraph (e).

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# Part IV

# Environmental Protection Agency

40 CFR Part 24

Issuance of and Administrative Hearings; Corrective Action Orders for Underground Storage Tanks; Proposed Rule

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 24**

**[FRL-3819-9]**

## Issuance of and Administrative Hearings; Corrective Action Orders for Underground Storage Tanks

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Hazardous and Solid Waste Amendments of 1984 (HSWA) added to the Resource Conservation and Recovery Act (RCRA) a new subtitle I which provides for the regulation of underground storage tanks (USTs). Section 9003(h), which was added to subtitle I by the Superfund Amendments and Reauthorization Act of 1986 (SARA), authorizes EPA to issue orders requiring an UST owner or operator to take corrective action in response to an UST release.

Today EPA proposed an amendment to extend the scope of authority of the rules governing issuance of and administrative hearings on corrective action orders in 40 CFR part 24 to corrective action orders issued pursuant to section 9003(h) of the Solid Waste Disposal Act (SWDA), as amended by RCRA. EPA believes that using part 24 procedures for section 9003(h) corrective action orders will avoid unnecessary time delays and expenditures of Agency or respondent's resources, and will provide a suitable technical framework for issuing corrective action orders. The intent of this amendment is to reduce the potential risks from UST releases as quickly as possible.

**DATES:** Comments on this proposal will be accepted if received on or before September 14, 1990.

**ADDRESSES:** Interested members of the public must submit an original and two copies of their comments to: Office of Underground Storage Tanks (OS-420) Docket No. UST-8, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Call (202) 475-9720 to make an appointment with docket clerk.

**FOR FURTHER INFORMATION CONTACT:** RCRA/SUPERFUND Hotline, (800) 424-9346; or in Washington, DC, (202) 382-3000.

**SUPPLEMENTARY INFORMATION:** The contents of today's preamble are listed in the following outlines:

I. Authority
II. Background
A. Subtitle I of RCRA
B. Summary of Today's Proposal
III. Analysis of Today's Proposal
IV. Economic and Regulatory Impacts
A. Regulatory Impact Analysis
B. Regulatory Flexibility Act
C. Federalism Assessment
D. Paperwork Reduction Act

### I. Authority

The rules governing issuance of and administrative hearings on corrective action orders, 40 CFR part 24, were promulgated on April 13, 1988, at 53 FR 12256, under the authority of sections 2002 and 3008 of the Solid Waste Disposal Act, commonly referred to as the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. 6912 and 6928. This amendment to 40 CFR part 24 is issued under the authority of sections 2002 and 9003 of RCRA, as amended, 42 U.S.C. 6912 and 6991.

### II. Background

#### *A. Subtitle I of RCRA*

On November 8, 1984, the President signed into law the Hazardous and Solid Waste Amendments of 1984. The amendments added to RCRA a new subtitle I, sections 9001-9010, which establishes a federal program for the regulation of underground storage tanks (USTs). Section 9003(h) authorizes EPA to issue administrative orders requiring owners or operators of leaking USTs to take corrective action.

#### *B. Summary of Today's Proposal*

The proposed amendment establishes administrative procedures for the issuance of and administrative hearings under section 9003(h) corrective action orders. The major elements of this amendment and the Agency's rationale for proposing it are outlined below.

There are currently no federal regulations governing administrative procedures for issuing 9003(h) corrective action orders. The rules at 40 CFR part 22 establish procedures for issuing administrative compliance orders and conducting administrative hearings pursuant to RCRA section 3008(a), as well as compliance authorities under other EPA statutes. The Agency amended these part 22 procedures on February 24, 1988, to include orders issued pursuant to section 9006 of RCRA (53 FR 5373).

Under section 9006(b), any order issued under 9006 shall become final in 30 days unless the recipient requests an administrative hearing. Section 9003(h) states that orders issued under section 9003(h) shall be subject to the same requirements as the section 9006 orders. Thus, recipients of section 9003(h) corrective action orders maintain the right to request a hearing within 30 days.

The Agency subsequently developed more streamlined procedures for the issuance of corrective action orders issued pursuant to section 3008(h) of RCRA. These streamlined procedures at 40 CFR part 24 were issued April 13, 1988 (53 FR 12256) for section 3008(h) corrective action orders. These procedures do not apply to orders suspending or revoking authorization to operate, and do not seek penalties under section 3008(h)(2) for noncompliance with a section 3008(h) order. EPA believes that the Agency has the ability, circumscribed by constitutional due process considerations, to decide what administrative procedures are appropriate to be followed for corrective action orders issued pursuant to section 9003(h) of RCRA. Thus, EPA proposes, through this amendment, that part 24 procedures be employed for the issuance of corrective action orders issued pursuant to section 9003(h), and for administrative hearings requested by recipients of such orders.

EPA believes, by the nature of section 9003(h) corrective action orders, that administrative procedures under part 24 would be more appropriate for section 9003(h) orders than would procedures under part 22. Administrative compliance orders (e.g., under section 3008(a) and section 9006) present specific violations and require compliance with specific requirements. Thus, in part 22 proceedings, EPA decision-makers are required to adjudicate specific factual issues relating to the violations in question. However, corrective action orders (e.g., under section 3008(h) and section 9003(h)) seek to compel respondents to undertake studies to examine releases and to take measures necessary to remediate such releases. The prerequisite to obtaining relief under corrective action orders to establishing that the release has occurred, not that a specific violation has occurred. The primary purpose of the part 24 hearing then is not proving a violation, but rather deciding how to remediate the release (see 40 CFR 22.13, "Issuance of Complaint").

Because of the nature of the purpose of the proceedings, the part 24 proceedings are less formal and resource-intensive than part 22 proceedings. Because the part 24 proceedings do not allow examination and cross-examination of witnesses, the proceedings require less case preparation and use a streamlined and less formal approach for presenting arguments and evidence. The simplified

administrative procedures under 40 CFR part 24 will promote timely response to releases where the owner or operator fails to initiate corrective action. This simplified approach is congruous with the UST program philosophy, where the primary goals are to reduce the risks from UST releases as quickly as possible. Therefore, EPA believes that using part 24 procedures for section 9003(h) corrective action orders would avoid unnecessary time delays and expenditures of Agency or respondent's resources, and would provide a more suitable technical framework for issuing corrective action orders than would part 22 procedures.

## III. Analysis of Today's Proposal

EPA's proposal to amend 40 CFR part 24 has two effects on the rule. The amendment proposes to expand the scope of coverage of the rule (§ 24.01) and to select the appropriate hearing procedures (§ 24.08) for section 9003(h) corrective action orders. These two issues are discussed below.

### *A. Scope of Part 24 Procedures*

EPA is proposing to expand the scope of 40 CFR Part 24 because it provides the least resource-intensive procedures for adjudicating corrective action orders, and is suitable to the technical nature of corrective action orders.

It should be noted that in today's proposal, 40 CFR part 24 procedures are used only when issuing a 9003(h) corrective action order alone. If a section 9003(h) corrective action order is issued in conjunction with a section 9006 order to compel compliance with specific requirements or to assess civil penalties, the 40 CFR part 22 procedures will be followed. This distinction is consistent with the practice followed for corrective action/compliance orders issued pursuant to RCRA section 3008(h). Table 1 illustrates when to follow part 22 and part 24 procedures.

TABLE 1

| Order | Procedures to use |
|---|---|
| 9003(h) Corrective Action Order requiring corrective action. | 40 CFR Part 24. |
| Section 9003(h) Corrective Action Order issued in conjunction with a 9006 Compliance Order requiring compliance with specific requirements. | 40 CFR Part 22. |
| Section 9003(h) Corrective Action Order issued in conjunction with a 9006 Compliance Order assessing civil penalties. | 40 CFR Part 22. |

### *B. Procedures for Hearings*

The rules at 40 CFR part 24 use a two-tiered set of procedures for conducting administrative hearings. The two-tiered set of procedures for administrative hearings include: (1) Subpart B—Hearings on Orders Requiring Investigations or Studies; and (2) Subpart C—Hearings on Orders Requiring Corrective Action.

Subpart B procedures are used when the initial RCRA section 3008(h) corrective action order directs the respondent to undertake either: (1) Studies of the nature and extent of releases of hazardous waste constituents; or (2) studies of the available alternatives for remediating such releases, either alone or with limited interim corrective action measures. Procedures in subpart C are used when the initial section 3008(h) corrective action order directs the respondent to undertake specific, comprehensive corrective measures, either alone or in conjunction with investigatory studies.

Today's proposal revises 40 CFR 24.08 to select appropriate hearing procedures for 9003(h) corrective action orders. The Agency believes that section 9003(h) corrective action orders will be issued primarily in situations when a release is suspected to have occurred. In these cases, the order will require the owner or operator both to confirm the release by conducting investigations or studies, and, if a release is confirmed, conduct immediate corrective measures to mitigate the human health and environmental impacts of the release. Thus, separate orders will not be issued for the investigation/study and the corrective action phases, and separate hearings will not be required. The Agency believes that procedures for hearings requested by the recipients of such orders are appropriately governed by the more extensive subpart C procedures. For purposes of administrative convenience, the Agency is proposing that the subpart C procedures exclusively be used for section 9003(h) corrective actions orders, including those rare instances when a section 9003(h) order would be issued that did not instruct the owner or operator to conduct corrective measures. Thus, the Agency is proposing that the subpart B procedures—Hearings on Orders Requiring Investigations or Studies— would not apply to section 9003(h) orders.

## IV. Economic and Regulatory Impacts

### *A. Regulatory Impact Analysis*

Under Executive Order 12291, the Agency must determine whether a new regulation is a "major" rule and prepare a Regulatory Impact Analysis (RIA) in connection with a major rule. A "major" rule is defined as one that is likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, federal, state, and local government agencies or geographical regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises in domestic or export markets. The amendment proposed here is procedural in nature, will not have any important economic impacts, and will not significantly affect the operations of regional or other program offices. Therefore, today's proposal is not deemed to be a "major" rule and, accordingly, does not trigger the requirement that a regulatory impact analysis be prepared.

### *B. Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires the Agency to prepare and make available for public comment a regulatory flexibility analysis that describes the impact of a proposed or final rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required if the head of an agency certifies the rule will not have significant economic impact on a substantial number of small entities. Since this proposed amendment merely establishes hearing procedures and has no significant economic impact on a substantial number of entities, it does not trigger the requirement in the Regulatory Flexibility Act that a regulatory flexibility analysis be prepared.

### *C. Federalism Assessment*

Executive Order 12612 requires the agency to perform a federalism assessment on proposed and final rules. The Executive Order specifies that federal agencies should refrain from limiting state policy options, consult with states prior to taking any actions that would restrict state policy options, and take such actions only when there is clear constitutional authority and the presence of a problem of national scope. The Executive Order provides for a preemption of state law only if there is a clear Congressional intent for the Agency to do so. Any such preemption is to be limited to the extent possible.

The Agency has reviewed today's proposal and concluded that a

federalism assessment, as defined by Executive Order 12612, is not required. Today's proposal merely defines the administrative procedures for issuance of and hearings on section 9003(h) corrective action orders. Since section 9003(h) corrective action orders are issued by the federal government, today's proposal will have no effect on state policy options.

*D. Paperwork Reduction Act*

This proposed amendment contains no information collection requirements and thus will not increase the paperwork burden on the regulated community in contravention of the purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

**List of Subjects in 40 CFR Part 24**

Administrative practice and procedure, Corrective action, Hazardous waste, Penalties, Revocation of operating authority, Underground storage tanks.

Dated: August 6, 1990.

William K. Reilly,

*Administrator.*

For the reasons set out in the Preamble, part 24, chapter I, of title 40, Code of Federal Regulations is proposed to be amended as follows:

## PART 24—[AMENDED]

1. The authority citation for part 24 continues to read as follows:

Authority: 42 U.S.C. 6912, 6928.

2. Section 24.01 is amended by redesignating paragraph (c) as paragraph (d) and by revising paragraph (a) and adding new paragraph (c) to read as follows:

**§ 24.01 Scope of these rules.**

(a) These rules establish procedures governing issuance of administrative orders for corrective action pursuant to sections 3008(h) and 9003(h) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (the Act), and conduct of administrative hearings on such orders, except as specified in paragraphs (b) and (c) of this section.

* * * * *

(c) The hearing procedures appearing at 40 CFR part 22 govern administrative hearings on any order issued pursuant to section 9003(h) of the Act that is contained within an administrative order that includes claims under section 9006 of the Act.

* * * * *

3. Section 24.02 is amended by revising paragraph (a) to read as follows:

**§ 24.02 Issuance of initial orders; definition of final orders and orders on consent.**

(a) An administrative action under section 3008(h) or 9003(h) of the Act shall be commenced by issuance of an administrative order. When the order is issued unilaterally, the order shall be referred to as an initial administrative order and may be referenced as a proceeding under section 3008(h) or 9003(h) of the Act. When the order has become effective, either after issuance of a final order following a final decision by the Regional Administrator, or after thirty days from issuance if no hearing is requested, the order shall be referred to as a final administrative order. Where the order is agreed to by the parties, the order shall be denominated as a final administrative order on consent.

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4. Section 24.04 is amended by revising paragraph (a) to read as follows:

**§ 24.04 Filing and service of orders, decisions, and documents.**

(a) *Filing of orders, decisions, and documents.* The original and one copy of the initial administrative order, the recommended decision of the Presiding Officer, the final decision and the final administrative order, and one copy of the administrative record and index thereto must be filed with the Clerk designated for section 3008(h) or 9003(h) orders. In addition, all memoranda and documents submitted in the proceeding shall be filed with the clerk.

* * * * *

5. Section 24.08 is revised to read as follows:

**§ 24.08 Selection of appropriate hearing procedures.**

(a) The hearing procedures set forth in subpart B of this part shall be employed for any requested hearing if the initial order directs the respondent—

(1) To undertake only a RCRA Facility Investigation and/or Corrective Measures Study, which may include monitoring, surveys, testing, information gathering, analyses, and/or studies (including studies designed to develop recommendations for appropriate corrective measures), or

(2) To undertake such investigations and/or studies and interim corrective measures, and if such interim corrective measures are neither costly nor technically complex and are necessary to protect human health and the environment prior to development of a permanent remedy.

(b) The hearing procedures set forth in subpart C of this part shall be employed if the respondent seeks a hearing on an order directing that—

(1) Corrective measures or such corrective measures together with investigations/studies be undertaken, or

(2) Corrective action be undertaken with respect to any release from an underground storage tank.

(c) The procedures contained in subparts A and D of this part shall be followed regardless of whether the initial order directs the respondent to undertake an investigation pursuant to the procedures in subpart B of this part, or requires the respondent to implement corrective measures pursuant to the procedures in subpart C of this part.

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# Part V

# Environmental Protection Agency

## 40 CFR Part 136

## Guidelines Establishing Test Procedures for the Analysis of Pollutants; Final Rule

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 136**

**[FRL-3786b]**

**RIN 2040-AB58**

## Guidelines Establishing Test Procedures for the Analysis of Pollutants

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is amending its "Guidelines Establishing Test Procedures for the Analysis of Pollutants" as proposed on September 3, 1987. This action does the following:

- Makes the results of certain validation studies for the inductively coupled plasma, and the flame and furnace atomic absorption tests procedures a part of 40 CFR part 136.
- Amends the procedures for approving alternate methods by adding an opportunity for comments on the test procedures before they are approved for nationwide use.
- Clarifies EPA's views on the equivalency of methods approved under part 136.
- Allows the option to preserve samples for oil and grease determinations with HCl in place $H_2SO_4$.

**DATES:** In accordance with 40 CFR 23.2, these amendments to the regulation shall be considered issued for purposes of judicial review at 1 p.m., August 29, 1990. Under section 509(b)(1) of the Clean Water Act, judicial review of these amendments can be obtained only by filing a petition for review in the United State Court of Appeals within 120 days after they are considered issued for purposes of judicial review. Under 509(b)(2) of the Clean Water Act, the requirements of these amendments may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Final rule shall be effective September 14, 1990.

All supporting materials pertinent to the development of this regulation are included in the Public Docket located at room 2904 EPA Headquarters, Washington, DC. The Public Docket is available to the public from 9 a.m. to 4 p.m. for inspection and copying.

**FOR FURTHER INFORMATION CONTACT:** Mr. James J. Lichtenberg, Environmental Monitoring Systems Laboratory, Office of Research and Development, U.S. Environmental Protection Agency, Cincinnati, OH 45268. Telephone number: (513) 569-7306.

**SUPPLEMENTARY INFORMATION:**

### I. Authority

Today's amendment was proposed on September 3, 1987. It is being promulgated under authority of sections 304(h) and 501(a) of the Clean Water Act, 33 U.S.C. 1251 *et seq.* (the Federal Water Pollution Control Act Amendments of 1972 as amended by the Clean Water Act of 1977 and the Water Quality Act of 1987) 33 U.S.C. 1314(h), 1361(a), 86 Stat. 816, Public Law 92-500; 91 Stat. 1567, Public Law 95-217; 101 Stat. 7, Public Law 100-4 (the "Act"). Section 304(h) of the Act requires the Administrator of the EPA to "promulgate guidelines establishing test procedures for the analysis of pollutants that shall include the factors which must be provided in any certification pursuant to section 401 of this Act or permit application pursuant to section 402 of this Act." Section 501(a) of the Act authorizes the Administrator to "prescribe such regulations as are necessary to carry out his functions under this Act."

### II. Regulatory Background

EPA promulgated "Guidelines Establishing Test Procedures for the Analysis of Pollutants" in 40 CFR part 136 on October 16, 1973 (38 FR 28758). These guidelines, which were amended on December 1, 1976 (41 FR 52780), provided test procedures for 115 well known pollutants and pollutant parameters, including metals and a number of organic compounds.

On October 26, 1984, the EPA promulgated regulations in the **Federal Register** (49 FR 43234) which further amended part 136. These amendments approved gas chromatographic (GC), gas chromatographic/mass spectrometric (GC/MS), and high performance liquid chromatographic (HPLC) methods for the analysis of the 111 toxic organic "priority" pollutants, an analytical method for carbonaceous biochemical oxygen demand (CBOD), a method for metals by inductively coupled plasma spectrophotometry (ICP), and mandatory sample container, preservation and holding time requirements. The test procedures for the organic pollutants included provisions for performance criteria that the laboratory must meet. These provisions were promulgated as an interim final rule. A correction notice was published on January 4, 1985 (50 FR 690-697). EPA also published technical amendments to those regulations in the **Federal Register** of June 30, 1986 (51 FR 23692).

The Virginia Electric Power Company and others (VEPCO) challenged the October, 1984 regulations (*Virginia Electric Power Co.*, et al. v. *U.S. Environmental Protection Agency*, et al., No. 84-2227 [4th Cir. filed November 9, 1984]). EPA and the parties entered into a settlement agreement on the issues in this case. In the settlement, EPA agreed to make available for comment certain studies assessing the performance of three analytical methods and to propose statements of precision and bias (recovery) for the methods in this rulemaking based on the studies. EPA also agreed to propose a change to 40 CFR 136.5 to allow an opportunity for notice and comment prior to final approval of new alternate test methods for nationwide use. In addition, EPA agreed to propose a clarification in the preamble of these proposed regulations concerning the use of the term "equivalent" in approving test methods. The Agency further agreed to take final action on these proposals. The settlement agreement is a part of the public record for this rulemaking.

### III. Precision and Recovery Amendments to Analytical Methods

EPA by this amendment is publishing precision (as single-analyst and multi-laboratory standard deviation) and bias (as mean recovery) information for incorporation into three analytical methods for the analysis of metals: Inductively coupled plasma (ICP), flame atomic absorption (FLAA), and graphite furnace atomic absorption (GFAA) test procedures.

Publication of these statements fulfills, in part, EPA's obligation under paragraph 2 of the VEPCO settlement agreement discussed above. Specifically, EPA is to "publish proposed amendments to these part 136 methods which shall include statements of precision and bias—[and] take any final action on these proposed amendments." Precision and bias are measures of a methods ability to quantify in a meaningful way the true concentrations in a sample or series of samples. Recovery is the complement of bias, i.e., recovery as percent=100 percent+bias as percent, so a statement of recovery is equivalent to a statement of bias. VEPCO's position as reflected in the VEPCO litigation and in comments to today's rulemaking is that the analytical variability associated with a part 136 method, as shown by precision and bias, can be significant and should be considered for purposes of setting National Pollutant Discharge Elimination System (NPDES) effluent limitations or in enforcing those limitations.

The legal and policy issues of whether or to what extent EPA considers analytical variability in the NPDES program, however, is not the subject of today's rulemaking. Those issues necessarily entail consideration of (1) the extent to which the Agency has already given industry the benefits (in terms of less stringent limitations) from variability in underlying data when EPA sets effluent limitations and (2) how the Agency should resolve issues of scientific uncertainty in any specific regulatory activity when the Agency is charged with protection of the Nation's waters. These broader issues are not the subject of today's rule. Rather, EPA has simply agreed to incorporate statements of precision and bias into certain part 136 methods.

Commenters also do not seek to disqualify any particular part 136 method but rather argue that EPA's analysis of precision and bias is unduly optimistic and that different methodology decisions would show much greater analytical variability. As discussed below EPA has used reasonable scientific judgment and addressed public comment to reasonably quantify precision and bias. None of the resulting values have shown the methods to be unfit as part 136 methods and, accordingly, EPA is not removing any method from part 136. The question of whether a given analytic method is appropriate in a given setting also remains part of the NPDES permit process.

Both FLAA and GFAA test procedures have been approved methods since 1973 but the recovery and precision statements published for the methods were, for the most part, limited to data gathered by a single laboratory. The ICP test procedure included the results of a preliminary EPA multi-laboratory study when approved in the 1984 final rule, but did not incorporate the precision and recovery results from the multi-laboratory study discussed below. The precision and recovery results from EPA's multi-laboratory studies are now available for FLAA, GFAA, and ICP and are being published as a part of this rule. In addition, although not part of the settlement agreement, the Agency is publishing precision and recovery statements for an approved EPA colorimetric procedure that was included in the same interlaboratory study as the FLAA methods. It should be noted that the performance characteristics of the methods for the individual analytes may vary by matrix.

1. *ICP Method*—The reference interlaboratory study is described in the EPA report, "EPA Method Study 27, Method 200.7 Trace Metals by ICP" (EPA 600/4-85-051).

EPA with this action publishes the recovery and precision statements for Method 200.7 by directly amending the language of section 13 of the method in appendix C of 40 CFR part 136.

2. *GFAA Methods*—The reference interlaboratory study is described in the EPA report, "EPA Method Study 31, Trace Metals by Atomic Absorption (Furnace Techniques)" (EPA 600/4-85-070).

The Agency has published the interlaboratory method study results as statements of recovery and precision for each GFAA method. These statements published in today's action are to be added to 40 CFR part 136 as appendix D and incorporated through footnote into Table IB. This action serves to incorporate these data into the approved methods until such time as the EPA manual of methods can be amended to permit these statements to be incorporated by reference.

3. *FLAA Methods*—The reference interlaboratory study is described in the EPA report, "USEPA Method Study 7, Analyses for Trace Metals in Water by Atomic Absorption Spectroscopy (Direct Aspiration) and Colorimetry" (EPA 600/4-86/025).

The Agency is publishing the interlaboratory method study results as statements of recovery and precision for each FLAA method, and for the arsenic colorimetric procedure. These statements published as a part of 40 CFR part 136 as appendix D are incorporated through footnote into Table IB. As with the GFAA methods, this action serves to incorporate these data into the approved methods until such time as the referenced methods can themselves be amended.

## IV. Amendments to Approval of Alternate Test Procedures For Nationwide Use

Under part 136, EPA has two procedures for approval of test procedures not already listed under part 136 upon application from persons outside the Agency. Responsible persons or firms holding a discharge permit may apply for approval of a method for either "Regional" or "nationwide" use. The purpose of this program is to encourage the development of innovative analytical methods and to allow applicants to use these new test methods, where appropriate for a given pollutant or parameter. Sections 136.4 and 136.5 contain the application and approval requirements.

EPA is today modifying the existing procedures for approval of alternate test procedures for nationwide use to allow opportunity for public notice and comment. Under the existing regulations (40 CFR 136.5(e)), the Director of the EPA Environmental Monitoring Systems Laboratory—Cincinnati (EMSL-CI) is to notify the applicant of his recommendation to the Administrator to approve or reject an application or specify additional information necessary to review the application. The Administrator may approve alternate methods determined to be in compliance with the applicable requirements of part 136. Notice of any final determination is to be submitted for publication in the **Federal Register** within 15 days after such determination.

EPA is modifying this procedure to allow an opportunity for public notice and comment prior to final EPA acceptance of an alternate test method for nationwide use. The notice and comment opportunity is to extend to all the factual bases of EPA proposed acceptance of the test method, including any performance data submitted by the applicant and any available EPA analysis of those data. EPA believes that public comment on proposed alternate methods will benefit both the public and the Agency.

In addition to providing an opportunity for comment on the Administrator's intention to approve an application for nationwide use, EPA is deleting the requirement that these determinations be submitted for publication within 15 days; EPA is retaining the requirement that the final decision be published in the **Federal Register**.

## V. Clarification of Use of the Term "Equivalent" in Approving Test Methods

For each regulated water pollutant or parameter, the Administrator has approved an array of analytical methods which have been judged to provide analytical data of a quality that is acceptable under the Clean Water Act. In the past, the Agency has occasionally described certain part 136 approved test procedures as "equivalent" (*see, e.g.* 49 FR 43238 and 43247). VEPCO requested a clarification of use of this term. The Agency agrees with VEPCO that for any given parameter, the array of approved methods will not necessarily give the same precision, mean recovery of spikes, or detection limits when repeated aliquots of sample are analyzed. Therefore, they are not necessarily statistically equivalent methods and, accordingly, have been designated "approved test procedures" in the Tables given in subsection 136.3 of 40 CFR part 136. The approval of any

array of methods often allows the selection of the analytical option which is best suited to the particular monitoring requirements and that will minimize their monitoring costs.

## VI. Preservation of Samples For Oil and Grease

The Agency has recognized a problem with the use of sulfuric acid as a preservative for oil and grease determinations in certain types of wastewater samples. Samples containing high concentrations of polyvalent metals-petroleum production brines, for example, will incur heavy precipitation upon acidification with sulfuric acid. The precipitation, which affects the reliability of the measurement can be avoided if hydrochloric acid is used instead of sulfuric acid. With this amendment, the Agency is allowing use of this optional preservation procedure.

## VII. Public Participation and Response to Most Significant Comments

A total of seven letters were received from commenters. Two of these commented on the Precision and Recovery amendments. Three commented on the proposal to clarify the term "equivalent" in approving test methods, and five commented on the proposal to allow optional use of HCL to preserve samples for oil and grease determination.

*Comment:* EPA must consider the variability of analytical methods in its regulatory process.

*Response:* As discussed above, EPA believes that the appropriate place to account for variability factors is when effluent limitation guidelines are established or when permit limitations are set. This rulemaking is simply promulgating acceptable analytical methods. EPA does consider the variability of candidate methods in approving such methods under part 136. The essential criteria are that the precision and recovery profiles of the method be, generally, within the range of other part 136 methods and that the method can provide valid results.

*Comment:* Part 136 methods must be scientifically validated and statements of precision and recovery must be included in part 136. These statements of precision and recovery should be provided for each sample matrix for which a "matrix effect" was found. In this way, the regulatory agencies, the permittee and the courts would all use a common set of performance information with the end result being an increase in regulatory certainty.

*Response:* EPA agrees that methods approved under part 136 must be scientifically validated. Further, EPA recognizes that an interlaboratory study is a useful and desireable means of validating an analytical method. However, EPA does not consider such a study to be a requirement for approval under part 136. Other, less extensive and less costly studies are sufficient to validate a method and may be used. Further, the costs to the Agency of conducting such studies for every analytical method and modification of existing methods would be prohibitive.

Reagent water data are given in the methods because it is the only available matrix which is reproducible, i.e., constant, across laboratories. With this information the laboratory can determine if the analytical data it is generating are cosistent with the capabilities of the method. The complete final reports and project summaries, which contain the statements of precision and recovery for all other water types tested, along with a complete discussion, conclusion and recommendation section, are available from NTIS and have been forwarded to the Office of Water, which considers these data, along with other data and information, to determine regulatory levels.

*Comment:* The proposal contains a major ambiguity relating to the regulatory significance of the precision and recovery statements contained in appendices C and D to part 136. In addition, the statements of precision and recovery reported in those appendices are unduly optimistic as a result of problems with the protocol for EPA's validation studies and with the statistical model that was used to reduce the raw data from those studies into statements of precision and recovery. The problems with these appendices are further complicated by EPA's failure to reflect recognized matrix effects in the performance data reported in each appendix.

*Response:* EPA sees no ambiguity relating to the regulatory significance of the precision and recovery (P&R) statements. The publication of the P&R statements itself has no regulatory significance. The use of this data in other forums is not a subject of this rulemaking. EPA does carry the obligation to use reasonable scientific procedures to asertain P&R statements. EPA does not consider these P&R statistics to be unduly optimistic because the laboratory ranking and outlier testing procedures applied to the results of these method validation studies were, fully, in accordance with the requirements of ASTM's Committee D19 on D19 on Water consensus Standard D2777-77, which was in effect at the time that the interlaboratory studies were conducted. Protocols for determining P&R are subject to debate and do change to reflect evolving consensus in the scientific community. EPA believes ASTM Standard D2777-77 to be a reasonable procedure. Therefore, EPA stands behind the statistics published in the reports of these studies. EPA does not, necessarily, intend to print P&R data or sample matrix data for all methods in 40 CFR part 136. However, data for the matrices studied but not printed in 40 CFR part 136 are available in the referenced reports.

EPA realizes that the application of some other statistical models may change the P&R statistics of these interlaboratory studies and make the statistics reported for these studies appear optimistic. EPA realizes, too, that the development of consensus standards, such as D2777, is a dynamic process which reflects the general opinion of a particular organization at the time. While some standards organizations have revised their procedures for laboratory ranking and outlier testing, ASTM Committee D19 has not. EPA has chosen to use ASTM Standard D2777 because, EPA believes that it is a reasonable procedure, is suited for application to methods for the analysis of water and, in the case of the data below, was the consensus protocol in use at the time the studies were conducted.

*Comment:* The proposed rule is unclear about the legal significance of the added statements of precision and recovery. In the VEPCO vs. EPA settlement, it was agreed that part 136 methods would include statements of precision and recovery for each of these three procedures for those parameters that are listed in part 136 and that have been the subject of the interlaboratory validation studies EPA has performed. The agreement does not require EPA to propose or take any final action on any statement on limit of detection for these three methods because the interlaboratory validation studies performed by EPA do not contain the data necessary to calculate valid limit of detection statements.

In the proposal EPA states,

> Publication of the precision and bias data is simply a publication of record support for EPA's choice of analytical methods. The data should indicate to the methods user what kind of performance to expect. However, EPA is not setting performance criteria by publication of these data and EPA does not intend that this information be used in enforcement actions to avoid liability based on Discharge Monitoring Reports. Variability factors are already routinely taken into account when effluent limitation guidelines

are established or when permit limitations are set.

*Response:* EPA does not find the statements from the settlement agreement contradictory to the statements in part 136 of the proposal. EPA agreed to "* * * publish proposed amendments to those (ICP, AA flame, AA flameless) part 136 methods which shall include statements of precision and recovery for each of these three procedures for those parameters that are listed in part 136 and that have been the subject of the interlaboratory validation studies * * *". The EPA has complied by publishing the precision and recovery statements generated for reagent water from these studies. Part 136 is not intended to define the Agency's enforcement strategy or protocol.

*Comment:* One commenter believes that the statements of limits of detection, contained in the 1979 MCAWW (Methods for the Chemical Analysis of Water and Wastes), for the methods in question are technically unsupported. Lack of data from the method validation studies is due in part to the selection of the test concentrations that were based on the methods' limit of detection. Until technically supportable limits of detection are determined for these methods, the issue must be left for resolution on a case-by-case basis, should such need arise.

*Response:* The interlaboratory study is used to generally validate a method. Comparison to the MDL procedure is not valid. The determination of MDL is a process of replicate analyses by an analyst on the analyst's equipment and matrix. EPA agrees that MDL will vary from laboratory to laboratory, instrument to instrument and water to water.

In the 1979 "Methods for the Chemical Analysis of Water and Wastes" (MCAWW) the definition of "detection limit" as applied to atomic absorption methodology is given in paragraph 3.3, Metals—4, in the text preceding the 200 series metals methods. The definition recognizes that there is a difference between instrumental and method detection limits with the latter being affected by the sample matrix and preparation procedure utilized. The listed detection limits in the 1979 MCAWW are considered "minimum working limits" which should serve as the guide to the analyst not to expect reliable determination below the listed concentration. The concept of "minimum working limit" implies a concentration determined under the most favorable conditions. The most favorable condition suggests the absence of contamination, no sample matrix effect and the instrument being in good working order.

The listed detection limits are therefore more related to the instrument and laboratory limitations than those that may occur because of the nature of a particular sample. When the sample matrix affects the analysis, the detection limit should be determined using the Method Detection Limit Procedure (MDL). (See appendix B to part 136—Definition and Procedure for the Determination of Method Detection Limit—Revision 1.11.) The determined MDL value takes into account the effect of the sample matrix and the entire analytical procedure.

The MDL procedure is useful in the determination of detection limits on a case-by-case basis and EPA agrees with the commenter that MDLs should be determined on a case-by-case basis.

In Method 200.7 the listed detection limits are stated to be "estimated instrument detection limits". For inductively coupled plasma—atomic emission spectrometry (ICP–AES), the use of the MDL procedure in the analyses of spiked reagent water samples is most useful in the determination of ICP–AES "minimum working limits" on a case-by-case basis.

*Comment:* The practice of using highly concentrated solutions of metals, contained and shipped in glass ampuls which participants then diluted before analyzing, introduced serious contamination errors for at least three metals, by using concentrated ampuls instead of split samples, EPA fails to assess the performance errors introduced by the steps of collecting, preserving, shipping and storing a sample prior to its analysis.

*Response:* It is stated in the final report and project summary for Method Study 27 that Al, B and Si values in the study have a high bias due to contamination of these elements from the glass ampuls. The fact that the study was conducted using glass ampuls does not reflect a method problem. The method specifies procedures for preparation of sample containers and other glassware so as to eliminate or minimize such contamination. Further, most laboratories routinely use plastic bottles for collection of samples to eliminate the contamination noted in these studies.

The evaluation of the errors associated with sample collecting, preservation, shipping and storage is not an objective of the interlaboratory method validation studies. The objective of the studies is to develop statements of precision and recovery on known concentrations of analytes in a sample analyzed through the method.

*Comment:* In some cases, test concentrations were selected at or below the actual limit of detection of the method. In the case of the FLAA method, this led to the rejection of all the low pairs of data and the scientifically-improper calculation of precision expressions based on linear regressions on two values.

*Response:* The test concentrations were selected at 1.5 to 5 times the MDL. In the case of Ba in the FLAA method all data points for the low concentration sample pair were rejected or not reported. This problem, which only occurred in the case of Ba by the FLAA method, is addressed in the final report and states that regressions for Ba were based on data from the remaining four samples studied (two mid and two high concentrations). The range of the concentrations tested is given in part 136 and is the range of the four samples used. A linear relationship is routinely fitted to the results of these studies, and a line may be properly fitted through precision or recovery estimates based on multiple measurements at two or more concentrations.

*Comment:* Participants in the method studies were asked to collect their own samples of surface waters that they then used to dilute the standard concentrated sample. Since surface waters can vary widely in their composition, including the background concentrations of the metals to be tested, this practice produced statements of precision and recovery for surface water that are neither representative of surface water in general nor any surface water in particular.

*Response:* EPA believes that the averaging of the effect of various surface waters on spike recoveries is a reasonable basis for estimating the general effect of surface water, since the surface waters studied were from a wide cross section of the U.S. All results were corrected by the analyst for the unique background of each surface water, to produce spike recoveries. The alternative of using only one water does not represent an average surface water either; it represents only one specific water.

*Comment:* Regression for precision should have been derived from the "true" concentration which is the sum of the measured concentration plus the background concentration.

*Response:* Reagent water regressions are the primary study results and these would not change following the commenter's recommendation. The regressions for any water with a

measurable background would change. The use of a variety of surface waters is primarily for comparison with reagent water results to highlight potential matrix effects. The way the comparison has been conducted, the presence of a significant background level will be interpreted as a matrix effect relative to the spike recovery. If the recommendation of the commenter is followed, comparison for matrix effects on precision would have to be done in some way, using regressions representing a different concentration interval for each matrix with a non-zero background or results for different matrices could not be compared at all. If the objective was simply to develop the best possible relationships between the observed means and precision for each matrix studied, the recommendation would be reasonable. However, considering the limited general applicability of relationships for the few matrices studied, development of such relationships was not a primary study objective. Instead, the relationships for reagent water analyses are the basis for statements of method recovery and precision that can be applied by the general method user to check their own performance.

*Comment:* The laboratory ranking system in IMVS was improperly applied to the raw data from the ICP and GFAA method studies. The result was the rejection of more data than was appropriate and in turn, unduly optimistic statements of precision and recovery.

*Response:* EPA believes that the ranking system employed in the IMVS was properly applied to the data from the ICP and GFAA method studies because EPA applied the ASTM consensus Standard D2777-77, exactly as prescribed. This laboratory ranking test, as it is presented in the ASTM Standard D2777-77 has been part of the accepted consensus standard for evaluating multilaboratory study data of a number of standards organizations.

*Comment:* All analysis data that were reported as either zero, less than some value or a negative number were eliminated from the raw data set before those data were transformed into statements of precision and recovery. This rejection of meaningful information again resulted in optimistic statements of precision and recovery.

*Response:* EPA tries to design all study samples to be well above MDL, so responses such as zeros, less than some value or negatives should not occur often under normal circumstances. Such responses indicate non-detection and so are not quantitative and no realistic quantitative interpretation can be made from them. Therefore, they were not included in the calculations. Such responses were not common throughout the study and their exclusion did not have a major effect upon the study precision and recovery statements. If such responses are very frequent, EPA considers disregarding all data for the affected study samples. Often such results reflect procedural errors and thus, the data do not represent the capability of the method.

*Comment:* The analysis of data from the GFAA method study that survived the laboratory ranking and outlier rejection process often contained less than the normally recommended amount of data for further analysis (based on guidelines in ASTM D 2777-85). Despite this fact, EPA developed statements of precision and recovery from these data.

*Response:* The GFAA study was conducted and analyzed before D 2777-85 was approved by ASTM. Under ASTM Standard D 2777-77, in force during these studies, data were required from at least three laboratories. As noted above, our studies met the ASTM procedures in effect at the time they were done. These ASTM procedures are valid for evaluation of these data.

*Comment:* The portion of the IMVS program (as described in the EPA Report on Method Study 31) that analyzes data for the presence of matrix effects appears to determine effectively when a matrix affects a method's recovery. However, the model is insensitive to matrix effects on method precision and to matrix effects that affect both precision and recovery. As a result, it appears that EPA has probably failed to acknowledge a number of significant matrix effects.

*Response:* As fully described and discussed in EPA Method Study 31, a significant matrix effect is suspected if the statistical test gives $F<0.05$ AND zero is not in the confidence interval. After review of the data, some (5 of 15) cases where statistical significance was indicated were judged to have been caused by some thing not of practical significance. For example, there is an obvious matrix effect due to sample background that is high relative to the spike levels studied. However, such an effect, caused by a high background, is only relevant to the spike recoveries from that specific sample, and so has no real effect on the ability of the method to perform in general application. In addition, the sensitivity of the test may show a relatively high percentage difference between two sample types but, in absolute units, the difference may be small. The remaining 10 cases involved 6 analytes and important matrix effects were indicated and discussed in the final report for Study 31. Any model will be somewhat insensitive to matrix effects on precision because inherent variability provides the scale for judging all differences between matrix precision or recovery. The simulation results submitted by one commenter show the IMVS approach is insensitive under these data conditions, but does not show the sensitivity of alternate models under the simulation conditions, or more importantly, under real data conditions. EPA believes that alternate models would also seem insensitive under similar test conditions. The IMVS model is not totally insensitive to differences in precision because high background was noted to cause significant IMVS matrix effects for several data sets, and high background will primarily increase imprecision.

*Comment:* EPA has been inconsistent in recognizing the limitations of its method studies. In the GFAA method, EPA notes in the method study report and again the preface to the proposed changes that the lowest concentration levels studies for Be, Cd, Mn and Ag were erratic and may have been too low for the participating laboratories to detect. EPA fails to modify the applicable concentration range in appendix D to part 136 to reflect this study conclusion. By contrast, in the ICP method study EPA notes that the lowest concentration level selected for Ba proved too low for a number of participating laboratories to detect. Here, EPA makes appropriate revisions.

*Response:* There is always uncertainty whether results indicating detection problems for low concentration samples were caused by laboratory deficiencies or because the sample concentrations were designed too low. When EPA judges the samples to be too low as it did for Ba in the ICP study, affected results are disregarded.

*Comment:* Table 24 of the GFAA method presents a list of metals for which matrix effects of a given significance are noted. Inexplicably, the table exclude five metals that exhibited effects of the same required threshold of significance.

*Response:* As explained in the statistical description section of the report, for a matrix to be statistically significant, the matrix must fail both the F-test [(F>Fobs) less than 0.05] and the 95% confidence interval (zero not included in the interval). For those five elements stated as being "inexplicably excluded", none of those elements failed the 95% confidence interval.

*Comment:* In the preamble, EPA indicates that matrix effects of some

significance were detected for a group of metals analyzed using ICP and GFAA methods. Yet, nowhere in the proposed regulations are these effects noted. There is a very real possibility that these effects will be improperly ignored in future standard setting, permitting and enforcement proceedings.

*Response:* EPA has reviewed the data and noted that most "matrix effects" observed in the studies involved precision increases affecting recovery of the spike levels when compared to the precision of spike recoveries from background-free reagent water. Such "effects" have no relevency to routine use of the methods.

*Comment:* The commenter believes that EPRI's interlaboratory validation studies (submitted as a part of public comment) avoid many of the scientific problems present in EPA's interlaboratory studies.

*Response:* EPA does not agree that scientific problems exist with the reported EPA interlaboratory studies. Further, EPA has reviewed the EPRI report and compared their reagent water results to the comparable results from the EPA studies and found that, in the case of the 10 metals common to both studies, the results were not significantly different. This was so even though the concentration ranges of the EPRI studies were, generally, lower than those of the EPA studies. EPA believes that these EPRI results support the general efficacy of these methods for use in part 136.

The EPRI studies were unique, in that, they used matrix samples only from the utility industry. Since no directly comparable matrices, other than reagent water, were included in the EPA studies no further comparisons between the EPRI and EPA studies were made.

*Comment:* We concur with the EPA proposal to clarify the term "equivalent" by substituting the term "approved test procedures".

*Response:* All those commenting on this issue expressed the same view. There were no dissenting comments.

*Comment:* We concur with the EPA proposal to allow the option to use HC1 for preservation of samples for oil and grease analysis.

*Response:* There were no dissenting opinions expressed on this issue.

*Comment:* While we agree with the option to use HC1 to preserve samples for oil and grease analysis, we recommend eliminating the need for cooling the samples to 4°C since cooling does not offer any increased protection against microbial degradation of the oil and grease. We have provided data to EPA to support this recommendation.

*Response:* EPA feels that while the data presented, from two separate petroleum company sources, tend to support the elimination of the cooling requirement for their samples, there may be other loss factors such as evaporation and chemical reaction that would be retarded by cooling to 4 ° C. Therefore, EPA believes that this issue should be considered on a case-by-case basis and is not now proposing to eliminate the cooling requirement.

## VIII. Regulatory Analysis

(a) Under Executive Order 12291, the Agency must judge whether a regulation is "major" and therefore subject to the requirement of a "Regulatory Impact Analysis." This regulation is not major for the following reasons:

(1) It only prescribes analytical methods and sample handling requirements that ensure a uniform measure of pollutants across all wastewater discharges within minimum acceptance criteria. It does not require that analyses actually be made. The purpose is to ensure that the quality of the environmental monitoring data meet certain minimum standards.

(2) The impact of this regulation will be far less than $100 million.

(a) The regulation affects unit monitoring costs for other regulatory programs, e.g., effluent guidelines regulations and the implementation regulations of the National Pollutant Discharge Elimination System (NPDES), and the pretreatment programs. However, it does not impose those costs. In fact, the monitoring costs for other programs are considered in each other rulemaking. This is appropriate because total (rather than unit) monitoring costs are determined by the monitoring provisions of these other regulations.

(b) This regulation has deliberately provided approval of several analytical options for most compounds. This often allows selection of the analytical option that is best suited to the particular monitoring requirements and that will minimize their monitoring costs.

(c) Further, through the equivalency provisions, these test procedure guidelines have been designated to encourage the development of innovative analytical methods by the private sector and to encourage the competitive viability of the instrument manufacturing industry. The equivalency provision also allows individual dischargers to gain approval of analytical systems of their own design that may further reduce their total monitoring costs.

(3) The impact of compliance with these regulations will not be concentrated on any particular sectors of American industry.

(b) Under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, EPA is required to determine whether a regulation will significantly affect a substantial number of small entities so as to require a regulatory analysis. The regulation requires no new reports beyond those already required. Therefore, in accordance with 5 U.S.C. 605(b), I hereby certify that this rule will not have a significant adverse economic impact on a substantial number of small facilities.

(c) This rule is associated with no increase in reporting or record-keeping burden to respondents as covered under the provisions of the Paperwork Reduction Act, 35 U.S.C. *et seq.* The rule is concerned with the Agency's publication of information on the equivalency of methods, and contains no information collection provisions.

## List of Subjects in 40 CFR Part 136

Water pollution control.

Dated: August 7, 1990.

**William K. Reilly,**

*Administrator.*

In consideration of the preceding, EPA hereby amends 40 CFR part 136 as follows:

1. The authority citation of 40 CFR part 136 continues to read as follows:

Authority: Secs. 301, 304(h), 307, and 501(a) Pub. L. 95–217, Stat. 1566, *et seq.* (33 U.S.C. 1251, *et seq.*) (The Federal Water Pollution Control Act Amendments of 1972 as amended by the Clean Water Act of 1977 and the Water Quality Act of 1987), 33 U.S.C. 1314 and 1361; 86 Stat. 816, Pub. L. 92–500; 91 Stat. 1567, Pub. L. 92–217; Stat. 7, Pub. L. 100–4 (The "Act").

2. In § 136.3, Table IB is amended by revising the column headings and by adding a new footnote 34 to read as follows:

**§ 136.3 Identification of test procedures.**

* * * * *

TABLE IB.—LIST OF APPROVED INORGANIC TEST PROCEDURES

| Parameter, units and method | EPA 1979 [34] | Reference (method No. or page) | | | |
|---|---|---|---|---|---|
| | | Std. methods 16th ED | ASTM | USGS [1] | Other |
| * * * * * | | * | | * | |

[34] Precision and recovery statements for the atomic absorption direct aspiration and graphite furnace methods, and for the spectrophotometric SDDC method for arsenic are provided in appendix D of this part titled, "Precision and Recovery Statements for Methods for Measuring Metals".

3. In § 136.3, Table II, is amended by revising entry 41, "Oil and grease", to read as follows:

**§ 136.3 Identification of test procedures.**

* * * * *

TABLE II.—REQUIRED CONTAINERS, PRESERVATION TECHNIQUES, AND HOLDING TIMES

| Parameter No./Name | Container [1] | Preservation [2,3] | Maximum holding time [6] |
|---|---|---|---|
| * * * * * | | | |
| Table IB—Inorganic Tests: | | | |
| * * * * * | | | |
| 41. Oil and Grease | G | Cool to 4°C, HCl or $H_2SO_4$ to pH < 2 | 28 days. |
| * * * * * | | | |

4. Section 136.5 by revising paragraph (e) to read as follows:

**§ 136.5 Approval of alternate test procedures.**

* * * * *

(e) *Approval for nationwide use.* (1) Within 60 days of the receipt by the Director of the Environmental Monitoring Systems Laboratory—Cincinnati (EMSL-CI) of an application for an alternate test procedure for nationwide use, the Director of EMSL-CI shall notify the applicant in writing whether the application is complete. If the application is incomplete, the applicant shall be informed of the information necessary to make the application complete.

(2) Within 90 days of the receipt of a complete package: EMSL-CI shall perform any analysis necessary to determine whether the alternate method satisfies the applicable requirements of this part; and the Director of EMSL-CI shall recommend to the Administrator that he/she approve or reject the application and shall also notify the applicant of such recommendation.

(3) As expeditiously as practicable, an alternate method determined by the Administrator to satisfy the applicable requirements of this part shall be proposed by EPA for incorporation in subsection 136.3 of 40 CFR part 136. EPA shall make available for review all the factual bases for its proposal, including any performance data submitted by the applicant and any available EPA analysis of those data.

(4) Following a period of public comment, EPA shall, as expeditiously as practicable, publish in the **Federal Register** a final decision to approve or reject the alternate method.

5. Appendix C to part 136 is amended by revising § 13.1, adding reference 14.10, and revising Table 4 to read as follows:

**Appendix C to Part 136—Inductively Coupled Plasma-Atomic Emission Spectrometric Method for Trace Element Analysis of Water and Wastes, Method 200.7**

* * * * *

*13. Precision and recovery*

13.1 An interlaboratory study of metal analyses by this method was conducted by the Quality Assurance Branch (QAB) of the Environmental Monitoring Systems Laboratory—Cincinnati (EMSL-CI). Synthetic concentrates containing various levels of the twenty-five elements listed in Table 4 were added to reagent water, surface water, drinking water and three effluents. These samples were digested by both the total digestion procedure (9.3) and the total recoverable procedure (9.4). Results for both digestions for the twenty-five elements in reagent water are given in Table 4; results for the other matrices can be found in Reference 14.10.

*14. References*

* * * * *

14.10 Maxfield R. and Minak B., "EPA Method Study 27, Method 200.7 Trace Metals by ICP," National Technical Information Service, Order No. PB 85-248-656, November 1983.

* * * * *

TABLE 4.—ICP PRECISION AND RECOVERY DATA

| Analyte | Concentration µg/L | Total digestion (9.3) µg/L | Recoverable digestion (9.4) µg/L |
|---|---|---|---|
| Aluminum | 69–4792 | X=0.9273(C)+3.6<br>S=0.0559(X)+18.6<br>SR=0.0507(X)+3.5 | X=0.9380(C)+22.1<br>S=0.0873(X)+31.7<br>SR=0.0481(X)+18.8 |
| Antimony | 77–1406 | X=0.7940(C)−17.0<br>S=0.1556(X)−0.6 | X=0.8908(C)+0.9<br>S=0.0982(X)+8.3 |

TABLE 4.—ICP PRECISION AND RECOVERY DATA—Continued

| Analyte | Concentration µg/L | Total digestion (9.3) µg/L | Recoverable digestion (9.4) µg/L |
|---|---|---|---|
| Arsenic | 69-1887 | SR=0.1081(X)+3.9<br>X=1.0437(C)−12.2<br>S=0.1239(X)+2.4 | SR=0.0682(X)+2.5<br>X=1.0175(C)+3.9<br>S=0.1288(X)+6.1 |
| Barium | 9-377 | SR=0.0874(X)+6.4<br>X=0.7683(C)+0.47<br>S=0.1819(X)+2.78 | SR=0.0643(X)+10.3<br>X=0.8380(C)+1.68<br>S=0.2540(X)+0.30 |
| Beryllium | 3-1906 | SR=0.1285(X)+2.55<br>X=0.9629(C)+0.05<br>S=0.0136(X)+0.95 | SR=0.0826(X)+3.54<br>X=1.0177(C)−0.55<br>S=0.0359(X)+0.90 |
| Boron | 19-5189 | SR=0.0203(X)−0.07<br>X=0.8807(C)+9.0<br>S=0.1150(X)+14.1 | SR=0.0445(X)−0.10<br>X=0.9676(C)+18.7<br>S=0.1320(X)+16.0 |
| Cadmium | 9-1943 | SR=0.0742(X)+23.2<br>X=0.9874(C)−0.18<br>S=0.557(X)+2.02 | SR=0.0743(X)+21.1<br>X=1.0137(C)−0.65<br>S=0.0585(X)+1.15 |
| Calcium | 17-47170 | SR=0.0300(X)+0.94<br>X=0.9182(C)−2.6<br>S=0.1228(X)+10.1 | SR=0.332(X)+0.90<br>X=0.9658(C)+0.8<br>S=0.0917(X)+6.9 |
| Chromium | 13-1406 | SR=0.0189(X)+3.7<br>X=0.9544(C)+3.1<br>S=0.0499(X)+4.4 | SR=0.0327(X)+10.1<br>X=1.0049(C)−1.2<br>S=0.0698(X)+2.8 |
| Cobalt | 17-2340 | SR=0.0009(X)+7.9<br>X=0.9209(C)−4.5<br>S=0.0436(X)+3.8 | SR=0.0571(X)+1.0<br>X=0.9278(C)−1.5<br>S=0.0498(X)+2.6 |
| Copper | 8-1887 | SR=0.0428(X)+0.5<br>X=0.9297(C)−0.30<br>S=0.0442(X)+2.85 | SR=0.0407(X)+0.4<br>X=0.9647(C)−3.64<br>S=0.0497(X)+2.28 |
| Iron | 13-9359 | SR=0.0128(X)+2.53<br>X=0.8829(C)+7.0<br>S=0.0683(X)+11.5 | SR=0.0406(X)+0.96<br>X=0.9830(C)+5.7<br>S=0.1024(X)+13.0 |
| Lead | 42-4717 | SR=0.0046(X)+10.0<br>X=0.9699(C)−2.2<br>S=0.0558(X)+7.0 | SR=0.0790(X)+11.5<br>X=1.0056(C)+4.1<br>S=0.0779(X)+4.6 |
| Magnesium | 34-13868 | SR=0.0353(X)+3.6<br>X=0.9881(C)−1.1<br>S=0.0607(C)+11.6 | SR=0.0448(X)+3.5<br>X=0.9879(C)+2.2<br>S=0.0564(X)+13.2 |
| Manganese | 4-1887 | SR=0.0293(X)+0.6<br>X=0.9417(C)+0.13<br>S=0.0324(X)+0.88 | SR=0.0268(X)+8.1<br>X=0.9725(C)+0.07<br>S=0.0557(X)+0.76 |
| Molybdenum | 17-1830 | SR=0.0153(X)+0.91<br>X=0.9682(C)+0.1<br>S=0.0618(X)+1.6 | SR=0.0400(X)+0.82<br>X=0.9707(C)−2.3<br>S=0.0811(X)+3.8 |
| Nickel | 17-47170 | SR=0.0371(X)+2.2<br>X=0.9508(C)+0.4<br>S=0.0604(X)+4.4 | SR=0.0529(X)+2.1<br>X=0.9869(C)+1.5<br>S=0.0526(X)+5.5 |
| Potassium | 347-14151 | SR=0.0425(X)+3.6<br>X=0.8689(C)−36.4<br>S=0.0934(X)+77.8 | SR=0.0393(X)+2.2<br>X=0.9355(C)−183.1<br>S=0.0481(X)+177.2 |
| Selenium | 69-1415 | SR=0.0099(X)+144.2<br>X=0.9363(C)−2.5<br>S=0.0855(X)+17.8 | SR=0.0329(X)+60.9<br>X=0.9737(C)−1.0<br>S=0.1523(X)+7.8 |
| Silicon | 189-9434 | SR=0.0284(X)+9.3<br>X=0.5742(C)−35.6<br>S=0.4160(X)+37.8 | SR=0.0443(X)+6.6<br>X=0.9737(C)−60.8<br>S=0.3288(X)+46.0 |
| Silver | 8-189 | SR=0.1987(X)+8.4<br>X=0.4466(C)+5.07<br>S=0.5055(X)−3.05 | SR=0.2133(X)+22.6<br>X=0.3987(C)+8.25<br>S=0.5478(X)−3.93 |
| Sodium | 35-47170 | SR=0.2086(X)−1.74<br>X=0.9581(C)+39.6<br>S=0.2097(X)+33.0 | SR=0.1836(X)−0.27<br>X=1.0526(C)+26.7<br>S=0.1473(X)+27.4 |
| Thallium | 79-1434 | SR=0.0260(X)+105.8<br>X=0.9020(C)−7.3<br>S=0.1004(X)+18.3 | SR=0.0884(X)+50.5<br>X=0.9238(C)+5.5<br>S=0.2156(X)+5.7 |
| Vanadium | 13-4698 | SR=0.0364(X)+11.5<br>X=0.9615(C)−2.0<br>S=0.0618(X)+1.7 | SR=0.0106(X)+48.0<br>X=0.9551(C)+0.4<br>S=0.0927(X)+1.6 |
| Zinc | 7-7076 | SR=0.0220(X)+0.7<br>X=0.9356(C)−0.30<br>S=0.0914(X)+3.75 | SR=0.0472(X)+0.5<br>X=0.9500(C)+1.82<br>S=0.0597(X)+6.50 |
| | | SR=0.0130(X)+10.7 | SR=0.0153(X)+7.78 |

X=Mean Recovery, µg/L
C=True Value for the Concentration, µg/L
S=Multi-laboratory Standard Deviation, µg/L
SR=Single-analyst Standard Deviation, µg/L

6. In part 136, by adding appendix D to read as follows:

## Appendix D to Part 136—Precision and Recovery Statements for Methods for Measuring Metals

Twenty-eight selected methods from "Methods for Chemical Analysis of Water and Wastes," EPA-600/4-79-020 (1979) have been subjected to interlaboratory method validation studies. The following precision and recovery statements are presented in this appendix and incorporated into part 136:

*Method 202.1*

For Aluminum, Method 202.1 (Atomic Absorption, Direct Aspiration) replace the Precision and Accuracy Section with the following:

*Precision and Accuracy*

An interlaboratory study on metal analyses by this method was conducted by the Quality Assurance Branch (QAB) of the Environmental Monitoring Systems Laboratory—Cincinnati (EMSL-CI). Synthetic concentrates containing various levels of this element were added to reagent water and a natural water or effluent of the analyst's choice. The digestion procedure was not specified. Results for the reagent water are given below. Results for other water types and study details are found in "USEPA Method Study 7, Analyses for Trace Methods in water by Atomic Absorption Spectroscopy (Direction Aspiration) and Colorimetry", National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, Order No. PB86-208709/AS, Winter, J.A. and Britton, P.W., June, 1986.

For a concentration range of 500-1200 μg/L

$X=0.979(C)+6.16$
$S=0.066(X)+125$
$SR=0.086(X)+40.5$

Where:

C=True Value for the Concentration, μg/L
X=Mean Recovery, μg/L
S=Multi-laboratory Standard Deviation, μg/L
SR=Single-analyst Standard Deviation, μg/L

*Method 206.4*

For Arsenic, Method 206.4 (Spectrophotometric-SDDC) add the following to the Precision and Accuracy Section:

*Precision and Accuracy*

An interlaboratory study on metal analyses by this method was conducted by the Quality Assurance Branch (QAB) of the Environmental Monitoring Systems Laboratory—Cincinnati (EMSL-CI). Synthetic concentrates containing various levels of this element were added to reagent water and a natural water or effluent of the analyst's choice. Results for the reagent water are given below. Results for other water types and study details are found in "USEPA Method Study 7, Analyses for Trace Methods in Water by Atomic Absorption Spectroscopy (Direct Aspiration) and Colorimetry", National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, Order No. PB86-208709/AS, Winter, J.A. and Britton, P.W., June, 1986.

For a concentration range of 20-292 μg/L

$X=0.850(C)-0.25$
$S=0.198(X)+5.93$
$SR=0.122(X)+3.10$

Where:

C=True Value for the Concentration, μg/L
X=Mean Recovery, μg/L
S=Multi-laboratory Standard Deviation, μg/L
SR=Single-analyst Standard Deviation, μg/L

*Method 213.1*

For Cadmium, Method 213.1 (Atomic Absorption, Direct Aspiration) replace the Precision and Accuracy Section with the following:

*Precision and Accuracy*

An interlaboratory study on metal analyses by this method was conducted by the Quality Assurance Branch (QAB) of the Environmental Monitoring Systems Laboratory—Cincinnati (EMSL-CI). Synthetic concentrates containing various levels of this element were added to reagent water and a natural water or effluent of the analyst's choice. The digestion procedure was not specified. Results for the reagent water are given below. Results for other water types and study details are found in "USEPA Method Study 7, Analyses for Trace Methods in Water by Atomic Absorption Spectroscopy (Direct Aspiration) and Colorimetry", National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, Order No. PB86-208709/AS, Winter, J.A. and Britton, P.W., June, 1986.

For a concentration range of 14-78 μg/L

$X=0.919(C)+2.97$
$S=0.108(X)+5.08$
$SR=0.120(X)+0.89$

Where:

C=True Value for the Concentration, μg/L
X=Mean Recovery, μg/L
S=Multi-laboratory Standard Deviation, μg/L
SR=Single-analyst Standard Deviation, μg/L

*Method 218.1*

For Chromium, Method 218.1 (Atomic Absorption, Direct Aspiration) replace the Precision and Accuracy Section with the following:

*Precision and Accuracy*

An interlaboratory study on metal analyses by this method was conducted by the Quality Assurance Branch (QAB) of the Environmental Monitoring Systems Laboratory—Cincinnati (EMSL-CI). Synthetic concentrates containing various levels of this element were added to reagent water and a natural water or effluent of the analyst's choice. The digestion procedure was not specified. Results for the reagent water are given below. Results for other water types and study details are found in "USEPA Method Study 7, Analyses for Trace Methods in Water by Atomic Absorption Spectroscopy (Direct Aspiration) and Colorimetry", National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, Order No. PB86-208709/AS, Winter, J.A. and Britton, P.W., June 1986.

For a concentration range of 74-407 μg/L

$X=0.970(C)+3.94$
$S=0.131(X)+4.26$
$SR=0.052(X)+3.01$

Where:

C=True Value for the Concentration, μg/L
X=Mean Recovery, μg/L
S=Multi-laboratory Standard Deviation, μg/L
SR=Single-analyst Standard Deviation, μg/L

*Method 220.1*

For Copper, Method 220.1 (Atomic Absorption, Direct Aspiration) replace the Precision and Accuracy Section with the following:

*Precision and Accuracy*

An interlaboratory study on metal analyses by this method was conducted by the Quality Assurance Branch (QAB) of the Environmental Monitoring Systems Laboratory—Cincinnati (EMSL-CI). Synthetic concentrates containing various levels of this element were added to reagent water and a natural water or effluent of the analyst's choice. The digestion procedure was not specified. Results for the reagent water are given below. Results for other water types and study details are found in "USEPA Method Study 7, Analyses for Trace Methods in Water by Atomic Absorption Spectroscopy (Direct Aspiration) and Colorimetry", National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, Order No. PB86-208709/AS, Winter, J.A. and Britton, P.W., June, 1986.

For concentration range 60-332 μg/L

$X=0.963(C)+3.49$
$S=0.047(X)+12.3$
$SR=0.042(X)+4.60$

Where:

C=True Value for the Concentration, μg/L
X=Mean Recovery, μg/L
S=Multi-laboratory Standard Deviation, μg/L
SR=Single-analyst Standard Deviation, μg/L

*Method 236.1*

For Iron, Method 236.1 (Atomic Absorption, Direct Aspiration) replace the Precision and Accuracy Section with the following:

*Precision and Accuracy*

An interlaboratory study on metal analyses by this method was conducted by the Quality Assurance Branch (QAB) of the Environmental Monitoring Systems Laboratory—Cincinnati (EMSL-CI). Synthetic concentrates containing various levels of this element were added to reagent water and a natural water or effluent of the analyst's choice. The digestion procedure was not specified. Results for the reagent water are given below. Results for other water types and study details are found in "USEPA Method Study 7, Analyses for Trade Methods in Water by Atomic Absorption Spectroscopy (Direct Aspiration) and Colorimetry", National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, Order No. PB86-208709/AS, Winter, J.A. and Britton, P.W., June, 1986.

For concentration range 350-840 μg/L

$X=0.999(C)-2.21$
$S=0.022(X)+41.0$

SR=0.019(X)+21.2.

Where:

C=True Value for the Concentration, μg/L.
X=Mean Recovery, μg/L
S=Multi-Laboratory Standard Deviation, μg/L
SR=Single-analyst Standard Deviation, μg/L

*Method 239.1*

For Lead, Method 239.1 (Atomic Absorption, Direct Aspiration) replace Precision and Accuracy Section with the following:

*Precision and Accuracy*

An interlaboratory study on metal analyses by this method was conducted by the Quality Assurance Branch (QAB) of the Environmental Monitoring Systems Laboratory—Cincinnati (EMSL–CI). Synthetic concentrates containing various levels of this element were added to reagent water and a natural water or effluent of the analyst's choice. The digestion procedure was not specified. Results for the reagent water are given below. Results for other water types and study details are found in "USEPA Method Study 7 Analyses for Trace Methods in Water by Atomic Absorption Spectroscopy (Direct Aspiration) and Colorimetry", National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, Order No. PB86–208709/AS, Winter, J.A. and Britton, P.W., June, 1986.

For concentration range of 84–367 μg/L

X=0.961(C)+13.8
S=0.028(C)+33.9
SR=0.011(X)+16.1

Where:

C=True Value for the Concentration, μg/L.
X=Mean Recovery, μg/L
S=Multi-laboratory Standard Deviation, μg/L
SR=Single-analyst Standard Deviation, μg/L

*Method 243.1*

For Manganese, Method 243.1 (Atomic Absorption, Direct Aspiration) replace Precision and Accuracy Section with the following:

*Precision and Accuracy*

An interlaboratory study on metal analyses by this method was conducted by the Quality Assurance Branch (QAB) of the Environmental Monitoring Systems Laboratory—Cincinnati (EMSL–CI). Synthetic concentrates containing various levels of this element were added to reagent water and a natural water or effluent of the analyst's choice. The digestion procedure was not specified. Results for the reagent water are given below. Results for other water types and study details are found in "USEPA Method Study 7, Analyses for Trace Methods in Water by Atomic Absorption Spectroscopy (Direct Aspiration) and Colorimetry", National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, Order No. PB86–208709/AS, Winter, J.A. and Britton, P.W., June, 1986.

For concentration range 84–469 μg/L

X=0.987(C)−1.27
S=0.042(X)+8.95
SR=0.023(X)+4.90

Where:

C=True Value for the Concentration, μg/L
X=Mean Recovery, μg/L
S=Multi-laboratory Standard Deviation, μg/L
SR=Single-analyst Standard Deviation, μg/L

*Method 289.1*

For Zinc, Method 289.1 (Atomic Absorption, Direct Aspiration) replace the Precision and Accuracy Section with the following:

*Precision and Accuracy*

An interlaboratory study on metal analyses by this method was conducted by the Quality Assurance Branch (QAB) of the Environmental Monitoring Systems Laboratory-Cincinnati (EMSL–CI). Synthetic concentrates containing various levels of this element were added to reagent water and a natural water or effluent of the analyst's choice. The digestion procedure was not specified. Results for the reagent water are given below. Results for other water types and study details are found in "USEPA Method Study 7, Analyses for Trace Methods in Water by Atomic Absorption Spectroscopy (Direct Aspiration) and Colorimetry", National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, Order No. PB86–208709/AS, Winter, J. A. and Britton, P. W., June, 1986.

For concentration range 56–310 μg/L.

X=0.999(C)+0.033
S=0.078(X)+10.8
SR=0.049(X)+1.10

Where:

C=True Value for the Concentration, μg/L.
X=Mean Recovery, μg/L
S=Multi-laboratory Standard Deviation, μg/L
SR=Single-analyst Standard Deviation, μg/L

*Method 202.2*

For Aluminum, Method 202.2 (Atomic Absorption, Furnace Technique) replace the Precision and Accuracy Section statement with the following:

*Precision and Accuracy*

An interlaboratory study on metal analyses by this method was conducted by the Quality Assurance Branch (QAB) of the Environmental Monitoring Systems Laboratory-Cincinnati (EMSL–CI). Synthetic concentrates containing various levels of this element were added to reagent water, surface water, drinking water and three effluents. These samples were digested by the total digestion procedure, 4.1.3 in this manual. Results for the reagent water are given below. Results for other water types and study details are found in "EPA Method Study 31, Trace Metals by Atomic Absorption (Furnace Techniques)," National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, Order No. PB 86–121 704/AS, by Copeland, F.R. and Maney, J.P., January 1986.

For a concentration range of 0.46–125 μg/L

X=1.1579(C)−0.121
S=0.4286(X)−0.124
SR=0.2908(X)−0.082

Where:

C=True Value for the Concentration, μg/L.
X=Mean Recovery, μg/L.
S=Multi-laboratory Standard Deviation, μg/L
SR=Single-analyst Standard Deviation, μg/L

*Method 204.2*

For Antimony, Method 204.2 (Atomic Absorption, Furnace Technique) replace the Precision and Accuracy Section statement with the following:

*Precision and Accuracy*

An interlaboratory study on metal analyses by this method was conducted by the Quality Assurance Branch (QAB) of the Environmental Monitoring Systems Laboratory-Cincinnati (EMSL–CI). Synthetic concentrates containing various levels of this element were added to reagent water, surface water, drinking water and three effluents. These samples were digested by the total digestion procedure, 4.1.3 in this manual as modified by this method. Results for the reagent water are given below. Results for other water types and study details are found in "EPA Method Study 31, Trace Metals by Atomic Absorption (Furnace Techniques)," National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, Order No. PB 86–121 704/AS, by Copeland, F.R. and Maney, J.P., January 1986.

For a concentration range of 10.50–240 μg/L

X=0.7219(C)−0.986
S=0.3732(X)+0.854
SR=0.1874(X)−0.461

Where:

C=True Value for the Concentration, μg/L
X=Mean Recovery, μg/L
S=Multi-laboratory Standard Deviation, μg/L
SR=Single-analyst Standard Deviation, μg/L

*Method 206.2*

For Arsenic, Method 206.2 (Atomic Absorption, Furnace Technique) add the following to the existing Precision and Accuracy statement:

*Precision and Accuracy*

An interlaboratory study on metal analyses by this method was conducted by the Quality Assurance Branch (QAB) of the Environmental Monitoring Systems Laboratory-Cincinnati (EMSL–CI). Synthetic concentrates containing various levels of this element were added to reagent water, surface water, drinking water and three effluents. Results for the reagent water are given below. Results for other water types and study details are found in "EPA Method Study 31, Trace Metals by Atomic Absorption (Furnace Techniques)," National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, Order No. PB 86–121 704/AS, by Copeland, F.R. and Maney, J.P., January 1986.

For a concentration range of 9.78–237 μg/L

X=0.9652(C)+2.112
S=0.1411(X)+1.873
SR=0.0464(X)+2.109

Where:

C=True Value for the Concentration, μg/L

X = Mean Recovery, μg/L
S = Multi-laboratory Standard Deviation, μg/L
SR = Single-analyst Standard Deviation, μg/L

*Method 208.2*

For Barium, Method 208.2 (Atomic Absorption, Furnace Technique) add the following to the existing Precision and Accuracy information:

*Precision and Accuracy*

An interlaboratory study on metal analyses by this method was conducted by the Quality Assurance Branch (QAB) of the Environmental Monitoring Systems Laboratory—Cincinnati (EMSL-CI). Synthetic concentrates containing various levels of this element were added to reagent water, surface water, drinking water and three effluents. These samples were digested by the total digestion procedure, 4.1.3 in this manual. Results for the reagent water are given below. Results for other water types and study details are found in "EPA Method Study 31, Trace Metals by Atomic Absorption (Furnace Techniques)," National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, Order No. PB 86-121 704/AS, by Copeland, F.R. and Maney, J.P., January 1986.

For a concentration range of 56.50-437 μg/L
X = 0.8268(C) + 59.459
S = 0.2466(X) + 6.436
SR = 0.1393(X) − 0.428

Where:
C = True Value for the Concentration, μg/L
X = Mean Recovery, μg/L
S = Multi-laboratory Standard Deviation, μg/L
SR = Single-analyst Standard Deviation, μg/L

*Method 210.2*

For Beryllium, Method 210.2 (Atomic Absorption, Furnace Technique) replace the existing Precision and Accuracy statement with the following:

*Precision and Accuracy*

An interlaboratory study on metal analyses by this method was conducted by the Quality Assurance Branch (QAB) of the Environmental Monitoring Systems Laboratory—Cincinnati (EMSL-CI). Synthetic concentrates containing various levels of this element were added to reagent water, surface water, drinking water and three effluents. These samples were digested by the total digestion procedure, 4.1.3 in this manual. Results for the reagent water are given below. Results for other water types and study details are found in "EPA Method Study 31, Trace Metals by Atomic Absorption (Furnace Techniques)," National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, Order No. PB 86-121 704/AS, by Copeland, F.R. and Maney, J.P., January 1986.

For a concentration range of 0.45-11.4 μg/L
X = 1.0682(C) − 0.158
S = 0.2167(X) + 0.090
SR = 0.1096(X) + 0.061

Where:
C = True Value for the Concentration, μg/L
X = Mean Recovery, μg/L
S = Multi-laboratory Standard Deviation, μg/L
SR = Single-analyst Standard Deviation, μg/L

*Method 213.2*

For Cadmium, Method 213.2 (Atomic Absorption, Furnace Technique) add the following to the existing Precision and Accuracy information:

*Precision and Accuracy*

An interlaboratory study on metal analyses by this method was conducted by the Quality Assurance Branch (QAB) of the Environmental Monitoring System Laboratory—Cincinnati (EMSL-CI). Synthetic concentrates containing various levels of this element were added to reagent water, surface water, drinking water and three effluents. These samples were digested by the total digestion procedure, 4.1.3 in this manual. Results for the reagent water are given below. Results for other water types and study details are found in "EPA Method Study 31, Trace Metals by Atomic Absorption (Furnace Techniques)," National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, Order No. PB 86-121 704/AS, by Copeland, F.R. and Maney, J.P., January 1986.

For a concentration range of 0.43-12.5 μg/L
X = 0.9826(C) + 0.171
S = 0.2300(X) + 0.045
SR = 0.1031(X) + 0.116

Where:
C = True Value for the Concentration, μg/L
X = Mean Recovery, μg/L
S = Multi-laboratory Standard Deviation, μg/L
SR = Single-analyst Standard Devision, μg/L

*Method 218.2*

For Chromium, Method 218.2 (Atomic Absorption, Furnace Technique) add the following to the existing Precision and Accuracy Section:

*Precision and Accuracy*

An interlaboratory study on metal analyses by this method was conducted by the Quality Assurance Branch (QAB) of the Environmental Monitoring Systems Laboratory—Cincinnati (EMSL-CI). Synthetic concentrates containing various levels of this element were added to reagent water, surface water, drinking water and three effluents. These samples were digested by the total digestion procedure, 4.1.3 in this manual. Results for the reagent water are given below. Results for other water types and study details are found in "EPA Method Study 31, Trace Metals by Atomic Absorption (Furnace Techniques)," National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, Order No. PB 86-121 704/AS, by Copeland, F.R. and Maney, J.P., January 1986.

For a concentration range of 9.87-246 μg/L
X = 0.9120(C) + 0.234
S = 0.1684(X) + 0.852
SR = 0.1469(X) + 0.315

Where:
C = True Value for the Concentration, μg/L
X = Mean Recovery, μg/L
S = Multi-laboratory Standard Deviation, μg/L
SR = Single-analyst Standard Devision, μg/L

*Method 219.2*

For Cobalt, Method 219.2 (Atomic Absorption, Furnace Technique), replace the Precision and Accuracy Section statement with the following:

*Precision and Accuracy*

An interlaboratory study on metal analyses by this method was conducted by the Quality Assurance Branch (QAB) of the Environmental Monitoring Systems Laboratory—Cincinnati (EMSL-CI). Synthetic concentrates containing various levels of this element were added to reagent water, surface water, drinking water and three effluents. These samples were digested by the total digestion procedure, 4.1.3 in this manual. Results for the reagent water are given below. Results for other water types and study details are found in "EPA Method Study 31, Trace Metals by Atomic Absorption (Furnace Techniques)," National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161 Order No. PB 86-121 704/AS, by Copeland, F.R. and Maney, J.P., January 1986.

For a concentration range of 21.10 − 461 μg/L
X = 0.8875(C) + 0.859
S = 0.2481(X) − 2.541
SR = 0.0969(X) + 0.134

Where:
C = True Value for the Concentration, μg/L
X = Mean Recovery, μg/L
S = Multi-laboratory Standard Deviation, μg/L
SR = Single-analyst Standard Deviation, μg/L

*Method 220.2*

For Copper, Method 220.2 (Atomic Absorption, Furnace Technique) replace the Precision and Accuracy Section statement with the following:

*Precision and Accuracy*

An interlaboratory study on metal analyses by this method was conducted by the Quality Assurance Branch (QAB) of the Environmental Monitoring Systems Laboratory—Cincinnati (EMSL-CI). Synthetic concentrates containing various levels of this element were added to reagent water, surface water, drinking water and three effluents. These samples were digested by the total digestion procedure, 4.1.3 in this manual. Results for the reagent water are given below. Results for other water types and study details are found in "EPA Method Study 31, Trace Metals by Atomic Absorption (Furnace Techniques)," National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161 Order No. PB 86-121 704/AS, by Copeland, F.R. and Maney, J.P., January 1986.

For a concentration range of 0.30 − 245 μg/L
X = 0.9253(C) + 0.010
S = 0.2735(X) − 0.058
SR = 0.2197(X) − 0.050

Where:

C=True Value for the Concentration, μg/L
X=Mean Recovery, μg/L
S=Multi-laboratory Standard Deviation, μg/L
SR=Single-analyst Standard Deviation, μg/L

*Method 236.2*

For Iron, Method 236.2 (Atomic Absorption, Furnace Technique) replace the Precision and Accuracy Section statement with the following:

*Precision and Accuracy*

An interlaboratory study on metal analyses by this method was conducted by the Quality Assurance Branch (QAB) of the Environmental Monitoring Systems Laboratory—Cincinnati (EMSL-CI). Synthetic concentrates containing various levels of this element were added to reagent water, surface water, drinking water and three effluents. These samples were digested by the total digestion procedure, 4.1.3 in this manual. Results for the reagent water are given below. Results for other water types and study details are found in "EPA Method Study 31, Trace Metals by Atomic Absorption (Furnace Techniques)," National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161 Order No. PB 86-121 704/AS, by Copeland, F.R. and Maney, J.P., January 1986.

For a concentration range of 0.37–455 μg/L
X=1.4494(C)−0.229
S=0.3611(X)−0.079
SR=0.3715(X)−0.161

Where:
C=True Value for the Concentration, μg/L
X=Mean Recovery, μg/L
S=Multi-laboratory Standard Deviation, μg/L
SR=Single-analyst Standard Deviation, μg/L

*Method 239.2*

For Lead, Method 239.2 (Atomic Absorption, Furnace Technique) add the following to the existing Precisions and Accuracy Section:

*Precision and Accuracy*

An interlaboratory study on metal analyses by this method was conducted by the Quality Assurance Branch (QAB) of the Environmental Monitoring Systems Laboratory—Cincinnati (EMSL-CI). Synthetic concentrates containing various levels of this element were added to reagent water, surface water, drinking water and three effluents. These samples were digested by the total digestion procedure, 4.1.3 in this manual. Results for the reagent water are given below. Results for other water types and study details are found in "EPA Method Study 31, Trace Metals by Atomic Absorption (Furnace Techniques)," National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161 Order No. PB 86-121 704/AS, by Copeland, F.R. and Maney, J.P., January 1986.

For a concentration range of 10.40–254 μg/L
X=0.9430(C)−0.504
S=0.2224(X)+0.507
SR=0.1931(X)−0.378

Where:
C=True Value for the Concentration, μg/L
X=Mean Recovery, μg/L
S=Multi-laboratory Standard Deviation, μg/L
SR=Single-analyst Standard Deviation, μg/L

*Method 243.2*

For Manganese, Method 243.2 (Atomic Absorption, Furnace Technique) replace the Precision and Accuracy Section statement with the following:

*Precision and Accuracy*

An interlaboratory study on metal analyses by this method was conducted by the Quality Assurance Branch (QAB) of the Environmental Monitoring Systems Laboratory—Cincinnati (EMSL—CI). Synthetic concentrates containing various levels of this element were added to reagent water, surface water, drinking water and three effluents. These samples were digested by the total digestion procedure, 4.1.3 in this manual. Results for the reagent water are given below. Results for other water types and study details are found in "EPA Method Study 31, Trace Metals by Atomic Absorption (Furnace Techniques)," National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. Order No. PB 86-121 704/AS, by Copeland, F.R. and Maney, J.P., January 1986.

For a concentration range of 0.42–666 μg/L
X=1.0480(C)+1.404
S=0.2001(X)+1.042
SR=0.1333(X)+0.660

Where:
C=True Value for the Concentration, μg/L
X=Mean Recovery, μg/L
S=Multi-laboratory Standard Deviation, μg/L
SR=Single-analyst Standard Deviation, μg/L

*Method 249.2*

For Nickel, Method 249.2 (Atomic Absorption, Furnace Technique) replace the Precision and Accuracy Section statement with the following:

*Precision and Accuracy*

An interlaboratory study on metal analyses by this method was conducted by the Quality Assurance Branch (QAB) of the Environmental Monitoring Systems Laboratory—Cincinnati (EMSL—CI). Synthetic concentrates containing various levels of this element were added to reagent water, surface water, drinking water and three effluents. These samples were digested by the total digestion procedure, 4.1.3 in this manual. Results for the reagent water are given below. Results for other water types and study details are found in "EPA Method Study 31, Trace Metals by Atomic Absorption (Furnace Techniques)," National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. Order No. PB 86-121 704/AS, by Copeland, F.R. and Maney, J.P., January 1986.

For a concentration range of 26.20–482 μg/L
X=0.8812(C)+2.426
S=0.2475(X)+1.896
SR=0.1935(X)+1.315

Where:
C=True Value for the Concentration, μg/L
X=Mean Recovery, μg/L
S=Multi-laboratory Standard Deviation, μg/L
SR=Single-analyst Standard Deviation, μg/L

*Method 270.2*

For Selenium, Method 270.2 (Atomic Absorption, Furnace Technique) add the following to the existing Precision and Accuracy Section:

*Precision and Accuracy*

An interlaboratory study on metal analyses by this method was conducted by the Quality Assurance Branch (QAB) of the Environmental Monitoring Systems Laboratory—Cincinnati (EMSL—CI). Synthetic concentrates containing various levels of this element were added to reagent water, surface water, drinking water and three effluents. Results for the reagent water are given below. Results for other water types and study details are found in "EPA Method Study 31, Trace Metals by Atomic Absorption (Furnace Techniques)," National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. Order No. PB 86-121 704/AS, by Copeland, F.R. and Maney, J.P., January 1986.

For a concentration range of 10.00–246 μg/L
X=0.9564(C)+0.476
S=0.1584(X)+0.878
SR=0.0772(X)+0.547

Where:
C=True Value for the Concentration, μg/L
X=Mean Recovery, μg/L
S=Multi-laboratory Standard Deviation, μg/L
SR=Single-analyst Standard Deviation, μg/L

*Method 272.2*

For Silver, Method 272.2 (Atomic Absorption, Furnace Technique) add the following to the existing Precision and Accuracy Section:

*Precision and Accuracy*

An interlaboratory study on metal analyses by this method was conducted by the Quality Assurance Branch (QAB) of the Environmental Monitoring Systems Laboratory—Cincinnati (EMSL—CI). Synthetic concentrates containing various levels of this element were added to reagent water, surface water, drinking water and three effluents. These samples were digested by the total digestion procedure, 4.1.3 in this manual. Results for the reagent water are given below. Results for other water types and study details are found in "EPA Method Study 31, Trace Metals by Atomic Absorption (Furnace Techniques)," National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. Order No. PB 86-121 704/AS, by Copeland, F.R. and Maney, J.P., January 1986.

For a concentration range of 0.45–56.5 μg/L
X=0.9470(C)+0.181
S=0.1805(X)+0.153
SR=0.1417(X)+0.039

Where:
C=True Value for the Concentration, μg/L

X=Mean Recovery, μg/L
S=Multi-laboratory Standard Deviation, μg/L
SR=Single-analyst Standard Deviation, μg/L

*Method 279.2*

For Thallium, Method 279.2 (Atomic Absorption, Furnace Technique) replace the Precision and Accuracy Section statement with the following:

*Precision and Accuracy*

An interlaboratory study on metal analyses by this method was conducted by the Quality Assurance Branch (QAB) of the Environmental Monitoring Systems Laboratory–Cincinnati (EMSL–CI). Synthetic concentrates containing various levels of this element were added to reagent water, surface water, drinking water and three effluents. These samples were digested by the total digestion procedure, 4.1.3 in this manual. Results for the reagent water are given below. Results for other water types and study details are found in "EPA Method Study 31, Trace Metals by Atomic Absorption (Furnace Techniques)," National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161 Order No. PB 86–121 704/AS, by Copeland, F.R. and Maney, J.P., January 1986.

For a concentration range of 10.00–252 μg/L.

$X=0.8781(C)-0.715$
$S=0.1112(X)+0.669$
$SR=0.1005(X)+0.241$

Where:

C=True Value for the Concentration, μg/L
X=Mean Recovery, μg/L
S=Multi-laboratory Standard Deviation, μg/L
SR=Single-analyst Standard Deviation, μg/L

*Method 286.2*

For Vanadium, Method 286.2 (Atomic Absorption, Furnace Technique) replace the Precision and Accuracy Section statement with the following:

*Precision and Accuracy*

An interlaboratory study on metal analyses by this method was conducted by the Quality Assurance Branch (QAB) of the Environmental Monitoring Systems Laboratory–Cincinnati (EMSL–CI). Synthetic concentrates containing various levels of this element were added to reagent water, surface water, drinking water and three effluents. These samples were digested by the total digestion procedure, 4.1.3 in this manual. Results for the reagent water are given below. Results for other water types and study details are found in "EPA Method Study 31, Trace Metals by Atomic Absorption (Furnace Techniques)," National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161 Order No. PB 86–121 704/AS, by Copeland, F.R. and Maney, J.P., January 1986.

For a concentration range of 1.36–982 μg/L.

$X=0.8486(C)+0.252$
$S=0.3323(X)-0.428$
$SR=0.1195(X)-0.121$

Where:

C=True Value for the Concentration, μg/L
X=Mean Recovery, μg/L
S=Multi-laboratory Standard Deviation, μg/L
SR=Single-analyst Standard Deviation, μg/L

*Method 289.2*

For Zinc, Method 289.2 (Atomic Absorption, Furnace Technique) replace the Precision and Accuracy Section statement with the following:

*Precision and Accuracy*

An interlaboratory study on metal analyses by this method was conducted by the Quality Assurance Branch (QAB) of the Environmental Monitoring Systems Laboratory–Cincinnati (EMSL–CI). Synthetic concentrates containing various levels of this element were added to reagent water, surface water, drinking water and three effluents. These samples were digested by the total digestion procedure, 4.1.3 in this manual. Results for the reagent water are given below. Results for other water types and study details are found in "EPA Method Study 31, Trace Metals by Atomic Absorption (Furnace Techniques)," National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161 Order No. PB 86–121 704/AS, by Copeland, F.R., and Maney, J.P., January 1986.

For a concentration range of 0.51–189 μg/L.

$X=1.6710(C)+1.485$
$S=0.6740(X)-0.342$
$SR=0.3895(X)-0.384$

Where:

C=True Value for the Concentration, μg/L
X=Mean Recovery, μg/L
S=Multi-laboratory Standard Deviation, μg/L
SR=Single-analyst Standard Deviation, μg/L

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Wednesday
August 15, 1990

# Part VI

# Department of Agriculture

## Animal and Plant Health Inspection Service

9 CFR Part 3

## Animal Welfare; Standards; Proposed Rule

**DEPARTMENT OF AGRICULTURE**

**Animal and Plant Health Inspection Service**

**9 CFR Part 3**

**[Docket No. 90-040]**

**RIN 0579-AA20**

## Animal Welfare; Standards

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to amend the regulations for the humane handling, care, treatment, and transportation of dogs and cats, and nonhuman primates, by completely revising and rewriting those regulations. This proposed rule is a revision of a proposed rule previously published in the **Federal Register** on March 15, 1989. The revised proposed rule reflects our consideration of the approximately 10,700 comments received in response to that proposal, our experience in administering and enforcing the regulations, and our ongoing consultation with the U.S. Department of Health and Human Services and other interested agencies. The effect of this action would be to update the regulations, to make them more consistent with other Federal regulations concerning the handling, care, treatment, and transportation of these animals, and to comply with the amendments to the Animal Welfare Act (7 U.S.C. 2131, *et seq.*), enacted December 23, 1985. Rewriting the regulations is also intended to make them easier to understand, thereby increasing compliance and making them more effective.

**DATES:** Consideration will be given only to comments received on or before October 1, 1990.

**ADDRESSES:** To help ensure that your written comments are considered, send an original and two copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, P.O. Box 1839, Hyattsville, MD 20788. Please state that your comments refer to Docket No. 90-040. Comments received may be inspected at the APHIS Public Reading Room, Room 1141, U.S. Department of Agriculture, 14th Street and Independence Avenue SW., Washington, DC, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** Dr. R.L. Crawford, Director, Animal Care Staff, Regulatory Enforcement and Animal Care, APHIS, USDA, Room 269, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8790.

**SUPPLEMENTARY INFORMATION:**

### General Background and Statutory Information

The Animal Welfare regulations (the regulations) are contained in title 9 of the Code of Federal Regulations, chapter 1, subchapter A, parts 1, 2, and 3. Part 1 provides definitions of the terms used in parts 2 and 3. Part 2 sets forth the administrative and institutional responsibilities of regulated persons under the Animal Welfare Act (7 U.S.C. 2131 *et seq.*) (the Act). Part 3 provides specifications for the human handling, care, treatment, and transportation, by regulated entities, of animals covered by the Act. Subpart A contains the regulations concerning dogs and cats; subpart B contains the regulations concerning guinea pigs and hamsters; subpart C contains the regulations concerning rabbits; subpart D contains the regulations concerning nonhuman primates; subpart E contains the regulations concerning marine mammals; and subpart F contains the regulations concerning other warmblooded animals. The regulations are issued and enforced by the Animal and Plant Health Inspection Service (APHIS), of the United States Department of Agriculture (USDA), under authority of the Act, as amended.

On December 23, 1985, extensive amendments to the Act were enacted (see Pub. L. 99-198, "The Food Security Act of 1985."). Among other things, the Act directs the Secretary of Agriculture to promulgate standards to govern the humane handling, care, treatment, and transportation of animals by dealers, research facilities, and exhibitors, for exercise of dogs, and for a physical environment adequate to promote the psychological well-being of nonhuman primates. In order to comply with the amendments to the Act, APHIS has published revisions of parts 1 and 2 and has published a proposal to amend part 3, as discussed below.

Proposals to amend parts 1 and 2 of the regulations were published in the **Federal Register** on March 31, 1987 (52 FR 10292-10298, Docket No. 84-027, and 52 FR 10298-10322, Docket No. 84-010, respectively). We solicited comments for a 60-day period, ending June 1, 1987. The comment period was twice extended, ending on August 27, 1987. We received 7,856 comments, many of which stated that it was difficult to comment upon the proposals to amend parts 1 and 2 independently of our proposal to amend the standards in part 3. In response to comments, we published revised proposals on parts 1 and 2, along with a proposed rule to amend subparts A, B, C, and D of part 3, on March 15, 1989 (54 FR 10822-10835, Docket No. 88-013; 54 FR 10835-10897, Docket No. 88-014; and 54 FR 10897-10954, Docket No. 87-004, respectively).

We solicited comments on the interrelationship of parts 1 and 2 with part 3 for a 60-day period, ending May 15, 1989. Approximately 5,600 comments, received or postmarked by that date, were considered in preparing final rules for parts 1 and 2. (Any that also pertained to part 3 were considered as responding to the proposal to amend part 3.) These final rules to amend parts 1 and 2 were published in the **Federal Register** on August 31, 1989 (54 FR 36112-36123, Docket No. 89-130, and 54 FR 36123-36163, Docket No. 89-131, respectively).

Most of our proposal with regard to part 3 dealt with revisions to the standards, based on our experience enforcing the regulations. We also proposed certain significant additions to the regulations, based on our mandate under the 1985 amendments to the Act. For example, we made significant additions to the regulations, regarding the exercise of dogs and regarding a physical environment necessary to promote the psychological well-being of nonhuman primates. We solicited comments on the proposal to amend part 3 for a 120-day period, ending July 13, 1989. A total of 10,686 comments were received in time to be considered. Included among the recommendations we received in response to the proposed rule were those submitted by the U.S. Department of Health and Human Services (HHS), with whom we have continued our ongoing consultation. Of the comments received, 623 were from dealers and exhibitors, 2,890 were from the research community, and 7,173 were from members of the general public. We included comments received from humane societies and groups representing the public in the areas of animal welfare and animal rights with comments received from the general public. Of the total number of comments received, the overwhelming majority were in response to our proposed changes regarding subparts A and D.

Upon review of the comments regarding subparts B and C, we determined that in general our proposed revisions of those subparts were appropriate, with some minor modifications. On July 16, 1990, we published a document making final the proposed amendments to part 3 that pertain to subparts B and C (55 FR 28879-28884, Docket No. 89-175). However, we believe that because of the

nature of the comments received in response to our proposed amendments regarding subparts A and D, and on our ongoing consultations with other Federal agencies, it is appropriate for us to make certain major modifications to our March 15, 1989, proposal, and to issue a revised proposal regarding those subparts. These changes, discussed below, have been incorporated in this revised proposed rule.

Comments raising objections or suggesting changes to the proposed rule are discussed below in this supplementary information. Due to the length of this document and the scope of the issues addressed, subheadings are provided in the supplementary information to guide the reader through the material. Section numbers are used in the subheadings wherever possible to further assist the reader. We have made a number of changes to our March 15, 1989, proposal in this revised proposed rule. Those changes are explained in the supplementary information below. We continue to believe that the remaining provisions are necessary to ensure the health and well-being of the animals in question, and we have included these remaining provisions in this revised proposal without change, except to make certain nonsubstantive wording changes for clarification.

In our discussion of the comments received, we refer both to the proposed rule published March 15, 1989, and to this revised proposed rule. In order to assist the reader in distinguishing between these two documents, we use the terms "proposed," "proposal," or "original proposal" when referring to the March 15, 1989, proposed rule. We use the terms "revised proposal" or "revision" when referring to this revised rule. When referring to the existing regulations in 9 CFR part 3, we refer to the "current regulations."

For purposes of discussion, when we refer in this document to our proposed changes to part 3, we will be referring only to the proposed changes to subparts A and D. Additionally, various provisions in this revised proposal indicate that specified functions will be carried out by the Administrator. It should be noted that the regulations define "Administrator" as meaning the Administrator of APHIS, or any other APHIS official whom the Administrator delegates to act in his stead.

**Consultation and Cooperation With Other Federal Departments, Agencies, or Instrumentalities**

The amendments to the Act direct the Secretary of Agriculture to

> consult and cooperate with other Federal departments, agencies, or instrumentalities concerned with the welfare of animals used for research, experimentation or exhibition, or administration of statutes regulating the transportation in commerce or handling in connection therewith of any animals when establishing standards pursuant to section 2143 of this title and in carrying out the purposes of this chapter.
>
> (Section 1757, 99 Stat. 1649, Pub. L. 99–198, amending 7 U.S.C. 2145(a)

Accordingly, we consulted with the United States Department of the Interior, U.S. Fish and Wildlife Service (USFWS), which regulates transportation of wild birds and animals into the United States.

The amendments also specifically direct the Secretary of Agriculture to "consult with the Secretary of Health and Human Service prior to issuance of regulations." (See section 1757, 99 Stat. 1649, Pub. L. 99–198, amending 7 U.S.C. 2145(a).) The Department of Health and Human Services, through the Public Health Service (PHS), National Institutes of Health (NIH), currently issues guidelines on the care and use of animals studied in biomedical research. The animals include dogs and cats, guinea pigs and hamsters, rabbits, and nonhuman primates. These NIH guidelines are contained in a document entitled "Guide for the Care and Use of Laboratory Animals" (NIH Guide or Guidelines).[1] The NIH Guide is widely accepted by scientific institutions as a primary reference on animal care and use. Compliance with the NIH Guide is not mandatory except to obtain NIH funding, but most research laboratories in the United States do comply. While the Animal Welfare Act and regulations address a broader range of activities and facilities than the NIH Guide, Congress' intent, as expressed in the legislative history, in requiring consultation with HHS is to ensure that, whenever possible, the regulations and the NIH Guidelines are consistent:

> The Conferees expect the Secretary of Agriculture to have full responsibility for enforcement of the Animal Welfare Act. However, the Conferees also recognize that a portion of the nation's research facilities fall under regulation from more than one agency. While the legislative mandate of each agency is different, and they may regulate different aspects of animal care, it is hoped that the agencies continue an open communications to avoid conflicting regulations wherever possible or practice. [sic]

(*See* Conference Report, "Congressional Record" of December 17, 1985, at page H12422.)

We have attempted in these proposed regulations to satisfy that intent, while at the same time being mindful of our responsibility to provide for the humane care, handling, treatment and transportation of various animals. To achieve this goal, we consulted extensively with NIH representatives concerning standards for the humane care, handling, treatment, and transportation of dogs and cats, guinea pigs and hamsters, rabbits, and nonhuman primates. We reviewed our existing regulations in conjunction with the NIH Guidelines. In addition, we considered comments raised by member agencies of the Interagency Research Animal Committee, which is comprised of Federal agencies that conduct research using animals. We also consulted with experts and professional organizations and sought their recommendations on appropriate standards to accomplish our goal. After considering all this information, we proposed extensive revisions to the regulations in 9 CFR part 3, subparts A, B, C, and D. In many cases, we proposed regulations substantially identical to current NIH Guidelines. That is because, in these cases, we believe the NIH Guidelines are appropriate and adequate to provide for the humane care, handling, treatment, and transportation of the animals in question. In other cases, we proposed to adopt different standards. In this revised proposal, we will discuss proposed changes on a subpart-by-subpart basis.

**General Comments**

Many commenters expressed general support for the proposed provisions, and for more stringent regulations in general. Several commenters stated that they favored more specific, rather than general standards. A very large number of commenters supported the proposed provisions that would establish requirements for increased space for animals. A very large number of commenters also supported exercise for laboratory animals.

Conversely, a very large number of commenters opposed more stringent regulations, and part 3 in general. Many commenters recommended that no changes be made to the current regulations. A very large number of

[1] The NIH Office for Protection from Research Risks publishes another document called the "Public Health Service Policy on Humane Care and Use of Laboratory Animals," under authority of the Health Research Extension Act of 1985 (Pub. L. 99–158, November 20, 1985). However, the guidelines in that document concern mainly the use of tranquilizers and other drugs on animals being used in research, appropriate pre- and post-surgical veterinary care for animals being used in research, and the organization and operation of animal care committees. These subjects are not covered in this proposal, as we therefore do not discuss these NIH requirements in this document.

commenters stated that the proposed standards for part 3 exceed statutory authority and are inconsistent with Congressional intent. A large number of commenters asserted that the proposed regulations go beyond ensuring the humane care and use of animals. In this revised proposal, as in the original proposal, APHIS's satutory authority for the proposed regulatory amendments is set forth in the supplementary information, under the headings "General Background and Statutory Information" and "Statutory Authority for This Proposed Rule." Based on the statutory authority set forth, we believe that ample authority exists for this revised proposal.

A large number of commenters opposed exercise requirements for animals on the grounds that they would be so expensive they would be prohibitive. While we are acutely aware that the economic impact of regulatory changes is of great importance to regulated entities, we do not consider dismissal of exercise requirements a viable option. We believe that such requirements are necessary, both for the well-being of the animals and to meet our statutory obligations. However, we believe that certain of the modifications we have included in this revised proposal, discussed below in this supplementary information, will meet the needs of the animals in question, and will in certain cases reduce the potential economic impact on regulated entities.

Many commenters urged a close correlation between the proposed regulations and NIH Guidelines. A small number of commenters stated that APHIS failed to coordinate with the Secretary of HHS in issuing the proposed rule. A large number of commenters stated that the proposed standards would radically alter established PHS and NIH policies. Several commenters stated that the NIH Guide is not a substitute for animal welfare standards and should be used only to assist institutions in animal care, not to replace compliance with animal welfare regulations. Many more commenters asserted that the legislative history of the 1985 amendments to the Act indicates that APHIS's authority is limited to promulgating regulations that are consistent with the guidelines contained in the PHS Policy. As noted in this supplementary information in Footnote 1, the PHS Policy is not directly relevant to the standards in part 3. However, we believe it is appropriate to address in this preamble the relationship between the regulations and NIH Guidelines. Section 15(a) of the Act requires that the Secretary of Agriculture consult and cooperate with other Federal agencies in establishing standards, and consult with the Secretary of HHS before issuing regulations (7 U.S.C. 2145(a)). We have continued the consultation described in the supplementary information accompanying the original proposal (54 FR 10898), in an effort to coordinate our requirements wherever it is consistent with our statutory mandate to do so. We believe that this revised proposal resolves all of the issues raised by HHS in response to our original proposal.

A small number of commenters urged that we consider allowing research facilities to comply with either the Animal Welfare regulations, the PHS Policy, Food and Drug Administration regulations, or the American Association for the Accreditation of Laboratory Animal Care (AAALAC) accreditation standards. This is not a viable option. All those who are subject to the Act must comply with its provisions. That also includes compliance with regulations and standards that we are required to promulgate. Those who are regulated are not provided with the option to choose the regulations that would apply to them, and we do not have the authority to offer such a choice.

A large number of commenters stated that it is not scientifically valid to adopt as Federal regulations all of the elements currently proposed to be adopted from the NIH Guidelines. In some cases, the proposed standards that were based on NIH Guidelines have been modified in this revised proposal. These changes are discussed throughout this supplementary information. In the remaining cases, specifically minimum space requirements for cats and nonhuman primates, we have found from our experience enforcing the regulations that the standards we have proposed are necessary minimum standards for ensuring the well-being of the animals in question.

A very large number of commenters stated that the proposed regulations are not supported by scientific documentation, that they are arbitrary and capricious, and that they provide no evidence either that the existing standards are inadequate or that the proposed standards will be of benefit to the animals' welfare. Many commenters recommended that the proposal be rewritten to reflect available scientific information and current professional consensus. A smaller number of commenters expressed the opinion that APHIS does not have the technical competence to promulgate the proposed standards. Under the Act, we are required, among other things, to establish standards to provide for the exercise of dogs and psychological well-being of nonhuman primates. Predictably, these two areas generated the most controversy over how existing scientific data should be interpreted in establishing regulations. In our proposal, we set forth provisions designed to meet our statutory mandate, as well as setting forth other proposed changes to the regulations, based on over 20 years of enforcing the regulations, and on additional evidence available to us. We then invited comments and analysis of those provisions. We have carefully reviewed all of the information and recommendations we received in response to our proposal. Included in this information, in many cases, was persuasive evidence that certain modifications to our original proposal were warranted. We have accordingly made such modifications in this revised proposal, as discussed below. We believe that this revised proposal incorporates the most compelling scientific data available to us. We are now providing the public the opportunity to review and comment on the provisions we are proposing. We will consider all comments received, and will make whatever changes are warranted in developing a final rule.

A small number of commenters recommended that separate standards be established for research, dealer, and exhibitor facilities. A small number of commenters recommended further that separate standards be established for different types of facilities within those three categories. While provisions do exist in the regulations to ensure that the standards in part 3 do not interfere with approved research, in general we do not believe that separate standards for different types of facilities would be appropriate. The Act requires that we establish minimum standards for the humane care and well-being of animals. The fact that the current and proposed standards are minimum inherently makes them applicable to each type of facility.

A large number of commenters stated in general that the scientific community is highly motivated to maintain the best possible laboratory animal care, because it is essential for human reasons and to ensure productivity and accuracy. We agree that humane treatment of animals used in research promotes both the well-being of the animals and the research value of the activities conducted. The standards set forth in part 3 of the regulations are minimum standards necessary for the

well-being of animals housed, held, or maintained at any of the various categories of regulated entities. We encourage and applaud treatment of animals according to standards in excess of the minimum. However, as discussed above, we do not consider it appropriate or warranted to establish a separate set of standards for each type of regulated entity.

Many commenters asserted that the proposed standards consisted of rigid engineering standards, rather than performance standards, and that such rigid standards are contrary to the directives of Executive Order No. 12498. Many commenters stated that the proposed standards would interfere with research due to their rigidity, and would not allow the flexibility and innovations necessary for the optimal care and treatment of animals. A number of commenters recommended that each section of the proposed regulations begin with a statement of the objective to be achieved, rather than the method of achieving it, to allow for flexibility and innovation. In proposing the standards in our original proposal, we attempted to set forth performance standards where we considered them appropriate. We then invited comments on each of the standards proposed. Based on the comments received, we have made, in this revised proposal, certain significant modifications. We have made these modifications with the goal of establishing performance standards that allow for flexibility and innovation, that are enforceable, and that ensure the health and well-being of the animals in question.

We do not agree that the regulations will interfere with research. The regulations provide for departures from the standards and regulations at research facilities, if specified and justified in the proposal to conduct the activity and approved by the facility's Committee (§ 2.38(k)(1)).

A small number of commenters expressed concern that the proposed regulations would result in research being conducted overseas, due to the added burdens and expense imposed upon the research community. A number of commenters stated that, by impeding biomedical research in the United States, the proposed regulations would permit our competitors to overtake and surpass the lead we have enjoyed in biotechnology. Many commenters also stated that many of the proposed provisions would be used to eliminate animals from biomedical research. Several commenters stated that cost of compliance is not a Congressionally mandated consideration in the adoption of new regulations.

We do not believe a significant amount of research activities would be conducted in countries other that the United States as a result of the regulations set forth in the revised proposal. We also do not perceive that Congress of HHS would provide Federal funds for research conducted abroad to avoid the requirements of the Animal Welfare regulations. Similar concerns were raised in 1966 and 1967 when the Act was first enacted, and regulations were promulgated to implement it. History has shown that these concerns were not borne out. To the contrary, tremendous advances in human and animal health have been made possible through continued support for biomedical research. The 1985 amendments to the Act impose specific requirements upon research facilities. Some costs will necessarily be associated with these changes. In enacting the amendments, Congress specifically found that the use of animals is instrumental in certain research and education (7 U.S.C. 2131(b)). Congress also determined that the benefit to society of providing for the humane care and use of animals in research justifies its attendant costs. We believe that the provisions of this revised proposal would effectuate the intent of Congress without imposing an unnecessary, unreasonable, or unjustified financial burden.

A large number of commenters stated that APHIS failed to show a rational connection between the proposed rule and the Agency record. We have been charged with the responsibility of administering and enforcing the Animal Welfare Act, and implementing regulations, since the Act was enacted in 1966. The proposed amendments to the regulations reflect our many years of experience in implementing the Act and additional expert information available to us. We have determined where additional regulatory requirements are needed to ensure that the safeguards intended by the Act are provided and to promote animal welfare. Based on information submitted in response to our request for comments regarding the proposed rule, we have revised certain of the provisions in the proposal. We believe that the provisions of this revised proposal, if implemented, would assist us in enforcing the Act and in preventing circumvention of its requirements.

Many commenters stated that the proposed regulations contain too many "loopholes" that allow facilities to interpret or circumvent standards, even though this is what Congress intended to avoid with its 1985 amendments to the Act. Throughout this rulemaking process, we have remained cognizant that section 13(a)(6) of the Act prohibits the Secretary from interfering with research design or the performance of actual research. Accordingly, the regulations provide to research facilities exceptions from the standards in part 3, when such exceptions are specified and justified in the proposal to conduct the activity.

Many commenters addressed in general the minimum space requirements set forth in the proposal. Of the commenters addressing these provisions, approximately half stated that the proposed requirements were insufficient. The other half stated that the proposed provisions would increase the space requirements in excess of what is required. The proposed minimum space requirements were based on analysis of a number of factors, including out experience enforcing the regulations, expert advisory recommendations, and consultation with other Federal agencies. The proposed requirements were based on the best information available to us. Upon review of the information submitted to us in response to the proposed rule, and based on our ongoing consultation with other Federal agencies, we have revised certain provisions in the proposed rule regarding minimum space requirements. We believe the revised provisions are appropriate to ensure the health and well-being of the animals contained in the enclosures.

One commenter requested that the proposed regulations allow for the use of existing cages until they need replacing. The commenter recommended that upon replacement of cages, it be required either that the replacement cages comply specifically with the amended regulations, or that they be subject to the judgment of the attending veterinarian. We are making no changes based on these comments. In the revised proposal, we are proposing to amend the current provisions regarding space requirements for cats and for nonhuman primates, and to add height requirements for primary enclosures for dogs. Based on our experience enforcing the regulations, we believe that the well-being of these animals requires that these amendments be implemented as soon as practically possible. We therefore do not believe it would be appropriate to delay such implementation until existing primary enclosures need replacement.

A large number of commenters stated generally that the proposed regulations would unduly restrict the exercise of professional judgment by the attending veterinarian and other laboratory animal professionals. Many commenters expressed concern that the proposed regulations would have an adverse effect on animal welfare. Upon review of the comments that addressed specific provisions in the proposed regulations, we believe that it would be appropriate to modify a number of those provisions to allow more latitude to the attending veterinarian, to help ensure that the needs of individual animals are met. Each of these modifications, and the comments addressing the provisions in question, are discussed below in this supplementary information.

Several commenters expressed concern that the proposed regulations would be unenforceable. We are keenly aware from our more than 20 years of implementing the regulations of the critical importance of enforceable regulations. In developing the proposed regulations, we took great care to determine that what was being proposed would be enforceable. We therefore do not anticipate a problem with enforceability.

A large number of commenters stated generally that the proposed standards would result in an increased risk of disease and injury to both humans and animals. We believe that the proposed regulations should pose little increased risk if proper medical, health, husbandry, and safety procedures are followed. Whatever risk might exist would be further minimized by certain of the changes we are making in this revised proposal, discussed in the supplementary information below, to allow for greater professional judgment as to the health and safety needs of individual animals, breeds, and species.

A number of commenters stated in general that the proposed regulations should specifically define "veterinary care," with regard to what are accepted or common veterinary practices. We do not believe that such a definition is necessary or practical. The type of care necessary will vary from situation to situation. Further, the most appropriate veterinary care for a given situation periodically changes due to advances in medicine and science. We believe that whether veterinary care is adequate can be determined according to commonly accepted practices and, for enforcement purposes, according to expert witnesses.

The original proposal regarding amendments to part 3 was published March 15, 1989. A very large number of commenters requested that the final rule based on the proposal be published in time to allow for enforcement of the amended regulations by December 31, 1989. Amendment of the current regulations is a high priority for the Department. However, we do not believe that accelerating the rulemaking process to meet the timetable requested by the commenters would have been in the best interests of either the animals in question or the regulated entities. Following publication of the proposal, comments from the public were accepted until July 13, 1989. Approximately 10,700 comments were received. We take seriously our responsibility under the Administrative Procedure Act to review and address each comment received. Based on that review, on our ongoing review of current research data, and on our ongoing consultation with other Federal agencies, we have formulated the provisions of this revised proposal, upon which we are inviting public comment. By following this rulemaking process, we believe that the end result will be regulations that better meet the needs of the animals in question.

A small number of commenters stated that the regulations are discriminatory against research, and should apply equally to other areas, such as farms, pet stores, etc. The regulations in subparts A and D apply to those entities specified under the Act as being subject to its provisions. Certain retail stores which sell pet animals are subject to the Act and the regulations. With regard to farm animals, on April 5, 1990, we published in the **Federal Register** a notice of our intent to begin regulating certain farm animals under the Act (55 FR 12630–12631, Docket No 89–223). We are considering requests from the public to begin regulating other animals under the Act, and will take whatever action is appropriate.

A small number of commenters stated that the proposed regulations were written in a manner not understandable by the general public, thereby making comments on them difficult, if not impossible. Based on the great number of comments we received addressing both specific and general provisions set forth in the proposal, we believe that in general the public found the proposed provisions, understandable. Those areas of the proposed regulations that were most complex—i.e., exercise requirements for dogs and primary enclosure requirements for nonhuman primates—have been modified and simplified. Additionally, as noted below throughout this supplementary information, we have made certain changes to the proposal for the purposes of clarity.

A number of commenters recommended that temperatures (centrigrade degrees), linear dimensions (centimeters), and weights (pounds) be rounded to whole number, asserting that the mathematical decimal points in the regulations are not practical. In most cases in the proposed regulations, units of measurement have been carried to one decimal point to allow for correlation between the United States customary system of measurement and the metric system. We believe that this correlation is necessary for accuracy and do not believe that carrying units of measurement to one decimal point would create practical problems.

Several commenters stated that the phrasing of the proposed regulations indicated application to non-animal areas. In certain cases, such as housekeeping standards, application to non-animal areas was intentional, because the condition of a premises can have an impact on the animals housed at the facility. In certain other cases, such as temperature requirements in housing facilities, qualifying language is included to make it clear that the standards need be met only when animals are present. We believe that the remainder of the proposed provisions express their intent clearly as to which areas of a facility, conveyance, or operation would be affected.

A number of commenters expressed concern that the proposed rules would adversely affect proper sanitation, disease, and vermin control. In general, we believe that the proposed regulations would result in improved levels of sanitation, disease, and vermin control. In those several areas where proposed provisions for the well-being of the animals might require increased cleaning, sanitization, and housekeeping efforts on the part of regulated facilities, we believe that such increased efforts are warranted by the attendant benefits to the animals.

Several commenters opposed the use of private groups' input in developing the proposed regulations. We do not share the commenters' viewpoint. The Administrative Procedure Act (APA) sets standards we must follow in carrying out rulemaking. The APA in no way prohibits information gathering from outside sources in developing a proposed regulation. In fact, soliciting information from outside sources is a recommended way of ensuring that affected parties have the opportunity to provide relevant information prior to development of a proposed rule. We have found the information we received from outside sources valuable in

compiling the latest scientific data on animal welfare.

A very large number of commenters stated that chimpanzees are currently being used for painful laboratory research of dubious scientific value, and therefore suffering psychological and physical torment. While this issue is not within the scope of the standards proposed for Subparts A and D, we believe that the extraordinary volume of comments with regard to it warrants our addressing these comments.

As we stated in the August 31, 1989, final rule regarding part 2 and limited portions of part 3 (54 FR 36139, Docket No. 89-131), in amending the Animal Welfare Act, Congress explicitly acknowledged that "the use of animals is instrumental in certain research and education for advancing knowledge of cures and treatment for diseases and injuries which afflict both humans and animals; * * *" (7 U.S.C. 2131). At the same time, however, Congress determined that alternative testing methods that do not require animals are being developed that are faster, less expensive, and more accurate, and that eliminating or minimizing unnecessary duplication of experiments on animals can result in more productive use of Federal funds (7 U.S.C. 2151). In response to public concern for laboratory animal care and treatment, the 1985 amendments to the Act imposed restrictions on the use of animals, so that pain and distress will be minimized whenever possible, alternatives to painful procedures will be considered, unnecessary duplication of experiments will be avoided, withholding of pain-relieving drugs will be limited to when scientifically justified, and adequate veterinary care will be provided. The 1985 amendments also prohibit using an animal in more than one major operative experiment unless necessary for scientific purposes or under other special circumstances (7 U.S.C. 2143(a)). The final regulations we published on August 31, 1989, reflected the determination of Congress that while biomedical research using animals is necessary, regulations to ensure that such research is conducted responsibly and humanely are also necessary.

A large number of commenters stated that APHIS failed to incorporate the recommendations submitted by a national research association. We reviewed all information submitted to us carefully in developing the proposed rule. The information we received represented a wide range of data and opinions, and a variety of different perspectives. From this information, we developed a proposal that included what we considered necessary minimum standards to meet the needs of the animals regulated. Based on the information we have received since publication of the proposed rule, we have modified that proposal. We are now soliciting comments on this revised proposal, and, after review of the comments received, all make whatever changes are appropriate.

A number of commenters stated that records of dog exercise and primate environmental enrichment should be made available to the Institutional Animal Care and Use Committee at research facilities, to the Department, and to the general public. The exercise and environmental enrichment recordkeeping requirements inlcuded in the proposed rule have been replaced in this revised proposal by requirements for operating procedures to meet the required ends. These requirements are discussed in more detail in this supplementary information, under the headings "Exercise and Socialization for Dogs," and "Environment Enhancement to Promote Psychological Well-Being." While such procedures at research facilities would be subject to APHIS review, we do not believe it is necessary for proper enforcement that they also be available to the general public.

A number of commenters recommended that the proposed regulations include an index to allow easier retrieval of information. As discussed above, we have made a number of changes to the proposed rule to simplify and clarify it, and believe that the revised proposal is understandable as written. We do not believe it is necessary to include an index in the regulations. Each of the subparts is formattted according to the types of animals involved. Within each subpart, the contents of each section are indicated by a section heading. These headings are set forth in a table of contents at the beginning of each subpart. We believe that this format provides adequate reference to the contents of the regulations.

*Subpart A—Dogs and Cats*

Regulations for humane handling, care, treatment, and transportation of dogs and cats are contained in 9 CFR part 3, subpart A. These regulations include minimum standards for handling, housing, feeding, watering, sanitation, ventilation, shelter from extremes of weather and temperature, veterinary care, and transportation.

It should be noted that the proposed regulations apply only to live dogs and cats, unless indicated otherwise.

In our March 15, 1989, proposed rule, we proposed to revise and rewrite the current regulations based on our experience administering them. We also proposed to amend our regulations to add requirements for the exercise of dogs. This is specifically required by the 1985 amendments to the Act. (See section 1752, 99 Stat. 1645, Pub. L. 99-198, amending section 13 of the Act). We discuss each topic covered in our proposed regulations below.

A number of commenters who responded to our proposed rule addressed issues relevant to subpart A as a whole. Several of these commenters stated that it is inappropriate to have the same regulations for both dogs and cats, because of the extreme behavioral differences between the species. We do not agree that the difference between the two species necessitate two entirely different sets of standards. Basic minimal animal husbandry and care requirements are similar for both species. In those cases where species-specific needs do exist for dogs and cats, separate provisions appropriate to each species are included in both the current and the proposed regulations.

A small number of commenters recommended that adequate provisions for exercise and socialization be provided for cats as well as dogs. One of our specific obligations under the 1985 amendments to the Act was to establish requirements for the exercise of dogs. In response to that mandate, we included such provisions in our proposal. Based on the information we have reviewed, we do not feel it is necessary or appropriate to require exercise and socialization for cats.

One commenter recommended that we seek the advice of experts on domestic cats when promulgating new regulations. In developing the proposed regulations, we received and analyzed information from many expert sources, including veterinary professionals, the scientific community, and organizations advocating the humane treatment of animals. We also relied in great measure on more than 20 years of enforcement of the Animal Welfare regulations. The provisions we are proposing are based upon the best information available to us regarding the necessary minimum standards for the humane handling, care, and treatment of cats and dogs.

Housing Facilities and Operating Standards

Current §§ 3.1 through 3.3 provide requirements for facilities used to house dogs and cats. Current § 3.1, "Facilities, general," contains regulations pertaining to housing facilities of any kind. It is followed by current § 3.2, "Facilities, indoor," and § 3.3 "Facilities, outdoor."

In our March 15, 1989, proposed rule, we proposed to amend these sections to provide for an environment that better promotes the health, comfort, and well-being of dogs and cats. We also proposed to add sections that provide regulations specifically governing two other types of facilities used to house dogs and cats—sheltered housing facilities, and mobile or traveling housing facilities. The term "sheltered housing facility" is defined in part 1 of the regulations as "A housing facility which provides the animals with shelter; protection from the elements; and protection from temperature extremes at all times. A sheltered housing facility may consist of runs or pens totally enclosed in a barn or building, or of connecting inside/outside runs or pens with the inside pens in a totally enclosed building." The term "mobile or traveling housing facility," also included in part 1, is defined as "a transporting vehicle such as a truck, trailer, or railway car, used to house animals while traveling for exhibition or public education purposes."

Some of the regulations we proposed for housing facilities are applicable to housing facilities of any kind. As in the current regulations, we proposed to include these standards of general applicability in one section, proposed § 3.1, that would also include many of the provisions in current § 3.1. Additionally, we proposed amendments to the current regulations that are specific to particular types of housing facilities, and included those provisions in separate sections of the proposed regulations. In some cases where the current regulations would have been unchanged in substance, we made wording changes to clarify the intent of the regulations.

Housing Facilities, General

*Housing Facilities: Structure; Construction—Section 3.1(a)*

We proposed in § 3.1(a) to require that housing facilities for dogs and cats be designed and constructed so that they are structurally sound. We proposed that they must be kept in good repair, and that they must protect the animals from injury, contain the animals securely, and restrict other animals and unauthorized humans from entering. A number of commenters addressed the issue of restricting the entrance of unauthorized humans, stating that the responsibility for maintaining adequate security at a facility belongs to the facility, and not to the Department of Agriculture. While we agree that, to a certain degree, the entrance of unauthorized humans is a general security issue, we believe that the presence of such individuals could pose the risk of injury to the animals housed in the facility. Because the well-being of the animals would be at stake, we are making no changes to our proposal based on the comments.

*Housing Facilities: Condition and Site—Section 3.1(b)*

In proposed § 3.1(b), we proposed to add the requirement that a dealer's or exhibitor's housing facilities be physically separated from any other business. When more than one entity maintains facilities on the premises, the increased traffic, equipment, and materials in proximity to the animals can be detrimental to the animals' well-being. Also, in cases where more than one entity maintains animals on a premises, it can be difficult to determine which entity is responsible for which animals and for the overall conditions. To avoid this difficulty, we proposed to require that housing facilities other than those maintained by research facilities and Federal research facilities be separated from other businesses. We proposed that this could be done by using a security fence or by conducting each business in a separate building. We did not propose to impose this requirement on research facilities, because they are often part of a larger sponsoring establishment, such as a university or pharmaceutical company, and responsibility for animal and site conditions rests with that establishment. Therefore, we have not encountered the enforcement difficulties noted above with respect to research facilities.

The comments that addressed these provisions in proposed § 3.1(b) were varied. Some supported the provisions as written. Some opposed the provisions in their entirety. Several commenters suggested amendments to the provisions to allow businesses to occupy the same building as long as the respective businesses' animals were kept separate. Others recommended requiring the separation of the business from the owner's dwelling. Several commenters recommended nonsubstantive wording changes to the provisions.

We believe that the provisions in proposed § 3.1(b) regarding the separation of animal housing facilities from other businesses are necessary. We believe the provisions as proposed provide a practical solution to the problems discussed above, without addressing issues of building construction that do not concern the health and well-being of the animals within. Therefore, we are making no changes to those provisions in this revised proposal.

We also proposed in § 3.1(b) to require that housing facilities and areas used for storing animal food and bedding be kept free of any accumulation of trash, waste material, junk, weeds, and discarded material, in order to prevent an unsanitary condition and problems with diseases, pests, and odors. The need for orderliness applies particularly to the areas where animals are maintained in the housing facilities. Under our proposal, these areas would have to be kept free of clutter, including equipment, furniture, and stored material, and materials not necessary for proper husbandry practices.

A number of commenters addressed these provisions. Some supported the provisions as written. A number of commenters recommended that we eliminate the proposed prohibition of "trash" and "junk." We continue to believe that such materials pose the danger of harboring and fostering disease, vermin, and other pests, and are making no changes to our proposal based on these comments. Many commenters were concerned that our prohibition of "clutter" would prohibit equipment and material actually used in the day-to-day operation of the facility. It was not our intent to prohibit materials that are used on a regular basis from being kept in animal areas, and we have made revisions to our proposal to address that issue. In this revised proposal we are removing the examples of acceptable materials and equipment we provided in the proposal to avoid giving the impression that the items listed are the only ones that may be kept in animal areas. We are also providing in this revised proposal that necessary "equipment" may be kept in animal areas, and that materials, equipment, and fixtures necessary for research may be kept in such areas. Additionally, in order to clarify our intent with regard to the storage of cleaning materials that are necessary for proper husbandry, we are adding a provision to proposed § 3.1(e) to specify that toxic materials stored in animal areas must be stored in cabinets, but may not in any case be stored in food preparation areas.

Some commenters took issue with our prohibition of weeds in the housing facility, stating that weeds are not necessarily detrimental to the health and well-being of animals. We are making no changes to our proposal with regard to weeds. While weeds themselves may not be detrimental, they interfere with such necessary practices as cleaning and rodent control.

*Housing Facilities: Surfaces; General Requirements—Sections 3.1(c) (1) and (2)*

We included in proposed § 3.1(c) requirements concerning housing facility surfaces that are common to all types of facilities. We proposed to include requirements specific to particular types of facilities in separate sections. In § 3.1(c)(1), we proposed to require that the surfaces of housing facilities either be easily cleaned and sanitized, or be removable or replaceable when worn or soiled. These provisions also applied to houses, dens, and other furniture-type fixtures or objects within the facility.

Proposed § 3.1(c)(1) also required that any surfaces that come in contact with dogs and cats be free of jagged edges or sharp points that might injure the animals, as well as rust that prevents the required cleaning and sanitization. Because we recognize that as long as water is used to clean animal areas, metal parts will rust, we proposed to allow rust on metal surfaces, as long as it does not reduce structural strength or interfere with proper cleaning and sanitization.

A number of commenters specifically supported the standards in proposed § 3.1(c)(1) as written. A number of commenters stated that our standards seemed to prohibit the presence of rust. It was our intent to provide that rust would become unacceptable only when it prevented cleaning and sanitization or affected the structural strength of a surface. To further clarify this intent, we are proposing to prohibit "excessive" rust that causes such problems.

We are continuing to propose in § 3.1(c)(2) to require that all surfaces be maintained on a regular basis and that surfaces that cannot be easily cleaned and sanitized be replaced when worn or soiled.

*Housing Facilities: Surfaces; Cleaning—Section 3.1(c)(3)*

We proposed in § 3.1(c)(3) to require that hard surfaces that come in contact with dogs or cats be cleaned daily and sanitized at least every 2 weeks, and as often as necessary to prevent any accumulation of excreta and disease hazards. Proposed § 3.1(b) also provided for various methods of sanitizing primary enclosures and food and water receptacles. Because these methods are effective in general for sanitization of hard surfaces that cats and dogs come in contact with, any of them could be used for the sanitization required by § 3.1(c). We proposed that floors made of dirt, sand, gravel, grass, or other similar material would have to be raked and spot-cleaned daily, since sanitization is not practicable, and the flooring material would have to be replaced if raking and spot-cleaning were not sufficient to eliminate odors, diseases, pests, insects, or vermin infestation. We proposed that all other surfaces would have to be cleaned daily and sanitized when necessary to satisfy generally accepted professional and husbandry practices.

A number of commenters specifically supported the provisions of proposed § 3.1(c)(3) as written. Commenters were divided on whether surfaces other than hard surfaces should be allowable in housing facilities. While a small number specifically supported the use of such alternative surfaces, others opposed their use, stating that floors such as dirt, sand, and gravel cannot be adequately sanitized. We are making no changes to our proposal based on these comments. While it is difficult or impossible to use standard sanitization procedures on such surfaces, it is relatively simple to replace specific areas as needed.

A large number of commenters addressed the cleaning and sanitization provisions in proposed § 3.1(c)(3). Several commenters supported the proposed provisions as written. A small number of commenters stated that we should make the provision more stringent by specifying that hard surfaces that need daily cleaning include wire, and cage and run fronts and sides. The large majority of commenters sought more flexibility regarding cleaning and sanitization. These commenters stated that the timetables proposed for cleaning and sanitization were more stringent than those required by good husbandry practices.

We continue to believe that cleaning and sanitization is necessary for surfaces that become soiled. However, we believe that certain modifications can be made to the proposed provisions without endangering the health and well-being of the dogs and cats. We agree that daily spot-cleaning would be adequate for hard surfaces with which dogs or cats come in contact. We are therefore revising our proposal to require that hard surfaces with which dogs and cats come in contact be spot-cleaned daily. Additionally, we are revising our proposal to require that such hard surfaces be sanitized to prevent any accumulation of excreta or disease hazards, in accordance with the sanitization provisions in proposed § 3.10. Under those provisions, such hard surfaces in primary enclosures would have to be sanitized at least once every two weeks. We are also revising our proposal to provide that floors made of dirt, absorbent bedding, sand, gravel, grass, or other similar material, be either raked or spot-cleaned with sufficient frequency to ensure all animals the freedom to avoid contact with excreta, rather than requiring that such surfaces be raked and spot-cleaned daily, as originally proposed. Additionally, in this revision we are removing our proposed requirement that all other surfaces of housing facilities be cleaned daily, and are proposing instead that all other surfaces be cleaned when necessary to satisfy generally accepted husbandry practices. We are making this last change in recognition of the fact that some areas in housing facilities, such as upper walls and ceilings, are not in contact with dogs and cats and do not require daily cleaning. We are including "absorbent bedding" as a material similar to dirt, sand, gravel, and grass, because many facilities use such bedding, and consider it preferable to alternative surface materials.

A small number of commenters recommended that we reformat proposed § 3.1(c) to increase its clarity, and that we specify the distinction between the terms "cleaning" and "sanitization," as used in our proposal. We believe the the revisions we have made to § 3.1(c) in this revised proposal clarify the intent of that paragraph, and that the revised paragraph is clear as written. Many commenters recommended that we define the word "clean." We believe that the dictionary defintion of the word "clean" adequately conveys our intent, and we see no need to define the word "clean" in the regulations.

*Housing Facilities: Water and Electric Power—Section 3.1(d)*

In the current regulations, § 3.1(b) specifies that reliable and adequate water and electric power must be made available "if required to comply with other provisions of this subpart." In our proposed rule, we set forth provisions concerning water and electric power in § 3.1(d). We proposed there to eliminate the qualifying statement cited above, and to require that all facilities have reliable and adequate electric power and mechanically pressurized potable running water for the dogs' and cats' drinking needs, for cleaning, and for carrying out other husbandry requirements. Based on our inspections of dealer, exhibitor, and research facilities, we believe that dog and cat facilities subject to the regulations cannot be properly cleaned and maintained without electric power and running potable water.

Several commenters specifically supported proposed § 3.1(d) as written.

Many commenters recommended that our reference to "mechanically pressurized potable running water" be changed to "potable running water." We continued to believe that electric power and potable running water are necessary for the cleaning and maintenance of nonhuman primate facilities. However, upon review of the comments, we believe that it is not necessary that the water be "mechnically pressurized." We are therefore revising the proposal to require that potable running water be available.

Several commenters recommended that facilities be required to provide both hot and cold water. Several other commenters stated that the water available should be required to be potable only if used for drinking. We are making no changes to our proposal based on these comments. We disagree that hot water is a necessity for adequate maintenance of a housing facility. We do believe, however, that all water provided must be potable, because it is difficult, if not impossible, to ensure that dogs and cats will not drink from puddles left from cleaning the facility.

Many commenters stated that our proposal erroneously indicated that electric power is necessary for adequate cleaning. We disagree with the commenters' interpretation of our discussion. The only areas specifically cited in our proposal as requiring electric power and heating, cooling, ventilation, and lighting. A small number of commenters asked that we define "reliable electric power." We believe the standard dictionary definitions of these words are adequate, and we see no need to define the term in the regulations.

*Housing Facilities: Storage—Section 3.1(e)*

We proposed in § 3.1(e) to expand the regulations in current § 3.1(c) concerning proper storage of food and bedding supplies. The proposed provisions retained the requirements that food and bedding be stored so as to protect them from vermin infestation or contamination, and that perishable food be refrigerated. Additionally, we proposed requirements to ensure further the quality of the food and bedding used by animals, and therefore of the area in which the animals are housed. We specified that supplies of food and bedding be stored in leakproof containers to protect the supplies from spoilage as well as from infestation and contamination, and that open supplies of food and bedding be stored in leakproof containers with tightly fitting lids. We proposed to require that the supplies be stored off the floor and away from the walls, to allow cleaning around and underneath them. We also proposed to require that all food be stored so as to prevent contamination or deterioration of its nutritive value. Under the proposal, substances toxic to dogs and cats would not be allowed to be stored in animal areas or in food storage and preparation areas.

A small number of commenters specifically supported provisions in proposed § 3.1(e) as written. The large majority of commenters responding to these provisions suggested some modifications. Some stated that our proposed requirement that all food and bedding be stored in leakproof containers was unnecessary. Although we continue to believe that the health and well-being of the animals necessitates the storing of open food and bedding supplies in leakproof containers, we agree that until such supplies are open, it is sufficient that they be stored in a manner that protects them from spoilage, contamination, and vermin infestation, and are revising our proposal accordingly.

Some commenters were concerned that our proposed requirement that perishable food be refrigerated would require the refrigeration of milled chows and diets. Others requested clarification of the term "perishable," or recommended that refrigeration of food should be at the attending veterinarian's discretion. Although we believe that standard practice, and not the attending veterinarian, should determine which foods require refrigeration, we are clarifying our intent in this revised proposal by specifying that only food requiring refrigeration must be so stored.

A large number of commenters opposed our proposed requirement that toxic materials not be stored in animal areas, stating that such materials would not jeopardize the health and well-being of the animals if stored in a manner to prevent accidental contamination of food products and contact with dogs and cats; one commenter opposed storage of any chemical substance in animal areas. Although we continue to believe that toxic substances cannot be stored in food storage or preparation areas without endangering the animals, we agree that if such substances are kept in cabinets in other animal areas, there would be little danger to the animals. We are therefore revising our proposal to allow such storage.

A small number of commenters stated that storage of food and bedding near walls should be permissible. We believe that the provision restricting storage near walls is necessary to allow for cleaning and pest control and are making no changes to the proposal based on these comments.

*Housing Facilities: Drainage and Waste Disposal—Section 3.1(f)*

In § 3.1(f) as proposed, the requirement was retained that housing facilities provide for removal and disposal of animal and food wastes, bedding, dead animals, and debris, as provided in current § 3.1(d). We proposed to clarify this requirement to include all fluid wastes and to include a provision that arrangements must be made for removal and disposal of wastes at least daily, and more often if necessary. We also proposed to require that trash containers be leakproof and be tightly closed when not in use, and that no forms of animal waste, including dead animals, be kept in food and animal areas.

Requirements for drainage are currently contained in §§ 3.2(e) and 3.3(d), under the sections concerning indoor facilities and outdoor facilities, respectively. Since all types of animal housing facilities, including our proposed categories of sheltered housing facilities and mobile or traveling housing facilities, must have some way of disposing of waste and liquids, we proposed to consolidate all drainage and waste disposal requirements in proposed § 3.1(f).

Both current §§ 3.2(e) and 3.3(d) require that a suitable method of eliminating excess water be provided. We proposed to retain that requirement and expand it to pertain to sheltered and to mobile or traveling housing facilities as well. Current § 3.2(e) requires that any drains used be properly constructed and kept in good repair to guard against foul odors. Additionally, where closed drainage facilities are used, they must be equipped with traps and be installed so that they prevent any back up of sewage onto the floor. We proposed to retain these provisions and expand them for indoor facilities, and proposed that the expanded provisions would also apply to other types of facilities where such drainage is appropriate. We proposed to require that disposal and drainage systems also minimize vermin and pest infestation, and disease hazards. As part of this safeguard, we proposed to require that any sump or settlement pond, or similar system for drainage and animal waste disposal, be located an adequate distance from the animal area of the housing facility. We also proposed to require that puddles of water in animal areas be promptly

mopped up or drained so that the animals stay dry.

A small number of commenters specifically supported the provisions of proposed § 3.1(f) as written. A large number of commenters opposed the proposed requirement that trash containers be leakproof and have lids. Many commenters stated that a lid on a trash can would not necessarily reduce odor or the availability of waste to vermin, as feces and urine are found in cages and are already available to vermin. We are making no changes based on these comments. The intent of the regulations is to minimize disease hazards such as vermin. The cleaning and sanitization requirements of this proposed rule are designed to help ensure that cages are kept adequately clean, and to reduce their attractiveness to pest and vermin. In combination with these requirements, we believe it is necessary to require sanitary practices such as leakproof trash containers with lids.

A large number of commenters stated that in certain facilities daily removal of wastes and dead animals is not necessary, and that the regulations should permit such removal to be conducted as necessary. We agree that such removal, if conducted regularly and frequently, would be adequate to protect the health and well-being of the animals, and are revising our proposal accordingly. We are also adding a provision to our revised proposal to make clear that waste materials must be collected and disposed of in a manner that minimizes contamination and disease risk.

A large of number of commenters stated that our proposed requirement for backflow valves in closed drainage systems was unnecessary, and that we should remove the requirement that sewage systems prevent the back-up of sewage onto the floor. A number of other commenters objected in general to our proposed requirement of adequate drainage systems. Many commenters opposed our proposed requirement that drainage systems rapidly eliminate animal waste and water and enable animals to stay dry. Upon review of these comments, we continue to believe that the regulations as proposed are necessary for the health and well-being of the animals housed, and are making no changes to our proposal based on these comments.

A large number of commenters stated that waste and dead animals should be permitted for short periods of time in areas other than animal areas. Such a practice would be permissible under the regulations as proposed, and we are making no changes to our proposal based on these comments. Several commenters recommended that the regulations permit storage of dead animals in food storage areas, if so directed by the attending veterinarian for the purpose of analysis or autopsy. We believe that the risk of contamination to food items would be too great if such a practice were allowed and are making no changes to our proposal based on these comments.

A number of commenters addressed the issue of sump ponds. Most of the commenters recommended that open sump ponds be prohibited. One commenter recommended that the regulations include a specific minimum distance from research facilities that sump ponds may be located. Based on our experience enforcing the regulations, we believe that sump ponds can be used without health risk if located an adequate distance from a facility. However, what constitutes an appropriate distance will often vary according to the size and configuration of the pond and the topography surrounding the facility. We believe our proposal addresses these variables adequately and are making no changes based on the comments.

A large number of commenters stated that the wording we used to restrict storage of dead animals, animal parts, and animal waste was repetitive. We believe that the wording used for the provision in question is necessary for proper enforcement, and are making no changes based on these comments.

In this revised proposal, we are adding a clarification to § 3.1(f) to specify that only puddles of standing water must be mopped up or drained so that the animals stay dry. This change will clarify that water that evaporates quickly or that is otherwise eliminated quickly does not endanger the health and well-being of the animals, and need not be mopped up.

*Housing Facilities: Washrooms and Sinks—Section 3.1(g)*

In proposed § 3.1(g), we proposed to retain the requirement in current § 3.1(e) that washing facilities be available to animal caretakers for their own cleanliness, and to include it in proposed § 3.1(g). We received no comments regarding this provision, and are making no changes to the wording included in our proposal.

Temperatures in Housing Facilities

*Temperature Requirements in Enclosed Facilities—Sections 3.2(a), 3.3(a), and 3.5(a)*

We proposed that enclosed housing facilities—that is, indoor facilities, the sheltered portion of sheltered housing facilities, and mobile or traveling facilities—be required to provide heating, cooling, and ventilation for the health, comfort, and well-being of dogs and cats housed there. We set forth the heating and cooling requirements for each of the above categories in §§ 3.2(a), 3.3(a), and 3.5(a) respectively. We proposed to set forth ventilation requirements in §§ 3.2(b), 3.3(b), and 3.5(b) respectively.

In establishing minimum temperatures for these facilities, the proposed regulations took into account whether a particular dog or cat housed there is acclimated to relatively low temperatures, and whether for some other reason, either because of breed, age, or condition, a dog or cat should not be subjected to certain low temperatures. In § 3.2(a) of the current regulations for indoor facilities, the minimum temperature allowed is 50° F (10° C) for all dogs and cats in those facilities that are not acclimated to lower temperatures. We proposed that in indoor, sheltered, and mobile or traveling housing facilities, the minimum temperature allowed continue to be 50° F (10° C) for dogs and cats not acclimated to lower temperatures. Because some dogs cannot be acclimated to lower temperatures, we also propose to apply the 50° F (10° C) minimum to breeds of dogs or cats that cannot tolerate lower temperatures without stress and discomfort (e.g., short-haired breeds such as beagles, greyhounds, and Dobermans), and to dogs and cats that are sick, aged, young, or infirm. We proposed that the minimum temperature for all other dogs and cats would be 35° F (1.7° C), except in indoor facilities, where the minimum temperature for all other dogs and cats would be 45° F (7.2° C).

In the current regulations, there is no maximum temperature specified for indoor housing facilities, although auxiliary ventilation is required when the temperature rises to or above 85° F (29.5° C). In the proposed rule, we established a maximum temperature of 95° F (35° C) for indoor facilities, mobile or traveling facilities, and the sheltered part of sheltered housing facilities, when those facilities contain dogs or cats. For each of those categories of shelters, we proposed that auxiliary ventilation, such as fans or air conditioning, would have to be used when the temperature rises to or above 85° F (29.5° C).

We received a large number of comments with regard to the temperature in indoor, sheltered, and mobile and traveling housing facilities. Some commenters opposed temperature

standards of any sort, here and elsewhere in the regulations. A large number of commenters recommended specific temperature ranges that were more stringent than those included in our proposal. A much greater number of commenters stated either that our proposed temperature ranges were too narrow, or that they did not leave enough latitude for professional judgment on the part of the attending veterinarian in the case of individual animals or breeds.

We continue to believe that the well-being of dogs and cats housed in enclosed facilities requires that parameters be established for hot and cold temperatures. Because of the wide range of temperatures that can be tolerated by various species and individual animals, we do not believe it is appropriate to compress the proposed range of allowable temperatures. Doing so would unnecessarily exclude certain temperature levels that are tolerable to many dogs and cats. On the other hand, we do not believe it is appropriate to expand the proposed range of allowable temperatures, except for indoor housing facilities, as explained below. Although certain dogs and cats may be able to tolerate temperatures out of that range, we do not believe such situations occur often enough to warrant making general changes to the proposed standards. However, although we believe it is appropriate to retain specific hot and cold temperature limits for all dogs and cats, upon review and analysis of the comments received, we believe there is some room for professional judgment on the part of the attending veterinarian regarding the proposed 50° C (10° C) lower limit for certain dogs, particularly those that are not acclimated to lower temperatures. For example, in the judgment of the attending veterinarian, a heavy-coated dog might be able to tolerate temperatures lower than 50° F (10° C), even if it is not otherwise acclimated to such lower temperatures. While we are retaining the 50° F (10° C) lower limit for certain dogs in this revised proposal, we are also proposing to provide that whether an individual dog may be exposed to temperatures lower than that limit may be based on the judgment of the attending veterinarian.

In this revised proposal, we are replacing the provision in § 3.2(a) that temperatures in indoor housing facilities drop no lower than 45° F (7.2° C) when dogs or cats are present to provide instead that temperatures must not drop below 35° F (1.7° C) when dogs or cats are present. Based on our review of the comments received, we believe the 45° F (7.2° C) lower limit originally proposed would unnecessarily exclude temperature levels that are tolerable to many dogs. Establishing a 35° F (7.2° C) lower limit would make the lower limit for indoor facilities consistent with that for sheltered facilities, and for mobile and traveling housing facilities.

In our proposal, we used "short-haired" breeds of dogs and cats as an example of dogs and cats that cannot tolerate temperatures lower than 50° F (10° C) without stress or discomfort. A number of commenters recommended that we delete the specific reference to "short-haired" breeds. We believe that using short-haired breeds as an example is useful to illustrate the intent of the proposed regulations. However, we believe that the revision we are making to our proposal, discussed above, to give the attending veterinarian latitude concerning such animals, should address the commenters' concerns that all short-haired animals would necessarily be subject to the 50° F (10° C) minimum temperature.

A large number of commenters recommended that we reword the temperature requirements in proposed § 3.3(a), regarding sheltered housing facilities, to specify that the sheltered part of such facilities must be heated and cooled "when necessary" to protect the dogs and cats. The same commenters also recommended that we remove the proposed requirement in that same paragraph that specifies that heating and cooling must provide for the animals' "comfort." Such changes would make the provisions for sheltered housing facilities consistent with those proposed for indoor housing facilities. The statement that facilities must be heated and cooled only when necessary is self-evident but, we believe, helpful for emphasis. With regard to the word "comfort," we agree that it is inappropriate for use in the proposed regulations. Although we encourage an environment that will promote the dogs' and cats' comfort, the intent of the regulations is to provide minimum standards for the health and well-being of the animals. For these reasons, we are including both of the changes recommended by the commenters in this revised proposal, and are also removing the word "comfort" in proposed § 3.5, regarding mobile or traveling housing facilities.

A large number of commenters recommended that we replace our proposed requirement that enclosed housing facilities be sufficiently heated and cooled to protect dogs and cats from cold and hot temperatures, to read instead that such animals be protected from "excessively" cold and hot temperatures. We agree that the wording as proposed would benefit from clarification, and in this revised proposal are specifying that dogs and cats in enclosed housing facilities must be protected from "temperature extremes."

A small number of commenters recommended that the regulations require that alternative surfaces such as concrete or metal be made available to every animal when the temperature falls below 45° F (7.2° C), and to sick, aged, infirm, or very small animals at all times. While we would encourage the use of such alterantive surfaces, we do not believe it is practical or necessary to require them in all cases.

A small number of commenters recommended that the regulations require that each animal's condition be reviewed daily, with emphasis on animals with special needs that may be especially affected by extremes of temperature and humidity. While we believe that certain dogs and cats, such as sick, aged, young, or infirm animals, should receive special attention regarding the minimum temperature they are exposed to, and are proposing such provisions, we do not believe that it would be practical or reasonable to require that such animals be monitored each day with regard to temperature and humidity fluctuations. We are therefore making no changes to our proposal based on these comments.

A small number of commenters stated that the regulations regarding minimum temperatures should be phrased as recommendations rather than requirements, to allow for events such as breakdowns or cleaning of equipment. We believe such a change would cause enforcement difficulties and would not be in the best interests of the animals, and we are making no changes to our proposal based on these comments.

Many commenters recommended that we propose provisions to allow dogs and cats that are acclimated to temperatures higher than 95 °F and lower than 35 °F to be exposed to temperatures outside those limits. We are making no changes based on these comments. Dogs or Cats that are acclimated to temperatures outside the proposed limits under one set of conditions may find the same temperatures intolerable under other conditions. For example, a dog that is acclimated to 100 °F temperatures in an outside area may not be able to tolerate the same temperature indoors, because of the enclosed facility's confined nature. Further, the humidity level in a

facility can greatly affect how tolerable a certain temperature level is. Based on our experience enforcing the regulations, we believe that the temperature limits we have proposed are warranted to promote the health and well-being of dogs and cats housed in enclosed facilities.

Several commenters stated that we should require that cooling systems operate automatically. We do not believe how a system works is important, as long as it meets the standards in the regulations, and are making no changes based on these comments. Several commenters requested that we publish our references for the temperature specifications we set. As discussed above, we based the proposed temperature limits on our experience enforcing the regulations.

*Ventilation Requirements in Housing Facilities—Sections 3.2(b), 3.3(b), and 3.5(b)*

The requirements for ventilation of indoor housing facilities that are set forth in § 3.2(b) of the current regulations were retained in the proposal, and were extended to apply to all sheltered portions of sheltered, and mobile or traveling housing facilities to provide for the health, comfort, and well-being of dogs and cats. Based on our inspections of dealer, exhibitor, and research facilities, we proposed to add (1) that ventilation must also be provided to minimize ammonia levels in these housing facilities; (2) that ventilation in mobile or traveling facilities must minimize exhaust fumes; and (3) that in indoor housing facilities, the relative humidity must be maintained between 30 and 70 percent. Although, as proposed, the 30–70 percent range would apply to all dogs and cats, we indicated in the supplementary information included in the proposed rule that we expected generally accepted professional and husbandry practices to be followed in providing humidity levels appropriate to particular breeds of dogs and cats. The 30–70 percent range corresponds to the recommendations contained in the NIH Guide. We did not propose to require that precise humidity levels be maintained in sheltered housing facilities or mobile or traveling facilities. The configuration of many sheltered facilities makes humidity control impracticable, and mobile or traveling housing facilities may travel into many different parts of the United States, with varying levels of humidity.

A number of commenters supported our proposed provisions as written. Several commenters recommended that allowable humidity limits be specified for mobile and traveling housing facilities. A large number of commenters stated that not all dogs and cats require humidity levels in the 30–70 percent range, and that it would therefore be inappropriate to establish specific humidity limits. Many commenters recommended that we require only that the appropriate relative humidity be left to the judgment of the attending veterinarian, and be maintained at a level that ensures the health and well-being of the animals housed in the facility. Upon review of the evidence presented in the comments, we agree that it is not appropriate or necessary to set specific upper and lower limits on relative humidity. We agree that the effect on animals of a particular level of humidity depends to a great degree on other factors, such as temperature and ventilation. We are therefore not including such specific limits in this revised proposal. However, we are providing in this revised proposal that, in those housing facilities where humidity can be controlled (indoor housing facilities and the sheltered part of sheltered housing facilities) the relative humidity must be at a level that ensures the health and well-being of the animals housed, as directed by the attending veterinarian, in accordance with generally accepted professional and husbandry practices.

A number of comments took issue with our proposed requirement that enclosed housing facilities be sufficiently ventilated to minimize odors, drafts, ammonia levels, and moisture condensation. (In mobile or traveling housing facilities the minimizing of exhaust fumes would also be required). The commenters expressed concern that the requirements would lead to significant disagreement as to the meaning of "minimize." Some commenters expressed doubt that odors could always be minimized. We are making no changes to our proposal based on these comments. The provisions as proposed do not require the elimination of objectionable odors, fumes, etc., only that they be held to minimal levels. We believe that such a performance standard can be met and enforced.

A number of commenters addressed our proposed requirement that air, preferably fresh air, be provided by means of windows, vents, fans, or air conditioning. One commenter recommended that fresh air be mandatory. We do not believe that it would be practical or necessary to require that fresh air always be provided and are making no changes to our proposal based on this comment. A much greater number of commenters stated that in many cases recycled air is preferable to fresh air, and recommended that we change our reference to "air" to read instead "ventilation." We agree that the word "ventilation" better encompasses the intent of our proposed provision, and are therefore revising our proposal to provide that ventilation must be provided by windows, doors, vents, fans, or air conditioning.

Several commenters recommended that auxiliary ventilation be required when the ambient temperature exceeds 80° F, rather than 85° F as proposed. The requirement for auxiliary ventilation at temperatures exceeding 85° F is part of the current regulations. Based on our experience enforcing the regulations, we believe that it is adequate to ensure the health and well-being of animals housed in enclosed facilities. We are therefore making no changes to the proposal based on these comments. A number of commenters opposed the requirement for auxiliary ventilation in cases where the animals are acclimated to high temperatures. We are making no changes to our proposed based on these comments. As discussed above, an animal acclimated to high temperatures in an outside area may find the same temperatures intolerable in an enclosed area without sufficient ventilation.

Many commenters stated that it would be impossible to stay within the relative humidity limits we proposed after steam cleaning, unless the air conditioning systems were set at 65° F or below. As discussed above, we are revising our proposal to remove upper and lower relative humidity limits.

Several commenters recommended that we reformat our proposed provision on relative humidity for readability. We believe that the proposed provisions are understandable as written and are making no changes to our proposal based on these comments.

For the same reasons discussed above regarding temperature requirements, we are removing the requirement in our proposal that ventilation in the enclosed parts of housing facilities provide for the "comfort" of the dogs and cats housed in the facility.

*Lighting Requirements in Housing Facilities—Sections 3.2(c), 3.3(c), and 3.5(c)*

In the proposed regulations, we retained the requirement in § 3.2(c) of the current regulations that indoor housing facilities have ample light to permit routine cleaning and inspection. We proposed to extend this requirement to all of the enclosed housing facilities

included in the proposed regulations. We also proposed to require in each case that either natural or artificial light be provided for at least 8 hours each day, corresponding to the natural period of daylight. Our experience inspecting licensees' and registrants' facilities has shown us that in the past some licensees and registrants have kept dogs and cats in darkened rooms throughout most of the day. In the case of indoor housing facilities and mobile or traveling housing facilities, we proposed to require that if only artificial light, such as flourescent light, is used, it provide full-spectrum illumination. Also, in our proposal, we retained the requirement in the current regulations for indoor facilities that primary enclosures be placed so as not to expose the animals in them to excessive light, and we proposed to extend that requirement to sheltered enclosures. We provided as an example of excessive light the situation where an animal is housed in the top cage of a stack of cages, near a lighting fixture.

A large number of commenters addressed our proposed provision that would require full-spectrum lighting. While a small number of commenters supported such a comment, a much larger number of commenters stated that full-spectrum lighting was unnecessary for the health and well-being of dogs and cats. Others stated that it was impractical because such lighting fixtures, when shielded for sanitation purposes, will filter out certain wavelengths of light. Some commenters presented evidence that continued exposure to full-spectrum illumination, strictly defined, could actually harm the vision of animals. Upon review of the comments, we believe that the practical problems associated with full spectrum lighting warrant our removing its requirement in the proposal, and we are doing so in this revised proposal.

Many commenters questioned the need for at least 8 consecutive hours of light each day, stating that such a specific timetable does not allow for professional judgment regarding the needs of individual breeds and animals. We agree that 8 hours of light may not be necessary or warranted in all cases, that it may not coincide with normal outdoor lighting cycles at particular times of the year, and that a provision for a "normal diurnal lighting cycle" would better meet the intent of the proposed regulation. We are therefore revising our proposal to provide that animal areas must be provided a regular diurnal lighting cycle of either natural or artificial light. In order to allow for professional judgment regarding the lighting needs of individual animals or species, we are proposing in this revised proposal that lighting in animal facilities must provide sufficient illumination to provide for the well-being of the animals, as well as to allow for good housekeeping practices, adequate inspection of animals, and adequate cleaning.

A number of commenters recommended that we provide a definition of "excessive light." We believe that the term is self-explanatory; that it means a degree of light available is detrimental to the well-being of the animals. Whether the light that is harmful to the animals would be determined on a case-by-case basis. Some commenters took issue with the statement in the supplementary information of our proposal that an animal housed in the top cage of a stack of cages near a light fixture would be exposed to excessive light. We are making no changes based on these comments. The provisions we proposed would prohibit exposing the animals to excessive light. In our supplementary information we provided just one example of a variety of situations we believe could constitute excessive light. We continue to believe that it is necessary for the health and well-being of dogs and cats that they not be exposed to excessive light.

Several commenters stated that our proposed lighting standards were minimal. It is our purpose throughout the regulations to establish minimum standards for the health and well-being of regulated animals. Although we encourage practices that exceed the minimum, we believe that the standards we are proposing would be adequate to meet their purpose.

A number of commenters recommended that we provide the authority to make exceptions to lighting standards to the Committee at research facilities. The regulations in § 2.38(k)(l) of part 2 already provide that exceptions to the standards in part 3 may be made when such exceptions are specified and justified in the proposal to conduct an activity and are approved by the Committee.

*Specific Provisions for Indoor Housing Facilities—Section 3.2(d)*

Section § 3.2(d) of the current regulations, regarding the interior surfaces of indoor housing facilities, requires that those surfaces be substantially impervious to moisture and readily sanitized. In § 3.2(d) of the proposed regulations, we retained the requirement that all surfaces be impervious to moisture, but made an exception in the case of ceilings that are replaceable. An example of this would be a suspended ceiling with replaceable panels. The requirements we proposed concerning interior surfaces are more stringent for indoor housing facilities than for any other type of facility. Only for indoor facilities, for example, did we propose that ceilings have to be either impervious to moisture or replaceable. This is because indoor facilities generally operate on one ventilation system, and any disease organisms or excessive odors that occur in the facility might spread throughout the facility, requiring a thorough cleaning or replacement of all interior surfaces.

A number of commenters specifically supported the proposed provisions as written. A number of other commenters stated that it is inconsistent to consider a pervious floor a threat to an animal's welfare in indoor facilities, but not in outdoor facilities. Based on our experience enforcing the regulations, we do not believe that indoor floors in facilities used to house dogs and cats can be kept sufficiently clean and sanitary unless they are impervious. The nature of the facilities and the animals housed has indicated to us that indoor floors that are not impervious tend to stay damp and warm, which encourages bacterial growth and other health risks. We are therefore making no changes to the proposal based on these comments. One commenter stated that ceilings should always be impervious to moisture, whether or not they are replaceable. We are making no changes based on this comment. In many cases, replacing a ceiling would be more effective in minimizing disease risk than cleaning it.

*Specific Provisions for Sheltered Housing Facilities—Section 3.3 (d) and (e)*

In proposed § 3.3(d) regarding sheltered housing facilities, we set forth the requirement that dogs and cats be provided with adequate shelter and protection from the elements.

In order to maintain sanitary conditions in sheltered housing facilities, we proposed to establish the following requirements in § 3.3(e). Under our proposal, the following areas would have to be impervious to moisture: (1) Indoor floor areas in contact with the animals; (2) outdoor floor areas not exposed to the direct sun or made of a hard material such as wire, wood, metal, or concrete, in contact with the animals; and (3) all walls, boxes, houses, dens, and other surfaces in contact with the animals. We proposed that outside floor areas in contact with the animals and exposed to the direct sun could consist

of compacted earth, sand, gravel, or grass.

A small number of commenters specifically supported the provisions pertaining to sheltered housing facilities as written. A number of commenters asked that we define "adequate shelter." To clarify the intent of this term, we are specifying in this proposal that the shelter must be adequate to protect the health and well-being of the animals housed. Several commenters recommended that the regulations set forth certain specific construction standards for shelters with regard to protection from the elements. We are making no changes to our proposal based on these comments. We believe that the provisions in this revised proposal that dogs and cats be provided with adequate shelter from the elements to protect their health and well-being will enable us to ensure that whatever shelter configuration is used meets the regulatory standards.

Several commenters recommended that the regulations require that clean, dry bedding be provided in sheltered housing facilities. We are making no changes based on these comments. Although we proposed such a requirement for shelters in outdoor housing facilities, we believe that the fact that dogs and cats in sheltered housing facilities have access to temperature-controlled enclosed housing makes the requirement unnecessary for such facilities.

*Specific Provisions for Outdoor Housing Facilities—Section 3.4*

The intent of § 3.3 of the current regulations is to provide adequate standards for the care of animals housed outdoors. However, our inspections of dealers' and exhibitors' facilities in climates with the temperature extremes have indicated that some licensees are not meeting what we believe should be minimum standards for the treatment of dogs and cats. Specifically, we believe that the regulations need to be made more stringent regarding the types of dogs and cats that can be kept outdoors, and regarding what shelter is necessary for dogs and cats kept outdoors. Therefore we proposed to revise the current requirements for outdoor facilities, to make them more clearly defined and more stringent.

Because outdoor facilities cannot be temperature-controlled, we believe it is necessary to judge a dog's or cat's suitability for outdoor housing on an individual basis. We set forth provisions in proposed § 3.4(a)(1) that a dog or cat could not be kept in an outdoor facility if (1) it is not acclimated to the temperatures prevalent in the area or region where the facility is located; (2) it is of a breed that cannot tolerate the prevalent temperatures of the area without stress or discomfort (such as short-haired breeds in cold climates); or (3) it is aged, young, sick or infirm. We recognize that in some situations, particularly in the case of dogs or cats obtained from pounds, it will not be known whether an animal has been acclimated to prevailing temperatures. Therefore, in proposed § 3.4(a)(2), we provided that if a dog's or cat's acclimation status is unknown, it must not be kept in an outdoor facility in any month in which, during the preceding 5 years, the temperature at the facility has been less than 35 °F (1.7 °C).

With regard to the type of shelter required for dogs and cats housed outdoors, we believe that the current regulations should be expanded to specify what is necessary for better and more humane treatment of the dogs and cats. In essence, the current regulations require that dogs and cats be provided with sufficient shade to protect them from the direct rays of the sun, shelter to keep them dry during rain or snow, and shelter when the atmospheric temperature falls below 50 °F. (10 °C). Additionally, bedding or some other protection is required when the ambient temperature falls below that to which the dog or cat is acclimated.

In § 3.4(b) of the proposed rule, we set forth the requirement that all outdoor facilities housing dogs or cats include a shelter structure that is accessible to all animals in the facility, and that is large enough to allow all animals in the structure to sit, stand, and lie in a normal manner, and to turn about freely. We proposed in § 3.4(d) that the shelter structure would have to: (1) Provide adequate shelter and protection from the cold and heat; (2) be protected from the direct rays of the sun and the direct effect of wind, rain, or snow; (3) have a wind break and a rain break at its entrance; and (4) contain clean, dry, bedding material. We also proposed in § 3.4(b) that in addition to the shelter structure, there would have to be a separate outside area of shade provided, large enough to contain all the animals at one time and to protect them from the direct rays of the sun. This shaded area would give the animals relief on hot days, when they should be unlikely to seek shelter in an unventilated structure. In this revised proposal, we are including clarifying language that multiple shelters and multiple outside areas of shade would be acceptable.

In proposed § 3.4(c), we set forth the requirement that all building surfaces that are in contact with dogs or cats in outdoor housing facilities be impervious to moisture. We specified that metal barrels, old refrigerators or freezers, and the like would not be permitted as shelter structures, and that the floors of outdoor housing facilities could be of compacted earth, sand, gravel, or grass, but would have to be kept clean.

Several commenters specifically supported our proposed provisions regarding outdoor housing facilities as written. A large number of commenters objected to our specifying in § 3.4(a)(1) which categories of dogs and cats would not be permitted to be housed in outdoor housing facilities. The commenters stated that such specificity precludes professional judgment on the part of the attending veterinarian as to whether being housed outdoors would be harmful to certain animals. Some commenters stated that being housed outdoors might even be beneficial to some of the dogs that would be excluded from outdoor housing under our proposed regulations. Based on our experience enforcing the regulations, we continue to believe that, in general, the categories of dogs and cats specified in proposed § 3.4(a)(1) are unable to tolerate temperature conditions in outdoor facilities. However, we recognize that, in certain cases, individual dogs or cats may not be harmed by, or may benefit from, conditions in outdoor facilities. We are therefore revising proposed § 3.4(a)(1) to provide that the categories of dogs and cats listed there may not be housed in outdoor housing facilities, unless such housing of the dogs or cats is specifically approved by the attending veterinarian.

A large number of commenters addressed our proposed provision that, when their acclimation status is unknown, dogs and cats must not be kept in outdoor facilities during any month in which, during the preceding 5 years, the temperature at the facility has been less than 35 °F. (1.7 °C). A number of commenters opposed the proposed provision without explanation. A number of commenters stated that the 35 °F (1.7 °C) standard was too low. Several commenters suggested that we replace the word "temperature" in the provision with the term "average daily temperature." Many commenters recommended that we substitute more general wording, to provide that dogs and cats acclimated to and tolerant of conditions at the facility would be permitted to be housed in the facility. Others suggested that the decision whether to house such dogs and cats in outdoor facilities be left to the attending veterinarian.

Upon review of the comments, we believe that some modification of the proposed provision is warranted. While we continue to believe, based on our experience enforcing the regulations, that 35 °F (1.7 °C) is a reasonable lower limit for dogs and cats whose acclimation status is unknown, we believe that the regulation we proposed is unnecessarily complex. Our intent in wording our proposal as we did was to ensure that animals whose acclimation status is unknown not be exposed to temperatures lower than 35 °F (1.7 °C). We are therefore revising our proposal to clarify that point, by specifying that when their acclimation status is unknown, dogs and cats must not be kept in outdoor facilities when the ambient temperature is less than 35 °F (1.7 °C).

Many commenters stated that the 35 °F minimum temperature need not apply to short-haired dogs if adequate insulated housing is provided. We are making no changes to the proposed provisions based on these comments. Even if a shelter structure were adequately temperature controlled, it would be necessary for the dog to leave the shelter periodically to take care of elimination and for feeding.

One commenter recommended that specific standards for acclimation should be set forth in the regulations. In enforcing the regulations, we would evaluate acclimation according to its standard dictionary definition, and do not believe it is necessary to include such a definition in the regulations.

A large number of commenters addressed the requirements in proposed § 3.4(b) that outdoor housing facilities have a shelter structure in which all animals in the facility can sit, stand, and lie in a normal manner, and a separate shade area large enough to contain all the animals. A number of commenters specifically supported the proposed provisions as written. A much greater number of commenters stated that the proposed standards were unnecessary, unjustified, and redundant with the requirements in proposed § 3.4(d) that dogs and cats in outdoor housing facilities be provided shelter from the elements. These commenters recommended that proposed § 3.4(b) be changed to read that the shelter must be sufficiently large to comfortably provide protection for all dogs and cats housed in the facility at the same time. We do not believe that proposed §§ 3.4 (b) and (d) are redundant. Section § 3.4(b) sets forth size standards for the required shelter; § 3.4(d) sets forth performance standards for the shelter. We do agree that, for purposes of clarity, the provisions in proposed §§ 3.4 (b) and (d) should be combined in one paragraph, and we are revising our proposal to include them in proposed § 3.4(b).

A large number of commenters addressed the provisions in proposed § 3.4(c), regarding the construction of outdoor housing facilities. Many commenters took issue with our proposed requirement that floor surfaces in outdoor housing facilities—if made of earth, sand, gravel, or grass—be replaced if there are any prevalent odors, diseases, insects, pests, or vermin. The commenters expressed the opinion that such materials cannot be replaced. We disagree, and believe that it is both practical and feasible to replace any of the materials listed. For the reasons discussed above under "Housing Facilities: Surfaces; Cleaning," we are including "absorbent bedding" in this revised proposal as one of the materials that may be used for floor surfaces in outdoor housing facilities.

Several commenters recommended that we specify the structural requirements of a shelter structure—i.e., how it should be built; what materials may be used. While we believe it is neither appropriate nor necessary to establish specific design standards for shelters, as long as they perform according to the proposed standards, we do believe that it is necessary that each such shelter contain at least a roof, four sides, and a floor. We are therefore revising our proposal to add such wording.

A number of commenters stated that the regulations should prohibit housing dogs and cats on surfaces of dirt, gravel, or sand. Based on our experience enforcing the regulations, we do not believe that such surfaces are harmful to the health and well-being of dogs or cats, and are therefore making no changes to our proposal based on these comments.

A small number of commenters recommended that § 3.4(c) include the requirement that floors and any other surfaces in outdoor housing facility shelters that come in contact with animals be impervious to moisture and be maintained in accordance with the sanitization procedures set forth elsewhere in the proposed regulations. Such surfaces are included among those addressed in proposed § 3.1, regarding general requirements for housing facilities, and we believe the construction, cleaning, and sanitization requirements set forth in that section are adequate to provide for the health and well-being of the animals housed. However, for clarity and emphasis, we are adding wording to our proposal to provide that all such surfaces must be maintained on a regular basis, and that surfaces of outdoor housing facilities that cannot be readily cleaned and sanitized must be replaced when worn or soiled.

Several commenters recommended that we include "cars" among the items that may not be used as shelters in outdoor housing facilities. A small number of commenters also recommended that we exclude all refrigerators and freezers from use as shelters, not just "old" refrigerators and freezers as proposed. We believe both the recommended changes are warranted and we are revising our proposal accordingly.

A large number of commenters addressed the provisions in proposed § 3.4(d) regarding specifications for shelters in outdoor housing facilities. Several commenters specifically supported the proposed provisions as written. Many commenters opposed our proposed requirement that the shelter be provided with a rain and wind break. While we do not believe it is appropriate to provide specific standards for the design of such breaks, we continue to believe that they are necessary to provide adequate shelter from the elements and are making no changes to our proposal based on these comments.

A number of commenters addressed the proposed provision requiring clean, dry bedding in shelters in outdoor facilities. One commenter stated that bedding should not be required when the shelter provided is adequate and the temperature exceeds 35 °°F (1.7 °C). While we disagree that bedding is not necessary until the temperature drops to 35 °°F (1.7 °C), we do agree that the proposed regulations should be clarified to indicate that bedding is required only in the case of cold temperatures. We are therefore revising our proposal to provide that shelters in outdoor facilities must contain clean, dry, bedding material when the temperature is below 50 °°F (10 °C), and additional clean, dry bedding when the temperature is 35° °F (1.7° C) or lower.

Many of the commenters addressing the issue of bedding saw practical problems with its implementation. A number of commenters opposed using bedding in outdoor housing facilities where a washdown procedure is carried out twice a day; others stated that it would not be possible to have clean dry bedding at all times, and that the regulations should allow for a grace period before introduction of new bedding. We are making no changes based on these comments. As discussed

above, bedding would be required only in cold temperatures, and it is not usual procedure to carry out washing of shelters in such temperatures. As far as how often bedding needs to be replaced, we anticipate that the regulations would be enforced on the basis of accepted husbandry practices.

A small number of commenters stated that the regulations should require enough bedding to make a soft, protective bed. While we would encourage that the comfort of the animals be considered in supplying bedding, we do not believe that it would be appropriate or practical to include such standards in the regulations, which are intended to set forth minimum standards to ensure the health and well-being of the regulated animals.

*Primary Enclosures—Section 3.6*

In proposed § 3.6, we proposed to amend current § 3.4, "Primary enclosures." The current section provides general requirements for construction and maintenance of primary enclosures, uniform space requirements for each dog or cat housed in a primary enclosure, and provisions regarding litter and resting surfaces for cats and the tethering of dogs on chains. We proposed to expand the current general requirements, to add some new requirements, and to clarify the existing requirements in accordance with the intent of the amendments to the Act.

*Primary Enclosures: General Requirements—Section 3.6(a)*

The provisions we set forth in proposed § 3.6 regarding primary enclosures contained requirements that all primary enclosures meet certain minimum standards to help ensure the safety and well-being of dogs and cats. A primary enclosure is defined in part 1 as "any structure or device used to restrict an animal or animals to a limited amount of space, such as a room, pen, run, cage, compartment, pool, hutch, or tether." Included among the primary enclosures subject to the proposed regulations would be those used by circuses, carnivals, traveling zoos, educational exhibits, and other traveling animal acts and shows. In § 3.6(a) we proposed to continue to require that primary enclosures be structurally sound and maintained in good repair to protect the animals from injury, to contain them, and to keep predators out. We also proposed to require that the primary enclosures keep unauthorized humans out. We proposed to continue to require that the primary enclosures enable the animals to remain dry and clean; that they provide the animals with convenient access to food and water; that they provide sufficient space for the dogs and cats to have normal freedom of movement; and that their floors be constructed in a manner that protects the animals from injury. With regard to this last requirement, we proposed to specify that if the floors of primary enclosures are of mesh or slatted construction, they must not allow the animals' appendages to pass through any openings in the floor.

We proposed to add requirements that the primary enclosures be constructed without sharp points or edges, and that they provide sufficient shade to the animals in the enclosures and protect them from temperature extremes and other weather conditions that might be uncomfortable or hazardous to the animals. We also proposed to require that the primary enclosures be easily cleaned and sanitized, or be replaceable when worn or soiled.

A number of commenters specifically supported the provisions of § 3.6(a) as written. A small number of commenters stated that the regulations in proposed § 3.6(a)(2), regarding the construction of primary enclosures, were redundant and unclear. We believe that the proposed provisions are clear as written. Further, we believe each of the provisions set forth addresses a distinct need, and is not redundant with other provisions. We are therefore making no changes based on these comments.

A large number of commenters addressed the provisions in proposed § 3.6(a)(2)(x), which state that floors of primary enclosures that are of mesh or slatted construction must be constructed so as to prevent the animals' appendages from passing through any openings in the floor. A small number of those commenters recommended that we replace the word "appendage" with the word "limb," so that "appendage" would not be construed to include a tail or toenail. We agree that such a change in wording would clarify the intent of the proposed rule and are revising our proposal to read that the floors of primary enclosures must be constructed so as to protect the animals' feet and legs from injury, and to prevent the animals' feet from passing through any openings in the floor. Many commenters recommended that we delete entirely the proposed requirement regarding mesh or slatted floors. We continue to believe that it is necessary for the safety of the animals that their limbs do not pass through openings in the floor and are making no change based on these comments.

Paragraph (iv) of § 3.6(a) of our proposal states that primary enclosures must be constructed so as to keep predators and unauthorized humans from entering the enclosures. Many commenters objected to this provision, stating that such security is unnecessary for the primary enclosure because elsewhere in the regulations the housing facility itself is required to have safeguards in place preventing the entry of unwanted animals and unauthorized humans. We disagree with the assertion of the commenters. Even assuming that no unwanted animals would ever enter the facility from the outside, there is still the risk that animals within the facility might escape from their enclosures and pose a risk to confined animals, unless the primary enclosures guard against such risk. We are therefore making no changes to the proposal based on these comments. However, after review of the proposal, we are revising proposed § 3.6(a)(iv) to provide that the primary enclosures must keep out "other animals," rather than "predators" as proposed. There may be animals that are not predators of dogs or cats in the strict sense, but that could nonetheless harm the dogs or cats. We believe such animals must be kept out of the primary enclosures.

Paragraph (xi) of § 3.6(a) of our proposal states that primary enclosures must be constructed so as to provide sufficient space to allow each animal to turn about freely, to stand, sit, and lie in a comfortable, normal position, and to walk in a normal manner. A small number of commenters recommended that the wording be changed to read "provide space that is adequate and permits freedom of movement and normal postural adjustments." We believe that the wording in the proposal conveys the intent of the provision adequately and are making no changes based on these comments. Several commenters requested that we define and justify the phrase "to walk in a normal manner." We believe that the meaning of the phrase and its justification are self-evident and we are making no changes based on these comments.

*Additional Primary Enclosure Requirements for Cats—Section 3.6(b)*

We proposed to change the space requirements for cats. In general, the proposed regulations based how much space a cat should have on the animal's weight, and whether it is a nursing mother. The space requirements in §§ 3.4(b) (1) and (3) of the current regulations are uniform for all cats, regardless of size, and require that each cat be given a minimum of 2.5 $ft^2$, with room to turn about freely, and to easily stand, sit, and lie in a comfortable

normal position. We believe, based on our inspections of research facilities, that the current minimum space requirements should be increased for all cats. Additionally, because the weight of a cat is a good indicator of its overall size, we believe that floor space requirements should distinguish between cats of different weights. Our proposed standards would provide cats with the space we believe is necessary, and at the same time make our regulations correspond more closely to the NIH Guide. We proposed in § 3.6(b)(1) to require that weaned cats weighing 8.8 lbs (4 kg) or less be provided with at least 3.0 $ft^2$ (0.28 $m^2$) of floor space, and that cats weighing over 8.8 lbs (4 kg) be provided with a minimum of 4.0 $ft^2$ (0.37$m^2$) of floor space. Additionally, we proposed to required that each queen with nursing kittens be provided with an additional amount of floor space, equivalent to at least 5 percent of her minimum require floor for each nursing kitten in the litter. For example, under our proposal, five nursing kittens would require a 25-percent increase and 10 nursing kittens would require a 50-percent increase. We proposed to provide that the minimum floor space required would be exclusive of any food, water, or litter pans, and the height of the primary enclosure for cats would have to be at least 24 inches (60.96 cm).

A large number of commenters addressed the provisions in proposed § 3.6(b)(1) regarding minimum space requirements for cats. A number of commenters specifically supported the proposed provisions as written. A small number of commenters recommended that the general space requirements for cats provide for more minimum space. A very large number of commenters stated that cat cages need to be large enough to allow normal postural adjustments, including full extension of front and back legs. We agree that "stretching" is part of a cat's normal behavior, and that space requirements need to allow for such activity. We believe that the space requirements we proposed would provide adequate room for such postural adjustments in a horizontal direction.

Many commenters opposed the proposed general increase for cats. Of those opposing the increase, most recommended retaining the current space requirements for cats, including height requirements, subject to the judgment of the attending veterinarian. We are making no changes based on these comments. We continue to believe, based on our experience enforcing the regulations, that the current space standards are inadequate for the well-being of cats. In developing new proposed space standards, we have consulted extensively with HHS, as statutorily mandated. The general standards we proposed correspond to Guidelines published by NIH. By coordinating our standards with the NIH Guidelines, we are furthering harmonious regulations throughout the Federal government, while ensuring the well-being of cats at regulated facilities.

A large number of commenters addressed the provisions in proposed § 3.6(b)(1)(iv) regarding increased space for queens with nursing kittens. Many commenters specifically supported the proposed provision as written. A very large number of commenters recommended that we require more space for nursing kittens than that provided for in the proposal. Many commenters stated that we should delete all reference to percentage increases for kittens. Of the commenters recommending deletion of the provision, most recommended that each queen with nursing kittens be provided with an additional amount of floor space to be determined by the attending veterinarian, based on the breed and behavioral nature of the queen, in keeping with generally accepted husbandry practices. A small number of commenters stated that requiring a specified amount of additional space for nursing kittens would sometimes require that the queen and her kittens be moved to a new cage right after birth, and that such a relocation would unnecessarily disturb the queen and could result in kitten mortality.

While we continue to believe that a 5 percent increase per nursing kitten is in most cases reasonable and necessary for the well-being of both the dam and kittens, upon review of the comments we agree that situations may arise where it is unnecessary or even harmful to require a specific increase in size, without allowing for professional discretion. Therefore, we are revising § 3.6(b)(1)(iv) to provide that each queen with nursing kittens must be provided with an additional amount of floor space, based on her breed and behavioral characteristics, in accordance with generally accepted husbandry practices as determined by the attending veterinarian. The revised proposal would require that if the additional amount of floor space for each nursing kitten is less than 5 percent of the minimum requirement for the queen, such housing must be approved by the Committee in the case of research facility, and by the Administrator in the case of dealers and exhibitors.

A large number of commenters requested that justification be provided for the provision in proposed § 3.6(b)(1)(v) that food and water pans would not be counted as required floor space. We believe it is obvious that requiring animals to walk or rest in their food and water receptacles in order to achieve adequate space would encourage sanitation and health problems. We believe the proposed provision is warranted as written.

A large number of commenters requested that we clarify whether litter pans would be counted as part of the minimum floor space under the proposed regulations. A small number of commenters recommended that they be so counted. While we continue to believe that food and water containers are not usable as floor space for animals contained, we believe it would be reasonable to consider litter pans as part of the floor space, as long as they are properly cleaned and sanitized. We are therefore revising our proposal accordingly.

A number of commenters stated that the proposed increases in space requirements for cats would make cleaning and sanitization more difficult when the large cages are stacked on each other. We believe that this concern is a logistical difficulty that can be overcome and that does not justify abandoning the proposed increases in space requirements.

In our proposal, we provided that all cats housed in the same primary enclosure would have to be compatible. We proposed to retain the requirement in current § 3.4(b)(3) that no more than 12 adult nonconditioned cats be housed in the same primary enclosure and to set forth that requirement in proposed § 3.6(b)(2). In addition, we proposed that the following restrictions would apply: queens in heat could not be housed in the same primary enclosure with sexually mature males, except for breeding; queens with litters and kittens under 4 months of age could not be housed in the same primary enclosure with any other adult cats, except when manintained in a breeding colony; and cats with a vicious or aggressive disposition would have to be housed separately.

Most of the commenters responding to the proposed provisions on compatibility supported them as written. Several commenters recommended that we clarify that kittens under 4 months of age may be housed with their dam. We believe that such a clarification is warranted and we are changing our proposal accordingly.

In § 3.6(b)(3), we proposed to retain the current requirement that in all primary enclosures having a solid floor, a receptacle with litter be provided to contain excreta. A small number of commenters stated that litter in a receptacle should be required, whether or not the floor is solid. We are making no changes to our proposal based on these comments. Floors with openings provide an adequate means of eliminating excreta and we see no need to require litter receptacles in such cases.

The current standards for cats in § 3.4(a)(2)(ii) state that there must be a solid resting surface in each primary enclosure that will comfortably hold all occupants at the same time, and that the resting surface must be elevated if the enclosure holds two or more cats. We proposed to require in § 3.6(b)(4) that all such resting surfaces be elevated, even if only one cat is in the enclosure, and to clarify that the resting surfaces not be counted as part of the minimum floor space. As proposed, the resting surfaces would have to be impervious to moisture, and would have to be either easily cleaned and sanitized, or easily replaceable when soiled or worn.

A number of commenters stated that resting surfaces need not be solid to meet the needs of the cats. We agree, and are removing the requirement from our proposal that resting surfaces be solid. We are also adding a clarification to our proposal to indicate that low resting surfaces will be considered part of the minimum floor space.

We proposed to provide, in § 3.6(b)(5), that cats in mobile or traveling shows or acts may be kept, while the show or act is traveling from one temporary location to another, in transport containers that comply with all requirements of proposed § 3.14 of subpart A, other than the marking requirements in proposed § 3.14(a)(6). Under the proposal, when the show or act is not traveling, the cats would have to be placed in primary enclosures that meet the minimum requirements of proposed § 3.6. Mobile or traveling shows and acts normally remain in one location for several days and then move to another location, with the movement taking a day or less. Because the animals are less subject to injury in smaller enclosures while traveling, we proposed to allow the use of transport cages during this time. However, under the proposed regulations, when not traveling, the cats would have to be placed in primary enclosures that comply with the minimum space requirements and other requirements of § 3.6. The only commenters who responded to these provisions supported them. We are therefore making no changes to § 3.6(b)(5) of our proposal.

*Additional Primary Enclosure Requirements for Dogs—Section 3.6(c)*

In proposed § 3.6(c), we retained the formulas in § 3.4(b)(2) of the current regulations for calculating the floor space for dogs [(length of dog in inches+6)×(length of dog in inches+6)=required square inches of floor space; required square inches/144=required square feet]. Because of the great variation in size and body conformation among the various species of dogs, we believe the present formula for calculating space based on body length is more appropriate than a formula based on the weight of the dog. Space requirements based on weight do not allow for the differences in body conformation among different breeds of dogs, such as bulldogs and whippets or greyhounds. Space requirements based on body length do allow for differences in body conformation. We therefore proposed to retain such provisions as a more appropriate method for determining minimum space requirements. We also proposed to require that the minimum height of a primary enclosure be at least 6 inches above the highest point of the body (normally the ears) of the tallest dog in the enclosure when standing in a normal position.

We proposed that, as with cats, nursing mothers would have to be provided with additional space. In proposed § 3.6(c)(1)(ii), we set forth the requirement that each bitch with nursing puppies be provided with an additional amont of floor space, equal to 5 percent of her minimum floor space, for each nursing puppy in the litter.

A number of commenters specifically supported our retention of the current general space requirements for dogs. A large number of comments addressed the provisions in proposed § 3.6(c)(1)(ii) regarding how much additional space should be provided bitches with nursing puppies. A small number of these commenters opposed without explanation the provisions regarding increased space. Several commenters stated that each nursing puppy should be provided more space than proposed. Most of the commenters addressing the issue of space for puppies recommended that we delete all reference to percentage increases of floor space. These commenters recommended that the regulations provide that each bitch with nursing puppies must be provided with an additional amount of floor space, to be determined by the attending veterinarian, based on the breed and behavioral nature of the bitch and in keeping with generally accepted husbandry practices.

For the reasons we discussed above with regard to minimum space requirements for cats, we believe it is appropriate to modify our proposed requirements regarding additional space for bitches with nursing puppies. Therefore, we are revising § 3.6(c)(1)(ii) of our proposal to provide that each bitch with nursing puppies must be provided with an additional amount of floor space, based on her breed and behaviorial characteristics, in accordance with generally accepted husbandry practices as determined by the attending veterinarian. We are proposing that if the additional amount of floor space for each nursing puppy is less than 5 percent of the minimum requirement for the bitch, such housing must be approved by the Committee in the case of a research facility, and by the Administrator in the case of dealers and exhibitors.

Many commenters addressed the proposed provisions regarding enclosure height for dogs. A small number of commenters opposed any requirements regarding cage height. A large number of commenters recommended that the provisions for enclosure height provide that the top of the enclosure be at least 6 inches above the head of the tallest dog in the enclosure, rather than 6 inches above its ears. A small number of commenters stated that primary enclosures should be large enough to allow a dog to stand on its hind legs and hold its tail aloft. While we believe a minimum enclosure height for dogs is necessary and appropriate, we do not believe that minimum requirements for the well-being of dogs need require that the animals be able to stand on their hind legs in a primary enclosure. Upon review of the comments, we believe that the recommendation that enclosures be at least 6 inches above the head of the largest dog would be reasonable and would not adversely affect the well-being of the dogs housed. We are therefore revising our proposal accordingly.

A number of commenters recommended that exemptions be made for housing of dogs in temporary enclosures that do not meet the proposed standards, as long as the dogs can stand, turn, and move about. We believe that allowing for such exemptions would lead to enforcement problems and would not be in the best interest of the dogs. We are therefore making no changes to the regulations based on these comments. Several commenters recommended that the

same requirements proposed for resting surfaces for cats be applied to dogs. We believe that the species differences between dogs and cats makes the proposed resting surface requirements for cats inappropriate for dogs and are making no changes to the proposal based on these comments.

In § 3.4(b)(2)(ii) of the current regulations, requirements are set forth for dog houses with chains used as primary enclosures for dogs kept outdoors. In § 3.6(c)(2) of the proposed regulations, we expanded those regulations, and proposed to apply the expanded regulations to dogs that are tethered by any means, and not just by chains. We proposed to retain the current requirement that a dog that is tethered be kept from being entangled, and to add the requirements that the dog not be able to come into physical contact with other dogs in the housing facility, and be able to roam to the full range of the tether. We proposed to retain the current requirement that the tether be of the type commonly used for the size dog involved, and that the tether be attached to the dog by a well-fitted collar. Additionally, we proposed to explicitly require that the collar must not cause trauma or injury to the dog. The proposed regulations included the following examples of types of collars that would be prohibited: Collars made of wire, flat chains, chains with sharp edges, and chains with rusty or nonuniform links. As in the current regulations, we proposed that the tether would have to be at least three times the length of the dog as measured from the tip of its nose to the base of its tail. We also proposed to require that the tether be attached to the front of the dog's shelter structure or to a post in front of the shelter structure, and that it allow the dog convenient access to the shelter structure and to food and water containers.

Several commenters specifically supported the proposed provisions as written. A number of commenters either opposed the use of tethers altogether or supported the use of tethers for temporary use only. We do not believe that the use of appropriate tethers is harmful to dogs. Many domestic pets are so restrained with no harmful effect. We are therefore making no changes to our proposal based on these comments. Several commenters recommended that the regulations require that tethers be at least 15 feet long, and be made of a soft but durable material that will not rot when exposed to the elements nor cause injury to the animal. We do not believe that either of the recommended changes are necessary for the well-being of dogs and are making no changes to our proposal based on these comments.

A small number of commenters recommended that we add language to the proposal to clarify that "tether" does not refer to devices used for chronic sampling of animals during research (such as indwelling catheters.) We believe that such an interpretation is self-evident and requires no clarification in the regulations. Several commenters stated that the collar specifications for tethered animals should be placed in a separate section of the regulations so as to apply to all dogs. We are making no changes to the proposal based on these comments. Requirements for identification, including collars, for all regulated dogs and cats are included in § 2.50 of the regulations.

We proposed that dog housing areas where chains or tethers are used must be enclosed by a perimeter fence at least 6 feet in height, so as to protect the dogs, to contain them, and to keep animals the size of dogs, raccoons, and skunks from going through or under it. A number of commenters, addressing similar provisions for perimeter fences elsewhere in the regulations, stated that requiring a fence at least 6 feet high would not necessarily keep unwanted animals from entering the area occupied by the animals housed. While we continue to believe that a perimeter fence 6 feet high will in most cases be adequate to keep out unwanted species, we recognize that, depending on the configuration and location of the facility, and on the type of fence used, fences of other heights might be warranted or necessary in keeping out animals. We are therefore amending our proposal to require that, in cases where a perimeter fence is required, it be of sufficient height to keep unwanted animals out, and that it be constructed so that it protects the dogs inside by preventing animals the size of dogs, skunks, and raccoons from going through it or under it. Because we believe that in most cases it would take a fence at least 6 feet high to keep out unwanted species, we are also proposing to require that fences less than 6 feet high must be approved by the Administrator.

A number of commenters recommended that we modify our proposed provisions regarding fences to allow for local zoning regulations. We believe that any such local considerations are beyond the scope of these regulations and we do not consider it appropriate to add such provisions to the regulations.

The proposal provided that all dogs housed in the same primary enclosure would have to be compatible. We proposed to retain the provision in current § 3.4(b)(2) limiting to 12 the number of nonconditioned adult dogs permitted to be housed in the same primary enclosure, and to set it forth in proposed § 3.6(c)(3). Additionally, that proposed paragraph contained the following provisions: Bitches in heat must not be housed in the same primary enclosure with sexually mature males, except for breeding; bitches with litters must not be housed in the same primary enclosure with other adult dogs; puppies under 4 months of age must not be housed in the same primary enclosure with adult dogs, except when maintained in a breeding colony; and dogs with a vicious or aggressive disposition must be housed separately.

A number of commenters recommended that we reduce the number of dogs permitted in one primary enclosure. Recommended maximums ranged from 4 dogs to 6 dogs. The provision allowing no more than 12 adult nonconditioned dogs in the same enclosure is contained in the current regulations. Based on our experience enforcing the regulations, we believe that allowing such a number has not been harmful to the health and well-being of the animals housed. We are therefore making no changes to the proposal based on these comments.

Several commenters recommended that we clarify the proposed regulations to indicate that puppies under 4 months of age may be housed with their dam. We believe that such a clarification is warranted and are revising our proposal accordingly.

Several commenters stated that it would be impossible to meet our proposed requirements for compatibility at facilities with rapid animal turnover. We are making no changes to our proposal based on these comments. The requirements for compatibility are similar in substance to those already being enforced under the current regulations, and we continue to believe that they are necessary for the health and well-being of the animals housed.

We proposed to provide, in § 3.6(c)(4), that dogs in mobile or traveling shows or acts may be kept, while the show or act is being transported from one temporary location to another, in transport containers that comply with all requirements of proposed § 3.14 of subpart A, other than the marking requirements in § 3.14(a)(6). We proposed that when the show or act is not traveling, the dogs would have to be placed in primary enclosures that meet the minimum requirements of § 3.6. Mobile or traveling shows and acts normally remain in one location for

several days and then move to another location, with the movement taking a day or less. Because the animals are less subject to injury in smaller enclosures while traveling, we proposed to allow the use of transport cages during this time. When stopped and not traveling, however, the dogs would have to be placed in primary enclosures that comply with the minimum space and other requirements of § 3.6. As explained above, we also proposed similar provisions regarding cats in mobile or traveling shows or acts. No commenters addressed these provisions and we are making no changes to § 3.6(c)(4) of our proposal.

Innovative Primary Enclosures for Dogs and Cats

We encourage the design and development of primary enclosures that promote the well-being of dogs and cats by providing them with sufficient space and the opportunity for movement and exercise. Accordingly, we are providing in this revised proposal that innovative primary enclosures not precisely meeting the floor area and height requirements provided for dogs and cats, but that do provide the dogs and cats with a sufficient volume of space and the opportunity to express species-typical behavior, may be used at research facilities when approved by the Committee, and by dealers and exhibitors when approved by the Administrator.

*Variances From Minimum Space Requirements—Section 3.6(d)*

In § 3.6(d) of our proposed rule, we proposed procedures whereby variances from the proposed regulations could be requested, and, if justified, approved by the Administrator. Under our proposal, such variances would allow an eligible registrant or licensee to continue operating, even though not fully in compliance with the proposed space requirements in Subpart A. Under our proposal, a variance would be limited in scope both as to time and to the primary enclosures covered by it, and would specify the portions of the applicant's facilities to which it applies. In this revised proposal, we are not including provisions for variances. In light of the removal of many of the space requirements in our original proposal that differed from the current regulations, and in light of the availability of primary enclosures meeting our proposed minimum space standards, we do not believe that it is necessary or appropriate to provide for variances from the proposed provisions.

*Exercise and Socialization for Dogs—Section 3.7*

In accordance with the 1985 amendments to the Act, in developing our proposed rule, we set forth standards for the exercise and socialization of dogs, and proposed a new § 3.7, titled "Exercise and socialization for dogs." The amendments we propose regarding exercise for dogs are a critical component of our rewriting of the animal welfare regulations, and constitute an area were we specifically directed by statute to address. Many of the provisions regarding exercise in our proposal were predicated on the premise that the increase of space available to dogs will predictably result in a concomitant increase in exercise activity. Thus, our proposed rule contained very specific guidelines for area dimensions governing exercise requirements.

The response from the public to our proposed exercise requirements was voluminous and intensive. We have carefully reviewed each of the comments received. Additionally, we have continued our ongoing analysis of all research information available regarding the exercise and socialization of dogs, and have continued our statutorily mandated consultation with other Federal agencies.

The scientific evidence available to us now leads us to conclude that space alone is not the key to whether a dog is provided the opportunity for sufficient exercise. Based on the comments received, discussed below, and the other research information available, it appears that additional space provided to certain dogs would be underutilized—i.e., even if released into a relatively large run, many dogs will find a corner and lie down. The evidence available to us indicates that certain dogs can receive sufficient exercise, even in cages of the minimum size mandated by the regulations, if they are given the opportunity to interact with other dogs or with humans.

Because of the wide variation in behavioral characteristics of different breeds, and of individual animals within breeds, we do not believe that our proposed "across-the-board" standards are the most appropriate way of ensuring that dogs in regulated facilities receive sufficient opportunity for exercise. We believe that it is possible to provide such opportunity in a variety of ways, or a variety of combinations of ways. We believe that each facility should be responsible for developing a written plan to ensure that each dog in the facility has the opportunity for adequate exercise, and that such plan must be made available to APHIS. We discuss these provisions in more detail below.

Intimately connected with the issue of exercise for dogs is the issue of the animals' socialization. The research data available, and in large measure simple observation, indicate that dogs given the opportunity to interact are more active than dogs housed individually. In short, social interaction among dogs is an effective means of promoting exercise. In those cases in which social interaction is lacking, other means of promoting exercise are necessary for the dogs' well-being and would be required under this revised proposal. Whatever the means developed, the guiding requirement would be that the dogs receive opportunity for sufficient exercise.

A very large number of commenters supported the concept of requiring the exercise of dogs. A very large number of commenters took an opposing view, and recommended that all provisions for exercise and socialization of dogs be removed from the regulations. The responsibility for establishing standards for the exercise of dogs is one that we are charged with by Congress, and is one that we must meet. In doing so, we take seriously our obligation to promote the well-being of the animals protected by the regulations. As discussed above, socialization is one means of promoting exercise.

Although the issue of the socialization of dogs is closely connected with the exercise of dogs, and many commenters addressed the two issues in tandem, the provisions were set forth separately in our proposal. In this supplementary information, we will address the comments responding to each issue separately.

*Social Contact for Dogs—Section 3.7(a)*

Under the provisions for social contact in proposed § 3.7(a), we set forth the requirement that all dogs housed, held or maintained by any dealer, exhibitor, or research facility be maintained in compatible groups. We proposed exceptions to this provision, however, for certain situations that involve either the provisions of an animal care and use procedure approved by a research facility's Committee, or the health and well-being of the dogs. Because of the social nature of dogs, we also proposed to require, with similar exceptions, that all dogs be able to see and hear other dogs. We proposed to require that a dog unable to see and hear other dogs, simply because it is the only dog in a facility, receive positive physical contact with humans

at least once a day. A number of commenters asked that we define "positive physical contact." "Positive physical contact" is defined in part 1 as "petting, stroking, or other touching, which is beneficial to the well-being of the animal." We proposed that this contact would have to total at least 60 minutes each day and could be given in one or more periods.

A small number of commenters specifically supported the proposed provision that all dogs be maintained in compatible groups. A much greater number of commenters opposed this provision. Those opposing the provision stated that: the proposed provision was arbitrary and lacking in scientific documentation; group housing could lead to fighting and the spread of disease; group-housed dogs pose a potential danger to personnel; housing dogs in groups can cause psychological distress to the animals; the Act does not specifically require the socialization of dogs; and bitches in whelp should be isolated from other dogs. A number of commenters stated that housing dogs in groups could interfere with research procedures at research facilities.

We do not agree that the regulations we proposed regarding group housing would interfere with research procedures. The regulations in § 2.38(k)(1) of Part 2 provide that exceptions to the standards in Part 3 may be made when such exceptions are specified and justified in the proposal to conduct an activity and are approved by the research facility's Committee. We believe that the remainder of the concerns expressed by the commenters are addressed by the provisions of this revised proposal. As stated above, we continue to believe that group housing of dogs is an effective and efficient means of providing the dogs the opportunity for adequate exercise. However, in cases where a facility chooses not to house all dogs in groups, or where certain dogs are housed individually for research reasons, the facility will be responsible under the provisions of this revised proposal for developing a program of alternatives to group housing to provide the dogs adequate opportunity for exercise, as discussed below.

One of the reasons we included in our proposal for not housing a dog with other dogs was the case where a dog exhibits vicious or aggressive behavior. Several commenters recommended that the regulations require that facilities make attempts to socialize such animals. We do not believe that such a requirement would be practical or within the scope of our authority. In this revised proposal, we are continuing to include dogs exhibiting vicious or aggressive behavior as those inappropriate for group housing.

In this revised proposal, provisions for group housing would be set forth in proposed § 3.7(b), and would allow dogs over 12 weeks of age to be maintained in compatible groups unless (1) housing in compatible groups is not in accordance with a Committee-approved research proposal at a research facility; (2) in the opinion of the attending veterinarian, such housing would adversely affect the health or well-being of the dog(s); and, (3) a dog exhibits aggressive or vicious behavior.

A large number of commenters addressed the proposed provision that all dogs be able to see and hear other dogs, except for reasons of health or well-being, approved research, or the fact that a dog is housed singly in a facility. Linked to these responses were those addressing the proposed requirement that dogs housed singly in a facility receive at least 60 minutes of positive physical contact each day. A small number of commenters specifically supported each of the provisions as written. A much larger number of commenters addressed only the requirement for positive physical contact. Of these commenters, many recommended that all dogs receive daily positive physical contact. Many others recommended that puppies receive positive physical contact and socialization from the fifth through the twelfth week of life. A small number of commenters either opposed the requirement for sensory contact among dogs, or recommended that the need for sensory contact be determined by the attending veterinarian. Many commenters opposed the proposed requirement that a dog lacking sensory contact with other dogs because it is the only dog at a facility be provided with at least 60 minutes of positive physical contact each day. Many commenters stated that the 60 minute minimum was arbitrary and lacking in scientific documentation, and recommended that the proposed provision be amended to simply require human contact once or several times a day. Several commenters stated that the socialization needs of dogs can be met only if two or more dogs have complete body contact. A small number of commenters expressed concern that requiring positive physical contact could create a human/animal bond that could lead to psychological problems for the caretaker.

As we discussed above, in developing our proposed regulations, we were guided by our statutory mandate to establish standards for the exercise of dogs. Also as stated above, we believe that socialization of dogs, including sensory contact, is the single most effective means of providing the opportunity for adequate exercise. Based on the evidence presented to us, however, we do not believe that it is essential for the health and well-being of dogs that they have sensory contact with other dogs, and do not believe that it is appropriate to include such a provision in the regulations as a required minimum standard. We are therefore not including the provisions of proposed § 3.7(a)(2), regarding sensory contact, in this revised proposal. We continue to believe, however, that dogs housed singly in facilities need regular interaction with humans, and are proposing in § 3.7(b)(1) of this revised proposal that if only one dog is housed, held, or maintained at a facility, the single dog must receive positive physical contact with humans at least daily.

A number of commenters expressed reservations concerning the group housing of dogs, stating that the behavior of dogs in packs is unpredictable and dangerous. While we agree that such dangerous behavior is frequently observed in animals that roam at large, we do not believe it is a significant problem with dogs that are in captivity and subject to human care and control. In cases where individual dogs exhibit aggressive or vicious behavior, the proposed regulations would provide for solitary housing of such animals.

A small number of commenters opposed what they considered "loopholes" in the proposed regulations that would allow research facilities to house animals in isolation, when the need for such housing is set forth in a research proposal approved by the facility's Committee. We are making no changes to our proposal based on these comments. Our mandate to establish and enforce Animal Welfare regulations under the Act makes it clear that the regulations shall not impede research efforts.

*Exercise and Socialization—Section 3.7(b)*

We set forth provisions for the release of dogs for exercise and socialization in proposed § 3.7(b). With certain exceptions that are explained below, we proposed to require that the following categories of dogs, if housed, held, or maintained by any dealer, exhibitor, or research facility, be released at least once a day for exercise and socialization: (1) Dogs that are kept in individual cages or that are kept individually in pens or runs that provide

less than four times the space required for that dog, and that do not allow visual and physical contact with other dogs; and (2) housed, held, or maintained in groups that are not provided with the greater of 80 sq. ft. of space or 150 percent of the minimum space required for all dogs in the group.

Under the proposal, however, dogs housed, held, or maintained individually would not have to be released if kept in pens or runs that provide at least four times the required space for that dog, and that allow the dogs visual and physical contact with other dogs. Also, in certain cases, the approval animal care and use procedure might prohibit the dogs' release for exercise and socialization. In those cases, we proposed that the dogs would have to be maintained in pens or runs that provide each dog with at least twice the minimum floor space set forth in § 3.6(c)(1) of the proposed subpart with regard to primary enclosures. We proposed that the exercise area would have to be at least 80 square feet, except that the area would have to provide each dog with at least twice the minimum floor space required by proposed § 3.6(c)(1).

As proposed, dogs housed, held, or maintained in groups would not have to be released for exercise if the dogs are maintained in pens or runs that provide the greater of 80 square feet or 150 percent of the space each dog would require under proposed § 3.6(c)(1) if maintained separately. We proposed that the exercise area would have to be the greater of 80 square feet or 150 percent of the minimum space requirement in § 3.6(c)(1), as calculated for all dogs in the exercise area.

We proposed that the exercise period for all dogs released for exercise would have to be at least 30 minutes each day, and could be provided in one or more release periods. We based that minimum on the consensus of APHIS veterinarians with training and experience in the care of dogs that 30 minutes of daily exercise is a reasonable minimum for maintenance of a dog's health and well-being.

A very large number of commenters addressed the proposed provisions regarding exercise. As noted above, many commenters, without addressing specific proposed provisions, expressed support for exercise requirements for dogs. Conversely, a large number of commenters opposed the inclusion in the regulations of any requirements regarding exercise. Many other commenters supported the concept that dogs must be provided the opportunity for exercise, but recommended modifications to the proposed provisions. A small number of commenters specifically supported the proposed provisions as written.

Of the commenters recommending modifications to the proposed exercise requirements, a large number recommended increases in exercise space and length of exercise period. A much greater number of commenters stated that the proposed space requirements, frequency of exercise, and length of exercise period were excessive and without scientific documentation. A number of commenters stated that exercise requirements differ for different breeds of dogs. Others recommended that exercise requirements for the dogs in each facility be determined by the facility's attending veterinarian. Several commenters recommended that the regulations require that all dogs kept in enclosures that provide the minimum amount of floor space be exercised daily. A number of commenters recommended that the regulations provide exemptions from the proposed exercise requirements for bitches with puppies or due to whelp, or in cases of assisted breeding. A small number of commenters recommended that dogs acclimated to the currently required enclosure sizes be exempted from the proposed exercise requirements. Several commenters stated that space configuration was more important than square footage in determining exercise area.

We have carefully reviewed each of the comments submitted regarding the exercise requirements contained in our proposal. We have also continued our ongoing analysis of current scientific literature regarding exercise requirements for dogs. Based on the evidence available to us, we believe that it is appropriate to modify our proposed requirements regarding exercise for dogs. Of the data available, the most conclusive indicates that area dimensions alone are not a reliable indicator of how much a dog will exercise. As discussed above, large areas do not guarantee exercise, nor do smaller areas preclude it. We believe that effective methods of ensuring that dogs receive adequate exercise can most appropriately be developed on a facility-by-facility basis, based on the judgment of the attending veterinarian. We are therefore proposing in § 3.7(c)(4) of this revised proposal that written standard procedures for provision of the opportunity for exercise must be prepared by each dealer, exhibitor, or research facility at which dogs are housed, held, or maintained. We are providing that this set of procedures would have to be made available to APHIS, and, in the case of research facilities, to officials of any pertinent funding Federal agency.

We provide in § 3.7(c)(a) of this revised proposal that, under the operating procedures we are proposing to require, dogs over 12 weeks of age, except bitches with litters, housed, held, or maintained in a regulated facility must be provided the opportunity for exercise regularly if they are kept individually in cages, pens, or runs that provide less than two times the required floor space for that dog, as indicated in proposed § 3.6(c)(1). In § 3.7(b) of this revised proposal, we provide that dogs over 12 weeks of age would not require additional opportunity for exercise regularly if they are housed, held, or maintained in groups in cages, pens, or runs that provide at least 100 percent of the recommended space for each dog if maintained separately.

*Methods of Exercise for Dogs—Section 3.7(c)*

Section 3.7(c)(1) of this revised proposal provides that exact methods and periods of providing the opportunity for exercise must be determined by the attending veterinarian, with, at research facilities, consultation with and review by the Committee. We are providing in § 3.7(c)(2) of this revised proposal that the opportunity for exercise may be provided in a number of ways, such as: (1) Group housing in cages, pens, or runs that provide at least 100 percent of the space required for each dog under the minimum floor space requirements set forth in proposed § 3.6(c)(1); (2) maintaining individually housed dogs in cages, pens, or runs that provide at least twice the minimum floor space required by proposed § 3.6(c)(1); (3) providing access to a run or open area; (4) providing positive physical contact with humans through play, grooming, petting, or walking on a leash; or (5) other similar activities.

A small number of commenters stated that exercise provisions in the regulations should not apply to dogs held for less than 2 weeks. We believe that the exercise needs of a dog do not necessarily depend on how long it is held in a facility, and that such an across-the-board exemption for dogs held less than 2 weeks would be inappropriate.

Although the proposal did not prohibit exercise by such means as treadmills, carousels, or swimming, it did specify that such methods would not be considered as meeting the exercise requirements of the proposed regulations. A number of commenters stated that such a restriction was unjustified. We disagree, and are

specifying in this revised proposal that such means of exercise would not be considered as meeting the exercise requirements of this revised proposal. Congressional intent with regard to the Act was to give dogs an opportunity for exercise, not to force them to exercise.

*Record of Exercise—Section 3.7(d)*

Under § 3.7(d) in our original proposal, the licensee or registrant would have been required to keep a record of each dog's release for exercise, with these records subject to APHIS inspection. Many commenters specifically supported this provision. A much larger number of commenters opposed such a requirement. Because written procedures for exercise for dogs would otherwise be required by this revised proposal, we are not including a requirement that records be kept of each dog's release for exercise.

*Exemptions from Exercise—Section 3.7(e)*

In our proposed rule, we stated that we recognize that certain situations would require an immediate response from facility personnel when a dog's welfare requires that it be provided less than the minimum standards for release for exercise. We therefore included a provision in proposed § 3.7(e) to authorize an attending veterinarian to exempt or restrict a particular dog from its required exercise and social release period, if he or she determines that it is necessary to do so for the dog's health, condition, or well-being. As proposed, the exemption would have to be recorded by the attending veterinarian, who would be required to review the grant of exemption at least every 30 days to determine if it is still warranted.

A large number of commenters stated that the recording of exemptions was unnecessary and should not be required. A small number of commenters stated that the regulations should allow exemptions for certain study situations without requiring documentation. We believe that such records are necessary for proper enforcement of the regulations and are including a provision in § 3.7(d)(3) of this revised proposal that records of any exemptions must be maintained and be made available to USDA officials upon request, and, in the case of research facilities, be made available to any pertinent funding Federal agency. In the case of research exemptions, § 2.38(k)(1) of the regulations provides that exceptions to the standards in Part 3 may be made only when such exceptions are specified in the proposal to conduct the activity and are approved by the research facility's Committee.

In § 3.7(d)(2) of this revised proposal, we are adding language regarding exemptions to those provisions regarding exemptions in our original proposal, to clarify that exemptions may be made at research facilities for research purposes. In that paragraph, we are providing that a research facility may be exempted from meeting the proposed exercise requirements for certain dogs, if the principal investigator determines for scientific reasons set forth in a research proposal that it is inappropriate for those dogs to exercise. In such cases, the exemption would have to be documented in the Committee-approved proposal, and would have to be reviewed at appropriate intervals as determined by the Committee, but not less than annually.

Definitions and Use of Terms

A small number of commenters asked that we define "exercise" and "socialization." We do not believe that such definitions are necessary. In general, we believe the standard dictionary meanings of the two words would be sufficient in complying with the regulations. One commenter stated that socialization and exercise should be addressed as separate provisions in the regulations. While we agree that socialization and exercise can be two separate activities, for the purposes of the regulations we believe they are often closely linked. In many cases socialization stimulates exercise. We therefore believe it is appropriate in this revised proposal to discuss socialization in the context of the proposed requirements for an exercise program for dogs.

A number of commenters requested that, for clarity's sake, we reword certain of the proposed provisions regarding exercise or define certain other terms. We believe that the changes we have incorporated in this revised proposal address these commenters concerns.

*Feeding—Section 3.8*

In proposed § 3.8(a), concerning feeding requirements for dogs and cats, we proposed to make minor changes to the feeding requirements in current § 3.5(a). In addition to the current provisions, we proposed to require that food given to a dog or cat be appropriate for the animal's age.

We proposed to make minor additions in § 3.8(b) to clarify that food receptacles must be used for dogs and cats, and must be located so as to minimize contamination by pests as well as by excreta, and so as to be protected from rain or snow. Under the proposal, feeding pans would either have to be made of a durable material that can be easily cleaned and sanitized, or be disposable and discarded after each use. We proposed to require that food containers that are not discarded be cleaned daily and be sanitized before being used to feed a different dog or cat or social grouping of dogs or cats, and, as currently required, be sanitized at least once every to weeks. Under the proposal, self-feeders for the feeding of dry food would have to be cleaned and sanitized regularly, and measures would have to be taken to prevent molding, deterioration, and caking of the food. We provided that any of the sanitization methods allowed in proposed § 3.10(b)(3) could be used for the sanitization required in proposed § 3.8.

A number of commenters specifically supported the provisions of proposed § 3.8 as written. A large number of commenters stated that it would be impossible to ensure that all animals will have access to food in group housing situations. We believe that whatever practical problems might have to be met to provide each dog access to food each day, they cannot justify ignoring the feeding needs of the animals housed in a facility, and we are making no changes based on these comments. Several commenters recommended that multiple feeding sites be provided for animals housed in groups. We believe that the provisions as proposed are adequate with regard to this concern. If certain dogs or cats are not eating because of lack of access to a feeding site, then multiple feeding sites could be one solution. Whatever the mechanism for ensuring it, however, the end result must be that each animal is fed daily.

A large number of commenters stated that, in group housing, there is no way to ensure that food will remain uncontaminated. We are making no changes to our proposal based on these comments. While we agree that the food might not always remain clean after it is offered to the dogs or cats, it is possible and necessary to ensure that the food is in appropriate condition at the time it is offered.

A large number of commenters recommended that the regulations specify that dogs and cats be fed once a day if food is not continuously available. We do not believe that the suggested wording is necessary to clarify the intent of the proposed provision and are making no changes based on the comments.

Several commenters stated that the regulations should require that weaned puppies and kittens up to the age of 16

weeks be fed solid food 3 times a day, with feeding frequency reduced to twice daily after 16 weeks of age. While we encourage giving such dogs individual attention wherever possible, we do not believe that it is necessary to the health and well-being of such animals to require in each case that they be fed more frequently than once a day. We believe further that the needs of these animals would be met by the requirement in the proposed regulation that the diet provided be appropriate for the animal's age and condition, and that the food provided be of sufficient quantity and nutritive value to maintain the normal condition and weight of the animal.

A number of commenters stated that it is inconsistent to require that nondisposable food receptacles be cleaned daily and sanitized every two weeks, while requiring that self-feeders need be cleaned only as needed. In setting forth in the proposal cleaning and sanitization requirements for receptacles and self-feeders, our guiding purpose was to ensure that all such feeding devices remain clean and sanitary enough not to pose a health risk to the animals using them. Upon review of the comments addressing this issue, we are modifying our proposed provisions regarding such cleaning and sanitization. In § 3.8 of this revised proposal, we are proposing to require that both nondisposable food receptacles and self-feeders be kept clean, and be sanitized in accordance with § 3.10(b) of this revised proposal, which would require that they be sanitized at least once every two weeks, as often as necessary to keep them clean and free from contamination, and before being used to feed another dog or cat or social grouping of dogs or cats. In cases where groups of dogs or cats are housed together, it would not be necessary to sanitize the receptacle between each feeding by a different dog or cat, but rather between use by different social groups.

Several commenters recommended that we require that contamination of food be prevented, rather than minimized. We do not believe that such a requirement would be practicable and are making no changes based on these comments.

*Watering—Section 3.9*

Currently, § 3.6 contains provisions for offering liquids to dogs and cats and for the cleaning and disinfection of watering receptacles. Under § 3.9 of the proposed rule we proposed to continue to require that potable water be offered at least twice daily, if it is not continually available, and proposed to add the requirement that water receptacles be sanitized before being used to water a different dog or cat or social grouping of dogs or cats.

A small number of commenters specifically supported these provisions as written. A number of commenters recommended that potable water be available to dogs and cats at all times, unless restricted by a veterinarian, or in times of excessive heat. A small number of commenters recommended that the regulations require that water be provided at least four times daily for a minimum of 1 hour each time. Based on our experience enforcing the regulations we believe that two 1-hour periods of watering are sufficient to meet the needs of dogs and cats, and are making no changes to the proposal based on these comments.

A number of commenters recommended that cleaning of water receptacles be required according to timetables, and that sanitization be required more often than every 2 weeks as proposed. We do not believe that such additional cleaning and sanitization is necessary and are making no changes based on these comments. A number of commenters also recommended that the regulations require that water receptacles be of such construction so as not to cause injury or discomfort to the dogs and cats. Based on our experience enforcing the regulations, we do not believe the commenters' concern has been a practical problem and are making no changes based on these comments.

*Cleaning of Primary Enclosures—Section 3.10(a)*

We proposed to revise and reword the provisions in current § 3.7, and to include them in proposed § 3.10, to clarify the intended requirements for sanitation and other forms of hygiene. We proposed to title the revised section "Cleaning, sanitization, housekeeping, and pest control."

In § 3.10(a) of our proposal, we proposed to require that excreta and food waste be removed from primary enclosures or from under primary enclosures at least daily and as often as necessary. We proposed to apply this cleaning requirement to all types of housing facilities and to primary enclosures with grill-type floors, and to the ground areas under raised runs with wire or slatted floors. In our proposed rule, we stated that our experience indicates that daily cleaning is necessary to prevent the accumulation of feces and food waste and to reduce disease hazards, pests, insects, and odors. We also proposed to require that when a primary enclosure is cleaned by steam or water, any dog or cat in the enclosure be removed during the cleaning process, to prevent the animal from being involuntarily wetted or injured. Additionally, we proposed to require that all standing water must be removed from the primary enclosure, and animals in other primary enclosures must be protected from being contaminated with water and other wastes during the cleaning.

A number of commenters supported the proposed provisions as written. A large number of commenters opposed the proposed provision that would require dogs and cats to be removed from primary enclosures that are being cleaned by steam or by hosing or flushing with water. Many of the commenters stated that certain caging designs protect the animals from being involuntarily wetted when cleaning is carried out, and that removing the animals when water or steam is used is impractical and unnecessary. Upon review of the comments regarding this issue, we believe that in some cases the practical and safety problems associated with removing dogs and cats from cages would outweigh the benefits of removing the animals when cleaning using steam or water is carried out. We are therefore revising our proposal at § 3.10(a) to require that when using water to clean a primary enclosure, whether by hosing, flushing, or other method, a stream of water must not be directed at a dog or cat. Additionally, the revised proposal would provide that when steam is used to clean a primary enclosure, dogs and cats must be removed or adequately protected to prevent them from being injured.

A number of commenters stated that it is not necessary for the health and well-being of dogs and cats that areas in and under primary enclosures be cleaned daily. Some of these commenters recommended that the attending veterinarian decide how often a primary enclosure should be cleaned. While we do not agree that frequency of cleaning is a decision that need be made by the attending veterinarian, upon review of the comments we believe that certain modifications are justified regarding the proposed provisions concerning cleaning and sanitization. We continue to believe that it is necessary to remove excreta and food waste from primary enclosures daily. However, in those areas with which the dogs and cats do not have contact, specifically areas underneath the primary enclosures, we believe that daily cleaning may not be necessary. We are therefore providing in § 3.10(a) of this revised proposal that excreta and food waste must be removed from

primary enclosures daily, and from under primary enclosures as often as necessary to prevent an excessive accumulation of feces and food waste, to prevent soiling of the dogs and cats contained in the primary enclosures, and to reduce disease hazards, insects, pests, and odors. We are also providing in this revised proposal that the pans under primary enclosures with grill-type floors, and the ground areas under raised runs with wire or slatted floors must be cleaned as often as necessary to prevent accumulation of feces and food waste and to reduce disease hazards, pests, insects, and odors.

Many commenters recommended that the proposed regulations include a provision for removal of waste material "as soon as possible and reasonable" in cases where ice or snow make it impossible to remove waste material. We do not believe that it would be appropriate or necessary to develop general animal welfare standards based on specific weather conditions.

A large number of commenters objected to our proposed provision that all standing water be removed from primary enclosures, stating that it would be virtually impossible to remove all traces of water after cleaning. Many commenters stated that many dogs enjoy playing in water. We continue to believe that the removal of standing water is an important element of good housekeeping practices. Upon review of the comments, however, we recognize the impracticality of requiring that *all* water be removed, and are revising our proposal accordingly.

Many commenters recommended that we define the word "cleaning." We believe that the dictionary definition of the word "cleaning" adequately conveys our intent and are making no change to our proposal based on these comments. We also believe that the changes we have made in this revised proposal in response to other comments will address the areas the commenters may have found confusing.

*Sanitization of Primary Enclosures and Food and Water Receptacles—Section 3.10(b)*

As proposed, the provisions of proposed § 3.10(b) regarding sanitization of primary enclosures and food and water receptacles were basically the same as those in § 3.7(b) of the current requirements. Additionally, we proposed to make minor editorial changes to the current regulations.

Consistent with changes explained elsewhere in this revised proposal, we are adding wording in proposed § 3.10(b)(2) to indicate that used food and water receptacles, as well as primary enclosures, must be sanitized at least once every two weeks, and before being used to feed or water another dog or cat.

A large number of commenters supported the provisions of proposed § 3.10(b) as written. Several commenters stated that the regulations should require sanitization of primary enclosures for dogs and cats at least every 7 days, rather than at least every 2 weeks as proposed. Based on our enforcement of the current regulations, we believe that sanitization at least every two weeks is sufficient to help ensure the health and well-being of the animals, and are making no changes to our proposal based on these comments. Proposed § 3.10(b) would require sanitization at least every 2 weeks, and more often if necessary. Many commenters expressed concern that the phrase "more often if necessary" was subjective and could lead to disagreements as to what is necessary. While we agree that the term "more often if necessary" is itself open-ended, it is followed in the proposed regulations by the phrase "to prevent an accumulation of dirt, debris, food waste, excreta, and other disease hazards." We believe that such wording is sufficiently specific. A number of commenters recommended wording and formatting changes in proposed § 3.10(b)(2). We believe that the language as proposed is clear and understandable and are making no changes based on these comments.

Proposed § 3.10(b)(3) contains specific methods of sanitization that would be considered adequate to meet the sanitization requirements of the proposed regulations. These methods are the same as those in the current regulations. Many commenters stated that these provisions are overly specific and restrictive. Based on our experience enforcing the regulations, we have found that requiring the methods of sanitization listed has resulted in effective sanitization. However, we recognize that new products with the same effectiveness as those listed may be or may become available. We are therefore revising our proposal to allow the use of detergent/disinfectant products that accomplish the same purpose as the detergent/disinfectant procedures specified in our original proposal.

In proposed § 3.10(b)(4), we are including "absorbent bedding" as a material similar to gravel, sand, grass, or earth that must be sanitized by removing contaminated material as necessary. As discussed elsewhere in the supplementary information, many facilities use such absorbent bedding, and find it superior in quality to alternative surface materials.

*Housekeeping for Premises—Section 3.10(c)*

In proposed § 3.10(c), we revised and reworded § 3.7(c) of the current regulations regarding housekeeping to clarify that paragraph's intent. The current regulations require that premises be kept free of trash accumulations and be kept clean enough and in good enough repair to protect the animals and facilitate the husbandry practices required by Part 3 of the regulations. We proposed to retain the current requirements, but also to add language to clarify that one of the aims of the housekeeping provisions is to keep premises rodent-free. Additionally, we proposed to specify the following as good housekeeping practices: Premises would have to be kept free of accumulations of trash, junk, waste products, and discarded matter such as wood, bricks, and abandoned cars; weeds, grasses, and bushes would have to be controlled so as to facilitate cleaning and pest control, and to protect the dogs' and cats' health and well-being from hazards such as fox tails, burrs, sharp twigs, and fires.

A number of commenters supported these provisions as written. A larger number of commenters stated that applying the proposed housekeeping requirements to the entire premises unjustifiably extended the inspector's authority beyond animal areas. We do not agree with this assertion. The proposed regulation makes it clear that one of the primary purposes of requiring good housekeeping throughout the entire premises is to minimize pest risks that could easily spread to animal areas.

*Pest Control—Section 3.10(d)*

The provisions of proposed § 3.10(d) regarding pest control are basically the same as those in § 3.7(d) of the current requirements. We proposed some minor revisions to simplify the language used. We also proposed to clarify that a pest control program is necessary to promote the health and well-being of the dogs and cats at a facility and to reduce contamination by pests in animal areas. The only commenters addressing the provisions of proposed § 3.10(d) supported them as written, and we are making no changes to those provisions in this revised proposal.

*Employees—Section 3.11*

Current § 3.8 requires that there be a sufficient number of employees to maintain the prescribed level of husbandry practices required by

Subpart A, and that husbandry practices be under the supervision of an animal caretaker with a background in animal husbandry or care. We proposed minor revisions to this section in proposed § 3.11 to make clear that this requirement is imposed upon every person subject to the regulations and that the burden of verifying and ensuring that the supervisor and other employees are appropriately qualified is on the employer subject to the regulations. We did not propose to prescribe a specific number of employees for each facility, because the number of employees needed will vary according to the size and configuration of the facility, and according to the number and types of animals housed there. Under the proposal, a facility would have to have enough employees to carry out proper feeding, cleaning, observation, and other generally accepted professional and husbandry practices.

A number of commenters supported proposed § 3.11 as written. Many commenters objected to the proposed provisions, and stated that inspectors and government administrators are not qualified to tell facilities that they do not have enough employees. We are making no changes based on these comments. As we stated above, whether a facility has enough employees would be determined on a case-by-case basis. We believe that such a determination can be made based on an evaluation of common practices regarding facilities of a particular size or nature, and on simple observation of whether the regulations are being complied with.

In this revised proposal, we are making a minor change to remove the requirement that the supervisor be an animal caretaker. However, under this revised proposal, the supervisor would still have to meet the other qualifications set forth in our original proposal.

*Social Grouping—Section 3.12*

We proposed to slightly revise current § 3.9 regarding social grouping of dogs and cats in order to reduce the stress suffered by certain dogs and cats. Under proposed § 3.12(d), dogs and cats could be maintained together in the same primary enclosure, or be maintained in the same primary enclosure with other species of animals, if they are compatible. The present regulations require that dogs and cats be kept separate from each other, and from other animals, regardless of how well they get along together, or whether they are distressed by separation because they have been raised together and are compatible. Under the proposal, if dogs and cats are not compatible with each other or with other animals, keeping them in the same primary enclosure would continue to be prohibited. A number of commenters supported the proposed provisions as written.

Section 3.12(c) of the proposal provides that puppies or kittens 180 days of age or less may not be housed in the same primary enclosure with adult dogs or cats, other than their dams, except when permanently maintained in breeding colonies. Many commenters correctly noted that this provision conflicted with the provisions in proposed § 3.6(b) and (c), which provide that puppies or kittens 4 months of age or less may not be housed with adult dogs or cats other than their dam. In this revised proposal, we are making the regulations consistent by changing "180 days" in proposed § 3.12(c) to "4 months."

Section 3.12(d) of the proposal provides that dogs or cats may not be housed in the same primary enclosure with any other species of animal, unless they are compatible. Many commenters opposed the housing of multiple species within the same primary enclosure, stating that such housing contradicts FDA and NIH guidelines. We are making no changes based on these comments. As we stated in our proposal, in some cases it would cause more stress to the animals to separate differing species than to keep them together. Such multiple-species housing would be permitted only if the animals are compatible.

One commenter objected to the proposed provisions on social grouping because they excluded the grouping of puppies with sires that exhibit beneficial paternal behavior. We do not believe that the benefits of housing adult males in the same enclosure with young puppies justify the risk to the puppies and are making no changes based on this comment.

A small number of commenters opposed what they understood in § 3.12 to be a requirement for social grouping. While we encourage social grouping in the same primary enclosure, our intent in setting forth proposed § 3.12 was not to require that social groups be formed in the same primary enclosure, but rather to ensure that whatever dogs or cats are in the same enclosure be compatible. In this revised proposal, we are modifying the wording of proposed § 3.12 to clarify that intent.

Paragraph (e) of § 3.12 in our original proposal provided that dogs and cats under quarantine or treatment for a communicable disease must be separated from other dogs and cats and other susceptible species of animals to minimize the risk of the disease. To emphasize that the attending veterinarian should have the latitude to isolate certain animals for medical reasons, we are revising proposed § 3.12(e) in this revised proposal to provide that dogs and cats that have or are suspected of having a contagious disease must be isolated from healthy animals in the colony, as directed by the attending veterinarian. The revised paragraph would also provide that when an entire group or room of dogs and cats is known to have or believed to be exposed to an infectious agent, the group may be kept intact during the process of diagnosis, treatment, and control.

Transportation Standards

*Consignments to Carriers and Intermediate Handlers—Section 3.13*

We proposed to expand the current obligations imposed upon carriers and intermediate handlers (defined in Part 1 of the regulations) to ensure the well-being of dogs and cats during transport in commerce. Certain prerequisites must be satisfied before carriers and intermediate handlers may accept dogs and cats for transport in commerce. Additionally, the carriers and intermediate handlers have certain duties to fulfill after the shipment has reached its destination. Various obligations are presently contained in current §§ 3.11 and 3.14. We proposed to consolidate them in one section, proposed § 3.13, and to add some additional ones necessary for the dogs' and cats' welfare.

We proposed to remove from the regulations the requirement that certifications accompanying shipments of dogs and cats include an "assigned accreditation number" (as provided in current § 3.11(c)(4)), because a program under which accreditation numbers are assigned has not been implemented.

A number of commenters expressed concern that the proposed regulations regarding transportation standards would significantly increase animal transit time. Some commenters estimated that the proposed regulations would quadruple transit charges. Others stated that the proposed regulations would eliminate the transport of animals by air. However, the commenters did not supply data to support these assertions. The purpose of amending the regulations is to help ensure the health and well-being of dogs and cats. In the absence of data indicating that other factors should override specific measures proposed to achieve this goal,

we are making no changes to our proposal based on these comments.

Among the current regulations retained in proposed § 3.13(a) was the provision that carriers and intermediate handlers must not accept a dog or cat for transport in commerce more than 4 hours before the scheduled departure time of the primary conveyance. A number of commenters supported this provision as written. A small number of other commenters recommended that the current 4-hour period be shortened to 2 hours. Based on our experience enforcing the regulations, we do not believe that the 4-hour period is unreasonable or a threat to the well-being of the animals. We are therefore making no changes to our proposal based on these comments.

In proposed § 3.13(b), we provided that carriers and intermediate handlers must not accept a dog or cat for transport in commerce unless they are provided with the name, address, and phone number of the consignee. A number of commenters supported this provision as written. A small number of commenters stated in general that proposed § 3.13(b) should be reevaluated, or stated more specifically that, because animal shipments are usually picked up at an airport, the name, address, and telephone number of the consignee should be optional. We continue to believe that such information is necessary for those situations where the consignee for some reason fails to take receipt of the animal, and are making no changes based on these comments.

Section 3.13(c) of the proposal included the requirement that written instructions concerning food and water requirements for each dog and cat in the shipment be securely attached to the outside of the primary enclosure before a carrier or intermediate handler can accept it for transport. This requirement is contained in current § 3.14(d). The proposal provided that instructions would have to be easily noticed and read. The only commenters who addressed this provision supported it and we are making no changes to proposed § 3.14(d).

Current § 3.14 requires that adult dogs and cats be given food at least once every 24 hours after acceptance for transportation, and water at least once every 12 hours after acceptance for transportation. It is conceivable under these regulations that a dog or cat could have been fed up to 24 hours before being consigned for transport in commerce and would then not be offered food for another 24-hour period. To avoid this occurrence, we proposed to add a certification requirement to proposed § 3.13(d) to require that a carrier or intermediate handler not accept a dog or cat for transport in commerce unless certification by the consignor accompanies the animal and specifies in writing the date and time each dog and cat was last provided food and water before acceptance for transport. In § 3.16, we proposed to require that the time periods for feeding and watering the dogs after acceptance for transport begin with the time of the last feeding and watering before acceptance for transport. To avoid situations where the carrier or intermediate handler would have to provide food and water immediately after accepting the animals, we proposed to require that the certification also state that the dogs and cats were provided water during the 4 hours before delivery to the carrier or intermediate handler, and were provided food during 12 hours before delivery to the carrier or intermediate handler.

A small number of commenters supported the provisions of proposed § 3.13(d) as proposed. A much larger number of commenters recommended that we we change the word "during" with regard to timeframes to "within." We agree that "within" closely expresses our intent and are revising our proposal accordingly. We are also making certain nonsubstantive format changes to proposed § 3.13(d) to reduce redundancy and to improve readability. A small number of commenters opposed the requirement for certification of the last time of feeding and watering, and opposed the potential necessity of a transporter's having to feed and water the animals shipped. We continue to believe that certification is necessary for effective implementation of the regulations. Further, we do not think it is humane to the animals to remove all feeding and watering obligations from the tranporter. We are therefore making no changes based on these comments.

Several commenters recommended that the certification be required to be included on the invoice accompanying the shipment. Several other commenters asked that we clarify whose responsibility it would be to provide the written certification. We are making no changes based on these comments. We do not believe it would be practical or reasonable to include feeding and watering information on the invoice. With regard to responsibility for certification, the proposed provisions make it clear such responsibility would be the consignor's. As proposed, carriers and intermediate handlers would not be allowed to accept dogs and cats for transport unless the certification described above is signed and dated by the consignor, and the time of the execution, as well as others required in proposed § 3.13, would have to include the tag number or tattoo assigned to each dog and cat under § 2.50 of the regulations.

In proposed § 3.13(e), we proposed to retain current standards which require that carriers and intermediate handlers must not accept a primary enclosure for transport unless it meets the other requirements of subpart A, or unless the consignor certifies that it meets the other requirements of subpart A. Even if such certification is provided however, it is the responsibility of the carrier or intermediate handler not to accept for transport an animal in an obviously defective enclosure. A small number of commenters supported the proposed provisions as written. Many commenters stated that the provisions in proposed § 3.13(e) were unnecessarily wordy or redundant, or put too much responsibility on the carrier or intermediate handler. We disagree. Under the current and proposed regulations, the responsibility is shared between consignor and carrier or intermediate handler. The intent behind allowing certification that a primary enclosure meets the standards is to relieve the carrier or intermediate handler of the need to assess the performance capabilities of the primary enclosure where such assessment would be difficult or impractical. It would not relieve the carrier or intermediate handler of the responsibility to refuse acceptance of a primary enclosure that is obviously defective or damaged.

Several commenters opposed the provision allowing for certification as to the primary enclosure from the consignor, stating that the general public should not be required to supply such certification, because most enclosures used are acceptable. We are making no changes based on these comments. The provisions of proposed § 3.13(e)(1) allow but do not require certification from the consignor.

A number of commenters recommended nonsubstantive wording changes to the proposed provisions. We do not believe the recommended changes would add to the clarify of the proposed provisions and are making no changes based on these comments.

In proposed § 3.13(f), we proposed to clarify the certifications of the consignor regarding the acclimation of a dog or cat to lower temperatures than those prescribed in current §§ 3.16 and 3.17 of the regulations (included in proposed §§ 3.18 and 3.19). In proposed § 3.14(f), we proposed to clarify the provisions in

§ 3.11(c) to require that the temperatures to which a dog or cat is exposed must meet generally accepted temperature ranges for the age, condition, and breed of the animal, even if it is acclimated to temperatures lower than those prescribed in the regulations. We proposed that a carrier or intermediate handler not be permitted to expose a dog or cat to temperatures lower than those prescribed by the regulations, unless a veterinarian certifies that the animal is acclimated to such lower temperatures, and unless the veterinarian includes in the certification the minimum temperature to which the animal may be exposed.

A small number of commenters supported the provisions of proposed § 3.13(f) as written. A number of commenters opposed allowing a veterinarian to set a minimum allowable temperature for dogs and cats. Of these commenters, many recommended retaining the current regulations. Several commenters stated that allowing a veterinarian to determine the minimum temperature an animal could be exposed to would be difficult to implement without major modification to the entire airline tracking system for cargo. A number of commenters stated that no exemption to the temperature requirements in proposed §§ 3.18 and 3.19 should be made for puppies 8–12 weeks old. One commenter recommended that, even with a veterinarian's certification, no dog or cat be allowed to be exposed to temperatures lower than 35 °F (1.7 °C), and that special temperature provisions be added for puppies and kittens, and ill or aged animals. We have reviewed carefully each of the comments received regarding the proposed temperature certification requirements, and continue to believe that it is necessary for the well-being of dogs and cats being transported to allow the discretion of a veterinarian as to what temperature levels an animal can tolerate. This discretionary authority would serve as a safeguard for young puppies and kittens, and would ensure that other animals with special needs not be exposed to temperatures dangerous to their well-being. We agree, however, that it would be in the best interests of the animals being transported to require that no dog or cat being transported be exposed to temperatures lower than 35 °F (1.7 °C), except for the limited exception made in proposed § 3.19(a)(3) for movement to or from the animal holding areas of a terminal facility or a primary conveyance, and we are revising our proposal to include such a provision.

We proposed in § 3.13(g) of the proposal to retain the provision in current § 3.11(d) that requires the carrier or intermediate handler to attempt to notify the consignee of the arrival of the animal upon arrival, and every 6 hours after arrival. Under our proposal, proposed § 3.13(g) would also include limitations on how long a dog or cat can be held at a terminal facility while waiting to be picked up by the consignee. The same time limitations are imposed under Part 2 of the regulations, § 2.80, "C.O.D. shipments," so that the carrier or intermediate handler must attempt to notify the consignee for 24 hours after arrival, then must return the animal to the consignor or to whomever the consignor designates if the consignee cannot be notified. If the consignee is notified and does not take physical delivery of the dog or cat within 48 hours of notification, the carrier or intermediate handler must likewise return the animal to the consignor or to whomever the consignor designates. We also included provisions in proposed § 3.13(g) that would require that carriers and intermediate handlers continue to maintain dogs and cats in accordance with generally accepted professional and husbandry practices, as long as the animals are in their custody and control and until the animals are delivered to the consignee or to the consignor or to whomever the consignor designates. We also proposed to require that the carrier or intermediate handler obligate the consignor to pay for expenses incurred by the carrier or intermediate handler in returning the animal to the consignor.

A number of commenters recommended that the regulations require that carriers and intermediate handlers be required to notify the consignee every 2 hours after arrival of the animal, rather than every 6 hours. We do not believe that such a requirement is practical or necessary and are making no changes to our proposal based on these comments. Several commenters recommended that the regulations require that records of attempts to notify the consignee of a dog or cat's arrival be maintained on the carrier's destination copy of the airway bill. We do not believe that such a requirement would be practical and are making no changes to our proposal based on these comments.

Several commenters stated that the regulations should specify what type of care the dog or cat is to receive while awaiting pick-up at the carrier facility. We believe that the proposed provision that such animals must be cared for according to generally accepted professional and husbandry practices makes clear the level of care that would be necessary under the proposed provisions.

Where references are made in proposed § 3.13 to tag numbers or tattoos assigned to each dog or cat under § 2.50 of the regulations, we are adding wording to make clear that identification is also required under § 2.38 of the regulations.

*Primary Enclosures Used to Transport Dogs and Cats: Construction—Section 3.14*

We proposed to reformat current § 3.12, which concerns primary enclosures used to transport dogs and cats, and to move those provisions to proposed § 3.14. Additionally, we proposed to revise the contents of several paragraphs in the section, and add requirements for surface transportation. When the transportation standards were rewritten in 1978 to incorporate the 1976 amendments to the Act concerning the commercial transportation of animals, the existing standards for surface transportation were inadvertently omitted. Since that time, the standards have pertained to commercial transportation by common carrier and only a few subsections have pertained to surface transportation by private vehicle. We therefore proposed to reinstate the surface transportation standards.

We proposed to require in § 3.14(a) that dogs and cats be shipped in primary enclosures. In addition to the requirements in current § 3.12(a) regarding construction of primary enclosures used for transportation, we proposed to require in § 3.14(a) that the primary enclosure be constructed so that: (1) The animal being transported is at all times securely contained within the enclosure and cannot put any part of its body outside of the enclosure in a way that could injure the animal or people; (2) any material used in or on the enclosure is nontoxic to the animal; and (3) if a slatted or wire mesh floor is used in the enclosure, it be constructed so that the animal cannot put any part of its body through the spaces between the slats or through the holes in the mesh. Our proposal specified that unless the dogs and cats are on raised floors made of wire or other nonsolid material, the primary enclosure would have to contain enough suitable, previously unused, litter to absorb and cover excreta.

A number of commenters supported the provisions of proposed § 3.14(a) as written. One commenter stated that a written certification should be required

of all regulated and licensed shippers stating that the primary enclosure meets all the requirements of proposed § 3.14(a). As discussed above, provision exists in proposed § 3.13(e) for the consignor to supply such certification, in lieu of the carrier or intermediate handler assessing the performance capabilities of the enclosure. However, we believe it would be unnecessarily restrictive to require such certification in all cases, and are making no changes based on these comments. Several commenters expressed concern that the proposed regulations would make carriers responsible for determining the suitability of litter. Carriers already have this responsibility under the current regulations, and our experience enforcing the regulations indicates that this has not posed any problems.

*Primary Enclosures Used to Transport Dogs and Cats: Cleaning—Section 3.14(b)*

In addition to retaining the cleaning and sanitization requirements that currently appear in § 3.12(e), we also proposed to require in proposed § 3.14(b) that if the dogs or cats being transported are in transit for more than 24 hours, either the enclosures be cleaned and the litter replaced, or other means, such as moving the animals to a different enclosure, be used to prevent the soiling of the dogs or cats by body wastes.

A large number of commenters opposed the proposed provisions regarding cleaning of the enclosures and replacement of litter. A small number of commenters recommended that such procedures be required if the animals are in transit for more than 36 hours, rather than 24 hours as proposed. Many commenters stated that requiring cleaning of enclosures and replacement of litter could create the risk of injury or escape of the animals. We continue to believe that it is necessary to the health and well-being of animals in transit that their enclosure, and their litter, be kept reasonably clean of body wastes. We are therefore retaining the provisions of proposed § 3.14(b) in this revised proposal, and are adding the provision that if it becomes necessary to remove the dog or cat from the enclosure, in order to clean or move the dog or cat to another enclosure, such procedure must be completed in a way that safeguards the dog or cat from injury and prevents escape.

*Primary Enclosures Used to Transport Dogs and Cats: Ventilation—Section 3.14(c)*

In proposed § 3.14(c)(1), we set forth ventilation requirements more restrictive than those in the current regulations, by removing two of the current options for primary enclosure configurations with regard to ventilation. The current regulations allow the primary enclosures to have ventilation openings on either two, three, or four sides. We proposed to require that there be ventilation openings on each of the four walls of primary enclosures used to transport dogs and cats, and that the ventilation openings total at least 8 percent of the total surface of each wall, with the total combined surface area of the ventilation openings comprising at least 14 percent of the total combined surface area of all the walls of the primary enclosure.

A small number of commenters supported the provisions of proposed § 3.14(c)(1) as written. An equal number of commenters either opposed the proposed provisions, or requested a transition period for modification and redesign of existing enclosures. Upon review of the comments, we have reconsidered the position we put forth in the proposal. The evidence available to us indicates that the benefits of amending the current standards regarding ventilation openings on primary enclosures would be minimal in comparison to the potential disruption of existing shipping procedures. We are therefore revising our proposal at proposed § 3.14(c)(1). The provisions we are setting in this revised proposal are the same as those in the current regulations at § 3.12(a)(4), except as discussed below, and would continue to allow the use in transport of primary enclosures with ventilation openings on two, three, or four sides.

While retaining in this revised proposal the majority of the current provisions regarding ventilation openings, we are proposing one change to the current regulations. The current regulations require that at least one-third of the total minimum area required for the ventilation of primary enclosures used for transportation be located on the lower one-half of the primary enclosure, and, likewise, at least one-third be located on the upper one-half. In this revised proposal, we are including provisions to require only that at least one-third of the ventilation area be located on the upper one-half of the primary enclosure. Research conducted by the Federal Aviation Administration has indicated that it is not necessary for the animals' well-being that one-third of the openings be located on the lower one-half. In fact, research has shown that requiring openings on the lower one-half of the enclosure may be detrimental to certain dogs and cats and other animals. Timid animals may benefit from the security provided by a solid wall in the lower one-half of the enclosure, and may be caused stress by openings on the lower one-half.

Section 3.12(h) of the current regulations requires that a primary enclosure that is permanently affixed to a primary conveyance so that the front opening of the enclosure is its only source of ventilation must face either the outside of the conveyance or an unobstructed aisle or passageway. Because primary enclosures that open directly to the outside of the conveyance may expose the animals in the enclosure to the elements, we proposed in § 3.14(c)(3) to require that enclosures with a front opening open only to an unobstructed aisle or passageway. We also proposed in § 3.14(c)(3) to require that the ventilation openings of primary enclosures permanently affixed to a conveyance be covered with bars, mesh, or smooth expanded metal having air spaces. No commenters addressed these provisions and we are making no changes to them in this revised proposal.

*Primary Enclosures Used to Transport Dogs and Cats: Compatibility—Section 3.14(d)*

Under the current regulations, § 3.12(b) requires that live dogs or cats transported in the same primary enclosure be of the same species and be maintained in compatible groups. We proposed to retain this wording in proposed § 3.14(d), with the added provision that dogs and cats that are private pets, are of comparable size, and are compatible, may be transported together in the same primary enclosure. As we stated in our proposal, based on our observations of shipments of dogs and cats and on information received from pet owners and dealers, we have determined that shipping companion animals individually may cause them more stress than shipping them together.

We also proposed in § 3.14(d) that: (1) Puppies or kittens 180 days of age or less may not be transported in the same primary enclosure with adult dogs or cats other than their dams; (2) dogs or cats that are aggressive or vicious must be transported individually in a primary enclosure, and (3) female dogs or cats in season (estrus) must not be transported in the same primary enclosure with any male dog or cat.

A number of commenters supported the provisions of § 3.14(d) as written. Several commenters objected that the proposed provisions would unjustifiably place the burden of determining compatibility on the carrier. Carriers already have this responsibility under

the current regulations, and our experience enforcing the regulations indicates that this has not posed any problems.

One commenter correctly noted that the provision in proposed § 3.14(d)(2), prohibiting puppies or kittens 180 days of age or less from being transported in the same primary enclosure with adult dogs or cats other than their dams is inconsistent with § 3.6 (b)(2) and (c)(3), which refers to puppies and kittens 4 months of age or less. To make the regulations consistent, we are changing the reference to "180 days" in proposed § 3.14(d)(2) to read "4 months."

*Primary Enclosures Used to Transport Dogs and Cats: Space and Placement—Section 3.14(e)*

We proposed to retain the requirement in current § 3.12(c) that each dog or cat transported in a primary enclosure have sufficient space to turn about freely in a standing position, and to sit, stand, and lie in a natural position, and we proposed to move that requirement to proposed § 3.14(e)(1). No commenters addressed these provisions and we are making no changes to them in this revised proposal.

*Primary Enclosures Used to Transport Dogs and Cats: Transportation by Air—Section 3.14(f)*

Because certain requirements for primary enclosures used in surface transportation were omitted from the 1978 revisions to the regulations, the provisions in current § 3.12(d) regarding the number of animals that may be transported in a primary enclosure are designed only for air transportation. We therefore proposed to set forth the provisions of current § 3.12(d), with some amendments, in proposed § 3.14(f), titled "Transportation by air." We proposed that a maximum of two live dogs or cats, 6 months of age or more, that are comparable in size, may be transported in the same primary enclosure when shipped by air. The present standard allows only one dog or cat, 6 months or more of age, to a container. We stated in our proposal that the change was proposed to help reduce stress on animals that would prefer traveling with a companion, rather than alone.

We also proposed that a maximum of two live puppies, 8 weeks to 6 months of age, of comparable size, and weighing over 20 lb (9 kg) each may be transported in the same primary enclosure. Present standards allow only one such puppy per primary enclosure. The present standards also allow only two live puppies and kittens, 8 weeks to 6 months of age, but not weighing over 20 lb (9 kg) each, to be shipped in the same primary enclosure. We proposed that it be permissible to transport a maximum of three such puppies or kittens in the same primary enclosure. In proposed § 3.14(f)(4), we proposed to retain the provision in current § 3.12(d) that weaned puppies or kittens less than 8 weeks old and of comparable size, or puppies or kittens that are less than 8 weeks old and are littermates accompanied by their dam, may be shipped in the same primary enclosure to research facilities. This last provision is limited by the Act to transport to research facilities.

A small number of commenters supported the provisions of proposed § 3.14(f) as written. A number of commenters opposed the provisions in proposed § 3.14(f) that would increase the allowable number of dogs or cats shipped by air in one enclosure. One commenter recommended that an even greater number of puppies and kittens than proposed be permitted transport by air in the same primary enclosure. The commenters who opposed the increase as proposed stated that allowing such an increase would create the potential of increased stress to the animals, and of injuries from fighting. The changes we proposed regarding the number of animals permitted shipment by air in one enclosure were designed to reduce the stress of transportation on the animals. Upon review of the comments, however, it is evident that increasing the number of animals per enclosure could create more stress than it eliminates. We are therefore revising our proposal regarding shipment by air to allow no more than one live dog or cat, 4 months of age or older, to be shipped in a primary enclosure. The revised provisions would also allow only one live puppy, 8 weeks to 4 months of age, and weighing over 20 lbs. (9 kg) to be shipped in a primary enclosure. No more than two live puppies or kittens, 8 weeks to 4 months of age, and weighing 20 lbs. (9 kg) or less, would be allowed transport in the same primary enclosure when shipped by air.

A small number of commenters recommended that only one species of animal be permitted shipment in each primary enclosure. We are making no changes based on this comment. Under the revised provisions, the only dogs and cats that could be shipped together by air would be kittens and small puppies. If these animals are compatible, as required by the proposed regulations, we do not believe there would be a danger in shipping them together.

A small number of commenters, addressing the issue of air transportation, recommended that the regulations require that cargo space be illuminated to allow observation of transported animals. One commenter recommended that the regulations require that all primary enclosures be secured to the plane cargo area. We do not believe that such requirements would be feasible, given the construction of air transport vehicles, and we are making no changes to our proposal based on these comments.

Several commenters opposed the provision in proposed § 3.14(f)(4) allowing weaned puppies or kittens less than 8 weeks of age to be shipped by air in the same primary enclosure when shipped to research facilities. Such a provision is authorized by the Act with regard to research facilities. We are therefore making no changes to the proposed provision based on these comments.

*Primary Enclosures Used to Transport Dogs and Cats: Transportation by Surface Vehicle—Section 3.14(g)*

We proposed to add a new § 3.14(g) regarding transportation by surface vehicle. As proposed, these provisions would reinstate primary enclosure requirements that were inadvertently omitted when the standards for the commercial transportation of dogs and cats were revised in 1978. We proposed that a maximum of four dogs or cats may be transported in the same primary enclosure when shipped by surface vehicle, provided all other transportation requirements in proposed § 3.14 are complied with. As explained in our proposal, we proposed to allow shipment of more dogs and cats in surface vehicle enclosures than in air shipping enclosures for several reasons. First, standard enclosures for surface transportation are larger than those customarily used for air transportation. Additionally, when animals are transported by surface vehicle, there is more opportunity for the driver or another person to check on the animals to ensure that their health is being maintained and that the animals are compatible.

Under our proposal, weaned live puppies or kittens less than 8 weeks of age, or puppies or kittens that are less than 8 weeks of age, are littermates, and are accompanied by their dam, would be permitted to be transported in the same primary enclosure when shipped to a research facility, including Federal research facilities.

One commenter supported the provisions as proposed. A number of commenters opposed the provisions. Several commenters stated that

allowing more than two puppies or kittens in the same primary enclosure would be dangerous to the animals. Another recommended that four puppies or kittens be permitted shipment together only over short distances. A number of commenters stated that the regulations for surface transport should be the same as those for air transport. Upon review of the comments, we continue to believe that the fundamental differences between surface transportation and air transportation allow for conditions where a greater number of dogs or cats can be safely transported in the same enclosure by surface vehicle. We are therefore making no changes to our proposal regarding these provisions.

Several commenters opposed the provisions in proposed § 3.14(g)(2) allowing weaned puppies or kittens less than 8 weeks of age to be shipped by surface vehicle in the same primary enclosure. As with air transportation, such a provision is authorized by the Act with regard to research facilities. We are therefore making no changes to the proposed provisions based on these comments.

*Primary Enclosures Used to Transport Dogs and Cats: Accompanying Documents and Records—Section 3.14(h).*

We proposed to require in proposed § 3.14(h) that shipping documents accompanying the shipments either be maintained by the operator of the conveyance or be securely attached in a readily accessible manner to the outside of the primary enclosures in a way that allows them to be detached for examination and securely reattached. We also proposed to require that instructions for food and water and for administration of drugs, medication, and other special care be attached to each primary enclosure in a manner that makes them easy to notice, to detach for examination, and to reattach securely. One commenter specifically supported the proposed provisions as written. Several commenters stated that the documents accompanying shipment of puppies and kittens under 6 months of age should contain the date of birth of those animals. We do not believe that such a requirement would be practical, especially with regard to the shipment of random source animals, and are making no changes to the proposal based on these comments. One commenter stated that the increasing use of electronic waybills would make it impossible to attach air waybills to the enclosures. The regulations as proposed do not require the attachment of air waybills to the enclosures, only the attachment of instructions for food, water, the administration of drugs or medication, and other special care.

*Primary Conveyances—Section 3.15*

To protect the health of dogs and cats during transportation in commerce, the regulations in current §§ 3.16 and 3.17 prohibit animals in transporting devices or holding areas of terminal facilities from being subjected to temperatures above or below a specified range. Temperature is also of concern when animals are being transported in the cargo spaces of primary conveyances. Until 1978, requirements concerning allowable temperatures in primary conveyances were included in § 3.13 of the regulations. However, these requirements were inadvertently omitted from the regulations during the last major revision in 1978.

As we stated in our proposal, the intervening years have demonstrated the need to reinstate these requirements for two principal reasons: (1) The current requirements concerning temperatures in primary conveyances are inconsistent, because dogs and cats in transporting devices and in holding areas of terminal facilities must not be exposed to temperatures outside a specified range, but dogs and cats in animal cargo spaces of primary conveyances—mainly cars and trucks—are not afforded the same protection; and (2) as air freight rates have risen dramatically during this time, increasing numbers of animals are being shipped by surface transportation—some for very long distances—with no provisions that the animals are not subjected to extremes of temperatures.

Under the requirements for air transportation in proposed § 3.15(d), we specified that during transportation, including time spent on the ground, live dogs and cats must be transported in cargo areas that are heated or cooled as needed to maintain the required ambient temperature. Under our proposal, the cargo areas would also have to be pressurized while the conveyance is in the air. In proposed § 3.15(e), we proposed to require that during surface transportation, auxiliary ventilation, such as fans, blowers or air conditioning, be used in animal cargo spaces containing live dogs and cats when the ambient temperature within the animal cargo space is 85 °F (29.5 °C) or higher. Additionally, as proposed, the ambient temperature would not be permitted to exceed 95 °F (35 °C) at any time; nor to exceed 85 °F (29.5 °C) for a period of more than 4 hours; nor to fall below 45 °F (7.2 °C) for a period of more than 4 hours; nor to fall below 35 °F (1.7 °C) at any time. We proposed to add requirements in proposed § 3.15(c) that a primary enclosure be positioned in a primary conveyance in a way that provides protection from the elements. Current § 3.13(f) requires that dogs and cats not be transported with any material, substance or device that may reasonably be expected to harm the animals. In proposed § 3.15(h), we proposed to clarify the intent of that requirement to indicate that the material, substance or device may not accompany the animals only if the shipment is conducted "in a such a manner" that may reasonably be expected to harm the dogs and cats.

A number of commenters supported the provisions in proposed § 3.15 as written. A number of commenters recommended that an exemption from pressurization of cargo areas be included for aircraft flying 10,000 feet or less. We believe that the commenters' point is a good one, warranting modification of our proposal. In § 3.15(d) of this revised proposal, we are including a provision consistent with standards set forth by the United States Fish and Wildlife Service, and are proposing to require that cargo areas be pressurized, unless the aircraft is flying under 8,000 feet. Several commenters recommended that the proposed provisions regarding pressurization be accompanied by a requirement that air cargo spaces provide sufficient air for normal breathing of the animals. We believe addition of such a provision would help clarify the intent of the regulations and are revising our proposal accordingly.

A small number of commenters addressed the provisions in proposed § 3.15(d) regarding the heating and cooling of air cargo areas. Several commenters stated that the provisions there should be the same as the more specific requirements in proposed § 3.15(e) for temperature levels in surface vehicles. We are making no changes to our proposal based on these comments. The differences between the construction of air and surface vehicles, and the nature of the transportation itself, would make such parallel regulations impractical. Because transportation by air generally requires less time than transport by surface vehicle, we believe that the proposed provisions regarding heating and cooling of air cargo areas would be adequate to ensure the health and well-being of the animals transported.

A small number of commenters stated that the proposed heating and cooling requirements for air cargo areas were too stringent. These commenters stated that carriers do not have the capability

to heat and cool the ground conveyances used to transport animals to and from the terminals and the aircraft. The commenters stated further that compliance with proposed provisions would be impossible because carriers do not have the capability to heat or cool the cargo compartment while the aircraft is on the ground. We disagree that the provisions of proposed provisions would be impossible because carriers do not have the capability to heat or cool the cargo compartment while the aircraft is on the ground. We disagree that the provisions of proposed § 3.15(d) would be unworkable. Those provisions do not address ground conveyances used to transport animals between terminals and aircraft. Further, we disagree that aircraft do not have the capability to control temperature levels while on the ground. We believe that the proposed provisions are workable and necessary. However, we are making one change in § 3.15(d) to clarify our intent. Instead of stating that the air cargo areas must ensure the health and comfort of the animals, the wording in this revised proposal states that the areas must ensure the health and well-being of the animals.

Several commenters stated that the temperature limits in proposed § 3.15(e) regarding surface transportation were too lenient, and should include separate requirements for sick, or very old or very young animals. While we encourage humane treatment of animals with special needs, we do not believe that it would be practical to impose diverse temperature requirements on the same surface vehicles based on the variety of animals it was carrying. We are therefore making no changes to our proposal based on these comments.

In this revised proposal we are removing certain wording that appeared in § 3.15(h) of our proposal, regarding which materials may be transported with dogs and cats. We believe that the original wording was redundant and confusing and that removing it will help clarify the proposed regulations.

*Food and Water Requirements—Section 3.16*

We set forth requirements regarding food and water for dogs and cats being transported, currently contained in § 3.14, in proposed § 3.16. We also proposed to remove the provision concerning the minimum amount of water that must be offered to dogs or cats under 16 weeks of age. The current regulations require that these dogs and cats be offered at least 60 cc (approximately 2 oz.) of potable water within a prescribed time. As we stated in the supplementary information of our proposal, the minimum amount in the current regulations is so small that we believe the young dogs and cats would be better served by simply falling under the general requirements concerning the offering of potable water.

Current § 3.14(a) requires that dogs and cats be offered water within 12 hours after the start of transportation or acceptance for transportation. Current § 3.14(b) requires that puppies and kittens be provided food at least once every 12 hours, and dogs and cats over 16 weeks of age be provided food at least once every 24 hours. The current regulations specify that these time periods begin at the time the animals are accepted for transport or the time transport begins, depending on who is carrying out the transport. This method of calculating when the time begins, however, could result in some dogs and cats not being provided water and food for unacceptably lengthy periods of time—in those cases where the animals were provided food and water the maximum time allowed before transport or acceptance for transport, and then not again until the maximum time allowed after transport or acceptance for transport. Therefore, we proposed in § 3.16 (a) and (b) that the time periods for providing food and water to the animals after transport or acceptance for transport begin at the time the dogs and cat was last provided food and water before initiation of transport or acceptance for transport.

In order to minimize the instances where carriers and intermediate handlers have to provide food and water to the animals immediately after accepting them for transport, we proposed that consignors subject to the regulations be required to certify that each dog and cat was provided water within 4 hours before delivery for transportation and that each dog and cat was provided food within 12 hours before delivery for transportation. As proposed, the regulations would require that the certification include the date and times the food and water was offered.

A number of commenters addressed the feeding and water provisions in proposed § 3.16. Approximately half of the commenters addressing the proposed provisions supported them as written. The remainder of the commenters were divided as to whether the proposed provisions were too restrictive or too lenient. A number of commenters stated that it was not necessary for a dog or cat to be provided water during the 4 hours preceding the beginning of transportation in commerce, and that watering within the 6 hours preceding transport would be sufficient. We believe that changing 4 hours to 6 hours would unnecessarily increase the number of times carriers or intermediate handlers would have to provide water to the animals, and are making no changes to the proposal based on these comments. A small number of commenters recommended that dogs and cats in transport, especially young animals, be fed and watered more often than as proposed. Based on our experience enforcing the regulations, we do not believe such a requirement is necessary or would be practical and are making no changes to our proposal based on this comment. A small number of commenters recommended that, instead of requiring certification of the last feeding and watering, and requiring that the animal be fed and watered within a specified time after acceptance for transport, it be encouraged that the consignor offer food and water to the animal immediately before shipment. We believe that such a change in our proposal would remove a necessary mechanism for ensuring that dogs and cats do not go excessively long periods of time without food and water. Also, it is not wise to give food or water to an animal immediately before transportation, as it may become sick and soil its cage, or aspirate food or water into its lungs. We are therefore making no changes to the proposed regulations based on these comments.

We proposed to set forth the provisions in current § 3.14(d), concerning a carrier or intermediate handler's responsibility regarding written feeding and watering instructions, in proposed § 3.16(c). We proposed to add the provision that food and water receptacles must be securely attached inside the primary enclosure and be placed so that the receptacles can be filled from outside the enclosure without opening the door. We proposed this provision based on information from carriers and intermediate handlers, which indicated to us that when a primary enclosure is opened to provide food or water to the animal inside, there is often a significant risk of the animal escaping from the enclosure. Several commenters stated that the regulations should require that such receptacles be permanently attached to the primary enclosure. We do not believe that such a change would be necessary or would add anything to the regulations, and are making no changes based on these comments. Several commenters stated that one receptacle would be sufficient for both food and water. We do not believe that using the same receptacle

for food and water would be reasonable and are making no changes based on these comments.

*Care in Transit—Section 317*

We proposed to set forth in proposed § 3.17 the provisions regarding care in transit in current § 3.15. We proposed some minor reformatting for readability, and several additions to the current provisions. The current regulations require that the driver of a surface vehicle check on the dogs and cats he or she is transporting. In proposed § 3.17(a), we proposed to allow this observation to be conducted either by the operator of the conveyance or a person accompanying the operator, but proposed to make it the responsibility of the regulated person transporting the dogs and cats to ensure that this observation is carried out. Additionally, in proposed § 3.17(a), we proposed to use language that specifies that dogs and cats in obvious physical distress be given veterinary care at the closest available veterinary facility. We proposed to make this change to clarify our intent as to the meaning of "as soon as possible" in the current regulations.

In proposed § 3.17(c), we proposed to add an exception to the current regulations that prohibit transport in commerce of a dog or cat in physical distress, to allow transport for the purposes of obtaining veterinary care for the condition.

We proposed to add a subsection § 3.17(e), to specify that these transportation standards remain in effect and must be complied with until the animal reaches its final destination, or until the consignee accepts delivery of the animal. We stated in the supplementary information in our proposal that we believe this provision is necessary to prevent any gap in care for the dog or cat and in responsibility for its care. While we continue to believe that it is important to ensure that no gaps occur in the care of the animal during its transportation, we believe that this intent could be clarified by making a change in the wording of our original proposal. To eliminate any confusion as to what constitutes "final destination," we are changing our proposal to provide that the transportation regulations must be complied with until a consignee takes physical delivery of the animal if the animal is consigned for transportation, or until the animal is returned to the consignor.

A number of commenters supported the provisions of proposed § 3.17 as written. Many commenters opposed the provision that would make air carriers responsible for determining whether an animal is in distress. The commenters stated that carriers are not trained to determine if animals are in physical distress or are ill. We are making no changes based on these comments. The proposed provisions would not require that carriers determine if an animal was ill, only that they monitor the animals for signs of distress. We believe such an evaluation can be done by a layman.

Proposed § 3.17(d) included provisions, similar to those in the current regulations, that during transportation in commerce a dog or cat must not be removed from its primary enclosure, unless it is placed in a primary enclosure or facility that meets the standards in the regulations. In this revised proposal, we are including an exception to this requirement, for those cases where the animals are removed to allow for required cleaning of the primary enclosure, in accordance with proposed § 3.14(b) of this revised proposal. However, such removal would have to be completed in a way that safeguards the dog or cat from injury and that prevents escape.

*Terminal Facilities—Section 3.18.*

Current § 3.16 imposes duties on carriers and intermediate handlers holding dogs or cats in animal holding areas of terminals to keep the animals away from inanimate cargo, to clean and sanitize the area, to have an effective pest control program, to provide ventilation, and to maintain the ambient temperature within certain prescribed limits. There is currently no similar obligation imposed on other persons who transport these animals. As a result, under the current regulations, animals could be held in animal holding areas under hazardous conditions.

We proposed to move the provisions regarding terminal facilities to proposed § 3.18, and to require that the same duties be imposed on any person subject to the regulations who transports dogs or cats and who holds them in the animal holding areas. As explained in the supplementary information of our proposal, because the animals require this minimum level of care no matter which regulated persons are moving them, it is illogical to place these duties only on carriers and intermediate handlers. Also, we proposed that the length of time that dogs and cats can be maintained in terminal facilities upon arrival after transportation would be the same as that proposed in § 3.13(g).

As well as retaining the temperature requirements in the current regulations, we proposed to add in § 3.18(d) the provision that the ambient temperature in the animal holding area of terminal facilities may not fall below 35 °F (1.7 °C) at any time live dogs or cats are present. The regulations we proposed would specify a procedure for measuring the ambient temperature. Under the proposal, in cases where a terminal facility contains more than one primary enclosure, it is possible that several temperature readings would have to be made to determine the ambient temperature at each primary enclosure. Also, § 3.18(e) as proposed contains those provisions contained in current § 3.17 that require shelter from the elements for dogs and cats, because the current provisions apply to persons holding a dog or cat in an animal holding area of a terminal facility.

A number of commenters supported the provisions of proposed § 3.18 as written. Many other commenters stated either that the proposed temperature requirements were too restrictive or too lenient. One commenter expressed concern that the proposed temperature requirements would prevent many airports from accepting shipments of dogs and cats. We are making no changes based on these comments. Except for the addition of the 35 °F (1.7 °C) minimum, the provisions proposed are provisions that have been in effect since 1978. These provisions have presented no significant practical problems or health risks to animals since that time. A number of commenters stated that it was inconsistent to allow animals to commingle with inanimate cargo in the cargo areas of a conveyance, but not in terminal facilities. While we agree that it would be desirable to impose such a restriction with regard to primary conveyances, standard transportation practices would make such a restriction impractical and unworkable. However, it is possible to separate animals from inanimate cargo in terminal facilities, and we continue to believe it is appropriate for the well-being of the animals to retain such a restriction.

Several commenters stated that fresh air should be mandatory in the animal holding areas of terminal facilities. We disagree. The evidence presented to us in comnments addressing other areas of the proposed regulations indicates that, in many cases, recycled air is preferable to the fresh air that might be available at a particular facility. We are therefore removing the requirement in proposed § 3.18(c) requiring "air, preferably fresh air," and replacing it with a requirement for "ventilation."

One commenter recommended that we expand on the requirement in proposed § 3.18(f) regarding the length of time that dogs and cats may be held in animal holding areas of terminal

facilities to establish a penalty mechanism for violation of the regulations. We believe that the standards for compliance are adequate as written, and do not believe it is necessary to specify enforcement procedures in provisions regarding animal welfare standards.

*Handling—Section 3.19*

Current § 3.17 also imposes duties on carriers and intermediate handlers for proper handling and movement of dogs and cats. For reasons explained above under "Terminal facilities," we included provisions in proposed § 3.19 to impose the same duties on any person subject to the regulations when handling a dog or cat at any time during the course of transportation in commerce, so that the animals' health, safety and well-being will be protected at all times during transport. As explained in the proposal, this would include movement from an animal holding area of a terminal facility to a primary conveyance and from a primary conveyance to a terminal facility. This would also include movement of the dog or cat on a transporting device used to transfer the animal from a primary conveyance to an animal holding area and vice versa, movement from one primary conveyance to another, and movement from place to place within the terminal facility.

A small number of commenters stated that the temperature requirements in proposed § 3.19 were too restrictive. Several commenters stated that the regulations should not allow exceptions to specific minimum temperatyre requirements based on certificates of acclimation to lower temperatures, as included in the proposal. We are making no changes to the proposal based on these comments. The provisions proposed are those that have worked satisfactorily under the current regulations, and we see no need to amend them at this time.

We proposed to require in proposed § 3.19(b) that care be exercised to avoid handling primary enclosures in such a way that dogs or cats in the primary enclosures are caused physical or emotional distress. Because of problems and complaints concerning the handling of dog and cat shipments in baggage areas by airlines, we proposed that primary enclosures containing dogs or cats must not be placed on unattended conveyor belts or on elevated conveyor ramps such as baggage claim conveyor belts and inclined conveyor ramps leading to baggage claim areas. We proposed to allow primary enclosures to be placed on inclined conveyor ramps that are used to load and unload aircraft, if there is an attendant at each end of the conveyor belt.

A number of commenters supported the provisions of proposed § 3.19(b) as written. A small number of commenters recommended that the regulations allow primary enclosures on baggage claim conveyor belts if the belts are specially designed for such use. We believe that interpretations of what constitutes "specially designed" would cause enforcement problems, and are making no changes to the proposal based on these comments.

Miscellaneous

Some commenters recommended that we make various nonsubstantive wording changes to the proposal for purposes of clarity. We have made such changes where we considered them appropriate. Additionally, a number of commenters made recommendations that addressed issues outside the scope of our proposal, including recommended husbandry and animal handling practices. While we are making no changes to our proposal based on these comments, we have carefully reviewed them and will take whatever action is appropriate.

*Subpart D—Nonhuman Primates*

Regulations on the humane handling, care, treatment, and transportation of nonhuman primates are contained in 9 CFR part 3, subpart D. These regulations include minimum standards for handling, housing, social grouping and separation of species, feeding, watering, sanitation, ventilation, shelter from extremes of weather and temperature, veterinary care, and transportation.

In our March 15, 1989, proposal, we proposed to revise and rewrite the current regulations based on our experience administering them under the Act. We also proposed to amend our regulations to add requirements for a physical environment adequate to promote the psychological well-being of nonhuman primates. This is specifically required by the 1985 amendments to section 13 of the Act. (See section 1752, 99 Stat. 1645, Pub. L. 99–198, amending 7 U.S.C. 2143.) We discuss each topic covered in our proposed regulations below.

As discussed in the supplementary information of our proposal, in preparing to revise and amend subpart D, we engaged in extensive study of the environmental needs of nonhuman primates that must be met to promote their psychological well-being. We actively sought input from various professional communities that are subject to the regulations. We formed a committee to study the psychological needs of nonhuman primates maintained by the research community and to make specific recommendations to us concerning the various issues presented by the 1985 amendments to the Act. This committee was comprised of APHIS representatives and ten members of the scientific research community. The members were experts recommended by the National Institutes of Health and were appointed by APHIS to formulate recommendations for means of providing an environment to promote the psychological well-being of nonhuman primates. Observers from NIH were also present during committee deliberations, although they were not members of the committee.

We also sought and obtained input from organizations, such as the National Association for Biomedical Research, which represent facilities utilizing nonhuman primates in their research.

We invited animal exhibitors to participate in the development of regulations to promote the psychological well-being of nonhuman primates. The American Association of Zoological Parks and Aquariums, a nonprofit, tax-exempt organization dedicated to the advancement of zoological parks and aquariums for conservation, education, scientific studies and recreation, formed a Primate Study Committee to develop materials concerning space requirements and the various environmental enrichments required by different species of nonhuman primates, based upon their social behavior and species-typical activity, in order to promote their psychological well-being.

The results of these efforts are explained in greater detail below in our discussion of the minimum space and environmental requirements set forth in our proposal.

The regulations we proposed in our revision of subpart D are minimum standards to be applied to all species of nonhuman primates. In our proposal we retained current footnote 1 of subpart D, although we revised it to reflect the need to promote the psychological well-being of nonhuman primates. Rather than stating that "discretion" must be used due to the variation in species, we proposed to require that these minimum standards be applied in a manner that is considered appropriate for the relevant species in accordance with customary and generally accepted professional and husbandry practices.

The Act applies to all nonhuman primates, whether living or dead. The standards we proposed are principally applicable to live nonhuman primates. In footnote 1 of our proposal, we

indicated that the proposed regulations apply only to live nonhuman primates, unless stated otherwise.

A large number of commenters addressed issues relevant to subpart D as a whole. Not surprisingly, considering the controversial nature of the subject, a great number of commenters focused their attention on the psychological well-being of nonhuman primates. A recurring theme among many commenters was that psychological well-being is undefinable and cannot be measured as an improvement for nonhuman primates. Many commenters stated that the proposed standards for psychological well-being were without basis in scientific data. During our consultations with experts on primate behavior, we became aware of the divergent opinions on how to interpret existing research. We disagree, however, that the standards we proposed were without basis. As discussed above, we consulted extensively with experts in the field of primatology. We supplemented the recommendations provided by those experts with information gained from our own experience in enforcing the regulations. Using the information available to us, we proposed standards that we believed would meet the intent of Congress in requiring us to add standards for a physical environment adequate to promote the psychological well-being of nonhuman primates. We could not, as some commenters recommended, accept the status quo. Such inaction would not fulfill our Congressional mandate, and would not, we believe, be in the best interest of the animals we are charged with protecting. Even if, as some commenters suggested, the amorphous nature of "psychological well-being" was not fully anticipated when the Act was amended, that would not relieve us of our responsibility to establish standards that best approach achieving that goal. We do not agree, as some commenters asserted, that significant evidence exists to indicate that the proposed changes in the regulations might be detrimental to nonhuman primates.

A number of commenters questioned the extent to which we incorporated the recommendations of the "expert committee" that was convened prior to development of the regulations. Many commenters stated that we should publish the proceedings and recommendations of that committee. The recommendations of the committee are included in the administrative record of this proposed rulemaking, and consequently are open to public inspection. We therefore see no need to publish them in the **Federal Register**. In developing the proposed regulations, we drew from information supplied by experts in the field of primatology, including the expert committee, to develop standards that we considered adequate to meet our responsibility under the Animal Welfare Act. As we discussed above, we discovered in developing the standards that there was a divergence of opinion concerning which standards would most appropriately promote the well-being of the animals. In publishing the proposal, we invited and encouraged the submission of data and research findings from experts in the field and from other members of the public. We have carefully analyzed the information and recommendations we received, and have continued our ongoing analysis of all research data available to us. Based on this analysis, we have made, in this revised proposal, what we consider significant changes to our original proposal regarding standards for promoting the psychological well-being of nonhuman primates. We once again invite and encourage public response to these proposed provisions.

Several commenters recommended that a national level "primate well-being committee" be created to evaluate and provide guidelines for the care of nonhuman primates. We do not believe it is necessary or appropriate to delay publication of proposed standards pending formation of such a committee.

Several commenters suggested we replace the term "generally accepted professional and husbandry practices" in the proposal with appropriate definable standards. We disagree that such a change is necessary and are making no change to our proposal based on these comments. For like reason, we are not replacing the term "nonhuman primate(s)" with "primate(s)," as suggested by some commenters.

A small number of commenters recommended that the recordkeeping requirements in both subparts A and D be removed. In this proposal we have removed certain of the proposed requirements for recordkeeping, based on our analysis of comments specifically addressing those requirements. We believe the recordkeeping requirements we have retained are necessary for enforcement of the regulations.

## Housing Facilities and Operating Standards

Current §§ 3.75 through 3.77 provide requirements for facilities used to house nonhuman primates. Current § 3.75, "Facilities, general," contains regulations pertaining to housing facilities of any kind. It is followed by current § 3.76, "Facilities, indoor," and § 3.77, "Facilities, outdoor." We proposed to amend these sections to provide for an environment that better promotes the psychological well-being of nonhuman primates. We also proposed to add sections that provide regulations specifically governing two other types of housing facilities used to house nonhuman primates, sheltered housing facilities and mobile or traveling housing facilities. The term "sheltered housing facility" is defined in part 1 as "a housing facility which provides the animals with shelter; protection from the elements; and protection from temperature extremes at all times. A sheltered housing facility may consist of runs or pens totally enclosed in a barn or building, or of connecting inside/outside runs or pens with the inside pens in a totally enclosed building." The term "mobile or traveling housing facility", also defined in part 1, means "a transporting vehicle such as a truck, trailer, or railway car, used to house animals while traveling for exhibition or public education purposes."

Some of the requirements we proposed for housing facilities are applicable to housing facilities of any kind. As in the current regulations, we proposed to include these standards of general applicability in one section, proposed § 3.75, in which we also included many of the provisions of current § 3.75. Additionally, we proposed amendments to the current regulations that are specific to particular types of housing facilities, and included those provisions in separate sections of the proposed regulations. In some cases, where the current regulations would have been unchanged in substance, we made wording changes to clarify the intent of the regulations.

## Housing Facilities, General

### *Housing Facilities: Structure; construction—Section 3.75(a)*

Because nonhuman primates vary widely in size, weight, and range of activity, the design, composition and structural strength required of housing facilities varies as well. We proposed to require in proposed § 3.75(a) that the design, composition, and structural strength of a housing facility be appropriate for the particular species housed in it. For example, the actual structural requirements for a housing facility would differ depending upon whether it is used to house marmosets, a small nonhuman primate species, or great apes, a typically large species weighing more than 88 lbs. (40 kg.). No

comments addressed these provisions, and we are making no changes in this revised proposal.

We also proposed in § 3.75(a) that the housing facility be constructed so as to restrict other animals and unauthorized humans from entering. A number of commenters addressed the issue of restricting the entrance of unauthorized humans. While some supported this provision, most stated that responsibility for maintaining adequate security at a facility belongs to the facility, and not to the Department of Agriculture. While we agree that exclusion of unauthorized humans is to some degree a general security issue, we continue to believe that such individuals could pose the risk of injury to the animals housed. Because the well-being of the animals would be at stake, we are statutorily authorized to restrict such entrance. We are therefore making no changes to our proposal based on the comments.

*Housing Facilities: Condition and Site—Section 3.75(b)*

In proposed § 3.75(b), we proposed to add the requirement that a dealer's or exhibitor's housing facilities be physically separated from any other business. When a housing facility is located on the same premises as any other business, there is likely to be increased traffic and activity, which is known to be distressful to nonhuman primates. Also, when more than one dealer maintains facilities on the premises, it can be difficult to determine which dealer is responsible for which animals and for the conditions of the facility. This has made inspection and enforcement of the regulations difficult. To avoid these difficulties we proposed to require that housing facilities, other than those maintained by research facilities and Federal research facilities, be physically separated from other businesses. As we explained in the supplementary information of our proposal, this can be done by using a security fence or by conducting each business in a separate building. As proposed, the means of separation used would have to be constructed so that it prevents unauthorized humans, and animals the size of dogs, skunks, and raccoons, from going through it or under it. We did not propose to impose these requirements upon research facilities because they are often part of a larger sponsoring establishment, such as a university or pharmaceutical company, and responsibility for animal and site conditions rests with that establishment. Therefore, we have not encountered the enforcement difficulties noted above with respect to research facilities.

We also proposed in § 3.75(b) that housing facilities and areas used for storing animal food and bedding be kept free of any accumulation of trash, weeds, and discarded material, in order to prevent unsanitary conditions, diseases, pests, and odors. The need for orderliness applies particularly to animal areas inside of housing facilities; and we proposed that they must be kept free of clutter, including equipment, furniture, or stored material, and materials not necessary for proper husbandry practices.

A number of commenters addressed these provisions. Some supported the provisions as written. Others were concerned that our prohibition of "clutter" would prohibit equipment and material actually used in the day-to-day operation of the facility. It was not our intent to prohibit materials that are used on a regular basis from being kept in animal areas, and we have made revisions to our proposal to address that issue. In this revised proposal, we are not including the examples we provided in our proposal of acceptable materials and equipment, in order to avoid giving the impression that the items listed are the only ones that may be kept in animal areas. We are also providing that necessary "equipment" may be kept in animal areas, and that materials, equipment, and fixtures necessary for research needs may be kept in such areas. Additionally, in order to clarify our intent with regard to the storage of cleaning materials that are necessary for proper husbandry, we are adding a provision to proposed § 3.75(e) to specify that toxic materials stored in animal areas must be stored in cabinets, but may not in any case be stored in food preparation areas.

*Housing Facilities: Surfaces; General Requirements—Section 3.75(c)(1) and (2)*

In proposed § 3.75(c), we proposed to include requirements concerning housing facility surfaces that are common to all types of facilities. The current regulations require that interior surfaces of indoor housing facilities be constructed and maintained so that they are substantially impervious to moisture and may be readily sanitized. They do not specify frequency to sanitization. They also do not provide any requirements for building surfaces used in outdoor housing facilities.

We proposed to remove the requirement that housing facilities have impervious surfaces, because many can simulate more natural environments by providing dirt floors and planted areas that are beneficial to the nonhuman primates' psychological well-being. In proposed § 3.75(c)(1), we provided that outdoor floors could be made of dirt, sand, gravel, grass, or other similar material that can be readily cleaned and is removable.

Under our proposal, any sufaces that come in contact with nonhuman primates would have to be maintained regularly so that they are kept in good condition. As proposed, interior surfaces and furniture-type fixtures or objects within the facility, such a perches, swings, and dens, would have to be made so that they can be readily cleaned and sanitized, or removed or replaced when worn or soiled. We proposed to add this requirement because we would no longer require impervious surfaces under our proposal, in an effort to encourage provision of more natural environments for the animals. Because porous surfaces may not be adequately sanitized, we proposed to require instead that they be removed or replaced when worn or soiled. This requirement appeared in our proposal in proposed § 3.75(c)(2). Otherwise, as proposed, the manner of construction and the materials used would have to allow for cleaning and sanitization.

In proposed § 3.75(c)(1), we proposed to require that surfaces that come in contact with nonhuman primates be free of jagged edges or sharp points that could injure the animals, as well as rust that prevents the required cleaning and sanitization or affects the structural integrity of the surfaces. Because we recognize that as long as water is used to clean animal areas metal parts will rust, we proposed to allow some rust on metal areas, as long as it does not reduce structural strength or interfere with proper cleaning and sanitization because that could present hazards to the animals.

A number of commenters addressed the above issues. Most supported the provisions as written. One suggested that our standards for replacement of surfaces were too stringent. Another recommended that we allow indoor, as well as outdoor floors to be made of a replaceable material. We disagree that our standards are excessively stringent. We do agree, however, that with proper maintenance, replaceable surfaces could be used indoors for nonhuman primates without harming the health or well-being of the animals housed. Therefore, we are proposing to remove the wording restricting replaceable floor surfaces such as dirt, sand, gravel, or grass to outdoor floors. One commenter stated that our standards seemed to prohibit the presence of rust. It was our intent to provide that rust would become

unacceptable only when it prevented cleaning and sanitization or affected the structural strength of a surface. To further clarify this intent, we are proposing to prohibit "excessive" rust that causes such problems.

*Housing Facilities: Surfaces; Cleaning—Section 3.75(c)(3)*

In proposed § 3.75(c)(3), we proposed to require that hard surfaces that come in contact with nonhuman primates be cleaned daily and sanitized at least once every two weeks and as often as necessary to prevent any accumulation of excreta or disease hazards, in accordance with generally accepted husbandry practices, unless the nonhuman primates engage in scent marking. As we discussed in the supplementary information of our preamble, scent marking is an inborn method used by certain species of nonhuman primates in nature (such as species of prosimians, marmosets, tamarins, and callimico) to establish their territory and for identification by other members of the species. Animals can detect that another member of the species has occupied a site by the scent left behind and can locate companions in this manner. It is distressful for these nonhuman primates to have the scent marks eliminated, since they lose their territorial claim and their frame of reference. We therefore proposed that hard surfaces that come in contact with nonhuman primates that scent mark be spot cleaned daily and that they be sanitized at regular intervals that would be determined in accordance with generally accepted professional and husbandry practices.

In proposed § 3.84(b)(3), we provided various methods of sanitizing primary enclosures. Because these methods are effective in general for sanitization of hard surfaces that nonhuman primates come in contact with, except for dirt floors and planted areas, under our proposal any of them could be used for the sanitization required by proposed § 3.75(c)(3). The method of sanitization would be determined by the housing facility operator. As proposed, planted enclosures and floors made of dirt, sand, gravel, grass, or other similar material would have to be raked and spot cleaned daily, since sanitization is not practicable. We proposed that contaminated flooring material would have to be removed if raking and spot cleaning does not eliminate odors, diseases, insects, pests, or vermin infestation. The material could then be replaced or a different material could be used. As proposed, all other surfaces of housing facilities would have to be cleaned daily and sanitized as necessary to satisfy general accepted husbandry practices.

A number of commenters supported the provisions proposed in § 3.75(c)(3), specifically with regard to scent-marking nonhuman primates. A number of commenters suggested modifications to our provisions. Some opposed even spot-cleaning with regard to scent-marking species; others suggested that we allow hard surfaces contacted by scent-marking species to be replaced rather than sanitized. Some stated that it was unnecessary to rake outdoor surfaces daily, or that it was unnecessary to remove animal wastes daily. Others suggested that we loosen or remove the timetables for cleaning and sanitization to allow greater flexibility.

While we continue to believe that cleaning and sanitization is necessary for surfaces that become soiled, we believe that certain modifications can be made to the proposed provisions without endangering the health and well-being of the nonhuman primates. We disagree that surfaces in contact with scent-marking species should not even be spot-cleaned. Removal of waste material is necessary for animal health, and spot-cleaning will not interfere with scent marking. We do agree that daily spot-cleaning of hard surfaces with which nonhuman primates come in contact, even if the animals are not a scent-marking species, would be sufficient cleaning for the health and well-being of the animals. We are therefore revising our proposal to require that hard surfaces in contact with nonhuman primates be spot-cleaned daily. Additionally, we are revising our proposal to require that such hard surfaces be sanitized as often as necessary to prevent any accumulation of excreta or disease hazards, in accordance with our sanitization provisions in proposed § 3.84. Under those provisions, such hard surfaces in indoor primary enclosures would have to be sanitized at least once every two weeks. We are also proposing in this revision to allow replacement, rather than sanitization, of hard surfaces in contact with nonhuman primates, and are revising our proposal to provide that floors made of dirt, absorbent bedding, sand, gravel, grass, or other similar material, and planted enclosures, be either raked or spot-cleaned with sufficient frequency to ensure all animals the freedom to avoid contact with excreta, rather than raked and spot cleaned daily, as originally proposed. Additionally, in this revision we are removing our proposed requirement that all other surfaces of housing facilities be cleaned daily, and are proposing instead that all other surfaces be cleaned when necessary to satisfy generally accepted husbandry practices. We are making this last change in recognition of the fact that some areas in housing facilities, such as upper walls and ceilings, are not in contact with nonhuman primates and do not require daily cleaning. We are including "absorbent bedding" as a material similar to dirt, sand, gravel, and grass because many facilities use such bedding, and consider it preferable to alternative surface materials.

*Housing Facilities: Water and Electric Power—Section 3.75(d)*

Section 3.75(d) provides requirements for water and electric power. It specifies that reliable and adequate water and electric power must be made available "if required to comply with other provisions of this subpart." In the proposed rule, we set forth the provisions concerning water and electric power in § 3.75(d). We proposed there to eliminate the qualifying statement cited above, and to require reliable electric power that is adequate for heating, cooling, ventilation, lighting, and other husbandry requirements, and mechanically pressurized potable running water for the nonhuman primates' drinking needs and adequate for cleaning and for carrying out other husbandry requirements. As we stated in the supplementary information of our proposal, based upon our inspections of dealer, exhibitor, and research facilities, we believe that nonhuman primate facilities subject to the Animal Welfare regulations cannot be properly cleaned and maintained without electric power and running potable water under pressure.

A number of commenters addressed proposed § 3.75(d). Some supported the provisions as written; others opposed the provisions in their entirety. Most of the comments regarding this paragraph recommended that our reference to "mechanically pressurized potable running water" be changed to "potable running water." We continue to believe that electric power and potable running water are necessary for the cleaning and maintenance of nonhuman primate facilities. However, upon review of the comments, we believe that it is not necessary that the water be "mechanically pressurized." We are therefore revising the proposal to require that potable running water be available. A small number of commenters stated that our proposal erroneously indicated that electric power is necessary for adequate

cleaning. We disagree with the commenters' interpretation of our discussion. The only areas specifically cited in our proposal as requiring electric power are heating, cooling, ventilation, and lighting. A small number of commenters asked that we define "reliable electric power." We believe the standard dictionary definitions of these words are adequate and see no need to define the term in the regulations.

*Housing Facilities: Storage—Section 3.75(e)*

We proposed in § 3.75(e) to expand the regulations in current § 3.75(c) concerning proper storage of food and bedding supplies. We proposed to retain the requirements that food and bedding be stored so as to protect them from vermin infestation or contamination, and that perishable food be refrigerated. We proposed requirements to ensure further the quality of the physical environment surrounding nonhuman primates. We proposed to add a requirement that food and bedding be stored in leakproof containers to protect the supplies from spoilage, contamination, and vermin infestation, and that open food and bedding supplies be kept in leakproof containers with tightly fitting lids to prevent spoilage and contamination. In proposed § 3.75(e), we proposed to require that substances that would be toxic to nonhuman primates be stored away from animal areas and food storage and preparation areas. Under our proposal, only the food and bedding in use could be kept in animal areas; when they were not in use they would have to be properly stored. In addition, as proposed, all food would have to be stored so as to prevent contamination or deterioration of its nutritive value. The supplies would have to be stored off the floor and away from the walls, to allow cleaning around and underneath them.

Approximately half of the comments received in response to these provisions supported them as written. The remainder suggested some modifications. Some commenters suggested that our requirement that all food and bedding be stored in leakproof containers was unnecessary. Although we continue to believe that the health and well-being of the animals necessitates the storing of open food and bedding supplies in leakproof containers, we agree that until such supplies are open, it is sufficient that they be stored in a manner that protects them from spoilage, contamination, and vermin infestation, and are revising our proposal accordingly. Some commenters were concerned that our proposed requirement that perishable food be refrigerated would require refrigeration of milled chows and diets. We are clarifying our intent in this revised proposal by specifying that only food requiring refrigeration must be so stored. One commenter recommended that properly labeled and sealed toxic substances should be allowed to be stored in animal areas where they are used. Although we continue to believe that toxic substances cannot be stored in food storage or preparation areas without endangering the animals, we agree that if such substances are kept in cabinets in other animal areas, there would be little danger to the animals. We are therefore revising our proposal to allow such storage.

*Housing Facilities: Drainage and Waste Disposal—Section 3.75(f)*

The regulations we proposed would continue to require that housing facilities provide for removal and disposal of animal and food wastes, bedding, dead animals, and debris, as provided in current § 3.75(d). We proposed to clarify this requirement so that it clearly applies to all fluid wastes, and to include a requirement that arrangements must be made for prompt daily removal and disposal of wastes. Under the proposal, removal and disposal would have to be carried out more than once each day if necessary to avoid problems with odors, pests, insects, and diseases. The regulations as proposed also contained the requirements that trash containers be leakproof and tightly closed when not in use, and that all forms of animal waste, including dead animals, be kept out of food and animal areas.

Requirements for drainage systems are currently provided in §§ 3.76(e) and 3.77(d) for indoor and outdoor facilities, respectively. Because all types of animal housing facilities, including sheltered housing facilities and mobile or traveling housing facilities, require a proper disposal facility and drainage system, we proposed to consolidate all drainage and waste disposal requirements in proposed § 3.75(f). We proposed to expand the requirements for drainage systems to provide that in all types of housing facilities, whether open or closed drains, waste sump ponds, or settlement ponds are used, they must be properly constructed, installed, and maintained, and they must minimize vermin and pest infestation, insects, odors, and disease hazards. As part of this safeguard, we proposed to require that waste sump ponds and settlement ponds be located an adequate distance from the animal area of the housing facility to prevent problems with vermin, pests, odors, insects, and disease hazards. As proposed, drainage systems would also have to eliminate animal wastes and water rapidly, so that the animals can stay dry. This is necessary because it is known to be distressful to nonhuman primates to be involuntarily wetted. Traps would be necessary in closed drainage systems to prevent the backflow of gases and the backup of sewage onto the floor.

A small number of commenters specifically supported the provisions in proposed § 3.75(f) as written. Several commenters stated that a lid on a trash can would not necessarily reduce odor or the availability of waste to vermin, as feces and urine are found in cages and are already available to vermin. We are making no changes based on these comments. The intent of the regulations is to minimize disease hazards such as vermin. The cleaning and sanitization requirements of this proposed rule are designed to help ensure that cages are kept adequately clean. In combination with these requirements, we believe it is necessary to require sanitary practices such as lids on trash cans.

A small number of comments stated that our requirements regarding backflow valves and the necessity that animals remain dry were unnecessary. Upon review of the comments, we continue to believe the regulations as proposed are necessary for the health and well-being of the animals housed, and are making no changes to our proposal based on these comments.

A small number of commenters stated that in certain facilities daily removal of wastes and dead animals is not necessary, and that the regulation should permit such removal to be conducted as necessary. We agree such removal, if conducted regularly and frequently, would be adequate to protect the health and well-being of the animals, and are revising our proposal accordingly. We have also added a provision to our revised proposal to make it clear that waste materials must be collected and disposed of in a manner that minimizes contamination and disease risk. Additionally, we are adding a clarification to specify that only puddles of standing water must be mopped up or drained so that the animals stay dry. This change will clarify that water that evaporates quickly or that is otherwise eliminated quickly does not endanger the health and well-being of the animals, and need not be mopped up.

*Housing facilities: Washrooms and Sinks—Section 3.75(g)*

We proposed to retain the requirement contained in current § 3.75(e) that washing facilities be available to animal caretakers for their cleanliness, and to include it in proposed § 3.75(g). The only comments we received regarding this provision supported it. We are therefore making no changes in our proposal regarding proposed § 3.75(g).

Requirements for Different Types of Housing Facilities

The current regulations specify two kinds of housing facilities, indoor and outdoor. These terms are defined in part 1 of the regulations. An indoor housing facility is defined as "any structure or building with environmental controls housing or intended to house animals" that is fully enclosed and has a continuous connection between the floor, ground, and ceiling, is capable of being temperature and humidity controlled, and has at least one door for entry and exit. An outdoor housing facility is defined as "any structure, building, land, or premise, housing or intended to house animals, and which does not meet the definition of an indoor housing facility or a sheltered housing facility and in which temperatures cannot be controlled within set limits. We proposed to add two additional sections containing requirements for sheltered housing facilities and mobile or traveling housing facilities, previously defined in this document.

Requirements for Enclosed or Partially Enclosed Housing Facilities

Three of the four types of housing facilities that may be used to house nonhuman primates are either enclosed or partially enclosed. They are indoor housing facilities, mobile or traveling housing facilities, and the sheltered portion of sheltered housing facilities. We proposed to require that all of these enclosed types of housing facilities be required to provide heating, cooling, and ventilation, and to maintain temperatures within the temperature limits provided in current paragraphs (a) and (b) of § 3.76 "Facilities, indoor," as discussed below. Additionally, we proposed to establish a minimum temperature for shelters provided in outdoor facilities.

*1. Temperature Requirements—Sections 3.76(a), 3.77(a), 3.78(b), and 3.79(a)*

We proposed that there must be sufficient heat provided to protect nonhuman primates from cold temperatures. As proposed, the ambient temperature (defined in Part 1 of the regulations as the temperature surrounding the animal) must not fall below 50 °F (10 °C). We also proposed to require cooling to protect nonhuman primates from high temperatures, specifying that the ambient temperature must not rise above 85 °F (29.5 °C), except that, as proposed, for mobile or traveling housing facilities only, the upper temperature limits would be 95 °F (35 °C) when nonhuman primates are present. However, as proposed, in mobile or traveling housing facilities, auxiliary ventilation such as fans or air conditioning would have to be provided when the temperature is 85 °F (29.5 °C) or higher. Because the various species of nonhuman primates have different optimal ambient temperatures and different tolerances for higher and lower temperatures, we proposed to require that the actual ambient temperature maintained be at a level that ensures the health and well-being of the species housed, in accordance with generally accepted professional and husbandry practices.

We received a large number of comments with regarding to the issue of temperature in indoor, sheltered, and mobile and traveling housing facilities, and concerning the minimum temperature for shelters in outdoor facilities. Some commenters supported the provisions as written. Some commenters opposed temperature standards of any sort with regard to housing facilities and elsewhere in the regulations. One commenter recommended a maximum temperature of 85 °F in all housing units. Most of the commenters stated that our range of allowable temperatures was too restrictive, and that we should allow temperatures lower than those proposed, and, in the case of indoor and sheltered facilities, higher than those proposed. A number of commenters stated that our proposed temperature ranges did not encompass natural conditions for many species. A number of commenters also recommended that we allow the attending veterinarian to use professional judgment when determining appropriate temperature levels.

We continue to believe that temperature standards are necessary to ensure the well-being of nonhuman primates. Upon review of the comments, however, we agree that many species of nonhuman primates can tolerate temperatures both lower and higher than those included in our proposal. We also agree that, within the allowable temperature range, the actual temperature level most appropriate for the animals can best be determined by an attending veterinarian. Therefore, we are revising our proposal to provide that, in indoor facilities, the sheltered parts of sheltered housing facilities, and mobile or traveling housing facilities, the ambient temperature must not fall below 45 °F (7.2 °C) and must not rise above 95 °F (35 °C) when nonhuman primates are present. We are also proposing to require that shelters provided in outdoor facilities provide heat to nonhuman primates to prevent the ambient temperature from falling below 45 °F (7.2 °C), except as directed by the attending veterinarian and in accordance with generally accepted professional and husbandry practices. Additionally, we are revising our proposal to provide that, in indoor housing facilities, the sheltered parts of sheltered housing facilities, and mobile or traveling housing facilities, the actual ambient temperature must be maintained at a level that ensures the health and well-being of the species housed, as directed by the attending veterinarian, in accordance with generally accepted professional and husbandry practices.

Many commenters stated that it would not be practical or feasible to attempt to control temperatures in outdoor primate housing facilities, especially if the facility is a large corral type. While we agree that it would be difficult or impossible to control the ambient temperature in the outdoor portion of outdoor housing facilities, the regulations as proposed would require only that the animal shelters in such facilities be maintained at temperatures no lower than 50° F (10° C). There are practical methods of heating such shelters, such as heating lamps, and we do not believe that the commenters' concerns warrant a change in our proposal.

One commenter on our proposed rule recommended that for both indoor and outdoor housing facilities, five or six "ecological niches" be defined in terms of temperature and humidity ranges, and that each species be classified into one of these niches. We do not believe that it would be possible to implement such a system on a practical level, given the wide range of species that might inhabit the same facility.

The requirements we proposed for mobile or traveling housing facilities in our original proposal also would require that auxiliary ventilation be provided when the ambient temperature in the facility is 85° F (29.5° C) or higher. Because we are now proposing to increase the upper temperature limit in indoor and sheltered housing facilities to 95° F (35° C), we believe it is necessary

for the health and well-being of nonhuman primates housed in such facilities to impose a like requirement for auxiliary ventilation whenever the ambient temperature in the facility is 85° F (29.5° C) or higher. We are therefore including such a requirement in this revised proposal.

A large number of commenters recommended that we remove the proposed requirement that heating and cooling must provide for the animals' "comfort." We agree that the use of the word "comfort" is inappropriate for use in the proposed regulations. Although we encourage an environment that will promote the nonhuman primates' comfort, the intent of the regulation is to provide minimum standards for the health and well-being of the animals. For this reason, in this revised proposal we are removing the word "comfort" wherever it appeared in the proposed provisions regarding housing facilities.

*2. Ventilation and Relative Humidity Level—Sections 3.76(b), 3.77(b), and 3.79(b)*

In our proposal, we proposed that the current requirement in § 3.76(b) for ventilation of indoor housing facilities would be applicable to the three types of enclosed housing facilities, to provide for the health, comfort, and well-being of nonhuman primates. For sheltered housing facilities, we proposed that the requirement would apply only to the sheltered portion of the facility, since the outdoor portion could not be humidity controlled. We proposed to add that ventilation must also be provided to minimize odors, drafts, and ammonia levels in these housing facilities and that mobile or traveling housing facilities must be ventilated to minimize exhaust fumes, to protect the well-being of the nonhuman primates.

We also proposed to require that, except in mobile or traveling housing facilities, the relative humidity in enclosed facilities be maintained between 30 and 70 percent. We proposed that the actual relative humidity maintained would depend upon the species housed and that it would have to be maintained at a level that ensures the health and well-being of the species housed, in accordance with generally accepted professional and husbandry practices. In the supplementary information of our preamble, we noted that certain species of nonhuman primates are known to be less tolerant of a wide range of humidity levels and therefore should be maintained at more specific humidity levels. We also noted that the NIH Guide provides precise humidity levels for certain species, and that individuals subject to our regulations could refer to the NIH Guide for these animals, because use of the Guide would maintain actual humidity levels within the requirements of these regulations and conform to generally accepted professional and husbandry practices.

We did not propose to require that a precise range of humidity levels be maintained in mobile or traveling housing facilities because they travel into all parts of the United States that have varying levels of humidity. Typically, the species of nonhuman primates that travel in these facilities are chimpanzees used in circuses and trained animal acts. Chimpanzees can tolerate a wider range of relative humidity levels than most species of nonhuman primates and would not be exposed to an undue health hazard if there is no range of humidity levels specified in the regulations. However, we proposed to require that the relative humidity level be maintained at a level that ensures the health and well-being of the species housed, in accordance with generally accepted professional and husbandry practices. Under the regulations we proposed, operators of mobile or traveling housing facilities, as well as all other housing facility operators would, still be subject to the general requirement contained in footnote 1 to the heading of Subpart D, which provides that these regulations must be applied in accordance with customary and generally accepted professional and husbandry practices considered appropriate for each species, and accordingly could not expose nonhuman primates to relative humidity levels that are considered hazardous to that species' physical well-being without violating the regulations.

Some commenters supported our proposed provisions as written. A large number of commenters stated that not all species require humidity levels within the 30 percent–70 percent range. Many commenters recommended that we require only that the appropriate relative humidity be left to professional judgment and be maintained at a level that ensures the health and well-being of the species housed, in accordance with generally accepted professional and husbandry practices. Upon review of the evidence presented in the comments, we agree that it is not appropriate or necessary to set specific upper and lower limits on relative humidity. We agree that the effect on animals of a particular level of humidity depends to a great degree on other factors, such as temperature and ventilation. We are therefore not including upper and lower humidity limits in this revised proposal. However, we are providing in this revised proposal that, in those housing facilities where humidity can be controlled (indoor housing facilities and the sheltered part of sheltered housing facilities), that the relative humidity must be at a level that ensures the health and well-being of the species housed, as directed by the attending veterinarian, in accordance with generally accepted professional and husbandry practices.

A number of commenters took issue with our proposed requirement that indoor housing facilities, the sheltered part of sheltered housing facilities, and mobile or traveling housing facilities be sufficiently ventilated to minimize odors, drafts, ammonia levels, and moisture condensation. (In mobile or traveling housing facilities the minimizing of exhaust fumes would also be required.) The commenters expressed concern that the requirements would lead to significant disagreement as to the meaning of "minimize;" some commenters expressed doubt that odors could always be minimized. We are making no changes based on these comments. The provisions as proposed do not require the elimination of the objectionable odors, fumes, etc., only that they be held to minimal levels. We believe that such a performance standard can be met and enforced.

A number of commenters addressed our requirement that air, preferably fresh air, be provided by means of windows, vents, fans, or air conditioning. A small number of commenters recommended that fresh air always be provided. We do not believe that it would be practical to require that fresh air always be provided and are making no changes to our proposal based on these comments. A much greater number of comments recommended that we change our reference to "air" to read "ventilation." We agree that the word "ventilation" better encompasses the intent of our proposed provision, and are therefore revising our proposal to provide that ventilation must be provided by windows, doors, vents, fans, or air conditioning.

*3. Lighting—Sections 3.76(c), 3.77(c), and 3.79(c)*

We proposed to continue the requirement presently imposed upon indoor facilities in current § 3.76(c) to provide adequate light to permit routine inspection and cleaning of the housing facility, and observation of nonhuman primates. We proposed that this requirement would apply to the three types of enclosed housing facilities

included in the proposed regulations. We proposed in proposed §§ 3.76(c), 3.77(c), and 3.79(c) to require a daily lighting cycle of at least 8 consecutive hours of light and at least 8 consecutive hours of darkness each day in order to maintain a normal lighting cycle for the nonhuman primates' well-being. As we discussed in the supplementary information of our proposal, a diurnal lighting cycle is known to be necessary for nonhuman primates to maintain normal breeding practices and to promote their psychological well-being. We also proposed to continue to allow artificial light to be used, but proposed to specify that it must provide full-spectrum illumination. We proposed to retain safeguards against exposing nonhuman primates to excessive light and to apply them to all enclosed housing facilities.

A number of commenters addressed our proposed provision to require full-spectrum lighting. While a small number of commenters supported such a requirement, many commenters stated that full-spectrum lighting was unnecessary for the health and well-being of nonhuman primates. Others stated that it was impractical because such lighting fixtures, when shielded for sanitation purposes, will filter out certain wavelengths of light. Some commenters presented evidence that continued exposure to full-spectrum illumination, strictly defined, could actually harm the vision of animals. Upon review of the comments, we believe that the potential problems associated with full-spectrum lighting warrant our removing its requirement in our proposal, and we are doing so in this revised proposal.

Many commenters questioned the need for at least 8 consecutive hours of light and 8 consecutive hours of darkness each day, stating that such a specific timetable does not allow for professional judgment regarding the needs of specific species. We agree that the normal diurnal lighting cycle may vary from species to species and month to month and are therefore revising our proposal to provide that animal areas must be provided a regular diurnal lighting cycle of either natural or artificial light. In order to allow for professional judgment regarding the lighting needs of individual animals or species, we are proposing that lighting in animal facilities provide sufficient illumination to provide for the well-being of the animals, as well as to allow for good housekeeping practices, adequate inspection of animals, and adequate cleaning.

A number of commenters recommended that we provide a definition of excessive light. We believe that the term is self-explanatory; that it means a degree of light that it is detrimental to the well-being of the animals. Whether the light available is harmful to the animals would be determined on a case-by-case basis. Some commenters took issue with the statement in the supplementary information of our proposal that an animal housed in the top cage of a stack of cages near a light fixture would be exposed to excessive light. We are making no changes based on these comments. The provisions we proposed would prohibit exposing the animals to excessive light. In our supplementary information we provided just one example of a variety of situations we believe could constitute excessive light. We continue to believe that it is necessary for the health and well-being of nonhuman primates that they not be exposed to excessive light.

A small number of commenters recommended that we broaden our proposed requirements to require such features as providing animals a range of light levels from which to choose, and providing access to sunlight for all nonhuman primates. We do not believe that such provisions are practical or necessary and are making no changes based on these comments.

A number of commenters recommended that we provide the authority to make exceptions in lighting standards to the Committee at research facilities. The regulations in § 2.38(k)(1) of part 2 already provide that exceptions to the standards in part 3 may be made when such exceptions are specified and justified in the proposal to conduct an activity and are approved by the Committee.

Requirements for Outdoor or Partially Outdoor Housing Facilities

*1. Shelter from the Elements—Section 3.77 (d) and (e); Section 3.78 (b) and (c)*

Outdoor housing facilities cannot be temperature controlled. We proposed to allow only those nonhuman primates that are acclimated to the prevailing seasonal temprature and that can tolerate without stress or discomfort the range of temperatures, humidity, and climactic conditions known to occur at the facility at the time of year they are housed there to be housed in outdoor facilities, in order to protect their physical welfare. One commenter recommended that we use the same acclimation standards for nonhuman primates in outdoor facilities as we proposed for dogs and cats under transport. Because of the significant differences between the species involved, and between housing conditions and transportation conditions, we are making no changes based on this comment.

As in current § 3.77 (a)–(c), our proposal provided that outdoor housing facilities must provide shelter from the elements and protection from various weather conditions, such as sun, wind, rain, cold air, and snow. For example, under our proposal, nonhuman primates would have to be provided with shade from the sun and protection from precipitation so that they may remain dry. This requirement appears in § 3.78(b) of the proposed rule. We proposed to require that the shelter provided be maintained in good repair, and that it be constructed in a manner and made of material that can be readily cleaned and sanitized in accordance with proposed § 3.75(c).

We proposed to make the requirement to provide protection from the elements applicable also to sheltered housing facilities. We proposed to require that nonhuman primates be provided shelter from the elements at all times. Accordingly, under our proposal, unless the nonhuman primates have continual ready access to the sheltered portion of the facility, some additional form of shelter would have to be provided that satisfies the requirements contained in paragraphs (a) through (e) of proposed § 3.77.

A small number of commenters specifically supported the provisions regarding shelters as written. Some commenters recommended that we delete the requirement for shelter at outdoor facilities. We believe that such shelters are necessary for the health and well-being of nonhuman primates housed in such facilities and are making no changes to our proposal based on these comments.

In proposed §§ 3.77(e) and 3.78(c), we proposed to require that the shelters in both sheltered and outdoor housing facilities be large enough to provide protection comfortably to all the nonhuman primates housed in the facility at the same time. As proposed, sheltered housing facilities and outdoor housing facilities would be required to have multiple shelters if there are aggressive or dominant animals present that might deter other nonhuman primates from utilizing the shelters when they so desire.

In this revised proposal, we are making certain wording changes to our revised proposal to clarify our intent regarding shelters in sheltered and outdoor housing facilities. In this

revision, we are providing that, in cases where aggressive or dominant animals are housed in the facility with other animals, the facility must provide either multiple shelters or other means to ensure that each nonhuman primate has access to shelter.

A number of commenters stated that the requirement for multiple shelters in certain situations should be deleted, because it would not eliminate the problem of some nonhuman primates being too intimidated by others to seek shelter. The commenters stated that there is a dominant animal in every social group, and that consequently, it would be impossible to guarantee that every animal would choose to join others in shelter. We are making no changes based on these comments. While we agree that it would be impossible to force every animal to take shelter, providing sufficient multiple shelters when aggressive or dominant animals are present would ensure that all nonhuman primates in the facility will have access to shelter.

A small number of commenters recommended that we rewrite the proposed provisions to specify that each outdoor housing facility have enough shelters to ensure that every animal is accommodated. We believe that this is what the proposed regulations would accomplish.

*2. Perimeter Fence—Sections 3.77(f) and 3.78(d)*

In proposed §§ 3.77(f) and 3.78(d), we proposed to require that unless a natural barrier exists that would restrict the animals to the housing facility and prevent unauthorized humans and animals from having contact with the nonhuman primates, a perimeter fence at least 6 feet in height be placed around the outdoor areas of sheltered housing facilities and outdoor housing facilities, and that it be placed at least 3 feet from the outside wall of the primary enclosure. In certain settings a perimeter fence is not needed because the animals are protected by natural barriers, such as moats or swamps surrounding the facility. As proposed, the exception for natural boundaries would be subject to the Administrator's approval. Under our proposal, the perimeter fence could be slatted, latticed or of other similar design, as long as it was designed and constructed in a manner that restricts unauthorized humans and animals from entering or having contact with the nonhuman primates, including animals capable of digging underneath it, and that prevents small animals the size of dogs, raccoons, and skunks from entering through it. We proposed to require that it be placed at least 3 feet from the outside wall of the primary enclosure and explained that this is considered to be a sufficient safety zone between the nonhuman primates and the public and that it would allow sufficient room to use cleaning equipment necessary for cleaning the waste and refuse that nonhuman primates throw into it. We proposed that the fence would not be required if the outside walls of the primary enclosure were high enough and built in a manner that prevents contact with or entry by other animals. To avoid the need for a perimeter fence we proposed to require that the outside walls of the primary enclosure be made of a heavy duty material such as concrete, wood, metal, plastic, or glass, that prevents unauthorized entry by and contact with humans and animals.

A small number of commenters specifically supported these provisions as written. A number of commenters specifically opposed the provisions requiring a perimeter fence. Some commenters stated that requiring a fence at least 6 feet high would not necessarily keep unwanted animals from entering the area occupied by the nonhuman primates; that even a fence of that height could be breached by certain animals. Other commenters recommended that we remove the requirement that the fence be able to keep out unauthorized humans; that the security of a facility is rightfully the concern of the facility. While we continue to believe that a perimeter fence 6 feet high will in most cases be adequate to keep out unwanted species, we recognize that, depending on the configuration and location of the facility, and on the type of fence used, fences of other heights might be warranted or necessary in keeping out animals. Therefore, we are amending our proposal to require that in cases where a perimeter fence is required, it be of sufficient height to keep unwanted species out, and that it be constructed so that it protects nonhuman primates by preventing animals the size of dogs, skunks, and raccoons from going through it or under it and having contact with the nonhuman primates. Because we believe that in most cases it would take a fence at least 6 feet high to keep out unwanted species, we are also proposing to require that fences less than 6 feet in height must be approved by the Administrator.

In like manner, we are proposing in this revised proposal that the perimeter fence must be of sufficient distance from the outside wall or fence of the primary enclosure to prevent physical contact between animals inside the enclosure and outside the perimeter fence. Under this revised proposal, such fences less than 3 feet in distance from the primary enclosure would have to be approved by the Administrator.

For the reasons discussed in this supplementary information under the heading "Housing Facilities: Structure; Construction," we are retaining the provision that the perimeter fence be able to prevent the entry of unauthorized humans. We are also retaining such a provision in the conditions necessary to make alternative barriers acceptable in lieu of perimeter fences.

A number of commenters recommended that perimeter fence requirements be standardized among species. We are making no changes based on these comments. The proposed regulations specify the need for a perimeter fence to keep out unwanted animals. Such a need exists for all nonhuman primates, and the type of fence used should not depend upon the species of nonhuman primates housed.

A number of commenters recommended that we modify our proposed provisions regarding fences to allow for local zoning regulations. We believe that any such local considerations are beyond the scope of these regulations, and we do not consider it appropriate to add such provisions to the regulations.

*3. Additional Safety Requirement—Sections 3.77(g), 3.78(e), and 3.79(d)*

We also proposed to add a requirement for facilities that are at least partially outdoors and are accessible to the public in order to protect nonhuman primates from the public and to protect the public from nonhuman primates. As proposed, public barriers would be required for sheltered housing facilities under proposed § 3.77(g), outdoor housing facilities under proposed § 3.78(e), and for mobile or traveling housing facilities under proposed § 3.79(e). The regulations we proposed would require barriers preventing unauthorized physical contact between the public and nonhuman primates for fixed public exhibits and traveling animal exhibits, at any time the public is present, both to protect the public and the nonhuman primates. We also proposed to require that nonhuman primates used in trained animal acts or uncaged public exhibits be under the control and supervision of an experienced handler or trainer whenever the public is present. We proposed to allow trained nonhuman primates used in animal acts and uncaged public exhibits to have physical contact with the public, as allowed under § 2.131, but only if the nonhuman

primates are under the direct control and supervision of an experienced handler or trainer at all times during the contact, in order to prevent injury to both the nonhuman primates and the public.

A small number of commenters recommended that the regulations prohibit all contact between nonhuman primates and the public. We agree that unauthorized contact must be prevented and believe our proposed provisions regarding barriers are necessary toward that end. However, it is not necessary to prohibit all contact between nonhuman primates and the public. Some commenters recommended we require that the barriers also restrict predators from easy access to the enclosures. We believe our proposed provisions regarding a perimeter fence address this issue and are making no changes to our proposal based on the comments.

Primary Enclosures

We proposed to revise completely current § 3.78, "Primary enclosures." We proposed to do so in accordance with the 1985 amendments to the Act. Under the amendments, the Secretary of Agriculture is directed to "promulgate standards to govern the humane handling, care, treatment, and transportation of animals by dealers, research facilities, and exhibitors." The standards must include minimum requirements "for a physical environment adequate to promote the psychological well-being of primates." (7 U.S.C. 2143(a)(2)(B)) Included among the primary enclosures subject to the regulations would be those used by circuses, carnivals, traveling zoos, educational exhibits, and other traveling animal acts and shows. As explained in greater detail below, we proposed different minimum space and environment requirements for research facilities, dealers, exhibitors, and traveling or mobile animal act exhibitors, in order to promote the psychological well-being of nonhuman primates and to provide for the nonhuman primates' minimum needs. Under our proposal, all primary enclosures would have been required to meet the proposed minimum requirements.

Our proposal was in contrast to current § 3.78, which provides general requirements for construction and maintenance of primary enclosures and uniform space requirements for every nonhuman primate housed in a primary enclosure.

We also proposed to add a subsection on social grouping of nonhuman primates within primary enclosures.

*Primary Enclosures: General Requirements—Section 3.80*

Primary enclosures are defined in part 1 of the regulations as "any structure or device used to restrict an animal to a limited amount of space, such as a room, pen, run, cage, compartment, pool, hutch, or tether." We proposed in § 3.80(a) to continue to require that primary enclosures be structurally sound and maintained in good repair to protect the animals from injury, to contain them, and to keep predators out, that they enable the animals to remain dry and clean, that they provide the animals with convenient access to clean food and water, that their floors be constructed in a manner that protects the animals from injury, and that they provide sufficient space for the nonhuman primates to make normal postural adjustments with freedom of movement.

We also proposed to require in proposed § 3.80(a) that the primary enclosures have no sharp points or edges that could injure the animals, that they keep unauthorized people and predators from entering the enclosure or having physical contact with nonhuman primates, that they provide shelter and protection from extreme temperature and weather conditions that can be dangerous to the animals' health and welfare, that they provide sufficient shade to protect all the animals contained in the enclosure at one time, and that they enable all surfaces to be readily cleaned and sanitized or replaced if worn or soiled.

These additional requirements were intended to provide more specific minimum criteria that must be satisfied by regulated persons maintaining nonhuman primates in order to provide for the welfare of the animals.

A small number of commenters specifically supported the provisions of § 3.80(a) as written.

In proposing that primary enclosures have floors that are constructed in a manner that protects the nonhuman primates from injuring themselves, we specified that such floors would have to protect against the nonhuman primates' having their appendages caught. A large number of commenters stated that such a provision would cause sanitation problems by restricting the elimination of fecal material in certain types of enclosures. We agree with the commenters and are therefore removing the requirement from proposed § 3.80(a) that floors of primary enclosures protect nonhuman primates from having their appendages caught, and are specifying instead only that the floors protect against injury.

A large number of commenters took issue with our requirements in proposed § 3.80(a) (iii) and (iv) that primary enclosures be constructed so as, among other things, to prevent the unauthorized release of nonhuman primates and to prevent the entry of unauthorized individuals. We continue to believe that such requirements would be necessary for the well-being of the animals in the enclosures, and are making no changes to our proposal based on these comments.

A number of commenters stated that certain wording within proposed § 3.80(a) was redundant. We believe that each of the provisions in proposed § 3.80(a) addresses a distinct need, and is necessary for proper enforcement.

A small number of commenters recommeded that primary enclosure be required only to make it difficult for predators to enter, rather than prevent their entry. We believe such a change would not be in the best interests of the nonhuman primates and are making no change based on these comments. However, upon review of our proposal, we do not believe that merely preventing the entry of "predators" is sufficient to ensure the well-being of the animals in the enclosure. There may be situations where an animal might not be a "predator" of nonhuman primates in the strict sense of the word, but might nonetheless pose a risk to the nonhuman primates. We are therefore revising our proposal to provide that primary enclosures must keep other unwanted animals and unauthorized individuals from entering the enclosure or having physical contact with the nonhuman primates. We are using the term "unwanted animals" to allow for situations where nonhuman primates in adjacent cages provide beneficial contact, such as grooming, to each other.

A number of commenters stated that it was unnecessary to include a requirement that primary enclosures be constructed so as to keep nonhuman primates dry. We believe it is important to the health and well-being of the nonhuman primates that they remain dry and are making no changes based on these comments.

A large number of commenters stated that our requirements that primary enclosures provide adequate protection from the extremes of temperatures and the elements were redundant with those regarding housing facilities and therefore should be deleted. We disagree, and are making no changes based on these comments. In many cases, primary enclosures are not synonymous with a housing facility. Such primary enclosures must be

governed by their own set of standards to ensure the health and well-being of the animals contained.

*Primary Enclosures: Social Grouping—Section 3.80(b)*

We proposed to include a subsection of proposed § 3.80 "Primary enclosures," to emphasize that nonhuman primates must be grouped in a primary enclosure with compatible members of their species or with other nonhuman primate species, either in pairs, family groups, or other compatible social groupings, whenever possible and consistent with providing for the nonhuman primates' health, safety, and well-being, unless social grouping is prohibited by an animal care and use procedure and approved by the facility's Committee. We specified in our proposal that compatibility would be based upon generally accepted professional practices and upon observation of the nonhuman primates to determine that they are in fact compatible. We proposed this requirement based upon scientific evidence and our experience, both of which indicate that nonhuman primates are social beings in nature and require contact with other nonhuman primates for their psychological well-being. The expert committee convened by APHIS also recommended social grouping to promote the psychological well-being of nonhuman primates. Social deprivation is regarded by the scientific community as psychologically debilitating to social animals. Where social grouping would not be possible or would be determined by the attending veterinarian to be contrary to providing for the nonhuman primates' health, safety, and well-being as explained below, or would be prohibited by an animal care and use procedure approved by the research facility's Committee in accordance with part 2 of the regulations, we proposed to require that nonhuman primates be at least able to see and hear other nonhuman primates, unless this were also prohibited by an animal care and use procedure approved by the research facility's Committee. In this case, under our proposal, the isolated individually housed nonhuman primates would be required to have positive physical contact or other interaction with their keeper or with another familiar and knowledgeable person for at least one hour each day.

We received a large number of comments in response to proposed § 3.80(b). The comments received differed in the specific provisions of § 3.80(b) they addressed and varied widely in their recommendations. A large number of commenters supported group housing in all or most cases. Some commenters recommeded that the regulations prohibit individual housing of nonhuman primates, either in all cases or in every case except when veterinary care is required. Although we continue to believe that interaction with other nonhuman primates is an important factor in ensuring the animals' psychological well-being, we do not believe it is reasonable or in the best interests of every nonhuman primate to require group housing in all cases. Our revised proposal requires that an environment enhancement plan, discussed below in this supplementary information, include specific provisions to address the social needs of nonhuman primates of species known to exist in social groups in nature.

One commenter recommended that it be required that a panel of experts evaluate each situation where a primate is individually housed in an exhibitor facility to determine if such housing is appropriate. While we believe that a panel is certainly one way to determine if a primate should be housed individually, we do not believe that it would be necessary for the well-being of the animals to specify that all decisions regarding individual housing of nonhuman primates at exhibitor facilities be made by a panel, and are making no changes to our proposal based on this comment.

A great number of commenters opposed our provisions regarding group housing of nonhuman primates. The commenters varied in the reasons provided for their opposition. A large number of commenters stated that group housing could significantly interfere with research where social grouping, or the lack of it, is a factor. We disagree with this assertion. Under § 2.38(k) (1), research facilities are required to comply with the standards in Part 3, except in cases where exceptions are specified and justified in the research proposal to conduct the specific activity and are approved by the facility's Committee. This provision exists to safeguard approved research.

A large number of commenters expressed concern that social grouping would endanger the animal's welfare by increasing noise and fighting. Other commenters stated that behavioral differences among varying species requires that discretion be used in deciding whether to employ group housing. While we believe, as noted, that social interaction is important to nonhuman primates, we recognize that situations may arise where it is more harmful than helpful to house animals in groups. In this revised proposal, we have reformatted and reworded the proposed provisions regarding social grouping, to include them in a revised § 3.81, titled "Environment Enhancement to Promote Psychological Well-Being." Social interaction is an integral part of the psychological well-being of nonhuman primates, and we believe it is appropriate to address such social grouping in the context of an overall approach to promoting the psychological well-being of nonhuman primates. In newly proposed § 3.81, regarding psychological well-being, we are proposing that each regulated facility must develop a plan for environement enhancement to promote the psychological well-being of nonhuman primates, discussed below in this supplementary information, and that the plan, among other things, must include specific provisions to address the social needs of nonhuman primates of species known to exist in social groups in nature. We are proposing that such specific provisions must be in accordance with currently accepted standards, as cited in appropriate professional journals or reference guides, as directed by the attending veterinarian. We are also proposing that such plan may provide for exceptions to such social grouping in cases where it would be injuries to the nonhuman primates. We believe that the regulations we are proposing in this revised proposal provide the attending veterinarian the necessary latitude to determine whether group housing would endanger the health, safety, and well-being of particular nonhuman primates. Additionally, the regulations in this revised proposal would make the appropriateness of group housing a factor that must be considered in a facility's plan to promote the psychological well-being of the animals housed.

In order to make clear situations where group hosuing would not be appropriate, we are proposing in this revised proposal to specify in § 3.81(a), regarding environment to promote the psychological well-being of nonhuman primates, that the environment enhancement plan may provide that: (1) A nonhuman primate that exhibits vicious or overly aggressive behavior, or is debilitated because of age or other conditions should be housed separately; (2) a nonhuman primate or group of nonhuman primates that has or is suspected of having a contagious disease must be isolated from healthy animals in the colony as directed by the attending veterinarian; and (3) nonhuman primates may not be housed with other species of nonhuman

primates or animals unless they are compatible, do not prevent access to food, water, and shelter by individual animals, and are not known to be hazardous to the health and well-being of each other. We are also proposing in this revised proposal that compatibility of nonhuman primates must be determined in accordance with generally accepted professional practices and actual observations, as directed by the attending veterinarian, to ensure that the animals are compatible. Additionally, we are proposing to require that individually housed nonhuman primates be able to see and hear nonhuman primates of their own or compatible species, unless the attending veterinarian determines that it would endanger their health, safety, or well-being. In our original proposal, we discussed the issue of animals held for "quarantine." However, because the term quarantine does not appear in this revised proposal, such a definition is unnecessary.

A large number of commenters supported the proposed requirement that individually housed nonhuman primates lacking interaction with other nonhuman primates receive positive physical contact or other interaction with their keeper or other familiar and knowledgeable person. Many commenters, however, opposed this requirement, and expressed concern that such a requirement could place the person involved at physical risk. We believe we have addressed these concerns in the process of reformatting and revising the provisions regarding social grouping in the context of psychological well-being. These revised provisions regarding such individually housed nonhuman primates are discussed below under the heading "Environment Enhancement to Promote Psychological Well-Being." Similarly, a number of commenters expressed concern that group housing of nonhuman primates would result in increased physical and mental stress and trauma to animal handlers. While we agree that housing primates in groups presents some logistical concerns that are not present when animals are housed individually, we believe that such concerns can be addressed by proper training of handlers and appropriate housing configurations.

A small number of commenters recommended that nonhuman primates be permitted to be caged individually in cases where experimentation lasts 12 months or less. We are making no changes to our proposal to establish such a provision. The commenters presented no evidence to support the conclusion that individual housing for 12 months or less is not psychologically distressing to nonhuman primates, and we are not aware of scientific data supporting such a conclusion.

A small number of commenters recommended that compatible groups of nonhuman primates be required to remain together and that it be required that primate infants remain with their dam for at least the first two years of life. While we encourage such practices where possible, we do not believe they would be practical in all cases and are making no changes to the proposal based on these comments.

A number of commenters stated that most veterinarians are not trained regarding social grouping of nonhuman primates, and that decisions regarding appropriate social grouping would be more appropriately left to an animal psychologist. We disagree with this assertion and are making no changes to our proposal based on these comments. Based on our experience enforcing the regulations, we believe that most attending veterinarians are familiar with and knowledgeable in the behavioral patterns of the nonhuman primates they are responsible for and are capable of making the professional judgments provided for under this revised proposal. A small number of commenters stated that the decision to individually house nonhuman primates should be reviewed monthly. We do not believe that such a requirement would be practical and are making no changes based on the comment.

A small number of commenters opposed what they considered "loopholes" in the proposed regulations that exempt research facilities from meeting specific standards, in cases where such an exemption is part of a research proposal approved by the facility's Committee. We are making no changes to our proposal based on these comments. Our mandate to establish and enforce animal welfare regulations under the Act makes it clear that the regulations shall not interfere with research efforts.

A small number of commenters expressed concern that nonhuman primates housed in stable family groups may inbreed, with negative consequences on captive conservation goals. We believe that such concerns are best addressed through husbandry management practices, rather than through the regulations.

A small number of commenters recommended that animals in group housing be of the same species. While we recognize that limiting group housing to the same species may be advantageous in some cases, we see no reason to require segregation of species that are compatible in nature.

*Primary Enclosures: Space and Physical Environment—Section 3.80 (c) and (d)*

As stated above, in our original proposal we proposed to revise completely the minimum space requirements for nonhuman primates set forth in current paragraphs (1) and (2) of § 3.78(b). The current requirements specify that primary enclosures be "constructed and maintained so as to provide sufficient space to allow each nonhuman primate to make normal postural adjustments with adequate freedom of movement" and provide a minimum floor space equal to an area of at least three times the area occupied by each animal when standing on four feet, regardless of the size or condition of the animal. We also proposed to add requirements for enhancing the environment of the primary enclosures used for maintaining nonhuman primates, in accordance with the 1985 amendments to the Act.

In preparing our proposal of minimum requirements for a physical environment adequate to promote the psychological well-being of nonhuman primates, we utilized the Agency's expertise and experience in regulating the humane handling, care, and treatment of nonhuman primates. Because this was the first occasion the Agency had been charged with responsibility for regulations to promote the psychological well-being of nonhuman primates, we considered it important and instructive to consult with experts and representatives of regulated industries. We requested their advice on the minimum space and other environmental requirements they considered necessary to meet the psychological needs of nonhuman primates.

As stated previously in this supplementary information, the National Institutes of Health (NIH), Public Health Service recommended experts to advise us regarding minimum standards for promoting the psychological well-being of nonhuman primates. A group of 10 nonhuman primates experts was selected and was asked to formulate a recommendation for these minimum standards. We also requested the American Association of Zoological Parks and Aquariums (AAZPA) to recommend minimum requirements. The consensus of opinion was that nonhuman primates need physical and mental stimulation for their psychological well-being, to enhance their developmental growth, and to

make them better socially adjusted. The reports indicated that the need for stimulation could be met by allowing them sufficient space to engage in species-typical behavior, by providing enclosure complexities such as perches and swings, by providing manipulative objects (such as balls and other objects), and by varying the methods of feeding (such as allowing the nonhuman primates to forage for food). The reports indicated that social interaction and exercise are equally necessary to promote their psychological well-being and that social grouping increases the nonhuman primates' physical activity. The reports differed, however, in their recommendations of the precise means, or combination of means, considered necessary to promote the nonhuman primates' psychological needs. Based on these reports and our observation of and experience with nonhuman primates, and considering the differences of opinion among the various professional communities maintaining nonhuman primates, we determined that nonhuman primates have an acknowledged need for physical and mental stimulation, and that their needs can be met in various ways.

We considered the environmental conditions under which nonhuman primates are maintained by regulated persons, and proposed minimum standards for primary enclosures used by research facilities (including Federal research facilities), dealers, exhibitors, and traveling or mobile animal act exhibitors. We proposed four sets of minimum standards, based on the determination that the environment in which a nonhuman primate is maintained may satisfy some of its needs and may require providing other forms of stimulation or environmental enhancements to satisfy other needs.

Accordingly, as explained in greater detail below, we proposed that primary enclosures used to maintain nonhuman primates must provide sufficient space, as set forth in our proposal, and that nonhuman primates must have exercise, social interaction (or human interaction), and environmental enrichments, consistent with their safety, health, and well-being. We proposed that the minimum amount of space to be required for each nonhuman primate, and the kind and amount of other means of meeting psychological needs required would vary among the four sets of minimum standards and would depend upon all the forms and opportunities for physical and mental stimulation presented to nonhuman primates in the environments typically provided by research facilities, dealers, exhibitors, and mobile or traveling animal act exhibitors, respectively.

A large number of commenters stated that minimum space requirements for nonhuman primates should be the same for all types of regulated facilities, and cited the lack of scientific consensus as to the need for differing space requirements for differing facilities. In continuing to analyze this issue, we have carefully reviewed the comments received, as well as other scientific data available to us, and have continued our ongoing consultation with HHS. The conclusion we have reached at this time is that although adequate space is critical to both the physical and psychological well-being of nonhuman primates, the issue of what constitutes "adequate space" can be meaningfully addressed only in the context of other enrichments of a primate's environment, particularly interaction with other nonhuman primates or humans. We believe that each primate's needs, in whatever type of facility it is housed, must be assessed by knowledgeable professionals, and must be met accordingly. In this revised proposal, therefore, we are proposing one set of minimum space requirements for all types of regulated facilities. At the same time, however, we are proposing to require that all regulated facilities must develop, document, and follow a plan for environment enhancement adequate to promote the psychological well-being of nonhuman primates in their facility. (The revised provisions for psychological well-being are discussed below under the heading "Environmental Enhancement to Promote Psychological Well-Being.") We encourage comments from the public that respond to the provisions of this revised proposal, and that provide further data regarding the specific space needs of nonhuman primates in each type of facility.

The minimum space requirements we are proposing in § 3.80(b)(1) of this revision are the same as those we originally proposed for research facilities as being adequate for nonhuman primates, except for one change. In response to many comments on nonhuman primate cage size requirements, we are modifying the weight limit of Group 6, as set forth in a table in proposed § 3.80(c)(1), by eliminating the top limit of 88 lbs. (20 kg), and by removing the proposed Group 7 for nonhuman primates weighing in excess of 88 lbs. (20 kg). Upon review of the evidence presented to us, we have determined that it may not be practical or feasible to establish specific cage size requirements for the larger great apes.

Current evidence available to use from regulated entities suggests that current technology does not exist for effective restraint of animals maintained in 50 square foot cages (as set forth in proposed Group 7). Commenters responding to our proposed rule provided evidence to indicate that such proposed Group 7 cage standards might actually discourage the progressive trend toward group housing in permanent facilities. Additionally, during our most recent consultations with HHS, that agency indicated their desire that, until their Guide might be further revised, the enclosure standards set forth in the Guide, parallel in all cases except proposed Groups 6 and 7 to those set forth in our proposal, not be modified.

Therefore, after further consideration of the unique needs of larger great apes, we are proposing to require in § 3.80 of this revised proposal that dealers, exhibitors, and research facilities that maintain great apes weighing over 110 lbs. (50 kg), must provide such animals an additional volume of space to allow for normal postural adjustments. We are also requiring in § 3.81 of this revised proposal that these larger great apes must be provided additional opportunities to express behavior typical of their species, as discussed in this supplementary information under the heading "Environment Enhancement to Promote Psychological Well-Being." We believe that these requirements will meet statutory requirements that encourage the further study of environment designs that meet the special social and behavioral needs of these animals.

The minimum enclosure sizes we proposed for research facilities, and which we are now proposing for all facilities with the changes discussed above, are based on the typical weight of the species, except for brachiating species and great apes, in accordance with the following table:

| Group | Weight lbs. (kg.) | Floor Area/ Animal ft.$^2$ ($m^2$) | Height in. (cm.) |
|---|---|---|---|
| 1 | Under 2.2 (under 1) | 1.6 (0.15) | 20 (50.8) |
| 2 | 2.2-6.6 (1-3) | 3.0 (0.28) | 30 (76.2) |
| 3 | 6.6-22.0 (3-10) | 4.3 (0.40) | 30 (76.2) |
| 4 | 22.0-33.0 (10-15) | 6.0 (0.56) | 32 (81.28) |
| 5 | 33.0-55.0 (15-25) | 8.0 (0.74) | 36 (91.44) |
| 6 | over 55.0 (over 25) | 25.1 (2.33) | 84 (213.36) |

The table above includes a correction of our original proposal regarding weights in Groups 2 and 3.

The minimum floor area and height that we are proposing were also recommended by the expert committee on nonhuman primates as sufficient to promote the psychological well-being of nonhuman primates.

Under this proposal, nonhuman primates would be categorized into these six groups by the typical weight of animals of their species, except for infants (up to 6 months of age) and juveniles (6 months to 3 years of age) of various species, which may weigh so much less than adults of their species that they are grouped with lighter weight species unless they obviously require greater space to make normal postural adjustments and movements, and except for brachiating species and the larger great apes. Brachiating species are those that typically hang or swing by their arms so that they are suspended in the air and fully extended. We are including the following as examples of the types of nonhuman primates that fall into each group:

Group 1—Marmosets, Tamarins, and infants (less than 6 months of age) of various species.

Group 2—Capuchins, Squirrel Monkeys and species of similar size, and juveniles (6 months to 3 years of age) of various species.

Group 3—Macaques and African species.

Group 4—Male Macaques and large African species.

Group 5—Baboons and nonbrachiating species larger than 33.0 lbs. (15 kg.).

Group 6—Great Apes greater than 55.0 lbs. (25 kg), except as provided for Great Apes weighing over 110 lbs. (50 kg), and brachiating species.

We have determined it appropriate to provide guidelines by proposing these six weight groups. In most instances, the specified dimensions for the various species would be sufficient to promote the nonhuman primates' psychological well-being, and the table could be used to determine the minimum space requirements for each species. However, if a nonhuman primate were unable to make normal postural adjustments and movements, or could not do so without difficulty, notwithstanding the table, it would have to be provided greater space.

The space requirements are minimum standards that must be provided to each nonhuman primate contained in a primary enclosure, unless otherwise specified. Consequently, if two nonhuman primates are housed together in one enclosure maintained by a research facility, the minimum floor area would be the sum of the minimum floor area space requirements that must be provided to each animal. However, in the case of mothers with infants less than 6 months of age, the space and height requirements would be those required for the mother. The minimum height for the animals would be the minimum height requirement for the largest nonhuman primate in the enclosure, not double that height as proposed in our original proposal. This change regarding height is based on a number of comments, which upon review we concur with, that indicate that, although increasing the floor space for group housing is necessary, doubling the height for two animals has questionable value. Also, the regulations would not allow the size of a primary enclosure to be reduced because it contains a suspended fixture, such as a swing or a perch, except that low perches and ledges would be counted as part of the floor space.

A small number of commenters specifically supported the minimum space requirements we originally proposed for primary enclosures at research facilities as written. A much larger number of commenters took issue with the minimum space requirements we proposed for research facilities, and which we are now proposing for all facilities. A large number of commenters stated that our proposed cage sizes were too small. An equally large number of commenters stated that we were proposing minimum sizes in excess of those necessary, or that we were proposing standards that were arbitrarily arrived at. Some commenters recommended that we set no specific minimum standards, and rely instead of professional discretion in every case. We believe that the minimum space requirements that were proposed for research facilities, and that are now being proposed for all facilities, are reasonable and adequate. We base this belief on our own experience enforcing the regulations, on expert recommendations received from the team of primate experts discussed above, and on our ongoing consultation with HHS.

Some of the comments received regarding the space requirements we originally proposed for research facilities stated that the grouping categories did not allow for variations in body configurations of animals, or for situations such as unusually light animals of a certain species, such as young nonhuman primates. We believe that the general physiognomy of nonhuman primates makes grouping by weight the most appropriate and practical method of categorization. Further, in footnote 2 to § 3.80 of our proposed rule, we noted that, although species categories for each weight group were presented as guidelines, infants and juveniles would normally fall into a lighter weight category than would older members of the species. One commenter, in reference to that footnote, stated that it should be changed to reflect the fact that a primate will grow and will have to be moved to a larger cage in a short time. We believe that such a necessity is self-evident and does not need to be included in the regulations.

A small number of commenters recommended that individually housed nonhuman primates be placed in primary enclosures with minimum dimensions for only short periods of time, and only for specified reasons—such as due to approved protocols or normal veterinary care requiring isolation. While we agree that individually housed nonhuman primates require additional enrichment for their psychological well-being, we believe such enrichment would be provided for under this revised proposal, as discussed below under the heading "Environment Enhancement To Promote Psychological Well-Being."

Many commenters stated that in proposing minimum space standards for research facilities, now proposed for all facilities, the Department had ignored

activity typical of varying species. We agree that the proposed space requirements alone do not address the issue of activities particular to varying species. However, as discussed below under the heading "Environment Enhancement To Promote Psychological Well-Being," each regulated facility would be required to develop a plan for promoting the needs of the nonhuman primates housed in the facility. The plan would, we believe, be the most practical way of addressing species-typical activity. However, we invite and encourage the submission of scientific data regarding appropriate cage dimensions based on species-typical activities. We will examine such data carefully in the development of a final rule based on this proposed rule.

A number of commenters stated that primate cage dimensions should be based on whether the species is arboreal or terrestrial. We do not believe that such considerations would be practical. In most cases, nonhuman primates are neither exclusively aboreal nor exclusively terrestrial, and basing cage sizes on such considerations would not be feasible.

We received some comments recommending that determining appropriate space requirements should be left to the attending veterinarian, in accordance with generally accepted professional and husbandry practices. While we agree that the attending veterinarian should be given some latitude in determining cage size, we believe that such decisions should be made in the context of specific minimum space requirements that would otherwise be required. We are therefore proposing to include § 3.80(b)(4) of this revised proposal that, in the case of research facilities, any exemption from the specified space requirements would have to be required by a research proposal or the judgment of the attending veterinarian, and be approved by the facility's Committee. In the case of dealers and exhibitors, any exemption would have to be required in the judgment of the attending veterinarian, and would have to be approved by the Administrator.

Some commenters stated that the minimum space tables in the original proposal were difficult to interpret. We do not believe that the table we proposed for research facilities was difficult to interpret and must assume the commenters were referring to the more complex table we proposed for exhibitors, which has been deleted in this revised proposal.

A number of commenters opposed our proposed requirement that, when more than one nonhuman primate is housed in a primary enclosure, the minimum space provided be the sum of the minimum floor space requirements that must be provided for each nonhuman primate housed in the enclosure, and double the minimum height requirement for the largest nonhuman primate housed in the enclosure. The commenters stated that such a formula would not take into account variables among individual animals and species, could lead to unworkable housing situations, and might reduce research conducted to find data to define space requirements or cage enrichments. As discussed above, the requirement regarding space for groups housing we are proposing in this revised proposal does not include doubling the height of the enclosure when more than one primate is housed. However, we continue to believe that it is appropriate to provide each primate that is housed in the enclosure the minimum amount of floor space it would be entitled to if it were housed separately. We do not believe that the proposed specific minimum will have a significant negative effect on research regarding space requirements. On the contrary, we would welcome additional data regarding space requirements in our continuing efforts to provide appropriate standards.

A small number of commenters stated that it would be inappropriate to require a minimum of 84" height for categories 6 and 7, because a cage that size would not fit through an 84" door frame due to the door jam or floor material. We believe that this concern does not warrant our revising our proposal regarding Group 6. (As dicussed above, this revised proposal does not contain a Group 7.) The recommended heights are based on NIH guidelines, which are already followed by many members of the research community. Further, we do not believe that the problem raised by the commenters is a significant practical one that will arise very frequently.

Several commenters, referring to the minimum space requirements we proposed for exhibitor facilities, stated that exemptions to the minimum space requirements should be allowed in for medical reasons and in cases where young nonhuman primates are being hand-reared. We believe that we have largely addressed the commenters' concerns by revising our proposal to eliminate the space standards for exhibitors addressed in the comments. Further, it has been our policy, in cases where the attending veterinarian thinks it necessary for medical reasons, to allow movement of nonhuman primates to alternatively sized cages on a short-term basis.

In our proposal, we stated that we encourage the design and development of primary enclosures that promote the psychological well-being of nonhuman primates by providing them with sufficient space and unrestricted opportunity for movement and exercise, and by allowing them to interact physically and socially with other nonhuman primates. Accordingly, we proposed to allow the use of primary enclosures that do not precisely meet the space requirements otherwise required of research facilities upon application to the Administrator for permission. Under our proposal, an applicant would be required to demonstrate both in writing and through use of a photographic aids that the proposed primary enclosure provides sufficient space and is designed so that the nonhuman primates can express species-typical behavior. A small number of commenters addressed these proposed provisions, specifically in regard to "pole housing." Most of these commenters opposed pole housing; one supported pole housing; and one recommended that pole housing be reviewed on a case-by-case basis. As originally proposed, and as retained in this revised proposal, all approval or denial of alternative housing would be done on a case-by-case basis.

In this revised proposal, we have made several changes to our original proposal regarding the approval of alternative housing. We are removing the specific requirements that the application for approval include written and photographic details. While we would continue to require such information in most cases, we recognize that other media, such as video tape, could be used to demonstrate the efficacy of alternative housing. It would be decided on a case-by-case basis whether the information submitted was sufficient for a decision to be made. Also, in order to allow for increased involvement by the Committee at research facilities, we are proposing to provide that approval of alternative housing at research facilities would be the responsibility of the facility's Committee. The use of such alternative housing by dealers and exhibitors would be dependent upon approval of the Administrator.

*Variances From Minimum Space Requirements—Section 3.80(e)*

In our proposed rule, we proposed procedures whereby variances from the proposed regulations could be requested and, if justified, approved by the Administrator. Under our proposal, such variances would allow an eligible

registrant or licensee to continue operating, even though not fully in compliance with the minimum space requirements for nonhuman primates. Under our proposal, a variance would be limited in scope both as to time and to the primary enclosures covered by it, and would specify the portions of the applicant's facilities to which it applied. In this revised proposal, we are not including provisions for variances. As discussed above, we believe that appropriate minimum space requirements can be addressed meaningfully only in the context of all forms of psychological enrichment provided the nonhuman primates. As discussed below, in this revised proposal, instead of proposing across-the-board requirements for activities such as exercise, we are requiring that facilities develop and document a plan to promote the psychological well-being of nonhuman primates. With regard to certain areas, such as exercise and enrichments, we would make it the responsibility of the facility to make available a plan for reaching that goal. In light of the removal of many of the across-the-board space requirements that were in our original proposal, and in light of the availability of primary enclosures meeting our proposed minimum space standards, we believe that it is not necessary to provide for variances regarding minimum space requirements.

*Environment Enhancement To Promote Psychological Well-Being—Section 3.81*

In proposed § 3.81, "Additional requirements for research facilities," we proposed environmental enrichments that research facilities would be required to provide, in addition to the minimum space requirements contained in proposed § 3.80(c)(1). We did so because the Animal Welfare Act, as amended, and the regulations contained in Part 2 of the Animal Welfare regulations impose specific duties on research facilities holding animals for research, testing, or teaching that are not imposed upon other regulated persons or industries, and that can affect their determination of the specific means employed to promote the psychological well-being of nonhuman primates.

After considering all the information available to us, including the report of the expert committee on nonhuman primates, we proposed the following minimum requirements to promote the psychological well-being of nonhuman primates in accordance with the Act, as amended. We set forth the proposed requirements in addition to the minimum space requirements set forth in proposed § 3.80(c)(1.

We proposed that environmental enrichments must be provided by research facilities so that the nonhuman primates can engage in species-typical behavior and receive sufficient physical and mental stimulation at all times. In proposed § 3.81(a)(1), we provided examples of the kinds of enrichments that would be required under our proposal, including: (1) Perches, swings, mirrors, and other cage complexities; (2) toys or objects to manipulate; and (3) varied methods of feeding. We proposed to require in proposed § 3.81 that research facilities house nonhuman primates in social groupings in primary enclosures whenever possible, to increase their physical activity and for their psychological well-being.

We proposed additional requirements applicable to individually housed nonhuman primates. In order to ensure that these nonhuman primates have sufficient opportunity for physical activity, we proposed to require that they be released for at least four hours of exercise each week into an area that has at least three times the floor area and twice the height of their primary enclosure. Under the provisions we proposed, release would not be required if they are maintained in a primary enclosure with other nonhuman primates, or if they are maintained in a primary encousre that is at least twice as great as that required for the species, because they would have greater opportunities to engage in physical activity on an ongoing basis. Under the regulations we proposed, nonhuman primates could be placed with compatible species during the required release period. This social interaction would promote their psychological well-being and is known to increase their physical activity.

A small number of comments received in response to our proposal asked that we define "socialization" and "psychological well-being." Research in this field is continuing, and additional data is being developed on an ongoing basis. In many cases, it is possible to assess that the psychological well-being of a primate is not being promoted when that primate exhibits what is considered abnormal behavior. What actually constitutes psyhological well-being in each species and each primate, however, is difficult to define. As an agency, we are mandated by Congress to establish standards to promote the psychological well-being of nonhuman primates, even though there is disagreements as to the meaning of the term and how best to achieve it. It appears obvious from information received from the expert committee on primates, consultations with HHS, other experts in primates, and the large number of comments received on the subject, that the psychological well-being of nonhuman primates involves a balance of several factors or areas of concern. This concept involves sufficient space for the animals; methods to stimulate the animals and occupy some of their time, both physically and mentally (i.e., environment enrichment); and methods of social interaction with other nonhuman primates or humans.

In this revised proposal, based on comments received and on our ongoing analysis of all other scientific evidence available to us, we have made certain changes to our original proposal regarding the methods research facilities would have to use in meeting the requirements of promoting the psychological well-being of nonhuman primates. Additionally, we are now proposing to apply those revised provisions regarding psychological well-being to dealers and exhibitors, as well as to research facilities. As we discussed earlier in this supplementary information, the scientific evidence available to us indicates that it is the combination of adequate space and environmental enrichments that is integral to promoting the psychological well-being of nonhuman primates. Because we are proposing to apply to other regulated entities the same minimum space requirements we originally proposed for research facilities, we believe it is appropriate and necessary to apply the same minimum standards regarding psychological well-being to each of these regulated entities. These proposed standards would take the place of the exercise and enrichment provisions we originally proposed for research facilities, exhibitors, and dealers. Additionally, in order to emphasize that the promotion of the psychological well-being of nonhuman primates is best achieved by a combination of factors, we are heading § 3.81 in this revised proposal "Environment enhancement to promote psychological well-being."

In response to § 3.81(c) in our original proposal, many commenters expressed concern that our proposed requirements for psychological well-being did not allow enough room for professional discretion at the facility level as to which forms of enrichment might be unnecessary or even harmful to individual animals or species. Many commenters recommended that species-typical activities be at the discretion of the attending veterinarian, because

some of these behaviors are harmful, and that we require only that the physical environment be enriched by providing means of expressing noninjurious species-typical activities at the discretion of the attending veterinarian. Many commenters stated that our proposed exercise standards were based on insufficient scientific documentation; that exercising nonhuman primates could cause trauma to both animals and caretakers; that the regulations should allow for exemption from socializing and exercising nonhuman primates based on the judgment of the attending veterinarian and, at research facilities, on the judgment of the facility's Committee; that determining "compatibility" of other different animals when released together for exercise would be difficult and time consuming; and that group exercise would pose a health risk to the animals involved. We have carefully analyzed these comments, and believe we have addressed many of the commenter's concerns through the changes we are making to our proposal, as described below.

Many commenters supported the provisions in proposed § 3.81(c) as written. Several felt they were inadequate. Others, while essentially supporting the proposed provisions, recommended changes to require more specificity regarding the methods of enrichment required, or to lengthen or establish specific timetables for the proposed exercise periods. A number of commenters either questioned our statutory authority to establish regulations governing exercise and social interaction, expressed opposition to "excessive" or "unscientific" regulations regarding the psychological well-being of nonhuman primates, or stated that standards regarding psychological well-being should apply only to nonhuman primates housed for specified periods of time. A number of commenters expressed concern that exercise requirement would interfere with research.

The promotion of the psychological well-being of nonhuman primates is a critical component in our rewriting of the animal welfare regulations, and is one that we are specificaly mandated to address under the Act. Statutorily, we have the responsibility and obligation to establish such provisions as we believe are necessary for a physical environment to promote the animals' psychological well-being, but do not have the authority to interfere with approved research procedures. As discussed above, a mechanism exists in the regulations to exempt research facilities from specific provisions in the case of approved research proposals. As noted above, the issue of what constitutes psychological well-being, and how best to promote it, is an area that continually welcomes new research data. One of the challenges of establishing regulations governing psychological well-being is to arrive at regulations that are practical and enforceable, while leaving room for professional discretion in the case of individual animals and species.

We have carefully reviewed all of the comments we received regarding this issue. As noted above, we have conducted such a review while continuing to analyze all other scientific data available to us, and while continuing our ongoing consultation with other Federal agencies. Based on this review, analysis, and consultation, we are revising our proposal to propose provisions that would apply to all dealers, exhibitors, and research facilities as discussed in the following paragraphs. In proposing these revised provisions, we invite and encourage further scientific data regarding the proposed provisions and the psychological well-being of nonhuman primates in general.

Section 3.81 of our proposal was titled "Additional requirements for research facilities." As discussed above, in this revised proposal, we would title § 3.81 as "Environment enhancement to promote psychological well-being." In the introductory text to that section, we would provide that dealers, exhibitors, and research facilities must develop, document, and follow a plan for environment enhancement adequate to promote the psychological well-being of nonhuman primates. We would require that such plan be in accordance with the currently accepted professional standards as cited in appropriate professional journals or reference guides and as directed by the attending veterinarian. By providing for such a plan, we believe that the psychological well-being of nonhuman primates would be promoted, while still leaving professional discretion as to the most appropriate means of promoting the well-being of particular animals or species. We would also require that the plan be made available to APHIS, and, in the case of research facilities, to officials of any pertinent Federal funding agency.

As proposed, it would be required that the plan address certain specified areas, including: (1) Social grouping; (2) environmental enrichment; (3) special consideration of nonhuman primates requiring special attention; and (4) restraint devices. We believe that each of these is an important area that needs to be addressed in determining how best to promote the psychological well-being of nonhuman primates.

*Social grouping.* The provisions we are proposing regarding social grouping in proposed § 3.81(a), as revised, and the comments we received regarding social grouping in our original proposal, are discussed above under the heading "Social Grouping."

*Environmental enrichment.* In our original proposal, we provided for multiple enrichments of the environment of nonhuman primates in proposed § 3.80(c)(2)(iii) for dealers, proposed § 3.80(c)(4)(ii) for certain nonhuman primates housed by mobile or traveling animal act exhibitors, and proposed § 3.81(a)(1) for research facilities. Many commenters specifically supported our proposed requirements for environmental enrichments. Some commenters stated that they did not agree that it was necessary for social enhancement to place playthings or toys in cages, or stated that determining which environmental enrichments were most appropriate would require prolonged experimentation. Many commenters questioned the need to provide examples of environmental enrichments in the regulations, and recommended instead that we rely on the discretion of the attending veterinarian.

Upon review of the comments, we continue to believe that the best scientific evidence available demonstrates the effectiveness of environmental enrichments in promoting the psychological well-being of nonhuman primates. We also believe that by incorporating the need for environmental enrichments into the facilities plan for promoting the psychological well-being of the animals, the regulations would provide the opportunity for professional discretion regarding the well-being of particular animals or species. Therefore, in revised § 3.81(b), we are proposing to require that the plan discussed above include provisions for enriching the physical environment in primary enclosures by providing means of expressing noninjurious species-typical activities, and to provide that species differences should be considered when determining the type or methods of enrichment. We continue to believe that it is beneficial to provide examples in the regulations of types of enrichment that have been proven by research to be effective in promoting the psychological well-being of nonhuman primates. Therefore, we would provide in the proposal that

examples of environmental enrichments include providing perches, swings, mirrors, and other increased cage complexities; providing objects to manipulate; varied food items; using foraging or task-oriented feeding methods; and providing interaction with the care giver or other familiar and knowledgeable person consistent with personnel safety precautions.

*Special considerations.* In § 3.81(c) of this revised proposal, we are proposing that certain categories of nonhuman primates must receive special attention regarding enhancement of their environment. In § 3.81(a)(4) of our original proposal, we proposed to require research facilities to provide for the special psychological needs of (1) individually housed nonhuman primates that are infants or juveniles, (2) those that are used in research that does not provide for much activity, and (3) those showing signs of psychological distress. We proposed to require that they consult with the attending veterinarian, who would instruct the facility as to the additional environmental enrichments that must be provided to provide for the nonhuman primates' psychological well-being. We specifically identified these three categories of nonhuman primates in the proposed regulations because we concur with the expert committee on nonhuman primates that they require additional consideration of their needs to promote their psychological well-being. As we discussed in the **SUPPLEMENTARY INFORMATION** of our proposal, infants and juveniles are in the formative period of their development growth and require physical and mental stimulation for normal development. They also require social interaction with other nonhuman primates so that they can function in accordance with the typical social behavior for their species. Similarly, those required to be inactive lack the physical activity and stimulation considered important for their psychological well-being, and their needs must be provided for in different ways. The special needs of those showing signs of psychological distress must also be individually addressed to prevent the development of psychological disorders. Because the needs and circumstances of individually housed nonhuman primates falling under any of these categories will differ on an individual basis, we stated in our proposal our belief that it is appropriate to require that research facilities consult with their attending veterinarian, who has expertise in the care and treatment of the species being attended, and can prescribe the additional measures deemed necessary to satisfy the nonhuman primates' psychological needs. We proposed to require that the attending veterinarian keep records of these additional instructions, and that they be subject to APHIS inspection under proposed § 3.81(c).

Several commenters recommended that we specify what additional enrichments would be required for these special categories of nonhuman primates. A large number of commenters recommended either that we delete the provisions regarding special categories of nonhuman primates, or delete the references to exercise and social interaction. Upon review of the comments, we continue to believe that the categories of nonhuman primates discussed above require special attention, and are revising our proposal to require such special attention, whether the animals are individually housed or not. We continue to believe that the form of special attention given these nonhuman primates would most appropriately be determined by the attending veterinarian. We are therefore proposing in revised § 3.81(c) that special attention be given to (1) infants and juveniles, (2) those nonhuman primates that show signs of being in psychological distress through behavior or appearance, and (3) those nonhuman primates used in research for which the Committee-approved protocol requires restricted activity. This special attention would be based on the needs of the individual species and in accordance with the instructions of the attending veterinarian. Some examples of special attention would be special feeding plans for juveniles, and increased one-on-one care for animals showing psychological distress.

In addition to these three special categories, we are proposing in this revised proposal that special attention be given to individually housed nonhuman primates that are unable to see and hear nonhuman primates of their own or compatible species. In certain cases, individual nonhuman primates might be prohibited from seeing and hearing other nonhuman primates by a Committee-approved research proposal. We believe that it is essential to the well-being of such nonhuman primates that they receive some form of compensatory enrichment. In our original proposal, under proposed § 3.80, we proposed to require that such nonhuman primates have positive physical contact or other interaction with their keeper or with another familiar and knowledgeable person for at least one hour each day. Upon review of the comments addressing this proposed provision, as discussed above under the heading "Social grouping," we believe that safety considerations, and the need to employ the type of enrichments and interaction most appropriate to the individual animal, warrant basing the type of compensation to be provided on the professional discretion of the attending veterinarian. However, one example of special attention might be that an additional amount of manipulable objects would be provided to such animals.

Additionally, we are proposing that regulated facilities include in their environment enhancement plan special provisions for great apes weighing over 110 lbs. (50 kg). The regulations would require that these special provisions include additional opportunities to express species-typical behavior. The apparent social nature and high degree of intelligence of these animals requires that particular attention be given to their species-typical social and behavioral needs in the determination of enclosure size, location, and complexity, as the desirability of pair of group housing.

A number of commenters addressed the general issue of allowing the attending veterinarian the discretion to determine conditions that help promote the psychological well-being of nonhuman primates, or to recommend exemptions to the regulatory standards. These commenters stated that most veterinarians have inadequate training in primate behavioral biology and psychology to be able to make proper determinations regarding such conditions. We disagree with this assertion. Based on our experience enforcing the regulations, we believe that most attending veterinarians are well-versed in what is necessary for the animals' health and well-being. We are confident in such veterinarians' capabilities to make sound professional decisions with regard to the regulations.

*Restraint devices.* We are also proposing that the plan to be developed by the facility include provisions addressing restraint devices. In § 3.81(b) of our original proposal, we proposed to add a prohibition against confining nonhuman primates in chairs, unless required by an animal care and use procedure and approved by the Committee in accordance with Part 2 of the Animal Welfare regulations, and unless the animal is released daily for exercise for at least one continuous hour each day during the period of confinement unless continuous restraint in a chair is required by an animal care and use procedure and approved by the Committee. In cases where continuous restraint would be approved, we

proposed to require that the nonhuman primate be released for exercise for at least one hour before and one hour after the period of restraint.

A small number of commenters supported the proposed provisions regarding primate chairs as written. Several commenters opposed all use of primate chairs. We are not revising our proposed provisions based on these comments. Such restraining devices are used only in research, and we do not have the authority to interfere with approved research procedures. A small number of commenters recommended that the use of primate chairs for an extended period of time be prohibited or discouraged. Again, our authority does not extend to approved research procedures. A small number of commenters stated that the proposed exercise period for chaired nonhuman primates is insufficient; others recommended that it be required that chaired nonhuman primates receive social contact with a conspecific primate during the exercise period, and that all animals placed in chairs with the approval of the facility's Committee be inspected by the Committee prior to the Committee's granting approval for use of the chair. We are making no changes to our proposed provisions regarding primate chairs based on these comments. We believe that release for one continuous hour during the period of restraint is adequate to promote the animal's well-being, and we do not believe it is practical to require exercise with conspecific animals or to require Committee inspection of each animal proposed to be restrained. However, in order to clarify our intent with the regard of the proposed 1-hour release period, we are revising our proposal to provide that the nonhuman primates in question must be provided the opportunity for "unrestrained activity," rather than "exercise." We believe this revised wording more closely encompasses the intent of the proposed regulations.

A large number of commenters expressed concern that our proposed exercise requirements regarding nonhuman primates restrained in chairs would interfere with research by conflicting with the scientific reasons for the restraint. The recommendations submitted by the commenters included deletion of the provisions in question, allowing exercise of the animal any time on the same day of restraint, allowing short-term chair restraint without requiring the exercise requirements to be met, and allowing the amount of time spent in a chair and the associated exercise requirements to be left to the judgment of the facility's Committee. Upon review of these comments, we agree that the proposed provisions, as written, could potentially interfere with approved research. Accordingly, we are proposing to revise our proposed provisions regarding the use of primate chairs to clarify that unrestrained activity be required during the restraint period only if such period of restraint is for more than 12 hours. In cases of short periods of restraint, the original proposal, as written, could potentially have required a longer period of unrestrained activity than the period of restraint. Additionally, we are removing our proposed requirement that, in cases where continuous restraint is approved by the committee, the animal be released for exercise at least one hour before it is restrained and for at least one hour after the period of restraint. We believe that such a provision is necessary, because, even without such a specific requirement, the nonhuman primate would have an opportunity to pursue its normal activity before and after the period of restraint.

A small number of commenters recommended that the Committee be allowed professional judgment in deciding which animals should be placed in restraining chairs, and which animals should be exempted from exercise for research reasons. The regulations as written already include such provisions and we are making no changes to our proposal based on these comments.

In this revised proposal, we are proposing several additional changes to our proposal regarding primate chairs. First, in this revised proposal we refer to restraint devices rather than primate chairs. Although primate chairs are the form of restraint devices most commonly used, we believe it is inappropriate to limit the provisions of our regulations specifically to devices known as primate chairs. Second, we are also proposing that nonhuman primates may be placed in restraint devices if required for health reasons as determined by the attending veterinarian. Finally, we are providing in this revised proposal that maintenance in such restraint must be for the shortest period possible.

*Documentation.* In § 3.81(c) of our proposal, we proposed that documentation of the release of each nonhuman primate for exercise and social interaction, and of the additional environmental enrichments ordered under proposed paragraph (a)(4) be kept by the attending veterinarian, subject to inspection by APHIS inspectors, and in the case of Federal research facilities, to review by officials of any Federal funding agency. We are not including similar provisions in this revised proposal. The plan required to be developed and documented by the facility, discussed above, would address the means the facility would use to comply with the regulations.

*Exemptions.* We stated in the supplementary information of our proposal that we recognize that certain situations will require an immediate response from facility personnel, when it is necessary to provide less than the minimum standards to a nonhuman primate, due to the condition of the animal, in order to provide for its welfare. We therefore proposed to include a provision in proposed § 3.81 that would authorize attending veterinarians to exempt or restrict a particular nonhuman primate from its required exercise and social release period if he or she determines that it is necessary for the nonhuman primate's health, condition, or psychological well-being due to the physical or psychological condition of the animnal. As proposed, the exemption would be for a period of up to 30 days, would be required to be recorded by the attending veterinarian, and would be subject to APHIS review and, in the case of Federal research facilities, to review by officials of any Federal funding agency. We proposed to require that the research facility be responsible for having the attending veterinarian review the grant of exemption at least every 30 days to determine if it were still warranted under the circumstances. Under our proposal, exemptions would be required to be included in the research facility's annual report and in the Committee's inspection report under § 2.35(b)(2)(i)(C).

In this revised proposal, we are proposing provisions similar to those in our original proposal, with certain additions and modifications we discuss below. In responding to our original proposal, several commenters recommended specific categories of nonhuman primates that should be exempted from exercise. We believe that the provisions as written provide the attending veterinarian sufficient latitude to decide which nonhuman primates should be exempted, and are not amending our proposal in response to these recommendations. A large number of commenters stated that the proposed provisions regarding exemptions were unreasonable, would require excessive paperwork, and would subject the attending veterinarian's opinion to unqualified review. Many commenters expressed concern that if

the exemptions were included in the facility's annual report, and that report were subject to the Freedom of Information Act, information on individual animals would become public knowledge.

The requirement that a summary of exceptions be included with the Annual Report is in accordance with § 2.36(a)(3) of the regulations and is not particular to the provisions in proposed § 3.81. Because such requirement is included elsewhere, however, we are removing it from proposed § 3.81.

Accordingly, § 3.81(e) of this revised proposal would provide that the attending veterinarian may exempt individual nonhuman primates from participation in environment enhancement plans because of their health or condition, or in consideration of their well-being, and must document the basis of such exemptions for each nonhuman primate. Unless the basis for an exemption is a permanent condition, it would be required that the attending veterinarian review the exemption at least every 30 days.

A number of commenters recommended that provision should be made for exemption on valid scientific grounds. Such exemptions are already provided for under § 2.38(k)(1) of the regulations. However, in order to emphasize that the standards of this revised proposal shall not interfere with approved research, we are proposing to add language in § 3.81(e)(2) of this revised proposal that the research facility's Committee may exempt individual nonhuman primates from some or all of the environment enhancement plans, for scientific reasons set forth in the research proposal. We would require that the basis of such exemption be documented in the approved proposal and be reviewed at appropriate intervals as determined by the Committee, but not less than annually.

We would additionally require that records of any exemptions be maintained by the dealer, exhibitor, or research facility and be made available to USDA officials or officials of any pertinent funding Federal agency upon request.

*Feeding—Section 3.82*

In § 3.82 of our proposal, we proposed to revise the provisions of current § 3.79 "Feeding," to include means of enhancing the psychological well-being of nonhuman primates by varying the types of feed and the methods of feeding, such as by using task-oriented feeding or allowing the animals to forage for food as in nature. We stated in the **SUPPLEMENTARY INFORMATION** of our proposal that we considered variation in the nonhuman primates' feeding on a daily basis a necessary means of providing necessary mental and physical stimulation.

We proposed minor changes to current § 3.79 to require that the amount of food, type of food, and frequency of feeding be appropriate for the species, size, age, and condition of the nonhuman primate, and be in accordance with generally accepted professional and husbandry practices and nutritional standards. As we discussed in the supplementary information of our proposal, in accordance with those practices and standards, consideration would also be given to the conditions under which the animal is kept, such as whether it is maintained in a primary enclosure allowing it frequent vigorous activity or if it is maintained in a primary enclosure that is more limiting, and whether it is maintained outdoors in a cold environment or in a warm environment, since these variables may affect the amount of food that is appropriate for the animal.

Many commenters supported our proposed requirement for a varied diet for nonhuman primates, and for varying feeding methods. Several commenters recommended that the regulations require that a varied diet consist of at least three different feed types at each feeding. A large number of other commenters opposed the proposed requirements for a varied diet, stating that varying the diet and method of feeding would interfere with research studies, that the requirements ignored the typical feeding behavioral patterns of varying species, and that the daily variation of diet would be stressful to nonhuman primates. Some commenters expressed concern that varying the nonhuman primates' diet could result in malnutrition or anorexia, and recommended either that the regulations require that the diet only be supplemented with varied food items or that varying the diet be conditional upon the advice of the attending veterinarian. A number of commenters stated that because commercial chow is nutritionally balanced, a varied diet was unnecessary.

We disagree that variety in the diet and method of feeding of nonhuman primates will interfere with research studies. As set forth in part 2 of the regulations, exceptions of the standards in part 3 may be made for research facilities when such exceptions are specified and justified in the proposal to conduct a specific activity and are approved by the facility's Committee. We do agree, however, that whether a particular animal or species of nonhuman primates would benefit from a varied diet is a decision that can best be made by the attending veterinarian. Therefore, in this revised proposal we are removing the requirement in proposed § 3.82(a) that a nonhuman primate's diet consist of varied food items, and are instead including "varied food items" in proposed § 3.81(b) as an example of an environmental enrichment. For like reasons, we are removing the requirement in proposed § 3.82(b) that the method of feeding be varied daily, and are instead including "using foraging or other task-oriented feeding methods" in proposed §3.81(b) as an example of an environmental enrichment. We are also making minor wording changes to proposed § 3.82(a) for purposes of clarity, and are redesignating paragraphs (c), (d), and (e) in proposed § 3.82 as paragraphs (b), (c), and (d), respectively.

We also proposed in §3.82(a) that the food must be clean, wholesome, and palatable. A small number of commenters stated that, in group housing, there is no way to ensure that food will remain clean, uncontaminated, wholesome, and palatable. We are making no changes to our proposal based on these comments. While we agree that the food may not always remain clean after it is offered to the nonhuman primates, it is possible and necessary to make sure that the food is in appropriate condition at the time it is offered.

We proposed in § 3.82(c) that nonhuman primates must be fed at least once each day, except as otherwise might be required to provide adequate veterinary care, with infants and juveniles required to be fed as often as necessary in accordance with generally accepted professional and husbandry practices and nutritional standards. Several commenters specifically supported these provisions as written. A large number of commenters stated that it could not be guaranteed that animals would eat their food when offered or would eat daily. Many commenters recommended that the nonhuman primates be offered food as often as necessary, in accordance with generally accepted professional and husbandry practices and nutritional standards based on the animals' age and condition. We are making no changes based on these comments. We continue to believe, based on the evidence available to us and on our experience enforcing the regulations, that daily feeding is necessary for the health and well-being of nonhuman primates. While we acknowledge that there is no way to

force an animal to consume the food offered to it, we believe that proper husbandry practices require that the animals at least be offered food each day.

We proposed to require in proposed § 3.82(d) that multiple feeding sites be made available if members of dominant nonhuman primate or other species are fed together with other nonhuman primates and proposed to require observation of the feeding practices of the animals to determine that each receives a sufficient amount of food. We stated in the proposal our belief that this would also enhance the psychological well-being of nonhuman primates by ensuring that each would have access to food and would not be prevented from obtaining food due to the aggressive behavior of others.

Several commenters specifically supported proposed § 3.82(d) as written. A large number of commenters opposed the provisions regarding multiple feeding sites and observation, stating that, due to dominance behavior, multiple feeding sites would not ensure that all animals will get food. The commenters also stated that, because animals eat according to dominance order, observation would require that each social group be observed for several unlimited hours.

We are making no changes to our proposal based on these comments. We disagree that multiple feeding sites would not be effective in ensuring feeding of all nonhuman primates, provided an adequate number of feeding sites are present. Further, while we acknowledge that close observation of feeding practices may require some time at first, the process will be less time consuming once feeding patterns are established in a group.

We proposed to continue to require sanitization of food containers at least once every two weeks and also proposed to require that food containers be sanitized whenever used provide food to a different nonhuman primate or social grouping of nonhuman primates. We specified that approved methods of sanitization would be those methods provided in proposed § 3.84(b) for sanitization of primary enclosures.

*Watering—Section 3.83*

In proposed § 3.83, we proposed minor changes to current § 3.80 to require that sufficient potable water be provided to the nonhuman primates. We proposed to retain the requirement that if water is not available to the nonhuman primates at all times, it must be offered to them at least twice a day, and we proposed to add a requirement that the water be offered for at least one hour each time it is offered. Under our proposal, the attending veterinarian could vary these requirements whenever necessary to provide adequate veterinary care to the nonhuman primates. We proposed to continue to require sanitization of water containers at least once every two weeks and also to require sanitization when used to provide water to a different nonhuman primate or social grouping of nonhuman primates. We specified that approved methods of sanitization would be those methods provided in proposed § 3.84(b)(3) for sanitization of primary enclosures.

One commenter specifically supported proposed § 3.83 as written. Some commenters recommended that we require that potable water be provided continuously under all circumstances or in times of excessive heat, or that water be provided at least four times daily for a minimum of 1 hour each time. A greater number of commenters stated that the proposed requirements regarding how often nonhuman primates must be offered water were too rigid, and that a schedule for watering should be established according to professional discretion. Based on our experience enforcing the regulations, we believe that two 1-hour periods of watering is sufficient to meet the needs of nonhuman primates. However, we consider that amount of watering a minimum standard that should in no situation be lessened. Therefore, in this revised proposal, we are making no substantive changes to proposed § 3.83. However, we are making several nonsubstantive changes to proposed § 3.83 for purposes of clarity.

*Cleaning, Sanitization, Housekeeping, and Pest control—Section 3.84*

In proposed § 3.84 we proposed requirements similar to those in current § 3.81 concerning cleaning, sanitization, housekeeping, and pest control, in order to provide for the welfare and well-being of nonhuman primates. In our proposed revisions to current § 3.81, we included the requirement that excreta and food waste be removed from and from underneath primary enclosures at least daily and as often as necessary, rather than merely "as often as necessary" as in the current regulations. We also proposed to require that the animals be removed from a primary enclosure when a cleaning method using water is performed, so that they will not be involuntarily wetted or injured. We proposed to require that fixtures inside of primary enclosures, such as bars and shelves, must be kept clean and be replaced when worn. In addition to requiring sanitization of planted areas inside of primary enclosures and gravel, sand, and dirt surfaces by removing contaminated material, we proposed to require that such areas be raked and spot cleaned daily. We proposed to require that if the nonhuman primates engage in scent marking, the primary enclosures be spot cleaned daily and sanitized at regular intervals established in accordance with generally accepted professional and husbandry practices, so as not to cause those animals psychological distress. Among the provisions in current § 3.81 was the requirement that a used primary enclosure be sanitized before it can be used to house another nonhuman primate.

We proposed such additional requirements in order to enhance the physical environment in which nonhuman primates are maintained through cleanliness and to provide for their general welfare. We also proposed nonsubstantive changes to current paragraphs (a) through (d) for purposes of clarity, in order to make the regulations easier to understand and comply with.

A number of commenters supported the proposed provisions as written. A large number of commenters opposed the proposed provision that the animals be removed from the primary enclosure when a method of cleaning using water is employed. The commenters stated that certain caging designs protect the animals from being involuntarily wetted when cleaning is carried out, and that removing the animals when water is used is impractical and unnecessary. Upon review of the comments regarding this issue, we believe that in some cases the practical and safety problems associated with removing nonhuman primates from cages, as well as the potential stress on the animals, would outweigh the potential benefits of removing the animals when cleaning using water is carried out. We are therefore revising our proposal at proposed § 3.84(a) to require that when using water to clean a primary enclosure, whether by hosing, flushing, or other method, a stream of water must not be directed at a nonhuman primate. The regulations in this revised proposal would also require that when steam is used to clean the primary enclosure, nonhuman primates be removed from their primary enclosure or be adequately protected to prevent them from being injured.

A number of commenters stated that a daily disturbance for cleaning would harm the psychological well-being of the nonhuman primates. We disagree that the simple daily removal of excreta and food waste would be unreasonably

stressful to nonhuman primates, and believe it is necessary for the physical well-being of the animals. We agree, however, that full daily cleaning of the primary enclosures could be unnecessary, provided the facility meets the other cleaning and sanitization requirements of proposed § 3.84. We are therefore not including in this revised proposal the requirement that appeared in our original proposal that hard surfaces of primary enclosures be cleaned every day. However, we are providing in this revised proposal that, in cases where the species of nonhuman primates housed engage in scent marking, hard surfaces in the primary enclosure would have to be spot-cleaned daily.

A large number of commenters recommended that we remove the proposed requirement that excreta and food waste be removed from primary enclosures and the areas underneath them more often than daily if necessary. We agree with the commenters that it is unlikely that such removal would be necessary more often than daily. In this revised proposal we would require that excreta and food waste be removed from inside each indoor primary enclosure daily, and from underneath the enclosure as often as necessary to prevent an excessive accumulation of feces and food waste, to prevent the nonhuman primates from being soiled, and to reduce disease hazards, insects, pests, and odors. We would limit this requirement to indoor primary enclosures, because our experience enforcing the regulations has demonstrated that in outdoor facilities, some of which encompass a number of acres, nonhuman primates can avoid contact with excreta and food waste, even if the enclosure is not always cleaned daily. We are proposing to require, however, that dirt floors, floors with absorbent bedding, and planted areas in primary enclosures be spot-cleaned with sufficient frequency to ensure all animals the freedom to avoid contact with excreta or as often as necessary to reduce disease hazards, insects, pests, and odors. For the same reasons, we are proposing that only indoor primary enclosures be sanitized once every two weeks.

Many commenters, addressing our proposed requirement that used primary enclosures be sanitized before being used to house another nonhuman primate, stated that large outdoor natural primate habitats cannot be sanitized when animal groups are changed. We are making no changes to our proposal based on these comments. In our proposal, we specified that primary enclosures that could not be sanitized using traditional means, must be sanitized by removing contaminated material as necessary to prevent odors, diseases, pests, insects, and vermin infestation. We believe that such a requirement is reasonable, practicable, and necessary. Further, based on our experience enforcing the regulations, we do not anticipate that, in the types of enclosures referred to by the commenters, entire groups of animals are changed so frequently as to make the proposed regulation unnecessarily burdensome.

In this revised proposal, we are adding clarifying language to make clear that used primary enclosures must be sanitized before being used to house either another nonhuman primate or group of nonhuman primates.

Many commenters recommended that we define the word "clean." We believe that the dictionary definition of the word "clean" adequately conveys our intent and are making no change to our proposal based on these comments. We also believe that the changes we have made to our revised proposal in response to other comments will address the areas the commenters may have found confusing.

Many commenters recommended that the proposed regulations allow an alternate sanitization schedule, so that a scent-marked surface remains at all times. We are making no changes to our proposal based on these comments. We believe that the sanitization provisions in proposed § 3.84(b)(2) make adequate allowance for scent marking. Many of the same commenters recommended that we amend the wording in proposed § 3.84(b) to clarify the difference between cleaning and sanitization. We believe that the provisions are clear as written and are making no changes to our proposed rule based on these comments.

In proposed § 3.84(b)(3), we included specific acceptable means of sanitization. These methods are the same as those in the current regulations. Many commenters stated that these provisions are overly specific and restrictive. Based on our experience enforcing the regulations, we have found that requiring the methods of sanitization listed has resulted in effective sanitization. However, we recognize that new products with the same effectiveness as those listed may be or may become available. We are therefore revising our proposal to allow the use of detergent/disinfectant products that accomplish the same purpose as the detergent/disinfectant procedures specified in our original proposal.

*Employees—Section 3.85*

Current § 3.82 requires that there be a sufficient number of employees to maintain the prescribed level of husbandry practices required by subpart D and the rendering of husbandry practices be under the supervision of an animal caretaker with a background in animal husbandry or care. We proposed minor revisions to this section in proposed § 3.85 to make clear that this requirement would be imposed upon every person subject to the Animal Welfare regulations, and that the burden of making certain that the supervisor is appropriately qualified would be on the employer regulated under the Act. We did not propose to prescribe a specific number of employees for each facility, because the number of employees needed will vary according to the size and configuration of the facility, and according to the number and type of animals housed there. We proposed to require that a facility have enough employees to carry out proper feeding, cleaning, observation, and other generally accepted professional and husbandry practices.

A number of commenters objected to proposed § 3.85, stating that inspectors and government administrators are not qualified to tell facilities that they do not have enough employees. We are making no changes based on these comments. As we stated above, whether a facility has enough employees would be determined on a case-by-case basis. We believe that such a determination can be made based on an evaluation of common practices regarding facilities of a particular size or nature, and on simple observation of whether the regulations are being complied with.

A small number of commenters suggested either that employee evaluation standards need further clarification, or that the regulations should require that the supervisor be sympathetic toward the well-being of nonhuman primates. We are making no changes based on these comments. We believe the standards proposed can be applied to all facilities adequately, and would not benefit from further specificity. We do not believe that it is either enforceable or necessary to determine the emotional attitude of employees, as long as they perform according to the regulatory standards.

Many commenters expressed concern that the proposed regulations would increase the risk to employees. While the intent of the comment is not clear to us, we believe that any risk to

employees would be decreased by these proposed provisions, by emphasizing the need for knowledge, background, and experience in proper husbandry and care of nonhuman primates.

In this revised proposal, we are making a minor change to remove the requirement that the supervisor be an animal caretaker. However, under this revised proposal, the supervisor would still have to meet the other qualifications set forth in our original proposal.

*Social Grouping and Separation—Section 3.86*

In proposed § 3.86, we proposed to revise current § 3.83 concerning social grouping of nonhuman primates in primary enclosures in order to promote their psychological well-being. The current regulations provide that when nonhuman primates are housed together they must be maintained in compatible groups and must not be housed in the same enclosure with animal species other than nonhuman primates. We proposed to allow nonhuman primates to be housed with other nonhuman primate species and with other animal species as long as they are compatible, do not compete with the other species for food and shelter, and would not be hazardous in any way to the health and well-being of each other.

We proposed to add the following regulations requiring separation of nonhuman primates in the following circumstances: (1) Nonhuman primates exhibiting vicious or overly aggressive behavior must be housed separately, and (2) nonhuman primates under quarantine or treatment for a communicable disease must be housed separately. We stated in our proposal that we consider the requirements to house nonhuman primates separately under these limited circumstances necessary to allow nonhuman primates to peacefully coexist in primary enclosures, as is required for their psychological well-being, and to protect their physical health and welfare.

We included provisions in our proposed regulations for keeping families together and for keeping compatible groups constant. We stated that studies of nonhuman primates have shown that they are socialized in a family-oriented manner in nature and that varying a group's composition may lead to distress or aggressive behavior towards new members of the group. Accordingly, we stated our belief that these regulations are necessary to promote the psychological well-being of nonhuman primates.

As discussed in this supplementary information under the heading "Social grouping," we believe that the issue of social grouping can best be addressed in the context of the overall well-being of nonhuman primates. Accordingly, we are removing proposed § 3.86 from our revised proposal, and are proposing to address the issue of social grouping in proposed § 3.81, regarding psychological well-being. Accordingly, we are revising our proposal to redesignate section numbers where appropriate. Sections that appeared as §§ 3.87 through 3.93 in our original proposal now appear as §§ 3.86 through 3.92 in this revised proposal.

A small number of commenters specifically supported proposed § 3.86 as written. Several commenters recommended that the regulations require that an attempt be made to resocialize vicious or overly aggressive nonhuman primates. We do not believe it would be practical to include such a provision in the regulations and are making no changes to our proposal based on these comments. A number of commenters suggested that proposed § 3.86 was unclear as written. We believe that the provisions regarding social grouping, as now contained in proposed § 3.81 are clear and understandable.

A large number of commenters opposed the requirement in proposed § 3.86(b) that families must be housed together and compatible groups must remain constant. The commenters stated that such a requirement could be detrimental to animals, and asserted that families do not stay together in the wild. The commenters stated that literature documents male and female transfers between groups. The commenters further stated that it is impossible to maintain compatible groups in research facilities where animals are removed for research purposes or to accommodate changing populations. While we believe that in most cases research data indicates beneficial effects from maintenance of families or other compatible groups, upon review of the comments received we acknowledge that such grouping may not be practical or beneficial to nonhuman primates in all cases. We are therefore not including in this revised proposal the requirements that families be housed together and that compatible groups remain constant.

Transportation Standards

In preparing our proposal to amend the transportation standards we consulted the "Interagency Primate Steering Committee Guidelines" developed by the United States National Institutes of Health-sponsored Interagency Primate Steering Committee. The Interagency Primate Steering Committee is composed of an inter-agency group of scientists concerned with the care and handling of nonhuman primates. The introduction to the Guidelines states the following:

> Shipment of nonhuman primates by a carrier from one location to another is stressful, even under the best of conditions. The purpose of these guidelines is to minimize the effects of transportation stress on these animals and to have them arrive at their destination in as good a physical condition as possible, with a minimal degree of illness or mortality. Secondly, the guidelines are intended to serve as a reference for adequate care of nonhuman primates for all persons involved with the shipping of these animals.

We also considered the transportation standards proposed by the U.S. Department of the Interior, Fish and Wildlife Service (USFWS) for nonhuman primates imported from abroad.

Based upon our experience enforcing the current regulations, and our consideration of the information available to us, we proposed revisions to the transportation standards in order to safeguard the health, safety, and psychological well-being of nonhuman primates transported in commerce.

As part of our revision, we proposed to include requirements that were previously part of the Animal Welfare regulations but were inadvertently omitted from the 1977 revision of the regulations. When the transportation standards were rewritten in 1977 to incorporate the 1976 amendments to the Act concerning the commercial transportation of animals, the existing standards for surface transportation were not included in the regulations. Since that time, the standards have pertained to the commercial transportation by common carrier and only a few paragraphs have pertained to surface transportation by private vehicle. The regulations we proposed to reinstate specifically affect provisions concerning ambient temperature during surface transportation in order to effect improved traveling conditions for nonhuman primates. As proposed, they also impose similar requirements on all persons subject to the Animal Welfare regulations engaged in the transportation of nonhuman primates in order to afford the animals necessary protection whenever they are transported in commerce.

A number of commenters expressed concern that the proposed regulations regarding transportation standards would significantly increase animal transit time. Some commenters estimated that the proposed regulations

would quadruple transit charges. Others stated that the proposed regulations would eliminate the transport of animals by air. However, the commenters did not supply data to support this assertion. The purpose of amending the regulations is to help ensure the well-being of nonhuman primates. In the absence of data indicating that other factors should override specific measures proposed to achieve this goal, we are making no changes to our proposal based on these comments.

*Consignments to Carriers and Intermediate Handlers for Transportation—Section 3.87 (Revised as Section 3.86)*

In proposed § 3.87, which has been changed to § 3.86 in this revised proposal, we proposed to expand the current obligations imposed upon carriers and intermediate handlers (defined in part 1 of the regulations), to ensure the well-being of nonhuman primates during transport in commerce. Our proposal required that certain prerequisites be satisfied before carriers and intermediate handlers could accept nonhuman primates for transport in commerce. Additionally, the proposed regulations included certain duties of the carriers and intermediate handlers following arrival of the shipment at its destination. Various obligations are presently contained in current §§ 3.85 and 3.88. We proposed to consolidate them in one section, proposed § 3.87, and to add some additional ones that we considered necessary for the nonhuman primates' welfare.

In sum, the requirements imposed on carriers and intermediate handlers in current § 3.85 and in our proposed revision are as follows: (1) Current § 3.85(a) requires that carriers and intermediate handlers not accept a live nonhuman primate for shipment from any person subject to the regulations more than 4 hours before the scheduled departure time of the primary conveyance in which the animal will be shipped; except that this time may be extended by agreement to 6 hours if specific prior scheduling of the shipment has been made. One commenter opposed the provision in § 3.87(a) of our proposal regarding extending the time before departure to 6 hours. We have observed no problems regarding the well-being of nonhuman primates because of this existing provision and are therefore making no revisions to our proposal based on this comment. (2) § 3.85(b) requires that carriers or intermediate handlers accept a nonhuman primate for shipment only if it is in a primary enclosed meeting the requirements of current § 3.85 "Primary enclosure used to transport live nonhuman primates," except that they may accept a nonhuman primate if it is consigned by a person subject to the regulations who provides a certificate stating that the primary enclosure conforms with § 3.85, unless the enclosure is obviously defective. The information required to be in the certificate is stated in the regulations. These provisions, which we included in § 3.87(e) of the proposed rule, were considered by many commenters to be unnecessarily word and redundant, or to put too much responsibility on the transporter. We disagree. The intent behind allowing certification that a primary enclosure meets the standards is to relieve the carrier or intermediate handler of the need to assess the performance capabilities of the primary enclosure where such assessment would be difficult or impractical. It does not relieve the carrier or intermediate handler of the responsibility to refuse acceptance of a primary enclosure that is obviously defective or damaged.

Current § 3.85(c) states that carriers and intermediate handlers whose facilities do not meet the minumum temperature requirements provided in the regulations may accept a nonhuman primate for transport if the consignor furnishes a certificate executed by a veterinarian accredited by USDA within 10 days before delivery of the animal for transport stating that the nonhuman primate is acclimated to air temperature lower than those prescribed in current §§ 3.90 and 3.91. The information required to be in the certificate is likewise stated in the regulation. Current § 3.85(d) requires carriers and intermediate handlers to notify the consignee of the animal's arrival at least once every 6 hours following arrival of the nonhuman primate at the animal holding area of a terminal facility and to record the time, date, and method of attempted and final notification on the shipping document.

Current § 3.88 requires the following: (1) Section 3.88(a) requires that nonhuman primates be offered potable water within the four hours preceding transport in commerce. Dealers, exhibitors, and research facilities are required to provide water to nonhuman primates transported in their own primary conveyance at least every 12 hours after transportation is begun and carriers and intermediate handlers are required to do so at least every 12 hours after they accept the animal for transport. (2) Section 3.88(b) provides requirements concerning the frequency of feeding nonhuman primates and similarly distinguished between those persons transporting nonhuman primates in their own primary conveyances, and carriers and intermediate handlers. (3) Section 3.88(c) requires any dealers, research facility, exhibitor, or operator of an auction sale consigning nonhuman primates for transport to affix written instructions concerning the animals' food and water requirements on the outside of the primary enclosure used for transporting the nonhuman primate. (4) Section 3.88(d) states that no carrier or intermediate handlers shall accept a nonhuman primate for transport in commerce unless written instructions concerning food and water requirements are affixed to the outside of its primary enclosure.

We proposed to place the various prerequisites that must be satisfied before carriers and intermediate handlers can accept a nonhuman primate for transport in commerce in proposed § 3.87, and to add some additional ones necessary for the nonhuman primates' well-being. We also proposed nonsubstantive changes to current § 3.85(a) in proposed § 3.87(a).

In proposed § 3.87(c), we proposed to include the requirements of current § 3.88(d) by requiring that written instructions concerning the food and water requirements for each nonhuman primate in the shipment be securely attached to the outside of the primary enclosure before a carrier or intermediate handler may accept it for transport.

As stated above, current § 3.88(a) provides that nonhuman primates must be provided water at least every 12 hours after acceptance by carriers and intermediate handlers for transportation. Current § 3.88(b) provides that nonhuman primates more than 1 year of age be offered food at least once every 24 hours after acceptance by carriers and intermediate handlers for transportation and that nonhuman primates less than 1 year of age be offered food at least once every 12 hours after acceptance for transportation. It is conceivable under these regulations that a nonhuman primate would have been fed up to 24 hours before being consigned for transportation in commerce and would then not be offered food for another 24-hour period. To avoid this occurence, and to be sure that nonhuman primates are given water as often as required for their well-being, we proposed to add a certification requirement in proposed § 3.87(d) that would state that each nonhuman primate in a primary enclosure delivered for transport was last offered food during the 12 hours

before delivery to a carrier or intermediate handler and was last offered water during the 4 hours before delivery to a carrier or intermediate handler. As proposed, it would also have to include the date and time each nonhuman primate in the primary enclosure was last offered food and water. We proposed that carriers and intermediate handlers that the nonhuman primates were provided water within that 4 hours before not be allowed to accept nonhuman primates for transport unless this certification accompanies the animal, is signed and dated by the consignor, and includes the date and time it was executed. We proposed that this certification, as well as the others required in proposed § 3.87, would also have to specify the species of nonhuman primate contained in the primary enclosure. Several commenters opposed the requirement for certification of the time of last feeding and watering. We continue to believe that such certification is necessary for effective implementation of the regulations and are making no changes to the proposal based on these comments.

In addition, in accordance with proposed § 3.90, "Food and water requirements," which has been changed to § 3.89 in this revised proposal, we proposed that the time periods applicable to carriers and intermediate handlers for feeding and watering the nonhuman primates would begin with the time the animal was last offered food and water, in accordance with the certification. As we discussed in the supplementary information of our proposal, we believe that the proposed requirement that the consignor certify delivery to the carrier or intermediate handler, and were offered food within 12 hours before delivery to the carrier or intermediate handler accepting the animals, would avoid situations where the carrier or intermediate handler would have to provide food and water immediately upon acceptance. We proposed to add these requirements so that carriers and intermediate handlers would be better able to provide any needed care and so that the nonhuman primates being transported would not go more than 12 hours without water or 24 hours without being offered food, if 1 year of age or more, and would not go more than 12 hours without being offered food, if less than 1 year of age.

In our proposal, we proposed to clarify the certifications required from the consignor regarding conformance of the primary enclosure with the regulations in Subpart D, and acclimation of nonhuman primate to temperatures lower than those prescribed in the regulations. We proposed to require that the certification of acclimation be signed by a veterinarian, that it specify a minimum temperature that the nonhuman primate can safely be exposed to, and that it specify each of the animals contained in the primary enclosure to which the certification is attached, rather than referring to the shipment of animals as a whole. We included the contents of the certifications in paragraphs (e) and (f) of proposed § 3.87, respectively. We proposed to clarify current § 3.85(c) by requiring that the temperatures to which a nonhuman primate is exposed must not be lower than the minimum temperature specified by the veterinarian and must be reasonably within the generally and professionally accepted range for the nonhuman primate as determined by the veterinarian, considering its age, condition, and species of the animal, even if it is acclimated to temperatures lower than those prescribed in the regulations. A small number of commenters addressed this last provision. Several expressed concern that allowing the veterinarian to specify a minimum temperature would be difficult to implement without major modifications of the entire airline tracking system for cargo. The remainder of the commenters recommended that the regulations require assurance that the ambient temperature will be above the minimum temperature specified in the veterinary certificate of acclimation under all circumstances. We are making no changes to our proposal based on these comments. In enforcing the regulations, we expect conformance within all practical limits. Our responsibility and concern is to ensure that overall well-being of the animals transported. We believe that the provisions regarding minimum temperature are workable as written, and do not believe it would serve any practical benefit to amend them.

We proposed to add limitations on how long a nonhuman primate can be held at a terminal facility while waiting to be picked up by the consignee. We proposed to adopt the time limitations provided in part 2, § 2.80, "C.O.D. shipments". Accordingly, we proposed that the consignor must attempt to notify the consignee upon arrival, and at least once every 6 hours for 24 hours after arrival, and then must return the animal to the consignor or to whomever the consignor designates if the consignee cannot be notified. Under our proposal, if the consignee is notified and does not take physical delivery of the nonhuman primate within 48 hours of its arrival, the carrier or intermediate handler must likewise return the animal to the consignor or to whomever the consignor designates.

We proposed to revise current § 3.85(d) to specifically require that carriers and intermediate handlers continue to maintain nonhuman primates in accordance with generally accepted professional and husbandry practices as long as the animals are in their custody and control and until the animals are delivered to the consignee or returned to the consignor or to whomever the consignor designates. We proposed to require the carrier or intermediate handler to obligate the consignor to reimburse it for the expenses incurred by the carrier or intermediate handler in returning the animal. These requirements appeared in proposed § 3.87(g). No commenters addressed these provisions and we are making no changes to them in this revised proposal.

*Primary Enclosures Used to Transport Nonhuman Primates—§ 3.88 (revised as Section 3.87)*

We proposed to reorganize the provisions of current § 3.86 and to make nonsubstantive changes to this section for clarity. These provisions appeared in § 3.88 of our proposal, which has been changed to § 3.87 in this revised proposal. One of the provisions in the current regulations, which appeared in § 3.88(a)(4) of the proposal, is that primary enclosures be constructed so as to allow easy removal of any animals in the event of an emergency. A small number of commenters opposed this provision; one commenter recommended that we issue standards for the removal of animals from enclosures. Although we believe that provision for the safe and quick removal of transported animals is necessary for their well-being, the "emergency" nature of such removals does not lend itself to specific standards. Therefore, we are making no changes to the proposal based on these comments. In addition to adopting the provisions of current § 3.86, our original proposal contained the following additional substantive changes to the current regulations.

We proposed to revise completely the current regulations concerning the number of nonhuman primates that can be transported together in one primary enclosure. The current regulations allow up to ten nonhuman primates to be transported in one primary enclosure. The guidelines issued by the Interagency Primate Steering Committee for the

transportation of nonhuman primates state that, as a general principle, nonhuman primates should be transported in individual compartments to avoid transmission of disease except when necessary to minimize social stress. In our proposal, we stated that, based upon our experience in regulating the transportation of nonhuman primates and upon consideration of the information available, we have determined that placing this number of nonhuman primates together in a situation that is unusual to and therefore stressful to the animals is dangerous for the animals and to the humans handling them. We therefore proposed in § 3.88(d)(1) that each nonhuman primate be transported individually in separate primary enclosures that may be connecting, except that the following social groupings could be maintained during transportation: (1) A mother with her nursing infant, (2) an established male-female couple (unless the female is in estrus) or a family group, and (3) a pair of juveniles that have not reached puberty.

A number of commenters recommended that the regulations require that if a pair of juveniles are transported together, they be compatible. We believe such a clarification is appropriate and have added it to this revised proposal. Several commenters stated that we should extend these exceptions to allow any nonhuman primates that are compatible to be transported in the same primary enclosure. While we believe that combining two compatible juveniles in one enclosure would pose minimal risk to the nonhuman primates, we believe that combining two adult nonhuman primates, other than a male-female couple, would pose unacceptable risks. Based on our experience enforcing the regulations, we have determined that the stresses of transportation can cause two otherwise compatible nonhuman primates to become aggressive and dangerous to each other. We are therefore making no changes to our proposal based on these comments.

In § 3.88(d)(2) of our proposal, we proposed that nonhuman primates of different species must not be transported in adjacent or connecting primary enclosures. Several commenters recommended that we allow nonhuman primates of different species to be transported in adjacent enclosures. We believe that the potential stress to the nonhuman primates of being in such close proximity with nonhuman primates of other species requires such a restriction, and we are therefore making no changes to our proposal based on these comments.

We proposed to completely revise the requirements for ventilation openings for primary enclosures that are not permanently affixed to the primary conveyance to provide substantially greater ventilation openings for the nonhuman primates' comfort during travel. A large number of commenters opposed our proposed changes to the amount of wall surface that must be comprised of ventilation openings. The commenters stated that the proposed increases in ventilation openings were undesirable because they would expose the animals to more stress from the outside environment, they would reduce the animals protection from cold temperatures and drafts, and they would weaken shipping containers. Based on the evidence provided in these comments, we believe that the well-being of nonhuman primates that are transported would be best served by retaining the current regulations regarding the percentage of wall space that must be comprised of ventilation openings, and are proposing to do so in this revised proposal. We are, however, including a provision in this revised proposal that differs from the current regulations. The current regulations require that at least one-third of the total minimum area required for the ventilation of primary enclosures used for transportation be located on the lower one-half of the primary enclosure and, likewise, at least one-third be located in the upper one half. In this revised proposal, we are including provisions to require that all of the ventilation openings be located on the upper one-half of the primary enclosure. Research conducted by the Federal Aviation Administration indicates that it is not necessary for the animals' well-being that one-third of the openings be located on the lower one-half of the enclosure. To the contrary, research has shown that openings on lower one-half of the enclosure are in many instances detrimental to the nonhuman primates being transported. Timid animals such as nonhuman primates benefit from the security provided by a solid wall in the lower one-half of the enclosure, and can be caused stress by openings on the lower one-half.

In our proposal, we proposed an additional construction requirement that would allow the floor of a primary enclosure to be wire mesh or slatted but that would require it to be designed and constructed so that the nonhuman primate contained inside cannot put any part of its body between the slats or through the mesh in order to prevent injury to the nonhuman primates. Also, we proposed to require that primary enclosures be constructed of materials that are nontoxic to the animal and that would not otherwise harm their health or well-being.

In proposed § 3.88(f), we proposed additional marking requirements for the outside of primary enclosures to better ensure there careful handling, so as to avoid causing the nonhuman primates additional stress. In this revised proposal, we are removing the requirement that primary enclosures must be clearly marked with the words "Do Not Tip" and "This Side Up." We believe that such markings are unnecessary if the enclosures are marked with the words "Wild Animals" or "Live Animals," as proposed. Several commenters stated that the proposed marking provisions do not comply with the marking requirements of the International Air Transport Association (IATA), and recommended that the IATA standards be used. The regulations proposed are the minimum standards we believe necessary to ensure the health and well-being of the animals being transported. In cases where the IATA standards exceed those included in our proposal, there would be nothing prohibiting their use. However, we do not believe it would be appropriate to require that they be used. Further, the IATA standards apply to air transport, and we do not believe it would be appropriate to require them to be used for all forms of transportation.

In § 3.88(g) of our proposal, we proposed that the documents that must accompany the nonhuman primates be held by the operator of the primary conveyance if it is a surface conveyance, or attached to the outside of the primary enclosure. We proposed that if such documents are attached to the primary enclosure, they must be placed in a secure but accessible manner, so that they can be removed and securely returned, and so that they are easily noticed. Several commenters indicated that it would be more appropriate to store shipping documents in an airway bill pouch than to attach them to a primary enclosure. Under our proposed rule, such storage would be permissible and we are making no changes to our proposed rule based on these comments.

We also proposed to require that instructions for food and water, and for administration of drugs, medication, and other special care be attached to the primary enclosure.

*Primary Conveyances—Section 3.89 (Revised as Section 3.88)*

Prescribed ambient temperature limits in primary conveyances used to transport nonhuman primates were part of the standards before the 1977 revisions to the regulations, but were inadvertently omitted from those revisions. In our proposal, we proposed to reinstate them for surface transportation, in order to prevent nonhuman primates from being transported under temperature conditions that would be harmful to their health and physical well-being. The current regulations prescribe upper and lower ambient temperature limits for nonhuman primates held in terminal facilities and prescribe lower temperature limits for nonhuman primates placed on transporting devices. We believe that it is equally important for the health and well-being of nonhuman primates that these limits be followed while the animals are in transport as well as when they are on either end of their journey. Under the regulations we proposed, all persons subject to the Animal Welfare regulations would be required to maintain the temperature inside a primary conveyance between 45 °F (7.2 °C) and 85 °F (30 °C) during surface transportation at all times a nonhuman primate is present. Because it would be impracticable to monitor the ambient air temperature inside the cargo area during air transportation, we proposed to require instead that it be maintained at a level that ensures the health and well-being of the species housed, in accordance with generally accepted professional and husbandry practices, at all times a nonhuman primate is present. We also proposed to add requirements that a primary enclosure be positioned in a primary conveyance in a manner that provides protection from the elements, such as rain, wind, snow, and sun, and that is far enough away from animals that are generally considered to be natural predators or enemies of nonhuman primates so that the nonhuman primates cannot reach, see, or smell them. We proposed to add these precautions to help avoid exposing nonhuman primates to known causes of distress and to make traveling less stressful for the animals.

Several commenters opposed the provision in proposed § 3.89(e) for a minimum temperature of 45 °F (7.2 °C), and recommended that it be higher. Other commenters recommended that we delete all minimum and maximum temperature standards. We believe that the temperatures standards we proposed are reasonable and tolerable for nonhuman primates and are making no changes to our proposal based on these comments.

A number of comments recommended that the regulations include a specific minimum distance for separating nonhuman primates from predators or natural enemies. We are making no changes to the proposal based on these comments. Because of the tremendous numbers of variables in shipping conditions, it would be impossible to establish one minimum distance that would be appropriate in all situations. However, we are revising the proposal regarding separation from predators or other enemies to remove the requirement that the nonhuman primates not be able to smell these animals. We are making this change due to the practical difficulties that would be associated with separating the animals in such a way, and also due to the difficulty in determining whether one animal can smell another.

One of the provisions in current § 3.87 that we proposed to retain, and which was included in § 3.89(f) of the proposed rule, was in the requirement that primary enclosures be positioned in the primary conveyance in a manner that allows the nonhuman primates to be removed quickly in an emergency. Several commenters recommended that this requirement be expanded to require that nonhuman primates be loaded last and unloaded first. While we encourage such a practice, and recognize that it is already customarily followed, we do not believe it would be practical to require it in the regulations.

In this revised proposal we are removing certain wording that originally appeared in § 3.89(i) of our proposal. We believe that the wording, concerning which materials may be transported with nonhuman primates, is both redundant and confusing. This wording change does not affect the substance of the provision as originally proposed.

*Food and Water Requirements—Section 3.90 (Revised as Section 3.89)*

We proposed to make nonsubstantive changes to the current regulations to make it clear that carriers and intermediate handlers must provide food and water to nonhuman primates being transported within a prescribed number of hours from the time the animals were last offered food and water. We proposed to require that consignors subject to the Animal Welfare regulations certify the date and time the nonhuman primate was last offered food and water. Under our proposal, carriers and intermediate handlers would be required to determine the appropriate time for providing food and water based upon the information in the certification. Everyone else transporting a nonhuman primate would be required to provide food and water within a prescribed number of hours after they last offered the animal food and water. We proposed this requirement so that nonhuman primates would not go longer than 24 hours without food or longer than 12 hours without water. Under our proposal, the prescribed number of hours, the same as in the current regulations, differed based upon the age of the nonhuman primate. We also proposed to require that nonhuman primates must be offered food within 12 hours before being transported in commerce, so that carriers and intermediate handlers would not have to provide food and water immediately upon acceptance. Although, under our proposal, proper food would have to be provided, in accordance with proposed § 3.82, we realize that the necessities of travel may require less variation in the types of food offered and in the method of feeding. Accordingly, we added a footnote in proposed § 3.90 to take the exigencies of travel into account. We proposed to included requirements for design, construction, and placement of food and water containers for the nonhuman primates' safety, comfort, and well-being. As previously discussed, we proposed to incorporate in proposed § 3.87 (revised as § 3.86) the requirement that carriers and intermediate handlers not accept nonhuman primates for transport unless written instructions concerning food and water requirements are affixed to the outside of the primary enclosure. In § 3.90, we proposed to require that consignors subject to the Animal Welfare regulations attach securely to the primary enclosure all written instructions concerning the nonhuman primates' food and water requirements during transportation.

A number of commenters supported proposed § 3.90, as written. One commenter specifically opposed these provisions, which we continue to believe are necessary for the well-being of nonhuman primates in transit. A small number of comments recommended that nonhuman primates in transit have access to fresh, clean water at all times. We believe such a requirement would be impractical, and we are making no changes to our proposal based on these comments. One commenter recommended that the term "potable water" be replaced with the term "water suitable for drinking." The two terms are synonymous and we are making no change to our proposal based on this comment.

One commenter stated that the regulations should require that food be offered twice in 24 hours to animals greater than 1 year of age, and three times in 24 hours to animals less than 1 year of age. We do not believe such a requirement is necessary or would be practical and we are making no changes to our proposal based on this comment. A small number of commenters recommended that, instead of requiring certification of the last feeding and watering, and requiring that the animal be fed and watered within a specified time after acceptance for transport, it be encouraged that the consignor offer food and water to the animal immediately before shipment. We believe that such a change to our proposal would remove a necessary mechanism for ensuring that nonhuman primates do not go excessively long periods of time without food and water. Additionally, it is not wise to give food or water to an animal immediately before transportation, as it may become sick and soil its cage, or aspirate food or water into its lungs. We are therefore making no changes to the proposed rgulations based on these comments.

*Care in Transit—Section 3.91 (Revised as Section 3.90)*

We proposed to clarify current § 3.89 to expressly require compliance with these regulations by any person subject to the Animal Welfare regulations who is transporting a nonhuman primate in commerce, regardless of whether the nonhuman primate is consigned for transport.

We proposed nonsubstantive changes to this section for purposes of clarity along with the following substantive changes.

We proposed to require that during surface transportation, regulated persons must obtain any veterinary care needed for the nonhuman primates at the closest available veterinary facility. We also proposed to require that, during air transportation, carriers or intermediate handlers arrange for any veterinary care that is needed for the nonhuman primates as soon as possible.

We proposed to add an exception to the current regulations to prohibit the transportation in commerce of a nonhuman primate in obvious physical distress, in order to allow transport for the purpose of providing veterinary care for the condition.

When nonhuman primates are initially removed from their primary enclosures after travel they may be unusually active or perhaps agitated. In order to avoid any resultant injury to the animals we proposed a requirement that would allow only authorized and experienced persons to remove nonhuman primates from their primary enclosures during transport in order to protect both the nonhuman primates, which could injure themselves in frenzied movement, and the people handling them. In this revised proposal, we are retaining this provision, but are adding qualifying language to provide that other individuals may remove the nonhuman primates if required for the health or well-being of the animals.

In our original proposal, we proposed to add a paragaraph that would specify that these transportation standards remain in effect and must continue to be complied with until the animal reaches its final destination, or until the consignee takes physical delivery of the animal if the animal has been consigned for transportation. In the proposal, we stated our belief that this provision is necessary to prevent any gap in care for the nonhuman primates and in responsibility for its care. While we continue to believe that it is important to insure that no gaps occur in the care of the nonhuman primates in transportation, we believe that this intent could be clarified by making a change in the wording of our original proposal. To eliminate any confusion as to what constitutes "final destination," we are changing our proposal to provide that the transportation regulations must be compiled with until a consignee takes physical delivery of the nonhuman primate if it is consigned for transportation, or until the animal is returned to the consignor.

A number of commenters supported the provisions of proposed § 3.91 as written. One of the provisions of the current regulations, which we proposed to include in § 3.91(a) and (b), was that the animals in transit must be checked on at least every 4 hours. One commenter recommended this provision be changed to at least once every 6 to 8 hours. Based on our experience the current regulations, we believe the current standards of monitoring at least every 4 hours already represent an acceptable minimum, and are making no changes to our proposal based on this comment.

*Terminal Facilities—Section 3.92 (Revised as Section 3.91)*

Current § 3.90 imposes duties on carriers and intermediate handlers holding nonhuman primates in animal holding areas of terminals to keep the animals away from inanimate cargo, to clean and sanitize the area, to have an effective pest control program, to provide air, and to maintain the ambient temperature within certain prescribed limits. Under the current regulations, there is no similar obligation imposed upon other persons who transport these animals. As a result, animals could be held in animal holding areas under hazardous conditions.

We proposed that the same duties currently imposed upon carriers and intermediate handlers be imposed upon any person subject to the Animal Welfare regulations transporting nonhuman primates and holding them in animal holding areas, since the animals require the same minimum level of care regardless of which regulated person is transporting the animals.

We proposed to add restrictions to prevent regulated persons from holding nonhuman primates within physical and visual reach of other animals and other species of nonhuman primates, since this is upsetting to them. We are also proposing that the length of time regulated persons be allowed to hold nonhuman primates in terminal facilities upon arrival be the same as that allowed for consigned animals under proposed § 3.87(g) (revised as § 3.86(g)). In our proposal, we stated our belief that this limitation on holding periods in terminal facilities is necessary to prevent regulated persons from leaving nonhuman primates in terminal facilities for any reason, such as to await additional shipments, and that, as a result, the stress of travel for nonhuman primates would be reduced.

In proposed § 3.92, we proposed to continue the temperature and ventilation requirements contained in current § 3.90 and also to include the provisions requiring shelter from the elements for nonhuman primates that are currently included in § 3.91 "Handling," because they are applicable to regulated persons holding nonhuman primates in animal holding areas of terminal facilities. Under our proposal, the proposed regulations for handling would be limited to the safeguards that must be provided during pysical handling and movement of nonhuman primates, as its heading suggests.

A number of commenters supported the provisions of proposed § 3.92 as written. A small number of commenters stated in general that the proposed provisions were too strict and restrictive. One commenter expressed concern that the proposed temperature requirements would prevent many airports from accepting primate shipments. We are making no changes based on these comments. The provisions proposed are provisions that have been in effect since 1978, and have presented no significant practical problems since that time. A number of commenters stated that it was inconsistent to allow animals to commingle with inanimate cargo in the

cargo areas of a conveyance, but not in terminal facilities. While we agree that it would be desirable to impose such a restriction with regard to primary conveyances, standard transportation practices would make such a restriction impractical and unworkable. However, it is possible to separate animals from inanimate cargo in terminal facilities, and we continue to believe it is appropriate for the well-being of the animals to retain such a restriction.

One commenter recommended that bedding be required when the ambient temperature reaches a low of 45° F. We are not certain what type of bedding the commenter is referring to. Proposed § 3.88 would require litter in primary enclosures. If the commenter is referring to additional forms of bedding, while we encourage such use, we believe that it would be impractical to require it in the regulations.

Based on comments we received in response to other areas of our proposed rule, we are making a wording change in § 3.92(c) of this revised proposal to read that "ventilation," rather than "air, preferably fresh air" must be provided in animal holding areas. The information presented to us indicates that in many cases recycled air is of superior quality to "fresh" air.

*Handling—section 3.93 (Revised as section 3.92)*

Current § 3.91 imposes duties on carriers and intermediate handlers for proper handling and movement of nonhuman primates. For the reasons explained above under "Terminal facilities," we proposed that these same duties be imposed upon any person subject to the Animal Welfare regulations handling a nonhuman primate at any time during the course of transportation in commerce, so that the animals' health, safety, and well-being will be protected at all times during transport. The regulations we proposed would continue to include movement from an animal holding area of a terminal facility to a primary conveyance and from a primary conveyance to a terminal facility. They would also continue to provide requirements for movement of a nonhuman primate on a transporting device. We proposed to broaden this section to include movement within and between primary conveyances, and movement within and between terminal facilities, because nonhuman primates may travel on several different primary conveyances and be moved around within terminal complexes in the course of their travel.

We also proposed to require that transporting devices on which nonhuman primates are placed to move them be covered to protect the nonhuman primates when the outdoor temperature falls below 45° (7.2° C). The current regulations require this protection when the outdoor temperature falls below 50° (10° C). In our proposal, we stated our belief that providing this protection becomes necessary at the lower temperature proposed, and that the proposed requirement will protect the health and well-being of nonhuman primates. One commended that the temperature provisions in the section on handling be modeled after the provisions for dogs and cats housed in outdoor housing facilities. We believe that the difference between housing conditions and transportation conditions are too great to make the use of the same regulations appropriate. We are therefore making no changes to the proposal based on this comment.

Air carriers commonly use conveyor belts and inclined belts for loading and unloading animals into airplane cargo space. These methods of loading can cause psychological distress to the animals. We proposed to allow nonhuman primates to be placed on inclined conveyor belts used for loading and unloading aircraft only, and only if an attendant is present at each end of the conveyor belt in case an animal has an extreme adverse reaction. We proposed to prohibit placing nonhuman primates on unattended conveyor belts or on elevated conveyor belts, such as baggage claim conveyor belts, since these forms of tilted movement cause nonhuman primates extreme distress and alternative means of moving the animals can generally be provided without great inconvenience. The transport crate is also more subject to tipping over or falling when on conveyor belts if the animal becomes excited or agitated. We are making no changes regarding these provisions in this revised proposal.

*Miscellaneous*

Some commenters recommended that we make various nonsubstantive wording changes to the proposal for purposes of clarity. We have made such changes where we considered them appropriate. Additionally, a number of commenters made recommendation that addressed issues outside the scope of our proposal, including recommended husbandry practices and requires that we extend our enforcement to animals not currently regulated. While we are making no changes to our proposal based on these comments, we have carefully reviewed them and will take whatever action is appropriate.

Public Comments on Regulatory Impact Analysis and Regulatory Flexibility Act Analysis

As required by Executive Order 12291, we conducted a preliminary regulatory impact analysis regarding the proposed rule. The preliminary analysis determined that implementation of all the proposed revisions and additions to the existing regulations would have a cost impact in excess of $100 million on the economy. Thus the proposed rule would be a "major rule."

At the outset of the preliminary regulatory impact analysis, we determined that the congressional mandate to promulgate more stringent regulations reflected the increasing public concern for and the absence of an appropriate market mechanism that adequately provides humane care and treatment of animals. We also determined that extensive and complex analysis of alternative provisions may be necessary to develop a rule that would minimize the regulatory impact on regulated establishments and the economy. Furthermore, we determined that the complexity of the factors being measured, the lack of statistical or any other available data source, the diversity of regulated establishments, and time and resource constraints would impact the extent of analysis.

We relied on several informational sources, such as expert opinion from across the country, inspection forms of regulated sites, and experience in the implementation of animal welfare regulations in assessing the potential regulatory burden. The preliminary regulatory impact analysis represented our best efforts to promulgate adequate regulations as mandated by the Act and to fulfill our obligations under Executive Order 12291.

We received many comments from the research community, dealers, and the general public noting that the preliminary regulatory impact analysis contained "overinflated" cost estimates. Only one of the comments from the general public provided detailed information of alternative estimates of compliance costs for each new provision in the proposed rule. Most of the comments contained a formatted statement indicating that costs in the analysis were "overinflated," and that well-run animal facilities already comply with the proposed requirements.

Conversely, we also received comments from the research community and the general public stating that the cost estimates in the preliminary regulatory impact analysis were too low. Again, only one commenter from the

research community provided detailed information and different compliance cost estimates for implementing the proposed rules. The commenter's estimates doubled our cost estimates.

Many commenters also stated that the proposed rule would inflate the cost of animal research, making it cost prohibitive. Others stated that the proposed rule would cost too much to implement and would put small dealers out of business. In addition, a few commenters from the research community stated that the proposed rule would cost too much and would put small researchers out of business. A small number of commenters stated that the proposed amendments would reduce the availability of puppies and litters and/or make pets too expensive.

The proposed amendments to the regulations that would have the greatest economic impact—the exercise of dogs and the establishment of environments to promote the psychological well-being of nonhuman primates—were mandated by the 1985 amendments to the Act. Although, as discussed below, the provisions of this revised proposal would have a significantly reduced economic impact from those of the original proposal, the economic impact would not be eliminated.

As noted, upon review of the many comments received and ongoing consultation with other Federal agencies, we have developed an alternative proposal, set forth in this document. In doing so, we have considered and will continue to consider all alternative, but enforceable, approaches in order to develop final regulations that will impose the least cost on regulated establishments within statutory goals. This revised proposal incorporates many of the comments received in response to the previous proposed rule, contains more performance-based standards, and minimizes the potential regulatory impact on affected establishments.

A large number of commenters, primarily from the research community, stated that insufficient detail was included in the preliminary regulatory impact analysis to explain the discrepancies between that analysis and one conducted by a national research association. These commenters stated that, according to the alternative analysis submitted, a 15 percent reduction in expenditures for actual research would be an important effect of the proposed regulations. Again, it is important to note that the regulatory impact analysis for this revised proposal indicates a significantly reduced impact from that projected for the original proposal. With regard to the discrepancies between the published regulatory impact analysis and the alternative analysis, we must assume that the use of different methodologies in the assessment of potential compliance costs have led to different results. There is no disagreement over whether the proposed amendments would have a significant economic effect. We do disagree, however, with the way the figures regarding the potential impact are interpreted in the commenters' analysis. The regulatory impact analysis for the original proposal distinguished between capital expenditures, which would have been a large part of the impact from the proposed provisions, and annual expenditures, through which actual research activities are funded. We believe that the variability among funding procedures for different research facilities does not allow the conclusion that the proposed rule would cause a 15 percent reduction in expenditures for actual research.

Some commenters from the research community asserted that we failed to do a cost-benefit analysis as required by Executive Order 12291. Many more commenters from the research community and the general public stated that the regulations would provide no benefit to animals or improvements in animal care.

The general requirements for a regulatory impact analysis under Executive Order 12291 of proposed Federal rules require an identification of the costs and benefits of a proposed rule. They provide that benefits and costs be examined and that regulatory objectives be chosen to maximize net benefits to society or involve the least cost to society. The preliminary regulatory impact analysis we conducted for the previous proposal examined the potential benefits to society and animals arising from the proposed rule, and indicated that these benefits could not be precisely quantified. In the absence of actual dollar figures for benefits, it was impossible to estimate the net potential benefits expressed in dollar amounts.

A large number of commenters disagreed with the statement in the summary of the regulatory impact analysis included with the proposed rule that study results do not suggest that the proposed regulations would cause research establishments to abandon the use of animals. The data available to us continues to support that original conclusion. This determination is discussed below under the heading "Executive Order 12291."

Many commenters stated that no documentation was provided for the calculations in the preliminary regulatory impact analysis. The data utilized in the analysis was included as an appendix to the study, which was available for public inspection.

A number of commenters stated that the proposed amendments to the transportation standards in the regulations would result in a substantial increase in the cost of research animals. As stated above, we agree that the proposed amendments would have an economic impact. With regard to increased transportation costs, however, there was insufficient data available to project the costs of revised transportation standards. We invite and welcome comments or pertinent information regarding this area.

We disagree with the opinion expressed by many commenters that animals will not receive improved animal care or benefits under amended regulations. There is considerable scientific data that supports the regulatory requirements designed to increase the level of animal care and treatment afforded to animals in regulated establishments. Requirements that provide for better and enriched animal housing environments, appropriate veterinary care, and procedures that minimize animal pain and discomfort will, we believe, improve animal welfare and benefit regulated animals.

Some commenters from the research community and the general public stated that the Department has failed to consider alternatives that will achieve statutory goals and involve the least cost to society. We disagree with these commenters. In developing the proposed rule, we sought comments and input from the regulated establishments, the general public, and interested Federal agencies. Previous proposals contain extensive discussion and explanation of alternative provisions for each new revision or change required by the amendments. Our revisions to the proposed rule contained in this document reflect our continued effort to identify and analyze alternatives and select appropriate requirements to meet the statutory objectives. We will also finalize rules only after all relevant factors are considered, including least costly alternatives, in achieving statutory goals.

A small number of commenters addressed issues regarding the potential costs of the proposed provisions that were outside the scope of the proposal and its accompanying economic analyses. Some of these commenters stated that Congress should provide additional funds to the research

community to implement the new regulations. Others stated that the projected costs could be better spent finding cures for life-threatening diseases and saving human lives. Although we consider these issues important ones, they concern areas outside the purview of the Department.

**Statutory Authority for This Proposed Rule**

This proposed rule is issued pursuant to the Animal Welfare Act (Act), as amended, 7 U.S.C. 2131–2157. Congress, in enacting the Food Security Act of 1985, Pub. L. No. 99–198, added significantly to the Secretary's existing responsibilities to promulgate standards for the care and treatment of animals covered under the Act. The declared policy of the Act is to ensure that animals intended for use in research facilities, as pets, or for exhibition purposes, are provided humane care and treatment; to assure the humane treatment of animals during transportation; and to prevent the sale of stolen animals.

The Act requires that the Secretary of Agriculture promulgate standards to govern the humane handling, care, treatment and transportation of animals by dealers, operators of auction sales, research facilities, exhibitors, and carriers and intermediate handlers. These standards are to include minimum requirements for handling, housing, feeding, watering, sanitation, ventilation, shelter from extremes of weather and temperatures, adequate veterinary care, and separation of species. The 1985 amendments to the Act specifically require the Secretary to promulgate standards for exercise of dogs and for a physical environment adequate to promote the psychological well-being of primates.

The proposed rule includes changes and additions to the standards required by the 1985 amendments as well as modifications based on our experience in administering and enforcing the Act. The Act authorizes these changes specifically in section 13 (7 U.S.C 2143) and in the grant of rulemaking authority contained in section 21 (7 U.S.C. 2151).

**Executive Order 12291**

We have examined the regulatory impact of this revised proposal in accordance with Executive Order 12291.

We are publishing revised proposed standards for the humane handling, care, treatment, and transportation of dogs, cats, and nonhuman primates (subparts A and D, part 3, Standards). These revised proposed standards include standards for exercise of dogs and for a physical environment adequate to promote the psychological well-being of nonhuman primates, as required by the amendments to the Act. The amendments to the Act reflect a Congressional determination that additional or revised standards governing the humane care and treatment of animals are desirable and necessary. Further impetus of the 1985 amendments expanding the Animal Welfare Act arises from the determination of the absence of an adequate market mechanism to ensure a socially optimal level of welfare afforded to animals used in the production activities of regulated establishments.

We are reproposing these rules because of the significant changes we have made to our original proposal. This new proposal is based on an examination of alternative standards, the close to 10,700 comments received on a proposal to amend part 3 published in the **Federal Register** on March 15, 1989, professional opinions, and ongoing consultation with other Federal agencies. Furthermore, this revised proposal is fully consistent with the Department's authority under the Act.

The regulatory impact of this reproposal is discussed in more detail in a Regulatory Impact and Flexibility Study, which is available for public inspection in Room 1141 of the South Building, U.S. Department of Agriculture between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays (address above). The main findings of the study are discussed below.

The largest regulatory burden of this reproposal may result from the requirements to ensure the exercise of dogs and a physical environment that promotes the psychological well-being of nonhuman primates.

Compliance with these reproposed standards may result in additional costs for regulated establishments over those imposed by the current standards. Study results indicate that regulated establishments may be required to spend approximately $158 million for additional capital improvements and $39 million in annual operating costs once the regulations become effective. The study indicates that over 73 percent of the total capital expenditures resulting from this reproposal would potentially fall on research facilities. The study also indicates that approximately 92 percent of the annual operating costs required by this reproposal would potentially fall on research facilities. The discounted value of the impact on the total regulated industry is estimated at approximately $552 million. These additional costs indicate that the new proposed standards in part 3 would constitute a "major rule" impact, and may significantly increase costs for animal care and housing.

These additional compliance costs may also result in increased costs for animal exhibits, pet owners and sport, and numerous types of biomedical research and drug development where there are no available alternatives that fully replace the use of a living biological system. Continued animal research is vital to develop therapies for diseases such as AIDS, Parkinson's disease, and heart diseases. Important tradeoffs between the welfare of animals and human welfare may occur.

Little evidence exists to indicate that increased regulatory costs would cause regulated establishments to abandon their uses of animals. In order to maintain the same level of activity, the cost of production of these establishments may increase in the short run. However, for those forms of research where alternative testing methods that do not require the use of animals exist, the imposition of the proposed regulations may have the effect of promoting more rapid development of alternative technologies which might otherwise take longer to evolve. In the long run, the availability of alternatives to animal uses in research, testing, and education may moderate the initial increase in the cost of production.

A more stringent set of standards was considered in the proposal to amend part 3 that was published in the **Federal Register** on March 15, 1989. The discounted value of the total impact of the previously proposed rule was estimated at $1.75 billion dollars, an amount over three times the impact estimated for this revised proposal. This result is to be expected since the performance-oriented standards in the reproposal provide more flexibility, thus allowing the regulated establishments to meet requirements through several means of compliance.

Potential benefits resulting from the new standards were discussed in this study, but could not be quantified. If the public perception of levels of animal welfare increase with the level of stringency of the regulations, then the benefits of greater public satisfaction will also accrue to society. However, given the difficulties in the quantification of benefits, the least cost criteria indicate that the performance-based alternatives should be preferred. This is because these alternatives provide more flexibility for the regulated establishments in achieving compliance.

The conclusions reached in the regulatory analysis require a number of

qualifications because of the exclusion of other important variables in addition to the valuation of benefits. Critical data deficiencies currently exist in measuring the anticipated changes in animal housing conditions and the population of animals housed by the regulated industry. Some of the difficulties are inherent in the diversity of factors being measured, others reflect the dearth of data collection efforts. The complexity of issues associated with animal welfare regulations also hinder the comprehensive assessment of impacts in a short period of time. Efforts should be made to improve baseline information, not for analytical purposes alone, but to improve the development of Federal animal welfare requirements. Furthermore, policymakers will benefit from an examination of the diversity of functions, sizes and geographical distribution of regulated industries across the nation.

We intend to collect additional information and refine the regulatory impact analysis of this revised proposal. We welcome comments or pertinent information concerning the changes in this regulatory action. The final regulatory impact analysis will be available upon publication of the final rulemaking for subparts A and D of part 3. It is not expected that the final analysis will affect the determination that this rule would have an impact in excess of $100 million annually. However, we will continue to examine alternative approaches which will minimize the regulatory burden on regulated establishments within the statutory requirements.

### Regulatory Flexibility Act

We have analyzed the potential impact of this revised proposal on small entities, as required by the Regulatory Flexibility Act (Pub. L. 96–354).

The impact of this reproposal on small entities is discussed in more detail in a Regulatory Impact and Flexibility Analysis, which is available for public inspection in Room 1141 of the South Building, U.S. Department of Agriculture between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays (address above).

We estimate that approximately 1,460 small entities may be affected by the revised requirements in subchapters A and D, part 3, Standards, in this reproposal. These 1,460 entities represent about 39 percent of all small establishments (3,771) licensed to operate animal ventures under provisions of the Act. Among the affected entities are 1,227 small breeders, 183 small dealers, and 50 small exhibitors. We do not expect any regulatory impact of this reproposal on small research sites. No research site or facility housing cats, dogs, or nonhuman primates for research, testing, or educational purposes would qualify as a small entity.

The total regulatory burden on small breeders, dealers, and exhibitors of this reproposal is estimated at approximately $32.4 million. This estimate represents the sum of discounted values of annual costs ($1.64 million per year discounted at 10 percent into perpetuity) to hire additional animal caretakers or handlers and capital expenditures ($16 million in the first year) to replace, construct, or equip new cat, dog, and nonhuman primate enclosures and improve sheltered housing facilities. The average discounted impact per affected small entity is estimated at approximately $22,171 per site.

Of the small regulated entities, small breeders would be most affected by this reproposal. Breeders represent about 57 percent of all small regulated entities and may incur approximately 80 percent of the estimated compliance costs, mostly from the new revised requirements for the exercise of dogs. An important distributional effect of the reproposal is that the impact on breeders will be concentrated on dog breeders in the Midwest region of the country. Eighty-five percent of all breeders are located in this region.

An important result of the regulatory flexibility analysis is that, in developing this reproposal, we have chosen a less costly approach to amend subparts A and D of part 3, Standards. The preliminary regulatory flexibility analysis of the March 15, 1989, rule estimated a discounted value of the total impact on all small affected entities at about $153.7 million, or an average of $105,249 per affected site. A comparison between the previously proposed rule and this reproposal indicates a potential five-fold decrease in the costs imposed on affected small entities.

We intend to collect additional information and refine the regulatory flexibility analysis of this reproposal. We welcome comments or pertinent information concerning the regulatory burden on small regulated entities. The result will be available upon publication on the final rulemaking for subparts A and D of part 3.

### Executive Order 12372

These programs/activities under 9 CFR part 3, subparts A, B, C, and D, are listed in the Catalog of Federal Domestic Assistance under No. 10.025 and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

### Paperwork Reduction Act

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the information collected provisions that are included in this proposed rule will be submitted for approval to the Office of Management and Budget (OMB). Your written comments will be considered if you submit them to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. You should submit a duplicate copy of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

### List of Subjects in 9 CFR Part 3

Animal welfare, Humane animal handling, Pets, Reporting and recordkeeping requirements, Transportation.

Accordingly, we propose to amend 9 CFR part 3 as follows:

## PART 3—STANDARDS

1. The authority citation for part 3 would be revised to read as follows, and the authority citation following all the sections would be removed:

Authority: 7 U.S.C. 2131–2156; 7 CFR 2.17, 2.51, and 371.2(d).

2. Subpart A would be revised to read as follows:

### Subpart A—Specifications for the Humane Handling, Care, Treatment, and Transportation of Dogs and Cats

#### Facilities and Operating Standards

Sec.
3.1 Housing facilities, general.
3.2 Indoor housing facilities.
3.3 Sheltered housing facilities.
3.4 Outdoor housing facilities.
3.5 Mobile or traveling housing facilities.
3.6 Primary enclosures.

#### Animal Health and Husbandry Standards

3.7 Exercise and socialization for dogs.
3.8 Feeding.
3.9 Watering.
3.10 Cleaning, sanitization, housekeeping, and pest control.
3.11 Employees.
3.12 Social grouping.

#### Transportation Standards

3.13 Consignments to carriers and intermediate handlers.
3.14 Primary enclosures used to transport live dogs and cats.

3.15 Primary conveyances (motor vehicle, rail, air, and marine).
3.16 Food and water requirements.
3.17 Care in transit.
3.18 Terminal facilities.
3.19 Handling.

## Subpart A—Specifications for the Humane Handling, Care, Treatment, and Transportation of Dogs and Cats [1]

### Facilities and Operating Standards

#### § 3.1 Housing facilities, general.

(a) *Structure; construction.* Housing facilities for dogs and cats must be designed and constructed so that they are structurally sound. They must be kept in good repair, and they must protect the animals from injury, contain the animals securely, and restrict other animals and unauthorized humans from entering.

(b) *Condition and site.* Housing facilities and areas used for storing animal food or bedding must be free of any accumulation of trash, waste material, junk, weeds, and other discarded materials. Animal areas inside of housing facilities must be kept neat and free of clutter, including equipment, furniture, and stored material, but may contain materials actually used and necessary for cleaning the area, and fixtures or equipment necessary for proper husbandry practices and research needs. Housing facilities other than those maintained by research facilities and Federal research facilities must be physically separated from any other business. If a housing facility is located on the same premises as another business, it must be physically separated from the other business so that unauthorized humans, and animals the size of dogs, skunks, and raccoons are prevented from entering it.

(c) *Surfaces.*—(1) *General requirements.* The surfaces of housing facilities—including houses, dens, and other furniture-type fixtures and objects within the facility—must be constructed in a manner and made of materials that allow them to be readily cleaned and sanitized, or removed or replaced when worn or soiled. Interior surfaces and any surfaces that come in contact with dogs or cats must:

(i) Be free of excessive rust that prevents the required cleaning and sanitization, or that affects the structural strength of the surface; and

(ii) Be free of jagged edges or sharp points that might injure the animals.

(2) *Maintenance and replacement of surfaces.* All surfaces must be maintained on a regular basis. Surfaces of housing facilities—including houses, dens, and other furniture-type fixtures and objects within the facility—that cannot be readily cleaned and sanitized, must be replaced when worn or soiled.

(3) *Cleaning.* Hard surfaces with which the dogs or cats come in contact must be spot-cleaned daily and sanitized in accordance with § 3.10(b) of this subpart to prevent any accumulation of excreta and reduce disease hazards. Floors made of dirt, absorbent bedding, sand, gravel, grass, or other similar material must be raked or spot-cleaned with sufficient frequency to ensure all animals the freedom to avoid contact with excreta. Contaminated material must be replaced whenever this raking and spot-cleaning is not sufficient to prevent or eliminate odors, insects, pests, or vermin infestation. All other surfaces of housing facilities must be cleaned and sanitized when necessary to satisfy generally accepted husbandry standards and practices. Sanitization may be done using any of the methods provided in § 3.10(b)(3) for primary enclosures.

(d) *Water and electric power.* The housing facility must have reliable electric power adequate for heating, cooling, ventilation, and lighting, and for carrying out other husbandry requirements in accordance with the regulations in this subpart. The housing facility must provide adequate running potable water for the dogs' and cats' drinking needs, for cleaning, and for carrying out other husbandry requirements.

(e) *Storage.* Supplies of food and bedding must be stored in a manner that protects the supplies from spoilage, contamination, and vermin infestation. The supplies must be stored off the floor and away from the walls, to allow cleaning underneath and around the supplies. Foods requiring refrigeration must be stored accordingly, and all food must be stored in a manner that prevents contamination and deterioration of its nutritive value. All open supplies of food and bedding must be kept in leakproof containers with tightly fitting lids to prevent contamination and spoilage. Only food and bedding that is currently being used may be kept in the animal areas. Substances that are toxic to the dogs or cats must not be stored in food storage and preparation areas, but may be stored in cabinets in the animal areas.

(f) *Drainage and waste disposal.* Housing facility operators must provide for regular and frequent collection, removal, and disposal of animal and food wastes, bedding, debris, garbage, water, other fluids and wastes, and dead animals, in a manner that minimizes contamination and disease risks. Housing facilities must be equipped with disposal facilities and drainage systems that are constructed and operated so that animal waste and water are rapidly eliminated and animals stay dry. Disposal and drainage systems must minimize vermin and pest infestation, insects, odors, and disease hazards. All drains must be properly constructed, installed, and maintained. If closed drainage systems are used, they must be equipped with traps and prevent the backflow of gases and the backup of sewage onto the floor. If the facility uses sump or settlement ponds, or other similar systems for drainage and animal waste disposal, the system must be located far enough away from the animal area of the housing facility to prevent odors, diseases, pests, and vermin infestation. Standing puddles of water in animal enclosures must be drained or mopped up so that the animals stay dry. Trash containers in housing facilities and in food storage and foor preparation areas must be leakproof and must have tightly fitted lids on them at all times. Dead animals, animal parts, and animal waste must not be kept in food storage or food preparation areas, food freezers, food refrigerators, or animal areas.

(g) *Washrooms and sinks.* Washing facilities such as washrooms, basins, sinks, or showers must be provided for animal caretakers and must be readily accessible.

#### § 3.2 Indoor housing facilities.

(a) *Heating, cooling, and temperature.* Indoor housing facilities for dogs and cats must be sufficiently heated and cooled when necessary to protect the dogs and cats from temperature extremes and to provide for their health and well-being. When dogs or cats are present, the ambient temperature in the facility must not fall below 50 °F (10 °C) for dogs and cats not acclimated to lower temperatures, for those breeds that cannot tolerate lower temperatures without stress or discomfort (such as short-haired breeds), and for sick, aged, young, or infirm dogs and cats, except as approved by the attending veterinarian. The ambient temperature must not fall below 35 °F (1.7 °C) and must not rise above 95 °F (35 °C) when dogs or cats are present.

(b) *Ventilation.* Indoor housing facilities for dogs and cats must be sufficiently ventilated at all times when dogs or cats are present to provide for their health and well-being, and to minimize odors, drafts, ammonia levels, and moisture condensation. Ventilation

[1] These minimum standards apply only to live dogs and cats, unless stated otherwise.

must be provided by windows, vents, fans, or air conditioning. Auxiliary ventilation, such as fans, blowers, or air conditioning must be provided when the ambient temperature is 85 °F (29.5 °C) or higher. The relative humidity must be maintained at a level that ensures the health and well-being of the dogs or cats housed therein, in accordance with the directions of the attending veterinarian and generally accepted professional and husbandry practices.

(c) *Lighting.* Indoor housing facilities for dogs and cats must be lighted well enough to permit routine inspection and cleaning of the facility, and observation of the dogs and cats. Animal areas must be provided a regular diurnal lighting cycle of either natural or artificial light. Lighting must be uniformly diffused throughout animal facilities and provide sufficient illumination to aid in maintaining good housekeeping practices, adequate cleaning, adequate inspection of animals, and for the well-being of the animals. Primary enclosures must be placed so as to protect the dogs and cats from excessive light.

(d) *Interior surfaces.* The floors and walls of indoor housing facilities, and any other surfaces in contact with the animals, must be impervious to moisture. The ceilings of indoor housing facilities must be impervious to moisture or be replaceable (e.g., a suspended ceiling with replaceable panels).

**§ 3.3 Sheltered housing facilities.**

(a) *Heating, cooling, and temperature.* The sheltered part of sheltered housing facilities for dogs and cats must be sufficiently heated and cooled when necessary to protect the dogs and cats from temperature extremes and to provide for their health and well-being. The ambient temperature in the sheltered part of the facility must not fall below 50 °F (10 °C) for dogs and cats not acclimated to lower temperatures, for those breeds that cannot tolerate lower temperatures without stress or discomfort (such as short-haired breeds), and for sick, aged, young, or infirm dogs and cats, except as approved by the attending veterinarian. The ambient temperature must not fall below 35 °F (1.7 °C) and must not rise above 95 °F (35 °C) when dogs or cats are present.

(b) *Ventilation.* The enclosed or sheltered part of sheltered housing facilities for dogs and cats must be sufficiently ventilated when dogs or cats are present to provide for their health and well-being, and to minimize odors, drafts, ammonia levels, and moisture condensation. Ventilation must be provided by windows, vents, fans, or air conditioning. Auxiliary ventilation, such as fans, blowers, or air conditioning, must be provided when the ambient temperature is 85 °F (29.5 °C) or higher.

(c) *Lighting.* Sheltered housing facilities for dogs and cats must be lighted well enough to permit routine inspection and cleaning of the facility, and observation of the dogs and cats. Animal areas must be provided a regular diurnal lighting cycle of either natural or artificial light. Lighting must be uniformly diffused throughout animal facilities and provide sufficient illumination to aid in maintaining good housekeeping practices, adequate cleaning, adequate inspection of animals, and for the well-being of the animals. Primary enclosures must be placed so as to protect the dogs and cats from excessive light.

(d) *Shelter from the elements.* Dogs and cats must be provided with adequate shelter from the elements at all times to protect their health and well-being.

(e) *Surfaces.* (1) The following areas in sheltered housing facilities must be impervious to moisture:

(i) Indoor floor areas in contact with the animals;

(ii) Outdoor floor areas in contact with the animals, when the floor areas are not exposed to the direct sun, or are made of a hard material such as wire, wood, metal, or concrete; and

(iii) All walls, boxes, houses, dens, and other surfaces in contact with the animals.

(2) Outdoor floor areas in contact with the animals and exposed to the direct sun may consist of compacted earth, absorbent bedding, sand, gravel, or grass.

**§ 3.4 Outdoor housing facilities.**

(a) *Restrictions.* (1) The following categories of dogs or cats must not be kept in outdoor facilities, unless that practice is specifically approved by the attending veterinarian:

(i) Dogs or cats that are not acclimated to the temperatures prevalent in the area or region where they are maintained;

(ii) Breeds of dogs or cats that cannot tolerate the prevalent temperatures of the area without stress or discomfort (such as short-haired breeds in cold climates); and

(iii) Sick, infirm, aged or young dogs or cats.

(2) When their acclimation status is unknown, dogs and cats must not be kept in outdoor facilities when the ambient temperature is less than 35 °F (1.7 °C).

(b) *Shelter from the elements.* Outdoor facilities for dogs or cats must include one or more shelter structures that are accessible to each animal in each outdoor facility, and that are large enough to allow each animal in the shelter structure to sit, stand, and lie in a normal manner, and to turn about freely. In addition to the shelter structures, one or more separate outside areas of shade must be provided, large enough to contain all the animals at one time and protect them from the direct rays of the sun. Shelters in outdoor facilities for dogs or cats must contain a roof, four sides, and a floor, and must:

(1) Provide the dogs and cats with adequate protection and shelter from the cold and heat;

(2) Provide the dogs and cats with protection from the direct rays of the sun and the direct effect of wind, rain, or snow;

(3) Be provided with a wind break and rain break at the entrance; and

(4) Contain clean, dry, bedding material if the ambient temperature is below 50 °F (10 °C). Additional clean, dry bedding is required when the temperature is 35 °F (1.7 °C) or lower.

(c) *Construction.* Building surfaces in contact with animals in outdoor housing facilities must be impervious to moisture. Metal barrels, cars, refrigerators or freezers, and the like must not be used as shelter structures. The floors of outdoor housing facilities may be of compacted earth, absorbent bedding, sand, gravel, or grass, and must be replaced if there are any prevalent odors, diseases, insects, pests, or vermin. All surfaces must be maintained on a regular basis. Surfaces of outdoor housing facilities—including houses, dens, etc.—that cannot be readily cleaned and sanitized, must be replaced when worn or soiled.

**§ 3.5 Mobile or traveling housing facilities.**

(a) *Heating, cooling, and temperature.* Mobile or traveling housing facilities for dogs and cats must be sufficiently heating and cooled when necessary to protect the dogs and cats from temperature extremes and to provide for their health and well-being. The ambient temperature in the mobile or traveling housing facility must not fall below 50 °F (10 °C) for dogs and cats not acclimated to lower temperatures, for those breeds that cannot tolerate lower temperatures without stress or discomfort (such as short-haired breeds), and for sick, aged, young, or infirm dogs and cats. The ambient temperature must not fall below 35 °F (1.7 °C) and must not rise above 95 °F (35 °C) when dogs or cats are present.

(b) *Ventilation.* Mobile or traveling housing facilities for dogs and cats must be sufficiently ventilated at all times when dogs or cats are present to provide

for their health and well-being of the animals, and to minimize odors, drafts, ammonia levels, moisture condensation, and exhaust fumes. Ventilation must be provided by windows, doors, vents, fans, or air conditioning. Auxiliary ventilation, such as fans, blowers, or air conditioning, must be provided when the ambient temperature within the animal housing area is 85 °F (29.5 °C) or higher.

(c) *Lighting.* Mobile or traveling housing facilities for dogs and cats must be lighted well enough to permit routine inspection and cleaning of the facility, and observation of the dogs and cats. Animal areas must be provided a regular diurnal lighting cycle of either natural or artificial light. Lighting must be uniformly diffused throughout animal facilities and provide sufficient illumination to aid in maintaining good housekeeping practices, adequate cleaning, adequate inspection of animals, and for the well-being of the animals.

**§ 3.6 Primary enclosures.**

Primary enclosures for dogs and cats must meet the following minimum requirements:

(a) *General requirements.* (1) Primary enclosures must be designed and constructed of suitable materials so that they are structurally sound. The primary enclosures must be kept in good repair.

(2) Primary enclosures must be constructed and maintained so that they:

(i) Have no sharp points or edges that could injure the dogs and cats;

(ii) Protect the dogs and cats from injury;

(iii) Contain the dogs and cats securely;

(iv) Keep other animals and unauthorized individuals from entering the enclosure;

(v) Enable the dogs and cats to remain dry and clean;

(vi) Provide shelter and protection from extreme temperatures and weather conditions that may be uncomfortable or hazardous to the dogs and cats;

(vii) Provide sufficient shade to shelter all the dogs and cats housed in the primary enclosure at one time;

(viii) Provide the dogs and cats with easy and convenient access to clean food and water;

(ix) Enable all surfaces in contact with the dogs and cats to be readily cleaned and sanitized in accordance with § 3.10(b) of this subpart, or be replaceable when worn or soiled;

(x) Have floors that are constructed in a manner that protects the dogs' and cats' feet and legs from injury, and that, if of mesh or slatted construction, do not allow the dogs' and cats' feet to pass through any openings in the floor; and

(xi) Provide sufficient space to allow each dog and cat to turn about freely, to stand, sit, and lie in a comfortable, normal position, and to walk in a normal manner.

(b) *Additional requirements for cats.*—(1) *Space.* Each cat, including weaned kittens, that is housed in any primary enclosure must be provided minimum vertical space and floor space as follows:

(i) Each primary enclosure housing cats must be at least 24 in. high (60.96 cm);

(ii) Cats up to and including 8.8 lbs. (4 kg) must be provided with at least 3.0 $ft^2$ (0.28 $m^2$);

(iii) Cats over 8.8 lbs (4 kg) must be provided with at least 4.0 $ft^2$ (0.37 $m^2$);

(iv) Each queen with nursing kittens must be provided with an additional amount of floor space, based on her breed and behavioral characteristics, and in accordance with generally accepted husbandry practices as determined by the attending veterinarian. If the additional amount of floor space for each nursing kitten is equivalent to less than 5 percent of the minimum requirement for the queen, such housing must be approved by the Committee in the case of a research facility, and, in the case of dealers and exhibitors, such housing must be approved by the Administrator; and

(v) The minimum floor space required by this section is exclusive of any food or water pans. The litter pan may be considered part of the floor space if properly cleaned and sanitized.

(2) *Compatibility.* All cats housed in the same primary enclosure must be compatible, as determined by observation. Not more than 12 adult nonconditioned cats may be housed in the same primary enclosure. Queens in heat may not be housed in the same primary enclosure with sexually mature males, except for breeding. Except when maintained in breeding colonies, queens with litters may not be housed in the same primary enclosure with other adult cats, and kittens under 4 months of age may not be housed in the same primary enclosure with adult cats, other than the dam. Cats with a vicious or aggressive disposition must be housed separately.

(3) *Litter.* In all primary enclosures having a solid floor, a receptacle containing sufficient clean litter must be provided to contain excreta and body wastes.

(4) *Resting surfaces.* Each primary enclosure housing cats must contain a resting surface or surfaces that, in the aggregate, are large enough to hold all the occupants of the primary enclosure at the same time comfortably. The resting surfaces must be elevated, impervious to moisture, and be able to be easily cleaned and sanitized, or easily replaced when soiled or worn. Low resting surfaces will be considered part of the minimum floor space.

(5) *Cats in mobile or traveling shows or acts.* Cats that are part of a mobile or traveling show or act may be kept, while the show or act is traveling from one temporary location to another, in transport containers that comply with all requirements of § 3.14 of this subpart other than the marking requirements in § 3.14(a)(6) of this subpart. When the show or act is not traveling, the cats must be placed in primary enclosures that meet the minimum requirements of this section.

(c) *Additional requirements for dogs.*—(1) *Space.* (i) Each dog housed in a primary enclosure (including weaned puppies) must be provided a minimum amount of floor space, calculated as follows: Find the mathematical square of the sum of the length of the dog in inches (measured from the tip of its nose to the base of its tail) plus 6 inches; then divide the product by 144. The calculation is: (length of dog in inches + 6)×(length of dog in inches + 6)=required floor space in square inches. Required floor space in inches/144=required floor space in square feet.

(ii) Each bitch with nursing puppies must be provided with an additional amount of floor space, based on her breed and behavioral characteristics, and in accordance with generally accepted husbandry practices as determined by the attending veterinarian. If the additional amount of floor space for each nursing puppy is less than 5 percent of the minimum requirement for the bitch, such housing must be approved by the Committee in the case of a research facility, and, in the case of dealers and exhibitors, such housing must be approved by the Administrator.

(iii) The interior height of a primary enclosure must be at least 6 inches higher than the head of the tallest dog in the enclosure when it is in a normal standing position.

(2) *Dogs on tethers.* Dogs may be kept on tethers only in outside housing facilities that meet the requirements of § 3.4 of this subpart, and only when the tether meets the requirements of this paragraph. The tether must be attached to the front of the dog's shelter structure or to a post in front of the shelter structure and must be at least three times the length of the dog, as measured from the tip of its nose to the base of its

tail. The tether must allow the dog convenient access to the shelter structure and to food and water containers. The tether must be of the type and strength commonly used for the size dog involved and must be attached to the dog by a well-fitted collar that will not cause trauma or injury to the dog. Collars made of materials such as wire, flat chains, chains with sharp edges, or chains with rusty or nonuniform links are prohibited. The tether must be attached so that the dog cannot become entangled with other objects or come into physical contact with other dogs in the outside housing facility, and so the dog can roam to the full range of the tether. Dog housing areas where dogs are on tethers must be enclosed by a perimeter fence that is of sufficient height to keep unwanted animals out. Fences less than 6 feet high must be approved by the Administrator. The fence must be constructed so that it protects the dogs by preventing animals the size of dogs, skunks, and raccoons from going through it or under it and having contact with the dogs inside.

(3) *Compatibility.* All dogs housed in the same primary enclosure must be compatible, as determined by observation. Not more than 12 adult nonconditioned dogs may be housed in the same primary enclosure. Bitches in heat may not be housed in the same primary enclosure with sexually mature males, except for breeding. Except when maintained in breeding colonies, bitches with litters may not be housed in the same primary enclosure with other adult dogs, and puppies under 4 months of age may not be housed in the same primary enclosure with adult dogs, other than the dam. Dogs with a vicious or aggressive disposition must be housed separately.

(4) *Dogs in mobile or traveling shows or acts.* Dogs that are part of a mobile or traveling show or act may be kept, while the show or act is traveling from one temporary location to another, in transport containers that comply with all requirements of § 3.14 of this subpart other than the marking requirements in § 3.14(a)(6) of this subpart. When the show or act is not traveling, the dogs must be placed in primary enclosures that meet the minimum requirements of this section.

(d) Innovative primary enclosures not precisely meeting the floor area and height requirements provided in paragraphs (b)(1) and (c)(1) of this section, but that provide the dogs or cats with a sufficient volume of space and the opportunity to express species-typical behavior, may be used at research facilities when approved by the Committee, and by dealers and exhibitors when approved by the Administrator.

## Animal Health and Husbandry Standards

### § 3.7 Exercise and socialization for dogs.

(a) *Dogs housed individually.* Dogs over 12 weeks of age, except bitches with litters, housed, held, or maintained by any dealer, exhibitor, or research facility, including Federal research facilities, must be provided the opportunity for exercise regularly if they are kept individually in cages, pens, or runs that provide less than two times the required floor space for that dog, as indicated by § 3.6(c)(1) of this subpart. If only one dog is housed, held, or maintained at a facility, the single dog must receive positive physical contact with humans at least daily.

(b) *Dogs housed in groups.* Dogs over 12 weeks of age housed, held, or maintained in groups by any dealer, exhibitor, or research facility, including Federal research facilities, do not require additional opportunity for exercise regularly if they are maintained in cages, pens, or runs that provide at least 100 percent of the required space for each dog if maintained separately. Such animals may be maintained in compatible groups, unless:

(1) Housing in compatible groups is not in accordance with a research proposal and the proposal has been approved by the research facility Committee;

(2) In the opinion of the attending veterinarian, such housing would adversely affect the health or well-being of the dog(s); or

(3) Any dog exhibits aggressive or vicious behavior.

(c) *Methods and period of providing exercise opportunity.* (1) Exact method(s) and period(s) of providing the opportunity for exercise shall be determined by the attending veterinarian with, at research facilities, consultation and review by the Committee.

(2) The opportunity for exercise may be provided in a number of ways, such as:

(i) Group housing in cages, pens or runs that provide at least 100 percent of the required space for each dog if maintained separately under the minimum floor space requirements of § 3.6(c)(1) of this subpart;

(ii) Maintaining individually housed dogs in cages, pens, or runs that provide at least twice the minimum floor space required by § 3.6(c)(1) of this subpart;

(iii) Providing access to a run or open area;

(iv) Providing positive physical contact with humans through play, grooming, petting, walking on a leash; or

(v) Other similar activities.

(3) Forced exercise methods or devices such as swimming, treadmills, or carousel-type devices are unacceptable for meeting the exercise requirements of this section.

(4) Written standard procedures for provision of the opportunity for exercise must be prepared by the dealer, exhibitor, or research facility, and must be made available to APHIS and, in the case of research facilities, to official of any pertinent funding Federal agency.

(d) *Exemptions.* (1) If, in the opinion of the attending veterinarian, it is inappropriate for certain dogs to exercise because of their health, condition, or well-being, the dealer, exhibitor, or research facility may be exempted from meeting the requirements of this section for those dogs. Such exemption must be documented by the attending veterinarian and, unless the basis for exemption is a permanent condition, must be reviewed at least every 30 days by the attending veterinarian.

(2) A research facility may be exempted from the requirements of this section if the principal investigator determines for scientific reasons set forth in the research proposal that it is inappropriate for certain dogs to exercise. Such exemption must be documented in the Committee-approved proposal and must be reviewed at appropriate intervals as determined by the Committee, but not less than annually.

(3) Records of any exemptions must be maintained and made available to USDA officials or any pertinent funding Federal agency upon request.

### § 3.8 Feeding.

(a) Dogs and cats must be fed at least once each day, except as otherwise might be required to provide adequate veterinary care. The food must be uncontaminated, wholesome, palatable, and of sufficient quantity and nutritive value to maintain the normal condition and weight of the animal. The diet must be appropriate for the individual animal's age and condition.

(b) Food receptacles must be used for dogs and cats, must be readily accessible to all dogs and cats, and must be located so as to minimize contamination by excreta and pests, and be protected from rain and snow. Feeding pans must either be made of a durable material that can be easily cleaned and sanitized or be disposable. If the food receptacles are not

disposable, they must be kept clean and must be sanitized in accordance with § 3.10(b) of this subpart. Sanitization is achieved by using one of the methods described in § 3.10(b)(3) of this subpart. If the food receptacles are disposable, they must be discarded after one use. Self-feeders may be used for the feeding of dry food. If self-feeders are used, they must be kept clean and must be sanitized in accordance with § 3.10(b) of this subpart. Measures must be taken to ensure there is no molding, deterioration, and caking of feed.

**§ 3.9 Watering.**

If potable water is not continually available to the dogs and cats, it must be offered to the dogs and cats at least twice daily for periods of at least 1 hour each time, unless restricted by the attending veterinarian. Water receptacles must be cleaned and sanitized in accordance with § 3.10(b) of this subpart, and before being used to water a different dog or cat or social grouping of dogs or cats.

**§ 3.10 Cleaning, sanitization, housekeeping, and pest control.**

(a) *Cleaning of primary enclosures.* Excreta and food waste must be removed from primary enclosures daily, and from under primary enclosures as often as necessary to prevent an excessive accumulation of feces and food waste, to prevent soiling of the dogs or cats contained in the primary enclosures, and to reduce disease hazards, insects, pests and odors. When using water to clean the primary enclosure, whether by hosing, flushing, or other methods, a steam of water must not be directed at a dog or cat. When stream is used to clean the primary enclosure, dogs and cats must be removed or adequately protected to prevent them from being injured. Standing water must be removed from the primary enclosure and animals in other primary enclosures must be protected from being contaminated with water and other wastes during the cleaning. The pans under primary enclosures with grill-type floors and the ground areas under raised runs with wire or slatted floors must be cleaned as often as necessary to prevent accumulation of feces and food waste and to reduce disease hazards, pests, insects and odors.

(b) *Sanitization of primary enclosures and food and water receptacles.* (1) Used primary enclosures and food and water receptacles must be cleaned and sanitized in accordance with this section before they can be used to house, feed, or water another dog or cat, or social grouping of dogs or cats.

(2) Used primary enclosures and food and water receptacles for dogs and cats must be sanitized at least once every 2 weeks using one of the methods prescribed in paragraph (b)(3) of this section, and more often if necessary to prevent an accumulation of dirt, debris, food waste, excreta, and other disease hazards.

(3) Hard surfaces of primary enclosures and food and water receptacles must be sanitized using one of the following methods:

(i) Live steam under pressure;

(ii) Washing with hot water (at least 180 °F (82.2 °C)) and soap or detergent, as with a mechanical cage washer; or

(iii) Washing all soiled surfaces with appropriate detergent solutions and disinfectants, or by using a combination detergent/disinfectant product that accomplishes the same purpose, with a thorough cleaning of the surfaces to remove organic material, so as to remove all organic material and mineral buildup, and to provide sanitization followed by a clean water rinse.

(4) Pens, runs, and outdoor housing areas using material that cannot be sanitized using the methods provided in paragraph (b)(3) of this section, such as gravel, sand, grass, earth, or absorbent bedding, must be sanitized by removing the contaminated material as necessary to prevent odors, diseases, pests, insects, and vermin infestation.

(c) *Housekeeping for premises.* Premises where housing facilities are located, including buildings and surrounding grounds, must be kept clean and in good repair to protect the animals from injury, to facilitate the husbandry practices required in this subpart, and to reduce or eliminate breeding and living areas for rodents and other pests and vermin. Premises must be kept free of accumulation of trash, junk, waste products, and discarded matter. Weeds, grasses, and bushes must be controlled as to facilitate cleaning of the premises and pest control, and to protect the health and well-being of the animals.

(d) *Pest control.* An effective program for the control of insects, external parasites affecting dogs and cats, and birds and mammals that are pests, must be established and maintained so as to promote the health and well-being of the animals and reduce contamination by pests in animal areas.

**§ 3.11 Employees.**

Each person subject to the Animal Welfare regulations (9 CFR parts 1, 2, and 3) maintaining dogs and cats must have enough employees to carry out the level of the husbandry practices and care required in this subpart. The employees who provide for husbandry and care, or handle animals, must be supervised by an individual who has the knowledge, background, and experience in proper husbandry and care of dogs and cats to supervise others. The employer must be certain that the supervisor and other employees can perform to these standards.

**§ 3.12 Social grouping.**

Dogs and cats that are housed in the same primary enclosure must be compatible, with the following restrictions:

(a) Females in heat (estrus) may not be housed in the same primary enclosure with males, except for breeding purposes;

(b) Any dog or cat exhibiting a vicious or overly aggressive disposition must be housed separately;

(c) Puppies or kittens 4 months of age or less may not be housed in the same primary enclosure with adult dogs or cats other than their dams, except when permanently maintained in breeding colonies;

(d) Dogs or cats may not be housed in the same primary enclosure with any other species of animals, unless they are compatible; and

(e) Dogs and cats that have or are suspected of having a contagious disease must be isolated from healthy animals in the colony, as directed by the attending veterinarian. When an entire group or room of dogs and cats is known to have or believed to be exposed to an infectious agent, the group may be kept intact during the process of diagnosis, treatment, and control.

**Transportation Standards**

**§ 3.13 Consignments to carriers and intermediate handlers.**

(a) Carriers and intermediate handlers must not accept a dog or cat for transport in commerce more than 4 hours before the scheduled departure time of the primary conveyance on which the animal is to be transported. However, a carrier or intermediate handler may agree with anyone consigning a dog or cat to extend this time by up to 2 hours.

(b) Carriers and intermediate handlers must not accept a dog or cat for transport in commerce unless they are provided with the name, address, and telephone number of the consignee.

(c) Carriers and intermediate handlers must not accept a dog or cat for transport in commerce unless written instructions concerning in-transit food and water requirements for each dog and cat in the shipment are securely attached to the outside of its primary

enclosure in a manner that makes them easily noticed and read.

(d) Carriers and intermediate handlers must not accept a dog or cat for transport in commerce unless the consignor certifies in writing to the carrier or intermediate handler the following information for each enclosure; a copy of the certification must accompany the dog or cat to its destination:

(1) The consignor's name and address;

(2) The tag number or tattoo assigned to each dog or cat under §§ 2.38 and 2.50 of the regulations;

(3) A statement by the consignor certifying that each dog or cat contained in the primary enclosure was offered food within 12 hours and water within 4 hours before delivery to the carrier or intermediate handler, and the date and time food and water was last offered; and

(4) The consignor's signature and the date and time the certification was signed.

(e) Carriers and intermediate handlers must not accept a dog or cat for transport in commerce in a primary enclosure unless the primary enclosure meets the requirements of § 3.14 of this subpart, or the consignor certifies in writing to the carrier or intermediate handler that the primary enclosure meets the requirements of § 3.14 of this subpart. Even if the consignor provides this certification, a carrier or intermediate handler must not accept a dog or cat for transport if the primary enclosure is obviously defective or damaged and cannot reasonably be expected to safely and comfortably contain the dog or cat without causing suffering or injury. A copy of the certification must accompany the dog or cat to its destination and must include the following information for each primary enclosure:

(1) The consignor's name and address;

(2) The tag number or tattoo assigned to each dog or cat under §§ 2.38 and 2.50 of this chapter;

(3) A statement by the consignor certifying that each primary enclosure in the shipment meets the standards for primary enclosures in § 3.14 of this subpart; and

(4) The consignor's signature and the date the certification was signed.

(f) Carriers and intermediate handlers must not accept a dog or cat for transport in commerce unless their holding area and cargo facilities meet the minimum temperature requirements provided in §§ 3.18 and 3.19 of this subpart, or unless the consignor provides them with a certificate signed by a veterinarian and dated no more than 10 days before delivery of the animal to the carrier or intermediate handler for transport in commerce, certifying that the animal is acclimated to temperatures lower than those required in §§ 3.18 and 3.19 of this subpart. Even if the carrier or intermediate handler receives this certification, the temperatures the dog or cat is exposed to while in the carrier's or intermediate handler's custody must not be lower than 35 °F (1.7 °C). A copy of the certification must accompany the dog or cat to its destination and must include the following information:

(1) The consignor's name and address;

(2) The tag number or tattoo assigned to each dog or cat under §§ 2.38 and 2.50 of this chapter;

(3) A statement by a veterinarian, dated no more than 10 days before delivery, that to the best of his or her knowledge, each of the dogs or cats contained in the primary enclosure is acclimated to air temperatures lower than 45 °F (7.2 °C); but not lower than a minimum temperature, specified on a certificate, that the attending veterinarian has determined is based on generally accepted temperature standards for the age, condition, and breed of the dog or cat; and

(4) The signature of the veterinarian and the date the certification was signed.

(g) When a primary enclosure containing a dog or cat has arrived at the animal holding area at a terminal facility after transport, the carrier or intermediate handler must attempt to notify the consignee upon arrival and at least once in every 6-hour period thereafter. The time, date, and method of each attempted notification and the actual notification of the consignee, and the name of the person who notifies or attempts to notify the consignee must be written on the carrier's or intermediate handler's copy of the shipping document and on the copy that accompanies the primary enclosure. If the consignee cannot be notified within 24 hours after the dog or cat has arrived at the terminal facility, the carrier or intermediate handler must return the animal to the consignor or to whomever the consignor designates. If the consignee is notified of the arrival and does not accept delivery of the dog or cat within 48 hours after arrival of the dog or cat, the carrier or intermediate handler must return the animal to the consignor or to whomever the consignor designates. The carrier or intermediate handler must continue to provide proper care, feeding, and housing to the dog or cat, and maintain the dog or cat in accordance with generally accepted professional and husbandry practices until the consignee accepts delivery of the dog or cat or until it is returned to the consignor or to whomever the consignor designates. The carrier or intermediate handler must obligate the consignor to reimburse the carrier or intermediate handler for the cost of return transportation and care.

**§ 3.14 Primary enclosures used to transport live dogs and cats.**

Any person subject to the Animal Welfare regulations (9 CFR parts 1, 2, and 3) must not transport or deliver for transport in commerce a dog or cat unless the following requirements are met:

(a) *Construction of primary enclosures.* The dog or cat must be contained in a primary enclosure such as a compartment, transport cage, carton, or crate. Primary enclosures used to transport dogs and cats must be constructed so that:

(1) The primary enclosure is strong enough to contain the dogs and cats securely and comfortably and to withstand the normal rigors of transportation;

(2) The interior of the primary enclosure has no sharp points or edges and no protrusions that could injure the animal contained in it;

(3) The dog or cat is at all times securely contained within the enclosure and cannot put any part of its body outside the enclosure in a way that could result in injury to itself, to handlers, or to persons or animals nearby;

(4) The dog or cat can be easily and quickly removed from the enclosure in an emergency;

(5) Unless the enclosure is permanently affixed to the conveyance, adequate devices such as handles or handholds are provided on its exterior, and enable the enclosure to be lifted without tilting it, and ensure that anyone handling the enclosure will not come into physical contact with the animal contained inside;

(6) Unless the enclosure is permanently affixed to the conveyance, it is clearly marked on top and on one or more sides with the words "Live Animals," in letters at least 1 inch (2.5 cm.) high, and with arrows or other markings to indicate the correct upright position of the primary enclosure;

(7) Any material, treatment, paint, preservative, or other chemical used in or on the enclosure is nontoxic to the animal and not harmful to the health or well-being of the animal;

(8) Proper ventilation is provided to the animal in accordance with paragraph (c) of this section; and

(9) The primary enclosure has a solid, leak-proof bottom or a removable, leak-proof collection tray under a slatted or wire mesh floor that prevents seepage of waste products, such as excreta and body fluids, outside of the enclosure. If a slatted or wire mesh floor is used in the enclosure, it must be designed and constructed so that the animal cannot put any part of its body between the slats or through the holes in the mesh. Unless the dogs and cats are on raised slatted floors or raised floors made of wire mesh, the primary enclosure must contain enough previously unused litter to absorb and cover excreta. The litter must be of a suitably absorbent material that is safe and nontoxic to the dogs and cats.

(b) *Cleaning of primary enclosures.* A primary enclosure used to hold or transport dogs or cats in commerce must be cleaned and sanitized before each use in accordance with the methods provided in § 3.10(b)(3) of this subpart. If the dogs or cats are in transit for more than 24 hours, the enclosures must be cleaned and any litter replaced, or other methods, such as moving the animals to another enclosure, must be utilized to prevent the soiling of the dogs or cats by body wastes. If it becomes necessary to remove the dog or cat from the enclosure in order to clean, or to move the dog or cat to another enclosure, this procedure must be completed in a way that safeguards the dog or cat from injury and prevents escape.

(c) *Ventilation.* (1) Unless the primary enclosure is permanently affixed to the conveyance, there must be:

(i) Ventilation openings located on two opposing walls of the primary enclosure and the openings must be at least 16 percent of the surface area of each such wall, and the total combined surface area of the ventilation openings must be at least 14 percent of the total combined surface area of all the walls of the primary enclosure; or

(ii) Ventilation openings on three walls of the primary enclosure, and the openings on each of the two opposing walls must be at least 8 percent of the total surface area of the two walls, and the ventilation openings on the third wall of the primary enclosure must be at least 50 percent of the total surface area of that wall, and the total combined surface area of the ventilation openings must be at least 14 percent of the total combined surface area of all the walls of the primary enclosure; or

(iii) Ventilation openings located on all four walls of the primary enclosure and the ventilation openings on each of the four walls must be at least 8 percent of the total surface area of each such wall, and the total combined surface area of the openings must be at least 14 percent of total combined surface area of all the walls of the primary enclosure; and

(iv) At least one-third of the ventilation area must be located on the upper half of the primary enclosure.

(2) Unless the primary enclosure is permanently affixed to the conveyance, projecting rims or similar devices must be located on the exterior of each enclosure wall having a ventilation opening, in order to prevent obstruction of the openings. The projecting rims or similar devices must be large enough to provide a minimum air circulation space of 0.75 in. (1.9 cm) between the primary enclosure and anything the enclosure is placed against.

(3) If a primary enclosure is permanently affixed to the primary conveyance so that there is only a front ventilation opening for the enclosure, the primary enclosure must be affixed to the primary conveyance in such a way that the front ventilation opening cannot be blocked, and the front ventilation opening must open directly to an unobstructed aisle or passageway inside the conveyance. The ventilation opening must be at least 90 percent of the total area of the front wall of the enclosure, and must be covered with bars, wire mesh, or smooth expanded metal having air spaces.

(d) *Compatibility.* (1) Live dogs or cats transported in the same primary enclosure must be of the same species and be maintained in compatible groups, except that dogs and cats that are private pets, are of comparable size, and are compatible, may be transported in the same primary enclosure.

(2) Puppies or kittens 4 months of age or less may not be transported in the same primary enclosure with adult dogs or cats other than their dams.

(3) Dogs or cats that are overly aggressive or exhibit a vicious disposition must be transported individually in a primary enclosure.

(4) Any female dog or cat in heat (estrus) may not be transported in the same primary enclosure with any male dog or cat.

(e) *Space and placement.* (1) Primary enclosures used to transport live dogs and cats must be large enough to ensure that each animal contained in the primary enclosure has enough space to turn about normally while standing, to stand and sit erect, and to lie in a natural position.

(2) Primary enclosures used to transport dogs and cats must be positioned in the primary conveyance so as to provide protection from the elements.

(f) *Transportation by air.* (1) No more than one live dog or cat, 4 months of age or older, may be transported in the same primary enclosure when shipped via air carrier.

(2) No more than one live puppy, 8 weeks to 4 months of age, and weighing over 20 lbs (9 kg), may be transported in a primary enclosure when shipped via air carrier.

(3) No more than two live puppies or kittens, 8 weeks to 4 months of age, that are of comparable size, and weighing 20 lbs (9 kg) or less each, may be transported in the same primary enclosure when shipped via air carrier.

(4) Weaned live puppies or kittens less than 8 weeks of age and of comparable size, or puppies or kittens that are less than 8 weeks of age that are littermates and are accompanied by their dam, may be transported in the same primary enclosure when shipped to research facilities, including Federal research facilities.

(g) *Transportation by surface vehicle.* (1) No more than four live dogs or cats, 8 weeks of age or older, that are of comparable size, may be transported in the same primary enclosure when shipped by surface vehicle (including ground and water transportation) and only if all other requirements of this section are met.

(2) Weaned live puppies or kittens less than 8 weeks of age and of comparable size, or puppies or kittens that are less than 8 weeks of age that are littermates and are accompanied by their dam, may be transported in the same primary enclosure when shipped to research facilities, including Federal research facilities, and only if all other requirements in this section are met.

(h) *Accompanying documents and records.* Shipping documents that must accompany shipments of dogs and cats may be held by the operator of the primary conveyance, for surface transportation only, or must be securely attached in a readily accessible manner to the outside of any primary enclosure that is part of the shipment, in a manner that allows them to be detached for examination and securely reattached, such as in a pocket or sleeve. Instructions for food and water and for administration of drugs, medication, and other special care must be attached to each primary enclosure in a manner that makes them easy to notice, to detach for examination, and to reattach securely.

**§ 3.15 Primary conveyances (motor vehicle, rail, air, and marine).**

(a) The animal cargo space of primary conveyances used to transport dogs and cats must be designed, constructed, and

maintained in a manner that at all times protects the health and well-being of the animals transported in them, ensures their safety and comfort, and prevents the entry of engine exhaust from the primary conveyance during transportation.

(b) The animal cargo space must have a supply of air that is sufficient for the normal breathing of all the animals being transported in it.

(c) Each primary enclosure containing dogs or cats must be positioned in the animal cargo space in a manner that provides protection from the elements and that allows each dog or cat enough air for normal breathing.

(d) During air transportation, including time spent on the ground, dogs and cats must be held or transported in cargo areas that are heated or cooled as necessary to maintain an ambient temperature that ensures the health and well-being of the dogs or cats. The cargo areas must be pressurized when the primary conveyance used for air transportation is not on the ground, unless flying under 8,000 ft. Dogs and cats must have adequate air for breathing at all times when being transported.

(e) During surface transportation, auxiliary ventilation, such as fans, blowers or air conditioning, must be used in any animal cargo space containing live dogs or cats when the ambient temperature within the animal cargo space reaches 85 °F (29.5 °C). Moreover, the ambient temperature may not exceed 95 °F (35 °C) at any time; nor exceed 85 °F (29.5 °C) for a period of more than 4 hours; nor fall below 45 °F (7.2 °C) for a period of more than 4 hours; nor fall below 35 °F (1.7 °C) at any time.

(f) Primary enclosures must be positioned in the primary conveyance in a manner that allows the dogs and cats to be quickly and easily removed from the primary conveyance in an emergency.

(g) The interior of the animal cargo space must be kept clean.

(h) Live dogs and cats may not be transported with any material, substance (e.g., dry ice) or device in a manner that may reasonably be expected to harm the dogs and cats or cause inhumane conditions.

**§ 3.16 Food and water requirements.**

(a) Each dog and cat that is 16 weeks of age or more must be offered food at least once every 24 hours. Puppies and kittens less than 16 weeks of age must be offered food at least once every 12 hours. These time periods apply to dealers, exhibitors, research facilities, including Federal research facilities, who transport dogs and cats in their own primary conveyance, starting from the time the dog or cat was last offered food before transportation was begun. These time periods apply to carriers and intermediate handlers starting from the date and time stated on the certificate provided under § 3.13(d) of this subpart. Each dog or cat must be offered food within 12 hours before being transported in commerce. Consignors who are subject to the Animal Welfare regulations (9 CFR parts 1, 2, and 3) must certify that each dog and cat was offered food within the 12 hours preceding delivery of the dog or cat to a carrier or intermediate handler for transportation in commerce, and must certify the date and time of the feeding, in accordance with § 3.13(d) of this subpart.

(b) Each dog and cat must be offered potable water during the 4 hours immediately preceding the beginning of its transportation in commerce and at least once every 12 hours thereafter. This time period applies to dealers, exhibitors, and research facilities, including Federal research facilities, who transport dogs and cats in their own primary conveyance, starting from the time the dog or cat was last offered potable water before being transported in commerce. This time period applies to carriers and intermediate handlers starting from the date and time stated on the certificate provided under § 3.13(d) of this subpart. Consignors who are subject to the Animal Welfare regulations (9 CFR parts 1, 2, and 3) must certify that each dog and cat was offered potable water within 4 hours before being transported in commerce, and must certify the date and time the water was offered, in accordance with § 3.13(d) of this subpart.

(c) Any dealer, research facility, including a Federal research facility, or exhibitor offering any dog or cat to a carrier or intermediate handler for transportation in commerce must securely attach to the outside of the primary enclosure used for transporting the dog or cat, written instructions for the in-transit food and water requirements for the dogs and cats contained in the enclosure. The instructions must be attached in a manner that makes them easily noticed, detached and returned to the enclosure.

(d) Food and water receptacles must be securely attached inside the primary enclosure and placed so that the receptacles can be filled from outside the enclosure without opening the door. Food and water containers must be designed, constructed, and installed so that a dog or cat cannot leave the primary enclosure through the food or water opening.

**§ 3.17 Care in transit.**

(a) *Surface transportation (ground and water).* Any person subject to the Animal Welfare regulations transporting dogs or cats in commerce must ensure that the operator of the conveyance, or a person accompanying the operator, observes the dogs or cats as often as circumstance allow, but not less than once every 4 hours, to make sure they have sufficient air for normal breathing, that the ambient temperature is within the limits provided in § 3.15(e), and that all applicable standards of this subpart are being complied with. The regulated person must ensure that the operator or person accompanying the operator determines whether any of the dogs or cats are in obvious physical distress and obtains any veterinary care needed for the dogs or cats at the closest available veterinary facility.

(b) *Air transportation.* During air transportation of dogs or cats, it is the responsibility of the carrier to observe the dogs or cats as frequently as circumstance allow, but not less than once every 4 hours if the animal cargo area is accessible during flight. If the animal cargo area is not accessible during flight, the carrier must observe the dogs or cats whenever they are loaded and unloaded and whenever the animal cargo space is otherwise accessible to make sure they have sufficient air for normal breathing, that the animal cargo area meets the heating and cooling requirements of § 3.15(d), and that all other applicable standards of this subpart are being complied with. The carrier must determine whether any of the dogs or cats are in obvious physical distress, and arrange for any needed veterinary care as soon as possible.

(c) If a dog or cat is obviously ill, injured, or in physical distress, it must not be transported in commerce, except to receive veterinary care for the condition.

(d) Except during the cleaning of primary enclosures, as required in § 3.14(b) of this subpart, during transportation in commerce a dog or cat must not be removed from its primary enclosure, unless it is placed in another primary enclosure or facility that meets the requirements of § 3.6 or § 3.14 of this subpart.

(e) The transportation regulations contained in this subpart must be complied with until a consignee takes physical delivery of the dog or cat if the animal is consigned for transportation,

or until the animal is returned to the consignor.

**§ 3.18 Terminal facilities.**

(a) *Placement.* Any person subject to the Animal Welfare regulations (9 CFR parts 1, 2, and 3) must not commingle shipments of dogs or cats with inanimate cargo in animal holding areas of terminal facilities.

(b) *Cleaning, sanitization, and pest control.* All animal holding areas of terminal facilities must be cleaned and sanitized in a manner prescribed in § 3.10(b)(3) of this subpart, as often as necessary to prevent an accumulation of debris or excreta and to minimize vermin infestation and disease hazards. Terminal facilities must follow an effective program in all animal holding areas for the control of insects, ectoparasites, and birds and mammals that are pests to dogs and cats.

(c) *Ventilation.* Ventilation must be provided in any animal holding area in a terminal facility containing dogs or cats, by means of windows, doors, vents, or air conditioning. The air must be circulated by fans, blowers, or air conditioning so as to miminize drafts, odors, and moisture condensation. Auxiliary ventilation, such as exhaust fans, vents, fans, blowers, or air conditioning must be used in any animal holding area containing dogs and cats, when the ambient temperature is 75 °F (23.9 °C) or higher.

(d) *Temperature.* The ambient temperature in an animal holding area containing dogs or cats must not fall below 45 °F (7.2 °C) or rise above 75 °F (23.9 °C) for more than four consecutive hours at any time dogs or cats are present. The ambient temperature must not fall below 35 °F (1.7 °C) or rise above 85 °F (29.5 °C) at any time dogs or cats are present. The ambient temperature must be measured in the animal holding area by the carrier, intermediate handler, or a person transporting dogs or cats who is subject to the Animal Welfare regulations (9 CFR parts 1, 2, and 3), outside any primary enclosure containing a dog or cat at a point not more than 3 feet (0.91 m) away from an outside wall of the primary enclosure, and approximately midway up the side of the enclosure.

(e) *Shelter.* Any person subject to the Animal Welfare regulations (9 CFR parts 1, 2, and 3) holding a live dog or cat in an animal holding area of a terminal facility must provide the following:

(1) *Shelter from sunlight and extreme heat.* Shade must be provided that is sufficient to protect the dog or cat from the direct rays of the sun.

(2) *Shelter from rain or snow.* Sufficient protection must be provided to allow the dogs or cats to remain dry during rain, snow, and other precipitation.

(f) *Duration.* The length of time any person subject to the Animal Welfare regulations (9 CFR parts 1, 2, and 3) can hold dogs or cats in animal holding areas of terminal facilities upon arrival is the time as that provided in § 3.13(g) of this subpart.

**§ 3.19 Handling.**

(a) Any person subject to the Animal Welfare regulations (9 CFR parts 1, 2, and 3) who moves (including loading or unloading) dogs or cats within, to, or from the animal holding area of a terminal facility or a primary conveyance must do so as quickly and efficiently as possible and must provide the following during movement of the dog or cat:

(1) *Shelter from sunlight and extreme heat.* Sufficient shade must be provided to protect the dog or cat from the direct rays of the sun. The dog or cat must not be exposed to an ambient air temperature above 85 °F (29.5 °C) for a period of more than 45 minutes while being moved to or from a primary conveyance or a terminal facility. The temperature must be measured in the manner provided in § 3.18(d) of this subpart.

(2) *Shelter from rain and snow.* Sufficient protection must be provided to allow the dogs and cats to remain dry during rain, snow, and other precipitation.

(3) *Shelter from cold temperatures.* Transporting devices on which live dogs or cats are placed to move them must be covered to protect the animals when the outdoor temperature falls below 50 °F (10 °C). The dogs or cats must not be exposed to an ambient temperature below 45 °F (7.2 °C) for a period of more than 45 minutes, unless they are accompanied by a certificate of acclimation to lower temperatures as provided in § 3.13(f). The temperature must be measured in the manner provided in § 3.18(d) of this subpart.

(b) Any person handling a primary enclosure containing a dog or cat must use care and must avoid causing physical harm or emotional distress to the dog or cat.

(1) A primary enclosure containing a live dog or cat must not be placed on unattended conveyor belts, or on elevated conveyor belts, such as baggage claim conveyor belts and inclined conveyor ramps that lead to baggage claim areas, at any time; except that a primary enclosure may be placed on inclined conveyor ramps used to load and unload aircraft if an attendant is present at each end of the conveyor belt.

(2) A primary enclosure containing a dog or cat must not be tossed, dropped, or needlessly tilted, and must not be stacked in a manner that may reasonably be expected to result in its falling. It must be handled and positioned in the manner that written instructions and arrows on the outside of the primary enclosure indicate.

(c) This section applies to movement of a dog or cat from primary conveyance to primary conveyance, within a primary conveyance or terminal facility, and to or from a terminal facility or a primary conveyance.

3. Subpart D would be revised to read as follows:

**Subpart D—Specifications for the Humane Handling, Care, Treatment, and Transportation of Nonhuman Primates**

**Facilities and Operating Standards**

Sec.
3.75 Housing facilities, general.
3.76 Indoor housing facilities.
3.77 Sheltered housing facilities.
3.78 Outdoor housing facilities.
3.79 Mobile or traveling housing facilities.
3.80 Primary enclosures.
3.81 Environment enhancement to promote psychological well-being.

**Animal Health and Husbandry Standards**

3.82 Feeding.
3.83 Watering.
3.84 Cleaning, sanitization, housekeeping, and pest control.
3.85 Employees.

**Transportation Standards**

3.86 Consignments to carriers and intermediate handlers.
3.87 Primary enclosures used to transport nonhuman primates.
3.88 Primary conveyances (motor vehicles, rail, air, and marine).
3.89 Food and water requirements.
3.90 Care in transit.
3.91 Terminal facilities.
3.92 Handling.

## Subpart D—Specifications for the Humane Handling, Care, Treatment, and Transportation of Nonhuman Primates[1]

### Facilities and Operating Standards

**§ 3.75 Housing facilities, general.**

(a) *Structure; construction.* Housing facilities for nonhuman primates must

[1] Nonhuman primates include a great diversity of forms, ranging from the marmoset weighing only a few ounces, to the adult gorilla weighing hundreds of pounds, and include more than 240 species. They come from Asia, Africa, and Central and South America, and they live in different habitats in nature. Some have been transported to the United

Continued

be designed and constructed so that they are structurally sound for the species of nonhuman primates housed in them. They must be kept in good repair, and they must protect the animals from injury, contain the animals securely, and restrict other animals and unauthorized humans from entering.

(b) *Condition and site.* Housing facilities and areas used for storing animal food or bedding must be free of any accumulation of trash, waste material, junk, weeds, and other discarded materials. Animal areas inside of housing facilities must be kept neat and free of clutter, including equipment, furniture, or stored material, but may contain materials actually used and necessary for cleaning the area, and fixtures and equipment necessary for proper husbandry practices and research needs. Housing facilities other than those maintained by research facilities and Federal research facilities must by physically separated from any other businesses. If a housing facility is located on the same premises as any other businesses, it must be physically separated from the other businesses so that unauthorized humans, and animals the size of dogs, skunks, and raccoons, are prevented from entering it.

(c) *Surfaces*—(1) *General requirements.* The surfaces of housing facilities—including perches, shelves, swings, boxes, houses, dens, and other furniture-type fixtures or objects within the facility—must be constructed in a manner and made of materials that allow them to be readily cleaned and sanitized, or removed or replaced when worn or soiled. Furniture-type fixtures or objects must be sturdily constructed and must be strong enough to provide for the safe activity and welfare of nonhuman primates. Floors may be made of dirt, absorbent bedding, sand, gravel, grass, or other similar material that can be readily cleaned, or can be removed or replaced whenever cleaning does not eliminate odors, diseases, pests, insects, or vermin. Any surfaces that come in contact with nonhuman primates must:

(i) Be free of excessive rust that prevents the required cleaning and sanitization, or that affects the structural strength of the surface; and

(ii) Be free of jagged edges or sharp points that might injure the animals.

(2) *Maintenance and replacement of surfaces.* All surfaces must be maintained on a regular basis. Surfaces of housing facilities—including houses, dens, and other furniture-type fixtures and objects within the facility—that cannot be readily cleaned and sanitized, must be replaced when worn or soiled.

(3) *Cleaning.* Hard surfaces with which nonhuman primates come in contact must be spot-cleaned daily and sanitized in accordance with § 3.84 of this subpart to prevent any accumulation of excreta or disease hazards, unless the species housed in the facility engage in scent marking. If the species scent mark, the surfaces must be sanitized or replaced at regular intervals as determined by the attending veterinarian in accordance with generally accepted professional and husbandry practices. Floors made of dirt, absorbent bedding, sand, gravel, grass, or other similar material, and planted enclosures must be raked or spot-cleaned with sufficient frequency to ensure all animals the freedom to avoid contact with excreta. Contaminated material must be removed or replaced whenever raking and spot cleaning does not eliminate odors, diseases, insects, pests, or vermin infestation. All other surfaces of housing facilities must be cleaned and sanitized when necessary to satisfy generally accepted husbandry standards and practices. Sanitization may be done by any of the methods provided in § 3.84(b)(3) of this subpart for primary enclosures.

(d) *Water and electric power.* The housing facility must have reliable electric power adequate for heating, cooling, ventilation, and lighting, and for carrying out other husbandry requirements in accordance with the regulations in this subpart. The housing facility must provide running potable water for the nonhuman primates' drinking needs. It must be adequate for cleaning and for carrying out other husbandry requirements.

(e) *Storage.* Supplies of food and bedding must be stored in a manner that protects the supplies from spoilage, contamination, and vermin infestation. The supplies must be stored off the floor and away from the walls, to allow cleaning underneath and around the supplies. Food requiring refrigeration must be stored accordingly, and all food must be stored in a manner that prevents contamination and deterioration of its nutritive value. Only the food and bedding currently being used may be kept in animal areas, and when not in actual use, open food and bedding supplies must be kept in leakproof containers with tightly fitting lids to prevent spoilage and contamination. Substances that are toxic to the nonhuman primates must not be stored in food storage and preparation areas, but may be stored in cabinets in the animal areas.

(f) *Drainage and waste disposal.* Housing facility operators must provide for regular and frequent collection, removal, and disposal of animal and food wastes, bedding, dead animals, debris, garbage, water, and any other fluids and wastes, in a manner that minizes contamination and disease risk. Housing facilities must be equipped with disposal facilities and drainage systems that are constructed and operated so that animal wastes and water are rapidly eliminated and the animals stay dry. Disposal and drainage systems must minimize vermin and pest infestation, insects, odors and disease hazards. All drains must be properly constructed, installed, and maintained. If closed drainage systems are used, they must be equipped with traps and prevent the backflow of gases and the backup of sewage onto the floor. If the facility uses sump ponds, settlement ponds, or other similar systems for drainage and animal waste disposal, the system must be located far enough away from the animal area of the housing facility to prevent odors, diseases, insects, pests, and vermin infestation. If drip or constant flow watering devices are used to provide water to the animals, excess water must be rapidly drained out of the animal areas by gutters or pipes so that the animals stay dry. Standing puddles of water in animal areas must be mopped up or drained so that the animals remain dry. Trash containers in housing facilities and in food storage and food preparation areas must be leakproof and must have tightly fitted lids on them at all times. Dead animals, animal parts, and animal waste must not be kept in food storage or food preparation areas, food freezers, food refrigerators, and animal areas.

(g) *Washrooms and sinks.* Washing facilities, such as washrooms, basins, sinks, or showers must be provided for animal caretakers and must be readily accessible.

**§ 3.76 Indoor housing facilities.**

(a) *Heating, cooling, and temperature.* Indoor housing facilities must be sufficiently heated and cooled when necessary to protect nonhuman primates from temperature extremes and to provide for their health and well-being. The ambient temperature in the facility

States from their natural habitats and some have been raised in captivity in the United States. Their nutritional and activity requirements differ, as do their social and environmental requirements. As a result; the conditions appropriate for one species do not necessarily apply to another. Accordingly, these minimum specifications must be applied in accordance with the customary and generally accepted professional and husbandry practices considered appropriate for each species, and necessary to promote their psychological well-being.

These minimum standards apply only to live nonhuman primates, unless stated otherwise.

must not fall below 45° F (7.2° C) and must not rise above 95° F (35° C) when nonhuman primates are present. The ambient temperature must be maintained at a level that ensures the health and well-being of the species housed, as directed by the attending veterinarian, in accordance with generally accepted professional and husbandry practices.

(b) *Ventilation.* Indoor housing facilities must be sufficiently ventilated at all times when nonhuman primates are present to provide for their health and well-being and to minimize odors, drafts, ammonia levels, and moisture condensation. Ventilation must be provided by windows, door, vents, fans, or air conditioning. Auxiliary ventilation, such as fans, blowers, or air conditioning, must be provided when the ambient temperature is 85° F (29.5° C) or higher. The relative humidity maintained must be at a level that ensures the health and well-being of the animals housed, as directed by the attending veterinarian, in accordance with generally accepted professional and husbandry practices.

(c) *Lighting.* Indoor housing facilities must be lighted well enough to permit routine inspection and cleaning of the facility, and observation of the nonhuman primates. Animal areas must be provided a regular diurnal lighting cycle of either natural or artificial light. Lighting must be uniformly diffused throughout animal facilities and provide sufficient illumination to aid in maintaining good housekeeping practices, adequate cleaning, adequate inspection of animals, and for the well-being of the animals. Primary enclosures must be placed in the housing facility so as to protect the nonhuman primates from excessive light.

**§ 3.77 Sheltered housing facilities.**

(a) *Heating, cooling, and temperature.* The sheltered part of sheltered housing facilities must be sufficiently heated and cooled when necessary to protect the nonhuman primates from temperature extremes, and to provide for their health and well-being. The ambient temperature in the sheltered part of the facility must not fall below 45° F (7.2° C) and must not rise above 95° F (35° C) when nonhuman primates are present. The ambient temperature must be maintained at a level that ensures the health and well-being of the species housed, as directed by the attending veterinarian, in accordance with generally accepted professional and husbandry practices.

(b) *Ventilation.* The sheltered part of sheltered animal facilities must be sufficiently ventilated at all times to provide for the health and well-being of nonhuman primates and to minimize odors, drafts, ammonia levels, and moisture condensation. Ventilation must be provided by windows, doors, vents, fans, or air conditioning. Auxiliary ventilation, such as fans, blowers, or air conditioning, must be provided when the ambient temperature is 85 °F (29.5 °C) or higher. The relative humidity maintained must be at a level that ensures the health and well-being of the species housed, as directed by the attending veterinarian, in accordance with generally accepted professional and husbandry practices.

(c) *Lighting.* The sheltered part of sheltered housing facilities must be lighted well enough to permit routine inspection and cleaning of the facility, and observation of the nonhuman primates. Animal areas must be provided a regular diurnal lighting cycle of either natural or artificial light. Lighting must be uniformly diffused throughout animal facilities and provide sufficient illumination to aid in maintaining good houskeeping practices, adequate cleaning, adequate inspection of animals, and for the well-being of the animals. Primary enclosures must be placed in the housing facility so as to protect the nonhuman primates from excessive light.

(d) *Shelter from the elements.* Sheltered housing facilities for nonhuman primates must provide adequate shelter from the elements at all times. They must provide protection from the sun, rain, snow, wind, and cold, and from any weather conditions that may occur.

(e) *Capacity; multiple shelters.* Both the sheltered part of sheltered housing facilities and any other necessary shelter from the elements must be sufficiently large to provide protection comfortably to each nonhuman primate housed in the facility. If aggressive or dominant animals are housed in the facility with other animals there, must be multiple shelters or other means to ensure that each nonhuman primate has access to shelter.

(f) *Perimeter fence.* The outdoor area of a sheltered housing facility must be enclosed by a fence that is of sufficient height to keep unwanted species out. Fences less than 6 feet high must be approved by the Administrator. The fence must be constructed so that it protects nonhuman primates by preventing unauthorized humans, and animals the size of dogs, skunks, and raccoons, from going through it or under it and having contact with the nonhuman primates. It must be of sufficient distance from the outside wall or fence of the primary enclosure to prevent physical contact between animals inside the enclosure and outside the perimeter fence. Such fences less than 3 feet in distance from the primary enclosure must be approved by the Administrator. A perimeter fence is not required if:

(1) The outside walls of the primary enclosure are made of a sturdy, durable material such as concrete, wood, plastic, metal, or glass, and are high enough and constructed in a manner that prevents contact with or entry by humans and animals that are outside the sheltered housing facility; or

(2) The housing facility is surrounded by a natural barrier that restricts the nonhuman primates to the housing facility and protects them from contact with unauthorized humans and animals that are outside the sheltered housing facility, and the Administrator gives written permission.

(g) *Public barriers.* Fixed public exhibits housing nonhuman primates, such as zoos, must have a barrier between the primary enclosure and the public at any time the public is present, that prevents physical contact between the public and the nonhuman primates. Nonhuman primates used in trained animal acts or in uncaged public exhibits must be under the direct control and supervision of an experienced handler or trainer at all times when the public is present. Trained nonhuman primates may be permitted physical contact with the public, as allowed under § 2.131, but only if they are under the direct control and supervision of an experienced handler or trainer at all times during the contact.

**§ 3.78 Outdoor housing facilities.**

(a) *Acclimation.* Only nonhuman primates that are acclimated to the prevailing temperature and humidity at the outdoor housing facility during the time of year they are at the facility, and that can tolerate the range of temperatures and climatic conditions known to occur at the facility at that time of year without stress or discomfort, may be kept in outdoor facilities.

(b) *Shelter from the elements.* Outdoor housing facilities for nonhuman primates must provide adequate shelter from the elements at all times. It must provide protection from the sun, rain, snow, wind, and cold, and from any weather conditions that may occur. The shelter must provide heat to the nonhuman primates to prevent the ambient temperature from falling below 45 °F (7.2 °C), except as directed by the attending veterinarian and in

accordance with generally accepted professional and husbandry practices.

(c) *Capacity; multiple shelters.* The shelter must be sufficiently large to comfortably provide protection for each nonhuman primates housed in the facility. If aggressive or dominant animals are housed in the facility with other animals there must be multiple shelters, or other means to ensure protection for each nonhuman primate housed in the facility.

(d) *Perimeter fence.* An outdoor housing facility must be enclosed by a fence that is of sufficient height to keep unwanted species out. Fences less than 6 feet high must be approved by the Administrator. The fence must be constructed so that it protects nonhuman primates by preventing unauthorized humans, and animals the size of dogs, skunks, and raccoons from going through it or under it and having contact with the nonhuman primates. It must be of sufficient distance from the outside wall or fence of the primary enclosure to prevent physical contact between animals inside the enclosure and outside the perimeter fence. Such fences less than 3 feet in distance from the primary enclosure must be approved by the Administrator. A perimeter fence is not required if:

(1) The outside walls of the primary enclosure are made of a sturdy, durable material such as concrete, wood, plastic, metal, or glass, and are high enough and constructed in a manner that prevents contact with or entry by humans and animals that are outside the housing facility; or

(2) The housing facility is surrounded by a natural barrier that restricts the nonhuman primates to the housing facility and protects them from contact with unauthorized humans and animals that are outside the housing facility, and the Administrator gives written permission.

(e) *Public barriers.* Fixed public exhibits housing nonhuman primates, such as zoos, must have a barrier between the primary enclosure and the public at any time the public is present, in order to prevent physical contact between the public and the nonhuman primates. Nonhuman primates used in trained animal acts or in uncaged public exhibits must be under the direct control and supervision of an experienced handler or trainer at all times when the public is present. Trained nonhuman primates may be allowed physical contact with the public, but only if they are under the direct control and supervision of an experienced handler or trainer at all times during the contact.

**§ 3.79 Mobile or traveling housing facilities.**

(a) *Heating, cooling, and temperature.* Mobile or traveling housing facilities must be sufficiently heated and cooled when necessary to protect nonhuman primates from temperature extremes and to provide for their health and well-being. The ambient temperature in the traveling housing facility must not fall below 45 °F (7.2 °C) and must not rise above 95 °F (35 °C) when nonhuman primates are present. The ambient temperature must be maintained at a level that ensures the health and well-being of the species housed, as directed by the attending veterinarian, and in accordance with generally accepted professional and husbandry practices.

(b) *Ventilation.* Traveling housing facilities must be sufficiently ventilated at all times when nonhuman primates are present to provide for the health and well-being of nonhuman primates and to minimize odors, drafts, ammonia levels, moisture condensation, and exhaust fumes. Ventilation must be provided by means of windows, doors, vents, fans, or air conditioning. Auxiliary ventilation, such as fans, blowers, or air conditioning, must be provided when the ambient temperature in the traveling housing facility is 85 °F (29.5 °C) or higher.

(c) *Lighting.* Mobile or traveling housing facilities must be lighted well enough to permit routine inspection and cleaning of the facility, and observation of the nonhuman primates. Animal areas must be provided a regular diurnal lighting cycle of either natural or artifical light. Lighting must be uniformly diffused throughout animal facilities and provide sufficient illumination to aid in maintaining good housekeeping practices, adequate cleaning, adequate inspection of animals, and for the well-being of the animals. Primary enclosures must be placed in the housing facility so as to protect the nonhuman primates from excessive light.

(d) *Public barriers.* There must be a barrier between a mobile or traveling housing facility and the public at any time the public is present, in order to prevent physical contact between the nonhuman primates and the public. Nonhuman primates used in traveling exhibits, trained animal acts, or in uncaged public exhibits must be under the direct control and supervision of an experienced handler or trainer at all times when the public is present. Trained nonhuman primates may be allowed physical contact with the public, but only if they are under the direct control and supervision of an experienced handler or trainer at all times during the contact.

**§ 3.8 Primary enclosures.**

Primary enclosures for nonhuman primates must meet the following minimum requiremetns:

(a) *General requirements.* (1) Primary enclosures must be designed and constructed of suitable materials so that they are structurally sound for the species of nonhuman primates contained in them. They must be kept in good repair.

(2) Primary enclosures must be constructed and maintained so that they:

(i) Have no sharp points or edges that could injure the nonhuman primates;

(ii) Protect the nonhuman primates from injury;

(iii) Contain the nonhuman primates securely and prevent accidental opening of the enclosure, including opening by the animal, and unauthorized release of the nonhuman primates;

(iv) Keep other unwanted animals and unauthorized individuals from entering the enclosure or having physical contact with the nonhuman primates;

(v) Enable the nonhuman primates to remain dry and clean;

(vi) Provide shelter and protection from extreme temperatures and weather conditions that may be uncomfortable or hazardous to the species of nonhuman primate contained;

(vii) Provide sufficient shade to shelter all the nonhuman primates housed in the primary enclosure at one time;

(viii) Provide the nonhuman primates with easy and convenient access to clean food and water;

(ix) Enable all surafces in contact with nonhuman primates to be readily cleaned and sanitized in accordance with § 3.84(b)(3) of this subpart, or replaced when worn or soiled;

(x) Have floors that are constructed in a manner that protects the nonhuman primates from injuring themeslves; and

(xi) Provide sufficient space for the nonhuman primates to make normal postural adjustments with freedom of movement.

(b) *Minimum space requirements.* Primary enclosures must meet the minimum space requirements provided in this subpart. These minimum space requirements must be met even if perches, ledges, swings, or other suspended fixtures are placed in the enclosure. Low perches and ledges will be counted as part of the floor space.

(1) The minimum space that must be provided to each nonhuman primate, whether housed individually or with other nonhuman primates, will be determined by the typical weight of animals of its species, except for

branchiating species and great apes,[2] and will be calculated by using the following table: [3]

| Group | Weight | | Floor area/animal | | Height | |
|---|---|---|---|---|---|---|
| | lbs. | (kg.) | ft.² | (m²) | in. | (cm.) |
| 1 | Under 2.2 | (Under 1) | 1.6 | (0.15) | 20 | (50.8) |
| 2 | 2.2-6.6 | (1-3) | 3.0 | (0.28) | 30 | (76.2) |
| 3 | 6.6-22.0 | (3-10) | 4.3 | (0.40) | 30 | (76.2) |
| 4 | 22.0-33.0 | (10-15) | 6.0 | (0.56) | 32 | (81.28) |
| 5 | 33.0-55.0 | (15-25) | 8.0 | (0.74) | 36 | (91.44) |
| 6 | Over 55.0 | (Over 25) | 25.1 | (2.33) | 84 | (213.36) |

(2) Dealers, exhibitors, and research facilities, including Federal research facilities, must provide great apes weighing over 110 lbs. (50 kg) an additional volume of space in excess of that required for group 6 animals as set forth in paragraph (b)(1) of this section, to allow for normal postural adjustments.

(3) Innovative primary enclosures not precisely meeting the floor area and height requirements provided in paragraph (b)(1) of this section, but that do provide nonhuman primates with a sufficient volume of space and the opportunity to express species-typical behavior, may be used at research facilities when approved by the Committee, and by dealers and exhibitors when approved by the Administrator.

(4) In the case of research facilities, any exemption from these standards must be required by a research proposal or the judgment of the attending veterinarian and must be approved by the Committee. In the case of dealers and exhibitors, any exemption from these standards must be required in the judgment of the attending veterinarian and approved by the Administrator.

(5) When more than one nonhuman primate is housed in a primary enclosure, the minimum space requirement for the enclosure is the sum of the minimum floor area space required for each individual nonhuman primate in the table in paragraph (b)(1) of this section, and the minimum height requirement for the largest nonhuman primate housed in the enclosure. *Provided however,* That mothers with infants less than 6 months of age may be maintained together in primary enclosures that meet the floor area space and height requirements of the mother.

**§ 3.81 Environment enhancement to promote psychological well-being.**

Dealers, exhibitors, and research facilities must develop, document, and follow a plan for environment enhancement adequate to promote the psychological well-being of nonhuman primates. Such plan must be in accordance with the currently accepted professional standards as cited in appropriate professional journals or reference guides, and as directed by the attending veterinarian. This plan must be made available to APHIS, and, in the case of research facilities, to officials of any pertinent funding agency. *Provided, however:* That the plan, as a minimum, must address each of the following:

(a) *Social grouping.* The environment enhancement plan must include specific provisions to address the social needs of nonhuman primates of species known to exist in social groups in nature. Such specific provisions must be in accordance with currently accepted professional standards, as cited in appropriate professional journals or reference guides, and as directed by the attending veterinarian. The plan may provide for the following exceptions:

(1) If a nonhuman primate exhibits viscious or overly aggressive behavior, or is debilitated as a result of age or other conditions (e.g., arthritis), it should be housed separately;

(2) Nonhuman primates that have or are suspected of having a contagious disease must be isolated from healthy animals in the colony as directed by the attending veterinarian. When an entire group or room of nonhuman primates is known to have or believed to be exposed to an infectious agent, the group may be kept intact during the process of diagnosis, treatement, and control.

(3) Nonhuman primates may not be housed with other species of primates or animals unless they are compatible, do not prevent access to food, water, or shelter by individual animals, and are not known to be hazardous to the health and well-being of each other. Compatibility of nonhuman primates must be determined in accordance with generally accepted professional practices and actual observations, as directed by the attending veterinarian, to ensure that the nonhuman primates are in fact compatible. Individually housed nonhuman primates must be able to see and hear nonhuman primates of their own or compatible species unless the attending veterinairan determines that it would endanger their health, safety, or well-being.

(b) *Environmental enrichment.* The physical environment in the primary enclosures must be enriched by providing means of expressing noninjurious species-typical activities. Species differences should be considered when determining the type of methods of enrichment. Examples of environmental enrichments include providing perches, swings, mirrors, and

[2] The different species of nonhuman primates are divided into six weight groups for determining minimum space requirements, except that all brachiating species of any weight are grouped together since they require additional space to engage in species-typical behavior. The grouping provided is based upon the typical weight for various species and not on changes associated with obesity, aging, or pregnancy. These conditions will not be considered in determining a nonhuman primate's weight group unless the animal is obviously unable to make normal postural adjustments and movements within the primary enclosure. Different species of prosimians vary in weight and should be grouped with their appropriate weight group. They have not been included in the weight table since different species typically fall into different weight groups. Infants and juveniles of certain species are substantially lower in weight than adults of those species and require the minimum space requirements of lighter weight species, unless the animal is obviously unable to make normal postural adjustments and movements within the primary enclosure.

[3] Examples of the kinds of nonhuman primates typically included in each age group are:

Group 1—marmosets, tamarins, and infants (less than 6 months of age) of various species.

Group 2—capuchins, squirrel monkeys and similar sizes species, and juveniles (6 months to 3 years of age) of various species.

Group 3—macaques and African species.

Group 4—male macaques and large African species.

Group 5—baboons and nonbrachiating species larger than 33.0 lbs. (15 kg.).

Group 6—great apes over 55.0 lbs. (25 kg.), except as provided in paragraph (b)(2) of this section, and branchiating species.

other increased cage complexities; providing objects to manipulate; varied food items; using foraging or task-oriented feeding methods; and providing interaction with the care giver or other familiar and knowledgeable person consistent with personnel safety precautions.

(c) *Special considerations.* Certain nonhuman primates must be provided special attention regarding enhancement of their environment, based on the needs of the individual species and in accordance with the instructions of the attending veterinarian. Nonhuman primates requiring special attention are the following:

(1) Infants and young juveniles;

(2) Those that show signs of being in psychological distress through behavior or appearance;

(3) Those used in research for which the Committee-approved protocol rquires restricted activity;

(4) Individually housed nonhuman primates that are unable to see and hear nonhuman primates of their own or compatible species; and

(5) Great apes weighing over 110 lbs. (50 kg). Dealers, exhibitors, and research facilities must include in the environment enhancement plan special provisions for great apes weighing over 110 lbs. (50 kg), including additional opportunities to express especies-typical behavior.

(d) *Restraint devices.* Nonhuman primates must not be maintained in restraint devices unless required for health reasons as determined by the attending veterinarian or by a research proposal approved by the Committee at research facilities. Maintenance under such restraint must be for the shortest period possible. In instances where long-term (more than 12 hours) restraint is required, the nonhuman primate must be provided the opportunity daily for unrestrained activity for at least one continuous hour during the period of restraint, unless continuous restraint is required by the research proposal approved by the Committee at research facilities.

(e) *Exemptions.* (1) The attending veterinarian may exempt individual nonhuman primates from participation in the environment enhancement plan because of their health or condition, or in consideration of their well-being. The basis of the exemption must be recorded by the attending veterinarian for each nonhuman primate. Unless the basis for the exemption is a permanent condition, the exemption must be reviewed at least every 30 days by the attending veterinarian.

(2) For a research facility, the Committee may exempt certain individual nonhuman primates from participation in some or all of the otherwsie required environment enhancement plans for scientific reasons set forth in the research proposal. The basis of the exemption shall be documented in the approved proposal and must be reviewed at appropriate intervals as determined by the Committee, but not less than annually.

(3) Records of any exemptions must be maintained by the dealer, exhibitor, or research facility and must be made available to USDA officials of any pertinent funding Federal agency upon request.

## Animal Health and Husbandry Standards

### § 3.92 Feeding.

(a) The diet for nonhuman primates must be appropriate for the species, size, age, and condition of the animal, and for the conditions in which the nonhuman primate is maintained, according to generally accepted professional and husbandry practices and nutritional standards. The food must be clean, wholesome, and palatable to the animals. It must be of sufficient quantity and have sufficient nutritive value to maintain a healthful condition and weight range of the animal and to meet its normal daily nutritional requirements.

(b) Nonhuman primates must be fed at least once each day except as otherwise might be required to provide adequate veterinary care. Infant and juvenile nonhuman primates must be fed as often as necessary in accordance with generally accepted professional and husbandry practices and nutritional standards, based upon the animals' age and condition.

(c) Food and food receptacles, if used, must be readily accessible to all the nonhuman primates being fed. If members of dominant nonhuman primate or other species are fed together with other nonhuman primates, multiple feeding sites must be provided. The animals must be observed to determine that all receive a sufficient quantity of food.

(d) Food and food receptacles, if used, must be located so as to minimize any risk of contamination by excreta and pests. Food receptacles must be kept clean and must be sanitized in accordance with the procedures listed in § 3.84(b)(3) of this subpart at least once every 2 weeks. Used food receptacles must be sanitized before they can be used to provide food to a different nonhuman primate or social grouping of nonhuman primates. Measures must be taken to ensure there is no molding, deterioration, contamination, or caking or wetting of food placed in self-feeders.

### § 3.83 Watering.

Potable water must be provided in sufficient quantity to every nonhuman primate housed at the facility. If potable water is not continually available to the nonhuman primates, it must be offered to them at least twice daily for periods of at least 1 hour each time, unless otherwise required by the attending veterinarian, or as required by the research proposal approved by the Committee at research facilities. Water receptacles must be cleaned and sanitized in accordance with methods provided in § 3.84(b)(3) of this subpart at least once every 2 weeks or as often as necessary to keep them clean and free from contamination. Used water receptacles must be sanitized before they can be used to provide water to a different nonhuman primate or social grouping of nonhuman primates.

### § 3.84 Cleaning, sanitization, housekeeping, and pest control.

(a) *Cleaning of primary enclosures.* Excreta and food waste must be removed from inside each indoor primary enclosure daily and from underneath them as often as necessary to prevent an excessive accumulation of feces and food waste, to prevent the nonhuman primates from becoming soiled, and to reduce disease hazards, insects, pests, and odors. Dirt floors, floors with absorbent bedding, and planted areas in primary enclosures must be spot-cleaned with sufficient frequency to ensure all animals the freedom to avoid contact with excreta, or as often as necessary to reduce disease hazards, insects, pests, and odors. When using water to clean the primary enclosure, whether by hosing, flushing, or other method, a stream of water must not be directed at a nonhuman primate. When steam is used to clean the primary enclosures, nonhuman primates must be removed or adequately protected to prevent them from being injured. Perches, bars, and shelves must be kept clean and replaced when worn. If the species of the nonhuman primates housed in the primary enclosure engages in scent marking, hard surfaces in the primary enclosure must be spot-cleaned daily.

(b) *Sanitization of primary enclosures and food and water receptacles.* (1) A used primary enclosure must be sanitized in accordance with this section before it can be used to house another nonhuman primate or group of nonhuman primates.

(2) Indoor primary enclosures must be sanitized at least once every 2 weeks and as often as necessary to prevent an excessive accumulation of dirt, debris, waste, food waste, excreta, or disease hazard, using one of the methods prescribed in paragraph (b)(3) of this section. However, if the species of nonhuman primates housed in the primary enclosure engages in scent marking, the primary enclosure must be sanitized are regular intervals determined in accordance with generally accepted professional and husbandry practices.

(3) Hard surfaces of primary enclosures and food and water receptacles must be sanitized using one of the following methods:

(i) Live steam under pressure;

(ii) Washing with hot water (at least 180 °F (82.2 °C)) and soap or detergent, such as in a mechanical cage washer;

(iii) Washing all soiled surfaces with appropriate detergent solutions or disinfectants, or by using a combination detergent/disinfectant product that accomplishes the same purpose, with a thorough cleaning of the surfaces to remove organic material, so as to remove all organic material and mineral buildup, and to provide sanitization followed by a clean water rinse.

(4) Primary enclosures containing material that cannot be sanitized using the methods provided in paragraph (b)(3) of this section, such as sand, gravel, dirt, absorbent bedding, grass, or planted areas, must be sanitized by removing the contaminated material as necessary to prevent odors, diseases, pest, insects, and vermin infestation.

(c) *Housekeeping for premises.* Premises where housing facilities are located, including buildings and surrounding grounds, must be kept clean and in good repair in order to protect the nonhuman primates from injury, to facilitate the husbandry practices required in this subpart, and to reduce or eliminate breeding and living areas for rodents, pests, and vermin. Premises must be kept free of accumulations of trash, junk, waste, and discarded matter. Weeds, grass, and bushes must be controlled so as to facilitate cleaning of the premises and pest control.

(d) *Pest control.* An effective program for control of insects, external parasites affecting nonhuman primates, and birds and mammals that are pests, must be established and maintained so as to promote the health and well-being of the animals and reduce contamination by pests in animal areas.

**§ 3.85 Employees.**

Every person subject to the Animal Welfare regulations (9 CFR parts 1, 2, and 3) maintaining nonhuman primates must have enough employees to carry out the level of husbandry practices and care required in this subpart. The employees who provide husbandry practices and care, or handle nonhuman primates, must be trained and supervised by an individual who has the knowledge, background, and experience in proper husbandry and care of nonhuman primates to supervise others. The employer must be certain that the supervisor can perform to these standards.

**Transportation Standards**

**§ 3.86 Consignments to carriers and intermediate handlers.**

(a) Carriers and intermediate handlers must not accept a nonhuman primate for transport in commerce more than 4 hours before the scheduled departure time of the primary conveyance on which the animal is to be transported. However, a carrier or intermediate handler may agree with anyone consigning a nonhuman primate to extend this time by up to 2 hours.

(b) Carriers and intermediate handlers must not accept a nonhuman primate for transport in commerce unless they are provided with the name, address, telephone number, and telex number, if applicable, of the consignee.

(c) Carriers and intermediate handlers must not accept a nonhuman primate for transport in commerce unless written instructions concerning in-transit food and water requirements for each nonhuman primate in the shipment are securely attached to the outside of its primary enclosure in a manner that makes them easily noticed and read.

(d) Carriers and intermediate handlers must not accept a nonhuman primate for transport in commerce unless the consignor certifies in writting to the carrier or intermediate handler that the nonhuman primate was offered food during the 12 hours and water during the 4 hours before delivery to the carrier or intermediate handler, and specifies the date and time the nonhuman primate was last offered food and water. A copy of the certification must accompany the nonhuman primate to its destination and must include the following information for each nonhuman primate:

(1) The consignor's name and address;

(2) The species of nonhuman primate;

(3) A statement by the consignor certifying that each nonhuman primate contained in the primary enclosure was offered food during the 12 hours and water during the 4 hours before delivery to the carrier or intermediate handler, and the date and time food and water was last offered; and

(4) The consignor's signature and the date and time the certification was signed.

(e) Carriers and intermediate handlers must not accept a nonhuman primate for transport in commerce unless the primary enclosure meets the requirements of § 3.87 of this subpart, or the consignor certifies in writing to the carrier or intermediate handler that the primary enclosure meets the requirements of § 3.87 of this subpart. Even if the consignor provides this certification, a carrier or intermediate handler must not accept a nonhuman primate for transport if the primary enclosure is obviously defective or damaged and cannot reasonably be expected to safely and comfortably contain the nonhuman primate without suffering or injury. A copy of the certification must accompany the nonhuman primate to its destination and must include the following information for each primary enclosure:

(1) The cosignor's name and address;

(2) The number of nonhuman primates contained in the primary enclosure;

(3) The species of nonhuman primate contained in the primary enclosure;

(4) A statement by the cosignor certifying that each primary enclosure in the shipment meets the USDA standards for primary enclosures contained in § 3.87 of this subpart; and

(5) The cosignor's signature and the date the certification was signed.

(f) Carriers and intermediate handlers must not accept a nonhuman primate for transport in commerce unless their holding area and cargo facilities meet the minimum temperature requirements provided in §§ 3.90 and 3.91 of this subpart, or unless the cosignor provides them with a certificate signed by a veterinarian and dated no more than 10 days before delivery of the animal to the carrier or intermediate handler for transport in commerce, certifying that the animal is acclimated to temperatures lower than those that are required in §§ 3.90 and 3.91 of this subpart. Even if the carrier or intermediate handler receives this certification, the temperatures the nonhuman primate is exposed to while in the carrier's or intermediate handler's custody must not be lower than the minimum temperature specified by the veterinarian in accordance with paragraph (f)(4) of this section, and must be reasonably within the generally and professionally accepted temperature range for the nonhuman primate, as determined by the veterinarian, considering its age, condition, and species. A copy of the certification must accompany the nonhuman primate to its destination and

must include the following information for each primary enclosure:

(1) The cosignor's name and address;

(2) The number of nonhuman primates contained in the primary enclosure;

(3) The species of nonhuman primate contained in the primary enclosure;

(4) A statement by a veterinarian that to the best of his or her knowledge, each of the nonhuman primates contained in the primary enclosure is acclimated to air temperatures lower than 45° F (7.2° C), but not lower than a minimum temperature specified on the certificate based on the generally and professionally accepted temperature range for the nonhuman primate considering its age, condition, and species; and

(5) The veterinarian's signature and the date the certification was signed.

(g) When a primary enclosure containing a nonhuman primate has arrived at the animal holding area of a terminal facility after transport, the carrier or intermediate handler must attempt to notify the consignee upon arrival and at least once in every 6-hour period after arrival. The time, date, and method of each attempted notification and the actual notification of the consignee, and the name of the person who notifies or attempts to notify the consignee must be written on the carrier's or intermediate handler's copy of the shipping document and on the copy that accompanies the primary enclosure. If the consignee cannot be notified within 24 hours after the nonhuman primate has arrived at the terminal facility, the carrier or intermediate handler must return the animal to the consignor or to whomever the consignor designates. If the consignee is notified of the arrival and does not take physical delivery of the nonhuman primate within 48 hours after arrival of the nonhuman primate, the carrier or intermediate handler must return the animal to the consignor or to whomever the consignor designates. The carrier or intermediate handler must continue to provide proper care, feeding, and housing to the nonhuman primate, and maintain the nonhuman primate in accordance with generally accepted professional and husbandry practices until the consignee accepts delivery of the nonhuman primate or until it is returned to the consignor or to whomever the consignor designates. The carrier or intermediate handler must obligate the consignor to reimburse the carrier or intermediate handler for the cost of return transportation and care.

**§ 3.87 Primary enclosures used to transport nonhuman primates.**

Any person subject to the Animal Welfare regulations (9 CFR parts 1, 2, and 3) must not transport or deliver for transport in commerce a nonhuman primate unless it is contained in a primary enclosure, such as a compartment, transport cage, carton, or crate, and the following requirements are met:

(a) *Construction of primary enclosures.* Primary enclosures used to transport nonhuman primates may be connected or attached to each other and must be constructed so that:

(1) The primary enclosure is strong enough to contain the nonhuman primate securely and comfortably and to withstand the normal rigors of transportation;

(2) The interior of the enclosure has no sharp points or edges and no protrusions that could injure the animal contained in it;

(3) The nonhuman primate is at all times securely contained within the enclosure and cannot put any part of its body outside the enclosure in a way that could result in injury to the animal, or to persons or animals nearby;

(4) The nonhuman primate can be easily and quickly removed from the enclosure in an emergency;

(5) The doors or other closures that provide access into the enclosure are secured with animal-proof devices that prevent accidental opening of the enclosure, including opening by the nonhuman primate;

(6) Unless the enclosure is permanently affixed to the conveyance, adequate devices such as handles or handholds are provided on its exterior, and enable the enclosure to be lifted without tilting it, and ensure that anyone handling the enclosure will not come into physical contact with the animal contained inside;

(7) Any material, treatment, paint, preservative, or other chemical used in or on the enclosure is nontoxic to the animal and not harmful to the health or well-being of the animal;

(8) Proper ventilation is provided to the nonhuman primate in accordance with paragraph (c) of this section;

(9) Ventilation openings are covered with bars, wire mesh, or smooth expanded metal having air spaces; and

(10) The primary enclosure has a solid, leak-proof bottom, or a removable, leak-proof collection tray under a slatted or wire mesh floor that prevents seepage of waste products, such as excreta and body fluids, outside of the enclosure. If a slatted or wire mesh floor is used in the enclosure, it must be designed and constructed so that the animal cannot put any part of its body between the slats or through the holes in the mesh. It must contain enough previously unused litter to absorb and cover excreta. The litter must be of a suitably absorbent material that is safe and nontoxic to the nonhuman primate and is appropriate for the species transported in the primary enclosure.

(b) *Cleaning of primary enclosures.* A primary enclosure used to hold or transport nonhuman primates in commerce must be cleaned and sanitized before each use in accordance with the methods provided in § 3.84(b)(3) of this subpart.

(c) *Ventilation.* (1) If the primary enclosure is movable, ventilation openings must be constructed in one of the following ways:

(i) If ventilation openings are located on two opposite walls of the primary enclosure, the openings on each wall must be at least 16 percent of the total surface area of each such wall and be located above the midline of the enclosure; or

(ii) If ventilation openings are located on all four walls of the primary enclosure, the opening on every wall must be at least 8 percent of the total surface area of each such wall and be located above the middle of the enclosure.

(2) Unless the primary enclosure is permanently affixed to the conveyance, projecting rims or similar devices must be located on the exterior of each enclosure wall having a ventilation opening, in order to prevent obstruction of the openings. The projecting rims or similar devices must be large enough to provide a minimum air circulation space of 0.75 inches (1.9 centimeters) between the primary enclosures and anything the enclosure is placed against.

(3) If a primary enclosure is permanently affixed to the primary conveyance so that there is only a front ventilation opening for the enclosure, the primary enclosure must be affixed to the primary conveyance in such a way that the front ventilation opening cannot be blocked, and the front ventilation opening must open directly to an unobstructed aisle or passageway inside of the conveyance. The ventilization opening must be at least 90 percent of the total area of the front wall of the enclosure, and must be covered with bars, wire mash, or smooth expanded metal having air spaces.

(d) *Compatibility.* (1) Only one live nonhuman primate may be transported in a primary enclosure, except as follows:

(i) A mother and her nursing infant may be transported together;

(ii) An established male-female pair or family group may be transported together, except that a female in esturus must not be transported with a male nonhuman primate;

(iii) A compatible pair of juveniles of the same species that have not reached puberty may be transported together.

(2) Nonhuman primates of different species must not be transported in adjacent or connecting primary enclosures.

(e) *Space requirements.* Primary enclosures used to transport nonhuman primates must be large enough so that each animal contained in the primary enclosure has enough space to turn around freely in a normal manner and to sit in an upright, hands down position without its head touching the top of the enclosure. However, certain larger species must be restricted in their movements, in accordance with professionally accepted standards of care, when greater freedom of movement would be dangerous to the animal, its handler, or to other persons.

(f) *Marking and labeling.* Primary enclosures, other than those that are permanently affixed to a conveyance, must be clearly marked in English on the top and on one or more sides with the words "Wild Animals," or "Live Animals," in letters at least 1 inch (2.5 cm.) high, and with arrows or other markings to indicate the correct upright position of the primary enclosure. Permanently affixed primary enclosures must be clearly marked in English with the words "Wild Animals" or "Live Animals," in the same manner.

(g) *Accompanying documents and records.* Shipping documents that must accompany shipments of nonhuman primates may be held by the operator of the primary conveyance, for surface transportation only, or must be securely attached in a readily accessible manner to the outside of any primary enclosure that is part of the shipment, in a manner that allows them to be detached for examination and securely reattached, such as in a pocket or sleeve. Instructions for food and water and for administration of drugs, medication, and other special care must be attached to each primary enclosure in a manner that makes them easy to notice, to detach for examination, and to reattach securely.

**§ 3.88 Primary conveyances (motor vehicle, rail, air, and marine).**

(a) The animal cargo space of primary conveyances used to transport nonhuman primates must be designed, constructed, and maintained in a manner that at all times protects the health and well-being of the animals transported in it, ensures their safety and comfort, and prevents the entry of engine exhaust from the primary conveyance during transportation.

(b) The animal cargo space must have a supply of air that is sufficient for the normal breathing of all the animals being transported in it.

(c) Each primary enclosure containing nonhuman primates must be positioned in the animal cargo space in a manner that provides protection from the elements and that allows each nonhuman primate enough air for normal breathing.

(d) During air transportation, the ambient temperature inside a primary conveyance used to transport nonhuman primates must be maintained at a level that ensures the health and well-being of the species housed, in accordance with generally accepted professional and husbandry practices, at all times a nonhuman primate is present.

(e) During surface transportation, the ambient temperature inside a primary conveyance used to transport nonhuman primates must be maintained between 45 °F (7.2° C) and 85 °F (30° C) at all times a nonhuman primate is present.

(f) A primary enclosure containing a nonhuman primate must be placed far enough away from animals that are predators or natural enemies of nonhuman primates, whether the other animals are in primary enclosures or not, so that the nonhuman primate cannot touch or see the other animals.

(g) Primary enclosures must be positioned in the primary conveyance in a manner that allows the nonhuman primates to be quickly and easily removed from the primary conveyance in an emergency.

(h) The interior of the animal cargo space must be kept clean.

(i) Nonhuman primates must not be transported with any material, substance (e.g., dry ice), or device in a manner that may reasonably be expected to harm the nonhuman primates or cause inhumane conditions.

**§ 3.89 Food and water requirements.**

(a) Each nonhuman primate that is 1 year of age or more must be offered food [4] at least once every 24 hours. Each nonhuman primate that is less than 1 year of age must be offered food at least once every 12 hours. These time periods apply to dealers, exhibitors, and research facilities, including Federal research facilities, who transport nonhuman primates in their own primary conveyances, starting from the time the nonhuman primate was last offered food before transportation was begun. These time periods apply to carriers and intermediate handlers starting from the date and time stated on the certification provided under § 3.86(d) of this subpart. Each nonhuman primate must be offered food within 12 hours before being transported in commerce. Consignors who are subject to the Animal Welfare regulations (9 CFR parts 1, 2, and 3) must certify that each nonhuman primate was offered food within the 12 hours preceding delivery of the nonhuman primate to a carrier or intermediate handler for transportation in commerce, and must certify the date and time of the feeding, in accordance with § 3.86(d) of this subpart.

(b) Each nonhuman primate must be offered potable water during the 4 hours immediately preceding the beginning of its transportation in commerce, and every 12 hours thereafter. This time period applies to dealers, exhibitors, and research facilities, including Federal research facilities, who transport nonhuman primates in their own primary conveyances, starting from the time the nonhuman primates was last offered potable water before being transported in commerce. This time period applies to carriers and intermediate handlers starting from the date and time stated on the certification provided under § 3.86(d) of this subpart. Consignors who are subject to the Animal Welfare regulations (9 CFR parts 1, 2, and 3) must certify that each nonhuman primate was offered potable water within 4 hours before being transported in commerce, and must certify the date and time the water was offered, in accordance with § 3.86(d) of this subpart.

(c) Any dealer, exhibitor, or research facility, including a Federal research facility, offering a nonhuman primate to a carrier or intermediate handler for transportation in commerce must securely attach to the outside of the primary enclosure used for transporting the nonhuman primate, written instructions for the in-transit food and water requirements of the nonhuman primate(s) contained in the enclosure. The instructions must be attached in a manner that makes them easily noticed, detached and returned to the enclosure.

(d) Food and water receptacles must be securely attached inside the primary enclosure and placed so that the receptacles can be filled from outside of the enclosure without opening the door. Food and water receptacles must be designed, constructed, and installed so that a nonhuman primate cannot leave

[4] Proper food for purposes of this section is described in § 3.82 of this subpart, with the necessities and circumstances of the mode or travel taken into account.

the primary enclosure through the food or water opening.

**§ 3.90 Care in transit.**

(a) *Surface transportation (ground and water).* Any person subject to the Animal Welfare regulations (9 CFR parts 1, 2, and 3) transporting nonhuman primates in commerce must ensure that the operator of the conveyance or a person accompanying the operator of the conveyance observes the nonhuman primates as often as circumstances allow, but not less than once every 4 hours, to make sure that they have sufficient air for normal breathing, that the ambient temperature is within the limits provided in § 3.88(d) of this subpart, and that all other applicable standards of this subpart are being complied with. The regulated person transporting the nonhuman primates must ensure that the operator or the person accompanying the operator determines whether any of the nonhuman primates are in obvious physcial distress, and obtains any veterinary care needed for the nonhuman primates at the closest available veterinary facility.

(b) *Air transportation.* During air transportation of nonhuman primates, it is the responsibility of the carrier to observe the nonhuman primates as frequently as circumstances allow, but not less than once every 4 hours if the animal cargo area is accessible during flight. If the animal cargo area is not accessible during flight, the carrier must observe the nonhuman primates whenever they are loaded and unloaded and whenever the animal cargo space is otherwise accessible to make sure that the nonhuman primates have sufficient air for normal breathing, that the ambient temperature is within the limits provided in § 3.88(d) of this subpart, and that all other applicable standards of this subpart are being complied with. The carrier must determine whether any of the nonhuman primates is in obvious physical distress, and arrange for any needed veterinary care for the nonhuman primates as soon as possible.

(c) If a nonhuman primate is obviously ill, injured, or in physical distress, it must not be transported in commerce, except to receive veterinary care for the condition.

(d) During transportation in commerce, a nonhuman primate must not be removed from its primary enclosure unless it is placed in another primary enclosure or a facility that meets the requirements of § 3.80 or § 3.87 of this subpart. Only persons who are experienced and authorized by the shipper, or authorized by the consignor or the consignee upon delivery, if the animal is consigned for transportation, may remove nonhuman primates from their primary enclosure during transportation in commerce, unless required for the health or well-being of the animal.

(e) The transportation regulations contained in this subpart must be complied with until a consignee takes physical delivery of the animal if the animal is consigned for transportation, or until the animal is returned to the consignor.

**§ 3.91 Terminal facilities.**

(a) *Placement.* Any persons subject to the Animal Welfare regulations (9 CFR parts 1, 2, and 3) must not commingle shipments of nonhuman primates with inanimate cargo or with other animals in animal holding areas of terminal facilities. Nonhuman primates must not be placed near any other animals, including other species of nonhuman primates, and must not be able to touch or see any other animals, including other species of nonhuman primates.

(b) *Cleaning, sanitization, and pest control.* All animal holding areas of terminal facilities must be cleaned and sanitized in a manner prescribed in § 3.84(b)(3) of this subpart, as often as necessary to prevent an accumulation of debris or excreta and to minimize vermin infestation and disease hazards. Terminal facilities must follow an effective program in all animal holding areas for the control of insects, ectoparasites, and birds and mammals that are pests of nonhuman primates.

(c) *Ventilation.* Ventilation must be provided in any animal holding area in a terminal facility containing nonhuman primates by means of windows, doors, vents, or air conditioning. The air must be circulated by fans, blowers, or air conditioning so as to mimimize drafts, odors, and moisture condensation. Auxiliary ventilation, such as exhaust fans, vents, fans, blowers, or air conditioning, must be used in any animal holding area containing nonhuman primates when the ambient temperature is 75 °F (23.9 °C) or higher.

(d) *Temperature.* The ambient temperature in an animal holding area containing nonhuman primates must not fall below 45 °F (7.2 °C) or rise above 85 °F (29.5 °C) at any time nonhuman primates are present. The ambient temperature must not rise above 75 °F (23.9 °C) for more than four consecutive hours at any time nonhuman primates are present. The ambient temperature must be measured in the animal holding area by the carrier, intermediate handler, or a person transporting nonhuman primates who is subject to the Animal Welfare regulations (9 CFR parts 1, 2, and 3), outside any primary enclosure containing a nonhuman primate at a point not more than 3 feet (0.91 m.) away from an outside wall of the primary enclosure, on a level that is even with the enclosure and approximately midway up the side of the enclosure.

(e) *Shelter.* Any person subject to the Animal Welfare regulations (9 CFR parts 1, 2, and 3) holding a nonhuman primate in an animal holding area of a terminal facility must provide the following:

(1) *Shelter from sunlight and extreme heat.* Shade must be provided that is sufficient to protect the nonhuman primate from the direct rays of the sun.

(2) *Shelter from rain or snow.* Sufficient protection must be provided to allow nonhuman primates to remain dry during rain, snow, and other precipitation.

(f) *Duration.* The length of time any person subject to the Animal Welfare regulations can hold a nonhuman primate in an animal holding area of a terminal facility upon arrival is the same as that provided in § 3.86(g) of this subpart.

**§ 3.92 Handling.**

(a) Any person subject to the Animal Welfare regulations (9 CFR parts 1, 2, and 3) who moves (including loading and unloading) nonhuman primates within, to, or from the animal holding area of a terminal facility or a primary conveyance must do so as quickly and efficiently as possible, and must provide the following during movement of the nonhuman primate:

(1) *Shelter from sunlight and extreme heat.* Sufficient shade must be provided to protect the nonhuman primate from the direct rays of the sun. A nonhuman primate must not be exposed to an ambient temperature above 85 °F (29.5 °C) for a period of more than 45 minutes while being moved to or from a primary conveyance or a terminal facility. The ambient temperature must be measure in the manner provided in § 3.91(d) of this subpart.

(2) *Shelter from rain or snow.* Sufficient protection must be provided to allow nonhuman primates to remain dry during rain, snow, and other precipitation.

(3) *Shelter from cold temperatures.* Transporting devices on which nonhuman primates are placed to move them must be covered to protect the animals when the outdoor temperature falls below 45 °F (7.2 °C). A nonhuman primate must not be exposed to an ambient air temperature below 45° F (7.2 °C) for a period of more than 45 minutes,

unless it is accompanied by a certificate of acclimation to lower temperatures as provided in § 3.86(f) of this subpart. The ambient temperature must be measured in the manner provided in § 3.91(d) of this subpart.

(b) Any person handling a primary enclosure containing a nonhuman primate must use care and must avoid causing physical harm or emotional distress to the nonhuman primate.

(1) A primary enclosure containing a nonhuman primate must not be placed on unattended conveyor belts or on elevated conveyor belts, such as baggage claim conveyor belts and inclined conveyor ramps that lead to baggage claim areas, at any time; except that a primary enclosure may be placed on inclined conveyor ramps used to load and unload aircraft if an attendant is present at each end of the conveyor belt.

(2) A primary enclosure containing a nonhuman primate must not be tossed, dropped, or needlessly tilted, and must not be stacked in a manner that may reasonably be expected to result in its falling. It must be handled and positioned in the manner that written instructions and arrows on the outside of the primary enclosure indicate.

(c) This section applies to movement of a nonhuman primate from primary conveyance to primary conveyance, within a primary conveyance or terminal facility, and to or from a terminal facility or a primary conveyance.

Done in Washington, DC, this 10th day of August 1990.

**James W. Glosser,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 90-19223 Filed 8-14-90; 8:45 am]

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## LIST OF PUBLIC LAWS

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This is a continuing list of public bills from the current session of Congress which have become Federal law. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

**H.R. 293/Pub. L. 101-352**

Fire Safe Cigarette Act of 1990. (Aug. 10, 1990; 104 Stat. 405; 3 pages) Price $1.00

**H.R. 3048/Pub. L. 101-353**

To designate the Agricultural Research Service, United States Department of Agriculture, animal health research building in Clay Center, Nebraska, as the "Virginia D. Smith Animal Health Research Laboratory". (Aug. 10, 1990; 104 Stat. 408; 1 page) Price $1.00

**H.R. 4790/Pub. L. 101-354**

Breast and Cervical Cancer Mortality Prevention Act of 1990. (Aug. 10, 1990; 104 Stat. 409; 7 pages) Price $1.00

**H.J. Res. 467/Pub. L. 101-355**

Designating September 21, 1990, as "National POW/MIA Recognition Day", and recognizing the National League of Families POW/MIA flag. (Aug. 10, 1990; 104 Stat. 416; 1 page) Price $1.00

**S. 1046/Pub. L. 101-356**

Merrimack River Study Act of 1990. (Aug. 10, 1990; 104 Stat. 417; 1 page) Price $1.00

**S. 1524/Pub. L. 101-357**

Pemigewasset River Study Act of 1989. (Aug. 10, 1990; 104 Stat. 418; 1 page) Price: $1.00

**S. 1543/Pub. L. 101-358**

To authorize the Board of Regents of Gunston Hall to establish a memorial to George Mason in the District of Columbia. (Aug. 10, 1990; 104 Stat. 419; 1 page) Price: $1.00

**S. 1875/Pub. L. 101-359**

To redesignate the Calamus Dam and Reservoir authorized under the Reclamation Project Authorization Act of 1972 as the Virginia Smith Dam and Calamus Lake Recreation Area. (Aug. 10, 1990; 104 Stat. 420; 1 page) Price: $1.00

**S. 2952/Pub. L. 101-360**

Energy Policy and Conservation Act Short-Term Extension Amendment of 1990. (Aug. 10, 1990; 104 Stat. 421; 1 page) Price: $1.00

**S.J. Res. 296/Pub. L. 101-361**

Designating August 7, 1990, as "National Neighborhood Crime Watch Day". (Aug. 10, 1990; 104 Stat. 422; 1 page) Price: $1.00

**S.J. Res. 343/Pub. L. 101-362**

To designate August 13 through August 19, 1990, as "Home Health Aide Week". (Aug. 10, 1990; 104 Stat. 423; 1 page) Price: $1.00

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