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Friday
February 15, 1991

Briefings on How To Use the Federal Register
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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: February 28, at 9:00 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC
RESERVATIONS: 202-523-5240

LOS ANGELES, CA

WHEN: March 4, at 9:00 a.m.
WHERE: Federal Building, 300 N. Los Angeles St. Conference Room 8544 Los Angeles, CA
RESERVATIONS: 1-800-726-4995

SAN DIEGO, CA

WHEN: March 5, at 9:00 a.m.
WHERE: Federal Building, 880 Front St. Conference Room 4S-13 San Diego, CA
RESERVATIONS: 1-800-726-4995

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Rules and Regulations

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

FEDERAL RESERVE SYSTEM

12 CFR Part 265

[Docket No. R-0724]

Delegation of Authority to the Federal Reserve Banks to Approve Certain Proposals by State Member Banks to Issue, or Retire Prior to Maturity, Subordinated Capital Notes, and to Approve Investments by State Member Banks in Bank Premises Without Quantitative Limitation

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is amending § 265.2 of its Rules Regarding Delegation of Authority (12 CFR 265.2) in order to delegate to the Federal Reserve Banks authority to approve certain proposals by state member banks to issue, or retire prior to maturity, subordinated capital notes. As part of this amendment, the Board is also delegating to the Reserve Banks authority to approve investments by state member banks in bank premises without quantitative limitation. Applications falling outside the standards set forth herein will be forwarded to the Board for further consideration.

EFFECTIVE DATE: February 15, 1991.

FOR FURTHER INFORMATION CONTACT: Sidney M. Sussan, Assistant Director (202/452-2639), or Beverly Evans-Church, Supervisory Financial Analyst (202/452-2573), Division of Banking Supervision and Regulation; or Thomas M. Corsi, Attorney, (202/452-3275), Legal Division; Board of Governors of the Federal Reserve System, Washington, DC 20551. For the hearing impaired *only*, Telecommunications Device for the Deaf (TDD), Dorothea Thompson, (202/452-3544).

SUPPLEMENTARY INFORMATION:

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601 *et seq.*), the Board certifies that the amendment will not have a significant economic impact on a substantial number of small business entities. The amendment does not have particular effect on small entities.

Public Comment

The provisions of section 553 of Title 5, United States Code, relating to notice, public participation, and deferred effective date have not been followed in connection with the adoption of this amendment because the change to be effected is procedural in nature and does not constitute a substantive rule subject to the requirements of that section. The Board's expanded rule making procedures have not been followed for the same reason.

List of Subjects in 12 CFR Part 265

Authority delegation (Government agencies), Banks, Banking, Federal Reserve System.

For the reasons set forth above, 12 CFR part 265 is amended as follows:

PART 265—RULES REGARDING DELEGATION OF AUTHORITY

1. The authority citation for part 265 continues to read as follows:

Authority: Section 11(k), 38 Stat. 261 and 80 Stat. 1314 (12 U.S.C. 248(k)).

2. Section 265.2 is amended by revising paragraphs (c)(10) and (f)(7)(i), by removing and reserving paragraphs (c)(24) and (c)(26), by removing and reserving paragraph (f)(7)(ii), and by adding new paragraphs (f)(50) and (f)(51) to read as follows:

§ 265.2 Specific functions delegated to Board employees and to Federal Reserve Banks.

* * * * *

(c) * * *

(10) To exercise the functions described in paragraphs (f)(4) (50), and (51) of this section in cases in which the conditions specified therein as prerequisites to exercise of such functions by the Federal Reserve Banks are not present, or in which, even though such conditions are present, the appropriate Federal Reserve Bank considers that nevertheless it should not take action on the member bank's request, and to exercise the functions described in paragraphs (f)(1), (2) and (7) of this section in cases in which the appropriate Federal Reserve Bank considers that it should not take action to approve the member bank's request.

* * * * *

(24) [Reserved]

* * * * *

(26) [Reserved]

* * * * * *

(f) * * *

(7) * * *

(i) The bank's capitalization in relation to the character and condition of its assets and to its deposit liabilities and other corporate responsibilities, including the volume of its risk assets and of its marginal and inferior-quality assets, all considered in relation to the strength of its management.

(ii) [Reserved]

* * * * *

(50) *Approval of subordinated debt to capital.* To approve a State member bank's proposed subordinated debt issue as an addition to the bank's capital structure if all of the following conditions are met:

(i) The terms of the proposed debt issue satisfy the requirements of § 204.2(a)(1)(vii)(C) of this part (Regulation D) and the Board's guideline criteria for approval of subordinated debt as an addition to capital; and

(ii) No significant policy issue is raised by the proposed issue as to which the Board has not expressed its view.

(51) To approve the retirement prior to maturity of capital notes issued by a state member bank described in § 204.2(a)(1)(vii)(C) of this part (Regulation D), provided the Reserve Bank is satisfied that the bank's capital position will be adequate after the proposed redemption.

* * * * *

By order of the Board of Governors of the Federal Reserve System, February 11, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91-3683 Filed 2-14-91; 8:45 am]

BILLING CODE 6210-01-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 30

Foreign Option Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Order.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is authorizing option contracts on the European Washed Arabica Coffee Futures Contract traded on the London Futures and Options Exchange ("London Fox") to be offered or sold to persons located in the United States. This Order is issued pursuant to: (1) Commission rule 30.3(a), 17 CFR 30.3(a) (1990), which makes it unlawful for any person to engage in the offer or sale of a foreign option product until the Commission, by order, authorizes such foreign option to be offered or sold in the United States; and (2) the Commission's Order issued on November 30, 1989, 54 FR 50348 (December 6, 1989), authorizing certain option products traded on London Fox to be offered or sold in the United States.

EFFECTIVE DATE: March 18, 1991.

FOR FURTHER INFORMATION CONTACT: Barney L. Charlon, Esq., Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Telephone: (202) 254-8955.

SUPPLEMENTARY INFORMATION: The Commission has issued the following Order:

Order Under Commission Rule 30.3(a) Permitting Option Contracts on the European Washed Arabica Coffee Futures Contract Traded on the London Futures and Options Exchange to be Offered or Sold in the United States Thirty Days After Publication of This Notice in the Federal Register

By Order issued on November 30, 1989 ("Initial Order"), the Commission authorized, pursuant to Commission rule 30.3(a),[1] certain option products traded on the London Futures and Options Exchange ("London Fox") to be offered or sold in the United States. 54 FR 50348 (December 6, 1989). Among other conditions, the Initial Order specified that:

> Except as otherwise permitted under the Commodity Exchange Act and regulations thereunder, * * * no offer or sale of any London Fox option product in the United States shall be made until thirty days after publication in the **Federal Register** of notice specifying the particular option(s) to be offered or sold pursuant to this Order * * *.

By letter dated January 28, 1991, London Fox represented that it would commence trading an option contract based on the European Washed Arabica Coffee futures contract on or after March 1, 1991. London Fox has requested that the Commission supplement its Initial Order and subsequent Order authorizing Options on the Robusta Coffee futures contract, Options on the No. 5 White Sugar futures contract, Options on the No. 6 Raw Sugar futures contract, Options on the No. 7 Cocoa futures contract and Options on the MGMI futures contract[2] by also authorizing London Fox's Option Contract on the European Washed Arabica Coffee futures contract to be offered or sold to persons in the United States. Upon due consideration, and for the reasons previously discussed in the Initial Order, the Commission believes that such authorization should be granted.

Accordingly, pursuant to Commission rule 30.3(a) and the Commission's Initial Order issued on November 30, 1989, and subject to the terms and conditions specified therein, the Commission hereby authorizes London Fox's Option Contract on the European Washed Arabica Coffee futures contract to be offered or sold to persons located in the United States thirty days after publication of this Order in the **Federal Register**.

Contract Specifications

OPTIONS ON THE EUROPEAN WASHED ARABICA COFFEE FUTURES CONTRACT

Contract Unit	One or more lots 37,500 pounds (lbs).
Contract Price	The price shall be expressed in United States Dollars and Cents per pound.
Trading Months	March, May, July, September, December, March (2), May (2).
Trading Hours	0800 to 1900 hours continuously.
Exercise/Strike Price Increments.	$50.
Expiry	At 12:30 on the third Wednesday in the month preceding the delivery month of the underlying futures.

List of Subjects in 17 CFR Part 30

Commodity futures, Commodity options, Foreign commodity options.

Accordingly, 17 CFR part 30 is amended as set forth below:

PART 30—FOREIGN FUTURES AND FOREIGN OPTION TRANSACTIONS

1. The authority citation for part 30 continues to read as follows:

Authority: Secs. 2(a)(1)(A), 4, 4c, and 8a of the Commodity Exchange Act, 7 U.S.C. 2, 6, 6c and 12a.

2. Appendix B to part 30 is amended by adding the following entry alphabetically after the existing entry for "London Futures and Options Exchange" to read as follows:

Appendix B—Option Contracts Permitted To Be Offered or Sold in the U.S. Pursuant to § 30.3(a)

Exchange	Type of contract	FR date and citation
* * *	* * *	*
London Futures and Options Exchange	Option Contract on European Washed Arabica Coffee Futures Contract.	February 15, 1991; 56 FR
* * *	* * *	*

[1] Commission rule 30.3(a), 17 CFR 30.3(a) (1990), makes it unlawful for any person to engage in the offer or sale of a foreign option product until the Commission, by order, authorizes such foreign option to be offered or sold in the United States.

[2] The Initial Order previously was supplemented to allow options on the MGMI futures contract to be offered or sold in the United States. *See* 55 FR 28372 (July 11, 1990).

Issued in Washington, DC, on February 12, 1991.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 91-3690 Filed 2-14-91; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 5

Delegations of Authority and Organization; Center for Veterinary Medicine

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations for delegations of authority relating to functions performed by the Center for Veterinary Medicine (CVM) by adding a new delegation concerning the determination of submission and approval dates for abbreviated new animal drug applications (ANADA's) and certain new animal drug applications (NADA's). These determinations are an essential part of the calculation of exclusivity periods.

EFFECTIVE DATE: February 15, 1991.

FOR FURTHER INFORMATION CONTACT: Ellen Rawlings, Division of Management Systems and Policy (HFA-340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4976.

SUPPLEMENTARY INFORMATION: FDA is delegating new authority to CVM under sections 512(c)(2)(D)(iv) and (c)(2)(F) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360b(c)(2)(D)(iv) and (c)(2)(F)), as amended by the Generic Animal Drug and Patent Term Restoration Act of 1988 (Pub. L. 100-670). New § 5.95 *Submission of and effective approval dates for abbreviated new animal drug applications and certain new animal drug applications* (21 CFR 5.95) authorizes the Director and Deputy Director, CVM, and the Director and Deputy Director, Office of New Animal Drug Evaluation, CVM, to perform all the functions of the Commissioner of Food and Drugs with regard to decisions concerning dates of submission and effective approval of ANADA's and their supplements submitted under section 512(b)(2) of the act. It also authorizes these officials to perform all the functions of the Commissioner with regard to certain NADA's and their supplements submitted under section 512(b)(1) of the act. These determinations are an essential part of the calculation of exclusivity periods.

Further redelegation of the authority delegated is not authorized. Authority delegated to a position by title may be exercised by a person officially designated to serve in such position in an acting capacity or on a temporary basis.

List of Subjects in 21 CFR Part 5

Authority delegations (Government agencies), Imports, Organization and functions (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 5 is amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR part 5 continues to read as follows:

Authority: 5 U.S.C. 504, 552, App. 2; 7 U.S.C. 2271; 15 U.S.C. 638, 1261-1282, 3701-3711a; secs. 2-12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451-1461); 21 U.S.C. 41-50, 61-63, 141-149, 467f, 679(b), 801-886, 1031-1309; secs. 201-903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321-393); 35 U.S.C. 156; secs. 301, 302, 303, 307, 310, 311, 351, 352, 354-360F, 361, 362, 1701-1706, 2101 of the Public Health Service Act (42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 263b-263n, 264, 265, 300u-300u-5, 300aa-1); 42 U.S.C. 1395y, 3246b, 4332, 4831(a), 10007-10008; E.O. 11490, 11921, and 12591.

2. New § 5.95 is added to Subpart B to read as follows:

§ 5.95 Submission of and effective approval dates for abbreviated new animal drug applications and certain new animal drug applications.

The following officials are authorized to perform all the functions of the Commissioner of Food and Drugs with regard to decisions made under section 512(c)(2)(D)(iv) and (c)(2)(F) of the Federal, Food, Drug, and Cosmetic Act (the act) concerning the date of submission and the date of effective approval of abbreviated new animal drug applications including supplements thereto, submitted under section 512(b)(2) of the act, and of new animal drug applications including supplements thereto, submitted under section 512(b)(1) of the act:

(a) The Director and Deputy Director, Center for Veterinary Medicine (CVM).

(b) The Director and Deputy Director, Office of New Animal Drug Evaluation, CVM.

Dated: February 7, 1991.

Gary Dykstra,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 91-3740 Filed 2-14-91; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Parts 102 and 161

[Docket No. 84P-0249]

Canned Tuna; Amendment of the Standard of Identity; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting the final rule that appeared in the **Federal Register** of October 31, 1990 (55 FR 45795) and amended the standard of identity for canned tuna. Among other things, it updated the scientific nomenclature for species' names in the standard for tuna as well as in the common or usual name regulation for bonito. In the final rule, the docket number was incorrectly given as "84N-0249". It should have read "84P-0249". The final rule also spelled *"Thunnus albacares"* incorrectly and included a number of other errors in the table in the preamble and in entries in 21 CFR 161.190. This document corrects those errors.

FOR FURTHER INFORMATION CONTACT: James F. Lin, Center for Food Safety and Applied Nutrition (HFF-414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0122.

In FR Doc. 90-25705, appearing at page 45795 in the **Federal Register** of Wednesday, October 31, 1990, the following corrections are made:

1. On the same page, in the first column, in the heading, "[Docket No. 84N-0249]" is corrected to read "[Docket No. 84P-0249]".

2. On page 45796, in the third column, in the table, under the heading "Revised list," the seventh entry *"Thunnus albacores"* is corrected to read *"Thunnus albacares"*; and in the 11th and 13th entries, the parentheses are removed.

§ 161.190 [Corrected]

3. On page 45797, in the third column, under § 161.190(a)(2), the sixth entry *"Thunnus albacores"* is corrected to read *"Thunnus albacares"*; and in the 10th entry the parentheses are removed and "shipjack" is corrected to read "skipjack"; and in the 12th entry, the parentheses are removed.

Dated: February 8, 1991.

Gary Dykstra,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 91-3680 Filed 2-14-91; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Part 235

[Docket No. R-91-1516; FR-3002-F-01]

Mortgage Insurance—Changes in Interest Rates

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

ACTION: Final rule.

SUMMARY: This change in the regulations reduces the maximum allowable interest rate on section 235 (Homeownership for Lower Income Families) insured loans. This final rule is intended to bring the maximum permissible financing charges for this program into line with competitive market rates.

EFFECTIVE DATE: February 5, 1991.

FOR FURTHER INFORMATION CONTACT: James B. Mitchell, Director, Financial Services Division, Office of Financial Management, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone (202) 708-4325. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The following amendments to 24 CFR chapter II have been made to decrease the maximum interest rate which may be charged on loans insured by this Department under section 235 of the National Housing Act. The maximum interest rate on the HUD/FHA section 235 insurance programs has been lowered from 9.50 percent to 9.00 percent.

Until recently, HUD regulated interest rates not only for the section 235 Program, but also for fire safety equipment loans insured under section 232 of the National Housing Act. However, Section 429(e)(2) of the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988) amended the National Housing Act to provide that interest on fire safety equipment loans under section 232(i) of the Act will be "at such rate as may be agreed upon by the mortgagor and the mortgagee." Accordingly, these loans, like most other National Housing Act-authorized loans, now have their interest rates determined by negotiation. Accordingly, this announcement of a change in interest rate ceilings for FHA-insured mortgages is limited to the section 235 Program. The Secretary has determined that this change is immediately necessary to meet the needs of the market and to prevent speculation in anticipation of a change.

As a matter of policy, the Department submits most of its rulemaking to public comment, either before or after effectiveness of the action. In this instance, however, the Secretary has determined that advance notice and public comment procedures are unnecessary and that good cause exists for making this final rule effective immediately. HUD regulations published at 47 FR 56266 (1982), amending 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, contain categorical exclusions from their requirements for the actions, activities, and programs specified in § 50.20. Since the amendments made by this rule fall within the categorical exclusions set forth in paragraph (l) of § 50.20, the preparation of an Environmental Impact Statement or Finding of No Significant Impact is not required for this rule. This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued 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, individual industries, Federal, State, or local governmental agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. In accordance with the provisions of 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. The rule provides for a small adjustment in the mortgage interest rate in programs of limited applicability, and thus of minimal effect on small entities. This rule was not listed in the Department's Semiannual Agenda of Regulations published on October 29, 1990, (55 FR 44530) pursuant to Executive Order 12291 and the Regulatory Flexibility Act. The Catalog of Federal Domestic Assistance Program numbers are 14.108, 14.117, and 14.120.

List of Subjects in 24 CFR Part 235

Condominiums, Cooperatives, Low- and moderate-income housing, Mortgage insurance, Homeownership, Grant programs: housing and community development.

Accordingly, the Department amends 24 CFR part 235 as follows:

PART 235—MORTGAGE INSURANCE AND ASSISTANCE PAYMENTS FOR HOMEOWNERSHIP AND PROJECT REHABILITATION

1. The authority citation for 24 CFR part 235 continues to read as follows:

Authority: Sections 211, 235, National Housing Act (12 U.S.C. 1715b, 1715z); section 7(d), Department of Housing and Urban Development Act, (42 U.S.C. 3535(d)).

2. In § 235.9, paragraph (a) is revised to read as follows:

§ 235.9 Maximum interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 9.00 percent per annum, except that where an application for commitment was received by the Secretary before February 5, 1991, the loan may bear interest at the maximum rate in effect at the time of application.

* * * * *

3. In § 235.540, paragraph (a) is revised to read as follows:

§ 235.540 Maximum interest rate.

(a) On or after February 5, 1991, the loan shall bear interest at the rate agreed on by the lender and the borrower, which rate shall not exceed 9.00 percent per annum, with the exception of applications submitted pursuant to feasibility letters, or outstanding conditional or firm commitments, issued prior to the effective date of the new rate. In these instances, applications will be processed at a rate not exceeding the applicable previous maximum rates, if the higher rate was previously agreed upon by the parties. Notwithstanding these exceptions, the application will be processed at the new lower rate if requested by the mortgagee.

* * * * *

Dated: February 6, 1991.

Arthur J. Hill,

Acting Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 91-3719 Filed 2-14-91; 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 March 1, 1991. 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 March 1, 1991 and will remain in effect until the PBGC issues new interest rates and factors.

EFFECTIVE DATE: March 1, 1991.

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, subpart C. (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.) In addition, when the PBGC terminates an underfunded plan involuntarily pursuant to ERISA section 4042(a), it uses the Subpart C formulas to determine the amount of the plan's underfunding.

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 February 1, 1991. This amendment adds to Appendix B a new set of interest rates and factors for valuing benefits in plans that terminate on or after March 1, 1991, which set reflects a decrease of ¼ percent in the immediate interest rate from 7¼ to 7 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 March 1, 1991, and because no adjustments 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, and Pensions.

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

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

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, and 1362 (1988).

2. Rate Set 90 of appendix B is revised and Rate Set 91 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 (%)	Deferred annuities				
	On or after	And before		k_1	k_2	k_3	n_1	n_2
* * *	*	*		*		*		
90	01-1-91	2-28-91	7.25	1.0650	1.0525	1.0400	7	8
91	03-1-91		7.00	1.0625	1.0500	1.0400	7	8

James B. Lockhart III,
Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 91-3696 Filed 2-14-91; 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 March 1991.

EFFECTIVE DATE: March 1, 1991.

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_u
	*		*		*		*		*			*			*	
March 1991..	.075	0.7375	.0725	.07125	.07	.0675	.0675	.0675	.0675	.0675	.0625	.0625	.0625	.0625	.0625	.05875

Issued at Washington, DC, on this 12th day of February 1991.

James B. Lockhart III,
Executive Director Pension Benefit Guaranty Corporation.

[FR Doc. 91-3695 Filed 2-14-91; 8:45 am]

BILLING CODE 7708-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 936

Oklahoma Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: The Director of OSM is approving a proposed amendment submitted by the State of Oklahoma as a modification to its permanent regulatory program (hereinafter referred to as the Oklahoma program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment, concerning an exemption for an operation when the extraction of coal is incidental to the extraction of other minerals, revises Oklahoma's rules to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: February 15, 1991.

FOR FURTHER INFORMATION CONTACT: James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 E.

Skelly Drive, suite 550, Tulsa, Oklahoma 74135, Telephone: (918) 581-6430.

SUPPLEMENTARY INFORMATION:

I. Background

The Oklahoma program was conditionally approved by the Secretary of the Interior on January 19, 1981. Information on the general background, modifications and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments, and detailed explanation of the conditions of approval of the Oklahoma program was published in the January 19, 1981, **Federal Register** (46 FR 4910). Subsequent actions on program amendments are identified at 30 CFR 936.15, 936.16, and 936.30.

II. Submission of Program Amendment

In accordance with the provisions of 30 CFR 732.17(d), OSM notified Oklahoma by letter dated February 7, 1990 (administrative record No. OK-909), of changes to Oklahoma's approved regulatory program that were necessary to make the program no less effective than the December 20, 1989, Federal regulations concerning the extraction of coal incidental to the extraction of other minerals.

Consistent with this February 7, 1990, notification, the Director in his decision on an Oklahoma program amendment submitted prior to the notification (see 55 FR 11169, 11170, March 27, 1990), required Oklahoma at 30 CFR 936.16(a) to amend its approved program to include rules corresponding to the newly promulgated Federal regulations at 30 CFR 700.11(a)(4) and 30 CFR Part 702, concerning the extraction of coal incidental to the extraction of other minerals.

In response to the 30 CFR part 732 notification and required amendment, Oklahoma, by letter dated March 30, 1990 (administrative record No. OK-914), submitted a proposed amendment to its approved program. OSM announced receipt of the proposed amendment in a notice in the April 20, 1990, publication of the **Federal Register** (55 FR 14979). In this notice, OSM opened a public comment period and provided an opportunity for a public hearing on the substantive adequacy of the revisions to the proposed amendment. The public comment period closed on May 21, 1990.

During its review of the proposed amendment, OSM identified concerns relating to the cumulative measurement period and administrative review of exemption decisions. In response to OSM's June 20, 1990, letter (administrative record No. OK-928) notifying Oklahoma of these concerns, Oklahoma submitted revisions to the proposed amendment on July 13, 1990 (Administrative Record No. OK-929).

OSM announced receipt of the revisions to the proposed amendment in a notice in the August 6, 1990, **Federal Register** (55 FR 31845). In this notice, OSM opened a public comment period. The public comment period closed on August 21, 1990.

III. Director's Findings

After a thorough review pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, the Director finds, as discussed below, that the proposed amendment as submitted on March 30, 1990, and revised on July 13, 1990, is no less stringent than SMCRA and no less effective than the corresponding Federal regulations.

Revisions to Oklahoma's Rules That Are Substantially Identical to the Corresponding Federal Regulations

Oklahoma proposes revisions to the following rules of its approved program that either contain language that is the same as or similar to the corresponding Federal regulations and are nonsubstantive in nature, or add specificity without adversely affecting other aspects of the program.

Section 700.5, concerning the definition of "surface coal mining operations" as it applies to operations where the extraction of coal is incidental to the extraction of other minerals (corresponding Federal regulation 30 CFR 700.5);

Section 700.11(b)(4), concerning the applicability of the Oklahoma program to operations where the extraction of coal is incidental to the extraction of other minerals (corresponding Federal regulation 30 CFR 700.11(b)(4)); and

Part 702 concerning the exemption for coal extraction incidental to the extraction of other minerals (corresponding Federal regulation 30 CFR part 702).

Because the proposed revisions to these Oklahoma rules either contain language that is the same as or similar to the corresponding Federal regulations and are nonsubstantive in nature, or add specificity without adversely affecting other aspects of the program, the Director finds that these proposed revisions to the Oklahoma program are no less effective than the corresponding Federal regulations. Therefore, the Director approves the proposed revisions and removes the required amendment at 30 CFR 936.16(a).

IV. Public and Agency Comments

1. Public Comments

The Director solicited public comments on the proposed amendment and provided opportunity for a public hearing. No comments were received. Because no one requested an opportunity to testify at a public hearing, no hearing was held.

2. Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), comments were solicited from various Federal agencies with an actual or potential interest in the Oklahoma program. Comments were also solicited from various State agencies. The Bureau of Land Management (BLM) and Soil Conservation Service (SCS) responded to OSM's solicitation.

By letter dated April 25, 1990, BLM commented that a search warrant should not be required to enter any building on the mine site as proposed at § 702.15(f) (administrative record No. OK-919). Section 702.15(f) states that no search warrant shall be required with respect to any activity under paragraphs (d) and (e) of § 702.15, except that a search warrant may be required for entry into a building. Sections 702.15 (d) and (e) address inspections of operations extracting coal incidental to the extraction of other minerals and claiming an exemption from the requirements of the Oklahoma program under part 702. Oklahoma's proposed rules at § 702.15(f) are identical to the corresponding Federal regulations at 30 CFR 702.15. Therefore, the Director is not requiring Oklahoma to revise the proposed rule in response to BLM's comment.

By letter dated April 20, 1990, SCS responded that it had no comments on the proposed amendment (administrative record No. OK-921).

3. Environmental Protection Agency (EPA) Concurrence

Pursuant to 30 CFR 732.17(h)(11)(ii), concurrence was solicited and received from the EPA (administrative record No. OK-918) for those aspects of the proposed amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act and the Clean Air Act.

By letter dated June 1, 1990, EPA stated that it had no comments on and concurred with the proposed amendment (administrative record No. OK-926).

4. State Historic Preservation Officer (SHPO), Advisory Council on Historic Preservation Comments (ACHP), and Oklahoma Archeological Survey (OAS) Comments

Pursuant to 30 CFR 732.17(h)(4), all amendments that may have an effect on historic properties are to be provided to the SHPO and ACHP for comment. Comments were solicited from these offices. By letter dated April 30, 1990, the SHPO responded that he had no comments on the proposed amendment (administrative record No. OK-920). By letter dated April 18, 1990, the Oklahoma Archeological Survey, which cooperates with the SHPO, responded that it had no objections to the proposed amendment (administrative record No. OK-922). No comments were received from ACHP.

V. Director's Decision

Based on the above findings, the Director is approving the proposed amendment submitted by Oklahoma on March 30, 1990, as revised on July 13, 1990, and he is removing the required amendment at 30 CFR 936.16(a).

The Federal regulations at 30 CFR part 936 codifying decisions concerning the Oklahoma program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to being their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Requirements

1. Compliance With the National Environmental Policy Act

The Secretary has determined that pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of a State regulatory program. Accordingly, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule 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.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal regulations will be met by the State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by OMB under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 936

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 4, 1991.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T, of the Code of Federal Regulations is amended as set forth below:

PART 936—OKLAHOMA

1. The authority citation for part 936 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 936.15 is amended by adding paragraph (j) as follows:

§ 936.15 Approval of regulatory program amendments.

* * * * *

(j) The revisions to the following sections of Oklahoma's permanent regulatory program rules submitted to OSM on March 30, 1990, as revised by Oklahoma on July 13, 1990, are approved effective February 15, 1991: Sections 700.5 and 700.11(b)(4), and part 702, concerning an exemption for operations when the extraction of coal is incidental to the extraction of other minerals.

§ 936.16 [Amended]

3. Section 936.16 is revised by removing and reserving paragraph (a).

[FR Doc. 91-3701 Filed 2-14-91; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD 6010.8-R]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Mental Health Services

AGENCY: Office of the Secretary, DoD.

ACTION: Interim final rule.

SUMMARY: This interim final rule implements changes required by the National Defense Authorization Act for Fiscal Year 1991 and the Department of Defense Appropriations Act for Fiscal Year 1991 concerning mental health services under CHAMPUS. The Acts change the existing day limits and waiver criteria for acute inpatient psychiatric care, introduce new day limits for residential treatment center care and require precertification for psychiatric inpatient admissions. There is also a provision in the Appropriations Act which generally excludes payment for inpatient mental care or residential care when the referral is made by a health care professional having an economic interest in the facility to which the patient is referred. This is being issued as an interim final rule in order to comply with the statutory mandate that the changes take effect February 15, 1991. Public comments, however, are invited and will be considered in connection with possible revisions to this rule.

DATES: *Effective date:* February 15, 1991. *Comments:* Written comments must be received on or before March 18, 1991.

ADDRESSES: Forward to Office of the Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Program Initiatives Branch, Mental Health Unit, Aurora, CO 80045-6900.

FOR FURTHER INFORMATION CONTACT: Mary K. Wert, OCHAMPUS (303) 361-8336.

SUPPLEMENTARY INFORMATION: In FR Doc. 77-7834, appearing in the **Federal Register** on April 4, 1977, (42 FR 17972), the Office of the Secretary of Defense published its regulation, DoD 6010.8-R, "Implementation of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)," as part 199 of title 32 CFR. DoD 6010.8-R was reissued in the **Federal Register** on July 1, 1986 (51 FR 24008).

A. Background

In the National Defense Authorization Act for Fiscal Year 1991, Public Law 101-510, and the Defense Appropriations Act for Fiscal Year 1991, Public Law 101-511, Congress firmly addressed the problem of spiraling costs for mental health services under CHAMPUS. As stated by the House Armed Services Committee:

> The cost of mental illness and substance abuse is of particular concern to the committee. While CHAMPUS expenditures have generally increased by 50 percent between 1986 and 1989, CHAMPUS mental health expenditures have more than doubled. Last year mental health costs accounted for about one-quarter of CHAMPUS's total spending, far above the typical proportion in private employers' health care plans.

Closer inspection of CHAMPUS costs shows that children and adolescents (dependents of active-duty and retired military personnel) are particularly heavy users of inpatient mental health care. Care in hospitals and residential treatment centers (RTCs) accounts for about 80 percent of their total mental health costs . . . Thus, control of inpatient costs, particularly for children and adolescents, is essential to slowing the rise in CHAMPUS mental health expenditures. H. Rept. No. 101-665, p. 289.

The Senate Appropriations Committee sounded the same call:

In recent years, CHAMPUS mental health costs have increased faster than other elements of the benefit package. Mental health costs more than doubled between 1986 and 1989 from $303,000,000 to $633,000,000. In 1989, mental health care presented about 25 percent of the total CHAMPUS program costs. In contrast, private sector firms' average mental health cost was about 11 percent of total costs. Mental health costs in the Blue Cross/Blue Shield Federal employee plan, which originally served as a model for CHAMPUS, represented about 4 percent of total costs.

CHAMPUS mental health benefits are more generous than plans available to Federal or private sector employees * * *. S. Rept. No. 101-521, p. 43.

Motivated by the desire to bring CHAMPUS mental health care costs under control, Congress—in both the Authorization and Appropriations Acts—established certain benefit changes and management procedures and required that they take effect February 15, 1991. These statutes made two principal changes. First, they established new day limits for inpatient mental health services—30 days for acute care for patients 19 years of age and older, 45 days for acute care for patients under 19 years of age, and 150 days of residential treatment—each of these limits subject to waiver in special cases after review by an outside expert that takes into account the level, intensity and availability of the care needs of the patient. Second, the statutes mandated prior authorization for all nonemergency inpatient mental health admissions, with required certification of emergency admissions within 72 hours.

One other statutory change—also required to be implemented February 15—was contained in the Appropriations Act. That provision disallows payment for inpatient services provided upon referral from a "health care professional having an economic interest" in the inpatient facility, subject, however, to the same waiver procedure as applies to the day limits.

Finally, the two statutes included other provisions addressing the serious problem of mental health costs under CHAMPUS, including authority to establish separate cost-sharing requirements for mental health services and a required report to Congress outlining DoD's plans to bring these costs under control.

Based on these two statutes and the strong Congressional policy embodied in them, DoD is taking three actions this winter. The first is this interim final rule to implement the three requirements Congress mandated with an effective date of February 15. The second action, expected in the very near future, is a separate proposed rule concerning other changes DoD determines necessary and appropriate to control costs. Approximately 60 days after the publication of that proposed rule, we expect to issue a final rule relating to both that proposed rule and any revisions to this interim final rule that are determined appropriate after a review of the public comments we receive regarding this interim final rule. The third action we will take this winter is a report to Congress concerning steps we have taken and future plans to control mental health care costs.

B. Provisions of this Interim Final Rule

This rule implements changes to CHAMPUS benefits for mental health services summarized as follows.

1. Mandatory Preadmission Certification

This rule requires preadmission authorization for all non-emergency inpatient mental services. This means that non-emergency mental health care provided by all hospitals, including those hospitals reimbursed under the DRG-based system, will be subject to preadmission certification. In the case of emergency inpatient mental health services, approval for continued inpatient care is required within 72 hours after admission.

A psychiatic inpatient admission is defined as an emergency when a physician determines by a psychiatric evaluation that a patient is at immediate risk of serious harm to self or others as a result of a mental disorder which requires continuous skilled observation at the acute level.

Under the rule, the program of utilization and quality review for mental health care services will follow many of the same procedures as have been in place under the CHAMPUS Peer Review Organization (PRO) program for non-mental health services. Among these procedures, specifically authorized by Congress for CHAMPUS and modeled after similar Medicare program rules, are special rules for financial responsibility for unnecessary care, rules designed generally to protect beneficiaries from responsibility for care they could not reasonably have known would be excluded.

Review of mental health care would also become part of the CHAMPUS PRO program for purposes of requirements regarding hospital cooperation, confidentiality of records, appeals and hearings, sanctions authorities and other procedures. However, current plans are that mental health reviews will continue to be handled by a separate contractor from the PRO contractors used for non-mental health services.

2. Day Limits and Waiver Authority

This rule amends the regulation to reflect the new Congressionally mandated day limits and waiver criteria. The present 60-day acute care limit and waiver criteria based upon danger to self or others will be replaced with the new day limits and waiver criteria for mental health services provided on and after February 15, 1991. The new day limits are expressed in relation to a "benefit year," defined as a 365-day period beginning on the first date of covered care. This replaces the current method of applying day limits on a calendar year basis, a method that produces inequalities in benefits based solely on the calendar. Particularly with the new 150-day standard for RTC care giving each beneficiary his or her own "benefit year" will provide all beneficiaries equal treatment in applying the day limits.

In transitioning from the old calendar year basis to the new benefit year basis, we must make provision for beneficiaries who receive acute care between January 1, 1991 (the starting point of the current period against which the existing 60-day limit is applied), and February 15, 1991, the effective date of the new day limits. To remain consistent with Congressional intent that typical acute care lengths of stay be reduced, we cannot defensibly restart all "benefit years" on February 15, because this could result in extending, rather than shortening, the number of days of services provided prior to a waiver review. Therefore, for beneficiaries who receive mental health services—whether acute or RTC—between January 1, and February 15, benefit years will be considered to have begun on the first day of such care, but not before January 1. However, to prevent disruptions of treatments in process, any beneficiaries who are inpatients on February 15, 1991, will not be subject to the waiver process before reaching the 60 day limit that existed when they were admitted. In the case of RTC care, with respect to

beneficiaries receiving care on February 15, their benefit year shall be considered as beginning on February 15. It should be noted again that the day limits do not result in a rigid limit on benefits, but only in triggering the waiver review process.

This rule establishes waiver criteria consistent with the new statutory provisions. To give meaning to the statutory day limits, the rule establishes a presumption against the appropriateness of inpatient services beyond those limits. This presumption can be overcome, however, by demonstrating that a true need exists.

This rule establishes two basic sets of criteria for evaluating the medical/psychological necessity of inpatient mental health services—one set for acute care and the other for RTC care. These sets of criteria are designed to provide meaningful standards by which to assure that patients who need inpatient services will be appropriately treated and also to assure that those who can be served at less acute levels of care will be appropriately referred. The specific provisions of these necessity criteria were developed after careful review of established and developing standards of professional associations and consultation with the most prominent psychiatrists and psychologists within the military services and specialists from our mental health peer review outside contractor. We welcome comments on these specific criteria contained in the rule.

To implement the new statutory mandates for intensive review of medical/psychological necessity at both the beginning (preadmission certification) and at the point of the maximum day limits (waiver requirement to exceed day limits), the rule establishes a continuum of review from preadmission review to concurrent review(s) to waiver consideration. Each stage along this continuum applies the same basic necessity criteria, but with different emphasis. At the front end, the emphasis is on development of a definitive individualized diagnosis/treatment plan, including a number of essential elements. During middle stages, the focus is on therapeutic progress under the individualized treatment plan and the refinement of plans for post-discharge therapy and services at less intensive levels of care. Finally, in unusual cases in which services beyond the maximum day limits are needed, the emphasis is on adopting necessary adjustments to the treatment plan and completing necessary services to permit discharge or transfer to less intensive levels of care. At all stages, the primary thrust is on appropriate, high quality, medically necessary care as demonstrated by adequate documentation and review.

3. Economic Interest Exclusion

As required by the Defense Appropriations Act, this interim final rule excludes CHAMPUS payment for care received when a patient is referred to a provider of inpatient mental health care or residential treatment care by a health care professional having an economic interest in the facility to which the patient is referred, unless coverage is granted by a waiver issued by the Director, OCHAMPUS, or designee. The waiver criteria shall be similar to those used in connection with waiving the day limits.

We have decided not to attempt, at least for now, a further regulatory definition of "economic interest." We assume some providers will suggest that some types of relationships which could be considered to constitute an "economic interest" ought to be ruled outside the scope of the term. We welcome suggestions along these lines. To be most helpful, we invite commenters to describe actual circumstances and explain why those circumstances are beyond the scope of apparent Congressional concern which underlies this provision. We will consider these comments in connection with possible revisions to this interim final rule. In the meantime, the waiver authority will assure that necessary and appropriate care can be approved, regardless of a referring physician's "economic interest" in the facility.

C. Rulemaking Procedures

DoD is issuing this interim final rule, with a February 15, 1991, effective date. We are dispensing with the procedures of prior public comment and 30-day notice before effective date on the grounds that this rule essentially brings the CHAMPUS regulation into conformity with statutory changes which, by their own force, become effective February 15, 1991. Thus, prior public comment is inpracticable and unnecessary and good cause exists for waiving the normal 30-day notice before effective date under the Administrative Procedure Act.

However, we are soliciting public comments on this rule. We will address these comments—and either revise or reaffirm all provisions of this rule—coincident with other changes to the regulation we will soon propose. In the interim, as required by the effective date of the statutory changes, the provisions of this rule will be in effect.

Regarding other regulatory procedures, Executive Order 12291 requires that a regulatory impact analysis be performed on any major rule. A "major rule" is defined as one which would result in an annual effect on the national economy of $100 million or more or have other substantial impacts.

Section 605(b) of the Regulatory Flexibility Act requires that each federal agency prepare, and made available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities.

This final rule is not a major rule under Executive Order 12291. Also, we certify that this rule will not significantly affect a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

In addition, this rule does not impose information collection requirements. Therefore, it does not need to be reviewed by the Executive Office of Management and Budget under authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3511).

List of Subjects in 32 CFR Part 199

Claims, Handicapped, Health insurance, Military personnel.

Accordingly, 32 CFR part 199 is amended as follows:

PART 199—[AMENDED]

1. The authority citation for part 199 continues to read as follows:

Authority: 10 U.S.C. 1079, 1086, 5 U.S.C. 301, Pub. L. 101–165, section 9100.

2. Section 199.2(b) is amended by adding a definition for "psychiatric emergency" in alphabetical order as follows:

§ 199.2 Definitions.

* * * * *

(b) *Specific definitions.*

* * * * *

Psychiatric emergency. A psychiatric inpatient admission is an emergency when a physician determines through a psychiatric evaluation that the patient is at immediate risk of serious harm to self or others as a result of a mental disorder and requires immediate continuous skilled observation at the acute level of care.

* * * * *

3. Section 199.4 is amended by redesignating the current test of paragraph (a)(10) after the italic heading as (a)(10)(i) and adding a new paragraph (a)(10)(ii); by adding a heading to newly designated paragraph (a)(10)(i); bv

adding new paragraphs (b)(4)(vii), (b)(4)(viii), (b)(4)(ix), (b)(4)(x) and (b)(4)(xi); by revising the paragraph heading for paragraph (b)(5)(ix) and by adding new paragraph (b)(5)(x); by revising the heading paragraph (g)(72); by redesignating paragraph (g)(73) as paragraph (g)(74) and by adding a new paragraph (g)(73), as follows:

§ 199.4 Basic program benefits.

(a) * * *

(10) * * *

(i) *In general.* * * *

(ii) *For mental health services.* The Director OCHAMPUS shall provide, either directly or through contract, a program of utilization and quality review for all mental health care services. Among other things, this program shall include mandatory preadmission authorization before nonemergency inpatient mental health services may be provided and mandatory approval of continuation of inpatient services within 72 hours of emergency admissions. This program shall also include requirements for other pretreatment certification procedures, concurrent review of continuing inpatient and outpatient, retrospective review, and other such procedures as determined appropriate by the Director, OCHAMPUS. The provisions of paragraph (h) of this section and § 199.15(f) shall apply to this program. The Director, OCHAMPUS, shall establish, pursuant to that section, procedures substantially comparable to requirements of paragraph (h) of this section and § 199.15. If the utilization and quality review program for mental health care services is provided by contract, the contractor(s) need not be the same contractor(s) as are engaged under § 199.15 in connection with other services.

* * * * *

(b) *Institutional benefits.*

* * * * *

(4) *Services and supplies provided by RTCS.*

* * * * *

(vii) *Criteria for determining medical or psychological necessity.* In determining the medical or psychological necessity of services and supplies provided by RTCs, the evaluation conducted by OCHAMPUS (directly or by contract) shall consider the appropriate level of care for the patient, the intensity of services required by the patient, and the availability of that care. In addition to the criteria set forth in this paragraph (b)(4) of this section, additional evaluation standards, consistent with such criteria, may be adopted by the Director, OCHAMPUS (directly or by contract). RTC services and supplies will not be considered necessary when the patient could be treated at a less intensive level of care reasonably available to the patient. RTC services and supplies shall not be considered necessary unless all the following criteria are clinically determined in the evaluation to be fully met:

(A) Patient has a diagnosable psychiatric disorder.

(B) Patient exhibits patterns of disruptive behavior with evidence of disturbances in family functioning or social relationships and persistent psychological and/or emotional disturbances.

(C) RTC services involve active clinical treatment under an individualized treatment plan that provides for:

(*1*) Specific goals/objectives relevant to the problems identified;

(*2*) Skilled interventions by qualified mental health professionals to assist the patient and/or family;

(*3*) Time frames for achieving proposed outcomes; and

(*4*) Evaluation of treatment progress, including an explanation of any failure to achieve the treatment goals/objectives defined and appropriate revisions in planning for treatment based on updated assessments of the patient's response to treatment.

(D) Unless therapeutically contraindicated, the family and/or guardian must actively participate in the continuing care of the patient either through direct involvement at the facility or geographically distant family therapy. (In the latter case, the treatment center must document that the patient's therapist and parents collaborate in all reviews.)

(viii) *Preauthorization requirement.*

(A) All admissions to RTC care are elective and must be certified as medically/psychologically necessary prior to admission. The criteria for preauthorization shall be those set forth in paragraph (b)(4)(vii) of this section. In applying those criteria in the context of preauthorization review, special emphasis is placed on the development of a specific diagnosis/treatment plan, consistent with those criteria and reasonably expected to be effective, for that individual patient. The elements of the individualized diagnosis/treatment plan must include:

(*1*) The diagnostic evaluation that establishes the necessity for the admission;

(*2*) An assessment regarding the inappropriateness of services at a less intensive level of care;

(*3*) A comprehensive, biopsychosocial assessment and diagnostic formulation;

(*4*) A specific individualized treatment plan;

(*5*) A specific plan for involvement of family members, unless therapeutically contraindicated; and

(*6*) A discharge plan, including an objective of referring the patient to further services, if needed, at less intensive levels of care within the benefit limit period.

(B) In cases involving transfers from acute care or the admission of patients from geographically distant locations, the individualized diagnosis/treatment plan need not be provided prior to admission, but shall be provided within 48 hours of the admission.

(ix) *Concurrent review.* Concurrent review of the necessity for continued stay will be conducted no less frequently than every 30 days. The criteria for concurrent review shall be those set forth in paragraph (b)(4)(vii) of this section. In applying those criteria in the context of concurrent review, special emphasis is placed on evaluating the progress being made in the active individualized clinical treatment being provided and on developing appropriate discharge plans.

(x) *Benefit limit.* Benefits for residential treatment are generally limited to 150 days in a benefit year. A benefit year begins with the first date of covered RTC care and ends 365 days later regardless of the total number of RTC days used within the benefit period. As a special rule for transition cases, with respect to any beneficiary who is an inpatient in an RTC on February 15, 1991, the benefit period for such patient shall be considered to have begun on February 15, 1991. The RTC benefit year is separate from the benefit year for inpatient mental health care.

(xi) *Waiver of the benefit limit.* (A) There is a statutory presumption against the appropriateness of residential treatment services in excess of 150 days in a benefit year. However, the Director, OCHAMPUS, or a designee, may waive the RTC benefit limit in paragraph (b)(4)(x) of this section and authorize payment for care beyond that limit. In order for a waiver to be granted, a non-Federal health care professional, designated by the Director, shall review the case and certify that the criteria for waiving the limit are documented to be met.

(B) The criteria for waiver shall be those set forth in paragraph (b)(4)(vii) of this section. In applying those criteria to the context of waiver request reviews, special emphasis is placed on assuring that:

(*1*) The record documents that active treatment has taken place for the past 150 days and substantial progress has been made according to the plan of treatment;

(*2*) The progress made is insufficient, due to the complexity of the illness, for the patient to be discharged to a less intensive level of care;

(*3*) Specific evidence is presented to explain the factors which interfered with treatment progress during the 150 days of RTC care; and

(*4*) The waiver request includes specific time frames and a specific plan of treatment which will lead to discharge.

(C) Where family or social issues complicate transfer to a lower level of intensity, the RTC is responsible for determining the supportive and adjunctive resources required to permit appropriate transfer. If the RTC fails adequately to meet this responsibility, the existence of such family or social issues shall be an inadequate basis for a waiver of the benefit limit.

(D) It is the responsibility of the patient's attending clinician to establish, through actual documentation from the medical record and other sources, that the conditions for waiver exist. A waiver request must be received by the reviewer designated by the Director, OCHAMPUS no later than the 135th day of RTC care. A decision to deny a waiver will be made on behalf of the Director only by a licensed doctoral level mental health professional experienced in the treatment of children and adolescents.

(*5*) * * *

(ix) *Inpatient mental health services provided prior to February 15, 1991.*

(x) *Inpatient mental health services provided on and after February 15, 1991.* Benefits are available for short-term, intensive inpatient hospital treatment of patients with life-threatening or severely disabling illness requiring the 24-hour availability of the qualified staff and other resources of a hospital. Services payable in acute inpatient settings are directed to assessment of the patient's illness and rapid stabilization of the patient's condition sufficient to permit management of the patient's condition at a less intensive level of care. Care must be determined to be medically or psychologically necessary. Services may not be provided in cases in which care is primarily custodial.

(A) *Criteria for determining medical or psychological necessity.* In determining the medical or psychological necessity of acute inpatient mental health services, the evaluation conducted by OCHAMPUS (directly or by contract) shall consider the appropriate level of care for the patient, the intensity of services required by the patient, and the availability of that care. The purpose of such acute inpatient care is to stabilize a life-threatening or severely disabling condition within the context of a brief, intensive model of inpatient care. Such care is appropriate only if the patient requires services of an intensity and nature that are generally recognized as being effectively and safely provided only in an acute inpatient hospital setting. In addition to the criteria set forth in this paragraph (b)(5)(x) of this section, additional evaluation standards, consistent with such criteria, may be adopted by the Director, OCHAMPUS (directly or by contract). Acute inpatient care shall not be considered necessary unless at least one of the following criteria is determined to be met:

(*1*) Patient poses a serious risk of harm to self and/or others.

(*2*) Patient needs to be observed and assessed on a 24-hour basis by skilled nursing staff, and/or requires continued intervention by a multidisciplinary treatment team.

(*3*) Patient is in need of high dosage, unusual medication, or somatic and/or psychological treatment, with potentially serious side effects.

(*4*) Patient has acute disturbances of mood, behavior, or thinking which required initial admission.

(B) *Emergency admissions.* Admission to an acute inpatient hospital setting may be on an emergency or on a non-emergency basis. In order for an admission to qualify as an emergency, the following criteria, in addition to those in paragraph (b)(5)(x)(A) of this section, must be met:

(*1*) The patient must be at immediate risk of serious harm to self and or others as determined by a psychiatric evaluation by a physician; and

(*2*) The patient requires immediate continuous skilled observation and treatment at the acute psychiatric level of care.

(C) *Preauthorization requirements.*

(*1*) All non-emergency admissions to an acute inpatient hospital level of care must be certified prior to the admission. The criteria for preauthorization shall be those set forth in paragraph (b)(5)(x)(A) of this section. In applying those criteria in the context of preauthorization review, special emphasis is placed on the development of a specific diagnosis/treatment plan, consistent with those criteria and reasonably expected to be effective, for that individual patient. The elements of the diagnosis/treatment plan must include:

(*i*) The diagnostic evaluation that establishes the necessity for the admission;

(*ii*) An assessment regarding the inappropriateness of services at a less intensive level of care;

(*iii*) A comprehensive biopsychosocial assessment and diagnostic formulation;

(*iv*) A specific individualized treatment plan;

(*v*) A specific plan for involvement of family members, unless therapeutically contraindicated; and

(*vi*) A discharge plan, including an objective of referring the patient to further services, if needed, at less intensive levels of care within the benefit limit period.

(*2*) The request for preauthorization certification must be received by the reviewer designated by the Director, OCHAMPUS at least 48 hours prior to the planned admission date. In general, the decision regarding certification shall be made within one working day of receipt of a request for certification.

(*3*) Certification prior to admission is not required in the case of a psychiatric emergency requiring an inpatient acute level of care, but certification for a continuation of services must be obtained within 72 hours after admission. Admissions resulting from a bona fide psychiatric emergency shall be reported to the Director, OCHAMPUS or a designee, within 24 hours of the admission or the next business day after admission.

(D) *Concurrent review.* Concurrent review of the necessity for continued stay may be conducted. The criteria for concurrent review shall be those set forth in paragraph (b)(5)(x)(A) of this section. In applying those criteria in the context of concurrent review, special emphasis is placed on evaluating the progress being made in the active clinical treatment being provided and on developing/refining appropriate discharge plans.

(E) *Benefit limits.*

(*1*) Payment for inpatient acute hospital care is, in general, statutorily limited as follows:

(*i*) Adults, aged 19 and over—30 days in a benefit year.

(*ii*) Children and Adolescents, aged 18 and under—45 days in a benefit year.

(*2*) It is the patient's age at the time of admission that determines the number of days available.

(*3*) The inpatient acute benefits available shall be calculated on a benefit year basis. A benefit year begins with the first day of covered acute inpatient care and ends 365 days later. Unused days in one benefit year cannot be applied to another.

(4) *Transition cases.* With respect to any beneficiary who received covered inpatient acute mental health services between the dates of January 1, 1991, and February 15, 1991, the benefit period for such beneficiary shall be considered to have begun on the first date of such services, but not before January 1, 1991. Further, with respect to any such beneficiary who is an inpatient on February 15, 1991, the limits set forth in paragraph (b)(5)(x)(C)(1) of this section, shall not apply to continued services during the same admission, until the beneficiary has received 60 days of inpatient care during the benefit year.

(F) *Waiver of the inpatient limit.*

(1) There is a statutory presumption against the appropriateness of inpatient acute services in excess of the day limits set forth in paragraph (b)(5)(x)(E) of this section. However, the Director, OCHAMPUS, or a designee, may in special cases waive the acute inpatient limits described in (b)(5)(x)(E) of this section and authorize payment for care beyond those limits. In order for a waiver to be granted, a non-Federal health care professional, designated by the Director, shall review the case and certify that a criterion for waiving the limit is documented to be met.

(2) The criteria for waiver of the acute inpatient limit shall be those set forth on paragraph (b)(5)(x)(A) of this section. In applying those criteria in the context of waiver request review, special emphasis is placed on determining whether additional days of acute inpatient mental health care are medically/psychologically necessary to complete necessary elements of the treatment plan prior to implementing appropriate discharge planning. A waiver may also be granted in cases in which a patient exhibits well-documented new symptoms, maladaptive behavior, or medical complications which have appeared in the inpatient setting requiring a significant revision to the treatment plan.

(3) The clinician responsible for the patient's care is responsible for documenting that a waiver criterion has been met and must establish an estimated length of stay beyond the date of the inpatient limit. There must be evidence of a coherent and specific plan for assessment, intervention and reassessment that reasonably can be accomplished within the time frame of the additional days of coverage requested under the waiver provision.

(4) For patients in care at the time the inpatient limit is reached, a waiver should be requested at least one week prior to the limit. For patients being readmitted after having received 30 or 45 days in a benefit year, the waiver review will be conducted at the time of the preadmission certification.

(5) Denial of a waiver for inpatient care will be made only by a licensed doctoral level mental health professional experienced in the treatment of adults or children/adolescents as appropriate.

* * * * *

(g) *Exclusions and limitations.*

(72) *Inpatient mental health services for services provided prior to February 15, 1991.* * * *

(73) *Inpatient mental health services provided on and after February 15, 1991.* Services in excess of 30 days in any benefit year, in the case of a patient nineteen years of age or older, 45 days in any benefit year in the case of a patient under 19 years of age, or 150 days in any benefit year in the case of inpatient mental health services provided as residential treatment care, or for care received when a patient is referred to a provider of inpatient mental health care or residential treatment care by a medical or health care professional having an economic interest in the facility to which the patient is referred, unless coverage for such services is granted by a waiver by the Director, OCHAMPUS, or a designee. In cases involving the day limitations, waivers shall be handled in accordance with paragraphs (b)(4) or (b)(5)(x) of this section. In cases involving the economic interest exclusion, the evaluation shall seek to assure the medical or psychological necessity of services, notwithstanding the health care professional's economic interest.

* * * * *

Dated: February 11, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-3604 Filed 2-14-91; 8:45 am]

BILLING CODE 3810-01-M

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32 CFR Part 247

[DoD Instruction 4640.4]

Standard Rates for Unofficial Telephone Service at DoD Installations

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This document removes 32 CFR part 247 concerning standard rates for unofficial telephone service at DoD installations. The part has served the purpose for which it was intended and is no longer required.

EFFECTIVE DATE: January 25, 1991.

FOR FURTHER INFORMATION CONTACT: L.M. Bynum, Directives Division, Washington Headquarters Services, Pentagon, Washington, DC 20301, telephone (703) 697-4111.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 247

Armed forces; Telephone.

PART 247—(REMOVED)

Accordingly, 32 CFR Part 247 is removed.

Authority: 10 U.S.C. 133.

Dated: February 11, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-3644 Filed 2-14-91; 8:45 am]

BILLING CODE 3810-01-M

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32 CFR Part 381

[DoD Directive 5105.31]

Defense Nuclear Agency

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This document revises 32 CFR part 381 to update the responsibilities, functions, relationships and authorities of the Director, Defense Nuclear Agency (DNA), a separate agency of the Department of Defense. Its mission is to provide support to Department of Defense and other Federal agencies on matters concerning nuclear weapons, nuclear weapons system acquisitions, nuclear weapons effects on weapons systems and forces, and nuclear weapons safety and security. This revision also places the Director, DNA under the direction, authority, and control of the Director, Defense Research and Engineering (32 CFR part 351).

EFFECTIVE DATE: January 24, 1991.

ADDRESSES: Office of the Director, Administration and Management, Organizational and Management Planning, Pentagon, Washington, DC 20301.

FOR FURTHER INFORMATION CONTACT: Mr. D. Clark, telephone (703) 697-1143.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 381

Organization and function (Government agencies).

Accordingly, 32 CFR part 381 is revised to read as follows:

PART 381—DEFENSE NUCLEAR AGENCY

Sec.
381.1 Purpose.
381.2 Mission.
381.3 Organization and management.
381.4 Responsibilities and functions.
381.5 Relationships.
381.6 Authorities.
381.7 Administration.

Appendix to Part 381—Delegations of Authority

Authority: 10 U.S.C. Chapter 8.

§ 381.1 Purpose.

This part updates the responsibilities, functions, relationships, and authorities, as prescribed herein.

§ 381.2 Mission.

(a) The Defense Nuclear Agency (DNA) shall provide support to the Office of the Secretary of Defense (OSD); the Military Departments; the Chairman, Joint Chiefs of Staff and Joint Staff; the Unified and Specified Commands; the Defense Agencies; and the DoD Field Activities (hereafter referred to collectively as "DoD Components"); and other Federal Agencies on matters concerning nuclear weapons, nuclear weapons system acquisitions, nuclear weapons effects on weapons systems and forces, and nuclear weapons safety and security.

(b) During wartime and international crises, in accordance with national priorities and, as directed by the Director, Defense Research and Engineering (DDR&E), the DNA shall redirect its resources to support the Chairman, Joint Chiefs of Staff (CJCS) and the Commanders of the Unified and Specified Commands in analyzing nuclear weapons planning and action options, and reconstituting nuclear forces.

§ 381.3 Organization and management.

The DNA is established as a separate agency of the Department of Defense, and shall be under the direction, authority, and control of the DDR&E. It shall consist of a Director and such subordinate organizational elements as are established by the Director within the resources authorized by the Secretary of Defense.

§ 381.4 Responsibilities and functions.

The Director, DNA, shall:

(a) Organize, direct, and manage the DNA and all assigned resources.

(b) Maintain the national nuclear weapons stockpile data bases during peace, crisis, and war. Maintain overall surveillance and provide guidance, coordination, advice, or assistance concerning all nuclear weapons in DoD custody including questions on production, composition, allocation, deployment, movement, storage, security and safety, maintenance, quality assurance and reliability assessment, report procedures, and retirement.

(c) Manage the DoD nuclear weapons effects research and test program.

(d) Conduct, as directed by DDR&E, research, development, test, and evaluation programs for on-site inspection technology related to arms control treaty verification.

(e) Conduct research, through exploratory development and/or proof of principle, in coordination with the Military Departments and other appropriate DoD Components and Federal Agencies, to develop technologies and techniques to improve the security, survivability, testing, employment, and effectiveness of nuclear systems, and the nuclear survivability of space, military, and communications systems.

(f) Provide advice and assistance on matters concerning nuclear weapons, nuclear weapons systems, effects of nuclear weapons, the technologies to determine the vulnerability and survivability of military systems and installations, and related arms control matters to DoD Components and Federal Agencies. Coordinate on appropriate Test and Evaluation Master Plans (TEMPs) for systems that have nuclear survivability requirements.

(g) Jointly manage the national nuclear test readiness program with the Department of Energy (DoE) and perform associated technical, operational, and safety planning. Maintain access to facilities necessary to resume above-ground testing.

(h) Act as the central coordinating agency within the Department of Defense on nuclear weapons stockpile data base management, nuclear effects testing, and nuclear effects research within approved policies and programs, and pertinent DoD–DoE agreements.

(i) Provide technical assistance and support to the Secretary of Defense, the Military Departments, and the CJCS in developing nuclear weapons system safety, surety, security, explosive ordnance disposal, and use-control standards, requirements, and operating procedures. Provide a member to joint DoD/DoE nuclear weapons system studies and reviews. Coordinate on proposed nuclear weapons safety rules and changes.

(j) Provide emergency response support and planning assistance to the DoD Components and other Federal Agencies as follows:

(1) Develop policies and procedures to respond to a nuclear weapon accident or improvised nuclear device (IND) incident. Conduct nuclear weapon accident and IND incident command post and field exercizes.

(2) Establish and maintain joint committees to coordinate exercise schedules and to ensure that actions are taken to correct identified deficiencies.

(3) Establish and maintain a Joint Nuclear Accident Coordinating Center (JNACC), in conjunction with DoE and a DNA Advisory Team, to assist On-Scene Commanders and Defense Senior Representatives.

(4) Act as the central coordinating agency for the Department of Defense on nuclear weapon accident and IND incident response.

(k) Maintain and provide nuclear weapons stockpile information to the DoD Components and other Federal Agencies, as required.

(l) Conduct, for the CJCS, nuclear weapons technical inspections of units having responsibilities for assembling, maintaining, or storing nuclear weapon systems, their associated components, and ancilliary equipment.

(m) Provide nuclear weapons quality assurance program oversight for the Department of Defense.

(n) Provide logistics management support for nuclear weapons under DoD control, including:

(1) Integrated materiel management functions for all specially designed and quality controlled nuclear ordnance items and, as appropriate, for Military Department-designed and quality controlled nuclear ordnance items.

(2) Manage that portion of the Federal Cataloging Program pertaining to nuclear ordnance items, including the maintenance of the central data bank and the publication of Federal Supply Catalogs and Handbooks for all nuclear ordnance items.

(3) Control the standardization of nuclear ordnance items in coordination with the appropriate Military Department.

(4) Manage a technical logistics data and information program.

(5) Serve as Inventory Control Manager of stockpile support items, and manage the DoD–DoE logistics supply interface.

(6) Manage the DoD–DoE loan account for nuclear materials.

(o) Assist the DDR&E and the Assistant to the Secretary of Defense for Atomic Energy in representing the Department of Defense in its relations with the DoE on all policy matters relating to the administration and operation of the Joint Nuclear Weapons

Publication System. Coordinate with DoE on Nuclear Weapon Accident Directives.

(p) In support of the DoD Components, perform technical analyses, studies, research, and development on:

(1) Technologies for treaty verification options, including procurement, and associated impacts with regard to arms control and nuclear test limitations.

(2) Technical and employment options for new nuclear weapons, including the relationship of advanced conventional munitions to these options.

(3) The effects of nuclear weapons on command, control, and communications systems improvements that may be needed to ensure reliable operation of forces.

(4) The effect of technology on nuclear force structure, operations, and political-military constraints.

(5) Technologies that would enhance the security, survivability and effectiveness of nuclear systems at both the strategic and theater levels; and evaluation of tactics, doctrine, force postures, operations, and training in order to better direct the DNA nuclear-related programs.

(6) Techniques for assessing and evaluating alternate nuclear operations and tactics.

(7) Broad military applications of atomic energy.

(q) Conduct joint programs involving, as appropriate, the Defense Advanced Research Projects Agency (DARPA), other DoD Components, and Allied Commands in matters regarding DNA-developed technologies. This includes test, evaluation, and demonstration of appropriate technologies.

(r) Disseminate technological information of joint interest relating to nuclear technology, development, and weapons, through laboratory liaison, technical reports, and nuclear weapons technical publications. Assist in technology transfer and implementation of successful research programs into the Military Departments and Allied Commands.

(s) Perform technical analyses, studies, and research on non-nuclear matters of critical importance to the Department of Defense where DNA has unique capabilities developed as part of its nuclear responsibilities.

(t) Conduct research in the field of radiobiology and related matters, essential to the operational and medical support of the DoD Components, through the Armed Forces Radiobiology Research Institute (AFRRI). The research shall be an integral part of the DoD medical and life sciences research, development, test, and evaluation program.

(u) Operate the Joint Atomic Information Exchange Group (JAIEG) in accordance with policy guidance furnished jointly by the Assistant to the Secretary of Defense for Atomic Energy (ATSD(AE)) for the Department of Defense and the Director for Military Applications for the DoE.

(v) Develop guidelines and criteria for the advice of the Defense Acquisition Board in evaluating the adequacy of system nuclear survivability.

(w) Be responsible for all matters relating to nuclear test programs and records to include preservation of vital test data and records acquired during past U.S. and other nuclear effects tests.

(x) Be responsible for the Nuclear Test Personnel Review.

(y) Maintain national-level oversight for the Site Folder Project and establish an exercise program for validation of site folders.

(z) Maintain DoD-level oversight of DoD nuclear weapons effects simulators.

(aa) Perform such other functions as may be assigned by the DDR&E.

§ 381.5 Relationships.

(a) In performing assigned functions, the Director, DNA, shall:

(1) Subject to the direction, authority, and control of the DDR&E, be responsible to the CJCS for operational matters as well as requirements associated with the joint planning process. For these purposes, the CJCS is authorized to communicate directly with the Director, DNA, and may task the Director, DNA, to the extent authorized by the DDR&E.

(2) Maintain appropriate liaison with other DoD Components and other Agencies of the Executive Branch for the exchange of information on programs and activities in the field of assigned responsibilities.

(3) Make use of established facilities and services in the Department of Defense or other governmental agencies, whenever practicable, to achieve maximum efficiency and economy.

(4) Ensure that the Secretary of Defense, the Deputy Secretary of Defense, the Secretaries of the Military Departments, the CJCS, and the heads of other DoD Components are kept fully informed of DNA activities with which they have substantive concern.

(5) Use data from nuclear tests performed by other countries, or provided by the intelligence community, to obtain information in designing U.S. nuclear forces and assisting the Unified and Specified Commands in target planning.

(6) Coordinate with other officials of the Department of Defense, as appropriate.

(b) The Secretaries of the Military Departments, CJCS, Commanders of Unified and Specified Commands, and Heads of other DoD Components shall:

(1) Provide support, within their respective fields of responsibilities, to the Director, DNA, as required, to carry out the responsibilities and functions assigned to the DNA.

(2) Provide information, as necessary, to the Director, DNA, on all programs and activities that include, or are related to, nuclear weapons effects research, nuclear effects testing, or nuclear weapons accident response as well as the safety, security, and survivability of nuclear weapons systems and forces.

(3) Keep the Director, DNA, informed as to the substance of major actions being coordinated with other DoD Components, the DoE and its laboratories, and other Federal Agencies that relate to DNA functions.

(4) Provide the Director, DNA, with information regarding long-term nuclear weapons development and requirements for nuclear weapons research and testing. This specifically includes keeping the Director, DNA, informed concerning systems response to nuclear weapons effects, and the security, safety, and survivability of nuclear systems and forces.

(c) The CJCS shall review and assess the adequacy of DNA efforts in nuclear weapons testing and nuclear weapons effects research that are related directly to systems employed in joint operations, and in support required for the execution of operational plans of the Unified and Specified Commands.

§ 381.6 Authorities.

The Director, DNA, is specifically delegated authority to:

(a) Communicate directly with heads of DoD Component and other Executive Departments and Agencies, as necessary, in carrying out assigned responsibilities and functions. Communications to the Commanders in Chief of the Unified and Specified Commands shall be coordinated with the CJCS.

(b) Obtain reports, information, advice, and assistance from other DoD Components, consistent with DoD Directive 7750.5,[1] as necessary, in

[1] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

carrying out assigned responsibilities and functions.

(c) Establish facilities necessary to accomplish the DNA mission in the most efficient and economical manner.

(d) Exercise the administrative authorities contained in the appendix to this part.

§ 381.7 Administration.

(a) The Director, and Deputy Director, DNA, shall be appointed by the Secretary of Defense.

(b) The Military Departments shall assign military personnel to the DNA in accordance with approved Joint Manpower Program authorizations and procedures for assignment to joint duty. The CJCS shall review and provide recommendations on the DNA Joint manpower program to the DDR&E, as appropriate, for those functions where DNA is responsive to CJCS.

Appendix to Part 381—Delegations of Authority

Pursuant to the authority vested in the Secretary of Defense, and subject to the direction, authority, and control of the Secretary of Defense, and in accordance with DoD policies, Directives, and Instructions, the Director, DNA, or in the absence of the Director, the person acting for the Director, is hereby delegated authority as required in the administration and operation of DNA to:

1. Exercise the powers vested in the Secretary of Defense by 5 U.S.C. 301, 302(b), and 3101 pertaining to the employment, direction, and general administration of DNA civilian personnel.

2. Fix rates of pay for wage-rate employees exempted from the Classification Act of 1949 by 5 U.S.C. 5102 on the basis of rates established under the Coordinated Federal Wage System. In fixing such rates, the Director, DNA, shall follow the wage schedule established by the DoD Fixing Authority.

3. Establish advisory committees and employ part-time advisors, as approved by the Secretary of Defense, for the performance of DNA functions consistent with 10 U.S.C. 173; 5 U.S.C. 3109(b); DoD Directive 5105.4 [1] "DoD Federal Advisory Committee Management Program," September 5, 1989; and the agreement between the Department of Defense and the Office of Personnel Management (OPM) on employment of experts and consultants, June 21, 1977.

4. Administer oaths of office incident to entrance into the Executive Branch of the Federal Government or any other oath required by law in connection with employment therein, in accordance with 5 U.S.C. 2903, and designate in writing, as may be necessary, officers and employees of DNA to perform this function.

5. Establish a DNA Incentive Awards Board and pay cash awards to, and incur necessary expenses for the honorary recognition of, civilian employees of the Government whose suggestions, inventions, superior accomplishments, or other personal efforts, including special acts or services, benefit or affect the DNA or its subordinate activities, in accordance with 5 U.S.C. 4503 and applicable OPM regulations.

6. In accordance with the provisions of 5 U.S.C. 7532; Executive Orders 10450, 12333, and 12356; and DoD Directive 5200.2 [2] "DoD Personnel Security Program," December 20, 1979; as appropriate:

a. Designate any position in DNA as a "sensitive" position.

b. Authorize, in case of an emergency, the appointment of a person to a sensitive position in the DNA for a limited period of time for whom a full field investigation or other appropriate investigation, including the National Agency Check (NAC), has not been completed.

c. Authorize the suspension but not terminate the services of a DNA employee in the interest of national security.

d. Initiate investigations, issue personnel security clearances and, if necessary, in the interest of national security, suspend, revoke, or deny a security clearance for personnel assigned, detailed to, or employed by the DNA. Any action to deny or revoke a security clearance shall be taken in accordance with procedures prescribed in DoD 5200.2-R [3], "DoD Personnel Security Program," January 1987.

7. Act as agent for the collection and payment of employment taxes imposed by chapter 21 of the Internal Revenue Code of 1954, as amended; and, as such agent, make all determinations and certifications required or provided for under section 3122 of the Internal Revenue Code of 1954, as amended, and section 205(p) (1) and (2) of the Social Security Act, as amended (42 U.S.C. 405(p) (1) and (2)) and with respect to DNA employees.

8. Authorize and approve:

a. Temporary duty travel for military personnel assigned or detailed to the DNA in accordance with Volume I, Joint Federal Travel Regulations.

b. Travel for DNA civilian officers and employees in accordance with Volume II, Joint Travel Regulations.

c. Invitational travel to non-DoD employees whose consultative, advisory, or other highly specialized technical services are required in a capacity that is directly related to, or in connection with, DNA activities, in accordance with Volume II, Joint Travel Regulations.

d. Overtime work for DNA civilian employees in accordance with 5 U.S.C. chapter 55, subpart V, and applicable OPM regulations.

9. Approve the expenditure of funds available for travel by military personnel assigned or detailed to the DNA for expenses incident to attendance at meetings of technical, scientific, professional, or other similar organizations in such instances where the approval of the Secretary of Defense, or designee, is required by 37 U.S.C. 412, and 5 U.S.C. 4110 and 4111. This authority cannot be redelegated.

10. Develop, establish, and maintain an active and continuing Records Management Program pursuant to 44 U.S.C. 3102 and DoD Directive 5015.2 [4], "Records Management Program," September 17, 1980.

11. Establish and use imprest funds for making small purchases of material and services, other than personal services, for the DNA, when it is determined more advantageous and consistent with the best interests of the Government, in accordance with DoD Directive 7360.10 [5], "Disbursing Policies," January 17, 1989.

12. Authorize the publication of advertisments, notices, or proposals in newspapers, magazines, or other public periodicals as required for the effective administration and operation of DNA consistent with 44 U.S.C. 3702.

13. Establish and maintain appropriate property accounts for DNA, and appoint Boards of Survey, approve reports of survey, relieve personal liability, and drop accountability for DNA property contained in the authorized property accounts that has been lost, damaged, stolen, destroyed, or otherwise rendered unserviceable, in accordance with applicable laws and regulations.

14. Promulgate the necessary security regulations for the protection of property and places under the jurisdiction of the Director, DNA, pursuant to DoD Directive 5200.8 [6], "Security of Military Installations and Resources," July 29, 1980.

15. Establish and maintain, for the functions assigned, an appropriate publications system for the promulgation of common supply and service regulations, instructions, and reference documents and changes thereto, pursuant to the policies and procedures prescribed in DoD 5025.1-M [7], "DoD Directives System Procedures," December 1990.

16. Enter into support and service agreements with the Military Departments, other DoD Components, or other Federal Agencies, as required for the effective performance of DNA functions and responsibilities.

17. Enter into and administer contracts, directly or through a Military Department, a DoD contract administration services component, or other Federal Agency, as appropriate, for supplies, equipment, and services required to accomplish the mission of the DNA. To the extent that any law or Executive order specifically limits the exercise of such authority to persons at the Secretarial level of the Military Department, such authority shall be exercised by the appropriate Under Secretary or Assistant Secretary of Defense.

18. Lease property under the control of DNA under terms that will promote the national defense or that will be in the public interest, pursuant to 10 U.S.C. 2667.

The Director, DNA, may redelegate these authorities, as appropriate, and in writing, except as otherwise specifically indicated

[1] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161

[2] See footnote 1 to paragraph 3 of this appendix.

[3] See footnote 1 to paragraph 3 of this appendix.

[4] See footnote 1 to paragraph 3 of this appendix.

[5] See footnote 1 to paragraph 3 of this appendix.

[6] See footnote 1 to paragraph 3 of this appendix.

[7] See footnote 1 to paragraph 3 of this appendix.

above or as otherwise provided by law or regulation.

These delegations of authority are effective immediately.

Dated: February 11, 1991.

L.M. Bvnum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-3643 Filed 2-14-91; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD7-90-91]

Drawbridge Operation Regulations; Great Canal, FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of David McWilliams, the bridge owner, the Coast Guard is adding regulations governing the Lansing Island drawbridge across Great Canal by requiring that advance notice of opening be given during certain periods. This change is being made because of a lack of requests for opening this bridge and the nearby Tortoise Island and Mathers drawbridges at night. This provision will relieve the bridge owner of the burden of having a person constantly available to open the draw and still provide for the reasonable needs of navigation.

EFFECTIVE DATE: These regulations become effective on March 18, 1991.

FOR FURTHER INFORMATION CONTACT: Walt Paskowsky, (305) 536-4103.

SUPPLEMENTARY INFORMATION: On November 15, 1990, the Coast Guard published a proposed rule (55 FR 47776) concerning this amendment. The Commander, Seventh Coast Guard District, also published the proposal as a Public Notice dated November 30, 1990. In each notice interested persons were given until December 31, 1990, to submit comments.

Drafting Information

The drafters of these regulations are Walter J. Paskowsky, project officer, and LT Genelle Tanos, project attorney.

Discussion of Comments

Only two comments were received. One offered no objections, but referred to some problems with the operation of the bridge while it was under construction that have since been resolved. The other commentor objected to the proposal and requested that all the drawbridges on the waterway open on signal. Since two other drawbridges on the waterway system have operated satisfactorily with advance notice requirements during weeknights for several years, we do not consider it necessary to require the Lansing Island bridge to be tended full time during evening hours.

The Coast Guard has carefully considered the comments and has determined that no new information has been presented that justifies the proposed regulation. The final rule is therefore, unchanged from the proposed rule published on November 15, 1990.

Federalism

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

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because of a lack of bridge openings at night. Since the economic impact is expected to be minimal, the Coast Guard certifies that the rule will not have a significant impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

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; 33 CFR 1.05-1(g).

2. Section 117.285 is amended by designating the existing text as paragraph (b) and adding a new paragraph (a) to read as follows:

§ 117.285 Great Canal.

(a) The draw of the Lansing Island bridge, mile 0.7, shall open on signal, except that during the evening hours from 10 p.m. to 6 a.m. from Sunday evening until Friday morning, except on evenings preceding a federal holiday, the draw shall open on signal if at least 15 minutes notice is given.

* * * * *

Dated: February 5, 1991.

Robert E. Kramek,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 91-3706 Filed 2-14-91; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 165

[CGD1 90-204]

Security Zone Regulations; Upper Bay of New York Harbor at Bayonne, NJ; Correction

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule, correction.

SUMMARY: The Coast Guard is correcting errors for the security zone regulations for Upper Bay of New York Harbor at Bayonne, NJ, which appeared in rule document 91-680 beginning on page 1109 in the issue of Friday, January 11, 1991.

FOR FURTHER INFORMATION CONTACT: LTJG C. W. Jennings of Captain of the Port, New York at (212) 668-7737.

SUPPLEMENTARY INFORMATION: A review of the published regulation revealed that no termination date was incorporated into the temporary rule issued for the security zone. Make the following corrections:

Correction

In temporary rule document CGD1 90-204 beginning on page 1109 in the Vol. 56, No. 8 issue of Friday, January 11, 1991, make the following corrections:

1. On page 1109, in the third column, the entire preamble paragraph captioned **DATES** is corrected to read as follows:

DATES: This regulation becomes effective at 7 a.m. local time on 30 November 1990 and terminates at 7 a.m. on 28 February 1991, unless terminated earlier by the Captain of the Port, New York.

§ 165.T1204 [Amended]

2. On page 1110, in the second column, the entire text of the paragraph (b) of § 165.T1204 is corrected to read as follows:

* * * * *

(b) *Effective date.* This regulation becomes effective at 7 a.m. local time on 30 November 1990 and terminates at 7 a.m. on 28 February 1991, unless

terminated earlier by the Captain of the Port, New York.

* * * * *

Dated: January 15, 1991.

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6 and 33 CFR 160.5.

R.M. Larrabee,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 91-3582 Filed 2-14-91; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[AD-FRL-3870-9]

Preparation, Adoption, and Submittal of State Implementation Plans; Methods for Measurement of PM_{10} Emissions From Stationary Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Technical amendments.

SUMMARY: A Federal Register document promulgating two methods, 201 and 201A, for the measurement of PM_{10} emissions from stationary sources was published April 17, 1990 (55 FR 14246). The methods contained several typographical errors. The purpose of this action is to correct these errors. In addition, a paragraph in each method is revised and moved to make the methods more understandable, and some terms in the nomenclature in the text of the method has been changed to make it consistent with the nomenclature in the worksheets.

EFFECTIVE DATE: February 15, 1991.

FOR FURTHER INFORMATION CONTACT: Roy Huntley, Emission Measurement Branch (MD-19), Technical Support Division, U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541-1060.

SUPPLEMENTARY INFORMATION:

List of Subjects in 40 CFR Part 51

Administrative practice and procedure, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: December 12, 1990.

Michael Shapiro,

Acting Assistant Administrator for Air and Radiation.

Methods 201 and 201A of appendix M of 40 CFR part 51 are amended as follows:

PART 51—[AMENDED]

1. The authority citation for part 51 continues to read as follows:

Authority: 42 U.S.C. 7401(b)(1), 7410, 7470-7479, 7501-7508, and 7601(a), unless otherwise noted.

Appendix [Amended]

2. In Method 201, section 4.1.6 is removed.

3. In Method 201, section 4.5 is added as follows:

4.5 PM_{10} Emission Calculation and Acceptability of Results. Use the EGR reduction program or the procedures in section 6 of this method to calculate PM_{10} emissions and the criteria in section 6.7 of this method to determine the acceptability of the results.

4. In Method 201A, section 4.1.6 is removed.

5. In Method 201A, section 4.5 is added as follows:

4.5 PM_{10} Emission Calculation and Acceptability of Results. Use the procedures in section 6 to calculate PM_{10} emissions and the criteria in section 6.3.5 to determine the acceptability of the results.

6. In Method 201A, in section 5.3.1.1, in the denominator of the equation for Reynolds number (Re), μ_{cyc} is revised to read μ_s.

7. In Method 201A, in section 5.3.1.1, in the denominator of the equation for Stokes 50 number (Stk_{50}), μ_{cyc} is revised to read μ_s.

8. In Method 201A, in the nomenclature section 5.3.1.1, "μ_{cyc} = Viscosity of gas through the cyclone, micropoise." is revised to read "μ_s = Viscosity of stack gas, micropoise."

9. In Method 201A, in section 5.3.1.2 in the numerator of the equation for Q_s, "μ_{cyc}" is revised to read "μ_s".

10. In Method 201A, in section 5.3.1.2, in the denominator of the equation for Q_s, "M_c" is revised to read "M_w".

11. In Method 201A, in the nomenclature section of section 5.3.1.2, "M_c = Molecular weight of the stack gas, lb/lb-mole." is revised to read "M_w = Wet molecular weight of the stack gas, lb/lb-mole.".

12. In Method 201A, introductory text is added in section 6 as follows: "Calculations are as specified in Method 5, sections 6.3 through 6.7, and 6.9 through 6.11, with the addition of the following:"

13. In Method 201A, in section 6.1, "M_c = Wet molecular weight of mixed gas through the PM_{10} cyclone, g/g-mole (lb/lb-mole)." is revised to read "M_w = Wet molecular weight of the stack gas, g/g-mole (lb/lb-mole)."

14. In Method 201A, in section 6.1, "μ_{cyc} = Viscosity of mixed cyclone gas, micropoise." is revised to read "μ_s = Viscosity of stack gas, micropoise."

15. In Method 201A, in section 6.1, μ_{std} and its definition are removed.

16. In Method 201A, in section 6.3.4, "μ_{cyc}" is revised to read "μ_s".

17. In Method 201A, in section 6.3.4, "T_2" is revised to read "T_s".

18. In Method 201A, in section 6.3.4.1, in the numerator of the equation, "$V_{m(std)}$" is revised to read "$V_{w(std)}$".

19. In Method 201A, in section 6.3.4.2, "M_c" is revised to read "M_w".

20. In Method 201A, in section 6.3.4.3, in the denominator of the equation, "M_c" is revised to read "M_w".

21. In Method 201A, in section 6.3.4.3, in the numerator of the equation, "μ_{cyc}" is revised to read "μ_s".

22. In Method 201A, in Figure 4, in the equation for orifice pressure head (ΔH) needed for cyclone flow rate, in the numerator, "t_m"is revised to read "(t_m + 460)".

23. In Method 201A, in Figure 5, the calculation for maximum and minimum velocities, appearing after the calculation of Nozzle velocity, is revised to read:

Maximum and minimum velocities:

Calculate R_{min}

$$R_{min} = 0.2457 + \sqrt{0.3072 - \frac{0.2603(\sqrt{Q_s})\,\mu_s}{v_n 1.5}} = ___$$

If R_{min} is less than 0.5, *or* if an imaginary number occurs when calculating R_{min}, use Equation 1 to calculate v_{min}. Otherwise, use Equation 2.

Eq. 1 $v_{min} = v_n\,(0.5) =$ ___ ft/sec

Eq. 2 $v_{min} = v_n\,R_{min} =$ ___ ft/sec

Calculate R_{max}.

$$R_{max} = 0.4457 + \sqrt{0.5690 + \frac{0.2603\,(\sqrt{Q_s})\,\mu_s}{v_n 1.5}} = ___$$

If R_{max} is greater than 1.5, use Equation 3 to calculate v_{max}. Otherwise, use Equation 4.

Eq. 3 $v_{max} = v_n\,(1.5) =$ ___ ft/sec

Eq. 4 $v_{max} = v_n\,R_{max} =$ ___ ft/sec

24. In Method 201A, in Figure 6, nomenclature section, "Δp_1 = dwell time at first traverse point, minutes" is revised to read "Δp_1 = measured velocity head at point 1, in. H_2O."

[FR Doc. 91-2218 Filed 2-14-91; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are determined for the communities listed below.

The base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base (100-year) flood elevations, for the community. This date may be obtained by contracting the office where the maps are available for inspection indicated on the table below.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: William R. Locke, Acting Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-2754.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of flood elevations for each community listed. Proposed base flood elevations or proposed modified base flood elevations have been published in the **Federal Register** for each community listed.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1968 (title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR part 67. An opportunity for the community or individuals to appeal proposed determination to or through the community for a period of ninety (90) days has been provided.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Purusant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies for reasons set out in the proposed rule that the final flood elevation determinations, if promulgated, will not have a significanct economic impact on a substantial number of small entities. Also, this rule is not a major rule under terms of Executive Order 12291, so no regulatory analyses have been prepared. It does not involve any collection of information for purposes of the Paperwork Reduction Act.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

PART 67—[AMENDED]

The authority citation for part 67 continues to read as follows:

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

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base (100-year) flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. No appeal was made during the ninety-day period and the proposed base flood elevations have not been changed.

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
ALABAMA	
Blount County (unincorporated areas) (FEMA Docket No. 7003)	
Locust Fork Black Warrior River:	
Just upstream of County Highway 13	*427
Just downstream of U.S. Highway 231	*565
Blackburn Fork Little Warrior River:	
At mouth	*433
Just downstream of County Highway 15	*450
Maps available for inspection at the County Courthouse, Oneonta, Alabama.	
Cherokee County (unincorporated areas) (FEMA Docket No. 7003)	
Coosa River:	
At county boundary	*539
At state boundary	*576
Chattooga River:	
At mouth	*573
About 3.2 miles upstream of State Highway 35	*581
Weiss Lake Forebay:	
Just upstream of Weiss Powerhouse Dam	*569
About 4.5 miles upstream of Weiss Powerhouse Dam	*572
Mill Creek:	
At mouth	*640
At southern county boundary	*651
Terrapin Creek:	
Just upstream of confluence of Mill Creek	*640
At southern county boundary	*654
Maps available for inspection at the County Courthouse, Centre, Alabama.	
Coffee County (unincorporated areas) (FEMA Docket No. 6997)	
Pea River:	
About 1.9 miles downstream of Elba Dam	*167
About 0.85 mile upstream of confluence of Morris Branch	*206
Whitewater Creek:	
About 1.2 miles downstream of confluence of Pea Creek	*201
About 1 mile upstream of confluence of Dorsey Branch	*214
Patrick Creek:	
Just upstream of County Highway 97	*228
About 1.23 miles upstream of County Highway 97	*246
Maps available for inspection at the County Courthouse, Elba, Alabama.	
Cullman County (unincorporated areas) (FEMA Docket No. 7003)	
Bavar Creek:	
About 500 feet upstream of mouth	*522
Just downstream of Section Line Road	*692
Mud Creek:	
About 600 feet upstream of mouth	*466
Just upstream of CSX railroad	*529
Maps available for inspection at the County Courthouse, 500 Second Avenue, SW, Cullman, Alabama.	
Tallapoosa County (unincorporated areas) (FEMA Docket No. 7003)	
Tallapoosa River:	
At southern county boundary	*210
About 1.5 miles upstream of southern county boundary	*214
Oaktasassi Creek:	
At mouth	*549
Just downstream of Pearson Chapel Road	*612
Tommy Saw Creek:	
At mouth	*578
Just downstream of North Central Avenue	*589
Maps available for inspection at the County Courthouse, Dadeville, Alabama.	
AMERICAN SAMOA	
Manua Islands, Tutuila Island (outlying areas) (FEMA Docket No. 6974)	
Unnamed Stream 4:	
At confluence with South Pacific Ocean	*4
Approximately 440 feet upstream of confluence with South Pacific Ocean	*31
Matavia Stream:	
At confluence with South Pacific Ocean	*3
Approximately 70 feet upstream of confluence with South Pacific Ocean	*11
Approximately 400 feet upstream of confluence with South Pacific Ocean	*29
Misa Stream:	
At confluence with Matavai Stream	*25
Approximately 100 feet upstream of confluence with Matavia Stream	*30
Leafu Stream (Leone):	
At confluence with Leone Bay	*1
At confluence with Pala Lagoon	*7
Approximately 2,300 feet upstream of confluence with Aualii Stream	*15
Approximately 4,330 feet upstream of confluence with Aualii Stream	*70
Fuafua Stream (Leone):	
At confluence with South Pacific Ocean	*5
Approximately 2,650 feet upstream of confluence with South Pacific Ocean	*105
At confluence with Vaitai Stream	*142
Approximately 3,100 feet upstream of confluence with Vaitai Stream	*155
Vaitai Stream (Leone):	
At confluence with Fuafua Stream	*137
Approximately 2,200 feet upstream of confluence with Fuafua Stream	*148
Drainageway 3:	
At confluence with South Pacific Ocean	*12
Approximately 200 feet upstream of confluence with South Pacific Ocean	*15
Approximately 2,600 feet upstream of confluence with South Pacific Ocean	*40
Approximately 5,200 feet upstream of confluence with South Pacific Ocean	*79

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 7,900 feet upstream of confluence with South Pacific Ocean	*117
Drainageway 4:	
At confluence with South Pacific Ocean	*2
Approximately 1,020 feet upstream of confluence with South Pacific Ocean	*30
Approximately 2,200 feet upstream of confluence with South Pacific Ocean	*52
Drainageway 5:	
At confluence with South Pacific Ocean	*8
Approximately 250 feet upstream of confluence with South Pacific Ocean	*40
Approximately 1,700 feet upstream of confluence with South Pacific Ocean	*55
Approximately 4,200 feet upstream of confluence with South Pacific Ocean	*97
Unnamed Stream 15:	
At confluence with South Pacific Ocean	*6
Approximately 200 feet upstream of confluence with South Pacific Ocean	*20
Approximately 1,800 feet upstream of confluence with South Pacific Ocean	*60
Approximately 4,300 feet upstream of confluence with South Pacific Ocean	*102
Vaipito Stream:	
At confluence with South Pacific Ocean at Pago Pago Harbor	*11
Approximately 1,800 feet upstream of confluence with South Pacific Ocean at Pago Pago Harbor	*15
At confluence with Pago Stream	*31
Just Downstream of Confluence with Fitiuli Stream	*51
Approximately 100 feet downstream of confluence with Utumua Stream	*102
Fagaalu Stream:	
At confluence with South Pacific Ocean	*3
Approximately 700 feet upstream of confluence with South Pacific Ocean	*11
At confluence with Unnamed Stream 13	*31
Approximately 600 feet upstream of confluence with Unnamed Stream 13	*50
Approximately 1,400 feet upstream of confluence with Unnamed Stream 13	*70
Unnamed Stream 13:	
At confluence with Fagaalu Stream	*31
Approximately 330 feet upstream of confluence with Fagaalu Stream	*41
Vailoa Stream (Utueli):	
At confluence with South Pacific Ocean	*4
Approximately 500 feet upstream of confluence with South Pacific Ocean	*10
Approximately 1,150 feet upstream of confluence with South Pacific Ocean	*21
Auvai Stream:	
At confluence with South Pacific Ocean	*4
At Highway Bridge approximately 50 feet upstream of confluence with South Pacific Ocean	*8
Approximately 1,500 feet upstream of confluence with Unnamed Stream 10	*18
Unnamed Stream 10:	
At confluence with Auvai Stream	*14
Approximately 300 feet upstream of confluence with Auvai Stream	*20
Approximately 500 feet upstream of confluence with Aubai Stream	*28
Siapapa Stream:	
At confluence with South Pacific Ocean	*2
Approximately 300 feet upstream of confluence with Fagaitua Bay	*10
Approximately 500 feet upstream of confluence with Fagaitua Bay	*12
Vaialufai Stream:	
At confluence with South Pacific Ocean	*2
Approximately 100 feet upstream of confluence with South Pacific Ocean	*10
Approximately 400 feet upstream of confluence with South Pacific Ocean	*11
Tialu Stream:	
At confluence with Vaialufai Stream	*8
Approximately 350 feet upstream of confluence with Vaialufai Stream	*11
Televai Stream:	
At confluence with South Pacific Ocean	*2
At Highway Bridge approximately 150 feet upstream of confluence with South Pacific Ocean	*15
400 feet upstream of confluence with South Pacific Ocean	*17
Unnamed Stream 7:	
At confluence with South Pacific Ocean	*1
300 feet upstream of confluence with South Pacific Ocean	*15
Unnamed Stream 6:	
At confluence with South Pacific Ocean	*3
Approximately 50 feet upstream of confluence with South Pacific Ocean	*15
Mulivaitele Stream:	
At confluence with South Pacific Ocean	*3
Approximately 100 feet upstream of confluence with South Pacific Ocean	*10
Approximately 700 feet upstream of confluence with South Pacific Ocean	*15
Approximately 1,800 feet upstream of confluence with South Pacific Ocean	*40
Approximately 2,000 feet upstream of confluence with South Pacific Ocean	*46
Vailoa Stream (Tula):	
At confluence with South Pacific Ocean	*4
Approximately 100 feet upstream of confluence with South Pacific Ocean	*10
Approximately 1,600 feet upstream of confluence with South Pacific Ocean	*13
Unnamed Stream 14:	
At confluence with South Pacific Ocean	*2
Approximately 1,150 feet upstream of confluence with Pala Lagoon	*5
Approximately 1,350 feet upstream of confluence with Pala Lagoon	*10
Approximately 1,620 feet upstream of confluence with Pala Lagoon	*20
Sagamea Stream:	
At confluence with Pala Lagoon	*1
Approximately 250 feet upstream of confluence with Pala Lagoon	*5
Approximately 450 feet upstream of confluence with Pala Lagoon	*11
Approximately 640 feet upstream of confluence with Pala Lagoon	*19
Papa Stream:	
At confluence with Pala Lagoon	*2
Approximately 350 feet upstream of confluence with Pala Lagoon	*5
Approximately 1,600 feet upstream of confluence with Pala Lagoon, just upstream of highway culvert	*20
Approximately 2,980 feet upstream of confluence with Pala Lagoon	*39
Mataalii Stream:	
At confluence with Pala Lagoon	*2
Approximately 300 feet upstream of confluence with Pala Lagoon	*5
Approximately 1,450 feet upstream of confluence with Pala Lagoon, approximately 100 feet downstream of highway culvert	*20
Approximately 2,040 feet upstream of confluence with Pala Lagoon	*41
Saulno Stream:	
At confluence with Pala Lagoon	*2
Approximately 210 feet upstream of confluence with Pala Lagoon	*6
Approximately 1,400 feet upstream of confluence with Pala Lagoon	*15
Approximately 2,790 feet upstream of confluence with Pala Lagoon	*75
Vaitele Stream (Tafunafou):	
At confluence with Pala Lagoon	*2
Approximately 200 feet upstream of confluence with Pala Lagoon	*10
Approximately 1,750 feet upstream of confluence with Pala Lagoon	*30
Approximately 5,000 feet upstream of confluence with Pala Lagoon	*92
Leaveave Stream:	
At confluence with Vaitele Stream	*15
Approximately 990 feet upstream of confluence with Vaitele Stream	*25
Approximately 3,800 feet upstream of confluence with Vaitele Stream	*59
At road crossing, approximately 5,550 feet upstream of confluence with Vaitele Stream	*76
Approximately 550 feet downstream of road, crossing Leaveave Stream, located approximately 1,200 feet southwest of high school in Mapusaga Village	*185
Taumata Stream:	
At confluence with Vaitele Stream	*41
Just downstream of road intersection, approximately 850 feet upstream of confluence with Vaitele Stream	*50
Approximately 2,900 feet upstream of confluence with Vaitele Stream	*80
Approximately 400 feet upstream of confluence with Mapusagatuai Stream	*135
Approximately 5,300 feet upstream of confluence with Mapusagatuai Stream	*172
Mapusagatuai Stream:	
At confluence with Taumata Stream	*128
Approximately 1,600 feet upstream of confluence with Taumata Stream	*145
Approximately 3,600 feet upstream of confluence with Taumata Stream	*166
Drainageway 1:	
At confluence with Pala Lagoon	*5
Approximately 1,370 feet upstream of confluence with Pala Lagoon	*10
Approximately 2,000 feet upstream of confluence with Pala Lagoon	*15
Approximately 2,400 feet upstream of confluence with Pala Lagoon	*24
Drainageway 2:	
At confluence with Pago Pago International Airport Lagoon	*7
At confluence with Drainageway 2A	*45
Approximately 3,600 feet upstream of confluence with Drainageway 2A	*80
Approximately 7,790 feet upstream of confluence with Drainageway 2A	*150
Approximately 200 feet east of intersection of Drainageway 2 and main north south highway, just north of Pavaiai Village	*258
Drainageway 2A:	
At confluence with Pago Pago International Airport Lagoon	*2
Approximately 600 feet upstream of Pago Pago International Airport Lagoon	*10
Approximately 3,200 feet upstream of Pago Pago International Airport Lagoon	*25
At confluence with Drainageway 2	*45
Gaoa Stream:	
At confluence with South Pacific Ocean	*3
Approximately 800 feet upstream of confluence with South Pacific Ocean	*11
Leafu Stream (Vatia):	
At confluence with Gaoa Stream	*6
Approximately 480 feet upstream of confluence with Gaoa Stream	*11
Faatafe Stream:	
At confluence with South Pacific Ocean	*1
Approximately 450 feet upstream of confluence with South Pacific Ocean	*5
Approximately 1,100 feet upstream of confluence with Vatia Bay	*15
Tafu Stream Left Tributary:	
At confluence with South Pacific Ocean	*3
Approximately 450 feet upstream of confluence with Vatia Bay	*5
Approximately 950 feet upstream of confluence with Vatia Bay	*10
Mulivai Stream:	
At confluence with South Pacific Ocean	*3
Approximately 350 feet downstream of confluence with Tafu Stream Right Tributary	*10
Approximately 880 feet upstream of confluence with Tafu Stream Right Tributary	*25
Tafu Stream Right Tributary:	
At confluence with Mulivai Stream	*12
Approximately 400 feet upstream of confluence with Mulivai Stream	*12
At confluence with Tafu Stream	*15
Leasi Stream:	
At confluence with South Pacific Ocean	*4
Approximately 180 feet upstream of confluence with South Pacific Ocean	*11
Suala Stream:	
At confluence with South Pacific Ocean	*4
Approximately 140 feet upstream of confluence with Lalolamauta Stream	*15
Left Branch Lalolamauta Stream:	
At confluence with Suala Stream	*8
Approximately 710 feet upstream of confluence with Suala Stream	*10
Vaitele Stream (Lauilitual):	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
At confluence with South Pacific Ocean	*3
Approximately 600 feet upstream of confluence with South Pacific Ocean	*10
Approximately 370 feet upstream of confluence with South Pacific Ocean	*20
Approximately 60 feet upstream of confluence with Lesea Stream	*30
Approximately 840 feet upstream of confluence with Lesea Stream	*42
South Pacific Ocean:	
On east end of island, at confluence with Mulivaitele Stream	*2
On north end of island at Massacre Bay	*3
On southwestern end of island, at confluence with Fuafua Stream	*5
In Pago Pago Harbor, at confluence of Pago Pago Harbor and Pago Stream	*11
Maps are available for review at the Public Works Department, American Samoa Government, Pago Pago, American Samoa.	
ARKANSAS	
Black Rock (city), Lawrence County (FEMA Docket No. 7000)	
Black River:	
At approximately 500 feet downstream of the downstream corporate limits	*262
At the most upstream corporate limits	*264
Maps available for inspection at the City Hall, Main Street, Black Rock, Arkansas	
Imboden (town, Lawrence County (FEMA Docket No. 7000)	
Spring River:	
Approximately .6 mile downstream of the downstream corporate limits	*285
Approximately .2 mile upstream of the upstream corporate limits	*291
Maps available for inspection at the City Hall, Imboden, Arkansas	
Lawrence County (unincorporated areas) FEMA Docket No. 7000)	
Black River:	
At approximately 42.69 river miles above the confluence of the White River	*243
At approximately 47.57 river miles above the confluence of the White River	*245
At approximately 65.75 river miles above the confluence of the White River	*259
At approximately 72 river miles above the confluence of the White River	*264
Big Running Water Creek:	
Approximately .73 mile downstream of State Route 228	*247
At approximately .49 mile upstream of State Route 228	*249
Spring River:	
At approximately 1.54 miles downstream of U.S. Route 62	*283
At approximately 1.50 miles upstream of U.S. Route 62	*292
At approximately 1,690 feet downstream of Burlington Northern Railroad	*304
At approximately 2.17 miles upstream of County Route 22	*312
Maps available for inspection at the County Courthouse, Main Street, Walnut Ridge, Arkansas.	
Portia (town), Lawrence County (FEMA Docket No. 7000)	
Black River:	
Approximately 1.6 miles downstream of U.S. Route 63 and State Route 25	*260
Approximately .5 mile upstream of Burlington Northern Railroad	*263
Maps available for inspection at the City Hall, Grove Street, Portia, Arkansas.	
Powhatan (town), Lawrence County (FEMA Docket No. 7000)	
Black River:	
At the downstream corporate limits	*259
At the upstream corporate limits	*260
Maps available for inspection at the Town Hall, Powhatan, Arkansas.	
Ravenden (town), Lawrence County (FEMA Docket No. 7000)	
Spring River:	
Approximately .2 mile upstream of Burlington Northern Railroad	*305
Approximately 1.83 miles upstream of County Route 22	*312
Maps available for inspection at the City Hall, Ravenden, Arkansas.	
CALIFORNIA	
Placer County (unincorporated areas) (FEMA Docket Nos. 6979 and 6997)	
Truckee River:	
Distance upstream of Alpine Meadows Road	
Approximately 50 feet	*6,174
Approximately 150 feet	*6,177
Approximately 420 feet	*6,178
Approximately 580 feet	*6,182
Approximately 685 feet	*6,183
Approximately 790 feet	*6,185
Approximately 950 feet	*6,186
Approximately 1,240 feet	*6,189
Natomas East Main Drainage Canal:	
Approximately 4,850 feet downstream of Riego Road, at an unnamed road	*39
Maps are available for review at the Placer County Department of Public Works, 11444 B Avenue, Auburn, California.	
CONNECTICUT	
Manchester (town), Hartford County (FEMA Docket No. 6997)	
Lydall Brook:	
Approximately 380 feet upstream of Vernon Street	*288
At confluence of Wilson Brook	*361
Globe Hollow Brook:	
At confluence with Hop Brook	*185
Approximately 490 feet upstream of Spring Street	*224
Wilson Brook:	
At confluence with Lydall Brook	*361
At downstream side of Wilson Brook Flood Control Dam	*373
Birch Mountain Brook:	
At confluence with Hop Brook and Porter Brook	*224
Approximately 20 feet upstream of Birch Mountain Road	*455
Avery Brook:	
At confluence with Hockanum River	*173
At upstream corporate limits	*176
Globe Hollow Pond: Entire shoreline within community	*241
Globe Hollow Reservoir: Entire shoreline within community	*268
Wilson Brook Dention Pond: Entire shoreline within community	*389
Howard Reservoir: Entire shoreline within community	*495
South Branch Lydall Brook:	
At confluence with Lydall Brook	*339
At downstream side of dam	*349
Hop Brook:	
Approximately 150 feet upstream of Prospect Street	*170
At confluence of Birch Mountain Brook and Porter Brook	*224
Porter Brook:	
At confluence with Hop Brook and Birch Mountain Brook	*224
Approximately 110 feet downstream of Charter Oak Street	*244
Maps available for inspection at the Planning Department, 41 Center Street, Manchester, Connecticut	
Plainfield (town), Windham County (FEMA Docket No. 7000)	
Quinebaug River:	
At downstream corporate limits	*108
At upstream corporate limits	*148
Moosup River:	
At confluence with Quinebaug River	*128
At upstream corporate limits	*282
Mill Brook:	
At downstream corporate limits	*124
Approximately 60 feet upstream of Kate Downing Road	*160
Frye Brook:	
At confluence with Horse Brook	*156
At Evans Pond Dam	*177
Horse Brook:	
At confluence with Mill Brook	*149
Approximately 0.4 mile upstream of Cemetery Road	162
Maps available for inspection at the Town Clerk's Vault, 8 Commerce Avenue, Plainfield, Connecticut.	
FLORIDA	
Caryville (city), Washington County (FEMA Docket No. 6997)	
Choctawhatchee River:	
About 1 mile downstream of U.S. Route 90	*60
About 1.4 mile upstream of CSX railroad	*63
Maps available for inspection at the City Hall, Caryville, Florida.	
Ebro (town), Washington County (FEMA Docket No. 6997)	
Chotawatchee River: Within community	26
Maps available for inspection at the City Hall, Ebro, Florida.	
Gadsden County (unincorporated areas) (FEMA Docket No. 6997)	
Apalachicola River:	
About 2.92 miles downstream of Interstate 10	*72
Just upstream of the Jim Woodruff Dam	*81
Ochlockonee River:	
Just upstream of Jackson Bluff Dam	*72
About 2.05 miles upstream of State Road 12	*118
Little River:	
About 2.75 miles downstream of confluence of Richlander Creek	*81
At confluence of Attapulgus Creek	*113
Attapulgus Creek:	
At confluence with Little River	*113
At confluence of Swamp Creek	*116
Richlander Creek:	
At mouth	*84
About 1.76 miles upstream of Interstate 10	*153
Quincy Creek:	
At confluence with the Little River	*104
Just downstream of County Road 268	*147
Just upstream of County Road 268	*152
About 1.36 miles upstream of County Road 268	*177
Ocklawaha Creek:	
At mouth	*75
Just upstream of State Road 267	*82
Bear Creek:	
At mouth	*80
Just downstream of Bear Creek Road	*89
Just upstream of Bear Creek Road	*94
About 2.06 miles upstream of Bear Creek Road	*109
Swamp Creek:	
At confluence with Attapulgus Creek	*116
Just downstream of State Route 159	*120
Maps available for inspection at the County Courthouse, Quincy, Florida.	
Vernon (city), Washington County (FEMA Docket No. 6997)	
Holmes Creek:	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
About 2.6 miles downstream of State Road 79	*35
About 2.2 miles upstream of State Road 79	*38
Maps available for inspection at the City Hall, Vernon, Florida.	
Washington County (unincorporated areas) (FEMA Docket No. 6997)	
Choctawhatchee River:	
About 9.5 miles downstream of State Road 20	*16
About 1.0 mile downstream of U.S. Route 90	*60
Holmes Creek:	
At mouth	*28
About 2.2 miles upstream of County Highway 166	*81
Alligator Creek:	
At mouth	*62
Just downstream of County Highway 166	*74
Econfina Creek:	
At County boundary	*26
About 0.2 mile upstream of confluence of Mitchell Mill Creek	*48
Grassy Lake: Along shoreline	*84
Hicks Lake: Along shoreline	*77
Lucas Lake: Along shoreline	*77
Dunford Lake: Along shoreline	*77
Maps available for inspection at the County Courthouse, 203 W. Cypress Avenue, Chipley, Florida.	
GEORGIA	
Bulloch County (unincorporated areas) (FEMA Docket No. 6997)	
Lotts Creek:	
Just upstream of U.S. Route 301	*140
Just downstream of Cypress Lake Dam	*150
Just upstream of Cypress Lake Dam	*157
About 1,900 feet upstream of Pulaski Road	*166
Lower Black Creek:	
Just upstream of Bella Terra Road	*146
Just downstream of County Route 335	*174
Tributary No. 1:	
At mouth	*152
Just downstream of County Road 338	*170
Tributary No. 2:	
At mouth	*164
Just downstream of State Route 67	*171
Mill Creek:	
Just upstream of State Route 24	*134
Just downstream of State Route 73	*148
Newsome Branch:	
At mouth	*141
Just downstream of David Wiggins Road	*160
Little Lotts Creek:	
About 4,000 feet downstream of confluence of Little Lotts Creek Tributary B	*187
Just downstream of confluence of Little Lotts Creek Tributary B	*190
Little Lotts Creek Tributary B:	
At mouth	*190
About 2560 feet upstream of mouth	*195
Maps available for inspection at the Building Inspection Department, North Main Street Annex, Statesboro, Georgia.	
Colquitt County (unincorporated areas) (FEMA Docket No. 6997)	
Ochlocknee River:	
About 1300 feet downstream of Meigs Road	*243
Just downstream of State Route 133	*278
Okapilco Creek:	
About 1.2 miles downstream of State Route 35	*275
About 1.4 miles upstream of Norfolk Southern Railway	*298
Maps available for inspection at the County Administrator's Office, County Governmental Building, 1220 South Main Street, Moultrie, Georgia.	
Lee County (unincorporated areas) (FEMA Docket No. 7000)	
Kinchafoonee Creek:	
At southern county boundary	*192
Just downstream of State Route 32	*209
Muckalee Creek:	
At southern county boundary	*192
About 6.7 miles upstream of southern county boundary	*210
Flint River:	
About 2.8 miles upstream of Georgia Power Dam	*195
About 2.8 miles upstream of southern county boundary	*207
Maps available for inspection at the Building Inspection Department, County Courthouse, Leesburg, Georgia.	
Toombs County (unincorporated areas) (FEMA Docket No. 6997)	
Pendleton Creek:	
About 2000 feet downstream of confluence of Little Creek	*127
Just downstream of County Route 188	*131
Little Creek:	
At mouth	*127
About 1.19 miles upstream of U.S. Route 280	*148
Ohoopee River:	
Just upstream of CSX railroad	*110
About 2.67 miles upstream of State Route 292	*118
Rocky Creek:	
At confluence of Rocky Creek Tributary No. 1	*184
About 3800 feet upstream of Adams Street	*213
Rocky Creek Tributary No. 1:	
At mouth	*184
About 1.09 miles upstream of mouth	*207
Rocky Creek Tributary No. 2:	
At mouth	*186
About 3200 feet upstream of mouth	*201
Little Rocky Creek:	
Just upstream of Ezra Taylor Road	*222
About 1550 feet upstream of Ezra Taylor Road	*227
Swift Creek:	
Just upstream of Norfolk Southern Railway	*174
Just downstream of Thompson Pond Road	*193
Swift Creek Tributary No. 1:	
Just upstream of County Route 222	*191
About 300 feet upstream of State Route 130	*201
Swift Creek Tributary No. 2:	
At mouth	*191
Just downstream of Thompson Pond Road	*193
About 600 feet upstream of Thompson Pond Road	*198
Maps available at the Chairman, County Commissioner's Office, County Courthouse, Lyons, Georgia.	
IDAHO	
Madison County (unincorporated areas) (FEMA Docket No. 6997)	
South Fork Teton River:	
Approximately 300 feet east of Section Line 21/22 in Township 6 North, Range 39 East	*4,831
Just downstream of Highway 20	*4,850
Just upstream of Union Pacific Railroad Bridge	*4,864
Just upstream of Sugar City Road	*4,889
Just downstream of State Highway 33	*4,924
North Fork Teton River:	
Approximately 2,600 feet downstream of bridge at Section Line 35/36 in Township 7 North, Range 39 East	*4,840
Just upstream of Kilgore Road bridge	*4,872
At Yellowstone Highway Bridge	*4,905
At bridge at Section Line 34/35 in Township 7 North, Range 40 East	*4,913
Just downstream of bridge at the Madison County/Fremont County line	*4,925
Maps are available for review at the Madison County Courthouse, 159 East Main Street, Rexburg, Idaho.	
Rexburg (city), Madison County (FEMA Docket No. 6997)	
South Fork Teton River:	
At the westernmost corporate limits	*4,851
Just upstream of the Union Pacific Railroad	*4,864
At Second East Street Bridge	*4,866
At the northeastern corner of the corporate limits	*4,869
Maps are available for review at the Rexburg City Hall, 12 North Center Street, Rexburg, Idaho.	
Sugar City (city), Madison County (FEMA Docket No. 6997)	
North Fork Teton River:	
All city area east of Highway 20	#1
Maps are available for review at City Hall, 10 East Center Street, Sugar City, Idaho.	
ILLINOIS	
Monticello (city), Piatt County (FEMA Docket No. 6997)	
Sangamon River:	
About 2 miles downstreams of Illinois Central Railroad	*644
About 0.5 mile upstream of Bridge Street	*647
South Unnamed Creek:	
At mouth	*646
About 800 feet upstream of Washington Street	*668
South Branch Creek:	
At mouth	*651
About 1000 feet upstream of Monroe Street	*675
South Branch Creek Tributary: Within community	*668
North Unnamed Creek:	
At mouth	*646
Just downstream of Poplar Street	*667
North East Tributary:	
At mouth	*650
About 100 feet downstream of State Street	*655
Maps available for inspection at the Municipal Building, 211 N. Hamilton, Monticello, Illinois.	
IOWA	
Woodbury County (unincorporated areas) (FEMA Docket No. 7003)	
Bacon Creek:	
At mouth	*1122
About 2700 feet upstream of County Highway L-36	*1127
Little Sioux River:	
About 2500 feet downstream of State Highway 31	*1122
About 2700 feet upstream of County Highway L-36	*1126
Missouri River:	
About 10.89 miles downstream of confluence of Omaha Creek	*1065
About 5.15 miles upstream of confluence of Omaha Creek	*1081
Maps available for inspection at the County Engineer's Office, County Courthouse, 7th & Douglas Streets, Sioux City, Iowa.	
KANSAS	
Franklin County (unincorporated areas) (FEMA Docket No. 7000)	
Pottawatomie Creek:	
At eastern county boundary	*872
About 1.12 miles downstream of southern county boundary	*885
Marais Des Cygnes River:	
At eastern county boundary	*871
About 0.85 miles upstream of Atchison, Topeka and Santa Fe Railway	*941
110 Mile Creek:	
At western county boundary	*933
About 1.14 miles upstream of Union Pacific Railroad	*934
Maps available for inspection at the County Courthouse, Room 203, Ottawa, Kansas.	
MAINE	
Arrowsic (town), Sagadahoc County (FEMA Docket No. 6991)	
Atlantic Ocean	
Sasanoa River:	
At State Route 127	*9
At Palace Cove	*11
Kennebec River:	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
At confluence with Sasanoa River	*9
At Bald Head Road extended	*10
Back River:	
At Bald Head	*10
At Mill Island	*11
Maps available for inspection at the Town Hall, Star Route 2, Arrowsic, Maine.	
Beals (town), Washington County (FEMA Docket No. 6991)	
Atlantic Ocean:	
At Pig Island	*12
At Seaduck Point	*25
Maps available for inspection at the Town Office, Beals, Maine.	
Bethel (town), Oxford County (FEMA Docket No. 6987)	
Androscoggin River:	
At the downstream corporate limits	*627
At the upstream corporate limits	*665
Sunday River:	
At confluence with the Androscoggin River	*650
At the upstream corporate limits	*651
Alder River:	
At confluence with the Androscoggin River	*652
At the upstream corporate limits	*710
Pleasant River:	
At confluence with the Androscoggin River	*664
Approximately 50 feet upstream of U.S. Route 2	*664
Mill Brook:	
At confluence with the Androscoggin River	*653
Approximately 0.2 mile upstream of State Route 5 (Mill Road)	*656
Kendall Brook:	
At confluence with the Adler River	*652
At the upstream corporate limits	*656
Twitchell Brook:	
At confluence with the Androscoggin River	*652
Approximately 0.7 mile upstream of U.S. Route 2 and State Routes 5 & 26	*656
Sanding Brook:	
At confluence with the Alder River	*652
Approximately 50 feet upstream of Mason Street	*725
Maps available for inspection at the Town Clerk's Office, Bethel, Maine.	
Brooksville (town), Hancock County (FEMA Docket No. 6997)	
Atlantic Ocean	
Penobscot Bay:	
Along shoreline at Tom Cod Cove	*11
Along shoreline at Head of the Cape	*35
Bagaduce River:	
Along shoreline at Henry Point	*11
Along shoreline at Bear Head	*12
Eggemoggin Reach:	
Along shoreline at Horseshoe Cove	*11
Along east shoreline of Redman Beach	*30
Maps available for inspection at the Town Offices, Brooksville, Maine.	
Burnham (town), Waldo County (FEMA Docket No. 7000)	
Sebasticook River:	
Approximately 120 feet downstream of the corporate limits	*132
At the upstream corporate limits	*175
Twenty Five Mile Stream:	
At confluence with Sebasticook River	*145
At the upstream corporate limits	*172
Lake Winnecook: Entire shoreline within community	*180
Maps available for inspection at the Town Office, Burnham, Maine.	
Castine (town), Hancock County (FEMA Docket No. 6991)	
Atlantic Ocean	
Penobscot River:	
At upstream corporate limits	*13
At Turner Point	*14
Penobscot Bay:	
At Ram Island	*11
At Perkins Point	*14
Hatch Cove: At Mayo Point Road (extended)	*11
Wadsworth Cove: At confluence of Bog Brook	*12
Morse Cove: At State Route 166A	*12
Bagaduce River:	
At upstream corporate limits	*11
At confluence with Penobscot Bay	*14
Maps available for inspection at the Town Hall, Castine, Maine.	
Cranberry Isles (town), Hancock County (FEMA Docket No. 7000)	
Atlantic Ocean	
Western Way:	
At Spurling Point	*11
At Great Head	*15
Gilley Thorofare:	
At Hadlock Point	*11
At eastern side of Sutton Island	*30
The Gut:	
At a point approximately 1,000 feet southeast of Fish Point	*15
At Fish Point	*18
Eastern Way:	
At northside of Sutton Island	*11
At southeast side of Bear Island	*15
Maps available for inspection at the home of Irene Bartlet, Town Clerk, Isleford, Maine.	
Deer Isle (town), Hancock County (FEMA Docket No. 6984)	
Atlantic Ocean:	
Shoreline in Smalls Cove	*11
At western shoreline of Stinson Point	*31
Maps available for inspection at the Town Office, Deer Isle, Maine.	
Enfield (town), Penobscot County (FEMA Docket No. 6991)	
Penobscot River:	
Downstream corporate limits	*147
Upstream corporate limits	*175
Cold Stream:	
Downstream corporate limits	*137
At Cold Stream Pond Dam	*192
Cold Stream Pond: Entire shoreline in community	*192
Brandy Brook:	
At confluence with Cold Stream	*144
Approximately 180 feet upstream of State Routes 155 & 188	*145
Maps available for inspection at the Town Clerk's Office, Enfield, Maine.	
Hancock (town), Hancock County (FEMA Docket No. 7000)	
Egypt Bay: Entire shoreline within community	*11
Taunton Bay: Entire shoreline within community	*11
Kilkenny Cove: Entire shoreline within community	*11
Skillings River: Entire shoreline within community	*11
Sullivan Harbor:	
At FR-7 extended	*12
At FR-28A extended	*22
Frenchman Bay:	
At Clam Ledge	*14
At Hancock Point	*24
Maps available for inspection at the Town Hall, Hancock, Maine.	
Island Falls (town), Aroostook County (FEMA Docket No. 6981)	
Fish Stream:	
At confluence with W. Branch Mattawamkeag River	*463
At upstream corporate limits	*465
Sly Brook:	
At confluence with W. Branch Mattawamkeag River	*461
Approximately .45 mile upstream of U.S. Route 2	*461
Dyer Brook:	
At confluence with W. Branch Mattawamkeag River	*447
Approximately 280 feet upstream of U.S. Route 2	*447
West Branch Mattawamkeag River:	
At confluence with Upper Mattawamkeag River	*438
At upstream corporate limits	*465
Mattawamkeag Lake: Entire shoreline within community	*438
Upper Mattawamkeag Lake: Entire shoreline within community	*438
Pleasant Lake: Entire shoreline within community	*537
Maps available for inspection at the Island Falls Municipal Building, Island Falls, Maine.	
Isleboro (town), Waldo County (FEMA Docket No. 7000)	
West Penobscot Bay:	
At Meadow Pond Road below Spragues Beach	*10
At west side of Job Island	*19
Penobscot Bay:	
On west side of Ryder Cove	*10
At east side of Lime Island	*22
Parker Cove:	
At west side of Hutchins Island	*11
At east side of Point Comfort	*18
Gilkey Harbor:	
At Shipyard Point	*10
Northwest of Minot Island	*15
Seal Harbor:	
At north side of Buring Point	*12
Southeast of Keller Point	*19
Maps available for inspection at the Town Office, Isleboro, Maine.	
Lamoine (town), Hancock County (FEMA Docket No. 6991)	
Jordan River:	
At State Route 204, approximately 1,000 feet west of its intersection with State Route 184	*12
At the shoreline along Old Point	*14
Eastern Bay:	
At the shoreline along Berry Cove	*13
At the shoreline along Old Point	*23
Skillings River:	
At the shoreline along Martins Cove	*11
Approximately 1,500 feet east of the intersection of Seal Point Road and State Route 204	*22
Maps available for inspection at the Town Office, Ellsworth, Maine.	
Lyman (town), York County (FEMA Docket No. 6981)	
Kennebunk Pond: Entire shoreline within community	*275
Roberts-Wadley Pond: Entire shoreline within community	*276
Bunganut Pond: Entire shoreline within community	*278
Swan Pond: Entire shoreline within community	*282
Maps available for inspection at the Town Hall, R.R. 5, Lyman, Maine.	
Northport (town), Waldo County (FEMA Docket No. 6997)	
West Penobscot Bay:	
At Broadway Avenue (extended)	*15
At Spruce Head	*26
Pitcher Pond: Entire shoreline within community	*205
Knight Pond: Entire shoreline within community	*205
Maps available for inspection at the Town Clerk's Office, Town Offices, Northport, Maine.	
Oxford (town), Oxford County (FEMA Docket No. 6991)	
Little Androscoggin River:	
At downstream corporate limits	*300
At upstream corporate limits	*326
Thompson Lake Outlet:	
At confluence with Little Androscoggin River	*311

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 300 feet upstream of the Robinson Manufacturing Dam	*327
Maps available for inspection at the Town Clerk's Office, Oxford, Maine.	
Southwest Harbor (town), Hancock County (FEMA Docket No. 7000)	
Atlantic Ocean	
The Narrows: At Valley Cove	*12
Western Way:	
At Norwood Cove	*11
At Clark Point	*16
Maps available for inspection at the Town Clerk's Vault, Town Office, Southwest Harbor, Maine.	
Stonington (town), Hancock County (FEMA Docket No. 7000)	
Atlantic Ocean	
East Penobscot Bay:	
Along shoreline at Burnt Cove	*10
Approximately .7 mile west of intersection of West Stonington Road and Whitman Road	*18
Deer Island Thorofare:	
Along shoreline at Webb Cove	*10
Along south shoreline of Camp Island	*16
Maps available for inspection at the Town Hall, Town Clerk's Vault, Stonington, Maine.	
Surry (town), Hancock County (FEMA Docket No. 6991)	
Atlantic Ocean	
Union River:	
Approximately 1.1 miles north of Weymouth Point	*12
At Weymouth Point	*14
Patten Bay:	
At State Route 172	*12
At Poignant Point	*15
Union River Bay:	
At Weymouth Point	*14
Approximately 1,400 feet south of Browns Point	*20
Blue Hill Bay:	
Approximately .8 mile southwest of the Nook	*17
Southeast of High Head	*23
Morgan Bay:	
At Emerton Brook	*12
At the Nook	*15
Maps available for inspection at the Town Office, Surry, Maine.	
Winter Harbor (town), Hancock County (FEMA Docket No. 6991)	
Atlantic Ocean:	
East of Big Moose Island	*11
Approximately 1,000 feet north of Little Moose Island	*22
Frenchman Bay:	
At Stave Island Harbor	*11
At Great Head	*20
Winter Harbor:	
At Moose Road in Mosquito Harbor	*11
Approximately 4,000 feet north of Ravens Nest	*20
Schoodic Harbor:	
Approximately 3,000 feet northeast of Buck Cove	*12
At Rolling Island	*24
Maps available for inspection at the Town Office, Winter Harbor, Maine.	
MASSACHUSETTS	
Auburn (town), Worcester County (FEMA Docket No. 6991)	
Dark Brook:	
Approximately 0.44 mile upstream of confluence with Auburn Pond	*511
At downstream side of Central Street Bridge	*536
Maps available for inspection at the Town Planner's Office, 104 Central Street, Auburn, Massachusetts.	
Boxford (town), Essex County (FEMA Docket No. 6987)	
Parker River:	
Approximately 230 feet downstream of downstream corporate limits	*87
Approximately 75 feet upstream of Washington Street	*134
Fish Brook:	
At confluence with Ipswich River	*41
Approximately 300 feet upstream of upstream corporate limits	*114
Ipswich River:	
At confluence of Fish Brook	*41
At upstream corporate limits	*41
Maps available for inspection at the Town Hall Selectman's Office, Boxford, Massachusetts.	
Springfield (city), Hampden County (FEMA Docket No. 7000)	
North Brook:	
Upstream side of North Brook Parkway Culvert	*180
Just downstream of Lumas Street culvert	*198
Maps available for inspection at the Planning Department and Department of Public Works Office, Springfield, Massachusetts.	
Topsfield (town), Essex County (FEMA Docket No. 6990)	
Ipswich River:	
Approximately 150 feet downstream of the downstream corporate limits	*32
Approximately 2,000 feet upstream of the upstream corporate limits at confluence with Nichols Brook	*41
Howlett Brook:	
At confluence with Ipswich River	*35
AT confluence with Pye and Mile Brooks	*53
Pye Brook:	
At confluence with Howlett and Mile Brooks	*53
Approximately 630 feet upstream of State Route 97 (Haverhill Road)	*64
Mile Brook:	
Approximately 130 feet downstream of U.S. Route 1 (Newburyport Turnpike)	*45
At the divergence from Pye Brook	*53
Branch of Ipswich:	
At the confluence with Ipswich River	*40
Approximately 90 feet upstream of U.S. Route 1 (Newburyport Turnpike) and at confluence of School Brook	*44
Cleveland Brook:	
At the confluence of School Brook	*44
Approximately 175 feet upstream of Washington Street	*73
School Brook:	
At confluence with Branch of Ipswich	*44
Approximately 125 feet upstream of High Street	*64
Fish Brook:	
At the confluence with Ipswich River	*41
AT corporate limits	*46
Maps available for inspection at the Town Hall, Town Clerk's Office, Topsfield, Massachusetts.	
MICHIGAN	
Pittsfield (charter township), Washtenaw County (FEMA Docket No. 6991)	
Pittsfield-Ann Arbor Drain:	
About 800 feet downstream of Dam No. 1	*800
Just downstream of Dam No. 1	*802
Just upstream of Dam No. 1	*807
Just downstream of State Road	*821
Wood Outlet Drain:	
About 1100 feet downstream of Maple Road	*804
About 1.0 mile upstream of Maple Road	*810
Maps available for inspection at the Township Hall, 701 West Ellsworth Road, Ann Arbor, Michigan.	
MINNESOTA	
Baxter (city), Crow Wing County (FEMA Docket No. 6991)	
Mississippi River:	
About 1.9 miles upstream of confluence of Crow Wing River	*1,158
About 11.4 miles upstream of confluence of Crow Wing River	*1,166
Perch Lake: Along shoreline	*1,193
Upper Whipple Lake: Along shoreline	*1,197
Lower Whipple Lake: Along shoreline	*1,197
Red Sand Lake: Along shoreline	*1,200
White Sand Lake: Along shoreline	*1,200
Maps available for inspection at the City Administrator's Office, City Hall, Baxter, Minnesota.	
Crow Wing County (unincorporated areas) (FEMA Docket No. 6991)	
Mississippi River:	
About 1.8 miles upstream of confluence of Crow Wing River	*1,158
Just downstream of Northwest Paper Company Dam	*1,167
Just upstream of Northwest Paper Company Dam	*1,177
About 4.4 miles upstream of confluence of Mission Creek	*1,188
Rice Lake: Along shoreline	*1,175
Black Bear Lake: Along shoreline	*1,181
Miller Lake: Along shoreline	*1,181
Little Rabbit Lake: Along shoreline	*1,182
Red Sand Lake: Along shoreline	*1,200
Serpent Lake: Along shoreline	*1,249
Maps available for inspection at the Planning and Zoning Administration Office, County Courthouse, 4th & Laurel Streets, Brainerd, Minnesota.	
NEVADA	
Humboldt County (unincorporated areas) (FEMA Docket No. 6997)	
Humboldt River:	
Approximately 600 feet below the City of Winnemucca western corporate limits	*4,265
At the City of Winnemucca western corporate limits	*4,267
At the City of Winnemucca northern corporate limits	*4,279
Approximately 3,200 feet above the City of Winnemucca northern corporate limits	*4,279
Maps are available for review at the Humboldt County Courthouse, Planning Department, Bridge and 4th Streets, Winnemucca, Nevada.	
NEW HAMPSHIRE	
Bridgewater (town), Grafton County (FEMA Docket No. 7000)	
Pemigewassett:	
At the downstream corporate limits	*471
At the upstream corporate limits	*483
Maps available for inspection at the Town Clerk's Vault, Bristol, New Hampshire.	
Franconia (town), Grafton County (FEMA Docket No. 6984)	
Ham Branch:	
At confluence with Gale River	*924
At upstream corporate limits	*992
Maps available for inspection at the Town Hall, Franconia, New Hampshire.	
New Durham (town), Strafford County (FEMA Docket No. 6997)	
Ela River:	
Downstream side of Old Quaker Road	*509
Downstream side of Club Pond Dam	*534
Club Pond: Entire shoreline within community	*534
Maps available for inspection at the Town Hall, New Durham, New Hampshire.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
New Ipswich (town), Hillsborough County (FEMA Docket No. 6997)	
Souhegan River:	
At downstream corporate limits	*829
Approximately .6 mile upstream of confluence with West Branch Souhegan River	*934
Maps available for inspection at the Town Clerk's Office, Town Hall, New Ipswich, New Hampshire.	
Newmarket (town), Rockingham County (FEMA Docket No. 6991)	
Lamprey River:	
At the Macallen Dam	*30
At the upstream corporate limits	*33
Great Bay: Entire length within community (along eastern corporate limits)	*7
Maps available for inspection at the Selectmen's Office, Town Hall, Main Street, Newmarket, New Hampshire.	
Ossipee (town), Carroll County (FEMA Docket No. 7000)	
Bearcamp River:	
At the confluence with Lake Ossipee	*414
Approximately .62 mile upstream of corporate limits	*432
Maps available for inspection at the Selectmen's Office, Town Hall, Ossipee, New Hampshire.	
Sunapee (town), Sullivan County (FEMA Docket No. 6987)	
Otter Pond: Entire shoreline within community	*1,129
Lake Sunapee: Entire shoreline within community	*1,095
Trask Brook:	
At downstream corporate limits	*923
Approximately 100 feet downstream of Nutting Road	*953
Unnamed Tributary to Trask Brook:	
At confluence with Trask Brook	*939
Approximately 75 feet downstream of Sioux Path Road	*960
Sugar River:	
At downstream corporate limits	*912
Approximately 275 feet upstream of State Route 11	*1,014
Maps available for inspection at the Town Office Building, Sunapee, New Hampshire.	
Wakefield (town), Carroll County (FEMA Docket No. 7000)	
Branch River:	
Upstream of Union Meadows Dam	*499
Approximately 175 feet upstream of State Route 16	*511
Province Lake: Entire shoreline within community	*481
Belleau Lake: Entire shoreline within community	*579
Stump Pond: Entire shoreline within community	*560
Great East Lake: Entire shoreline within community	*575
Maps available for inspection at the Town Clerk's Office, Route 109, Sanbornville, New Hampshire.	
Woodstock (town), Grafton County (FEMA Docket No. 6984)	
Pemigewasset River:	
At downstream corporate limits	*609
At upstream corporate limits	*775
Maps available for inspection at the Town Office Building, Woodstock, New Hampshire.	
NEW JERSEY	
Blairstown (township), Warren County (FEMA Docket No. 6997)	
Paulins Kill:	
Downstream corporate limits	*311
At upstream side of Vail Road	*318
Maps available for inspection at the Blairstown Municipal Building, Stillwater Road, Blairstown, New Jersey.	
Mansfield (township), Burlington County (FEMA Docket No. 6997)	
Delaware River:	
At downstream corporate limits	*13
At upstream corporate limits	*14
Crafts Creek:	
At confluence with the Delaware River	*13
Just downstream of U.S. Route 130	*17
Maps available for inspection at the Township Clerk's Office, Municipal Complex, Mansfield, New Jersey.	
Newfield (borough), Gloucester County (FEMA Docket No. 7000)	
Burnt Mill Branch:	
At the downstream County boundary	*88
Approximately .3 mile upstream of CONRAIL	*94
Maps available for inspection at the Borough Clerk's Office, Newfield Municipal Building, Newfield, New Jersey.	
NEW YORK	
Cameron (town), Steuben County (FEMA Docket No. 7000)	
North Branch Tuscarora Creek:	
Downstream corporate limits	*1,439
Upstream corporate limits	*1,504
Canisteo River Tributary 17:	
Confluence with Canisteo River	*1,042
Approximately 0.52 mile upstream of State Route 432	*1,628
Canisteo River Tributary 22:	
Confluence with Canisteo River Tributary 25	*1,248
Approximately 0.91 mile upstream of confluence with Canisteo River Tributary 25	*1,703
Canisteo River Tributary 23:	
At confluence with Canisteo River Tributary 24	*1,319
Approximately 1.1 miles upstream of its confluence with Canisteo River Tributary 24	*1,737
Canisteo River Tributary 24:	
Approximately 70 feet downstream of Cameron—North Jasper Road	*1,248
Approximately 1.4 miles upstream of confluence of Canisteo River Tributary 23	*1,741
Canisteo River Tributary 25:	
Approximately 700 feet downstream of McMaster Road	*1,052
At confluence of Canisteo River Tributaries 22 and 24	*1,248
Maps available for inspection at the Town Hall, Cameron Mills, New York.	
NORTH CAROLINA	
Burke County (unincorporated areas) (FEMA Docket No. 7003)	
Howard Creek:	
About 750 feet downstream of Bryant Road	*1,009
Just downstream of Norfolk Southern Railway	*1,128
Just upstream of Norfolk Southern Railway	*1,137
Just downstream of Mountain View Road	*1,148
Just upstream of Mountain View Road	*1,166
Just upstream of U.S. Route 70	*1,206
Drowning Creek:	
Just upstream of Norfolk Southern Railway	*938
About 325 feet upstream of Cape Hickory Road	*974
McGalliard Creek:	
About 3,700 feet downstream of Park Bridge	*1,009
Just downstream of Park Bridge	*1,021
Just upstream of Park Bridge	*1,055
About 1.66 miles upstream of Falls Road	*1,091
Henry Fork:	
At the county boundary	*928
Just downstream of dam	*939
Just upstream of dam	*962
About 4,200 feet upstream of dam	*965
Silver Creek:	
About 1.64 miles downstream of Conley Road	*1,036
About 2,200 feet downstream of Conley Road	*1,046
Catawba River:	
About 2,400 feet downstream of Watermill-Glen Alpine Road	*1,032
Just downstream of Watermill-Glen Alpine Road	*1,033
Maps available for inspection at the Planning Office, Human Resources Center, Parker Road, Morganton, North Carolina.	
Columbus County (unincorporated areas) (FEMA Docket No. 7000)	
Lumber River:	
At State boundary	*61
About 1.44 miles upstream of U.S. Route 74	*65
Waccamaw River:	
At State boundary	*26
Just downstream of Lake Waccamaw	42
Maps available for inspection at the Soil Conservation Service Office, 112 W. Smith Street, Whiteville, North Carolina.	
Rockingham County, (unincorporated areas) (FEMA Docket No. 7000)	
Dan River:	
About 400 feet downstream of State Road 700	*507
About 500 feet upstream of confluence of Matrimony Creek	*528
Smith River:	
About 0.9 mile downstream of State Road 14	*552
About 2,000 feet downstream of State Road 14	*557
Matrimony Creek:	
At mouth	*527
About 1,700 feet upstream of Center Church Road	*571
Rock Creek:	
About 900 feet upstream of SR 1714	*569
About 1,700 feet upstream of SR 1714	*576
Dry Creek:	
About 2,100 feet downstream of Norfolk Southern Railway	*526
About 300 feet upstream of Main Street	*557
Reed Creek:	
About 3,200 feet downstream of U.S. Route 311	*584
About 2,600 feet upstream of U.S. Route 311	*587
Big Beaver Island Creek:	
About 3.7 miles upstream of mouth	*654
About 4.6 miles upstream of mouth	*663
Little Beaver Island Creek:	
About 2.0 miles upstream of mouth	*603
About 2.4 miles upstream of mouth	*610
Troublesome Creek:	
Just upstream of SR 2423	*707
About 1,000 feet upstream of U.S. Route 220	*829
Maps available for inspection at the County Planning Office, County Complex, Wentworth, North Carolina.	
Wilkes County (unincorporated areas) (FEMA Docket No. 7000)	
Yadkin River:	
About 2.16 miles downstream of State Road 115	*955
About 1,600 feet upstream of State Road 1143	*983
Maps available for inspection at the County Planner's Office, County Administration Building, 110 North Street, Wilkesboro, North Caroline.	
Yadkin County (unincorporated areas) (FEMA Docket No. 7000)	
Yadkin River:	
About 3,100 feet downstream of confluence of Sandyberry Creek	*894
Just downstream of county boundary	*905
Deep Creek:	
Just upstream of Baltimore Road	*733
Just downstream of confluence of South Deep Creek	*740
South Deep Creek:	
Just upstream of confluence with Deep Creek	*740
Just downstream of Old Stage Road	*742
Sandyberry Creek:	
About 1,650 feet downstream of State Road 67	*896
Just downstream of SR 1331	*948
Beaverdam Creek:	
About 1,000 feet downstream of Caroline Street	*911

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Just downstream of abandoned structure (about 1,550 feet upstream of Caroline Street)	*962
Just upstream of abandoned structure (about 1,550 feet upstream of Caroline Street)	*970
Just downstream of SR 1312	*1025
Cobb Creek:	
About 1,450 feet upstream of SR 1311	*921
About 0.80 mile upstream of SR 1311	*937
Maps available for inspection at the County Manager's Office, County Office Building, Yadkinville, North Carolina.	
OHIO	
Athens County (unincorporated areas) (FEMA Docket No. 6997)	
Ohio River:	
At downstream county boundary	*603
At upstream county boundary	*605
Hocking River:	
At mouth	*603
About 0.15 mile upstream of CSX railroad	*683
Sunday Creek:	
At mouth	*661
At upstream county boundary	*701
Snow Fork:	
At downstream county boundary	*709
Just upstream of State Route 78	*715
Federal Creek:	
At confluence of Sharps Fork	*628
About 2100 feet upstream of State Route 550	*633
Maps available for inspection at the County Engineer's Office, 555 East State Street, Athens, Ohio.	
Coalton (village), Jackson County (FEMA Docket No. 7000)	
Pigeon Creek:	
At downstream corporate limits	*692
About 2650 feet upstream of CSX railroad	*708
Maps available for inspection at the City Hall, Coalton, Ohio.	
PACIFIC TRUST	
Islands of Saipan, Tinian and Rota, Commonwealth of the Northern Mariana Islands (FEMA Docket No. 7000)	
Tanapag Stream:	
Just upstream of Beach Road	*8
About 100 feet downstream of West Coast Highway	*19
Approximately 300 feet upstream of West Coast Highway	*25
Approximately 2,000 feet upstream of West Coast Highway	*50
Garapan Area:	
Approximately 400 feet from intersection of Hillside View Road and 4th Street	#1
San Roque Stream:	
Just upstream of West Coast Highway	#1
Lake Susupe:	
Located approximately 5,000 feet south of intersection of Wallace Highway and West Coast Highway	*6
Philippine Sea:	
At shoreline located approximately 4,100 northeast of crossing of West Coast Highway and San Roque Stream	*9
At shoreline located 900 feet north of crossing of West Coast Highway and San Roque Stream	*10
At shoreline located 1,200 feet southwest of Puntan Achugao 550 feet northwest of West Coast Highway	*7
At shoreline located at Unai Achugao 600 feet northwest of West Coast Highway	*12
At shoreline located at Unai Tanapag approximately 2,400 southwest of confluence of Tanapag Stream and the Philippine Sea	*7
At shoreline located approximately 2,300 feet southwest of Puetton Tanapag 850 feet northwest of Beach Road	*10
At shoreline located 750 feet west of intersection of Hillside View Road and Beach Road	*7
At shoreline located approximately 3,000 feet south of intersection of Beach Road and Broadway	*10
At shoreline located 1,300 feet north of intersection of Kobler Road and Beach Road	*7
At shoreline located approximately 1,400 feet east 900 feet north of Puntan Agingan	*13
Maps available for review at the Office of the Governor, Capital Hill, Saipan, MP.	
SOUTH CAROLINA	
Clarendon County (unincorporated areas) (FEMA Docket No. 7000)	
Pocotaligo River:	
About 700 feet downstream of confluence of Ox Swamp	*81
About 1.3 miles upstream of confluence of Sammy Swamp	*99
Ox Swamp:	
At mouth	*81
At confluence of Davis Branch	*97
Loss Branch:	
At confluence with Ox Swamp	*97
About 1.3 miles upstream of Raccoon Road	*115
Davis Branch:	
At mouth	*97
Just downstream of State Highway 14	*141
Bell Branch:	
At mouth	*86
Just downstream of Branch View Drive	*130
Potato Creek:	
Just upstream of State Route 260 Dam	*79
Just downstream of State Highway 127	*98
Potato Creek Tributary No. 1:	
At confluence with Potato Creek	*79
About 0.74 mile upstream of State Route 260	*79
White Oak Creek:	
At mouth	*77
Just downstream of State Highway 345	*106
Tawcaw Creek:	
Just upstream of Marion Dam	*81
Just downstream of Interstate 95	*106
Little Tawcaw Creek:	
At mouth	*82
Just downstream of Service Road	*100
Ragins Branch:	
At mouth	*92
Just downstream of Interstate 95 on ramp	*110
Jacks Creek:	
Just upstream of Jacks Creek Dam	*80
Just downstream of State Highway 76	*87
Maps available for inspection at the County Courthouse, Manning, South Carolina.	
Darlington County (unincorporated areas) (FEMA Docket No. 7000)	
Jeffries Creek:	
At county boundary	*121
Just downstream of State Road 19	*167
High Hill Creek:	
At mouth	*78
Just downstream of Pisgah Road	*89
Black Creek:	
Just upstream of State Road 133	*103
Just downstream of State Road 50	*149
Bellyache Creek:	
At mouth	*103
Just downstream of Old Mill Dam	*131
Just upstream of Old Mill Dam	*136
About 0.95 mile upstream of State Road 786	*168
Swift Creek:	
About 1200 feet upstream of mouth	*81
Just downstream of State Road 13	*148
Maps available for inspection at the County Courthouse, Darlington, South Carolina.	
TENNESSEE	
Blount County (unincorporated areas) (FEMA Docket No. 7000)	
Pistol Creek:	
At mouth	*835
About 3300 feet upstream of confluence of Springfield Branch	*841
Springfield Branch:	
At mouth	*839
About 3400 feet upstream of MacArthur Road	*840
Tennessee River:	
At downstream county boundary	*815
At confluence of Little River	*817
Little River:	
At mouth	*817
About 2.14 miles upstream of State Route 33	*842
Lackey Creek:	
At mouth	*816
Just downstream of Grey Ridge Road	*874
Lackey Creek Tributary:	
At mouth	*849
About 0.96 mile upstream of mouth	*892
Taylor Branch:	
At mouth	*829
Just downstream of Meadowview Road	*845
Maps available for inspection at the County Courthouse, Maryville, Tennessee.	
Obion County (unincorporated areas) (FEMA Docket No. 7003)	
Harris Fork Creek:	
Just upstream of Daniel McConnell Road	*316
About 2.0 miles upstream of Pierce Station Road	*349
Maps available for inspection at the County Courthouse, Union City, Tennessee.	
TEXAS	
South Padre Island (town), Cameron County (FEMA Docket No. 6991)	
Gulf of Mexico:	
Approximately 2,000 feet south of northern corporate limits along Padre Boulevard	*6
At Tropical Drive	*7
At Coronado Drive	*7
Just west of Gulf Boulevard between Kingfish Street and Whiting Street	*7
At Haas Drive	*7
Approximately 1,300 feet northeast of Sunset Drive	*8
At Gulf Boulevard between Aries Drive and Capricorn Drive	*8
Approximately 300 feet landward of shoreline near southern corporate limits	*11
East of Gulf Boulevard near Huisache Street extended	*11
At Gulf Boulevard between Constellation Drive and Mars Lane	*11
Entire shoreline	*13
Maps are available for inspection at 4501 Padre Boulevard, South Padre Island, Texas.	
VERMONT	
Bloomfield (town), Essex County (FEMA Docket No. 6984)	
Connecticut River:	
At the downstream corporate limits	*899
At the upstream corporate limits	*997
Maps available for inspection at the Town Office, North Stratford, New Hampshire	
Bradford (town), Orange County (FEMA Docket No. 6991)	
Connecticut River:	
At downstream corporate limits	*411
At upstream corporate limits	*414
Waits River:	
At Smith Hydroelectric Station Dam	*464
At upstream corporate limits	*621
Maps available for inspection at the Town Clerk's Office, Town and Village Offices, Bradford, Vermont.	
Bradford (village), Orange County (FEMA Docket No. 6991)	
Waits River:	
At Smith Hydroelectric Dam	*454
At the upstream corporate limits	*474
Connecticut River:	
Downstream corporate limits	*414

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
U.S. Route 5	*414
Maps available for inspection at the Town Clerk's Office, Town and Village Offices, Bradford, Vermont.	
Brunswick (town), Essex County (FEMA Docket No. 6975)	
Connecticut River:	
At downstream corporate limits	*873
At upstream corporate limits	*898
Maps available for inspection at the home of the Chairman of the Board of Selectmen, Roger Case, R.F.D. 2, Box 118, Guildhall, Vermont.	
Dummerston (town), Windham County (FEMA Docket No. 6984)	
West River:	
Approximately 380 feet downstream of downstream corporate limits	*259
At upstream corporate limits	*354
Connecticut River:	
At downstream corporate limits	*239
At upstream corporate limits	*244
Maps available for inspection at the Town Hall R.D. 2, Dummerston, Vermont.	
Fairlee (town), Orange County (FEMA Docket No. 6975)	
Connecticut River:	
At Fairlee—Thetford Town line	*407
At Bradford—Fairlee Town line	*411
Maps available for inspection at the Town Hall, Fairlee, Vermont.	
Guildhall (town), Essex County (FEMA Docket No. 6984)	
Connecticut River:	
Approximately 200 feet downstream of the downstream corporate limits	*852
At the upstream corporate limits	*862
Maps available for inspection at the Town Hall. R.F.D. 2, Guildhall, Vermont.	
Lemington (town), Essex County (FEMA Docket No. 6975)	
Connecticut River:	
At downstream corporate limits	*997
At upstream corporate limits	*1,012
Maps available for inspection at the residence of the Chairman of Planning Commission, R.R 1, Box 162, Canaan, Vermont.	
Ryegate (town), Caledonia County (FEMA Docket No. 6984)	
Connecticut River:	
At downstream corporate limits	*429
At upstream corporate limits	*433
Wells River:	
At downstream corporate limits	*689
Approximately .3 mile upstream of (Town Highway) County Route 50 bridge	*742
Scott Brook:	
At confluence with Wells River	*728
At upstream corporate limits	*759
Quarry Road Brook:	
At confluence with Wells River	*732
Approximately 270 feet upstream of Quarry Road	*752
Maps available for inspection at the Town Office, Ryegate, Vermont.	
Thetford (town), Orange County (FEMA Docket No. 6984)	
Connecticut River:	
Downstream corporate limits	*399
Upstream corporate limits	*407
Maps available for inspection at the Town Clerk's Office, Thetford, Vermont.	
West Windsor (town), Windsor County (FEMA Docket No. 6991)	
Mill Brook:	
Downstream corporate limits	*617
Upstream corporate limits	*845
Maps available for inspection at the Town Clerk's Office, Brownsville, Vermont.	
WEST VIRGINIA	
Albright (town), Preston County (FEMA Docket No. 6997)	
Cheat River:	
Approximately 1,500 feet downstream of State Route 26	*1,209
Approximately 1,800 feet upstream of Bridge and Dam for Albright Power Plant	*1,224
Maps available for inspection at the Community Building, Bishop Avenue, Albright, West Virginia.	
Belmont (town), Pleasants County (FEMA Docket No. 6991)	
Ohio River:	
At approximately .5 mile southwest along State Route 2 from its intersection with Emerald Street	*623
At approximately 800 feet northeast along State Route 2 from its intersection with Sun Street	*624
Maps available for inspection at the Town Hall, 218 Main Street, Belmont, West Virginia.	
Pleasants County (unincorporated areas) (FEMA Docket No. 6991)	
Ohio River:	
At the confluence of Bull Creek	*620
At the confluence of Bens Run	*629
Middle Island Creek:	
At the confluence with the Ohio River	*626
At the County boundary	*641
Maps available for inspection at the County Clerk's Office, Pleasants County Courthouse, St. Marys, West Virginia.	
St. Mary's (City), Pleasants County (FEMA Docket No. 6991)	
Ohio River:	
Approximately 650 feet southwest along State Route 2 from its intersection with Bridge Street	*625
At approximately 80 feet southwest along State Route 2 from its intersection with South Bradfield	*627
Middle Island Creek:	
At approximately 125 feet downstream of CSX Transportation	*626
At approximately 2,000 feet upstream of State Route 2	*626
Maps available for inspection at the Town Hall, 418 2nd Street, St. Mary's, West Virginia.	

The base (100-year) flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. Any appeals of the proposed base flood elevations which were received have been resolved by the Agency.

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
MAINE	
Bar Harbor (town), Hancock County (FEMA Docket No. 6974)	
Eastern Bay:	
At Hadley Point	*14
At Parker Pointg	*20
Northeast Creek: At State Route 3	*11
Frenchman Bay:	
At Dorr Point	*19
At Great Head	*33
Otter Cove:	
At Otter Creek	*12
At Otter Point	*44
Newport Cove:	
At Schooner Head Road extended	*12
At Thunder Hole	*44
Western Bay:	
At State Routes 102 and 198	*11
At Negro Point	*14
Mount Desert Narrows: At Israel Point	*14
Maps available for inspection at the Planning Department, 93 Cottage Street, Bar Harbor, Maine.	
MASSACHUSETTS	
Lowell (city), Middlesex County (FEMA Docket No. 6941)	
Merrimack River:	
Upstream side of the Pawtucket Dam	*93
Approximately 3.2 miles upstream of Pawtucket Dam	*104
Black Brook:	
Upstream side of Boston and Main Railroad crossing	*100
Approximately 0.8 mile upstream of Westford Street	*112
Beaver Brook:	
At the confluence with the Merrimack River	*70
Approximately 1,050 feet upstream of Veterans of Foreign Wars Highway	*71
Concord River:	
Upstream side of Merrimack Street	*65
Approximately 1,200 feet upstream of Interstate Route 495 East	*104
River Meadow Brook:	
Approximately 350 feet downstream of Lawrence Street	*74
Approximately 200 feet upstream of East Industrial Avenue	*103
Marginal Brook:	
Approximately 50 feet upstream of Billerica Street	*104
Approximately 1,000 feet upstream of Hollis Street	*127
Trull Brook Tributary:	
Approximately 0.7 mile downstream of Phoenix Avenue	*110
Approximately 250 feet upstream of Boston and Maine Railroad	*130
Maps available for inspection at the Building Inspector's Office, City Hall, 375 Merrimack Street, Lowell, Massachusetts.	

Issued: February 7, 1991.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 91-3611 Filed 2-14-91; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

Restricted Frequency Bands for Non-Licensed Transmitters

AGENCY: Federal Communications Commission.

ACTION: Final rule; technical amendment.

SUMMARY: This technical amendment is being made to correct an error concerning restricted bands of operation that has been identified by the Agency in the Code of Federal Regulations.

EFFECTIVE DATE: February 15, 1991.

FOR FURTHER INFORMATION CONTACT: John A. Reed, Office of Engineering and Technology (202) 653-7313.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 15

Radio.

Part 15 of Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 15 continues to read as follows:

Authority: Secs. 4, 302, 303, 304, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 302, 303, 304, and 307.

2. In the table following paragraph (a) of § 15.205, *Restricted bands of operation,* 2438.5–2500 printed in the third column, second line is revised to read 2483.5–2500.

Federal Communications Commission

Donna R. Searcy,

Secretary.

[FR Doc. 91-3660 Filed 2-14-91; 8:45 am]

BILLING CODE 6712-01-M

ENVIRONMENTAL PROTECTION AGENCY

48 CFR Part 1501 and 1516

[FRL-3902-1]

Acquisition Regulations: Unauthorized Commitments, Ratification and Administrative Changes

AGENCY: Environmental Protection Agency.

ACTION: Final rule; technical amendment.

SUMMARY: This document amends the Code of Federal Regulations due to amendatory language errors in two earlier rules. The two final rules were published in the **Federal Register** on May 2, 1990 at (55 FR 18340) and June 18, 1990 at (55 FR 24578).

EFFECTIVE DATE: February 15, 1991.

FOR FURTHER INFORMATION CONTACT: Paul Schaffer at (202) 382-5032.

48 CFR parts 1501 and 1516 are amended as follows:

1. The authority citation for parts 1501 and 1516 continue to read as follows:

Authority: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

PART 1501—[AMENDED]

2. Subpart 1501.6 is amended by removing §§ 1501.670-1, 1501.670-2, 1501.670-3, 1501.670-4, 1501.670-5, 1501.670-6, and 1501.670-7.

PART 1516—[AMENDED]

§ 1516.404-276 [Amended]

3. In section 1516.404-276(a) remove HCA and replace with RAD.

Dated: December 21, 1990.

John C. Chamberlin,

Director, Office of Administration.

[FR Doc. 91-2808 Filed 2-14-91; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 90-10; Notice 2]

RIN 2127-AD36

Federal Motor Vehicle Safety Standard Pneumatic Tires—Bead Unseating Tire Dimensions

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This notice takes final action on a petition by the Rubber Manufacturers Association to amend Standard No. 109, *New Pneumatic Tires—Passenger Cars,* to permit the testing of 17 and 18 inch T-Type temporary spare tires. Prior to this amendment, the dimensions set forth in the table in Figure 1 for bead unseating did not permit tires of these sizes.

DATES: *Effective date:* These amendments are effective March 18, 1991.

Petitions for reconsideration: Any petitions for reconsideration of this rule must be received by NHTSA no later than March 18, 1991.

ADDRESSES: Petitions for Reconsideration of this rule should refer to Docket No. 90-10; Notice 2 and should be submitted to the following address: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Cook, Office of Crash Avoidance, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202-366-4803).

SUPPLEMENTARY INFORMATION: Federal Motor Vehicle Safety Standard No. 109, *New Pneumatic Tires,* (49 CFR 571.109) contains performance requirements and tests for pneumatic tires for passenger cars, including specifications for bead unseating resistance in S4.2.2.3 and S5.2. In preparation for the test, the tire to be tested must be washed, dried, and inflated to an inflation pressure specified in Table II of the standard. Then, after mounting the wheel and tire in a fixture described in Figure 1 of the standard, a load must be applied through a testing block until the bead unseats or the specified value is reached.

A table in Figure 1 specifies dimensions of the bead unseating fixture for various wheel sizes. Among the dimensions is "dimension A for tires with maximum inflation pressure." "Dimension A" is a subsection of the bead unseating fixture from the center of the mounted wheel and tire combination to the point at which the test anvil contacts the tire at the beginning of the bead unseating test. The point of contact is the maximum section width of a properly inflated tire. The permissible wheel sizes are currently 10 inches to 17 inches, at one inch intervals.

The Rubber Manufacturers Association (RMA) petitioned the agency to amend the permissible dimensions in the bead unseating fixture specified in the table in Figure 1. It requested that in Figure 1, the table include "dimension A's" of 10.6 inches for 17 inch tires and 11.4 inches for 18 inch tires having maximum inflation pressure of 60 lb/in^2. The petition stated that new "dimension A's" were needed for 17 and 18 inch T-Type tires which had been standardized by the Tire and Rim Association.

After its initial review, the agency granted the petition and issued a notice of proposed rulemaking (NPRM) to amend the table in Figure 1 in Standard No. 109. (55 FR 24280, June 15, 1990). The agency tentatively concluded in the proposal that the requested amendments would permit the introduction of 17 and 18 inch T-Type tires, for which Standard No. 109 did not contain provisions. The

notice explained that when the agency initially amended the standard to permit T-Type tires, only tires with diameters of 13 inches to 16 inches were anticipated. (44 FR 12869, March 7, 1977).

The notice continued that the "A values" in Figure 1 were uniformly derived from a formula which added a constant value of 1.9 inches after the wheel size was divided by two. Applying this formula to the proposed 17 and 18 inch tires results in values of 10.4 inches for 17 inch wheels and 10.9 inches for 18 inch wheels. In contrast, RMA recommended values of 10.6 inches and 11.4 inches, stating that these larger values would allow tires to be tested without having the test anvil come into contact with the rim during a bead unseating test. The notice proposed these larger values, which the agency tentatively concluded would more appropriately test 17 and 18 inch T-Type tires. The NPRM requested comments about the need to amend the wheel sizes in the table in Figure 1 and the appropriateness of the proposed values.

In response to the NPRM, the agency received comments from the European Tyre and Rim Technical Organisation (ETRTO) and General Motors (GM). Both commenters supported the proposal's intent. No comment opposed the proposal. NHTSA has considered the points by the commenters in developing this final rule. The commenter's significant points are addressed below, along with the agency's response to those points.

Along with supporting the proposal to add testing dimensions for 17 and 18 inch T-Type tires to the table in Figure 1, the commenters expressed additional thoughts. ETRTO requested amending the table to include additional "dimension A's" for 18 inch conventional tires and 19 inch T-Type tires. GM suggested that the agency amend Standard No. 109 by eliminating the table in Figure 1 and replacing it with a uniform formula for calculating "dimension A." Their recommended formula would be the distance between the center of the wheel to the point of maximum section width of the inflated tire mounted in the bead unseating fixture in Figure 1. GM believed that specifying this formula instead of specific numerical values for each wheel diameter would eliminate the need to amend the standard each time a tire with a new wheel diameter was introduced. It suggested that a footnote could be added to Figure 1 stating that manufacturers could increase or decrease the value for "dimension A" in specified increments if the bead unseating test could not be completed due to testing difficulties. GM further stated that to facilitate NHTSA's enforcement testing, the agency could require tire manufacturers to provide the value for "dimension A" used for its certification before conducting the bead unseating test.

Based on the reasons in the NPRM and the commenters' general agreement with the proposal, NHTSA has decided to amend the table in Figure 1 of Standard No. 109, as proposed. Accordingly, the table in Figure 1 is amended to include new "dimension A's" for 17 and 18 inch T-Type tires.

NHTSA is currently evaluating the merits of the commenters' additional recommendations about testing for bead unseating. If the agency determines that these recommendations are worthwhile, it will issue an NPRM initiating a rulemaking.

Section 103(c) of the Vehicle Safety Act requires that each order shall take effect no sooner than 180 days from the date the order is issued unless "good cause" is shown that an earlier effective date is in the public interest. Given that this amendment facilitates the introduction of certain tires without imposing additional requirements on manufacturers and that the public interest is served by not delaying the introduction of these alternative tire designs, the agency has determined that there is good cause to have the amendment become effective 30 days after publication of the final rule.

The agency has determined that the amendment is not "major" within the meaning of Executive Order 12291 and is not "significant" for purposes of the Department of Transportation's regulatory policies and procedures. NHTSA has evaluated this amendment and determined that it will impose no mandatory costs on manufacturers. This amendment merely permits manufacturers to introduce T-Type tires of larger dimensions. For those manufacturers, the costs will be minimal. It will not have an impact on the economy in excess of $100 million. Similarly, it will not result in a major change in costs or prices for consumers, individuals industries, government, or any geographic region. Nor will this action significantly affect competition. The agency has further determined that a full regulatory evaluation is not required because the rule will have minimal economic impacts.

For the same reasons discussed above, and because few tire manufacturers are small manufacturers, I certify under the Regulatory Flexibility Act that this rule will not have a significant impact on a substantial number of small entities within the meaning of the statute.

Further, NHTSA has analyzed this rulemaking action in accordance with the principles and criteria contained in Executive Order 12612 and has determined that it has no Federalism implications that warrant preparation of a Federalism report.

Finally, the agency has concluded that the environmental consequences of the proposed change will be of such limited scope that they will not have a significant effect on the quality of the human environment.

List of Subjects in 49 CFR 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, 49 CFR part 571 is amended as follows:

PART 571—[AMENDED]

1. The authority citation for part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403 and 1407; delegation of authority at 49 CFR 1.50.

2. In § 571-109, the Table in Figure 1 is revised to read as follows:

* * * * *

Wheel size	Dimension "A" for tires with maximum inflation pressure	
	Other than 60 lbs/in²	60 lbs/in²
18		11.40
17	12.00	10.60
16	11.50	9.90
15	11.00	9.40
14	10.50	8.90
13	10.00	8.40
12	9.50	
11	9.00	
10	8.50	
320mm	8.50	
340mm	9.00	
345mm	9.25	
365mm	9.75	
370mm	10.00	
390mm	11.00	
415mm	11.50	
400mm(1)	10.25	
425mm(1)	10.75	
450mm(1)	11.25	
475mm(1)	11.75	
500mm(1)	12.25	

(1) for CT tires only.

Figure 1—Bead Unseating Fixture—Dimensions in Inches

Issued on: February 11, 1991.

Jerry Ralph Curry,

Administrator.

[FR Doc. 91-3717 Filed 2-14-91; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 675

[Docket No. 901199-1021]

Groundfish of the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final notice of initial specifications of groundfish for 1991.

SUMMARY: NOAA announces final specifications of total allowable catches (TACs) and initial apportionments for each category of groundfish in the Bering Sea and Aleutian Islands (BSAI) management area for the 1991 fishing year. This action is necessary to establish harvest limits for groundfish in the 1991 fishing year. This action is based on public comments, the best available information on the biological condition of groundfish stocks, the socioeconomic condition of the fishing industry, and consultation with the North Pacific Fishery Management Council (Council) at its meeting of December 3–7, 1990. The intended effect of this action is the conservation and management of groundfish resources in the BSAI management area.

DATES: Effective at 0001 hours, Alaska Local Time (A.l.t.), January 1, 1991, through 2400 hours, A.l.t., December 31, 1991, or until changed by subsequent notice in the **Federal Register.**

ADDRESSES: The final Stock Assessment and Fishery Evaluation Document for Groundfish Resources in the Bering Sea/Aleutian Islands Region as Projected for 1991 (SAFE report) may be requested from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone 907–271–2809.

FOR FURTHER INFORMATION CONTACT: Jay J. C. Ginter, Fishery Management Biologist, NMFS, 907–586–7229.

SUPPLEMENTARY INFORMATION: Groundfish fisheries in the BSAI management area are governed by Federal regulations (at 50 CFR 611.93 and part 675), which implement the Fishery Management Plan for Bering Sea/Aleutian Islands Groundfish (FMP). The FMP was prepared by the Council and approved by the Secretary of Commerce (Secretary) under the Magnuson Fishery Conservation and Management Act (Magnuson Act).

The FMP and implementing regulations require the Secretary, after consultation with the Council, to specify annually the TAC, initial domestic annual harvest (DAH), and initial total allowable level of foreign fishing (TALFF) for each target species and the "other species" category for the succeeding fishing year (§ 675.20(a)(7)). The sum of the TACs must be within the optimum yield (OY) range of 1.4 million to 2.0 million metric tons (mt) (§ 675.20(a)(2)). For 1991, this sum of TACs is equal to 2.0 million mt, as indicated in Table 1.

TABLE 1.—FINAL 1991 TOTAL ALLOWABLE CATCH (TAC) AND APPORTIONMENTS OF GROUNDFISH IN THE BERING SEA (BS) AND ALEUTIAN ISLANDS (AI) MANAGEMENT AREA [1]

Species	TAC	Initial TAC [2]	DAP [3]	JVP [4]	DAH [5]	TALFF [6]
Pollock:						
BS	1,300,000	1,105,000	1,105,000	0	1,105,000	0
AI	85,000	72,250	72,250	0	72,250	0
Pacific cod	229,000	194,650	194,650	0	194,650	0
Sablefish:						
BS	3,100	2,634	2,634	0	2,634	0
AI	3,200	2,720	2,720	0	2,720	0
Atka mackerel	24,000	20,400	20,400	0	20,400	0
Yellowfin sole	135,000	114,750	114,750	0	114,750	0
Rock sole	90,000	76,500	76,500	0	76,500	0
Greenland turbot	7,000	5,950	5,950	0	5,950	0
Arrowtooth flounder	20,000	17,000	17,000	0	17,000	0
Other flatfish	64,675	54,974	54,974	0	54,974	0
Pacific ocean perch:						
BS	4,570	3,885	3,885	0	3,885	0
AI	10,775	9,159	9,159	0	9,159	0
Other red rockfish [7]:						
BS	1,670	1,420	1,420	0	1,420	0
AI	4,685	3,982	3,982	0	3,982	0
Other rockfish [8]:						
BS	400	340	340	0	340	0
AI	925	786	786	0	786	0
Squid	1,000	850	850	0	850	0
Other species	15,000	12,750	12,750	0	12,750	0
Totals	2,000,000	1,700,000	1,700,000	0	1,700,000	0

Notes to Table 1:
[1] Amounts in metric tons; apply to entire BSAI management area unless otherwise specified.
[2] Initial TAC (ITAC)=0.85 of TAC; initial reserve=TAC-ITAC=300,000.
[3] DAP=domestic annual processing.
[4] JVP=joint venture processing.
[5] DAH=DAP + JVP.
[6] TALFF=total allowable level of foreign fishing.
[7] "Other red rockfish" includes shortraker, rougheye, northern and sharpchin.
[8] "Other rockfish" includes *Sebastes* and *Sebastolobus* species except for Pacific ocean perch and the "other red rockfish" species.

A notice specifying preliminary initial TAC, reserve, DAH, and TALFF amounts for the 1991 fishing year was published on November 27, 1990, and comments were invited through December 27, 1990 (55 FR 49311). One written comment was received. It is summarized and responded to below. In addition, oral comments were heard and public consultation with the Council occurred during the Council meeting in Anchorage, Alaska, on December 3–7, 1990. Biological and economic data that became available after preparation of the proposed specifications and Council recommendations made at its December meeting account for differences between

the proposed specifications and those published in this notice.

The specified TACs for each species are based on the best available biological and socioeconomic information. The Council, its Advisory Panel (AP), and its Scientific and Statistical Committee (SSC), at their September and December 1990 meetings, reviewed current biological information about the condition of groundfish stocks in the BSAI management area. This information was compiled by the Council's BSAI groundfish Plan Team and presented in the SAFE report for the BSAI groundfish fisheries in the 1991 fishing year. The Plan Team annually produces such a document as the first step in the process of specifying TACs. The SAFE report contains a review of the latest scientific analyses and estimates of each species' biomass and other biological parameters. From these data and analyses, the Plan Team estimates an acceptable biological catch (ABC) for each species category.

A summary of preliminary ABCs for each species for 1991 and other biological data from the September 1990 draft SAFE report was provided in the notice of proposed 1990 specifications (55 FR 49311, November 27, 1990). The Plan Team's recommended ABCs were reviewed by the SSC, AP, and Council at their September 1990 meetings. Based on the SSC's comments on technical methods and new biological data not available in September, the Plan Team revised its ABC recommendations in the final SAFE report dated November 1990. The revised ABC recommendations were again reviewed by the SSC, AP, and Council at their December 1990 meetings to produce the Council's final ABC estimates. The Council then developed its TAC recommendations to the Secretary based on the final ABCs as adjusted for other biological and socioeconomic considerations. For each species category, the Council adopted final ABCs so that catches at or below that amount would not cause overfishing, as defined by Amendment 16 to the FMP. Each of the Council's recommended TACs for 1991 is equal to or less than the final ABC for each species category. Therefore, the Secretary finds that the recommended TACs are consistent with the biological condition of groundfish stocks.

A principal consideration for the Council in developing its 1991 TAC recommendations was assuring that the sum of the species TACs did not exceed the maximum OY of 2 million mt. In addition, the Council's recommended division of certain TACs between seasons and gear types, as described below, was done according to prescribed procedures. Therefore, the Secretary also finds that the recommended TACs are consistent with socioeconomic goals and objectives of the FMP.

Apportionment of TAC

As required under § 675.20(a)(3), the amount of TAC for each species initially is reduced by 15 percent. The sum of these 15-percent amounts is designated as the reserve. This reserve is not species specific, and any amount of the reserve may be reapportioned to a target species or the "other species" category during the year, providing that such reapportionments do not result in overfishing (§ 675.20(a)(3)).

The remaining 85 percent of TAC is the initial TAC (ITAC). This amount is apportioned between DAH and TALFF such that TALFF for each target species and the "other species" category at the beginning of the year equals the ITAC minus DAH. For 1991, initial TALFF is zero for all species because the DAH equals ITAC.

Each DAH amount is further apportioned between its two components, joint venture processing (JVP) and the expected domestic annual processing (DAP) category, which includes U.S. vessels that process their catch onboard or deliver it to U.S. fish processors. The JVP equals DAH minus DAP to be consistent with the intent of the domestic processor preference amendments to the Magnuson Act. The initial amounts of DAP and JVP are determined by the Director, Alaska Region, NMFS (Regional Director), in consultation with the Council. The initial DAP and JVP amounts for each target species and the "other species" category are based on projected changes in U.S. harvesting and processing capacity and the extent to which U.S. harvesting and processing will occur during the coming year (§ 675.20(a)(4)). The final TACs, ITACs, reserve, and initial apportionments of groundfish between DAP and JVP in the BSAI management area for 1991 are given in Table 1 of this notice. For 1991, initial JVP is zero for all species because the initial DAP equals DAH and ITAC.

Amendment 16 to the FMP (56 FR 2700, January 24, 1991) requires one quarter of the proposed DAP, JVP, and TALFF to be made available on an interim basis for harvest at the beginning of the fishing year (January 1) until superseded by final notice of initial specifications (§ 675.20(a)(7)(i)). Hence, the groundfish harvest specification in Table 1 of this notice supersedes the interim 1991 specifications published in Table 2 of the notice of proposed specifications (55 FR 49311, November 27, 1990).

Pollock Split Season

Amendment 14 to the FMP (56 FR 492, January 7, 1991) requires that the ITAC of pollock be divided into two seasonal allowances (i.e., the roe season, January 1—April 15, and the non-roe season, June 1—December 31) (§ 675.20(a)(2)(ii)). The Council, at its September 1990 meeting, proposed a seasonal split of the pollock ITAC of 25 percent in the roe season and 75 percent in the non-roe season (55 FR 49311, November 27, 1990). At its December 1990, meeting the Council considered nine factors in setting the final seasonal allowances of pollock (Agenda D-3(a-b)(4)) and decided to recommend limiting the pollock catch during the roe season to 441,500 mt in the Bering Sea subarea (Table 2).

TABLE 2.—FINAL ALLOCATION OF THE 1991 POLLOCK TAC BY SEASON [1]

Subarea	TAC [2]	ITAC [3]	Roe season [4]	Non-Roe season [5]
Bering Sea	1,300,000	1,105,000	441,500	663,500
Aleutian Islands	85,000	72,250	72,250	remainder

[1] Amounts are in metric tons.
[2] TAC=total allowable catch.
[3] Initial TAC (ITAC)=0.85 of TAC; 0.15 of TAC is apportioned to reserve.
[4] January 1 through April 15.
[5] June 1 through December 31; specified amounts may be increased by any amount of the roe-season allowance that is unharvested after April 15 and any reapportioned amount of the reserve, or may be decreased by any amount harvested in excess of the roe-season allowance and any amount taken incidental to the catch of other species between April 15 and June 1.

In reviewing the Council's recommended seasonal allowance of the pollock ITAC, the Secretary considered how the recommended allowance would achieve one or more of the objectives of Amendment 14. This amendment was intended to resolve four potential problems related to intensive fishing mortality of pollock during the roe season.

The recommended roe-season allowance of the pollock ITAC will prevent an inappropriate or unintended allocation of the pollock TAC among seasons and between industry sectors by limiting the roe-season harvest to about 40 percent of the ITAC of pollock in the Bering Sea subarea. This is consistent with the proportion of the pollock ITAC that was actually harvested by DAH fisheries during the roe season, but without roe-season constraints, in recent years. The pollock harvest during the roe season of 1990 was approximately 37 percent of the ITAC of pollock that year. During the period 1986 through 1989, the Bering Sea pollock harvest in the first 4 months of the fishing year (which is 2 weeks longer than the roe season defined in Amendment 14) averaged 42 percent of the total annual Bering Sea pollock harvest.

As DAP fishing effort increases, there is a trend toward larger DAP pollock harvests earlier in the fishing year. Two reasons for this trend include (1) The high value of pollock roe relative to other pollock products, and (2) the common-property nature of the pollock resource and the open-access management regime give no incentive to delay harvesting. Hence, with a rapidly growing DAP fishing fleet, there is a real potential for a disproportionately large roe-season harvest without a specific seasonal catch limit. In this event, those vessels and processors that have the capacity to catch and process roe-bearing pollock most rapidly would have a competitive advantage over those elements of the industry that conduct slower, more evenly paced operations.

The Secretary finds that the Amendment 14 objective of preventing an inappropriate or unintended allocation of the pollock TAC among seasons and between industry sectors is achieved by the recommended roe-season allowance for Bering Sea pollock and that the specific allowance of 441,500 mt will provide a reasonable balance between roe and non-roe season harvests. The recommended roe-season catch limit will allow production of valuable pollock products while preventing an excessively disproportionate harvest in the roe season.

The Secretary finds also that the roe-season catch limit may help prevent adverse effects on the ecosystem and on future pollock productivity from intensive fishing mortality during the roe season. Although the environmental assessment of alternatives considered for Amendment 14 indicated no clear evidence of significant negative impacts on the ecosystem from intensive fishing during a compressed season, there is uncertainty about the actual effects of such fishing. The complexity of the ecosystem can easily mask any statistical relationship between the abundance of pollock eggs and larvae, and the future abundance of various pollock predators (including the threatened Steller sea lion) and of harvestable stocks of pollock. Given this uncertainty, conservative limitation of the roe-season pollock harvest is reasonable.

The Council made no recommendation to allocate pollock by season in the Aleutian Islands subarea. The entire ITAC of pollock in that subarea will be available for harvest during the roe season, and any amount unharvested on April 15 will be available for harvest during the non-roe season beginning June 1, subject to other harvesting limitations. The Secretary finds this recommendation consistent with the objectives of Amendment 14, given the difficult fishing conditions in the Aleutian Islands subarea. The rugged bottom topography, swift currents, and lower density of pollock in this area can cause fouled fishing gear and low catches relative to those in the Bering Sea subarea. As a result, harvests of pollock in the Aleutian Island subarea typically account for a small proportion of the overall BSAI pollock harvest. The average pollock harvests by DAH fisheries in the Aleutian Islands subarea over the 3 years 1988–1990 are about 3 percent of the total pollock harvest in the BSAI management area. In addition, pollock tend to be harvested later in the Aleutian Islands subarea, usually after the Bering Sea subarea catch limits are attained. Therefore, the rationale for a separate roe-season catch limit in the Bering Sea subarea is not currently applicable to the Aleutian Islands subarea. Amendment 14 provides for specifying a separate roe-season allowance if a need is apparent in the future.

Finally, in adopting the Council's recommended seasonal allowances of the pollock ITACs for the Bering Sea and Aleutian Islands subareas, the Secretary also accepts and adopts the nine findings considered by the Council as required by Amendment 14 in setting seasonal apportionment of the pollock ITACs. The record of these considerations is found at Agenda D-3(a–b)(4) for the December 1990 meeting of the Council and in appendix B of the SAFE report dated November 1990. By basing these findings on the biological and socioeconomic information contained in the final SAFE report dated November 1990, the Secretary finds that the recommended seasonal allowances of pollock are based on and consistent with the types of information required by § 675.20(a)(2)(i).

Sablefish Gear Allocation

Division of the sablefish TACs for the Bering Sea and Aleutian Islands subareas between users of trawl and longline fishing gears is provided for under Amendment 13 to the FMP implemented by a final rule published December 6, 1989 (54 FR 50386). Longline fishing gear is defined at § 675.2 as a stationary, buoyed, and anchored line with hooks or pots (other than king or Tanner crab pots) attached. Gear allocations of TACs are specified at § 675.24(c) in the following proportions:

Bering Sea subarea: trawl gear—50 percent; longline gear—50 percent, and *Aleutian Islands subarea:* trawl gear—25 percent; longline gear—75 percent.

Based on the specifications in Table 1 for the 1991 fishing year, trawl gear and fixed-gear catch limits of sablefish in each subarea are equivalent to the shares of the TACs and ITACs listed in Table 3.

TABLE 3.—FINAL GEAR SHARES OF THE 1991 SABLEFISH TAC

Subarea	Gear	Percent of TAC	Share of TAC (mt)	Share of ITAC (mt) [1]
Bering Sea	Trawl	50	1,550	1,317
Bering Sea	Longline	50	1,550	1,317
Aleutian Islands	Trawl	25	800	680

TABLE 3.—FINAL GEAR SHARES OF THE 1991 SABLEFISH TAC—Continued

Subarea	Gear	Percent of TAC	Share of TAC (mt)	Share of ITAC (mt) [1]
Aleutian Islands	Longline	75	2,400	2,040

[1] Initial TAC (ITAC)=0.85 of TAC, rounded to the nearest whole mt; 0.15 of TAC is apportioned to reserve. The sum of both ITAC gear shares in a subarea is equal to the ITAC for that subarea in Table 1 (adjusted for rounding error).

Pacific Ocean Perch (POP) Complex

The POP category has included a complex of five species of red rockfish (i.e., Pacific ocean perch (*Sebastes alutus*), northern rockfish (*S. polyspinis*), rougheye rockfish (*S. aleutianus*), shortraker rockfish (*S. borealis*), and sharpchin rockfish (*S. zacentrus*)). Stock assessment of the POP complex is based on *S. alutus* because this species is the most abundant of those in the complex, and it is the species for which the most biological data exist (see the SAFE report dated November 1990). The abundance of *S. alutus* appears to have increased from record low levels in the mid-1970s to a level above the biomass that would produce the estimated maximum sustainable yield. However, the other species in the POP complex may not have experienced the same increase. In addition, the fishing industry apparently can target its catches on other species of red rockfish in the POP complex, especially rougheye and shortraker rockfish.

To protect these minor rockfish species in the POP complex from excessive harvest, the Plan Team recommended that the calculated ABC for the POP complex be reduced by 50 percent. Alternatively, the Plan Team suggested splitting the POP complex to allow full exploitation of *S. alutus* and protect the other four red rockfish species. After reviewing the SAFE report and the Plan Team's recommendation, the SSC recommended separate ABCs and management of (1) *S. alutus*, (2) rougheye and shortraker rockfish, and (3) northern and sharpchin rockfish in the Aleutian Islands subarea; and (1) *S. alutus*, and (2) rougheye, shortraker, northern, and sharpchin rockfish in the Bering Sea subarea. The Council adopted the SSC recommendation.

The Secretary agrees with the need to manage the *S. alutus* fishery separately from the other minor species in the POP complex. However, the Secretary is deviating from the Council's recommendation to split the POP complex in the Aleutian Islands subarea into three parts. It is doubtful that rougheye and shortraker rockfish can be adequately differentiated from northern and sharpchin rockfish for purposes of monitoring and enforcing catch limits. Therefore, in this action, the Secretary is splitting the POP complex into two parts in both subareas and specifying TACs and apportionments thereof accordingly. The two parts will be (1) Pacific ocean perch (*S. alutus*) and (2) the other red rockfish species of shortraker, rougheye, northern, and sharpchin rockfish. The species list in Table I indicates this change from the proposed specifications.

Prohibited Species Catch (PSC) Limits

Crab and Pacific Halibut

Amendment 16 to the FMP (56 FR 2700, January 24, 1991) established PSC limits for red king crab and *C. bairdi* Tanner crab in specific zones of the Bering Sea subarea and for Pacific halibut throughout the BSAI management area. The bycatch of crabs in a zone is counted against the PSC limit for that zone, but the bycatch of halibut anywhere in the BSAI management area is counted against the primary and secondary halibut PSC limit. These PSC limits are:

200,000 red king crabs applicable to Zone I;

1,000,000 *C. bairdi* Tanner crabs applicable to Zone 1;

3,000,000 *C. bairdi* Tanner crabs applicable to Zone 2;

4,400 mt of Pacific halibut (primary PSC limit); and

5,333 mt of Pacific halibut (secondary PSC limit).

Amendment 16 authorizes the apportionment of each PSC limit into PSC allowances that are assigned to specified bottom-trawl fisheries. For 1991, four bottom-trawl fisheries are identified to receive PSC allowances. At its December 1990 meeting, the Council adopted the PSC allowances in Table 4 of this notice, based on the currently anticipated bycatch of crabs and halibut during the 1991 fishing year. Differences between these PSC allowances and those proposed (55 FR 49311, November 27, 1990) reflect differences between the proposed and final groundfish specifications in Table 1.

TABLE 4.—FINAL 1991 PROHIBITED SPECIES CATCH ALLOWANCES

Fisheries	Zone 1	Zone 2	Zones 1+2H Primary	BSAI-wide Secondary
Red King Crabs, number of animals:				
DAP flatfish	40,000			
DAP rocksole	150,000			
DAP turbot	0			
DAP other	10,000			
C. bairdi Tanner Crabs, number of animals:				
DAP flatfish	100,000	825,000		
DAP rocksole	700,000	300,000		
DAP turbot	0	50,000		
DAP other	200,000	1,825,000		
Pacific Halibut, metric tons:				
DAP flatfish			660	800
DAP rocksole			908	1,100
DAP turbot			165	200
DAP other			2,667	3,233

Herring

The Council has approved Amendment 16A to the FMP and has submitted it to the Secretary for review. If approved and implemented as recommended by the Council, Amendment 16A would establish a PSC limit of herring and PSC allowances for specific fisheries. Proposed and final PSC allowances will be published in the proposed and final rule notices that will implement Amendment 16A, if approved by the Secretary. Therefore, this final notice of initial specifications does not specify herring PSC allowances. If approved and implemented in 1991, the bycatch of herring in groundfish fisheries will be counted against the specified herring PSC allowances from the beginning of the fishing year.

Seasonal apportionments of PSC limits

Amendment 16 to the FMP also provides authority to establish seasonal apportionments of bycatch PSC allowances among the fisheries to which bycatch has been apportioned. No seasonal apportionments were proposed in the preliminary specifications. However, during its December 1990 meeting, the Council recommended a seasonal apportionment of the halibut PSC allowance to the "DAP Other" fishery as in Table 5.

TABLE 5.—FINAL ALLOCATION OF THE 1991 PSC ALLOWANCE OF HALIBUT TO THE "DAP OTHER" FISHERY (PRIMARY AND SECONDARY PSC AMOUNTS IN METRIC TONS)

Quarter	Percent	Primary	Secondary
January 1–March 31	45	1,200	1,455
April 1–June 30	40	1,067	1,293
July 1–September 29	15	400	485
September 30–December 31	remainder	remainder	remainder
Total		2,667	3,233

The purpose of this seasonal apportionment of the halibut PSC allowance is to assure some fishing opportunity for pollock and Pacific cod using bottom-trawl gear in the second and third quarters of the year. In 1990, the bottom-trawl fishery for pollock and cod was closed in Zones 1 and 2H on May 30, and in the entire BSAI management area on June 30, with a substantial portion of the TACs for cod and Aleutian Islands pollock unharvested because the PSC allowance to the "DAP Other" fishery was caught. The Council's recommended seasonal apportionment of the halibut PSC allowance is intended to allow an increased amount of the pollock and cod TAC to be harvested by preventing the entire PSC allowance from being harvested in any one quarter if halibut bycatch rates are high.

In making its recommendation for seasonal allowances of the halibut bycatch apportionment to the "DAP Other" fishery, the Council adopted the recommendations presented by an ad hoc AP workgroup. This workgroup considered and balanced a variety of factors. In particular, it noted that bycatch regulations (at § 675.21) in 1990 had a severe impact on the bottom-trawl fishery for Pacific cod. With the start of the 1991 flatfish fishing season delayed until May 1 (56 FR 384, January 4, 1991), Pacific cod is expected to be more important as a target fishery early in the year than it was in 1990. Also, Pacific cod is most vulnerable to trawl gear early in the year. The workgroup assumed that the halibut bycatch apportionment would constrain the "DAP Other" fishery based on experience in 1990, although no quantitative estimate of this constraint can be made because of the unknown but expected lowering of bycatch rates due to the vessel incentive program to be implemented under Amendment 16. The bottom-trawl fishery for Pacific cod could produce the largest economic return by fishing the resource early in the year. Consequently, the workgroup recommended that most of the halibut PSC allowance be made available in the first two quarters. A small amount (15 percent) was recommended to be reserved for the second half of the year to ensure that there will be some opportunity for harvesting Pacific cod with bottomtrawl gear at that time if the TAC for Pacific cod remains unharvested. The Council adopted the recommendations of this workgroup as an effective balance of the interests affected by the "DAP Other" halibut PSC allowance.

In reviewing and adopting the Council's recommended seasonal apportionment of the halibut PSC allowance to the "DAP Other" fishery, the Secretary considered seven types of information specified at § 675.21(b)(2) as follows:

1. The biomass trends and distribution of halibut are summarized in appendix A of the SAFE report dated November 1990 and in other scientific documents of the International Pacific Halibut Commission;

2. The seasonal distribution of pollock and Pacific cod are described in the SAFE report dated November 1990 and other NMFS documents;

3. The expected halibut bycatch by the "DAP Other" fishery is based on historical bycatch rates presented in appendix C of the SAFE report dated November 1990;

4. The expected variations in bycatch rates throughout the year are based on the same data referenced in item 3;

5. The expected changes in groundfish fishing seasons include the establishment of roe and non-roe seasons for pollock (56 FR 492, January 7, 1991), and the delay of directed fishing for flatfish species except rock sole until May 1 (56 FR 384, January 4, 1991).

6. The expected start of fishing effort for pollock and Pacific cod is January 1; and

7. The economic effects of seasonal apportionments of the halibut PSC allowance are expected to be positive as more pollock and Pacific cod may be harvested with non-pelagic gear than otherwise would be possible without the seasonal apportionments. No data are available to quantify the marginal benefit of this action.

Groundfish

No PSC limits for groundfish species are specified in this notice. Amendment 12 to the FMP (54 FR 18519, May 1, 1989) provides for annual specification of PSC limits for groundfish species or species groups for which the TAC can be completely harvested by domestic fisheries. In practice, these PSC limits apply only to JVP and TALFF fisheries for species that have a zero JVP or TALFF appointment. No groundfish PSC allowances are specified in this action since the TACs of groundfish are anticipated to be harvested entirely by DAP fisheries and no part of the TAC of any species is made available to

directed fishing by JVP or foreign fisheries.

Comments and Responses

One letter of comment was received on the proposed 1991 specifications published November 27, 1990 (55 FR 49311). A summary of this comment and response follows.

Comment: Nine points are made as follows: (1) Any limitation of the pollock roe season will decrease the economic return from the fishery because the value of pollock per metric ton is higher during the roe season than at any other time of the fishing year; (2) a limit on the roe season will encourage unnecessary capitalization in the shore-based processing sector of the fishery; (3) the SEC stated that the entire pollock TAC could be taken during the roe season without adverse biological effects; (4) the pollock stock is adequately protected from overfishing by a TAC that is well below the ABC of pollock; (5) there is no connection between the pollock apportionment and protection of Steller sea lions; (6) there is no need to collect fishery data from the pollock fishery later in the fishing year after conclusion of the roe season; (7) the limitation on roe-season harvests of pollock will result in a greater bycatch of halibut from pollock fishing using non-pelagic gear during the non-roe season; (8) the limitation on roe-season harvests of pollock will increase the likelihood that full harvest of the pollock TAC will be prevented by closures due to attainment of bycatch limits; and (9) the limitation on roe-season harvests of pollock will increase gear conflicts between the trawl fishery for pollock and longline and pot fisheries for other species.

Response: (1) The Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR) for Amendments 19 and 14, dated July 20, 1990, indicated that a prohibition on fishing pollock during the roe season could reduce the wholesale value of the DAP pollock fishery by about $35 million, assuming the same catch as that reported for 1989. This is not the action being taken for 1991. In fact, the 1991 roe-season allowance of 441,500 mt is about 12 percent greater than the actual DAH harvest of pollock in the first 4 months of 1989 and about 10 percent greater than the actual harvest during the roe season in 1990. Relative to the roe-season harvests of pollock in 1989 and 1990, the roe-season allowance for 1991 would appear likely to increase, not decrease, the economic return from the fishery. The 1991 roe-season allowance could result in a decrease in economic return if a significant increase in fishing effort resulted in all or most of the pollock TAC being harvested within the roe season. The extent of this potential decrease is speculative since an increased supply of pollock roe may decrease its market value. Given a significant increase in fishing effort, the Secretary intends to prevent the possibility that all or most of the pollock TAC will be harvested in the roe season by implementing the Council's recommended roe-season catch allowance. Any potential decreased revenues or increased costs that result from this action are necessary to meet the objectives of Amendment 14.

(2) Excessive fishing and processing capacity, regardless of whether it is shore-based or at-sea, stems from olympic-style fisheries harvesting a limited fish resource and is a problem that neither Amendment 14 nor this action attempts to solve.

(3) The potential biological effects of intensive fishing mortality during the roe-bearing season are arguable. NOAA is aware of no marine or fishery biologist who would state categorically that such fishing has no biological effect. Lack of statistically significant evidence of a perturbation within a population of animals is not the same as no effect. This is consistent with SSC reports stating that there is no evidence of biological harm. The EA/RIR discusses some of the hypothetical impacts on stock productivity. Potentially, an intensive roe season harvest could alter the reproductive capacity of the stock by affecting either spawning success or the sex composition of the stock. The effect of fishing mortality on future recruitment of young fish to the harvestable population depends on the relationship between the spawning population and recruits. Another potential impact of concentrated fishing mortality is localized depletion of discrete stocks. Unfortunately, current information on pollock population dynamics is insufficient to define beyond question a stock-recruitment relationship, all the factors affecting recruitment, and specific localized stock boundaries. In view of this uncertainty about the long-term effects of an intensive pollock fishery, limiting the amount of pollock that may be harvested during the roe season to historical levels is a prudent management measure.

(4) NOAA agrees that specification of the TAC of pollock below its ABC will help protect the pollock resource from overfishing as defined by the Council in Amendment 16 to the FMP. Managing the fishery to prevent its exceeding the TAC does not, by itself, ensure its long-term protection from the potential negative impacts of an intensive roe-season harvest as described above in response to item 3.

(5) Research at the NOAA National Marine Mammal Laboratory indicates that the recent declines in Steller sea lion abundance in Alaska may be linked, in part, to changes in either the quality or quantity of prey species available. It has been hypothesized that pollock roe fisheries and other pollock fisheries may be contributing to these declines. This hypothesis has not been tested, and there is insufficient evidence either to link population declines of northern sea lions in prey availability or to link the size of the roe fishery as opposed to the size of the pollock fishery to prey availability. Data also are insufficient regarding the interactions of the pollock roe fishery on other marine mammals. In view of the Steller sea lions recently being listed as "threatened" under terms of the Endangered Species Act, NOAA considers a limitation on the size of the roe-season harvest of pollock to be a prudent management measure to prevent possible declines in the pollock resource caused by unrestricted harvests during the roe season.

(6) Biological data from a fishery operating over a broad time period involving more than one season reveal better information about the stock structure of the species being harvested than data from a relatively short, intensive fishery.

(7) and (8) NOAA is aware that limiting the roe-season harvest of pollock establishes a larger non-roe-season harvest than may otherwise occur. During the non-roe season, pollock frequently are harvested with bottom-trawl gear that also catches prohibited species, such as halibut, with limits that may effect fishery closures before the target species TAC is fully harvested. This will not be a serious problem if fishermen are vigilant in avoiding high bycatch rates of prohibited species by fishing in ways that minimize their bycatch rates. Fishermen can use pelagic gear, which is not vulnerable to closures due to attainment of PSC allowances, to catch pollock during the non-roe season. NOAA notes that non-pelagic gear was prohibited everywhere in the BSAI management area to harvest pollock on June 30, 1990, because the halibut PSC allowance for the "DAP Other" fishery was attained. This event did not constrain the DAP pollock fishery from reaching its pollock catch limit before the end of the fishing year. In addition,

NOAA is considering refinements to the bycatch management regime, including an incentive program, under Amendment 16 to the FMP.

(9) Gear conflicts between trawl and fixed-gear types may increase in the future. These conflicts will result from increased crowding on the fishing grounds because of an increased number of vessels or an increased amount of fixed gear being set by longline fishermen, not from a limitation on the amount of pollock that may be harvested during the roe season. As indicated above, the specified roe-season harvest limit, as a proportion of the total catch, is not substantially different from the long-term average amount of pollock harvested during the roe season. If the number of fishing vessels competing for all groundfish resources during the non-roe season were to remain unchanged, an increase in gear conflicts at that time is unlikely; however, new vessels with greater fishing power are constantly entering the fishery. An increase in gear conflicts during the non-roe season will more likely result from expanding fishing capacity competing for a limited fish resource than from this seasonal allocation of pollock. Excessive fishing capacity is a problem that neither Amendment 14 nor this action attempts to solve.

Classification

This action is authorized under 50 CFR 611.93(b) and 675.20 and complies with Executive Order 12291.

List of Subjects

50 CFR Part 611

Fisheries, Foreign relations.

50 CFR Part 675

Fisheries.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 8, 1991.

Michael Tillman,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

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Proposed Rules

Federal Register
Vol. 56, No. 32
Friday, February 15, 1991

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 AGRICULTURE

Food and Nutrition Service

7 CFR Parts 210, 215, 220, 235, and 245

National School Lunch Program, Special Milk Program for Children, School Breakfast Program, State Administrative Expense Funds, and Determining Eligibility for Free and Reduced Price Meals and Free Milk in Schools; Coordinated Review Effort, Extension of Public Comment Period

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule; extension of public comment period.

SUMMARY: The proposed rule, Coordinated Review Effort, was published in the **Federal Register** (55 FR 52754) on December 21, 1990. Public comments were requested to be postmarked by February 19, 1991. This action extends the public comment period to April 5, 1991. This extension will provide the public with additional time to analyze the provisions of the proposed rulemaking and to develop substantive comments which will assist the Department in the development of a unified review system.

DATES: To be assured of consideration, comments must be submitted or postmarked on or before April 5, 1991.

ADDRESSES: Comments should be sent to Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, USDA, Food and Nutrition Service, 3101 Park Center Drive, room 1007, Alexandria, Virginia 22302.

FOR FURTHER INFORMATION CONTACT: Mr. Eadie at the above address or phone (703) 756-3620.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed by the Assistant Secretary for Food and Consumer Services under Executive Order 12291 and has been classified not major. This action will not have an annual effect on the economy of $100 million or more, nor will it result in major increases in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions. This action will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign based enterprises in domestic or export markets.

The National School Lunch Program, Special Milk Program for Children, School Breakfast Program, and State Administrative Expense Funds, are listed in the Catalog of Federal Domestic Assistance under Nos. 10.555, 10.556, 10.553, and 10.560, respectively, and are subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (7 CFR Part 3015, subpart V and 48 FR 29114, June 24, 1983.)

This action imposes no new reporting or recordkeeping provisions that are subject to the Office of Management and Budget (OMB) review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520).

This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601-6120 and thus is exempt from the provisions of that Act.

Background

The Department published the proposed Coordinated Review Effort in the **Federal Register** (55 FR 52754) on December 21, 1990. In order to allow sufficient time to implement a final rulemaking before the start of the 1991/1992 school year, the Department provided a 60-day comment period. The American School Food Service Association, representing school food service personnel, and other commenters have indicated that the 60-day comment period is not sufficient. Specifically, it was pointed out that many schools were closed during the holiday season, thus limiting the time available for comment. Further, the complexity of the proposed rule demands sufficient time be made available for detailed analysis and the development of substantive comments.

The Department is eager to ensure that commenters have sufficient time to evaluate the proposal and to develop substantive comments. To achieve this end, the Department will continue to receive comments submitted or postmarked on or before April 5, 1991.

Authority: (Section 22 of the National School Lunch Act (42 U.S.C. 1769c).

Dated: February 13, 1991.

George A. Braley,
Acting Administrator.

[FR Doc. 91-3855 Filed 2-14-91; 8:45 am]

BILLING CODE 3410-30-M

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 87-005]

RIN 0579-AA21

Importation of Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule and notice of public hearing.

SUMMARY: We propose to revise certain importation prohibitions, restrictions and procedural requirements contained in "Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products." We believe these revisions are necessary due to changes in the distribution of plant pests known to be present in certain foreign countries, and due to reevaluations of the risks that these plant pests could be inadvertently introduced into the United States. These revisions would affect the types of nursery stock and related articles allowed to be imported into the United States, and the procedures required for their importation.

We are also giving notice of the availability for public review of a draft risk analysis document, "Standards for Pest Risk Analyses: Plants in Growing Media." When it reaches final form, this document will be used by APHIS to evaluate pest risks associated with the proposed introduction into the United States of various plant species established in growing media.

DATES: Consideration will be given only to comments received on or before April 16, 1991. We also will consider

comments made at a public hearing to be held on March 28, 1991, in Washington, DC.

ADDRESSES: To help ensure that your written comments are considered, send and original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 87-005. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

The public hearing will be held on March 28, 1991, at 10 a.m. in the Jefferson Auditorium, United States Department of Agriculture, South Building, 14th Street and Independence Avenue SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Cooper, Senior Operations Officer, Port Operations, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 632, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8645.

SUPPLEMENTARY INFORMATION:

Public Hearing

A representative of the Animal and Plant Health Inspection Service (APHIS) will preside at the public hearing. Any interested person may appear and be heard in person, by attorney, or by other representative.

The public hearing will begin at 10 a.m. and is scheduled to end at 5 p.m. local time. However, the hearing may be terminated at any time after it begins if all persons desiring to speak have been heard. We request that all persons attending the public hearing register with the presiding officer, and fill out a speakers' registration card if they wish to speak, on the morning of the hearing between 9 a.m. and 10 a.m. at the hearing room. Registered speakers will be heard in the order of their registration. Anyone else who wishes to speak at the hearing will be heard after the registered speakers. We ask that anyone who reads a statement provide two copies to the presiding officer at the hearing.

If the number of registered speakers and other participants at the hearing warrants it, the presiding officer may limit the time for each presentation so that everyone wishing to speak has the opportunity.

The purpose of the hearing is to give interested persons an opportunity for oral presentation of data, views, and arguments. Questions about the content of the proposed rule may be part of the commenters' oral presentations. However, neither the presiding officer nor any other representative of APHIS will respond to comments at the hearing, except to clarify or explain provisions of the proposed rule.

Future Rulemaking Actions

APHIS intends to propose several more amendments to "Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products" during the next three years. Primarily, these amendments will consist of changes to the list of plants allowed to be imported established in growing media (7 CFR 319.37-8). APHIS has received requests to allow more than 60 additional genera and families of plants established in growing media to be imported into the United States.

Generally, APHIS permits the entry of specified plant genera and families after APHIS determines that the entry presents no significant pest risk to United States agriculture. The decision on whether to allow entry of each plant genus is time-consuming, and includes detailed analysis of pest risks associated with the genus. These pest risk analyses must be scientifically sound, thorough, and up to date. Pest risk analyses have been performed for the plant genera and families that are under consideration for entry established in growing media. However, most of the analyses were completed more than a year ago, and some are up to ten years old. APHIS is concerned that some of the analyses may now be outdated. In addition, the methods used in performing the analyses varied, because they were not conducted in accordance with a uniform pest risk analysis methodology. Therefore, APHIS intends to conduct new pest risk analyses for these 60 plant genera and families, using a uniform pest risk analysis methodology and up-to-date information.

Completing new pest risk analyses for all the genera that have been requested will take several years because new, uniform standards for pest risk evaluation will be used. As discussed below, at the present time, APHIS is still developing the standards and procedures that will be used to evaluate the pest risks associated with the proposed entry of these plant genera in growing media.

To prevent unnecessary delay in the publication of regulations, APHIS has decided to publish revisions to § 319.37-8 in several phases. Each time APHIS completes the pest risk analysis and decision-making process for 5-15 genera, we intend to publish a proposed rule proposing to permit entry of those genera we believe can be safely imported.

Therefore, revisions to the regulations will be proposed in phases. The current proposed rule does not propose to add any plants to the list of plants approved for entry established in growing media contained in § 319.37-8. Over the next three years, we expect to propose several more rules, each listing plant genera APHIS proposes to add to the list in § 319.37-8.

Draft "Standards for Pest Risk Analyses: Plants in Growing Media"

APHIS is currently developing the standards and procedures that will be used to evaluate the pest risks associated with the proposed entry of additional plant genera in growing media. We have recently completed a draft document describing possible methodologies for this type of pest risk assessment, and we are making the document available for public review and comment.

Importers and others have requested that APHIS allow approximately 60 additional genera of plants to enter the United States established in growing media. APHIS will perform a pest risk analysis for each. The results of each pest risk analysis will determine whether or not APHIS proposes to permit entry of the plant. Therefore, interested parties may wish to review and comment on the draft risk analysis document, "Standards For Pest Risk Analyses: Plants in Growing Media."

This document describes the process through which APHIS is developing risk analysis standards for entry of plants established in growing media. It discusses alternate methods for performing such analyses, and recommends standards to ensure that pest risk analyses are of high quality. It also discusses the types of data that must be sought to perform a reliable analysis, and methodologies for evaluating that data.

Copies of the document may be obtained from the following address: APHIS, Policy and Program Development Planning and Risk Analysis Systems, room 814, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (303) 436-8716.

Background

The Plant Quarantine Act (7 U.S.C. 151 *et seq.*) and the Federal Plant Pest Act (7 U.S.C. 150aa *et seq.*) authorize us to prohibit or restrict the importation into the United States of any plants, roots, bulbs, seeds, or other plant

products in order to prevent the introduction into the United States of plant pests.

Regulations promulgated under this authority, among others, include 7 CFR 319.37 through 319.37–14, "Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products" (the regulations). These regulations govern the importation of living plants, plant parts, and seeds for or capable of propagation, and related articles. Other sections of part 319 deal with articles such as cut flowers, or fruits and vegetables intended for consumption.

The Federal Plant Pest Act defines "plant pest" as "any living stage of: Any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or reproductive parts thereof, viruses, or any organisms similar to or allied with any of the foregoing, or any infectious substances, which can directly or indirectly injure or cause disease or damage in any plants or parts thereof, or any processed, manufactured, or other products of plants." The regulations in 7 CFR 319.37–1 contain a similar definition of "plant pest." We use the term "plant pests" in many places in the regulations, to refer to these living stages. Occasionally, where the intent of the regulations is to address certain types of pests and exclude others, we use more specific terms, e.g., "plant diseases" where we discuss virus indexing procedures useful in detecting plant diseases but not other types of plant pests.

The regulations restrict or prohibit the importation of most nursery stock, plants, roots, bulbs, seeds, and other plant products. These articles are classified as either *prohibited* articles or *restricted* articles.

A prohibited article is an article that the Deputy Administrator for Plant Protection and Quarantine (PPQ) has determined cannot feasibly be inspected, treated, or handled to prevent it from introducing plant pests new to or not widely prevalent or distributed within and throughout the United States, if imported into the United States. Prohibited articles may not be imported into the United States, unless imported by the United States Department of Agriculture for experimental or scientific purposes under specified safeguards.

A restricted article is an article that the Deputy Administrator for PPQ has determined can be inspected, treated, or handled to eliminate the risk of its spreading plants pests if imported into the United States. Restricted articles may be imported into the United States if they are imported in compliance with restrictions that may include permit and phytosanitary certificate requirements, inspection, treatment, or postentry quarantine.

We are proposing to change the regulations by: (1) Adding certain articles to the list of prohibited articles; (2) changing the conditions under which certain restricted articles may be imported into the United States; and (3) changing certain operating procedures regarding inspections, certification, permits, and agreements. These proposed changes are discussed below, section by section.

Section 319.37 Prohibitions and Restrictions on Importation; Disposal of Articles Refused Importation

We propose to simplify and clarify the language prohibiting the importation of prohibited articles, and prohibiting the importation of restricted articles except in accordance with the regulations.

We also propose to revise the procedures for the disposal of articles that are refused entry due to noncompliance with the requirements of the regulations. Currently, the regulations require that such articles be promptly removed from the United States or abandoned for destruction. In recent years the amount of material refused entry and subsequently abandoned for destruction at ports has increased greatly, resulting in a severe drain on APHIS resources at ports. We therefore propose to change the regulations to require the importer of such articles to be responsible for taking actions specified by an inspector to prevent the articles from introducing plant pests. Such required actions would involve applying safeguards to the articles (such as treatments authorized by the PPQ Treatment Manual [1] and ordered by the inspector), shipping the articles to a point outside the United States, or destroying the articles. The specified actions would be required to be taken within the time specified in an emergency action notification (PPQ Form 523). In choosing which action to order and in setting the time limit for the action, the inspector would consider the degree of pest risk presented by the plant pest associated with the article. The degree of pest risk depends on the number and life stages of the plant pests associated with the article, whether the article is a host of the pest, the types of other host materials for the pest in or near the port, the climate and season at the port in relation to the pest's survival range, and the availability of treatment facilities for the article. The large range of possible combinations of these circumstances makes it impossible to state a general rule specifying the disposition and time limits to be imposed for particular articles or pests.

We are also proposing to require that no person shall remove any restricted article from the port of first arrival unless and until a written notice is given to the collector of customs by the inspector that the restricted article has satisfied all the requirements of the regulations. This change would enhance our enforcement of the regulations, and would help eliminate the possibility that articles would be released before satisfying those requirements.

Section 319.37–1 Definitions

We propose to add a definition of the term "port of first arrival," because the proposed regulations specify that various inspection, certification, and other requirements can be fulfilled at the port of first arrival. The definition we propose to add reads, "The land area (such as a seaport, airport, or land border station) where a person, or a land, water, or air vehicle, first arrives after entering the territory of the United States, and where inspection of articles is carried out by inspectors."

We also propose to add a definition of "*Solanum* spp. true seed" to distinguish between true seeds from the flowers of *Solanum* spp. and cut sections of *Solanum* tubers that are often referred to as *Solanum* seed or potato seed.

We also propose to amend the definition of "from," by adding that an article would not be considered to be from Canada if it was ever grown in a country from which it would be subject to special foreign inspection and certification requirements that this document proposes to add, in § 319.37–5. This change would prevent such articles, which present a significant pest risk, from being considered to be "from" Canada, and from being imported into the United States under the generally less restrictive requirements for articles from Canada.

We also propose to revise the definition of "indexing," which currently reads as follows: "Transmitting the juices from an article suspected of being infected with a particular disease to another article known to be susceptible to such disease, by grafting or otherwise, in order to determine the presence or absence of the disease in the article suspected of being infected with such disease." This definition is accurate for pathogen detection tests which involve grafting imported plant

[1] The Plant Protection and Quarantine Treatment Manual is incorporated by reference in the Code of Federal Regulations. For further information on the content and availability of this manual, see 7 CFR 300.1, "Materials incorporated by reference."

material to sensitive indicator plants or rubbing sap from imported plant material onto sensitive indicator plants. However, indexing has evolved in recent years to include all types of pathogen detection tests. Some of these tests, such as serology, electron microscopy, and nucleic acid hybridization, do not involve transmission of an infectious pest to a sensitive indicator but instead involve detection of the pest in extracts from the imported plant. Consequently, the above definition for indexing is no longer descriptive of all pathogen detection procedures used in indexing.

We propose to revise the definition of "indexing" to read as follows: "Any procedure using plant material or its extracts to determine the presence or absence of one or more pests in or on the tested plant material." This revised definition is broad enough to include all the types of tests currently used in indexing.

Section 319.37–2 Prohibited Articles

Each entry in the list in this section consist of an article, the places from which its importation is prohibited, and the plant pests which are the reason for its prohibition. The column headings for the list currently read as follows:

Prohibited article (except seeds unless specifically mentioned)	Foreign country(ies) or locality(ies) from which prohibited	Tree, plant, or fruit disease, or injurious insect, or other plant pest determined as existing in the places named and capable of being transported with the prohibited article

We propose to change the column headings to read as follows:

Prohibited article (includes seeds only if specifically mentioned)	Foreign places from which prohibited	Plant pests existing in the places named and capable of being transported with the prohibited article

The heading for prohibited articles would be changed to clarify that seeds are prohibited articles only if they are specifically mentioned in the list.

The heading for places would be changed because not all the places listed are countries, and the term localities is vague. Places listed include countries, territories and possessions of countries, continents (which include all countries, territories, and possessions on the named continent), and geographical descriptions by longitude (which include all countries, territories, or possessions of countries located in part or entirely within the cited lines of longitude). For some articles, the places from which they are prohibited are listed as "All" or "All except (country or continent name)". In view of this variety of place descriptions, the heading "Foreign places from which prohibited" seems most appropriate. For the same reasons, we would change "foreign countries and localities" in paragraph (b) of this section to read "foreign places."

The heading for pests would be changed to remove the emphasis on tree, plant, and fruit diseases and injurious insects. Since the term "plant pests" is fully defined in § 319.37–1 and is a basic term used frequently in the regulations, we believe it is the best term to use in the heading of this list of prohibited articles.

We propose to change [2] the foreign places, plant pests, or both associated with 24 articles currently in the list of prohibited articles. The articles are *Acer* (maple), *Aesculus* (horsechestnut), *Althaea* (althaea, hollyhock), *Chaenomeles* (flowering quince), *Chrysanthemum* (chrysanthemum), *Cocos nucifera* (coconut), *Cydonia* (quince), *Eucalyptus* (eucalyptus), *Euonymus* (euonymus), *Gladiolus* (gladiolus), *Hibiscus* (hibiscus, rose mallow), *Jasminum* (jasmine), *Larix* (larch), *Ligustrum* (privet), *Malus* (apple, crabapple), *Mangifera* (mango), *Prunus* (almond, apricot, cherry, cherry laurel, English laurel, nectarine, peach, plum, prune), *Pyrus* (pear), *Ribes nigrum* (black currant), *Rosa* (rose), *Solanum* spp. (tuber bearing species only—Section Tuberarium) (potato), *Sorbus* (mountain ash), *Syringa* (lilac), and *Vitis* (grape).

We propose to add certain articles, foreign places, and plant pests to the list. Based on scientific reports and inspection reports for each proposed addition,[3] we have determined that there is a need to prohibit importation of the listed articles to prevent introduction into the United States of the plant pests listed with that article. We propose to classify these articles as prohibited rather than restricted because there is no feasible method of inspection or treatment or other procedure to ensure that the articles do not introduce plant pests.

We also propose to add to the list of prohibited articles 19 articles that are not currently listed. Some of the additions are the seed of plants; the heading to the list of prohibited articles indicates that seed is not prohibited unless specifically mentioned. We have determined that if these articles are imported from the foreign places listed with them, they may introduce the pests listed with them, and there is no feasible method of inspection, treatment, or other procedure to prevent this introduction. The articles we propose to add are *Abelmoschus* (okra), *Aiphanes* (coyure, ruffle and date palm), *Arachis* (peanut) seed only, *Blighia sapida* (akee), *Crocosmia* (montebretia), *Dendranthema* (chrysanthemum), *Fabaceae* (herbaceous spp. only), *Hyophorbe* (palm), *Leersia* (cutgrass) seed, *Leptochloa* (sprangletop) seed, *Neodypsis* (palm), *Poaceae* (vegetative parts of all grains and grasses), *Prunus* seed (except species in subgenus *Cerasus*) (almond, apricot, nectarine, peach, plum, and prune) (excluding seed meeting the conditions for importation in § 319.37–5(j)), *Pseudolarix* (golden larch), *Ravenea* (palm), *Solanum* spp. true seed,[4] *Theobroma* (cacao), *Watsonia* (bugle lily), and *Zizania* (wild rice) seed.

[2] The rule portion of this document proposes to delete the listings for these articles and to replace the deleted listings with new listings for the same articles, showing the appropriate foreign places and plant pests associated with each article. Persons interested in identifying changes to the pests associated with particular articles or the foreign places from which the articles are prohibited should compare the proposed listings in § 319.37–2 of the rule portion of this document to the current listings for those articles in § 319.37–2.

[3] Information on the scientific and inspection reports for particular articles may be obtained by writing to the Administrator, c/o Port Operations, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 635, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

[4] True seed is the term commonly used in horticulture to identify seed produced by flowers of *Solanum* capable of germinating and producing new *Solanum* plants, as distinguished from cut sections of *Solanum* tubers that are often referred to as *Solanum* seed or potato seed.

We propose to divide the listing for the genus *Solanum* into two separate listings, to deal with the fact that some plant pests are associated with all *Solanum* species, and some only with true seed of potatoes. One listing would prohibit plants of *Solanum* species, except potato true seed, from all countries except Canada. The second listing would prohibit potato true seed (*Solanum* tuber-bearing species Section Tuberarium) from all countries except Canada and New Zealand. The net effect would be that *Solanum* spp. plants could be imported only from Canada, while true seed of potatoes could be imported only from Canada and New Zealand, and true seed of non-potato *Solanum* species could be imported from any country.

We also propose to correct the listing for Mulberry mosaic virus. This disease of mulberry is currently and erroneously listed as a prohibited article; the listing should read *Morus* (mulberry) as the prohibited article, with mulberry dwarf or mulberry mosaic diseases listed as the pests associated with the article.

In addition, we propose to change the listing for *Ribes nigrum* (black currant) to *Ribes* spp. (currant, gooseberry) because we have determined, as discussed in the proposed changes to § 319.37-7, that the pest of concern, black currant reversion agent, occurs in other *Ribes* species, as well as *Ribes nigrum*.

We also propose to delete the listings for *Oryza* (rice) and *Zizania* (wild rice), since these articles are included under the family *Poaceae*, which we propose to add to the list. As discussed above, we are adding *Zizania* seed as a prohibited article, so wild rice seed, as well as rice plants and wild rice plants (included in the current listing for *Zizania* and in the proposed listing of *Poaceae*), would all be prohibited articles.

Section 319.37-2(b) prohibits, among other things, the importation of certain plants that exceed a specified maximum size. Large plants are difficult to inspect thoroughly, and the larger the plant, the greater the possibility that pests may be overlooked during inspections. Current § 319.37-2(b)(6) limits the size of imported plants with growth habits similar to trees and shrubs, with certain exceptions, to a length of 460 millimeters (approximately 18 inches) measured from the soil line to the farthest terminal growing point. However, many palm plants and plants with growth habits similar to palms have a terminal growing point only a few inches above the soil line, but have stems and leaves extending outward several feet. Such plants technically meet the current size standard, but present inspection difficulties of the type the size standard was designed to eliminate. Therefore, we propose to add language to this section to prohibit importation of palms and other plants with growing habits similar to palms that exceed a total length (stem plus leaves) of 915 millimeters (approximately 36 inches). Experience conducting inspections has shown that palms and similar plants of this size or less can be effectively inspected for pests.

Section 319.37-3 Permits

This section of the regulations allows certain restricted articles to be imported or offered for importation only after issuance of a written permit by Plant Protection and Quarantine. Written permits are required for these articles because they present substantial risks of introducing plant pests unless certain conditions are met, and the written permit process helps ensure that the necessary conditions are met.

We propose adding true seed of *Solanum* spp. (tuber-bearing species only—Section Tuberarium) from New Zealand to the list of articles that may be imported if accompanied by a written permit. We do not believe that true seed of *Solanum* spp. (tuber-bearing species only—Section Tuberarium) imported from New Zealand would present a risk of introducing plant pests, because plant pests of *Solanum* spp. (tuber-bearing species only—Section Tuberarium) that are new to or not widely prevalent or distributed within and throughout the United States do not exist in New Zealand, and the conditions for importing potatoes (including true seed) into New Zealand are equivalent to the conditions for importing potatoes (including true seed) into the United States. These true seeds from New Zealand could be imported only after issuance of a written permit, to assist APHIS in ensuring that the true seed originated in New Zealand.

We also propose adding bulbs of *Crocosmia*, *Gladiolus*, and *Watsonia* to the list of articles that may be imported only after issuance of a written permit. We would add a written permit requirement only for the bulbs of these species because a requirement already in the regulations, § 319.37-3(a)(5), requires written permits for restricted articles other than bulbs, seeds, or sterile cultures of orchid plants, when imported in lots of 13 or more articles. The revised permit requirement would require permits for both imported bulbs and plants of these species. We proposed above to prohibit importation of *Crocosmia*, *Gladiolus*, and *Watsonia* articles from certain foreign places, and a written permit requirement would help ensure that these articles are allowed importation only from foreign places not included in that prohibition.

Section 319.37-4 Inspection and Phytosanitary Certificates of Inspection

This section of the regulations currently requires that a phytosanitary certificate of inspection issued by the country in which the article was grown accompany a restricted article at the time of importation or offer for importation, if the country in which the article was grown maintains an official system of inspection for plant pests. It also states that any such restricted article is subject to inspection at the time of importation. It states further that a restricted article imported from countries not maintaining such an official system shall be inspected by PPQ at the time of importation into the United States to determine if it is free of plant diseases and other plant pests and is otherwise eligible to be imported.

We propose to amend this section to require that any restricted article offered for importation into the United States must be accompanied by a phytosanitary certificate or, in the case of certain greenhouse-grown plants from Canada, a certificate of inspection in the form of a label. This change would reflect the fact that for many years there have been no imports of restricted articles into the United States from countries that do not maintain an official system of inspection for plant pests, and we are unaware of any persons interested in importing restricted articles from such countries in the forseeable future. As a policy decision, APHIS does not intend to allow importation of restricted articles from countries that do not maintain an official system of inspection for plant pests. This change would provide protection in cases where, due to political change, a country interrupts or discontinues its plant protection activities. This change is also in accord with section 1 of the Plant Quarantine Act (7 U.S.C. 154), which does not require admission of nursery stock from such countries but only provides that "nursery stock imported from countries where no official system of inspection for such stock is maintained may be admitted upon such conditions and under such regulations as the Secretary of Agriculture may prescribe."

As noted above, we also propose to amend this section to allow importations of certain greenhouse-grown plants from Canada accompanied by certificates of inspection in the form of a label. The label would not be a

phytosanitary certificate but would, like a phytosanitary certificate, serve as the certificate of inspection required by section 1 of the Plant Quarantine Act (7 U.S.C. 154). The label would be used for importation of articles that meet the conditions of a written greenhouse inspection program agreement between the Canadian plant protection service (Plant Protection Division of Agriculture Canada) and PPQ.

The use of a label certificate in lieu of a phytosanitary certificate would facilitate the shipment of eligible greenhouse-grown plants from Canada to the United States, and would reduce the amount of time APHIS inspectors must devote to such shipments at the port of entry. In addition, Canada has agreed to reciprocity for the use of such labels. Canada will allow the entry from the United States of certain greenhouse-grown plants when they are accompanied by certificates of inspection in the form of a label, rather than phytosanitary certificates.

Consistent with the agreement, the proposed regulations provide that Agriculture Canada shall do the following:

—Eliminate individual inspections and phytosanitary certification of articles exported under the agreement;
—Enter into written agreements with greenhouse growers participating in the greenhouse program, that contain specific requirements that must be carried out by greenhouse growers;
—Inspect greenhouses and the plants being grown in them using inspection methods and schedules approved by Plant Protection and Quarantine to ensure that the requirements of the agreement between the Plant Protection Division of Agriculture Canada and greenhouse growers are being carried out;
—Issue labels to each grower participating in the program. The labels issued to each grower will be required to bear a unique number assigned by the Plant Protection Division of Agriculture Canada identifying that grower, and will be required to bear the following statement: "This shipment of greenhouse grown plants meets the import requirements of the United States, and is believed to be free from injurious plant pests. Issued by Plant Protection Division, Agriculture Canada." The Plant Protection Division of Agriculture Canada will also be required to ensure that the grower's label is placed on each container of articles exported under the agreement and on an airway bill, bill of lading, or delivery ticket accompanying each shipment of articles;
—Ensure that only plants that are not excluded shipment by the terms of the agreements between the Plant Protection Division of Agriculture Canada and the greenhouse growers are shipped.

The Plant Protection Division of Agriculture Canada would ensure that each participating greenhouse grower shall:

—Maintain records of the kinds and quantities of plants grown in their greenhouses, including the place of origin of the plants, keep the records for at least one year after the plants are shipped to the United States, and make the records available for review and copying upon request by either the Plant Protection Division of Agriculture Canada or an authorized representative of the Secretary of Agriculture.
—Apply to the outside of each carton of plants grown in accordance with this subsection, so as to be readily visible to inspectors and customs officials, and to an airway bill, bill of lading, or delivery ticket for plants to be shipped to the United States, a label issued by the Plant Protection Division of Agriculture Canada including the identification number assigned to the grower by the Plant Protection Division of Agriculture Canada and the following certification statement: "This shipment of greenhouse grown plants meets the import requirements of the United States, and is believed to be free from injurious plant pests. Issued by Plant Protection Division, Agriculture Canada.";
—Apply labels in accordance with this program solely to cartons of plants that meet requirements of 7 CFR chapter III for import of these plants from Canada into the United States; and
—Use pest control practices approved by Plant Protection and Quarantine and the Plant Protection Division of Agriculture Canada to exclude pests from the greenhouses.

This proposed change would allow the plant protection service of Canada to certify that certain greenhouses and all the products grown in them for export to the United States are believed to be free from injurious plant pests, rather than requiring the plant protection service of Canada to inspect individual shipments and certify that individual shipments of articles are free from pests.

We believe that this proposed change would continue to protect against the introduction of plant pests while easing the regulatory burden on growers and importers. It would allow more efficient use of Canadian plant protection service and PPQ personnel resources. Canadian growers who meet the requirements of the regulations would not have to arrange for a representative of the Canadian plant protection service to inspect and issue a phytosanitary certificate for each shipment; instead, the representative would inspect the greenhouse and plants grown in it and authorize the grower to mark his shipping cartons with a label identifying the articles as shipped in accordance with this program. The label would be issued to the growers by the plant protection service of Canada, and would be considered by PPQ as equivalent to a phytosanitary certificate of inspection for the plants authorized importation under this program. This would allow the growers to avoid expense, scheduling difficulties and delays involved in obtaining the services of an inspector for each shipment.

These provisions regarding importation of greenhouse-grown plants would be implemented for Canadian plants because following extensive discussions with the Canadian plant protection service and evaluation of their inspection and certification services,[5] we have determined that such importations can be allowed without increasing the risk of introductions of plant pests into the United States.

We also propose to amend this section by adding a provision that a restricted article may be sampled and inspected by an inspector at the port of first arrival and/or under preclearance inspection arrangements in the country where grown.[6] This change reflects the increasing use of preclearance inspection arrangements under which articles are inspected in the country where the articles were grown prior to their shipment to the United States. It is important to note that this change does not reduce the authority of inspectors to inspect any restricted article at the time of its entry into the United States.

[5] Documents concerning our evaluation of Canadian plant protection activities in regard to this program are contained in the administrative record for this proposed rule, and may be obtained by writing to the Administrator, c/o Port Operations, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 635, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

[6] Any special preclearance inspection requirements developed for particular articles or countries will be published in the **Federal Register**.

Section 319.37–5 Special Foreign Inspection and Certification Requirements

This section requires that phytosanitary certificates for certain restricted articles from certain countries contain accurate additional declarations by those countries to certify that the articles are free from particular pests. This is necessary because the visual inspection just prior to export required for issuance of phytosanitary certificates would not consistently detect certain pests.

The additional declarations required for some articles concern the place and manner of growth of the articles, testing for disease organisms, and microscopic inspections for certain plant pests, which are necessary to ensure the pest-free status of certain imported articles.

The current regulations in § 319.37–5 (a) through (g) require that a phytosanitary certificate containing additional declarations accompany various articles "at the time of importation or offer for importation into the United States." We propose to change this phrase to read "at the time of arrival at the port of first arrival in the United States" in current paragraphs (a) through (g), and to use this new language in proposed paragraphs (h) through (m) in § 319.37–5.

There are several reasons for this proposed change in language. The "time of importation" actually occurs when the means of conveyance crosses the territorial boundary of the United States, and there are no APHIS inspectors present to verify compliance at this point. The first opportunity for inspectors to verify compliance occurs when the means of conveyance arrives at a port. We are proposing to require that phytosanitary certificates accompany articles at "the port of first arrival" to link compliance to the earliest opportunity APHIS inspectors have to verify compliance, and to prevent the movement in the United States of uncertified and possibly infested articles which could result in the introduction of plant pests.

Certain restricted articles from any of a large number of countries must be accompanied by a phytosanitary certificate containing an accurate additional declaration that the land on which the article was grown was sampled and microscopically inspected and found free from two types of potato cyst nematodes, *Globodera rostochiensis* (Woll.) Behrens and *G. pallida* (Stone) Behrens.

We propose to remove Israel from the list of countries that must provide additional declarations regarding these nematodes. Israel would be removed because we have determined that these potato cyst nematodes do not occur in Israel, based on reports [7] from the European Plant Protection Organization.

We also propose to add Australia, Bulgaria, Costa Rica, Crete, Cyprus, Egypt, Hungary, Jordan, Malta, Morocco, Pakistan, the Philippines, and Tunisia to the list of countries that must provide an additional certification regarding these nematodes, because we have determined, based on reports in the scientific literature and from foreign plant protection services, that one or both of these nematodes occur in these countries and articles from these countries may pose a risk of spreading these nematodes.

Section 319.37–5(b)(1) deals with importation of plants of *Chaenomeles, Cydonia, Malus, Prunus,* and *Pyrus* species. Plants in these genera include flowering quince, quince, apple, crabapple, almond, apricot, cherry, cherry laurel, English laurel, nectarine, peach, plum, prune, and pear. Currently, these articles may be imported only from Belgium, Canada, Federal Republic of Germany, France, Great Britain, and the Netherlands, and with one exception, only if the phytosanitary certificate accompanying the article contains an additional statement by the plant protection service of the country of origin declaring that the articles were grown in nurseries and that the articles were found to be free of certain specified diseases. The determination that the articles were found to be free of these specified diseases is based on visual examination and indexing of the parent stock of the articles and inspection of the nursery where the articles are grown. The exception is that an accurate declaration on the phytosanitary certificate that a disease does not occur in the country in which an article was grown may be used in lieu of visual examination and indexing of the parent stock for that disease. We propose to amend this section to remove the apple chat fruit virus from the list of diseases for which *Malus* must be examined and indexed, based on studies [8] that show that the apple chat fruit virus does not cause economic damage to plants grown in the U.S., that there is reasonable cause to assume it is in the U.S., and therefore it is not of quarantine significance.

We also propose to add certain diseases to the lists of diseases for which *Chaenomeles, Cydonia, Malus, Prunus,* and *Pyrus* must be indexed and visually examined. We have determined that these articles present a risk of introducing the specified diseases, and that this risk can be controlled by imposing the requirements of § 319.37–5(b)(1) on the articles.

The diseases we propose to add are *Guignardia piricola* (Nose) Yamomoto for *Chaenomeles, Cydonia, Malus,* and *Pyrus; Valsa mali* Miyabe & Yamada ex. Miura for *Malus, Prunus,* and *Pyrus*; and quince sooty ringspot agent, quince yellow blotch agent, and quince stunt agent for *Pyrus.*

We also propose to add to § 319.37–5(b)(1) a requirement that, with one exception, any restricted article of *Vitis* spp. imported from Canada must be accompanied by a phytosanitary certificate bearing an accurate additional declaration stipulating that the plants were grown in a nursery, and were found free of specified plant diseases by visual examination and indexing of the parent stock conducted in Canada by the plant protection service of Canada. The exception is that an accurate declaration on the phytosanitary certificate that a disease does not occur in Canada may be used in lieu of visual examination and indexing of parent stock for that disease.

We believe that this action regarding importations from Canada is necessary in response to the shipment to Canada of European grapevine scion wood and rootstocks. There is a great demand for these European stocks in the United States and Canada, and a considerable amount was imported into Canada several years ago. Although these stocks are prohibited importation into the United States, there is a chance that some of these stocks or their progeny may be deliberately or inadvertently imported from Canada. The proposed indexing visual examination, and additional declaration requirements should prevent these European stock grapevines, and Canadian stock grapevines infected with diseases from European stock, from entering the United States.

We also propose to change the requirements regarding *Chrysanthemum* spp. in § 319.37–5(c) to apply to both

[7] Documents concerning our evaluation of these reports are contained in the administrative record for this proposed rule, and may be obtained by writing to Port Operations, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 635, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

[8] Documents concerning our evaluation of these studies are contained in the administrative record for this proposed rule, and may be obtained by writing to Port Operations, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 635, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

Chrysanthemum and *Dendranthema* spp., because plants known as chrysanthemums and subject to white rust, the disease of concern in this section, are found classified in both of these genera. We also propose to remove the provisions in this paragraph that allow importation of *Chrysanthemum* and *Dendranthema* spp. from Canary Islands, Chile, Colombia, Great Britain, Uruguay, and Venezuela, because allowing, such importation would not be appropriate since white rust disease occurs in these countries and we have proposed, in § 319.37-2(a), to prohibit importation of *Chrysanthemum* and *Dendranthema* spp. from these countries.

Paragraph (e) of § 319.37-5 allows an article of *Rubus* spp. (except seeds) from Ontario, Canada, to enter the United States without being subject to postentry quarantine if the accompanying phytosanitary certificate contains an additional declaration that the article was found by the plant protection service of Canada to be free of *Rubus* stunt virus based on visual examination and indexing of the parent stock. This exemption from postentry quarantine is allowed because Ontario has established a Raspberry Plant Certification Program which APHIS has reviewed and approved as adequate for certification of *Rubus* spp.

Recently, Canada has developed similar *Rubus* certification programs for other parts of Canada. Therefore, we propose to change § 319.37-5(e) to allow an article of *Rubus* spp. from anywhere in Canada to enter the United States without being subject to postentry quarantine, provided it is accompanied by a phytosanitary certificate bearing an accurate additional declaration that the article is free of *Rubus* stunt agent, based on visual examination and indexing of the parent stock in accordance with an approved Raspberry Plant Certification Program of Canada.[9] We also propose to change the term "*Rubus* stunt virus" to "*Rubus* stunt agent" in § 319.37-5 (e) and (f) because recent research indicates that the agent of this disease may not be a virus.

Paragraph (g) of § 319.37-5 allows certain varieties of coconut seed to be imported from Jamaica, if the Jamaican plant protection service certifies on the phytosanitary certificate accompanying such shipments that the coconut seed is of specified varieties that are resistant to lethal yellowing disease. We propose to amend this paragraph to allow importation of these articles from Costa Rica as well as Jamaica, because our pest risk analysis indicates that coconut seed that is certified by the plant protection service of Costa Rica to be of the specified varieties may be imported from Costa Rica without significant risk of spreading plant pests.

Importation of propagative material (except seed) of *Vitis* spp. (grape) is currently prohibited from all foreign places except Canada, due to the risk that the grapevine might introduce certain plant diseases into the United States. Recently, visual examination and indexing procedures have been implemented at a nursery in the Federal Republic of Germany which can show whether *Vitis* vegetative material is free from these diseases.

Therefore, we propose to add a new paragraph (h) to § 319.37-5 to allow the importation of grapevines from the Federal Republic of Germany if a phytosanitary certificate accompanies the importation and the certificate contains an accurate additional declaration that the parent stock of the grapevines was determined to be free of certain specified plant diseases by visual examination and indexing of the parent stock, and that the plants were propagated in fumigated soil by rooting plant material derived from indexed plants or by grafting plant material derived from indexed plants onto rootstocks derived from indexed plants. The soil in which these grapevines are grown would have to be fumigated by applying 400 to 870 pounds of methyl bromide per acre and covering the soil with a tarpaulin for 7 days. Grapevines imported under these conditions would also undergo postentry quarantine in accordance with § 319.37-7, as a further safeguard against the slight possibility that such grapevines could be infected with plant diseases that would not be apparent during inspection at the time of entry.

Under § 319.37-2(a), we proposed to prohibit importation of *Syringa* spp. (lilac) from Europe, except for lilac meeting the conditions for importation in § 319.37-5(i). The requirements we propose to add in proposed § 319.37-5(i) would allow the importation of lilac from the Netherlands if, at the time of arrival at the port of first arrival in the United States, the phytosanitary certificate accompanying the lilac contains an accurate additional declaration that the parent stock was found free of plant diseases by inspection and indexing and that the lilac to be imported was propagated either by rooting cuttings from indexed parent plants or by grafting indexed parent plant material on seedling rootstocks, and was grown in fumigated soil (fumigated by applying 400 to 870 pounds of methyl bromide per acre and covering the soil with a tarpaulin for 7 days) in a field at least three meters from the nearest non-indexed lilac. We have determined that the plant protection service of the Netherlands uses indexing techniques for the disease of concern, elm mottle virus, that allow safe importation of lilac when used with the other precautions specified in this proposed requirement.

Under § 319.37-2(a), we proposed to prohibit importation from all foreign places of seeds of *Prunus* spp. other than species in the subgenus *Cerasus* (almond, apricot, nectarine, peach, plum, and prune), except for seeds meeting the conditions for importation in § 319.37-5(j). The requirements we propose to add in proposed § 319.37-5(j) would allow the importation of seeds of *Prunus* spp. other than species in the subgenus *Cerasus* (almond, apricot, nectarine, peach, plum, and prune), from Belgium, France, Federal Republic of Germany, the Netherlands, or Great Britain if, at the time of arrival at the port of first arrival in the United States, the seeds are accompanied by a phytosanitary certificate of inspection, containing accurate additional declarations that (i) the seeds are from parent stock grown in one of these countries in a nursery that is free of plum pox (Sharka) virus; and (ii) the seeds have been found by the plant protection service of the country in which grown to be free of plum pox (Sharka) virus based on the testing of parent stock by visual examination and indexing. An accurate additional declaration on the phytosanitary certificate of inspection that plum pox (Sharka) virus does not occur in the country in which the seeds were grown may be used in lieu of declarations (i) and (ii) for seeds from countries other than Cyprus, Syria, Turkey, and those countries in Europe. These requirements are necessary because the specified seeds can carry plum pox (Sharka) virus.

We also propose to add a new paragraph 319.37-5(k) requiring that any restricted article of *Feijoa*—feijoa, pineapple guava from New Zealand shall undergo postentry quarantine in accordance with § 319.37-7 unless the article, at the time of arrival at the port of first arrival in the United States, is accompanied by a phytosanitary certificate of inspection containing an accurate additional declaration that New Zealand is free of the plant disease

[9] A copy of the Raspberry Plant Certification Program of Canada may be obtained by writing to the Administrator, c/o Port Operations, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 635, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

caused by *Monilinia fructigena*. At present, *Feijoa* spp. plants from New Zealand require postentry quarantine solely to detect *M. fructigena*. We are proposing this change based on reports [10] submitted by the New Zealand Ministry of Agriculture that *M. fructigena* does not exist in New Zealand. We are requiring an additional declaration on the phytosanitary certificate to that effect to provide continued assurance that *M. fructigena* does not exist in New Zealand.

We also propose to add a new paragraph 319.37–5(l) requiring an additional declaration on phytosanitary certificates for the importation of gladiolus and related genera from certain countries where gladiolus rust, *Uromyces transversalis* (Thuem.) Wint., may occur. We propose to require that any restricted article of *Gladiolus*, *Watsonia* or *Crocosmia* spp. from Luxembourg or Spain shall, at the time of arrival at the port of first arrival in the United States, be accompanied by a phytosanitary certificate of inspection, containing accurate additional declarations that (i) The plants were grown in a disease free environment in a greenhouse; (ii) the plants were subjected to 12 hours of continuous misting per day with water at 15–20 degrees Celsius on 2 consecutive days; and (iii) the plants were inspected by a plant quarantine official of the country where grown 20 days after the completion of the misting and were found free of gladiolus rust. We believe that these precautions, and the other requirements of the regulations, would serve to prevent introduction of gladiolus rust.

We also propose to add a new paragraph 319.37–5(m) requiring an additional declaration on phytosanitary certificates for the importation of *Acer palmatum* and *Acer japonicum* from the Netherlands. We propose to require that these articles be accompanied by a phytosanitary certificate of inspection containing an additional declaration that the article is of a nonvariegated variety, in order to prevent the introduction of maple variegation diseases.

Section 319.37–6 Specific Treatment and Other Requirements

This section requires certain restricted articles imported into the United States to be treated for particular plant pests at the time of importation. We believe that certain of these treatments are not effective, or are unnecessary for other reasons, and we therefore propose to delete the treatment requirements described below.

The requirement in § 319.37–6(c) to defoliate or treat certain articles for citrus blackfly would be deleted, because the citrus blackfly occurs in the United States, and because various parasites of the citrus blackfly have been successfully introduced in the citrus-growing areas of the United States, and these parasites have proven effective in preventing economic damage to citrus by citrus blackfly.

The requirement in § 319.37–6(d) to treat seeds of alfalfa and related plants for possible infection with *Verticillium albo-atrum* would be deleted because reports in the scientific literature [11] indicate that the disease agent can be carried within the seed itself, which renders the surface treatment ineffective, and because *Verticillium albo-atrum* is now well established throughout the northwestern part of the United States. The agriculture industry now relies on disease-resistant strains of alfalfa, rather than exclusion of the disease agent, as a strategy for dealing with this plant disease.

The requirement in § 319.37–6(e) to treat seed of *Glycine* (soybean), *Dolichos* (lablab), *Pachyrhizus* (yam bean root, jicama), *Phaseolus* (bean), *Pueraria* (Chinese yam, kudzu bean, kudzu vine) and *Vigna* (cowpea, catjang, asparagus bean, black-eyed pea, moth bean, adzuki bean) species for possible infection with *Phakopsora pachyhrizi* Syd. (soybean rust) would be deleted because reports in the scientific literature [11] indicate that these seeds are unlikely to carry the disease agent, that the usual commercial cleaning of the seed would remove the agent if it were present, and test plantings of heavily contaminated seed failed to result in infection of the plants.

We also propose to add a heat treatment requirement for *Guizotia abyssinica* (niger seed) imported from all foreign places. This requirement would be imposed because shipments of niger seed have frequently been found to contain exotic species of dodder (*Cuscuta* spp.), a parasitic weed. Since all articles requiring treatment as an import condition may be imported only if a written permit has been issued in accordance with § 319.37–3(a)(1), importation of niger seed would require a written permit.

We also propose to add a treatment requirement for seed of citrus and citrus relative plants (all species of the plant family *Rutaceae*) imported from all foreign places where citrus canker disease is known to occur. All such seed would be immersed in water at 125 °F (51.6 °C) or higher for 10 minutes, and then immersed for at least 2 minutes in a solution containing 200 parts per million sodium hypochlorite, with the solution maintained at a pH of 6.0 to 7.5. This requirement would be imposed because citrus seed may carry bacteria that can cause citrus canker disease, and this treatment is known to be effective in destroying citrus canker bacteria (*Xanthomonas campestris* pv. *citri* (Hasse) Dowson).

We also propose to add a treatment requirement for seeds of *Castanea* (chestnuts) and *Quercus* (acorns) imported from all foreign places except Canada and Mexico, to prevent the entry of pests of chestnut and acorn including *Curculio elphas* (Cyllenhal), *C. nucum* L., *Cydia* (*Laspeyresia*) *splendana* Hubner, and *Pammene fusciana* L. (*Hemimeme juliana* (Curtis)). We propose to require that chestnuts and acorns be treated at the port of first arrival in accordance with the applicable provisions of the Plant Protection and Quarantine Treatment Manual.[12]

Section 319.37–7 Postentry Quarantine

This section allows certain articles to be imported into the United States only if, among other requirements, they are grown under special quarantine conditions for a period after importation. The period of quarantine ranges from six months to two years, depending on the genus of the article, and during that period the articles are kept separate from domestic plants, are subject to inspection by PPQ inspectors, and must meet other conditions necessary to prevent the dissemination of plant diseases.

The postentry quarantine provision is designed for articles for which there is a slight but existing risk of infection with certain plant diseases in the place of origin. Since many of the articles listed in this section are shipped in a dormant

[10] Documents concerning our evaluation of these reports are contained in the administrative record for this proposed rule, and may be obtained by writing to the Administrator, c/o Port Operations, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 635, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

[11] Documents concerning our evaluation of these reports are contained in the administrative record for this proposed rule, and may be obtained by writing to Port Operations, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 635, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

[12] The Plant Protection and Quarantine Treatment Manual is incorporated by reference in the Code of Federal Regulations. For further information on the content and availability of this manual, see 7 CFR 300.1, "Materials incorporated by reference."

or leafless state, diseases would not be readily revealed by inspection at the time of importation. The postentry quarantine growing period would reveal evidence of diseases, if any are present.

We propose to add six articles and foreign places to the list in § 319.37-7(a) for which postentry quarantine is required, based on our current assessments of the existence of certain plant diseases in certain foreign places. These assessments incorporate reports of plant diseases from the plant protection services of foreign countries, reports in the scientific literature, and identifications by PPQ personnel of plant diseases in shipments from foreign places.

We propose to add the following six articles, and to list with them the foreign places from which they could be imported subject to postentry quarantine: *Abelmoschus* (okra), *Blighia sapida* (akee), *Dendranthema* (chrysanthemum), *Pseudolarix* (golden larch), *Ribes* (currant, gooseberry), and *Vitis* (grape) (meeting the conditions for import in § 319.37-5(h) of this subpart).

The listing for *Rosa* spp. (rose) currently allows the importation of *Rosa* spp. under postentry quarantine from all foreign places except Australia, Canada, Italy, and New Zealand. Importation of *Rosa* spp. from Australia, Italy, and New Zealand is prohibited by § 319.37-2(a); in accordance with § 319.37-7(a) importation of *Rosa* spp. from Canada is allowed without postentry quarantine. We propose to remove Canada from this listing in § 319.37-7(a) and require postentry quarantine for *Rosa* spp. from Canada because Canada does not restrict the entry of *Rosa* spp. from any foreign place, and it is therefore possible that *Rosa* spp. imported from Canada may spread rose wilt, through either re-export of rose stock imported into Canada or infection of Canadian rose stock by stock imported from other foreign places.

We also propose to remove seven articles and alter the listings for four articles in the list of articles for which postentry quarantine is required. *Blighia* (akee), *Bouea* (kundangan), *Calocarpum* (sapote), *Carya* (hickory, pecan), *Castanea* (chestnut), *Coccoloba* (see grape or pigeon plum), and *Pouteria* (lucuma) would be removed because a recent thorough review of scientific literature revealed that no diseases of these articles exist that would require this restriction. The listing for *Theobroma* (cacao) would be removed because we are prohibiting importation of *Theobroma* from all foreign places by adding it to the list of prohibited articles in 319.37-2, and we do not propose to allow it to be imported under postentry quarantine.

The listing for *Feijoa*—feijoa, pineapple guava would be changed to "*Feijoa*—feijoa, pineapple guava (except from New Zealand if accompanied by a phytosanitary certificate of inspection in accordance with § 319.37-5(k))", since we have determined that the plant disease of concern, *Monilinia fructigena*, is not present in New Zealand and is unlikely to become established there due to the geographic isolation and trade patterns of New Zealand. *Feijoa* articles from New Zealand would be allowed to be imported if they undergo postentry quarantine or are accompanied by a phytosanitary certificate containing, in accordance with proposed § 319.37-5(k), an accurate additional declaration that *Monilinia fructigena* does not occur in New Zealand.

The listing for *Ribes nigrum* (black currant) would be changed to *Ribes* spp. (currant, gooseberry) because we have determined that the pest of concern, black currant reversion agent, occurs in other *Ribes* species as well as *Ribes nigrum*. The listing for *Ribes* (other than *Ribes nigrum*) in § 319.37-7(b) would be removed, since changing the listing in § 319.37-7(a) from *Ribes nigrum* to *Ribes* spp. would make the listing redundant in § 319.37-7(b).

The current listing for *Blighia* in § 319.37-7(b) would be moved to § 319.37-7(a) and would be changed to read *Blighia sapida* (akee) and to prohibit entry subject to postentry quarantine of akee from Nigeria and the Ivory Coast. This change would be necessary as a result of the change we proposed to § 319.37-2 above, to prohibit importation of akee from these countries.

Section 319.37-8 Growing Media

Section 319.37-8(b) allows a restricted article from Canada other than from Newfoundland or from the Land District of South Saanich on Vancouver Island in British Columbia to be imported in any growing medium. The restrictions on Newfoundland and the area on Vancouver Island were established because of the presence of potato cyst nematodes in these areas. However, the Canadian plant protection service recently redefined the area of Vancouver Island in which one of these pests occurs.

To bring the regulations into accord with the current identification of the part of Vancouver Island in which potato cyst nematodes occur, we propose to change § 319.37-8(b) to allow importation of a restricted article, in any growing medium, from Canada other than Newfoundland or from that portion of the Municipality of Central Saanich in the Province of British Columbia east of the west Saanich Road.

Section 319.37-9 Approved Packing Material

This section lists the materials in which restricted articles may be packed when imported into the United States. We propose to add four packing materials to this list. Tests of these materials and experience with their use have shown that they do not present significant risks of introducing plant pests when used as specified in this section. The materials we propose to add are baked or expanded clay pellets, perlite, rock wool, and volcanic rock.

Executive Order 12291 and Regulatory Flexibility Act

We are proposing this rule in conformance with Executive Order 12291, and we have determined that the cyclical review and revisions of 7 CFR 319.37, including both the current proposal and future proposals that will concern additions to the list of plants allowed entry established in growing media, constitute a "major rule," within the broad intent of the Executive Order. Based on information compiled by the Department, we have determined that the amendments proposed for the first phase of this rulemaking, contained in this proposed rule, would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, federal, state or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

We have prepared a preliminary Regulatory Impact Analysis (RIA) and a preliminary Regulatory Flexibility Analysis (RFA) concerning the cyclical review and revisions of 7 CFR 319.37, including both the current proposal and future proposals that will concern additions to the list of plants allowed entry established in growing media. The exact content of future rules to be proposed in this area, including the final list of plants to be allowed entry established in growing media, will not be known until APHIS completes pest risk analysis and decision-making processes necessary for the development of these proposed rules. Therefore, the preliminary RIA and RFA

take a broad approach and make certain necessary assumptions in order to form a preliminary estimate of economic effects. The RIA and RFA assume that APHIS will propose to allow entry of all plants in growing media for which we have received requests for entry, and make generic assumptions for safeguards and precautionary procedures that may be required for entry of some genera. However, it is unlikely that APHIS, after conducting pest risk analyses, will propose to allow entry of all requested plants. In addition, the safeguards and precautionary procedures necessary for safe entry of some genera will be developed and refined later in the rule development process. Therefore, precise information on these areas will not be available for the preliminary RIA and RFA.

Therefore, the preliminary RIA and RFA will be revised and extended to achieve greater specificity as rulemaking continues. Each proposed rule that is published concerning additions to the list of plants allowed entry established in growing media will include a discussion of changes made to the earlier versions of the RIA and RFA, addressing more complete and specific economic impacts as data and program decisions become available.

Copies of the RIA and RFA may be obtained by sending a written request to the Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

This proposed rule, if adopted, would prohibit the importation of certain nursery stock and other articles that are currently allowed importation and would allow importation of certain nursery stock and other articles that are now prohibited. The total number of articles affected would be small compared with the millions of articles imported each year. Since dealers in nursery stock normally deal in a wide variety of articles, and have numerous domestic and foreign sources available as alternatives, we do not expect the proposed rule to have a substantial effect on either large or small entities of the nursery stock industry.

The businesses that would be affected by this proposed rule include importers of nursery stock, domestic growers of these articles, and sellers of these articles. Many thousands of entities are included in this group, most of which are classified as small entities. The 1982 *Census of Agriculture* indicated that 96 percent of the firms involved with the category "Nursery and Greenhouse Products, Mushrooms, and Sod," or 34.031 firms, were small businesses with an annual sales volume of less than $500,000. These small businesses accounted for 38 percent of the total sales volume of this category ($1,476,867,000 of $3,821,196,000).

Dealers may be faced with fewer choices for foreign suppliers of certain articles due to additions to the lists of prohibited plant genera and prohibited foreign places. In view of the small number of plant genera affected by the proposed changes, the many alternative product sources and product lines available, and the limited price competition anticipated from foreign sources, we do not expect significant impacts on prices paid for imported nursery stock and related articles. In 1987, small entities imported approximately $100 million of nursery stock, mostly articles which would not be affected by this proposed rule. We estimate that the maximum cost to small entities caused by our proposed changes would be no more than $1 million, or an average of less than $30 per small entity.

Administrative costs for some dealers may rise in the short run as they locate new sources of products if their current suppliers are located in places added to the prohibited lists. Costs for the added burden of locating and securing new suppliers and establishing transportation channels will differ depending on the scope and volume of each dealer's business.

The change in status from prohibited to restricted for certain sources of coconut seeds, true potato seeds, and *Syringa* spp. (lilac) would provide access to new markets for some dealers. The amount of lilac imported is not expected to represent significant competition for domestic producers, and coconut seeds and true potato seeds are not known to be produced domestically.

The requirement that *Rosa* spp. imported from Canada enter at an official inspection station rather than at various entry points along the U.S.-Canada border may cause some dealers to incur additional transportation costs for these articles, or may cause them to choose domestic or other foreign suppliers. Canadian rose stock comprises 97 percent of all imported rose stock, however, the total volume imported is a small percentage of the total rose stock produced in the United States.

The proposal to allow grapevine imports from the Federal Republic of Germany would have a small to negligible effect on U.S. dealers, depending on the type, quantity, and price of these imports. The most probable effect would be a slight displacement of grapevine importations from Canada, which provided the overwhelming majority of grapevine importations in 1987, the last year for which complete figures are available.

Changes in the certification requirements for certain plants, which would require exporting countries to take extra precautions and observe specific growing conditions for certain shipments, would have a negligible effect on U.S. dealers, due to the small number of plant genera involved and the very small incremental cost increase associated with this change.

The addition of five approved packing materials may slightly reduce the cost of shipping some plants, and may enhance the survival of some plants that could benefit from being shipped packed in the new materials.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the information collection provisions that are included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Written comments concerning any information collection provisions should be submitted to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. A duplicate copy of such comments should be submitted to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, subpart V.)

List of Subjects in 7 CFR Part 319

Agricultural commodities, Imports, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation, Nursery stock.

Accordingly, 7 CFR part 319 would be amended as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 would continue to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167; 7 CFR 2.17, 2.51, and 371.2(c).

2. Section 319.37 would be revised to read as follows:

§ 319.37 Prohibitions and restrictions on importation; disposal of articles refused importation.

(a) No person shall import or offer for entry into the United States any prohibited article, except as otherwise provided in § 319.37–2(c) of this subpart. No person shall import or offer for entry into the United States any restricted article except in accordance with this subpart.

(b) The importer of any article denied entry for noncompliance with this subpart must, within the time specified in an emergency action notification (PPQ Form 523), destroy, ship to a point outside the United States, or apply treatments or other safeguards to the article, as prescribed by an inspector to prevent the introduction into the United States of plant pests. In choosing which action to order and in setting the time limit for the action, the inspector shall consider the degree of pest risk presented by the plan pest associated with the article, whether the article is a host of the pest, the types of other host materials for the pest in or near the port, the climate and season at the port in relation to the pest's survival range, and the availability of treatment facilities for the article.

(c) No person shall remove any restricted article from the port of first arrival unless and until a written notice is given to the collector of customs by inspector that the restricted article has satisfied all requirements under this subpart.

§ 319.37–1 [Amended]

3. In paragraph (b) of the definition of "From" in § 319.37–1, the phrase "or (g)" would be removed, and the phrase "(g), (h), (i), (j), (k), (l), or (m)" would be added in its place.

4. In § 319.37–1, the definition of "Indexing" would be revised and the following definitions would be added in alphabetical order:

§ 319.37–1 Definitions.

* * * * *

Indexing. Any procedure using plant material or its extracts to determine the presence or absence of one or more pests in or on the tested plant material.

* * * * *

Port of first arrival. The land area (such as a seaport, airport, or land border station) where a person, or a land, water, or air vehicle, first arrives after entering the territory of the United States, and where inspection of articles is carried out by inspectors.

* * * * *

Solanum spp. true seed. Seed produced by flowers of *Solanum* capable of germinating and producing new *Solanum* plants, as distinguished from cut sections of *Solanum* tubers that are often referred to as *Solanum* seed or potato seed.

* * * * *

5. In § 319.37–2(a), the table headings would be revised to read as follows; the listings for *Acer, Aesculus, Althaea, Chaenomeles, Chrysanthemum, Cocos nucifera, Cydonia, Eucalyptus, Euonymus, Gladiolus, Hibiscus, Jasminum, Larix, Ligustrum, Malus, Mangifera,* Mulberry mosaic virus, *Oryza, Prunus, Pyrus, Ribes nigrum, Rosa, Solanum, Sorbus, Syringa, Vitis,* and *Zizania* would be removed, and the following would be added in alphabetical order:

319.37–2 Prohibited articles.

(a) * * *

Prohibited article (includes seeds only if specifically mentioned)	Foreign places from which prohibited	Plant pests existing in the places named and capable of being transported with the prohibited article
Abelmoschus spp. (okra)	Africa	Cotton leaf curl agent.
	Brazil	Cotton anthocyanosis agent
	Bangladesh, India, Sri Lanka	Bhendi yellow vein mosaic agent
	Ivory Coast, Nigeria, Iraq	Okra mosaic virus okra yellow leaf curl agent
	Papua New Guinea, Trinidad and Tobago	Okra mosaic agents.
* *	* * *	* *
Acer spp. (maple) (except Acer palmatum and Acer japonicum meeting the conditions for importation in § 319.37–5(m) of this subpart)	Japan	*Xanthomonas acernea* (Ogawa) Burk.
	Europe, Japan	Maple mosaic or variegation diseases.
* *	* * *	* *
Aesculus spp. (horsechestnut)	Czechoslovakia, Federal Republic of Germany, German Democratic Republic, Romania, United Kingdom	Horsechestnut variegation or yellow mosaic diseases.
Aiphanes spp. (coyure, ruffle, and spine palm)	All	A diversity of diseases including but not limited to: lethal yellowing disease; cadang-cadang disease.
* *	* * *	* *
Althaea spp. (althaea, hollyhock)	Africa	Cotton leaf curl agent.
	Bangladesh, India, Sri Lanka	Bhendi yellow vein mosaic agent.
Arachis spp. (peanut) seed only	India, Indonesia, Japan, People's Republic of China, Philippines, Taiwan, Thailand	Peanut stripe virus.
	Ivory Coast, Senegal, Upper Volta	Peanut clump virus.
	India	Indian peanut clump virus.
* *	* * *	* *
Blighia sapida (akee)	Nigeria, Ivory Coast	Okra mosaic virus.
* *	* * *	* *
Chaenomeles spp. (flowering quince) not meeting the conditions for importation in § 319.37–5(b) of this subpart	All	A diversity of diseases including but not limited to those listed for *Chaenomeles* in § 319.37–5(b)(1) of this subpart.
* *	* * *	* *
Chrysanthemum spp. (chrysanthemum)	Argentina, Brazil, Canary Islands, Chile, Colombia, Europe, Republic of South Africa, Uruguay, Venezuela, and all countries, territories, and possessions of countries located in part or entirely between 90° and 180° East longitude.	*Puccinia horiana* P. Henn. (white rust of chrysanthemum).
Cocos nucifera (coconut) (including seed) (Coconut seed without husk or without milk may be imported into the United States in accordance with § 319.56 of this part)	All except from Jamaica or Costa Rica if meeting the conditions for importation in § 319.37–5(g) of this subpart	A diversity of diseases including but not limited to: lethal yellowing disease; cadang-cadang disease.
* *	* * *	* *

Prohibited article (includes seeds only if specifically mentioned)	Foreign places from which prohibited	Plant pests existing in the places named and capable of being transported with the prohibited article
Crocosmia spp. (montebretia)	Africa	*Puccinia mccleanii* Doidge (rust), *Uredo gladioli-buettneri* Bub. (rust), *Uromyces gladioli* P. Henn. (rust), *U. nyikensis* Syd. (rust).
	Africa, Brazil, France, Italy, Malta, Mauritius, Portugal	*U. transversalis* (Thuem.) Wint. (rust).
	Argentina, Uruguay	*U. gladioli* P. Henn. (rust).
Cydonia spp (quince) not meeting the conditions for importation in § 319.37-5(b) of this subpart	All	A diversity of diseases including but not limited to those listed for *Cydonia* in § 319.37-5(b)(1) of this subpart.
* *	* * *	* *
Dendranthema spp. (chrysanthemum)	Argentina, Brazil, Canary Islands, Chile, Colombia, Europe, Republic of South Africa, Uruguay, Venezuela, and all countries, territories, and possessions of countries located in part or entirely between 90° and 180° East longitude	*Puccinia horiana* P. Henn. (white rust of chrysanthemum).
* *	* * *	* *
Eucalyptus spp. (eucalyptus)	Europe, Sri Lanka, and Uruguay	*Pestalotia disseminata* Thuem. (parasitic leaf fungus).
Euonymus spp (euonymus)	Europe, Japan	*Euonymus* mosaic diseases.
Fabaceae (=*Leguminosae*) (herbaceous spp. only)	All except Canada	A diversity of diseases including but not limited to: African soybean dwarf agent, alfalfa enation virus, azuki bean mosaic virus, bean golden mosaic virus, cowpea mild mottle virus, French bean mosaic virus, groundnut chlorotic leaf streak virus, groundnut chlorotic spotting virus, groundnut rosette agents, groundnut witchesbroom MLO, horsegram yellow mosaic virus, Indonesian soybean dwarf virus, lima bean mosaic virus, lucerne Australian symptomless virus, lucerne vein yellowing virus, mung bean yellow mosaic virus, peanut stripe virus, red clover mottle virus, and soybean dwarf virus.
* *	* * *	* *
Gladiolus spp. (gladiolus)	Africa	*Puccinia mccleanii* Doidge (rust), *Uredo gladioli-buettneri* Bub. (rust), *Uromyces gladioli* P. Henn. (rust), *U. nyikensis* Syd. (rust).
	Africa, Brazil, France, Italy, Malta, Mauritius, Portugal	*U. transversalis* (Thuem.) Wint. (rust)
	Argentina, Uruguay	*U. gladioli* P. Henn. (rust).
* *	* * *	* *
Hibiscus spp. (kenaf, hibiscus, rose mallow)	Africa	Cotton leaf curl agent.
	Brazil	Cotton anthocyanosis agent.
	India	Hibiscus leaf curl agent.
* *	* * *	* *
Hyophorbe spp. (palm)	All	A diversity of diseases including but not limited to lethal yellowing disease; cadang-cadang disease.
* *	* * *	* *
Jasminum spp. (jasmine)	Belgium, Federal Republic of Germany, German Democratic Republic, Great Britain.	Jasmine variegation diseases.
	India	Chlorotic ringspot, phyllody, yellow ring mosaic diseases.
	Philippines	Sampaguita yellow ringspot mosaic diseases.
* *	* * *	* *
Larix spp. (larch)	Provinces of New Brunswick and Nova Scotia in Canada, Europe, and Japan Europe.	*Lachnellula wilkommi* (Harteg) Dennis (European larch canker) *Phacidiopycnis pseudotsuga* (M. Wils.) Hahn (Douglas fir canker).
* *	* * *	* *
Leersia spp. (cutgrass) seed only (all other *Leersia* articles are included under *Poaceae*).	All	*Xanthomonas campestris* pv. *oryzae*.
* *	* * *	* *
Leptochloa spp. (sprangletop) seed only (all other *Leptochloa* articles are included under *Poaceae*).	All	*Xanthomonas campestris* pv. *oryzae*.
Ligustrum spp. (privet)	Europe	*Ligustrum* mosaic diseases.
* *	* * *	* *
Malus spp. (apple, crabapple) not meeting the conditions for importation in § 319.37-5(b) of this subpart.	All	A diversity of diseases including but not limited to those listed for *Malus* in § 319.37-5(b)(1) of this subpart.
Mangifera spp. (mango) seed only	All except North and South America (excluding Barbados, Dominica, French Guiana, Guadeloupe, Martinique, and St. Lucia).	*Cryptorhynchus mangiferae* F. (mango weevil).
* *	* * *	* *
Morus spp. (mulberry)	India, Japan, Korea, People's Republic of China, Thailand, and Union of Soviet Socialist Republics.	Mulberry dwarf or mulberry mosaic diseases.
* *	* * *	* *
Neodypsis spp. (palm)	All	A diversity of diseases including but not limited to: lethal yellowing disease; cadang-cadang diseases.
* *	* * *	* *

Prohibited article (includes seeds only if specifically mentioned)	Foreign places from which prohibited	Plant pests existing in the places named and capable of being transported with the prohibited article
Poaceae (vegetative parts of all grains and grasses)	All except Canada	A wide diversity of plant diseases, including but not limited to: banana streak virus, barley yellow mosaic virus, barley yellow striate mosaic virus, brome streak mosaic virus, cereal chlorotic mosaic virus, cocksfoot mild mosaic virus, corn stunt spiroplasma, Cynodon chlorotic streak virus, cynosurus mottle virus, Echinochloa ragged stunt virus, European aster yellows MLO, European wheat striate mosaic virus, Iranian maize mosaic virus, maize bushy stunt MLO, maize chlorotic mottle virus, maize mosaic virus, maize mottle/chlorotic stunt virus, maize rough dwarf virus, maize streak virus, maize stripe virus, northern cereal mosaic virus, oat red streak mosaic virus, oat sterile dwarf virus, rice swarf virus, rice gall dwarf virus, rice tungro virus, rice wilted stunt virus, rice yellow mottle virus, rice yellow dwarf agent, yellow dwarf agent, sugarcane white leaf MLO, wheat yellow leaf virus, and wheat yellowing stripe bacterium.
* *	* * *	* *
Prunus spp. (almond, apricot, cherry, cherry laurel, English laurel, nectarine, peach, plum, prune, not meeting the conditions for importation in § 319.37-5(b) of this subpart.	All	A diversity of diseases including but not limited to those listed for *Prunus* in § 319.37-5(b)(1) of this subpart.
Prunus spp. (except species in subgenus *Cerasus*) (almond, apricot, nectarine, peach, plum, prune) seed only, not meeting the conditions for importation in § 319.37-5(j) of this subpart.	All	Plum pox (Sharka) virus.
Pseudolarix spp. (golden larch)	Provinces of New Brunswick and Nova Scotia in Canada, Europe, and Japan.	*Lachnellula wilkommi* (Harteg) Dennis (European larch canker).
* *	* * *	* *
Pyrus spp. (pear) not meeting the conditions for importation in § 319.37-5(b) of this subpart.	All	A diversity of diseases including but not limited to those listed for *Pyrus* in § 319.37-5(b)(1) of this subpart.
* *	* * *	* *
Ravenea spp. (palm)	All	A diversity of diseases including but not limited to: lethal yellowing disease; cadang-cadang disease.
Ribes spp. (currant, gooseberry)	Europe	Black currant reversion agent.
Rosa spp. (rose)	Australia, Bulgaria, Italy, and New Zealand	Rose wilt virus.
* *	* * *	* *
Solanum spp. (excluding potato tubers which are subject to 7 CFR part 321).	All except Canada	Andean potato latent virus; Andean potato mottle virus; potato mop top virus; dulcamara mottle virus; tomato blackring virus; tobacco rattle virus; potato virus Y (tobacco veinal necrosis strain); potato purple top wilt agent; potato marginal flavescence agent; potato purple top roll agent; potato witches broom agent; stolbur agent; parastolbur agent; potato leaflet stunt agent; potato spindle tuber viroid.
Solanum spp. true seed (tuber bearing species only—Section Tuberarium).	All except Canada and New Zealand	Andean potato latent virus, potato virus T, tobacco ringspot virus (Andean potato calico strain).
Sorbus spp. (mountain ash)	Czechoslovakia, Denmark, Federal Republic of Germany and German Democratic Republic.	Mountain ash variegation or ringspot mosaic disease.
Syringa spp. (lilac) not meeting the conditions for importation in § 319.37-5(i) of this subpart.	Europe	Elm mottle virus.
Theobroma spp. (cacao)	All	A diversity of diseases and pests including but not limited to: cocoa swollen shoot virus, cocoa mottle leaf virus, cocoa yellow mosaic virus, cocoa necrosis virus, *Crinipellis perniciosa* (Stahel) Singer (witches broom fungus), *Monilia roreri*=*Moniliophthora rorei* (CiF.) H.C. Evans *et al* (watery pod rot), cocoa isolates of *Ceratocystis fimbriata* Ellis and Halst (wilts), *Trachysphaera fructigena* Tabor and Bunting (mealy pod agents of cushy gall disease), *Oncobasidum theobromae* Talbot and Keane (vascular streak die-back), *Xyleborus* spp. bettles and *Acrocercops cramella* (Snellen) (cocoa moth).
* *	* * *	* *

Prohibited article (includes seeds only if specifically mentioned)	Foreign places from which prohibited	Plant pests existing in the places named and capable of being transported with the prohibited article
Vitis spp. (grape) not meeting the conditions for importation in § 319.37-5(h) of this subpart.	All except Canada	A diversity of diseases including but not limited to arabis mosaic virus, artichoke Italian latent virus, grapevine Bulgarian latent virus, grapevine fanleaf virus and its strains, Hungarian chrome mosaic virus, raspberry ring spot virus, strawberry latent ring spot virus, tomato black ring virus, grapevine asteroid mosaic agent, grapevine Bratislava mosaic virus, grapevine chasselas latent agent, grapevine corky bark "Legno riccio" agent, grapevine leaf roll agent, grapevine little leaf agent, grapevine stem pitting agent, grapevine vein mosaic agent, grapevine vein necrosis agent, flavescence-doree agent, black wood agent (bois-noir), grapevine infectious necrosis bacterium, grapevine yellows disease bacterium, *Xanthomonas ampelina* Panagopoulos, the fungi *Peyronellaea glomerata* Ciferri, *Pseudopeziza tracheiphila* Muller-Thur-gau, *Rhacodiella vitis* Sterenberg, *Rosellinia necratrix* Prill, and *Septoria melanosa* (Vialla and Ravav) Elenk.
Watsonia spp. (bugle lily)	Africa	*Puccinia mccleanii* Doidge (rust), *Uredo gladioli-buettneri* Bub. (rust), *Uromyces gladioli* P. Henn. (rust), *U. nyikensis* Syd. (rust).
	Africa, Brazil, France, Italy, Malta, Mauritius, Portugal	*U. transversalis* (Thuem.) Wint. (rust).
	Argentina, Uruguay	*U. gladioli* P. Henn. (rust).
Zizania spp. (wild rice) seed only (all other *zizania* articles are included under *Poaceae*).	All except Canada	*Xanthomonas campestris* pv. *oryzae* (Ishiyama) Dye.

6. In § 319.37-2, paragraph (b) would be amended by removing the phrase "countries and localities" and inserting the word "places" in its place, and by revising paragraph (b)(6) to read as follows:

§ 319.37-2 Prohibited articles.

* * * * *

(b)(6)(i) Plants (other than stem cuttings, cactus cuttings, artificially dwarfed plants such as bonsai, and palms and plants whose growth habits simulate palms) exceeding 460 millimeters (approximately 18 inches) in length from soil line (top of rooting zone for plants produced by air layering) to the farthest terminal growing point and whose growth habits simulate the woody habits of trees and shrubs, including but not limited to cacti, cycads, yuccas, and dracaenas.

(ii) Palms and plants whose growth habits simulate palms, that exceed a total length (stem plus leaves) of 915 millimeters (approximately 36 inches) in length.

* * * * *

§ 319.37-2 [Amended]

7. Section 319.37-2 would be amended by removing from paragraph (c)(4) the phrase "tree, plant, or fruit diseases, injurious insects, and other".

§ 319.37-3 [Amended]

8. Section 319.37-3 would be amended by revising paragraph (a)(3) to read as follows:

(a) * * *

(3) Bulbs of *Allium sativum* spp. (garlic), *Crocosmia* spp. (montebretia), *Gladiolus* spp. (gladiolus), and *Watsonia* spp. (bugle lily); true seed of *Solanum* spp. (tuber bearing species only—Section Tuberarium) from New Zealand;

* * * * *

9. Section 319.37-4 would be revised to read as follows:

§ 319.37-4 Inspection, treatment, and phytosanitary certificates of inspection.

(a) *Phytosanitary certificates of inspection.* Any restricted article offered for importation into the United States must be accompanied by a phytosanitary certificate of inspection or, in the case of greenhouse-grown plants from Canada imported in accordance with paragraph (c) of this section, a certificate of inspection in the form of a label in accordance with paragraph (c)(1)(iv) of this section attached to each carton of the articles and to an airway bill, bill of lading, or delivery ticket accompanying the articles.

(b) *Inspection and treatment.* Any restricted article may be sampled and inspected by an inspector at the port of first arrival and/or under preclearance inspection arrangements in the country in which the article was grown, and must undergo any treatment contained in the Plant Protection and Quarantine Treatment Manual [6] that is ordered by the inspector. Any restricted article found upon inspection to contain or be contaminated with plant pests, that cannot be eliminated by treatment, shall be denied entry at the first United States port of arrival.

(c) *Greenhouse-grown plants from Canada.* A greenhouse-grown restricted plant may be imported from Canada if the following conditions are met:

(1) The Plant Protection Division of Agriculture Canada shall:

(i) Eliminate individual inspections and phytosanitary certification of articles exported under the agreement;

(ii) Enter into written agreements with, and assign a unique identification number to, each greenhouse grower participating in the greenhouse program;

(iii) Inspect greenhouses and the plants being grown in them using inspection methods and schedules approved by Plant Protection and Quarantine to ensure that the criteria of this subsection are met;

(iv) Issue labels to each grower participating in the program. The labels issued to each grower shall bear a unique number identifying that grower, and shall bear the following statement: "This shipment of greenhouse grown plants meets the import requirements of the United States, and is believed to be free from injurious plant pests. Issued by Plant Protection Division, Agriculture Canada." The Plant Protection Division, Agriculture Canada shall also ensure that the label is placed on the outside of each container of articles exported under the agreement and that the grower's label is placed on an airway

[6] The Plant Protection and Quarantine Treatment Manual is incorporated by reference in the Code of Federal Regulations. For further information on the content and availability of this manual, see 7 CFR 300.1, "Materials incorporated by reference."

bill, bill of lading, or delivery ticket accompanying each shipment of articles; and

(v) Ensure that only plants that are not excluded shipment by the criteria of this subsection are shipped.

(2) Each greenhouse grower participating in the program shall enter into an agreement with the Plant Protection Division of Agriculture Canada in which the grower agrees to:

(1) Maintain records of the kinds and quantities of plants grown in their greenhouses, including the place of origin of the plants, keep the records for at least one year after the plants are shipped to the United States, and make the records available for review and copying upon request by either the Plant Protection Division of Agriculture Canada or an authorized representative of the Secretary of Agriculture.

(ii) Apply to the outside of each carton of plants grown in accordance with this subsection, so as to be readily visible to inspectors and customs officials, and to an airway bill, bill of lading, or delivery ticket for plants to be shipped to the United States, a label issued by Agriculture Canada including the identification number assigned to the grower by the Plant Protection Division of Agriculture Canada and the following certification statement: "This shipment of greenhouse grown plants meets the import requirements of the United States, and is believed to be free from injurious plant pests. Issued by Plant Protection Division, Agriculture Canada."

(iii) Apply labels in accordance with paragraph (c)(2)(ii) of this section solely to cartons of plants that meet requirements of this chapter for import of these plants from Canada into the United States; and

(iv) Use pest control practices approved by Plant Protection and Quarantine and the Plant Protection Division of Agriculture Canada to exclude pests from the greenhouses.

§ 319.37-5 [Amended]

10. In paragraphs (a), (c), (d), (e), (f), and (g) of § 319.37-5, the phrase "importation or offer for importation into" would be removed and the phrase "arrival at the port of first arrival in" would be added in its place each time it appears.

§ 319.37-5 [Amended]

11. In § 319.37-5(a) Israel would be removed from the list of places, and the following countries would be added in alphabetical order to the list of places: Australia, Bulgaria, Costa Rica, Crete, Cyprus, Egypt, Hungary, Jordan, Malta, Morocco, Pakistan, the Philippines, and Tunisia.

12. Section 319.37-5 would be amended by revising paragraph (b)(1) to read as follows:

§ 319.37-5 Special foreign inspection and certification requirements.

* * * * *

(b)(1) Any of the following restricted articles (except seeds) at the time of arrival at the port of first arrival in the United States must be accompanied by a phytosanitary certificate of inspection which contains an additional declaration that the article was grown in a nursery in Belgium, Canada, Federal Republic of Germany, France, Great Britain, or the Netherlands and that the article was found by the plant protection service of the country in which grown to be free of the following injurious plant diseases listed in paragraph (b)(2) of this section: for *Chaenomeles* spp. (flowering quince) and *Cydonia* spp. (quince), diseases (i), (ii), (iv), (xviii), (xix), (xx), and (xxi); for *Malus* spp. (apple, crabapple), diseases (i), (ii), (iii), (vi), (vii), (xxii), and (xxiii); for *Prunus* spp. (almond, apricot, cherry, cherry laurel, English laurel, nectarine, peach, plum, prune), diseases (i), (ix) through (xvii), and (xxii); and for *Pyrus* spp. (pear), diseases (i), (ii), (iv), (v), (xviii), (xix), (xx), (xxi) and (xxii); and for *Vitis* spp. (grape) from Canada, diseases (xxiv) through (xxxviii). The determination by the plant protection service that the article is free of these diseases will be based on visual examination and indexing of the parent stock of the article and inspection of the nursery where the restricted article is grown to determine that the nursery is free of the specified diseases.[7] An accurate additional declaration on the phytosanitary certificate of inspection by the plant protection service that a disease does not occur in the country in which the article was grown may be used in lieu of visual examination and indexing of the parent stock for that disease and inspection of the nursery.

* * * * *

§ 319.37-5 [Amended]

13. In § 319.37-5 paragraphs (b)(2)(x)(x)(i)(v) through (b)(2)(x)(x)(x)(v)(i)(i)(i) would be added as follows:

* * * * *

(b) * * *

(2) * * *

(xxiv) The following nematode transmitted viruses of the polyhedral type: Arabis mosaic virus, Artichoke Italian latent virus, Grapevine Bulgarian latent virus, Grapevine fanleaf virus and its strains, Hungarian chrome mosaic virus, Raspberry ringspot virus, Strawberry latent ringspot virus, and tomato black ring virus.

(xxv) Grapevine asteroid mosaic agent.

(xxvi) Grapevine Bratislava mosaic virus.

(xxvii) Grapevine chasselas latent agent.

(xxviii) Grapevine corky bark "Legno riccio" agent.

(xxix) Grapevine leaf roll agent.

(xxx) Grapevine little leaf agent.

(xxxi) Grapevine stem pitting agent.

(xxxii) Grapevine vein mosaic agent.

(xxxiii) Grapevine vein necrosis agent.

(xxxiv) Flavescence-doree agent.

(xxxv) Black wood agent (bois-noir).

(xxxvi) Grapevine infectious necrosis bacterium.

(xxxvii) Grapevine yellows disease bacterium.

(xxxviii) *Xanthomonas ampelina* Panagopoulos.

§ 319.37-5 [Amended]

* * * * *

14. In § 319.37-5(c), the phrase "of *Chrysanthemum* spp. (chrysanthemum) from Great Britain or from any other country or locality except Europe (other than Great Britain)" would be changed to read "of *Chrysanthemum* spp. (chrysanthemum) or *Dendranthema* spp. (chrysanthemum) from any foreign place except Europe,"; the phrase "Canary Islands, Chile, Colombia" would be added immediately following the word "Canada,"; and the phrase "Uruguay, Venezuela," would be added immediately following the phrase "Republic of South Africa,".

§ 319.37-5 [Amended]

15. In § 319.37-5(e), "Ontario," would be removed; the phrase "rubus stunt virus" would be removed and the phrase "*Rubus* stunt agent" would be added in its place; and Footnote 7 and its reference would be renumbered as Footnote 8 and revised to read, "Such testing is done under a Raspberry Plant Certification Program of Canada."

[7] In all of the listed countries, indexing of parent stock for species of *Prunus* not immune to plum pox (i.e., other than *Prunus avium, P. cerasus, P. mahaleb, P. padus, P. serotina, P. serrula, P. serrulata, P. subhirtella, P. laurocerasus, P. virginiana, P. effusa, P. sargentii, P. yedoensis*) is currently done only at government operated nurseries (research stations). In France, all indexing of parent stock for all *Chaenomeles* spp., *Cydonia* spp., *Malus* spp., *Prunus* spp., and *Pyrus* spp. is currently done only at government operated nurseries (research stations).

§ 319.37-5 [Amended]

16. In § 319.37-5(f), the phrase "rubus stunt virus" would be removed and the phrase "*Rubus* stunt agent" would be added in its place.

319.37-5 [Amended]

17. In § 319.37-5(g) the phrase "Costa Rica or of" would be added immediately before the word "Jamaica".

§ 319.37-5 [Amended]

18. In § 319.37-5, paragraphs (h) through (m) would be added to read as follows:

* * * * *

(h) Any restricted article of *Vitis* spp. (grape) from the Federal Republic of Germany is prohibited as specified in § 319.37-2(a) of this subpart unless at the time of arrival at the port of first arrival in the United States the article is accompanied by a phytosanitary certificate issued by the plant protection service of the Federal Republic of Germany, that contains and accurate additional declaration that:

(1) The *Vitis* spp. (grape) to be imported were propagated in fumigated soil (fumigated by applying 400 to 870 pounds of methyl bromide per acre and covering the soil with a tarpaulin for 7 days) by rooting plant material derived form indexed plants or by grafting plant material derived from indexed plants onto rootstocks derived from indexed plants, and

(2) The parent stock of the *Vitis* spp. (grape) was determined by inspection and indexing to be free of the plant diseases listed in paragraphs (b)(2)(xxiv) through (xxxviii) of this section.

(i) Any restricted article of *Syringa* spp. (lilac) from the Netherlands is prohibited as specified in § 319.37-2(a) unless at the time of arrival at the port of first arrival in the United States the phytosanitary certificate accompanying the article of *Syringa* spp. (lilac) contains an accurate additional declaration that stipulates that the parent stock was found free of plant diseases by inspection and indexing and that the *Syringa* spp. (lilac) to be imported were propagated either by rooting cuttings from indexed parent plants or by grafting indexed parent plant material on seedling rootstocks, and were grown in fumigated soil (fumigated by applying 400 to 870 pounds of methyl bromide per acre and covering the soil with a tarpaulin for 7 days) in a field at least three meters from the nearest non-indexed *Syringa* spp. (lilac).

(j)(1) Seeds of *Prunus* spp. other than species in the subgenus *Cerasus* (almond, apricot, nectarine, peach, plum, and prune) from Belgium, France, Federal Republic of Germany, The Netherlands, or Great Britain shall, at the time of arrival at the port of first arrival in the United States, be accompanied by a phytosanitary certificate of inspection, containing accurate additional declarations that:

(i) The seeds are from parent stock grown in a nursery in Belgium, France, Federal Republic of Germany, The Netherlands, or Great Britain that is free of plum pox (Sharka) virus: and

(ii) The seeds have been found by the plant protection service of the country in which grown to be free of plum pox (Sharka) virus based on the testing of parent stock by visual examination and indexing.

(2) Seeds of *Prunus* spp. other than species in the subgenus *Cerasus* (almond, apricot, nectarine, peach, plum, and prune) from all countries except those in Europe, Cyprus, Syria, and Turkey shall, at the time of arrival at the port of first arrival in the United States, be accompanied by a phytosanitary certificate of inspection, containing an accurate additional declaration that plum pox (Sharka) virus does not occur in the country in which the seeds were grown.

(k) Any restricted article of *Feijoa*—feijoa, pineapple guava from New Zealand shall undergo postentry quarantine in accordance with § 319.37-7 unless the article, at the time of arrival at the port of first arrival in the United States, is accompanied by a phytosanitary certificate of inspection, containing an accurate additional declaration that New Zealand is free of *Monilinia fructigena*.

(l) Any restricted article of *Gladiolus*, *Watsonia* or *Crocosmia* spp. from Luxembourg or Spain shall, at the time of arrival at the port of first arrival in the United States, be accompanied by a phytosanitary certificate of inspection, containing accurate additional declarations that:

(1) The plants were grown in a disease free environment in a greenhouse;

(2) The plants were subjected to 12 hours of continuous misting per day with water at 15-20 degrees Celsius on 2 consecutive days; and

(3) The plants were inspected by a plant quarantine official of the country where grown 20 days after the completion of the misting and were found free of gladiolus rust.

(m) Any restricted article of *Acer palmatum* or *Acer japonicum* from the Netherlands is prohibited unless the article is accompanied, at the time of arrival at the port of first arrival in the United States, by a phytosanitary certificate of inspection, containing an accurate additional declaration that the article is of a nonvariegated variety of *A. palmatum* or *A. japonicum*.

19. In § 319.37-6 paragraphs (c), (d) and (e) would be removed, paragraph (f) would be redesignated as (c), Footnote 8 and the references to it would be renumbered as Footnote 9 and revised to read as follows, and new paragraphs (d), (e) and (f) would be added to read as follows:

§ 319.37-6 Specific treatment and other requirements.

* * * * *

(d) Seeds of *Guizotia abyssinica* (niger seed) from any foreign place, at the time of arrival at the port of first arrival, shall be heat treated for possible infestation with *Cuscuta* spp. in accordance with the applicable provisions of the Plant Protection and Quarantine Treatment Manual.[9]

(e) Seeds of all species of the plant family *Rutaceae* from Afghanistan, Andaman Islands, Argentina, Bangladesh, Brazil, Burma, Caroline Islands, Camoro Islands, Fiji Islands, Home Island in Cocos (Keeling) Islands, Hong Kong, India, Indonesia, Ivory Coast, Japan, Kampuchea, Korea, Madagascar, Malaysia, Mauritius, Mexico, Mozambique, Nepal, Oman, Pakistan, Papua New Guinea, Paraguay, Peoples Republic of China, Philippines, Reunion Island, Rodriquez Islands, Ryukyu Islands, Saudi Arabia, Seychelles, Sri Lanka, Taiwan, Thailand, Thursday Island, United Arab Emirates, Uruguay, Vietnam, Yemen (Sanaa), and Zaire, at the time of arrival at the port of first arrival in the United States shall be treated for possible infection with citrus canker by being immersed in water at 125 °F (51.6 °C) or higher for 10 minutes, and then immersed for a period of at least 2 minutes in a solution containing 200 parts per million sodium hypochlorite at a pH of 6.0 to 7.5.

(f) Seeds of *Castanea* and *Quercus* from all countries except Canada and Mexico at the time of arrival at the port of first arrival in the United States shall be treated for possible infestation with *Curculio elphas* (Cyllenhal), *C. nucum* L., *Cydia* (*Laspeyresia*) *splendana* Hubner, *Pammene fusciana* L. (*Hemimeme juliana* (Curtis)) and other insect pests of chestnut and acorn in accordance withy the applicable

[9] The Plant Protection and Quarantine Treatment Manual is incorporated by reference in the Code of Federal Regulations. For further information on the content and availability of this manual, see 7 CFR 300.1, "Materials incorporated by reference."

provisions of the Plant Protection and Quarantine Treatment Manual.[9]

20. In § 319.37-7(a)(2) the listings for *Acer, Aesculus, Althaea, Chrysanthemum, Eucalyptus, Euonymus, Gladiolus, Hibiscus, Jasminum, Larix, Ligustrum, Morus, Ribes nigrum, Rosa, Sorbus,* and *Syringa* would be removed, and the following entries would be added in alphabetical order:

§ 319.37-7 Postentry quarantine.

(a) * * *

(2) * * *

Restricted articles (excluding seeds)	Foreign place from which imported
Abelmoschus spp. (okra)	All except Bangladesh, Brazil, Canada, India, Iraq, Papua New Guinea, Sri Lanka, Trinidad and Tobago, and Africa.
* * *	* * *
Acer spp. (maple)	All except Canada, Europe, and Japan.
* * *	* * *
Aesculus spp. (horsechestnut)	All except Canada, Czechoslovakia, Federal Republic of Germany, German Democratic Republic, Romania, and the United Kingdom.
Althaea spp. (althaea, hollyhock)	All except Bangladesh, Canada, India, Sri Lanka, and Africa.
* * *	* * *
Blighia sapida (akee)	All except Canada, Ivory Coast, and Nigeria.
* * *	* * *
Chrysanthemum spp. (chrysanthemum)	All except Argentina, Brazil, Canada, Canary Islands, Chile, Colombia, Europe, Republic of South Africa, Uruguay, Venezuela, and all countries, territories, and possessions of countries located in part or entirely between 90° and 180° East longitude.
* * *	* * *
Crocosmia spp. (montebretia) (except bulbs)	All except Africa. Argentina, Brazil, Canada, France, Italy, Luxembourg, Malta, Mauritius, Portugal, Spain, and Uruguay.
* * *	* * *
Dendranthema spp. (chrysanthemum)	All except Argentina, Brazil, Canada, Canary Islands, Chile, Columbia, Europe, Republic of South Africa, Uruguay, Venezuela, and all countries, territories, and possessions of countries located in part or entirely between 90° and 180° East longitude.
* * *	* * *
Eucalyptus spp.	All except Canada, Europe, Sri Lanka, and Uruguay.
Euonymus spp. (euonymus)	All except Canada, Japan, and Europe.
* * *	* * *
Gladiolus spp. (gladiolus) (except bulbs)	All except Africa, Argentina, Brazil, Canada, France, Italy, Luxembourg, Malta, Mauritius, Portugal, Spain, and Uruguay.
Hibiscus spp. (kenaf, hibiscus, rose mallow)	All except Brazil, Canada, India, and Africa.
* * *	* * *
Jasminum spp. (jasmine)	All except Canada, Belgium, Federal Republic of Germany, German Democratic Republic, Great Britian, India, and the Philippines.
* * *	* * *
Larix spp. (larch)	All except Canada, Japan, and Europe.
Ligustrum spp. (privet)	All except Canada and Europe.
* * *	* * *
Morus spp. (mulberry)	All except Canada, India, Japan, Korea, People's Republic of China, Thailand, and Union of Soviet Socialist Republics.
* * *	* * *
Pseudolarix spp. (golden larch)	All except Canada, Japan, and Europe.
* * *	* * *
Ribes spp. (currant, gooseberry)	All except Canada and Europe.
Rose spp. (rose)	All except Australia, Bulgaria, Italy and New Zealand.
* * *	* * *
Sorbus spp. (mountain ash)	All except Canada, Czechoslovakia, Denmark, Federal Republic of Germany, and German Democratic Republic.
Syringa spp. (lilac)	The Netherlands, if the articles meet the conditions for importation in § 319.37-5(i) of this subpart, and all other places except Canada and Europe.
* * *	* * *
Vitis spp. (grape) meeting the conditions for importation in § 319.37-5(h) of this subpart.	Federal Republic of Germany.
Watsonia (buble lily) (except bulbs)	All except Africa, Argentina, Brazil, Canada, France, Italy, Luxembourg, Malta, Mauritius, Portugal, Spain, and Uruguay.
* * *	* * * *

§ 319.37-7 [Amended]

21. In paragraph (b) of § 319.37-7, the listings "*Blighia*—akee", "*Bouea*—kundangan", "*Calocarpum*—sapote", "*Carya*—hickory, pecan", "*Castanea*—chestnut", "*Coccoloba*—sea grape, pigeon plum", "*Pouteria*—lucuma", "*Ribes* (other than *Ribes nigrum*)—red currant, white currant, gooseberry", and "*Theobroma*—cacao" would be removed and the listing "*Feijoa*—feijoa, pineapple guava" would be changed to read "*Feijoa*—feijoa, pineapple guava (except from New Zealand if accompanied by a phytosanitary certificate of inspection in accordance with § 319.37-5(k))".

§ 319.37-7 [Amended]

22. In paragraph (d) of § 319.37-7, Footnote 9 and the reference to it would be renumbered as Footnote 10.

23. Paragraph 319.37-8(b) would be revised to read as follows:

§ 319.37-8 Growing media.

* * * * *

(b) A restricted article from Canada, other than from Newfoundland or from that portion of the Municipality of Central Saanich in the Province of British Columbia east of the West Saanich Road, may be imported in any growing medium.

* * * * *

24. In § 319.37-9, after the introductory text the following would be added in alphabetical order to the list of approved packing materials:

§ 319 37-9 Approved packing material.

* * * * *

Baked or expanded clay pellets
Perlite
Rock wool
Volcanic rock

* * * * *

§ 319.37-13 [Amended]

25. In § 319.37-13, Footnote 10 and the reference to it would be renumbered Footnote 11.

Done in Washington, DC, this 8th day of February 1991.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91-3590 Filed 2-14-91; 8:45 am]

BILLING CODE 3410-34-M

Farmers Home Administration

7 CFR Parts 1941, 1943 and 1945

Pledging All Assets as Collateral for Insured Farmer Program Loans

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to amend its regulations to require a lien on all property owned by an FmHA borrower when such borrower receives an FmHA insured loan. The reason for amending these regulations is to tighten security requirements and the test for obtaining credit elsewhere The intended effect is to increase the protection of the Government's interest and reduce government losses.

DATES: Written comments must be submitted on or before March 18, 1991.

ADDRESSES: Submit written comments, in duplicate, to the Office of the Chief, Regulations Analysis and Control Branch, Farmers Home Administration, USDA, room 6348, South Agriculture Building, 14th Street and Independence Avenue SW., Washington, DC 20250. All written comments made pursuant to this notice will be available for public inspection during regular working hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mark Falcone, Senior Loan Officer, Farmer Programs Loan Making Division, Farmers Home Administration, USDA, South Building, 14th Street and Independence Avenue SW., Washington, DC 20250, telephone (202) 475-4019.

SUPPLEMENTARY INFORMATION:

Classification

This action was reviewed under USDA procedures established in Department Regulation 1512-1, which implements Executive Order 12291, and has been determined to be nonmajor because it will not result in an annual effect on the economy of $100 million or more.

Intergovernmental Consultation

For the reasons set forth in the final rule related to Notice 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983) and FmHA Instruction 1940-J, "Intergovernmental Review of Farmers Home Administration Programs and Activities" (December 23, 1983), Farm Ownership Loans, Farm Operating Loans, and Emergency Loans are excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials. The Soil and Water Program, however, is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Programs Affected

These changes affect the following FmHA programs as listed in the Catalog of Federal Domestic Assistance:

10.404—Emergency Loans
10.406—Farm Operating Loans
10.407—Farm Ownership Loans
10.416—Soil and Water Loans

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91-190, an Environmental Impact Statement is not required.

Discussion of Proposed Rule

Since 1976, FmHA's outstanding farm loan portfolio has increased from approximately $5 billion to over $25 billion. Poor economic conditions in the 1980's caused many family farmers to default on their FmHA loans. As a result, it is projected that once the Agency has completed debt restructuring for its present delinquent borrowers, as provided for in the Agricultural Credit Act of 1987, FmHA losses could exceed $8 billion because of inadequate loan security. A General Accounting Office (GAO) report submitted to the Honorable Jesse Helms, U.S. Senate, in February 1989 addressed FmHA's loan making policies and practices. One of the concerns noted in the report was FmHA's eroding security position on many loans and the tremendous losses the Agency projected because of this. One of GAO's recommendations addressed the need for a change in FmHA's collateral requirements. The report recommended additional security be taken when servicing loans, including the option of obtaining the best security interest available on all of the borrower's assets. The Agency attempted to tighten security requirements for primary loan servicing programs in a proposed rule dated May 23, 1988. However, it was determined that with the passage of the Agricultural Credit Act of 1987, the Congress did not intend that FmHA borrowers provide additional collateral for serviced or restructured loans. Therefore, FmHA proposes tightening its insured loan making regulations in an attempt to prevent additional Government losses. Implementation of this regulation change will encourage applicants to pursue more vigorously the requirement to obtain credit through other sources. Subsidized Government outlays will be reduced. Requiring a lien on all of a borrower's assets (subject to exceptions noted in this rule) will not adversely affect the borrower's farming operation. Current regulations provide for release of additional security to other creditors when remaining security is adequate and the release of the security is necessary for additional credit to continue the farming operation. Minor grammatical and reference changes are also proposed in this rule.

List of Subjects

7 CFR Part 1941

Crops, Livestock, Loan Programs-Agriculture, Rural Areas, Youth.

7 CFR Part 1943

Credit, Loan Programs-Agriculture, Recreation and recreation areas, Water Resources.

7 CFR Part 1945

Agriculture, Disaster Assistance, Loan Programs—Agriculture.

Therefore, as proposed, chapter XVIII, title 7, Code of Federal Regulations, is amended as follows:

PART 1941—OPERATING LOANS

1. The authority citation for part 1941 continues to read as follows:

Authority: 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Operating Loan Policies, Procedures, and Authorizations

2. Section 1941.19 is amended by removing paragraph (b); by redesignating paragraph (a) as (b); by designating the introductory text of the section as paragraph (a) and revising it; by redesignating newly designated paragraphs (b)(1) through (b)(4) as (b)(3) through (b)(6), respectively, and adding new paragraphs (b)(1) and (b)(2); and by revising newly designated paragraph (b)(4) and the first sentence of paragraph (g) introductory text to read as follows:

§ 1941.19 Security.

(a) *Real estate and chattels.* The loan must be secured by a first lien on all property or products acquired, produced, or refinanced with loan funds and by the best lien obtainable on all other assets owned by the applicant. When a loan is made to an individual applicant, the loan approval official will require the best lien obtainable on all assets owned by the applicant. When a loan is made to an entity, the loan approval official will require the best lien obtainable on all assets owned by the applicant, and all assets owned by members of the entity. Different lien positions on real estate are considered separate and identifiable collateral. In unusual cases, the loan approval official may require a co-signer as defined in § 1910.3(d) of subpart A of part 1910 of this chapter or a pledge of security from someone other than the borrower. Generally, a pledge of security is preferable to a co-signer. Liens may be subordinated to another lender in accordance with § 1962.30 of subpart A of part 1962 of this chapter when the subordination will help the borrower to accomplish the objectives of the loan.

(1) Security will include, but is not limited to, the following: Land, buildings, structures, fixtures, machinery, equipment, livestock, livestock products, growing crops, stored crops, inventory, supplies, accounts receivable, certain cash or special cash collateral accounts, marketable securities, certificates of ownership of precious metals, and cash surrender value of life insurance.

(2) Security will also include assignments of leases or leasehold interests having mortgageable value; revenues, royalties from mineral rights, patents, and copyrights; and pledges of security by third parties.

(3) Advice on obtaining security will be received from OGC when necessary.

(b) *Exceptions.* (1) A lien will not be taken on property that does not have liquidation value.

(2) A lien will not be taken on property that could have significant environmental problems/costs (i.e. underground storage tanks).

* * * * *

(4) A lien will not be taken on subsistence livestock; cash or special cash collateral accounts to be used for the farming operation or for necessary living expenses; all types of retirement accounts; households goods; and small tools and small equipment, such as hand tools, power lawn mowers, and other similar items not needed for security purposes.

* * * * *

(g) *Fixtures.* A security interest will be taken in fixtures. * * *

* * * * *

3. Section 1941.33 is amended by revising paragraph (b)(2)(ii) to read as follows:

§ 1941.33 Loan approval or disapproval.

* * * * *

(b) * * *

(2) * * *

(ii) Specify all security requirements;

* * * * *

PART 1943—FARM OWNERSHIP, SOIL AND WATER AND RECREATION

4. The authority citation for part 1943 continues to read as follows:

Authority: 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

Subpart A—Insured Farm Ownership Loan Policies, Procedures, and Authorizations

5. Section 1943.19 is amended by removing paragraphs (d) and (f) and redesignating paragraphs (e), (g) and (h) as (d), (e) and (f), respectively; by adding introductory text to the section; and by revising paragraphs (a), (b) and (c) to read as follows:

§ 1943.19 Security.

Each FO loan will be secured by real estate or by real estate and a combination of chattels and/or other security.

(a) *Real estate security.* (1) When a loan is made to an individual applicant, the loan approval official will require the best lien obtainable on all assets owned by the applicant. When a loan is made to an entity, the loan approval official will require the best lien obtainable on all assets owned by the applicant, and all assets owned by members of the entity.

(2) Security will include, but is not limited to, the following: land, buildings, structures, fixtures, machinery, equipment, livestock, livestock products, growing crops, stored crops, inventory, supplies, accounts receivable, certain cash or special cash collateral accounts, marketable securities, certificates of ownership of precious metals, and cash surrender value of life insurance.

(3) Security will also include assignments of leases or leasehold interests having mortgageable value; revenues, royalties from mineral rights, patents and copyrights; and pledges of security by third parties.

(4) A first lien is required on real estate, when available. In addition, loans will be secured by a junior lien on real estate provided:

(i) Prior lien instruments do not contain provisions for future advances (except for taxes, insurance, other costs needed to protect the security, or reasonable foreclosure costs), cancellation, summary forfeiture, or other clauses that may jeopardize the Government's interest or the applicant's ability to pay the FO loan unless any such undesirable provisions are limited, modified, waived or subordinated insofar as the Government is concerned.

(ii) Agreements are obtained from prior lienholders to give notice of foreclosure to FmHA whenever State law or other arrangements do not require such a notice. Any agreements needed will be obtained as provided in part 1807 of this chapter (FmHA Instruction 427.1), except as modified by the "Memorandum of Understanding—FHA-FCA," FmHA Instruction 2000-R (available in any FmHA office).

(5) Advice on obtaining security will be received from OGC when necessary.

(6) The designated attorney, title insurance company, or the OGC will furnish advice on obtaining security when a life estate is involved.

(7) Any loan of $10,000 or less may be secured by the best lien obtainable without title clearance or legal service as required in part 1807 of this chapter (FmHA Instruction 427.1) provided the County Supervisor believes from a search of the County records that the applicant can give a mortgage on the farm. This exception to title clearance will not apply when:

(i) The loan is made simultaneously with that of another lender.

(ii) Land is to be purchased.

(iii) This provision conflicts with program regulations of any other FmHA loan being made simultaneously with the FO loan.

(8) The Departments of Agriculture and the Interior have agreed that FmHA loans may be made to Indians and secured by real estate when title is held in trust or restricted status:

(i) The applicant will request the Bureau of Indian Affairs (BIA) to furnish Title Status Reports to the County Supervisor.

(ii) BIA approval will be obtained on the mortgage after it has been signed by the applicant and any other party whose signature is required.

(b) *Exceptions.* (1) A lien will not be taken on property that does not have liquidation value or when it will complicate loan servicing or liquidation.

(2) A lien will not be taken on property that could have significant environmental problems/costs (i.e. underground storage tanks).

(3) A lien will not be taken on property that cannot be made subject to a valid lien.

(4) A lien will not be taken on subsistence livestock; cash or special cash collateral accounts to be used for the farming operation or for necessary family living expenses; all types of retirement accounts; household goods; and small tools and small equipment, such as hand tools, power lawn mowers, and other similar items not needed for security purposes.

(5) When title to a livestock or crop enterprise is held by a contractor under a written contract or the enterprise is to be managed by the applicant under a share lease agreement, an assignment of all or part of the applicant's share of the income will be taken. A form approved by OGC will be used to obtain the assignment.

(6) A lien will not be taken on marginal land, including timber, when a softwood timer (ST) loan is secured by such land.

(c) *Chattel security.* (1) A first lien will be taken on equipment or fixtures bought with loan funds whenever such property cannot be included in the real estate lien.

(2) Chattel security liens will be obtained and kept effective as notice to third parties as provided in subpart B of part 1941 and subpart A of part 1962 of this chapter.

* * * * *

§ 1943.19 [Amended]

6. In § 1943.19, newly designated paragraph (f) is amended by changing the reference "paragraph (g)" to "paragraph (e)".

7. Section 1943.33 is amended by revising paragraph (b)(2)(ii) to read as follows:

§ 1943.33 Loan approval or disapproval

* * * * *

(b) * * *

(2) * * *

(ii) Specify all security requirements;

* * * * *

§ 1943.38 [Amended]

8. In § 1943.38, paragraph (a) is amended by changing the reference "§ 1943.19(b)(4)" to "§ 1943.19(a)(7)".

Subpart B—Insured Soil and Water Loan Policies, Procedures, and Authorizations

9. Section 1943.69 is amended by removing paragraph (d); by redesignating paragraphs (e), (f), (g) and (h) as paragraphs (d), (e), (f) and (g), respectively; by adding introductory text to the section; and by revising paragraphs (a), (b), (c) and the introductory text of newly designated paragraph (d) to read as follows:

§ 1943.69 Security.

Each SW loan will be secured by real estate, chattels, other security, leaseholds or a combination of these.

(a) *Real estate security.* (1) When a loan is made to an individual applicant, the loan approval official will require the best lien obtainable on all assets owned by the applicant. When a loan is made to an entity, the loan approval official will require the best lien obtainable on all assets owned by the applicant, and all assets owned by members of the entity.

(2) Security will include, but is not limited to, the following: land, buildings, structures, fixtures, machinery, equipment, livestock, livestock products, growing crops, stored crops, inventory, supplies, accounts receivable, certain cash or special cash collateral accounts, marketable securities, certificates of ownership of precious metals, and cash surrender value of life insurance.

(3) Security will also include assignments of leases or leasehold interests having mortgageable value; revenues, royalties from mineral rights, patents and copyrights; and pledges of security by third parties.

(4) A first lien is required on real estate, when available. In addition, loans will be secured by a junior lien on real estate provided:

(i) Prior lien instruments do not contain provisions for future advances (except for taxes, insurance, other costs needed to protect the security, or reasonable foreclosure costs), cancellation, summary forfeiture, or other clauses that may jeopardize the Government's interest or the applicant's ability to pay the SW loan unless any such undesirable provisions are limited, modified, waived or subordinated insofar as the Government is concerned.

(ii) Agreements are obtained from prior lienholders to give notice of foreclosure to FmHA whenever State law or other arrangements do not require such a notice. Any agreements needed will be obtained as provided in part 1807 of this chapter (FmHA Instruction 427.1), except as modified by the "Memorandum of Understanding–FHA–FCA," FmHA Instruction 2000–R (available in any FmHA office).

(5) Advice on obtaining security will be received from OGC when necessary.

(6) The designated attorney, title insurance company, or OGC will furnish advice on obtaining security when a life estate is involved.

(7) Any loan of $10,000 or less may be secured by the best lien obtainable without title clearance or legal services as required in part 1807 of this chapter (FmHA Instruction 427.1), provided the County Supervisor believes from a search of the County records that the applicant can give a mortgage on the farm. This exception to title clearance will not apply when:

(i) The loan is made simultaneously with that of another lender.

(ii) This provision conflicts with program regulations of any other FmHA loan being made simultaneously with the SW loan.

(8) The Departments of Agriculture and Interior have agreed that FmHA loans may be made to Indians and secured by real estate when title is held in trust or restricted status. When security is taken on real estate held in trust or restrictive status:

(i) The applicant will request the Bureau of Indian Affairs (BIA) to furnish Title Status Reports to the County Supervisor.

(ii) BIA approval will be obtained on the mortgage after it has been signed by the applicant and any other party whose signature is required.

(b) *Exceptions.* (1) A lien will not be taken on property that does not have liquidation value or when it will complicate loan servicing or liquidation.

(2) A lien will not be taken on property that could have significant environmental problems/costs (i.e. underground storage tanks).

(3) A lien will not be taken on property that cannot be made subject to a valid lien.

(4) A lien will not be taken on subsistence livestock; cash or special cash collateral accounts to be used for the farming operation or for necessary family living expenses; all types of retirement accounts; household goods; and small tools and small equipment, such as hand tools, power lawn mowers, and other similar items not needed for security purposes.

(5) When title to a livestock or crop enterprise is held by a contractor under a written contract or the enterprise is to

be managed by the applicant under a share lease agreement, an assignment of all or part of the applicant's share of the income will be taken. A form approved by OGC will be used to obtain the assignment.

(6) A lien will not be taken on marginal land, including timber, when a softwood timber (ST) loan is secured by such land.

(c) *Chattel security.* Loans will be secured by chattels subject to the following conditions:

(1) A lien will not be taken on chattels if it will prevent the borrower from obtaining credit from other sources or the FmHA.

(2) A first lien will be taken on equipment or fixtures bought with loan funds whenever such property cannot be included in the real estate lien.

(3) When a loan is made only for the purchase of shares of water stock, such stock will be pledged or assigned as security for the loan.

(4) If there is no real estate security available and a lien is taken on chattels only, the loan cannot be over $100,000 and must be scheduled for repayment within 20 years or the useful life of the security, whichever is less.

(5) Chattel security will be obtained and kept effective as notice to third parties as provided in subpart A of part 1962 and subpart B of part 1941 of this chapter.

(d) *Loans secured by leaseholds.* A loan will be secured by a mortgage on the leasehold if it has negotiable value and is able to be mortgaged, subject to the following:

* * * * *

§ 1943.69 [Amended]

10. In § 1943.69, newly designated paragraph (g) is amended by changing the reference "paragraph (g)" to "paragraph (f)."

11. Section 1943.83 is amended by revising paragraph (b)(2)(ii) to read as follows:

§ 1943.83 Loan approval or disapproval.

* * * * *

(b) * * *

(2) * * *

(ii) Specify all security requirements; and

* * * * *

§ 1943.88 [Amended]

12. In § 1943.88, paragraph (a) is amended by changing the reference "§ 1943.69(b)(5)" to "§ 1943.69(a)(7)".

PART 1945—EMERGENCY

13. The authority citation for part 1945 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart D—Emergency Loan Policies, Procedures and Authorizations

14. Section 1945.169 is amended by revising the section heading; by removing the introductory text and paragraphs (d) through (i); by redesignating paragraphs (b) and (c) as (c) and (d), and paragraphs (j) through (r) as (e) through (m), respectively; by revising paragraphs (a) and newly designated (d) (1) and (3); and by adding new paragraph (b) to read as follows:

§ 1945.169 Security.

(a) EM loans made for subtitle B (operating) purposes will be secured by a first lien on the crop(s) and/or livestock and livestock products being financed with EM loan funds and by the best lien obtainable on all other assets owned by the applicant. EM loans made for subtitle A (real estate) purposes will be secured by a lien on all assets.

(1) When a loan is made to an individual applicant, the loan approval official will require the best lien obtainable on all assets owned by the applicant. When a loan is made to an entity, the loan approval official will require the best lien obtainable on all assets owned by the applicant, and all assets owned by members of the entity.

(2) Security for loans will include, but is not limited to, the following: land, buildings, structures, fixtures, machinery, equipment, livestock, livestock products, growing crops, stored crops, inventory, supplies, accounts receivable, certain cash or special cash collateral accounts, marketable securities, certificates of ownership of precious metals, and cash surrender value of life insurance. Security will also include assignments of leases or leasehold interest having mortgageable value; revenues, royalties from mineral rights, patents and copyrights; and pledges of security by third parties.

(3) The same collateral may be used to secure two or more loans made, insured and/or guaranteed, to the same borrower. Accordingly, when an EM loan is made to an indebted FmHA guaranteed loan borrower, a junior lien may be taken on the same chattels and/or real estate that serves as collateral for the guaranteed loan(s).

(4) Advice on obtaining security will be received from OGC when necessary.

(b) *Exceptions.* (1) A lien will not be taken on property that does not have liquidation value or when it will complicate loan servicing or liquidation.

(2) A lien will not be taken on property that could have significant environmental problems/costs (i.e. underground storage tanks).

(3) A lien will not be taken on property that cannot be made subject to a valid lien.

(4) A lien will not be taken on subsistence livestock; cash or special cash collateral accounts to be used for the farming operation or for necessary family living expenses; all types of retirement accounts; household goods; and small tools and small equipment, such as hand tools, power lawn mowers, and other similar items not needed for security purposes.

(5) When title to a livestock or crop enterprise is held by a contractor under a written contract or the enterprise is to be managed by the applicant under a share lease agreement, an assignment of all or part of the applicant's share of the income will be taken. A form approved by OGC will be used to obtain the assignment.

(6) A lien will not be taken on marginal land, including timber, when a softwood timber (ST) loan is secured by such land.

(7) When a loan is made for real estate purposes, a lien will not be taken on chattels if it will prevent the borrower from obtaining credit from other sources or the FmHA.

(8) Chattel security liens will be obtained and kept effective as notice to third parties as provided in subpart B of part 1941 and subpart A of part 1962 of this chapter.

* * * * *

(d) *Personal and corporate guarantees by cosigners.* (1) The loan approval official may require additional personal and/or corporate guarantees by a cosigner(s), including guarantees from parent, subsidiary or affiliated companies; relatives of the applicant; or any other willing party having equity in mortgageable assets. The loan approval official will require that such guarantees be secured by collateral which has equity value.

* * * * *

(3) When security is taken under paragraph (d) of this section, chattel security will be serviced in accordance with subpart A of part 1962 of this chapter. Real estate security will be serviced in accordance with subpart A of part 1965 of this chapter.

* * * * *

§ 1945.169 [Amended]

15. In § 1945.169, newly designated paragraph (e)(3) is amended by changing the reference "paragraph (j)(2)" to "paragraph (e)(2)"; paragraph (e)(4) is amended by changing the reference

"paragraphs (j) (1), (2) and (3)" to "paragraphs (e) (1), (2) and 3"; and newly designated paragraph (i)(3) is amended by changing the reference "paragraph (n)(1)" to "paragraph (i)(1)".

§ 1945.175 [Amended]

16. In § 1945.175, paragraph (c)(3) is amended by changing the reference "§ 1945.169(r)(1)" to "§ 1945.169(m)(1)".

17. Section 1945.183 is amended by revising paragraph (d)(1) to read as follows:

§ 1945.183 Loan approval or disapproval.

* * * * *

(d) * * *

(1) The loan approval official will date, sign and distribute Form FmHA 1940-1 in accordance with the FMI and set forth all security requirements and any special conditions of approval in the appropriate section on Form FmHA 1940-1.

* * * * *

Dated: December 6, 1990.

Jonathan I. Kislak,

Acting Under Secretary for Small Community and Rural Development.

[FR Doc. 91-3496 Filed 2-14-91; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF ENERGY

Office of the General Counsel

10 CFR Part 715

[Docket No. GC-RM-91-101]

Clean Air Act Amendments of 1990; Definition of "Nonrecourse Project-Financed"

AGENCY: Office of the General Counsel, Department of Energy (DOE).

ACTION: Notice of proposed rulemaking and public hearing.

SUMMARY: The DOE today is publishing for public notice and comment its proposed definition of the term "nonrecourse project-financed," for purposes of section 416(a)(2)(B) of the Clean Air Act Amendments of 1990 ("CAA"). 42 U.S.C. 7651o(a)(2)(B). This definition will clarify which entities qualify as "independent power producers," eligible to participate, under title IV's Acid Deposition Control provisions, in the Direct Sale Subaccount and Contingency Guarantee plans. Section 416(a)(2)(B) requires that the Secretary of Energy publish a definition of "nonrecourse project-financed" within 3 months of the date of enactment of the CAA, which was signed by the President on November 15, 1990. This rulemaking fulfills the Secretary's obligations under that section.

DATES: Written comments (six copies) must be received on or before April 1, 1991. The DOE will hold a public hearing at 9:30 a.m. on Tuesday, March 19, 1991, at the address listed below. Requests to speak at the hearing must be received by Friday, March 15, 1991.

ADDRESSES: Written comments (six copies) and requests to speak at the public hearing, are to be submitted to: U.S. Department of Energy, Office of Legal Policy and Analysis, Office of the General Counsel, GC-15, Docket No. GC-RM-91-101, 1000 Independence Ave. SW., Washington, DC 20585, (202) 586-3419.

The public hearing will be held at 9:30 a.m. at the U.S. Department of Energy, Room 1E-245, Forrestal Building, 1000 Independence Ave. SW., Washington, DC 20585. Parties who requested time to speak must bring six copies of their oral statements to the hearing. Copies of the transcript of the public hearing, and the public comments received, may be obtained or photocopied at the DOE Freedom of Information Reading Room, Room 1E-190, 1000 Independence Ave. SW., Washington, DC 20585, (202) 586-6020, Monday through Friday, between the hours of 9 a.m. and 4 p.m., except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lee A. Casey, Office of the General Counsel, GC-15, Department of Energy, 1000 Independence Ave. SW., Washington, DC 20585, (202) 586-3419.

SUPPLEMENTARY INFORMATION:

I. Background of the Requirement for a Definition of "Nonrecourse Project-Financed"

Title IV of the Clean Air Act Amendments of 1990, 42 U.S.C. 7651 *et seq.*, Acid Deposition Control, imposes a system of limits on the annual emissions of sulfur and nitrogen dioxides from electricity producing power plants. Each existing facility that is covered under title IV—referred to as an "affected unit"—is entitled to a certain number of emissions allowances, based on its baseline emissions and other factors prescribed by Congress. Generally, emissions limitations are phased-in and can be met by existing facilities either through actual emissions reductions, or through the purchase of emissions allowances.

New facilities covered by the requirements of title IV generally must obtain the necessary emission allowances from pre-existing facilities to which allowances have been allocated. Congress also provided that the Administrator of the Environmental Protection Agency ("EPA") must establish a Special Reserve of Allowances, including a Direct Sale Subaccount. Allowances from this Direct Sale Subaccount must be periodically offered for sale at a fixed price by the EPA. Sales are to be on a first come, first served basis, except that independent power producers ("IPPs"), electricity producers other than traditional electric utilities, are to have guaranteed access to the special reserve through a priority system which allows IPPs an opportunity to purchase allowances before they are offered to others. This is done to ensure that IPPs are not closed out of the emission allowances market. 42 U.S.C. 7651o(c)(2).

In addition, an eligible IPP may qualify for a "contingency guarantee." New IPP projects are usually "project financed," that is, financing is arranged and based upon the expected returns from power sales from the project, as opposed to being financed on the strength of a company's balance sheet or with recourse to the assets of the company generally, as most new utility projects are financed. In order to obtain this financing, IPPs ordinarily will have to demonstrate to their prospective lenders that they will have the necessary emission allowances under title IV's acid deposition provisions. An IPP which meets certain statutory requirements will be entitled, under section 416(c)(3), to a written guarantee from the Administrator of EPA, stating that it is eligible to purchase the necessary allowances from the Direct Sale Account at a guaranteed price. This is referred to as a "contingency guarantee." 42 U.S.C. 7651o(c)(3).

Congress intended that only genuine IPPs would be entitled to the benefits offered them under the Direct Sale Subaccount and contingency Guarantee provisions of title IV. In order to exclude traditional utilities, for whom the best guarantee of their financing commitments is obtained through regulated rates, from the definition of IPP, that definition of an IPP was expanded to include a requirement—characteristic of most non-utility generating facilities—that such facilities be "nonrecourse project financed." Accordingly, 416(a)(1) of the CAA, 42 U.S.C. 7651o(a)(1), defines "independent power producer" as "any person who owns or operates, in whole or in part, one or more new independent power production facilities," and a "new independent power production facility" is defined as a facility that:

(A) is used for the generation of electric energy, 80 percent or more of which is sold at wholesale;

(B) is *nonrecourse project-financed* (as such term is defined by the Secretary of Energy within 3 months of the date of the enactment of the Clean Air Act Amendments of 1990);

(C) does not generate electric energy sold to any affiliate (as defined in section 2(a)(11) of the Public Utility Holding Company Act of 1935) of the facility's owner or operator unless the owner or operator of the facility demonstrates that it cannot obtain allowances from the affiliate; and

(D) is a new unit required to hold allowances under this title.

42 U.S.C. 7651o(a)(2)(B) (emphasis added).

Recognizing, however, that the term "nonrecourse project-financed" is not a term with a universally accepted and well-defined meaning, but rather is a concept that encompasses a wide variety of transactions in an evolving industry, Congress instructed the Department of Energy to provide a definition of "nonrecourse project-financed" within three months of the enactment of the CAA.

The term "nonrecourse project-financed" encompasses two related concepts: "Project" and "nonrecourse" financing. The treatment of each concept in the DOE's proposed definition is explained more fully below.

Two common characteristics of virtually all project financing's for IPPs are a pledge to the lenders of (i) the assets financed and (ii) the primary revenue-producing contracts, which for IPPs are the power sale contracts. Accordingly, the proposed definition of "nonrecourse project-financed" provides that an IPP will qualify as "nonrecourse project-financed" if it pledges the assets financed, and part or all of the revenues from one or more power sale contracts covering the affected facility. In not requiring a pledge of all of a facility's revenues, the definition recognizes that not all of the revenues are necessarily pledged to the lender in a typical project financing situation, and that project suppliers, such as fuel transporters, may obtain a pledge of certain facility' revenues as security for the payment of project expenses.

Generally, all financings, even nonrecourse financings, involve recourse to one or more entities or to assets owned by one or more entities. In order to define properly the term "nonrecourse financing," it is therefore necessary to determine against whom the lender will not have recourse. Consistent with the Congress' intent to exclude facilities financed with the general credit available to traditional utilities, the proposed definition expressly excludes financings which provide for recourse to an electric utility with a retail service territory. Whether a utility has a retail service territory can be determined by reference to state or local law. The proposed definition makes clear, however, that an equity contribution, or a commitment to make an equity contribution, by a traditional utility in connection with a financing of a facility is not an obligation to repay debt, and thus would not disqualify a financing from being nonrecourse.

The definition of "nonrecourse" also makes clear that limited undertakings by the facility's owners, or other project participants, such as commitments to pay cost overruns, limited guarantees, indemnity provisions and the like, will not disqualify a financing from being "nonrecourse," so long as at the time of a financing a borrower expects that the repayment of the term debt will be made from revenues generated by the facility.

The proposed definition also would make clear that a project financed entirely with the producer's own funds, without borrowing, would not on that account be disqualified from being a "nonrecourse project-financed," and thus an independent power producer under section 416(a)(2)(B) Moreover, the proposed definition would make clear that it is for purposes of section 416(a)(2)(B) only, and that it will not alter or impact the tax treatment of any IPP or IPP project under the Internal Revenue code and regulations.

II. Environmental Review

Section 7(c)(1) of the Energy Supply and Environmental Coordination Act of 1974, Public Law 93–319 (codified at 15 U.S.C. 791 *et seq.*) provides: "No action taken under the Clean Air Act shall be deemed a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969." Consequently, neither an Environmental Impact Statement nor an Environmental Assessment is required for the proposed rule.

III. Review Under Executive Order 12291

The proposed rule has been reviewed in accordance with Executive Order 12291, which directs that all regulations achieve their intended goals without imposing unnecessary burdens on the economy, on individuals, on public or private organizations, or on State and local governments. The Executive Order also requires that regulatory impact analyses be prepared for "major rules." The Executive Order defines "major rule" as any regulations 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 geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises in domestic or export markets.

The proposed rule would provide a congressionally required component of the statutory definition of independent power production facility, in turn, a necessary component of the statutory definition of independent power producer. DOE has determined that the effect of today's proposed rule, if finalized, will not have the magnitude of effects on the economy to bring the proposed rule within the definition of "major rule."

Pursuant to the Executive Order, the proposed rule was submitted to OMB for pre-publication regulatory review.

IV. Review Under Executive Order 12612

Executive Order 12612 requires that rules be reviewed for Federalism effects on the institutional interests of States and local governments, and if the effects are sufficiently substantial, preparation of a Federalism assessment is required to assist senior policymakers. DOE believes that this rule will not have any substantial direct effects on State and local governments.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act, Public Law 96–345 (5 U.S.C. 601–612), requires that an agency prepare an initial regulatory flexibility analyses to be published at the time the proposed rule is published. This requirement (which appears in section 603), does not apply if the agency "certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." The proposed rule would provide a congressionally required component of the statutory definition of independent power production facility, in turn, a necessary component of the statutory definition of independent power producer. Therefore, DOE certifies that this rule, if promulgated, would not have a "significant economic impact on a substantial number of small entities."

VI. Public Comment Procedures

A. Written Comment Procedures

Interested persons are invited to participate in this rulemaking by

submitting data, views, or arguments with respect to the proposed definition of "nonrecourse project-financed" set forth in this Notice. Comments (six copies) must be submitted to the address indicated in the "**ADDRESSES**" section of this Notice and should be identified on the outside of the envelope and on documents submitted to DOE with the designation: Docket No. GC-RM-91-101. All comments received by the date indicated in the "DATES" section and all other relevant information will be considered by DOE before final action is taken on the proposed regulations.

Pursuant to the provisions of 10 CFR 1004.11, any person submitting information which he or she believes to be confidential and exempt by law from public disclosure should submit one complete copy of the document and six copies, if possible, from which the information believed to be confidential has been deleted. DOE will make its own determination with regard to the confidential status of the information and treat it according to its determination.

B. Public Hearing

1. Procedures for Submitting Requests to Speak

The time and place of the public hearing are indicated at the beginning of this notice. DOE invites any person who has an interest in today's proposed rule, or who is a representative of a group or class of persons that has an interest in the proposed amendments, to make a request for an opportunity to make an oral presentation. Such requests should be directed to the address or phone number indicated at the beginning of this notice. Requests should be labelled: Docket No. GC-RM-91-101, both on the document and on the envelope.

The person making the request should give a telephone number where he or she may be contacted. Each person to be heard must submit six copies of his or her statement at the hearing registration desk. In the event any person wishing to testify cannot meet this requirement, alternative arrangements can be made in advance of the hearing by so indicating in the letter requesting to make an oral presentation.

2. Conduct of Hearing

DOE reserves the right to select the persons to be heard at the hearing, to schedule the respective presentations, and to establish the procedures governing the conduct of the hearing. Each presentation shall be limited to 15 minutes.

A DOE official will be designated to preside at the hearing. The hearing will not be a judicial or an evidentiary-type hearing, but will be conducted in accordance with 5 U.S.C. 553. At the conclusion of all initial oral statements, each person will be given the opportunity to make a rebuttal statement. The rebuttal statements will be given in order in which the initial statements were made, and will be limited to 10 minutes each.

Any interested person who wishes to ask a question at the hearing may submit the question, in writing, to the presiding officer to be asked of any person making a statement at the hearing. The presiding officer will determine whether the question is relevant and whether time limitations permit it to be presented for an answer.

A transcript of the hearing will be retained by DOE and made available for inspection at the DOE Freedom of Information Reading Room, Room 1E-190, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6020, between the hours of 9 a.m. and 4 p.m., Monday through Friday. For more information concerning the availability of records at the Freedom of Information Reading Room, call (202) 586-6020. In addition, any person may purchase a copy of the hearing transcript from the court reporter.

List of Subjects in 10 CFR Part 715

Independent Power Producer; Nonrecourse project-financed.

Issued in Washington, DC, February 12, 1991.

Stephen A. Wakefield,

General Counsel.

For the reasons set forth in the preamble, DOE proposes to add part 715 to chapter III of title 10, Code of Federal Regulations as follows:

PART 715—DEFINITION OF NONRECOURSE PROJECT-FINANCED

Sec.
715.1 Purpose and scope.
715.2 Definitions.
715.3 Definition of "nonrecourse project-financed".

Authority: Clean Air Act Amendments of 1990, 42 U.S.C. 7651o(a)(2)(B); Department of Energy Organization Act, 42 U.S.C. 7254.

§ 715.1 Purpose and scope.

This part sets forth definition of "nonrecourse project-financed" as that term is used to define "new independent power production facility," in section 416(a)(2)(B) of the Clean Air Act Amendments of 1990, 42 U.S.C. 7651o(a)(2)(B). This definition is for purposes of section 416(a)(2)(B) only. It is not intended to alter or impact the tax treatment of any facility or facility owner under the Internal Revenue Code and regulations.

§ 715.2 Definitions.

As used in this subpart—

Act means the Clean Air Act Amendments of 1990, 104 Stat. 2399.

Facility means a *new independent power production facility* as that term is used in the Act, 42 U.S.C. 7651o(a)(2).

§ 715.3 Definition of "nonrecourse project-financed".

The term "nonrecourse project-financed" means debt, if any, the financing of which is secured by the assets financed and the revenues received by a facility including, but not limited to, part or all of the revenues received under one or more agreements for the sale of the electric output from the facility, and which no electric utility company with a retail service territory is obligated to repay in whole or in part. A commitment to contribute equity or the contribution of equity to a facility by an electric utility company shall not be considered an obligation of such utility to repay the debt of a facility. The existence of limited guarantees, commitments to pay for cost overruns, indemnity provisions, or other similar undertakings or assurances by the facility's owners or other project participants will not disqualify a facility from being "nonrecourse project-financed" as long as at the time of the financing for the facility, the borrower is obligated to make repayment of the term debt from the revenues generated by the facility, rather than from other sources of funds. Projects that are 100 percent equity financed are also considered "nonrecourse project-financed" for purposes of section 416(a)(2)(B).

[FR Doc. 91-3781 Filed 2-14-91; 8:45 am]

BILLING CODE 6450-01-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1500

Reloadable Tube Aerial Shell Fireworks Devices; Proposed Rulemaking

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is proposing to amend its fireworks regulations in order to ban reloadable tube aerial shell devices with shells larger than 1.75 inches in outer diameter. Requirements

currently enforced by the Commission do not adequately address the risk of serious injury posed by these fireworks devices, and no feasible mandatory performance or design criteria would adequately reduce the risk of injury. Compliance with a voluntary standard is not expected to be acceptably high. The Commission is issuing this proposed rule under the authority of the Federal Hazardous Substances Act.

DATES: Written comments in response to this notice must be received by the Commission no later than March 18, 1991.

ADDRESSES: Comments should be mailed, perferably in five (5) copies, to Comment CH 2-91, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or delivered to the Office of the Secretary, Consumer Product Safety Commission, room 420, 5401 Westbard Avenue, Bethesda, Maryland; telephone (301) 492-6800.

FOR FURTHER INFORMATION CONTACT: Susan B. Kyle, Project Manager, Directorate for Health Sciences, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 492-6994.

SUPPLEMENTARY INFORMATION:

A. Background

Reloadable tube aerial shell fireworks devices (also referred to in this notice as "reloadable shell devices") are classified by the Department of Transportation ("DOT") as Class C common fireworks devices. Class C fireworks devices are suitable for use by consumers. Typically, reloadable shell devices consist of a cardboard launcher tube approximately 10 to 12 inches tall and separate shells that the user places inside of the tube. Once the shell is placed inside of the launcher tube, the fuse extends slightly above the top of the tube. Upon ignition, the shell is projected approximately 75 to 250 feet in the air and bursts with another powder charge, releasing a colorful starburst. These devices have become increasingly popular in the past three to four years.

Four nominal sizes of shells are available at this time for consumer use: 1.5, 1.75, 2.0, and 2.25 inches in outer diameter. This proposed amendment concerns only shells that are larger than 1.75 inches.

The Commission regulates fireworks devices pursuant to the provisions of the Federal Hazardous Substances Act ("FHSA"), 15 U.S.C. 1261 *et seq.* Under current regulations, the Commission has declared certain specified fireworks devices to be "banned hazardous substances." 16 CFR 1500.17(a) (3), (8), and (9). Additional regulations prescribe the requirements that fireworks devices not specifically listed as banned must meet to avoid being classified as banned hazardous substances. 16 CFR part 1507. These include a requirement that fuses burn 3 to 6 seconds, resist side ignition, and remain securely attached to the device; a requirement for base stability to prevent tipover during firing; a requirement to prevent blowout of the tube; and a limit on audible "reports" to 2 grains of powder. Finally, additional Commission regulations prescribe specific warnings required on various legal fireworks devices, 16 CFR 1500.14(b)(7), and designate the size and location of these warnings. 16 CFR 1500.121. Under the Commission's existing regulations, reloadable tube aerial shell fireworks devices that comply with applicable requirements are not banned hazardous substances.

The Commission has received reports of thirty-one incidents involving reloadable shells that have occurred since 1986. A majority of incidents in which the size of the shell was reported (19 of 24) involved shells larger than 1.75 inches. According to information from an insurance carrier, detailed investigations conducted by the Commission, and other data gathered by the Commission, the resulting injuries have been severe injuries to the facial area, particularly to eyes. Injuries have resulted in serious burns and loss or impairment of sight. (See Ref. No. 1.)

On July 31, 1990, the Commission issued an advance notice of proposed rulemaking ("ANPR") discussing the hazard presented by reloadable shells larger than 1.75 inches in diameter. 55 FR 31069. The ANPR also discussed the concern that smaller shells with an explosive power exceeding that of existing 1.75 inch shells might be produced in the future to circumvent a ban based purely on size. In the ANPR, the Commission noted that injury data indicated a distinction between shells larger than 1.75 inches and shells 1.75 inches or smaller. The ANPR discussed the following four regulatory alternatives with regard to reloadable shells larger than 1.75 inches or smaller shells with equivalent explosive power: (1) A ban; (2) additional labeling; (3) issuance of performance or design criteria to modify these devices; or (4) no mandatory action, but encouragement of a voluntary standard.

B. Statutory Authority

This proceeding is conducted under provisions of the FHSA, 15 U.S.C. 1261 *et seq.* Fireworks are "hazardous substances" within the meaning of section 2(f)(1)(A) of the FHSA because they are flammable or combustible substances, or they generate pressure through decomposition, heat, or other means, and they "may cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use * * *." 15 U.S.C. 1261(f)(1)(A).

Under section 2(q)(1)(B) of the FHSA, the Commission may classify as a "banned hazardous substance" any hazardous substance intended for household use which, notwithstanding the precautionary labeling required by the FHSA, presents such a hazard that keeping the substance out of interestate commerce is the only adequate means of protecting the public. *Id.* section 1261(q)(1)(B). A proceeding to promulgate a regulation classifying a substance as a banned hazardous substance under section 2(q)(1) of the FHSA is governed by the requirements set forth in section 3(f) of the FHSA, and by the provisions of section 701(e) of the Federal Food, Drug, and Cosmetic Act ("FDCA") (21 U.S.C. 371(e)) made applicable by section 2(q)(2) of the FHSA (15 U.S.C. 1261(q)(2)).

The July 31, 1990, ANPR was the first step necessary to declare the specified reloadable shell devices banned hazardous substances under section 2(q)(1). See 15 U.S.C. 1262(f). This proposed regulation continues the regulatory process in accordance with the requirements of 15 U.S.C. 1262(h). If the Commission determines to issue a final rule, it must publish the text of the final rule and a final regulatory analysis, *id.* section 1262(i)(1), and it must make findings concerning voluntary standards, the relationship of the costs and benefits of the rule, and the burden imposed by the regulation. *Id.* 1262(i)(2).

If the Commission decides to finalize the rule, procedures established under section 701(e) of the FDCA would govern. 15 U.S.C. 1261(q)(2). These procedures provide that once the Commission issues a final rule, interested persons have a period of thirty (30) days in which to file objections stating reasonable grounds therefor, and to request a public hearing on those objections. If no objections are filed, the order becomes effective on the last day for objections. Should objections be filed, the presiding officer would issue an order after the hearing, based upon substantial evidence. 21 U.S.C. 371(e).

C. The Product

1. Product Description and Use

Each reloadable shell package contains an assembled cardboard launcher tube and base unit typically measuring 10 to 12 inches in height, packaged together with a number of individually fused shells. The packages generally contain six, eight, or twelve individual shells. The device fires shells that produce various visual and audible effects from the re-usable tube into the air. Their reloadability differentiates these devices from other products in the mine and shell category of fireworks, which typically are an integral unit with one common fuse and are designed for a single use. Approximately ten different models of reloadable shell devices with four sizes of shells are believed to be available in the market for consumer use: shells which are 1.5, 1.75, 2.0, and 2.25 inches in outer diameter. The models with 1.5 and 1.75 inch shells typically include twelve shells, while models with the larger size shells typically include six shells. The shell casings may be made of plastic or paper. (See Ref. No. 2.)

Operation of these devices is more complicated than setting off other fireworks generally used by consumers. The user must unwind the fuse (approximately 12.5 inches long) from around the shell, insert the shell into the launcher tube in the proper orientation, leaving a very short length of fuse (1 to 2 inches) projecting from the top of the tube, and then light the fuse. Because the fuse must be lit from the top of the tube, some part of the user's body may remain over the firing path of the device when it is launched. Additionally, the length of the fuse (10 to 16 inches rather than 1 to 2 inches typical of other fireworks devices) may create a false impression that the fuse will burn for a significantly longer time. (See Ref. No. 3.) The fuse consists of two different types of fuse joined together; a one to two inch length of relatively slow burning fuse, known as "safety fuse," that ignites a very fast burning fuse, known as "quickmatch," which in turn ignites the lift propellant inside the shell. During the past year, three models of reloadable shells have been marketed with a one-piece thread wrapped fuse. The Commission's tests, however, have shown no significant difference in performance of this fuse and the two-piece fuse, except that the former is more resistant to side ignition. Also the problem of separation of the two components of two-piece fuses noted in the Commission's tests does not exist with one-piece fuse construction. (See Ref. No. 4.)

2. Market Data

Annual U.S. sales of reloadable shells since 1987 are estimated to be between 15 and 22 million units. Approximately 3.5 million of these shells (roughly 15% of the 1989 total) are larger than 1.75 inches. Eight to ten companies export reloadable shells from China to the United States. The devices are actually made in some of the 150 to 200 small independent provincial factories. The largest trading companies each market three or four brands of reloadable shells. Other firms market a single brand. One dominant brand among large reloadable shells accounts for the great majority of all 2.25 inch devices. Most reloadable shells exported to the United States use predominantly black powder (which is a weaker explosive mixture than flash powder) in their propellant or lift charges. Black powder and other mixtures may be used in the burst or display charge to produce various aerial effects. (See Ref. No. 2.)

There are approximately one hundred U.S. importers of reloadable shell devices, almost all of whom market both reloadable shells larger than 1.75 inches and smaller reloadable shells. Retail prices for reloadable shell devices vary greatly, ranging from about $10 over $40. The estimated average retail price of a single device (typically including either six large shells or twelve small ones) is approximately $20. Prices appear to vary regionally. (See Ref. No. 2.)

Industry representatives have reported that approximately 42 million of the small (1.5 inch and 1.75 inch) shells have been shipped to the United States since 1987, while approximately 5 million of the large (2 inch and 2.25 inch) shells were imported during this time period. 1989 shipments are estimated at about 18.5 million small and 3.5 million large shells. (See Refs. Nos. 5 and 6.)

3. Explosive Power

This proposal concerns only reloadable shell devices with shells that have an outer diameter larger than 1.75 inches. The ANPR also included smaller shells that have equivalent explosive power. The Commission sought comments on its definition of explosive power, and on the technical aspects of determining the explosive power equivalent to large reloadable shells. 55 FR 31069. In an attempt to further define "explosive power," the Commission's Health Sciences Laboratory analyzed certain physical characteristics of the shells and the U.S. Department of the Interior's Bureau of Mines ("BOM") conducted testing to determine the explosive power of these shells. However, the Commission staff is unable at this time to link the factor of the explosive power of reloadable shell devices with the potential to produce injury. Thus, the Commission has decided not to propose a restriction on explosive power.

4. Substitute Products

Other products exist which retailers and consumers could substitute for reloadable devices using shells larger then 1.75 inches if the proposed ban became effective. In addition to reloadable shell devices using shells 1.75 inches and smaller, there are non-reloadable aerial devices. These non-reloadable items may provide either single or multiple shots—sometimes up to 100 per device. Such non-reloadable devices are sold already assembled, with the fuse extending from the bottom of the tube rather than from the top, so that the user does not have to place the shell inside of the launcher tube. (See Ref. No. 2.) Investigations by Commission staff indicated that in lighting these devices the users are likely to bend their knees more and squat lower than they would to light the reloadable shell devices. This position puts the user's head further away from the device out of the path of the shell, and may reduce the likelihood of injury. (See Ref. No. 3.)

In addition, some types of fireworks devices, known as missiles, are also available for home use. A missile is a rocket-type projectile with fins that is fired into the air. Its fuse also lights from the bottom. The prices of all of the known substitute products vary within the same approximate range ($5 to over $40) as the prices of reloadable shell devices. (See Ref. No. 2.)

D. Risk of Injury

The Commission has received reports of thirty-one incidents reported to have involved reloadable shells that have occurred since 1985 . The Commission has performed in-depth investigations ("IDI's") in seventeen of these cases. Information concerning the other fourteen incidents is less complete. Many of these thirty-one incidents were reported, at the Commission's request, by the major insurance carrier for the fireworks industry. Of the thirty-one incidents, seventeen reportedly involved 2.25 inch shells, two involved 2.0 inch shells, one involved a 1.75 inch shell, and four involved 1.5 inch shells. In seven cases the size of the shell was not known. (See Ref. No. 1.)

The majority of incidents resulted in serious facial and eye injuries. Eleven of the seventeen investigated incidents reportedly involved eye injuries; six of

these resulted in loss of an eye (one additional uninvestigated case also reportedly involved loss of an eye). Other injuries included burns, facial lacerations and disfigurement, and loss of teeth. (See Refs. Nos. 1 and 7.)

The staff reviewed the investigations to identify injury scenarios. (Information in one of the seventeen investigated cases was insufficent to be included in the staff's analysis of the incident scenarios.) In ten of these sixteen investigated cases the shell launched earlier than the victim had expected. The actual time between lighting the fuse and launch is unknown. Several victims said that they expected to have more time to get away because of the length of the fuse and because their experience of previously firing shells led them to believe they would have more time to get away. In one of these cases, the shell reportedly launched before the operator lit the fuse, the device tipped over and an onlooker standing 10 feet away was struck in the face by the shell. (See Ref. No. 3.)

In three cases, the victims were injured when the shell exploded in the launch tube. One of these incidents involved the victim holding the tube while firing the shell, resulting in a hand injury. In one case, the shell exploded immediately upon leaving the launch tube. It is unclear, however, whether the shell actually exploded or the tube tipped directing the shell toward the victim. In one case, the victim was injured when, after waiting "one minute," he went back to check the device and was struck in the face. In one case, the victim held the shell in his hand while lighting the fuse, then put it into the tube. (See Ref. No. 3.)

After examining the IDIs, the Commission staff noted several patterns associated with the incidents. Two primary factors were (1) The position the victims appeared to use when lighting the fuse which placed their face near or over the launcher tube and (2) inconsistency in fuse burn time. In contrast to non-reloadable shell devices that have a fuse located at the base of the device, with reloadable shells the user must place the shell inside of the tube with the end of the fuse extending out of the launch tube. The Commission staff observed several individuals who were simulating lighting the use of a reloadable shell device. These individuals bent at the waist and squatted with the knees bent only enough to reach the fuse. If a victim used this same position he/she would be placed in a forward leaning pose with the head very near or over the tube.

The length of the fuse may contribute to the risk of injury. The long fuse gives the impression that ample time exists to get away after lighting the fuse in contrast to devices with shorter fuses. This perception may lead some people to leave "slowly." The victim might not believe his (or her) body position was hazardous because the fuse length indicates ample time to get away. Additionally, previous firing of shells might have demonstrated there was time to get away; failure of the fuse to perform always as expected indicates that the fuse may also be a factor in the incidents. (See Ref. No. 3.)

The Commission's injury data indicate that fewer injuries have occurred with shells 1.75 inches or smaller than with shells larger than 1.75 inches. Of the twenty-four reported incidents in which the size of the shell is identified, nineteen involved shells larger than 1.75 inches, while only five incidents involved smaller shells (four with 1.5 inch shells and one with a 1.75 inch shell). This also represents a much smaller proportion of injuries since the industry has reported to the CPSC that approximately 42 million of the smaller shell devices have been imported from 1987 through 1989, while only approximately 5 million of the larger shell (shells larger than 1.75 inches) devices have been imported during the same time period.

This proposed rule concerns only large reloadable shells (larger than 1.75 inches in outer diameter). The Commission is attempting to act quickly with regard to these larger size shells because of the apparently greater risk presented by these larger shells. The Commission intends that swift action will remove these large reloadable shells from the market before the 1991 fireworks season. The Commission intends, however, to continue studying the injuries involving smaller shells.

E. Comments Responding to the ANPR

The Commission received ten comments from eight individuals or organizations in response to the ANPR published on July 31, 1990. No comments from consumers or consumer representatives were received.

1. Summary of Comments

Two commenters supported a ban of reloadable shells larger than 1.75 inches: the American Pyrotechnics Association ("APA"), a trade association which represents approximately 80 percent of all fireworks manufacturers, importers, and distributors, and whose membership accounts for approximately 90 percent of all Class C fireworks sold and used in the United States; and the American Fireworks Standards Laboratory ("AFSL"), an organization that develops voluntary standards for fireworks devices. Four commenters favored design or performance criteria instead of a ban on any size of the reloadable shells. Two commenters advocated development of a voluntary standard rather than a mandatory standard or ban. The commenters voiced a variety of viewpoints on a range of topics, as summarized below.

2. In Support of a Ban

The APA's comments supported a ban of reloadable shells larger than 1.75 inches in diameter, and recommended that the Commission establish certain mandatory requirements, based on AFSL's voluntary standard #22, for all other reloadable shells. The APA further advocated revision of the Commission's existing requirements to allow for a fuse burn time of 3 to 9 seconds for all fireworks devices, rather than the current burn time of 3 to 6 seconds. The APA also addressed the issue of banning shells that have an explosive power exceeding that of a 1.75 inch reloadable shell. The APA noted that the AFSL standard's limitation on shell diameter (to 1.75 inches) and on the total weight of a single shell (to 50 grams) in combination with DOT's existing regulation that restricts the chemical composition used for propellant and bursting charge to black powder, would effectively limit the explosive force of reloadable shells.

As noted, AFSL also supported the elimination of reloadable shells larger than 1.75 inches in diameter, agreeing that their potential for injury justifies their removal from the consumer market. AFSL commented that it is "not confident" that changes in labeling would significantly reduce injuries. Like the APA, the AFSL also recommended extending the fuse burn time to 3 to 9 seconds. AFSL also noted the importance of several provisions of the AFSL standard for reloadable shells in addition to the limitation of shell size to 1.75 inches in diameter. Finally, AFSL also referred to the limitations on shell diameter, total shell weight, and powder to limit the explosive power of reloadable shells.

The Commission believes that APA's and AFSL's comments concerning the establishment of requirements for reloadable shells 1.75 inches or smaller are outside of the scope of this proposal. The issue of a longer fuse burn time for all fireworks devices is also beyond the scope of this notice. The Commission understands these comments to advocate requirements that would apply to smaller reloadable shells only rather

than as an alternative to banning reloadable shells larger than 1.75 inches.

With regard to the question of defining explosive power, the Commission staff has considered APA's and AFSL's suggestion and its own testing results but has decided not to propose a limitation on explosive power.

3. Criteria as an Alternative to a Ban

Several commenters recommended that rather than banning any reloadable shells, the Commission should establish certain requirements for all reloadable shells. The specific requirements suggested included: (1) A requirement that mortar tubes be constructed of a better, stronger material so that they do not deteriorate during shipping or use; (2) a requirement that the mortar tube be buried in the ground during firing to prevent tipover; (3) a requirement that directions for use be prominently displayed on the tube and shell, and given verbally at the time of purchase; and (4) a requirement that labeling warn against misuse of the product and against consumption of alcohol or drugs during operation of the device.

The Commission considered the alternatives of additional labeling and establishing specific criteria, but believes that these measures would not adequately reduce the risk of injury. (See Refs. Nos. 3 and 9.) Although the measures suggested by the commenters may increase the safety of these devices to some degree, the Commission does not believe that they would address all of the injury scenarios identified by the Commission's investigations. For instance, criteria are not likely to address the risk of injury presented by users placing their faces over the launch tube when lighting the fuse, or the misperception that they have more time to get away because of the length of the fuse. Additionally, the Commission's past experiences indicate the industry's inability to produce devices that consistently comply with Commission's regulations. Moreover, several of the requirements suggested by commenters are beyond the Commission's authority (e.g. requiring verbal instructions at the time of sale, or requiring that devices be used in a particular manner).

4. Voluntary Standard

Two commenters supported development of a voluntary standard as an alternative to banning of any of the reloadable shells. One commenter specified that such industry guidelines should include (1) Additional labeling, (2) elimination of plastic shells, (3) restrictions on the number of reports in the shells, and (4) a limit of 6 shells per box. These guidelines are similar to provisions of AFSL's voluntary standard.

The Commission staff does not believe that a voluntary standard would adequately reduce injuries associated with reloadable shells. As discussed below in the section on alternatives, the level of compliance with a voluntary standard is uncertain. Manufacturers would pay a fee to use the AFSL seal certifying that their products comply with the voluntary standard. If a few companies market non-certified goods, competitive pressure may be great for other companies to do so.

5. Commission's Authority to Regulate Reloadable Shells

One commenter questioned the authority of the Commission to ban reloadable shells, stating that the recognized role of government is in promulgating "reasonable rules and regulations, i.e. not bans."

The Commission clearly has authority to ban a product under the provisions of the FHSA (see discussion above in section entitled "Statutorily Authority"). Moreover, the Commission has in the past issued bans concerning certain types of fireworks devices, such as M-80s, when the Commission determined that other measures would not adequately reduce the risk of injury associated with the product.

Another commenter stated that reloadable shells should not be classified as hazardous substances under the FHSA because injuries resulting from the devices are not due to customary or reasonably foreseeable handling, but from misuse of the product when users lean over the launch tube. The same commenter also took the position that the Commission cannot ban reloadable shells because it has not tried the alternative of requiring additional labeling.

These fireworks devices may properly be classified as hazardous substances under the FHSA. The FHSA encompasses intended use of a product, as well as "reasonably foreseeable handling or use." See 15 U.S.C. 1261(f)(1)(A). The Commission staff believes that, due to the design of reloadable shell devices which requires the user to light a fuse extending from the top of the launch tube, it is foreseeable that the user would lean over the tube. Moreover, the injury data indicate that injuries result from a variety of different scenarios. Injuries appear to occur for many reasons, other than "misuse," whether foreseeable or not.

With regard to additional labeling, the commenter correctly states that the Commission must consider the effectiveness of labeling before it can ban a product under section 2(q)(1) of the FHSA. However, if the Commission finds that labeling would not adequately reduce injuries, there is no need to issue requirements for labeling.

6. Effect of a Ban

One commenter argued that elimination of all reloadable shells would cause undue hardship on the industry, and suggested that eliminating only those shells larger than 1.75 inches would increase the cost to consumers of using fireworks, and would increase the profits for American manufacturers at the expense of importers. The same commenter also suggested that injuries would increase with a ban on shells larger than 1.75 inches because consumers could "move up" to shells designed for commercial use. Finally, this commenter stated that many other products require more urgent attention.

The Commission considered the potential effect on industry from a ban on reloadable shells. The Commission's information indicates that a ban of reloadable shells larger than 1.75 inches would not have a significant economic effect on manufacturers or importers because these same companies also produce and import the substitute devices to which consumers would likely turn and because large reloadable shells constitute a small proportion of sales of importers. With regard to the effect on consumers, the Commission has no reason to believe that consumers would shift to use of commercial devices rather than to other readily available devices marketed for consumer use. For further discussion concerning potential effects on manufacturers, importers, and consumers, see the discussion below referring to these issues.

As to the commenter's last point, the Commission cannot, in this time of serious budget constraints, address all of the hazards presented by consumer products.

7. Unreasonable Risk

One commenter who opposes any ban of reloadable shells stated that the statistics contained in the ANPR do not support a conclusion that reloadable shells larger than 1.75 inches in outer diameter present an unreasonable risk of injury.

The Commission believes that the nineteen of twenty-four incidents in which the size of the shell was identified that involved shells greater than 1.75 inches and resulted in serious injuries to the face and eyes do support regulatory action. Because the basis for defining fireworks as hazardous substances is

section 2(f)(1)(A), which does not refer to unreasonable risk, no finding of unreasonable risk is necessary for the Commission to issue a rule banning large reloadable shells. However, the Commission could consider similar factors in determining to regulate hazardous substances under section 2(f)(1)(A). Determination of an unreasonable risk involves examining the severity of injury, the likelihood of injury, and the impact of possible regulatory action. These considerations would support the Commission's action here. Injuries involved with these devices are very serious, many resulting in eye injuries, including loss of an eye. The numbers of reported and estimated injuries are significant. Finally, the Commission's information indicates that the impact of the proposed regulation on industry and consumers would be minimal.

8. Comment Period

Finally, one commenter stated that the 30-day period provided for comments concerning the ANPR was too short. The commenter suggested that the period be extended to 180 days.

The Commission believes that the comment period was sufficient to provide notice of the initiation of regulatory action and to allow for the submission of comments. The 30-day comment period was within the time limit the FHSA provides for comments concerning the risk of injury and alternatives identified in an ANPR. See 15 U.S.C. 1262(f)(4). The Commission staff sent letters to many organizations that were likely to be interested in this matter informing them of the publication of the ANPR and providing a copy of the notice. Additionally, interested persons will have another opportunity to comment on this proceeding with the issuance of this proposed rule.

F. The Proposed Ban

The Commission is proposing to ban reloadable tube aerial shells larger than 1.75 inches in outer diameter. Thus, the Commission intends to remove from the market reloadable shells that have resulted in the majority of reported injuries.

1. Potential Effect on Reduction of Injuries

The majority of the incidents reported to the Commission (nineteen of the twenty-four incidents where the size of the shell was indentified) involving reloadable shells occurred with shells larger than 1.75 inches. Thus, elimination of these large shell devices would likely reduce the number of injuries associated with reloadable shells to a substnatial degree.

During the July 4, 1990 holiday period (June 23–July 20), the Commission's Directorate for Epidemiology estimated 360 injuries to have been treated in hospital emergency rooms. (See Refs. Nos. 1 and 2.) Since 1987, this holiday season has accounted for an average of about two-thirds of the total annual estimated injuries associated with all fireworks. If this proportion is roughly applicable to the reloadable shell subcategory, total injuries in 1990 may be as high as about 550. Based on information concerning the proportion of reported incidents that have occurred with shells over 1.75 inches, the majority of these estimated incidents would likely be associated with shells larger than 1.75 inches. Under the conservative assumptions that only 50% of the estimated injuries are associated with shells over 1.75 inches and that serious face and eye injuries account for one to ten percent of all injuries, and using the 360-injury estimate as a conservative measure of the risk for all shells, the Commission estimates that the annual cost to the public ranges up to about $1 million. The potential annual benefits of the proposed amendment are comprised of the elimination or reduction of this cost. (See Ref. No. 2.)

2. Potential Effect on Consumer Cost and Choice

The proposed ban would slightly limit the number of fireworks products available to consumers. However, the Commission's information indicates that other similar aerial display fireworks that would be adequate substitutes for large reloadable shells would continue to be available at similar prices. Further, the Commission believes that consumers purchase total-dollar "baskets" of fireworks for a given occasion, and often may not perceive significant differences among the various large display items available. Thus, the cost to consumers associated with the proposed ban would likely be minimal. (See Ref. No. 2.)

3. Potential Effect on Industry

Although some changes in production may be made if the proposed amendment were issued on a final basis, the effect on overall production costs is expected to be temporary and relatively small. Production of the larger reloadable shells has reportedly been severely restricted in anticipation of Commission action. Additionally, the anticipated cost in changing to production of the smaller shells is likely to be minimal.

Manufacturers and importers would lose sales revenues from large reloadable shells, but all known manufacturers also produce smaller reloadable shells and other substitute devices. (See Ref. No. 2.) The Commission does not believe that any significant adverse net effects on the sales revenues of any one manufacturer or importer would occur if the proposed amendment were to become effective.

G. Alternatives

1. Design or Performance Criteria

Instead of banning any reloadable shells, the Commission could propose specific design or performance criteria with which large reloadable shells would have to comply. Such criteria would be phrased in terms of a ban—all reloadable shells subject to the regulation that do not meet the specified criteria would be banned.

The Commission could establish requirements similar to those stated in the AFSL standard #22, in essence making aspects of this voluntary standard mandatory. In its comments, the APA noted the provisions of the AFSL standard that APA considers most important for the Commission's consideration. In addition to limiting the outer diameter of reloadable shells to 1.75 inches, these are: (1) The launcher assembly must remain upright when tilted 22 degrees; (2) the gross weight of the shell is limited to a maximum of 50 grams, and the propellant and break charge are limited to black powder or equivalent composition; (3) packages must contain no more than six shells per launch tube; (4) shells must be constructed of a material that does not produce sharp fragments during operation; and (5) shells must use a one-piece "safety fuse" that extends at least 5 centimeters from the launcher tube. The APA and AFSL also requested the Commission to change the existing fuse-burn time (3 to 6 seconds) to 3 to 9 seconds.

The Commission could propose such criteria rather than a ban of shells larger than 1.75 inches in outer diameter. However, the Commission believes that design or performance criteria would not adequately reduce the risk of injury associated with this product. Information regarding feasibility of criteria and quality-control casts doubt on the effectiveness of design and performance criteria. The five performance requirements recommended by AFSL and APA are discussed below. (See Ref. No. 3.)

Twenty-Two Degree Tilt Test

This requirement would improve the stability of the device and, therefore, might reduce any injuries caused by the product's tipping over during use. However, the Commission's information indicates that the number of injuries due to tipover is small. Moreover, it is uncertain that increased stability would in fact reduce tipovers since the cause of tipovers is unknown.

Limiting the Amount and Type of Explosive Powder in Large Shells.

Restricting the gross weight of shells to 50 grams would have the effect of eliminating the 2.0 inch and 2.25 inch shells now on the market. Limiting the propellant and break charge to specific amounts of black power would not effectively limit the explosive power of the launching shells as they are presently constructed because manufacturers could use very fine mesh components to produce a shell with substantially greater explosive power with fewer grams of black powder.

Limiting Packages to Six Shells Per Tube

This requirement might reduce the likelihood that the tube would become deformed or weakened after repeated use, possibly causing the shell to be improperly seated in the bottom of the tube and, therefore, to explode before reaching the proper height. Three cases investigated by the Commission involved shells that exploded inside the tube. It is quite possible that these could have resulted from the shells becoming lodged in the tube after ignition. However, the cause of the explosions has not been specifically linked to damaged or deformed tubes resulting from previous firings. In the Commission's testing, very few shells jammed in the tube and misfired. Thus, it does not appear that reducing the number of shells would have much effect on the number of injuries associated with the devices.

Eliminate Hard Plastic

Requiring shells to be constructed of a material that does not produce sharp fragments during operation might reduce the severity of injury if the user were struck in the face by the shell. BOM's testing indicated that paper shells may be more likely to bounce away before exploding. However, available data suggest that reloadable shells with paper casings, when they strike a person who is standing near or over the launch tube are just as likely to cause severe injuries as plastic shells.

One-Piece Fuse With a Constant Burn Rate and Longer Fuse Burn Time

A one-piece fuse with a constant burn rate might reduce the risk of injury associated with early ignition of the device in those cases where the green safety tip of the fuse separates from the quick burning section of the fuse. The APA has indicated that increasing the burn time to 3–9 seconds would give manufacturers a broader range to work with. Although these criteria for fuses may reduce some injuries caused by early ignition, the Commission does not believe that such criteria would be an adequate alternative to a ban of large size shells. The Commission's tests failed to show that one-piece fuses performed any more consistently than two-piece fuses. Manufacturers have not demonstrated their ability to produce consistently devices that would meet such design or performance criteria. The Commission's experience in testing for compliance with existing fuse burn requirements indicates that consistency is a significant problem.

Moreover, changes in the fuse would not address user-related injuries that may be due to the positioning of the user over the launch tube, foreseeable misuse of the device, or the user's misperception that the long fuse provides more time than there actually is to get away from the device. The Commission believes that there is no technically feasible way to address these scenarios without destroying the utility of the product or creating a design which is too complicated for the consumer to use safely.

Consideration of criteria to be applied to shells 1.75 inches or smaller is beyond the scope of this rulemaking.

2. Additional Labeling

The current product has extensive labeling. These labels read:

Warning

Shoots flaming balls.
Use only under close adult supervision.
For outdoor use only. Place cardboard launcher upright on level ground. Unwrap long fuse on ball. Insert ball into tube with flat end down and with fuse extending out of tube.
Do not hold in hand.
Do not put face over tube. (present on some models)
Light fuse and get away.

One alternative the Commission considered is to add further warning or instructional labeling to devices using shells larger than 1.75 inches or to modify the existing warning. This would leave large reloadable shells on the market and would have less impact on manufacturers and importers than a ban. The Commission believes, however, that any additional or altered labeling may not be effective in reducing the risk of injury. The warning label quoted above is comparable to the warning label on alternative devices which are not implicated in similar incidents.

A label adding a statement comparable to "fuse burns rapidly, light and get away quickly," may not produce the desired result because the user is likely to form an initial perception of fuse burn time based on the length of the fuse. Also, the user's experience in lighting several shells successfully, as most victims in the investigated incidents had, provides information to the user concerning fuse burn time. Thus, users' perception and experience concerning the amount of time available to get away may lead them to disregard an inconsistent warning. (See Ref. No. 3) AFSL also commented that effectiveness of modification to labeling is doubtful.

3. Voluntary Standard

A final alternative is for the Commission to take no mandatory action, but to encourage the development of a voluntary standard. As discussed elsewhere in this notice, the AFSL has developed a voluntary standard applicable to reloadable aerial shells. Allowing voluntary rather than mandatory action would save the Commission resources necessary to promulgate mandatory requirements.

However, compliance with the AFSL standard will only be required for manufacturers who pay to participate in the AFSL certification program. The level of participation among manufacturers and the extent of conformance among non-participants is not expected to be substantial. Without mandatory action, some firms are likely to continue producing and importing large shells. If some companies market non-certified devices, other may feel compelled for competitive reasons to do so. This will erode the level of compliance over a period of time. Past experience when the Commission has asked the industry to voluntarily halt or make changes in shipments of a particular device confirms this assessment. In those instances, shipments of the particular devices initially decreased, but rose again over time.

Thus, although industry costs associated with widespread conformance to the AFSL voluntary standard would probably be lower than under the proposed action, potential benefits would likely also be lower. (See Ref. No. 2.) AFSL has indicated that

requirements of the voluntary standard will be phased in by stages, and it will take several production seasons to be set fully in place. AFSL itself supports the Commission's proposed action.

H. Comment Period

The Commission is providing a thirty-day comment period for this proposed rule. The shortened comment period is necessary to affect the shipment of large reloadable shells into the United States for the 1991 Fourth of July holiday season. Under the U.S.-Canada Free Trade Agreement ("Trade Agreement") and the Executive Order implementing it, proposed Federal standards-related measures must provide seventy-five days for comment unless "urgent circumstances" exist in which delay would frustrate a "legitimate domestic objective." The Trade Agreement defines "legitimate domestic objective" as one "whose purpose is to protect health, safety, essential security, the environment, or consumer interests." Trade Agreement, Art. 609. With a shortened comment period the Commission can publish a final rule by April 1991, in time to have a substantial impact on shipments for the 1991 holiday season which are heaviest in April, May, and June. However, if the full seventy-five days are allowed for comments, the Commission's action may not have a significant effect for the upcoming season.

Although the Commission has information indicating that factories have stopped production of large reloadable shells pending the outcome of this rulemaking proceeding, the Commission is concerned that manufacturers may attempt to dump existing inventories of large shell devices in the U.S. before the effective date. The Commission also notes that issuance of the ANPR before this proposed rule provided additional time for persons to comment on this rulemaking proceeding.

I. Preliminary Regulatory Analysis

Introduction

The Commission has preliminarily determined to ban reloadable shell devices larger than 1.75 inches in outer diameter. Accordingly, as explained earlier in this notice, the Commission is preparing to take action under the FHSA to ban these reloadable shell devices. Section 3(h) of the FHSA requires the Commission to prepare a preliminary regulatory analysis containing:

(1) A preliminary description of the potential benefits and potential costs of the proposed regulation, including any benefits or costs that cannot be quantified in monetary terms, and an identification of those likely to receive the benefits and bear the costs;

(2) A discussion of the reasons any standard or portion of a standard submitted to the Commission under subsection (f)(5) of the FHSA was not published by the Commission as the proposed regulation or part of the proposed regulation;

(3) A discussion of the reasons for the Commission's preliminary determination that efforts proposed under subsection (f)(6) of the FHSA assisted by the Commission as required by section 5(a)(3) of the Consumer Product Safety Act would not, within a reasonable period of time, be likely to result in the development of a voluntary standard that would eliminate or adequately reduce the risk of injuries identified in the notice provided under subsection (f)(1); and

(4) A description of any reasonable alternatives to the proposed regulation, together with a summary description of their potential costs and benefits, and a brief explanation of why such alternatives should not be published as a proposed regulation.

15 U.S.C. 1261(h).

The following discussion addresses these requirements.

Regulatory Analysis

Potential Benefits of the Proposed Amendment

The proposed amendment to the fireworks regulation is intended to eliminate the risk of injury associated with the reasonably foreseeable use of large, reloadable tube aerial shells. It is expected that the removal of these products from the market would substantially reduce or eliminate the associated injuries, with only a slight, if any, offsetting increase in the number of injuries due to the use of substitute products available to consumers.

Based on the latest available incident data, some 360 injuries associated with reloadable shells are estimated to have been treated in hospital emergency rooms during the July 4, 1990 holiday period (June 23–July 20). Since 1987, this holiday season has accounted for an average of about two-thirds of the total annual estimated injuries associated with all fireworks. Assuming that this proportion is roughly applicable to the reloadable shell sub-category, total injuries in 1990 may be as high as about 550. No product-specific annual estimate is available for reloadable shells.

Though the distribution of these injuries among the various reloadable shell devices is not precisely known, information from cases investigated by the Commission suggests that the majority is associated with the larger sizes subject to the proposed amendment. Injuries range in nature from minor hand or arm burns that are treated and released from hospital emergency rooms, to severe eye and face injuries that require hospitalization and that may result in temporary or permanent vision loss. Under the conservative assumption that only 50% of the estimated injuries are associated with reloadable shells greater than 1.75 inches in diameter, using the 360-injury estimate as a conservative measure of the risks for all reloadable shells, and assigning a range of 1–10% to account for the incidence of serious face and eye injuries, the estimated annual cost to the public of these incidents ranges up to $1 million. This constitutes the potential level of benefits to be derived from the proposed amendment.

Potential Costs of the Proposed Amendment

Economic costs associated with the proposed amendment would chiefly involve potential costs to foreign manufacturers and U.S. importers from sales losses and inventory retrofitting, and reduced market choices for consumers who purchase aerial display fireworks. Each of these costs is estimated to be slight, and is reduced to the extent that available alternative products are perceived as adequate substitutes for large reloadable shells. A discussion of the various sectors affected, including potential effects on competition and small business, is provided below.

Effects on Industry

To comply with the proposed amendment, U.S. importers would have to discontinue shipment of large reloadable shells from foreign trading companies. Since the U.S. is the primary market for reloadable shells, manufacturers would likely cease production of these items; production facilities would be converted to the manufacture of smaller Class C shells or to larger, Class B shells. Production has reportedly been severely curtailed during 1990 in anticipation of CPSC action; virtually no imports of large reloadable shells are expected during 1990 and 1991.

Some molds used in the production of large reloadable shells may have to be discarded or converted to other uses, at some cost to foreign manufacturers. If mold retrofits cost manufacturers up to $1,000 apiece, the overall cost for the approximately 200 small factories now in production could be up to $200,000. Although most firms may opt to modify or replace molds on a one-time basis, the amount and nature of hand labor involved in producing reloadable shells would probably be unaffected. Thus, the effect on overall production costs for

most firms is expected to be temporary and relatively small.

Manufacturers and importers would lose sales revenues from large reloadable shells; however, all of the known manufacturers also produce smaller reloadable shells and other, non-reloadable substitute devices (e.g., missiles and other aerial display items). Reloadable shells typically have accounted for a very small percentage of sales for most firms. It is believed that sales of substitute items will make up for virtually all revenue losses that might otherwise occur, and that no significant adverse net effects on the sales revenues of any one manufacturers or importer would accompany the proposed amendment.

Another potential cost to industry is associated with the disposition of existing product inventory, principally in China (though some importers may also have leftover inventories in the U.S., these products would presumably not be affected by the proposed amendment). A substantial portion of 1989–90 production is believed to have been held by manufacturers; this could amount to 2–3 million units. It is likely that these would either be: (a) repackaged as multi-shell "firing-rack" products and exported to the U.S. as Class B devices; (b) exported to Europe instead of the U.S.; or (c) sold in the domestic (Chinese) market. Many would probably be repackaged for sale as Class B items, at some small cost to manufacturers. It is unlikely, however, that this cost would be reflected as increases in the prices of Class B items to importers, given the relatively small volume of units involved. Prices on such items may actually be reduced in order to speed inventory clearance.

Effects on Competition and Small Business

The proposed amendment may affect competion among marketers of Class C fireworks devices to the extent that the mix of products offered by some firms leads to changes in customers' purchasing behavior. All known production of reloadable shells is from China. Marketers of domestically-produced goods, whose product mix would be unaffected by the proposed amendment, could benefit at the expense of importers of Chinese goods. This potential effect is of particular concern to the Commission since many of the roughly 100 importers of reloadable shells could be considered to be small firms in terms of sales and employment. Some domestic manufacturers may also be considered to be small; no adverse impact on these companies would accompany the proposed amendment.

Retailers' and consumers' purchases of fireworks tend, in general, to be made all at once from a single source. Information from industry suggests that the availability of specific items, such as large reloadable shells, tends to lead to general purchases of other fireworks devices from those firms offering the specific desired goods. To the extent that this perceived product-mix advantage is diminished by the proposed amendment, the market shares of some domestic producers of alternative items (missiles and other non-reloadables) could increase following issuance of the proposed amendment.

The magnitude of this potential effect is estimated to be quite low. All known manufacturers and U.S. importers offering large reloadable shell devices also market the smaller versions. It is quite likely, therefore, that most importers would continue to offer products (smaller reloadable shells) that domestic producers do not offer. There would also continue to exist a wide variety of other imported devices at lower prices than domestically-produced goods. Large reloadable shells constitute such a small share of most firms' sales that elimination of such products would probably have a negligible effect on the competitive position of individual firms.

It appears that since almost all importers offer most kinds of fireworks devices and represent multiple foreign suppliers, and since smaller reloadable shells would still be available, any relative impact on importers' sales due to the proposed amendment would be slight, and potential effects on small firms would not be disproportionate to the effects on small firms would not be disproportionate to the effects on large importers or domestic manufacturers. The low level of overall sales or large reloadables makes it unlikely that larger domestic producers of substitute products would be able to increase their overall market shares significantly at the expense of small importers.

It is concluded that no significant adverse impact on a substantial number of small firms would result from the proposed amendment. Small and large importers would probably be equally and minimally affected.

Effects on Consumers

The proposed amendment would limit consumer choice by removing some increasingly popular products from the market. Consumers may or may not perceive a significant loss of enjoyment as a result; however, other similar aerial display fireworks devices would continue to be available at roughly similar prices. As noted above, reloadable shells vary in retail price from about $10 to over $40. Smaller reloadable shells provide somewhat less dramatic bursting effects, but provide more shells per package (usually 12 instead of 6) for about the same price. Non-reloadable single- and multi-shot missiles deliver similar pyrotechnic effects, and retail for a similarly wide range of retail prices ($5 to $50).

If the average price of the largest substitute aerial display Class C fireworks devices were $5.00 per unit higher than the average price of large reloadable shells, and annual unit sales of substitute products increased to compensate at about the 0.5 million level, then the annual cost to the public of the proposed amendment would be $2.5 million. This estimate represents a likely maximum cost since some substitutes for large reloadable shells are lower in average retail price; further, it is believed that many consumers purchase total-dollar "baskets" of fireworks for a given occasion, and often may not perceive significant differences among the various large display items available.

A low level of net benefits to consumers may result from issuance of the proposed amendment on a final basis. The net benefits may range from near zero to about $1 million per year, depending on the number of injuries that might be avoided, and depending on the effect of product substitution on consumers' retail outlays and enjoyment of these products. Under almost any reasonable set of assumptions, it appears that costs and benefits associated with the proposed amendent would probably both be low. Although the number and total cost of serious incidents associated with the use of large reloadable shells are small, the cost to consumers associated with removing these articles from the market may approach zero, especially since the use of substitutes is already widespread.

Other Standards

In July 31, 1990 ANPR, the Commission invited interested parties to submit or develop standards that might address the risk of injury associated with large reloadable shells. As noted above, the American Fireworks Standards Laboratory (AFSL) has developed a voluntary safety standard (AFSL #22) for all reloadable shell devices, and has requested that the Commission adopt the major provisions of the voluntary standard into the proposed amendment. These major

provisons of the voluntary standard would limit the size of reloadable shells to 1.75 inches in outer diamater, limit gross shell weight to 50 grams, and limit propellant and bursting charges to black powder (the weakest pyrotechnic material). Further, this standard incorporates a tipover (stability) test provision, a requirement that one-piece "safety" fuses be used to address the hazard associated with inconsistent fuse-burn times, and a requirement that not more than six shells be packaged with a single launch tube.

No products have yet been manufactured in conformance with AFSL #22. The 1.75 inch shell diameter limit of the standard would, however, essentially accomplish the same result as the proposed amendment. The remaining provisions of AFSL #22 would apply only to smaller reloadable shells. Although the Commission could opt to regulate the smaller size shells at a later date and in a separate proceeding, the ANPR of July 31, 1990 is limited to the larger shells (and their kinetic energy equivalents). The proposed amendment is consistent with AFSL #22 concerning larger shells and has essentially the same effect.

As noted in the Voluntary Action discussion in the section on Alternatives below, firms accounting for an estimated 80–90% of all reloadable shells shipped in 1989 are expected to conform to AFSL #22 by 1991. However, some imports of large shell devices, particulary those existing inventories from 1989 and 1990 production, would probably continue. The APA has expressed concern that failure to mandate a prohibition on large shells may result in continued importation of the items for at least another year. Consumer demand may lead other firms to re-enter the market if the prohibition on the larger items remained voluntary, despite increasing product liability concerns among manufacturers, importers and insurers. Thus, non-conformance by only one or two firms may lead to very low overall conformance to the AFSL powder limit. Further, it is unlikely that any large reloadable shells that might be imported in the future would conform with other provisions of the AFSL standard (especially the fuse requirement); most smaller shells would probably conform.

Industry costs associated with widespread conformance to the AFSL voluntary standard would probably be lower than under the proposed amendment to the mandatory regulations; potential benefits would probably also be lower. This would be true primarily to the extent that inventories of non-conforming goods were exported to the U.S. In the long term, it is uncertain whether any net benefits to consumers would result, since the level of injury reduction could be near zero if, as is likely, some firms choose not to conform. Given this uncertainty, it is not reasonable to conclude that the AFSL voluntary standard would adequately reduce the risk associated with the large reloadable shells within a sufficiently short period of time.

Alternatives to the Proposed Amendment

As noted above, the proposed amendment is estimated to have potential costs and benefits that are fairly low. The Commission has also considered the potential costs and benefits of reasonable alternatives to the proposed amendment. The principal alternative considered during the regulatory development process involves applying performance and design provisions, similar to those of the AFSL voluntary standard, to large reloadable shell devices, rather than classifying all large shells as banned hazardous substances. The Commission has also considered possible labeling or instructional information requirements as an alternative to an outright ban. In addition, the Commission may consider alternate effective dates in determining the reasonableness of a final amendment. The Commission could also determine that no further mandatory action in needed, i.e., that voluntary action would adequately address the risk associated with large reloadable shells.

Alternate Requirements

A substantial proportion of the most serious injuries reported to the Commission involves fuse burn-time variability (usually a too-quick ignition), or consumers' perceptions thereof. The Commission could require that large reloadable shells be equipped with an improved fuse system in order to achieve a more consistent—and perhaps longer—average burn time. Doubts concerning the ability of the industry to produce a fuse that operates consistently have been discussed above. This remedy is viewed by the APA and AFSL as the most important overall safety improvement that could be made to reloadable shells; although under the AFSL voluntary standard, the one-piece fuse provision applies only to smaller reloadable shells, such a requirement may be equally applicable to all reloadable shells, regardless of size.

This alternative would allow large reloadable shells to stay on the market, thereby preserving the existing degree of consumer choice among aerial display Class C fireworks. Onepiece safety fuses are under development in China and are reported to be technically feasible for use in all reloadable shell devices. Such a requirement may, however, have some impact on the manufacturing cost—and average retail price—of the products. As described in the cost section above, a $1.00 per unit price increase for large reloadables (probably reasonable maximum) would result in an annual cost to consumers of about $0.5 million.

In addition, a safety fuse requirement for large reloadable shells would probably not reduce the risk to the same extent as would an outright ban, even if a very effective fuse system were developed. Not all incidents associated with large reloadable shells involve fuse problems: even properly operating fuses may not eliminate those "reasonably foreseeable misuse" incidents in which victims hold lighted shells in their hands or hold the launch tube. It is also possible that different fuse designs would make the shells more difficult to insert in their tubes; a short-length requirement could eliminate the reloadable characteristic of the product. Further, concerns exist about quality control among fuse suppliers and about the Chinese fireworks producers' ability to assemble reloadable shells with safety fuses that operate any more reliably than present versions. Thus, it is probably reasonable to expect that somewhat higher costs and lower benefits would be associated with a fuse requirement than would be associated with a limit on shell size.

It is suspected that the relative risk associated with large reloadable shells is much greater than for small ones. While reloadable shells greater than 1.75 inches in diameter account for under 20% of annual shipments, they account for over 50% of the serious injuries investigated by the Commission and may account for a disproportionate number of all injuries. Thus, the Commission believes that particular attention must be given to addressing the risk associated with large reloadable shells as expeditiously as possible.

Alternate Labeling or Instructional Information Requirements

Some of the injuries investigated by the Commission appear to have involved reasonably foreseeable misuse of the product (e.g., lighting the fuse before inserting the shell into the launching tube, or holding the tube while it discharged). To address this aspect of the risk, the Commission could require that additional labeling be

placed on each product or that instructions on safe use be provided with each product.

Like the alternate performance or design requirements discussed above, a labeling or instructional materials amendment would allow reloadable shells to remain on the market. Potential costs to industry may be lower than under an outright ban, assuming that the cost of providing additional information to consumers is very low. Manufacturing costs associated with labeling—probably no more than 1–2 cents per unit—would be lower than costs associated with providing separate instructional materials, e.g., printed sheets, which may add 2–5 cents per unit.

Neither of these courses of action would result in significant increases in overall production costs. The small increases attributable to labels or instructions would probably not, given the price-competitive nature of the fireworks market, be reflected in retail price increases for reloadable shell devices. Although such costs are usually passed on to consumers eventually, these would likely be spread over firms' entire product lines over a long period of time, without noticeable effects on the price of any one item or group of items.

Existing reloadable shells carry fairly strong, specific warnings and instructions. There are no data to suggest that a significant number, if any, of the incidents that occur would likely be avoided if all large reloadable shells carried warning labels or instructions that are more detailed than they already are. It cannot be concluded that potential benefits of additional labeling or instructions would be greater than zero.

Further, most substitutes for large reloadables generally appear to be safer; injuries would probably be reduced, on balance, as a result of the use of these substitutes. The benefits of substitute use may outweight the potentially higher cost to consumers. Therefore, although the costs and benefits of labeling or instruction requirements may each be very small, it appears that greater potential net benefits would accompany the removal of large reloadable shell devices from the market.

Alternate Effective Date

The proposed amendment would prohibit introduction into commerce of the covered products after 30 days from the publication of a final amendment in the **Federal Register**. Assuming publication in early-to-mid 1991, the proposed amendment would remove most large reloadable shell devices from the retail market for the 1991 Fourth of July season. The Commission could reduce the potential inventory retrofit costs of the proposed amendment to manufacturers by extending the effective date beyond the 1991 selling season (e.g., to six months after the date of publication of the final notice). This would allow foreign manufacturers to export their products unmodified to the U.S. without repackaging them for sale as Class B items, and would obviate the need to divert shipments to other markets. The reduction in cost associated with this alternative is estimated to be very slight, since virtually no sales would be lost under the 30-day proposal.

This alternative would allow the continued sale and use by consumers of large reloadable shells; the injury-reduction benefits of the proposed amendment would be postponed for a year. In view of the risk of serious injury or death associated with the product and the minimal burden associated with the timing of the proposed amendment, the Commission has determined that a longer effective date would not be in the public interest, and that the 30-day effective date is necessary to protect consumers.

No Action/Rely on Voluntary Standard

The Commission could determine, based on the available preliminary information, that no mandatory action is reasonably necessary to reduce the risk associated with large reloadable shells. Under this alternative, the AFSL standard under development would be relied upon to provide safety to the public. Potential product liability exposure may be a powerful incentive for manufactuers and importers to conform to such a standard; liability insurance coverage for large shells has reportedly already been cancelled by at least one major insurance company which had previously represented importers accounting for the vast majority of those products. It is also possible that states, localities, or other nations may enact laws restricting the sale or importation of some or all reloadable shells.

The potential effects of this alternative on estimated benefits and costs are described in the section on other standards, above. Although costs would be lowest under this option, it is uncertain whether any benefits would accrue to consumers. Although expected conformance to the performance and design provisions of AFSL #22 may be high if all firms participated, inventories of existing large shell devices produced in 1989 and 1990 would probably continue to be shipped to the U.S. despite the voluntary prohibition on shells larger than 1.75 inches, and at least one or two firms would probably continue to market large reloadable shells in significant numbers. It is concluded from the available information that voluntary conformance over time would probably not be high and that there is a greater likelihood that net benefits would accrue to consumers under the proposed amendment to the mandatory fireworks regulations.

J. Regulatory Flexibility Certification

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, agencies are generally required to prepared proposed and final regulatory flexibility analyses describing the impact of the rule on small businesses and other small entities, unless the head of the agency certifies that the rule will not, if promulgated, have a significant effect on a substantial number of small entities. The Commission staff has analyzed the potential effect of the proposed amendment on industry. Many of the roughly 100 importers of reloadable shells could be considered to be small firms in terms of sales and employment. Some domestic manufacturers may also be considered to be small, but no adverse impact on these companies is anticipated in connection with the proposal. Large reloadable shells constitute such a small share of most firms' sales that elimination of these products would likely have only a negligible effect on the sales revenues or the competitive position of individual firms.

Because most importers offer a range of fireworks devices and represent multiple foreign suppliers, and because several types of substitute devices would still be available if this proposal is finalized, any relative impact on importers' sales would likely be minimal. Potential effects on small firms would not be disproportionate to the effects on larger importers or domestic manufacturers. Thus, the Commission certifies that no significant adverse impact on a substantial number of small firms or entities would result from the proposed amendment.

K. Environmental Considerations

The Commission's regulations governing environmental review procedures provide that the amendment of rules or safety standards establishing design or performance requirements for products normally have little or no potential for affecting the human environment. See 16 CFR 1021.6(c)(1). The Commission does not foresee that this proposed amendment to the existing

fireworks regulations would involve any special or unusual circumstances that might alter this conclusion. Thus, the Commission concludes that no environmental assessment or environmental impact statement is required in this proceeding.

L. Effective Date

The rule will become effective 30 days from publication of the final rule in the **Federal Register** and will apply to reloadable shell fireworks devices with shells larger than 1.75 inches in outer diameter that are imported on or after that date.

List of Subjects in 16 CFR Part 1500

Consumer protection, Hazardous materials, Hazardous substances, Imports, Infants and children, Labeling, Law enforcement, and Toys.

Conclusion

For the reasons given above, the Commission proposes to amend title 16 of the Code of Federal Regulations as follows:

PART 1500—HAZARDOUS SUBSTANCES AND ARTICLES: ADMINISTRATION AND ENFORCEMENT REGULATIONS

1. The authority for part 1500 continues to read as follows:

Authority: 15 U.S.C. 1261–1276.

2. Section 1500.17 is amended to add a new paragraph (a)(11) to read as follows:

§ 1500.17 Banned hazardous substances.

(a) * * *

(11) Reloadable tube aerial shell fireworks devices that use shells larger than 1.75 inches in outer diameter.

Dated: February 8, 1991.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

Reference Documents

The following documents contain information relevant to this rulemaking proceeding and are available for inspection at the Office of the Secretary, Consumer Product Safety Commission, Room 420, 5401 Westbard Avenue, Bethesda, Maryland:

1. Memorandum from James Eisele, EPHA, to David Schmeltzer, AED, CA, dated October 19, 1990, Reloadable Shell Fireworks Injuries.
2. Memorandum from Dale R. Ray, ECPA, to John D. Rogers, CARN, dated November 28, 1990, entitled Regulatory Analyses of Proposed Fireworks Amendment.
3. Memorandum from Warren Mathers, EPHF, to John D. Rogers, CARM, dated October 23, 1990, entitled Reloadable Tube Aerial Shell Fireworks Incidents.
4. Memorandum from John R. Whitaker, HSHL, to John D. Rogers, dated October 19, 1990, entitled Laboratory and Field Analysis of Reloadable Shell Mortar Devices.
5. Letters dated February 22, 1990, and March 21, 1990, from the Drayton Insurance Brokers, Inc.
6. Letter dated March 10, 1990, from the American Pyrotechnics Association.
7. Memorandum from A. Esch, Health Sciences, to John D. Rogers, CARM, dated October 16, 1990, entitled Injuries Associated with Fireworks (Mortar Shells).
8. Memorandum from Warren K. Porter, Jr., Director, HSHL, to John Rogers, CARM, dated October 25, 1990, entitled Summary of the U.S. Bureau of Mines Testing Data on Reloadable Mortar Devices, and including Test Report from Bureau of Mines, entitled Evaluation of Reloadable Tube Aerial Shell Fireworks Devices.
9. Memorandum from Division of Regulatory Management, dated October 29, 1990, entitled Specific Performance Requirements for Reloadable Shells.
10. Briefing Package from John Rogers, Project Manager, to the Commission, November 13, 1990.
11. Memorandum from John Rogers, CARM, to the Commission, dated November 29, 1990, entitled Supplemental Memorandum to November 13, 1990 Reloadable Shell Fireworks Briefing Package.
12. Memorandum from John Rogers, CARM, to the Commission, dated January 14, 1991, entitled Responses to Questions Raised by Commissioners During Briefing on Reloadable Shell Fireworks Devices.
13. Memorandum from Dale R. Ray, ECPA, to John D. Rogers, CARM, dated January 23, 1991, entitled Reloadable Shell Fireworks: Changes to Draft **Federal Register** Notice of Proposed Rulemaking to Reflect Commission Vote on Kinetic Energy.

[FR Doc. 91–3617 Filed 2–14–91; 8:45 am]

BILLING CODE 6366–55–M

DEPARTMENT OF STATE

Bureau of Politico-Military Affairs

22 CFR Parts 120, 123, and 126

[Public Notice 1342]

Amendments to the International Traffic in Arms Regulations (ITAR)

AGENCY: Department of State.

ACTION: Proposed rule.

SUMMARY: This proposed rule would clarify and amend the regulations implementing section 38 of the Arms Export Control Act, which governs the export of defense articles and defense services. Specifically, it would make explicit certain limits on the definition of technical data; expand an existing exemption from licensing requirements for shipments by or for U.S. Government agencies; and create a new exemption for specialized packing cases for defense articles. This proposed rule is intended to reduce the burden on munitions exporters by clarifying when a license is needed to export technical data and by eliminating the need for prior U.S. Government approval for certain transactions.

DATES: Comments must be submitted on or before March 18, 1991.

ADDRESSES: Written comments should be sent to: Rose Biancaniello, Chief, Arms Licensing Division, Office of Defense Trade Controls, Department of State, Washington, DC 20520. Public comments will be made available for public inspection.

FOR FURTHER INFORMATION CONTACT: Rose Biancaniello, Chief, Arms Licensing Division, Office of Defense Trade Controls, Department of State, (703–875–6644).

SUPPLEMENTARY INFORMATION: This proposed rule amends the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120–130), which implement section 38 of the Arms Export Control Act (22 U.S.C. 2778). The amendment, which would clarify when a license is needed to export technical data and would eliminate licensing requirements for certain exports of defense articles, is one of a series of proposed ITAR changes intended to eliminate requirements on munitions exporters that are no longer necessary. Additional proposed rule changes are to be published shortly.

First, this amendment would revise the definition of technical data for purposes of the ITAR by making explicit that it does not include basic marketing information on function or purpose, or general system descriptions.

Second, this amendment would add packing cases specially designed to carry defense articles to the list of those items covered by the U.S. Munitiions List that are exempt from the licensing requirements of the ITAR.

Third, this amendment would relax the requirements that must be met before exporting defense articles for U.S. Government use abroad without an export license or a U.S. Government Bill of Lading. Specifically, it would remove the requirement that exporters certifiy that the urgency of the U.S. Government need is such that an appropriate export license or U.S. Government Bill of Lading could not have been obtained in a timely manner. In addition, this amendment would make clear that the exporter certification required whenever this exemption is used must be submitted to the Office of Defense Trade Controls at the same time as the

shipper's export declaration required under § 123.25(c).

This amendment involves a foreign affairs function of the United States and thus is excluded from the major rule procedures of Executive Order 12291 (46 FR 13193) and the procedures of 5 U.S.C. 553 and 554. Nevertheless, it is being published as a proposed rule in order to provide the public with an opportunity to comment and provide advice and suggestions regarding the proposal. The period for submission of comments will close 30 days after publication of this proposed rule. In addition, this rule affects collection of information subject to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and will serve to reduce the burden on exporters in that respect. The relevant information collection is to be reviewed by the Office of Management and Budget under control No. 1405-0013.

List of Subjects in 22 CFR Parts 120, 123, and 126

Arms and munitions, Classified information, Exports.

Accordingly, for the reasons set forth in the preamble, it is proposed that title 22, chapter I, subchapter M (consisting of parts 120 through 130) of the Code of Federal Regulation, be amended as set forth below:

PART 120—PURPOSE, BACKGROUND AND DEFINITIONS

1. The authority citation for part 120 continues to read as follows:

Authority: Sec. 38, Arms Export Control Act, 90 Stat. 744 (22 U.S.C. 2778); E.O. 11958, 42 FR 4311; 22 U.S.C. 2658.

2. In § 120.21, paragraph (c) is revised to read as follows:

§ 120-21 Technical data.

* * * * *

(c) Information, in any form, which is directly related to the design, engineering, development, production, processing, manufacture, use, operation, overhaul, repair, maintenance, modification, or reconstruction of defense articles. This includes, for example, information in the form of blueprints, drawings, photographs, plans, instructions, computer software and documentation. This also includes information which advances the state of the art of articles on the U.S. Munitions List. This definition does not include information concerning general scientific, mathematical or engineering principles. It also does not include basic marketing information on function or purpose or general system descriptions.

PART 123—LICENSES FOR THE EXPORT OF DEFENSE ARTICLES

3. The authority citation for part 123 continues to read as follows:

Authority: Sec. 38, Arms Export Control Act, 90 Stat. 744 (22 U.S.C. 2778); E.O. 11958, 42 FR 4311; 22 U.S.C. 2658.

4. In § 123.16, the first sentence of paragraph (b) is revised to read as follows:

§ 123.16 Obsolete firearms and models.

* * * * *

(b) District directors of customs may permit the export without a license of packing cases specially designed to carry defense articles and unclassified models or mock-ups of defense article, provided that such models or mock-ups are nonoperable and do not reveal any technical data in excess of that which is exempted from the licensing requirements of § 125.4(b). * * *

PART 126—GENERAL POLICIES AND PROVISIONS

5. The authority citation for part 126 continues to read as follows:

Authority: Sec. 38, Sec. 42, Arms Export Control Act, 90 Stat. 744 (22 U.S.C. 2778); E.O. 11958, 42 FR 4311; 22 U.S.C. 2658; Sec. 317, Comprehensive Anti-Apartheid Act of 1986 (22 U.S.C. 5067); E.O. 12571, 51 FR 39505.

6. In § 126.4, paragraph (c) is revised to read as follows:

§ 126.4 Shipments by or for United States Government agencies.

* * * * *

(c) A license is not required for the export of any defense article or technical data for end-use by a U.S. Government Agency under the following circumstances:

(1) The export is pursuant to a contract with, or written direction by, an agency of the U.S. Government; and

(2) The end-user is a U.S. Government agency or facility, and the defense articles or technical data will not be transferred to any foreign person.

A written statement certifying that these requirements have been met will be presented at the time of export to the appropriate district director of customs or Department of Defense transmittal authority, and shall be provided, along with a copy of the shipper's export declaration required under § 123.25(c) of this subchapter, to the Office of Defense Trade Controls.

Dated: January 2, 1991.

Charles A. Duelfer,

Director, Center for Defense Trade, Bureau of Politico-Military Affairs.

[FR Doc. 91-3657 Filed 2-14-91; 8:45 am]

BILLING CODE 4710-25-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 920

Maryland Permanent Regulatory Program; Ownership and Control Definitions; Improvidently Issued Permits

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing the receipt of proposed amendments to the Maryland permanent regulatory program (hereinafter referred to as the Maryland program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments concern proposed changes to the Code of Maryland Administrative Regulations (COMAR) and are intended to incorporate regulatory changes initiated by the State. The proposed amendments would define ownership and control, detail additional requirements concerning the reporting of violations and ownership and control data and the effect of that information on various permitting decisions, and provide criteria and procedures for the identification and rescission of improvidently issued permits.

This notice sets forth the times and locations that the Maryland program and proposed amendments to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on March 18, 1991. If requested, a public hearing on the proposed amendments will be held at 1 p.m. on March 12, 1991. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on March 4, 1991.

ADDRESSES: Written comments should be mailed or hand delivered to: Mr. James C. Blankenship, Jr., Director, Charleston Field Office, at the address listed below. Copies of the proposed amendments and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive, free of charge, one copy of the

proposed amendments by contacting OSM's Charleston Field Office.

Office of Surface Mining Reclamation and Enforcement, Charleston Field Office, 603 Morris Street, Charleston, West Virginia 25301, Telephone: (304) 347-7158.

Maryland Bureau of Mines, 69 Hill Street, Frostburg, Maryland 21532, Telephone: (301) 689-4136.

FOR FURTHER INFORMATION CONTACT: James C. Blankenship, Jr., Director, Charleston Field Office, telephone: (304) 347-7158.

SUPPLEMENTARY INFORMATION:

I. Background

On February 18, 1982, the Secretary of the Interior approved the Maryland program. Information regarding general background on the Maryland program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Maryland program can be found in the February 18, 1982, **Federal Register** (47 FR 7214-7217). Subsequent actions concerning amendments to the Maryland program are contained in 30 CFR 920.15 and 30 CFR 920.16.

II. Discussion of Proposed Amendments

On October 3, 1988, the Office of Surface Mining Reclamation and Enforcement published a final rule amending its regulations dealing with the permit approval process by adding definitions of the term "owns and controls" in 30 CFR part 773, and revised 30 CFR 773.15, to specify the review by the regulatory authority of the compliance record of the permit applicant and related parties with certain environmental laws which is required prior to the issuance of a permit for surface coal mining operations. The rule also amended the regulations governing the permitting process by expanding the scope of the review that must be made prior to the issuance of a permit concerning any willful pattern of violations (53 FR 38868-38890).

The regulation change was intended to secure greater compliance with SMCRA by preventing mining permits from being issued to persons who, either by themselves or through related persons, own or control violators of SMCRA. By letter dated May 11, 1989, OSM advised Maryland that three new rules had been promulgated which defined ownership and control, detail additional requirements concerning the reporting of violations and ownership and control data and the effect of that information on various permitting decisions, and provide criteria and procedures for the identification and recision of improvidently issued permits. A list of Maryland program changes determined necessary as a results of the new rules was also provided (Administrative Record No. MD-400).

On December 6, 1990, the Maryland Bureau of Mines (the Bureau) submitted the following proposed amendments to Maryland's federally approved program (Administrative Record No. MD-492).

COMAR 08.13.09.01B(58) is added to define the terms "owned or controlled" and "owns or controls" as they apply to anyone or a combination of the relationships specified herewith: (a)(i) being a permittee of a surface coal mining operation; (a)(ii) based upon instruments of ownership or voting securities; owning of record in excess of 50 percent of an entity; or; (a)(iii) having any other relationship which gives one authority directly or indirectly to determine manner of conduct of surface coal mining operations. The following relationships are presumed to constitute ownership or control unless it can be proven that the subject does not have the authority to directly or indirectly determine the manner in which the relevant surface coal mining operations is conducted: (6)(1) being an officer or director or entity; (6)(ii) being the operator of a surface coal mining operation; (b)(iii) having the ability to commit the financial or real property assets or working resources of an entity; (b)(iv) being a general partner in a partnership; (b)(v) based on the instruments of ownership or the voting securities of a corporate entity, owning of record 10 through 50 percent of the entity; or (b)(vi) owning or controlling coal to be mined by another person under a lease, sublease or other contract and; (a) having the exclusive right to receive such coal after mining; and (b) having authority to determine the manner in which that person or another person conducts a surface coal mining operation.

COMAR 08.13.09.02H is revised to require that permit applications be submitted on forms provided by the Bureau.

COMAR 08.13.09.02I is revised to note that the submission of a social security number in connection with a permit application is voluntary.

COMAR 08.13.09.02I(1) is revised to require that the mining application include social security numbers and employee identification numbers, as applicable, and that the person who will pay the abandoned mine land reclamation fee be identified.

COMAR 08.13.09.02I(3) is revised to delete certain requirements for business other than single proprietorships.

COMAR 08.13.09.02I(4) is deleted and replaced with the requirement that the application shall contain for each person who owns or controls the applicant under the definition in COMAR Regulation 01B(59):

(a) The person's name, address, social security number and employer identification number;

(b) The person's ownership or control relationship to the applicant, including percentage of ownership and location in organization structure;

(c) The title of the person's position and the date the position was assumed;

(d) Each additional name and identifying number, including employer identification number, Federal or State permit number, and MSHA number with date of issuance, under which the person owns or controls, or previously owned or controlled, a surface coal mining and reclamation operation in the United States within five years preceding the date of the application; and

(e) The application number or other identifier of, and the regulatory authority for, any other pending surface coal mining operation permit application filed by the person in any State in the United States.

COMAR 08.13.09.02I(5) is deleted and replaced with the requirement that for any surface coal mining operation owned or controlled by either the applicant or by any person who owns or controls the applicants, the operations:

(a) Name, address, identifying numbers, including employer identification number, Federal or State permit number and MSHA number, the date of issuance of the MSHA number, and the issuing regulatory authority; and

(b) Ownership and control relationship to the applicant, including percentage of ownership and location in the organizational structure.

COMAR 08.13.09.02I(11) is deleted and replaced with the requirement that each mining permit application contain for any violation of a provision of SMCRA or any law, rule or regulation of the U.S. or of any State law rule or regulation enacted pursuant to the Federal Law, rule or regulation pertaining to air or water environmental protection incurred in connection with any surface coal mining operation, a list of all violations, notices received by the applicant during the three year period preceding the application date, and a list of all unabated cessation orders and unabated air and water quality violation notices received prior to the date of the application by any surface coal mining

operation owned or controlled by either the applicant or by any person who owns or controls the applicant. For each violation notice or cessation order the lists shall include the following information, as applicable:

(a) Any identifying numbers for the operation, including the Federal or State permit number and MSHA number, the dates of issuance of the violation notice and MSHA number, the name of the person to whom the violation notice was issued, and the name of the issuing regulatory authority, department or agency;

(b) A brief description of the violation alleged in the notice;

(c) The date, location and type of any administrative or judicial proceedings initiated concerning the violation;

(d) The current status of the proceeding and of any violation notice; and

(e) The actions taken to abate the violation.

COMAR 08.13.09.04L(2) is deleted and replaced with the requirement that, based upon available information, the Bureau shall not issue a permit if any surface coal mining and reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant is currently in violation of the Regulatory Program, or any other law, rule or regulation referred to in this subsection.

COMAR 08.13.09.04L(3) is deleted and replaced with the requirement that if a current violation exists under subsection (2) of this section, the Bureau shall require the applicant or any person who owns or controls the applicant, prior to issuance of the permit to:

(a) Submit proof that the current violation has been or is in the process of being corrected to the satisfaction of the agency that has jurisdiction over the violation; or

(b) Submit to the Bureau proof that the applicant or any person owned or controlled by either the applicant or any person who owns or controls the applicant, has filed and is presently pursuing in good faith, a direct administrative or judicial appeal to contest the validity of the current violation. If the initial judicial review affirms the violation, then the applicant shall within 30 days of the judicial action submit the proof required under paragraph (3)(a) of this subsection.

Existing COMAR 08.13.09.04L(4) is renumbered 08.09.04L(6) and COMAR 08.13.09.04L(5) is renumbered 08.13.09.04L(7).

COMAR 08.13.09.04L(4) is added to require that any permit that is issued on the basis of proof submitted under subsection (3) of this section be conditionally issued.

COMAR 08.13.09.04L(5) is added to require that if the Bureau makes a determination that the applicant anyone who owns or controls the applicant, or the operator specified in the application, controls or has controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violations of such nature and duration, and with resulting irreparable damage to the environment as to indicate an intent not to comply with the provisions of the regulatory program, no permit be issued. The applicant or the operator is afforded an opportunity for an adjudicatory hearing on the determination as provided in Regulation .06.

In COMAR 08.13.09.04M(1) subpart (c) is renamed (d).

COMAR 08.13.09.04M(1)(c) is added to require that the notice of intent to issue the requested permit contain, among other things, a requirement for the applicant to update, correct or indicate that no change has occurred in the information previously submitted in the application.

Existing COMAR 08.13.09.04M (4) through (7) are renumbered COMAR 08.13.09.04M (5) through (8).

COMAR 08.13.09.04M(3) is added to require that prior to issuing the permit, the Bureau shall reconsider its decision to approve the application based on the review required by section L(2) and (3) of this regulation in light of any new information submitted under subsection (1)(c) of this section.

COMAR 08.13.09.05D(9) is added to require that within 30 days after a cessation order is issued, for a violation which creates an imminent danger to the health or safety of the public, is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources, or for failure to abate a violation within the time limits set in the order, for operations conducted under the permit, except where a stay of the cessation order is granted and remains in effect, the permittee shall either submit to the Bureau the following information, current to the date the cessation order was issued, or notify the Bureau in writing that there has been no change since the immediately preceding submittal of such information:

(a) Any new information needed to correct or update the information previously submitted to the Bureau under COMAR Regulation .02I(4), including the date of departure from the position, if applicable; or (b) if not previously submitted, the information required from a permit applicant under COMAR Regulation .02I(4).

COMAR 08.13.09.05E, "Improvidently Issued Permits: General Procedures," is added. COMAR 08.13.09.05E(1) requires the Bureau to review the circumstances under which a surface coal mining permit was issued if it believes it to be improvidently issued. The Bureau shall use the criteria of subsection (2) in the review and if the permit is found to be improvidently issued, it shall comply with subsection (3).

COMAR 08.13.09.05E(2) requires that the Bureau find a surface coal mining and reclamation permit improvidently issued if:

(a) Under the violations review criteria of the regulatory program at the time the permit was issued:

(i) The Bureau should not have issued the permit because of an unabated violation or a delinquent penalty or fee; or

(ii) The permit was issued on the presumption that a notice of violation was in the process of being corrected to the satisfaction of the agency with jurisdiction over the violation, but a cessation order subsequently was issued; and

(b) The violation, penalty or fee:

(i) Remains unabated or delinquent; and

(ii) It is not the subject of a good faith appeal, or of an abatement plan or payment schedule with which the permittee or other person responsible is complying to the satisfaction of the responsible agency; and

(c) Where the permittee was linked to the violation, penalty or fee through ownership or control, under the violations review criteria of the regulatory program at the time the permit was issued:

(i) An ownership or control link between the permittee and the person responsible for the violation, penalty or fee still exists; or

(ii) Where the link was severed the permittee continues to be responsible for the violation, penalty or fee.

COMAR 08.13.09.05E(3) requires that if the Bureau finds that a permit was improvidently issued, one or more of the following remedial measures will be used by the Bureau:

(a) Implement a plan for abatement of the violation or schedule for payment of the penalty or fee;

(b) Impose a permit condition requiring that in a reasonable period of time the permittee or other person responsible abate the violation or pay the penalty or fee;

(c) Suspend the permit until the violation is abated or the penalty or fee is paid; or

(d) Rescind the permit under Section F of this regulation.

COMAR 08.13.09.05F, "Improvidently Issued Permits: Rescission Procedures," is added. COMAR 08.13.09.05F(1) requires that if the Bureau, under subsection E(3)(d), elects to rescind an improvidently issued permit, the Bureau shall serve on the permittee a notice of proposed suspension and rescission which includes the reasons for the finding under section E(2) and states that:

(a) After a specified period of time not to exceed 90 days, the permit automatically will become suspended, and not to exceed 90 days thereafter rescinded unless the permittee submits proof and the regulatory authority finds that:

(i) The Bureau finding was erroneous;

(ii) The permittee or other person responsible has abated the violation on which the finding was based or paid the penalty or fee to the satisfaction of the responsible agency;

(iii) The violation, penalty or fee is the subject of a good faith appeal, or of an abatement plan or payment schedule with which the permittee or other person responsible is complying to the satisfaction of the responsible agency; or

(iv) Since the finding was made the permittee has severed any ownership or control link with the person responsible for the does not continue to be responsible for the violation, penalty or fee;

(b) After suspension or rescission, the permittee shall cease all surface coal mining and reclamation operations under the permit, except for violation abatement and for reclamation and other environmental protection measures as required by the Bureau; and

(c) The permittee may file an appeal for administrative review of the notice in accordance with COMAR Regulation .06.

COMAR 08.13.09.40G(10) is added to require that within 60 days after issuance of a cessation order under subsection (1)(b), (1)(c) and (2) of this section, the Bureau notify in writing any person who has been identified under COMAR Regulations 05D(9), 02I(4) and 02I(5) as owning or controlling the permittee, that the cessation order was issued and that the person has been identified as an owner or controller.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(b), OSM is now seeking comments on whether the amendments proposed by Maryland satisfy the applicable program approval criteria of 30 CFR 732.17. If the amendments are deemed adequate, they will become part of the Maryland program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Charleston Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **"FOR FURTHER INFORMATION CONTACT"** by 4 p.m. on March 4, 1991. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the OSM office listed under **"ADDRESSES"** by contacting the person listed under **"FOR FURTHER INFORMATION CONTACT."** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations under **"ADDRESSES."** A written summary of each meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 920

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: February 6, 1991.

Carl C. Close,

Assistant Director, Eastern Support Center.

[FR Doc. 91-3693 Filed 2-14-91 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 935

Ohio Permanent Regulatory Program; Revision of Administrative Rules and the Ohio Revised Code

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening of public comment period.

SUMMARY: OSM is reopening the public comment period on Revised Program Amendment No. 41 to the Ohio permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). This amendment concerns ownership and control of mining operations, the identification and rescission of improvidently issued mining permits, enforcement of notices and orders, and public inspection of permit applications.

OSM announced its receipt of the initial version of the proposed amendment in the **Federal Register** on July 13, 1990 (55 FR 28779). In that proposed rule notice, OSM inadvertently omitted specific discussion of three of the proposed changes to the Ohio program. This proposed rule notice is intended to identify those three proposed changes and to provide an opportunity for public comment on those changes.

This notice sets forth the times and locations that the Ohio program and proposed amendments to that program will be available for public inspection and the comment period during which interested persons may submit written comments on the three proposed changes to the Ohio program.

DATES: Written comments must be received on or before 4 p.m. on March 4, 1991 to ensure consideration in the rulemaking process. If requested, a public hearing on the amendment will be held at 9 a.m. on February 25, 1991. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on February 22, 1991.

ADDRESSES: Written comments should be mailed or hand-delivered to Mr. Richard J. Seibel, Director, Columbus Field Office, at the address listed below. Copies of the Ohio program, the proposed amendments, and all written

comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendments by contacting OSM's Columbus Field Office.

Office of Surface Mining Reclamation and Enforcement, Columbus Field Office, 2242 South Hamilton Road, room 202, Columbus, Ohio 43232, Telephone: (614) 866-0578.

Ohio Department of Natural Resources, Division of Reclamation, 1855 Fountain Square Court, Building H, Columbus, Ohio 43224, Telephone: (614) 265-6675.

FOR FURTHER INFORMATION CONTACT: Mr. Richard J. Seibel, Director, Columbus Field Office, (614) 866-0578.

SUPPLEMENTARY INFORMATION:

I. Background

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1982 **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Discussion of the Proposed Amendments

By letter dated May 11, 1989 (Administrative Record No. OH-1332), the Director of OSM notified the Ohio Department of Natural Resources, Division of Reclamation (Ohio) that OSM had recently promulgated three new Federal rules. These new Federal rules define ownership and control, specify the effect of ownership and control information on the issuance of permits and the reporting of violations, and provide criteria and procedures for the identification and rescission of improvidently issued mining permits. The Director required that Ohio modify its regulatory program to remain consistent with the new Federal requirements.

By letter dated June 25, 1990 (Administrative Record No. OH-1333), Ohio submitted proposed Program Amendment No. 41 which was intended to satisfy the requirements in the Director's letter of May 11, 1989. OSM announced receipt of the proposed amendment in the July 13, 1990 **Federal Register** (55 FR 28779), and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period ended on August 13, 1990. The public hearing scheduled for August 7, 1990 was not held because no one requested an opportunity to testify. On October 11, 1990, OSM sent its comments to Ohio on the proposed amendment (Administrative Record No. OH-1382). In response to OSM's letter, Ohio submitted Revised Program Amendment No. 41 on November 15, 1990 (Administrative Record No. OH-1411).

In the proposed rule notice of July 13, 1990, concerning Program Amendment No. 41 (55 FR 28779), OSM inadvertently omitted specific discussion of three of the changes to the Ohio Program proposed in Program Amendment No. 41. This proposed rule notice is intended to identify those three proposed changes and to provide an opportunity for public comment on those changes. Revised Program Amendment No. 41 did not alter the three changes proposed in the initial amendment which are the subject of this proposed rule notice.

The three changes initially proposed in Program Amendment No. 41 and omitted from OSM's proposed rule notice are briefly discussed below:

1. OAC Section 1501:13-5-01 paragraph (E)(8)

Ohio is revising this paragraph to delete the requirement that, for approval of permit applications, applicants must submit proof that all reclamation fees required under Chapter 1513. of the Ohio Revised Code (ORC) and under section 1501. of the Ohio Administrative Code (OAC) have been paid for coal produced from previous and existing mining operations.

2. OAC Section 1501:13-5-01 paragraph (F)

Ohio is adding this new paragraph to provide that after a mining application is approved, but before the permit is issued, the Chief of the Ohio Department of Natural Resources, Division of Reclamation, shall reconsider his/her decision to approve the application in light of any new information submitted by the applicant under OAC section 1501:13-4-03(B)(11) and (C)(5). This information concerns the identity and violation history of the applicant and any persons who own or control the applicant.

3. OAC Section 1501:13-5-01 paragraph (H)(5)

Ohio is revising this paragraph to delete the requirement that mining permits shall contain a provision requiring that applicants shall pay all reclamation fees required under ORC chapter 1513. and under OAC section 1501. for coal produced under the permit.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendments proposed by Ohio satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Ohio program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Columbus Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

List of Subjects in 30 CFR Part 935

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: January 30, 1991.

David G. Simpson,

Acting Assistant Director, Eastern Support Center.

[FR Doc. 91-3691 Filed 2-14-91; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 948

West Virginia Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening and extension of public comment period on proposed amendment.

SUMMARY: OSM is announcing the receipt of revisions to a previously proposed amendment to the West Virginia permanent regulatory program (hereinafter referred to as the West Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). In accordance with 30 CFR 732.17(h), OSM is reopening the comment period to allow the public sufficient time to consider and comment

on modifications (Administrative Record No. WV 857) submitted by West Virginia on December 17, 1990, to an amendment which was initially submitted by the State on June 29, 1990. The revised amendment is in response to OSM's issue letters of October 11, and November 16, 1990, and is intended to make the requirements of West Virginia's program no less effective than the Federal program. The revised amendment contains modifications relating to definitions, sediment control structures, completion of reclamation, multiple-seam mining, excess spoil fills, underdrains and coal refuse disposal.

This notice sets forth the times and locations that the West Virginia program and the revised proposed amendment to that program are available for public inspection and the public comment period during which interested persons may submit additional written comments on the revised proposed amendment.

DATES: Written comments must be received on or before 4 p.m. on March 4, 1991.

ADDRESSES: Written comments should be mailed or hand delivered to the Office of Surface Mining Reclamation and Enforcement, Charleston Field Office, Attention: West Virginia Administrative Record, 603 Morris Street, Charleston, West Virginia 25301.

Copies of the revised proposed amendment (Administrative Record No. WV 857), the initial amendment, the West Virginia program, and the administrative record on the West Virginia program are available for public review and copying at the OSM office and the office of the State regulatory authority listed below, Monday through Friday, 9 a.m. to 4 p.m., excluding holidays.

Office of Surface Mining Reclamation and Enforcement, Charleston Field Office, 603 Morris Street, Charleston, West Virginia 25301, Telephone: (304) 347-7158.

West Virginia Department of Commerce, Labor and Environmental Resources, Division of Energy, 1615 Washington Street, East, Charleston, West Virginia 25311, Telephone: (304) 348-3500.

In addition, copies of the revised proposed amendment are available for public inspection during regular business hours at the following locations:

Office of Surface Mining Reclamation and Enforcement, Morgantown Area Office, 75 High Street, room 229, Morgantown, West Virginia 26505, Telephone: (304) 291-4004.

Office of Surface Mining Reclamation and Enforcement, Beckley Area Office, 101 Harper Park Drive, Beckley, West Virginia 25801, Telephone: (304) 255-5265.

Each requester may receive one free copy of the revised proposed amendment by contacting the OSM Charleston Field Office.

FOR FURTHER INFORMATION CONTACT: Mr. James C. Blankenship, Jr., Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement; 603 Morris Street, Charleston, West Virginia 25301, Telephone (304) 347-7158.

SUPPLEMENTARY INFORMATION:

I. Background on the West Virginia Program

On January 21, 1981, the Secretary of the Interior conditionally approved the West Virginia program. Information concerning the general background of the West Virginia program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the initial conditions of the approval of the West Virginia program can be found in the January 21, 1981, **Federal Register** (46 FR 5915-5956). Subsequent actions concerning the conditions of approval and previous program amendments are codified at 30 CFR 948.10, 948.12, 948.13, 948.15, and 948.16.

II. Discussion of Proposed Amendment

On May 23, 1990, the Secretary of the Interior announced in the **Federal Register** his decision to approve, with certain exceptions, West Virginia's Surface Mining Reclamation Regulations (title 38, Series 2) as submitted on April 26, 1989, and revised on December 19, 1989, and February 7, 1990 (55 FR 21304-21340). The notice which summarizes the comments received on the State's revised regulations and the Secretary's disposition of those comments was published in the **Federal Register** on June 12, 1990 (55 FR 23703-23728).

As explained in the May 23, 1990, **Federal Register** notice, the Secretary found thirty-six provisions in West Virginia's revised regulations to be less effective than the corresponding Federal requirements. Because seven of those provisions could cause immediate environmental and enforcement problems, the Secretary required the State to submit amendments to those provisions by June 29, 1990. The remaining twenty-nine required amendments are to be submitted by April 30, 1991. In addition, the Secretary did not approve twelve specific provisions in the State's revised regulations. Because of that action, none of the disapproved provisions are enforceable by the State.

On June 21, 1990, OSM provided the State copies of the May 23 and June 12, 1990, **Federal Register** notices (Administrative Record No. WV 844). In addition to submitting the seven required amendments by June 29, 1990, OSM advised the West Virginia Division of Energy that approximately fifteen modifications had been made to its regulations by the West Virginia Legislature subsequent to its February 7, 1990, submission which would also have to be submitted to OSM for approval.

On June 29, 1990, pursuant to 30 CFR 948.16, the West Virginia Division of Energy submitted revisions to its Surface Mining Reclamation Regulations to satisfy seven of the thirty-six inconsistencies identified in its regulations on May 23, 1990 (Administrative Record No. WV 845). The revisions pertained to the State's definitions of downslope, embankment, impoundment and prospecting; the design, construction, maintenance, abandonment, certification and inspection of bench control systems and completely incised sediment control structures; the removal of organic material from the critical foundation areas of excess spoil disposal fills; and the construction of diversion channels to divert run-off from areas adjacent to and above both valley fills constructed with rock core chimney drains and durable rock fills.

The Division of Energy also submitted modifications to its regulations relating to applicant violation information, the removal of abandoned coal refuse disposal piles, geologic information, transfer assignment or sale of permit rights, incidental boundary revisions, permit findings and conditions, the final planting report, bond forfeiture sites, the application for small operator assistance, and inspection frequencies. These sixteen modifications were made by the West Virginia Legislature subsequent to the Division of Energy's February 7, 1990, program amendment submission that was partially approved on May 23, 1990.

In addition to the required amendments and the legislative modifications, the Division of Energy revised its regulations to correct a number of clerical or editorial errors concerning the definition of bench control system, maps, the removal of abandoned coal refuse disposal piles, sediment control structures, blasting, liability insurance, prospecting, inactive status, durable rock fills, remining and coal refuse disposal. The Division of Energy also submitted rationale to

support alternative proposals relating to spoil disposal involving multiple seam mining operations in steep slope areas and the construction of diversion channels across excess spoil disposal fills.

On August 7, 1990, OSM published a notice in the **Federal Register** soliciting public comments on the State's proposed amendment of June 29, 1990, to determine whether the modifications were no less effective than the Federal regulations and no less stringent than SMCRA (55 FR 32102–32103). The public comment period closed on September 6, 1990 (Administrative Record No. WV 850). The public hearing scheduled for August 27, 1990, was not held because no one requested an opportunity to testify.

By letter dated October 11, 1990, OSM notified the State that certain proposed revisions contained in its June 29, 1990, submission were found to be less effective than the Federal requirements (Administrative Record No. WV 854). At the State's request, OSM delayed final rulemaking on its June 29, 1990, amendment to allow West Virginia an opportunity to submit revised modifications.

On November 16, 1990, OSM provided the State comments concerning its proposed steep slope, multiple-seam mining requirements (Administrative Record No. WV 854A). This letter was a follow-up to OSM's initial issue letter of October 11, 1990, and contained recommendations which, if adopted, would make the proposed State rules no less effective than the Federal requirements.

By letter dated November 30, 1990, the Division of Energy acknowledged receipt of OSM's issue letters of October 11, and November 16, 1990, and requested that a meeting by scheduled for December 6, 1990, to discuss OSM concerns (Administrative Record No. WV 856). As requested, a meeting was held on December 6, 1990. The primary topic of discussion was OSM's issue letter of November 16, 1990, relating to multiple-seam mining.

By letter dated December 17, 1990, West Virginia submitted revisions to its initial program amendment of June 29, 1990 (Administrative Record No. WV 857). In addition, the State advised OSM that the proposed rules were being submitted to the West Virginia Legislature for approval as final rules, and, given the late date, promulgation of the proposed modifications as emergency regulations would be problematic resulting in confusion and possible complication of the legislative rulemaking process. The revised proposed amendment contains modifications concerning the definition of bench control systems, down slope and prospecting; the design, construction, certification, inspection and abandonment of sediment control structures and permanent impoundments; the completion of reclamation; the gravity transport of spoil on steep slope multiple-seam mining operations; the construction of diversion channels to divert run-off from areas above and adjacent to both valley fills constructed with rock core chimney drains and durable rock fills; the construction of under drains in durable rock fills; the construction and maintenance of coal refuse disposal sites; and the slope design requirements for coal refuse disposal sites.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is reopening the comment period on West Virginia's revised program amendment to provide the public an opportunity to reconsider the adequacy of the revisions. Specifically, OSM is seeking comments on the revisions to the State's Surface Mining Reclamation Regulations, title 38, Series 2, that were submitted on December 17, 1990 (Administrative Record No. WV 857). OSM is seeking comments on whether the revised proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If approved, the amendment will become part of the West Virginia permanent regulatory program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the OSM Charleston Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

List of Subjects in 30 CFR Part 948

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: February 5, 1991.

Carl C. Close,

Assistant Director, Eastern Support Center.

[FR Doc. 91–3692 Filed 2–14–91; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR PART 61

[FRL-3905-8]

National Emission Standards for Hazardous Air Pollutants

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rule.

SUMMARY: Today EPA proposes to stay the effectiveness of subpart I of 40 CFR part 61, the National Emission Standards for Hazardous Air Pollutants for Radionuclide Emissions (54 FR 51654, December 15, 1989) as applied to NRC-licensed facilities other than nuclear power reactors. In a future related action, EPA intends to propose to rescind subpart I as it is applied to nuclar power reactors and to stay subpart I for those facilities during the pendency of that rulemaking. These actions would supplant for such facilities the stay originally granted by the Administrator pursuant to Clean Air Act section 307(d)(7)(B), 42 U.S.C. 7607(d)(7)(B), and subsequently extended on March 15, 1990 (55 FR 10455, March 21, 1990), July 122, 1990 (55 FR 29205, July 18, 1990), and September 10, 1990. (55 FR 38057, September 17, 1990).

DATES: EPA proposes to stay the effectiveness of subpart I of 40 CFR part 61 for all NRC-licensed facilities except for nuclear power reactors from March 9, 1991 until November 15, 1992, or until such earlier date that EPA is prepared to make an initial determination under Clean Air Act section 112(d)(9) and conclude its reconsideration under section 307(d)(7)(B). Comments concerning the proposed stay must be received by EPA on or before February 22, 1991. A hearing concerning the proposal will be held in Washington, DC on February 25, 1991 if a request for such a hearing is received by February 21, 1991. For the location of the hearing, please contact Al Colli at (703) 308–8787.

ADDRESSES: Comments should be submitted (in duplicate if possible) to: Central Docket Section LE–131, Enviromental Protection Agency, Attn: Docket No. A–79–11, Washington, DC 20460. Requests to participate in the hearing should be made in writing to the Director, Criteria and Standards Division, ANR–460W, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Comments and requests to participate in the hearing may also be faxed to the EPA at (703) 308–8763.

FOR FURTHER INFORMATION CONTACT: Al Colli, Environmental Standards Branch, Criteria and Standards Division (ANR-460W), Office of Radiation Programs, Environmental Protection Agency, Washington, DC 20460, (703) 308-8787.

SUPPLEMENTARY INFORMATION:

A. Background

On October 31, 1989, EPA promulgated under section 112 of the Clean Air Act, 42 U.S.C. 7412, National Emission Standards for Hazardous Air Pollutants (NESHAPs) controlling radionuclide emissions to the ambient air from several source categories, including emissions from Licensees of the Nuclear Regulatory Commission (NRC) and Non-DOE Federal Facilities (subpart I, 40 CFR part 61). This rule was published in the **Federal Register** on December 15, 1989 (54 FR 51654). At the same time as the rule was promulgated, EPA granted reconsideration of subpart I based on information received late in the rulemaking on the subject of duplicative regulation by NRC and EPA and on potential negative effects of the standard on nuclear medicine. EPA established a comment period to receive further information on these subjects, and also granted a 90-day stay on subpart I as permitted by Clean Air Act section 307(d)(7)(B), 42 U.S.C. 7607(d)(7)(B). That stay expired on March 15, 1990.

EPA subsequently extended the stay of the effective date of subpart I on several occasions, pursuant to the authority provided by section 10(d) of the Administrative Procedure Act (APA), 5 U.S.C. 705, and section 301(a) of the Clean Air Act, 42 U.S.C. 7601(a). (55 FR 10455, March 21, 1990; 55 FR 29205, July 18, 1990; and 55 FR 38057, September 17, 1990). The most recent of these stays will expire on March 9, 1991.

B. Proposed Stay

EPA today proposes to stay the effectiveness of subpart I of 40 CFR part 61 for all NRC-lciensed facilities except nuclear power reactors. This stay also will not apply to facilities not licensed by the NRC or an agreement state. This partial stay of subpart I is necessary in order to provide the Agency time to collect the additional information required to make an initial determination pursuant to a new provision added to section 112 by the 1990 amendments to the Clean Air Act. New section 112(d)(9) provides.

> No standard for radionuclide emissions from any category or subcategory of facilities licensed by the Nuclear Regulatory Commission (or an Agreement State) is reqired to be promulgated under this section if the Administrator detrmines, by rule, and after consultation with the Nuclear Regulatory Commission, that the regulatory program established by the Nuclear Regulatory Commission pursuant to the Atomic Energy Act for such category or subcategory provides an ample margin of safety to protect the public health.

For certain categories of NRC-licensed facilities, EPA is concerned that the information presently available to EPA may not be adequate to enable the Agency to determine whether or not the regulatory program established by NRC is sufficient to provide "an ample margin of safety to protect the public health," as that term is used in section 112 of the Clean Air Act.

At the time that EPA issued its most recent stay of subpart I, EPA anticipated that a review of the comments received during the comment period for reconsideration would yield sufficient emissions information to enable the Agency to determine those NRC-licensed facilities (if any) for which additional regulation under subpart I is necessary to provide an ample margin of safety. However, after reviewing the information received during the comment period for reconsideration, EPA has concluded that there still remains a gap in information concerning certain types of NRC-licensed facilities. EPA has also concluded that it is unlikely that the required information can be obtained solely by soliciting further comments from the affected facilities.

In addition to consultation with the NRC, EPA now believes that it is essential to specifically require submission of additional information from a representative subset of affected facilities pursuant to section 114 of the Clean Air Act. Due to the time required for individual facilities to compile and submit the required information and for EPA to collate and analyze the data, EPA anticipates that it could take until November 1992 before EPA has sufficient information to make a determination for these facilities. EPA is therefore proposing to stay the effectiveness of subpart I for NRC-licensed facilities other than nuclear power reactors until November 15, 1992, or until such earlier date that EPA is prepared to make an initial determination under Clean Air Act section 112(d)(9) and conclude its reconsideration under section 307(d)(7)(B). If EPA determines that the NRC regulatory program for a particular type of facility affords an ample margin of safety under section 112 of the Clean Air Act, EPA will conclude its reconsideration and propose to rescind subpart I as it applies to that type of facility. If EPA determines that retention of subpart I is required to afford an ample margin of safety for a particular type of NRC-licensee, EPA will conclude the reconsideration by dissolving the stay and permitting the standard to take effect as it applies to that type of facility.

EPA notes that section 112(q)(4) of the Clean Air Act Amendments also stays the applicability of subpart I as applied to facilities engaged in medical research or treatment. This Congressionally mandated stay will expire in November 1992, or at such time that the Administrator makes a determination pursuant to a rulemaking under section 112(d)(9).

EPA invites comments concerning the proposed stay of the effectiveness of subpart I, and specifically seeks comment on the issue of whether or not EPA has sufficient substantive information to make the determination concerning NRC-licensed facilities contemplated by section 112(d)(9).

C. Facilities Not Affected By the Proposed Stay

1. Nuclear Power Reactors

EPA has received sufficient information concerning the health risks from nuclear power reactors and NRC's regulatory program which controls those risks to make an initial determination under section 112(d)(9). For this category of NRC-licensed facilities, EPA intends to conclude its reconsideration and to issue a proposal to rescind subpart I as it applies to such facilities. EPA will also stay the effectiveness of subpart I for nuclear power reactors during the pendency of the rulemaking process.

2. Non-DOE Federal Facilities

EPA's reconsideration of subpart I covered all categories of facilities subject to the standard, including Federal facilities not licensed by NRC and not operated by DOE ("non-DOE Federal facilities"). EPA granted reconsideration on the limited issues of duplication of effort by EPA and NRC and potential negative impacts of the standard on the medical community. EPA has concluded that these factors do not apply to Federal facilities not licensed by NRC. Therefore, the determination concerning the adequacy of the NRC regulatory program contemplated by the new language in

section 112(d)(9) cannot apply to such facilities. Accordingly, the additional stay of the effectiveness of subpart I which EPA is today proposing will not apply to non-DOE federal facilities that are not licensed by NRC. Effective March 9, 1991, subpart I of 40 CFR part 61 will go into effect as applied to Federal facilities not licensed by NRC and not operated by DOE.

D. Miscellaneous

1. Paperwork Reduction Act

There are no information collection requirements in this proposed rule. As previously discussed, the Agency intends to issue section 114 letters to a representative sample of facilities and the appropriate documents will at that time be submitted to OMB.

2. Executive Order 12291

Under Executive Order 12291, EPA is required to judge whether this regulation is a "major rule" and therefore subject to certain requirements of the Order. The EPA has determined that issuing a stay for Subpart I will result in none of the adverse economic effects set forth in section I of the Order as grounds for finding a regulation to be a "major rule." This regulation is not major because the nationwide compliance costs do not meet the $100 million threshold, the regulation does not significantly increase prices or production costs, and the regulation does not cause significant adverse effects on domestic competition, employment, investment, productivity, innovation or competition in foreign markets.

The Agency has not conducted a Regulatory Impact Analysis (RIA) of this proposed regulation because this action does not constitute a major rule.

3. Regulatory Flexibility Analysis

Section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603, requires EPA to prepare and make available for comment an "initial regulatory flexibility analysis" which describes the effect of the proposed rule on small business entities. However, section 604(b) of the Act provides that an analysis not be required when the head of an Agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.

This proposed rule to stay 40 CFR part 61 subpart I, if promulgated, will have the effect of easing the burdens associated with the provisions of subpart I and for those reasons, I certify that this rule will not have significant economic impact on a substantial number of small entities.

Dated: February 12, 1991.

William K. Reilly,

Administrator.

[FR Doc. 91-3782 Filed 2-14-91; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Federal Insurance Administration

44 CFR Part 67

[Docket No. FEMA-7006]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a notice of proposed determinations of base (100-year) flood elevations previously published at 55 FR 48641 on November 21, 1990. This correction notice provides a more accurate representation of the Flood Insurance Study and Flood Insurance Rate Map for the Unincorporated Areas of Kingfisher County, Oklahoma.

FOR FURTHER INFORMATION CONTACT: William R. Locke, Acting Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2754.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the correction to the Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in the Unincorporated Areas of Kingfisher County, Oklahoma, previously published at 55 FR 48646 on November 21, 1990, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR Part 67.

List of Subjects in 44 CFR Part 67

Flood insurance, Floodplains.

On page 48646, in the November 21, 1990 issue of **Federal Register**, the entry for Cimarron River under Kingfisher County (Unincorporated Areas) in Oklahoma, is corrected to read as follows:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Cimarron River:	
Approximately 1,750 feet downstream of U.S. Route 81	*1,024
Approximately 1.7 miles upstream of confluence of Turkey Creek at low flow	*1,037

Issued: February 7, 1991.

C.M. "Bud" Schauerte,

Administrator Federal Insurance Administration.

[FR Doc. 91-3612 Filed 2-14-91; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB52

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for the Plant Xyris tennesseensis (Tennessee Yellow-Eyed Grass)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to list a plant, *Xyris tennesseensis* (Tennessee yellow-eyed grass), as an endangered species under the authority contained in the Endangered Species Act (Act) of 1973, as amended. *Xyris tennesseensis* is currently believed extant at only seven sites—five in Tennessee and one each in Alabama and Georgia. All sites occupy less than an acre in area. Three populations have been lost and four of the remaining populations have delined in recent years from habitat modification associated with agricultural and silvicultural uses, road construction/maintenance, over-collecting and succession. This proposed rule, if made final, will extend the Act's protection to *Xyris tennesseensis*. The Service seeks data and comments from the public on this proposed rule.

DATES: Comments from all interested parties must be received by April 16, 1991. Public hearing requests must be received by April 1, 1991.

ADDRESSES: Comments and materials concerning the proposal should be sent to the U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, Suite A,

Jackson, Mississippi 39213. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Cary Norquist at the above address (601/965-4900 or FTS 490-4900)

SUPPLEMENTARY INFORMATION:

Background

Xyris tennesseensis, a species of yellow-eyed grass in the family Xyridaceae, is a perennial which ranges from 7 to 10 decimeters (2.3 to 3.3 feet) in height. Plants typically occur in clumps where they arise from fleshy bulbous bases. Leaves are basal, the outermost scale-like, the larger ones linear, twisted, deep green and 14 to 45 centimeters (cm) (5.5 to 17.7 inches) long. The inflorescene consists of brown conelike spikes, 1 to 1.5 cm (0.4 to 0.6 inch) in length, which occur singly at the tips of long slender stalks from 30 to 70 cm (1 to 2 feet) long. The flowers, which are pale yellow in color and 4.5 millimeters (mm) (0.2 inch) long, unfold in the late morning and wither by mid-afternoon. Fruits are thin walled capsules containing numerous seeds 0.5 to 0.6 mm (0.02 inch) in length. Flowering occurs from August through September (Kral 1978, 1983, 1990).

Xyris tennesseensis superficially resembles *X. torta*, one of the few xyrids with which it is sympatric. However, *X. torta* differs in its strongly ribbed leaves and more curved and ciliate (rather than lacerate) lateral sepals. Taxonomically, *Xyris tennesseensis* is closest to the *X. difformis* complex. In that complex, the leaves are flatter and fanlike, bases are non-bulbous and their seed sculpture is different (Kral 1983, 1990).

Kral (1978) described *X. tennesseensis* during the course of a study on Xyridaceae, based on an examination of a 1945 specimen (identified as *Xris caroliniana*) from Lewis County, Tennessee, and more recent collections from that county and northwest Georgia. Extensive surveys were conducted for this species during the 1988 and 1989 field seasons (Kral 1990). Three of the original sites no longer supported populations of this *Xyris* and only one new population was located. Currently only seven populations are known to be extant, consisting of five sites in Lewis County, Tennessee, and one site each in Bartow County, Georgia, and Franklin County, Alabama. These isolated remnants are located over three different physiographic provinces, the Cumberland Plateau of Alabama, the Western Highland Rim of Tennessee and the Valley and Ridge Province of Georgia (Kral 1990).

Xyris tennesseensis occurs in seep-slopes, springy meadows or on the banks or gravelly shallows of small streams. As with all *Xyris*, the habitat is open or thinly wooded and the soils are moist to wet year-round. However, this species differs from other *Xyris* in being found in areas where calcareous rocks are at or near the soil surface. Thus, its soils are circumneutral to basic instead of acidic. Common associates include ferns and fern allies such as *Osmunda, Thelypteris palustris* and *Lycopodium appressum*; grasses such as *Leersia oryzoides, Panicum* and *Andropogon;* and sedges such as *Scirpus atrovirens, Eleocharis, Cyperus, Rhynchospora caduca* and *R. capitellata. Juncus* is common with *J. brachycephalus* being a constant associate, Dominant dicots are *Phlox glaberrima, Lysimachia lanceolata, Solidago patula, Rudbeckia fulgida umbrosa, Eupatorium perfoliatum* and *Parnassia grandiflora* (in Tennessee). Woody vegetation on the border of seeps or along streambanks include *Alnus, Salix, Sambucus, Cornus,* and *Cephalanthus.* The surrounding forest consist of upland species common to the oak-hickory, oak-pine or oak-juniper type (Kral 1983, 1990).

Population size ranges from a few dozen plants at one site to thousands of individuals at two sites. Most sites support populations of a few hundred plants and each site occupies less than an acre in area. Most populations are located on private land; however, plants extend onto State maintained highway right-of-way in Alabama and onto National Park Service land (Natchez Trace Parkway) in Lewis County, Tennessee.

Of 10 historically known populations, 3 populations have been lost and 4 of the remaining are declining from threats associated with highway construction/right-of-way maintenance; modification or destruction of habitat for agricultural usage; over-collecting; or the encroachment of woody plants.

Federal actions involving *Xyris tennesseensis* began with the December 15, 1980, publication of a notice of review for native plants in the **Federal Register** (45 FR 82480). *Xyris tennesseensis* was included in this notice as a category 1 species. Category 1 comprises taxa for which the Service presently has sufficient biological information to support their being proposed to be listed as endangered or threatened species. On November 28, 1983, the Service published a supplement to the notice of review for native plants in the **Federal Register** (48 FR 53640); the plant notice was again revised on September 27, 1985 (50 FR 39526) and on February 21, 1990 (55 FR 6184). *Xyris tennesseensis* was included as a category 2 species in the 1983 supplement and the revised notices. Category 2 species are those for which listing as endangered or threatened species may be warranted but for which substantial data on biological vulnerability and threats are not currently known or on file to support a proposed rule. The Service contracted a status survey for this species in 1988. Field surveys were conducted during 1988 and 1989. A final report was received and approved by the Service in the spring of 1990. This report (Kral 1990) and other information support the proposed listing. The data demonstrate a limited distribution and continuing threats to the species.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Xyris tennesseensis* Kral (Tennessee yellow-eyed grass) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range. Xyris tennesseensis* has been and continues to be threatened by the destruction or adverse modification of its habitat. In surveying potential habitat for additional populations, Kral (1990) noted that similar habitat had been impacted or lost due to agricultural or silvicultural practices. Many of the larger stream bottoms, which were once seep meadows and springs, have been dammed for ponds, drained and converted to pasture or row-crops, or developed for housing. A site in Gordon County, Georgia, that once supported a population of this *Xyris* is now a soybean field (Kral 1990). Other areas surveyed had been adversely affected by timber operations. As discussed in the "Background" section of this rule, this *Xyris* is dependent on small, clean, spring-fed headwater streams or associated seeps. Timbering upslope leads to increased erosion, deposition into the seeps and water quality degradation of the watershed (Kral 1990). Heavy equipment, in association

with logging, would damage individual plants and drain the habitat if operated directly in the seeps.

Habitat for the Alabama population has been disturbed by timbering and gravel quarrying (for use in the adjacent highway). Since 1982 the number of plants at this site have significantly declined (from 100's to less than 100) due to these disturbances and the use of herbicides in right-of-way maintenance. Highway construction caused the destruction of a second population in Georgia (Bartow County). Three other populations are located near roads and are potentially threatened by road improvement measures.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* This species is not known to be in commercial trade. Over-collecting (presumably for scientific purposes) has resulted in a significant decline for one population in Tennessee (Kral 1990).

C. *Disease or predation.* None apparent.

D. *The inadequacy of existing regulatory mechanisms.* This *Xyris* is considered endangered in all States where it occurs; however, it is currently afforded legal protection in only one State (Tennessee). Tennessee legislation (Rare Plant Protection and Conservation Act of 1985) prohibits taking without the permission of the landowner and regulates commercial sale and export. Plants which are listed, or proposed for listing in Georgia, automatically come under the protection provided by the Wildflower Preservation Act of 1973 (T. Patrick, Georgia Heritage Program, pers. comm., 1990). This legislation prohibits taking of plants from public ands (without a permit) and regulates the sale and transport of plants within the State. Neither of these statutes provide protection against habitat destruction, which is the principal threat. The Tennessee Department of Conservation and Tennessee Nature Conservancy have several voluntary protection agreements with landowners. These agreements, while very useful in protecting the plants, have no legal authority. The Act would strengthen existing protection, provide additional protection and encourage active management for *Xyris tennesseensis* (see "Available Conservation Measures").

E. *Other natural or manmade factors affecting its continued existence.* This species is vulnerable due to the small number of populations, the limited amount of area each population occupies and its specialized habitat requirements (see "Background" section). *Xyris tennesseensis* occurs in habitat which is "open" and is vulnerable to overcrowding and shade associated with woody plant encroachment. Furthermore, open wet areas are essential for successful germination (Kral 1988). In Lewis County, Tennessee, one population has been lost and a second is declining from the increased competition with succession (Kral 1990). While succession is a slow and natural process, it poses a threat to this species due to the small number of populations and limited amount of suitable habitat remaining. Proper management planning is needed to address this aspect of the species' biology.

This species is vulnerable to diversion of seep or ground water. Kral (1990) noted that water tables are dropping throughout the area, resulting in the loss of many of the seeps and springheads.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Xyris tennesseensis* as endangered. With only seven populations remaining (each occupying less than an acre of area each), four of these declining, and all apparently in need of long-term management, a classification of endangered is appropriate. An endangered species, as defined by the Act, is threatened with extinction throughout all or a significant portion of its range. Critical habitat is not being designated for reasons discussed in the following section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time the species is proposed to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for this species. As discussed under Factor B in the Summary of Factors Affecting the Species, *Xyris tennesseensis* has been impacted by over-collecting and publicity surrounding its listing could exacerbate the threat of taking. Taking is an activity difficult to enforce against and only regulated by the Act with respect to plants in cases of (1) removal and reduction to possession of endangered plants from lands under Federal jurisdiction, or their malicious damage or destruction on such lands; and (2) removal, cutting, digging up, or damaging or destroying in knowing violation of any State law or regulation, including State criminal trepass law. Such provisions are difficult to enforce, and publication of critical habitat descriptions and maps would make *Xyris tennesseensis* more vulnerable and increase enforcement problems. All involved parties, including State and Federal agencies and principal landowners, have been notified of the location and importance of protecting this species' habitat. Protection of this species' habitat will be addressed through the recovery process and through the section 7 jeopardy standard. Therefore, it would not now be prudent to determine critical habitat for *Xyris tennesseensis.*

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

A portion of one population extends onto National Park Service (NPS) land. The Tennessee Department of Conservation has an agreement with NPS to protect this species. The

Environmental Protection Agency would consider this species relative to pesticide (herbicide) registration. The Federal Highway Administration would consider this species in relation to those highway maintenance projects which are federally funded. Currently, no activities to be authorized, funded, or carried out by Federal agencies are known to exist that would affect *Xyris tennesseensis*.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale this species in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. In addition, for endangered plants, the 1988 amendments (Pub. L. 100–478) to the Act prohibit the malicious damage or destruction on Federal lands and the removal, cutting, digging up, or damaging or destroying of endangered plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances.

It is anticipated that few trade permits would ever be sought or issued because the species is not common in cultivation or in the wild. Requests for copies of the regulations on listed plants and inquiries regarding prohibitions and permits may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, room 432, Arlington, Virginia 22203 (703/358–2104).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

Final promulgation of the regulation on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to Complex Field Supervisor (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Kral, R. 1978. A new species of *Xyris* (sec. *Xyris*) from Tennessee and northwestern Georgia. Rhodora 80 (823):444–447.

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Author

The primary author of this proposed rule is Cary Norquist (see **ADDRESSES** section) 601/965–4900 or FTS 490–4900.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. It is proposed to amend § 17.12(h) by adding in alphabetical order the family *Xyridaceae* and the following entry to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
*	*	*	*	*	*	
Xyridaceae—Yellow-eyed grass family:						
Xyris tennesseensis	Tennessee yelow-eyed grass	U.S.A. (AL, GA, TN)	E		NA	NA
*	*	*	*	*	*	

Dated: January 22, 1991.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 91-3586 Filed 2-14-91; 8:45 am]

BILLING CODE 4310-55-M

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50 CFR Part 17

RIN 1018-AB52

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for the Plant Limnanthes Floccosa ssp. Californica (Butte County Meadowfoam)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes endangered status for a plant, *Limnanthes floccosa* ssp. *californica* (Butte County meadowfoam). The subspecies is threatened principally by urban development in the undeveloped northern and eastern portions of the City of Chico in Butte County, California. In addition, conversion of the plant's habitat, vernal pools and ephemeral drainages, for agricultural purposes threatens the plant. Overgrazing by livestock, garbage dumping, off-road vehicle use, competing alien vegetation, poor air quality, and stochastic (random) extinction by virtue of the small isolated nature of the remaining populations threaten the subspecies to some degree. If made final, this proposed rule would implement Federal protection of the Endangered Species Act of 1973, as amended (Act). Comments from the public regarding the accuracy of this proposed rule are sought.

DATES: Comments from all interested parties must be received by April 16. 1991. Public hearing requests must be received by April 1, 1991.

ADDRESSES: Comments and materials concerning this proposal should be sent to Wayne S. White, Field Supervisor, U.S. Fish and Wildlife Service, Sacramento Field Office, 2800 Cottage Way, Room E-1803, Sacramento, California 95825. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Jim Bartel at the above address (916/978-4866 or FTS 460-4866).

SUPPLEMENTARY INFORMATION:

Background

Limnanthes floccosa ssp. *californica*, a member of the false mermaid family (Limnanthaceae), was first collected in 1917 by Amos Heller 10 miles north of Chico in Butte County, California. In a paper revising the taxonomy of *L. floccosa*, a species that ranges from Jackson County in Oregon to Butte County, Mary Kalin de Arroyo (1973) described *L. floccosa* ssp. *californica* from a 1970 collection she made 0.5 miles south of Shippee Road along State Route 99 in Butte County. The Butte County meadowfoam is a densely pubescent, winter annual herb. Its stems, which range from 3 to 25 centimeters in length, generally lie flat on the ground with the tips curved upward. Appearing in late March through April, the flowers of *L. floccosa* ssp. *californica* are white with dark yellow veins at the base of each of the five petals (McNeill and Brown 1979). Though similar in appearance, differences in nutlet (seed) ornamentation, inflorescence, flower shape during full bloom, and sepal fusion and vestiture (i.e., coloring and type of hairiness) separate *L. floccosa* ssp. *californica* from *L. floccosa* ssp. *floccosa* (Jokerst 1989), the only other subspecies of *L. floccosa* that occurs within the vicinity of ssp. *californica*. In addition, electrophoretic (Arroyo 1975) and allozyme (Brown and Jain 1979, McNeill and Jain 1983) studies demonstrated the genetic distinctiveness of *L. floccosa* ssp. *californica*.

Butte County meadowfoam is restricted in distribution to a narrow 25-mile strip along the eastern flank of the Sacramento Valley from central Butte County to the northern portion of the City of Chico (Jokerst 1989). According to James Jokerst (1989), *Limnanthes floccosa* ssp. *californica* has two centers of distribution; near the type locality in central Butte County, and in and around Chico. Although Arroyo (1973) reported the subspecies from the summit of Table Mountain in Butte County, this locality is based on a 1949 collection by Herbert Mason that is probably mislabeled (James Jokerst, consulting botanist, pers. comm., 1987). Three other *Limnanthes* taxa occasionally are associated with the Butte County meadowfoam: *L. alba* var. *alba*, *L. douglasii* var. *rosea*, and *L. floccosa* ssp. *floccosa* which reaches its southern distributional limits in the northern portion of Chico. Arroyo (1973) reporter that *L. floccosa* ssp. *californica* grew on the "[e]dges of deep vernal pools in undisturbed areas." Jokerst (1989), however, stated that the subspecies occurs in three types of seasonal wetlands; "ephemeral drainages, vernal pool depressions in ephemeral drainages, occasionally around the edges of isolated vernal pools (i.e., those not connected with other pools by ephemeral drainages)." Vernal pools form in regions with Mediterranean climates where shallow depressions fill with water during fall and winter rains. Downward percolation is prevented by the presence of an impervious subsurface layer, such as a clay bed, hardpan, or volcanic stratum (Holland 1986). Plant species occurring in vernal pools are uniquely adapted to this "amphibious ecosystem," with a seasonal alternation of very wet and very dry conditions (Zedler 1987, Stone 1990). Upland plants cannot tolerate the temporarily saturated to flooded soils of winter and spring, and marsh or aquatic species requiring a permanent source of water cannot tolerate the drying conditions of summer.

Limnanthes floccosa ssp. *californica* is primarily threatened by urban development in and around the City of Chico in Butte County, California. In a study funded by Chico, Jeffrey Dole (1988) conducted a field survey of the subspecies' vernal pool and ephemeral drainage habitat to precisely delimit the number and distribution of the Butte County meadowfoam populatons in the vicinity of the city. He identified ten populations in the Chico area, whereas Jokerst (1989) reported that an eleventh population ("Diesel") existed in the northern portion of the city. Construction of an apartment complex, however, destroyed this population. In addition, the California Natural Diversity Data Base (CNDDB) reports that a twelfth site located west of the junction of Paradise Skyway and Bruce Road in Chico was destroyed by the construction of a shopping center in 1985. Of the ten remaining populations in or immediately adjacent to Chico, seven populations are entirely on private land and zoned for urban development. Two populations and a small portion of another occur on City-owned property surrounding Chico Municipal Airport (Jokerst 1989) and may be subject to some airport maintenance activities (City of Chico 1989). As a result, the ten remaining populations in the Chico area are subject to urbanization or airport-related maintenance.

According to the CNDDB, an additional five "occurrences" (i.e., populations sites) of *Limnanthes floccosa* ssp. *californica* exist or existed outside of the Chico area. Jokerst (1989), however, noted that only four "non-Chico" populations remain today. All four sites occur on private land, and are

immediately adjacent to paved roads; three of the four populations exist on parcels smaller than 50 acres in size. Such small parcels of grazing land are often subject to "ranchette" development. The transformation of essentially unaltered lands into cultivated fields ("ag-land conversion") also threatens these populations outside of the Chico area. In sum, 12 of the 14 remaining populations of *L. floccosa* ssp. *californica* occur entirely or largely on private land and are subject to urban development and ag-land conversion. The two populations and a small portion of another that occur on City-owned property may be subject to airport maintenance activities. Other potential threats include overgrazing by livestock, garbage dumping, off-road vehicle use, competing alien vegetation, and poor air quality. Moreover, Jokerst (1989) estimated that fewer than 200,000 plants existed in the 14 remaining sites in 1988. Because 11 of the 14 populations consisted of fewer than 9,000 plants, stochastic extinction by virtue of the small isolated nature of the remaining populations threatens the subspecies.

Federal government actions on this plant began when the Service published a revised notice of review in **Federal Register** (45 FR 82480) on December 15, 1980, of native plants considered for listing under the Act. *Limnanthes floccosa* ssp. *californica* was included as a Category 1 candidate (species for which the Service has sufficient data in its possession to support a listing proposal). On November 28, 1983, the Service published a supplement to the 1980 notice of review in the **Federal Register** (48 FR 53640). Because this supplement did not change the status of *L. floccosa* ssp. *californica*, the subspecies remained a Category 1 candidate. *L. floccosa* ssp. *californica* was included as a Category 1 candidate in the September 27, 1985 (50 FR 39526) and the February 21, 1990 (55 FR 6184) notices of review.

On February 22, 1988, the Service received from the California Native Plant Society a petition "to review the [Butte County meadowfoam] for emergency federal listing as endangered." Although the petition did not identify an emergency posing a significant risk to the well-being of the species, the Service concluded and published in the **Federal Register** a 90-day finding that substantial information had been presented indicating that the requested action may be warranted (53 FR 53030). The Service noted that its status review of the species was "already . . . in progress . . . ." Ibid. A conservation plan (Jokerst 1989) detailing additional data on the status of the plant confirmed the need for listing. Because section 4(b)(3)(B) of the Endangered Species Act, as amended, requires the Secretary to make a finding on certain pending petitions within 12 months of their receipt, publication of this proposed rule constitutes the final finding for the petitioned action.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act (16 U.S.C. 1533) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Limnanthes floccosa* Howell ssp. *californica* Arroyo are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* As discussed in the "Background" section, eight of the ten remaining populations occurring either partially or totally on private lands in the Chico area are threatened by urbanization. These sites have been zoned by the City of Chico for various types of urban uses, such as residential, neighborhood commercial, or manufacturing-industrial park (Jokerst 1989). Because 3 of the 4 remaining non-Chico area populations may be suited to ranchette development, 11 of the remaining 14 populations of the Butte County meadowfoam are vulnerable to urban development. In addition, the publicly owned populations on lands surrounding Chico Municipal Airport (Jokerst 1989) may be subject to airport maintenance activities (City of Chico 1989).

As discussed in the "Background" section, ag-land conversion also threatens the four populations outside of the Chico area. For example, 90 percent of the population of *L. floccosa* ssp. *californica* growing at the type locality was lost as a result of ag-land conversion for rice production in the early 1980's (Jokerst 1989). All known remaining populations of the Butte County meadowfoam are thus subject to urban development, airport maintenance activities, and/or ag-land conversion.

B. *Overutilization for commercial recreational, scientific, or educational purposes.* All species of *Limnanthes* have high potential agronomic value because of the oil contained within their seeds. Because the lubricating qualities of *Limnanthes* oil are retained under high temperature and pressure, the seed oil is similar to that produced by sperm whales (Jain *et al.* 1977). Crop breeding studies at the University of California, Davis suggest that *L. floccosa* ssp. *califorica* has desirable traits for future agricultural use (Jokerst 1989). Although this plant may have some economic value as an oil crop, it is likely that only a relatively small quantity of seed would need to be collected in the wild for use in cultivation. Thus, overutilization for this commercial use is unlikely to constitute a threat to *L. floccosa* ssp. *californica*.

C. *Disease or predation.* Intensive long-term grazing by livestock evidently has eliminated the Butte County meadowfoam from apparently suitable pool habitat in the Chico area. The "Cohasset" population abruptly ends at the fenceline of an overgrazed pasture, and the "North-Enloe" and "Bruce-Stilson" populations increased in numbers when grazing pressure was reduced (Jokerst 1989). Dole (1988) similarly noted high population numbers in ungrazed pastures. Nevertheless, *L. floccosa* ssp. *californica* seems to have persisted in areas receiving light to moderate to periodic heavy grazing pressure (Jokerst 1989). Though the overall effect of livestock grazing is not completely understood, overgrazing doubtlessly has adversely affected and likely continues to threaten the plant.

D. *The inadequacy of existing regulatory mechanisms.* Under the Native Plant Protection Act (chapter 1.5 section 1900 *et seq.* of the Fish and Game Code) and California Endangered Species Act (chapter 1.5 section 2050 *et seq.*), the California Fish and Game Commission has listed *Limnanthes floccosa* ssp. *californica* as endangered (14 California Code of Regulations section 670.2). Though both statutes prohibit the "take" of State-listed plants (chapter 1.5 section 1908 and section 2080), State law appears to exempt the taking of such plants via habitat modification or land use change by the landowner. After the California Department of Fish and Game notifies a landowner that a State-listed plant grows on his or her property, State law evidently requires only that the landowner notify the agency "at least 10 days in advance of changing the land use to allow salvage of such plant." (chapter 1.5 section 1913)

Jokerst (1989) drafted a conservation plan for the City of Chico that details various actions designed to conserve *Limnanthes floccosa* ssp. *californica* in the Chico area "while recognizing the need for future urban growth." Though the City of Chico "adopted" the conservation plan on October 17, 1989,

an alternative mitigation program or addendum to the plan was approved simultaneously, which actually institutes the City's mitigation procedure for projects affecting the subspecies. The alternative plan calls for the immediate establishment of two "core preserves" and four "secondary preserves" (City of Chico 1989). The plan, which generates no acquisition funding, relies on developer dedication, either via fee title or conservation easement, of preserved pool habitat. Perhaps as a result of the voluntary nature of the mitigation program, only one 20-acre preserve within a secondary preserve area ("Doe Mill") has been established to date (Clif Sellers, City of Chico, pers. comm., 1990). Moreover, the alternative program does not address the fate of non-preserve areas. Consequently, the effectiveness of the City of Chico in protecting and managing the vernal pool habitat under its jurisdiction remains open to question.

Under section 404 of the Clean Water Act, the U.S. Army Corps of Engineers (Corps) regulates the discharge of fill into the waters of the United States, including wetlands. To be in compliance with the Clean Water Act, potential applicants are required to notify the Corps prior to undertaking any activity (e.g., grading, discharge of soil or other fill material) that would result in the fill of wetlands under the Corps' jurisdiction. Nationwide Permit Number 26 (See 33 CFR 330.5) has been issued to regulate the fill of wetlands that are relatively small, less than 10 acres. Most proposals involving the fill of less than 1 acre in size would qualify under Nationwide Permit Number 26. Where fill would occur in a wetland 1–10 acres in size, the Corps circulates for comment a predischarge notification to the Service and other interested parties prior to determining whether or not the proposed fill activity qualifies under Nationwide Permit Number 26. Because the Corps must respond within 20 days or the proposed activity will be authorized under Nationwide Permit 26, many projects are authorized by default. Individual permits are required for the discharge of fill into wetlands greater than 10 acres in size. The review process for the issuance of individual permits is more extensive, and conditions may be included that require the avoidance or mitigation of environmental impacts. The Corps has discretionary authority and can require an applicant to seek an individual permit if the Corps believes that the resources are sufficiently important, regardless of the size of the wetland. In practice, the Corps rarely requires an individual permit when a project would qualify for a nationwide permit.

With respect to the vernal pools harboring *Limnanthes floccosa* ssp. *californica*, most individual pools and ephemeral drainages in Butte County encompass less than 10 acres. As a result, even large projects can qualify for Nationwide Permit 26. For example, the Corps recently confirmed a wetland delineation of 7.8 acres of vernal pools on property owned by Crocker Development within the "Rancho Arroyo" population. Although the Sacramento District of the Corps has not required individual permits for projects that involve filling vernal pools or ephemeral drainages, the agency did issue a cease and desist order to a landowner that graded 0.4 acres of vernal pool habitat on a 10.83-acre parcel in violation of Section 404 of the Clean Water Act. However, the District notified two applicants that proposed fills of vernal pool habitat of *L. floccosa* ssp. *californica* qualified for Nationwide Permit 26. In addition, six landowners have submitted or are preparing wetland delineations for their respective properties in the Chico area.

If a federally listed endangered or threatened species may be affected by a proposed project, the Corps must insure that it does not authorize, fund, or carry out any action that is likely to jeopardize the species' continued existence (See below under "Available Conservation Measures").

E. *Other natural or manmade factors affecting its continued existence.* Alien, annual grasses and forbs invaded the low-elevation, plant communities of California during the days of the Franciscan missionaries. Today, these grasses, which account for 50 to 90 percent of the vegetative cover (Heady 1977) and can stand up to a meter in height (Holland 1986), dominate most grasslands in California. By germinating in late fall prior to native forbs, alien grasses have outcompeted (for nutrients and water) and displace much of the native flora throughout California. Although inact vernal pools are "relatively immune" to the competition of alien plants (Zedler 1987). Jokerst (1989) reported that soil disturbance or reductions in the frequency and length of time pool soil is saturated facilitate the invasion of *Limnanthes floccosa* ssp. *californica's* vernal pool habitat by weedy species. The effect of grazing livestock (see Factor C "Summary of Factors Affecting the Species") in concert with the ubiquitous presence of alien plants on *L. floccosa* ssp. *californica* needs further study.

Natural fluctuations in rainfall patterns resulting in little to no water in the vernal pools may effect localized extinctions (Jokerst 1989). Though climatic-induced extirpations have not been documented for *Limnanthes floccosa* ssp. *californica*, the small isolated nature of the remaining populations make stochastic extinction more likely. A prolonged drought of several years is the most likely stochastic phenomenon that would result in the localized extinction of a vernal pool plant like the Butte County meadowfoam. In addition, because of the proximity of the subspecies to roads and urban development, Jokerst (1989) reports that garbage dumping, off-road vehicle use, and poor air quality may adversely affect some populations of *Limnanthes floccosa* ssp. *californica*.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by *Limnanthes floccosa* ssp. *californica* in determining to propose this rule. Based on this evaluation, the preferred action is to list *L. floccosa* ssp. *californica* as endangered. At least two populations have been lost due to urbanization in the Chico area, and 90 percent of a third site has been converted to a rice field. Of the remaining 14 populations of the Butte County meadowfoam, all are subject to urban development, airport maintenance activities, and/or ag-land conversion. In addition, overgrazing by livestock, garbage dumping, off-road vehicle use, competing alien vegetation, poor air quality, and stochastic extinction by virtue of the small isolated nature of the remaining populations threaten the entire range of the subspecies to some degree. Federal listing is needed to provide opportunities for protection of populations from natural and anthropogenic (human-induced) loss and degradation of vernal pools and their associated watersheds.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that determination of critical habitat is not prudent for this species at this time. *Limnanthes floccosa* ssp. *californica* occurs primarily on private land that has been and is subject to urban development and ag-land conversion (see Factor A in "Summary of Factors Affecting the Species"). The vernal pool and ephemeral drainage habitat of the

plant is usually small and easily identified. The publication of precise maps and descriptions of critical habitat in the **Federal Register** would make this plant more vulnerable to incidents of vandalism and could contribute to the decline of the species. A listing of *L. floccosa* ssp. *californica* as endangered would also publicize the rarity of this plant and, thus, could make it attractive to researchers or collectors of rare plants. The proper agencies have been notified of the locations and management needs of this plant. Landowners will be notified of the location and importance of protecting habitat of this species. Protection of this species' habitat will be addressed through the recovery process and through the section 7 consultation process. The Service believes that Federal involvement in the areas where this plant occurs can be identified without the designation of critical habitat. Therefore, the Service finds that designation of critical habitat for this plant is not prudent at this time, because such designation likely would increase the degree of threat from vandalism, collecting, or other human activities.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The U.S. Army Corps of Engineers would become involved with this plant species, if it is listed, through its permitting authority as described under section 404 of the Clean Water Act. By regulation, nationwide permits may not be issued where a federally listed endangered or threatened species would be affected by the proposed project without first completing formal consultation pursuant to section 7 of the Act. The presence of a listed species would highlight the national importance of these resources. In addition, insurance of housing loans by the Department of Housing and Urban Development in areas that presently support *Limnanthes floccosa* ssp. *californica* would be subject to review by the Service under section 7 of the Act. Airport development at Chico Municipal Airport, if proposed, likely would be subject to review and/or approval by the Federal Aviation Administration and, thus, subject to section 7 consultation.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 for endangered species set forth a series of general prohibitions and exceptions that apply to all endangered plants. With respect to *Limnanthes floccosa* ssp. *californica*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, make it illegal with respect to any endangered plant for any person subject to the jurisdiction of the United States to import or export; transport in interstate or foreign commerce in the course of a commercial activity; sell or offer for sale the species in interstate or foreign commerce; or to remove and reduce to possession the species from areas under Federal jurisdiction; maliciously damage or destroy any such species on any area under any such species on any other area in knowing violation of any State law or regulation, or in the course of any violation of a State criminal trespass law. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plant species under certain circumstances. Though the seeds of *Limnanthes floccosa* ssp. *californica* likely have high agronomic value (see Factor B. "Summary of Factors Affecting the Species"), the Service anticipates that few trade permits would be sought or issued for this species. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203-3507 (703/358-2104).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Limnanthes floccosa* ssp. *californica*;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of the species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

The final decision on this proposal will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Field Supervisor, U.S. Fish and Wildlife Service, in Sacramento, California (see **ADDRESS** section).

National Environmental Policy Act

The Service has determined that an Environmental Asssessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the**Federal Register** on October 25, 1983 (48 FR 49244).

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Author

The primary author of this proposed rule is Jim A. Bartel, Sacramento Field Station (see "ADDRESS" section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and Record-keeping requirements, and Transportation.

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is thereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. It is proposed to amend §17.12(h) by adding the following, in alphabetical order under the family indicated, to the List of Endangerd and Threatened Plants:

§17.12 Endangered and threatened plants.

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Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Limnanthaceae—False mermaid family:						
*	*	*	*	*	*	
Limnanthes floccosa ssp. *californica*.	Butte County meadowfoam	U.S.A. (CA)	E		NA	NA
*	*	*	*	*	*	

Dated: January 23, 1991.

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 91–3587 Filed 2–14–91; 8:45 am]

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50 CFR Part 17

RIN 1018-AB52

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for a Hawaiian Plant, Marsilea villosa ('Ihi'ihi)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to list a fern, *Marsilea villosa* ('ihi'ihi), as an endangered species under the authority contained in the Endangered Species Act of 1973, as amended (Act). This species is known only from three small populations, two located on the island of Oahu, and a third from the island of Molokai, Hawaii. The greatest immediate threats to the survival of this species are the encroachment from exotic vegetation, habitat degradation by off-road vehicles, and grazing by cattle. A determination that *Marsilea villosa* is endangered would implement the Federal protection and recovery provisions provided by the Act. Comments and materials related to this proposal are solicited.

DATES: Comments from all interested parties must be received by April 16, 1991. Public hearing requests must be received by April 1, 1991.

ADDRESSES: Comments and materials concerning this proposal should be sent to Ernest F. Kosaka, Field Supervisor, Honolulu Field Office, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, room 6307, P.O. Box 50167, Honolulu, Hawaii 96850. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Derral R. Herbst, at the above address (808/541–2749 or FTS 551–2749).

SUPPLEMENTARY INFORMATION:

Background

Marsilea villosa was first collected in Nuuanu Valley, Oahu, in 1817, by Louis Charles Adelbert von Chamisso, the botanist on a Russian world exploring expedition. Chamisso's fern collections were studied by George Kaulfuss who recognized the *Marsilea* as a new species and described it (Kaulfuss 1824). The type specimen was deposited in the Herbarium of Higher Plants in Leningrad. Apparently, at that time it was widespread on Oahu, and during

the early to middle 1900's, had been collected at several sites on the island (Bruegmann 1989), including at Barbour's Point located in the south central portion of the island. Today, only two populations are known from Oahu: One is located at Kokohead Crater at the southeastern corner of the island, growing on land owned by the City and County of Honolulu; the other is on the Lualualei Naval Reservation located in the central portion of the southwest facing coast line.

On the island of Molokai, *Marsilea* was first collected in 1928 at Mokio Point (Degener 1936), and in 1948 at Moomomi in the northwestern portion of the island. It was last seen at those sites in the mid 1970's, and surveys of these areas during 1984 failed to find the plant. In 1989 a small population was discovered on privately owned land near the southwestern tip of the island (Winona Char, botanical consultant, *in litt.*, 1989). *Marsilea* was collected on the eastern side on the island of Niihau, at Loe Lake in 1949. The fern was not found during a 1984 survey. This area is currently used for cattle grazing.

The three remaining populations at Kokohead, and the Lualualei Naval Reservation on the island of Oahu, and the southwestern tip of Molokai are small and isolated from each other. They are near a stream or an inlet from the ocean, and less than 250 feet in elevation. The largest site is in the Lualualei Valley on the Naval Reservation where clumps of this plant are scattered among kiawe trees (*Prosopis juliflora*), in an area of approximately 6 acres. The Kokohead population covers about 0.5 acres. The population on Molokai measures roughly 7 feet by 25 feet. The fern's habitat is dynamic, however, and may shrink or swell from year to year depending upon rainfall or other factors.

Marsilea villosa is an aquatic to semiaquatic fern that grows in small shallow depressions on level or gently sloping terrain. The soil is silty clay or lithified sand with a shallow clay top soil. An impervious layer prevents downward percolation and allows water to pond temporarily in the depressions. *Marsilea villosa* requires periodic flooding to complete its life cycle. The spore cases normally are produced as the habitat begins to dry up and do not ripen unless the plant is drought-stressed (Bruegmann 1986). When sufficient water is present, the plant reproduces vegetatively with young plants being produced on creeping rhizomes.

Similar in appearance to a four-leaved clover, it is 5–25 centimeters (2–10 inches) tall, with four leaflets at the tip of the stem. The leaves arise in pairs, and when fertile each bears a small, hard spore case on a short stalk at its base. All parts of the plant may be covered with rust-colored hairs (Bruegmann 1989, St. John 1981). *Marsilea villosa* is the only member of the genus native to Hawaii and is closely related to *M. vestita* of the western coast of the United States (Forbes 1920, Christensen 1925).

The greatest immediate threats to the survival of this species are the competition from exotic plants, and the disturbance of areas where the plant grows by off-road vehicles or by grazing cattle. The extremely small number and size of the populations and their restricted distribution makes the species more vulnerable to stochastic events.

Federal Government action on this plant began as a result of Section 12 of the Act, which directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. In that and subsequent notices, *Marsilea villosa* was treated as under petition for listing as endangered. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of the Smithsonian report as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act, and giving notice of its intention to review the status of the plant taxa named therein. As a result of that review, on June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant species, including *Marsilea villosa*, to be endangered species pursuant to section 4 of the Act. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No 94–51 and the July 1, 1975, **Federal Register** publication.

Marsilea villosa was included in the July 1, 1975, notice of review and the June 16, 1976 proposal. General comments received in relation to the 1976 proposal are summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909). In 1978, amendments to the Act required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, the Service published a notice in the **Federal Register** (44 FR 70796) withdrawing the portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired. The Service published an updated notice of review for plants on December 15, 1980 (45 FR 82480), September 27 1985 (50 FR 39525), and February 21, 1990 (55 FR 6184); *Marsilea villosa* was included as a Category 1 candidate on all three lists, indicating that the Service had substantial information warranting its proposal for listing as endangered or threatened.

Section 4(b)(3)(B) of the Act requires the Secretary to make a finding on certain pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 Amendments further requires all petitions pending on October 1, 1982, be treated as having been newly submitted on that date. The latter was the case for *Marsilea villosa* because the Service had accepted the 1975 Smithsonian report as a petition. On October 13, 1983, the Service found that the petitioned listing of this species was warranted, but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act; notification of this finding was published on January 20, 1984 (49 FR 2485). Such a finding requires the petition to be recycled, pursuant to section 4(b)(3)(C)(i) of the Act. The finding was reviewed in October of 1984, 1985, 1986, 1987, 1988, and 1989. Publication of the present proposal constitutes the final 1-year finding for this species.

Summary of Factors Affecting the Species

Section 4 of the Act and regulations (50 CFR part 424) promulgated to implement the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1). These factors and their application to *Marsilea villosa* Kaulf. ('ihi'ihi) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Shading and competition for water by naturalized, exotic plants probably are the two greatest threats affecting this species. This threat from encroaching, competing exotic species affects all the known populations of the plant.

Several activities promote this invasion by alien plant species. For example, the Kokohead population has been damaged by off-road vehicles which illegally enter the area; off-road vehicles not only damage or destroy plants, but also disturb the soil

promoting the ingression of competing exotic vegetation. While this population has been partially fenced through a management agreement between the City and County and The Nature Conservancy of Hawaii, the threat of damage from vehicles remains.

Some of the sites that once supported this plant have been heavily grazed by cattle. The Lualualei population grows in an area leased to private concerns for cattle pastureland. Grazing and trampling by cattle damage or destroy plants and allow intrusion by exotic vegetation; cattle also carry seeds of exotic species into the area. However, certain benefits to the Lualualei population may be derived from the presence of the cattle, as their grazing on the exotic vegetation in some respects helps to control it, and their trampling develops potholes that may increase the fern's habitat. The Lualualei Naval Reservation receives more rain than do the western sides of Niihau and Molokai, thus alien plants are favored at this site. On Molokai and Niihau less exotic vegetation would compete with the plants in the temporary ponds, and the loss of the fern from trampling or consumption by cattle would not be outweighed by potential benefits of removing competing alien plants or development of additional potholes.

Although not documented, the Molodai population probably is adversely affected by the axis deer which are known to browse in the area. Axis deer foot prints have been seen in the mud at this site. Cattle graze nearby, but apparently not on the site.

Many of the sites that once supported the fern now contain sugar cane fields, industrial parks, housing developments, and pastures. The population at Barbour's Point has been replaced by an industrial park, an urban park, and sugar cane fields. The Molokai site is part of a large privately owned parcel, that may be considered for future development. The species was once widespread and could be discovered at additional sites that could potentially be threatened by urbanization.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Not known to be a factor, but a small number of plants have been transplanted into private gardens, aquaria, or fish ponds, and specimens occasionally are collected for herbaria. The species is attractive and could be sought by collectors of rare plants. Unrestricted collecting for scientific or horticultural purposes or excessive visits by individuals interested in seeing rate plants could result from increased publicity, and would seriously impact the species. Disturbance to the area by trampling would promote greater ingress by competing exotic species.

C. *Disecse or predation.* Not known to be applicable.

D. *The inadequacy of existing regulctory mechanisms.* At the present time, no State laws or existing regulatory mechanisms protect *Marsilea villosa* or prevent its further decline. However, Federal listing would automatically invoke listing under Hawaii State law, which prohibits taking and encourages conservation by State government agencies. Funds for activities required for the conservation, management, enhancement, or protection of the species could be made available under section 6 of the Act (State Cooperative Agreements) if the species were listed as threatened or endangered. The Act would also offer additional protection to the species, in that it is now a violation of the Act if any person removes, cuts, digs up, damages or destroys an endangered species in knowing violation of any State law or regulation or in the course of any violation of a State criminal trespass law. Listing under the Act will augment State and private conservation measures for this species by providing for habitat protection through section 7 and recovery planning.

Marsilea villosa was once more widespread, and additional as yet undiscovered sites could be found. These sites could be vulnerable to threats arising from urban developments. Under section 404 of the Clean Water Act, the U.S. Army Corps of Engineers (Corps) regulates the discharge of fill into the waters of the United States, including wetlands. To be in compliance with the Clean Water Act, potential applicants are required to notify the Corps prior to undertaking any activity (grading, discharge of soil or other fill material, etc.) that would result in the fill of wetlands.

If *Marsilea villosa* were federally listed as endangered, the Corps would be required to insure that any project it permits, funds, or carries out would not be likely to jeopardize the continued existence of the fern. Conditions that would provide protection to the species could be incorporated into permits issued. The provisions of section 7 of the Act are more fully discussed later in this proposed rule.

E. *Other natural or manmade factors affecting its continued existence.* The small number of populations makes the species more vulnerable to certain threats such as stochastic events. A single man-caused or natural environmental disturbance could destroy a significant percentage of the individuals of this species. The Kokohead population has suffered localized damage from campfires, and fire remains a potential threat.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Marsilea villosa* as endangered. The three remaining populations face threats from the encroachment and competition from exotic species of plants, damage from off road vehicles, and grazing and trampling by domestic cattle. Urbanization and fires remain as potential threats. Given these circumstances, the determination of endangered status seems warranted. Critical habitat is not being proposed for the reasons listed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time the species is proposed to be listed as endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for this species. Such a determination would result in no known benefit to the species. The publication of legal descriptions and maps necessary in a proposal to designate critical habitat would highlight the last known sites for this species and may result in increased threats of vandalism or take. As noted under Factor "B," *Marsilea villosa* is an attractive plant and live specimens would be of interest to curiosity seekers or collectors of rare plants. All involved parties and the landowners have been notified of the location and importance of protecting this species' habitat. Protection of the species' habitat will be addressed through the recovery process and through the section 7 consultation process. Therefore, it would not now be prudent to determine critical habitat for *Marsilea villosa*.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land

acquisition and cooperation with the State and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. If *Marsilea villosa* is listed, the Department of Defense would need to consult with the Service on their pasture lease on the Lualualei Naval Reservation if it is determined that this activity may affect this species.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 for endangered plant species set forth a series of general prohibitions and exceptions that apply to all endangered plants. With respect to *Marsilea villosa* all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale this species in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. In addition, the Act would prohibit malicious damage or destruction of the species on any area under Federal jurisidiction, or the removal, cutting, digging up, damaging or destroying of the plant on any other area in knowing violation of any State law or regulation or in the course of any violation of a State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuances of permits to carry out otherwise prohibited activities involving plant endangered species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued because the species is not common in cultivation or in the wild.

Section 9(a)(2)(B) of the Act, as amended, prohibits the removal and reduction to possession as well as the malicious damage or destruction of endangered plant species in areas under Federal jurisdiction. This provision would apply to the population of *Marsilea villosa* growing in the Lualualei Naval Reservation.

Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, P.O. Box 3507, Arlington, Virginia 22203-3507 (703/358-2104 or FTS 921-2232).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

Any final decision on this proposal to list *Marsilea villosa* will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal. The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Field Supervisor, Honolulu Field Office (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Bruegmann, M.M. 1986. The phenology, tissue water relations and taxonomy of *Marsilea villosa*. M.S. thesis, Botany Dept., Univ. of Hawaii. Unpubl.

Bruegmann, M.M. 1989. Unpublished status report on *Marsilea villosa*, U.S. Fish and Wildlife Service. 31pp.

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Forbes, C.N. 1920. Notes of *Marsilea villosa* Kaulf. Occasional Papers Bernice P. Bishop Museum 7: 47-49.

Kaulfuss, G.F. 1824. Enumeratio Filicum quas in itinere circa terram legit Cl. Adalbertus de Chamisso . . . Lipsiae. pp. 271-272.

St. John, H. (C.A. Corn, ed.). 1981. Rare endemic plants of the Hawaiian Islands. Hawaii, Dept. Land Nat. Resources, Honolulu, 74 unnum. pp.

Author

The primary author of this proposed rule is Dr. Derral R. Herbst, Fish and Wildlife Enhancement, Honolulu Field Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and Record keeping requirements, and Transportation.

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1544; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500; unless otherwise noted.

2. It is proposed to amend § 17.12(h) by adding in alphabetical order the family Marsileaceae and the following entry to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
*	*	*	*	*	*	
Marsileaceae—Pepperwort family:						
Marsilea villosa	'ihi' ihi	U.S.A. (HI)	E		NA	NA
*	*	*	*	*	*	

Dated: January 22, 1991.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 91-3588 Filed 2-14-91; 8:45 am]

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50 CFR Part 17

RIN 1018-AB56

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for the Point Arena Mountain Beaver (Aplodontia rufa nigra)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) is proposing endangered status for the Point Arena mountain beaver (*Aplodontia rufa nigra*). Limited in distribution to cool, moist areas along the Mendocino Coast, Mendocino County, California, the Point Arena mountain beaver now occurs in only nine known sites, comprising a total of about 100 acres of habitat. Estimates of the total number of remaining individuals range from about 51–65 animals (Steele 1986; Steele, pers. comm. 1989). Within its localized habitat, threats to the Point Arena mountain beavers include grazing, highway construction and maintenance, public access and recreational use (campground and hiking trails), rodent control, exotic plant expansion, housing developments, steam impoundments and irrigation, predation by feral and pet cats and dogs, and agricultural use.

DATES: Comments from all interested parties must be received by April 16, 1991. Public hearing requests must be received by April 1, 1991.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, Sacramento Field Office, 2800 Cottage Way, room E-1823, Sacramento, California 95825. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne S. White, Field Supervisor, at the above address (phone 916/978-4866 or 8-460-4866).

SUPPLEMENTARY INFORMATION:

Background

The Point Arena mountain beaver is a member of the family Aplodontidae, which is represented by a monotypic genus and species. This family is in the order Rodentia, suborder Sciuriomorpha and apparently represents the oldest known group of living rodents, the Aplodontids, which are thought to be ancestral to sciurid rodents (Steele 1986).

Taylor (1914) described the Point Arena mountain beaver as a full species, but later (1918) revised his treatment, reducing the taxon to subspecific status as *Aplodontia rufa nigra*. Although the taxon is geographically isolated, Taylor (1918) felt the revision was justified. The paucity of specimens and the extensive overlap in certain cranial and external characteristics, led him to conclude that full species status could not be supported in relation to other California coastal mountain beavers. Several revisions to the species have been made (Dalquest and Scheffer 1945, Hall and Kelson 1959, Hall 1981), with the Point Arena mountain beaver being maintained as a subspecies.

Certain cranial and external characteristics separate the Point Arena mountain beaver from other subspecies of mountain beavers (Taylor 1918). For example, only *Aplodontia rufa nigra* has black and gray fur on the dorsal surface. The black pelage characteristics of the male and female adult Point Arena mountain beaver is seen as early as July in young of the year. In the other subspecies, coastal individuals tend to be darker than inland animals, though none are as dark as the Point Arena mountain beaver. Osteologically, the outline and breadth of the Point Arena mountain beaver's nasal bones represent a unique cranial characteristic. The Point Arena form is stocky and cylindrical in body shape with a broad, massive, laterally compressed skull. The skull's flat upper surface and lack of postorbital processes are noteworthy (Hall 1981). Mountain beavers possess small eyes, rounded ears, and a distinctive cylindrical stump of a tail. Each forepaw has an opposable thumb and all digits have long, curved claws.

Three well-differentiated subspecies of mountain beavers, the Humboldt mountain beaver (*A. r. humboldtiana*), Point Arena mountain beaver (*A. r. nigra*), and Point Reyes mountain beaver (*A. r. phaea*) are distributed along the north coast of California. Each of these is geographically separated by considerable distances (Steele 1986). Approximately 80 miles separate the Point Arena mountain beaver from the range of its northern conspecific, the Humboldt mountain beaver. To the south, the range of the Point Reyes mountain beaver begins about 60 miles from the southern limit of the distribution of the Point Arena taxon.

Of the seven subspecies of mountain beaver occurring on the coast or inland, the Point Arena form has the most limited distribution and is found only in coastal Mendocino County, California. Historical collection records noted populations between the town of Point Arena and Alder Creek, a distance of about 6.8 miles (Camp 1918). Data from the Christiansen Ranch area increased the known range about five miles further north (Pfeiffer 1954). In 1981 Steele attempted to relocate the four historically known populations, but found that only the population at Alder Creek remained. He did, however, discover three previously unrecorded populations (Steele 1982). These areas were resurveyed by Steele in 1986, resulting in a total of eight known populations, four of which were observed during the 1981 field survey (Steele 1982, 1986). In 1989, an additional population was discovered at Manchester State Beach (Steele, pers. comm. 1989). All nine populations are

located within the previously described geographical range of about 12 miles along the coast line. Populations are found at Mallo Pass Creek, Irisk Creek, Alder Creek, Manchester State Beach (three sites including the American Telephone and Telegraph communication facility), Lagoon Lake, Minor Hole Road, and Point Arena, Mendocino County, California (Steele 1982, 1986; Steele, pers comm. 1989).

Mountain beavers are restricted in geographic distribution to cool, moist areas receiving heavy rainfall (25–60 inches per year) along the Pacific Coast and Sierra Nevada, extending from southern British Columbia to central California (Steele 1986). The Point Arena subspecies occurs only in Mendocino County, California, within the coastal, narrow, and irregularly shaped valleys. These valleys have relatively warm temperatures because the ridges block the cool, moist onshore ocean breezes; thereby limiting the potential moist habitat required by the Point Arena mountain beaver.

Point Arena mountain beaver populations have been located on steep, northfacing slopes or in protected gulches. Burrowing activities usually are conducted under dense vegetation, where moisture conditions make the soil relatively easy to excavate. Micro-habitat conditions include an abundant supply of food plants and moderately deep and firm soil with good drainage (Steele 1986). Those populations on coastal strand/costal scrub habitat are less sheltered; however, strong winds and a persistent marine influence prevent extreme fluctuations in temperature (Steele 1986).

Point Arena mountain beavers are found in habitats with four basic types of vegetation: costal scrub, coniferous forest, riparian, and stabilized dunes (coastal strand). Habitat types for the nine populations are as follows: Point Arena-coastal scrub, Minor Hole road-coastal scrub/riparian, Lagoon Lake-coastal scrub, Alder Creek-coastal scrub/riparian, Mallo Pass Road-coastal scrub/riparian, Manchester State Beach-coastal scrub/coastal strand, American Telephone and Telegraph communication facility at Manchester State Beach-costal scrub/coastal strand, and Irish Gulch-coastal scrub/riparian/coniferous forest.

Coastal scrub species include cow-parsnip (*Heracleum lanatum*), coyote Brush (*Baccharis pilularis*), wax-myrtle (*Myrica californica*), California blackberry (*Rubus vitifolius*), salal (*Gaultheria shallon*), and poison-oak (*Rhus diversiloba*), Coastal strand habitat consists of lupine (*Lupinus arboreus*), coyote brush, coast goldenrod (*Solidaga spatghulata*), dune grasses, and ice plant (*Mesembryanthemum* spp.). At the Irish Creek population site, the coniferous overstory is composed primarily of Douglas-fir (*Pseudotsuga menziesii*), gaint fir (*Abies grandis*), and bishop pine (*Pinus muricata*). Riparian and coatal scrub species are prevalent in the understory of the Irish Creek site and include species such as thimbleberry (*Rubus parvivlorus*), nettle (*Urtica* spp.), sword fern (*Polystichum munitum*), salmon berry (*Rubus spectabilis*), and elderberry (*Sambucus* supp.).Riparian vegetation is found in conjunction with other habitat types at Minor Hole Road, Alder Creek, Irish Gulch, and Mallo Pass Road and includes skunk-cabbage (*Lusichiton americanum*), gaint horsetail (*Equisetum Telmateia*), willows (*Salix* spp.), red alder (*Alnus oregona*), wood rose (*Roa gymnocarpa*), and California blackberry (Hardham and True 1972).

At the three sites on Manchester State Beach (one of which is referred to as the American Telephone and Telegraph communication facility), the Point Arena mountain beaver occupies stabilized sand dunes with coastal scrub components. The Manchester State Beach sites, located about 0.25 miles apart, are significantly different than the other known Point Arena mountain beaver locations because they provide less cover, fewer food plants, and poorer borrowing substrate. Although mountain beavers usually construct underground burrows, those inhabiting the coastal strand burrow under shrubby vegetation. Because temperatures are still relatively mild with minimum fluctuations owing to the marine influence, the Point Arena mountain beaver is able to tolerate these surface ambient temperatures in the coastal strand environment.

No data are available on historical population numbers for the Point Arena mountain beaver. However, estimates for other subspecies range from 1.4 to 2.2 individuals per acre for *A. r. pacifica* in Oregon (Neal and Borrecco 1981, Lovejoy and Black 1979) up to 9 (or 16 temporarily) animals per acre (Voth 1968).

During a 1985–1986 status survey, Steele (1986) found a total of 41 active burrow systems in eight populations (range 2–9 animals/system). He estimated that the number of individuals per site ranged from 3 to 10 or more, for an overall subspecies population estimate of approximately 41–55 individuals. The Point Arena mountain beavers occupied roughly 24 acres of a total of approximately 83 acres of available habitat (Steele 1986). Sites vary in size from 3.7 to 19.8 acres of which about 1.5 to 8 acres were occupied by the mountain beavers (Steele 1986). By incorporating data from the 1988 survey (Steele, pers, comm.), the number of sites was increased to nine, the total population estimate to 51–65, and the total available habitat to about 100 acres.

Mountain beavers live within an extensive system of tunnels usually constructed a few inches from the surface (Steele 1986). Runways are enlarged to accommodate nests and for food storage facilities (Steele 1986). These burrows are found only in portions of the home range (Martin 1971). Limited data on the Point Arena mountain beaver indicate that an average of one or two animals is found within individual burrow systems (Steele 1986).

Radio-telemetry studies indicate that adult mountain beavers had home ranges varying from 0.01 to 0.08 acres size (mean 0.04 acres), with no significant differences between males and females (Martin 1971). Adults do not seem to range far from the burrow entrances as evidenced by a maximum recorded distance of about 140 feet (Martin 1971). During the breeding season individuals may travel outside the calculated home range. In the summer months, young mountain beavers use the burrow systems as well as ground surface to disperse from the next (Steele 1986).

Mountain beavers appear to be solitary in their social structure, except during the breeding season, and intraspecifically defend their nests and burrows (Martin 1971). Even though home ranges may overlap, each mountain beaver is solitary when feeding (Steele 1986).

A. r. nigra prefers to forage on succulent herbaceous plant material and the deciduous tree bark and leaves forming the understory (Steele 1982, 1986). Species frequently consumed by the mountain beaver include sword fern, cow parsnip, salal, nettle, salmonberry, and lupine. From the little information available, it appears that the Point Arena mountain beaver is primarily a nocturnal forager (Steele 1986).

In comparison to the abilities of many other rodents, the mountain beaver is physiologically somewhat limited in maintaining its water balance and in thermoregulating (Dolph *et al.* 1962; Greenbaum and Dicker 1963; House *et al.* 1963; Druzinshy 1983, 1984; Johnson 1971; Kinney 1971; and others). Anatomical and physiological data indicate that mountain beavers are incapable of producing a concentrated urine and, therefore, require substantial

daily amounts of water. It is thought that the limited osmoregulatory abilities of the mountain beaver are responsible for its localized distribution, confining it to cool, moist areas (Nungesser and Pfeiffer 1965). Work with *A. r. pacifica* in Oregon found that the nest and burrow system effectively mediate warm surface temperatures and seasonal changes in humidity (Johnson 1971, Kinney 1971). Further evidence stems from work on dehydration studies of mountain beavers such as the finding that *A. rufa* has a limited ability to increase reabsorption of sodium in the kidney when dehydrated (Schmidt-Nielson and Pfeiffer 1970). To excrete this excess sodium requires the loss of water via the urine. Further, there are no indications that mountain beavers can enhance evaporative water loss when heat-stressed, a method used by some mammals to maintain homeothermy (Goslow 1964, Johnson 1971, Kinney 1971).

In mountain beavers, it appears that the relatively primitive thermoregulatory ability limits the animal's surface activity to moderate temperature days. Mountain beavers can thermoregulate adequately only over a relatively narrow band of ambient temperatures (6 to 16 degrees C) which corresponds to the normal temperature range within the burrows (Kinney 1971). Animals exposed to environmental temperature of around 30 degrees C may experience the upper thermal tolerance limit (Kinney 1971). When surface temperatures are too warm, the mountain beaver will either seek refuge in its burrow or orient its body to maximize its ability to lose body heat passively. In laboratory experiments, mountain beavers undergoing heat stress responded by a decreasing metabolic and respiratory rates, and by changing posture to maintain a relatively constant body temperature (Steele 1986).

Mountain beavers usually reach sexual maturity during the second year. Because it is monestrous and all females in a given population ovulate at about the same time (during a period of 5–7 weeks in mid or late winter), the breeding season is quite limited (Pfeiffer 1958). It appears that the gestation period is 28 to 30 days (Pfeiffer 1958). In late February and March, the litter is born, containing usually two to three, infrequently four, individuals (Steele 1986). Only one litter per female is produced per year (Steele 1986).

Demographic information such as age class structure and distribution on the Point Arena mountain beaver is sparse. Data from other subspecies indicate a sex ratio of 1.2 to 1.0 (male to female) for adult *A. r. pacifica* (Lovejoy and Black 1979). Other *Aplodontia* subspecies are known to have survived for six or more years (Lovejoy and Black 1979).

Because of their burrowing habits and foraging in gardens, croplands, and forests, mountain beavers can cause extensive damage and are considered a nuisance in some areas (Steele 1986). For example, in certain areas of coastal Oregon and Washington, the mountain beaver is numerous and regarded as a pest (Scheffer 1929, Phillips 1982). Mountain beavers can be particularly destructive in Douglas-fir forests by clipping conifer seedlings, basal girdling of saplings, and undermining roots by burrowing (Neal and Borrecco 1981). However, none of the totally California subspecies are known to cause substantial damage to crops, nor are they generally found in intensively managed forest tracts.

Of the nine known populations of Point Arena mountain beaver, three are totally on private land (Minor Road, Lagoon Lake, and American Telephone and Telegraph communication facility). Four others (Point Arena, Alder Creek, Irish Gulch, and Mallo Creek) partly are on private land. The State of California has jurisdiction over two of three mountain beaver locations at Manchester State Beach (California Department of Parks and Recreation), and also owns portions of Alder Creek, and highway rights-of-way on the Point Arena, Irish Gulch, and Mallo Creek sites. The other mountain beaver site at Manchester State Beach occurs on the communication facility that is owned by the American Telephone and Telegraph Company; this private land is encircled by State land (Manchester State Beach). On Minor Road the County of Mendocino has a highway right-of-way.

The Point Arena mountain beaver is included as a category 1 taxon in the Service's most recent Animal Notice of Review, published in the **Federal Register** on January 6, 1989 (54 FR 554). For taxa in this category, the Service has substantial information on hand to support the biological appropriateness of proposing to list such taxa as endangered or threatened species.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Point Arena mountain beaver (*Aplodontia rufa nigra*) are as follows:

A. The present or threatened destruction, modification, or curtailment of its habitat or range. Although there are no estimates available on the amount of historical habitat for the Point Arena mountain beaver, given the amount of habitat that already has been developed for urban and agricultural purposes, it is likely that substantial habitat loss has occurred. Livestock production, dating from the time of introduction of cattle by the Spanish, may well have substantially modified historical *Aplodontia* habitats (Steele 1986). Earlier known Point Arena mountain beaver populations were situated near farming or ranching activities. Livestock grazing and brush clearing have eliminated much coastal scrub habitat in the area (Steele 1986). Moreover, cattle have stepped on *Aplodontia* burrows and destroyed runways (Steele 1986). Of the nine presently known populations, five are found near agricultural or ranch land and are subject to continued impacts from these activities (Steele 1986).

Construction of private and county roads has resulted in the loss of habitat. New home construction at Irish Beach and in Irish Creek upslope from the mountain beaver population has affected the habitat quality. Loss of habitat, dumping of trash, and an increase in predation by feral and non-feral house pets, may have reduced the Point Arena mountain beaver population at Irish Creek. About 100 homes were completed in 1983 as part of a planned development of 1,091 homes (Steele 1986). The developer recently received approval from the county and the California Coastal Commission to develop approximately 50 more homes (Berrigan, Mendocino County Planning and Building Services Department, pers. comm.). An adjunct part of this project included constructing a water diversion system at Mallo Creek to supply the domestic water requirements of the development. Recently the Coastal Commission approved the withdrawal of up to 50 cubic feet per second of water from Mallo Creek for residential use at the Irish Beach subdivison (B. Noah Tilghman, California Coastal Commission, letter dated June 22, 1988). Such a water diversion has the potential to adversely affect the mountain beaver by reducing the amount and quality of available habitat. Ancillary facilities including a market, motel, and offices also were tentatively planned for

construction (Steele 1986). The latest revision to the Mendocino County Land Use Plan shows increasing housing developments, creating a potential for additional indirect and direct disturbance to the mountain beavers in the Irish Creek area.

A subdivision also has been planned for Lagoon Lake. Although the roads are now in, only a couple of homes have been built there. However, if development proceeds as originally envisioned, homes could be built up to several hundred feet away from the Point Arena mountain beaver site at Lagoon Lake. Some of the lots that are part of the Hunter's Lagoon project at Lagoon Lake have been purchased by the California Department of Parks and Recreation as additional land for Manchester State Beach (Dave Barlett, California Department of Parks and Recreation, pers. comm.). With such close urban development, the mountain beavers will be subject to increased human disturbance and probably augmented predation pressure by house pets. Urban development in the Lagoon Lake area may adversely modify existing mountain beaver habitat and reduce the number of animals.

The Irish Beach-to-Manchester Alternative Coastal Trail has been proposed to provide non-vehicular beach access at Irish Beach, Alder Creek Beach Road, Kinney Road, and Stoneboro Road. This project includes construction of a parking area, construction of an interpretative center and establish access to the proposed trail at both Irish Creek and Alder Creek. This would increase human disturbance to the mountain beaver population and result in a reduction in habitat quality. There is no information available to indicate that the Point Arena mountain beaver can tolerate this degree of human disturbance. However, even a limited effect on the mountain beaver's reproductive success or mortality rates from predation could extirpate this population of approximately five animals.

It is likely that there has been previous habitat loss at the American Telephone and Telegraph communication facility resulting from construction and secondary impacts from use of the facility. It is not known how large this population was prior to construction of the communication facility; however, there are only approximately four animals now present on this 3.7 acre site (Steele 1986).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Overutilization is not known to be a problem. However, the very low number of individuals at these isolated remaining sites, makes each population vulnerable to extirpation from collection for scientific or other purposes.

C. *Disease or predation.* Predation by domestic and feral dogs as well as cats is a mortality factor for mountain beaver, particularly in sites located adjacent to existing urban and agricultural developments such as at Irish Gulch, Alder Creek, and Point Arena. The impact of this predation pressure has the potential to be devastating on such small populations in that one determined predator could extirpate any of the remaining populations.

D. *Inadequacy of existing regulatory mechanisms.* The California Department of Fish and Game considers the Point Arena mountain beaver a "Species of Special Concern" and is in the process of preparing the documentation to request that the State Fish and Game Commission designate this taxon as endangered. Although the California Department of Fish and Game requires special authorization (either a collecting permit or memorandum of understanding) to collect this subspecies for scientific purposes, there is no legal status to protect its habitat. Furthermore, because the Point Arena mountain beaver is classified by the State of California as a non-game animal, farmers and/or other landowners may legally take the animals without obtaining a permit if the animals are deemed destructive to property such as crops.

All known Point Arena mountain beaver populations are within the Coastal Zone and, therefore, subject to the provisions of the California Coastal Act (California State Public Resources Code, Division 20; California Coastal Act of 1976). The primary goal of the Coastal Act is to preserve and protect natural resources, prime agricultural land, and timber land. The Coastal Commission is authorized to approve only those activities that are dependent on these resources. However, activities such as dredging, channelization, construction of pipelines, transmission lines, water diversions, and existing agricultural operations may be permitted. Local coastal plans must be developed by coastal cities and counties and include a land use plan, zoning ordinances, and zoning maps. A land use plan has been developed for the Inverson Planning Area (Land Use Plan: Mallo Pass Creek to Inverson Road). This planning area plus a small section of the Navarro River to Mallo Pass Creek Planning Area, includes the entire known distribution of the Point Arena mountain beaver. However, this plan does not contain any specific actions designed to protect the mountain beaver or its habitat.

The Coastal Act and Mendocino County Land Use Plan provide indirect habitat protection to the mountain beaver. However, such land use plans are not required to minimize activities adjacent to sensitive habitat such as construction of housing tracts, diversion or retention of drainage waters, increased human intrusion, or adverse impacts by livestock. Further, mountain beavers are not presently protected from development activities or other potentially adverse impacts because there are no regulations or guidelines that protect the animal or its habitat.

E. *Other natural and manmade factors affecting its continued existence.* Construction of roads may reduce or possibly eliminate the ability of young Point Arena mountain beavers to successfully disperse from natal areas. Point Arena mountain beavers may be killed by cars as they attempt to cross roads. Both the Minor Hole Road and Alder Creek populations have burrows near and under roadways (Steele 1986), thus increasing the likelihood that mountain beavers will wander onto the pavement. The nocturnal habits of the animal make their attempts at road crossing even more hazardous.

Rodent control by trapping and baiting is still fairly common along the Mendocino Coast, and often is associated with residential and family garden practices (Steele 1986). Baits laced with strychnine or anticoagulants are the most widely used (Steele 1986). Also, wet spots and seeps sometimes are treated with applications of copper sulfate to control sheep liver fluke (Steele 1986). Although there is no information available assessing the impacts of such programs on the Point Arena mountain beaver, these activities represent a potential threat. Maintenance workers at the Kampgrounds of America facility near the mountain beaver site at Point Arena placed poison bait and traps out to kill the mountain beavers they mistakenly identified as gophers. It is unknown if any Point Arena mountain beavers succumbed; however, this demonstrates the threat that rodent control activities present and also how an act of vandalism through trapping or application of poisoned bait could severely impact the species. Although no such vandalism has been reported, the potential exists to extirpate these small, disjunct populations.

Exotic plants include gorse (*Ulex europaeus*), broom (*Cytisus spp.*), pampas grass (*Cortaderia Selloana*), and others. In some areas these species

have become established and relatively widespread, thereby reducing the quality and quantity of the native ecosystem of the Point Arena mountain beaver.

Because the remaining Point Arena mountain beavers have a localized distribution, they are extemely vulnerable to extinction from a catastrophic event such as fire, flooding, disease, drought, or earthquake. Such events could eliminate all individuals or further depress the already low population numbers to a point where they could not recover.

Additionally, the population numbers are now sufficiently low so that the effects of inbreeding depression (whereby closely related individuals breed) may result in the expression of a deleterious gene in the population. Individuals possessing such deleterious alleles are less likely to effectively cope with the environmental conditions or to adapt to environmental changes, even relatively minor ones. Moreover, small populations (especially those with less than 50 individuals), are subject to the effects of genetic drift. This means that by chance events, the genetic variability eventually will decline in small populations, thus limiting the flexibility of a population to respond to environmental changes. The effects of genetic drift and inbreeding depression are genetically similar. Individual populations of mountain beavers number from about 3 to 10 animals, and therefore, the genetic effects of small size are likely to be a significant factor in the taxon's long-term survivability.

Small populations may also suffer from the effects of habitat fragmentation. The subdivision of the habitat into smaller blocks of land often is the result of human-related activities such as fire, water diversion, livestock grazing, road construction, and urban development and serves to exacerbate the segregation of the extant populations. Habitat fragmentation, by further reducing population size, increases the probability of genetic drift and inbreeding depression that may result in less vigorous and adaptable populations of mountain beavers.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list the Point Arena mountain beaver (*Aplodontia rufa nigra*) as endangered. The limited distribution (nine sites), narrow physiological habitat tolerances, small overall population number, and threats of habitat loss from urban development, pesticide application, predation by feral animals as well as house pets, and human disturbance make endangered status warranted in lieu of threatened status. Given these threats and with only about 51–65 individuals remaining on about 100 acres of habitat, the taxon is now facing extinction. Critical habitat is not being proposed for reasons enumerated under the Critical Habitat section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat concurrently with determining a species to be endangered or threatened. Because the Point Arena mountain beaver now occurs in such small populations (3 to 10 individuals per site) and is limited to nine known sites with a restricted distribution of about 100 acres, any acts of vandalism, such as trapping, poisoning, or collection, could seriously reduce the outstanding numbers of individuals and cause irreparable harm. Further, interested parties have been notified of the status of the taxon including landowners as well as private, State, city, county, and Federal agencies. Therefore, because the concerned landowners already have been notified and any proposal for critical habitat requires publication of precise location maps in the **Federal Register** which could result in vandalism or collection, the Service has determined that designation of critical habitat would not be prudent.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Potential recovery actions could include establishing a buffer around each population site and excluding further urban or other development within the zone of about 100 acres of total habitat or within adjacent potential habitat, installing protective fencing, implementing cooperative agreements to manage the species, and restricting pesticide application. Such actions may be initiated following listing. The protection required of Federal agencies and prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Federal involvement may occur if the Federal Highways Administration provides funding to the California Department of Transportation (Caltrans) to construct new highways or repair existing ones. The American Telephone and Telegraph Company proposed to install a subterminal fiber optics cable in a six-foot deep trench as part of its submarine lightguide cable installation project under its communication facility. In consideration of the mountain beaver on the site, the proposal was modified to bore the cable through the site rather than excavate a six-foot deep trench. If hydroelectric facilities are proposed for the streams within or adjacent to Point Arena Mountain beaver habitat, a Federal Energy Regulatory Commission permit will be required that may incorporate measures to protect the mountain beaver and its habitat. No such hydroelectric facilities are known to be planned.

The Act and its implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to take (including harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt any such conduct), import or export, transport in interstate or foreign commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign

commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 40 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposal are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat and provided by section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

Any final decision on this proposal will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Regional Director (FWE-SE), U.S. Fish and Wildlife Service, 1002 N.E. Holladay, 4th Floor, Portland, Oregon 97232-4181.

National Environmental Policy Act

The Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Author

The primary author of this proposed rule is Dr. Kathleen E. Franzreb, Sacramento Field Office, U.S. Fish and Wildlife Service, 2800 Cottage Way E-1823, Sacramento, California 95825, (916/978-4866 or 8-460-4866).

List of Subjects in 50 CFR Part 17

Endangered and threatened Species, Exports, Imports, Reporting and Recordkeeping requirements, and Transportation.

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. It is proposed to amend § 17.11(h) by adding the following, in alphabetical order under Mammals, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS:							
*	*	*	*	*	*	*	
Beaver, Point Arena mountain.	*Aplodontia rufa nigra*	U.S.A. (CA)	Entire	E		NA	NA
*	*	*	*	*	*	*	

Dated: January 30, 1991.

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 91–3589 Filed 2–14–91; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 56, No. 32
Friday, February 15, 1991

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.

ACTION

Information Collection Submitted to the Office of Management and Budget for Review

AGENCY: ACTION.

ACTION: Information Collection Submitted to the Office of Management and Budget for Review.

SUMMARY: This notice sets forth certain information about an information collection proposal by ACTION, the Federal Domestic Volunteer Agency. Under the Paperwork Reduction Act (44 U.S.C., Chapter 35), the Office of Management and Budget (OMB) reviews and acts upon proposals to collect information from the public or to impose records keeping requirements. ACTION has submitted two copies of the attached information collection proposal to OMB. OMB and ACTION will consider comments on the proposed collection of information and records keeping requirements. ACTION is requesting an expedited review by OMB with final action by March 18, 1991 so that the approved forms will be read for the first Training Conference beginning April 2, 1991.

DATES: OMB and ACTION will accept comments received by 30 days from the date of publication.

ADDRESSES: Send comments to both:
And
Janet A. Smith, Clearance Officer, ACTION, 2200 Vermont Ave. NW., Washington, DC 10525, Tel: 202/634-9245

Daniel Chenok, Desk Officer for ACTION, Office of Management & Budget, 3002 New Executive Office Bldg., Washington, DC 20503, 202/395-7316

SUPPLEMENTARY INFORMATION:

Office of ACTION Issuing Proposal: Program Analysis and Evaluation Division.

Title of Forms: ACTION Training Conference Evaluation.

ACTION Forms No: OPRE 91-3.

Need and Use: ACTION will use the form to inform the Office of Domestic Operations on the results of ACTION's training conference for project directors. ACTION will use the information to plan future conferences.

Type of Request: New.

Respondent's Obligation to Reply: Voluntary.

Frequency of Collection: At the end of each training conference, of which there will be ten in 1991 and no more than fifteen in 1992.

Estimated Number of Annual Responses: 2,084.

Average Burden Hours Per Response: .33.

Estimated Annual Reporting or Disclosure Burden: 688 hours.

Janet A. Smith,
Clearance Officer ACTION.

BILLING CODE 6050-28-M

ATTACHMENT A

1991 REGIONAL TRAINING CONFERENCE -- REGION III

CONFERENCE EVALUATION FORM

Your response to this evaluation is important. We will use this information to make needed adjustments to future conferences. Your response is anonymous: don't write your name. Complete the items by 12:00 noon, Friday, May 17, 1991, and deposit the forms in the appropriate collection boxes.

Q1. In what State is your project located? Circle your answer.

45	Delaware	49	Ohio
46	District of Columbia	50	Pennsylvania
47	Kentucky	51	Virginia
48	Maryland	52	West Virginia

Q2. How long have you managed a project funded, at least in part, by ACTION? Fill in the blanks.

____ YEARS and ____ MONTHS

Q3. What ACTION programs do you work with currently? Circle as many answers as apply.

1 VISTA
2 VISTA LITERACY CORPS
3 RETIRED SENIOR VOLUNTEER PROGRAM
4 FOSTER GRANDPARENT PROGRAM
5 OTHER. Please specify: _____

Q4. Did you return a needs assessment questionnaire on this conference prior to attending? Circle your answer.

1 YES
2 NO

Q5. What is your opinion on the quality of conference support? Rate the following aspects of the conference using a five-point scale, 1=Poor to 5-Excellent? Circle your answer.

	POOR			EXCELLENT
a. Timely notification about conference.	1	2	3	4	5
b. Timely dissemination of materials . .	1	2	3	4	5
c. Hotel	1	2	3	4	5
d. Training rooms.	1	2	3	4	5

Q6. What is your opinion on the quantity of conference arrangements? Rate the following aspects of the conference using a five-point scale, 1 = "Too little" to 5 = "Too much." Circle your answer.

	TOO LITTLE		JUST RIGHT		TOO MUCH
a. Opportunities for sharing of ideas with other trainees	1	2	3	4	5
b. Length of the conference.	1	2	3	4	5
c. Length of the conference day.	1	2	3	4	5
d. Time allowed to rest and relax. . . .	1	2	3	4	5

Region III, 1991 RTC CONFERENCE EVALUATION - Page 2

Instructions: Q7 -- circle the letters to mark the presentations and workshops that you attended; Q8 -- circle your level of agreement with the general statement for the sessions that you attended.

Q7. DID YOU GO?	Q8. THE KNOWLEDGE OR SKILLS I LEARNED FROM THIS PRESENTATION OR WORKSHOP WILL HELP ME TO BETTER MANAGE MY ACTION-SUPPORTED PROJECT(S).	STRONGLY DISAGREE				STRONGLY AGREE
	Monday, May 13					
a.	New Director Training	1	2	3	4	5
b.	Public Awareness (Yde)	1	2	3	4	5
c.	Drug Abuse Prevention (Panel)	1	2	3	4	5
	Tuesday, May 14					
a.	Resource Mobilization (Mason)	1	2	3	4	5
b.	Project Management (Kammerdiener)	1	2	3	4	5
c.	Volunteer Management (McCurley)	1	2	3	4	5
d.	VISTA -- Overview (Rodgers)	1	2	3	4	5
e.	VISTA -- College Campus Volunteer Recruitment (COOL)	1	2	3	4	5
f.	OAVP -- Overview (Burns)	1	2	3	4	5
g.	OAVP -- Project Related Topics (Panel)	1	2	3	4	5
	Wednesday, May 15					
a.	Resource Mobilization (Mason)	1	2	3	4	5
b.	Project Management (Kammerdiener)	1	2	3	4	5
c.	Volunteer Management (McCurley)	1	2	3	4	5
f.	VISTA Issues (Panel)	1	2	3	4	5
g.	RSVP Issues (Open Discussion)	1	2	3	4	5
h.	FGP Issues (Open Discussion)	1	2	3	4	5
	Thursday, May 16					
a.	Equal Opportunity Workshop (Voss)	1	2	3	4	5
b.	Role of Inspector General (Denny)	1	2	3	4	5
c.	State Meetings	1	2	3	4	5
d.	Nuts and Bolts	1	2	3	4	5
e.	Q & A with the IG	1	2	3	4	5
	Friday, May 17					
a.	Volunteer/Project Liability and Risk Management (Panel)	1	2	3	4	5

Region III, 1991 RTC CONFERENCE EVALUATION - Page 3

The RTC Conference Needs Assessment Form that most of you returned played a major part in the organization of this conference. Below are listed the workshops most frequently requested by Project Directors in your region.

Q9. To what degree were your needs as a project director met by workshops in the subjects listed below? If you did not have any need for the workshop subject, circle NA under "Does Not Apply."

	NOT MET AT All			COMPLETELY MET		Does Not Apply
a. Hard to reach volunteers.	1	2	3	4	5	NA
b. Public awareness campaigns.	1	2	3	4	5	NA
c. Designing evaluations for advisory councils.	1	2	3	4	5	NA
d. Evaluating project performance. . . .	1	2	3	4	5	NA
e. Liability and volunteers.	1	2	3	4	5	NA
f. Designing creative recognition activities.	1	2	3	4	5	NA
g. Using community resources for recognition	1	2	3	4	5	NA
h. Designing a public relations plan . .	1	2	3	4	5	NA
i. How to design and use newsletters . .	1	2	3	4	5	NA
j. How to do long range planning	1	2	3	4	5	NA
k. Maximizing Advisory Council resources	1	2	3	4	5	NA
l. Meeting transportation needs.	1	2	3	4	5	NA

Q10. Overall, how well did this conference meet your needs as a project manager?. Circle your answer.

1 MET NONE OF MY NEEDS
2 MET A FEW OF MY NEEDS
3 MET SOME OF MY NEEDS
4 MET MOST OF MY NEEDS
5 MET ALL OF MY NEEDS

Q11. What is your most important suggestion for future Regional Training Conferences? Explain why you made this suggestion. Fill in the box.

MY MOST IMPORTANT SUGGESTION FOR FUTURE CONFERENCES AND WHY

Thank you for your help in evaluating the accomplishments of this conference. Your answers, comments, and suggestions will be useful in planning our future training events.

ATTACHMENT B

1991 SENIOR COMPANION PROGRAM PROJECT DIRECTORS CONFERENCE

CONFERENCE EVALUATION FORM

Your response to this evaluation is important. We will use this information to make needed adjustments to future conferences. Your response is anonymous: don't write your name. Complete the items by the close of the conference and deposit the forms in the appropriate collection boxes.

Q1. In what State is your project located?

_____ STATE

Q2. How long have you managed an SCP project funded, at least in part, by ACTION? Fill in the blanks.

____ YEARS and ____ MONTHS

Q3. Did you return a needs assessment questionnaire on this conference prior to attending? Circle your answer.

1 YES
2 NO

Q4. What is your opinion on the quality of conference support? Rate the following aspects of the conference using a five-point scale, 1=Poor to 5=Excellent? Circle your answer.

	POOR				EXCELLENT
a. Timely notification about conference.	1	2	3	4	5
b. Timely dissemination of materials . .	1	2	3	4	5
c. Hotel	1	2	3	4	5
d. Training rooms.	1	2	3	4	5

Q5. What is your opinion on the quantity of conference arrangements? Rate the following aspects of the conference using a five-point scale, 1 = "Too little" to 5 = "Too much." Circle your answer.

	TOO LITTLE		JUST RIGHT		TOO MUCH
a. Opportunities for sharing of ideas with other trainees	1	2	3	4	5
b. Length of the conference.	1	2	3	4	5
c. Length of the conference day.	1	2	3	4	5
d. Time allowed to rest and relax. . . .	1	2	3	4	5

1991 SCP CONFERENCE EVALUATION - Page 2

Instructions: Q6 -- circle the letters to mark the presentations and workshops that you attended; Q7 -- circle your level of agreement with the general statement for the sessions that you attended.

Q6. DID YOU GO? → Q7. THE KNOWLEDGE OR SKILLS I LEARNED FROM THIS PRESENTATION OR WORKSHOP WILL HELP ME TO BETTER MANAGE MY ACTION-SUPPORTED PROJECT(S).

		STRONGLY DISAGREE			STRONGLY AGREE
	Monday, April 8				
a.	New Director Training	1	2	3	4	5
b.	Public Awareness (Yde)	1	2	3	4	5
c.	Drug Abuse Prevention (Panel)	1	2	3	4	5
	Tuesday, April 9					
a.	Resource Mobilization (Mason)	1	2	3	4	5
b.	Project Management (Kammerdiener)	1	2	3	4	5
c.	Volunteer Management (McCurley)	1	2	3	4	5
d.	SCP -- Overview (Burns)	1	2	3	4	5
e.	SCP -- Project Related Topics (Panel)	1	2	3	4	5
	Wednesday, April 10					
a.	Resource Mobilization (Mason)	1	2	3	4	5
b.	Project Management (Kammerdiener)	1	2	3	4	5
c.	Volunteer Management (McCurley)	1	2	3	4	5
d.	Older Persons with Hearing and Vision Impairment (Helen Keller Natl Ctr)	1	2	3	4	5
e.	Open Discussion	1	2	3	4	5
	Thursday, April 11					
a.	Equal Opportunity Workshop (Voss)	1	2	3	4	5
b.	Role of Inspector General (Denny)	1	2	3	4	5
c.	State Meetings	1	2	3	4	5
d.	Nuts and Bolts	1	2	3	4	5
e.	Q & A with the IG	1	2	3	4	5
	Friday, April 12					
a.	Volunteer/Project Liability and Risk Management (Panel)	1	2	3	4	5

-7-

[FR Doc. 91-3658 Filed 2-14-91; 8:45 am]
BILLING CODE 6050-28-C

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Proposed Determinations With Regard to the 1991-95 Program Provisions

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed determinations.

SUMMARY: The Commodity Credit Corporation (CCC) proposes to make the following program determinations with respect to the 1991-95 price support and production adjustment programs for wheat, feed grains, cotton (extra long staple and upland), rice, and oilseeds: (a) What crops, in addition to fruits and vegetables, should not be permitted to be planted on acreage considered to be "flexible acreage"; (b) whether the production of industrial and other crops should be allowed on acreage designated as program crop permitted acreage under the "0/92 and 50/92" provisions of these programs; (c) what minor oilseed crops should be eligible to be planted on acreage designated as program crop permitted acreage under the "0/92 and 50/92" programs; and (d) what oilseed crops should be eligible to be pledged as collateral for price support loans.

These determinations are made pursuant to the Agricultural Act of 1949, as amended (the 1949 Act), and the CCC Charter Act, as amended.

EFFECTIVE DATE: Comments must be received on or before February 27, 1991, in order to be assured of consideration.

ADDRESSES: Bruce R. Weber, Director, Commodity Analysis Division, USDA-ASCS, room 3741-S, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Bradley Karmen, Agricultural Economist, Commodity Analysis Division, USDA-ASCS, room 3744-S, P.O. Box 2415, Washington, DC 20013 or call (202) 447-7923.

The Preliminary Regulatory Impact Analysis describing the options considered in developing this proposed determination and the impact of the implementation each option is available on request from the above-named individual.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under U.S. Department of Agriculture procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512-1 and has been designated as "non-major."

It has been determined that these program provisions will not result in an annual effect on the economy of $100 million or more.

The titles and numbers of the federal assistance programs, as found in the catalogue of Federal Domestic Assistance, to which this notice applies:

Titles	*Numbers*
Commodity Loans and Purchases	10.051
Cotton Production Stabilization	10.052
Feed Grains Production Stabilization	10.055
Wheat Production Stabilization	10.058
Rice Production Stabilization	10.065

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of these determinations.

It has been determined by environmental evaluation that this action will have no significant impact on the quality of human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983). It is necessary that the determinations for the 1991 crops be made in sufficient time for producers to make spring planting decisions. Accordingly, the public comment period is limited to 15 days from the date this notice is filed with the Director, Office of the Federal Register. This will allow CCC time to consider the comments received before the final program determinations are made. The comments received with respect to this notice of proposed determination will be reviewed in determining the provisions of the 1991 Program Provisions.

Accordingly, the following program determinations are proposed to be made with respect to the provisions that are applicable to the 1991-95 crops of wheat, feed grains, cotton, rice and oilseeds:

(a) *crops that May Not be Planted on Flexible Acres.* Section 504 of the 1949 Act states that producers may plant crops other than the program crop on up to 25 percent of any participating crop acreage base. This acreage will be known as "flexible" acreage.

Crops that may be planted on flexible acreage are: (1) Any program crop; (2) any oilseed crop; (3) any other crop, except any fruit or vegetable crop (including potatoes, dry edible beans, lentils and peas). The planting of certain fruits or vegetables may be permitted if such crop is an industrial or experimental crop, or no substantial domestic production or market exists for the crop.

The planting of any crop on flexible acres may also be prohibited. An annual determination of the commodities that may not be planted on the flexible acreage must be made and a list of such crops be made available. The following list of fruits and vegetables are the crops that CCC intends to include on a list of prohibited crops on flexible acreage: apples, apricots, arugala, artichokes, asparagus, avocados, babaco papayas, bananas, beans, beets, black berries, blueberries, bok choy, boysenberries, broccoli, brussel sprouts, cabbage, calabaza, cassava, chinese cabbage, chinese mustard, chufes, canary melon, cantaloupes, casaba melon, carrots, cauliflower, celeriac, celery, cherries, chicory, chinese bitter melon, citron, citron melon, coffee, collards, cowpeas, cranberries, crenshaw melon, cucumbers, currants, dasheen, dates, egg plant, elderberries, endive, escarole, figs, gooseberries, grapefruit, grapes, guavas, honeydew melon, huckleberries, jerusalem artichokes, kale, kiwifruit, kohlrabi, kumquats, leeks, lemons, lentils, lettuce, limequats, limes, loganberries, loquats, mangos, marionberries, mulberries, murcotts, mustard greens, nectarines, olallieberries, onions, oranges, okra, olives, papaya, paprika, parsnip, passion fruits, peaches, pears, peas, all peppers, persimmons, persian melon, pineapple, plantain, plumcots, plums, pomegranates, potatoes, sweet potatoes, pumpkins, quinces, radiochio, radishes, raspberries, rhubarb, rutabaga, santa claus melon, salsify, savory, shallots, spinach, squash, strawberries, swisschard, sweet corn, tangelos, tangerines, tangos, taniers, taro root, tomatoes, turnips, turnip greens, watercress, watermelons, white sapote, yam, yu choy.

CCC intends to permit all other crops, except the above list of fruits and vegetables, to be grown on flexible acreage. However, CCC will consider adding other crops to this prohibited list.

Comments, along with justifications, are requested as to the appropriateness of the list of fruits and vegetables and what other crops, if any, should be added to the list of prohibited crops on flexible acreage.

(b) *Planting Industrial and Other Crops on PAY/92 Acres.* Sections 101B(c)(1)(E), 103B(c)(1)(E), 105B(c)(1)(E) and 107B(c)(1)(E) of the 1949 Act provide that, subject to such terms and conditions as may be prescribed, all or any part of acreage otherwise required to be devoted to a conservation use

(CU) as a condition of qualifying for payments to be devoted to sweet sorghum, guar, sesame, castor beans, crambe, plantago ovato, triticale, rye, mung beans, commodities for which no substantial domestic production or market exists but that could yield industrial raw materials that are being imported, or likely yield industrial raw material that is being imported, or likely to be imported, into the United States, or commodities grown for experimental purposes (including kenaf and milkweed), except that such acreage may be permitted to be devoted to such production only if it is determined that:

(1) The production is not likely to increase the cost of the price support program and will not affect farm income adversely; and

(2) The production is needed to provide an adequate supply of the commodity or, in the case of commodities for which no substantial domestic production or market exists but that could yield industrial raw materials, the production is needed to encourage domestic manufacture of such raw material and could lead to increased industrial use of such raw material to the long-term benefit of United States industry.

Comments are requested as to whether production of industrial and other crops should be permitted on acreage otherwise required to be devoted to CU on acreage designated as program crop acreage under the 0/92 and 50/92 provisions of the 1991–95 programs.

(c) *Planting Minor Oilseeds on 0/92 Acreage.* Sections 105B(c)(1)(F) and 107B(c)(1)(F) of the 1949 Act states that all or any part of acreage otherwise required to be devoted to CU as a condition of qualifying for payments under the wheat and feed grain program may be devoted to sunflowers, rapeseed, canola, safflower, flaxseed, mustard seed, and any other designated minor oilseed (excluding soybeans).

CCC does not propose to designate any other minor oilseed with respect to this acreage for the 1991–95 crops.

(d) *Designation of Oilseeds Eligible for Loan.* Section 205(a) of the 1949 Act states that the term "oilseeds" means soybeans, sunflower seed, canola, rapeseed, safflower, flaxseed, mustard seed and such other oilseeds as may be designated. Section 205(c) of the 1949 Act provides that, if price support loans are available for other oilseeds, the loan rate(s) shall be at such level as is determined to be fair and reasonable in relation to the loan level for soybeans.

CCC proposes not to designate any other oilseed eligible for loan for the 1991–95 crops. Comments are requested on this proposal.

Consideration will be given to any data, views and recommendations that are received relating to these issues.

Authority: Sections 101, 101B, 103B, 105B, and 107B of the Agricultural Act of 1949; 15 U.S.C. 714b and 714c.

Signed at Washington, DC, on February 11, 1991.

Keith D. Bjerke,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 91–3708 Filed 2–12–91; 12:05 pm]

BILLING CODE 3410–05–M

Federal Crop Insurance Corporation

[Doc. No. 8224–S/A&US–91–2]

Request for Comments on Ratemaking Methdology

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Notice with request for comment.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) publishes this notice to solicit public comment and suggestions for improvement regarding the present methodology with respect to ratemaking for crop insurance purposes.

The premium rate charged to any insured under the FCIC insurance program for the major crops is determined by two main factors: (1) The average yield of the land and (2) the average rate charged where the land is located.

Notice No. A&US–91–1, published elsewhere in this issue of the **Federal Register** requests comments on the methodology for yield determinations. This notice (No. A&US–91–2) is requesting comments on the second factor; the FCIC methodology and procedure on ratemaking.

The average rate is determined by evaluating insurance experience in the area for a number of years as adjusted for changes in policy terms and conditions. The appropriate amount to charge for the possibility of a catastrophic event which may occur in the area also is estimated. Once the average rate is determined, a mathematical adjustment spreads or spans the rate over different yield levels so that the individual yield history of the insureds can be appropriately considered.

Ratemaking methods and criteria to be used for the 1992 crop year evolved from FCIC's experience with previous rate reworks, continuing introduction of recommendations from a study by consulting actuaries, and discussions with the Actuarial Improvement Coordinating Committee (a group of industry and FCIC personnel). Four major concepts are used: (1) Loss cost, (2) credibility, (3) catastrophe, and (4) target loss ratio. These concepts are applied to all crop programs and regions.

Loss Cost

Loss cost is the percent of insured value paid to policyholders. It can be considered as a pure premium rate under some circumstances. The average of loss costs for a period of years may not indicate the same rate adjustment as indicated by a cumulative loss ratio. This is particularly true when liability may be low in a year of large losses. The average of loss costs is a more meaningful indicator of rate adequacy in crop insurance than the cumulative loss ratio whenever there is a wide range in annual loss costs.

Credibility

Credibility is a term used by actuaries to indicate the degree to which the data provide a sound technical basis for ratemaking. Data provide little guidance as to the appropriate rate if there are no losses. Clearly, zero is not the best estimate of the appropriate rate in this case. The chance of observing few losses is greater when there is limited experience. Proposed 1992 methodology addresses the problem of small numbers of observations for some crops and areas:

(a) Use the National Agricultural Statistical Services Crop Reporting District (CRD) as the basis rating district.

(b) Use a credibility criterion of 271 claims in the base period.

(c) Use a process to smooth rates among counties and rating districts.

The credibility criterion is defined in terms of the number of claims needed to have a 90 percent statistical probability that the estimated rate is within plus or minus 10 percent of the true rate. This means that, if 10,000 rates are estimated, at least 9,000 of these should be within 10 percent of the average loss costs that will be observed in future years.

This standard requires 271 claims in the CRD for full credibility. For smaller volume crops, the standard for full credibility is reduced to 63 claims, based on 50 percent probability of being within plus or minus 10 percent of the true rate.

If insufficient claims are observed in a CRD, nearby districts are combined. Combinations are done by prorating available experience and using that result to estimate missing years for a CRD in some cases. In other cases, the

CRDs simply are combined. Analysts must evaluate each case to determine the best procedure to achieve the credibility standard.

Catastrophe

A catastrophe is a loss situation in which nearly all policies in a geographic area suffer some loss. Often, the nation with all crops does not have enough premium income in a year to cover losses. One bad year can erase all profits (reserves) accumulated over 30 years, as occurred in Montana wheat in 1985.

Catastrophe is to be incorporated into the premium rate using an approach recommended by a consulting actuary. This catastrophe loading adds a minimum of 1.0 and a maximum of 5.0 percentage points to an average loss cost based on a series of loss costs capped at the 16th largest value. This method uses information from wider geographic areas to estimate losses which potentially will be observed in a smaller area at some future date. Waiting until a catastrophe is observed in a smaller area is not reasonable because (1) Reserves never will be adequate when it occurs and (2) the impact upon rates at the time would be much greater.

Target Loss Ratio

The Federal Crop Insurance Act of 1980 requires FCIC to estblish reasonable reserves. This means that, over time, the cumulative loss ratio must be less than 1.00. For 1992, FCIC proposes a criterion that the program on a national basis should break even 85 percent of the time over any 10-year period. This criterion, based on 1948–88 experience, results in a target loss ratio of 0.88. Hence, a crop program that has a cumulative loss ratio of 1.00 would incur a 13.6 percent rate increase (1.00 divided by .88), assuming reasonably constant loss costs over time.

This criterion is more lenient than one which requires each individual crop program to achieve a specific reserve level. That standard would require a lower target loss ratio for certain crops because experience is much more variable.

Experience Period

Loss costs by year for 1970–1989, the latest 20-year period for which data are available, will be the basis for computing rates. Loss costs will be for each CRD, each state, and nationally. The actual loss cost will then be increased by a mathematical adjustment to estimate the losses that would have been observed at the 75 percent coverage level compared to the average coverage chosen by insureds. This is done because basic rates are estimated at the 75 percent level of coverage. Rates at the 65 and 50 percent coverage levels are a percentage of the basic rate.

The 1992 rate change for a county within a CRD will be limited to no more than a 20 percent increase or a 5 percent decrease from the 1991 rate. Rates are proposed to be adjusted annually until all counties within a CRD have the same base rate.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447–3325.

ADDRESSES: Written responses to this notice should be sent, not later than March 15, 1991, to Peter F. Cole, Secretary, Federal Crop Insurance Corporation, room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

Written comments in response to this notice should be identified at the top of the first page with the number "A&US–92–2."

All written comments received pursuant to this rule will be available for public inspection and copying in room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

Done in Washington, DC on February 11, 1991.

James E. Cason,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 91–3702 Filed 2–14–91; 8:45 am]

BILLING CODE 3410-08-M

[Doc. No. 8282-S/AMC-91-1]

Request for Comments on Criteria and Methodology for Reinsured Companies Rating System

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Request for comments and suggestions.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) publishes this notice seeking public comments and suggestions for establishing criteria and methodology that may be used to measure a company's ability to meet successfully its sales and service responsibilities

Under the authority of the Federal Crop Insurance Act, as amended, FCIC uses a dual system of delivery of the crop insurance program. Master Marketers and private insurance companies provide multiple peril crop insurance to agricultural producers through FCIC approved policies, which are in turn reinsured by FCIC. The ability and manner in which these companies operate is critical to the success of a sound crop insurance program.

FCIC is considering establishing criteria and methodology to evaluate a company's operation through a rating system which evaluates the factors indicative of an ability to operate efficiently and effectively in addition to observed performance. The results of an industry wide assessment may be made available to the public to ensure informed decisions can be made in choosing a quality company for crop insurance policy sales and service.

FCIC is seeking comments and suggestions to identify key factors within a company's operation which should be used to demonstrate company soundness and the evaluation criteria to be used to measure actual performance. These areas may include, but are not necessarily limited to, the following:

—Marketing Plans
—New Sales
—Sales Agent Related Services
—Document Processing Time
—Underwriting Controls
—Sales Agent and Loss Adjuster Training Plans.
—Financial Strength
—Data Processing Capability
—Geographic Service Area
—Internal Controls Systems
—Private Sector Reinsurance Coverage

The public is also invited to provide comments and suggestions on the form evaluations should take; the frequency of evaluations; and, FCIC's proper role for reacting to positive and negative findings.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC., 20250, telephone (202) 447–3325.

ADDRESSES: Written responses to this notice should be sent to Johnnie F. Perdue, Director, Raleigh Compliance Office, One Copley Parkway, suite 201, Morrisville, N.C. 27560, not later than March 15, 1991. Written responses should be clearly identified by adding "AMC–91–1," at the top of the first page.

Written comments received pursuant to this notice will be available for public inspection and copying at the above address during regular business hours, Monday through Friday.

Done in Washington, DC on February 11, 1991.

James E. Cason,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 91-3703 Filed 2-14-91; 8:45 am]

BILLING CODE 3410-08-M

Forest Service

Strawberry Gulch Timber Sale

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service published a Notice of Intent to prepare an Environmental Impact Statement in the August 18, 1989 **Federal Register** (Vol. 54, No. 159) for a proposal to harvest timber and build roads in the Strawberry Gulch areas on the Hayden Ranger District of the Medicine Bow National Forest in Carbon County, Wyoming. That notice is hereby revised to show that the Draft Environmental Impact Statement (DEIS) is expected to be available for public review in July, 1991, and the Final Environmental Impact Statement (FEIS) is scheduled to be completed by January, 1992. No other revisions are made.

Gerald G. Heath,

Forest Supervisor.

[FR Doc. 91-3647 Filed 2-14-91; 8:45 am]

BILLING CODE 3410-11-M

The Ouachita National Forest, Le Flore County, OK, Multiple Use Advisory Council

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a meeting of The Ouachita National Forest, Le Flore County, Oklahoma, Multiple Use Advisory Council. The meeting will be open to the public. This notice also describes the functions of the Council. Notice of this meeting is required under the National Advisory Committee Act.

DATE: March 4, 1991, 7 p.m.

ADDRESS: The meeting location is at the Kiamichi Vo Tech, located just west of Talihina OK. Send written statements to Forest Supervisor, Ouachita National Forest, P.O. Box 1270, Hot Springs, AR 71902.

FOR FURTHER INFORMATION CONTACT: Gary Pierson, (501)-321-5281.

SUPPLEMENTARY INFORMATION: The Ouachita National Forest, Le Flore County, Oklahoma, Multiple Use Advisory Council was created by the Winding Stair Mountain National Recreation and Wilderness Area Act (16 U.S.C. 460vv-13). The Council, comprised of 20 members, appointed by the Secretary of Agriculture September 25, 1989, will meet periodically. The purpose of this Council is advisory in nature. The Council shall provide information and recommendations to the Secretary regarding the operation of the Ouachita National Forest in Le Flore County. The Council is composed of representatives from the local area in which the Ouachita National Forest is located, equally divided among conservation, timber, fish and wildlife, tourism and recreation, and economic development interests.

Mike Curran, Supervisor of the Ouachita National Forest will chair the meeting. Representatives of the Forest Service will attend from the Department of Agriculture including the designated officer of the Federal Government. The agenda for this meeting will include: the road policy of the Forest Service, the future plans for the Advisory Council and any new business from the floor.

Dated: February 8, 1991.

David Wilson,

Acting Forest Supervisor.

[FR Doc. 91-3877 Filed 2-14-91; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF AGRICULTURE

National Agricultural Library

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Laboratory Animal Welfare: Institutional Plans for Environmental Enhancement for Nonhuman Primates

AGENCIES: National Agricultural Library, USDA and National Library of Medicine, NIH, HHS.

ACTION: Notice of availability of information relative to environmental enhancement for nonhuman primates.

SUMMARY: This notice announces the availability of bibliographies on environmental enhancement for nonhuman primates, and the National Institutes of Health's "Nonhuman Primate Intramural Management Plan." Regional meetings concerning U.S. Department of Agricultural Animal Welfare Regulations are also announced. This information is presented to assist institutions in developing plans for environmental enhancement to promote the psychological well-being of nonhuman primates.

ADDRESSES: Information can be obtained from either: Ms. Jean Larson, Animal Welfare Information Center, National Agricultural Library, U.S. Department of Agriculture, Beltsville, MD 20705, phone (301) 344-3212; or Dr. Fritz Gluckstein, National Library of Medicine, Bethesda, MD 20894, phone (301) 496-6097. Bibliographies and plans referenced in this announcement can be obtained from the Animal Welfare Information Center, National Agricultural Library, room 205, Beltsville, MD 20705.

SUPPLEMENTARY INFORMATION: The Final USDA Animal Welfare Regulations, part 3, subpart D, published elsewhere in this issue of the **Federal Register**, include the requirement that research facilities "develop, document and follow" a plan for enhancement of the environment of nonhuman primates, in order to promote the psychological well-being of these animals.

The regulatory approach of requiring institutional plans for environmental enhancement for nonhuman primates is intended to meet several objectives:

(1) To allow individual institutions the flexibility to develop plans consistent with various theories of how best to provide environmental enhancement as well as plans that are compatible with existing animal welfare programs and divergent types of facilities;

(2) To permit modifications to plans as scientific knowledge accrues, without requiring additional rulemaking; and

(3) To be consistent with the administration's desire for performance standards in Federal regulations.

Although the wide diversity among regulated institutions allows for some disparity in institutional plans, the regulatory requirement that plans be "in accordance with currently accepted professional standards as cited in appropriate professional journals or reference guides" presumes a fundamental consistency among these plans. The specific provisions required by the regulation to be included or addressed in institutional plans also should result in underlying uniformity of plan designs and a reasonable degree of similarity in implementing procedures.

In an effort to approach uniformity, and to provide institutions with up-to-date information in this area, the National Agricultural Library (NAL) and the National Library of Medicine (NLM) announce the following:

(1) The NAL, in cooperation with the NLM, is preparing and will continue to update bibliographies pertaining to the psychological well being of nonhuman primates;

(2) The NAL will collect and make available to requestors, plans from institutions that have been identified by the Animal and Plant Health Inspection Service (APHIS), USDA or Federal funding agencies as being cost-effective and that meet the letter and the spirit of the legislation; and,

(3) The National Institutes of Health's (NIH) "Nonhuman Primate Intramural Management Plan" is available currently from the NAL.

The adequacy of performance standards depends largely upon consistently reasonable interpretation of the requirements and common understanding of oversight mechanisms. To this end, APHIS and the Division of Animal Welfare, Office for Protection from Research Risks, NIH, will be co-sponsoring regional meetings to provide relevant information and to solicit the comments of interested parties. These meetings will be held in San Francisco, CA on April 10, St. Louis, MO on May 1 and Washington, DC on June 6, 1991. Further specific information will be sent to all USDA-registered research facilities and NIH awardee institutions in the near future.

Dated: January 23, 1991.

Joseph H. Howard,

Director, National Agricultural Library.

Dated: January 18, 1991.

William F. Raub,

Acting Director, National Institutes of Health.

[FR Doc. 91-3269 Filed 2-14-91; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Action Affecting Export Privileges; Kenneth K. Gimm et al.

In the Matter of: Kenneth K. Gimm, individually and doing business as Gimm Young Co., Gimm Computer Co., Gimm Consultants and Charles Wilson Scientific, 190 Route 73, Maple Shade, New Jersey 08052, and 211 Route 38, Maple Shade, New Jersey 08052, Respondents.

Order

Whereas, on January 10, 1989, then-Assistant Secretary for Export Enforcement G. Philip Hughes entered an Order against Respondents which, in pertinent part, provided that:

It is therefore ordered:

First, Gimm shall pay to the Department a civil penalty in the amount of $50,000, as follows: Gimm will make five equal annual installment payments to the Department of $5,000 each, for a total of $25,000. The first annual installment of $5,000 shall be paid on or before September 1, 1989. The four remaining installments shall be paid one, two, three and four years, respectively, from the date of the first payment. The remainder of the civil penalty, $25,000, shall be suspended, as authorized by Section 788.16(c) of the Regulations, for a period of six years from the date of entry of this Order, and shall thereafter be waived provided that, during the period of suspension, Gimm has committed no violation of the Act or any regulation, order or license issued under the Act.

Second, Kenneth K. Gimm, individually and doing business as Gimm Young Co., Gimm Computer Co., Gimm Consultants, and Charles Wilson Scientific (hereinafter collectively referred to as Gimm) * * * shall be denied, for a period of two years following the date of this Order, all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving the export of U.S.-origin commodities or technical data from the United States or abroad * * *.

E. As authorized by § 788.16(c) of the Regulations, the last 18 months of the denial period shall be suspended for a period of six years from the date of this Order, and shall thereafter be waived provided that, during the period of suspension, Gimm has committed no violation of the Act or any regulation, order or license issued under the Act.

Whereas, pursuant to §§ 788.17(b) and 788.16(c) of the Export Administration Regulations (15 CFR parts 768–799 (1990)) (the Regulations) issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. 2401–2420 (1990)) (the Act),[1] the Department on December 18, 1990, applied to the undersigned to modify the Order of January 10, 1989, by revoking the 18-month period of suspension of denial, and by revoking the suspension of $25,000 of the civil penalty, because Respondents have refused or failed to pay the second $5,000 installment of the civil penalty that was due and payable on September 1, 1990, as required by the Order of January 10, 1989;

Whereas, on December 18, 1990, Respondents were Ordered by the undersigned to Show Cause in writing on or before February 1, 1991, why the Order of January 10, 1989 should not be modified as requested by the Department for the Respondents' failure to pay the civil penalty as required by the Order of January 10, 1989;

Whereas, the Order to Show Cause was duly served on the Respondents in a manner authorized by § 788.4 of the Regulations;

Whereas, the Respondents have failed to show cause why the revocation of the suspensions requested by the Department should not be ordered;

Now, Therefore, pursuant to §§ 788.17(b) and 788.16(c) of the Regulations and in consequence of Respondents' failure to pay the civil penalty as required by the Order of January 10, 1989;

It is hereby ordered that the Order of January 10, 1989, is modified, as follows:

First, the suspension of 18 months of the denial period of all U.S. export privileges imposed against Respondents is hereby revoked. *Kenneth K. Gimm*, individually and doing business as *Gimm Young Co.*, *Gimm Computer Co.*, Gimm Consultants and Charles Wilson Scientific, 190 Route 73, Maple Shade, New Jersey 08052, and 211 Route 38, Maple Shade, New Jersey 08052, collectively referred to herein as respondents, and all their successors, assignees, officers, partners, representatives, agents and employees, shall be denied, for a period of 18 months from the date of this Order, all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving the export of U.S.-origin commodities or technical data from the United States or abroad.

A. All outstanding individual validated export licenses in which any respondent appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of respondents' privileges of participating, in any manner or capacity, in any special licensing procedure including, but not limited to, distribution licenses, are hereby revoked.

B. Without limiting the generality of the foregoing, participation prohibited in any such transaction, either in the United States or abroad, shall include, but is not limited to, participation: (i) As a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of any commodities or technical data, in whole or in part, exported or to be exported from the United States and subject to the Regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or

[1] The Act expired on September 30, 1990. Executive Order 12730 (55 FR 40373, October 2, 1990) continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. 1701–1706 (Supp. 1990)).

technical data. Such denial of export privileges shall extend only to those commodities and technical data which are subject to the Act and the Regulations.

C. After notice and opportunity for comment, such denial may be made applicable to any person, firm, corporation, or business organization with which any respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services.

D. No person, firm, corporation, partnership or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Licensing shall, with respect to U.S.-origin commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with any respondent or any related person, or whereby any respondent or any related person may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly: (a) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported, in whole or in part, or to be exported by, to, or for any respondent or any related person denied export privileges; or (b) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any export, reexport, transshipment, or diversion of any commodity or technical data exported or to be exported from the United States. These prohibitions apply only to those commodities and technical data which are subject to the Act and the Regulations.

Second, the suspension of $25,000 of the civil penalty is hereby revoked. That suspended sum of $25,000 is immediately due and payable, in addition to the second installment of $5,000 that was due on September 1, 1990, for a total civil penalty of $30,000 immediately due and payable. The remaining balance due, $15,000, shall be paid in accordance with the installment schedule set forth in the Order of January 10, 1989.

Third, this Order shall be served upon respondents and published in the **Federal Register.**

Entered this 5th day of February, 1991.

Quincy M. Krosby,

Assistant Secretary for Export Enforcement.

[FR Doc. 91-3648 Filed 2-14-91; 8:45 am]

BILLING CODE 3510-DT-M

[Docket No. 910225-1025]

Foreign Availability Assessment Concerning Hard-Disk Test Equipment

AGENCY: Office of Foreign Availability, Bureau of Export Administration, Commerce.

ACTION: Notice of initiation of an assessment and request for comments.

SUMMARY: The Office of Foreign Availability (OFA) is providing notice that it has initiated an assessment of foreign availability of certain Hard-Disk Test Equipment to controlled countries. OFA will assess foreign availability under part 791 of the Export Administration Regulations (EAR). OFA is seeking public comments on the foreign availability of these items worldwide.

DATES: The period for submission of information will close on March 1, 1991.

ADDRESSES: Submit information relating to this foreign availability assessment to: Steven C. Goldman, Office of Foreign Availability, Bureau of Export Administration, U.S. Department of Commerce, room SB-097, 14th Street and Pennsylvania Avenue NW., Washington, DC 20230.

The public record concerning this notice will be maintained in the Bureau of Export Administration's Freedom of Information Record Inspection Facility, room 4518, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Byrg E. Bonnelycke, Office of Foreign Availability, Department of Commerce, Washington, DC 20230, telephone: (202) 377-8074.

SUPPLEMENTARY INFORMATION: Although the Export Administration Act (EAA) expired on September 30, 1990, the President invoked the International Emergency Economic Powers Act and continued in effect the provisions of the EAA and the Export Administration Regulations (EAR), to the extent permitted by law, in Executive Order 12730 of September 30, 1990.

Part 791 of the EAR (15 CFR 730 *et seq.*) establishes the procedures and criteria for determining the foreign availability of goods and technology whose export is controlled for national security reasons.

On November 2, 1990, OFA accepted for filing a foreign availability submission pursuant to § 791.4 of the EAR relating to the decontrol of certain Hard-Disk Test Equipment for export to controlled countries. This equipment is controlled for national security reasons under Export Control Commodity Number (ECCN) 1358A(f) of the Commodity Control List (CCL) (15 CFR 799.1, Supp. 1):

> Equipment specially designed for the manufacture or testing of devices and assemblies thereof [previously] controlled by ECCN 1588A or magnetic recording media described in ECCN 1572A and specially designed components therefor:
>
> * * * * *
>
> (f) Stored program controlled equipment for monitoring, grading, exercising or testing recording media, other than tape, controlled by paragraph (d) of ECCN 1572A.

Upon acceptance of the submission, OFA initiated a foreign availability assessment of the item. By March 4, 1991, the Department intends to submit for publication in the **Federal Register** its determination of the foreign availability of this type of equipment.

To assist OFA in assessing such foreign availability, any person may submit relevant information to OFA at the above address. The following information would be especially useful:

—Product names and model numbers of the U.S. and non-U.S. items;
—Names and locations of non-U.S. sources;
—Key performance elements, attributes, and characteristics of the items on which quality comparisons may be made;
—Non-U.S. sources' production quantities and/or sales of any allegedly comparable item;
—An estimate of market demand and the potential economic impact of the control on the U.S. item;
—Extent to which any allegedly comparable item is based on U.S. technology;
—Product names, model designations, and value of U.S. controlled parts and components incorporated in any allegedly comparable item; and
—Information supporting the proposition that the foreign item is in fact available to the country or countries for which foreign availability is alleged.

Evidence supporting such relevant information may include, but is not limited to: Foreign manufacturers' catalogs, brochures, or operations or maintenance manuals; articles from reputable trade publications; photographs; and depositions based

upon eyewitness accounts. Supplement No. 1 to part 791 of the EAR provides additional examples of evidence that would be helpful to the investigation.

OFA will also accept comments or information accompanied by a request that part or all of the material be treated confidentially because of its proprietary nature or for any other reason. The information for which confidential treatment is requested should be submitted to OFA separately from any non-confidential information submitted. The top of each page should be marked with the term "Confidential Information." OFA either will accept the submission in confidence or, if the submission fails to meet the standards for confidential treatment, return it. A non-confidential summary must accompany such submissions of confidential information. The summary will be made available for public inspection.

Informaton OFA accepts as privileged under section (b) (3) or (4) of the Freedom of Information Act (5 U.S.C. 552) will be kept confidential and will not be available for public inspection, except as authorized by law. Communications from agencies of the United States Government and foreign governments will not be made available for public inspection.

All other information received in response to this notice will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires written comments. Oral comments must be followed by written memoranda, which also will be a matter of public record and will be available for public review and copying.

The public record of information received in response to this notice will be maintained in the Bureau of Export Administration's Freedom of Information Records Inspection Facility, room 4525, Department of Commerce, 14th Street and Pennsylvania Avenue NW., Washington, DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in part 4 of title 15 of the Code of Federal Regulations.

Information about the inspection and copying of records at the facility may be obtained from Margaret Cornejo, Bureau of Export Administration, Freedom of Information Officer, at the above address or by calling (202) 377-2593.

Because of the strict statutory time limitations in which Commerce must make its determination, the period for submission of relevant information will close on March 1, 1991. The Department will consider all information received before the close of the comment period in developing the assessment. Information received after the end of the period will be considered if possible, but its consideration cannot be assured. Accordingly, the Department encourages persons who wish to provide information related to this foreign availability submission to do so at the earliest possible time to permit the Department the fullest consideration of the information.

Dated: February 11, 1991.

James M. LeMunyon,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 91-3678 Filed 2-14-91; 8:45 am]

BILLING CODE 3510-DT-M

Telecommunications Equipment Technical Advisory Committee; Closed Meeting

A meeting of the Telecommunications Equipment Technical Advisory Committee will be held March 14, 1991, 9:30 a.m., in the Herbert C. Hoover Building, Room 1629, 14th Street & Pennsylvania Avenue NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions that affect the level of export controls applicable to telecommunications and related equipment and technology. The Committee will meet only in executive session to discuss matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on January 5, 1990, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C., 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC 20230. For further information, contact Lee A. Carpenter on (202) 377-2583.

Dated: February 11, 1991.

Betty Ferrell,

Director, Technical Advisory Committee Unit.

[FR Doc. 91-3679 Filed 2-14-91; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration

Short-Supply Determination: Certain Wide Stainless Steel Hot Bands

AGENCY: Import Administration/International Trade Administration, Commerce.

ACTION: Notice of Short-Supply Determination on Certain Wide Stainless Steel Hot Bands.

SHORT-SUPPLY REVIEW NUMBER: 36.

SUMMARY: The Secretary of Commerce ("Secretary") hereby grants a request for a short-supply allowance of 770 net tons of certain 61.25-inch wide stainless steel hot bands for February through December 1991 under Article 8 of the U.S.-E.C. steel arrangement.

EFFECTIVE DATE: February 8, 1991.

FOR FURTHER INFORMATION CONTACT: James Rice or Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue NW., Washington, DC 20230 (202) 377-2667 or (202) 377-0159.

SUPPLEMENTARY INFORMATION: On January 11, 1991, the Secretary received an adequate short-supply petition from Mercury Stainless, Inc. ("Mercury") requesting a short-supply allowance for 12,000 net tons (1,000 tons per month) of certain 61.25 inch wide stainless steel hot bands for 1991 under Article 8 of the Arrangement Between the European Coal and Steel Community and the European Economic Community, and the Government of the United States of America Concerning Trade in Certain Steel Products. Mercury requested short supply for this product because it alleges that the only domestic producer is not a competitive or reliable supplier, and because foreign suppliers are unwilling to export this product under regular export licenses. The Secretary conducted this short-supply review pursuant to section 4(b)(4)(A) of the Steel Trade Liberalization Program Implementation Act, Public Law 101-221, 103 Stat. 1886 (1989) ("the Act"), and § 357.102 of the Department of Commerce's Short-Supply Procedures, 19 CFR 357.102 ("Commerce's Short-Supply Procedures").

The requested material meets the following specifications:

Grades:
T-304
T-304L
T-316
T-316L

Thickness:
0.145 inch
0.187 inch
0.210 inch
0.250 inch

Variation in gauge shall not exceed ten percent of the nominal, and tolerance will be ordered gauge plus or minus 5 percent.

Width:
61.25 inches (+0.5 inch, −0.25 inch tolerance).

The quantities required, by grade, are as follows:

Grade	Quantity (net tons)
T-304	745
T-304L	105
T-316	15
T-316L	135
Total	1,000

ACTION: On January 11, 1991, the Secretary established an official record on this short-supply request (Case Number 36) in the Central Records Unit, Room B-099, Import Administration, U.S. Department of Commerce at the above address. On January 18, 1991, the Secretary published a notice in the **Federal Register** announcing a review of this request and soliciting comments from interested parties. Comments were required to be received no later than January 25, 1991, and interested parties were invited to file replies to any comments no later than January 30, 1991. In order to determine whether this product, or a viable alternative product, could be supplied in the U.S. market for the period of this review, the Secretary sent questionnaires to: Allegheny-Ludlum Steel Corporation ("Allegheny-Ludlum"), Armco, Inc. ("Armco"), Carpenter Technology Inc. ("CarTech"), Cyclops Industries Inc. ("Cyclops"), J&L Specialty Products ("J&L"), and Republic Engineered Steels ("RES"). The Secretary received adequate questionnaire responses from four of the six companies. No comments were filed in response to the **Federal Register** notice.

QUESTIONNAIRE RESPONSES: Three of the four respondents (Allegheny-Ludlum, CarTech and J&L) indicated that they did not produce the wide stainless hot bands required by Mercury. However, RES indicated that it could produce the requested product and meet all of Mercury's needs, with the exception of 70 tons per month of the grade T-316/T-316L material. Allegheny-Ludlum argued that Mercury's request was "without merit since 60 inch sheets are not required for the United States market for stainless steel sheets."

ANALYSIS: Two issues are raised in Mercury's request: (1) Whether Mercury's request for 61.25-inch wide stainless hot bands is reasonable; and (2) should RES be considered a viable supplier of the requested wide hot bands to Mercury.

To address the merits of the request for 61.25-inch wide stainless steel hot bands requires the Secretary to determine whether the width requirement is a reasonable specification. In regard to specifications, the House Report of the Steel Trade Liberalization Program Implementation Act, ("House Report") states that "* * * if the petitioner has been purchasing the same steel product for the same end use, with the same requested specifications from all of its sources for a significant period of time, then such specification should be considered reasonable" H.R. No. 263, 101st Cong., 1st Sess. 15 (1989). In this case, Mercury has been purchasing the requested wide stainless hot bands since 1987.

Therefore the Secretary can only conclude that Mercury's request for 61.25-inch wide stainless steel hot bands is reasonable. As to Mercury's allegation that RES is not a viable supplier, Mercury provided no information to refute RES's questionnaire response regarding its ability to supply an acceptable product. Rather, Mercury focused its position on the uncompetitive price of RES hot bands in relation to the prices from offshore suppliers. Analyzing whether the RES price is reasonable requires the Secretary to determine the prevailing domestic market price for this product.

The House Report defines "prevailing domestic market price" as the "current prices in the U.S. market for domestically produced and imported product, as reflected in actual purchase and sales transactions" H.R. No. 263, 101st Cong., 1st Sess. 14 (1989). Since the prevailing domestic market price is based upon actual purchases and Mercury has a history of purchasing this product from RES, the Secretary can only conclude that the RES prices are reasonable. Therefore, RES must be regarded as a viable supplier to Mercury for all the material it can supply, which totals 930 net tons per month of the 1,000 net tons per month requested.

CONCLUSION: Because Mercury requires 12,000 net tons (1,000 tons per month) of wide stainless steel hot bands to meet its production needs during 1991, and because one domestic producer can supply all but 70 net tons per month of the requested material (grade T-316/T-316L hot bands) the Secretary determines tht short supply exists for the noted 70 net tons per month of this product, or 840 net tons for 1991. However, since this request is for January through December 1991 and Mercury will be unable to obtain material to meets its January needs, the Secretary grants short supply for 770 net tons of certain 61.25-inch wide stainless steel hot bands in grades T-316/T-316L (Mercury's February through December 1991 needs) for 1991, pursuant to section 4(b)(4)(A) of the Act, and § 357.102 of Commerce's Short-Supply Procedures.

Dated: February 8, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-3689 Filed 2-14-91; 8:45 am]

BILLING CODE 3510-DS-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Addition to Procurement List.

SUMMARY: This action adds to the Procurement List a service to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: March 18, 1991.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 557-1145.

SUPPLEMENTARY INFORMATION: On December 7, 1990, the Committee for Purchase from the Blind and Other Severely Handicapped published notice (55 FR 50577) of proposed addition to the Procurement List.

After consideration of the material presented to it concerning the capability of a qualified workshop to provide the service at a fair market price and the impact of the addition on the current or most recent contractor, the Committee has determined that the service listed below is suitable for procurement by the

Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractors for the service listed.

c. The action will result in authorizing small entities to provide the service procured by the Government.

Accordingly, the following service is hereby added to the Procurement List: Commissary Shelf Stocking & Custodial, Fitzsimmons Army Medical Center, Denver, Colorado.

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

E.R. Alley, Jr.,

Deputy Executive Director.

[FR Doc. 91–3704 Filed 2–14–91; 8:45 am]

BILLING CODE 6820–33–M

Procurement List Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities to be produced and services to be provided by workshops for the blind or other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: March 18, 1991.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and services listed below from workshops for the blind or other severely handicapped. It is proposed to add the following commodities and services to the Procurement List:

Commodities

Case, Ear Plug

6515–01–212–9452,
(Remaining 20 percent of Government's Requirement)

Wash Kit, Personal

7360–00–139–1063

Bag, Parts

8105–LL–B00–0208
8105–LL–B00–0209
8105–LL–B00–0210
8105–LL–B00–9974
8105–LL–B00–9975
(Requirements of Mare Island Naval Shipyard, CA)

Services

Janitorial/Custodial, Department of the Army, Coralville Reservoir, Coralville Lake, Iowa.

Janitorial/Custodial, Internal Revenue Service Center, 3651 South Interregional Highway 35, Austin, Texas

Sending and Oiling Picnic Tables, Deschutes National Forest, Bend Ranger District, Bend, Oregon.

E.R. Alley, Jr.,

Deputy Executive Director.

[FR Doc. 91–3705 Filed 2–14–91; 8:45 am]

BILLING CODE 6820–33–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Selection Criteria for Closing and Realigning Military Installations Inside the United States

AGENCY: Department of Defense (DoD).

ACTION: Final selection criteria.

SUMMARY: The Secretary of Defense, in accordance with section 2903(b), title XXIX, part A of the FY 1991 National Defense Authorization Act, is required to publish the proposed selection criteria to be used by the Department of Defense in making recommendations for the closure or realignment of military installations insikde the United States.

EFFECTIVE DATE: February 15, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Whittaker or Ms. Patricia Walker, Base Closure and Utilization, OASD(P&L), (703) 614–5356.

SUPPLEMENTARY INFORMATION:

A. Final Selection Criteria

The final criteria to be used by the Department of Defense to make recommendations for the closure or realignment of military installations inside the United States under title XXIX, part A of the National Defense Authorization Act for Fiscal Year 1991 as follows:

In selecting military installations for closure or realignment, the Department of Defense, giving priority consideration to military value (the first four criteria below), will consider:

Military Value

1. The current and future mission requirements and the impact on operational readiness of the Department of Defense's total force.

2. The availability and condition of land, facilities and associated airspace at both the existing and potential receiving locations.

3. The ability to accommodate contingency, mobilization, and future total force requriements at both the existing and potential receiving locations.

4. The cost and manpower implications.

Return on Investment

5. The extent and timing of potential costs and savings, including the number of years, beginning with the date of completion of the closure or realignment, for the savings to exceed the costs.

Impacts

6. The economic impact on communities.

7. The ability of both the existing and potential receiving communities' infrastructure to support forces, missions and personnel.

8. The environmental impact.

B. Analysis of Public Comments

The Department of Defense (DoD) received 169 public comments in response to the proposed DoD selection criteria for closing and realigning military installations inside the United States. The public's comments can be grouped into four topics: General, military value, costs and "payback", and impacts. The following is an analysis of these comments.

(1) General Comments

(a) A substantial number of commentors expressed concern over the proposed criteria's broad nature and similiarity to the 1988 Defense Secretary's Base Realignment and Closure Commission criteria. Many of the comments noted a need for objective measures or factors for the criteria. Some commentors also suggested various standard measures or factors for

the criteria. The inherent mission diversity of the Military Departments and Defense Agencies (DoD Components) makes it impossible for DoD to specify detailed criteria, or objective measures or factors that could be applied to all bases within a Military Department or Defense Agency. We have provided the commentors' letters to each Military Department for their consideration. The similarity to the 1988 Base Closure Commission criteria is acknowledged. After reviewing the public comments we concluded that using similar criteria is appropriate.

(b) Many commentors noted that a correlation between force structure and the criteria was not present. The base closure and realignment procedures mandated by title XXIX, part A, of the National Defense Authorization Act for Fiscal Year 1991 (the Act) require that the Secretary of Defense's recommendations for closure and realignment be founded on the force structure plan and the final criteria required by the Act. DoD's analytical and decision processes for applying the final criteria will be based on the force structure plan. The military value criteria provide the connection to the force structure plan.

(c) Many commentors noted the need for more detailed information on how DoD would implement the base closure procedures required by the Act. A recurrent suggestion was to group like bases into categories for analysis. In response to this comment and suggestion, and to respond to the general comments (a) and (b) above, we have issued policy guidance to the Military Departments and Defense Agencies on the base closure process. This guidance requires them to:

• Treat all bases equally: They must consider all bases equally in selecting bases for closure or realignment under the Act, without regard to whether the installation has been previously considered or proposed for closure or realignment by the Department. This policy does not appply to closures or realignments that fall below the thresholds established by the Act or to the 86 bases closed under Public Law 100-526;

• Categorize bases: They must categorize bases with like missions, capabilities and/or attributes for analysis and review, to ensure that like bases are fairly compared with each other; and

• Perform a capacity analysis: They must link force structure changes described in the force structure plan with the existing force and bases structure, to determine if a potential for closure or realignment exists. In the event a determination is made that no excess capacity exists in a category, then there will be no need to continue the analysis of that category, unless there is a military value or other reason to continue the analysis;

• Develop and Use Objective Measures/Factors: They must develop and use objective measures or factors within categories for each criterion, whenever feasible. We recognize that it will not always be possible to develop appropriate objective measures or factors, and that measures/factors (whether they be objective or subjective) may vary for different categories of bases.

(d) A number of commentors recommended assigning specific weights to individual criteria. It would be impossible for DoD to specify weights for each criterion that could be applied across the board to all bases, again due to the mission diversity of the Military Departments and Defense Agencies. It appears from the comments that numbering the criteria may have been mistaken as an order of precedence associated with individual criteria. We do not intend to assign an order of precedence to an individual criterion, other than to give priority to the first four.

(e) Several commentors gave various reasons why a particular installation should be eliminated from any closure or realignment evaluation. Public Law 101-510 directs DoD to evaluate all installations equally, exclusive of those covered under Public Law 100-526 or those falling below the threshold of section 2687, title 10, U.S. Code. Public Law 100-526 implemented the recommendations of the 1988 Defense Secretary's Commission on Base Realignment and Closure. We have issued guidance to the DoD Components instructing them to consider all bases equally, this includes those previously nominated for study in the Defense Secretary's January 29, 1990, base realignment and closure announcement that are above the thresholds established in the Act. Conversely, we did not receive any requests that a particular installation be closed or realigned pursuant to section 2924 of Public Law 101-510.

(f) A number of commentors noted a need for more management controls over data collection to ensure accuracy of data. We agree with this recommendation and have issued guidance that requires the DoD Components to develop and implement internal controls, consistent with their organizational and program structure, to ensure the accuracy of data collection and analyses being performed. This guidance incorporates the lessons learned from the General Accounting Office's review of the 1988 Base Closure Commission's work.

(g) After detailed consideration of all comments, we have determined that some of the criteria may have been unclear. We have revised the criteria for additional clarity.

(h) Some of the early comments we received recommended extending the original December 31, 1990, public comment deadline. We agreed and extended the public comment period to January 24, 1991. In addition, we accepted for consideration 19 public comments received after the January 24, 1991, deadline.

(2) Military Value Comments

(a) A majority of comments received supported DoD's decision to give priority consideration to the military value criteria. In the aggregate, military value refers to the collection of attributes that describe how well a base supports its assigned force structure and missions.

(b) Several commentors recommended that National Guard and Reserve Component forces be included as part of DoD's base closure analysis. The Department's total force concept includes National Guard and Reserve Component forces, and these forces will be reflected in the force structure plan required by the Act for this base closure process. To clarify that point, criteria number one and three were amended.

(c) Some commentors recommended DoD apply the military value criteria without regard to the DoD component currently operating or receiving the services of the base. The commentors noted that this would maximize utilization of Defense assets and therefore improve the national security. We agree with this comment. DoD must retain its best bases and where there is a potential to consolidate, share or exchange assets, that potential will be pursued. We also recognize that this potential does not exist among all categories of bases and that the initial determination of the military value of bases must be made by the DoD Component currently operating the base. Consequently, we have left the military value criteria general in nature and therefore applicable DoD-wide, where appropriate. We have also issued guidance to the DoD Components that encourages inter-service and multi-service asset sharing and exchange. Finally, we will institute procedures to ensure each DoD Component has the opportunity to improve the military value of its base structure through

analysis of potential exchanges of bases with other DoD Components.

(d) Some commentors recommended we include the availability of airspace in our considerations of military value. We agree and have revised criterion number two accordingly.

(e) Several commentors requested a geographic balance be maintained when considering installations for realignment or closure. DoD is required by Public Law 101-510 to evaluate all installations equally, exclusive of those covered under Public Law 100-526 or those falling below the thresholds of section 2687, title 10, U.S. Code. However, some measures of military value do have a geographic component and therefore military mission requirements can drive geographic location considerations.

(f) Some commentors recommended that the availability of trained civil service employees be considered as well as the capacity of the private sector to support or perform military missions. DoD's civil service employees are an integral part of successful accomplishment of defense missions, as are defense contractors whether they be nationally or locally based. To the extent that the availability of trained civilian or contractor work forces influences our ability to accomplish the mission, it is already included in criteria number one and four.

(g) Several commentors recommended that mobilization potential of bases be considered and that those bases required for mobilization be retained. Contingency and mobilization requirements are an important military value consideration and were already included in criterion number three. The potential to accommodate contingency and mobilization requirements is a factor at both existing and potential receiving locations, and we have amended criterion number three accordingly.

(h) One commentor recommended retaining all bases supporting operation Desert Shield/Storm and another recommended including overseas bases. DoD must balance its future base structure with the forces described in the force structure plan, and not on the current basing situation. Some forces currently supporting Operation Desert Storm are scheduled for drawdown between 1991 and 1997. DoD must adjust its base structure accordingly. Overseas bases will also be closed in the future as we drawdown DoD's overseas forces. However, Congress specifically left overseas base closures out of the base closure procedures established by the Act.

(3) Cost and "Payback" Comments

(a) Some commentors recommended calculating total federal government costs in DoD's cost and "payback" calculations. A number of such comments gave as examples of federal government costs, health care and unemployment costs. The DoD Components annually budget for health care and unemployment costs. We have instructed the DoD Components to include DoD costs for health care and unemployment, associated with closures or realignments, in the cost calculations.

(b) Several commentors noted the absence of a "payback" period and some felt that perhaps eight or ten years should be specified. We decided not to do this; we did not want to rule out making changes that were beneficial to the national security that would have longer returns on investment. The 1988 Base Closure Commission felt that a six-year "payback" unnecessarily constrained their choices. The DoD Componentes have been directed to calculate return on investment for each closure or realignment recommendation, to consider it in their deliberations, and to report it in their justifications. Criterion number five has been amended accordingly.

(c) Some commentors recommended including environmental clean-up costs in base closure cost and payback calculations. Some also noted that the cost of environmental clean-up at a particular base could be so great that the Department should remove the base from further closure consideration.

The DoD is required by law to address two distinctly different types of environmental costs.

The first cost involves the clean-up and disposal of environmental hazards in order to correct past practices and return the site to a safe condition. This is commonly referred to as environmental restoration. DoD has a legal obligation under the Defense Environmental Restoration Program and the Comprehensive Environmental Response, Compensation and Liability Act for environmental restoration at sites, regardless of a decision to close a base. Therefore, these costs will not be considered in DoD's cost calculations. Where installations have unique contamination problems requiring environmental restoration, these will be identified as a potential limitation on near-term community reuse of the installation.

The second cost involves ensuring existing practices are in compliance with the Clean Air, Clean Water, Resource Conservation and Recovery Act, and other environmental acts, in order to control current and future pollution. This is commonly referred to as environmental compliance. Environmental compliance costs can potentially be avoided by ceasing the existing practice through the closure or realignment of a base. On the other hand, environmental compliance costs may be a factor in determining appropriate closure, realignment, or receiving location options. In either case, the environmental compliance costs or cost avoidances may be a factor considered in the cost and return on investment calculations. The Department has issued guidance to the DoD Components on this issue.

(d) Some commentors recommended DoD change the cost and "payback" criteria to include uniform guidelines for calculating costs and savings. We agree that costs and savings must be calculated uniformly. We have improved the Cost of Base Realignment Actions (COBRA) model used by the 1988 Base Closure Commission and have provided it to the DoD Components for calculations of costs, savings, and return on investment.

(4) Impacts Comments

(a) Many commentors were concerned about social and economic impacts on communities and how they would be factored into the decision process. We have issued instructions to the DoD Components to calculate economic impact by measuring the effects on direct and indirest employment for each recommended closure or realignment. These effects will be determined by using statisical information obtained from the Departments of Labor and Commerce. This is consistent with the methodology used by the 1988 Base Closure Commission to measure economic impact. We incorporated the General Accounting Office's suggested improvements for calculation of economic impact. DoD will also determine the direct and indirect employment impacts on receiving bases. We have amended criterion number six to reflect this decision.

(b) The meaning of criterion number seven, "the community support at the receiving locations" was not clear to several commentors. Some wondered if that meant popular support. Others recognized that this criterion referred to a community's infrastructure such as roads, water and sewer treatment plans, schools and the like. To clarify this criterion, we have completely re-written it, while also recognizing that a comparison must be made for both the existing and potential receiving communities.

(c) Many commentors asked how environmental impacts would be considered. As we stated in topic 3(c), DoD will consider certain environmental costs. In addition, we have instructed the DoD Components to consider, at a minimum, the following elements when analyzing environmental consequences of a closure or realignment action:

- Threatened and endangered species
- Wetlands
- Historic and Archeological sites
- Pollution Control
- Hazardous Materials/Wastes
- Land and Air uses
- Programmed environmental costs/cost avoidances

(d) A number of commenters questioned the meaning of criterion number nine. "The implementation process involved". The intent of this criterion was to describe the implementation plan, its milestones, and the DoD military and civilian employee adjustments (Increases and decreases) at each base, that would result through implementation of the closure or realignment. After further consideration, we have determined that developing the implementation plan is a necessary requirement and conclusion of applying the other eight criteria. A description of the implementation plan, while important to the understanding the recommended closure or realignment, is not in itself a specific criterion for decisionmaking. Consequently, we have deleted criterion number nine. We have instructed the Military Departments and Defense Agencies to include a description of their implementation plans for each recommended closure or realignment, as part of the justification to be submitted to the Commission.

C. Previous Federal Register References

(1) 55 FR49679, November 30, 1990: Proposed selection criteria and request for comments.

(2) 55 FR53536, December 31, 1990: Extend comment period on proposed selection criteria.

D. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) does not apply.

Dated: February 11, 1991.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 91–3645 Filed 2–14–91; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Environmental Assessment; Exoatmospheric Discrimination Experiment (EDX) Program

AGENCY: U.S. Army Strategic Defense Command (USASDC); DOD.

COOPERATING AGENCY: Strategy 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 conducting EDX 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 EDX 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 EDX launch facility were examined early in the siting process but were eliminated as unreasonable. A no-action alternative was also considered. The Environmental Assessment resulted in a finding of no significant impact. Construction will proceed as scheduled, however, due to budgetary constraints, the flight program implementation has been delayed. When the flight schedule becomes firm, this document will be reviewed and revised, as necessary, in light of any changes to the program.

DATES: Written comments are required by March 18, 1991.

POINT OF CONTACT: Mr. D.R. Gallien, Address: U.S. Army Strategic Defense Command, CSSD–EN, Post Office Box 1500, Huntsville, AL 35807–3801, Fax (205) 955–3958.

SUPPLEMENTARY INFORMATION: The USASDC was assigned the mission of acquiring critical mid-course data on ballistic missile re-entry vehicles and decoys; EDX would accomplish this mission. The EDX program would use the ARIES booster to launch a suborbital sensor into space to observe a target ballistic missile re-entry complex during the mid-course phase of its flight. The proposed EDX program would involve nine flights over three years from two different launch sites after October 1993: The target complex would be released from a MINUTEMAN I missile launched from Vandenberg Air Force Base, California and the EDX booster and sensor payload vehicle would be launched from the Kauai Test Facility (KTF), located on the Pacific Missile Range Facility (PMRF), Kauai, Hawaii. Current launch use activities would continue, however, pubic access through these areas would be limited for a total of less than 1 day over a three year period.

The EDX program would include a number of activities to be conducted at seven different sites. These activities are categorized as design, fabrication/assembly/testing, construction, flight preparation, launch/flight/data collection, payload recovery, sensor payload vehicle refurbishment, data analysis, and site maintenance/disposition. The locations and types of EDX activities are: Vandenberg Air Force Base, California/Western Test Range, flight preparation, launch/flight/data collection; Pacific Missile Range Facility, Kauai, Hawaii, construction, flight preparation, launch/flight/data collection, payload recovery, sensor payload vehicle refurbishment, site maintenance/disposition: Sandia National Laboratories, New Mexico, design, fabrication/assembly/testing; U.S. Army Kwajalein Atoll, Republic of the Marshall Islands, flight preparation, launch/flight/data collection; Hill Air Force Base, Utah, fabrication/assembly/testing; Space Dynamics Laboratory, Utah State University, Logan, Utah, design, fabrication/assembly/testing, data analysis; and Boeing Aerospace and Electronics, Kent Space Center, Kent, Washington, design, fabrication/assembly/testing, sensor payload vehicle refurbishment, data analysis.

To determine the potential for significant environmental impacts as a result of the EDX 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 environmental components: Air quality, biological resources, cultural resources, hazardous materials/waste, 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 Vandenberg Air Force Base, U.S. Army Kwajalein Atoll, Sandia National Laboratories, Hill Air Force Base, Space Dynamics Laboratory, and Boeing Aerospace and Electronics, Kent Space Center.

Potential adverse effects to subsurface cultural resources as a result of construction of launch pad on KTF and a new Mission Control Center/ Payload Assembly Building 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 ground-disturbing activities during construction. Should cultural resources be discovered 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 EDX 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. In addition, light use will be limited to mission requirements. Potentially significant impacts on the Category 1 candidate endangered plant *Ophioglossum concinnum* have been avoided through a transplantation program coordinated with the U.S. Fish and Wildlife Service.

Mitigable consequences resulting from EDX activities would occur on PMRF's infrastructure (main base sanitary sewer system). Potential sanitary sewer impacts will be mitigated by implementing a monitoring program and by participating in a treatment effectiveness study and conservation activities to ensure that effluent standards are met.

Implementation of proposed mitigations will result in reduction of these impacts to a not significant level.

Dated: February 12, 1991.

Lewis D. Walker,

Deputy Assistant Secretary of the Army, Environmental, Safety, and Occupational Health (DESOH).

[FR Doc. 91-3718 Filed 2-14-91; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Open Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 19 February 1991.

Time: 1000-1600 SW.

Place: Pentagon, Washington, DC.

Agenda. The Army Science Board (ASB) 1991 Ad Hoc Subgroup on Improving the Quality of Science and Engineering in the Army will meet to review progress of individual members on assigned tasks and will meet with DA officials to discuss the structure of the military and civilian personnel systems and the proposed Army Acquisition Corps. This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (703) 695-0781/0782.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 91-3725 Filed 2-14-91; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 21 February 1991.

Time: 0830-1200.

Place: The Pentagon, Washington, DC.

Agenda: The Army Science Board (ASB) Ad Hoc Subgroup on Chemical Protective Clothing will meet to complete work on assigned issues and prepare a final report. This meeting will be closed to the public in accordance with section 552(c) of title 5, U.S.C., specifically subparagraph (1) thereof, and title 5, U.S.C., appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer Sally Warner, may be contacted for further information at (703) 695-0781/0782.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 91-3726 Filed 2-14-91; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 27 February 1991.

Time: 1000-1400.

Place: HDQA, Defense Advanced Research Projects Agency, Arlington, VA.

Agenda: The Army Science Board (ASB) Ad Hoc Subgroup on Tactical Space Systems will meet to review the DARPA Advanced Space Technology Program, to include communication technology, electro-optic systems, and spacecraft component technology. This meeting will be closed to the public in accordance with section 552(c) of title 5, U.S.C., specifically subparagraph (1) thereof, and title 5, U.S.C., appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer Sally Warner, may be contacted for further information at (703) 695-0781/0782.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 91-3727 Filed 2-14-91; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 28 February and 1 March 1991.

Time: 0800-1700.

Place: The Pentagon, Washington, DC.

Agenda: The Army Science Board (ASB) C3I Issue Group will meet to continue work on the follow-on radio to SINCGARS study. The group will examine future Army requirements and ways in which application of technology can improve mission effectiveness and radio systems costs. This meeting will be closed to the public in accordance with section 552(c) of title, 5, U.S.C., specifically subparagraph (1) thereof, and title 5 U.S.C., appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer Sally Warner, may be contacted for further information at (703) 695-0781/0782.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 91-3728 Filed 2-14-91; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).
Dates of Meeting: 11–12 March 1991.
Time: 0800–1700.
Place: Fort Monmouth, New Jersey.
Agenda: The Army Science Board (ASB) C31 Issue Group the Follow-On Radio to SINCGARS will meet with Army Personnel from the SINCGARS Program to discuss the capabilities of the current radio and planned future improvements. This meeting will be closed to the public in accordance with section 552(c) of title 5, U.S.C., specifically subparagraph (1) thereof, and title 5, U.S.C., appendix 2 subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer Sally Warner, may be contacted for further informaiton at (703) 695–0781/0782.

Sally A. Warner,
Administrative Officer, Army Science Board.

[FR Doc. 91–3731 Filed 2–14–91; 8:45 am]
BILLING CODE 3710–8–M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).
Dates of Meeting: 13–14 March 1991.
Time: 0900–1430.
Place: MIT Lincoln Laboratories, Lexington, MA.
Agenda: The Army Science Board (ASB) Ad Hoc Subgroup on Tactical Space Systems will meet to review the proposed CECOM Lightweight Tactical Army Satcom Satellite (LTASS) Program, to include satellite component technology efforts and ground station developments. This meeting will be closed to the public in accordance with section 552(c) of title 5, U.S.C., specifically subparagraph (1) thereof, and title 5, U.S.C., appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer Sally warner, may be contacted for further information at (703) 695–0781/0782.

Sally A. Warner,
Administrative Officer, Army Science Board.

[FR Doc. 91–3732 Filed 2–14–91; 8:45 am]
BILLING CODE 3710–8–M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).
Dates of Meeting: 22 March 1991.
Time: 0800–1700.
Place: Pentagon.
Agenda: The Army Science Board (ASB) C3I Issue Group the Follow-on Radio to SINCGARS will meet for presentations involving research in this area. This meeting will be closed to the public in accordance with section 552(c) of title 5, U.S.C., specifically subparagraph (1) thereof, and title 5, U.S.C., appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer Sally Warner, may be contacted for further information at (703) 695–0781/ 0782.

Sally A. Warner,
Administrative Officer, Army Science Board.

[FR Doc. 91–3733 Filed 2–14–91; 8:45 am]
BILLING CODE 3710–8–M

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).
Dates of Meeting: 25–26 March 1991.
Time: 0800–1700.
Place: Pentagon, Wash., DC.
Agenda: The Army Science Board (ASB) Ad Hoc Subgroup on Initiatives to Improve HBCU/MIs Infrastructure will meet to receive information on HBCU/MI programs other than DoD. This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (703) 695–0781/0782.

Sally A. Warner,
Administrative Officer, Army Science Board.

[FR Doc. 91–3734 Filed 2–14–91; 8:45 am]
BILLING CODE 3710–8–M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).
Dates of Meeting: 2–3 April 1991.
Time: 0900–1600.
Place: The Aerospace Corp., Los Angeles, CA.
Agenda: The Army Science Board (ASB) Ad Hoc Subgroup on Tactical Space Systems will meet to prepare their report on the proposed CECOM Lightweight Tactical Army Satcom Satellite (LTASS) Program, and SDC Army Tactical Surveillance Satellite (ATSS) Program. This meeting will be closed to the public in accordance with section 552(c) of title 5, U.S.C., specifically subparagraph (1) thereof, and title 5, U.S.C., appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer Sally Warner, may be contacted for further information at (703) 695–0781/0782.

Sally A. Warner,
Administrative Officer, Army Science Board.

[FR Doc. 91–3735 Filed 2–14–91; 8:45 am]
BILLING CODE 3710–8–M

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).
Dates of Meeting: 7–8 March 1991.
Time: 0800–1700
Place: Pentagon, Wash, DC.
Agenda: The Army Science Board (ASB) Ad Hoc Subgroup on Initiatives to Improve HBCU/MIs Infrastructure will hold their initial meeting on DoD and Army HBCU/MI programs. The group will examine ways to maximize both the HBCU/MI contribution to Army Research, Development and Acquisition and the HBCU/MI infrastructure. This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contracted for further information at (703) 695–0781/0782.

Sally A. Warner,
Administrative Officer, Army Science Board.

[FR Doc. 91–3729 Filed 2–14–91; 8:45 am]
BILLING CODE 3710–8–M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).
Dates of Meeting: 6–7 March 1991.
Time: 0900–1630.
Place: HQDA, US Army Strategic Defense Command, Huntsville, AL.

Agenda: The Army Science Board (ASB) Ad Hoc Subgroup on Tactical Space Systems will hold a meeting to review the Army Tactical Surveillance Satellite (ATSS) Program. This meeting will be closed to the public in accordance with section 552(c) of title 5, U.S.C., specifically subparagraph (1) thereof, and title 5, U.S.C., appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer Sally Warner, may be contacted for further informaiton at (703) 695-0781/0782.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 91-3730 Filed 2-14-91; 8:45 am]

BILLING CODE 3710-8-M

DEPARTMENT OF EDUCATION

Laboratory Review Panel; Establishment

AGENCY: Office of the Secretary, Education.

ACTION: Notice of establishment of laboratory review panel.

SUMMARY: The Acting Secretary of Education (Acting Secretary) announces his intention to establish the Laboratory Review Panel under the authority of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C.A. appendix 2) and the General Education Provisions Act, part D (Pub. L. 90-247, as amended; 20 U.S.C. 1233 *et seq.*).

PURPOSE: The Acting Secretary has determined that the establishment of the Laboratory Review Panel (Panel) is necessary and in the public interest in connection with the performance of duties imposed on the Department by law. The Panel will advise and make recommendations to the Assistant Secretary of Education for Educational Research and Improvement (Assistant Secretary) on the performance and plans of the Program of Regional Educational Laboratories (Program). The Panel will issue an annual report each March and will, when requested by the Assistant Secretary, make additional reports containing its technical findings and recommendations regarding major events in the administration of the Program. The Panel will consist of not more than seven members who are experts in program evaluation, school improvement, and policy analysis.

RESPONSIBLE OFFICIAL: Charles Stalford, Educational Research Analyst, Office of Educational Research and Improvement, U.S. Department of Education, Washington, DC 20202-5644, telephone: (202) 219-2126.

Dated: February 8, 1991.

Ted Sanders,

Acting Secretary of Education.

[FR Doc. 91-3675 Filed 2-14-91; 8:45 am]

BILLING CODE 4000-01-M

[CFDA No. 84.215C]

Fund for Innovation in Education (FIE), Technology Education Program

ACTION: Notice; cancellation of competition.

In the Department's combined application notice, published in the **Federal Register** on September 17, 1990 (55 FR 38192), the Secretary included an announcement of a competition for the FIE: Technology Education Program. (The program specific information appears on pages 38194, 38199, and 38200.) This competition has been canceled.

The Secretary intends to announce in the **Federal Register** a competition for the Fund for Innovation in Education (FIE), Innovation in Education Program (84.215A), under which he intends to invite applications for school restructuring projects that show promise of improving educational outcomes. All those who have previously requested information for the FIE, Technology Education Program (84.215C) will be sent the application package for the Innovation in Education (84.215A) Program competition.

FOR FURTHER INFORMATION CONTACT: Allen Schmieder, Fund for the Improvement and Reform of Schools and Teaching, 555 New Jersey Avenue, NW., room 522, Washington, DC 20208-5524. Telephone: (202) 219-1496. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time.

Dated: February 11, 1991.

Christopher T. Cross,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 91-3672 Filed 2-14-91; 8:45 am]

BILLING CODE 4000-01-M

[CFDA No. 84.094C]

Patricia Roberts Harris—Public Service Education Fellowship Program Invitations for Applications for New Awards for Fiscal Year 1991

Purpose of Program: Provides grants to institutions of higher education to support fellowships for graduate and professional studies to students who demonstrate financial need and who plan to pursue a career in public service.

Eligible Applicants: Institutions of higher education as defined in section 1201(a) of the Higher Education Act of 1965, as amended.

Deadline For Transmittal of Applications: March 18, 1991.

Deadline For Intergovernmental Review: May 17, 1991.

Applications Available: February 15, 1991.

Available Funds: $3,198,000 has been appropriated for this program for FY 1991. $1,145,360 is estimated to be available for new awards.

Estimated Range of Award: $4,500-$64,000.

Estimated Average Size of Awards: $30,000.

Estimated Number of Awards: 45 (80 fellowships).

Note: The department is not bound by any estimates in this notice.

Project Period: Up to 36 months, with 12-month budget periods.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR part 74, 75, 77, 79, 82, 85, and 86; and (b). The regulations for this program in 34 CFR part 649.

For Applications or Information Contact: Charles H. Miller, Senior Education Program Specialist, Division of Higher Education Incentive Programs, U.S. Department of Education, 400 Maryland Avenue SW., room 3514, ROB-3, Washington, DC 20202-5251. Telephone: (202) 708-8395. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time.

Program Authority

20 U.S.C. 1134d-1134f.

Date: February 7, 1991.

(Catalog of Federal Domestic Assistance Number: 84.094C Patricia Roberts Harris - Public Service Education Fellowships Program)

Leonard L. Haynes III,

Assistant Secretary for Postsecondary Education.

[FR Doc. 91-3673 Filed 2-14-91; 8:45 am]

BILLING CODE 4000-01-M

Office of Special Education and Rehabilitative Services

[CFDA No.: 84.025]

Invitations for Applications for New Awards Under the Services for Children with Deaf-Blindness Program for Fiscal Year 1991

Purpose of Program: To assist States in assuring the provision of early intervention, special education, and related services to infants, toddlers, children, and youth with deaf-blindness; to provide technical assistance to agencies that are preparing adolescents with deaf-blindness for adult placement; and to support research, development, replication, preservice and inservice training, parental involvement activities, and other activities to improve services to children with deaf-blindness.

Note: The estimates of funding levels and awards in this notice do not bind the Department of Education to a specific level of funding or number of grants, unless the amount is otherwise specified by statute or regulation.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR), 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86.

Priorities: The three priorities under the Services for Children with Deaf-Blindness Program, which are addressed in this announcement, were published in the Federal Register at 56 FR 2264, on January 22, 1991. Applicants are referred to that publication for a description of the priorities.

TITLE OF PROGRAM: SERVICES FOR CHILDREN WITH DEAF-BLINDNESS APPLICATION NOTICES FOR FISCAL YEAR 1991

Title and CFDA number	Deadline for transmittal of applications	Deadline for intergovernmental review	Available	Estimated range of awards	Estimated size of awards	Estimated number of awards	Project period
Innovations for educating children with deaf-blindness in general education settings (CFDA No. 84.025F).	April 9, 1991	June 10, 1991	$537,000	$120,000–140,000	$134,000	4	Up to 36 months.
Utilization of best educational practices for students with deaf-blindness (CFDA 84.025L).	April 9, 1991	June 10, 1991	513,000	$115,000–135,000	128,000	4	Up to 36 months.
Symposium on provision of educational and related services to children and youth with deaf-blindness (CFDA 84.025Q).	April 9, 1991	June 10, 1991	60,000	$60,000	60,000	1	Up to 18 months.

Eligible Applicants: Public or nonprofit private agencies, institutions, or organizations may apply for an award under this part.

Selection Criteria: The Secretary uses selection criteria under Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.210 for evaluation of applications addressing these priorities, and distributes an additional 5 points to the plan of operation criterion, an additional 3 points to the quality of key personnel criterion, an additional 5 points to the evaluation plan, and an additional 2 points to the adequacy of resources criterion, in accordance with the provisions under 34 CFR 75.210(c).

For Applications or Information Contact: Dawn Hunter, Chief, Severely Handicapped Branch, Division of Educational Services, Office of Special Education Programs, U.S. Department of Education, 400 Maryland Avenue SW. (Switzer Building, room 4620), Washington, DC 20202.

Telephone: Dawn Hunter (202) 732-1009; (TDD (202) 732-1169).

Program Authority: 20 U.S.C. 1422.

Dated: February 8, 1991.

Robert R. Davila,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 91-3674 Filed 2-14-91; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP91-1164-000, et al.]

Northwest Pipeline Corporation, et al.; Natural Gas Certificate Filings

February 8, 1991.

Take notice that the following filings have been made with the Commission:

1. Northwest Pipeline Corporation

[Docket No. CP91-1164-000]

Take notice that on February 5, 1991, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed in Docket No. CP91-1164-000, and abbreviated application pursuant to section 7 (c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the continued operation of the San Juan Basin Pipeline facilities between Ignacio, Colorado, and Blanco, New Mexico, which previously were constructed under section 311 of the Natural Gas Policy Act of 1978, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northwest further requests all necessary waivers of its traiff and/or the prior notification and protest procedures under blanket transportation service regulations to allow the initial section 311 firm shippers on the San Juan Basin Pipeline to convert from such service to blanket certificate transportation service without loss of priority and without use of the otherwise applicable prior notice and protest procedures.

Northwest states that the subject facilities include 33.4 miles of 30-inch pipeline extending from Ignacio, Colorado to a Blanco, New Mexico interconnect with El Paso Natural Gas Company; 5,500 sea-level horsepower of compression at the new La Plata Compressor Station at Ignacio; and the WestGas Meter Station at an interconnect with Western Gas Supply Company. Northwest further states that the construction of these facilities was begun in June, 1990, and was completed in January, 1991; and that all necessary permits and environmental clearances were received prior to construction.

According to Northwest, the cost of constructing these facilities was approximately $26.2 million and the initial design capacity was approximately 300 MMcf per day.

Northwest further states that it commenced service through the facilities on February 1, 1991, and that the facilities will be used solely to perform section 311 transportation until approval of the instant application. Northwest avers that the produced and delivered from the Ignacio area to El Paso at Blanco.

Northwest states that approval of its request is required by the present and future public convenience and necessity because: (1) It will promote open-access transportation by removing potential barriers to market entry, (2) it will facilitate non-discriminatory access to the new pipeline capacity, and (3) it will augment the range of options available to various producers, shippers, and markets. Also, Northwest states that its proposal to allow conversions of section 311 transportation service without impacting the term, rate, or any other conditions set forth in the respective agreements simply would eliminate the administrative complications associated with maintaining and monitoring appropriate "on-behalf-of" arrangements, thus placing the initial shippers on an equal footing with subsequent blanket transportation shippers through the new facilities.

Since the subject facilities were discussed in Northwest's expansion filing in Docket No. CP91-780-000 as being integral to the service proposed therein, parties are encouraged to raise any issues related to Docket No. CP91-1164-000 at the technical conference to be held in the Docket No. CP91-780-000 proceeding on February 14, 1991.

Comment date: March 1, 1991, in accordance with Standard Paragraph F at the end of this notice.

2. Florida Gas Transmission Company and United Gas Pipe Line Company

[Docket Nos. CP91-1126-000, CP91-1127-000, CP91-1131-000, CP91-1132-000, CP91-1133-000]

Take notice that the above referenced companies (Applicants) 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 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.[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 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: March 25, 1991, in accordance with Standard Paragraph G at the end of this notice.

[1] These prior notice requests are not consolidated.

Docket No. (date filed)	Applicant	Shipper Name	Peak day,[1] average, annual	Points of		Start up date, rate schedule	Related[2] dockets
				Receipt	Delivery		
CP91-1126-000 2-4-91	Florida Gas Transmission Company, 1400 Smith St., Houston, TX 77002.	City of Starke, Florida.	178 134 65,000	TX, LA, MS, AL FL, Off TX, Off LA.	FL	1-1-91, PTS-1	CP89-555-000, ST91-6544-000.
CP91-1127-000 2-4-91	Florida Gas Transmission Company, 1400 Smith St., Houston, TX 77002.	Sebring Utilities Commission.	514 386 187,660	TX, LA, MS, AL FL, Off TX, Off LA.	FL	1-1-91, PTS-1	CP89-555-000, ST91-6505-000.
CP91-1131-000 2-4-91	United Gas Pipe Line Co., P.O. Box 1478, Houston, TX 77251-1478.	Laser Marketing Company.	10,300 10,300 3,759,500	LA	LA	12-2-90, ITS	CP88-6-000, ST91-6011-000.

[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.

Docket No. (date filed)	Applicant	Shipper name	Peak day,[1] average, annual	Points of		Start up date, rate schedule	Related[2] dockets
				Receipt	Delivery		
CP91-1132-000 2-4-91	United Gas Pipe Line Co., P.O. Box 1478, Houston, TX 77251-1478.	Coastal States Gas Transmission Company.	1,030 1,030 375, 950	Off LA, MS, TX	AL, LA, TX	12-17-90, ITS	CP88-6-000, ST91-6247-000.
CP91-1133-000 2-4-91	United Gas Pipe Line Co., P.O. Box 1478, Houston, TX 77251-1478.	Louisiana State Gas Corporation.	37,595 37,595 13,722,175	LA, MS, Off LA, TX	LA	12-7-90, ITS	CP88-6-000, ST91-6245-000.

3. Transcontinental Gas Pipe Line Corporation

[Docket No. CP91-1028-000]

Take notice that on January 25, 1991, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP91-1028-000, a request pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon certain firm gas transportation services to Northern Natural Gas Company (Northern Natural), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transco states that on March 30, 1979, it entered into a service agreement with Northern Natural providing for the transportation of natural gas under Transco's Rate Schedule X-221. Transco further states that the Commission authorized such service to Northern Natural by order issued on November 9, 1979 in Docket No. CP79-282. Transco indicates that on October 7, 1988, Northern Natural provided Transco with written notice of its desire to terminate the service agreement and service under Transco's Rate Schedule X-221, pursuant to the provisions of Article II of such agreement.

Transco proposes in its application to abandon its Rate Schedule X-221 conditioned upon the Commission granting Transco authority to provide firm transportation service to Northern Natural of 2,000 MMBtu per day from Vermillion Area Block 331, Offshore Louisiana to Terrebonne Parish, Louisiana or alternate listed locations under Transco's Rate Schedule FT.

Comment date: March 1, 1991, in accordance with Standard Paragraph F at the end of this notice.

4. Natural Gas Pipeline Company of America

[Docket No. CP91-1071-000]

Take notice that on January 31, 1991, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois, 60148, filed in Docket No. CP91-1071-000 an application pursuant to section 7(c) of the Natural Gas Act (NGA) and subpart A of part 157 of the Commission's Regulations, for a certificate of public convenience and necessity authorizing the operation of Natural Gas Policy Act (NGPA) section 311(a)(1) facilities which have been constructed, or are currently under construction, to provide NGA jurisdictional services, including transportation services pursuant to subpart G of part 284 of the Commission's Regulations, and the completion of construction of certain compression facilities to the extent such facilities are not yet completed by the time certificate authority is issued. Pursuant to NGA section 7(b), Natural also requests pre-granted abandonment authority with respect to certain of these facilities to coincide with the acquisition and operation of such facilities by Northern Border Pipeline Company (Northern Border) pursuant to NGA section 7(c) certificate authority received separately by Northern Border from the Commission, all as more fully set forth in the application on file with the Commission and open to public inspection.

The facilities consist of: (A) Approximately 147 miles of 30-inch pipeline which commences at the outlet of Northern Border in Hancock County, Iowa, near Ventura, and terminates at Natural's Compressor Station 109 (C.S. 109) near Harper, Keokuk County, Iowa, and one (1) quadruple 12-inch meter along with interconnecting piping in Hancock County, Iowa, constructed at an estimated cost of $76.075 million, respectively; and (b) one (1) 5500 horsepower compressor engine currently under construction at Natural's existing C.S. 109 near Harper, Keokuk County, Iowa at an estimated cost of $7.218 million.

Section 7(c) certificate authority will allow Natural to maximize the use of the facilities which are now limited to providing transportation service for others under NGPA section 311(a)(1). Certification will also allow Natural to provide services under its blanket transportation certificate. Separately, it will permit Natural to move its own system supply volumes by means of the subject facilities following the transportation of such volumes by Northern Border. Accordingly, Section 7(c) certificate authority for the facilities will provide flexibility for Natural in serving its traditional resale customers, and for Natural's transportation customers.

The construction of the facilities occurred, or is occurring, pursuant to the authority of section 311(a)(1) of the NGPA and subpart B of part 284 of the Commission's Regulations, and the facilities will be used solely for the transportation of natural gas pursuant to such authority until such time as the Commission issues a certificate of public convenience and necessity authorizing the operation of the facilities for NGA jurisdictional services. Construction of the pipeline facilities commenced June 23, 1990, and construction of facilities required for the related compression at C.S. 109 commenced November 2, 1990.

Natural proposes to use its existing Rate Schedules FTS and ITS in providing transportation service for others by means of such facilities. Because they are located within Natural's Northern Zone, the postage-stamp rate applicable in that zone will apply to transportation by means of the subject facilities. It is contemplated that Northern Border's acquisition of facilities will take place late in 1992.

Comment date: March 1, 1991, in accordance with Standard Paragraph F at the end of the notice.

5. Trunkline Gas Company and Southern Natural Gas Company

[Docket Nos. CP91-1154-000, CP91-1155-000, CP91-1156-000, CP91-1157-000, and CP91-1158-000]

Take notice that on February 4, 1991, the above listed companies 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 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.[2]

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 § 284.223 of the Commission's Regulations is provided in the attached appendix.

Comment date: March 25, 1991, in accordance with Standard Paragraph G at the end of the notice.

[2] These prior notice requests are not consolidated.

Docket No. (date filed)	Applicant	Shipper name	Peak day,[1] average, annual	Points of		Start up date, rate schedule	Related dockets [2]
				Receipt	Delivery		
CP91-1154-000 (2-4-91)	Trunkline Gas Company.	NGC Transportation, Inc.	50,000 50,000 18,250,000	Offshore LA & TX, LA, IL, TN.	LA	12-12-90, PT	CP86-586-000, ST91-6328-000.
CP91-1155-000 (2-4-91)	Trunkline Gas Company.	Texaco Gas Marketing, Inc.	200,000 200,000 73,000,000	Offshore LA & TX, LA, IL, TN.	LA	12-12-90, PT	CP86-586-000, ST91-6294-000
CP91-1156-000 (2-4-91)	Trunkline Gas Company.	PSI, Inc	100,000 100,000 36,500,000	Offshore LA & TX, LA, IL, TN, TX.	LA	12-11-90, PT	CP86-586-000, ST91-6332-000.
CP91-1157-000 (2-4-91)	Southern Natural Gas Company.	Perry, GA	1,400 1,400 511,000	Offshore LA & TX, TX, LA, MS, AL.	GA	1-1-91, FT	CP88-316-000, ST91-6359-000.
CP91-1158-000 (2-4-91)	Southern Natural Gas Company.	Monticello, GA	216 216 78,840	Offshore LA & TX, TX, LA, MS, AL.	GA	1-1-91, FT	CP88-316-000, ST91-6377-000.

[1] Quantities are shown in Mcf 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.

6. Trunkline Gas Company

[Docket Nos. CP91-1139-000 [3], CP91-1140-000, CP91-1141-000, CP91-1142-000, CP91-1143-000, CP91-1144-000, CP91-1145-000, CP91-1146-000, CP91-1147-000]

Take notice that on February 4, 1991, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251-1642, 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 (18 CFR 157.205 and 284.223) for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP86-586-000 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 and in the attached appendix.

Information applicable to each transaction including the identity of the shipper, the date of the transportation agreement between Trunkline and the respective shipper, the contract number of the transportation service agreement, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket number and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by Trunkline and is included in the attached appendix.

Trunkline alleges that it would provide the proposed service for each shipper under an executed transportation service agreement and would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: March 25, 1991, in accordance with Standard Paragraph G at the end of this notice.

[3] These prior notice requests are not consolitated.

Docket No. Transportation Agreement (contract No.)	Applicant	Shipper name	Peak Day, [1] average, annual	Points of		Start up date, rate schedule, service type	Related [2] dockets
				Receipt	Delivery		
CP91-1139-000 12-13-90 (T-PLT-2787)	Trunkline	Arcadian Corporation.	100,000 100,000 36,500,000	Various Existing Points.	LA	12-14-90, PT, Interruptible.	ST91-6331-000
CP91-1140-000 12-1-88 (T-PLT-1303)	Trunkline	Centran Corporation.	5,000 5,000 1,825,000	Various Existing Points.	LA	12-5-90, PT, Interruptible.	ST91-6236-000
CP91-1141-000 12-19-89 (T-PLT-1969)	Trunkline	American Central Gas Marketing.	50,000 50,000 18,250,000	Various Existing Points.	MS	12-12-90, PT, Interruptible.	ST91-6292-000
CP91-1142-000 12-13-90 (T-PLT-2789)	Trunkline	NGC Transportation, Inc.	100,000 100,000 36,500,000	Various Existing Points.	LA	12-14-90, PT, Interruptible.	ST91-6327-000
CP91-1143-000 11-14-88 (T-PLT-1287)	Trunkline	Enron Gas Marketing, Inc.	100,000 100,000 36,500,000	Various Existing Points.	LA	12-12-90, PT, Interruptible.	ST91-6293-000
CP91-1144-000 12-29-89 (T-PLT-2005)	Trunkline	Equitable Resources Marketing Company.	75,000 75,000 27,375,000	Various Existing Points.	LA	12-6-90, PT, Interruptible.	ST91-6237-000
CP91-1145-000 4-27-89 (T-PLT-1568)	Trunkline	Loutex Energy, Inc.	40,000 40,000 14,600,000	Various Existing Points.	LA	12-13-90, PT, Interruptible.	ST91-6329-000
CP91-1146-000 12-13-90 (T-PLT-2788)	Trunkline	Louis Dreyvus Energy Corporation.	100,000 100,000 36,500,000	Various Existing Points.	LA	12-14-90, PT, Interruptible.	ST91-6330-000
CP91-1147-000 12-10-90 (T-PLT-2784)	Trunkline	PSI Gas Marketing.	100,000 100,000 36,500,000	Various Existing Points.	LA	12-13-90, PT, Interruptible.	ST91-6333-000

[1] Quantities are shown in Mcf.
[2] The ST docket indicates that 120-day transportation service was initiated under § 284.223(a) of the Commission's Regulations.

7. Equitrans, Inc., Equitrans, Inc., Southern Natural Gas Company, Southern Natural Gas Company, Southern Natural Gas Company, Southern Natural Gas Company,

[Docket Nos. CP91-1091-000, CP91-1092-000, CP91-1096-000, CP91-1097-000, CP91-1098-000, CP91-1099-000]

Take notice that Equitrans, Inc., 3500 Park Lane, Pittsburgh, Pennsylvania, 15275, and Southern Natural Gas Company, P.O. Box 2563, Birmingham, Alabama 35202-2563, (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. CP86-553-000 and Docket No. CP88-316-000, 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: March 25, 1991, in accordance with Standard Paragraph G at the end of this notice.

[4] These prior notice request are not consolidated.

Docket No. (dated filed)	Shipper name (type)	Peak day average day, annual Mcf	Receipt [1] points	Delivery points	Contract date, rate schedule service type	Related docket start up date
CP91-1091-000 (1-31-91)	O&R Energy, Inc	77,480MMBtu 5,000MMBtu 1,000,000MMBtu	PA, WV	PA	10-24-90, ITS, Interruptible.	ST91-6517-000 12-1-90
CP91-1092-000 (1-31-91)	Panhandle Trading Company.	50,604MMBtu 500MMBtu 182,500MMBtu	PA	PA	12-21-90, ITS, Interruptible.	ST91-6516-000 1-16-91
CP91-1096-000 (1-31-91)	City of Hogansville, Georgia (local distribution company).	210 210 76,650	OTX, OLA, TX, LA, MS, AL.	GA	1-1-91, FT, Firm	ST91-6369-000 1-1-91
CP91-1097-000 (1-31-91)	City of LaFayette, Georgia (local distribution company).	1,435 1,435 523,775	OTX, OLA, TX, LA, MS, AL.	GA	1-1-91, FT, Firm	ST91-6376-000 1-1-91
CP91-1098-000 (2-1-91)	City of Louisville, Georgia (local distribution company).	178 178 64,970	OTX, OLA, TX, LA, MS, AL.	GA	1-1-91, FT, Firm	ST91-6358-000 1-1-91
CP91-1099-000 (2-1-91)	City of Millen, Georgia (local distribution company).	194 194 70,810	OTX, OLA, TX, LA, MS, AL.	GA	1-1-91 FT, Firm	ST91-6381-000 1-1-91

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.

Panhandle Eastern Pipe Line Company

[Docket Nos. CP91-1148-000, CP91-1149-000, CP91-1150-000, CP91-1151-000, CP91-1152-000, CP91-1153-000]

Take notice that on February 4, 1991, Panhandle Eastern Pipe Line Company, P.O. Box 1642, Houston, Texas 77251-1642, (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 an interruptible basis pursuant to Panhandle's Rate Schedule PT on behalf of various shippers under its blanket certificate issued in Docket No. CP86-585-000, 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.[5]

Information applicable to each transaction, including the identity of the shipper, 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.

Comment date: March 25, 1991, in accordance with Standard Paragraph G at the end of this notice.

[5] These prior notice requests are not consolidated.

Docket No.	Shipper name (type)	Peak day, average day, annual dt	Receipt points	Delivery points	Contract date	Related docket, start-up date
CP91-1148-000	Amgas, Inc. (Marketer)	200 100 36,500	CO, KS, IL, MI, OH, OK, TX, WY.	IL	12-13-90	ST91-6577, 1-4-91.
CP91-1149-000	Amgas, Inc. (Marketer)	200 100 36,500	CO, KS, IL, MI, OH, OK, TX, WY.	IL	12-13-90	ST91-6580, 1-1-91.
CP91-1150-000	Amgas, Inc. (Marketer)	180 90 32,850	CO, KS, IL, MI, OH, OK, TX, WY.	IL	12-20-90	ST91-6578, 1-1-91.
CP91-1151-000	Semco Energy Services, Inc. (Marketer).	50,000 50,000 18,250,000	CO, KS, OK, TX	KS	12-21-90	ST91-6576, 1-1-91.

Docket No.	Shipper name (type)	Peak day, average day, annual dt	Receipt points	Delivery points	Contract date	Related docket, start-up date
CP91-1152-000	Amgas, Inc. (Marketer)	60 30 10,950	CO, IL, KS, MI, OH, OK, TX, WY.	IL	12-13-90	ST91-6579, 1-1-91.
CP91-1153-000	Phillips 66 Natural Gas Company (Producer).	500 500 182,500	TX	TX	12-21-90	ST91-6575, 1-1-91.

9. United Gas Pipe Line Company

[Docket No. CP91-999-000]

Take notice that on January 23, 1991, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP91-999-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon transportation service provided to Southern Natural Gas Company (Southern) pursuant to a gas transportation contract authorized in Docket No. CP76-469, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

United states that it is requesting authorization to abandon the transportation service it provides to Southern pursuant to Panhandle's Rate Schedule X-76 of its FERC Gas Tariff, Original Volume No. 2 and a contract dated October 7, 1976, as amended. United indicates that pursuant to a letter agreement dated December 13, 1990, United and Southern agreed to terminate the transportation agreement as of November 30, 1990. United further states that no abandonment of facilities is proposed in conjunction with the abandonment of this transportation service. United indicates that upon receipt of the requested abandonment authority, United would file appropriate tariff sheets to cancel Rate Schedule X-76.

Comment date: March 1, 1991, in accordance with Standard Paragraph F at the end of this notice.

10. Transcontinental Gas Pipe Line Corporation

[Docket No. CP91-1029-000]

Take notice that on January 25, 1991, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP91-1029-000, a request pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon certain firm gas transportation services to Northern Natural Gas Company (Northern Natural), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transco states that on December 20, 1978, it entered into a service agreement with Northern Natural providing for the transportation of natural gas under Transco's Rate Schedule X-217. Transco further states that the Commission authorized such service to Northern Natural by order issued on December 10, 1979 in Docket No. CP79-297. Transco indicates that on October 7, 1988, Northern Natural provided Transco with written notice of its desire to terminate the service agreement and service under Transco's Rate Schedule X-217, pursuant to the provisions of Article II of such agreement.

Transco proposes in its application to abandon its Rate Schedule X-217 conditioned upon the Commission granting Transco authority to provide firm transportation service to Northern Natural of 6,500 MMBtu per day from Ship Shoal Blocks 65 and 70, Offshore Louisiana to Terrebonne Parish, Louisiana or alternate listed locations under Transco's Rate Schedule FT.

Comment date: March 1, 1991, in accordance with Standard Paragraph F at the end of the notice.

11. Natural Gas Pipeline Company of America, Texas Eastern Transmission Corporation, Natural Gas Pipeline Company of America, El Paso Natural Gas Company, CNG Transmission Corporation

[Docket Nos. CP91-1159-000, CP91-1165-000, CP91-1168-000, CP91-1169-000, CP91-1170-000]

Take notice that 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 to Applicants 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.[6]

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 A. Applicants' addresses and transportation blanket certificates are shown in the attached appendix B.

Comment date: March 25, 1991, in accordance with Standard Paragraph G at the end of this notice.

[6] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-1159-000 (2-5-91)	North Shore Gas Company (LDC).	6,283 6,283 2,293,295	TX, IL, AR	IL, TX	9-10-90,[1] FTS, Firm.	ST91-5876-000, 12-1-90.
CP91-1165-000 (2-5-91)	Brooklyn Interstate Natural Gas Corp. (Marketer).	100,000 100,000 36,500,000	Various	Various	12-6-90,[1] IT-1, Interruptible.	ST91-6528-000, 1-1-91.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-1168-000, ST91-5949-000 (2-6-91)	The Peoples Gas Light and Coke Company (LDC).	30,000 30,000 10,950,000	TX, OK, NM, KS, IL, NE, IA.	IL	10-8-90,[1] FTS, Firm.	12-1-90.
CP91-1169-000 (2-6-91)	Continental Natural Gas, Inc. (Marketer).	41,200 42,200 15,038,000	OK	OK	12-1-90, T-1, Interruptible.	ST91-6022-000, 12-1-90.
CP91-1170-000, ST91-6233-000 (2-6-91)	New York Power Authority (End User).	150,000 97 [4] 35,405	([2])	([3])	11-1-90, TI, Interruptible.	12-7-90.

[1] As amended.
[2] Various interconnects between Texas Eastern Transmission Corporation and CNG.
[3] Interconnections between facilities of CNG and Transcontinental Gas Pipe Line Corporation.
[4] CNG's quantities are in dekatherms.

Applicant's address	Blanket docket
CNG Transmission Corporation, 445 West Main Street, Clarksburg, West Virginia 26302-2450	CP86-311-000.
El Paso Natural Gas Company, P.O. Box 1492, El Paso, Texas 79978	CP88-433-000.
Natural Gas Pipeline Company of America, 701 East 22nd Street, Lombard, Illinois 60148	CP86-582-000.
Texas Eastern Transmission Corporation, 5400 Westheimer Court, P.O. Box 1642, Houston, Texas 77251-1642	CP88-136-000.

12. Trunkline Gas Company

[Docket Nos. CP91-1112-000, CP91-1113-000]

Take notice that on February 1, 1991, Trunkline Gas Company (Applicant), Post Office Box 1642, Houston, Texas 77251-1642, 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. CP86-586-000, 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.[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 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: March 25, 1991, in accordance with Standard Paragraph G at the end of this notice.

[7] These prior notice requests are not consolidated.

Docket number (date filed)	Shipper name	Peak day [1] average annual	Points of		Start up date rate schedule	Related [2] dockets
			Receipt	Delivery		
CP91-1112-000 2-1-91	Amerada Hess Corporation.	100,000 100,000 36,500,000	IL, IN, On LA, Off LA, On TX, Off TX, TN.	IN	12-1-90, PT	ST91-6172-000.
CP91-1113-000 2-1-91	Entrade Corporation	150,000 150,000 54,750,000	IL, IN, On LA, Off LA, On TX, Off TX, TN.	On LA	12-1-90, PT	ST91-6169-000.

[1] Quantities are shown in Mcf.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day tansportation service was reported in it.

13. Algonquin Gas Transmission Company

[Docket No. CP91-1111-000]

Take notice that on February 1, 1991, Algonquin Gas Transmission Company (Applicant), 1284 Soldiers Field Road, Boston, Massachusetts 02135, filed in Docket No. CP91-1111-000 an application pursuant to section 7(c) of the Natural Gas Act, for a certificate of public convenience and necessity authorizing Applicant to construct and operate certain interstate pipeline facilities that will enable Applicant to transport natural gas on a firm basis for Distrigas of Massachusetts Corporation (DOMAC) under Applicant's blanket transportation certificate, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant requests authorization to raise the maximum allowable operating pressure (MAOP) of its J-System to 433 psig by replacing several sections of pipe on the J-System, by converting certain facilities previously installed under Section 311 of the Natural Gas Act of 1978 to Natural Gas Act services and by installing certain related and auxiliary facilities, and to operate the facilities at the higher MAOP. Applicant states that the increase in the MAOP of its J-System will enable Applicant to provide a year-round, firm transportation service to DOMAC commencing in June 1992, under the authority of Applicant's blanket transportation certificate and at its general applicable rates for firm

transportation service, Rate Schedule AFT-1.

Applicant indicates that the J-System is a discrete lateral at the eastern end of Applicant's mainline system, which runs approximately 23 miles between Needham and Everett, Massachusetts, and serves two local distribution companies. Applicant further indicates that the J-System has an MAOP of only 214 psig. Applicant states that it is unable to physically move gas westerly from the J-System into its mainline for transportation to delivery points elsewhere on its system.

Applicant proposes to increase the MAOP of the J-System by replacing five discrete sections of 16, 24, 26 and 28-inch diameter pipe, totalling approximately 6,335 feet. Applicant states that the MAOP of four of these sections of pipe is limited to 321 psig, which is below the level of 433 psig needed to provide firm service. Applicant further states that the fifth section has an MAOP of 433 psig; however, this section has been previously repaired and will be replaced while the line is out of service.

Applicant requests authorization to operate certain receipt point facilities at Everett, Massachusetts, which were previously constructed under section 311 of the Natural Gas Policy Act of 1978 and § 284.3(c) of the Commission's Regulations, as amended by Order No. 525. Applicant submits that these facilities, which were installed during the period September-November 1990, include a 16-inch tap, a block valve, and redundant monitor regulators housed within a prefabricated building, as well as some instrumentation at the adjacent DOMAC plant. Applicant proposes to operate these facilities because the facilities will be used to transport gas that is subject to the Commission's Natural Gas Act jurisdiction.

Applicant proposes to undertake a number of incidental facilities modifications in order to be capable of receiving gas and transporting gas from DOMAC. Applicant proposes to modify certain existing valve and regulator sites to permit bi-directional gas flow and to isolate portions of the mainline and Applicant's I-System at pressures lower than normal current operating pressures to receive gas from the J-System and allow Applicant to meet normal expected loads at customary pressures. Applicant indicates that it will reconfigure some mainline regulators to allow for separation of the 24-inch mainline and 30-inch mainline loop between the compressor station at Burillville, Rhode Island and Valve 41X. Applicant states that certain meter station modifications will be required including installation of new gas heaters and gas quality measuring equipment. Applicant further states that a by-pass at the Needham regulator station will be installed to permit gas flow from the J-System into the upstream mainline facilities while protecting the J-System from overpressure. It is indicated that the existing regulator at Waltham will be removed and a new regulator will be installed at the J-2 tap upstream of Applicant's J-2 System.

Applicant estimates that the total cost of all facilities to be $5,626,372. Applicant states that initial financing will be through revolving credit arrangements, short term loans and from funds on hand.

Applicant states that Applicant and DOMAC have executed a Precedent Agreement which Applicant has agreed to undertake the necessary facilities construction and modifications needed for Applicant to receive from DOMAC and transport on a firm basis up to 90,000 MMBtu equivalent per day from Everett receipt point to various specified delivery points. Applicant further states that the Precedent Agreement provides that if at the time of execution of a firm transportation service agreement between Applicant and DOMAC, Applicant has executed a firm transportation agreement with Enron Power Enterprise Corporation (Enron Power) for the transportation of natural gas that Enron Power purchases from DOMAC, then DOMAC's maximum daily transportation quantity will be reduced by a like amount. It is indicated that the maximum daily transportation quantity in the firm transportation service agreement between Applicant and Enron Power will be 28,600 MMBtu equivalent per day. Applicant indicates that the parties have designated 61,400 MMBtu equivalent per day as the maximum daily transportation quantity. Applicant further indicates that the delivery of these volumes by Applicant will be as follows:

Quantity MMBtu per day	Delivery point
28,600	Milford, MA.
15,000	Bourne, MA.
15,000	Somers, NY.
10,000	Kensington, CT.
7,500	North Haven, CT.
6,500	Fall River, MA.
6,400	(Points to be determined).
1,000	North Attleboro, MA.
90,000	

Applicant states that the Milford delivery point will be a new delivery point for Commonwealth Gas Company (Commonwealth), where Commonwealth will receive gas on behalf of Enron Power. Applicant further states that, to accomplish such deliveries, it will be required to construct a loop of its existing T-System pipeline in addition to the delivery point. Applicant indicates that such facilities will be the subject of a subsequent certificate application, which Applicant expects to file in March 1991.

Comment date: March 1, 1991, in accordance with Standard Paragraph F at the end of this notice.

14. Northwest Pipeline Corporation

[Docket No. CP91-1129-000]

Take notice that on February 4, 1991, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed in Docket No. CP91-1129-000, an application pursuant to section 7(b) and 7(c) of the Natural Gas Act, as amended, for an order granting: (1) A certificate of public convenience and necessity authorizing the construction and operation of a new Ignacio Mainline Compression Station in La Plata County, Colorado; and (2) permission and approval to abandon the use of the existing compression facilities at the Ignacio Complex for compression of gas received from the mainline and to abandon in place certain plant piping which allows the mainline gas to enter the existing compression facilities, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northwest states that its Ignacio Complex is a natural gas processing and compression facility located in Sections 35 and 36, Township 34 North, Range 9 West, La Plata County, Colorado at the junction of Northwest's San Juan gathering system and mainline transmission system. It is situated near the southern terminus of Northwest's mainline adjacent to Northwest's Ignacio Meter Station interconnect with El Paso Natural Gas Company (El Paso).

Northwest further states that the Ignacio Plant complex presently compresses and processes a commingled stream of mainline and San Juan Basin field gas, with part of the compressed volumes bypassing the processing operation for delivery into the mainline. All of the gas flowing down Northwest's mainline from the North, plus all the San Juan Basin gas gathered to the Ignacio Complex must be compressed at the Ignacio Complex prior to delivery to El Paso at Ignacio.

Northwest requests a certificate of public convenience and necessity authorizing the construction and operation of a new 13,000 sea-level

horsepower compressor station at Ignacio, and associated interconnect piping, to be used for the compression of mainline transportation gas. The proposed new compressor station, the Ignacio Mainline Compressor Station, will be located inside the existing 2.7 acre site of Northwest's La Plata Compressor Station in the SE¼ of Section 35 and SW¼ of Section 36 of Township 34 North, Range 9 West of La Plata County, Colorado, adjacent to Northwest's Ignacio Complex.

Northwest states that the new compressor station will consist of two gas turbine driven centrifugal compressor units, with appurtenances, and that sixteen-inch piping will be used to connect each compressor unit to common 24-inch suction and discharge units between the compressor station and Northwest's 26-inch mainline. Additionally, Northwest proposes to install approximately 450 additional feet of 24-inch pipe and utilize a portion of the existing 24-inch piping from the mainline to the Ignacio Complex to provide the optional capacity for discharge from the new mainline compressor station directly to the inlet of the Ignacio Plant for processing prior to redelivery into the mainline. The compressor station will have a design capacity of approximately 275 MMcf per day, calculated at 468 psig suction pressure and a 800 psig discharge pressure. The estimated construction cost for the new compressor station and associated piping is $9,690,987.

Northwest avers that, since the proposed mainline compressor station facilities will be located within the existing La Plata Compressor Station site, there will be no significant environmental impacts.

Further, Northwest requests an order granting permission and approval for it to abandon use of the existing Ignacio Compressor Stations, A, B, and C for the compression of mainline transportation gas and to abandon in place approximately 440 feet of 24-inch piping currently used only to deliver mainline gas to the existing Ignacio compressor facilities. Northwest proposes to abandon the operation of the existing Ignacio compressor facilities for mainline gas compression and henceforth dedicate such facilities solely to the compression of field gas.

Northwest states that the proposed construction of a new mainline compressor station at Ignacio and the associated proposed abandonment of the use of the existing Ignacio Complex compression facilities for mainline gas will enable Northwest to maintain the status quo with respect to the amount of capacity available to transport mainline gas to Ignacio, while enabling Northwest to dedicate all of its existing Ignacio complex compression capacity to San Juan field gas service. Having all of the existing compression available for field gas use will enable Northwest to receive up to approximately 360 MMcf per day of San Juan gas into its Ignacio Complex, a substantial increase over the maximum amount of San Juan gas that can be received while portions of the existing compression facilities are being used to compress mainline gas.

Northwest says that increasing its capability to receive San Juan field gas into its Ignacio Complex will benefit both Northwest and the San Juan area producers by facilitating increased production of San Juan field gas and increasing the use of Northwest's associated gathering and processing services. In addition, the resulting increase in San Juan volumes available at the outlet of the Ignacio Complex will enable additional volumes to be delivered into either El Paso's expanded Ignacio to Blanco pipeline or Northwest's new transportation pipeline from Ignacio to Blanco.

Since the subject facilities may be related to Northwest's expansion filing in Docket No. CP91-780-000, parties are encouraged to raise any issues related to Docket No. CP91-1129-000 at the technical conference to be held in the Docket No. CP91-780-000 proceeding on February 14, 1991.

Comment date: March 1, 1991, in accordance with Standard Paragraph F at the end of this notice.

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 on the Commission's staff may, within 45 days after the issuance of the instant 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. 91-3669 Filed 2-14-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RM87-17-000]

Natural Gas Data Collection System; New Edit-Checking Software Plus Revisions to the Edit Checks and Record Formats for the FERC Form No. 2

February 11, 1991.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of New Edit-Checking Software plus Revisions to the Edit Checks and Record Formats for the FERC Form No. 2.

SUMMARY: New software for edit-checking of the structured data file of the FERC Form No. 2 (Annual Report of Major Natural Gas Companies) is now available. This software has been developed for Commission use and to assist pipelines in complying with the

electronic submission requirement for filing the FERC Form No. 2 in accordance with Order Nos. 493 (53 FR 15,025 (Apr. 27, 1988)), 493–A (53 FR 30,027 (Aug. 10, 19088)), and 493–B (53 FR 49,652 (Dec. 9, 1988)). Also the Commission is revising certain record formats (appendix A) and edit checks (appendix B) for the FERC Form No. 2.

Only a PC version of the edit-checking software is available at this time. This software is being issued to enable FERC Form No. 2 respondents to accomplish minimal automated validation of the Form No. 2 prior to submission. User suggestions and comments on potential improvements to the edit-check software are encouraged. A User's Manual is also available. An order form is attached for requesting the software (executable code), User's Manual, and the complete set of revised record formats.

DATES: The PC software, User's Manual, and revised record formats are available on February 11, 1991.

ADDRESSES: Requests for the software and the documentation should be directed to: Reference and Information Center, Federal Energy Regulatory Commission, 941 North Capitol Street NE., Room 3308, Washington, DC 20426 (202) 208–11371.

FOR FURTHER INFORMATION CONTACT: For general information contact, Linda Ferguson at (202) 208–0706.

SUPPLEMENTARY INFORMATION: PC software (executable code) is now available to provide for edit-checking of the structured data file of the FERC Form No. 2 when filed in accordance with the Form No. 2 instructions and record formats previously revised on January 8, 1990 and updated today. A complete set of updated record formats is available in WordPerfect 4.2 and ASCII format. Revisions to the electronic record formats and edit checks are listed in Appendices A and B respectively. A directory of files found on each diskette is listed in appendix C.

The FERC Form No. 2 edit checks were also revised on January 8, 1990 and are updated today. A complete list of the edit checks, as revised, and related error messages are found in Appendix A of the User's Manual. The user's manual is available in WordPerfect 5.0 and ASCII format.

The edit-checking software was written in the C programming language. The software can be run on an IBM-compatible PC with at least 512K RAM, DOS 2.0 (or later version), and a fixed 20 MB (hard) disk. The software is available on a 3.5" (1.44MB) or 5.25" (1.2MB) double-sided, high density diskette.

The software has been tested by staff and field tested by several pipelines. If problems occur relating to the software, the Commission staff encourages users to provide written comments as to the exact nature of the problem and submit them to Linda Ferguson, Room 6000, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

This notice is available through the Commission Issuance Posting System (CIPS), an electronic bulletin board service that provides access to formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed on a 24-hour basis using a personal computer with a modem. Your communications software should be set at full duplex, no parity, eight data bits and one stop bit. To access CIPS at 300, 1200 or 2400 baud dial (202) 208–1397. For access at 9600 baud dial (202) 208–1781. FERC is using U.S. Robotics HST Dual Standard modems. If you have any problems, please call (202) 208–2474. The notice will be available on CIPS for 30 days from the date of issuance of the notice.

In addition to publishing the text of this notice in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this notice during normal business hours in the Reference and Information Center (Room 3308) at the Commission's headquarters, 941 North Capitol Street NE., Washington, DC 20426.

The PC software is available from the Commission's copy contractor, LaDorn System Corporation ((202) 898–1151), located in Room 3308, 941 North Capitol Street, NW., Washington, DC 20426. Persons requesting the software should fill out the attached Order Form. The software is available without charge. However, the Commission's copy contractor has a copy fee of $6.00 per 3.5" diskette and $5.00 per 5.25" diskette. The User's Manual is also available in hardcopy at 20 cents per page.

Lois D. Cashell,

Secretary.

Appendix A—Revisions to the FERC Form No. 2 Record Formats and General Information

Sechedule F4

1. Record 6: Officers
   a. Item 21: character positions changed to 11–45.
   b. Item 22: character positions changed to 46–105.
2. Record 19: Statement of Income for the Year—Part 1
   a. Item "Utility Plant Reported", character position 12: Comments are changed so that other utility is specified in item 169b.
   b. Item 169a: new item "Net Utility Operating Income"; character positions 217–228; the data type is "numeric"; the comment is "item 153 minus item 169". Note: "Other Item Specified" is now Item 169b.
   c. Item 169b: "Other Item Specified" was previously Item 169a; the character positions are changed to 229–251.
   d. Item "Footnote ID": the character positions are changed to 252–255. Delete Item "Filler".
3. Record 20: Statement of Income for the Year—Part 2
   a. Item "Utility Plant Reported" at character position 12 is deleted. Note: This item is replaced by Item "Filler".
   b. Item "Filler": character position 12; the data type is character; the comment is "blank filled".
   c. Item 170: Comments are changed to read "item 153 minus item 169 (where Utility Plant Reported code = "4")".
4. Record 21: Statement of Income for the Year—Part 3
   a. Item "Utility Plant Reported" at character position 12 is deleted. Note: This item is replaced by Item "Filler".
   b. Item "Filler": character position 12; the data type is character; the comment is "blank filled".
5. Record 22: Statement of Income for the Year—Part 4
   a. Delete Item "Utility Plant Reported", character position 12. Note: This item is replaced by Item "Filler".
   b. Item "Filler": (new item) character position 12; the data type is character; the comment is "blank filled".

Schedule F5

1. Record 44: Taxes Accrued, Prepaid and Charged During the Year—Part 1
   a. Item "Type of Tax Code", character position 12: Comments are changed to add a new code—"grand total of all taxes, code=4".
2. Record 45: Taxes Accrued, Prepaid and Charged During the Year—Part 2
   a. Item "Type of Tax Code", character position 12: Comments are changed to add a new code—"grand total of all taxes, code=4".
3. Record 48: Miscellaneous Current and Accrued Liabilities (Account 242)
   a. Item "Information Reported Code", character position 11: Comments are changed to "individual item, code=1; subtotal, code=2; grand total, code=3".

Schedule F6

1. Record 6: Field and Main Line Industrial Sales of Natural Gas
   a. Item "Type of Sale", character position 11: Comments are changed to "blank record (for readability), code=0; firm, code=1; off peak, code=2; interruptible, code=3; other, code=4; specify other in item 753b; subtotal, code=9".
   b. Item 753a "Other Item Specified" is now Item 753b; the new character positions are 183–197.

c. Item "Docket Number" is now designated Item 753a and is assigned new character positions 168–182.
d. Item "Filler": Replaces Item "Docket Number" at character positions 52–61; data type is character, the comment is "blank filled".
e. Item "Footnote ID": the character positions are changed to 198–201.
f. Item "Filler": new character positions 202–255.

2. Record 7: Sales for Resale—Natural Gas [Account 483]—Part 1
a. Item "Sales Type", character position 11: the comment "other, code=6, specify in item 760e" is changed to "other, code=6, specify in item 765'.

3. Record 8: Sales for Resale—Natural Gas [Account 483]—Part 2
a. Item 765a: character positions changed to 55–99.
b. Item "Footnote ID": character positions changed to 100–103.
c. Item "Filler": character positions changed to 104–255.

Schedule F7

1. Record 22: Gas Storage Projects—Part 3
a. Item 1306, "Total Gas Withdrawn to Storage" changed to read "Total Gas Withdrawn from Storage".

General Information

1. The following has been added to the cover page:
This report is mandatory under the Natural Gas Act, Sections 10(a) and 16, and 18 CFR 260.1. Failure to report may result in criminal fines, civil penalties and other sanctions as provided by law. The Federal Energy Regulatory Commission does not consider this report to be of a confidential nature.
2. The paragraph at III (3) has been modified to add the following: "(Indicate by checking the appropriate box on Page 4, List of Schedules, if the reports to stockholders will be submitted or if no annual report to stockholders is prepared.)"
3. The paragraph following III (4)(b) has been modified to read as follows: "When submitting after the filing date for this form, send the letter or report to the Chief Accountant at the address indicated at III (3).

Appendix B—Revisions to the FERC Form No. 2 Edit Checks

[Note: For a complete list of edit checks refer to appendix A of the User's Manual]

Edit No. and description

16a. New edit: Item 87=Sum of Item 601 (Info. Reported Code=1 & Long Term Debt Code=1)
21. Item 98: Utility Plant Code for Item 559 changed to 8
38. Item 121: Add Long Term Debt Code=2 and Information Reported Code=2 to Item 601
39. Item 122: Add Long Term Debt Code=3 and Information Reported Code=2 to Item 601
42 Item 136: Add Type of Tax Code=4 to Item 615
46. Item 150: Account Subdiv. Codes changed so that Item 667 is Code 10, Item 678 is Code 6, Item 689 is Code 8
51. Item 181: Add Utility Plant Code=4 to the preceding instruction
95. Item 401: change the (−) sign preceding Item 399 to (+)
96. Item 401: edit check modified to include Item 398 preceded by a (+) sign and Item 399 preceded by a (−) sign
103. Item 445: change the (+) sign preceding Item 443 to (−)
111. Omit
116. Item 475: edit check should read "Items 472 + Item 473 − Item 474"
142. Item 549: Item 545 changed to Item 549
169. Item 561: The revised edit check should read "Item 561 = (Item 564)/(Item 563)"
170. Omit
171. Omit
172. Omit

[Note: The following new edit checks numbered 197a–197o are added for Schedule F(5), Records 44–45]

Edit No. and description

197a. New edit: Item 610 (Info. Reported Code=3 & Type of Tax Code=4)=Sum of Item 610 (Info. Reported Code=1 & Type of Tax Code=1, 2, or 3)
197b. New edit: Item 611 (Info. Reported Code=3 & Type of Tax Code=4)=Sum of Item 611 (Info. Reported Code=1 & Type of Tax Code=1, 2, or 3)
197c. New edit: Item 612 (Info. Reported Code=3 & Type of Tax Code=4)=Sum of Item 612 (Info. Reported Code=1 & Type of Tax Code=1, 2, or 3)
197d. New edit: Item 613 (Info. Reported Code=3 & Type of Tax Code=4)=Sum of Item 613 (Info. Reported Code=1 & Type of Tax Code=1, 2, or 3)
197e. New edit: Item 614 (Info. Reported Code=3 & Type of Tax Code=4)=Sum of Item 614 (Info. Reported Code=1 & Type of Tax Code=1, 2, or 3)
197f. New edit: Item 615 (Info. Reported Code=3 & Type of Tax Code=4)=Sum of Item 615 (Info. Reported Code=1 & Type of Tax Code=1, 2, or 3)
197g. New edit: Item 616 (Info. Reported Code=3 & Type of Tax Code=4)=Sum of Item 616 (Info. Reported Code=1 & Type of Tax Code=1, 2, or 3)
197h. New edit: Item 617 (Info. Reported Code=3 & Type of Tax Code=4)=Sum of Item 617 (Info. Reported Code=1 & Type of Tax Code=1, 2, or 3)
197i. New edit: Item 618 (Info. Reported Code=3 & Type of Tax Code=4)=Sum of Item 618 (Info. Reported Code=1 & Type of Tax Code=1, 2, or 3)
197j. New edit: Item 619 (Info. Reported Code=3 & Type of Tax Code=4)=Sum of Item 619 (Info. Reported Code=1 & Type of Tax Code=1, 2, or 3)
197k. New edit: Item 620 (Info. Reported Code=3 & Type of Tax Code=4)=Sum of Item 620 (Info. Reported Code=1 & Type of Tax Code=1, 2, or 3)
197l. New edit: Item 621 (Info. Reported Code=3 & Type of Tax Code=4)=Sum of Item 621 (Info. Reported Code=1 & Type of Tax Code=1, 2, or 3)
197m. New edit: Item 622 (Info. Reported Code=3 & Type of Tax Code=4)=Sum of Item 622 (Info. Reported Code=1 & Type of Tax Code=1, 2, or 3)
197n. New edit: Item 623 (Info. Reported Code=3 & Type of Tax Code=4)=Sum of Item 623 (Info. Reported Code=1 & Type of Tax Code=1, 2, or 3)
197o. New edit: Item 624 (Info. Reported Code=3 & Type of Tax Code=4)=Sum of Item 624 (Info. Reported Code=1 & Type of Tax Code=1, 2, or 3)
198–211. Items 610–624. Add this instruction "For Tax Code=1, 2, and 3". Change (Info. Reported Code=2) to (Info. Reported Code=1). Change (Info. Reported Code=3) to (Info. Reported Code=2). Edit check 204a (for Item 617) is a new edit and reads "Item 617 (Info. Reported Code=2)=Sum of Item 617 (Info. Reported Code=1).
212–216. Items 632, 634, 635, 636, & 638. Change (Acct. Subdiv. Code=6) to (Percentage Reported Code=6). Also change (Acct. Subdiv. Code=1 thru 5) to (Percentage Reported Code=1 thru 5)
236–238. Change Item 666 to Item 664
239–241. Change Item 667 to Item 666
242–244. Change Item 668 to Item 667
277. Item 700. The instruction "For Info. Reported Code=1; Balance Year Codes 1 and 2:" should precede rather than follow this edit check.
280. Item 714. The instruction "For Info. Reported Code=1; Balance Year Code=1" should precede this edit check.
326. Item 862. The (+) sign preceding Item 860 should be changed to a (−)
506. Item 1368. Add "(Info. Reported Code=1)" to Item 1036
510. Item 1372. The edit check for Item 1372 should read "Item 1306–Item 1373"
519. Item 1398. The edit check for Item 1398 should read "Item 1291–Item 1399"

Appendix C—Directory of Files

Diskette A

F2CHECK 48929
Edit Check Software
F2COID 6
Edit Check Software
F2COL 26373
Edit Check Software
F2EDIT C 52827
Edit check Software
F2EDIT EXE 97188
Edit Check Software
F2EDIT OBJ 83316
Edit Check Software
FORM2 BAT 14
Edit Check Software
INSTALL C 5665
Edit Check Software
INSTALL EXE 23535
Edit Check Software
INSTALL OBJ 8122
Edit Check Software
INTRA C 44168
Edit Check Software
README 146205
User's Manual in ASCII
NOTICE 20319
Notice in ASCII
FORM2P1 ASC 260146
Record Formats in ASCII—Part 1

FORM2P2 ASC 182448
Record Formats in ASCII—Part 2

Diskette B

F2CHECK 48929
Edit Check Software
F2COID 6
Edit Check Software
F2COL 26373
Edit Check Software
F2EDIT C 52827
Edit Check Software
F2EDIT EXE 97188
Edit Check Software
F2EDIT OBJ 83316
Edit Check Software
FORM2 BAT 14
Edit Check Software
INSTALL C 5665
Edit Check Software
INSTALL EXE 23535
Edit Check Software
INSTALL OBJ 8122
Edit Check Software
INTRA C 44168
Edit Check Software
README WP5 121203
User's Manual in WP 5.0
NOTICE WP5 23280
Notice in WP 5.0
FORM2 P1 328393
Record Formats in WP 4.2—Part 1
FORM2 P2 155495
Record Formats in WP 4.2—Part 2

Order Form

RM87-17-000: Released—February 11, 1991
FERC Form No. 2: PC Edit Check Software, User's Manual, Revised Record Formats
Send to: LaDorn Systems Corporation, 941 North Capitol Street N.E.—Room 3308, Washington, DC 20426, (202) 898-1151

Ordered By: _____
Company: _____
Address: _____

Phone Number: ( ) _____
Diskette (specify):
—— 3.5" (1.44MB): $6.00/diskette
—— 5.25" (1.2MB): $5.00/diskette

Package	Description	Copy Fee
—— Package A	Form No. 2 Edit—Checking Executable Code. The User's Manual, the Record Formats, and the Notice—(ASCII format). 1 diskette.	.....
—— Package B	Form No. 2 Edit—Checking Executable Code. The User's Manual, and the Notice—(WP 5.0). The Record Formats—(WP 4.2) 1 diskette.	.....
—— Package C	Hardcopy of User's Manual 77 pages @ 20 cents per page.	.....
—— Package D	Hardcopy of Record Formats 354 pages @ 20 cents per page.	.....
Postage & handling (Contact LaDorn).	.....	.....
Total Copy Fee.	.....	.....

Make check payable to LaDorn Systems Corporation.

[FR Doc. 91-3667 Filed 2-14-91; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. GT91-17-000]

Eastern Shore Natural Gas Co.; Proposed Changes in FERC Gas Tariff

February 8, 1991.

Take notice that Eastern Shore Natural Gas Company (ESNG) on February 1, 1991, pursuant to section 4 of the Natural Gas Act, and the Commission's regulations governing the electronic submission of tariffs, 18 CFR 383.2011(b) (1989), filed six copies of First Revised Volume No. 1. ESNG requests that the Commission allow the proposed tariff revisions to become effective upon thirty days' notice, on March 1, 1991.

The purpose of First Revised Volume No. 1 is to comply with the Commission's new electronic filing requirements adopted in Order No. 493. These regulations require natural gas pipelines to refile Volume No. 1 of their effective tariffs in electronic form no later than their first general rate proceeding after October 31, 1989.

ESNG states the copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rule 211 and rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before February 15, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 91-3668 Filed 2-14-91; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. RP88-259-000, CP89-1227-000, RP90-124-000, and RP90-161-000]

Northern Natural Gas Co.; Informal Settlement conference

February 8, 1991.

Take notice that an informal settlement conference has been scheduled in the above-captioned proceeding to begin on February 19, 1991, at 1 p.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426.

Any party, as defined by 18 CFR 385.102(c) (1990), or any participant, as defined by 18 CFR 385.102(b) (1990), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214) (1990)).

For additional information, contact Donald Williams (202) 208-0743 or Sandra Delude at (202) 208-2161.

Lois D. Cashell,
Secretary.

[FR Doc. 91-3670 Filed 2-14-91; 8:45 am]
BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3905-7]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5076.

Availability of Environmental Impact Statements Filed February 4, 1991, through February 8, 1991, pursuant to 40 CFR 1506.9.

EIS No. 910040, DRAFT EIS, UAF, NH, ME, Pease Air Force Base (AFB) Disposal and Reuse, Implementation, Newington, NH, Due: April 1, 1991, Contact: Lt. Col. Tom Bartol (713) 382-4891.

EIS No. 910041, FINAL EIS, USA, MS, Camp Shelby Annual Training Facilities, Construction, Implementation, Forrest, Perry, and Greene Counties, MS, Due: March 18, 1991, Contact: Col. Everett Cameron (601) 973-6229.

EIS No. 910042, DRAFT EIS, UAF, NV, Tonapah Test Range 37th Tactical Fighter Wing Relocation and other Tactical Force Structure Actions at Holloman and Nellis AFBs, Nye County, NV, Due: April 1, 1991, Contact: Cpt. David Clark (804) 764-7844.

EIS No. 910043, LEGISLATIVE DRAFT EIS, NPS, AK, Gate of the Arctic National Park and Preserve, Use of All-Terrain Vehicles (ATV) for Subsistence on Park Land, City of Anaktuvik Pass, AK, Due: April 16, 1991, Contact: William B. Lawrence (907) 257-2648.

EIS No. 910044, FINAL EIS, NPS, CA, Eugene O'Neill National Historic Site Development and General Management Plan, Implementation, Contra Costa County, CA, Due: March 18, 1991, Contract: Stanley Albright (415) 838-0249.

Dated: February 12, 1991.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 91-3738 Filed 2-14-91; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3905-6]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared January 28, 1991, through February 1, 1991, pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 13, 1990 (55 FR 13969).

Draft EISs

ERP No. D-AFS-J67009-MT Rating EU3, Montanore Mine/Mill Project, Construction and Operation, Permit Approval, section 404 Permit, Special Use Permit, Kootenai National Forest, Lincoln and Sanders Counties, MT.

Summary: EPA has determined that the impacts associated with the Montanore project are environmentally unsatisfactory. EPA believes that many of the project's impacts are avoidable and/or mitigatable. The draft EIS does not contain an adequate assessment of environmental impacts and reasonable alternatives which could reduce those impacts.

ERP No. DA-COE-L39006-AK Rating LO, Kodiak Harbor Additional Moorage Construction, Implementation, Kodiak, Island, AK.

Summary: EPA believes the proposed action is the least environmentally damaging alternative with regard to water quality effects and the loss of crab spawning habitat. The loss of crab habitat should be minimized if the described mitigation measures are fully implemented.

Final EISs

ERP No. F-AFS-L65134-ID, Mallard Creek Timber Sale and Road Construction, Implementation, Nez Perce National Forest, Red River Ranger District, Idaho County, ID.

Summary: EPA has no objections to the proposed project. No formal letter was sent to the agency.

ERP No. F-AFS-L65136-ID, Cove Area Timber Sales and Road Construction, Implementation, Nez Perce National Forest, Idaho County, ID.

Summary: EPA has no objections to the proposed project. No formal letter was sent ot the agency.

ERP No. F-BLM-J61080-UT, Dixie Resource Area, Resource Management Plan, Implementation, Washington County, UT.

Summary: Review of the final EIS has been completed and the project found to be satisfactory. No formal letter was sent to the agency.

ERP No. F-FHW-J40120-CO, I-25/49th Avenue Interchange Closure, I-25 to 58th Avenue Interchange Improvement, Funding, Denver and Adams Counties, CO.

Summary: EPA has concerns about the proposed project on the impacts to wetlands and urges the Colorado Department of Highways to work with the EPA's section 404 regarding these concerns. Otherwise, EPA has no objections to the proposed action.

EPA No. F-MMS-L02017-AK, 1991 Beaufort Sea Outer Continental Sheld (OCS) Oil and Gas Sale 124, Lease Offering, AK.

Summary: EPA has environmental concerns with the proposed action and supports selection of both the Barrow and Barter Island deferral alternatives as the preferred action. Absent a feedback mechanism to assess the actual effectiveness of proposed mitigating stipulation avoidance of the sensitive habitat located in these two deferral areas would provide the most effective form of mitigation.

Dated: February 12, 1991.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 91-3737 Filed 2-14-91; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3904-4]

Intent To Prepare an Environmental Impact Statement (EIS) on the Formosa Organic Chemicals and Plastics Production Facilities Near Point Comfort, TX

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

ACTION: Issuance of new source National Pollutant Discharge Elimination System (NPDES) permit to Formosa Plastics Corporation, USA for expansion of its organic chemicals and plastics production facilities near Point Comfort, Texas.

PURPOSE: EPA has determined that the issuance of NPDES permit to the Formosa Plastics Corporation, USA for wastewater discharges from the expanded facilities represents a major Federal action that may significantly affect the quality of the human environment. Therefore, an EIS will be prepared to assess the potential environmental consequences of EPA's permit action.

FOR FURTHER INFORMATION TO BE PLACED ON THE PROJECT MAILING LIST CONTACT: Mr. Norm Thomas; Chief, Federal Activities Branch; U.S. EPA, Region 6(E-F); 1445 Ross Avenue; Dallas, Texas 75202-2733. Telephone: (Commercial) 214-655-2260 or (FTS) 255-2260.

SUMMARY: Formosa Plastics Corporation, USA is expanding its existing Polyvinyl Chloride-Vinyl Chloride Monomer (PVC/VCM) Plant. The new facilities include an Olefins Plant, Caustic-Chlorine Plant, Ethylene Dichloride Plant, High Density Polyethylene Plant, Polypropylene Plant, Ethylene Glycol Plant, Linear Low Density Polyethylene Plant, Biaxial Oriented Polypropylene Plant, and a Utilities Plant. Support facilities include a combined Wastewater Treatment Plant and a Marine Loading Facility (MLF). The MLF will consist of 12 storage tanks and a flare, a 74-acre Shore Tank Farm (STF), a 18-acre Dock Area Tank Farm, an Incinerator Scrubber System, and a Flare System. Some potential impacts associated with the project include: solid waste handling; land use changes; noise, effluent discharged into Lavaca Bay and Cox's Creek; surface and ground water; increased air emissions; infrastructure requirements; increased traffic; and socioeconomics.

ALTERNATIVES: EPA may issue the NPDES permit for the project expansions as proposed; issue the NPDES permit for the project

expansions with modifications to minimize adverse impacts; or deny the NPDES permit.

SCOPING: EPA encourages agency and public participation in the decision-making process on this proposed permit action. Federal, State and local agencies and the public are invited to participate in the process for determining the scope of issues to be addressed and for identifying the major issues related to the proposed action. A public meeting to receive input to this scoping process will be held at 7 p.m. on March 15, 1991 and 10 a.m. on March 16, 1991 at the Bauer Community Center, 2300 No. Highway 35, in Port Lavaca, Texas.

ESTIMATED DATE OF DRAFT EIS RELEASE: May, 1991.

RESPONSIBLE OFFICIAL: Robert E. Layton Jr., P.E. Regional Administrator.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 91-3739 Filed 2-14-91; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51759; FRL 3878-4]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the Federal Register of May 13, 1983 (48 FR 21722). This notice announces receipt of 122 such PMNs and provides a summary of each.

DATES: Close of review periods:

P 91-303, March 10, 1991.

P 91-304, 91-305, March 5, 1991.

P 91-306, 91-307, 91-308, 91-309, 91-310, 91-312, 91-313, March 9, 1991.

P 91-315, 91-316, 91-317, 91-318, March 10, 1991.

P 91-319, 91-320, 91-321, March 11, 1991.

P 91-322, 91-323, 91-324, 91-325, 91-326, 91-327, March 12, 1991.

P 91-328, 91-329, 91-330, 91-331, 91-332, 91-333, 91-334, 91-335, March 13, 1991.

P 91-337, 91-338, 91-339, 91-340, 91-341, 91-342, 91-343, 91-344, 91-345, March 17, 1991.

P 91-346, March 18, 1991.

P 91-347, 91-348, 91-349, 91-350, 91-351, 91-352, March 19, 1991.

P 91-353, March 20, 1991.

P 91-354, 91-355, March 25, 1991.

P 91-356, 91-357, 91-358, 91-359, 91-360, 91-361, 91-362, 91-363, March 23, 1991.

P 91-364, 91-365, 91-366, 91-367, 91-368, 91-369, 91-370, 91-371, 91-372, 91-373, 91-374, 91-375, 91-376, 91-377, March 25, 1991.

P 91-378, 91-379, March 26, 1991.

P 91-380, 91-381, 91-382, 91-383, 91-384, 91-385, 91-386, 91-387, 91-388, March 30, 1991.

P 91-389, April 1, 1991.

P 91-390, March 12, 1991.

P 91-391, 91-392, 91-393, 91-394, 91-395, April 2, 1991.

P 91-396, April 6, 1991.

P 91-397, April 2, 1991.

P 91-398, 91-399, April 3, 1991.

P 91-400, 91-401, 91-402, 91-403, April 6, 1991.

P 91-404, 91-405, 91-406, 91-407, 91-408, 91-409, 91-410, 91-411, April 7, 1991.

P 91-412, 91-413, 91-414, 91-415, 91-416, 91-417, 91-418, April 8, 1991.

P 91-419, April 9, 1991.

P 91-420, 91-423, 91-424, 91-425, 91-426, 91-427, 91-428, 91-429, April 13, 1991.

Written comments by:

P 91-303, February 8, 1991.

P 91-304, 91-305, February 3, 1991.

P 91-306, 91-307, 91-308, 91-309, 91-310, 91-312, 91-313, February 7, 1991.

P 91-315, 91-316, 91-317, 91-318, February 8, 1991.

P 91-319, 91-320, 91-321, February 9, 1991.

P 91-322, 91-323, 91-324, 91-325, 91-326, 91-327, February 10, 1991.

P 91-328, 91-329, 91-330, 91-331, 91-332, 91-333, 91-334, 91-335, February 11, 1991.

P 91-337, 91-338, 91-339, 91-340, 91-341, 91-342, 91-343, 91-344, 91-345, February 15, 1991.

P 91-346, February 16, 1991.

P 91-347, 91-348, 91-349, 91-350, 91-351, 91-352, February 17, 1991.

P 91-353, February 18, 1991.

P 91-354, 91-355, February 23, 1991.

P 91-356, 91-357, 91-358, 91-359, 91-360, 91-361, 91-362, 91-363, February 21, 1991.

P 91-364, 91-365, 91-366, 91-367, 91-368, 91-369, 91-370, 91-371, 91-372, 91-373, 91-374, 91-375, 91-376, 91-377, February 23, 1991.

P 91-378, 91-379, February 24, 1991.

P 91-380, 91-381, 91-382, 91-383, 91-384, 91-385, 91-386, 91-387, 91-388, February 28, 1991.

P 91-389, March 2, 1991.

P 91-390, February 10, 1991.

P 91-391, 91-392, 91-393, 91-394, 91-395, March 3, 1991.

P 91-396, March 7, 1991.

P 91-397, March 3, 1991.

P 91-398, 91-399, March 4, 1991.

P 91-400, 91-401, 91-402, 91-403, March 7, 1991.

P 91-404, 91-405, 91-406, 91-407, 91-408, 91-409, 91-410, 91-411, March 8, 1991.

P 91-412, 91-413, 91-414, 91-415, 91-416, 91-417, 91-418, March 9, 1991.

P 91-419, March 10, 1991.

P 91-420, 91-423, 91-424, 91-425, 91-426, 91-427, 91-428, 91-429, March 14, 1991.

ADDRESSES: Written comments, identified by the document control number "(OPTS-51759)" and the specific PMN number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., Rm. L-100, Washington, DC, 20460, (202) 382-3532.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M St., SW., Washington, DC 20460 (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the TSCA Public Docket Office NE-G004 at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

P 91-303

Importer. Goldschmidt Chemical Corporation.

Chemical. (G) Diquarterneric polydimethylsiloxane.

Use/Import. (G) Open, nondispersive use. Import range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5,091 mg/kg species (Rat). Eye irritation: none species (Rabbit). Skin irritation: negligible species (Rabbit).

P 91-304

Manufacturer. Amspec Chemical Corporationation.

Chemical. (G) Titanyl acetylacetonate.

Use/Production. (G) Surface modifier. Prod. range: 20,000 kg/yr.

P 91-305

Importer. Confidential.
Chemical. (G) Acrylic resin.
Use/Import. (S) Sizing ingredient for fiberglass reinforcements. Import range: Confidential.

P 91-306

Manufacturer. Monsanto Company.
Chemical. (G) Heterocycloc sulfenylic amine.
Use/Production. (G) Chemical used in rubber manufacturing. Prod. range: 145,000–500,000 kg/yr.
Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg species (Rat). Acute dermal toxicity: LD50 > 2,000 mg/kg species (Rabbit). Eye irritation: none species (Rabbit). Mutagenicity: negative. Static acute toxicity: time EC50 48H5.0 mg/l species (Daphnia Magna). Skin irritation: negligible species (Rabbit). Skin sensitization: negative species (Guinea Pig).

P 91-307

Manufacturer. Confidential.
Chemical. (S) Maleic anhydride; 2-butoxyethanol; prpylene oxide; 4,4-methylenebiscyclohexylisocyanate.
Use/Production. (S) Radiation cure coating for industral use. Prod. range: 20,000–100,000 kg/yr.

P 91-308

Manufacturer. Confidential.
Chemical. (S) Maleic anhydride; butoxethoxyethanol; tris(2-hydroxyethyl) isocycanurate; azelaic acid.
Use/Production. (S) Radiation cure coating for industral use. Prod. range: 20,000–100,000 kg/yr.

P 91-309

Manufacturer. Confidential.
Chemical. (S) Butyl cellosolve; maleic anhydride; diglycidyl ether of bisphenol A.
Use/Production. (S) Radiation cure coating for industrial use. Prod. range: 10,000–50,000 kg/yr.

P 91-310

Manufacturer. Confidential.
Chemical. (S) Maleic anhydride; butoxyethoxyethanol; 1,5-pentanediol.
Use/Production. (S) Radiation cure coating for industrial use. Prod. range: 10,000–50,000 kg/yr.

P 91-312

Manufacturer. E.I. Du Pont De Nemours & Co., Inc.
Chemical. (G) Acrylic polymer.
Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 91-313

Importer. Guthrie Latex, Inc.
Chemical. (S) Polymer of formic acid, hydrogen peroxide, and natural rubber (latex).
Use/Import. (S) Manufacture of rubber goods. Import range: 1,000,000–1,500,000 kg/yr.

P 91-315

Importer. Confidential.
Chemical. (G) Copolymer of butyl methacrylate, methacrylate, exthoxylated, an aromaic and a heterocyclic vinyl compound.
Use/Import. (G) Additive, open, nondispersive use. Import range: Confidential.

P 91-316

Importer. Confidential.
Chemical. (G) Polyoxyalkylene polyester urethane block polymer.
Use/Import. (G) Additive, open, nondispersive use. Import range: Confidential.

P 91-317

Importer. Confidential.
Chemical. (G) Dimethylpolysiloxane, polyoxyalkylene ether.
Use/Import. (G) Additive, open, nondispersive use. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg species (Rat). Eye irritation: none species (Rabbit). Skin irritation: negligible species (Rabbit).

P 91-318

Manufacturer. Ciba-Geigy Corp.
Chemical. (G) 2-(Hydroxymethyl)-2-methyl-1,3-propanediol triester.
Use/Production. (S) Crosslinking agent in epoxy powder coatings. Prod. range: Confidential.
Toxicity Data. Static acute toxicity: time EC50 48H5.0 mg/l species (daphnia magna). Mutagenicity: negative.

P 91-319

Manufacturer. The Woodbridge Corporation.
Chemical. (G) Polyurethane suspension in polyol.
Use/Production. (G) Manufacture for polyurethane foam. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 5 g/kg species (Rat). Eye irritation: moderate species (Rabbit). Skin irritation: negligible species (Rabbit). Skin sensitization: negative species (Guinea Pig).

P 91-320

Manufacturer. Stamford Chemical Corp.
Chemical. (G) Ethylenic insaturated cationic surfactant monomer.
Use/Production. (S) Intermediate for polymer production. Prod. range: Confidential.

P 91-321

Importer. Confidential.
Chemical. (G) Poly(isophorone substituted-hexamethylene substituted-poly.
Use/Import. (G) Finishing product Import range: Confidential.

P 91-322

Manufacturer. Confidential.
Chemical. (G) Salt of alkene substituted with alkyl carboxyaryl oxo substituted pyrazoles.
Use/Production. (G) Chemical intermediate. Prod. range: 400–1,400 kg/yr.
Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg species (Rat). Acute dermal toxicity: > 2,000 mg/kg species (Rabbit). Eye irritation: slight species (Rabbit). Skin irritation: slight species (Rabbit). Skin sensitization: negative species (Guinea Pig).

P 91-323

Manufacturer. Confidential.
Chemical. (G) Alkene substituted with alkyl carboxyaryl oxo substituted pyrazoles.
Use/Production. (G) Contained use in an article. Prod. range: 300–1,000 kg/yr.
Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg species (Rat). Acute dermal toxicity: LD50 > 2,000 mg/kg species (Rabbit). Eye irritation: slight species (Rabbit). Skin irritation: slight species (Rabbit). Skin sensitization: negative species (Guinea Pig).

P 91-324

Manufacturer. Confidential.
Chemical. (G) Nitro bipnenyl, bis sulfo, amino, hydroxy napthalenyl azo dimethoxy, sodium salt.
Use/Production. (S) Dyestuff for coloration of textiles. Prod. range: 2,000–6,000 kg/yr.

P 91-325

Manufacturer. Confidential.
Chemical. (G) Sulfo nahpthalene azo h- acid, mono chloro triazine, amino phenyl v.s.
Use/Production. (S) Reactive dyestuff for coloration of textile. Prod. range: Confidential.

P 91-326

Importer. Confidential.

Chemical. (G) 2-Hydroxyethylcellulose-2-cyanoethyl ether.
Use/Import. (S) Catalyst additive for polypropylene. Import range: 5,000–10,000 kg/yr.

P 91-327

Manufacturer. Huls America, Inc.
Chemical. (G) Dialkyldialkoxysilane.
Use/Import. (S) Catalyst additive for polypropylene. Import range: 5,000–10,000 kg/yr.

P 91-328

Manufacturer. Confidential.
Chemical. (G) Disubstituted phenylazo-trisubstituted naphthalene.
Use/Production. (G) Open nondispersive. Prod. range: Confidential.

P 91-329

Manufacturer. Confidential.
Chemical. (G) Salt of a fatty acid with an alkyl amine.
Use/Production. (G) Motor oil friction modifier additive. Prod. range: Confidential.

P 91-330

Manufacturer. Confidential.
Chemical. (G) Salt of a fatty acid with an alkyl amine.
Use/Production. (G) Motor oil friction modifier. Prod. range: Confidential.

P 91-331

Manufacturer. E.I. Du Pont De Nemours & Co., Inc.
Chemical. (G) Aryl isocyanate acyl chloride.
Use/Production. (G) Monomer. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg species (Rat). Skin irritation: strong species (Rabbit).

P 91-332

Manufacturer. E.I. Du Pont De Nemours & Co., Inc.
Chemical. (G) Aryl polyamideurea.
Use/Production. (G) Membrane. Prod. range: Confidential.

P 91-333

Manufacturer. Arizona Chemical Company.
Chemical. (G) Rosin modified cyclic hydrocarbon, vinyl aromaticsco-polymer.
Use/Production. (G) Printing ink resin. Prod. range: Confidential.

P 91-334

Manufacturer. Arizona Chemical Company.
Chemical. (G) Rosin modified cyclic hydrocarbon, vinyl aromaticsco-polymer.
Use/Production. (G) Printing ink resin. Prod. range: Confidential.

P 91-335

Manufacturer. Arizona Chemical Company.
Chemical. (G) Rosin modified cyclic hydrocarbon, vinyl aromaticsco-polymer.
Use/Production. (G) Printing ink resin. Prod. range: Confidential.

P 91-337

Importer. Ciba-Geigy Corporation.
Chemical. (G) Substituted disazo naphthalene sulfonic acid.
Use/Import. (G) Textile dye. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg species (Rat). Acute dermal toxicity: LD50 > 2,000 mg/kg species (Rabbit). Eye irritation: none species (Rabbit). Mutagenicity: negative. Skin irritation: negligible species (Rabbit). Skin sensitization: negative species (Guinea Pig).

P 91-338

Manufacturer. Confidential.
Chemical. (G) Phosphorized boronated succinimide.
Use/Production. (G) Lubricant additive. Prod. range: Confidential.

P 91-339

Manufacturer. Confidential.
Chemical. (G) Polyurethane polymer.
Use/Production. (G) Coatings/adhesives for open nondispersive use. Prod. range: Confidential.

P 91-340

Manufacturer. Henkel Corporation, Emery Group.
Chemical. (S) Alcohols C9-C11-iso-, C10 rich, esters with C6-C12 fatty acids.
Use/Production. (S) Lubricant basestock for automotive oils ad. Prod. range: 5,000–80,000 kg/yr.

P 91-341

Manufacturer. Henkel Corporation, Emery Group.
Chemical. (S) Pentaerythritol ester of pentanoic acid and isononanoic acid.
Use/Production. (S) Lubricant basestock for refrigeration compressors. Prod. range: 5,000–80,000 kg/yr.

P 91-342

Manufacturer. Henkel Corporation, Emery Group.
Chemical. (S) Pentaerythritol ester of pentanoic acids and isononanoic acid.
Use/Production. (S) Lubricant basestock for refrigeration compressors. Prod. range: 5,000–80,000 kg/yr.

P 91-343

Manufacturer. Henkel Corporation, Emery Group.
Chemical. (S) Alcohols, C11-C14-iso-, C13 rich, esters with C6-C12 fatty acids.
Use/Production. (S) Lubricant basestock for automotive oils. Prod. range: 5,000–80,000 kg/yr.

P 91-344

Manufacturer. Confidential.
Chemical. (S) 3-Methylphenoxyethanol.
Use/Production. (S) Intermediate for paper coating. Prod. range: Confidential

P 91-345

Importer. Unichema North America.
Chemical. (S) C20-C24 fatty acids, unsaturated and saturated, branched and linear.
Use/Import. (G) Dispersive use and open, nondispersive use. Import range: Confidential.

P 91-346

Manufacturer. Confidential.
Chemical. (G) Fatty acid ester.
Use/Production. (G) Lubricant of magnetic tape. Prod. range: Confidential.

P 91-347

Manufacturer. Confidential.
Chemical. (S) Fatty acids, C5, C9, esters with pentaerythritol (EINECS 2702903).
Use/Production. (G) Synthetic industrial lubricant for contained use. Prod. range: Confidential.

P 91-348

Importer. Xerox Corporation.
Chemical. (G) Organometallic compound.
Use/Import. (G) Antistatic for plastics, open, nondispersive use. Import range: Confidential.

P 91-349

Manufacturer. Dover Chemical Corporation.
Chemical. (S) Phosporous acid, bis isooctadecyl ester.
Use/Production. (S) Ingredient and reactant for metal-working fluids by third party and for PVC stabilizer. Prod. range: 85,000–91,000 kg/yr.

P 91-350

Manufacturer. Dover Chemical Company.
Chemical. (G) Mixed alylphenyl alkyl phosphite.
Use/Production. (S) Ingredient and reactant in PVC stabilizer; chelator activity. Prod. range: Confidential.

P 91-351

Manufacturer. Dover Chemical Corporation.
Chemical. (G) Mixed (etherdiol) phenyl andalkyl diphosphite.
Use/Production. (S) Ingredient and reactant of PVC stabilizer; metal chelator. Prod. range: Confidential.

P 91-352

Manufacturer. Dover Chemical Company.
Chemical. (G) Mixed (etherdiol) alkyl diphosphite.
Use/Production. (S) Ingredient and reactant in PVC stabilizers; metal chelator. Prod. range: Confidential.

P 91-353

Manufacturer. Confidential.
Chemical. (G) Metal alkyl salicylate.
Use/Production. (G) Additive for automotive engine oil. Prod. range: Confidential.

P 91-354

Manufacturer. Confidential.
Chemical. (G) Polyurethane salt.
Use/Production. (G) Polyurethane intermediate for the plastic and textile industry. Prod. range: Confidential.

P 91-355

Manufacturer. Confidential.
Chemical. (G) Polyurethane.
Use/Production. (G) Polyurethane for the plastic and textile industry. Prod. range: Confidential.

P 91-356

Importer. Hoechst Celanese Corporation.
Chemical. (G) Perfluoropolyether.
Use/Import. (G) Vapor phase soldering, heat transfer fluid, electronic testing - all contained use. Import range: Confidential.

P 91-357

Importer. Hoechst Celanese Corporation.
Chemical. (G) Perfluoropolyether.
Use/Import. (G) Vapor phase soldering, heat transfer fluid, electronic testing - all contained use. Import range: Confidential.

P 91-358

Manufacturer. Confidential.
Chemical. (G) Maleinized polyalkene.
Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 91-359

Manufacturer. Confidential.
Chemical. (G) Soya linoleic alkyd.
Use/Production. (S) Resin intermediate. Prod. range: Confidential.

P 91-360

Manufacturer. Confidential.
Chemical. (G) Acrylated soya linoleic alkyd.
Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 91-361

Manufacturer. Confidential.
Chemical. (G) Styrenated amino acrylated copolymer.
Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 91-362

Manufacturer. EMS-American Grilon, Inc.
Chemical. (S) Copolyamide of hexamethylene diamine (a), adipic acid (b), and sebacic acid (c), = PA66/610 (ISO 1874-1).
Use/Production. (S) Polymer for film extrusion (mono- and multi-layer). Prod. range: Confidential.

P 91-363

Importer. Confidential.
Chemical. (G) Bismaleimide.
Use/Import. (G) Heat resistant resin for use in the manufacture of reinforced plastic articles. Import range: Confidential.

P 91-364

Manufacturer. Confidential.
Chemical. (G) Polyurethane salt.
Use/Production. (G) Polyurethane salt for the plastic and textile industry. Prod. range: Confidential.

P 91-365

Manufacturer. Minnesota Mining & Manufacturing (3M).
Chemical. (G) Fluorinated sulfonimide.
Use/Production. (S) Chemical intermediate. Prod. range: Confidential.

P 91-366

Manufacturer. Minnesota Mining & Manufacturing (3M).
Chemical. (G) Fluorochemical salt.
Use/Production. (S) Battery electrolyte. Prod. range: Confidential.

P 91-367

Importer. Shin-Etsu Silicones of America, Inc.
Chemical. (G) Silylpolyalkylene.
Use/Import. (S) Ingredient for silicone rubber compounds. Import range: 1,000–3,000 kg/yr.

P 91-368

Manufacturer. Reichhold Chemicals.
Chemical. (G) Rosin phenolic modified short oil alkyd resin.
Use/Production. (S) Industrial Coatings. Prod. range: Confidential.

P 91-369

Manufacturer. Confidential.
Chemical. (S) Polymer of dimer fatty acids, acetic acid, rosin, glycerine, ethylene diamene, and propylene carbonate.
Use/Production. (S) Resin for use in flexographic printing inks. Prod. range: 250,000–300,000 kg/yr.

P 91-370

Manufacturer. Confidential.
Chemical. (G) Epoxy acrylic phenolic resin.
Use/Production. (G) Container coating. Prod. range: Confidential.

P 91-371

Manufacturer. Confidential.
Chemical. (G) Epoxy adduct.
Use/Production. (G) Epoxy paint binder. Prod. range: Confidential.

P 91-372

Manufacturer. Confidential.
Chemical. (G) Acrylic copolymers.
Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 2.0 g/kg species (Rat). Acute dermal toxicity: LD50 > 2.0 g/kg species (Rabbit).

P 91-373

Manufacturer. Confidential.
Chemical. (G) Acrylic copolymers.
Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 91-374

Manufacturer. Confidential.
Chemical. (G) Acrylic copolymers.
Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 91-375

Importer. Goldschmidt Chemical Corporation.
Chemical. (G) Amphoteric polydimethylsiloxane.
Use/Import. (G) Open, nondispersive use. Import range: Confidential.

P 91-376

Manufacturer. Confidential.
Chemical. (G) Quaternary ammonium chloride.
Use/Production. (G) Destructive use. Prod. range: Confidential.

P 91-377

Manufacturer. Confidential.

Chemical. (G) Quaternary ammonium chloride.
Use/Production. (G) Destructive use. Prod. range: Confidential.

P 91-378

Manufacturer. Confidential.
Chemical. (G) Amino salt of a carboxyl terminated polycarbonate urethane polymer.
Use/Production. (S) Fabric coating, fabric finish, paperboard coating. Prod. range: 100,000–500,000 kg/yr.

P 91-379

Manufacturer. Ethox Chemicals, Inc.
Chemical. (S) Phosphoric acid, mixed decyl, ethyl, and octyl ester, potassium salt.
Use/Production. (G) Catalyst used in closed process. Prod. range: 63,560–190,680 kg/yr.
Toxicity Data. Eye irritation: moderate. Skin irritation: negligible species (Rat).

P 91-380

Manufacturer. Confidential.
Chemical. (G) Aromatic ether of ethylene glycol.
Use/Production. (S) Organic synthesis intermediate. Prod. range: 30,000–100,000 kg/yr.

P 91-381

Manufacturer. H.B. Fuller Company.
Chemical. (G) Polyamide.
Use/Production. (S) Adhesive. Prod. range: Confidential.

P 91-382

Manufacturer. Hercules Incorporated.
Chemical. (G) Unsaturated, cyclic siloxane polymers.
Use/Production. (G) Thermoset resin. Prod. range: Confidential.

P 91-383

Manufacturer. Hercules Incorporated.
Chemical. (G) Unsaturated, cyclic siloxane polymers.
Use/Production. (S) Thermoset resin. Prod. range: Confidential.

P 91-384

Importer. Ciba-Geigy Corporation.
Chemical. (G) Esterified polyamic acid.
Use/Import. (S) Insulating material. Import range: Confidential.

P 91-385

Importer. Wacker Silicones Corporation.
Chemical. (S) 4-Hexennitrile, 2-methyl-2-benzyl.
Use/Import. (S) Fragrance ingredient. Import range: Confidential.

P 91-386

Importer. Confidential.
Chemical. (G) Tall oil fatty acids, ester with disubstituted triol.
Use/Import. (G) Component of surface coating systems. Import range: Confidential.

P 91-387

Importer. Confidential.
Chemical. (G) 2-(4-(2-Sulfoxyethyl sulfonyl) phenyl)azo-7(3-(4-chloro-2-(substituted)-1,3,5-triazin-2yl)-amino)-substituted azo-naphthalene-1-amino-8 hydroxy-3, 6-disulfonic acid, sodium salt.
Use/Import. (S) Bifunctional fiber reactive dye for cotton and other cellulosic fibers. Import range: 4,000–8,000 kg/yr.

P 91-388

Importer. Confidential.
Chemical. (G) Substituted napthalene, ((8-4-chloro-6-((4-(2-sulfoxy) ethyl)sulfonyl) substituted 1,3,5-triazin-2-yl)-1-hydroxy-3,6-disulf-2-napthaleneyl)azo-sodium salt.
Use/Import. (S) Bifunctional fiber reactive dye for cotton and other cellulosic fibers. Import range: 4,000–8,000 kg/yr.

P 91-389

Manufacturer. Kenrich Petrochemicals, Inc.
Chemical. (S) Zirconium IV 2,2 (bis-2-propenolato-methyl) butanolato, tris 2-propenoato-0.
Use/Production. (S) Processing aid. Prod. range: 5,000–2,5000 kg/yr.

P 91-390

Manufacturer. Finetex, Inc.
Chemical. (S) 2-Aminethane-sulfonic-acid-N-methyl-alkanoyl-sodium salt.
Use/Production. (S) Fire fighting agent. Prod. range: 17,600–44,000 kg/yr.

P 91-391

Importer. SNPE Inc.
Chemical. (S) Acrylic acid ester with 3-(2-hydroxyethyl).
Use/Import. (S) Reactive diluent. Import range: 10,000–30,000 kg/yr.
Toxicity Data. Acute oral toxicity: LD50 909 mg/kg species (Rat). Eye irritation: slight species (Rabbit). Skin irritation: slight species (Rabbit). Mutagenicity: negative. Skin sensitization: negative species (Guinea Pig).

P 91-392

Manufacturer. Ashland Chemical, Inc.
Chemical. (G) Copolymer of itaconic acid, 2-hydroxyethyl methacrylate and acrylic acid esters.
Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 91-393

Manufacturer. E.I. Du Pont De Nemours & Co., Inc.
Chemical. (G) Esterified polyamic acid.
Use/Production. (S) Coating for electronic component. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 1,900 mg/kg species (Rat). Static acute toxicity: time LC50 96H> 1,000 mg/l species (Fathead Minnow). Eye irritation: slight species (Rabbit). Skin irritation: negligible species (Rabbit).

P 91-394

Importer. Hoechst Celanese Corporation.
Chemical. (G) Substituted perfluoroalkenyl ammonium salt.
Use/Import. (S) Charge control agent. Import range: 250–1,000 kg/yr.
Toxicity Data. Acute oral toxicity: LD50 > 2,000 mg/kg species (Rat). Eye irritation: none species (Rabbit). Skin irritation: strong species (Rabbit). Mutagenicity: negative.

P 91-395

Importer. Hoechst Celanese Corporation.
Chemical. (G) Substituted perfluoroalkenyl ammonium salt.
Use/Import. (S) Charge control agent Import range: 250–1,000 kg/yr.
Toxicity Data. Acute oral toxicity: LD50 > 2,000 mg/kg species (Rat). Eye irritation: none species (Rabbit). Skin irritation: strong species (Rabbit). Mutagenicity: negative.

P 91-396

Manufacturer. Petrogen, Inc.
Chemical. (G) Rhamnolip.
Use/Production. (G) Used in cleaning sludge from oil storage tanks. Prod. range: 100,000–200,000 kg/yr.

P 91-397

Importer. Hoechst Celanese Corporation.
Chemical. (G) Modified acrylate polymer, ammonium salt.
Use/Import. (S) Binder for paints. Import range: 10,000–40,000 kg/yr.
Toxicity Data. Acute oral toxicity: LD50 > 5,000 kg/yr.

P 91-398

Manufacturer. Confidential.
Chemical. (G) Alkyoxypropionitrile
Use/Production. (G) Site limited intermediate. Prod. range: Confidential.

P 91-399

Manufacturer. Confidential.
Chemical. (G) Alkyloxypropinitrile.
Use/Production. (G) Site limited intermediate. Prod. range: Confidential.

P 91-400

Manufacturer. E.I. Du Pont De Nemours & Co., Inc.
Chemical. (G) Acrylic copolymer.
Use/Production. (G) Highly dispersive use. Prod. range: Confidential.

P 91-401

Importer. Basf Corporation.
Chemical. (S) Cyanamide, zinc salt (1:).
Use/Import. (G) Anticorrosion pigment. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 1.79 g/kg species (Rat). Mutagenicity: negative.

P 91-402

Importer. Basf Corporation.
Chemical. (G) PEG polymer with mono- and di-functional hydroxy and amino-alkanes, alkanoic acid-alkanioic acid.
Use/Import. (G) Processing agent. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 13.400 mg/kg species (Rat). Static acute toxicity: time LC50 0.33 mg/l species (Rain Trout). Eye irritation: none species (Rabbit). Skin irritation: slight species (Rabbit). Mutagenicity: negative.

P 91-403

Manufacturer. Confidential.
Chemical. (G) Brominated triazine derivative.
Use/Production. (G) Used as a low dosage processing and curing aid in resin formulations. Prod. range: Confidential.

P 91-404

Manufacturer. E.I. Du Pont De Nemours & Co., Inc.
Chemical. (G) Heterocyclic cyanine dye.
Use/Production. (G) Photographic dye - contained use. Prod. range: Confidential.

P 91-405

Importer. Ciba-Geigy Corp.
Chemical. (G) Aromatic azide.
Use/Import. (G) Functional component of polyimide precursor. Import range: Confidential.

P 91-406

Manufacturer. Confidential.
Chemical. (G) Oxime salt.
Use/Production. (G) Destructive use. Prod. range: Confidential.

P 91-407

Manufacturer. Atochem North America, Inc.
Chemical. (G) Esters of epoxidized soybean oil.
Use/Production. (S) Lubricant for PVC. Prod. range: Confidential.

P 91-408

Manufacturer. Atochem North America, Inc.
Chemical. (G) Esters of epoxidized soybean oil.
Use/Production. (S) Lubricant for PVC. Prod. range: Confidential.

P 91-409

Manufacturer. PCR, Inc.
Chemical. (S) Poly(ethylene-1,3-dimethyldisiloxane) copolymer-trimethylsiloxy endblocked.
Use/Production. (S) Component in masonrery water repellant. Prod. range: 33,100 kg/yr.

P 91-410

Manufacturer. Confidential.
Chemical. (G) Bis(armoatic dicarboxylic acid).
Use/Production. (S) Pressure to a polymer intermediate. Prod. range: Confidential.

P 91-411

Manufacturer. Ciba-Geigy Corp.
Chemical. (S) N,N,N,N-tetragglycidyl-4,4-methylene bis(2-ethylbenzenamine.
Use/Production. (S) Component of compossition or aerospace use. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 2,000 mg/kgf species (Rat). Eye irritation: none species (Rabbit). Skin irritation: negligible species (Rabbit).

P 91-412

Manufacturer. Confidential.
Chemical. (G) Polyurethane polymer.
Use/Production. (G) Coatings/adhesives. Prod. range: Confidential.

P 91-413

Manufacturer. Confidential.
Chemical. (G) Acrylated alkyd.
Use/Production. (G) Paint. Prod. range: Confidential.

P 91-414

Manufacturer. Confidential.
Chemical. (G) Alkylated alkyd.
Use/Production. (G) Paint. Prod. range: Confidential.

P 91-415

Manufacturer. Confidential.
Chemical. (G) Alkylated alkyd.
Use/Production. (G) Paint. Prod. range: Confidential.

P 91-416

Manufacturer. Confidential.
Chemical. (G) Alkylated alkyd.
Use/Production. (G) Paint. Prod. range: Confidential.

P 91-417

Manufacturer. Confidential.
Chemical. (G) Acrylic copolymer.
Use/Production. (G) Paint. Prod. range: Confidential.

P 91-418

Manufacturer. Confidential.
Chemical. (G) Fluorinated polyurethane.
Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.
Toxicity Data. Eye irritation: none species (Rabbit). Skin irritation: negligible species (Rabbit).

P 91-419

Manufacturer. Worthen Industries Inc.
Chemical. (G) Aipic acid, polymer with 1,6-hexanediol, neopentylglycol, cycloalkanediol alkyl amine, cycloalkaneamine, 4,4-methylene bis(cyclohexyl isocyanated) and propanoic acid, 3-hydroxy-2(hydroxy methyl)2-methyl.
Use/Production. (G) Adhesive coating. Prod. range: Confidential.

P 91-420

Importer. Confidential.
Chemical. (S) Furan, tetrahydro-,polymer with methyl ocirane; hydroxy ethylacrylate; toluene diisocyanate.
Use/Import. (S) A radiation cure coating for industrial use. Import range: 750–5,000 kg/yr.

P 91-423

Manufacturer. The Dow Chemical U.S.A.
Chemical. (G) Polyether polyol.
Use/Production. (G) Polymeric building blocks for industrial coating. Prod. range: Confidential.

P 91-424

Importer. Confidential.
Chemical. (G) Copolymer of methyl methacrylate, ethylene glycol dimethacrylate and styrene.
Use/Import. (G) Component of toner for xeroxgraphy. Import range: Confidential.

P 91-425

Manufacturer. Confidential.
Chemical. (G) Urethane polyacrylic resin.
Use/Production. (G) Coating component. Prod. range: 50,00–10,000 kg/yr.

P 91-426

Manufacturer. Confidential.
Chemical. (G) Urethane acrylic latex.
Use/Production. (G) Coating component. Prod. range: 50,00-10,000 kg/yr.

P 91-427

Manufacturer. Confidential.
Chemical. (G) Urethane acrylic latex.
Use/Production. (G) Coating component. Prod. range: 500-1,000 kg/yr.

P 91-428

Manufacturer. Confidential.
Chemical. (G) Ethoxylated fatty amines.
Use/Production. (G) Intermediate. Prod. range: Confidential.

P 91-429

Manufacturer. Confidential.
Chemical. (G) Ethoxylated fatty amines, acetates salts.
Use/Production. (G) Intermediate. Prod. range: Confidential.

Dated: February 11, 1991

Steve Newburg-Rinn

Acting Director, Information Management Division, Office of Toxic Substances.

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FEDERAL COMMUNICATIONS COMMISSION

[DA-91-117]

National Exchange Carrier Association, Inc.; Comment Filing Dates

Released: February 4, 1991.

On December 31, 1990, the National Exchange Carrier Association, Inc. ("NECA") filed proposed revisions to the average schedules with a requested effective date of July 1, 1991. The revisions that NECA proposed are contained in the appendix to this Notice.

Copies of NECA's average schedule filing and the record that will be developed in this proceeding may be obtained from the Commission's public records duplication contractor, The Downtown Copy Center, suite 140, 1114 21st Street, NW., Washington, DC 20037. (202) 452-1422. The record in this proceeding is also available for public inspection and duplication at room 544, 1919 M Street, NW., Washington, DC. Commenting parties should file five (5) copies of their comments and reply comments at room 544, 1919 M Street, NW., Washington, DC, 20554, and two (2) copies with the Downtown Copy Center. For consideration in this proceeding, all comments and reply comments in this proceeding should be captioned "In the Matter of National Exchange Carrier Association December 31, 1990 Proposed Revisions to the Average Schedule Formula."

Comments on NECA's proposed revisions to the average schedules may be filed on or before March 1, 1991. Reply comments may be filed on or before March 14, 1991.

For further information, contact Kent R. Nilsson, room 544, 1919 M Street, NW., Washington, DC 20554. (202) 632-6363.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Appendix—NECA's Proposed Modifications to the Average Schedule Formulae

NECA proposes that the following average schedule formulae become effective July 1, 1991.

Common Line: Where access lines per exchange are less than 385.554541, the settlement per access line would be: $11.042471—($.011652 × Access Lines Per Exchange). Where access lines per exchange are greater than or equal to 385.554541, the settlement per access line would be $6.550155.

Common Line Rate of Return Formula: The common line factor would be .593717 + (3.611402)(ROR).

Traffic Sensitive Central Office: For less than 10,00 access lines, the settlement per minute would be: [1.31393—.000031393 (access lines)] $.028639 + ($181.406911/minutes per exchange). For 10,000 or more access lines, the settlement per minute would be: $.028639 + $181.406911/minutes per exchange.

Intertoll Switching: The settlement per trunk would be $25.70.

Line Haul Distance Sensitive: The settlement would be [($1.019329) (interstate circuit miles) + ($.0011290) (traffic sensitive switched minutes)].

Line Haul Non-Distance Sensitive: The settlement per interstate circuit termination would be $38.69.

Special Access: The settlement for special access would be .860701 times special access revenue.

Traffic Sensitive Rate of Return: The traffic sensitive factor would be equal to .568566 + (3.834967) (ROR).

CABS and Access Administration: The CABS and access administration settlement would be $649.92 + ($.000452) (minutes).

Signaling System 7: Signaling System 7 compensation would be: $360 per month for each central office with signal point equipment in service: $1415 for each central office with signal switching point in service; $1775 for each central office with both signal point and service switching point in service: $780 for each pair of an "A" link.

[FR Doc. 91-3659 Filed 2-14-91; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, City and State	File No.	MM Docket No.
A. Kennedy Broadcasting, Inc., Burnham, PA.	BPH-900503ME	91-14
B. Pauline S. Hain, Burnham, PA.	BPH-900503MG	.....

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.

Issue Heading and Applicant(s)

1. Comparative—A, B
2. Ultimate—A, B

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) 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. 91-3661 Filed 2-14-91; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-893-DR]

Kentucky; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Kentucky (FEMA-893-DR), dated January 29, 1991, and related determinations.

DATED: February 6, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: The notice of a major disaster for the Commonwealth of Kentucky, dated January 29, 1991, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 29, 1991:

The counties of Carroll, Jackson, Livingston, Rockcastle, Trimble, and Wolfe for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 91-3714 Filed 2-14-91; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

Central America Discussion Agreement; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203-011075-015.

Title: Central America Discussion Agreement.

Parties:

United States/Central America Liner Association
Nexos Line
Nordana Line, Inc.
Concorde Shipping, Inc.
Tropical Shipping and Construction Co. Ltd.
Central America Shippers, Inc.
Great White Fleet, Ltd.
Naviera Consolidada S.A.
Empresa Naviera Santa
Thompson Shipping Co., Ltd.
Norwegian American Enterprises, Inc.

Synopsis: The proposed amendment would add King Ocean Central America, S.A. as a party to the Agreement. The parties have requested a shortened review period.

Dated: February 11, 1991.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91-3664 Filed 2-14-91; 8:45 am]

BILLING CODE 6730-01-M

Galveston Wharves/Union Equity Co-operative Exchange Terminal Agreement, et al.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement no.: 224-011089-001.

Title: Galveston Wharves/Union Equity Co-operative Exchange Terminal Agreement.

Parties:

The Board of Trustees of the Galveston Wharves (Port)
Union Equity Co-operative Exchange (Union Equity)

Synopsis: The Agreement amends the basic agreement to increase the percentage of dock fees that Union Equity pays the Port from 25% to 50%.

Agreement no.: 224-200473.

Title: Jacksonville Port Authority/Westway Trading Corporation Terminal Agreement.

Parties:

Jacksonville Port Authority (JPA)
Westway Trading Corporation (Westway)

Synopsis: The Agreement provides Westway with the lease and use of certain facilities at JPA's Talleyrand Docks and Terminal, in Jacksonville, Florida for the handling and storage of bulk liquid products. Westway shall pay JPA monthly rental as provided in this Agreement.

Agreement no.: 224-010968-009.

Title: Maryland Port Administration/Hapag-Lloyd AG/Atlantic Division Terminal Agreement.

Parties:

Maryland Port Administration
Hapag-Lloyd AG/Atlantic Division

Synopsis: The Agreement provides that the basic agreement will be on a month-to-month basis for 60 days beginning February 9, 1991, pending the final negotiation of a long-term lease.

Agreement no.: 224-200006-001.

Title: The City of Oakland/Senator Linie GmbH Co. and Deutsche Seereederei Rostock GmbH (DSR) and Cho Yang Shipping Company Terminal Agreement.

Parties:

The City of Oakland (City)
Senator Linie GmbH Co. (Senator Lines)
Deutsche Seereederei Rostock GmbH (DSR)
Cho Yang Shipping Company (Cho Yang)

Synopsis: The Agreement amends the parties' basic agreement to: (1) Add DSR as a joint service party with Senator Lines, known as DSR/Senator Lines, and Cho Yang as user parties; and (2) relocate the assigned premises covered by the Agreement to the Sea-Land Terminal, Berths 20, 21 and 22, Outer Harbor Terminal Area.

Dated: February 12, 1991.

By order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91-3710 Filed 2-14-91; 8:45 am]

BILLING CODE 6730-01-M

Hawaiian Marine Islands Terminal Agreement; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the

Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10220. Interested parties may submit protests or comments on each agreement to the Secretary Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in § 560.602 and/or § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 224-200455-001.

Title: Port of Oakland/Puget Sound Tug and Barge Co. dba Hawaiian Marine Lines Terminal Agreement

Parties:

Port of Oakland

Puget Sound Tug and Barge Co. dba Hawaiian Marine Lines (HML)

Filing Party: Mr. John E. Nolan, Assistant Port Attorney, Port of Oakland, 530 Water Street, Oakland, CA 94607.

Synopsis: The Agreement amends the parties' basic agreement to apply its provisions to the occasional use by HML of other Port owned terminals for project type cargo.

Dated: February 12, 1991.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91-3709 Filed 2-14-91; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

First Bank Corp.; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 6, 1991.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. First Bank Corp., Fort Smith, Arkansas; to engage *de novo* through its subsidiary, Realty Appraisals, Inc., Fort Smith, Arkansas, in real estate appraising pursuant to § 225.25(b)(13) of the Board's Regulation Y. These activities will be conducted in Arkansas and Oklahoma.

Board of Governors of the Federal Reserve System, February 11, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-3684 Filed 2-14-91; 8:45 am]

BILLING CODE 6210-01-F

Charles Keiter; Change in Bank Control Notice

Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.stS.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than March 6, 1991.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. Charles Keiter, Danville, Pennsylvania; to acquire up to 15.7 percent of the voting shares with warrants of Montour Bank, Danville, Pennsylvania.

Board of Governors of the Federal Reserve System, February 11, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-3685 Filed 2-14-91; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 86N-0141; DESI 12708]

Diutensen Tablets; Withdrawal of Approval of New Drug Application; Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is amending a previous notice withdrawing approval of the new drug application (NDA) 12-708 for Diutensen Tablets, held by Wallace Laboratories, Division of Carter-Wallace., Half Acre Rd., Cranberry, NJ 08512. Only that portion of the application providing for Diutensen Tablets is withdrawn. Those parts of the application that provide for Diutensen-R Tablets, containing methyclothiazide and reserpine, remain approved.

EFFECTIVE DATE: February 14, 1991.

FOR FURTHER INFORMATION CONTACT: Margaret F. Sharkey, Center for Drug Evaluation and Research (HFD-366), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8041.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register**

of August 9, 1989 (54 FR 32696), FDA withdrew approval of DNA 12-708 for Diutensen Tablets, a combination of cryptenamine tannates and methyclothiazide, because the drug lacks substantial evidence of effectiveness. However, Diutensen-R Tablets, containing methyclothiazide and reserpine, is also covered by NDA 12-708. Approval of those parts of NDA 12-708 that provide for Diutensen-R Tablets should not have been withdrawn. Diutensen-R Tablets are effective for hypertension. This conclusion was announced in a notice published in the **Federal Register** of June 5, 1974 (39 FR 19973).

Because approval of Diutensen-R Tablets is covered by NDA 12-708, the Director of the Center for Drug Evaluation and Research hereby amends the August 9, 1989, notice of withdrawal to clarify that approval of those parts of NDA 12-708 that pertain to Diutensen Tablets are withdrawn; those parts of NDA 12-708 that pertain to Diutensen-R Tablets, containing methyclothiazide and reserpine, remain approved.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (section 505(e) (21 U.S.C. 355(e)) and under authority delegated to the Director of the Center for Drug Evaluation and Research (21 CFR 5.82).

Dated: January 25, 1991.

Carl C. Peck,

Director, Center for Drug Evaluation and Research.

[FR Doc. 91-3741 Filed 2-14-91; 8:45 am]

BILLING CODE 4160-01-M

Advisory Committees; Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETINGS: The following advisory committee meetings are announced:

Endocrinologic and Metabolic Drugs Advisory Committee

Date, time, and place. March 7, 1991, 8:30 a.m., and March 8, 1991, 8 a.m., Conference Rms. D and E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, March 7, 1991, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 5 p.m.; open committee discussion, March 8, 1991, 8 a.m. to 5 p.m.; John J. Gueriguian, Center for Drug Evaluation and Research (HFD-510), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3490.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in endocrine and metabolic disorders.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before February 28, 1991, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On March 7, 1991, the committee will discuss: (1) The cardiovascular safety and efficacy of fibrate drugs, with particular focus on the findings of the Helsinki Heart Secondary Prevention Study; and (2) the question as to whether cardiovascular endpoint trials ought to be a requirement for the eventual approval of all or certain classes of lipid-regulating drugs. On March 8, 1991, the committee will discuss: (1) New drug application (NDA) 19768, submitted by Merck & Co., Inc., for Simvastatin (Zocor®), and (2) NDA 20082, submitted by Norwich Eaton, for Etidronate disodium/calcium carbonate (Actonel®).

Cardiovascular and Renal Drugs Advisory Committee

Date, time, and place. March 14 and 15, 1991, 9 a.m., Jack Masur Auditorium, Clinical Center Bldg. 10, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD. Parking in the Clinical Center visitor area is reserved for Clinical Center patients and their visitors. If you must drive, please use an outlying lot such as Lot 41B. Free shuttle bus service is provided from Lot 41B to the Clinical Center every 8 minutes during rush hour and every 15 minutes at other times.

Type of meeting and contact person. Open public hearing, March 14, 1991, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 5 p.m.; open committee discussion, March 15, 1991, 9 a.m. to 5 p.m.; Joan C. Standaert, Center for Drug Evaluation and Research (HFD-110), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4730 or 419-259-6211.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in cardiovascular and renal disorders.

Agenda—Open public hearing. Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee, should communicate with the contact person.

Open committee discussion. On March 14, 1991, the committee will discuss Cardizem Q. D. (diltiazem), for use in hypertension, new drug application (NDA) 20-062, Marion Laboratories, and Left Ventricular Hypertrophy: Labeling implications. On March 15, 1991, the committee will discuss labeling revision for Enkaid (encainide), NDA 18-981, Bristol Meyers-Squibb.

Dental Products Panel of the Medical Devices Advisory Committee

Date, time, and place. March 15, 1991, 8:30 a.m., Conference Rm. D, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, 8:30 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 4 p.m., Gregory Singleton, Center for Devices and Radiological Health (HFZ-470), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1180.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before February 28, 1991, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will assess the classification of dental amalgam filling material.

Board of Tea Experts

Date, time, and place. March 21 and 22, 1991, 10 a.m., rm. 700, 850 Third Ave., Brooklyn, NY.

Type of meeting and contact person. Open public hearing, March 21, 1991, 10 a.m. to 11 a.m., unless public participation does not last that long; open committee discussion, 11 a.m. to 4:30 p.m.; open committee discussion, March 22, 1991, 10 a.m. to 4:30 p.m.; Robert H. Dick, New York Regional Laboratory, Food and Drug Administration, 850 Third Ave., Brooklyn, NY 11232, 212-965-5739.

General function of the committee. The committee advises on the establishment of uniform standards of purity, quality, and fitness for consumption of all teas imported into the United States under 21 U.S.C. 42.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee.

Open committee discussion. The committee will discuss and select tea standards.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI-35), Food and Drug Administration, Rm. 12A-16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: February 11, 1991.

Gary Dykstra,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 91-3681 Filed 2-14-91; 8:45 am]

BILLING CODE 4160-01-M

Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HF (Food and Drug Administration) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (35 FR 3685, February 25, 1970, as amended most recently in pertinent parts at 53 FR 8978 March 18, 1988 and 54 FR 9252 March 6, 1989) is amended to reflect the transfer of the biostatistical and epidemiological review of biological products from the Office of Epidemiology and Biostatistics, Center for Drug Evaluation and Research (CDER) to the Office of Biological Product Review, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration. This reorganization will ensure that this major biological activity is under the control of biologics management.

Section HF-B, Organization and Functions is amended as follows:

1. Delete subparagraph (n-6) and insert the new subparagraph (n-6) for the Center for Drug Evaluation and Research reading as follows:

(n-6) Office of Epidemiology and Biostatistics (HFNJ). Conducts programs for the Center to collect and evaluate information on drug product safety, usage, product quality, and effectiveness.

Disseminates drug product information to other components of the Center and the Agency.

Collaborates with users of drug product information to insure that information collected and evaluated is sufficient, relevant, and useful.

Provides statistical services to Center scientific and regulatory programs.

Conducts research on, develops, and evaluates statistical methodologies.

Conducts research and develops information using epidemiological and other strategies.

Develops liaison with sources of medical and scientific information related to drug products.

2. Delete subparagraph (p-3) and insert the new subparagraph (p-3) for the Center for Biologics Evaluation and Research reading as follows:

(p-3) Office of Biological Product Review (HFBD). Reviews, evaluates, and takes appropriate action on establishment and product licenses and other marketing applications submitted by manufacturers, tests products submitted for release in coordination with other Center components, as appropriate, and establishes written and physical standards for biological products regulated by the Office.

Develops policy and procedures on and reviews, evaluates, and takes appropriate action on biological product investigations and biological product licenses.

Administers applicable provisions of the FD&C Act as they pertain to investigational products and to certain devices and drugs that are related to biological products.

Evaluates and takes appropriate action, in coordination with other Agency components, on the results of continuing surveillance and medical evaluation of the labeling, advertising, clinical experience, and reports submitted by manufacturers and sponsors of products regulated by the Center.

Reviews, evaluates, and takes appropriate action on recommendations concerning withdrawal of approval of license applications for products regulated by the Center.

Conducts programs to collect and evaluate epidemiological and nonepidemiological information on biological product usage, adverse reactions, poisonings, safety, quality, and effectiveness.

Provides statistical services to Center scientific and regulatory programs; and conducts research on, develops, and evaluates statistical methodologies.

Dated: January 31, 1991.

David A. Kessler,

Commissioner of Food and Drugs.

[FR Doc. 91-3646 Filed 2-14-91; 8:45 am]

BILLING CODE 4160-01-M

Family Support Administration

Forms Submitted to the Office of Management and Budget for Clearance

The Family Support Administration (FSA) will publish on Fridays information collection packages submitted to the Office of Management and Budget (OMB) for clearance, in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). Following is the package submitted to OMB since the last publication on January 11, 1991.

(For a copy of a package, call the FSA, Report Clearance Officer 202-401-5604)

Quality Control Negative Case Action Worksheet/Review Schedule—FSA-6401

The information obtained from this form is needed to promote the proper State Administration of AFDC and adult programs by helping to assess performance in the denial or termination of benefits. *Respondents:* State or local governments; *Number of Respondents:* 20,057; *Frequency of Response:* Annually; *Average Burden per Response:* 1.00284; *Estimated Annual Burden:* 20,114 hours.

OMB Desk Clearance Officer: Laura Oliven.

Written comments and recommendations for the proposed information collection should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3201, 725 17th Street NW., Washington, DC 20503.

Dated: February 5, 1991.

Sylvia E. Vela,

Deputy Associate Administrator, Office of Management & Information Systems.

[FR Doc. 91-3594 Filed 2-14-91; 8:45 am]

BILLING CODE 4150-01-M

Forms Submitted to the Office of Management and Budget for Clearance

The Family Support Administration (FSA) will publish on Fridays information collection packages submitted to the Office of Management and Budget (OMB) for clearance, in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). Following is the package submitted to OMB since the last publication.

(For a copy of a package, call the FSA, Report Clearance Officer 202-401-5604)

Worksheet for Integrated AFDC, Adult, Food Stamps and Medicaid Quality Control Reviews—FSA-4340—0970-0072

The integrated worksheet serves to document the findings of state quality control reviewers who review the correctness of a sample of eligibility decisions made by the states for the AFDC, Food Stamp and Medicaid programs. The findings are used to identify areas where corrective action is needed. *Respondents:* State or local governments; *Number of Respondents:* 63,000; *Frequency of Response:* 1; Average Burden per Response: 11.0236 hours; *Estimated Annual Burden:* 694,487 hours.

OMB Desk Clearance Officer: Laura Oliven.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officers designated above at the following address: OMB Reports Management Branch, New Executive Office Building, room 3201, 725 17th Street NW., Washington, DC 20503.

Dated: February 5, 1991.

Sylvia E. Vela,

Deputy Associate Administrator, Office of Management & Information Systems.

[FR Doc. 91-3595 Filed 2-14-91; 8:45 am]

BILLING CODE 4150-04-M

National Institutes of Health

National Cancer Institute; Meeting (Division of Cancer Treatment Board of Scientific Counselors)

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, DCT, National Cancer Institute, National Institutes of Health, February 19-20, 1991, Building 31C, Conference Room 10, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public on February 19 from 8:30 a.m. to approximately 5:30 p.m., and again on February 20 from 8:30 a.m. until adjournment, to review program plans, concepts of contract recompetitions and budget for the DCT program. In addition, there will be scientific reviews by several programs in the Division. Attendance by the public will be limited to space available.

In accordance with the provision set forth in section 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, the meeting will be closed to the public on February 19 from 5:30 p.m. to approximately 6:30 p.m., for the review, discussion and evaluation of individual programs and projects conducted by the National Institutes of Health, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the difficulty of coordinating the attendance of members because of conflicting schedules.

Ms. Carole Frank, Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301-496-5708) will provide summaries of the meeting and rosters of committee members upon request.

Dr. Bruce A. Chabner, Director, Division of Cancer Treatment, National Cancer Institute, Building 31, Room 3A52, National Institutes of Health, Bethesda, Maryland 20892 (301-496-

4291) will furnish substantive program information.

Dated: February 4, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91-3786 Filed 2-14-91; 8:45 am]

BILLING CODE 4140-01-M

Public Health Service

Office of the Assistant Secretary for Health; Statement of Organization, Functions and Delegations of Authority

Part H, Public Health Service (PHS), Chapter HA (Office of the Assistant Secretary for Health) of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (42 FR 61318, December 2, 1977, as amended most recently at 55 FR 29272, July 18, 1990), is amended to reflect establishment of a new Division of OHSA Information Technology and Management (HAU27) within the Office of Management, Office of Organization and Management Systems. The new Division will provide a focus for OASH to meet PHS Information Resources Management responsibilities.

Office of the Assistant Secretary for Health

Under part H, chapter HA, Office of the Assistant Secretary for Health, Section HA-20, Functions, under Office of Management (HAU), Office of Organization and Management Systems (HAU2), following the statement for the Division of Management Planning and Analysis (HAU26), add the following title and statement:

Division of OASH Information Technology and Management (HAU27)

(1) Formulates, recommends for approval and implements Information Resources Management (IRM) policy for OASH; (2) develops OASH IRM strategic and tactical plans; (3) develops the OASH component of the PHS Information Technology Systems Budget; (4) develops an OASH purchasing timetable for ADP/TC equipment; (5) reviews all OASH purchase requests for ADP/TC equipment, software, ADP support services and maintenance and prepares OASH delegations of procurement authority; (6) manages the OASH Systems Security Program; (7) manages the end-user computer support activities for OASH employees; (8) projects and coordinates OASH ADP/IRM training requirements; (9) manages the OASH Local Area Networks; (10) coordinates OASH activities with the Parklawn Computer Center/FDA and the Division of Computer Research and Technology/NIH; (11) provides IRM technical assistance, network planning and needs assessment to OASH offices and expedites the planning and procurement processes for priority OASH activities; (12) maintains an inventory of OASH information technology equipment and systems and provides a central interface with OASH Property Management Officials; (13) coordinates the integration of program and management data to support OASH information management systems; and (14) provides assistance to OASH in the development and implementation of information systems.

Dated: February 5, 1991.

Wilford J. Forbush,

Director, Office of Management.

[FR Doc. 91-3736 Filed 2-14-91; 8:45 am]

BILLING CODE 4160-17-M

National Institutes of Health; Statement of Organization, Functions and Delegations of Authority

Part H, Chapter HN (National Institutes of Health) of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (40 FR 22859, May 27, 1975, as amended most recently at 55 FR 248, December 26, 1990) is amended to reflect the following change in the National Institute of Child Health and Human Development (HNT): (1) Establish the National Center for Medical Rehabilitation Research (NCMRR) (HNT8). The establishment of the NCMRR was mandated by the National Institutes of Health Amendments of 1990.

Section HN-B, Organization and Functions, is amended as follows: (1) Under the heading *National Institute of Child Health and Human Development (HNT), Division of Prevention Research (HNT7),* add the following:

National Center for Medical Rehabilitation Research (HNT8). (1) Conducts, fosters, and supports research and research training, including research on the development of orthotic and prosthetic devices, the dissemination of health information, and other programs with respect to the rehabilitation of individuals with physical disabilities resulting from diseases or disorders of the neurological, musculoskeletal, cardiovascular, pulmonary, or any other physiological system; (2) establishes program priorities and allocates program resources in support of multi-disciplinary medical rehabilitation research including clinical trials; (3) plans and directs extramural (grant and contract) programs and cooperative agreements in support of medical rehabilitation related research; and (4) coordinates the activities of the Center with other institutes and components of the Federal Government and with similar activities of other public and private entities.

Dated: February 7, 1991.

William F. Raub,

Acting Director, NIH.

[FR Doc. 91-3676 Filed 2-14-91; 8:45 am]

BILLING CODE 4170-01-M

Social Security Administration

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with Public Law 96-511, The Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the **Federal Register** on February 1, 1991.

(Call Reports Clearance Office on (301) 965-4149 for copies of package)

1. State Agency Budget List of Part-Time and Temporary Positions for SSA Disability Programs—0960-0403—The information on form SSA-4516 is used by the Social Security Administration (SSA) to budget funds for the operation of State Disability Determination Services (DDS). The affect public conissts of State DDS's which are under contract to SSA.

Number of Respondents: 54.
Frequency of Response: 1.
Average Burden Per Response: 60 minutes.
Estimated Annual Burden: 54 hours.

2. State Agency Budget List of Full-Time Positions for SSA Disability Programs—0960-0404—The information on form SSA-4515 is used by the Social Security Administration (SSA) to help determine the funds each State Disability Determination Services (DDS) agency will need during the coming year. The respodnents are state DDS's which make disability determinations for SSA.

Number of Respondents: 54.
Frequency of Response: 1.
Average Burden Per Response: 60 minutes.

Estimated Annual Burden: 54 hours.

3. Claim for Amounts Due in the Case of a Deceased Beneficiary—0960-0101—The information on form SSA-1724 is used by the Social Security Administration to determine who should be paid any funds which are due a deceased beneficiary. Respondents are persons claiming those funds.

Number of Respondents: 300,000.
Frequency of Response: 1.
Average Burden Per Response: 10 minutes.
Estimated Annual Burden: 50,000 hours.

4. Request For Withdrawal of An Application—0960-0015—The information collected on the form SSA-521 is used by the Social Security Administration to effectuate and record a claimant's withdrawal of an application for benefits. The affected public is comprised of individuals desirous of withdrawing a claim.

Number of Respondents: 50,000.
Frequency of Response: 1.
Average Burden Per Response: 5 minutes.
Estimated Annual Burden: 4,166 hours.

5. Statement For Determining Continuing Eligibility For Supplemental Security Income Payment—0960-0416—The information collected on form SSA-8203 is used by the Social Security Administration to determine if certain recipients of Supplemental Security Income (SSI) payments are still eligible to receive those payments and, if so, are they receiving the correct amount? The affected public consists of those recipients who are required to furnish this information, either because of a scheduled redeterminatiion, or because an event occurred which may affect their receipt of SSI.

Number of Respondents: 554,000.
Frequency of Response: 1.
Average Burden Per Response: 12 minutes.
Estimated Annual Burden: 110,800 hours.

6. Supplement to Claim of Person Living Outside the United States—0960-0051—The information on form SSA-21 is used by the Social Security Administration to determine the continuing entitlement to benefits, the amounts of those benefits and the effect of withholding tax on benefits received by persons living outside the United States The respondents are beneficiaries who are living or have lived outside the United States.

Number of Respondents: 35,000.
Frequency of Response: 1.
Average Burden Per Response: 5 minutes.
Estimated Annual Burden: 2,917 hours.

7. Application For Disability Insurance Benefits—0960-0060—The information collected on the form SSA-16 is used by the Social Security Administration to detemrine a claimant's entitlement to disability isurance benefits. The affected public is comprised of individuals who are filing a claim for disability insurance benefits.

Number of Respondents: 1,000,000.
Frequency of Response: 1.
Average Burden Per Response: 9 minutes.
Estimated Annual Burden: 150,000 hours.

OMB Desk Officer: Laura Oliven.

Social Security Administration

Written comments and recommendatioins regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

Dated: Februry 11, 1991.

Ron Compston,

Social Security Administration, Reports Clearance Officer.

[FR Doc. 91-3688 Filed 2-14-91; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Administration

[Docket No. D-91-942; FR-2921-D-01]

Amendment of Redelegation of Procurement Authority to the Field

AGENCY: Office of the Assistant Secretary for Administration, HUD.

ACTION: Amendment of redelegation of procurement authority to the Field.

SUMMARY: The redelegation of authority, published in the **Federal Register** on January 19, 1976 at 41 FR 2666 (Docket No. 76-399), which was amended on March 15, 1976 (41 FR 11067), October 28, 1976 (41 FR 47279), October 16, 1979 (44 FR 59671), November 4, 1980 (45 FR 73141), May 16, 1984 (49 FR 20760), October 17, 1985 (50 FR 42097), and April 28, 1986 (51 FR 15850), is further amended by raising the dollar limitations for procurement by certain HUD field officials from $10,000 to $25,000 (except for sole source procurements), and by raising the dollar limitations for purchases by each Field Office Manager and Administrative Division Director from $2,000 to $2,500. Additional minor editorial changes are made to the redelegation.

EFFECTIVE DATE: February 15, 1991.

FOR FURTHER INFORMATION CONTACT: Robert E. Lloyd, Procurement Analyst, Policy and Evaluation Division, Office of Procurement and Contracts, room 5262, 451 7th Street, SW., Washington, DC 20410, (202) 708-0294. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: This change is being made to increase the dollar thresholds for field procurement authority as a result of recent changes to parts 5 and 13 of the Federal Acquisition Regulation. The statutory citations in previous delegations are corrected and other editorial and format changes are made to simplify the redelegations.

Accordingly, the Assistant Secretary for Administration redelegates as follows:

Section A. Authority Redelegated

Sections C and D of the redelegation of authority published at 41 FR 2666, as amended at 41 FR 47279, 45 FR 73141, 49 FR 20760-61, 51 FR 15850, and 51 FR 21632 are further amended to read as follows:

Section C. Authority Redelegated

1. Each Regional Administrator-Regional Housing Commissioner; Director, Office of Administration; and Regional Contracting Officer is designated as a Contracting Officer and may, subject to any limitations imposed by the Assistant Secretary for Administration (Senior Procurement Executive), enter into and administer all procurement contracts and interagency agreements for property and services required by the Department, and grants and cooperative agreements in support of the Department's discretionary assistance programs, with regard to activities within his or her respective Region, unless otherwise delegated by the Assistant Secretary for Administration.

2. Each Director, Administrative Services Division/Administrative and Management Services Division and Regional Purchasing Agent is authorized: (1) To enter into and administer purchases for property and services for the Department which are placed under the established Federal schedule contracts up to the maximum ordering limitation for each such contract; and (2) to enter into and administer purchases for property and services for the Department not to exceed either the dollar limitation on small purchases contained in 41 U.S.C. 253(g) on an individual basis or, in the

case of sole source procurements, not to exceed $10,000 on an individual basis.

3. The Authority in Subparagraphs 1 and 2 of section C does not apply to purchases and contracts for the Acquired Property Program of the Office of Housing, as defined by the HUD Acquisition Regulation at 48 CFR 2401.601-72, nor does it apply to the acquisition (including purchase, lease, or rental) of Federal Information Processing (FIP) resources as defined in the Federal Information Resources Management Regulation, unless prior approval has been received from the Office of Information Policies and Systems (OIPS). Acquisition (including purchase, lease, or rental) of FIP resources, as part of training or other support provided by a contractor, is also prohibited without the prior approval of OIPS.

Section D. Authority Redelegated

Each Field Office Manager and Administration Division Director is designated as a Purchasing Agent and is authorized: (1) To enter into and administer purchases of property and services for the Department not to exceed 10 percent of the dollar limitation for small purchases contained in 41 U.S.C. 253(g) on an individual basis; and (2) to enter into and administer purchases which are placed under established Federal schedule contracts, up to the maximum ordering limitation for each such contract, except:

a. Purchases of capitalized equipment or furniture other than from General Services Administration Federal Supply Schedule Contracts; or

b. Purchases and contracts for the Acquired Property Program.

Section B. Delegations Revoked

Because certain of the subsequently issued amendments to the basic redelegation of field procurement authority (published on January 19, 1976 at 41 FR 2666; Docket No. 76-399) amended only sections C and D, they have been superseded and should be revoked to clarify the redelegations of authority presently in effect in sections C and D. Consequently, this Notice revokes the following delegations of authority previously made by the Assistant Secretary for Administration:

1. 45 FR 73141, November 4, 1980 [Docket No. D-80-625];
2. 49 FR 20760, May 16, 1984, [Docket No. D-84-761].
3. 51 FR 15850, April 28, 1986, [Docket No. D-86-817].
4. 51 FR 21632, June 13, 1986, [Docket No. D-86-817].
5. Paragraphs 2 and 4 of the Delegation of Authority at: 41 FR 47279, October 28, 1976, [Docket No. D-76-465].

Authority: Delegation of Authority to Assistant Secretary for Administration, January 19, 1976 (41 FR 2666).

Dated: February 4, 1991.

Jerry R. Pierce,

Acting Assistant Secretary for Administration.

[FR Doc. 91-3720 Filed 2-14-91; 8:45 am]

BILLING CODE 4210-01-M

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-91-1917; FR-2934-N-11]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized and underutilized Federal property determined by HUD to be suitable for possible use for facilities to assist the homeless.

EFFECTIVE DATE: February 15, 1991.

ADDRESSES: For further information, contact James Forsberg, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708-4300; TDD number for the hearing- and speech-impaired (202) 708-2565. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 Court Order in *National Coalition for the Homeless* versus *Veterans Administration*, No. 88-2503-OG (D.D.C.), HUD is publishing this Notice to identify Federal buildings and real property that HUD has determined are suitable for use for facilities to assist the homeless. The properties were identified from information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property.

The Order requires HUD to take certain steps to implement section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), which sets out a process by which unutilized or underutilized Federal properties may be made available to the homeless. Under section 501(a), HUD is to collect information from Federal landholding agencies about such properties and then to determine, under criteria developed in consultation with the Department of Health and Human Services (HHS) and the Administrator of General Services (GSA), which of those properties are suitable for facilities to assist the homeless. The Order requires HUD to publish, on a weekly basis, a Notice in the **Federal Register** identifying the properties determined as suitable.

The properties identified in this Notice may ultimately be available for use by the homeless, but they are first subject to review by the landholding agencies pursuant to the court's Memorandum of December 14, 1988 and section 501(b) of the McKinney Act. Section 501(b) requires HUD to notify each Federal agency about any property of such agency that has been identified as suitable. Within 30 days from receipt of such notice from HUD, the agency must transmit to HUD: (1) Its intention to declare the property excess to the agency's need or to make the property available on an interim basis for use as facilities to assist the homeless; or (2) a statement of the reasons that the property cannot be declared excess or made available on an interim basis for use as facilities to assist the homeless.

First, if the landholding agency decides that the property cannot be declared excess or made available to the homeless for use on an interim basis the property will no longer be available.

Second, if the landholding agency declares the property excess to the agency's need, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law and the December 12, 1988 Order and December 14, 1988 Memorandum, subject to screening for other Federal use.

Homeless assistance providers interested in any property identified as suitable in this Notice should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A-10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443-2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit such written expressions of interest within 30 days from the date of this Notice. For complete details concerning the timing and processing of applications, the reader is encouraged to refer to HUD's **Federal Register** Notice on June 23, 1989

(54 FR 26421), as corrected on July 3, 1989 (54 FR 27975).

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *U.S. Army:* Robert Conte, Dept. of Army, Military Facilities, DAEN-ZCI-P; rm. 1E671, Pentagon, Washington, DC 20310-2600; (202) 693-4583; *Veterans Administration:* Linda Tribby, Management Analyst, Dept. of Veterans Affairs, room 717, 810 Vermont Ave. NW., Washington, DC 20420; (202) 233-5026; *Corps of Engineers:* Gary B. Paterson, Chief, Base Realignment and Closure Office, Directorate of Real Estate, 20 Massachusetts Ave. NW., rm. 4133, Washington, DC 20314-1000; (202) 272-0520. (These are not toll-free numbers.)

Dated: February 7, 1991.

Russell K. Paul,

Deputy Assistant Secretary for Grant Programs.

Suitable Buildings (by State)

Arkansas

U.S. Army Garrison,
Fort Chaffee,
260 Taylor Avenue.
Fort Chaffee, AR Co: Sebastian.
Landholding Agency: Army.
Property Number: 21910112.
Status: Underutilized.
Comment: 173 sq. ft.; one story; no water or heat in bldg.; most recent use—administration.

U.S. Army Garrison,
Fort Chaffee,
263 Taylor Avenue.
Fort Chaffee, AR Co: Sebastian.
Landholding Agency: Army.
Property Number: 219110113.
Status: Underutilized.
Comment: 707 sq. ft.; one story; no water or heat in bldg.; needs rehab; most recent use—storage.

California

EM Barracks—T-1201, T-1202, T-1203, T-1204, T-1208, T-1214,
Sierra Army Depot,
DS Hall Avenue.
Herlong, CA Co: Lassen.
Landholding Agency: Army.
Property Number: 219110117-219110122.
Status: Underutilized.
Comment: Six buildings; 5310 sq. ft. each; two story wood frame; security restrictions.

Open Mess & NCO Club, T-1218,
Sierra Army Depot,
DS Hall Avenue.
Herlong, CA Co: Lassen.
Landholding Agency: Army.
Property Number: 219110123.
Status: Underutilized.
Comment: 8694 sq. ft.; one story wood frame; needs rehab; presence of asbestos; security restrictions.

New Jersey

Clementon Family Housing,
Erial-Williamstown Road.
Sicklerville, NJ Co: Camden.
Landholding Agency: COE.
Property Number: 319110001-319110024.
Status: Unutilized.
Base Closure.
Comment: 1036-1200 sq. ft.; 24 one story single family residences; structural deficiencies; needs rehab; possible asbestos.

Virginia

Bldg. T-11130,
Combined Arms Support Command and Fort Lee,
39th Street.
Fort Lee, VA Co: Fort Lee.
Landholding Agency: Army.
Property Number: 219110141.
Status: Excess.
Comment: 2488 sq. ft.; one story; structurally deteriorated; off-site use only.

Wyoming

Bldg. 13,
Medical Center,
N.W. of town at the end of Fort Road.
Sheridan, WY Co: Sheridan.
Landholding Agency: VA.
Property Number: 979110001.
Status: Unutilized.
Comment: 3613 sq. ft.; 3 story wood frame masonry veneered; potential utilities; possible asbestos; needs rehab.

Bldg. 30,
Medical Center,
NW. of town at the end of Fort Road.
Sheridan, WY Co: Sheridan.
Landholding Agency: VA.
Property Number: 979110002.
Status: Unutilized.
Comment: 1336 sq. ft.; one story concrete frame earth covered; potential utilities; most recent use—root cellar.

Bldg. 79,
Medical Center,
NW. of town at the end of Fort Road.
Sheridan, WY Co: Sheridan.
Landholding Agency: VA.
Property Number: 979110003.
Status: Unutilized.
Comment: 45 sq. ft.; one story brick and tile frame; limited utilities; most recent use—reservoir house; use for storage purposes.

Universe of Properties:

Total	70.
Suitable	37.
Suitable Buildings	37.
Suitable Land	0.
Unsuitable	33.
Unsuitable Buildings	33.
Unsuitable Land	0.
Number of Resubmissions	0.

[FR Doc. 91-3515 Filed 2-14-91; 8:45 am]

BILLING CODE 4210-29-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-020-01-4212-11; AZA 8642]

Arizona; Classification of Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Recreation and Public Purposes Act classification, Arizona.

The following public land has been determined to be suitable for conveyance for recreational and public purposes under the provisions of the Recreation and Public Purposes (R&PP) Act, as amended (43 U.S.C. 869 et seq.).

Gila and Salt River Meridian, Maricopa County, Arizona

T. 1 N., R. 4 E.,
Sec. 14, SW¼NW¼. Containing 40 acres, more or less.

Arizona State University (ASU) has been granted lease AZA 8642 for development of a parking area to serve its recreational/educational programs. The parking facility has been developed and patent has been applied for affecting approximately 11 acres.

The city of Tempe proposes development of the remaining 29 acres, more or less, within R&PP Act lease AZA 18069 granted to the city for the Rio Salado Project of river reclamation and recreation. Patent would be available upon completion of construction.

The land has been classified under the provisions of the R&PP Act and segregated from all appropriations including location under the general mining laws, except from the mineral leasing laws, since May 26, 1978, the date of classification for lease to ASU.

Patents to the land will be subject to the following terms, conditions and respective reservations:

1. Provisions of the R&PP Act and to all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches or canals constructed by the authority of the United States.

3. All minerals reserved to the United States, together with the right to prospect for, mine and remove the minerals.

4. Rights-of-way to the entities noted as follows:

a. Affecting city of Tempe lease A 18069, as amended:

City of Tempe channelization A 23632.

Maricopa County Highway Department A 4283 for highway and bridge purposes.

Maricopa County Flood Control District flood control structure A 8887.

Arizona Department of Transportation A 23567 for freeway purposes.

Arizona Public Service Company transmission line AR 025230.

Southwest Gas Company gas pipeline AR 024876.

b. Affecting ASU lease A 8642; all of (a) above and including city of Tempe storm drain A 1119 and road A 7244.

For a period of forty-five (45) days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027. Any adverse comments will be evaluated by the State Director who may sustain, vacate or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: February 6, 1991.

Charles R. Frost,

Associate District Manager.

[FR Doc. 91-3654 Filed 2-14-91; 8:45 am]

BILLING CODE 4310-32-M

[G-010-4333-13/G1-0107]

Albuquerque District, NM; Temporary Boating Closure on the Rio Grande Wild and Scenic River, NM

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Temporary seasonal closure to boating use of approximately 15 miles of river from the Colorado/New Mexico State line to Lee's Trail in north-central New Mexico.

SUMMARY: A temporary closure to boating is proposed from April 1, 1991 through May 31, 1991, on approximately 15 miles of the Rio Grande from the Colorado/New Mexico State line in Section 24, T. 32 N., R. 11 E., to Lee's Trail in the NE¼NE¼ of Section 30, T. 30 N., R. 12 E. The closure will provide habitat protection and privacy for several raptor species. The affected section of river would be signed at all key access points in Colorado and New Mexico by April 1, 1991.

Under the authority and requirements of 43 CFR 8364.1, the public lands and related waters as described above would be closed to boating use except for emergency water craft, BLM, other Federal, State or local agency water craft in performance of an official duty and other water craft on official business specifically approved by the Taos Area Manager of the Bureau of Land Management.

Any person who fails to comply with this closure order issued under 43 CFR 8364 would be subject to penalties provided in 43 CFR 8360.0-7. Persons who violate the closure are subject to fines of not more than $1,000 or imprisonment for no longer than 12 months, or both.

Over the past eight years, boating use has been suspected of harming the success of raptors nesting within the confines of the Rio Grande Canyon. Studies will be conducted in 1991 to determine whether to continue with a closure, modify it, or rescind it.

DATES: Comments on the proposed closure must be received by March 15, 1991. Should the closure order receive approval, the effective date would be April 1, 1991 through May 31, 1991. A copy of this closure and restriction order would be posted at the Bureau of Land Management Offices in Alamosa, Colorado and Taos, New Mexico, and all points of public access to the 15 miles of the Rio Grande on or before April 1, 1991.

ADDRESSES: Written comments on the proposed closure should be directed to Sam DesGeorges, Wildlife Biologist or Thomas Mottl, River Manager, Bureau of Land Management, Taos Resource Area, 224 Cruz Alta Road, Taos, New Mexico 87571. Phone (505) 758-8851. Maps of the affected area are available for public inspection at the Bureau of Land Management Offices in Alamosa, Colorado, 1921 State Avenue, and in Taos, New Mexico, 224 Cruz Alta Road.

Dated: February 7, 1991.

Patricia E. McLean,

Associate District Manager.

[FR Doc. 91-3649 Filed 2-14-91; 8:45 am]

BILLING CODE 4310-FB-M

[WY-060-01-4333-12]

Recreation Management; Road Closure; WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Muddy Mountain Road Closure.

SUMMARY: Notice is hereby given that the Muddy Mountain Road from the junction of Circle Drive (Natrona County Road No. 505) to the Muddy Mountain Campground is closed to vehicle travel from November 15 to June 15 each year. This restriction does not apply to the use of snow machines on designated trails. The road is located in Townships 31 and 32 North, Range 79 West of the Sixth Principal Meridian in Natrona County, Wyoming.

EFFECTIVE DATE: February 15, 1991.

FOR FURTHER INFORMATION CONTACT: Bill Mortimer, Area Manager, Platte River Resource Area (307) 261-7500.

SUPPLEMENTARY INFORMATION: The purposes of the closure are to protect fragile soils and vegetation on Muddy Mountain, to reduce vehicle access into elk winter range, and to minimize damage to the road caused by use during muddy conditions. Guidelines and authority for the closure are contained in 43 CFR part 8340.

February 1, 1991.

William H. Mortimer,

Area Manager.

[FR Doc. 91-3650 Filed 2-14-91; 8:45 am]

BILLING CODE 4310-22-M

[UT-040-08-4322-02]

Cedar City District Grazing Advisory Board Meeting

Notice is hereby given in accordance with Public Law 992-463 that a meeting of the Cedar City District grazing Advisory Board will be held on Friday, March 22, 1991. The meeting will begin at 9:30 a.m. in the Bureau of Land Management, Cedar City District Office, located at 176 East D.L. Sargent Drive, Cedar City, Utah.

The agenda will include the following: (1) Proposed fiscal year range improvement projects, (2) Maintenance needs of old land treatments, (3) Animal Damage Control, (4) Drought impacts, (5) Report on FY90 range improvement accomplishments (6) Emergency grazing permittee needs, (7) General Advisory Board business.

Grazing Advisory Board meetings are open to the public. Interested persons may make oral statements or file written statements for the Board's consideration. Oral statements will be heard at 9:45 a.m. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 176 East D.L. Sargent Drive, Cedar City, Utah 84720, phone (801) 586-2401, by March 18, 1991. Depending on the number of persons wishing to make statements, a per person time limit may be established by the District Manager.

Dated: February 4, 1991.

Gordon R. Staker,

District Manager.

[FR Doc. 91-3651 Filed 2-14-91; 8:45 am]

BILLING CODE 4310-DQ-M

[OR-943-01-4214-10; GP1-108; OR-19802(WASH)]

Order Providing for Opening of Lands Subject to Section 24 of the Federal Power Act; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action will open 2,013 acres of National Forest Systems lands that are withdrawn for Power Project No. 2157 to permit consummation of a pending land exchange, subject to the provisions of section 24 of the Federal Power Act.

EFFECTIVE DATE: February 15, 1991.

FOR FURTHER INFORMATION CONTACT: Linda Sullivan, BLM, Oregon State Office, P.O. Box 2965, Portland, Oregon 97208.

SUPPLEMENTARY INFORMATION: By virtue of the authority vested in the Secretary of the Interior by section 24 of the Federal Power Act of June 10, 1920, as amended (16 U.S.C. 819), and pursuant to the determination of the Federal Energy Regulatory Commission in DVWA-282-Washington, it is ordered as follows:

At 8:30 a.m., on February 15, 1991, the following described lands are open to disposal by land exchange as specified in Federal Energy Regulatory Commission determination DVWA-282-Washington, subject to section 24 of the Federal Power Act of June 10, 1920, as amended, 16 U.S.C. 818:

Willamette Meridian

Those portions of the following described legal subdivisions which lie within the boundary of Power Project No. 2157 as more particularly identified and described in the official records of the Bureau of Land Management, Oregon State Office:

T. 28 N., R. 9 E.,
Sec. 3, lots 1 and 2.
T. 29 N., R. 9 E.,
Sec. 21, lots 11 and 12;
Sec. 22, lots 5, 6, 7, and 8;
Sec. 23, lots 11 and 12, E½SE¼ and SW¼SE¼;
Sec. 24, lots 6, 7, and 8, and W½;
Sec. 25, N½N½;
Sec. 26, N½N½;
Sec. 27, N½, NW¼SW¼, and N½SE¼;
Sec. 28;
Sec. 29, N½, NW¼SW¼, and N½SE¼;
Sec. 33, lots 1 and 2, and SE¼NE¼;
Sec. 34, lot 4, S½NW¼, N½NW¼, SE¼SW¼, NW¼SE¼, and S½SE¼.

The areas described aggregate approximately 2,013 acres of Snohomish County, Washington.

Dated: February 6, 1991.

Robert D. Rheiner, Jr.,

Acting State Director.

[FR Doc. 91-3653 Filed 2-14-91; 8:45 am]

BILLING CODE 4310-33-M

MT-030-01-4212-14]

Montana; Realty Actions

AGENCY: Bureau of Land Management; Interior.

ACTION: Notice of realty action.

SUMMARY: The following land (NDM73759-73769; NDM79588-79591) has been found suitable for sale under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713), at not less than the estimated fair market value (FMV).

DATES: The land will not be offered for sale before April 16, 1991.

ADDRESSES: 2933 Third Avenue West; Dickinson, North Dakota 58601.

FOR FURTHER INFORMATION CONTACT: William C. Monahan, Dickinson District Office, 701-255-9148.

SUPPLEMENTARY INFORMATION:

Parcel	*Legal Description*
	FIFTH PRINCIPAL MERIDIAN
NDM73759	T. 129 N., R. 104 W., Sec. 31: Lot 1, 39.82-acres, Bowman County, FMV $1,800.
NDM73760	T. 129 N., R. 104 W., Sec. 32: SWSW, 40.00-acres, Bowman County, FMV $1,800.
NDM73761	T. 129 N., R. 105 W., Sec. 23: SESE, 40.00-acres, Bowman County, FMV $1,800.
NDM73762	T. 129 N., R. 105 W., Sec. 24: NWNW, 40.00-acres, Bowman County, FMV $1,800.
NDM73763	T. 129 N., R. 106 W., Sec. 24: SESW, 40.00-acres, Bowman County, FMV $1,800.
NDM73764	T. 131 N., R. 103 W., Sec. 34: NWSW, 40.00-acres, Bowman County, FMV $1,600.
NDM73765	T. 131 N., R. 103 W., Sec. 35: SENE, 40.00-acres, Bowman County, FMV $1,600.
NDM73766	T. 152 N., R. 75 W., Sec. 2: Lot 2, 47.64-acres, McHenry County, FMV $4,000.
NDM73767	T. 154 N., R. 77 W., Sec. 3: Lot 1, 39.04-acres, McHenry County, FMV $3,100.
NDM73768	T. 154 N., R. 77 W., Sec. 3: SENE, 40.00-acres, McHenry County, FMV $3,200.
NDM73769	T. 157 N., R. 75 W., Sec. 15: SWSW, 40.00-acres, McHenry County, FMV $2,400.
NDM79588	T. 156 N., R. 89 W., Sec. 27: NWNE, 40.00-acres, Mountrail County, FMV $4,000.
NDM79589	T. 158 N., R. 86 W., Sec. 30: Lot 2, 38.31-acres, Renville County, FMV $3,100.
NDM79590	T. 158 N., R. 86 W., Sec. 33: SWNW, 40.00-acres, Renville County, FMV $3,400.
NDM79591	T. 157 N., R. 50 W., Sec. 8: Lot 1, 10.94-acres, Walsh County, FMV $800.

The land described is hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this section or 270 days from the date of publication of this notice, whichever occurs first.

The land will be offered for sale at public auction beginning at 10: a.m., m.d.t., on April 25, 1991, at 2933 Third Avenue West, Dickinson, North Dakota 58601. The sale will be done by modified competitive procedures. The tract's lessees or adjoining land owners must submit a bid the day of sale to retain preference rights. The sale will be by sealed bid only.

All sealed bids must be submitted to the BLM's Dickinson District Office at 2933 Third Avenue West, Dickinson, North Dakota 58601, no later than 4:30 p.m., m.d.t., on April 24, 1991. Bid envelopes must be marked on the left front corner with the parcel number and the sale date. Bids must not be for less than the appraised FMV specified in this Notice. Each sealed bid shall be accompanied by a certified check, postal money order, bank draft or cashier's check made payable to the United States Department of the Interior, BLM, for not less than 20 percent of the amount bid.

Bids on unsold parcels will be opened each following Wednesday at 10 a.m., Mountain Time until the parcels are sold.

Terms and Conditions

The terms and conditions applicable to the sale are:

1. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals. A more detailed description of this reservation, which will be incorporated in the patent document, is available for review at this office.

2. A right-of-way is reserved for ditches and canals constructed by the authority of the United States under the Authority of the Act of August 30, 1890, (26 Stat. 291; 43 U.S.C. 945).

3. The patents will be subject to all valid existing rights to include rights-of-way.

Federal law requires that all bidders must be U.S. citizens 18 years old or older, or, in the case of corporations, be subject to the laws of any State of the U.S. Proof of these requirements must accompany the bid.

Under the modified competitive sale procedures, an apparent high bid will be declared at the public auction. The apparent high bidder and the lessee and adjoining land owners will be notified. They will have five (5) working days from the date of the sale to exercise the preference consideration given to meet the high bid.

Should they fail to submit a bid that matches the apparent high bid within the specified time period, the apparent high bidder shall be declared the high bidder. The total purchase price for the land shall be paid within 180 days from the date of the sale.

Detailed information concerning the sale, including the reservations, procedures for a condition of sale, and planning and environmental documents, is available at the Dickinson District Office, Bureau of Land Management, 2933 Third Avenue West, Dickinson, North Dakota 58601.

Comments

For a period of 45 days from the date of this Notice in the **Federal Register**, interested parties may submit comments to the District Manager, Dickinson District, at the above address. In the absence of any objections, this proposal will become the final determination of the Department of the Interior.

Dated: February 8, 1991.

Daniel T. Mates,

District Manager.

[FR Doc. 91-3655 Filed 2-14-91; 8:45 am]

BILLING CODE 4310-DN-M

Susanville District Advisory Council; Meeting

AGENCY: Susanville District Advisory Council, Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given in accordance with Public Law 95-579 (FLPMA), that the Susanville District Advisory Council will hold a business meeting on Thursday, March 14, 1991, from 10 a.m. to 4:30 p.m. at the Bureau of Land Management's (BLM) Susanville District Office, 705 Hall Street, Susanville, California 96130. The primary discussion topic will be a proposal by a citizen coalition to create the Black Rock/High Rock Emigrant Trails National Conservation Area in parts of the Susanville, CA, and Winnemucca, NV, Districts of the BLM. The Council will also be updated on other BLM initiatives and projects.

The meeting is open to the public, and interested persons may make oral statements or file a written statement for the council's consideration. Those wishing to make an oral statement must notify the Susanville District Manager, 705 Hall Street, Susanville, CA 96130, by Friday, March 1, 1991. Depending on the number of persons wishing to speak, a time limit may be imposed.

FOR FURTHER INFORMATION, CONTACT: Jeff Fontana, (916) 257-5381.

Robert J. Sherve,

Associate District Manager.

[FR Doc. 91-3652 Filed 2-14-91; 8:45 am]

BILLING CODE 4310-40-M

[G-910-G1-0414-4214-10; NMNM 84801]

Proposed Withdrawal and Opportunity for Public Meeting; New Mexico Correction

In **Federal Register** document 90-29270, Vol. 55, No. 241, on the issue of Friday, December 14, 1990, on page 51510, the following correction is made:

1. On page 51510 under Summary, the fifth, sixth, and seventh lines in the first sentence are corrected to read: "Forest System land for the East Fork River Canyon and Scenic Byway and to protect high recreation."

Dated: February 5, 1991.

Monte G. Jordan,

Associate State Director.

[FR Doc. 91-3656 Filed 2-14-91; 8:45 am]

BILLING CODE 4310-FB-M

Fish and Wildlife Service

Issuance of Permit for Marine Mammals

On August 10, 1990, a notice was published in the **Federal Register** (Vol. 55, FR 155) that an application had been filed with the Fish and Wildlife Service by The U.S. Fish & Wildlife Service, National Ecology Research Center, PRT 672624 for a permit to continue capture and tagging activities with sea otters (*Enhydra lutris nereis*).

Notice is hereby given that on December 5, 1990, as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Endangered Species Act of 1972 (16 U.S.C. 1539), the Fish and Wildlife Service issued a permit subject to certain conditions set forth therein.

The permits are available for public inspection during normal business hours, 7:45 a.m. to 4:15 p.m. at the Office of Management Authority, 4401 N. Fairfax Drive, room 430, Arlington, VA 22203.

Dated February 11, 1991.

R.K. Robinson,

Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 91-3662 Filed 2-14-91; 8:45 am]

BILLING CODE 4310-55-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Board for International Food and Agricultural Development and Economic Cooperation; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of the One Hundredth and Fourth Meeting of the Board for International Food and Agricultural Development and Economic Cooperation (BIFADEC) on February 28, 1:30 p.m. to 5:15 p.m. and March 1, 8:30 a.m. to 11:30 a.m.

The purposes of the Meeting are: (a) Ceremony and reception for the Swearing-in of incoming new Board Members and recognition of outgoing Board Members, (b) to consider the final report and recommendations of the Task Force on Development Assistance and Cooperation; report on the status of new BIFADEC Charter; update on University Center creation; discuss and approve the composition of and scope of work for the Task Force on University Center Program; to discuss the Agency response to the Board recommendations on University Development Linkage Project and Program Support Grants; to hear report from JCARD; update on sustainable Agriculture CRSP, (c) to discuss proposed revisions of the Foreign Assistance Act (FAA) of 1961, (d) to discuss the A.I.D. new initiative—Democracy, Business, Family, plus Strategic Management, (e) to learn the status and intent of A.I.D. reorganization effort and its three teams, and (f) to discuss how BIFADEC and the U.S. academic community can relate constructively to the development issues facing A.I.D.

The February 28, 1991, Meeting will be held at the Pan American Health Organization (PAHO), 525 23rd St., NW., Conference Room "C," and the March 1, 1991, meeting will be held in the Department of State, room 1105, State Department Building. Any interested

person may attend and may present oral statements in accordance with procedures established by the Board and to the extent the time available for the meeting permits.

The Bureau for Diplomatic Security has implemented new procedures for being in the Department of State building. All persons, visitors and employees, are required to wear proper identification at all times while in the building.

Please let the BIFAD Staff know (at tel. nos. 663-2585 or 663-2578) that you expect to attend the meeting and on which days. Provide your full name, name of employing company or organization, address and telephone number not later than Tuesday, February 26, 1991.

A BIFAD Staff member will meet you at the Department of State entrance at 21st and C Streets (at Virginia Avenue) with your visitor's pass.

Due to the strict security at the Department of State, (even though you are pre-cleared) visitors will be required to present a valid identification with photograph to the receptionist before they can be admitted to the building. The receptionist at the Pan American Health Organization requires a list of the attendees due to the strict security.

Curtis Jackson, Bureau of Science and Technology, Office of Research and University Relations, Agency for International Development is designated as A.I.D. Advisory Committee Representative at this Meeting. It is suggested that those desiring further information write to Dr. Jackson, in care of the Agency for International Development, Rm. 309, SA-18, Washington, DC 20523, or telephone him on (703) 875-4005.

Dated: February 11, 1991.

C. Stuart Callison,

Acting Executive Director, BIFADEC.

[FR Doc. 91-3677 Filed 2-14-91; 8:45 am]

BILLING CODE 6116-01-M

INTERSTATE COMMERCE COMMISSION

Intent To Engage In Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. The parent corporation is Armwal, Inc., a Georgia corporation whose principal office is located at 6970 Jonesboro Road, Morrow, Georgia 30260.

2. The wholly-owned subsidiaries which will participate in the operations are (i) A.B.C. Compounding Company, Inc., a Georgia corporation; (ii) A.B.C. Compounding Company of Texas, Inc., a Texas corporation; and (iii) Intersouth Transport & Leasing, Inc., a Georgia corporation.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-3721 Filed 2-14-91; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-No. 356X)]

CSX Transportation, Inc.—Abandonment Exemption—in Boone County, WV; Exemption

Applicant has filed a notice of exemption under 49 CFR part 1152 subpart F—Exempt Abandonments to abandon its 3.89-mile line of railroad between milepost 0.0, near Elk Run Junction, and milepost 3.89, near Blue Pennant, in Boone County, WV.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with an U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on March 17, 1991 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by February 25, 1991.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by March 7, 1991, with: Office of the Secretarv, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Charles M. Rosenberger, CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ad initio.*

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by February 20, 1991. Interested persons may obtain a copy of the EA from SEE by writing to it (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275-7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: February 12, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-3722 Filed 2-14-91; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-290 (Sub-No. 112X)]

Norfolk and Western Railway Co.—Abandonment Exemption—in Suffolk and Chesapeake, VA; Exemption

Applicant has filed a notice of exemption under 49 CFR part 1152 subpart F—Exempt Abandonment to abandon its 12.7-mile line of railroad between milepost V-15.4, at Algren, and

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

milepost V-28.1, at Kenyon, in Suffolk and Chesapeake, VA.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on March 17, 1991 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by February 25, 1991.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by March 7, 1991, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Richard W. Kienle, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510-2191.

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by February 20, 1991. Interested persons may obtain a copy of the EA from SEE by writing to it (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275-7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: February 12, 1991.

By the Commission, David M. Konschnik, Director, Office of proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-3723 Filed 2-14-91; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-12 (Sub-No. 135X)]

Southern Pacific Transportation Co.; Abandonment Exemption—in Yamhill County, OR; Exemption

Applicant has filed a notice of exemption under 49 CFR 1152 subpart F—Exempt Abandonments to abandon its 4.67-mile line of railroad between milepost 737.894, near St. Joseph, and milepost 742.568, near Carlton, in Yamhill County, OR.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on March 16, 1991 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by February 25, 1991.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by March 6, 1991, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Gary A. Laakso, Southern Pacific Transportation Company, One Market Plaza, San Francisco, CA 94105.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by February 19, 1991. Interested persons may obtain a copy of the EA from SEE by writing to it (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275-7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: February 12, 1991.

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See Exemtion of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-3724 Filed 2-14-91; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination; Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the prescribed classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue NW., room S-3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

None.....

Volume II

Minnesota: MN90-15 (Jan. 5, 1990). p. 613, pp. 615, 623

Nebraska: NE90-2 (Jan. 5, 1990). p. 721, pp. 722-723

Volume III

Colorado: CO90-3 (Jan. 5, 1990. p. 121, p. 122

Montana: MT90-1 (Jan. 5, 1990). p. 171 pp. 172-175

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3228.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 8th day of February 1991.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 91-3465 Filed 2-14-91; 8:45 am]

BILLING CODE 4510-27-M

NUCLEAR REGULATORY COMMISSION

Abnormal Occurrence Report Section 208 Report Submitted to the Congress

Notice is hereby given that pursuant to the requirements of section 208 of the Energy Reorganization Act of 1974, as amended, the Nuclear Regulatory Commission (NRC) has published and issued another periodic report to Congress on abnormal occurrences (NUREG-0090, Vol. 13, No. 3).

Under the Energy Reorganization Act of 1974, which created the NRC, an abnormal occurrence is defined as "an unscheduled incident or event that the Commission (NRC) determines is significant from the standpoint of public health or safety." The NRC has made a determination, based on criteria published in the **Federal Register** (42 FR 10950) on February 24, 1977, that events involving an actual loss or significant

reduction in the degree of protection against radioactive properties of source, special nuclear, and by-product material are abnormal occurrences.

The report to Congress is for the third calendar quarter of 1990. The report identifies the occurrences or events that the Commission determined to be significant and reportable; the remedial actions that were undertaken are also described.

The report discusses six abnormal occurrences, none of which involved a nuclear power plant. There were five abnormal occurrences at NRC licensed facilities: One involved a medical therapy misadministration; three involved medical diagnostic misadministrations; and one involved a significant breakdown in management and procedural controls at a medical facility. The sixth abnormal occurrence was reported by an Agreement State (Arizona); the event involved a medical therapy misadministration.

A copy of the report is available for public inspection and/or copying at the NRC Public Document Room, 2120 L Street, NW., (Lower Level), Washington, DC 20555, or at any of the nuclear power plant Local Public Document Rooms throughout the country.

Copies of NUREG-0090, Vol. 13, No. 3 (or a y of the previous reports in this series), may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013-7082. A year's subscription to the NUREG-0090 series publication, which consists of four issues, is also available.

Copies of the report may also be purchased from the National Technical Information Service, Springfield, VA 22161.

Dated at Rockville, MD this 11th day of February, 1991.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 91-3698 Filed 2-14-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 72-4 (50-269/270/287)]

Duke Power Company; Issuance of Amendment to Materials License No. SNM-2503

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 2 to Materials License No. SNM-2503 held by the Duke Power Company for the receipt and storage of spent fuel at the Oconee Independent Spent Fuel Storage Installation, located on the Oconee Nuclear Station site, Oconee County, South Carolina. The amendment is effective as of the date of issuance.

The amendment revises the Technical Specifications in appendix B. Changes were made to Specifications 1.1.A and 1.1.B of appendix B to reflect Revision 4 to the Oconee Nuclear Station Independent Spent Fuel Storage Installation (ISFSI) Security Program.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment. Prior public notice of the amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of the amendment will not result in any significant environmental impact and that, pursuant to 10 CFR 51.22(c), an environmental assessment need not be prepared in connection with the issuance of the amendment.

For further details with respect to this action, see (1) the application for amendment dated January 10, 1991, and (2) Amendment No. 2 to Materials License No. SNM-2503, and (3) the Commission's letter to the licensee dated February 7, 1991. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the Local Public Document Room at the Oconee County Public Library, 501 W. Southbroad Street, Walhalla, South Carolina 29691.

Dated at Rockville, Maryland, this 7th day of February 1991.

For the U.S. Nuclear Regulatory Commission.

Charles J. Haughney,

Chief, Fuel Cycle Safety Branch, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 91-3697 Filed 2-14-91; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards Subcommittee on TVA Plant Licensing and Restart; Meeting

The ACRS Subcommittee on TVA Plant Licensing and Restart will hold a meeting on March 4 and 5, 1991, at the Amberley Suite Hotel, 4880 University Drive, Huntsville, AL.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be a follows:

Monday, March 4, 1991—2.00 p.m. until 5:30 p.m.

Tuesday, March 5, 1991—8:30 a.m. until 3 p.m.

The Subcommittee will review the planned restart of Browns Ferry Unit 2.

Oral statements maybe presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those sessions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the meeting, the Subcommittee, along with any of their consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to the Designated Federal Official, Mr. Dean Houston (telephone 301/492-9521) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: February 8, 1991.

Gary R. Quittschreiber,

Chief, Nuclear Reactors Branch.

[FR Doc. 91-3699 Filed 2-14-91; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Subcommittee on Improved Light Water Reactors; Postponed

The ACRS Subcommittee meeting on Improved Light Water Reactors scheduled to be held on Tuesday, February 12, 1991 at 7920 Norfolk Avenue, Room P-110, Bethesda, MD has been postponed to March 14 and 15, 1991; this meeting is tentatively scheduled to be held at Palo Alto, CA. Notice of this meeting was published in the **Federal Register** (56 FR 3489) on Wednesday, January 30, 1991. A notice

of this meeting will be published in the **Federal Register** at the appropriate time in the future.

For further information contact: Mr. Medhat El-Zeftawy (telephone 301/492-9901) between 7:30 a.m. and 4:15 p.m.

Dated: February 8, 1991.

Gary R. Quittschreiber,

Chief, Nuclear Reactors Branch.

[FR Doc. 91-3700 Filed 2-14-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-348 and 50-364]

Alabama Power Co.; Consideration of Issuance of Amendment to Facility Operating License and Proposed no Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License No. 50-348 and 50-364 issued to Alabama Power Company (the licensee) for operation of the Joseph M. Farley Nuclear Plant (FNP), Units 1 and 2, located in Houston County, Alabama.

The proposed amendments would revise Technical Specification section 4.7.9 concerning snubber surveillance for both units to reflect the guidance contained in Generic Letter 90-09, "Alternative Requirements for Snubber Visual Inspection Intervals and Corrective Actions."

Before issuance of the proposed license amendments, the Commission will have made the findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the request for amendments involve no significant hazards consideration. Under the Commission's regulation in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has reviewed the proposed changes and has determined that the requested amendments do not involve a significant hazards consideration for the following reasons:

1. The proposed changes will not involve a significant increase in the probability or consequences of an accident previously evaluated. No physical change to the facility or its operating parameters is being made. The proposed changes were developed by the NRC Staff and maintain the same confidence level as the existing visual snubber inspection schedule as specified within Generic Letter 90-09. For these reasons, the response of the plant to previously evaluated accidents will remain unchanged.

2. The proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated. Since no change is being made to degrade the design, operation, or maintenance of the plant, a new mode of failure is not created. Therefore, a new or different kind of accident will not occur as a result of these changes.

3. The proposed changes do not involve a significant reduction in a margin of safety. The Surveillance Requirements set forth in Generic Letter 90-09 as alternative requirements for snubber visual inspection intervals were developed by the NRC Staff, and, as addressed in Generic Letter 90-09 (including FNP's revisions), maintain the same confidence level as the present requirements. Therefore, incorporating the suggested Surveillance Requirements from Generic Letter 90-09 will not reduce any margin of safety.

The licensee has concluded that the proposed amendments meet the three standards in 10 CFR 50.92 and, therefore, involve no significant hazards consideration.

The NRC staff has made a preliminary review of the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the requested amendments do not involve a significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By March 18, 1991, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room located at Houston-Love Memorial Library, 212 W Burdeshaw Street, P.O. Box 1369, Dothan, Alabama 36302. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to ir tervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contention shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplment which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the request for amendment involves no significant hazards consideration, the Commission may issue the amendment and make it effectve, notwithstanding the request for a hearing. Any hearing held would take palce after issuance of the amendment.

If a final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day period. However, should circumstances, change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Elinor G. Adensam: (petitioner's name and telephone number), (date petition was mailed), (plant name), and (publication date and page number of this **Federal Register** notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to James H. Miller, III, Esq., Balch and Bingham, P.O. Box 306, 1710 Sixth Avenue North, Birmingham, Alabama 35201, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d)

For further details with respect to this action, see the application for amendment dated February 6, 1991, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room located at Houston-Love Memorial Library, 212 W Burdeshaw Street, P.O. Box 1369, Dothan, Alabama 36302.

Dated at Rockville, Maryland, this 12th day of February 1991.

For the Nuclear Regulatory Commission.

Stephen T. Hoffman,

Project Manager, Project Directorate II-1 Division of Reactor Projects—I/II Office of Nuclear Reactor Regulation.

[FR Doc. 91-3847 Filed 2-14-91; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Request Submitted to OMB for Clearance

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces the request for clearance of an information collection, Application for Solicitation Privileges in the Combined Federal Campaign, which has been submitted to the Office of Management and Budget for review. The application is completed by charitable, non-profit, tax-exempt organizations and assistance programs.

Approximately 500 forms are completed annually, each requiring an estimated 10 hours to complete, for a total public burden of 5,000 hours. For copies of this proposal call Ron Trueworthy on (202) 606-2261.

DATES: Comments on this proposal should be received on or before March 18, 1991.

ADDRESSES: Send or deliver comments to—Joseph Lackey, OPM Desk Officer, OIRA, Office of Management and Budget, New Executive Office Building, NW., Room 3002, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jeremiah J. Barrett, (202) 606-2564.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

[FR Doc. 91-3694 Filed 2-14-91; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Agency Clearance Office—Kenneth A. Fogash (202) 272-2142.

Upon written request copy available from: Securities and Exchange Commission, Public Reference Branch, Washington, DC 20549-1002.

Form 5, File No. 270-323
Form 4, File No. 270-125
Form 3, File No. 270-126

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted for OMB approval final amendments to Forms 3, 4, and 5, which will restructure the manner in which transactions and holdings by persons subject to Section 16 of the Securities Exchange Act of 1934 are reported. With respect to Form 3, the Commission estimates that approximately 9,656 respondents would be affected at an estimated one-half burden hour per response. Form 4 would be filed by 69,162 persons annually at an estimated one-half burden hour per response. Form 5 would be filed by 40,500 persons at one burden hour per response. The estimated average burden hours are made solely for purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the costs of the Commission's rules and forms. Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with the Securities and Exchange Commission rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549 and Gary Waxman, Clearance Officer, Office of Management and Budget (Paperwork Reduction Project 3235-0104, -0287, and -0362), room 3208, New Executive Office Building, Washington, DC 20503.

Dated: February 8, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-3665 Filed 2-14-91; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

[Notice No. 711]

Dollar Limitation for Display and Retail Advertising Specialties

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Treasury.

ACTION: General notice.

SUMMARY: This notice sets forth the annually updated dollar limitations prescribed for alcohol beverage industry members under the "Tied House" provisions of the Federal Alcohol Administration Act.

DATES: This notice shall be effective retroactive to January 1, 1991.

ADDRESSES: Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Ave. NW., Washington, DC 20226.

FOR FURTHER INFORMATION CONTACT: John Colozzi, Market Compliance Branch, (202) 535-6444.

SUPPLEMENTARY INFORMATION: Based on data of the Bureau of Labor Statistics, the consumer price index was 6.1 percent higher in December 1990 than in December 1989. Therefore, effective January 1, 1991, the dollar limitation for "Product Displays" (27 CFR 6.83(c)) is increased from $146.00 to $155.00 per brand. Similarly, the "Retailer Advertising Specialties" (27 CFR 6.85(b)) is increased from $72.00 to $76.00 per brand. Also, the "Participation in Retailer Association Activities" (27 CFR 6.100(e)) is increased from $146.00 to $155.00 per year.

Industry members who wish to furnish, give, rent, loan or sell product displays or retailer advertising specialties to retailers are subject to dollar limitations (27 CFR 6.38 and 6.85). Industry members making payments for advertisements in programs or brochures issued by retailer associations at a convention or trade show are also subject to dollar limitations (27 CFR 6.100). The dollar limitations are updated annually by use of a "cost adjustment factor" in accordance with 27 CFR 6.82. The cost adjustment factor is defined as a percentage equal to the change in the Bureau of Labor Statistics' consumer price index. Adjusted dollar limitations are established each January using the consumer price index for the preceding December.

Signed: February 8, 1991.

Stephen E. Higgins,

Director.

[FR Doc. 91-3663 Filed 2-14-91; 8:45 am]

BILLING CODE 4810-13-M

Internal Revenue Service

[Delegation Order No. 112]

Delegation of Authority

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of authority.

SUMMARY: Delegation Order No. 112 is revised to redelegate authority to sign employee plans adverse, modification or revocation determination letters to Chief, Technical/Review Staff. The text of the delegation order appears below.

EFFECTIVE DATE: September 28, 1990.

FOR FURTHER INFORMATION CONTACT: Cora Davis, E:O:D, room 2237, 1111 Constitution Avenue, NW., Washington, DC 20224, (202) 566-6222 (not a toll free call).

Order No. 112 (Rev. 10)

Effective date: September 28, 1990.

Authority to Issue Determination and Revocation Letters, to Allow Amendment of Employee Plans After the Expiration of the Remedial Amendment Period and to Issue Examination Reports relating to Employee Plans

Pursuant to authority vested in the Commissioner of Internal Revenue by Treasury Order 150-10, authority with respect to issuance of determination and revocation letters, to allow amendment of plans after the expiration of the remedial amendment period and to issurance of examination reports pertaining to employee plans and related matters is delegated as follows:

1. The District Director of each Employee Plans and Exempt Organizations key district is authorized, subject to section 3, to:

(a) issue determination and revocation letters involving the provisions of sections 401, 403(a), 405, 409A, 501(a) and 4975(e)(7) of the Internal Revenue Code of 1986 with respect to:

(1) qualification of stock bonus, pension, profit sharing, employee stock ownership, annuity, and bond purchase plans, and cash or deferred arrangements;

(2) exemption from federal income tax under section 501(a) of trusts forming a part of such plans, provided that the determination does not involve application of section 502 (feeder organizations) or section 511 (unrelated business income), or the question of whether a proposed transaction will be a prohibited transaction under section 4975(c)(1) or section 503 with respect to plans described in section 4975(g)(2) or (3);

(3) compliance with the applicable requirements of foreign situs trusts as to taxability of beneficiaries (section 402(c)) and deductions for employer contributions (section 404(a)(4)); and

(4) amendments (including those relating section 414(1) of the Code), partial terminations or terminations of such plans and trusts.

(b) determine that any organization or trust described in section 401(a), the plan of which is referred to in section

4975(g)(2) or (3), has engaged in a prohibited transaction under section 503 and to notify such entity in writing of the revocation of exemption and of the requalification for exemption after such entity establishes that it will not knowingly again engage in a prohibited transaction and that it also satisfies all applicable requirements of section 401(a).

(c) issue determination and revocation letters with respect to exemption from federal income tax of a group trust:

(1) under section 501(a), with respect to its funds which equitably belong to participating trusts described in section 401(a), and, for taxable years beginning after December 31, 1981, plans and governmental units described in section 805(d)(6); and/or

(2) under section 408(e), with respect to its funds' which equitably belong to individual retirement accounts which satisfy the requirements of section 408(a).

(d) issue examination reports with respect to:

(1) continued qualification under sections 401, 403(a), 405, 409A, and 4975(e)(7) of plans and continued exemption under section 501(a) of the related trust:

(2) imposition of tax under sections 1, 511 through 514, 641 and Chapter 43; and

(3) imposition of penalties under Chapter 68 of the Internal Revenue Code of 1986.

(e) issue modification or revocation of determination letters described above in accordance with currently applicable appeal procedures. If the revocation involves collectively-bargained plans, or plans for which the Internal Revenue Service is proposing to issue a revocation letter because certain fiduciary actions subject to Part 4, Subtitle B of Title I of the Employee Retirement Income Security Act (ERISA) have violated the exclusive benefit rule of section 401(a), the plan must have been submitted for technical advice and the Assistant Commissioner (E) must have concurred with the revocation.

(f) redelegate this authority as follows:

(1) with respect to issuance and modification of favorable determination letters or examination reports, other than a report issued with a proposed revocation letter, not below Internal Revenue Agent and Tax Law Specialist, GS-12, and then only if such individual is a person other than the initiator.

(2) with respect to issuance of proposed and final adverse determination letters or proposed and final revocation letters and related examination reports, not below Chief, Technical/Review Staff.

2. In each region, the Regional Counsel, Chiefs and Associate Chiefs, Appeals Office, are authorized to:

(a) issue final determination or final revocation letters on appeals from proposed adverse determination and proposed revocation letters issued by key district offices under this delegation.

(b) issue letters as to the decision on appealed examination reports or of deficiency notices as provided in Delegation Order No. 77 (as revised).

(c) This authority may not be redelegated.

3. The Assistant Commissioner (Employee Plans and Exempt Organizations), with concurrence of the Chief Counsel, is authorized to require preissuance review of final adverse determination and final revocation letters covered by section 7476(a) of the Internal Revenue Code of 1986.

4. The District Director of each Employee Plans and Exempt Organizations key district is authorized to:

(a) allow a plan to be amended after the expiration of its remedial amendment period described in section 401(b) of the Code for any plan year in which a request for a determination letter is made or is pending with the Service, and for the plan year prior to the plan year in which the plan is submitted for a determination letter if the plan is submitted by the end of the time for filing the tax return of the employer (including extensions) for the taxable year of the employer beginning with or within that prior plan year, provided that two conditions are met:

(1) the plan is retroactively amended to comply with the qualification requirements as of the time the defect in the plan arose, and

(2) employee benefit rights are retroactively restored to the levels they would have been had the plan been in compliance with the qualification requirements from the date the defect in the plan arose.

(b) redelegate this authority but not below Chief, Technical/Review Staff.

Delegation Order No. 112 (Rev. 9) effective August 25, 1983, is hereby superseded.

Dated: September 28, 1990.

Charles H. Brennan,

Deputy Commissioner (Operations).

[FR Doc. 91-3492 Filed 2-14-91; 8:45 am]

BILLING CODE 4830-01-M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 32
Friday, February 15, 1991

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).

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Thursday, February 21, 1991.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED: Cigarette Lighter NPR.

The staff will brief the Commission on a notice of proposed rulemaking (NPR) for a mandatory consumer product safety standard to require disposable and novelty cigarette lighters to resist operation by children less than five years old.

For a Recorded Message Containing the Latest Agenda Information, Call (301) 492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 (301) 492-6800.

Dated: February 12, 1991.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 91-3856 Filed 2-13-91; 2:04 pm]

BILLING CODE 6355-01-M

RAILROAD RETIREMENT BOARD

Notice of Public Meeting

Notice is hereby given that the Railroad Retirement Board will hold a meeting on February 21, 1991, 9:00 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois, 60611. The agenda for this meeting follows:

(1) B.O. 75-1, Section 1.
(2) B.O. 75-3, Section III.
(3) B.O. 75-2, Section 14.
(4) Travelers' Medicare Contract.
(5) Regulations—Part 200, General Administration.
(6) Regulations—Parts 202 and 301, Employers Under the Railroad Retirement Act and Railroad Unemployment Insurance Act.
(7) Regulations—Part 203, Employees Under the Act.
(8) Regulations—Part 255, Recovery of Overpayments.
(9) Regulations—Part 259.1, Initial Determinations with Respect to Employer and Employee Status.
(10) Regulations—Part 320, Initial Determinations Under the Railroad Unemployment Insurance Act and Review of and Appeals from Such Determinations.
(11) Regulations—Parts 320 and 340, Initial Determinations Under the Railroad Unemployment Insurance Act and Reviews of and Appeals from Such Determinations; Recovery of Benefits.

The entire meeting will be open to the public. The person to contact for more information is Beatrice Ezerski, Secretary to the Board, COM No. 312-751-4920, FTS No. 386-4920.

Dated: February 12, 1991.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 91-3857 Filed 2-13-91; 2:05 pm]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of February 18, 1991.

A closed meeting will be held on Tuesday, February 19, 1991, at 2:30 p.m. An open meeting will be held on Wednesday, February 20, 1991, at 10:00 a.m., in Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit considerations of the scheduled matters at a closed meeting.

Commissioner Schapiro, as duty officer, voted to considered the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, February 19, 1991, at 2:30 p.m., will be:

Institution of injunctive actions.
Opinion.

The subject matter of the open meeting scheduled for Wednesday, February 20, 1991, at 10:00 a.m., will be:

1. Consideration of whether to issue a release which will adopt amendments to the net capital rule under the Securities Exchange Act of 1934: The net capital rule would be amended: to prohibit broker-dealers from making distributions of net capital over a certain amount to affiliated parties without first notifying the Commission; give the Commission the ability to restrict the withdrawal of capital from a broker-dealer in certain circumstances; and prohibit broker-dealers from withdrawing capital to benefit insiders of the firm at an earlier stage than is now permitted. For further information, please contact Roger G. Coffin at (202) 272-2396.

2. Consideration of an application of Wunsch Auction System, Inc. ("WASI"), filed pursuant to Section 5 of the Securities and Exchange Act of 1934 ("Act"), for an exemption from registration as a national securities exchange under Section 6 of the Act of both WASI and WASI's computerized, "single-price auction system ("Wunsch System"). For further information, please contact Gordon Fuller (202) 272-2414.

At times, changes in Commission priorities require alternations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Paul Atkins at (202) 272-2000.

Dated: February 12, 1991.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-3839 Filed 2-13-91; 8:45 am]

BILLING CODE 8010-01-M

Corrections

Federal Register
Vol. 56, No. 32
Friday, February 15, 1991

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

Commodity Credit Corporation

7 CFR Part 1403

Debt Settlement Policies and Procedures

Correction

In rule document 91-89 beginning on page 359 in the issue of Friday, January 4, 1991, make the following corrections:

1. On page 359, in the second column, in the first line, "no" should read "not". In the fifth line from the bottom of the page, "ad" should read "and".

2. On the same page, in the third column, "distances" should read "instances".

BILLING CODE 1505-01-D

FARM CREDIT ADMINISTRATION

12 CFR Parts 614 and 619

RIN 3052-AB13

Loan Policies and Operations; Definitions; Lending Authorities, Appraisal Standards, Participations, and Lending Limits

Correction

In proposed rule document 91-1326 beginning on page 2452, in the issue of Wednesday, January 23, 1991, make the following corrections:

1. On page 2452, in the third column, in the second complete paragraph, in the third line from the end, "qualification" should read "qualifications".

2. On page 2454, in the 1st column, in the last paragraph, in the 10th line, "of" should read "or".

3. On the same page, in the second column, in the second complete paragraph, in the sixth line, "maybe" should read "may be".

4. On page 2456, in the 2nd column, in the 18th line, "normally" was misspelled. In the same column, in the last paragraph, in the second line "where" should read "were".

5. On page 2457, in the first column, in the third line, "§ 7.6" should read "section 7.6".

6. On the same page, in the second column, in the second complete paragraph, in the eighth line from the end, "FCS" was printed incorrectly.

7. On page 2458, in the second column, in the first complete paragraph, in the sixth line from the end, "of" should read "to".

8. On the same page, in the third column, in the first complete paragraph, in the eighth line from the end , after "is" insert "a".

9. On page 2459, in the third column,in the first complete paragraph, in the eighth line, "if" should read "of". In the same column, in the second complete paragraph, in the second line from the end, "warehouses" should read "warehousers".

10. On page 2461, in the 3rd column, in the 14th line, "encourage" should read "encourages".

11. On page 2464:

a. In the first column, in the heading for *B, "Limitations"* should read *"Limitation"*.

b. In the ninth line below the heading, "financing" should read "financings"

c. In the same paragraph, in the third line from the end, "obligation" should read "obligated".

d. In the second column, in the first complete paragraph, in the seventh line, "proposed" should read "reproposed"; and in the eight line, "lend" should read "lending".

e. In the third column, in the second complete paragraph, the second line should read, "allow any of the exclusions of existing".

f. In the same column, in the third paragraph, in the 11th line, "guarantee" should read "guarantees". In the same paragraph, in the fifth line from the end, "not" should read "no".

12. On page 2465, make the correction below:

a. In the first column, in the first complete paragraph, in the fifth line, "and" should read "or".

b. In the second column, in the second complete paragraph, in the first line, "regulations" should read "regulations".

c. In the same paragraph, in the second line from the top and the sixth line from the end, "primarily" should read "primary".

d. In the 3rd column, in the 10th line, "visibility" should read "viability".

13. On page 2467, in the first column, in the second complete paragraph, in the second line "enters" was misspelled.

§ 614.4000 [Corrected]

14. On page 2468, in the first column, in § 614.4000(e)(4), in the second line, "interests" should read "interest".

§ 614.4030 [Corrected]

15. On the same page, in the second column, in § 614.4030(c)(3), in the sixth line, "*only*", should read "only".

§ 614.4240 [Corrected]

16. On page 2469, in the second column, in § 614.4240(m)(1), in the third line, "interest" should read "interests".

§ 614.4245 [Corrected]

17. On the same page, in the third column, in § 614.4245(a)(4), in the eighth line, remove the comma after "loan".

§ 614.4260 [Corrected]

18. On page 2470. in the third column, in § 614.4260(b)(2), in the seventh line, "appraisers" should read "appraisals".

§ 614.4225 [Corrected]

19. On page 2472, in the first column, in § 614.4325, in paragraph (c)(2), third line, and in paragraph (c)(3), in the second line, "interest" should read "interests". In paragraph (c)(4), in the last line, "territory" was misspelled.

20. In the second column, in paragraph (g)(3), "commerce" should read "commence".

§ 614.4352 [Corrected]

21. On page 2474, in the first column, in § 614.4352, in the second line from the end, "capital" was misspelled.

§ 614.4359 [Corrected]

22. On page 2475, in the first column, in § 614.4359(b), in the sixth line, "leading" should read "lending".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Administration

Rural Health Outreach Grant Program

Correction

In notice document 91-2851 beginning on page 5012 in the issue of Thursday, February 7, 1991, make the following corrections:

1. On page 5012, in the third column, in the fourth line from the bottom, "amont" should read "among".

2. On page 5013, in the first column, in the fifth line from the bottom, "$3000" should read "$300".

BILLING CODE 1505-01-D

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Parts 1301 and 1304

Definition and Exemption of Affiliated Practioners

Correction

In proposed rule document 91-2262, beginning on page 4181, in the issue of Monday, February 4, 1991, make the following correction:

On page 4181, in the 3d column, in the 2d full paragrah, in the 11th line insert "not" after "does".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 151

[CGD 90-054]
RIN 2115-AD64

Pollution-Prevention Requirements of Annex V of MARPOL 73/78

Correction

In the issue of Tuesday, February 5, 1991, on page 4676, in the correction to proposed rule document 91-422 a portion of the text of correction number 2a was incorrect and is corrected as follows: a. Under **Discussion of Proposed Amendments**, in the fourth line "151.51" should read "§ § 151.51".

BILLING CODE 1505-01-D

federal register

Friday
February 15, 1991

Part II

Department of Agriculture

Animal and Plant Health Inspection Service

9 CFR Part 3

Animal Welfare; Standards; Final Rule

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 3

[Docket No. 90-218]

RIN: 0579-AA20

Animal Welfare; Standards

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations for the humane handling, care, treatment, and transportation of dogs and cats, and nonhuman primates, by a comprehensive revision and rewriting of those regulations. The effect of this action is 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 carry out the requirements of the amendments to the Animal Welfare Act (7 U.S.C. 2131, *et seq.*), enacted December 23, 1985. Rewriting the regulations also makes them easier to understand, thereby increasing compliance and making them more effective.

EFFECTIVE DATE: This final rule shall become effective March 18, 1991. Plans for providing exercise of dogs in § 3.8 and for promoting the psychological well-being of nonhuman primates in § 3.81 must be implemented by August 14, 1991.

FOR FURTHER INFORMATION CONTACT: Dr. R. L. Crawford, Director, Animal Care Staff, Regulatory Enforcement and Animal Care, APHIS, USDA, room 565, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7833.

SUPPLEMENTARY INFORMATION:

Background

This final rule revises the regulations contained in 9 CFR, part 3, subparts A and D. It is the result of an intensive effort that began in 1985 when Congress amended the Animal Welfare Act (7 U.S.C. *et seq.*) (the Act) in Public Law 99-198, "The Food Security Act of 1985," and directed the Secretary of Agriculture to promulgate certain new relations governing the humane handling, care, treatment, and transportation of animals by dealers, research facilities, and exhibitors, including requirements for exercise of dogs and a physical environment adequate to promote the psychological well-being of nonhuman primates. The final rule reflects the many years of experience of the Animal and Plant Health Inspection Service (APHIS), United States Department of Agriculture (the Department) in enforcing the Act and the Animal Welfare regulations (the regulations). We considered many thousands of public comments in deciding upon the content of the final rule. Our ongoing consultation with the United States Department of Health and Human Services (HHS), as well as other Federal agencies concerned with animal welfare, also contributed significantly to determining how best to fulfill our statutory mandate.

Due to the length and complexity of this document, it is broken down into general headings and specific subheadings where appropriate, to assist the reader. The supplementary information begins with a brief history of this rulemaking. Following that are our response to the comments we received regarding our August 15, 1990, revised proposal, and the changes we are making based on those comments and our ongoing consultation with HHS. Lastly, we address the concerns raised in the public comment letters regarding our economic assessments of the cost of implementing the proposed regulations.

General Background and Statutory Information

The regulations are contained in title 9 of the Code of Federal Regulations, chapter I, subchapter A, parts 1, 2, and 3. Part I 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 Act. Part 3 provides specifications for the humane handling, care, treatment, and transportation, by regulated entities, of animals covered by the Act. Subpart A of part 3 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 regulated under the Act. APHIS issues and enforces the regulations, 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 published revisions of parts 1 and 2, and a proposal and a revised 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.) The 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 to be made 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 HHS, with whom we continued our ongoing consultation. 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, due to the nature of the comments received in response to our proposed amendments regarding subparts A and D, and as a result of our ongoing consultations with other Federal agencies, we made certain major modifications to our March 15, 1989, proposal, and issued a revised proposal regarding those subparts on August 15, 1990 (55 FR 33448–33531, Docket No. 90–040).

We received a total of 11,932 comments in response to our revised proposal in time to be considered. Of the comments received, 509 were from dealers and exhibitors, 1,372 were from the research community, and 10,051 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 from the general public.

Comments raising objections or suggesting changes to the revised proposal are discussed below in this supplementary information. 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 August 15, 1990, proposal in this final rule. Those changes are explained in the supplementary information below. The remaining provisions of our proposal are necessary to ensure the health and well-being of the animals in question, and we have included these remaining provisions in this final rule, except to make certain nonsubstantive wording changes for clarification.

In our discussion of the comments received, we use the term "proposed" or "proposal" when referring to the August 15, 1990, revised proposal. We use the term "original proposal" when referring to the March 15, 1989 proposal. When referring to the regulations in 9 CFR part 3 prior to the effective date of this final rule, we refer to the "existing regulations."

General Comments

A large number of commenters expressed general support for the proposed provisions, and for more stringent regulations in general. A large number of commenters supported the proposed provisions that would establish requirements for increased space for animals. Many commenters also supported exercise for laboratory animals. A small number of commenters supported those provisions that they said would not interfere with research.

Conversely, very many commenters opposed the proposal in general. Many of these stated in general that the provisions that represented revisions to our March 15, 1989 proposal were unacceptable. A number of commenters stated generally that the proposal should be rewritten. A number of commenters expressed opposition to more stringent regulations. Many commenters recommended that no changes be made to the existing regulations. A number of commenters asserted that the proposed regulations go beyond ensuring the humane care and use of animals. Some of these commenters stated that the proposed standards exceed statutory authority and are inconsistent with Congressional intent. In this final rule, APHIS's statutory 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 Final Rule." Based on the statutory authority set forth, we believe ample authority exists for this rule.

A large number of commenters stated that the involvement of other Federal agencies in the rulemaking process is resulting in weaker animal welfare regulations. We do not agree that the regulations are being weakened. On the contrary, this final rule contains a significant number of provisions that are more stringent than those in the existing regulations. Additionally, two significant areas in the proposal—the exercise of dogs and the psychological well-being of nonhuman primates—are not in the existing regulations.

A number of commenters opposed in general what they considered the weakening of our original proposal in the revised proposal. We do not agree that the revised proposal represents a weakening of our original proposal. We gauge the strength of the animal welfare regulations by how well they effectuate the humane handling, care, treatment, and transportation of the animals in question. Our goal is to accomplish this end in the most reasonable and efficient way possible. We expect the provisions in this revised rule to attain the same ultimate goal as those in the proposed rule.

Many commenters stated that they favored more specific, rather than general standards. Of those favoring more specific standards, many expressed opposition to "performance standards," as contrasted with "engineering standards." Conversely, very many commenters stated that they were in favor of replacing engineering standards with performance standards. A small number of commenters asserted that including rigid engineering standards in the proposed regulations was 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 specificity, and would not allow the flexibility and innovations necessary for the optimal care and treatment of animals. Many commenters stated that rigid engineering standards are not suitable for regulating a wide range of facilities, interfere with professional judgment, rapidly become obsolete, and are not scientifically justified. In developing the proposed rule, we relied on our experience enforcing the regulations, on our scientific expertise, on information supplied by other Federal agencies, on research data regarding animal behavior, and on other information submitted by the public. Our goal was to establish regulations that would both promote the well-being of the animals in question and be enforceable. We did not consider it appropriate to couch all the proposed regulations either in the form of performance standards or engineering standards. In formulating the proposal, we attempted to identify those areas where variations in circumstances and animal behavior would make very specific standards less effective in promoting animal welfare than broader, goal-oriented standards. In those areas, we proposed to allow for flexibility in how the goal would be reached. In other areas, we determined that the needs of most of the animals housed, handled, or transported together were so similar that specific uniform standards were more appropriate, both for enforceability and for the well-being of the animals. Even in those areas, however, we recognized that in some cases the same specific requirements would not be appropriate for every animal involved. To accommodate these exceptions, we provided in many cases for professional discretion by the attending veterinarian. We believe that the provisions in this final rule represent

a practical and enforceable blend of performance and engineering standards.

Many commenters stated that Congressional intent regarding the Act was for APHIS to avoid the use of performance standards. These commenters referred to correspondence between certain members of Congress and the United States Office of Management and Budget, in which the members of Congress urged that specific standards be adopted. We are aware of the correspondence referred to, and do not agree that it fully represents Congressional intent. On the contrary, the Congressional Conference Report on the Fiscal Year 1991 Agricultural Appropriations Bill contains the following language: "The conferees expect the Animal and Plant Health Inspection Service to incorporate performance based standards into its regulations when such performance based standards would not interfere with the establishment of a minimal level of care or the enforceability of the Act as Congress intended." As discussed above, we have therefore incorporated performance based standards where we considered them appropriate.

A number of commenters stated that researchers do not have the expertise to assess performance standards. We do not share the commenters' concern. The standards set forth in the proposal clearly state the ends that must be achieved. The regulated facilities, and not any particular researchers, is responsible for achieving these ends. We are confident each facility has or has access to the professional expertise adequate to ensure compliance with the regulations.

One commenter stated that the National Institutes of Health (NIH) Guide for the Care and Use of Laboratory Animals (Guide) must not be used as a minimum regulatory standard. Several 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 Guide. Conversely, a large number of commenters stated that they concurred with coordination between certain provisions of the regulations and the NIH Guide. 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)). However, notwithstanding our obligation to consult, we are mindful that Congress has entrusted the Department with the responsibility for establishing minimum requirements to carry out the Act's purposes, and for administering the Act because of our expertise in animal welfare matters. In the entire proposal, several areas contained provisions that paralleled those in the NIH Guide. In those cases, in fulfilling our responsibility to set forth regulations providing for animal welfare, we were also able to set forth regulations that harmonized with the NIH Guide.

One commenter stated that the proposed rulemaking would radically alter established Public Health Service/NIH policies. We disagree. The Public Health Service issues their Guidelines independent of our statutory mandate. This rule concerns the implementation of the Animal Welfare Act, for which the Secretary of Agriculture is responsible. In developing the proposed rule, we carried out our statutory obligation to consult with HHS. The consultations we conducted with that Department were comprehensive and intensive. A representative from the National Institutes of Health worked closely with APHIS to provide the HHS position on all issues affecting the research community. Through this consultation, we achieved what we understand to be a mutually satisfactory document. Based on our ongoing communication with HHS, that it can be readily implemented by the research community.

A number of commenters stated that the proposal was not stringent enough to meet the intent of Congress. We disagree. The intent of Congress was to provide for the enhanced well-being of the animals covered under the Act, and in particular to provide for the exercise needs of dogs and to promote the psychological well-being of nonhuman primates. Congress has provided the Department the authority to develop regulations to promote animal welfare. We believe the standards in this final rule provide the flexibility to accommodate varying conditions and procedures, while still providing the opportunity for exercise of dogs and an environment to promote the psychological well-being of nonhuman primates. In certain cases, based on information supplied by the public, we have made modifications to our proposal to promote better the well-being of the animals covered by the Act and the regulations.

A 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. A number of 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. The proposal we published was the result of a Congressional mandate to establish standards to provide for the exercise of dogs and for the psychological well-being of nonhuman primates, as well as the result of changes to the regulations that we considered appropriate based on over 20 years of enforcing those regulations. As noted above, in 1989 we published an initial proposal to amend and expand the regulations. We invited public comment on that proposal, soliciting whatever scientific data was available. Based on the information we received, and on our ongoing consultation with other Federal agencies, we made a number of significant modifications to that initial proposal. The basis for these changes was discussed in the preamble of the revised proposal that we published August 15, 1990. In that revised proposal, we again invited research data and other public comment. We have carefully reviewed all of the data and other information submitted to us, and, based on that information, have made certain modifications in this final rule. The basis for these modifications is discussed in the supplementary information of this final rule.

A small number of commenters recommended that separate standards be established for research, dealer, and exhibitor facilities. As we discussed in our proposal, 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 are appropriate. The Act requires that we establish minimum standards for the humane care and well-being of animals. The fact that the standards we proposed are minimum assures that they will be adequate for 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 humane reasons and to ensure productivity and accuracy. As discussed in the proposal, we agree that humane treatment of animals used in research promotes 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, as was suggested by these commenters.

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. A small number of commenters stated that APHIS should not allow any exemptions from the regulations, even if approved by the Institutional Animal Care and Use Committee (Committee) at research facilities. We disagree. 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 research facilities with exceptions from the standards in part 3, when such exceptions are specified and justified in the proposal to conduct the activity. This provision is clearly set forth in part 2 of the regulations, and we do not agree, as one commenter recommended, that a similar provision is necessary as preface to part 3.

On the other hand, a number of commenters stated that APHIS exceeded statutory authority and Congressional intent by proposing regulations that interfere with research facilities' right to determine whether an activity is to be considered as a part of the performance of research. We disagree. These regulations are consistent with the Act's requirement that our regulations do not interfere with the design or performance of research.

One commenter asked that we clarify which provisions could be departed from if approved in a research protocol, and which need to be adhered to in every case. The Act is clear on this issue. No provision in the regulations is to interfere with research that is part of an approved protocol.

A large number of commenters addressed the issue of primary enclosure size. Of those discussing primary enclosures, many supported the areas where our proposed provisions coincided with the NIH Guide. Very many commenters supported in general larger cages for animals. Many commenters stated that the minimum space requirements set forth in the proposal were insufficient. Based both on our experience enforcing the regulations and on animal research, we disagree that the minimum space requirements we proposed are insufficient. In the case of each of the animals whose treatment is regulated under subparts A and D—cats, dogs, and nonhuman primates—the specific minimum space requirements are at least as stringent as those in the existing regulations. In the case of cats, we have increased the space requirements from the existing regulations. In the case of dogs, we have maintained the existing floor space requirements for most dogs, have increased the space requirements for certain dogs, and have added height requirements. In the case of nonhuman primates, we have set forth space requirements that in effect closely parallel those in the existing regulations, and that in certain cases exceed the requirements in the existing regulations. In all cases, notwithstanding the specific primary enclosure dimensions required by the proposal, the regulations would require that the animal be able to move in a normal manner.

Several commenters stated generally that the proposed regulations would unduly restrict the exercise of professional judgment by the attending veterinarian and other laboratory animal professionals. We recognize that under certain circumstances, specific uniform requirements will not be most effective in promoting the well-being of all animals involved. To accommodate such situations, we have, in many cases, provided for discretion on the part of the attending veterinarian. We therefore disagree with the commenters that the provisions of this final rule will unduly restrict professional judgment.

Many commenters stated generally that the proposed regulations would have an adverse effect on animal welfare. We disagree. The regulations set forth in this final rule include the addition of certain requirements for the well-being of animals, as mandated by Congress, and amendments to the existing regulations that we consider necessary to improve animal care. We consider this final rule to be an improvement over the existing regulations.

A large number of commenters expressed concern that the proposed regulations would be unenforceable, given the current number of inspectors employed by the Department. We are making no changes based on these comments. In developing the proposed regulations, we were cognizant of the demands they would make on Department personnel, and are confident that the proposed provisions are workable and enforceable. Beyond that, we believe that they are necessary to enable us to meet our Congressional mandate to promote and protect the well-being of the animals covered under the Act.

Many commenters stated more specifically that the Department would have difficulty enforcing the provisions regarding exercise requirements for dogs and the promotion of the psychological well-being of nonhuman primates. We disagree. Those particular areas of the regulations require facilities to develop plans for meeting the respective needs of dogs and/or nonhuman primates. In enforcing the regulations, an inspector will visually inspect the animals and the facility, and will review the required plans, as well as records of any exemptions for specific animals, to verify what he or she observes. Development of the plans will require involvement of the attending veterinarian, and in the case of research facilities, the Committee. We are confident that such professional involvement, combined with inspections by the Department, will be of greater benefit to the animals involved than rigid, across-the-board standards that do not take into account varying conditions and procedures.

One commenter stated that the attending veterinarian should have greater discretion in the formulation of animal care plans, and that all veterinarians should be board-certified. The regulations require that the attending veterinarian have knowledge of the species to be maintained at a facility. Additional requirements would be at the discretion of the facility.

One commenter stated that the regulations as proposed allow for too much "professional judgment" on the part of the attending veterinarian. The commenters questioned whether all veterinarians would have the integrity necessary to make sound professional judgments. Under the regulations, the attending veterinarian is responsible to the facility, which is responsible for compliance with the regulations. The facility is therefore dependent on the attending veterinarian's sound judgment to remain in compliance. Additionally, all decisions made by attending veterinarians will be subject to review by APHIS inspectors.

A large number of commenters stated that requirements for exercise of dogs and social interaction of primates must be spelled out clearly. We consider the requirements referred to be set forth clearly in our proposal. It is clear what ends are to be achieved. However, we

do not consider it in the best interests of individual animals, many with differing needs, to restrict all facilities to the same specific set of procedures in achieving those ends.

In certain provisions in the regulations, the standards allow for adherence to "generally accepted practices." A small number of commenters stated that this term is vague, and that inspectors will be unable to evaluate whether a facility is in compliance. We disagree. Department inspectors are professional veterinary medical officers or animal health technicians, and are well trained in, and able to evaluate what constitute, generally accepted practices. A number of commenters stated that customary and generally accepted practices were precisely what Congress was objecting to when it required that the regulations be amended. We disagree with the general statement that generally accepted practices are harmful to animals. We particularly disagree with the allegation that accepted professional veterinary practices are inadequate. Even in the absence of Federal regulations regarding animal care, the veterinary profession adheres to its own professional standards to ensure the well-being of the animals it attends to. The changes that Congress mandated in the 1985 amendments to the Act were for the most part additions, not amendments, to the existing regulations. These additions, specifically relating to exercise for dogs and the psychological well-being of non-human primates, have been included in the regulations in such a way as to allow for the diversity of needs among species, breeds, individual animals, and conditions. A more rigid, inflexible approach could actually prove injurious to the animals.

A large number of commenters stated that facilities need to be able to establish their own performance standards, so that a facility can ensure adequate animal care and can accommodate special institutional needs and circumstances. Conversely, a number of commenters stated that the Department is illegally delegating its statutory duty to issue regulations to those being regulated. We disagree that the Department is inappropriately delegating its authority. Through the regulations set forth in this final rule, we are establishing standards for the exercise of dogs and the psychological well-being of nonhuman primates. Under the regulations, facilities are authorized only to develop specific procedures for meeting the standards.

One commenter stated that any plans or standard operating procedures developed by a Committee to comply with the regulations should be required to be submitted for Department approval. Under the regulations, such plans will be subject to review by Department inspectors. We therefore do not consider it necessary to require their submission for approval prior to implementation.

The regulations as proposed provided in certain cases for written documentation by facilities of procedures and exemptions. A number of commenters questioned whether APHIS would retain copies of this documentation. The commenters expressed concern that if APHIS took possession of copies, that information would then be available to the public under the Freedom of Information Act. According to the commenters, this would both allow competitors access to information associated with research, and provide potential terrorists with information regarding facilities. As a general rule, the written documentation required by the regulations will be inspected by APHIS at the facility, and will not be copied or removed. However, APHIS will have the option of removing such documentation if removal is necessary to carry out enforcement procedures.

One commenter recommended that the general public and any veterinarian be permitted access to records of research facilities to assist APHIS in monitoring these sites for compliance. Under the Act, enforcement is restricted to Department employees, and may not be delegated to members of the public.

A number of commenters stated that the proposed regulations would burden research facilities with unnecessary paperwork. On the other hand, a large number of other commenters opposed the elimination in the revised proposal of any recordkeeping requirements that appeared in the original proposal. One commenter called for daily or weekly documentation by facilities of compliance with the regulations. A number of other commenters stated that the proposed standards for laboratory animals were carefully drawn to avoid unnecessary paperwork. Under the Paperwork Reduction Act, we are required to minimize the paperwork burden on the public, consistent with the proper performance of our responsibilities under the Act. Cognizant of this obligation, we developed the proposed regulations with the goal of reducing paperwork requirements as much as possible, while still retaining the ability to document adequately conditions for enforcement purposes. Eliminating documentation requirements entirely would in certain areas hinder our ability to carry out our mandate to promote and enforce the welfare of animals covered under the Act. The recordkeeping and reporting requirements in this final rule represent what we consider the minimum necessary to enable us to enforce the regulations adequately.

Some commenters 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.

A small number of commenters stated that the regulations should differentiate clearly between standards for transportation of shipped animals, and those traveling with passengers. With regard to carriers and intermediate handlers, the regulations specify that animals are covered by the regulations when "accepted" by those entities for transport. If these animals are in the possession of individuals in passenger areas, they are not subject to the regulations. Several commenters stated that the transportation standards should be clarified as to "transport in commerce" and "transport between buildings." We do not consider such a distinction necessary. Regulated animals must be handled in compliance with the standards at all times.

Several 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 will be minimized by the provisions in this final rule that allow for professional judgment as to the health and safety needs of individual animals, breeds, and species.

A small number of commenters stated that standards for temperature ranges should be as uniform as possible throughout the regulations to avoid confusion. In many areas in this final rule, based on information we received from the public, we have made changes to standardize allowable temperature ranges. These changes are discussed in the supplementary information of this final rule. One commenter recommended that all temperature and humidity

standards be deleted from the regulations, and be replaced with general performance standards. We disagree with the commenter with regard to temperature requirements. Although the needs and tolerances of individual animals allow for some variation in acceptable temperature levels, certain upper and lower limits exist that are applicable to animals in general. With regard to humidity, the regulations as proposed already provide for professional discretion in determining appropriate humidity levels.

A number of commenters stated that environmental and temperature standards for animals should be similar to human standards until comfort indices for various species can be established. We disagree with the commenters. Differences among species do not allow for accurate cross-species comparisons.

One commenter stated that allowing for flexibility or innovation, as provided in certain cases in the regulations, is inappropriate when dealing with minimum standards. We disagree. The regulations include minimum standards, as required by law. In allowing for flexibility and innovation, we are simply allowing regulated entities some latitude in determining how to satisfy those minimum requirements.

One commenter stated that the regulations would create an adversarial relationship between veterinarians and researchers. Several commenters stated that under the proposed regulations, the attending veterinarian and Committee would become an enforcement agent of APHIS, which is not authorized by the Act. One commenter opposed the involvement of the Committee in the approval of procedures, because, according to the commenter, this usurps management's role and exceeds APHIS's statutory authority. Under the regulations, the research facility is responsible for ensuring that the regulations are met. Under the regulations, the attending veterinarian and the Committee are to provide professional judgment to the facility. We do not consider this an adversarial relationship, nor do we consider it as delegating enforcement authority to either the attending veterinarian or the Committee.

A small number of commenters stated that many of the proposed provisions would be used to eliminate animals from biomedical research. As we discussed in our proposal, history does not support such an assertion. Concerns regarding the elimination of animals from research were raised in 1966 and 1967 when the Act was first enacted and regulations were promulgated to implement it. To the contrary, however, tremendous advances in human and animal health have been made possible through continued support for biomedical research. In enacting the 1985 amendments to the Act, Congress specifically found that the use of animals is instrumental in certain research and education (7 U.S.C. 2131(b)). We believe that the provisions of this rule will effectuate the intent of Congress without imposing an unnecessary, unreasonable, or unjustified financial burden.

Several commenters expressed concern that the proposed regulations would discourage young people from entering medical research fields. We disagree. We believe that greater concern for the humane care and use of animals may in fact encourage new scientists and foster greater support for biomedical research throughout our society.

One commenter 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.

Several commenters recommended that the proposed regulations include an index to allow easier retrieval of information. We do not believe it is necessary to include an index in the regulations. Each of the subparts designates the types of animals it covers. 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.

Several commenters requested that, in developing a final rule, the Department consider all comments received on previous proposed standards, as well as those received on our most recent proposal. We take seriously our responsibility under the Administrative Procedure Act to consider each comment timely received in response to proposed rulemaking. Accordingly, we have reviewed all such comments in the process of developing and modifying the rulemaking that is culminating in this final rule.

One commenter stated that all pet animal businesses should be covered by the regulations. The regulations in subparts A and D apply to those entities specified under the Act as being subject to its provisions. Under the Act, certain retail stores that sell pet animals are subject to the Act and the regulations. Other commenters stated that humane societies, animals rights organizations, and other special interest groups should be subject to the regulations. Such entities are not specified under the Act as being subject to its provisions, and therefore are not subject to the regulations unless they also act as dealers, exhibitors, research facilities, intermediate handlers, or carriers.

Several commenters stated either that the proposed regulations were written in a manner not understandable by the general public, thereby making comments on them difficult, if not impossible, or that the regulations should be reformatted or rewritten to improve their clarity. 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.

Effective Dates

A large number of commenters addressed the issue of when the regulations should become effective. Several commenters expressed the opinion that the Department is obligated to make the amended regulations effective upon publication of this final rule. One commenter stated that the Department has already exceeded the time during which it was legally obligated to establish new regulations. Many more commenters called for a delay in the effective date, in order to allow time for adequate planning and financing. The commenters requesting a delay recommended that the regulations, particularly those provisions regarding minimum space requirements, become effective from 1 to 5 years after publication. A small number of commenters requested that primary enclosure space requirements be "grandfathered" in, to allow use of existing primary enclosures that are not in compliance with the new standards, until those enclosures would otherwise need replacement.

We disagree that the Department has illegally delayed publication of this final rule. On the contrary, the Department has diligently pursued the promulgation of these regulations with as much speed as their complexity allows. We are

keenly aware of the economic impact these amended regulations will have on regulated entities. However, we are obligated to establish standards to promote the well-being of the animals protected by the Act, notwithstanding the fact that expenses will be incurred by regulated facilities in complying with the regulations. We are also aware of our obligation under Executive Order 12291 to minimize the economic impact of these rules on affected entities. In recognition of this responsibility, and of the practical delays that will necessarily be associated with complying with certain of the new requirements, we are providing that the facility plans for providing exercise of dogs, and for promoting the psychological well-being of nonhuman primates, must be developed and implemented within 180 days of the publication date of this final rule.

Many commenters pointed out that several of the new requirements would require affected facilities to make extensive structurally related changes in order to be able to comply with the new regulations. We believe those comments are well-founded and, therefore, in order to allow affected facilities the time necessary to make such changes, we are providing in this rule that regulated persons have until February 15, 1994, to comply with a few, specific provisions. These provisions appear in this rule in the following places:

1. Section 3.6(b)(1)(ii)(A) through § 3.6(b)(1)(ii)(C) (redesignated from § 3.6(b)(1)(i) through § 3.6(b)(1)(iii) in the proposed rule), regarding minimum space requirements for primary enclosures containing cats;
2. Section 3.6(c)(1)(iii), regarding height requirements for primary enclosures containing dogs;
3. Section 3.6(c)(2)(ii) (redesignated from § 3.6(c)(2) in the proposed rule), regarding perimeter fences surrounding dogs kept on tethers;
4. Section 3.77(f), regarding perimeter fences surrounding nonhuman primates housed at sheltered housing facilities;
5. Section 3.78(d), regarding perimeter fences surrounding nonhuman primates housed at outdoor housing facilities; and
6. Section 3.80(b)(2)(i) through § 3.80(b)(2)(iv) (redesignated from § 3.80(b)(1), § 3.80(b)(2), § 3.80(b)(4), and § 3.80(b)(5), respectively, in the proposed rule), regarding minimum space requirements for primary enclosures containing nonhuman primates.

Because this new rule replaces the current standards, we are providing in this rule that, where standards currently exist with regard to the provisions listed above, those existing standards must be complied with during the period prior to February 15, 1994. This will enable us to maintain the standards necessary for the well-being of those animals whose care will be affected by the need for structural changes. Although we are providing additional time to comply with those new standards that require extensive structural changes, it is nevertheless our intent to encourage facilities to make those changes and come into compliance with the new standards as soon as possible.

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 regulations, as discussed in this final rule, apply only to live dogs and cats. In our August 15, 1990, proposal, we proposed to revise and rewrite the existing 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 1752, 99 Stat. 1645, Pub. L. 99-198, amending section 13 of the Act). We discuss below each topic covered in our proposal.

Several commenters recommended that adequate provisions for exercise and socialization be provided for cats as well as dogs. As we discussed in our proposal, 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. However, the Act does not specifically require that we establish exercise requirements for cats, and based on the information we have reviewed, we do not feel it is necessary or appropriate to require exercise and socialization for cats.

Housing Facilities and Operating Standards

Existing §§ 3.1 through 3.3 provide requirements for facilities used to house dogs and cats. Existing § 3.1, "Facilities, general," contains regulations pertaining to housing facilities of any kind. It is followed by existing § 3.2, "Facilities, indoor," and § 3.3, "Facilities, outdoor." In our 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 existing 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 existing § 3.1. Additionally, we proposed amendments to the existing 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 existing regulations would have been unchanged in substance, we made wording changes to clarify the intent of the regulations.

Several commenters recommended that we require that housing facilities comply with Federal, State, and local laws and regulations relating to housing facilities for dogs and cats, so as to allow uniform enforcement by various jurisdictions. We are making no changes based on these comments. We are authorized under the Act to establish minimum standards for animal welfare. This mandate is different than those under other Federal, State, and local laws.

One commenter requested that we combine the provisions regarding sheltered housing facilities and outdoor housing facilities to avoid confusion over which is which. As defined in part 1 of the regulations, sheltered and outdoor housing facilities are two distinct types of facilities. Because of the differences between the two, we consider separate regulations necessary for each.

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 small number of commenters specifically supported these provisions as written. A large 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. Others were concerned that, even if the facility made reasonable efforts to prevent the entry of unauthorized humans, the facility would still be liable for the entry of trespassing individuals. Because, unlike nonhuman predators and pests, it may be virtually impossible to prevent the unauthorized entry of humans, it will not be a violation of these regulations for facilities to fail to prevent such entry. In this final rule, we are therefore removing the requirement, as proposed in §§ 3.1 (a) and (b), that facilities restrict the entry of unauthorized humans.

A small number of commenters stated that the provision that facilities restrict the entry of other animals was unnecessarily stringent. One commenter stated that reasonable efforts to comply with this provision should be sufficient. Others requested clarification of the definition of "other animals." We continue to believe that the provision is adequate as written. Unlike the forced entry of unauthorized humans, entry by other animals can be prevented by structural safeguards. Our implicit intent in requiring that other animals be restricted from entering the facility was to bar the entry of animals that could be detrimental to the health and well-being of the animals housed at the facility.

One commenter recommended that facilities be required only to reasonably protect animals from injury. We are making no changes based on this comment. We do not consider it unreasonable to require facilities registered or licensed under the Act to ensure the well-being of the animals in their custody.

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 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.

One commenter specifically supported these provisions as written. Several commenters recommended that we require that all holding facilities and broker operations be operated in a building separate from the owner's dwelling or living quarters, with the exception of administrative offices. We do not consider the location of a licensee's dwelling relevant to the welfare of the animals housed in a facility, and therefore are making no changes based on this comment.

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 other 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, but could contain materials actually used and necessary for cleaning the area, and fixtures or equipment necessary for proper husbandry practices and research needs.

A small number of commenters took issue with these proposed provisions. One commenter stated that weeds are not necessarily detrimental to the welfare of animals. Others recommended that we prohibit the conditions described only when they might negatively affect the health and welfare of the animals, or that we reword the proposed provision for clarity. We are making no changes based on these comments. While weeds themselves may not be detrimental, they interfere with such necessary practices as cleaning and rodent control. We continue to believe that the wording as proposed is necessary and enforceable.

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. We proposed to allow rust on metal surfaces, as long as it is not excessive and does not reduce structural strength or interfere with proper cleaning and sanitization.

We proposed 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.

A small number of commenters specifically supported these provisions as written. One commenter expressed the opinion that the provisions in proposed § 3.1(c)(1) were redundant with the requirements in proposed § 3.10. We disagree. The requirements in proposed § 3.1(c)(1) are structural requirements for housing facilities. The provisions in proposed § 3.10 pertain to cleaning and sanitization.

One commenter stated that rusted areas cannot be adequately sanitized, and that rust affects structural strength and creates harmful runoff, and therefore should be prohibited. Based on our experience enforcing the regulations, we have not found superficial rust to be a problem with regard to either structural strength or sanitization. We are therefore making no changes based on this comment.

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 spot-cleaned daily and sanitized at least every 2 weeks. Proposed § 3.10(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, absorbent bedding, sand, gravel, grass, or other similar material would have to be raked or spot-cleaned with sufficient frequency to ensure all animals the freedom to avoid contact with excreta. This flooring material would have to be replaced if the raking and spot-cleaning were not sufficient to prevent or eliminate odors, pests, insects, or vermin infestation. We proposed that all other surfaces would have to be cleaned and sanitized when necessary to satisfy generally accepted professional and husbandry practices.

A small number of commenters stated that dogs or cats in large open runs may not need to have those areas cleaned daily. The regulations as proposed require only daily spot-cleaning of hard surfaces with which the dogs and cats come into contact. We consider such a requirement both practicable and necessary and are making no changes based on the comments.

One commenter opposed the use of floors such as dirt, sand, and gravel, stating that such materials cannot be adequately sanitized. We are making no changes based on these comments. While it is sometimes difficult to use standard sanitization procedures on such surfaces, it is relatively simple to replace specific areas as needed. Several commenters objected to the use of gravel surfaces on the grounds that the use of such material was inhumane. Section 3.1(a) of this final rule requires that housing facilities must protect the animals there from injury. In any cases where the use of gravel is shown to be causing injury, it is prohibited under § 3.1(a).

Several commenters stated that sanitization should be required either daily or weekly. The provisions as proposed stated that sanitization must be carried out at least every two weeks, and more often if necessary to prevent an accumulation of dirt, debris, food waste, excreta, and other disease hazards. Based on our experience enforcing the regulations, we consider such provisions adequate for proper sanitization.

The regulations as proposed required cleaning to prevent any accumulation of excreta. Many commenters stated that it would be impossible to prevent all accumulation of excreta, and recommended that we delete the word "any" before the word "accumulation." We consider the commenters' point a valid one and are making the recommended change.

One commenter requested that we define "hard surfaces." We consider the term self-explanatory and are making no changes based on the comment.

Facilities: Water and Electric Power—Section 3.1(d)

In the existing 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 potable running water for the dogs' and cats' drinking needs, for cleaning, and for carrying out other husbandry requirements.

A small number of commenters supported the proposed provisions as written. 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. Because methods of sanitation exist that do not require hot water, we disagree that hot water is a necessity for adequate maintenance of a housing facility. However, we do consider it necessary to require that all water provided 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.

Housing Facilities: Storage—Section 3.1(e)

We proposed in § 3.1(e) to expand the regulations in existing § 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. 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 open supplies of food and bedding would have to be stored in leakproof containers with tightly fitting lids to protect the supplies from spoilage and contamination. 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 food requiring refrigeration be stored accordingly, and 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 food storage and preparation areas, but could be stored in cabinets in the animal areas.

A small number of commenters supported the proposed provisions as written. A small number of commenters stated that storage of food and bedding near walls should be permissible. We continue to 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.

Several commenters recommended that we require that food be stored in accordance with either manufacturer's recommendations, generally accepted practice, or human food service guidelines. We consider the intent of the commenters' recommendations to be met by the proposed requirement that all food be stored in a manner that prevents contamination and deterioration of its nutritive value.

A small number of commenters recommended that the regulations be less specific than proposed regarding where toxic substances may be stored, and require only that known toxic substances be stored in a manner so as to prevent accidental contamination of food products and contact with dogs and cats. We continue to believe that the well-being of the animals requires that no toxic substances be stored in food storage and preparation areas, and are retaining that provision in this final rule. Further, we continue to believe that because of the danger of toxicity to the animals housed, it is necessary to require that toxic substances stored in animal areas be kept in cabinets. We are therefore making no changes based on the comments.

One commenter stated that if toxic materials are stored in animal areas, it should be required that appropriate materials for cleaning up a spill be available. We do not consider such a requirement necessary. Provisions exist elsewhere in the regulations to ensure that the facility is maintained in such a way as to prevent injury to the animals. It will be incumbent upon the facility to ensure that they have the proper materials to comply with these provisions. In setting forth our proposal, our intent was to limit the toxic materials that may be housed in animal

areas to those required for normal husbandry practices. We are therefore adding wording to § 3.1(e) to clarify that intent.

One commenter stated that facilities should be allowed to adopt their own strategies for storing feed and chemicals, because the cost of providing additional storage space would be considerable. We consider the storage requirements proposed to be the minimum necessary, and to be in accordance with generally accepted husbandry and feed storage practices. We are therefore making no changes based on the comment.

Several commenters stated that instead of requiring that open supplies of food and bedding be stored in leakproof containers, the regulations should require that such supplies be stored in containers that will prevent contamination and spoilage. Based on our experience enforcing the regulations, we consider leakproof containers necessary to prevent contamination and spoilage, and are therefore making no changes 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 existing § 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 regular and frequent collection, removal, and disposal of wastes, in a manner that minimizes contamination and disease risk. We also proposed to require that trash containers be leakproof and be tightly closed, and that no forms of animal waste, including dead animals, be kept in food and animal areas.

Requirements for drainage are contained in existing §§ 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 existing §§ 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. Existing § 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 the backflow of odors and the backup 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 also proposed to require that disposal and drainage systems 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 standing 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 interpreted our provisions regarding the prevention of odor and sewage as a requirement that closed drainage systems include backflow valves. Many commenters stated that installing such valves would be prohibitively expensive. The use of backflow valves was not specifically required in the proposed regulations. The provisions in question called for essentially the same standards as those already required under the existing regulations. We therefore do not expect facilities to experience significant practical or financial difficulties in meeting the standards.

A small number of commenters asserted that adequate provision to preclude direct contact of animals with sewage or other wastes was included in § 3.10 of the proposal. We do not agree. Section 3.10 as proposed addresses cleaning, sanitization and housekeeping, but does not directly address drainage requirements.

One commenter recommended that we change the proposed requirement that animal waste and water be rapidly eliminated and that the animals be kept dry to read only that animal waste and water be adequately eliminated. We continue to believe that the wording of the proposal adequately conveys the intent of the proposed standard and are making no changes based on the comment.

A number of commenters recommended that we eliminate the proposed requirement that standing puddles of water in animal enclosures be drained or mopped up. These commenters stated that no evidence exists that dogs exercised in the rain suffer any deleterious effects. We do not consider pet animals being exercised in the rain by their owners to be parallel with animals housed within a facility. Because of the confined nature of such facilities, we consider the provision as proposed necessary to decrease the likelihood of contamination of the animals.

A number of commenters recommended that the regulations require that waste be removed from within the facility daily. One commenter recommended that such removal should occur twice daily. As proposed, removal of wastes must take place on a regular and frequent basis. We continue to believe that such a requirement will adequately protect the well-being of the animals, and are making no changes to that provision.

A number of commenters opposed the proposed requirement that trash containers have lids. We are making no changes based on these comments. We consider the covering of trash containers as necessary to control insects and odors. Under these regulations, the use of lids is required only in animal areas and food storage and preparation areas, not in office areas.

A number of commenters addressed the issue of sump ponds. A small number of commenters recommended that open sump ponds be prohibited. Several commenters recommended that the regulations include a specific minimum distance from research facilities that sump ponds may be located. As we stated in our proposal, 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 this rule addresses these variables adequately and we are making no changes based on the comments.

A small number of commenters recommended that we add to our provisions regarding sump or settlement ponds the requirement that they be located far enough away from the facility to prevent the spread of diseases through the sewage system to the animal area. We are not aware of disease spread in such a manner having been a problem to date and are therefore making no changes based on these comments.

Several commenters stated that the wording we used to restrict storage of dead animals, animal parts, and animal waste was repetitive. We consider the wording used for the provision in question necessary for proper enforcement, and are making no changes based on the comments. One commenter stated that the prohibition of the storage of animal parts in food areas should not preclude storing canned food in refrigerators along with blood/serum samples. We are making no changes based on this comment. We believe that the danger of contamination of foodstuffs by animal parts can be significant, and that a general prohibition on commingling the two is necessary on a practical level for proper enforcement.

Housing Facilities: Washrooms and Sinks—Section 3.1(g)

In proposed § 3.1(g), we proposed to retain the requirement in existing § 3.1(e) that washing facilities be available to animal caretakers for their own cleanliness, and to include it in proposed § 3.1(g). As proposed, facilities would be required to provide readily accessible washrooms, basins, sinks, or showers for animal caretakers. A small number of commenters recommended that showers be required. Conversely, several commenters expressed concern whether facilities with showers alone would meet the regulations. We are making no changes based on these comments. While we agree that showers can constitute adequate washing facilities, we do not consider them the only appropriate method of ensuring employee hygiene.

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 sufficiently heated and cooled when necessary to protect the dogs and cats from temperature extremes and to provide for their health and well-being. 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 existing 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 or cats not acclimated to lower temperatures. Because some dogs cannot be acclimated to lower temperatures, we also proposed 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 exceptions to the 50 °F (10 °C) minimum could be made upon approval of the attending veterinarian, and that the minimum temperature for all other dogs and cats would be 35 °F (1.7 °C).

In the existing 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. A number of commenters recommended specific temperature ranges that were more stringent than those included in our proposal. A 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. Although the regulations as proposed provide the attending veterinarian some latitude in deciding whether unacclimated dogs and cats may be exposed to temperatures lower than an otherwise specified limit, we do not believe that the needs of the animals housed vary so widely as to warrant removing all temperature limits.

A number of commenters stated that the 35 °F and 95 °F limits we proposed were too lenient. On the other hand, a large number of commenters stated that the limits we proposed did not adequately take into account acclimated animals that can tolerate temperatures outside those limits. Upon review of the comments, we consider both viewpoints to have some merit. While the limits we proposed may become intolerable to certain animals at the extremes, we agree that animals can become acclimated to temperatures outside those limits. Therefore, in this final rule, we are establishing general temperature limits more stringent than those proposed, while at the same time allowing flexibility to accommodate animals that can tolerate temperatures outside those limits. We are providing in this final rule that the ambient temperature in the enclosed facilities must not fall below 45 °F (7.2 °C) for more than 4 consecutive hours when dogs or cats are present, and must not rise above 85 °F (29.5 °C) for more than 4 consecutive hours when dogs or cats are present.

A small number of commenters recommended that the regulations require that alternative surfaces that allow the dogs and cats to avoid 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 other times. Upon review of the comments, we agree that in order for certain dogs and cats to tolerate cold temperatures, they must be able to conserve their body heat. To allow for such conservation of body heat, we are including in this final rule the requirement that enclosed housing facilities provide dry bedding, solid resting boards, or other methods of conserving body heat when temperatures are below 50 °F (10 °C).

Many commenters stated that short-haired breeds should not be limited to a 50 °F (10 °C) minimum temperature, because some short-haired breeds are what the commenters termed "winter hardy." We are making no changes based on these comments. Although we consider 50 °F a necessary minimum for the well-being of most short-haired breeds, the regulations as proposed provided the attending veterinarian the professional discretion to make exceptions where appropriate. A small number of commenters objected to the

allowance of such exceptions. We continue to believe that the professional education and experience of the attending veterinarian enables him or her to make a professional judgment based on the condition of the animal and the circumstances involved, and that such flexibility is necessary to accommodate differences in individual animals and situations.

One commenter stated that setting minimum and maximum temperatures alone is not sound, and that standards should be written that take into account temperatures, humidity, air velocity, and acclimation requirements for breeds and species. To the best of our knowledge, the comprehensive information described by the commenter does not exist. Based on the information available to us, and on our experience enforcing the regulations, we consider the temperature limits we have set as minimum standards for the health and well-being of the animals in question.

Several commenters, addressing the temperature requirements for sheltered housing facilities, questioned whether the outdoor portion of sheltered housing facilities must be closed off when the temperature falls outside the allowable range for the enclosed portion of the facility. Several commenters also requested that the regulations clarify that sheltered housing facilities are not required to control the temperature of the outside portion of those facilities. We believe that common sense dictates that the outdoor portion of sheltered housing facilities cannot be heated, and that no further clarification is necessary in the regulations. In a sheltered facility, the enclosed area must be available to the animals at all times. There is therefore no reason to restrict the animals from exiting to the outdoor portion if they choose.

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 existing 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 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 odors, drafts, ammonia levels, and moisture condensation in these housing facilities; (2) that ventilation in mobile or traveling facilities must minimize exhaust fumes; and (3) that in indoor housing facilities and the sheltered part of sheltered housing facilities, the relative humidity must be maintained at a level that ensures the health and well-being of the dogs or cats housed in the facility, in accordance with the directions of the attending veterinarian and generally accepted professional and husbandry practices.

A small number of commenters specifically supported the ventilation requirements in the proposed rule. A small number of commenters recommended that it be required that the relative humidity in indoor facilities be maintained between 30 and 70 percent. Others recommended in general that specific ventilation standards be established to eliminate disagreements between inspectors and facilities. We are making no changes based on these comments. The effect on animals of a particular level of humidity depends to a great degree on other factors, such as temperature and ventilation. We therefore consider it appropriate as proposed to allow professional discretion regarding exact humidity levels.

A small number of commenters stated that it is unnecessary to require as proposed that auxiliary ventilation be used at temperatures equaling or exceeding 85 °F (29.5 °C), because the regulations as proposed require in general that facilities be sufficiently ventilated to provide for dogs' and cats' health and well-being. While we agree that the requirement for auxiliary ventilation at higher temperatures falls under the general requirement for adequate ventilation, we continue to believe that it serves a specific and necessary purpose. Based on our experience enforcing the regulations, achieving adequate ventilation at moderate temperatures can be accomplished through various means, such as either natural or mechanical ventilation. However, at higher temperatures, auxiliary ventilation becomes necessary on a uniform basis in ensuring the health and well-being of the animals. We are therefore making no changes based on the comments.

A number of commenters opposed the requirement for auxiliary ventilation at 85 °F in cases where animals are acclimated to such conditions. We are making no changes based on these comments. Because an animal is acclimated to high temperatures under one set of conditions does not ensure that it can tolerate those same temperatures under all conditions. It is the combination of temperature, humidity, and ventilation, along with whether an area is open or enclosed, that determines whether conditions are tolerable. Because the effect of a high temperature is heightened in a confined space, we consider it necessary that auxiliary ventilation be provided for all dogs and cats housed in enclosed areas when the temperature reaches or exceeds 85 °F.

A small number of commenters stated that the regulations should require that auxiliary ventilation be used in mobile or traveling housing facilities when the ambient temperature reaches 75 °F. The commenters' recommendations were not supported by additional data as to why the change from our proposal would be necessary, and we are making no changes based on this comment.

One commenter expressed concern that determining what constitutes excessive odor will involve a subjective evaluation. The requirement that odors be minimized is included in the existing regulations. While we agree that it does not lend itself to precise measurement, we consider the word "minimize" to be sufficiently measurable for enforcement purposes.

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 existing regulations that indoor housing facilities have ample light to permit routine cleaning and inspection, and proposed also that it must allow observation of the dogs and cats. We proposed to apply these requirements 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 according to a regular diurnal lighting cycle, and that sufficient light be provided to aid in maintaining good housekeeping practices, adequate cleaning, adequate inspection of animals, and for the well-being of the animals. Also, in our proposal, we retained the requirement in the existing 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.

A small number of commenters specifically supported the lighting requirements as proposed. Several commenters responded to the statement we originally made in the supplementary information of our original proposal that an example of excessive lighting might involve an animal housed in the top cage of a stack of cages near a light fixture. The commenters stated that there is no

evidence that dogs and cats are harmed by the level of light generated by artificial sources when housed in top cages. We recognize that not all animals housed in top cages are exposed to excessive light, and have included no standards in the regulations specifically addressing such housing. As we explained in our revised proposal, and as we continue to believe, the example we provided involves just one of a variety of situations that could constitute excessive light.

A number of commenters objected to the proposed requirement for lighting on a regular diurnal cycle, and recommended instead that the regulations require a specific number of hours of light or darkness each day. Upon review of the comments, we continue to believe that it would not be beneficial in all cases to establish one specific timetable for lighting. Such a specific timetable might not be necessary or warranted in all cases, and might not coincide with normal outdoor lighting cycles at a particular time of year. The wording as proposed is designed to allow for professional discretion regarding lighting appropriate to varying situations.

A number of commenters objected to the provision in our proposal that light in enclosed housing facilities be uniformly diffused. One commenter stated that the uniform diffusion of light in a facility is technically impossible. The requirement in our proposal for the uniform diffusion of light is very similar to the requirement in the existing regulations for "uniformly distributed illumination." Our intent in retaining the requirement for uniform lighting was to allow for proper cleaning, observation of animals, and inspection, without the need for an additional light source, such as a flashlight. We consider this standard to be both necessary and attainable.

One commenter stated that the lighting standards were only minimal. As we discussed in our revised proposal, 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 consider the standards in this final rule adequate to meet their purpose.

In our proposal, the lighting requirements for mobile or traveling housing facilities did not contain a prohibition of excessive lighting. One commenter stated that such a prohibition should be included. Because of the nature of mobile and traveling housing facilities, and the electrical and lighting systems present in such facilities, we have not found excessive lighting there to be a problem. We are therefore making no changes based on the comment.

Specific Provisions for Indoor Housing Facilities—Section 3.2(d)

Section 3.2(d) of the existing 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. Several commenters stated that ceilings should always be impervious to moisture, and recommended that we delete the provision that they may be 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.

A small number of commenters recommended that the proposed provisions regarding ceilings be changed to require that the ceiling be kept clean and dry. We consider the proposed wording adequate to convey this intent and are making no changes based on these comments.

One commenter stated that the requirement for impervious or replaceable ceilings discriminates against research facilities, because ceilings are not addressed with regard to mobile, outdoor, and sheltered facilities. The requirement for impervious or replaceable ceilings has nothing to do with the purpose of a facility. As we explained in our proposal, we consider the more stringent requirement necessary for indoor facilities 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 objected to our proposed requirement that certain areas of indoor facilities be impervious to moisture, and recommended instead that the proposal call for surfaces that are either moisture retardant or repellant. Some of these commenters stated that surfaces impervious to moisture might not allow for secure footing. We are making no changes based on these comments. We do not agree that because a surface is impervious to moisture implies that it causes insecure footing. We also do not consider moisture-retardant surfaces adequate to achieve the necessary end, which is prevention of the absorption of fluids and wastes. The intent of the provision was to facilitate cleaning and sanitation and to decrease odors and disease hazards. We continue to consider impervious surfaces in indoor facilities necessary to achieve these ends.

Specific Provisions for Sheltered Housing Facilities—Sections 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 to protect their health and well-being.

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, absorbent bedding, sand, gravel, or grass.

A small number of commenters specifically supported the provisions regarding sheltered housing facilities as written. Several commenters, in referring to shelter at sheltered housing facilities, recommended specific protection from heat for traditional dog houses. In general, we do not expect the use of traditional dog houses in sheltered housing facilities and are making no changes based on these comments.

One commenter requested that we define "adequate shelter." We consider

the meaning of "adequate shelter" to be clear in § 3.3 as proposed and are making no changes based on this comment.

A small number of commenters recommended that we reword our proposed requirements regarding shelter to make it clear that the sheltered housing facility must be large enough to provide all the animals present with shelter from the elements at the same time. We agree that it would be beneficial for the animals involved to clarify that shelter must accommodate all animals comfortably. We are therefore adding wording to § 3.3(d) as proposed to require that the shelter structures must be large enough to allow each animal to sit, stand, and lie in a normal manner and to turn about freely.

One commenter stated that the provisions regarding exposure to direct sun should include a specific duration of such exposure. The intent of those provisions was that the floor areas in question must be exposed to sunlight at some time during the day. Based on that intent, we do not consider it necessary to specify a duration of sunlight.

One commenter stated that outdoor floor areas should not be restricted solely to those materials listed in § 3.3(e)(2) (compacted earth, absorbent bedding, sand, gravel, or grass). The proposed regulations as written do not restrict outside areas to the surfaces listed in § 3.3(e)(2). Examples of alternative surfaces are provided in § 3.3(e)(1)(ii).

Specific Provisions for Outdoor Housing Facilities—Section 3.4

The intent of § 3.3 of the existing regulations is to provide adequate standards for the care of animals housed outdoors. However, our inspections of dealers' and exhibitors' facilities in climates with 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 consider it necessary to make the regulations 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 existing requirements for outdoor facilities, to make them more clearly defined and more stringent.

Because outdoor facilities cannot be temperature-controlled, 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, unless specifically approved by the attending veterinarian, 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 when the ambient temperature is 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 existing regulations should be expanded to specify what is necessary for better and more humane treatment of the dogs and cats. In essence, the existing 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 one or more shelter structures that are accessible to all animals in the facility, and that are 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(b) 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; (4) contain clean, dry, bedding material; and (5) include a roof, four sides, and a floor. We also proposed in § 3.4(b) that in addition to the shelter structure, there would have to be one or more separate outside areas of shade provided, large enough to contain all the animals at one time and to protect them from the direct rays of the sun.

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, cars, 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, absorbent bedding, sand, gravel, or grass, but would have to be kept clean.

A small number of commenters specifically supported the provisions regarding outdoor housing facilities as written.

A small number of commenters objected to the 35 °F minimum for dogs and cats at outdoor housing facilities, when the acclimation status of those animals is unknown. One of these commenters stated that the proposed 35 °F minimum was inconsistent with the 50 °F proposed minimum in indoor and sheltered housing facilities for dogs not acclimated to lower temperatures. We agree that temperatures below 50 °F can be just as hazardous to unacclimated animals at outdoor facilities as at indoor and sheltered housing facilities, and are therefore providing in this final rule that dogs and cats whose acclimation status is unknown must not be kept in outdoor facilities when the ambient temperature is less than 50 °F (10 °C).

A small number of commenters stated that the minimum temperature for dogs and cats of unknown acclimation status should be removed, and responsibility for such decisions left to the attending veterinarian. We do not agree that the attending veterinarian can make a valid decision regarding an animal's tolerance without knowing its acclimation status and are making no changes based on these comments.

Many commenters recommended that we delete short-haired breeds in cold climates as an example of dogs or cats that must not be housed in outdoor facilities. We are making no changes based on these comments. Most short-haired breeds cannot tolerate cold temperatures. In those cases where individual animals or breeds can tolerate cold temperatures, the regulations as proposed allow for professional discretion on the part of the attending veterinarian.

A small number of commenters objected to the proposed regulations which allow the attending veterinarian to grant exceptions to the general prohibition on housing certain dogs and cats outside. We continue to believe that differences in animals and varying situations make it necessary to allow for professional judgment in certain cases. We also continue to believe that the attending veterinarian is the individual best qualified to exercise this judgment.

A small number of commenters stated that specific standards for what constitutes "acclimation" should be included in the regulations. We consider the term "acclimation" to be adequately

defined by normal usage, and do not consider it necessary to define the term further. One commenter recommended that we delineate more specifically which dogs and cats may not be housed outdoors. We consider the provisions as proposed to be clear as written and are making no changes based on this comment. One commenter stated that the terms "sick," "infirm," "aged," and "young" should be defined. We expect the attending veterinarian to exercise professional judgment regarding these terms, and do not agree that specific definitions beyond those which are commonly understood are necessary or desirable.

One commenter stated that the wind chill factor must be considered in the outdoor housing of dogs and cats. We agree, and consider this factor to be addressed in § 3.4(b) as proposed, regarding shelter from the elements.

A number of commenters addressed the provisions in proposed § 3.4(b), regarding shelter from the elements at outdoor housing facilities. Several commenters recommended that a maximum of six dogs be allowed per shelter. We do not consider such a limit necessary. Proposed § 3.6 of the regulations allows for a maximum of 12 nonconditioned dogs per primary enclosure. We see no reason to set a limit on conditioned animals, provided the space and compatibility requirements otherwise required by the regulations are met.

Several commenters requested definitions of "wind break" and "rain break." We believe these terms are self-explanatory and need no further clarification.

A small number of commenters stated that the shelters at outdoor housing facilities should be required to be maintained at indoor temperature ranges. We do not consider such a requirement practical; nor do we consider it necessary in light of the other specific requirements designed to ensure the health and well-being of animals kept at outdoor housing facilities.

A small number of commenters addressed the issue of bedding material at outdoor housing facilities, as required by proposed § 3.4(b)(4). Approximately half of these commenters opposed the requirement for bedding, stating either that group-housed dogs create their own heat, or that bedding materials can serve as fomites for potential disease problems. Conversely, one commenter stated that clean, dry bedding should be required at all times to prevent sores. Another commenter requested that the regulations specify the amount of additional bedding needed at cold temperatures, so that compliance can be verified. We do not agree that the requirement for bedding should be eliminated. We do not consider it advisable to depend on group-housing of dogs to provide adequate warmth at outdoor facilities. Nor do we believe that potential disease hazards from bedding that is improperly cared for should preclude the requirement for bedding material. We also do not consider it practical or necessary to specify exactly how much bedding should be provided. Such a decision should be based on professional judgment regarding species, breed, and prevailing conditions. With regard to requiring bedding to prevent sores, § 3.1(a) of the standards requires that housing facilities protect animals from injury. If the animals in a facility are suffering from sores, then the facility must take measures to come back into compliance with the regulations. Although the use of bedding is one possible solution, we do not consider it necessary to impose a uniform requirement for bedding in all cases.

A number of commenters addressed the provisions in proposed § 3.4(c), regarding the construction of outdoor housing facilities. A small number of commenters supported the proposed provisions as written. A number of commenters took issue with our proposed requirement that floor surfaces in outdoor housing facilities—if made of compacted 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 consider it both practical and feasible to replace any of the materials listed.

Primary Enclosures—Section 3.6

In proposed § 3.6, we proposed to amend existing § 3.4, "Primary enclosures." The existing 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 existing general requirements, to add some new requirements, and to clarify the existing requirements in accordance with the intent of the amendments to the Act.

A small number of commenters opposed in general the proposed provisions regarding primary enclosures. A number of commenters recommended that the regulations require that primary enclosures comply with all applicable Federal, State, and local laws and regulations. We disagree. As noted above, our mandate under the Act may not necessarily be the same as those of other Federal, State, and local laws. We do not consider it necessary to attempt to require compliance with other laws to establish minimum standards for primary enclosures.

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 of the regulations 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 are 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 other animals 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' feet 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 in proposed § 3.6(a) as written.

Section 3.6(a)(2)(iv) of our proposal stated that primary enclosures must be constructed so as to keep other animals

and unauthorized humans from entering the enclosures. A number of commenters objected to this provision, stating that such security is unnecessary for the primary enclosure because of similar security measures required elsewhere in the regulations for the housing facility itself. 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, however, deleting the requirement that unauthorized humans be kept from entering the primary enclosures, for the reasons set forth in this supplementary information under the heading, "Housing Facilities: Structure; Construction—§ 3.1(a)."

Several commenters stated that the provisions in proposed §§ 3.6(a)(2)(vi) and (a)(2)(vii), regarding protection from weather conditions and the need for shade, respectively, were unnecessary, because shelter and protection from the sun are already addressed elsewhere in the regulations with regard to housing facilities in general. Because housing facilities and primary enclosures are not always the same or equivalent, the provisions as proposed are necessary in both places in the regulations. We are therefore making no changes based on these comments. One commenter objected to the requirement that primary enclosures provide shelter because, according to the commenter, although many types of primary enclosures provide adequate protection when used in an enclosed housing facility, they would not meet the criterion of supplying sufficient shelter in areas not otherwise sheltered by the facility. We are making no changes based on this comment. The regulations do not require that a primary enclosure be able to provide adequate shelter under circumstances that do not exist, only that they properly protect the animals in them in any given situation.

Several commenters recommended that § 3.6(a)(2)(vi) make it clear that shelter and protection from the elements must be accessible to all animals in an enclosure at the same time, and that similar clarification be added in § 3.6(a)(2)(viii) with regard to access to food and water We agree that such a change will better convey the intent of the regulations and are so amending this final rule.

A number of commenters addressed the provisions in proposed § 3.6(a)(2)(x), requiring that, if primary enclosures have floors that are of mesh or slatted construction, they do not allow the dogs' and cats' feet to pass through any openings in the floor. Some commenters opposed mesh flooring of any sort. A small number of commenters expressed the opinion that flooring should always be small mesh. Others were divided as to whether mesh should be allowed that is large enough to permit passage of feces, even though such flooring would probably also allow passage of a dog's or cat's foot. Several commenters stated that floor mesh should be large enough to allow the animals' feet to pass freely back and forth. A small number of commenters stated that flooring designs and materials should be researched individually to suit the situation and the species involved.

We do not consider it practical or necessary to prohibit the use of mesh floors. Many mesh designs can be used without detriment to the animals involved. With regard to the size of openings in the floor, the intent of the Act is to provide for the health and well-being of the animals. Floors that can injure the animals by allowing their legs to pass through do not comply with the intent of the Act, whether or not they prohibit the passage of feces. We do not consider ease of cleaning to be a higher priority than the safety of the animals. We are therefore making no changes based on these comments.

One commenter stated that, because wire or slatted mesh flooring is uncomfortable and may be injurious to the animals enclosed, the regulations should require that solid resting surfaces be provided for both dogs and cats. We agree that certain types of flooring do not allow any relief for the animals enclosed. We are therefore adding a provision to § 3.6(a)(2)(x) of this final rule to require the following: If the floor of a primary enclosure is constructed of wire, a solid 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, must be provided.

Section 3.6(a)(2)(xi) 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 we proposed conveys the intent of the provision adequately and we are making no changes based on these comments. One commenter requested that we define and justify the phrase "to walk in a normal manner." We believe that the meaning of the phrase is 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 (b)(3) of the existing 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 consider it necessary, based on our inspections of research facilities, to increase the existing minimum space requirements for all cats. Additionally, because the weight of a cat is a good indicator of its overall size, the 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)(ii) (redesignated as § 3.6(b)(1)(ii)(B) in this final rule) 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. We proposed in § 3.6(b)(1)(iii) (redesignated as § 3.6(b)(1)(ii)(C) in this final rule) that cats weighing over 8.8 lbs (4 kg) be provided with a minimum of 4.0 ft^2 (0.37m^2) of floor space. Additionally, we proposed to require that each queen with nursing kittens 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. We proposed that if the additional amount of floor space for each nursing kitten is equivalent to less than 5 percent of the minimum requirements for the queen, 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. We proposed to provide that the minimum floor space required would be exclusive of any food or water pans, but that the litter pan may be considered part of the floor space if properly cleaned and sanitized. We proposed in § 3.6(b)(1)(i) (redesignated as § 3.6(b)(1)(ii)(A) in this

final rule) that 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 increased space requirements for cats. A small number of commenters recommended retaining the existing space requirements for cats, either in general or based on the judgment of the attending veterinarian. A large number of commenters recommended doubling the minimum cage size for cats. A small number of commenters stated that all cats, regardless of weight, should be provided with at least 4 square feet of cage space. With regard to the height of primary enclosures, one commenter recommended that the minimum requirement provide only that the interior height must allow the animals to stand and sit without touching the top. We are making no changes to the regulations based on the comments regarding the size of primary enclosures for cats. In developing new proposed space standards, we have consulted extensively with HHS, as statutorily mandated. The space requirements we proposed are consistent with other Federal guidelines, and we consider them necessary and adequate for the well-being of the cats. We do not agree that all cats need to be provided with the same amount of space. It is unreasonable to require that a cat weighing 1 lb. be provided the same amount of space as a cat weighing 10 lbs.

A number of commenters requested that justification be provided for the provision in proposed § 3.6(b)(1)(v) (redesignated as § 3.6(b)(1)(iv) in this final rule) 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.

A number of commenters requested that existing primary enclosures that would meet the proposed space requirements if the space occupied by food and water bowls is counted, be permitted usage until needing replacement for normal wear and tear. As discussed in the preceding paragraph, it is not humane to require cats to use their food and water bowls as part of their minimum floor space, and we do not agree with the commenters' recommendation.

A number of commenters addressed the proposed requirement for increased space for nursing queens. A small number of commenters opposed allowing such additional space. Other commenters recommended that the standard additional space per kitten be 10 percent, rather than 5 percent as proposed, or that the regulations provide specific requirements for neonatal floor space, rather than percentage requirements. We are making no changes based on these comments. The general minimum space requirements for cats that we proposed were found to be necessary for each animal. We consider it self-evident that additional animals in an enclosure will occasion the need for additional space. We disagree, however, that an additional 10 percent is necessary for each kitten, especially in view of the fact that this final rule will increase the minimum space requirements for adult cats. We also disagree that specific uniform requirements for nursing queens are appropriate. The space necessary for the queen herself will be determined by her weight. We consider it reasonable to base the additional space necessary for nursing kittens on the number of kittens present.

Several commenters recommended that the requirement for additional space for nursing queens not begin until the kittens are 3 weeks old. We disagree. Not only is the additional space necessary from the kittens' birth, but adopting the commenters' recommendation would often result in an unnecessary movement of the queen and kittens.

One commenter stated that the provisions regarding increased space for nursing kittens was unenforceable, because breed and behavioral characteristics do not provide a useful determinant. The commenter stated further that "accepted husbandry practices" are the very practices Congress wishes to change. We disagree with the commenter. We consider the consideration of breed and behavioral characteristics to be a legitimate method of assessing the needs of individual animals. As noted above, 5 percent additional space will be the norm. Departures must be approved by the attending veterinarian or the Administrator. Further, we disagree that "accepted husbandry practices" are generally inadequate or harmful to animals. In the 1985 amendments to the Act, Congress specifically mandated only that the Department establish regulations to promote exercise in dogs and to provide an environment that promotes the psychological well-being of nonhuman primates. Requiring additional space for nursing kittens, and also for nursing puppies, is a change that the Department feels is necessary in the interest of promoting the general welfare of these animals. We consider the new provisions an improvement over the existing regulations, and disagree that they do not meet Congressional intent.

One commenter stated that nursing queens should be provided a nest box. We do not agree that a nest box is necessary for individually housed queens, and the regulations prohibit the group housing of queens with litters, except in breeding colonies. Based on our experience enforcing the regulations, there has been no indication that nest boxes are needed.

A small number of commenters stated that the proposed regulations were unclear as to whether the Committee or the attending veterinarian has responsibility for determining the necessary additional space for nursing queens. We agree that the provision in question is ambiguous as written, and we are amending this final rule to make it clear that the responsibility for determining the necessary additional space at research facilities belongs to the attending veterinarian.

A number of commenters took issue with the provision proposed in § 3.6(b)(1)(v) (redesignated as § 3.6(b)(2)(iv) in this final rule) that litter pans may be considered part of the floor space if properly cleaned and sanitized. We do not agree with the commenters. Cats will often sit or lie in clean litter pans. A small number of commenters stated that using the term "if properly cleaned and sanitized" implies that dirty litter pans are otherwise acceptable. We do not share the commenters' concerns. The cleaning and sanitization requirements in this rule contain explicit requirements to ensure that all animal areas are kept clean.

One commenter stated that the regulations should encourage the use of "gang cages" with large elevated resting areas for all cats in the institution. We are making no changes based on this comment. Gang cages are not prohibited by the regulations, and may be used if desired.

A small number of commenters stated that the regulations should require that cats be provided with scratching posts. While the use of scratching posts is not prohibited by the regulations, we believe that requiring them is not necessary as a minimum standard in order to promote the cats' health and well-being. Therefore, we are making no changes based on these comments.

As we noted in the "**SUPPLEMENTARY INFORMATION**" of this rule under the heading "**EFFECTIVE DATES**," many commenters pointed out that certain of

the new standards would require affected facilities to make extensive structural changes. The alteration in the minimum space requirements for cats is one such change in the standards. Therefore, in § 3.6(b)(1)(i) of this rule, we are continuing the existing regulations for minimum space requirements for cats for the period prior to February 15, 1994. On and after February 15, 1994, facilities must comply with the minimum space requirements for cats set forth in §§ 3.6(b)(ii) (A) through (C) of this rule (redesignated from §§ 3.6(b)(1) (i) through (iii) of the proposed rule).

Compatibility

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 existing § 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; except when maintained in a breeding colony, queens with litters could not be housed in the same primary enclosure with any other adult cats, and kittens under 4 months of age could not be housed in the same primary enclosure with adult cats, other than their dam; and cats with a vicious or aggressive disposition would have to be housed separately.

A small number of commenters specifically supported the provisions regarding compatibility as written. One commenter stated that the compatibility requirements in subpart A should parallel those set forth in subpart D for nonhuman primates. We disagree. The differences in needs between nonhuman primates and dogs and cats makes parallel regulations with regard to compatibility inappropriate.

We are making one change to § 3.6(b)(2) as proposed. Consistent with changes we are making elsewhere in Subpart A in response to comments, we are providing that kittens under 4 months of age may be housed in the same primary enclosure with their foster dams.

Litter

In § 3.6(b)(3), we proposed to retain the existing requirement that in all primary enclosures having a solid floor, a receptacle with litter be provided to contain excreta. A number of commenters stated that litter in a receptacle should be required, whether or not the floor is solid. Upon review of the comments received, we agree that the presence of a litter pan for all cats is necessary to enable them to meet a species behavioral need. We are therefore providing in this final rule that a receptacle with litter be included in all primary enclosures used to house cats.

One commenter recommended that it be required that the litter box be large enough for the cat to stand in, and deep enough for the cat to bury its feces. We believe the requirement that the litter box be large enough to contain excreta and body wastes will sufficiently provide for the health and well-being of the cat, and addresses the commenter's concern for an adequate litter box.

Resting Surfaces

The existing 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 only low resting surfaces would 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.

One commenter stated that low resting surfaces should not be considered part of the floor space because they reduce its usability. A number of commenters requested that we clarify what constitutes a "low resting surface." We agree that additional language would help clarify the intent of the provision. We are therefore providing in this final rule that low resting surfaces that do not allow the space under them to be comfortably occupied by the animal will be counted as part of the floor space.

Cats in Mobile or Traveling Shows

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 existing regulations for calculating the floor space for dogs (length of dog in inches + 6) x (length of dog in inches + 6) = required square inches of floor space; required square inches/144 = required square feet). We also proposed to require that the minimum height of a primary enclosure be at least 6 inches above the head of the tallest dog in the enclosure when standing in a normal position.

A small number of commenters supported retaining the existing method of calculating space requirements for dogs. A large number of commenters recommended that the existing minimum space requirements for dogs be doubled. One commenter stated that breeding dogs housed by wholesale commercial breeders should be allowed triple the minimum floor space, because such dogs spend their lives in these facilities. We do not agree that the changes recommended by the commenters are necessary. We consider the proposed floor space requirements for dogs, which are the same as those already in the regulations, to be adequate. This is especially so in light of the exercise requirements included in this final rule, which will require that each dog be provided adequate opportunity for exercise.

A small number of commenters recommended that space requirements for dogs be based on weight, as are those in the NIH Guide. While space requirements based on weight are appropriate for cats, whose body conformation is similar from breed to breed, the wide difference in body configuration among breeds of dogs makes space based on weight inappropriate. For example, as we discussed in our original proposal, the difference in body conformation between a bulldog and a greyhound

would make a formula based on their weight inappropriate.

The proposed regulations specified that the required floor space would apply for each dog housed in a group situation with other dogs. Several commenters recommended that, for group housing situations, the formula for determining minimum floor space be reduced to 32 percent for each dog added to the enclosure after the first dog. We do not consider it reasonable or logical to conclude that the second or third dog in a primary enclosure needs 68 percent less space than the first dog, and we are making no changes based on these comments.

One commenter stated that, in determining minimum space requirements, dogs should be measured in a straight line from the tip of the nose to the base of the tail in a normal standing position. We agree, and measurements for space are already being conducted in the manner described by the commenter.

Several commenters recommended that the regulations allow dogs and cats to be housed for up to 14 days in primary enclosures that do not meet the standards, to permit cleaning of primary enclosures and in emergencies. We do not consider such a provision reasonable or necessary. Cleaning should not take a significant length of time. Our experience has demonstrated that emergencies should not provide an exception to the minimum standards for primary enclosures.

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 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. We proposed 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.

As discussed in this supplementary information under the heading "Additional Primary Enclosure Requirements for Cats—§ 3.6(b)," the regulations as proposed do not clearly state whether the attending veterinarian or the Committee is responsible for approving additional space for nursing puppies that is less than 5 percent of the minimum space for the bitch. In this final rule, we are clarifying that it is the attending veterinarian who is responsible for such approval.

A number of commenters opposed in general the proposed provisions for percentage increases of floor space. A small number of commenters specifically supported the provisions regarding additional space for nursing bitches. A small number of commenters stated that space requirements for nursing bitches should be solely at the discretion of the attending veterinarian. We disagree. We consider 5 percent extra space per nursing puppy a standard that will be appropriate in most cases. We recognize, however, that situations may arise where it may be unnecessary or even detrimental to move a nursing bitch to an enclosure that meets the 5-percent standard. Only in those cases do we expect the attending veterinarian to approve primary enclosures that do not allow at least 5 percent additional space for each puppy.

A small number of commenters stated that only nursing bitches with puppies 3 weeks of age or older should be provided with additional floor space. We disagree with the commenters' recommendation, for the same reasons set forth in this supplementary information for cats with nursing kittens.

A small number of commenters recommended that the regulations provide for 10 percent additional space per nursing puppy in a litter, rather than 5 percent as proposed. We consider 5 percent to be an adequate amount of additional space, given the size of nursing puppies, and the fact that they do not generally move very far from the dam during most of their nursing period

Several commenters stated that the regulations regarding resting surfaces for cats should be applied to dogs. Because of the behavioral differences between dogs and cats, we do not consider it necessary to require elevated resting surfaces for dogs. However, as we discuss in this supplementary information under the heading "Primary Enclosures: General Requirements—§ 3.6(a)," we are requiring that resting surfaces be provided for both dogs and cats when the floor of a primary enclosure is made out of wire.

A number of commenters addressed the height requirements set forth in proposed § 3.6(c)(1)(iii). A small number of these commenters supported these provisions as written. Others either stated in general that the proposed height requirement was excessive, or recommended specific changes to the proposed provisions. A small number of commenters stated that the regulations should require that the top of the dogs' ears not touch the top of the primary enclosure while the dogs are standing erect or sitting We disagree Based on our experience enforcing the regulations, we consider the requirement that the cage be at least 6 inches above the head of the tallest dog in the enclosure, when in a standing position, to adequately address the commenters' concerns.

A small number of commenters recommended that the minimum height be increased from that proposed. Most of these commenters stated that primary enclosures should be large enough to allow dogs to make all normal postural adjustments, such as standing on hind legs and holding the tail aloft. We do not consider such a change necessary or appropriate. The regulations are by law minimal standards for the well-being of the animals. We do not consider a dog's standing on its hind legs to be a frequent enough postural adjustment to require its inclusion as a minimal standard With the implementation of the exercise requirements in this final rule, dogs will have adequate opportunity for activity. One commenter recommended that the interior height of the cage should be 6 inches above the ears of the tallest dog when standing. We are making no changes based on this comment. Six inches above the head will accommodate the tallest standing ears for most dogs.

As we noted in the "Supplementary Information" of this rule under the heading "Effective Dates," many commenters pointed out that certain of the new standards would require affected facilities to make extensive structural changes. The alteration of the height requirement for primary enclosures containing dogs is one such change in the standards. Therefore, in § 3.6(c)(1)(iii) of this rule, we are continuing, for the period prior to February 15, 1994, the existing minimum height requirement for primary enclosures containing dogs. On and after February 15, 1994, facilities must comply with the new height requirement, as set forth in § 3.6(c)(1)(iii).

Dogs on Tethers

In § 3.4(b)(2)(ii) of the existing 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 existing 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 existing 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 existing 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 small 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 based on these comments. One commenter recommended that the regulations require that the tether length for dogs housed by wholesale dog breeders be six times the length of the dog, but not less than 15 feet long. We do not believe this recommended change is necessary for the well-being of dogs. Requiring tethers that are at least three times the length of the dog allows the dog sufficient movement in both a forward and a lateral direction.

Several commenters stated that the regulations should prohibit the placement of entangling objects within the reach of dogs on tethers, or otherwise prevent the dogs from being accidentally hanged. Each of these concerns are addressed in the proposed provisions, and we are making no changes based on these comments.

We proposed that dog housing areas where chains or tethers are used must be enclosed by a perimeter fence of sufficient height to keep unwanted animals out, and to keep animals the size of dogs, raccoons, and skunks from going through or under it. We also proposed to require that fences less than 6 feet high must be approved by the Administrator. Several commenters stated that the expense of constructing a fence adequate to meet the proposed regulations would be cost-prohibitive. While we are sensitive to the costs involved in complying with the regulations, we are obligated under the Act to require that the dogs are confined with adequate protection for humane care. A perimeter fence is necessary to confine dogs that escape from their tethers and to restrict the entrance of potential predators.

One commenter stated that a 4-foot perimeter fence would be just as effective in preventing the entrance of animals as a 6-foot fence. Based on the need to contain and/or exclude dogs and other animals from the primary enclosure, we consider 6 feet to be the minimum necessary fence height in most cases. However, the regulations as proposed allow for varying situations and needs by providing for approval by the Administrator of fences less than 6 feet high.

As we noted in the "Supplementary Information" of this rule under the heading "**EFFECTIVE DATES**," many commenters pointed out that certain of the new standards would require affected facilities to make extensive structural changes. The addition of the requiremant for a perimeter fence in § 3.6(c)(2) as proposed (designated as § 3.6(c)(2)(ii) in this rule) is one such change in the standards. Therefore, in § 3.6(c)(2)(ii) of this rule, we are providing that facilities must comply with the provisions regarding such perimeter fences on and after February 15, 1994.

Compatibility

The proposal provided that all dogs housed in the same primary enclosure would have to be compatible. We proposed to retain the provision in existing § 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; except when maintained in a breeding colony; puppies under 4 months of age must not be housed in the same primary enclosure with adult dogs, other than the dam; and dogs with a vicious or aggressive disposition must be housed separately.

One commenter specifically supported the proposed provisions as written. Another commenter stated that up to 12 conditioned, as well as nonconditioned, dogs should be allowed in the same enclosure if they are compatible. Although the proposed regulations limit the number of nonconditioned dogs in an enclosure, there is no limit on the number of conditioned dogs per enclosure. One commenter stated that the regulations should limit to four the number of dogs per enclosure, whether the animals are conditioned or nonconditioned. We do not agree that such a change is necessary. Since 1967, the regulations have allowed for 12 nonconditioned dogs to be housed together. During that time, there have been few reported problems stemming from the number of dogs housed together. Whatever the number of dogs housed together, they must be compatible.

One commenter stated that because bitches in whelp require isolation, they should be able to be housed without seeing, hearing, or touching other animals. We do not believe that the commenter's recommendation warrants a change in the regulations. There is nothing in the regulations to preclude the housing described, as long as the dog is provided adequate space, care, and attention.

One commenter requested that the regulations clarify what is meant by "vicious or aggressive" behavior. We consider these terms to be self-explanatory, requiring no additional definition in the regulations.

We are making one change in § 3.6(c)(3) as proposed. Consistent with changes we are making elsewhere in subpart A in response to comments, we are providing that puppies under 4 months of age may be housed in the same primary enclosure with their foster dam.

Dogs in Mobile or Traveling Shows or Acts

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. The only commenter who addressed these provisions supported them as written,

and we are making no changes in this final rule.

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 provided in § 3.6(d) of the 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, could be used at research facilities when approved by the Committee, and by dealers and exhibitors when approved by the Administrator.

Many commenters specifically supported the proposed provisions regarding innovative enclosures as written. Very many more commenters objected to what they termed a "loophole" that would permit smaller primary enclosures than those otherwise required by the regulations. We consider adequate space to be one of the primary factors in the humane treatment of animals regulated under the Act. The specific space requirements we set forth in our proposal were based on the best current information available to us, including our experience enforcing the regulations. However, we believe it would be unrealistic to conclude that the design standards currently in general use cannot be improved upon, based on continuing research in engineering and animal behavior. Establishing a mechanism for approval of innovative enclosures will likely foster such research. It is also important to note that innovative enclosures will not qualify for approval unless they provide the animals with a sufficient volume of space and the opportunity to express species-typical behavior, and that such enclosures and the behavior of the housed dogs and cats will be subject to APHIS observation and inspection.

A small number of commenters stated that the attending veterinarian at research facilities, and not the Committee, should be responsible for approval of innovative primary enclosures. We do not agree. The authority to grant exceptions to the general standards has been delegated to the attending veterinarian in certain cases in these regulations, for situations involving the health and well-being of the animals. Authority to approve innovative primary enclosures should be retained in the Committee.

Several commenters stated that the approval of innovative primary enclosures at research facilities should be the responsibility of the Administrator, not the Committee. We disagree. The Committee at research facilities is comprised of individuals who represent both professional and community interests. We consider such a body the appropriate one for deciding on the approval of innovative enclosures. Again, it is important to note that any enclosures that do receive approval at research facilities will be subject to APHIS inspection.

A small number of commenters stated that the regulations should include the criteria to be used in evaluating innovative primary enclosures. Such criteria already exist in the regulations as proposed, and we are therefore making no changes based on these comments.

Reformatting

We are making several nonsubstantive formatting changes to subpart A to set forth its sections in a more logical order. We are redesignating § 3.7 as proposed as § 3.12, and are redesignating proposed §§ 3.8, 3.9, 3.10, 3.11, and 3.12 as §§ 3.7, 3.8, 3.9, 3.10, and 3.11, respectively.

Exercise and Socialization for Dogs—Section 3.7 (Redesignated as Section 3.8 in this Final Rule)

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" (redesignated in this final rule as § 3.8). We proposed that 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 would 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.

We set forth provisions for group housing in proposed § 3.7(b), and proposed to 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); or, (3) a dog exhibits aggressive or vicious behavior.

A very large number of commenters supported the concept of requiring the exercise of dogs. A smaller number of commenters took an opposing view, and recommended that all provisions for exercise of dogs be removed from the proposed regulations. Some commenters opposed the proposed exercise requirements because they considered them cost prohibitive. 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.

A number of commenters expressed reservations concerning the group housing of dogs, stating that the behavior of dogs in packs is unpredictable and dangerous. As we discussed in our proposal, 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.

Many commenters stated that they were in favor of socialization for animals. A number of other commenters stated that references to socialization should be removed from the proposed regulations, because requirements for socialization were not included in the 1985 amendments to the Act. While we consider socialization in many cases to be an integral part of the provision of adequate exercise, the commenters are correct in stating that the Act does not include requirements for socialization. We are therefore removing references to socialization from § 3.7 as proposed (redesignated in this final rule as § 3.8), and are removing references to social grouping from § 3.12 as proposed (redesignated in this final rule as § 3.7).

We proposed in § 3.7(c)(4) 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 proposed 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 proposed in § 3.7(a) that 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). We proposed additionally 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.

In proposed § 3.7(b), we provided that dogs over 12 weeks of age would not require additional opportunity for exercise regularly if they were housed, held, or maintained in groups in cages, pens, or runs providing at least 100 percent of the required space for each dog if maintained separately.

Many commenters expressed opposition to primary enclosures for exercise larger than those otherwise required for dogs. They stated that increased enclosure sizes will not increase activity. We disagree that increasing enclosure size is not a means of providing dogs with the opportunity for exercise. However, under the regulations as proposed, facilities are not restricted to increasing cage size to provide for exercise. For example, group housing of dogs is an effective alternative to increasing cage size for individual dogs, as is removal of the dog from its primary enclosure for alternative forms of exercise.

A small number of commenters stated that purpose-bred dogs are acclimated to the existing enclosure sizes and should be exempt from the proposed exercise requirements. A large number of commenters stated that scientific evidence does not support that dogs housed in less than two times their minimum space need additional exercise opportunities. Many of these commenters stated that the dogs' exercise needs are being met with existing housing. We disagree. Not all dogs are maintained in an environment that permits exercise and Congress concluded that the existing minimum space standards for dogs were not in themselves sufficient to allow for adequate opportunity for exercise.

Several commenters opposed the requirement for positive physical contact for dogs housed alone in a facility, either in general or in cases where the dog is not socialized to humans. A small number of commenters stated that daily interaction with humans should be required for all dogs. One commenter recommended that positive physical contact must total at least 60 minutes daily, and be provided to dogs isolated at a facility, as well as to the sole animal at a facility. The commenter supplied no data to support the recommendation for 60 minutes of positive physical contact, and we see no need for contact of that duration. While we do not consider it necessary for all dogs to have daily interaction with humans in all cases, upon review of the comments, we agree that there is little practical difference between an animal that is the sole dog at a facility and dogs that are isolated from other dogs at a facility. We are therefore providing in § 3.8(c)(2) of this final rule that when dogs are housed at a facility without sensory contact with other dogs, they must be provided with positive physical contact with humans at least daily.

One commenter expressed concern that the term "positive physical contact" is so vague that cagewashing and feeding will be so termed. We do not share the commenter's concern. The definition of "positive physical contact" in Part 1 of the regulations clearly states the meaning of the term.

A number of commenters recommended that the regulations clarify that facility standards for exercise be made available to APHIS "upon request." We agree that such an amendment would clarify the intent of our proposal and are therefore adding the words "upon request" in this final rule. Also, to further clarify the intent of our proposal, we are making certain changes regarding the requirement for a plan for the exercise of dogs. We are specifying in this final rule that such a plan must be appropriate and must be approved by the attending veterinarian. Additionally, we are making a formatting change to move from § 3.7(c)(4) of the proposal (redesignated as § 3.8(c)(4) in this final rule) the requirement that written procedures for exercise be developed, and are moving that provision to the introductory text of § 3.8 (redesignated in this final rule from § 3.7 of the proposal).

Methods of Exercise for Dogs—Section 3.7(c) (Redesignated in this Final Rule as Section 3.8(c))

We proposed in § 3.7(c)(1) of the proposal that exact methods and periods of providing the opportunity for exercise be determined by the attending veterinarian, with, at research facilities, consultation with and review by the Committee. We proposed to provide in § 3.7(c)(2) 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 number of commenters supported allowing for the professional judgment of the attending veterinarian in developing plans for the exercise of dogs. A very large number of other commenters stated that the regulations should require daily release of dogs from their enclosures for a specified period of time, from ½ hour to 1 hour. One commenter stated that the regulations should require that dogs be exercised at least twice daily. Another recommended that exercise be required at least one day out of each weekend or holiday. Several commenters expressed the opinion that dogs cannot be adequately exercised in less than four times the floor space otherwise required for housing. Several commenters stated that facilities that do not utilize APHIS-recommended methods of exercise should be required to submit their proposed exercise plan to the Administrator for prior approval. One commenter expressed concern that if APHIS does not specify exact methods and duration of exercise, the plans for exercise developed by the facilities may allow absurdly low levels of exercise. We do not agree that requiring a specified period or frequency for exercise would be appropriate in all cases. Such a requirement would not take into account variation among the types of dogs and the use for which they are being held, and would be too restrictive to be applied generally to diverse facilities. The regulations as proposed, calling for a plan for meeting the exercise needs of dogs at each facility, will allow each facility to meet the requirements of the regulations in the manner most appropriate to the facility and to the animals housed there.

In order to clarify our intent with regard to exercise, we are making several changes to § 3.7(c) as proposed (redesignated as § 3.8(c) in this final rule). We are clarifying that "exact methods and periods of providing the opportunity for exercise," as proposed, more specifically means "the frequency, method, and duration of the opportunity for exercise." Additionally, we are clarifying § 3.8(c)(1) in this final rule to make clear that review by the Committee at research facilities of the methods and periods of providing exercise involves approval by the Committee. With regard to examples we provided of methods of exercise, we are clarifying that providing access to a run or open area is appropriate if done "at the frequency and duration prescribed by the attending veterinarian." Finally,

we are removing "providing positive physical contact with humans that encourages exercise" from the listing of examples of methods of providing exercise. In order to place greater emphasis on the benefits of positive physical contact with humans, we are providing in § 3.8(c)(2) of this final rule that dealers, exhibitors, and research facilities should, in developing their plan, consider providing positive physical contact with humans that encourages exercise through play, walking on a leash, or similar activities.

A number of commenters expressed the opinion that not requiring group-housed dogs to be released for exercise is contrary to Congressional intent. One commenter recommended a return to the specific run size dimensions set forth in our original proposal. We disagree that Congressional intent was to require specific methods of exercise for dogs, such as release from their primary enclosures. As amended, the Act requires that the regulations include minimum requirements for the exercise of dogs. Based on the research available to us, and on our own experience enforcing the regulations, it is evident that one of the most effective means of promoting exercise in dogs is to house the dogs in groups.

A small number of commenters expressed reservations regarding group housing of dogs, stating either that such housing can lead to fighting when the groups are unstable, that group housing might conflict with other agencies' standards for testing protocols, or that group housing can pose a hazard to handlers. One commenter recommended that exemptions to group housing should be made on a case-by-case basis. As proposed, group housing is not required. It is merely included as one method of complying with the regulations regarding the exercise of dogs. We are therefore making no changes based on the comments.

Several commenters stated that group-housed dogs that each have 100 percent of their minimum space requirement will not have sufficient room for exercise. We do not agree. Based on the evidence available to us, such an amount of space will provide adequate room for group-housed dogs to interact and play.

Several commenters stated that even dogs housed in enclosures with twice the minimum space required should be released for exercise. We disagree. We are confident that by allowing for additional space for dogs housed individually, and by encouraging group housing, the proposed regulations regarding doubling the minimum space will promote adequate exercise for dogs.

A small number of commenters stated that dogs housed in enclosures totalling 150 percent of their minimum space should not have to be released for exercise. We do not agree that the amount of space recommended by the commenter will be sufficient for dogs lacking other opportunities for exercise and are making no changes based on the comment.

One commenter stated that the provision that twice a dog's minimum space offers adequate room for exercise is a rigid engineering standard that should be deleted. Although we agree that the provision in question is an easily measurable one, it is only one option among many that a facility may choose to ensure proper exercise for dogs. As such, we do not agree that it is unnecessarily rigid.

One commenter recommended that dogs housed individually in acceptable pens, runs, or cages be considered as meeting the exercise requirements if they can make visual contact with one or more other dogs. We agree with the commenter in cases where the individually housed dog's enclosure provides at least twice its minimum space requirement. If the enclosure falls short of that size, however, we continue to believe that the dog must be provided other means of exercise. While we encourage visual contact among the dogs in a facility, we do not consider such contact a substitute for the contact provided by group housing. For the same reason, we do not agree with the commenter who recommended that individually housed dogs in runs should not be required to have twice the minimum space requirements if they can "muzzletouch" each other.

One commenter recommended that it be required that bitches with litters be provided an additional opportunity for exercise if they are housed in primary enclosures providing less than four times the minimum space required for the bitch. We are making no changes based on this comment. We consider the "twice-the-minimum" requirements proposed, in tandem with the additional minimum space required for bitches with litters, to be adequate to ensure that bitches with litters are provided adequate space for exercise.

A small number of commenters stated that the regulations should provide no variances from the exercise requirements. The only exemptions from exercise will be provided in cases where an approved protocol at a research facility calls for such an exemption, and in cases where it would be injurious to the dog's health to exercise, as determined by the attending veterinarian. The first type of exemption is in accordance with our statutory obligation not to interfere with approved research. The second is necessary for the well-being of the animal.

A number of commenters stated that records of release for exercise should be maintained for review by APHIS inspectors. A small number of other commenters stated that records of dog exercise should be made available to the Committee, the Department, and the general public. We do not agree that it is necessary for the facility to keep records of exercise to ensure compliance with the regulations. The facility's plan will be available to APHIS and, in the case of research facilities, to officials of any pertinent funding Federal agency. We are confident that the requirement for this written plan, together with inspections by APHIS personnel, will ensure that the dogs at each facility receive sufficient exercise.

Several commenters stated that social interaction for dogs cannot substitute for physical exercise, regardless of the cage size. While we disagree with the commenters' assertion that social interaction cannot adequately stimulate exercise, we do agree upon review of the comment that certain of the methods suggested in the proposal for providing exercise would not be adequate. We are therefore amending § 3.7(c)(2)(iv) as proposed (redesignated as § 3.8(c)(2)(iv) in this final rule) to delete grooming and petting as forms of positive physical contact with humans that may provide the opportunity for exercise. Additionally, we are adding language, both in § 3.8(c)(2)(iv) and § 3.8(a) to clarify that positive physical contact with humans must be of the sort that encourages exercise.

A small number of commenters urged that the Department carefully scrutinize the records pertaining to exercise, and develop a system of outside, impartial observation to ensure that facilities actually use exercise enclosures. A system of impartial observation already exists with regard to enforcement of the regulations. Only Department personnel are authorized by law to conduct inspections.

A small number of commenters stated that exercise provisions in the regulations should not apply to dogs held for less than 1 week. 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 1 week would be inappropriate.

A number of commenters addressed the fact that we supplied a number of

examples of ways adequate exercise might be provided. A large number of commenters recommended that the examples be deleted, because the actual methods of exercise will be determined based on professional judgment at each facility. We see no advantage in deleting the examples provided. They in no way limit the facility in developing an exercise plan, and we consider them helpful as recommendations of satisfactory methods of providing exercise.

A small number of commenters asserted that development of plans and standards for exercise should be solely the responsibility of the Department. We do not agree. Such across-the-board requirements would not allow sufficient flexibility and latitude for varying conditions, and would be unnecessarily restrictive.

One commenter stated that the regulations should stipulate that study procedures may not be substituted for exercise requirements. The requirement as proposed was that dogs be provided the opportunity for exercise. We do not consider it reasonable to assume that no study procedures will provide the dogs involved with adequate exercise. We therefore do not consider it appropriate to make the change recommended by the commenter. A small group of commenters addressed a similar issue, and stated that animals used in research protocols involving forced exercise should be exempt from required exercise. Whether such animals should be exempted from the exercise standards will depend on the situation. If the research protocol provides the animals with adequate exercise, then they will not need additional exercise. Also, in cases where the research protocol calls for specific limits on the exercise provided, it would not be required that the animals exceed those limits. This is in accordance with § 2.28(k)(1) of part 2 of the regulations, which provides that exceptions to the standards in part 3 of the regulations may be made when such exceptions are specified and justified in the proposal to conduct an activity and are approved by the Committee.

Several commenters stated that it would be sufficient to abide by the NIH Guide for exercise of dogs. We disagree. The Act specifically requires us to establish regulations to promote exercise for dogs. The NIH Guide is just that, containing guidelines and not regulations.

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. One commenter specifically supported the inclusion of such examples. A number of commenters stated that the examples provided were unjustified. We disagree. Congressional intent with regard to the Act was to give dogs an opportunity for exercise, not to force them to exercise.

One commenter stated that the exercise standards for dogs should be the same as the standards for the psychological well-being of nonhuman primates. We do not agree. The differences in species behavior and needs, and the distinct statutory requirements for dogs and nonhuman primates, make parallel provisions inappropriate.

Exemptions from Exercise—Section 3.7(d) (Redesignated as Section 3.8(d) in this Final Rule)

We proposed in § 3.7(d)(1) that 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 exercise requirements for those dogs. As proposed, such an exemption would have to be documented by the attending veterinarian and, unless the basis for the exemption were a permanent condition, the exemption would have to be reviewed at least every 30 days by the attending veterinarian.

We proposed additionally that research facilities may be exempted from the exercise requirements for dogs if the principal investigator determines for scientific reasons set forth in the research proposal that it is inappropriate for certain dogs to exercise. As proposed, such an 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.

As proposed, records of any exemptions would have to be maintained and be made available to USDA officials or any pertinent funding Federal agency upon request.

A number of commenters supported the provisions as proposed. A number of commenters stated that research facilities should be permitted to make exemptions for certain study situations without documentation being required. Such an allowance would be contrary to the Act and we are making no changes based on these comments.

Many commenters recommended that rather than require review by the attending veterinarian every 30 days, it should be required that exemptions to exercise be approved in the standard procedures for exercise. A number of other commenters stated that the exemptions should have to be reviewed only "as needed." One commenter recommended that it be required that review of exemptions be carried out on a daily basis, to ensure continuity and assist inspectors. We are making no changes based on these comments. In most cases,exemptions from exercise will be of a temporary nature. Allowing the exemptions to continue for long periods of time without review would not comply with the intent of the Act. However, we do expect conditions warranting exemptions to continue for more than a day at a time, and consider daily review unnecessary.

One commenter stated that it should be required that documentation for exemptions be "accessible," not made available for review. We do not consider there to be any substantive difference between making records accessible and making them available, and we are making no changes based on this comment.

A large number of commenters stated that the recording of an exemption for exercise is not necessary, because an inspector can verify compliance visually. We do not agree. Without written documentation of exemptions, it will be virtually impossible for inspectors to conduct an adequate evaluation of whether dogs are being exercised in accordance with the regulations.

One commenter stated that the regulations should require that exemptions be documented in the animals' medical records, rather than in separate records. We are making no changes based on this comment. The regulations do not require that medical records be kept for each animal; nor do they prohibit exemptions from exercise from being recorded on such records. In any case, the record of any exemptions would have to be made available to the Department.

Feeding—Section 3.8 (Redesignated as § 3.9 in this Final Rule)

In proposed § 3.8(a), concerning feeding requirements for dogs and cats, we proposed to make minor changes to the feeding requirements in existing § 3.5(a). In addition to the existing 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 required by the existing regulations, be sanitized at least once every two weeks. We proposed to require that both nondisposable food receptacles and self-feeders be kept clean, and be sanitized in accordance with § 3.10(b) of the 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. We proposed that 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.

A number of commenters specifically supported the provisions of proposed § 3.8 as written. Several 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 and cat 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, the end result must be that each animal is fed daily.

One commenter 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.

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.

Several commenters stated that cats should be fed more often than as proposed, because domestic cats take a number of small meals throughout the day. We consider once-a-day feeding, as proposed, to be an appropriate minimum for most situations. If specific animals are suffering because of inadequate feeding, the regulations require that they must be fed with sufficient frequency to provide adequate veterinary care.

One commenter recommended that the regulations require that feeders be cleaned daily and sanitized every 7 days to help break recurrent cyclical infection. We believe that the regulations we proposed already address the commenter's concerns regarding the prevention of infection, and are making no changes based on the comment. Under the proposed regulations, feeders must be kept clean. Sanitization must be carried out at least every 2 weeks, or as often as necessary to prevent an accumulation of dirt, debris, food waste, excreta, and other disease hazards.

Watering—Section 3.9 (Redesignated as Section 3.10 in this Final Rule)

Existing § 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. Others recommended more frequent watering in hot weather. One commenter stated that the requirement for twice daily watering is unenforceable, because inspectors will not be present 24 hours a day to carry out verification. Upon review of the comments, we agree that provision should be made for additional periods of watering when necessary. However, based on our experience enforcing the regulations, we do not consider it necessary to require in all cases that water be provided at all times. We are therefore providing in this final rule that if potable water is not continually available to the dogs and cats, it must be offered as often as necessary to ensure their health and well-being, but not less than twice daily for at least 1 hour each time, unless restricted by the attending veterinarian.

A small number of commenters stated that it should be required that water receptacles be cleaned and sanitized more often than as proposed. For the reasons we discussed regarding food receptacles under the preceding heading, we are making no changes based on these comments.

A small number of commenters recommended 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 consider the commenters' concerns to be a practical problem requiring regulation, and we are making no changes based on these comments.

Cleaning of Primary Enclosures—Section 3.10(a) (Redesignated as Section 3.11(a) in this Final Rule)

We proposed to revise and reword the provisions in existing § 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."

We proposed to require 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 also proposed 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.

We also proposed 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, we proposed 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. We also 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 small number of commenters objected to the requirement for the daily cleaning of primary enclosures, stating that such frequency was not necessary for the health of the animals. One commenter recommended that grill-type floors be exempt from daily cleaning of wastes, and instead be required to be cleaned as often as necessary. The only area around the primary enclosure that requires daily cleaning is the inside area housing the animals. Areas under primary enclosures must be cleaned out only as necessary. The wording in the proposal regarding the interior of primary enclosures states that excreta and food waste must be removed from those areas daily. We consider this a reasonable and necessary minimum. Several commenters stated that it should be required that excreta be removed daily from beneath primary enclosures. We are making no changes based on these comments. The frequency of cleaning recommended by the commenters is not necessary to prevent the soiling of the animals. However, frequent removal of wastes is necessary to control problems such as odor and vermin. Several commenters recommended that cleaning frequency should be determined by the attending veterinarian, and conform with the NIH Guide. We cannot envision many situations where daily cleaning of the inside of a primary enclosure would not be necessary, and therefore do not consider it appropriate to allow for departures from that frequency. The provisions as written do conform with the NIH Guide. One commenter recommended that in cases where bedding is used, cleaning be required only as often as necessary to prevent excess accumulations of excreta and feed waste. We do not agree that the use of bedding lessens the need for sanitation, and are making no changes based on this comment.

A small number of commenters objected to the daily cleaning of non-contact surfaces. Such a requirement was not included in the proposal. Several other commenters stated that standards for odor should be set as to be measurable. Proposed § 3.10 contained no requirements for odor control. We consider this issue to be adequately addressed under the ventilation requirements for housing facilities, discussed elsewhere in this supplementary information, under the heading "Ventilation Requirements in Housing Facilities—Sections 3.2(b), 3.3(b), and 3.5(b)."

Many commenters objected to the proposed requirement that standing water be removed from primary enclosures. Some stated that when dogs are housed with elevated areas, many enjoy playing in water. Others suggested that water be required to be removed only "to the extent practical." The requirement as proposed is not based solely on the comfort of the animals housed, but also on the need to minimize the opportunity for contamination and disease spread. We consider the requirement for the removal of standing water to be necessary as written, and to convey its intent clearly.

A large number of commenters urged that it be required that animals be removed from a primary enclosure when the enclosure is being cleaned by steam. A smaller number of commenters stated that it should be required that a dog or cat not be involuntarily wetted during the cleaning of an enclosure. We recognize clearly the potential dangers to animals that are not properly protected when steam cleaning is taking place. It was our intent in wording the proposal as we did to make it clear that animals must be removed from their primary enclosures during steam cleaning, unless they are otherwise adequately protected. However, upon review of the comments regarding this provision, we consider it appropriate to reword that provision to further clarify our intent. Additionally, we consider it appropriate to reword our requirement regarding the wetting of animals during cleaning, again to clarify our intent. Therefore, in this final rule, we are providing in § 3.11(a) (redesignated from § 3.10(a) in the proposal) that when steam or water is used to clean the primary enclosure, whether by hosing, flushing, or other methods, dogs and cats must be removed, unless the enclosure is large enough to ensure the animals would not be harmed, wetted, or distressed in the process. In prohibiting the wetting of animals, our intent is to prohibit direct wetting of animals during the cleaning process. We do not consider it deleterious to the animals, for example, to have their feet wetted by water resulting from the cleaning. As discussed, above, however, standing water must be removed from the primary enclosure.

Many commenters recommended that we define the word "cleaning." We believe that the dictionary definition of the word "cleaning" adequately conveys our intent and we are making no change to our proposal based on these comments.

Sanitization of Primary Enclosures and Food and Water Receptacles—Section 3.10(b) (Redesignated as Section 3.11(b) in this Final Rule)

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 existing requirements. In § 3.10(b)(2) of our proposal, we included wording 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 small 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 existing regulations, we believe that sanitization at least every two weeks is sufficient to help ensure the health and well-being of the animals. As proposed, more frequent sanitization is required as necessary.

One commenter recommended that it be required that food receptacles be cleaned daily. Although the proposed regulations do not require daily cleaning of food receptacles, § 3.8(b) as proposed (redesignated in this final rule as § 3.9(b)) requires that food receptacles be kept clean. Individual circumstances will determine if compliance with that requirement necessitates daily cleaning.

Proposed § 3.10(b)(3) contained 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 existing regulations, with the addition of a provision to allow the use of detergent/disinfectant products that accomplish the same purpose as the detergent/disinfectant procedures specified in the existing regulations.

A small number of commenters addressed § 3.10(b)(3)(ii) of the proposal, which provided as an

acceptable method of sanitization washing with hot water (at least 180 °F (82.2 °C)) and soap or detergent. Most of the commenters recommended that the provision be changed to specify water temperatures from 140 °F–160 °F, because, according to the commenters, detergents are not effective at 180 °F. The provision in question has been included in the existing regulations for a number of years, and we are not aware of any problems due to the water temperature required. One commenter stated that water in the 160 °F–180 °F range is capable of sanitizing, whether or not soap or detergents are used. We do not agree with the commenter's assertion in all cases. Whether water heated as recommended by the commenter is effective in sanitization depends on a number of variables, including the water temperature, the organisms involved, and the duration of contact with the surface to be sanitized. We therefore do not consider it appropriate to make any changes based on the comment.

Housekeeping for Premises—Section 3.10(c) (Redesignated as Section 3.11(c) in this Final Rule)

In proposed § 3.10(c), we revised and reworded § 3.7(c) of the existing regulations regarding housekeeping to clarify that paragraph's intent. The existing 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 subpart A of the regulations. We proposed to retain the existing 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; 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. The only commenters addressing these provisions supported them, and we are making no changes in this final rule.

Pest Control—Section 3.10(d) (Redesignated as Section 3.11(d) in this Final Rule)

The provisions of proposed § 3.10(d) regarding pest control are basically the same as those in § 3.7(d) of the existing 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.

Several commenters requested that the regulations include further clarification of the provisions regarding a pest control program. We consider the goal to be met regarding pest control to be clearly stated in the proposal. Because of the wide diversity in facility structures, location, pest problems, and methods of prevention and eradication, we do not consider it advantageous or reasonable to prescribe specific procedures for pest control.

Several commenters stated that the regulations should contain requirements to ensure that pesticides are applied in accordance with applicable Federal, State, and local laws. Persons using pesticides are required to comply with applicable Federal, State, and local laws by the terms of those laws. While we agree that users should be careful in the use of pesticides, we are making no changes based on these comments.

Employees—Section 3.11 (Redesignated as Section 3.12 in this Final Rule)

Existing § 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 individual 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 other commenters objected to the proposed provisions, and stated that adequate staffing levels should be determined by the facilities or the attending veterinarian. Several commenters stated that government personnel are not qualified to tell facilities that they do not have enough employees. The requirement as proposed was that there be sufficient employees to carry out the level of husbandry and care required by the regulations, and is clearly within the Department's authority under the Act. We disagree that the Department cannot make a valid determination of whether adequate staffing exists. As we discussed in our proposal, such a determination can be made based on an evaluation of common practices regarding facilities of a particular size or nature, and on observation of whether the regulations are being complied with.

A small number of commenters recommended that § 3.11 as proposed be reworded to state that the employer is responsible only for the training of employees, and not for their performance. Such a change would not convey our intent, which is to ensure compliance with the regulations by holding the facility responsible for both the training and the performance of its employees. One commenter stated that the regulations should require that all employees possess a minimal level of knowledge, background, and experience in animal husbandry and dog/cat care. We are making no changes based on this comment. We consider the fact that the employee supervisor must meet the qualifications described, together with the fact that the employer must be certain that other employees can perform to the prescribed standards, to be adequate in assuring the competence of the employees. Several commenters stated that standards for employee evaluation should be clarified in the regulations. We consider employee evaluation to be most appropriately left to the facility itself, and are making no changes based on these comments.

Social Grouping—Section 3.12 (Redesignated as Section 3.7 in this Final Rule)

We proposed to revise slightly existing § 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. 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.

We also proposed in § 3.12(c) that 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. Additionally, we proposed 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. We also proposed to 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.

Several commenters supported proposed § 3.12 as written. 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. Several commenters opposed the housing of multiple species within the same primary enclosure. 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 not compatible.

Several commenters opposed the use of group housing, stating that aggressive pack behavior in dogs can cause injury in animals. One commenter stated that socialization will be extremely stressful for dogs and cats, and that stressed individuals will be identified only by trial and error. As we stated in our proposal, although injurious pack behavior is frequently observed in animals that roam at large, it is not a significant problem in animals cared for by humans. Additionally, it should be noted that proposed § 3.12 does not require group housing of animals. It merely sets forth standards for those situations where a facility chooses to house its animals in groups.

A number of commenters stated that in cases where foster dams are used, puppies and kittens should be allowed to stay with those animals, just as if with their natural dam. We agree, and are adding such a provision to this final rule, both in § 3.7 (redesignated from § 3.12 in the proposal), and in §§ 3.6 (b) and (c).

A small number of commenters stated the provisions in proposed § 3.12 were duplicative of the provisions in §§ 3.6 (b)(2) and (c)(3), and were therefore unnecessary. We do not agree. The compatability requirements in proposed § 3.12 include situations where dogs and cats are housed together. The provisions in § 3.6 do not.

For the reasons discussed in this supplementary information under the heading "Exercise and Socialization for Dogs—§ 3.7 (Redesignated as § 3.8 in this Final Rule)," we are changing the heading of proposed § 3.12 (redesignated as § 3.7 in this final rule) from "Social Grouping" to "Compatible Grouping."

Transportation Standards

Consignments to Carriers and Intermediate Handlers—Section 3.13

We proposed to expand the existing 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 existing §§ 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 existing § 3.11(c)(4)), because a program under which accreditation numbers are assigned has not been implemented.

One commenter requested that the regulations be clarified as to the distinction between the transport of animals and the transport of animals "in commerce." We do not consider such definitions necessary. Under the regulations, the transportation of any covered animal by any regulated entity is "in commerce," whether in intrastate, interstate, or foreign commerce.

Among the existing 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. As proposed, this time period could be extended by up to 2 hours if arranged between the consignor and the carrier or intermediate handler. Several commenters called for a shortening of this time period, down to a maximum of 2 hours. We are making no changes based on these comments. It would be impracticable for carriers to arrange for and handle the transport of animals within the shortened time span. A small number of other commenters recommended that the period for acceptance before departure be changed to 6 hours in all cases, since the 4-hour maximum may be changed without extenuating circumstances. Based on our experience enforcing the regulations, we consider the 4-hour period to be a suitable maximum in most cases. By requiring prior agreement between two parties for extension of this period, we have found that the time will be extended only as needed in extenuating circumstances.

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 telephone number of the consignee. The only commenter addressing these provisions supported them as written.

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 existing § 3.14(d). The proposal provided that instructions would have to be easily noticed and read. One commenter stated that the provisions do not make it clear what a carrier should do if the shipper writes instructions that no food should be fed. Several other commenters opposed the provisions, saying it would be impractical for carriers to have to maintain a log for feeding and watering instructions for each animal in transport. One commenter stated that feeding and watering times should be calculated from the time of tender, not from the time of last feeding/watering by the shipper. Some commenters stated that the problem of offering animals food and water while in transit could be solved by requiring that the consignors offer the animals food and water immediately before the animal is shipped. One commenter recommended that the consignor certification not be necessary in cases where food and water are provided in the primary enclosure at the time of presentation for shipment.

We do not consider it wise to provide an animal with food or water immediately before transportation, as it might become sick and soil its cage, or aspirate food or water into its lungs. However, upon review of the comments, we agree that keeping track of a wide variety of feeding and watering schedules for animals could create practical problems for carriers. To reduce these problems, we are providing in this final rule that carriers and intermediate handlers must not accept a dog or cat for transportation in commerce, unless the consignor certifies in writing that the dog or cat was

offered food and water during the 4 hours before delivery to the carrier or intermediate handler. By requiring feeding and watering within 4 hours of delivery for transportation, the regulations will both make more uniform the time frame during which animals will have to be fed and watered in transportation, and minimize the number of animals that need to be offered food and water in transportation. In most cases under the amended regulations, animals being transported will reach their destination before having to be fed and watered again. Additionally, to eliminate the need for the carrier to maintain a log of feeding and watering schedules, we are requiring in this final rule that, on the feeding and watering certification provided by the consignor, there be included specific instructions for the next feeding(s) and watering(s) for a 24-hour period. We are also providing that instructions for no food or water are not acceptable unless directed by the attending veterinarian.

A small number of commenters were opposed to the requirement that the certification of feeding and watering be attached to each primary enclosure. Several commenters stated that the certification should be required only on the invoice accompanying the shipment. We disagree. Secure attachment of the required information is necessary, because primary enclosures can sometimes become separated from the rest of the shipment. If information regarding feeding and watering is not attached to the enclosure, situations might arise where the carrier cannot determine if and when the animals should be offered food and water.

In this final rule, we are also making certain nonsubstantive formatting changes to improve the clarity of § 3.13 as proposed. We are combining the provisions of proposed §§ 3.13 (c) and (d) into § 3.13(c), and are redesignating subsequent paragraphs in § 3.13 accordingly.

In proposed § 3.13(e), we proposed to retain the existing standards that 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. Other commenters expressed the opinion that the provisions of proposed § 3.13(e) were redundant; that final responsibility for determining the suitability of primary enclosures will rest on the carrier or intermediate handler in any case. Upon review of these comments, we agree that § 3.13(e) as proposed (redesignated as § 3.13(d) in this final rule) contains redundant provisions. We are therefore amending it in this final rule to make the carrier or intermediate handler solely responsible for determining whether to accept a primary enclosure for transportation.

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 existing §§ 3.16 and 3.17 of the regulations (included in proposed §§ 3.18 and 3.19). In proposed § 3.13(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. However, we proposed that in any case, even with a veterinarian's certification, no dog or cat being transported may be exposed to temperatures lower than 35 °F (1.7 °C).

Several commenters stated that veterinarians should not certify acclimation certificates, either due to the potential for liability or because, according to the commenters, veterinarians will not have first-hand knowledge of the acclimation status of the animal. We disagree. The veterinarian, based on his or her training and professional judgment, is the most appropriate person to make the necessary determination. Several commenters expressed general opposition to the allowance for acclimation certificates. We are making no changes based on these comments. There is no doubt that certain animals can tolerate temperatures outside the broad parameters appropriate for most animals. There is no need to restrict these animals from being transported in temperatures they are acclimated to.

A small number of commenters supported the provisions of proposed § 3.13(f) as written. Several commenters recommended that the regulations should require that no dogs or cats be transported if the air temperature is lower than 45 °F or higher than 85 °F. We do not agree that it is necessary or practical to establish such temperature limits for all animals in all cases. Certain dogs and cats can tolerate temperatures out of the range recommended by commenters for limited periods of time. We do agree, however, that it is necessary for the well-being of the animals to limit the duration of such exposure, and to ensure that the animal is acclimated to lower temperatures by means of certification by a veterinarian. We are therefore retaining the provisions in § 3.13(f) as proposed (redesignated as § 3.13(e) in this final rule) that carriers and intermediate handlers must not accept a dog or cat for transport in commerce unless their holding area meets the minimum temperature requirements provided in §§ 3.18 and 3.19, or unless the consignor provides them with a certificate signed by a veterinarian certifying that the animal is acclimated to temperatures lower than those required in §§ 3.18 and 3.19. To limit the duration of exposure to low temperatures, we are amending § 3.13(e) of this final rule to provide that even if the carrier or intermediate handler receives this certification, the temperature the dog or cat is exposed to while in a terminal facility must not be lower than 45 °F (7.2 °C) for more than 4 consecutive hours, as set forth in § 3.18, nor lower than 45 °F (7.2 °C) for more than 45 minutes, as set forth in § 3.19, when moving dogs or cats to or from terminal facilities or primary conveyances. Additionally, to make the transportation temperature requirements more consistent with those for housing facilities, we are providing in § 3.13(e) that acclimation certificates are required when the temperature is lower than 50 °F, rather than 45 °F as proposed.

One commenter stated that a certification of acclimation should be used only when a veterinarian can state that the animal is acclimated to temperatures of 35 °F and higher. The commenter's recommendation was based on the proposal, which set a temperature minimum of 35 °F. With the changes we are making in this final rule, we do not believe it practical or necessary to adopt the commenter's recommendation, which would restrict transport in colder climates.

One commenter recommended that the proposed provisions should apply only to animal holding areas, and not to entire cargo facilities. The commenter's recommendation is consistent with our

intent, and we are revising the wording of proposed § 3.13(f) (redesignated as § 3.13(e) in this final rule) to clarify that intent.

We proposed in § 3.13(g) of the proposal to retain the provision in existing § 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. Proposed § 3.13(g) included 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 existing 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) to 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 3 hours after arrival of the animal, rather than every 6 hours. We do not agree that such a requirement is practical or necessary. Our enforcement of the existing regulations has shown no problems with these provisions to date. Several commenters stated 48 hours is too long to wait to return any animals not picked up by the consignee after notification. We do not agree. Under the regulations, the animal must be properly cared for until either picked up or returned.

One commenter requested clarification as to which shipping documents a carrier or intermediate handler must use to record attempts to notify the consignee. The regulations as proposed require that attempts at notification be recorded on the carrier's or intermediate handler's copy of the shipping document, and on the copy that accompanies the primary enclosure. It was our intent in proposing the provision that the necessary documentation would be recorded on copies of the waybill. We recognize, however, that in certain cases—i.e., electronic waybills—there will be no copy accompanying the primary enclosure. Therefore, we are addressing the commenter's concern by requiring in this final rule that all attempts to notify the consignee must be written either on the carrier's or intermediate handler's copy of the shipping document or on the copy that accompanies the primary enclosure.

Primary Enclosures Used to Transport Dogs and Cats: Construction—Section 3.14(a)

We proposed to reformat existing § 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 implement 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 paragraphs 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 existing § 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, other animals, 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 small number of commenters specifically supported the provisions of proposed § 3.14(a) as written. One commenter recommended that the regulations specify how an enclosure will be built so that it may be secured to the frame or solid surface of the transporting conveyance. Because of the variation in types of cages and transport vehicles, we do not consider it appropriate to require one method of fastening. We are therefore making no changes based on this comment.

A small number of commenters stated that requiring that a primary enclosure be built so that an animal cannot put any part of its body outside the enclosure in a way that could injure the animal is excessive. Most of these commenters stated that such a requirement might result in caging with poor ventilation. We do not agree. To be used in transportation, primary enclosures must meet the ventilation requirements in proposed § 3.14(c). These requirements are very similar to those in the existing regulations, and have proven workable and appropriate. We also do not agree that the provisions in question are excessive. They clearly state that parts of the animals' body shall not protrude from the cage "in a way that could result in injury." Such a requirement is reasonable and necessary for the well-being of the animals.

One commenter stated that mesh floors should be allowed if they do not allow feet and/or toes to become caught, because too small a mesh will not allow feces to pass through. We are making no changes based on these comments. We do not agree that mesh that allows passage of the animals' toes or feet will ensure that the animals are not injured. Although we recognize that wider mesh will more readily permit passage of feces, we do not consider the level of convenience in cleaning cages to outweigh the need to protect the animals from injury.

Primary Enclosures Used to Transport Dogs and Cats: Cleaning—Section 3.14(b)

In addition to retaining the cleaning and sanitization requirements that appear in existing § 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. We proposed further that 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.

A small 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. Several commenters stated that requiring cleaning of enclosures and replacement of litter could create the risk of injury to carrier employees or escape of the animals. Several commenters stated that cleaning and replacement of litter be required only if the animal has soiled the litter already in place. We are making no changes based on these comments. By requiring cleaning of the primary enclosure only after 24 hours have passed, the regulations will not require the cleaning of enclosures that have not been soiled. Allowing an animal to stay for 36 hours in a cage that has not been cleaned poses a risk to the well-being of the animal. In addition to cleaning the cage, the carrier has the option of moving the animal to another enclosure. The issue of animals escaping while their enclosures are being cleaned is addressed in § 3.14(b) as proposed.

Several commenters recommended that the regulations provide that planned transport should not exceed 24 hours, and that when transport does exceed that time, animals must be moved from their primary enclosure to a clean one. We are making no changes based on these comments. It is not necessary to regulate the duration of transportation, because the regulations as proposed already include practical options for sanitation of primary enclosures for transportation that exceeds 24 hours.

Primary Enclosures Used to Transport Dogs and Cats: Ventilation—Section 3.14(c)

The provisions we proposed regarding ventilation requirements for primary enclosures used to transport dogs and cats were the same as those in the existing regulations at § 3.12(a) (4), except as discussed below.

While retaining in the proposal the majority of the existing provisions regarding ventilation openings, we proposed to amend those provisions to require that at least one-third of the ventilation area be located on the upper one-half of the primary enclosure. 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. The only comments specifically addressing these provisions supported them, and we are making no changes in this final rule.

Primary Enclosures Used to Transport Dogs and Cats: Compatibility—Section 3.14(d)

Under the existing regulations, § 3.12(b) required 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.

We also proposed in § 3.14(d) that: (1) 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; (2) dog 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. The only comments specifically addressing these provisions supported them, and we are making no changes in this final rule.

Primary Enclosures Used to Transport Dogs and Cats: Space and Placement—Section 3.14(e)

We proposed to retain the requirement in existing § 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). The only comments specifically addressing these provisions supported them, and we are making no changes in this final rule.

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 existing § 3.12(d) regarding the number of animals that may be transported in a primary enclosure were designed only for air transportation. We therefore proposed to set forth the provisions of existing § 3.12(d), with some amendments, in proposed § 3.14(f), titled "Transportation by air." We proposed that no more than one live dog or cat, 4 months of age or more, may be shipped in a primary enclosure when shipped by air.

We also proposed that 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. We proposed that it be permissible to transport a maximum of two live puppies or kittens, 8 weeks to 4 months of age, and weighing 20 lbs. (9 kg) or less each, in the same primary enclosure. In proposed § 3.14(f)(4), we proposed to retain the provision in existing § 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.

In using 4 months as the age an animal must attain before it can be transported, we departed from the existing regulations, which use 6 months as the minimum age for transportation. The change we proposed from 6 months to 4 months was made to achieve further consistency with similar provisions throughout Subpart A. A number of commenters opposed this change. One commenter stated that such a change would make obsolete educational materials issued by the transportation industry, and that the existing regulations have proven adequate. Upon review of the issue, we agree with the comment that no compelling reason exists to change the upper limit in the provisions in question to 6 months. Further, we agree with several of the commenters that, by reducing the upper limit to 6 months, and, in effect, requiring that all puppies over 4 months be shipped alone, the regulations as proposed could promote undue stress on many of the animals being transported. We are therefore returning in this final rule to the 6-month upper limit.

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 permitted by the Act with regard to transportation to research facilities. We are therefore making no changes to the proposed provision based on these comments.

Several commenters stated that it should be required that puppies less

than 12 weeks of age not be shipped by air. We do not agree. Based on our experience enforcing the regulations, an 8-week minimum has proven adequate to safeguard the well-being of the animals shipped.

Several commenters stated that flexibility and professional discretion should be allowed in determining how many animals should be shipped together. We do not agree. The existing regulations have proven adequate and necessary to protect the well-being of the animals shipped.

Several commenters recommended that, instead of limiting the weight of two puppies shipped together to no more than 20 lbs. each, the regulations should limit the total weight of the two puppies to no more than 50 lbs. We are making no changes based on these comments. Such a change would in many cases require the use of enclosures larger than those currently used, and would therefore create a greater risk to the animals shipped. Based on our experience enforcing the regulations, we have found that approximately 20 lbs. per puppy is the maximum safe weight limit for two animals shipped together.

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. These provisions were proposed to 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.

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 opposed the provisions. Another commenter 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 in most cases for conditions where a greater number of dogs or cats can be safely transported in the same enclosure by surface vehicle. For the most part, therefore, we are making no changes to our proposal regarding these provisions. We are making one change, however, to provide that animals transported by privately owned aircraft will be covered by the same provisions proposed for surface vehicle. The nature of transport by most privately owned aircraft, and the configuration of their interiors, allows for greater attention to be paid to the animals during transport than does shipping by commercial aircraft. Therefore, in most cases, transportation by privately owned aircraft is more similar to transportation by surface vehicle than to transportation by commercial aircraft.

Several commenters expressed opposition to the proposed provision limiting to four the number of dogs and cats shipped in one primary enclosure by surface vehicle. We are making no changes based on these comments. In the past, the number of dogs and cats limited to one primary enclosure was 12. However, our experience enforcing this standard demonstrated that shipping this number of animals together was deleterious to their health and well-being. We consider a maximum of four dogs or cats per enclosure to be adequate to ensure the health and well-being of the animals.

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 an exception is authorized by the Act with regard to transportation 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. Several commenters specifically supported the proposed provisions as written. Several commenters stated that the regulations should allow for the use of non-detachable food and water instructions, because detachable ones might be lost. The commenters' recommendation has been addressed in § 3.13(c) of this rule, which provides that food and water instructions must be securely attached to the primary enclosure. We have made appropriate wording changes in § 3.14(h) to convey this intent.

Primary Conveyances—Section 3.15

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. We also proposed that cargo areas would have to be pressurized while the conveyance is in the air, unless it is flying under 8,000 ft. 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 or 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. Existing § 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 manner" that may reasonably be expected to harm the dogs and cats or cause inhumane conditions.

A small number of commenters specifically supported the provisions of proposed § 3.15 as written. A small number of commenters stated that the proposed heating and cooling requirements for air cargo areas were too stringent. One commenter 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. Upon review of the comments, we agree that the proposed provisions would be impracticable. Due to Federal aviation safety requirements, it would be impossible to comply with the proposed standards when the aircraft is on the ground. We are therefore amending § 3.15(d) as proposed to delete the provision that the standards apply to aircraft on the ground, and to periods when the animals are being transported. However, we are retaining provisions in § 3.19 as proposed that include safeguards for animals moved on transporting devices.

One commenter recommended that the regulations should include specific temperature limits for transport in air cargo areas. Due to the nature of cargo areas on aircraft, such a requirement would be impractical. Further, based on our experience enforcing the regulations, we are not aware of significant problems with temperature extremes during flight.

One commenter specifically supported the provisions of proposed § 3.15(e) as written. 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 additional care 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. Additionally, provisions in § 3.14 as proposed, and in § 3.17 as proposed, restrict the transportation of very young or sick animals, respectively.

One commenter recommended that the regulations require that auxiliary ventilation be used when temperatures reach 75 °F, and also recommended that temperatures should not exceed 75 °F for more than 4 hours. The commenter supplied no additional data to support this recommendation, and we do not consider such a change necessary to ensure the well-being of animals transported.

We are making several changes to § 3.15(e) that are consistent with changes we are making elsewhere in this final rule. Upon review of the comments received, we agree that animals will be adequately protected from extreme temperatures for extended periods of time if temperatures in cargo areas during surface transportation do not exceed 85 °F for more than 4 hours, nor fall below 45 °F for more than 4 hours. Therefore, in this final rule, we are removing the provisions in proposed § 3.15(e) that temperatures may not exceed 95 °F at any time, nor fall below 35 °F at any time. These amendments will minimize disruption to normal shipping practices, while at the same time continuing to safeguard the well-being of the animals shipped.

One commenter recommended that the regulations require that animals be transported in trucks that provide a certain number of air changes per hour, and that these ventilation systems be operated at all times the vehicle is not in motion. We are making no changes based on this comment. We consider the regulations set forth in this final rule to provide adequate standards for the protection of animals being transported. As long as a primary conveyance is in compliance with the standards, we do not consider it relevant how the standards are met.

One commenter recommended that specific standards be set forth regarding trailers and buses used as primary conveyances. We consider the proposed wording adequate to address the health and safety of animals being transported, and are making no changes based on these comments.

Food and Water Requirements—Section 3.16

We set forth requirements regarding food and water for dogs and cats being transported, contained in the existing regulations 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.

Existing § 3.14(a) requires that dogs and cats be offered water within 12 hours after the start of transportation or acceptance for transportation. Existing § 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. 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 would begin at the time the dog or 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 or cat was provided water within 4 hours before delivery for transportation and that each dog or cat was provided food within 12 hours before delivery for transportation. We also proposed to require that the certification include the date and times the food and water was offered.

A number of commenters addressed the feeding and watering provisions in proposed § 3.16. Several supported these provisions as proposed. A small number of commenters recommended that dogs and cats in transport, especially young animals, be fed and watered more often than as proposed. One commenter stated that water should be available continuously during transport. Based on our experience enforcing the regulations, we do not consider such additional feeding and watering necessary or practical, and are making no changes based on this comment. In particular, the provision of water at all times during transit would promote wetting and contamination of the primary enclosure and the animal.

One commenter opposed the requirements of proposed §§ 3.16 (a) and (b), regarding the frequency of feeding and watering of animals in transit. The commenter stated that the regulations as proposed would create logistical problems for carriers, both in carrying out the feeding and watering, and in keeping track of when such feeding and watering must take place. The commenter recommended that it be required that the consignor offer food and water to the animal immediately before shipment. As we stated elsewhere in this supplementary information under the heading "Consignments to Carriers and Intermediate Handlers—§ 3.13," we do not consider it 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. However, as we described under that same heading, we are amending this final rule to reduce the logistical difficulties carriers might experience, both by requiring that animals be offered food and water within 4 hours of delivery for transport, and by requiring that an explicit schedule for feeding and watering during the next 24-hour period be securely attached to the primary enclosure by the consignor.

One commenter stated that the shipper should be required to provide an adequate amount of food and water along with the animals shipped. We do not consider such a requirement practical or necessary. Under normal circumstances, it should not be necessary to feed and water the animals

while they are in transport. When an animal is in transport for an extended period of time, it is the responsibility of the carrier or intermediate handler to provide food and water as required in § 3.16.

One commenter stated that provision of food high in water content should be allowed in place of water. We are making no changes based on this comment. It would not be evident in each case what amount of food high in water content would be adequate as a replacement for water alone.

One commenter recommended that it be required that instructions for feeding and watering be securely attached to the primary enclosure. We have included this provision, as discussed above. Several commenters expressed the opinion that one receptacle is sufficient for both food and water. We do not consider it reasonable or practical to allow use of the same receptacle for food and water. Separate receptacles are necessary to allow for feeding and watering at the same time, as required by the standards in this final rule.

We proposed to set forth the provisions in existing § 3.14(d), concerning a carrier's 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.

We have made several nonsubstantive formatting changes to § 3.16. To eliminate duplicative provisions, we have combined paragraphs (a) and (b) as proposed, and have redesignated subsequent paragraphs accordingly.

Care in Transit—Section 3.17

We proposed to set forth in proposed § 3.17 the provisions regarding care in transit in existing § 3.15, with some minor reformatting for readability and several additions to the existing provisions. In proposed § 3.17(a), we proposed to allow either the operator of the conveyance or a person accompanying the operator to check on the dogs or cats being transported, 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 or cats in obvious physical distress must be given veterinary care at the closest available veterinary facility.

A small number of commenters specifically supported the provisions of proposed § 3.17 as written. One commenter stated that observing the dogs or cats at least every 4 hours, as proposed, is unnecessary when temperature-controlled vehicles are used. We do not agree. Excessively cold or hot temperatures are not the only problems that may be encountered in the vehicle or with the animals themselves.

One commenter stated that the regulations should require that necessary veterinary care be provided "as soon as possible," not at the closest veterinary facility, as proposed, because not all clinics have proper facilities. We are making no changes based on this comment. By using the term "closest available," we consider the language as proposed to adequately state our intent, and to address the concerns of the commenter.

In proposed § 3.17(c), we proposed to add an exception to the existing regulations prohibiting 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 also proposed to add a paragraph, § 3.17(e), to specify that these transportation standards remain in effect and 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. One commenter opposed the provision that would make air carriers responsible for determining whether an animal is in distress. The commenter stated that airline employees should be responsible only for reporting any suspicious symptoms or behavior to the veterinarian. We are making no changes based on these comments. The provisions as proposed require only that the carriers determine if an animal is in obvious physical distress. The carriers are not required to interpret symptoms or other signs. If the animal is in obvious distress, then the carrier must arrange for any needed veterinary care.

Terminal Facilities—Section 3.18

We proposed to require that any person subject to the regulations who transports dogs or cats and who holds them in animal holding areas must keep the animals away from inanimate cargo, clean and sanitize the area, have an effective pest control program, provide ventilation, and maintain the ambient temperature within certain prescribed limits. 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). Several commenters recommended that the proposed regulations be clarified with regard to the commingling of dogs and cats with inanimate cargo. We consider the regulations as proposed to adequately express our intent for enforcement purposes, and are making no changes based on the comments. One commenter stated that the proposed cleaning requirements for terminals were too rigid, because the animals there are contained in primary enclosures. While we agree that the animals themselves will not largely contribute to the need for sanitation, we consider thorough cleaning of the animal holding area to be necessary for the animals' well-being, due to the wide variety of other materials that will normally be kept in such facilities.

In proposed § 3.18(c), we provided that ventilation must be provided in any animal holding area in a terminal facility containing dogs or cats. A small number of commenters recommended that the regulations specifically require that fresh air be provided. We do not agree. In many cases, recycled air is of higher quality than what would ordinarily be considered "fresh air."

As well as retaining the temperature requirements in the existing 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 specified a procedure for measuring the ambient temperature.

A small number of commenters supported the provisions of proposed § 3.18 as written. One commenter stated that the temperature requirements for housing facilities should also apply to holding facilities. Other commenters were divided on whether the proposed temperature standards were too stringent or too lenient. Upon review of the comments, we are making several changes to the temperature requirements in § 3.18. Essentially, we agree that the temperature limits for holding facilities should coincide with those of housing facilities. Therefore, in this final rule, we are providing that the ambient temperature in an animal holding area containing dogs or cats must not fall below 45 °F (7.2 °C) for

more than 4 consecutive hours or rise above 85 °F (29.5 °C) for more than 4 consecutive hours at any time dogs or cats are present.

Handling—Section 3.19

The existing regulations imposed duties on carriers and intermediate handlers for proper handling and movement of dogs and cats. 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.

One commenter stated that requiring that proposed minimum and maximum temperature limits not be exceeded for more than 45 minutes was arbitrary. We disagree. Forty-five minutes is an adequate period of time to transport animals to and from aircraft and holding areas, while at the same time safeguarding their health and well-being.

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 harm 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.

One commenter stated that using the term "must avoid" in describing methods of handling primary enclosures is too restrictive, and does not take into account accidents. We are making no changes based on this comment. It is reasonable and practicable to take steps to avoid accidents, and is necessary for the well-being of the animals being transported.

One commenter stated that the word "emotional" should be deleted with regard to avoiding causing the animals distress, because it is accepted that animals other than man cannot experience emotions. We do not agree that animals do not show emotion. However, we are deleting the word "emotional" in § 3.19, to allow for broader enforcement of the term "distress."

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.

We proposed to revise and rewrite the existing regulations based on our experience administering them under the Act. We also proposed to amend the 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 1752, 99 Stat. 1645, Public Law 99–198, amending 7 U.S.C. 2143.) We discuss each topic covered in our proposed regulations below.

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 the existing 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 small number of commenters stated that the proposed regulations did not represent the recommendations of the expert committee on nonhuman primates that was convened prior to the development of the proposed regulations. In soliciting recommendations from the expert committee, we considered it one source among many with the experience and expertise to advise us in the development of the proposed regulations. Throughout this rulemaking process, we have consistently invited information from all informed parties. This final rule represents the best information available to us, including that supplied to us by the expert committee.

One commenter recommended that the regulations require that each facility develop a care and use plan to address all aspects of nonhuman primate care, including physical aspects of the facility. Several commenters stated that a separate plan should be required for each species. Several commenters opposed the documentation of a plan for promoting the psychological well-being of nonhuman primates, as discussed below, stating that written procedures are not required for equally important husbandry practices under the proposed regulations. We disagree that a written, comprehensive plan addressing all aspects of nonhuman primate care is necessary. The specific standards that each facility must meet are set forth in the regulations in this final rule. A plan is necessary with regard to the psychological well-being of nonhuman primates, however, due to the many variables affecting how best to achieve psychological well-being in different species and animals.

One commenter stated that the use of primates in basic research should not be allowed until a research facility can demonstrate that it can maintain the animals' psychological well-being. We are making no changes based on this comment. Under the Act, the Department is not authorized to promulgate regulations that interfere with the design, outline or guidelines of actual research.

The heading for subpart D as proposed contains a footnote reference, which indicates that because of the great diversity among nonhuman primates, the standards in subpart D 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. A number of commenters recommended that the footnote also state that the minimum standards must be applied so as to allow the nonhuman primates to express the species-specific behavior of each

individual species. We do not consider such an addition necessary. Consideration of species-typical behavior is already included in § 3.81 as proposed as a minimum standard

Housing Facilities and Operating Standards

Existing §§ 3.75 through 3.77 provide requirements for facilities used to house nonhuman primates. Existing § 3.75, "Facilities, general," contains regulations pertaining to housing facilities of any kind. It is followed by existing § 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 of the regulations, 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 are issuing for housing facilities are applicable to housing facilities of any kind. As in the existing regulations, we include these standards of general applicability in one section, § 3.75, in which we also include many of the provisions of existing § 3.75. Additionally, we are amending the existing regulations that are specific to particular types of housing facilities, and include those provisions in separate sections of the final rule. In some cases, where the existing regulations would have been unchanged in substance, we made wording changes to clarify the intent of the regulations.

A number of commenters supported the provisions of proposed § 3.75 as written. Several commenters recommended that we require that housing facilities comply with Federal, State, and local laws and regulations relating to housing facilities for animals, so as to allow uniform enforcement by various jurisdictions. We are making no changes based on these comments. We are authorized under the Act to establish minimum standards for animal welfare, and this mandate may differ from those of other Federal, State, or local laws with regard to housing facilities.

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.).

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, stating that the responsibility for maintaining adequate security at a facility belongs to the facility, and not to the Department. Others were concerned that, even if the facility made reasonable efforts to prevent the entry of unauthorized humans, the facility would still be liable for the entry of trespassing individuals. Upon review of the comments, we agree that instances of forced entry at a regulated facility should not be violations of these regulations. In this final rule, we are therefore removing the requirement, as proposed in §§ 3.75 (a) and (b), that facilities restrict the entry of unauthorized humans.

A small number of commenters stated that the provision that facilities restrict the entrance of other animals should be changed to require only that the facilities restrict other animals from "easy access." We continue to believe that the provision is necessary and appropriate as proposed. Entry by other animals can be prevented by structural safeguards.

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 facility 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 proposed, the means of separation used would have had to have been 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. As discussed in this supplementary information under the preceding heading, we are removing the requirement that the means of separation prevent access by unauthorized humans.

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, except for materials actually used and necessary for cleaning the area, and fixtures and equipment necessary for proper husbandry practices and research needs. The only commenters who specifically addressed proposed § 3.75(b) supported those provisions as written, and we are making no changes in this final rule.

Housing Facilities: Surfaces; General Requirements—Sections 3.75 (c)(1) and (c)(2)

In proposed § 3.75(c), we proposed to include requirements concerning housing facility surfaces that are common to all types of facilities. The existing 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 of 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 floors could be made of dirt, absorbent bedding, sand, gravel, grass, or other similar material that can be readily cleaned or is removable.

We proposed that any surfaces 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 as 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 excessive rust that prevents the required cleaning and sanitization or affects the structural integrity of the surfaces.

Many commenters supported § 3.75(c)(1) as written. One commenter stated that proposed § 3.75(c)(1) did not adequately convey that rust can be a health hazard. The regulations as proposed prohibit excessive rust. Based on our experience enforcing the regulations, however, we have not found superficial rust to be a problem with regard to sanitization. We are therefore making no changes based on this comment.

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 spot-cleaned daily and sanitized in accordance with § 3.84 of the proposed regulations to prevent any accumulation of excreta or disease hazards, unless the nonhuman primates engage in scent marking. Under those provisions, such hard surfaces in indoor primary enclosures would have to be sanitized at least once every two weeks. As we discussed in the supplementary information of our proposal, 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 their 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 sanitized or replaced 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, absorbent bedding, sand, gravel, grass, or other similar material would have to be raked or spot-cleaned with sufficient frequency to ensure all animals the freedom to avoid contact with excreta. 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 and sanitized when necessary to satisfy generally accepted husbandry standards and practices.

A small number of commenters opposed what they termed rigid specifications for cleaning practices, including daily spot-cleaning, and recommended that the regulations instead allow flexibility through the use of professional judgment. We do not consider the regulations as proposed to be unnecessarily stringent. For example, with regard to floors not made of hard materials, the proposed regulations require only that they be raked or spot-cleaned with sufficient frequency to ensure all animals the freedom to avoid contact with excreta. Hard surfaces with which the animals come in contact must be cleaned daily, but only by spot-cleaning, to prevent accumulation of excreta and disease hazards. Such cleaning is necessary to ensure the well-being of the animals housed.

A small number of commenters recommended that the regulations require daily spot-cleaning, even for animals that scent mark. An equal number of commenters opposed spot-cleaning for scent marking species. Upon review of the issue, we determined that spot-cleaning, by its nature, will not be disruptive of scent marking species, and, as we stated in our proposal, is necessary in general for adequate cleaning. We are therefore amending this final rule to require that daily spot-cleaning be carried out for all species, even those that scent mark.

The regulations as proposed required cleaning to prevent an accumulation of excreta. A number of commenters stated that it would be impossible to prevent any accumulation of excreta, and recommended that we delete the word "any" before the word "accumulation." We consider the commenters' point a valid one and are making the recommended change.

Several commenters recommended that the cages of scent marking species be intensely sanitized in sections every 24 hours, to allow scent to remain in enclosures at all times. We do not consider it practical or necessary to specifically require such a sanitization procedure. However, there is nothing in the proposed regulations to prohibit such a procedure, provided the enclosure as a whole is adequately sanitized in accordance with the regulations.

A small number of commenters stated that certain types of primary enclosures, such as hanging cages, should not have to be sanitized at least every 2 weeks, given the fact that waste material can drop freely from such enclosures and the fact that periodic removal of nonhuman primates from their enclosure can cause stress to the animals. We are making no

changes based on these comments. Even cages such as hanging cages will become soiled and will retain a certain amount of waste material. We consider the sanitization requirements as proposed necessary to minimize the risk of contamination and disease spread.

One commenter stated that it was unclear whether § 3.75(c)(3) as proposed may be applied as a standard looser than those set forth in proposed § 3.84 for the sanitization of primary enclosures. There is nothing contradictory between §§ 3.75 and 3.84, and we do not consider further clarification necessary.

Several commenters stated that enclosures for scent marking species should be spot-cleaned with soap and water daily. Although the use of soap and water is an effective method of cleaning, it is not the only effective method. We therefore do not consider it appropriate to require it as the only allowable cleaning method.

Housing Facilities: Water and Electric Power—Section 3.75(d)

Existing § 3.75(b) 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 potable running water for the nonhuman primates' drinking needs and adequate for cleaning and for carrying out other husbandry requirements.

Many commenters supported the provisions of § 3.75(d) as written. One commenter opposed these provisions without explanation. Lacking evidence to the contrary, we continue to consider the provisions as proposed necessary and appropriate, and are making no changes in this final rule.

Housing Facilities: Storage—Section 3.75(e)

We proposed in § 3.75(e) to expand the regulations in existing § 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 proposed that food requiring refrigeration must be stored accordingly. We proposed requirements to ensure further the quality of the physical environment surrounding nonhuman primates. We proposed to add a requirement that open food and bedding be stored 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 food storage and preparation areas, but proposed to allow them to be stored in the animal areas if kept in cabinets.

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.

A small number of commenters specifically supported proposed § 3.75(e) as written. A number of commenters stated that storage of food and bedding near walls should be permissible. One commenter stated that if food and bedding supplies can be moved for cleaning, it should be permitted that they be stored next to a wall. We consider the provision restricting storage near walls necessary, both to allow for cleaning and to minimize problems with vermin, and we are making no changes based on these comments.

Several commenters stated that the regulations should prohibit all storage of toxic materials in animal areas. If toxic substances are stored in cabinets, the risk of their causing harm to animals is minimal. However, we agree that to reduce the danger to animals as much as possible, toxic substances stored in animal areas should be limited to those required for normal husbandry practices. We are therefore adding such a provision in this final rule.

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 existing § 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 regular and frequent collection, removal, and disposal of wastes, in a manner that minimizes contamination and disease risk. The regulations as proposed also contained the requirements that trash containers be leakproof and tightly closed, and that all forms of animal waste, including dead animals, be kept out of food and animal areas.

Requirements for drainage systems are provided in existing §§ 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. Traps would be necessary in closed drainage systems to prevent the backflow of gases and the backup of sewage onto the floor. Additionally, we proposed that puddles of standing water must be mopped up or drained so that the animals stay dry.

A small number of commenters specifically supported the provisions of proposed § 3.75(f) as written. A large number of commenters interpreted the provisions regarding the prevention of odor and sewage as a requirement that closed drainage systems include backflow valves. Many commenters stated that installing such valves would be prohibitively expensive. The proposed provisions did not specifically require backflow valves. The provisions in question called for essentially the same standards as those already required under the existing regulations. We therefore do not expect facilities to experience significant practical or financial difficulties in meeting this standard.

A small number of commenters opposed the proposed requirement that trash containers have lids. We are making no changes based on these comments. We consider the covering of trash containers necessary to control insects and odors. Under these regulations, the use of lids is required

only in animal areas and food storage and preparation areas, not in office areas.

A number of commenters stated that it would be difficult to remove all puddles from surfaces in outdoor housing, especially during rain. Other commenters recommended that the proposed provisions regarding puddles be rewritten to state that free water in the housing facilities should be dealt with in a manner that ensures all animals the freedom to avoid sprays and puddles. One commenter stated that because some primates enjoy playing in puddles, decisions concerning standing water should be left to the facility. Another commenter stated that it should be required that puddles of water in animal areas be mopped up or drained only if animals can come in contact with the puddles.

We agree with the commenters that it would be impossible to ensure that all water is removed from animal areas at all times. The intent of the proposed provisions is to require removal of water as rapidly as possible, so as to protect animals from being soiled, and to prevent the propagation of pests and diseases. We consider this intent to be adequately conveyed in the requirement that standing puddles of water in animal areas must be mopped up or drained so that the animals stay dry.

One commenter stated that it is impossible to eliminate standing water in outdoor enclosures, and that, therefore, raised covered platforms should be required so as to allow animals to remain dry. We are making no changes based on this comment. Outdoor facilities usually allow enough space so that animals can avoid puddles and soiling. Additionally, outdoor housing facilities are required by the regulations to contain shelter to protect nonhuman primates from the elements.

One commenter opposed what the commenter termed the relaxation of regulations requiring the daily removal of animal and food wastes in nonhuman primate enclosures. We do not agree with the commenter's interpretation of the regulations. Section 3.84 requires that excreta and food waste be removed from each indoor primary enclosure daily. The provisions in § 3.75(f) deal with the collection, removal, and disposal of wastes from the housing facility.

Housing facilities: Washrooms and Sinks—Section 3.75(g)

We proposed to retain the requirement contained in existing § 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 to § 3.75(g) in this final rule.

Requirements for Different Types of Housing Facilities

The existing 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 premises, 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.

Several commenters stated that the standards for outdoor housing facilities for nonhuman primates should differentiate between research facilities and dealers/breeders. We disagree. The needs of the animals housed are the same no matter which entity happens to be holding them. We are therefore making no changes based on these comments.

Requirements for Indoor Housing Facilities. Mobile or Traveling Housing Facilities, the Sheltered Part of Sheltered Housing Facilities, and Shelters in Outdoor 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 existing 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. We proposed 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 also proposed 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 proposed 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. As proposed, auxiliary ventilation such as fans or air conditioning would have to be provided when the temperature is 85 °F (29.5 °C) or higher.

We received a large number of comments with regard to the issue of temperature in indoor, sheltered, and mobile and traveling housing facilities, and concerning the minimum temperature for shelters in outdoor facilities. A number of commenters stated that our proposed temperature ranges were too stringent and 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. A number of other commenters stated that our proposed temperature ranges were too lenient in general, or too lenient except for certain specified species.

We continue to believe that the well-being of nonhuman primates housed in enclosed facilities requires that parameters be established for hot and cold temperatures. We do not believe that the needs of the animals housed vary so widely as to warrant the removal of all temperature limits. Upon review of the comments calling for more stringent temperature limits, and those recommending more lenient limits, we have decided that changes to the

proposed rule are appropriate. For example, while certain species or animals may be acclimated to temperatures exceeding 95 °F, the confined nature of enclosed facilities will make such high temperatures intolerable for other animals. Also, given the heightened effect of heat in enclosed areas, even animals normally acclimated to temperatures higher than 95 °F will not be able to tolerate high temperatures in an enclosed area for extended periods of time. Therefore, in this final rule, we are establishing general temperature limits more stringent than those proposed, while at the same time allowing flexibility to accommodate animals that can tolerate temperatures outside those limits. We are providing in this final rule that the ambient temperature in the enclosed facilities must not fall below 45 °F (7.2 °C) for more than 4 consecutive hours when nonhuman primates are present, and must not rise above 85 °F (29.5 °C) for more than 4 consecutive hours when nonhuman primates are present. In sheltered housing facilities, exposure to temperatures above 85 °F must be approved by the attending veterinarian, in accordance with generally accepted husbandry practices.

A small number of commenters stated that the regulations should be restated to ensure that animals are maintained at temperatures appropriate for their species, or that they should include temperature specifications by species or groups. Because of the variation among nonhuman primates, even those of the same species, as to acclimation and housing conditions, we do not consider it appropriate or practical to establish a system of allowable temperatures based on species. The regulations in this final rule provide that the temperature in enclosed facilities must be maintained within a range that ensures the health and well-being of the animals housed.

A number of 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. As we discussed in the proposal, while we agree that it would be difficult or impossible to control the ambient temperature in the outdoor housing facilities, the regulations as proposed require only that the animal shelters in such facilities be maintained at temperatures no lower than 45 °F (10 °C).

Some of these commenters expressed concern that the use of heat lamps to achieve the necessary temperatures would be potentially hazardous. In reviewing this issue, it has always been our intent that supplementary heat be provided in shelters in outdoor housing facilities in a way so as not to present hazards. We have inserted the word "safely" in § 3.78(a) to clarify this intent. Heat lamps are one possible method of maintaining required temperatures. The proposed regulations do not require their use.

Proposed § 3.78(a) provided that only acclimated nonhuman primates may be kept in outdoor housing facilities. Several commenters stated that determinations regarding the acclimation of nonhuman primates should be the responsibility of the attending veterinarian. The commenters' recommendation is consistent with our intent regarding § 3.78(a) as proposed, and we are amending that paragraph accordingly.

One commenter stated that even acclimated animals should not be permitted at outdoor facilities when the temperature falls below 45 °F. We disagree. Certain nonhuman primates can be acclimated to temperatures below 45 °F. As long as they are acclimated, there is no reason to prohibit them from outdoor facilities at the lower temperatures.

2. Ventilation and Relative Humidity Level—Sections 3.76(b), 3.77(b), and 3.79(b)

In our proposal, we proposed that the existing 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 that in 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 species housed, as directed by the attending veterinarian, in accordance with generally accepted professional and husbandry practices. We also proposed that ventilation must 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, and to protect the well-being of the nonhuman primates.

A small number of commenters specifically supported the ventilation requirements in the proposed rule. A small number of commenters recommended that it be required that the relative humidity in enclosed facilities be maintained between 30 and 70 percent. One commenter recommended that specific humidity standards be established to better ensure compliance with the regulations. As we stated in our proposal, the effect on animals of a particular level of humidity depends to a great degree on other factors, such as temperature and ventilation. We therefore consider it appropriate as proposed to allow the maintenance of the humidity level in accordance with generally accepted professional and husbandry practices.

A small number of commenters stated that it is unnecessary to require as proposed that auxiliary ventilation be used at temperatures exceeding 85 °F (29.5 °C), because the regulations as proposed require in general that facilities be sufficiently ventilated to provide for the nonhuman primates' health and well-being. While we agree that the requirement for auxiliary ventilation at higher temperatures falls under the general requirement for adequate ventilation, we continue to believe that it serves a specific and necessary purpose. Based on our experience enforcing the regulations, achieving adequate ventilation at moderate temperatures can be accomplished through various means, such as either natural or mechanical ventilation. However, at higher temperatures, auxiliary ventilation becomes necessary on a uniform basis in ensuring the health and well-being of the animals. We are therefore making no changes based on the comments.

A number of commenters recommended that the regulations require that fresh air always be provided to nonhuman primates, or that if fresh air cannot be supplied, an exemption must be submitted to the Department for approval. We disagree. The regulations as proposed require that sufficient ventilation be supplied to provide for the animals' health and well-being. In many cases, recycled air is more healthful than what would be considered "fresh" air, due to the use of air-filtering mechanisms. We are therefore making no changes based on these comments.

One commenter requested that the regulations clarify what constitutes excessive odor. The requirement that odor be minimized is included in the existing regulations. While we agree that it does not lend itself to precise measurement, we consider the word "minimize" to be sufficiently measurable for enforcement purposes. Our enforcement experience has shown that excessive odor generally can be measured against the standard of what is reasonable in the circumstances in

accordance with generally accepted husbandry practices.

One commenter recommended that the regulations require that additional ventilation be supplied in mobile or traveling facilities when the temperature exceeds 80 °F. The commenter's recommendation was not supported by additional data to demonstrate why the change from 85 °F, as proposed, would be necessary, and we are making no changes based on this comment.

3. Lighting—Sections 3.76(c), 3.77(c), and 3.79(c)

We proposed to require, at the three types of enclosed housing facilities included in the proposed regulations, sufficient light to permit routine inspection and cleaning of the facility, and observation of the nonhuman primates. We also proposed that animal areas must be provided a regular diurnal lighting cycle of either natural or artificial light, and that 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. We proposed to retain safeguards against exposing nonhuman primates to excessive light and to apply them to all enclosed housing facilities.

A small number of commenters supported the proposed requirements for lighting as written. A small number of commenters objected to the proposed requirement for lighting on a regular diurnal cycle, and recommended instead that the regulations require a specific number of hours of light and darkness a day. Upon review of the comments, we continue to believe it would not be beneficial in all cases to establish one specific timetable for lighting. Such a specific timetable might not be necessary or warranted in all cases and might not coincide with normal outdoor lighting cycles at a particular time of year. The wording as proposed is designed to allow for sufficient lighting necessary for the well-being of the animals and the performance of required activities.

A number of commenters objected to the provision in our proposal that light in enclosed housing facilities be uniformly diffused. Several commenters stated that the regulations should require only that the nonhuman primates be protected from excessive light. The requirement in our proposal for the uniform diffusion of light is very similar to the requirement in the existing regulations for "uniformly distributed illumination." Our intent in retaining the requirement for uniform lighting was to allow for proper cleaning, observation of animals, and inspection, without the need for an additional light source, such as a flashlight. We consider this standard to be both necessary and attainable.

Several commenters stated that the regulations should allow for professional judgment with regard to light intensities. One commenter opposed the proposed requirement that nonhuman primates be protected from excessive light, because, according to the commenter, this would require the moving of primary enclosures or housing facilities. The regulations as proposed contain only minimum and maximum requirements for light intensity. We consider these limits necessary for proper husbandry practices and the protection of the animals. Within these limits, the regulations allow significant variation as to lighting levels. We do not agree that protecting animals from excessive light will require moving of housing facilities, although it may require the moving of certain primary enclosures. Moving enclosures, however, is only one way of protecting animals from excessive light. We therefore do not consider it appropriate or necessary to change the regulations as proposed based on these comments.

A number of commenters recommended that we provide the authority to make exceptions to lighting standards to the Committee at research facilities. Section 2.38(k)(1) of part 2 of the regulations already provides that exceptions to the standards in part 3 of the regulations 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—Sections 3.77 (d) and (e): Sections 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 temperature and that can tolerate without stress or discomfort the range of temperatures, humidity, and climatic 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.

As in existing §§ 3.77 (a) through (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 consider such shelters 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 (1) 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, or (2) to provide some other means to ensure protection for each nonhuman primate housed in the facility.

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. As we stated in the proposal, 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. If all animals do not have access to shelter, the facility can either increase the number of shelters or reduce the number of animals housed.

A number of commenters stated that proposed §§ 3.77(e) and 3.78(c) were redundant with §§ 3.77(d) and 3.78(b) respectively, and should be deleted. We disagree. Sections 3.77(d) and 3.78(b) set forth the type of shelter that is required. Sections 3.77(e) and 3.78(c) set forth the requirement that sufficient shelter or shelters be provided to allow all animals housed access to shelter.

A small number of commenters suggested specific alternatives to multiple shelters for ensuring that all animals housed have access to shelter. These suggested methods fall under the provision allowing for "other means" of ensuring protection for each animal. We do not consider it necessary or appropriate to limit alternatives by setting forth specific means in the regulations.

The provisions for shelter in outdoor or partially outdoor facilities require that the shelter provide protection from any weather conditions that might occur. A number of commenters recommended that this provision be deleted, because no shelter structure is likely to be effective during events such as hurricanes or tornadoes. We do not consider it appropriate to make the change recommended by the commenters. The required shelters must be able to provide shelter from reasonably foreseeable extremes of weather.

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 be placed around the outdoor areas of sheltered housing facilities and outdoor housing facilities. We proposed that the fence would have to be of sufficient height to keep unwanted species out, and that fences less than 6 feet high would have to be approved by the Administrator. We also proposed that the fence would have to 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, and that fences less than 3 feet from the primary enclosure would have to be approved by the Administrator.

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 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.

We also proposed to retain the provision that the perimeter fence be able to prevent the entry of unauthorized humans. We also proposed to retain such a provision in the conditions necessary to make alternative barriers acceptable in lieu of perimeter fences.

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, stating that the security of a facility is rightfully the concern of the facility. We disagree that a perimeter fence will not help protect the animals housed. The perimeter fence is not intended to ensure security for the facility, but rather, to protect against incidental contact with the nonhuman primates by other animals and people. We agree, however, that a fence of any practicable height will not be able to entirely eliminate entry by either humans or other animals. We do continue to believe that a fence at least 6 feet high will provide reasonable protection and deter the entrance of humans and other animals. To clarify the purpose of the perimeter fence, however, we are amending the proposal to require that such a fence "restrict" the entrance of animals and humans, rather than "prevent" their entrance, as proposed. We are making a like change in § 3.77(f)(1) as proposed regarding alternative methods of surrounding the animals.

A number of commenters stated that a facility not be considered in violation of the regulations in cases of unlawful intrusion, as long as the perimeter fence is adequately constructed with signs prohibiting unauthorized entry. A fence that reasonably restricts such entrance will be considered to be in compliance with the standards.

One commenter stated that a 4-foot perimeter fence would be just as effective in meeting the proposed standards as a 6-foot fence. Another commenter stated that a short, electric fence might suit some facilities better. One commenter stated that perimeter fence requirements should be flexible enough to allow the facility to meet its own needs. Another stated that primary enclosures of solid construction might not need a 6-foot-high fence. Based on the need to restrict the entrance of other animals and unauthorized humans, we consider 6 feet to be the minimum necessary fence height in most cases. However, the regulations as proposed allow for varying situations and needs by providing for approval by the Administrator of fences less than 6 feet high.

Several commenters expressed the opinion that requiring the written permission of the Administrator for fences less than 6 feet high exceeds the Department's authority. We disagree. The Secretary of Agriculture is authorized to promulgate whatever regulations he or she deems necessary to carry out the requirements of the Act.

One commenter stated that perimeter fence requirements should be standardized among species. We are making no changes based on this comment. The regulations in this final rule specify the need for a perimeter fence to restrict the entrance of other animals and unauthorized humans. Such a need exists for all nonhuman primates, and the type of fence used should not depend upon the species of nonhuman primate housed.

As we noted in the "**SUPPLEMENTARY INFORMATION**" of this rule under the heading "**EFFECTIVE DATES,**" many commenters pointed out that certain of the new standards would require

affected facilities to make extensive structural changes. The addition of the requirement for perimeter fences at sheltered and outdoor housing facilities are two such changes in the standards. Therefore, we are providing in §§ 3.77(f) and 3.78(d) of this rule that facilities must comply with the requirements for perimeter fences on and after February 15, 1994.

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), for 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, to protect both 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 of part 2 of the regulations, 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 number of commenters objected to the proposed requirement that the barrier must prevent contact between nonhuman primates and the public. For the same reasons discussed above regarding perimeter fences, we are changing the word "prevent," as set forth in the proposal, to "restrict."

A number of commenters recommended that the regulations prohibit all contact between nonhuman primates and the public. While we agree that unauthorized contact must be restricted, we do not consider it necessary to prohibit all contact between nonhuman primates and the public, as long as the handling requirements set forth in § 3.78(e) as proposed are met.

Primary Enclosures

We proposed to revise completely existing § 3.78, "Primary enclosures," 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.

Our proposal was in contrast to existing § 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.

Primary Enclosures: General Requirements—Section 3.80(a)

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 other unwanted animals 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 unwanted animals 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.

One commenter specifically supported the provisions of proposed § 3.80(a) as written. A small number of commenters recommended that the regulations require that primary enclosures provide hiding areas out of sight from humans and other primates. If such hiding areas are necessary for certain species or animals, they are to be addressed under the provisions in § 3.81 of this final rule, which requires a plan including environment enhancement to promote psychological well-being. We do not consider it necessary or appropriate to include such a requirement for all primary enclosures.

Several commenters stated that the requirements in proposed § 3.80(a) would not be practical in outdoor housing facilities. We are making no changes based on these comments. There are no requirements in proposed § 3.80(a) that would be unnecessary or impracticable in outdoor facilities.

A large number of commenters took issue with our requirements in proposed §§ 3.80(a)(2)(iii) and (a)(2)(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. A large number of commenters stated that such requirements would create a need for individual cage locks, which would restrict emergency access to each animal. Upon review of the comments received, we agree that §§ 3.80 (a)(2)(iii) and (a)(2)(iv) as proposed could create impracticable and possibly unsafe conditions. For these reasons, and for the reasons relating to unauthorized humans discussed in this supplementary information under the heading "Housing Facilities: Structure; Construction—§ 3.75(a)," we are removing the proposed requirements that primary enclosures prevent the unauthorized release of nonhuman primates and prevent the entry of unauthorized individuals.

Section 3.80(a)(2)(vii) as proposed requires that primary enclosures be constructed so as to provide the nonhuman primates with easy and convenient access to clean food and water. A number of commenters stated that requiring easy access to food might be interpreted as prohibiting the use of enrichment devices containing food. We disagree. Although task-oriented and enrichment feeding devices may be part of the environment enhancement programs developed under § 3.81, a basic adequate diet must be made available to the nonhuman primates.

A number of commenters addressed the requirement in proposed § 3.80(a)(2)(x) that primary enclosures must have floors that are constructed in a manner that protects the nonhuman primates from injuring themselves. One commenter recommended that the provision state instead that primary enclosures must have floors that are constructed in a manner that protects the primates from having their appendages caught. Many other commenters specifically opposed the use of large wire mesh floors that would allow primates' hands and feet to slip through. We consider the commenters' concerns to be adequately addressed by § 3.80(a)(2)(x) as written.

A small number of commenters stated that proposed § 3.80(a)(2)(x) was written so as to imply that cage floors would have such small mesh that there will be an increased risk of contaminating food with feces. The intent of the Act is to provide for the health and well-being of the animals. Floors that cause injury to the animals by allowing their arms or legs to pass through do not comply with the intent of the Act, whether or not they prohibit the passage of feces. We do not consider the ease of cleaning to be a higher priority than the safety of the animals. Whatever the design of the floors, the animals in the enclosure must be provided access to clean food and water.

A number of commenters stated that certain wording within proposed § 3.80(a) was redundant. We disagree. Each of the provisions in proposed § 3.80(a) addresses a distinct need, and is necessary for proper enforcement.

Primary Enclosures: Minimum Space Requirements—Section 3.80(b)

In our proposal, we proposed to revise completely the minimum space requirements for nonhuman primates set forth in existing § 3.78(b) (1) and (2). The existing 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.

The minimum enclosure sizes we proposed for all facilities are based on the typical weight of the species, except for brachiating species and great apes, in accordance with the following table:

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)

In addition to the above proposed space requirements, we proposed that 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, to allow for normal postural adjustments.

We proposed that nonhuman primates would be categorized into the 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 included 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 over 55.0 lbs. (25 kg), except as provided for Great Apes weighing over 110 lbs. (50 kg), and brachiating species.

In our proposal, we stated our belief that, 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. As proposed, 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. We proposed that the space requirements would be minimum standards that must be provided to each nonhuman primate contained in a primary enclosure, unless otherwise specified. However, our proposal provided that, 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. As proposed, the minimum height for the animals would be the minimum height requirement for the largest nonhuman primate in the enclosure. Also, the regulations as proposed 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 proposed. A much larger number of commenters took issue with the minimum space requirements we proposed to require. Some expressed general opposition to increased space requirements for nonhuman primates. A number of commenters stated that the proposed space requirements were arbitrary and lacking in scientific basis, or would not promote increased activity among nonhuman primates. A large number of commenters stated that the proposed requirements were inadequate, or more specifically that they did not meet the space needs of great apes. Some stated that alternative methods for determining space requirements should be adopted. The minimum space requirements set forth in the proposal were based on data

supplied by an expert committee on primates convened prior to the initiation of rulemaking, on consultation and coordination with HHS, on comments received from the public in response to our original proposal, and on our experience enforcing the regulations. Based on this information collection and consultation, we are confident that the space requirements adopted in this rule represent current professionally accepted standards.

Several commenters stated that the examples we provided of which types of nonhuman primates typically fall under which weight group were incorrect in some cases and should be deleted. We are making no changes based on these comments. The examples we provided are just that. They are included in a footnote and are meant as guidelines for appropriate grouping of nonhuman primates. The examples provided are based on the NIH Guide, and are not meant to apply to every animal of a given species. The actual space requirements are based on weight, not species.

Several commenters stated that the regulations should adopt the space recommendations of the American Association of Zoological Parks and Aquariums (AAZPA), as published in our original proposal. While we encourage the adoption of the AAZPA recommendations where possible, we do not consider it appropriate to require them in the regulations. Under the Act, we establish minimum standards for animal care. The AAZPA standards exceed the minimum necessary for the humane care of nonhuman primates.

A small number of commenters either opposed counting low perches or ledges as part of the floor space, or requested clarification as to the height at which low perches or ledges would be considered part of the floor space. We agree that the regulations as proposed are unclear on this point. We are therefore adding language to § 3.80(b) of these regulations to provide that low perches and ledges that do not allow the space underneath them to be comfortably occupied by the animal will be counted as part of the floor space.

One commenter stated that young primates should be provided the same space as adults of their species, to allow them to grow. Another commenter stated that there is no evidence to indicate that space requirements should be different with regard to the sex of the species. The proposed space requirements are based on the weight of the animal, not on whether it is young, or male or female. The proposed regulations do contain a footnote that provides examples of which types of nonhuman primates typically fall into which weight groups. In these groups, the differences in weight between males and females, and young primates and adults, is taken into consideration. However, this footnote is included merely as guidance. With regard to young primates, it is expected that they will be transferred to appropriate cages based on their weight as necessary.

One commenter recommended that cage size be related to total biomass, instead of the sum of each individual primate. We disagree. Two primates weighing 2 pounds each, require more space than one primate weighing 4 pounds. We do not consider space requirements based on total biomass to be sufficient to meet the space needs of the animals, nor to provide for their psychological well-being.

One commenter recommended that a specific space requirement for apes over 110 pounds should be listed in the primate space table. We are making no changes based on this comment. The regulations as proposed require that special attention be given to the larger great apes. Not only must they be provided with an additional volume of space to allow for normal postural adjustments, in excess of that required in the top group of space requirements in the space table, but they must also be provided with additional opportunities for species-typical behavior. We are confident these requirements will adequately meet the space and psychological needs of larger great apes.

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, such enrichment would be provided for under the requirements in § 3.81 as proposed, concerning environment enhancement to promote psychological well-being.

A small number of commenters stated that in proposing minimum space standards the Department had ignored activity and behavior typical of varying species. A very large number of commenters specifically opposed the height requirements set forth in our proposal, stating that those provisions did not allow enough space for climbing to promote the psychological well-being of nonhuman primates. As we discussed in our proposal, we agree that the proposed space requirements alone do not address the issue of activities particular to varying species. However, under the regulations, each regulated facility will be required to develop a plan for promoting the needs of the nonhuman primates housed in the facility. We consider this type of plan to be the most practical way of addressing species-typical activity.

A small 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 arboreal nor exclusively terrestrial, and basing cage sizes on such considerations would not be feasible. Additional height requirements for brachiating species are already included in the regulations as proposed. For other species, if species-typical activity requires an arboreal environment, that would need to be addressed in the plan for environment enhancement required under § 3.81 of the regulations as proposed.

A small number of commenters recommended the establishment of a separate space group for brachiating species, utilizing crown-heel and span dimensions. Based on the size of the largest brachiating species, and on their postural needs, we consider including them in the largest space requirements to be necessary and adequate to meet their needs. We are therefore making no changes based on the comments.

We received some comments recommending that determining appropriate space requirements should be the responsibility of the attending veterinarian, in accordance with generally accepted professional and husbandry practices. As we discussed in our proposal, 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. In § 3.80(b)(4) as proposed (redesignated as § 3.80(b)(2)(iii) in this final rule), we provided that any exemption from the specified space requirements must 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 must be required in the judgment of the attending veterinarian, and must be approved by the Administrator.

Several commenters expressed the opinion that the provisions as proposed allow too much flexibility to regulated entities regarding minimum space requirements for nonhuman primates.

We consider the minimum space requirements to be quite specific as proposed, and are making no changes based on these comments.

A small number of commenters stated that it would be inappropriate to require a minimum 84" height for category 6, because a cage that size would not fit through an 84" door frame due to the door jamb or floor material. Several commenters also stated that requiring cages of that height would necessitate the raising of rooms in which the commenters house nonhuman primates. We do not consider this concern to be one that will occur with any frequency, nor to be one that warrants our changing the regulations as proposed. We have determined that Category 6 nonhuman primates require a minimum cage height of 84" for their health and well-being, and the final rule reflects this determination. The height requirements are based on the NIH Guide, which is already followed by many members of the research community. Further, we do not believe that the problem of moving cages through doorways is a significant practical one. Cages can be disassembled and reassembled when necessary.

A number of commenters opposed the 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 space requirements that must be provided for each nonhuman primate housed in the enclosure. The commenters stated that such a formula could lead to unworkable housing and care situations, might reduce research conducted to find data to define space requirements or cage enrichments, and would not take into account variables among individual animals and species. We continue to consider the space requirements for group-housed animals to be necessary and workable as proposed. In terms of practical implementation, they are similar to the existing regulations, which require a minimum amount of space for each animal housed in an enclosure. Further, we do not believe they will have a negative effect on research regarding space requirements. With the addition to the regulations of a mechanism for approval of innovative housing, incentive exists to conduct further research on the space requirements of nonhuman primates, and on innovative housing that will meet those needs.

One commenter stated that mothers with infants under 6 months of age should be housed in enclosures that are based on the combined minimum space requirements for the mother and the infants, as determined by weight. We do not consider such a requirement necessary, based on species behavior which typically involves carrying and attention to the infant. We are therefore making no changes based on this comment. One commenter stated that infant primates should be allowed to stay with their mothers until 12 months of age, instead of being weaned unnecessarily at 6 months of age. Another commenter stated that the regulations regarding mothers with infants should refer to "unweaned infants" rather than infants less than 6 months of age, to prevent premature separation from the mother. The regulations as proposed do not require weaning at any particular age. The provisions regarding when infants need additional space is based on both nonhuman primate behavior and the size of the infant. Most nonhuman primates require additional space by 6 months of age, whereas weaning ages may vary greatly.

As we noted in the "Supplementary Information" of this rule under the heading "Effective Dates," many commenters pointed out that certain of the new standards would require affected facilities to make extensive structural changes. The alteration of the minimum space requirements for nonhuman primates is one such change in the standards. Therefore, in §§ 3.80(b)(1) (i) and (ii) of this rule, we are continuing the existing regulations for minimum space requirements for nonhuman primates for the period prior to February 15, 1994. On and after February 15, 1994, facilities must comply with the minimum space requirements for nonhuman primates set forth in § 3.80(b)(2)(i) through § 3.80(b)(2)(iv) of this rule (redesignated from §§ 3.80(b) (1) and (2), and § 3.80(b) (4) and (5), respectively, of the proposed rule).

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 provide the minimum space otherwise required. Under our proposal, an applicant would be required to demonstrate that the proposed primary enclosure provides sufficient space and is designed so that the nonhuman primates can express species-typical behavior. We proposed 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.

A very large number of commenters addressed the provisions regarding innovative housing for nonhuman primates. Most of these commenters supported the provision. These commenters recommended that pole-housing be included as an acceptable method of innovative housing. We continue to consider it appropriate that approval or denial of alternative housing be done on a case-by-case basis, and are making no changes based on these comments. A large number of commenters objected to what they termed a "loophole" that would permit smaller primary enclosures than those otherwise required by the regulations. We consider adequate space to be one of the primary factors in the humane treatment of animals regulated under the Act. The specific space requirements we set forth in the proposal were based on the best current information available to us. However, we believe it would be unrealistic to conclude that the design standards currently in general use cannot be improved upon, based on continuing research in engineering and animal behavior. Establishing a mechanism for approval of innovative enclosures will likely foster such research. It is also important to note that innovative enclosures will not qualify for approval unless they provide the animals with a sufficient volume of space and the opportunity to express species-typical behavior, and that such enclosures will be subject to APHIS inspection.

Environment Enhancement to Promote Psychological Well-Being—Section 3.81

In proposed § 3.81, titled "Environment enhancement to promote psychological well-being," we proposed that dealers, exhibitors, and research facilities be required to develop, document, and follow a plan for environment enhancement adequate to promote the psychological well-being of nonhuman primates. We proposed to require that the 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. We also proposed to require that the plan be made available to APHIS, and, in the case of research facilities, to officials of any pertinent Federal funding agency. We proposed to require that the plan address certain

specified areas, including: (1) Social grouping; (2) environmental enrichment; (3) special considerations of nonhuman primates requiring special attention; and (4) restraint devices.

A very large number of commenters supported in general the promotion of psychological well-being in nonhuman primates. A number of others requested that "psychological well-being" in nonhuman primates be defined. A number of commenters stated either that the term is undefinable and cannot be measured as an improvement for nonhuman primates, that it is impossible to establish valid standards for the animals' psychological well-being, that the proposed standards might be detrimental to nonhuman primates, that the proposed regulations regarding psychological well-being were excessive, or that the proposed standards were not based on scientific analyses. As we discussed in our proposal, what constitutes psychological well-being in each species and each primate does not lend itself to precise definition. As an agency, however, we are mandated by Congress to establish standards to promote the psychological well-being of nonhuman primates. As we discussed earlier, the 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, demonstrate 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.

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 specifically 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 actual research.

One commenter stated that the regulations should not limit resource materials for the development of environment enhancement plans to professional journals and reference guides. The regulations as proposed require adherence to such information sources as a minimum. They do not prohibit the use of other research sources in establishing the required plans.

A large number of commenters urged that the regulations include specific requirements for exercise and social grouping of nonhuman primates, as proposed in our original proposal. We disagree with the commenters that it would be in the best interests of nonhuman primates to impose uniform rigid standards on all facilities. Because of the diverse needs of varying species and individual animals, it might actually prove harmful to establish the same set of specific standards for all animals.

A small number of commenters stated that any release of nonhuman primates for exercise and social interaction should be documented. We do not consider such documentation necessary for enforcement purposes. With the requirement for a written plan, and inspections by Department personnel, we do not expect enforcement problems with the regulations as proposed.

We are making two additions to § 3.81 as proposed to clarify our intent. That section requires that the plan for environment enhancement be made available to APHIS. It was our intent that the plan be made available upon request. We are therefore adding language to § 3.81 as proposed to clarify that intent. Additionally, we are specifying that the required plan for environment enhancement must be an appropriate one.

Social Grouping.

We proposed in § 3.81(a) that the environment enhancement plan include specific provisions to address the social needs of nonhuman primates of species known to exist in social groups in nature. As proposed, 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.

A number of commenters opposed the proposed provisions regarding the social needs of nonhuman primates. Several commenters said the proposed provisions were vague and should be clarified, or that more specific criteria for meeting social needs should be set forth. Many others offered specific recommendations for addressing the animals' social needs. The proposed provisions regarding the social needs of primates were intentionally written so as to allow some flexibility and professional discretion to individual facilities in meeting the social needs of the animals. Exactly how the animals' social needs are met is of less importance than the fact that they are met.

One commenter stated that requiring that the social needs of nonhuman primates be met exceeds the intent of Congress. We do not agree with the commenter. In general, nonhuman primates are social animals, with the need for socialization constituting a significant component of their psychological makeup. Promotion of the animals' psychological well-being requires that their social needs be addressed.

A small number of commenters stated that caging nonhuman primates for their lifetime has proven to be advantageous both to the animals' care and to their welfare. We disagree that individually housing nonhuman primates, without addressing their psychological and social needs, is adequate to promote their psychological well-being. Such practices will not be in compliance with these regulations.

A number of commenters stated that social housing should not be mandatory, but rather should be one of the possible methods of enriching the animals' environment. Other commenters stated that multiple housing of animals is inappropriate in most cases. One commenter stated that socialization should be based on individual housing that allows for visual and auditory contact among nonhuman primates, rather than group housing. One commenter stated that, under the regulations as proposed, facilities might be precluded from housing only one nonhuman primate. We are making no changes based on these comments. The regulations as proposed do not specifically call for group housing of nonhuman primates. They do, however, require that the social needs of nonhuman primates be addressed. In most cases, we expect group housing to be the most efficient and appropriate method of ensuring that the animals' social needs are met.

Many commenters stated that social grouping would endanger the animals' welfare by increasing noise and fighting. We are making no changes based on these comments. The regulations in proposed § 3.81(a)(3) require that nonhuman primates be compatible before being housed together. A number of other commenters, while supporting in general group housing of nonhuman primates, stated that in certain cases it might be inappropriate and detrimental. We agree that such situations might exist, and consider them to be already addressed in § 3.81(a)(3) as proposed.

A small number of commenters stated that housing primates in groups will

facilitate spread of infectious diseases. We consider the regulations as proposed adequate to prevent the spread of disease among group-housed animals. Section 3.81(a)(2) as proposed requires the isolation of nonhuman primates that have or are suspected of having a contagious disease. Additionally, the cleaning and sanitization requirements elsewhere in the regulations as proposed are designed to minimize disease introduction and spread.

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. As we discussed in our proposal, 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 stated that meeting the requirements regarding the social needs of nonhuman primates will require facilities to increase their staffs. One commenter expressed concern that providing for group housing for primates will involve significant expense. We do not agree that compliance with the regulations as proposed will necessarily require large staffing increases. In any event, some additional staffing, if necessary, would not be unreasonable in response to the amendments to the Act. Whether additional staffing is needed will depend on how the facility meets the social needs of the nonhuman primates, on the physical configuration of the facility, and on the facility's method of operations. In some cases, housing animals in groups is less labor-intensive than housing them individually.

One commenter asserted that individually housing primates is appropriate in cases where the animal is used in experiments lasting 12 months or less. We are making no changes based on this comment. The Act does not distinguish between animals kept for a short term and those kept long-term, and requires minimum standards for all animals, regardless of the duration involved. The commenter 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 stated that the fact that primates socialize in nature neither indicates nor suggests that they are psychologically harmed by eliminating contact with other nonhuman primates. We disagree. In general, nonhuman primates are social animals by nature. In providing for the psychological well-being of nonhuman primates, such social needs must be taken into account. Other commenters stated that social grouping has not been proven to assure psychological well-being or to prevent development of stereotypical behaviors. We are making no changes based on these comments. No practices or regulations can guarantee the psychological well-being of nonhuman primates in all cases. However, the most compelling evidence available indicates that certain practices, including housing nonhuman primates in groups, can promote psychological well-being. In general, housing in groups promotes psychological well-being more assuredly than does individual housing. On the other hand, individual housing has been demonstrated to give rise to significantly more stereotypical behavior than does group housing.

A small number of commenters recommended that compatible groups of nonhuman primates be required to remain together. Others recommended that primate infants remain with their dam for a minimum number of years, ranging from 2 years to 4 years. A small number of commenters recommended that the regulations allow primate families to be housed together. Others requested that such housing be required. One commenter stated that conspecifics should be housed together whenever possible. While we encourage such practices where possible, and nothing in the regulations as proposed prohibits them, we do not consider them practical in all cases. We are therefore making no changes based on these comments.

A small number of commenters suggested that behavioral scientists or animal psychologists may be more qualified than attending veterinarians to establish environment enhancement plans. Under the regulations as proposed, the attending veterinarian has responsibility for directing the development of the plan. However, nothing in the proposed regulations prohibits consultation with other animal experts. On the contrary, we expect the attending veterinarian to carry out whatever consultation and professional research he or she deems necessary to adequately advise the facility. One commenter stated that at research facilities, the environment enhancement plan should be designed based on consultation with and review by the Committee. As noted, the attending veterinarian may consult as necessary in directing development of the plan. Further, at research facilities, animal care programs are subject to annual review by the Committee.

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. Conversely, a very large number of commenters stated that exemptions for research should be allowed only if it can be documented that social housing is interfering with the research. Under § 2.38(k)(1) of part 2 of the regulations, 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.

In order to make clear situations where group housing would not be appropriate, we proposed to specify in §§ 3.81 (a)(1), (a)(2), and (a)(3) 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 also proposed 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 proposed that individually housed nonhuman primates must 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. A small number of commenters expressed opposition to all individual housing of nonhuman primates. We consider it obvious that situations will arise where housing in groups is self-evidently more harmful than helpful, and are making no changes based on the comments.

A small number of commenters stated that the specific provisions described in the preceding paragraph should be

deleted, because, according to the commenters, they all fall under the category of currently accepted professional standards. We consider the provisions in question minimum standards applicable in all situations. We are therefore making no changes based on the comments.

Environmental Enrichment

In proposed § 3.81(b), we proposed 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 provided 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.

Many commenters stated that the regulations should list all of the specific areas that must be addressed in an environmental enrichment plan. Some commenters expressed concern that the lack of a guide in choosing environment enrichments could result in prolonged experimentation at the expense of the primates' health and research funds. A number of commenters submitted specific practices that they believed should be included in achieving environmental enrichment. One commenter recommended that the Department set forth an exhaustive list of unacceptable practices. The provisions in § 3.81 of the proposal set forth broad standards that must be met to ensure the psychological well-being of nonhuman primates. Section 3.81(b) is more specific, requiring enrichment of the physical environment by providing means of expressing species-typical activities. Examples of such enrichment are provided. Beyond this, however, we do not consider it appropriate to attempt to set forth an exhaustive list of methods of achieving environmental enrichment. Because of the many variables affecting how best to enrich the environment for species and animals that have different needs and that are held under differing conditions, such a listing would be unnecessarily restrictive, and would not allow for advances in animal behavioral research. Nor do we consider it possible or necessary to set forth a comprehensive list of unacceptable practices. Practices will be considered unacceptable if they do not promote compliance with the standards in § 3.81 as proposed.

Several commenters recommended that a panel of experts in primatology should be formed to develop standardized plans for environmental enrichment of nonhuman primates. For the reasons set forth in the preceding paragraph, we do not consider it appropriate to attempt to set forth a comprehensive listing of specific standards for environmental enrichment. A committee of the nature described by the commenters was convened prior to the initiation of this rulemaking process. We have drawn on the recommendations of that committee in developing this rulemaking.

One commenter stated that the regulations should list what species-typical behaviors are required, because all behaviors are not possible in a cage. We do not consider such a change practical or necessary, and expect common sense, along with professional judgment, to assist in determining what behaviors can and should be promoted in caged animals.

One commenter stated that professional standards for environmental enrichment do not exist. We disagree. While we welcome additional research with regard to environmental enrichment, sufficient professional consensus already exists to make plans for such enrichment appropriate. A small number of commenters stated that there is no definable species-typical behavior in captive nonhuman primates. We disagree. Species-typical behavior has been defined in both wild and captive populations, and sufficient data exists to meet the standards as proposed.

Special Considerations

In § 3.81(c) of the proposal, we proposed that certain categories of nonhuman primates must receive special attention regarding enhancement of their environment. We proposed to require facilities to provide for the special psychological needs of (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 requires 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).

As proposed, 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.

A small number of commenters requested that additional criteria be provided as to what constitutes special attention. We are making no changes based on these comments. The form this special attention must take will depend to a great extent upon what form of environment enhancement is afforded all of the nonhuman primates in a facility under the required plan. Rather than restrict forms of special attention to a finite list, we consider it appropriate as proposed to base the special attention on the needs of the individual species, in accordance with the instructions of the attending veterinarian.

Several commenters stated that, at research facilities, the Committee and not the attending veterinarian should determine what special attention is necessary. We consider it appropriate in general to give responsibility for determining appropriate special attention to the attending veterinarian. However, the regulations do not prohibit consultation with the Committee.

A number of commenters addressed the requirement for special attention for nonhuman primates that show signs of being in psychological distress through behavior or appearance. A small number of commenters recommended that the term "psychological distress" be changed to "psychological pathology," because, according to the commenters, psychological distress can be of a transient or insignificant nature. We consider the term "psychological distress" to better convey our intent that facilities remedy even transient psychological disturbances than does the change recommended by the commenters, and are making no changes based on these comments. A small number of commenters stated that if a nonhuman primate exhibits stereotypical movements, such as hair pulling or similar signs of psychological distress, consultation with outside experts should occur. Under the regulations, a facility is required to provide adequate veterinary care to its animals. In certain cases, the attending veterinarian may consider it necessary to conduct outside consultation in administering such care. However, we do not consider it necessary or practical to include in the regulations a compendium of what constitutes adequate veterinary care. One commenter requested that the

regulations include a definition of "psychological distress." We consider the provision in question to be clear as written. Any behavior or appearance that would indicate abnormal stress must be addressed.

One commenter requested that the regulations include examples of restricted activity in research situations that would require special attention. We are making no changes based on this comment. The nature of restricted activity deemed necessary under a research protocol is subject to approval by the Committee. We do not consider it appropriate to attempt to enumerate in the regulations examples of restrictions that are the responsibility of the Committee.

Several commenters recommended that the provisions in § 3.81(c)(5) as proposed be broadened to require special attention for great apes other than those weighing over 110 lbs. (50 kg). We are making no changes based on these comments. The special attention to be provided great apes over 110 lbs. is related to their need for additional space over that required for other great apes in § 3.80. For this reason, we do not consider it necessary to require special attention for the smaller great apes.

Restraint Devices

We also proposed that the plan to be developed by the facility include provisions addressing restraint devices. We proposed that 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. As proposed, maintenance under such restraint would be limited to the shortest period possible. We proposed that, 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.

A small number of commenters supported the proposed provisions regarding restraint devices as written. A small number of commenters stated that the proposed exercise period for restrained nonhuman primates is insufficient. Upon review of the comments, we continue to consider release for one continuous hour during the period of restraint adequate to promote the animal's well-being, and are making no changes based on these comments.

A small number of other commenters recommended that it be required that restrained nonhuman primates receive social contact with a conspecific primate during the exercise period, and that all animals placed in restraint devices with the approval of the facility's Committee be inspected by the Committee prior to the Committee's granting approval for use of the restraint device. We are making no changes based on these comments. The special needs of restrained animals are already addressed in § 3.81(c)(3) as proposed. Further, the restraint of animals must be reviewed by the Committee at least twice annually, in accordance with part 2 of the regulations. Similarly, the recommendation of the commenter who suggested that the Committee be required to investigate alternatives before approving research protocols is already addressed in § 2.31(d)(1)(ii) of part 2 of the regulations.

A small number of commenters expressed concern that requirements for the exercise of restrained animals would interfere with research protocols. Some of these commenters recommended that requirements for restrained animals be left to the Committee. We disagree that the provisions as proposed regarding restrained animals would interfere with research. Under § 2.38(k)(1) of part 2 of the regulations, 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. For this reason, we are not adopting the recommendation of the commenter who stated that continuous restraint for more than 12 hours should be prohibited in all cases.

A small number of commenters requested that the regulations differentiate between restriction of movement and restraint. We are making no changes based on these comments. The regulations as proposed clearly pertain to maintenance in restraint devices. We consider the reference adequate to convey our intent as written.

Exemptions—Section 3.81(e)

In § 3.81(e)(1) of the proposal, we proposed 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. The basis of the exemption would have to be recorded by the attending veterinarian 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.

We proposed in § 3.81(e)(2) of the 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 proposed to 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 additionally proposed to 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.

A small number of commenters expressed opposition to what they termed "loopholes" in the regulations, which they stated would allow researchers to house animals in isolation merely by claiming necessity. As discussed above, we do not have the authority to interfere with approved research, and are making no changes based on these comments. Several commenters opposed exemptions of any sort. Permitting exemptions based on approved research protocols is consistent with the provisions of the Act that we not interfere with the design, outlines, or guidelines of actual research. It may be necessary to the health and well-being of the animals to allow for exemptions for medical reasons. We are therefore making no changes based on these comments.

A number of commenters stated that the provisions for exemptions will require excessive paperwork, will be costly, and will subject the attending veterinarian's opinion to unqualified review. Throughout these regulations, we have attempted to minimize recordkeeping requirements. However, we continue to consider it necessary in facilitating inspection and enforcement that exemptions from the environment enhancement plan granted by the attending veterinarian be documented and be subject to review by the Department. We do not agree that it is necessary, however, as one commenter recommended, that documentation of exemptions be provided to the Department. Under the proposed regulations, these records must be made available to APHIS upon request. We consider that provision adequate to ensure proper inspection and enforcement.

A small number of commenters stated that exemptions should be reviewed by the attending veterinarian "as needed," rather than every 30 days as proposed. We are making no changes based on these comments. Because of the importance accorded the promotion of the psychological well-being of nonhuman primates under the Act, and because medical conditions in many cases change frequently, we consider it necessary and appropriate to ensure that exemptions to the environment enhancement plan be reviewed on a regular basis, to ensure that the exemptions are not in effect any longer than is necessary.

A small number of commenters stated that the facility should designate the individual most qualified to grant exemptions, because the attending veterinarian may not be the most qualified individual available with regard to animal behavior, and seldom has contact with nondiseased primates. A small number of commenters stated that the Committee, and not the attending veterinarian, should have final authority at research facilities with regard to exemptions. We are making no changes based on these comments. The exemptions granted by the attending veterinarian will be for medical reasons, which he or she is qualified through training to assess.

Several commenters stated that the attending veterinarian should be permitted to exempt either individual nonhuman primates or groups of nonhuman primates from participation in the environment enhancement plan, and that exemptions for permanent conditions, including old age, should not need to be reviewed every 30 days. We do not agree. To ensure each nonhuman primate's participation in the environment enhancement plan to the fullest extent possible, exemptions need to be made on an individual basis, according to the health, condition, and well-being of the animal. No blanket exemptions for groups or conditions are acceptable.

Several commenters recommended that it be required that exemptions made by the Committee be reviewed every 30 days. We do not agree with the commenters' recommendation. Exemptions made by the Committee will be made for reasons relating to an approved research protocol. Such exemptions are not subject to as rapid change as exemptions for medical reasons, and do not need to be reviewed as often as those for medical reasons.

Feeding—Section 3.82

In § 3.82(a) of our proposal, we proposed minor changes to existing § 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 for the conditions in which the nonhuman primate is maintained, and be in accordance with generally accepted professional and husbandry practices and nutritional standards. We also proposed in § 3.82(a) that the food must be clean, wholesome, and palatable.

One commenter supported the provisions of proposed § 3.82 as written. Another commenter 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 this comment. As we stated in our proposal, 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.

A small number of commenters stated that each nonhuman primate should be fed a varied diet, with at least three different feed types offered at each feeding. These commenters also stated that monkey chow with outdated expiration dates should not be fed to nonhuman primates. Other commenters stated that a varied diet should be required, with chow forming no more than 50 percent of a laboratory nonhuman primate's diet. One commenter recommended that varying feeding methods be required. We agree that food should not be offered when its quality has deteriorated. This concern is already addressed under the regulations as proposed, which requires that food be palatable to the animals and of sufficient nutritive value to maintain a healthful condition and weight range for the animal, and to meet its normal daily nutritional requirements. However, as we discussed in our proposal, whether a particular animal or species of nonhuman primate would benefit from a varied diet or varying feeding methods is a decision that can best be made by the attending veterinarian. Therefore, we are retaining the provisions in § 3.81(b) as proposed that include "varied food items" and "foraging and task-oriented feeding methods" as examples of environmental enrichment.

One commenter recommended that primates should be provided with natural, unprocessed fruits to aid clinicians in judging the well-being of the animals, based on their consumption of these items. We do not consider the consumption of any particular food to be a reliable indicator of an animal's well-being and are making no changes based on this comment.

We proposed in § 3.82(b) 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. One commenter recommended that the regulations require that primates be fed at least twice daily. Based on our experience enforcing the regulations, we continue to consider once daily feeding to be adequate for nonhuman primates, and are making no changes based on the comment.

We proposed to require in proposed § 3.82(c) that multiple feeding sites be made available if members of dominant nonhuman primate or other species are fed together with other nonhuman primates. A number of commenters specifically supported proposed § 3.82(c) as written. A number of commenters opposed the provisions regarding multiple feeding sites, stating that, due to dominance behavior, multiple feeding sites would not ensure that all animals will get food. We are making no changes based on these comments. Whatever practical problems have to be met to provide each nonhuman primate access to food each day, they cannot justify ignoring the feeding needs of the animals housed at a facility.

Several commenters stated that multiple feeding sites should be required only if individuals are unable to feed due to social dominance relationships. As worded in the proposal, § 3.82(c) bases the need for multiple feeding sites on the presence of dominant animals. Such a premise implies that dominant animals will hinder other animals from adequate access to food. We therefore consider the commenters' recommendation to be addressed adequately by the regulations as proposed.

Section 3.82(c) as proposed also requires observation of the feeding practices of the animals to determine that each receives a sufficient amount of food. One commenter stated that observation at each feeding might be impractical; that it is sufficient to observe every third day and regroup the animals with compatible peers if necessary. As worded, the regulations require only that observation be carried out to ensure that all animals receive sufficient food. No specific frequency of observation is provided for. One

commenter objected to the requirement for observation, and suggested instead that excess food be offered to ensure that all animals have enough to eat. We do not agree with the commenter. Excess food may be detrimental to the health and well-being of the animals, and may create pest problems.

A number of commenters suggested that methods other than observation be used to determine whether nonhuman primates are being fed enough. The methods recommended by the commenters included monitoring the animals' weight and coat condition. The regulations as proposed already require that the food fed to nonhuman primates must be of a sufficient quantity and have sufficient nutritive value to maintain a healthy condition and weight range of the animal. Although these are valid parameters, they are not affected exclusively by the amount of food eaten. The only way to be certain that all animals receive a sufficient quantity of food is by direct observation.

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 to 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. Several commenters specifically supported these provisions as written. One commenter stated that it may be impossible to keep food dry in outdoor facilities. We disagree. Feeders can be constructed so as to keep food dry and protected from the weather. We are therefore making no changes based on this comment.

Watering—Section 3.83

In proposed § 3.83, we proposed minor changes to existing § 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 1 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 2 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.

A small number of commenters specifically supported proposed § 3.83 as written. A number of commenters recommended that we require that potable water be provided continuously under all circumstances, or that at least 4 hours pass between the twice daily watering, to account for species differences. Other 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 it is necessary for the well-being of nonhuman primates to offer them water at least twice daily. Upon review of the comments, however, we agree that greater emphasis needs to be placed on the needs of individual animals and species. We are therefore providing in this final rule that if potable water is not continually available to nonhuman primates, it must be offered as often as necessary to ensure their health and well-being, but not less than twice daily for at least 1 hour each time, unless otherwise restricted by the attending veterinarian, or as required by the research proposal approved by the Committee at research facilities.

Cleaning, Sanitization, Housekeeping, and Pest Control—Section 3.84

In our proposed revisions to existing § 3.81, we included the requirement that excreta and food waste be removed from primary enclosures 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. We proposed to require that fixtures inside primary enclosures, such as bars and shelves, must be kept clean and be replaced when worn. We also proposed that 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. We proposed to require that if the nonhuman primates engage in scent marking, hard surfaces in the primary enclosures must be spot-cleaned daily.

A small number of commenters supported the provisions in proposed § 3.84 as written. A small number of commenters stated that the regulations should require that excreta and food waste be removed from primary enclosures only as often as necessary, rather than daily as proposed. We are making no changes based on these comments. We cannot envision many situations where daily cleaning of the inside of a primary enclosure would not be necessary, and therefore do not consider it appropriate to allow for departures from that frequency.

One commenter stated that spot-cleaning of hard surfaces in primary enclosures housing scent-marking species should be required to be done at regular intervals according to professional discretion, rather than daily as proposed. We disagree. By spot-cleaning, the environment of the scent-marking species will not be unduly disrupted, and we continue to consider daily spot-cleaning necessary to protect the health and well-being of the animals.

We also proposed that when using water to clean the primary enclosure, a stream of water must not be directed at a nonhuman primate. Additionally, when steam is used to clean the primary enclosures, nonhuman primates would have to be removed or adequately protected to prevent them from being injured. We proposed to require that indoor primary enclosures be sanitized once every two weeks, and included language to make clear that used primary enclosures would have to be sanitized before being used to house either another nonhuman primate or group of nonhuman primates.

A very large number of commenters stated that the regulations should require that nonhuman primates be removed from primary enclosures before those enclosures are cleaned, particularly by steam. We recognize clearly the potential dangers to animals that are not properly protected when steam cleaning is taking place. It was our intent in wording the proposal as we did to make it clear that animals must be removed from their primary enclosures during steam cleaning, unless they are otherwise adequately protected. However, upon review of the comments regarding this provision, we consider it appropriate to reword that provision to clarify our intent further. Additionally, we consider it appropriate to reword the requirement regarding the wetting of animals during cleaning, again to clarify our intent. Therefore, in this final rule, we are providing in § 3.84(a) that when steam or water is used to clean the primary enclosure, whether by hosing, flushing, or other methods, nonhuman primates must be removed, unless the enclosure is large enough to ensure that the animals would

not be harmed, wetted, or distressed in the process. In prohibiting the wetting of animals, our intent is to prohibit the direct wetting of animals during the cleaning process. We do not consider it deleterious to the animals, for example, to have their feet wetted by water resulting from cleaning.

One commenter stated that many facilities use transfer cages, and expressed concern that the proposed regulations will make it necessary to hold or transfer animals in cages that are of equal size to the home cage, and to sanitize this transfer cage before holding another animal. As proposed, the standards do not prohibit the use of transfer cages if they comply with the transport enclosure requirements in § 3.87(e) as proposed. The intent of the sanitization requirements as proposed is to prohibit the use of soiled cages and to limit the transmission of disease agents between animals from different rooms or groups. Under the regulations as proposed, an enclosure could be used successively for animals of the same group, unless it becomes soiled.

A number of commenters recommended that perches, bars, and shelves should be replaced when excessively worn or soiled. We are making no changes based on this comment. The regulations as proposed already require that these fixtures be replaced when worn. We consider it excessive and unnecessary, however, to require their replacement when they are soiled.

In proposed § 3.84(b)(3), we included specific acceptable means of sanitization, that are the same as those in the existing regulations, with one addition. We proposed to allow also the use of detergent/disinfectant products that accomplish the same purpose as the detergent/disinfectant procedures specified in the existing regulations.

Several commenters stated that a daily disturbance for cleaning would harm the psychological well-being of the nonhuman primates. We do not believe that the simple daily removal of excreta and food waste would be significantly stressful to nonhuman primates, and believe it is necessary for the physical well-being of the animals.

One commenter, 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 consider such a requirement 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.

Several 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. The needs of scent-marking species are already addressed in § 3.84(b)(2) as proposed.

Section 3.84(d) as proposed required that the facility must establish and maintain an effective program for control of insects, external parasites affecting nonhuman primates, and birds and mammals that are pests. A number of commenters stated that the control of bird populations around outdoor enclosures is unnecessary because birds pose a low disease risk. We are making no changes based on this comment. The regulations as proposed do not require control of bird populations unless they are pests. If there are sufficient numbers of birds to affect the health and well-being of primates, due to possible disease transmission, it is necessary that the bird population be controlled.

Employees—Section 3.85

Existing § 3.82 requires that there be a sufficient number of employees to maintain the prescribed level of husbandry practices required by subpart D, and that 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 regulations, and that the burden of making certain that the supervisor is appropriately qualified would be on the employer regulated under the Act. We also proposed to remove the requirement that the supervisor be an animal caretaker.

One commenter specifically supported the provisions of proposed § 3.85 as written. 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. One commenter stated that such a determination should be left to the attending veterinarian. We are making no changes based on these comments. As we discussed in our proposal, 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 the successful performance of common husbandry and caretaking practices and on our expert judgment 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 consider the standards as proposed applicable to all facilities as proposed, and disagree that they would benefit from further specificity. We do not consider it either enforceable or necessary to determine the emotional attitude of employees, as long as they perform according to the regulatory standards.

One commenter stated that § 3.85 as proposed should be reworded to state that the employer is responsible only for the training of the employees, and not for their performance. Such a change would not convey our intent, which is to ensure compliance with the regulations by holding the facility responsible for both the training and performance of its employees. We are therefore making no changes based on this comment.

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 interagency 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 Interior, Fish and Wildlife Service (USFWS) for nonhuman primates imported from abroad.

Based upon our experience enforcing the existing 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 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 regulations engaged in the transportation of nonhuman primates in order to afford the animals necessary protection whenever they are transported in commerce.

One commenter recommended that "in-house" transport should comply with the regulations. Under the regulations as proposed, in-house transport is not excluded from the standards, and therefore must comply with the regulations.

Consignments to Carriers and Intermediate Handlers for Transportation—Section 3.86

In proposed § 3.86, we proposed to expand the existing 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 existing §§ 3.85 and 3.88. We proposed to consolidate them in one section, proposed § 3.86, and to add some additional ones that we considered necessary for the nonhuman primates' welfare. Several commenters opposed in general the provisions of § 3.86 as proposed.

Among the existing regulations retained in proposed § 3.86(a) was the provision 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. Several commenters opposed the option of 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 changes based on this comment.

Existing § 3.85(b) requires that carriers or intermediate handlers accept a nonhuman primate for shipment only if it is in a primary enclosure meeting the requirements of existing § 3.85, "Primary enclosures 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. A small number of commenters addressed these provisions, which were contained in § 3.86(e) of the proposal, stating that they were redundant, because final responsibility for determining the suitability of primary enclosures will rest on the carrier and intermediate handler in any case. Upon review of these comments, we agree that § 3.86(e) as proposed contains redundant provisions. We are therefore amending it in this final rule to make the carrier or intermediate handler solely responsible for determining whether to accept a primary enclosure for transportation.

Existing § 3.85(c) states that carriers and intermediate handlers whose facilities do not meet the minimum temperature requirements provided in the regulations may accept a nonhuman primate for transport if the consignor furnishes a certificate executed by a veterinarian, within 10 days before delivery of the animal for transport, stating that the nonhuman primate is acclimated to air temperatures lower than those prescribed in existing §§ 3.90 and 3.91. These provisions were included in § 3.86(f) of the proposal, where we proposed to clarify the certification regarding acclimation of a 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, 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 certification in paragraph (f) of proposed § 3.86, respectively. We proposed to clarify existing § 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. The information required to be in the certificate is likewise stated in the regulations.

Existing § 3.88 requires the following: (1) Section 3.88(a) requires that nonhuman primates be offered potable water within the 4 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 distinguishes between those persons transporting nonhuman primates in their own primary conveyances, and carriers and intermediate handlers. (3) Section 3.88(c) requires any dealer, 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 handler 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.

In proposed § 3.86(c), we proposed to include the requirements of existing § 3.88 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, existing § 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. Existing § 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. We proposed to add a certification requirement in proposed § 3.86(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 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 § 3.86, would also have to specify the species of nonhuman primate contained in the primary enclosure.

In subpart A of this final rule, in response to comments, we are making certain changes to the requirements for feeding and watering prior to transport that we also consider warranted in subpart D. We agreed with commenters addressing the issue that keeping track of a wide variety of feeding and watering schedules for animals could create practical problems for carriers. To reduce this problem, we are making the same changes in § 3.86 that we made in subpart A, to provide that carriers and intermediate handlers must not accept a nonhuman primate for transportation in commerce, unless the consignor certifies in writing that the nonhuman primate was offered food and water during the 4 hours before delivery to the carrier or intermediate handler. By requiring feeding and watering within 4 hours of delivery for transportation, the regulations will both make more uniform the time frame during which animals will have to be fed and watered in transportation, and minimize the number of animals that need to be offered food and water in transportation. In most cases under the amended regulations, animals being transported will reach their destination before having to be fed and watered again. Additionally, to eliminate the need for the carrier to maintain a log of feeding and watering schedules, we are requiring that on the feeding and watering certification provided by the consignor, which must be securely attached to the outside of the primary enclosure, there be included specific instructions for the next feeding(s) and watering(s) for a 24-hour period. We are also providing that instructions that no food and water be given are not acceptable unless directed by the attending veterinarian.

Several commenters stated that since most institutions restrain primates with ketamine prior to shipping, they may not be able to feed them 12 hours prior to delivery. The commenters' concerns have been addressed by the changes just discussed, which require feeding within the 4 hours before delivery for transportation. Under this amended provision, the animal can be fed after being placed into the transport enclosure.

In this final rule, we are also making certain nonsubstantive formatting changes to improve the clarity of § 3.86 as proposed. We are combining the provisions of proposed §§ 3.86 (c) and (d) into § 3.86(d), and are redesignating subsequent paragraphs in § 3.86 accordingly.

One commenter objected to the need for multiple certification forms under § 3.86 as proposed. In this final rule, we are addressing the commenter's concerns by eliminating the need for two of the three certification forms that could possibly have been needed under the proposal. Because this final rule requires that instructions for feeding and watering be securely attached to the primary enclosure, we are eliminating the need for separate certification to accompany the enclosure. Also, by making the carrier or intermediate handler responsible for determining if a primary enclosure is in adequate condition, we are eliminating the option of the consignor providing certification regarding the condition of the primary enclosure.

Existing § 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. 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 in § 3.86(g) 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 existing § 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. One commenter opposed the requirement as proposed that carriers and intermediate handlers provide for proper care of the nonhuman primate. The commenter expressed concern that this provision might discourage carriers from transporting animals. We are making no changes based on this comment. As long as the animals are in their possession, there is no option but to make the carriers' and intermediate handlers' responsible for the animals' well-being.

In this final rule, we are making three other changes to § 3.86 as proposed that are consistent with changes we are making elsewhere in this final rule in response to comments. First, we are amending § 3.86(f) as proposed, regarding the minimum allowable temperatures at carriers' and intermediate handlers' facilities to make it clear that these requirements apply only to animal holding areas, and not to entire cargo facilities. Second, we are

amending § 3.86(f)(4) as proposed, to provide that certification of acclimation provided by a veterinarian must include a statement 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 50 °F (10 °C), rather than lower than 45 °F (7.2 °C), as proposed. Finally, we are providing that all attempts to notify the consignor after transport of an animal must be recorded by the carrier or intermediate handler either on the carrier's or intermediate handler's copy of the shipping document or on the copy that accompanies the primary enclosure.

Primary Enclosures Used to Transport Nonhuman Primates—Section 3.87

We proposed to reorganize the provisions of existing § 3.86, regarding primary enclosures used to transport nonhuman primates, and to make nonsubstantive changes to this section for clarity. These provisions appeared in § 3.87 of our proposal. Several commenters opposed in general the provisions of § 3.87 as proposed.

We proposed in § 3.87(d)(1) that each nonhuman primate be transported individually in separate primary enclosures, 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 compatible juveniles that have not reached puberty.

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. As we discussed in the proposal, 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 based on these comments.

Several commenters stated that, because nonhuman primates have menstrual cycles, rather than periods of estrus, the statement regarding females in estrus should be deleted. Although the commenters are technically correct we consider the term "estrus" to convey the intent and implications desired, and to adequately describe the prohibition intended.

In proposed § 3.87(e), we proposed that primary enclosures must allow nonhuman primates a specified amount of minimum space, except that 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. One commenter stated that the regulations should specify the animals exempted from the space requirements and set forth the minimum cage sizes allowed. We do not consider it appropriate to make the change recommended by the commenter. The exemption as proposed is designed to accommodate situations where safety considerations are a factor. Because such situations are by their nature variable, often requiring differing responses, we consider the wording as proposed necessary and adequate as written.

In proposed § 3.87(f), we proposed that primary enclosures must be clearly marked with the words "Wild Animals" or "Live Animals," along with arrows to indicate the correct upright position of the primary enclosure. One commenter stated that labels saying "do not tip" and "this side up" should be used on shipping crates. We consider the regulations as proposed adequate to signal the position the primary enclosure must be handled in, and also that special care needs to be given to the enclosure. We therefore do not consider it necessary to make the change recommended by the commenter.

In § 3.87(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. 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. In this final rule, we are amending the wording in § 3.87(g) as proposed to reflect the change we are making in § 3.86, that food and water instructions must be securely attached to the primary enclosure.

Primary Conveyances—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 existing 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 regulations would be required to maintain the temperature inside a primary conveyance between 450 °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.

One commenter stated that recording thermometers should be required during air transport, to verify that temperature requirements are not violated. We do not consider such a change practical or justifiable in relation to the burden it would create. Such a requirement may require airplanes to carry and maintain such thermometers even on flights where no animal is being transported.

We provided in § 3.88(i) of the proposal that nonhuman primates must not be transported with any material, substance, or device in a manner that

may reasonably be expected to harm the nonhuman primates or cause inhumane conditions. A number of commenters stated that nonhuman primates should be allowed to be shipped with potentially harmful substances, if proper precautions are followed to prevent injury or inhumane conditions. We consider the wording as proposed adequate to convey our intent, and are making no changes based on the comments.

Food and Water Requirements—Section 3.89

We proposed to make nonsubstantive changes to the existing 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 existing 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 § 3.89 to take the exigencies of travel into account. We proposed to include 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 § 3.86 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 § 3.89, 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.

Several commenters supported proposed § 3.89 as written. Several commenters stated that the regulations should require that food be offered to animals either every 12 hours, or twice in every 24-hour period. Several commenters recommended that it be required that water be offered a minimum of once every 4 hours during transportation. Based on our experience enforcing the regulations, we do not consider the requirements recommended by the commenters necessary or practical, and are making no changes based on these comments.

A number of commenters stated that providing food high in water content should be allowed in lieu of providing water. We are making no changes based on these comments. It would not be evident in each case how much food would be an adequate substitute for water.

A number of commenters, addressing both the food and water requirements in proposed § 3.89 and the veterinary care requirements in proposed § 3.90, stated that it should be the responsibility of the consignor, and not the carrier, to ensure that animals being transported receive adequate food and water and veterinary care. We do not consider such a recommendation to be practical or in the best interests of the animals. Both food and water and veterinary care needs require a timely response by the carrier, and are necessarily the carrier's responsibility.

We have made several changes to § 3.89 as proposed to reflect the changes we are making in § 3.86, as discussed in this supplementary information under the heading "Consignments to Carriers and Intermediate Handlers for Transport—Section 3.86." We are providing in this final rule that nonhuman primates must be offered food and water within 4 hours of delivery for transport, and are requiring that an explicit schedule for feeding and watering during the next 24-hour period be securely attached to the primary enclosure by the consignor. To eliminate duplicative provisions, we are also combining paragraphs (a) and (b) as proposed, and are redesignating subsequent paragraphs accordingly.

Care in Transit—Section 3.90

We proposed to clarify existing § 3.89 to expressly require compliance with these regulations by any person subject to the regulations who is transporting a nonhuman primate in commerce, regardless of whether the nonhuman primate is consigned for transport.

We proposed to require that during surface transportation, regulated persons must obtain any veterinary care needed for the nonhuman primate 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 primate as soon as possible.

We proposed to add an exception to the existing regulations that 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, except that other individuals would be permitted to remove the nonhuman primates if required for the health or well-being of the animals. We proposed to provide that the transportation regulations must be complied 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 small number of commenters specifically supported the provisions of proposed § 3.90 as written. One commenter stated that the regulations should require that, when necessary, veterinary care be provided "as soon as possible," not at the closest available facility as proposed, because not all clinics have facilities for appropriate veterinary care. We are making no changes based on this comment. By using the term "closest available," we consider the language as proposed to adequately state our intent and to address the concerns of the commenter.

Terminal Facilities—Section 3.91

Existing § 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 existing 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 imposed by the existing regulations upon carriers and intermediate handlers be imposed upon any person subject to the 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 also proposed that the length of time regulated persons may hold nonhuman primates in terminal facilities upon arrival would be the same as that allowed for consigned animals under proposed § 3.86(g). A small number of commenters requested clarification of the provision restricting placement of nonhuman primates near other animals. We consider the provision self-explanatory as written, and are making no changes based on these comments.

In proposed § 3.91, we proposed to continue the temperature and ventilation requirements contained in existing § 3.90 and also to include the provisions requiring shelter from the elements for nonhuman primates that are included in existing § 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 physical handling and movement of nonhuman primates, as its heading suggests.

A small number of commenters supported the provisions of proposed § 3.91 as written. A small number of commenters objected to the allowable temperature range for holding facilities. Several commenters stated that this range was narrower than that for housing facilities. Upon review of the comments, we agree that the temperature limits in terminal facilities should be consistent with those in housing facilities. Therefore, we are providing in this final rule that the ambient temperature in an animal holding area containing nonhuman primates must not fall below 45 °F (7 .2 °C) for more than 4 consecutive hours when nonhuman primates are present, and must not rise above 85 °F (29.5 °C) for more than 4 consecutive hours when nonhuman primates are present. Additionally, we are providing that auxiliary ventilation must be used in any animal holding area containing nonhuman primates when the ambient temperature is 85 °F (29.2 °C) or higher.

One commenter recommended that bedding be provided for all primates, and that nest boxes with deep bedding be provided for small primates when the ambient temperature reaches a low of 45 °F . We are making no changes based on this comment. Under these regulations, an animal will not be exposed to temperatures below 45 °F unless acclimated, as certified by a veterinarian. Further, we do not consider requiring bedding and nest boxes to be practical during transportation.

A number of commenters stated that the cleaning, sanitization, and pest control standards should not be as stringent for terminal facilities as for housing facilities, because animals spend such a short period of time in transport. While we agree that the animals themselves will not largely contribute to the need for sanitation, we consider thorough cleaning of the animal holding area to be necessary for the animals' well-being, due to the wide variety of other materials that will normally be kept in such areas.

Handling—Section 3.92

Existing § 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 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 °F (7.2 °C). The existing regulations require this protection when the outdoor temperature falls below 50 °F (10 °C). A number of commenters stated that the proposed temperature limits relating to handling were not stringent enough. We are making no changes based on these comments. The allowable temperatures set forth in the regulations are further limited by the period of time animals may be exposed to these temperatures. We consider them reasonable and adequate to allow for short periods of exposure to cool or warm temperatures that may be necessary under normal handling conditions.

Among the requirements we set forth in § 3.92 as proposed was the provision that 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. A small number of commenters stated that the term "emotional distress" should be changed to "psychological distress" because attributing emotions to animals is anthropomorphic. We do not agree that animals do not show emotion. However, we are deleting the word "emotional" in § 3.92 to allow for broader enforcement of the word "distress."

Miscellaneous

Some commenters recommended that we make various nonsubstantive wording changes to the proposal for purposes of clarity, including certain nomenclature changes and the deletion of certain provisions the commenters considered redundant. We have made such changes where we considered them appropriate, and have also made certain other nonsubstantive wording changes to clarify the regulations.

Additionally, a number of commenters made recommendations that addressed issues outside the scope of the proposal, such as the appropriateness of using animals in research, whether APHIS is appropriated sufficient funds for enforcement purposes, and what types of penalties would be appropriate for violations of the regulations. A number of commenters recommended provisions that were already included in the proposal. We are making no changes in this final rule based on these comments.

Comments Regarding the Regulatory Impact and Flexibility Analysis

As required by Executive Order 12291 and the Regulatory Flexibility Act, 5 U.S.C. 601–612, the Department analyzed the regulatory implications of the revised standards for the humane handling, care, treatment, and transportation of dogs, cats, and nonhuman primates published in the proposal. A large number of commenters addressed our regulatory impact analysis and its compliance with federal rulemaking procedures. Below we provide an analysis of the comments and our responses.

A large number of commenters in general expressed concerns about the lack of scientific justification for the revised standards in the presence of significant costs to be imposed on regulated establishments and the economy. Many commenters added that the Department has shown a lack of concern and basic understanding of the operation of regulated entities and, therefore, substantially underestimated the adverse economic impacts of the proposed regulations on animal research. Moreover, many commenters stated that the proposed standards would inflate the cost of animal research making it cost prohibitive without any scientific proof of improvements in animal welfare.

We also received many comments from the research community, dealers, intermediate handlers and carriers, and the general public noting that the cost estimates in the regulatory impact analysis were generally underestimated. A few commenters from the research community and the general public also stated that the Department has failed to consider alternatives that will achieve statutory goals and involve the least cost to society. Others opposed the proposed rules on grounds that these will cost too much to implement and will put small researchers and dealers out of business. Conversely, we received one comment from a member of the general public noting that the regulatory impact analysis contained overinflated cost estimates.

We are acutely aware of the potential regulatory costs or impacts of the revised standards on regulated entities and the economy. We also believe that the revisions included in our regulatory proposals, including this final rule, are necessary to meet our statutory obligations. We strongly disagree with the comments concerning our lack of efforts and understanding of affected entities. In developing new standards, including the final rule in this docket, we have given careful and extensive consideration to the "major rule" impact that the animal welfare regulations would have on the economy, the regulated establishments, and public health. We have also set regulatory priorities with the aim of minimizing the potential adverse impacts of the regulations and continued the assessment of alternative and least costly provisions that can achieve similar statutory objectives.

The revision of animal welfare regulations as mandated by Congress has been a lengthy and difficult task. In performing this task, we have continually worked toward developing the most reasonable and justifiable standards based on available scientific knowledge, sought and reviewed extensive public comments, conducted ongoing consultation with other Federal agencies and professional organizations, developed and considered alternative proposals, adopted least costly alternatives that would foster improved animal care and accomplish statutory objectives, and allowed for innovative ideas and on-site professionals to exercise their judgment in meeting the need of animals under their care.

We have continually attempted to improve our analysis of potential costs on regulated entities and the economy. In general, our analysis has 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 and assessing the potential regulatory burden. In performing the analysis, we have acknowledged the presence of problems in the measurement of complex variables and other related factors, lack of statistical or any other available data sources, regional and structural diversity of regulated establishments, problems with quantifying potential benefits and indirect effects on animal research, and time and resource constraints. However, we consider the analysis as representing our extensive efforts to promulgate revised regulations and fulfill our obligations under federal guidelines for regulatory processes.

Several other commenters indicated that the Department has failed to do a cost-benefit analysis as required by Executive Order 12291. A few commenters from the research community and the general public added that the revised standards provided no benefit to animals or improvements in animal care.

The general requirements for a regulatory impact analysis under Executive Order 12291 recommend 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. Our analysis of the revised standards examined the potential benefits to society and animals and indicated that these benefits could not be properly quantified. The estimation of social benefits in monetary terms would have required an empirical analysis of marginal increases in social welfare or utility due to the regulations. If such an analysis could have been completed, it would have taken considerable time and resources to complete. In the absence of actual dollar figures for benefits, therefore, it was not feasible for the Department to estimate the net potential benefits from the regulations. However, we stated in our analysis that the Congressional mandate to promulgate more stringent animal welfare regulations reflected the increasing public demands for increased levels of humane care and treatment of animals used for human ends.

We also disagree with the comments that regulated animals will not receive improved animal handling, care, and treatment under the revised standards. There has been considerable scientific data and increased public opinion that supports the intent of Congress 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, procedures that minimize animal pain and discomfort, and innovative primary enclosures are some of the factors that support the increased level of welfare and benefits to regulated animals.

Statutory Authority for this Final Rule

This rule is issued pursuant to the Animal Welfare Act (Act), as amended, 7 U.S.C. 2131–2159. Congress, in enacting the Food Security Act of 1985, Public Law No. 99–198, added significant new responsibilities 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.

This 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 additional grant of rulemaking authority contained in section 21 (7 U.S.C. 2151).

Executive Order 12291

The Department has examined the regulatory impact of this final rule in accordance with Executive Order 12291.

This final rule revises the standards for the humane handling, care, treatment, and transportation of dogs, cats, and nonhuman primates (subparts A and D, part 3, Standards). It includes the new provisions 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 Animal Welfare Act. The amendments to the Act reflect a Congressional determination that additional or revised standards governing the humane care and treatment of captive animals are desirable and necessary.

In developing the final standards, we examined alternative regulatory approaches. We adopted least costly alternatives which would foster improved animal care and accomplish regulatory objectives. We gave careful and extensive consideration to the more than 11,900 public comments received on our proposal. We consulted with other Federal agencies. Finally, we implemented, to the extent possible, performance standards, innovative ideas, and professional judgment for meeting the need of captive animals.

We have determined that this final rule is within the authority delegated to the Department by statutory law and it does not conflict, overlap, or contradict other Federal regulations, policies, or guidelines on laboratory animal care, use, and treatment practices.

The regulatory impact of this rule is discussed in more detail in a Final Regulatory Impact and Flexibility Analysis, available for public inspection at the APHIS Public Reading Room, room 1141, U.S. Department of Agriculture, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays, or by telephoning (202) 382-1368. The main findings of the analysis are discussed below.

Compliance with the final standards would result in additional costs for affected regulated establishments over those imposed by the current standards. The largest regulatory impact on regulated establishments would result from the new requirements to ensure the exercise of dogs and a physical environment adequate to promote the psychological well-being of nonhuman primates. Study results indicate that regulated establishments may be required to spend approximately $144 million for additional capital improvements and $26 million in annual operating costs once the final rule becomes effective.

We are acutely aware of the potential cost impact of this rule on the operation of regulated establishments. As we discuss in the "**SUPPLEMENTARY INFORMATION**" of this final rule, many commenters responding to our proposed rule pointed out that certain of the new standards would require affected facilities to make extensive structural changes. These new standards are identified under the heading "**EFFECTIVE DATES.**" Therefore, with regard to these provisions, we are continuing the existing regulations for the period prior to February 15, 1994. On and after February 15, 1994, establishments must comply with the new provisions set forth in this rule, as identified at the affected sections. This period of time before compliance with certain of the new provisions is required will allow establishments sufficient time and flexibility to comply with those provisions. But, we will require the plans for providing exercise for dogs and for promoting the psychological well-being of nonhuman primates to be adopted and implemented within 180 days after the publication date of this rule.

The discounted value of the total cost impact on regulated establishments is estimated at approximately $408 million. These additional costs indicate that the new standards in part 3 constitute a "major rule" and may significantly increase costs for animal care and housing. The study indicates that over 71 percent of the total capital expenditures would potentially fall on research facilities. The study also indicates that approximately 81 percent of the total annual operating costs would also fall on research facilities.

These additional compliance costs may also result in increased costs for animal exhibits, wholesale pet dealers, and 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 operating these establishments would increase in the short run. However, for those forms of research where alternative testing methods that do not require the use of animals exist, this final rule may promote more rapid development of alternative technologies that might otherwise take longer to evolve. In the long run, the availability of substitutes to animal uses in research, testing, and education or the use of innovative techniques may moderate the initial increase in the cost of production.

The main focus of the regulatory analysis is on the potential compliance costs to be imposed on regulated establishments. The least-cost criterion indicates that the performance-based alternatives included in this final rule are preferred. This is because the final standards allow more flexibility, thus regulated establishments can meet requirements through several means of compliance.

A more stringent set of standards was considered in the original 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 original proposed rule was estimated at $1.75 billion dollars, an amount over four times the impact estimated for this final rule.

We are aware that animal welfare standards are social regulation activities of government that are characterized by extensive market externalities and inherent difficulties in measuring social benefits and costs at the margin.

In the case of this final rule, it is difficult to measure its efficiency or net benefits, because economic agents other than the regulated establishments and consumers are involved. For animal welfare, the applicable economic theory is for the case of a regulated establishment that produces a private

good and generates a social concern in the process—animal use, pain, discomfort, and suffering. Regulations force the regulated entity to change its production process and reduce the social implications of its actions, but it will also raise its production and consumer costs and generate social opportunity costs.

Alternatively, society in general has an interest in whether the production activities of such entities create excessive animal pain, discomfort, and suffering, and any net benefit-cost estimation must include any improvements in the level of animal welfare. The crucial economic question is whether the social costs imposed by this final rule are adequately balanced with the social benefits at the margin.

Potential social benefits resulting from the new standards were discussed in the analysis, but could not be properly quantified. The estimation of social benefits in monetary terms would have required a lengthy and cost prohibitive study of marginal increases in social welfare or utility. This is because animal welfare is an anthropomorphic attribute. Such study would have measured the increase in the level of public perception in animal welfare as the level of stringency of the regulations also increases.

Finally, because of the complexity and difficulty in measuring the regulatory implications, we have continually given careful and extensive consideration to the potential regulatory impacts associated with the animal welfare regulations. Finalizing the regulations as mandated by Congress has been a difficult and lengthy process. In performing this task, we set regulatory priorities with the aim of developing the most reasonable and justified standards based on our past experience and available scientific knowledge.

Regulatory Flexibility Act

The Department also analyzed the potential impact of this final rule on small entities as required by the Regulatory Flexibility Act (Pub. L. 96–354).

The study is discussed in more detail in a Final Regulatory Impact and Flexibility Analysis, which is available for public inspection in the APHIS Public Reading Room, room 1141, U.S. Department of Agriculture, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays, or by telephoning (202) 382–1368.

The Department estimates that approximately 1,460 small entities may be affected by the revised requirements in subparts A and D, part 3, Standards. These 1,460 entities represent about 39 percent of all small establishments (3,771) licensed to operate animal ventures under provisions of the Animal Welfare Act. We estimate that this rule imposes additional compliance costs to 1,227 small breeders, 183 small dealers, and 50 small exhibitors. The Department does not anticipate major regulatory impacts on small research sites. This is because the affected research sites or facilities housing cats, dogs, or nonhuman primates for research, testing, or educational purposes would not qualify as small entities. For the most part, affected animal research sites belong to large academic and non-profit institutions, or private companies.

The total regulatory burden on small breeders, dealers, and exhibitors resulting from this final rule is estimated at approximately $32 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 of $16 million to replace, construct, or equip new cat, dog, and nonhuman primate enclosures and improve sheltered housing facilities. The average discounted total impact per affected small entity is estimated at approximately $22,000 per affected animal site.

Of the small entities, small breeders would be most affected by this final rule, incurring approximately 60 percent of the estimated compliance costs, mostly from the new revised requirements for the exercise of dogs. An important distributional effect 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.

In developing this final rule, the Department has adopted the less costly approach to amend subparts A and D of part 3, Standards. The preliminary regulatory flexibility analysis of the March 15, 1989 original proposal estimated a discounted value of the total impact on all small affected entities at about $154 million, or an average of $105,249 per affected animal site. A comparison between the original proposed rule and this final rule indicates a potential five-fold decrease in the potential costs to be imposed on affected small entities.

Executive Order 12372

These programs/activities under 9 CFR part 3, subparts A 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. 3501, *et seq.*), the information collection provisions that are included in this rule have been approved by the Office of Management and Budget (OMB) and have been given OMB control number 0579–0093.

List of Subjects in 9 CFR Part 3

Animal welfare, Humane animal handling, Pets, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 9 CFR part 3 to read as follows:

PART 3—STANDARDS

1. The authority citation for part 3 is revised to read as follows, and the authority citation following all the sections is removed:

Authority: 7 U.S.C. 2131–2156; 7 CFR 2.17, 2.51, and 371.2(d).

2. Subpart A is 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 Compatible grouping.
3.8 Exercise for dogs.
3.9 Feeding.
3.10 Watering.
3.11 Cleaning, sanitization, housekeeping, and pest control.
3.12 Employees.

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 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 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 § 3.11(b) of this subpart to prevent 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 § 3.11(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 but are required for normal husbandry practices 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 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, 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. Dry bedding, solid resting boards, or other methods of conserving body heat must be provided when temperatures are below 50 °F (10 °C). The ambient temperature must not fall below 45 °F (7.2 °C) for more than 4 consecutive hours when dogs or cats are present, and must not rise above 85 °F (29.5 °C) for more than 4 consecutive hours 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 and discomfort (such as short-haired breeds), and for sick, aged, young, or infirm dogs or cats, except as approved by the attending veterinarian. Dry bedding, solid resting boards, or other methods of conserving body heat must be provided when temperatures are below 50 °F (10 °C). The ambient temperature must not fall below 45 °F (7.2 °C) for more than 4 consecutive hours when dogs or cats are present, and must not rise above 85 °F (29.5 °C) for more than 4 consecutive hours 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, 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.

(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. The shelter structures must be large enough to allow each animal to sit, stand, and lie in a normal manner and to turn about freely.

(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) Outside 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 50 °F (10 °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 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 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. Dry bedding, solid resting boards, or other methods of conserving body heat must be provided when temperatures are below 50 °F (10 °C). The ambient temperature must not fall below 45 °F (7.2 °C) for more than 4 consecutive hours when dogs or cats are present, and must not exceed 85 °F (29.5 °C) for more than 4 consecutive hours 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 the health and well-being of the animals, 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 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 proper cleaning and inspection 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 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 all 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 all 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 § 3.11(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. If the floor of the primary enclosure is constructed of wire, a solid 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 must be provided; 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) Prior to February 15, 1994 each cat housed in any primary enclosure shall be provided a minimum of 2½ square feet of floor space;

(ii) On and after February 15, 1994:

(A) Each primary enclosure housing cats must be at least 24 in. high (60.96 cm);

(B) Cats up to and including 8.8 lbs (4 kg) must be provided with at least 3.0 ft^2 (0.28 m^2);

(C) Cats over 8.8 lbs (4 kg) must be provided with at least 4.0 ft^2 (0.37 m^2);

(iii) 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. 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 attending veterinarian in the case of a research facility, and, in the case of dealers and exhibitors, such housing must be approved by the Administrator; and

(iv) 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 or foster dam. Cats with a vicious or aggressive disposition must be housed separately.

(3) *Litter.* In all primary enclosures, 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 that do not allow the space under them to be comfortably occupied by the animal will be counted as part of the 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 attending veterinarian 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: Provided that, prior to February 15, 1994, each dog must be able to stand in a comfortable normal position.

(2) *Dogs on tethers.* (i) 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.

(ii) On and after February 15, 1994, 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 or foster 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.

(Approved by the Office of Management and Budget under control number 0579-0093)

Animal Health and Husbandry Standards

§ 3.7 Compatible 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 or foster 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.

§ 3.8 Exercise for dogs.

Dealers, exhibitors, and research facilities must develop, document, and follow an appropriate plan to provide dogs with the opportunity for exercise. In addition, the plan must be approved by the attending veterinarian. The plan must include written standard procedures to be followed in providing the opportunity for exercise. The plan must be made available to APHIS upon request, and, in the case of research facilities, to officials of any pertinent funding Federal agency. The plan, at a minimum, must comply with each of the following:

(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.

(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 in total 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) The frequency, method, and duration of the opportunity for exercise shall be determined by the attending veterinarian and, at research facilities, in consultation with and approval by the Committee.

(2) Dealers, exhibitors, and research facilities, in developing their plan, should consider providing positive

physical contact with humans that encourages exercise through play or other similar activities. If a dog is housed, held, or maintained at a facility without sensory contact with another dog, it must be provided with positive physical contact with humans at least daily.

(3) 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 at the frequency and duration prescribed by the attending veterinarian; or

(iv) Other similar activities.

(4) Forced exercise methods or devices such as swimming, treadmills, or carousel-type devices are unacceptable for meeting the exercise requirements of this section.

(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. (Approved by the Office of Management and Budget under control number 0579–0093)

§ 3.9 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 § 3.11(b) of this subpart. Sanitization is achieved by using one of the methods described in § 3.11(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 § 3.11(b) of this subpart. Measures must be taken to ensure that there is no molding, deterioration, and caking of feed.

§ 3.10 Watering.

If potable water is not continually available to the dogs and cats, it must be offered to the dogs and cats as often as necessary to ensure their health and well-being, but not less than twice daily for at least 1 hour each time, unless restricted by the attending veterinarian. Water receptacles must be kept clean and sanitized in accordance with § 3.11(b) of this subpart, and before being used to water a different dog or cat or social grouping of dogs or cats.

§ 3.11 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 steam or water is used to clean the primary enclosure, whether by hosing, flushing, or other methods, dogs and cats must be removed, unless the enclosure is large enough to ensure the animals would not be harmed, wetted, or distressed in the process. 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 accumulations of trash, junk, waste products, and discarded matter. Weeds, grasses, and bushes must be controlled so 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.

§ 3.12 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 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.

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 the consignor certifies in writing to the carrier or intermediate handler that the dog or cat was offered food and water during the 4 hours before delivery to the carrier or intermediate handler. The certification must be securely attached to the outside of the primary enclosure in a manner that makes it easily noticed and read. Instructions for no food or water are not acceptable unless directed by the attending veterinarian. Instructions must be in compliance with § 3.16 of this subpart. The certification must include the following information for each dog and cat:

(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) The time and date the animal was last fed and watered and the specific instructions for the next feeding(s) and watering(s) for a 24-hour period; and

(4) The consignor's signature and the date and time the certification was signed.

(d) 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. 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.

(e) Carriers and intermediate handlers must not accept a dog or cat for transport in commerce unless their animal holding area meets 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 a terminal facility must not be lower than 45 °F (2.2 °C) for more than 4 consecutive hours when dogs or cats are present, as set forth in § 3.18, nor lower than 45 °F (2.2 °C) for more than 45 minutes, as set forth in § 3.19, when moving dogs or cats to or from terminal facilities or primary conveyances. 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 50 °F (10 °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.

(f) 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 all attempted notifications and the actual notification of the consignee, and the name of the person who notifies or attempts to notify the consignee must be written either on the carrier's or intermediate handler's copy of the shipping document or 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.

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§ 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 § 3.11(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, 6 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 6 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 6 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 or privately owned aircraft.* (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) or privately owned aircraft, 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 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. Food and water instructions must be attached in accordance with § 3.13(c).

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§ 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, dogs and cats must be held 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 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.

(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. Each dog and cat must be offered potable water 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 and potable water 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(c) of this subpart. Each dog and cat must be offered food and potable water within 4 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 and potable water within the 4 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 the food and potable water was offered, in accordance with § 3.13(c) of this subpart.

(b) 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 a 24-hour period for the dogs and cats contained in the enclosure. The instructions must be attached in a manner that makes them easily noticed and read.

(c) 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.

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§ 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 circumstances 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 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 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 § 3.11(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 minimize 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 85 °F (29.5 °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 85 °F (29.5 °C) for more than four consecutive hours 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 and 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 and cats in animal holding areas of terminal facilities upon arrival is the same as that provided in § 3.13(f) 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 and 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(e). 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 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.

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3. Subpart D is 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.
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3.86 Consignments to carriers and intermediate handlers.
3.87 Primary enclosures used to transport nonhuman primates.
3.88 Primary conveyances (motor vehicle, 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 [2]

Facilities and Operating Standards

§ 3.75 Housing facilities, general.

(a) *Structure: construction.* Housing facilities for nonhuman primates must 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 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 be 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 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 accumulation of excreta or disease hazards. 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 but that are required for normal husbandry practices 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 minimizes 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

[2] 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 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.

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 must not fall below 45 °F (7.2 °C) for more than 4 consecutive hours when nonhuman primates are present, and must not rise above 85 °F (29.5 °C) for more than 4 consecutive hours 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, 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 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) for more than 4 consecutive hours when nonhuman primates are present, and must not rise above 85 °F (29.5 °C) for more than 4 consecutive hours when nonhuman primates are present, unless temperatures above 85 °F (29.5 °C) are approved by the attending veterinarian, in accordance with generally accepted husbandry practices. 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 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) *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.* On and after February 15, 1994, 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 restricting 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 restricts 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 restricts 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.

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§ 3.78 Outdoor housing facilities

(a) *Acclimation.* Only nonhuman primates that are acclimated, as determined by the attending veterinarian, 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 safely 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 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 protection for each nonhuman primate housed in the facility.

(d) *Perimeter fence.* On and after February 15, 1994, 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 restricting 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 restricts 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 restrict 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.

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§ 3.79 Mobile or traveling house 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) for more than 4 consecutive hours when nonhuman primates are present, and must not rise above 85 °F (29.5 °C) for more than 4 consecutive hours 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 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.

(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 restrict 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.

§ 3.80 Primary enclosures.

Primary enclosures for nonhuman primates 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 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;

(iv) Keep other unwanted animals 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 surfaces 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 themselves; 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 that do not allow the space underneath them to be comfortably occupied by the animal will be counted as part of the floor space.

(1) Prior to February 15, 1994:

(i) Primary enclosures must 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

(ii) Each nonhuman primate housed in a primary enclosure must be provided with a minimum floor space equal to an area at least three times the area occupied by the primate when standing on four feet.

(2) On and after February 15, 1994:

(i) 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 brachiating species and great apes.[3] and will be calculated by using the following table: [4]

Group	Weight		Floor area/animal		Height	
	lbs.	(kg.)	ft.^{2}	(m^2)	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)

(ii) 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)(2)(i) of this section, to allow for normal postural adjustments.

(iii) In the case of research facilities, any exemption from these standards must be required by a research proposal or in 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.

(iv) 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)(2)(i) 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.

(c) Innovative primary enclosures not precisely meeting the floor area and height requirements provided in paragraphs (b)(1) and (b)(2) 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.

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§ 3.81 Environment enhancement to promote psychological well-being.

Dealers, exhibitors, and research facilities must develop, document, and follow an appropriate plan for environment enhancement adequate to promote the psychological well-being of nonhuman primates. The 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 upon request, and, in the case of research facilities, to officials of any pertinent funding agency. The plan, at 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

[3] 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.

[4] 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 size 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)(ii) of this section, and brachiating species.

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 vicious 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, treatment, 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 veterinarian 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 or methods of enrichment. 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.

(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 requires 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 species-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 an individual nonhuman primate from participation in the environment enhancement plan because of its health or condition, or in consideration of its well-being. The basis of the exemption must be recorded by the attending veterinarian for each exempted 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 an individual nonhuman primate from participation in some or all of the otherwise 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 or officials of any pertinent funding Federal agency upon request.

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Animal Health and Husbandry Standards

§ 3.82 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 as often as necessary to ensure their health and well-being, but no less than twice daily for 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 kept clean 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.

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§ 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 steam or water is used to clean the primary enclosure, whether by hosing, flushing, or other methods, nonhuman primates must be removed, unless the enclosure is large enough to ensure the animals will not be harmed, wetted, or distressed in the process. 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 at 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, 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 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 the consignor certifies in writing to the carrier or intermediate handler that the nonhuman primate was offered food and water during the 4 hours before delivery to the carrier or intermediate handler. The certification must be securely attached to the outside of the primary enclosure in a manner that makes it easily noticed and read. Instructions for no food or water are not acceptable unless directed by the attending veterinarian. Instructions must be in compliance with § 3.89 of this subpart. The certification must include the following information for each nonhuman primate:

(1) The consignor's name and address;

(2) The species of nonhuman primate;

(3) The time and date the animal was last fed and watered and the specific instructions for the next feeding(s) and watering(s) for a 24-hour period; and

(4) The consignor's signature and the date and time the certification was signed.

(d) 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. 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.

(e) Carriers and intermediate handlers must not accept a nonhuman primate for transport in commerce unless their animal holding area facilities meet the minimum temperature requirements provided in §§ 3.91 and 3.92 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 that are required in §§ 3.91 and 3.92 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 (e)(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 consignor'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 50 °F (10 °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.

(f) 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 all attempted notifications and the actual notification of the consignee, and the name of the person who notifies or attempts to notify the consignee must be written either on the carrier's or intermediate handler's copy of the shipping document or 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.

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§ 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 openings on every wall must be at least 8 percent of the total surface area of each such wall and be located above the midline 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 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 of 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) 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 estrus 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 may 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 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. Food and water instructions must be attached in accordance with § 3.86(c) of this subpart.

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§ 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 [5] 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. Each nonhuman primate must be offered potable water 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 and potable water 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(c) of this subpart Each nonhuman primate must be offered food and potable water within 4 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 and potable water within the 4 hours preceding delivery of the nonhuman primate to a carrier or intermediate handler for transportation in commerce, and must certify the date and time the food and potable water was offered, in accordance with § 3.86(c) of this subpart.

(b) 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 a 24-hour period 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 and read.

[5] Proper food for purposes of this section is described in § 3.82 of this subpart, with the necessities and circumstances of the mode of travel taken into account.

(c) 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 the primary enclosure through the food or water opening.

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§ 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 physical 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 minimize 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 85 °F (29.5 °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) 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 (9 CFR parts 1, 2, and 3) 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(f) 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 measured 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(e) 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 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.

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Done in Washington, DC, this 6th day of February 1991.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

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Forest Service

36 CFR Part 219

National Forest System Land and Resource Management Planning; Advance Notice of Proposed Rulemaking

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 219

National Forest System Land and Resource Management Planning

RIN 0596-AA50

AGENCY: Forest Service, USDA.
ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Forest Service has been engaged in a comprehensive review and evaluation of the National Forest System Land and Resource Management Planning regulation at 36 CFR part 219, subpart A. Based largely on review of published reports resulting from the "Critique of Land Management Planning" as well as other sources of information, the agency has concluded that a new rule at 36 CFR part 219, subpart B, is needed in order to focus more specifically on implementation, amendment, and revision of forest plans; the relationship between forest planning and project decisionmaking; and to make various other changes intended to simplify the planning process and respond to ideas identified during the regulatory review. Accordingly, the agency is issuing an Advance Notice of Proposed Rulemaking to solicit comments on the agency's preliminary regulatory text. Public comment is invited and will be considered in formulating a proposed rule.

DATES: Comments must be received in writing by May 16, 1991.

Four informational meetings will be held to provide the public an opportunity to ask questions about this Advance Notice of Proposed Rulemaking and to provide a forum for discussion among interested members of the public. The meetings are scheduled as follows:

1. February 26, 1991, 9 a.m. to 4 p.m., Washington, DC.
2. April 8, 1991, 9 a.m. to 4 p.m., Portland, Oregon.
3. April 10. 1991, 9 a.m. to 4 p.m., Denver, Colorado.
4. April 12, 1991, 9 a.m. to 4 p.m., Atlanta, Georgia.

ADDRESSES: Send written comments to F. Dale Robertson, Chief (1920), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090-6090. The public may inspect comments received on this Advance Notice of Proposed Rulemaking in the Office of the Director, Land Management Planning, Third Floor, Central Wing, Auditor's Building, 14th and Independence Avenue, SW, Washington, DC between the hours of 8:30 a.m. and 4 p.m. Those wishing to inspect comments are encouraged to call ahead (202-447-5933) to facilitate entry into the building.

The four informational meetings will be held at the following locations:

1. Washington, DC—Rosslyn Westpark Hotel, 1900 North Fort Myer Drive, Arlington, Virginia, 22209.
2. Portland, Oregon—World Trade Center, 25 SW., Salmon, Portland, Oregon, 97204.
3. Denver, Colorado—Lakewood Sheraton, 360 Union Boulevard, Lakewood, Colorado, 80228.
4. Atlanta, Georgia—Lenox Inn, 3387 Lenox Road NE., Atlanta, Georgia, 30326.

FOR FURTHER INFORMATION CONTACT: Larry Larson, Assistant Director, Land Management Planning; Ann Christensen, Land Management Planning Specialist; or Joyce Parker, Program Analyst; 202-447-5933.

SUPPLEMENTARY INFORMATION:

Introduction

The agency's preliminary proposal is to issue a regulation at 36 CFR part 219, subpart B entitled, "Implementing and Changing Land and Resource Management Plans." This regulation would replace all aspects of the existing regulation except for direction on the development of initial forest plans. Direction for development of initial forest plans would continue to be set forth in 36 CFR part 219, subpart A.

Maintenance of subpart A is necessary because eight out of 123 forest plans remain uncompleted. These are plans for the Stanislaus, Modac, Lassen, Shasta-Trinity, Sierra, Mendocino, Six Rivers, and Klamath National Forests. All of these forests are located in the Pacific Southwest Region (Region 5). It is the agency's intent to have these eight forests complete their forest plans under the requirements for forest plan development currently described by the existing regulation. As these eight plans are completed and approved under the existing regulation, they would become subject to the implementation requirements and other direction that would be contained in a new subpart B.

The preliminary proposal for a regulation at 36 CFR part 219 subpart B, "Implementing and Changing Land and Resource Management Plans," represents the agency's initial response to many of the recommendations of the Critique of Land Management Planning and other findings of the regulatory review. Due to widespread public interest in the planning regulation and the scope of the changes being considered, the agency is issuing this preliminary regulatory text as an Advance Notice of Proposed Rulemaking (hereafter, referred to as the Notice). The preliminary regulatory text, which is referred to by such terms as "Subpart B" or the "proposal" at various places in this Notice, should not be confused with a proposed rule. The regulatory text is intended to assist in generating meaningful public discussion and comment prior to developing a proposed rule. After consideration of public response to this Notice, the agency will issue a proposed rule for public comment. After consideration of the public comments on the proposed rule, a final rule will be issued. The proposed rule is tentatively scheduled to be issued in October 1991, with a final rule issued in March 1992.

During development of this Advance Notice of Proposed Rulemaking, the agency recognized that forest planning regulations are inherently complex and that every effort should be made to assist reviewers in understanding the ideas being offered. Accordingly, the preamble material which follows contains the most thorough explanation available of the preliminary regulatory text. In addition, the agency has developed a detailed index to quickly guide reviewers to the location of specific topics of interest in the preliminary regulatory text. This index is set out at the end of this Notice. The agency has also scheduled a series of meetings across the country to assist the public in understanding the ideas presented in this Notice and to provide an informal public forum for discussing them. Statements for the record will not be received during any of these meetings. Information regarding these meetings is given in the **"DATES"** and **"ADDRESSES"** sections earlier in this Notice.

In studying and considering this preliminary proposal, reviewers are encouraged to consider the extent to which forest planning, the public, and the agency have changed since the existing regulation was adopted in 1982. Unlike a decade ago, forest plans are currently in place and being implemented on almost all National Forests; several years worth of monitoring and evaluation information is available; and there has been a tremendous increase in the understanding and sophistication of both the public and the agency with regard to forest planning. Recognition of the evolution of forest planning is central to this preliminary proposal.

Subpart B would be a "next generation" regulation designed to adapt the forest planning process to changing

needs and circumstances. Although there is a natural inclination to compare it to the existing regulation, this should be done with care. There are fundamental changes reflected in the preliminary regulatory text which must be understood lest a quick comparison be misleading. Reviewers are also encouraged to carefully study the section on "Streamlining the Regulatory Text" and the section-by-section preamble discussion for § 219.40 in order to understand structural changes which may be initially confusing for some reviewers.

Finally, reviewers will notice a variety of ideas designed to simplify the forest planning process and the regulatory text itself. The concept of simplification is a recurring theme expressed in many different ways. While recognizing that forest planning is inherently a complex task, the agency is firmly committed to trying to make it more understandable and efficient. The agency hopes that reviewer's comments will help in finding the proper balance between providing an efficient, understandable process and achieving an appropriate degree of procedural requirements.

Background

The Forest Service is responsible for managing the land and resources of the National Forest System which includes 191 million acres of lands in 42 States, the Virgin Islands and Puerto Rico. The National Forest system is organized into nine Regional Offices; 155 National Forests; 19 National Grasslands, and 640 Ranger districts. The System is headed by the chief of the Forest Service. Under the Multiple-Use Sustained Yield Act of 1960 (916 U.S.C. 528, *et seq.*) and the National Forest Management Act of 1976 (16 U.S.C. *et seq.*), these lands are managed for a variety of uses on a sustained basis to ensure a continued supply of goods and services to the American people in perpetuity.

The Forest and Rangeland Renewable Resources Planning Act of 1974 (RPA) (88 Stat. 476 *et seq.*), as amended by the National Forest Management Act of 1976 (NFMA), (90 Stat. 2949 *et seq*; 16 USC 1601–1614), specifies that land and resource management plans shall be developed for units of the National Forest System. Regulations to implement the National Forest Management Act are set forth at 36 CFR part 219.

Of the 123 land and resource management plans (hereafter referred to as forest plans) to be completed, 114 are final and are being implemented. Of these, 65 have been cleared of all administrative appeals.

During the 14 years since enactment of the NFMA, much has been learned about planning for management of National Forest System lands. The original vision of NFMA raised many varied expectations, some of which have been realized and some of which remain unfulfilled. While there appears to be general concensus that the NFMA planning process is basically sound, there is considerable evidence that improvements are needed in various procedural aspects of implementing the statute.

Although forest planning efforts to date have produced notable accomplishments in addressing forest management issues and fostering public participation in public land management, it is apparent that many controversies linger or remain unabated. Even though procedural improvements can enhance various aspects of the planning process, there remain fundamental disagreements within our society about management of National Forest lands. The issues surrounding National Forest System management require that difficult choices be made where there are no universally accepted answers. In this high stakes and emotion-filled arena, forest planning cannot be expected to resolve all differences. This is not necessarily a reflection of the inadequacy of forest planning, but rather an indication of the importance the American people place on the National Forest System and its reources.

History of Forest Service Planning Process

The current forest planning regulation (36 CFR part 219) is an extension of historic Forest Service land management planning experiences. Since its inception, the Forest Service has prepared land and resource use plans to guide inventories, identify special management areas, calculate sustainable use levels, and monitor resource conditions and trends. These planning procedures have evolved over the years in response to increasing demands for forest resources, statutory developments, and the changing desires and expectations of the American public.

Early Forest Service planning efforts generally focused on individual resources such as wildlife, recreation, timber, range, and other uses. This simple and functional approach to planning was acceptable during a period when demand for the resources of the National Forests was relatively low and the various uses seldom conflicted.

During the 1950's and 1960's, demand for National Forest resources increased rapidly. In response to these increasing demands, and with the enactment of the Multiple-Use Sustained-Yield Act of 1960, the Forest Service modified its general planning procedures and began to prepare what were known as Multiple Use Plans for each Ranger District. These plans attempted to improve the coordination of resource uses and to minimize perceived conflicts between uses. Multiple Use Plans classified sub-areas of each Ranger District with different management emphases and attempted to integrate resource uses in a manner compatible with the management emphasis of each sub-area. Concurrent with these efforts to improve the coordination of resource uses, demand for National Forest resources continued to grow and, as a result, management of National Forest resources became more complex.

In 1973, the Forest Service initiated a more structured, heirarchial system of land management planning. This heirarchy began with broad agency-wide objectives established by the Chief of the Forest Service. In addition, each of the nine administrative Regions of the Forest Service prepared Area Guides for large sub-parts of the Region. The Area Guides estimated the mix of resource outputs expected from each area. The foundation of the heirarchy was Unit Plans prepared for sub-areas of each Ranger District. Unit Plans, like Multiple Use Plans, delineated lands with different management emphases and prescribed permissible activities. Unit Plans presented the first opportunity to incorporate into the land management planning process the environmental analysis and public participation requirements of the National Environmental Policy Act of 1969 (NEPA).

The unit planning process was never completed because of the enactment of the Forest and Rangeland Renewable Resources Planning Act (RPA) of 1974, as subsequently amended by the National Forest Management Act (NFMA) of 1976. Building on existing Forest Service planning practices, the RPA and NFMA established comprehensive statutory guidance for National Forest System land and resource management planning.

The RPA requires that the Forest Service prepare every 10 years an Assessment describing the current and expected demand for forest and rangeland resources and the Nation's potential to meet those demands. The Assessment provides the basis for development of "The Forest Service Program for Forest and Rangeland Resources" prepared every 5 years, to guide Forest Service activities. The Forest Service completed Assessments

in 1979 and 1989, and issued Programs in 1976, 1980, 1985, and 1990.

The RPA also established the first statutory requirement for the development of land and resource management plans. However, the RPA did not provide guidance on the development of these plans, other than directing that a systematic interdisciplinary process be used to achieve integrated consideration of physical, biological, economic, and other sciences.

The NFMA amended the RPA to provide the detailed statutory guidance for the preparation of forest plans. Generally, the NFMA requires that each forest plan provide, in a single set of documents, the overall guidelines and direction for the management of the applicable National Forest for a period up to 15 years. The central theme of the NFMA's planning provisions, Section 6, is that planning must be based on the integrated consideration of the multiple uses defined in the Multiple-Use Sustained Yield Act of 1960. Each forest plan must include coordination of outdoor recreation, range, timber, watershed, wildlife and fish habitat, and wilderness. Forest management activities, timber harvest levels, and management procedures must be determined in the light of all the multiple-uses (16 U.S.C. 1604(e)). Section 6 further promotes the integrated consideration of multiple-use management by requiring that the Forest Service provide for and foster public participation in the planning process (16 U.S.C. 1604(d)).

The Secretary of Agriculture adopted the first planning regulation on September 17, 1979 (44 FR 53928). In response to the Presidential Task Force on Regulatory Relief to streamline the regulatory process and to adopt regulations that promote management efficiency and maximize net public benefits, the Secretary published a proposed revised planning regulation on February 22, 1982 (47 FR 7678). A total of 2,020 comments were received on the proposed regulation. On September 30, 1982, the final revision to 36 CFR Part 219 was adopted (47 FR 43026).

The regulation was later revised to respond to a court ruling that the environmental statement on which the 1979 roadless area decisions were based did not adequately meet the National Environmental Policy Act requirements (*California* v. *Block*, 690 F.2d. 753, 9th Cir. 1982). The revision to 36 CFR 219.17, Wilderness designation, was published September 7, 1983 (48 FR 40383) to provide direction that roadless areas would be evaluated in forest plans.

Overview of Existing NFMA Planning Regulation

The existing planning regulation sets forth the purpose of National Forest System land and resource management planning and the principles under which forest plans are to be developed and maintained. The existing regulation emphasizes an interdisciplinary approach with public involvement and opportunity to comment. The existing regulation also provides a process for development and maintenance of regional guides and forest plans. In addition, it establishes requirements for integrating individual forest resources into the planning process. The existing regulation also acknowledges compliance with other laws, such as the Endangered Species Act, Clean Water Act, National Historic Preservation Act, and the Archaeological Resources Protection Act. Finally, the existing regulation sets forth requirements to ensure consistency of future decisions with forest plans; for monitoring and evaluation of forest plan implementation; and for amending and revising forest plans.

The existing regulation establishes a 3-level planning process, where information and management objectives are exchanged between national, regional, and forest levels. At the national level, the existing regulation acknowledges that the Forest Service prepare an RPA Assessment and an RPA Program. The RPA Assessment is an analysis of present and anticipated demand and supply of renewable resources of all forest and range lands in the country. Based upon the Assessment, the RPA Program presents broad, national goals for the management of these resources on National Forests.

At the regional level, regional guides are prepared for each of the nine administrative Regions of the Forest Service. The guides established regional standards and guidelines for identifying certain timber harvest practices, designated travel corridors, identified sources of air pollution, and regional monitoring and evaluation procedures.

The existing regulation requires that regional guides reflect the goals and objectives of the RPA Program to the extent consistent with the resource capabilities of the Region and requires the guides to display tentative resource objectives for each Forest based on the RPA Program. Regional guides also provide for general coordination of National Forest System, State and Private Forestry, and Research programs. The existing regulation specifies procedures to ensure interdisciplinary analysis, public participation, coordination with other governmental planning efforts during preparation of regional guides and forest plans, and environmental analysis and documentation. The majority of the existing regulation prescribes detailed and complex procedures for developing, amending, and revising forest plans. Under the existing regulation, forest plans must be revised at least every 15 years using the same procedures as required for the original development and approval of a forest plan.

A forest plan may be amended at any time. When amending a forest plan, the Forest Supervisor must determine whether the amendment will result in a "significant change" in the plan. If so, the existing regulation requires that the Forest Supervisor follow the same procedures as required for the development and approval of the original forest plan. If the amendment is determined not to be significant for the purposes of the planning process, the Forest Supervisor may implement the amendment after appropriate public notice and completion of appropriate NEPA documents.

The existing regulation establishes extensive analytical and procedural requirements for the development, revision, and significant amendment of forest plans. These requirements include: inventory data and information collection; identification of the minimum level of management that would be needed to maintain and protect the planning area as part of the National Forest System; calculation of the maximum physical and biological production potentials of multiple-use resources; calculation of the mix of resource outputs that provide the maximum present net value of those resources having an established market value or are assigned a monetary value; and projection of demand for resources with both price and nonprice information.

The existing regulation further prescribes procedures for the formulation and evaluation of alternatives. The regulation requires that alternatives consider a full range of resource outputs and expenditure levels. These alternatives must be designed to facilitate evaluation of opportunity costs, resource trade-offs, present net value, and benefits and costs. In addition to an assessment of the environmental consequences required by NEPA, the existing regulation requires an evaluation of the effects of the alternatives on: the expected outputs of market and nonmarket goods and services; the relationship of expected

outputs to the RPA Program objectives; the expected financial costs; the expected financial value of the resource outputs; total receipts to the Federal government; direct economic benefits to users; receipt shares to local governments; local income; local employment; and changes in present net value. The existing regulation requires that the evaluation of alternatives consider the significant physical, biological, economic, and social effects of each alternative, and a comparison of present net value, outputs of goods and services, and overall protection and enhancement of environmental resources.

The general planning procedures of the existing regulation provide that each forest plan shall establish a monitoring and evaluation program satisfying specific requirements of the regulation. Under the existing regulation, all of the procedures apply not only to forest plan development but to revision and significant amendment as well.

In addition to these general planning procedures, the existing regulation establishes requirements for integrating individual resource planning into the development, revision, and significant amendment of forest plans. Currently, there are 13 separate sections of the existing regulation which address: timber resource land suitability; vegetation management practices; timber resource sale schedule; evaluation of roadless areas; wilderness management; fish and wildlife resources; grazing resources; recreation resources; mineral resources; water and soil resources; cultural and historic resources; research natural areas; and diversity. Each of these sections provides detailed procedural requirements and in some cases substantive standards that must be incorporated into the development, revision, and significant amendment of forest plans.

Section 219.27 of the existing regulation sets forth the minimum specific management requirements to be met in accomplishing goals and objectives for the National Forest System. It provides additional standards for resource protection; vegetative manipulation; silvicultural practices; even-aged timber management; riparian areas; soil and water conservation; and diversity. Finally, the existing regulation requires that forest plans identify research needs for management of the National Forest System.

Implementation of the existing regulation has resulted in development of the most comprehensive land management plans in the history of the Forest Service. The development of 123 forest plans has served as the focus for unprecedented public involvement in Forest Service decisionmaking. It is estimated that over one million people have commented on forest plans. The planning process resulting from the existing regulation has greatly improved the integrated consideration of the multiple uses defined by the Multiple-Use Sustained-Yield Act. However, the experience of developing these plans has demonstrated that there is substantial room for improvement in the way the Forest Service conducts land management planning consistent with the NFMA.

Critique of Land Management Planning

The Forest Service initiated a comprehensive review of its land management planning process in March 1989. Conducted with the help of The Conservation Foundation, the Department of Forestry and Natural Resources at Purdue University, and others, the purpose of the Critique was to document what had been learned since passage of the National Forest Management Act and to determine how best to respond to the planning challenges of the future.

The Critique involved over 3,500 people both within and outside the Forest Service. Workshops and interviews were conducted involving over 2,000 people who had participated in or had responsibilities for forest planning. These participants represented a broad cross-section of all those who were involved in planning, including members of the general public, interest groups, representatives of other agencies, elected officials, representatives of Indian tribal governments, Forest Supervisors, Regional Foresters, resource specialists, and members of interdisciplinary planning teams. Additionally, there were written comments received from 1,500 interested people.

The Critique was completed in May 1990. The results of the Critique are documented in a summary report, "Synthesis of the Critique of Land Management Planning" (Vol. 1) and 10 other more detailed reports. Except as listed below, the reports were developed by teams of Forest Service personnel, often with the assistance of representatives of other agencies or academia. In addition to the primary authors listed below, team members included representatives of Colorado State University, the Bureau of Land Management, the Nebraska Forest Service, and the USDA Office of Budget and Program Analysis. A complete listing of contributors to each of the 11 reports is included in the Synthesis Report (Vol. 1—p. 24). The reports include:

Volume 1, "Synthesis of the Critique of Land Management Planning" (Forest Service and The Conservation Foundation).

Volume 2, "National Forest Planning: Searching for a Common Vision" (The Conservation Foundation and Purdue University).

Volume 3, "Organization and Administration".

Volume 4, "Analytical Tools and Information".

Volume 5, "Public Participation".

Volume 6, "Effectiveness of Planning Coordination".

Volume 7, "Effectiveness of Decisonmaking".

Volume 8, "Usefulness of Forest Plans".

Volume 9, "Analysis of Emerging Timber Supply Disruption".

Volume 10, "Forest Plan Implementation: Gateway to Compliance with NFMA, NEPA, and Other Federal Environmental Laws"—U.S. Department of Agriculture, Office of General Counsel (Michael J. Gippert and Vincent L. Dewitte).

Volume 11, "National Forest Planning Under RPA/NFMA: What Needs Fixing?"—University of California (Dennis E. Teeguarden).

The findings of the Critique identified that adjustments are needed in the following areas:

—Citizens', lawmakers', and the agency's expectations of planning.
—The agency's attitude toward and conduct of public involvement.
—How the agency conducts planning.
—Simplification and clarification of planning procedures.
—Implementation of plans, particularly to ensure that they are followed and used.
—Connections between appropriations and forest plans.

Seven major recommendations were developed from 232 detailed recommendations as follows:

1. *Simplify, clarify, and shorten the planning process.*

—Reduce and clarify planning regulations and direction.
—Provide for incremental forest plan revision.
—Provide maximum responsibility and authority permitted by law to local resource managers.

2. *Ensure high quality planning.*

—Inform and involve affected and interested publics early and continuously.
—Ensure clarity and consistency in planning direction.

—Increase commitment to planning among line officers.
—Enhance and improve our analytical tools and procedures.
—Match analytical tools to the questions at hand.

3. *Improve the organizational and administrative infrastructure for planning.*

—Review the organizational structure to identify where changes are needed to further promote integrated resources management.
—Institutionalize planning as a profession in the Forest Service.
—Ensure that the agency has skilled people for all the various planning jobs.
—Provide for greater research support to planning and the National Forest System.

4. *Strengthen and clarify the ties between forest plans and programming, budgeting, and appropriation activities.*

—Describe the relationships between forest plans and programming, budgeting, and appropriation activities.
—Reduce "line item" budgeting and adopt end-results budgeting Servicewide.
—Refine the system that links forest plans to program development and budgeting processes.

5. *Define, clarify, and explain the RPA, NFMA, and NEPA processes, and explain how they fit with the agency's framework for multi-level planning, decisionmaking, and management.*

—Educate agency employees, citizens, and cooperators about the planning process and how the pieces fit together.
—Provide in-Service training for line officers and staff on analytical methods and procedures in planning.

6. *Develop a comprehensive strategy and clearly assign responsibilities for implementation and maintenance of forest plans.*

—Develop a strategy for revising forest plans.
—Improve methods for monitoring and maintaining forest plans.

7. *Refurbish the mechanisms for quality control, management review, and forest plan monitoring.*

—Use forest plans as the standard for measuring both individual and organizational performance.
—Disseminate the results of quality control and management reviews and the decisions from appeals and litigations.

A discussion of the Critique's results is found throughout this preamble. Readers are encouraged to review the Critique's reports in order to more fully understand the background and context from which the preliminary regulatory text in this Advance Notice of Proposed Rulemaking emerges. Copies of these reports may be obtained from the Policy Analysis Staff (1970), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090-6090 (202-447-2775).

Other Sources of Information for Review of Current Rules

The Critique, its findings, and recommendations have provided a firm foundation for the regulatory review of 36 CFR part 219. However, there are additional sources of information available for use by the agency in assessing the adequacy of the existing regulation. For example, the extensive experience gained by Forest Service personnel was utilized. This includes the results of land management plan administrative appeals and litigation. The agency also considered various professional publications on the planning process, as well as on-going efforts related to the planning process, such as the Keystone Policy Dialogue which addressed biological diversity on Federal lands. In addition, the agency has the benefit of testimony presented in October of 1989 during Oversight Hearings of the Committee on Agriculture, Nutrition, and Forestry, and the Committee on Energy and Natural Resources, U.S. Senate.

Findings of the Regulatory Review

Based on the findings of the Critique, agency experience, and other sources of information as described above, the agency has reached the following conclusions relevant to the planning process:

1. *The National Forest Management Act is basically sound.* Neither the Critique nor review of agency experience under the existing regulation reveals any need to revise the authorizing statute. NFMA itself is basically sound legislation. The basic principles of NFMA, such as integrated resource planning, public participation, and an interdisciplinary approach continue to provide a solid foundation for agency planning efforts. The Act provides sufficient flexibility to address needed improvements through revision of the planning regulation or agency procedures.

Although it is recognized that there are problems with the timely implementation of forest plans, the review concluded that many of the problems are not directly associated with the provisions of NFMA. Public land management is complicated by a long series of laws and regulations enacted over many years. This has resulted in a situation once described by Federal District Court Judge Lawrence K. Karlton as a "crazy quilt of apparently mutually incompatible statutory directives." (*United States* v. *Brunskill,* Civil S-82-666-LKK (E.D. Cal. Nov. 8, 1984) unpublished opinion, aff'd, 792 F.2d 9938 (9th Cir. 1986)).

The forest planning process has heightened the visibility of the Forest Service decisionmaking process as the agency attempts to resolve controversial issues amid sometimes conflicting and uncoordinated laws and regulations. Thus, the controversy which often has surrounded forest planning must be viewed in light of the many requirements imposed upon resource planning and decisionmaking by statutory and regulatory requirements other than the National Forest Management Act (e.g., National Environmental Policy Act, Endangered Species Act, Clean Water Act, Clean Air Act). The regulatory review found that it is often the interaction of these other laws and regulations which has increased the controversy surrounding forest planning and land use and not necessarily NFMA itself.

The regulatory review also found that some of the dissatisfaction with NFMA could be traced to the unrealistic expectations which occurred after the statute was enacted. One of the major findings of the Critique of Land Management Planning was the need for adjustments in the public's expectations of forest planning. This is explicitly addressed in the report developed by the Conservation Foundation and Purdue University, Volume 2 of the Critique. It states:

"Undeniably, there is much frustration and dissatisfaction with forest planning. Some members of this study's joint review committee agreed that significant, if not radical, changes in forest planning and management are necessary. Expectations for forest planning are high—in some cases, unrealistically so. Some workshop participants expected forest planning would lead to establishment of "reasonable and sustainable" production goals. Others thought it would free resource allocation from politics while building a powerful case for budgets and appropriations sufficient to accomplish plan goals. And many apparently thought that forest planning would be a way to influence the political process and sway management to their purposes. Probing more deeply, we found that it was not so much the process to which people objected, but

the results of that process. In retrospect, it was inevitable that this would occur. When the law was enacted, representatives of both the Sierra Club and the National Forest Products Association returned to their constituents and proclaimed victory. Obviously, both had different expectations of outcomes under the law. Nonetheless, while participants at the workshops had many suggestions for changes, there was little sentiment for dispatching with the law or process or otherwise wiping the forest planning slate clean." (p. 3)

2. *Many recommendations of the Critique should be implemented through changes in the NFMA regulation.* The Critique resulted in many recommendations which were found to be highly applicable to changes in the existing regulation. Although a number of specific recommendations were used in developing the preliminary regulatory text in this Advance Notice of Proposed Rulemaking, the following three major recommendations identified by the Critique were deemed particularly important:

(a) *Clarify the Decision Framework.* The existing regulation is ambiguous about the nature of forest plan decisions and the appropriate scope of environmental analysis. During the development of the first generation of forest plans, many people believed that forest plans would make irretrievable resource commitments for all projects necessary to fully implement the goals and objectives of the plan. Some portions of the existing regulation arguably support this view. However, other provisions of the existing regulation require separate analysis and decisionmaking prior to implementation of individual projects.

This confusion over the nature of forest plan decisions has been a principal source of controversy for many plans. Most of the administrative appeals of forest plans, filed pursuant to 36 CFR 211.18 (1989) and 36 CFR part 217 (1990), challenge whether forest plans and accompanying environmental impact statements satisfy particular requirements of NFMA, NEPA, the Endangered Species Act, the Clean Water Act, and other environmental laws. Many provisions of these statutes and their implementing regulations require detailed and specific analysis of individual projects and their potential environmental effects prior to an agency's decision to proceed with the project. Forest plan appellants frequently argue that forest plans irretrievably commit the agency to individual projects but fail to provide the analysis and documentation required by these statutes.

In fact, the environmental impact statements accompanying forest plans do not attempt to identify, evaluate, and decide every individual project that is permissible during the normal 10-year period of a forest plan. The agency's experience in developing forest plans indicates that it would be practically impossible to satisfy these obligations in one single set of decisions or in a single environmental impact statement. Administrative appeal decisions by the Chief of the Forest Service and the Office of the Secretary of Agriculture have explained the content of forest plan decisions and the scope of environmental analysis. Nevertheless, the ambiguity of the existing regulation continues to cause confusion and controversy over the nature of forest plan decisions and the appropriate scope of environmental impact statements accompanying forest plans. This ambiguity must be removed.

(b) *Simplify, clarify, and shorten the planning process.* The Critique found that the complexity of the forest planning process was so overwhelming that few people really fully understood it. Further, the Critique found that this complexity often inhibited meaningful communication with the public and other governments, reduced agency credibility, increased the time and cost needed to complete plans, and was generally counter-productive. For example, the existing regulation establishes procedural and analytical requirements that are in some areas significantly more complex than required by NFMA. The emphasis on very rigorous and standardized analysis often seemed to overwhelm other aspects of forest planning and to greatly extend the time required to complete the development of forest plans.

The Critique also identified the problems associated with trying to resolve socio-political issues through a highly technical and systematic set of planning procedures. The importance of balancing technical answers with the values and concerns of the public was highlighted in the Critique's reports.

Another problem associated with the complex planning process is the length of time required to complete forest plans. The lengthy process has proven very frustrating for the public and agency employees. In addition, the financial expenditure required for the lengthy and complex process has had a major impact on the agency and diverted funds and personnel from project decisionmaking and other activities. A General Accounting Office assessment of preparing forest plans on two National Forests estimated that the plans cost $2.1 and $2.5 million, respectively, over a 5 year period (GAO/RCED-87-28FS).

The regulatory review fully endorses the need to simplify, clarify, and shorten the planning process, while also recognizing that forest planning is not an inherently simple task. There is clearly a need to simplify the planning process and to better integrate technical "answers" with people's values. At the same time, it must be recognized that forest planning is a complex task due to the multitude of resources and statutory responsibilities involved. Sound, yet often complex, technical analyses serve a critical role in evaluating resource trade-offs and ensuring that resource decisions are based on the best possible information. As a result, a balance must be found between the simplicity most people desire and the complex reality of trying to develop approaches to difficult problems which involve many technical considerations and diverse public values.

(c) *Provide for "need for change" based revision of forest plans.* The Critique firmly endorsed a "need for change" approach to forest plan revision (also described as "incremental" revision). It was considered a key element to achieving one of six major recommendations of the Critique; i.e., to "Simplify, clarify, and shorten the planning process." (see immediately preceding discussion)

In the report developed by the Conservation Foundation and Purdue University, Volume 2 of the Critique, the relative merits of "zero" based vs. incremental planning are addressed:

"Wiping the slate clean and beginning anew allows the entire universe of alternatives to be examined, unprejudiced by directions and choices that have gone before. In fact, however, change is incremental when the alternatives available are heavily influenced—and circumscribed—by the choices made in the past. Examining the entire universe of alternatives in great detail may be both interesting and informative, but it imposes a tremendous demand for analysis that may go largely unused in the real decision process . . . Federal regulations should be revised to permit an explicitly incremental approach to the revision of forest plans." (p. 61) See the section-by-section discussion of § 219.36 later in this preamble for further information on the differences and benefits.

3. *Many opportunities exist to streamline the existing regulatory text.*

One of the findings of the review of the existing regulation was that much could be done to simplify the text of the regulation and to enhance its readability without creating major substantive changes. For example, there were numerous opportunities to simplify language, shorten definitions, eliminate very similar or duplicative provisions, improve structural organization, and reduce overlap with other laws, regulations, or Executive orders.

In addition, language without real substantive effect is sometimes included in the existing regulation to provide visibility to a particular topic or to provide information of an explanatory nature. Unless they fulfill a meaningful purpose, provisions of this type in the existing regulation should be revised or removed. Although streamlining the text in this manner may initially seem unnecessary or confusing when compared to the existing regulation, the composite effect of such changes can be a significant reduction in the length of the regulation, an enhancement of its readability, and a positive step forward towards better understanding and simplification of forest planning.

Review of the existing regulation also considered the relative roles of the planning regulation at 36 CFR part 219 and the Forest Service directives system. The review indicated that the regulation is better suited for defining the purpose or desired results of planning and minimum standards rather than for describing detailed procedural guidelines. As a result, some streamlining of the regulatory text can be achieved by shifting detailed procedural direction to agency directives. In response to revision of the existing regulation, the agency anticipates a major reorganization of its directives related to forest planning. Subject to procedures in 36 CFR part 216, revisions to planning direction in Forest Service Manual Chapter 1920 will be made available for public review and comment prior to being adopted. The agency hopes to have an initial draft of the updated planning direction available for public review and comment soon after issuance of a proposed rule.

4. *The solution to some problems with the planning process are not within the scope of the planning regulation.*—Approximately one-third of the 232 Critique recommendations related to changes appropriately implemented through the planning regulation or related guidance in the directives system. Subsequently, about two-thirds of the recommendations must be addressed through other channels, such as organizational changes or improved training.

In addition, even though some aspects of planning are within the scope of the regulation, the real success or failure of some endeavors will not depend upon regulatory text, but rather the commitment and understanding of agency personnel and the public. One good example of this is public involvement. No amount of regulatory detail can guarantee effective and open communication. Certain expectations can be defined and minimum procedures established, but ultimately the success or failure of the communication between the agency and public depends upon the people involved. As a result, the agency recognizes that even though modifying the planning regulation is a major and essential step towards improving the effectiveness of forest planning, such improvements must occur in concert with other changes and commitments in order for the full potential of forest planning to be realized.

Public Comment

Based on the findings of the regulatory review, the agency has developed preliminary regulatory text for 36 CFR part 219, Subpart B. This preliminary text is intended to provide a focus for public dialogue on NFMA and encourage public comment on the agency's initial response to findings of the regulatory review. The agency recognizes that there are numerous options for addressing ways that the existing regulation could be changed. It is not possible in this Advance Notice of Proposed Rulemaking to identify or evaluate every option that could be considered for each section of the preliminary text. Once public comment has been received in response to this Notice, the agency will be better able to focus on the areas of particular public interest and consider alternative approaches.

The public is encouraged to comment on all aspects of this preliminary regulatory text. In addition, the agency has identified three areas where additional comment would be particularly helpful. These three areas address issues related to forest planning that are known to be of considerable interest to the public and represent topics in which the agency is particularly interested in receiving public comment.

1. *Degree of Detail Addressing Project Level NEPA Procedures.*—The preliminary text clearly addresses the relationship of NEPA compliance to forest planning and project decisionmaking, but does not include detailed direction regarding how NEPA procedures will be accomplished at the project level. Currently, the agency uses the CEQ Regulations (40 CFR parts 1500 through 1508) as supplemented by the Forest Service directives system (Forest Service Manual 1950 and Forest Service Handbook 1909.15) to guide project level NEPA compliance. The agency is currently in the process of revising the directives which address environmental policy and procedure. The proposed changes should soon be available for public review and comment.

In conducting the regulatory review, the agency recognized that many of the public's concerns with forest plan implementation related not to the requirements of NFMA, but rather to the requirements of a myriad of other statutes and regulations (see Findings of the Regulatory Review). The requirements of NEPA, its implementing CEQ Regulations (40 CFR parts 1500 through 1508), and related case law are particularly noteworthy because they require a variety of procedural steps which must be accomplished prior to project approval during forest plan implementation. As a result, efficient and effective compliance with the requirements of NEPA is an integral part of the successful and timely implementation of a forest plan.

The agency has identified project decisionmaking as generally being the approval point of irreversible and irretrievable resource commitments. Thus, project approval must be accompanied by a site-specific disclosure of environmental impacts (see section-by-section discussion of § 219.33 for a detailed explanation). The public is encouraged to comment on the most efficient means of accomplishing this without compromising the spirit or intent of NEPA. For example, respondents may wish to address tiering environmental documents, cumulative effects disclosure, the use of categorical exclusions, or the need for more specific criteria addressing circumstances for an environmental impact statement rather than an environmental assessment. Consideration could also be given to whether some of the detailed direction on project level NEPA procedures should be shifted to the planning regulation or possibly expanded on in greater depth in a separate regulation.

2. *Changes in Administrative Appeal Procedures.*—The NFMA planning regulation at 36 CFR part 219 does not provide detailed direction on appeal procedures. This detailed direction is found at 36 CFR part 217, Requesting Review of National Forest Planning and Project Decisions, and at 36 CFR part 251, subpart C—Appeal of Decisions

Related to Occupancy and Use of National Forest System Lands. Although the preliminary regulatory text does not contain any change to appeal procedures, the agency is interested in receiving comments from the public regarding the administrative appeals process.

The timely implementation of forest plans is dependent upon a prompt and effective process for handling administrative appeals. Despite attempts to expedite the appeals process through issuance of new appeal procedures in 1989, significant problems with the appeals process continue to exist. For example, there are concerns that some appellants bypass opportunities to resolve issues prior to issuance of a decision, but then use the appeals process to cause intentional delays in project implementation. There are also continuing concerns about the costs of the appeals workload on the agency. Handling this workload continues to require an enormous investment of agency staffing and funds.

Although the appeals process performs an important and helpful role, the agency continues to explore ways to streamline the process and ensure that it is used for its intended purpose. One option would be to provide a proposed decision document for public review and comment prior to its being signed by the deciding officer. This approach would allow the deciding officer to consider comments and adjust or revise the decision in response to those comments as appropriate. The decision document would then be signed by the deciding officer and there would be no further opportunity for administrative appeal.

Another option could be to limit appeals to only those issues raised during opportunities for public comment. The agency invites comment on these options and encourages the public to suggest other ways to make the administrative appeals process more effective and timely.

3. *Role of Non-market Values in Economic Analysis*—The agency specifically invites comments on the usefulness of assigning dollar values to non-market outputs such as "recreation visitor days" and "wilderness visitor days." In developing the preliminary text, the agency has not altered its current approach to assigning and using such values. However, the use of these values has been criticized in comments received on the plans developed under the current rule, in administrative appeals of those plans, and in the Critique of Land Management Planning.

The values have been criticized from several different perspectives. Some people have commented that the methods used to derive non-market values have been either inappropriate or inadequately applied, with the result that the value estimates are either too high or too low. Others have suggested that where the government imposes a fee for an output, such as for some forms of recreation, the value estimate should be based on the fee rather than on some separate and unrelated analytic procedure. Still others have argued that the attempt to assign values to non-market outputs is inherently inappropriate and that the values of these outputs should not be subject to economic efficiency calculations.

The Critique addresses these problems most directly in two places. Volume 4 of the Critique, "Analytical Tools and Information," states that "Nonmarket prices have played a minimal role in making explicit allocation and scheduling decisions in forest planning. Confusion and wide variations of opinion exist about which accounting stance for RPA nonmarket values should be used for forest planning. Furthermore, there is little acceptance for the methods used to estimate RPA nonmarket benefit values." (p.17) These and other findings regarding demand and benefit values (prices) are later followed by recommendations to establish consistent policies regarding the use of market and non-market benefit values and to improve methods for estimating non-market benefit values and demand relationships.

Volume 2 of the Critique, "National Forest Planning: Searching for a Common Vision," addresses the role that non-market values have played in planning from another perspective. That report highlights the problems which have resulted from the strongly analytical approach taken in the existing regulation, including the role of economic efficiency analysis using non-market values in the present net value calculations. The report states, "To perform this analysis, assumptions had to be made regarding the production and value of resources not commonly thought of in economic terms: wilderness and other undeveloped recreation, wildlife and fish, and water all needed some sort of price assigned to them so that their values could be weighed against those of timber, livestock grazing, and minerals * * * This approach worked against effective planning in several ways. Oriented as it was toward resource "outputs" and present net value, it ignored both the ecosystem approach of NFMA and the express desires of the American public that there be a reasonable balance in the management of the national forests." (p. 32)

Reviewers interested in commenting on the role of non-market values are encouraged to read these Critique reports to properly understand the context and discussion from which these excerpts were taken. The section-by-section discussions addressing analysis methods for forest planning (219.36(d)) and economic analysis displays for alternatives (219.36(e)(1)(iii)) should also aid in understanding this issue.

Although both Critique reports raise questions about the use of non-market values, neither provides specific recommendations regarding their future use, nor do they explore the relationship of their use in forest planning to other Forest Service efforts, such as the RPA Program or TSPIRS (the Timber Sale Program Information Reporting System), which currently use these values.

In light of the questions raised by the Critique and the relationship between the use of non-market values in forest planning and in other agency efforts, the agency is interested in further exploring their appropriate role in forest planning. The public is encouraged to comment on this, and any other aspects of interest,related to economic analysis.

Rulemaking Petition Received—On November 1, 1990, the agency received an unsolicited petition for rulemaking from the National Forest Products Association and 79 other organizations "to engage in a rulemaking to amend the regulations set out at 36 CFR part 219 to improve the implementation of land and resource management plans ('forest plans'), provide for the prompt amendment, establish specific environmental documentation requirements, and for related reasons." This petition for rulemaking included proposed regulatory text and the rationale for it. It represents an optional approach to changing the NFMA planning regulation at 36 CFR part 219.

This Advance Notice of Proposed Rulemaking serves as the agency's response to the request for rulemaking. The specific recommendations in the petition will be considered as part of the public comment associated with this Notice and will be considered at the same time that the other comments are evaluated.

Major Goals of Preliminary Proposal

The following list describes some of the major goals of a new regulation to be codified at 36 CFR part 219, subpart B, and is provided to assist reviewers in understanding the scope and intent of the preliminary regulatory text.

1. *Simpler, more understandable process.* Subpart B would reduce some of the complexity of the existing planning process and should result in a more relevant, understandable approach to forest planning.

2. *Shorter time needed for forest plan revision.* Subpart B would make procedural changes which should shorten the time period needed to revise a forest plan, thus reducing costs and some of the frustrations associated with previous, lengthy planning efforts.

3. *Emphasis on the on-going nature of forest planning and project decisionmaking.* Subpart B would stress that forest planning is a continuous process dependent on periodic monitoring and evaluation, keeping plans current and updated through amendment or revision, and maintaining on-going and meaningful communication with the public and other governments.

4. *More dynamic, responsive forest plans.* Subpart B would make procedural changes which should shorten the time period needed to revise a forest plan, thus reducing costs and some of the frustrations associated with previous, lengthy planning efforts.

5. *Better focus for analytical efforts.* Subpart B would focus analytical efforts on the key information needed by decisionmakers regarding environmental, economic, and social effects rather than on trying to define a wide range of standardized analytical requirements which may not be relevant to local conditions or the decisions being made.

6. *"Ends" rather than "means" orientation.* Subpart B would reduce the amount of direction which instructs how to accomplish various planning tasks and focuses instead on clarifying the desired results of the planning effort.

Highlights of Preliminary Proposal

The preliminary text for a new subpart B, which is set out at the end of this Notice, reflects several provisions which vary notably from the approach taken in the existing regulation. These provisions are addressed in detail in the section-by-section discussion which follows. The following list highlights some of the key features included in the preliminary regulatory text. Reviewers are encouraged to closely review the section-by-section discussions to fully discern the nature and scope of these and all other provisions.

1. *Establish "a need for change" as the basis for revision of a forest plan.* Subpart B would describe a revision process that is based on the "need to change" a plan (i.e., incrementally based), rather than repeating the same "zero" based procedural steps as used for development of initial forest plans.

2. *Clarify the staged-decisionmaking process.* Subpart B would define the nature of decisions made in forest plans and the relationship of programmatic forest plans to site-specific project decisionmaking.

3. *Define consistency requirements.* Subpart B would specify that the consistency of a project with the forest plan is based on adherence to the standards and guidelines.

4. *Define overall planning and decisionmaking framework.* Subpart B would address the relationship of forest planning to other resource planning and decisionmaking efforts and would clearly identify that forest plans are the mechanism by which the results of these other efforts are integrated into on-the-ground management.

5. *Eliminate requirement for regional guides.* Subpart B would replace the previous requirement for regional guides with a more flexible planning and decisionmaking structure for addressing regional resource issues.

6. *Emphasize the role of public involvement and coordination with other governments.* Subpart B would strengthen the commitment to public involvement and coordination with other Federal agencies and State, local, and Indian tribal governments and introduces new provisions designed to promote on-going and meaningful communication.

7. *Require preparation of an annual monitoring and evaluation report.* Subpart B would promote the role and visibility of monitoring and evaluation by establishing a requirement for preparation of an annual monitoring and evaluation report to be transmitted to the Regional Forester and made available to the public.

8. *Define requirements to provide for biological diversity.* Subpart B would provide for diversity by establishing requirements related to threatened or endangered species, sensitive species, rare or unique biological communities, and other selected species and would provide for their monitoring.

9. *Introduce the concept of "management indicators".* Under subpart B, the concept of "management indicator species" would be replaced with a somewhat similar concept of "management indicators" and its role would be linked to the monitoring and evaluation of selected species and communities for the purposes of assuring biological diversity.

10. *Establish a new process for identifying unsuited timber lands.* Subpart B would establish substantially altered procedures including a provision for categorizing suitable timber lands as either "suitable-scheduled" or "suitable-unscheduled".

Section-by-Section Analysis

The principle features of the preliminary regulatory text keyed to CFR section numbers are summarized here.

Section 219.30 Purpose and principles. This section would identify the topics that subpart B addresses; implementing and changing forest plans, the relationship of forest plans to project decisionmaking and NEPA compliance, and how forest plans fit within the agency's overall resource planning and decisionmaking framework. Thus, subpart B would essentially address all aspects of land and resource management planning (hereafter, forest planning), except for direction regarding the development of initial forest plans, which is found at subpart A.

Paragraph (b) would identify 10 principles based on statutory authority and agency policy which describe the conceptual basis for National Forest System resource planning and subsequent resource management. The first three principles (§ 219.30(b) (1)–(3)) would provide an overall perspective for forest planning. The first principle would reaffirm the agency's commitment to multiple-use and sustained-yield management and would recognize the role of environmental and amenity values in managing the National Forests to meet the needs and desires of the American people in an ecologically sound manner. The second principle would recognize that forest planning does not occur in isolation, but rather is part of an overall planning and decisionmaking framework which varies in nature among the national, regional, forest, and site-specific project levels. The third principle would describe the forest plan as a framework for establishing how a forest will be managed while integrating environmental and economic factors. This would set the stage for forest plans to be viewed as a "gateway" for future decisions rather than as an accumulation of all the site-specific decisions needed to manage a forest for the decade of the forest plan—an important clarification that is central to the structure of the regulatory text.

The next two principles (§ 219.30(b)(4)–(5)) would reflect essential components of successful planning as evidenced by findings of the Critique of Land Management Planning and agency experience. One principle would reaffirm the importance of an interdisciplinary approach to planning,

recognizing its role in properly integrating multiple-use values and understanding ecosystem relationships. The other principle would stress the vital importance of on-going and open communication with the public and other governments.

The next three principles (§ 219.30(b)(6)–(8)) would address the dynamic nature of forest plans. The sixth principle highlights the need to be able to readily and efficiently change plans in light of changing conditions, a critical factor if plans are to serve as dynamic, relevant documents to guide forest management over time. At the same time, it reflects the need to gradually phase in those changes when they have significant impacts on people and communities. The concept of "need for change" based revision would be established in the seventh principle, with the important and heightened roles of monitoring and evaluation described in the eighth principle.

The last two principles (§ 219.30(b)(9)–(10)) would focus on the planning process itself. The first articulates the need for an understandable and timely planning process in order to enhance public involvement and result in sound, responsive resource decisions. The last principle would establish the concept that the level and intensity of analysis in planning should be integrated with the requirements for NEPA compliance and commensurate with the decisions being made.

In total, the ten principles concisely highlight the underlying concepts and assumptions upon which the preliminary regulatory text is based and provide the foundation for the substantive requirements set forth later in the text.

Section 219.31 Applicability and transition. Subpart B would apply to the entire National Forest System except for those situations where an initial forest plan has not been completed. Paragraph (a)(1) of this section would make clear that, under such circumstances, subpart A would apply until the forest plan is approved. As a result, the agency would maintain consistent regulatory guidance for development of all initial forest plans and avoid disruption of the planning process for the unfinished plans. As previously noted, eight forest plans remain unfinished, all in the Pacific Southwest Region (R5). These are plans for the Stanislaus, Modoc, Lassen, Shasta-Trinity, Sierra, Mendocino, Six Rivers, and Klamath National Forests.

Paragraph (a)(2) requires that the Regional Guide for the Pacific Southwest Region be maintained in accordance with the requirements of the existing regulation (subpart A) until all forest plans are complete. This is in contrast to the direction for all other Regions as found at paragraph (d) of this section. The Pacific Southwest Region would be required to maintain a regional guide in order to direct development of the unfinished forest plans.

Paragraph (a)(3) provides that the resource requirements of §§ 219.41 and 219.42 would not trigger the need to change an existing forest plan prior to the time when revision would otherwise occur. Although it is the agency's desire to bring all forest plans into accordance with subpart B as soon as reasonably possible, it is recognized that it would be very disruptive, expensive, and unnecessary to require every forest plan to be assessed against the resource requirements of a newly effective rule prior to a scheduled revision. Therefore, the resource requirements of §§ 219.41 and 219.42 would be phased in through the normal amendment and revision processes.

Paragraph (b) would require that if a forest plan is in the process of being amended or revised when subpart B becomes effective, the amendment or revision would need to be completed in accordance with the requirements of subpart B. This provision is intended to accelerate implementation of subpart B. However, the agency intends to reassess this provision prior to issuance of a final rule since it is not possible at this time to accurately predict the nature of the final rule nor the impact it might have on forest plans midway through the amendment or revision process.

Paragraph (c) clarifies use of the term "forest plan" and describes how more than one forest may be addressed in a single plan.

Paragraph (d) provides instructions for making the transition from the regional guides required by § 219.8 of the existing regulation to the planning and decisionmaking framework defined at § 219.33 of subpart B. This paragraph would require the Regional Forester to tentatively identify a process and timetable for phasing out the regional guide and then provide that information to the public for a 60-day comment period. After reviewing public comments, the Regional Forester would make a final determination regarding how the regional guide will be phased out.

The intent of this provision is two-fold. First, it is designed to provide for the orderly termination of regional guides prepared in accordance with § 219.8 of the existing regulation. Since it is the agency's desire to implement subpart B in as timely and concise a manner as possible, it is incumbent that outdated documents be discontinued. However, the most appropriate pace for doing so may vary among Regions and some, or all, of the information in regional guides may still be valid and needed. Therefore, subpart B would provide for a timetable to be determined and process established for reviewing each regional guide to eliminate unnecessary contents and identify elements still beneficial and needed. The Regional Forester would have the flexibility to determine how best to retain the beneficial provisions, as described in § 219.33(d).

As evident from this transition language, subpart B would eliminate the requirement for a regional guide. During development of the existing regulation, regional guides were viewed as an important link between RPA at the national level and forest planning at the local level. One important function of the regional guides was to serve as a mechanism for disaggregating resource objectives from the RPA Program to each forest planning area. Another key function was to provide regional standards and guidelines in compliance with specific resource requirements of the regulation.

Although this approach had considerable merit initially, the need for these two functional roles has lessened over time. First, due to changes in the nature of the RPA Program, the role of the regional guide for disaggregating resource objectives is no longer relevant. As stated in the Summary of the Recommended 1990 RPA Program, "The 1990 RPA Program provides broad national guidance for program emphases and trends, rather than specific, quantified output targets for individual forest programs" (p. S–7). The role of the regional guide in providing regional standards and guidelines has also diminished. Such direction has generally already been incorporated into approved forest plans. Any reconsideration of standards and guidelines can be achieved through the forest plan amendment or revision processes.

Agency experience has shown that regional guides may no longer be the most effective and efficient means for providing regional direction. In reality, most regional guides did not fully achieve the role of being the meaningful or effective documents originally envisioned. Moreover, the rigorous requirements of §§ 219.8 and 219.9 in the existing regulation proved to have siphoned a significant investment of staffing and funds from forest or project planning efforts.

Although the requirement for regional guides would be eliminated, the importance of regional planning and decisionmaking is not diminished. Instead, the Regional Forester would have more flexible, efficient, and effective options for establishing regional direction through already available adminstrative means, including the Forest Service directives system (36 CFR part 200) and issuance of inter-regional, regional, or sub-regional planning and decision documents (see § 219.33(d)). This approach, which would continue to provide for NEPA compliance and appropriate public notice and comment, is consistent with the overall thrust of subpart B to simplify and streamline the planning process.

Section 219.32 Definitions. The following definitions are in the existing regulation but would not be included in subpart B either because they are not used or because they do not vary in meaning from common and well-established uses of the term: Base sale schedule; Biological growth potential; Capability; Corridor; Cost efficiency; Management concern; Management direction; Management intensity; Multiple use; Net public benefits; Planning horizon; Public issue; Real dollar value; Receipt shares; Responsible line officer; Sale schedule; Silvicultural system; Suitability; and Sustained yield of products and services.

The following terms would be newly defined in this section: Class I area; Environmental and amenity values; Evaluation; Infrastructure; Management area; Management indicators; Monitoring; NEPA procedures; Programmatic environmental impact statement; Project; Regulated volume; RPA Assessment and Program; Responsible official; Sensitive species; Special habitats; Standards and guidelines; Suitable-scheduled lands; Suitable-unscheduled lands; and Viable population.

The following definitions appear in the existing regulation and would be retained in subpart B: Allowable sale quantity; Diversity; Even-aged management; Forested land; Goal; Goods and services; Integrated pest management; Long-term sustained-yield timber capacity; Management practice; Management prescription; Objectives; Planning area; Plan period (previously planning period); Present net value; Timber production; and Uneven-aged management.

Unless otherwise noted in the following paragraph, any changes in the definitions of this section from those in the existing regulation are for clarity or improved readability and may be considered to have little or no substantive effect.

The definition of "Allowable sale quantity" (ASQ) highlights that the ASQ is a maximum volume or decadal "ceiling"; ASQ is calculated based only on suitable-scheduled lands (see §§ 219.40(c)(3) and 219.41(b)(3)(i)). The definition of "diversity" clarifies that diversity is determined based on the land area controlled by the forest plan (see § 219.40(b)). The definition of "planning area" has been modified to be applicable to any area controlled by a decision document rather than limited to only regional guides or forest plans. The definition of "plan period" has been adapted to reflect the fact that plans may last longer than a decade, though not longer than 15 years, before being revised.

Some definitions are further discussed in association with the section in which they are used. For example, the term "Management indicators" is discussed in the explanation of § 219.40(b) or refer to the discussion of § 219.41 for clarification of the terms "suitable-scheduled" and "suitable-unscheduled."

Section 219.33 Resource planning and decisionmaking framework. This section would define the nature of decisions made in forest plans, the role of project decisionmaking, the relationship of plans and projects to NEPA compliance, and the relationship of forest planning to other resource planning and decisionmaking. This section responds to a major finding of the Critique of Land Management Planning and to agency experience as discussed earlier in the preamble under the discussion of "Findings of the Regulatory Review".

Paragraph (a) would establish the nature of decisions made in forest plans, clarifying that plans are programmatic in nature and generally do not provide final authorization for irretrievable resource commitments. The intent of paragraph (a) is to codify the description of the nature of forest plan decisions as has already been articulated by the agency and supported by the Federal courts on previous occasions.

The Chief of the Forest Service identified the decisions made in forest plans in two landmark administrative appeal decisions (Panhandle LRMP Appeal #2130, August 15, 1988, p.7; Flathead LRMP Appeals #1467 and #1513, August 31, 1988, p.8). Numerous other appeal decisions also reflect the nature of forest plan decisions. For example, in the Chief's decision in the Routt LRMP Appeal by RMOGA, May 25, 1984 the Chief ruled that lands designated as not available for oil and gas leasing in the LRMP (forest plan) could be redesignated when a decision was made at a more site specific point; similiarly in the Decision of the Pike and San Isabel LRMP Appeal by Maas #1130, February 13, 1986) the Chief affirmed the possible ski area designation in the forest plan but noted that this was not the final decision nor appeal opportunity on whether a ski area would be developed. In the Chief's Decision on the Routt LRMP Appeal by Wahl, April 23, 1986 assignment of timber harvesting prescription in the forest plan was the decision affirmed, but the decision noted that this did not represent the final decision on development, pending further NEPA compliance and appeal opportunity.

The courts have adopted the Chief's characterization of the nature of forest plans. The court's decision in *Council for Environmental Quality (CFEQ)* v. *Lyng*, [731 F.Supp. 970, 977–978 (D. Colo. 1989)] contains an almost verbatim characterization. In addition, the court's decision in *Idaho Conservation League* v. *Mumma* [CV 88–197–M–CCL (D. Mont. decided August 8, 1990)] further supports this interpretation.

In the Idaho case, the plaintiffs initially argued that the assignment of non-wilderness management prescriptions in the forest plan constituted an irreversible commitment to develop these roadless areas. The Chief's appeal decision had refuted the plaintiff's characterization stating that the Forest Service uses a staged decisionmaking process and that the forest plan did not make project level decisions. In rejecting the plaintiffs' position, the court noted: "The Plan does not deal with any specific development of those areas which were designated as non-wilderness. It does not even propose any future development; it merely allows for the possibility of development in the future" (at 5–6). The court noted that "[i]n this case any future development which might take place will again be determined by the Forest Service and will be subject to the requirements of NEPA" (at 6).

Consistent with the concept of the forest plan as a broad, programmatic statement, paragraph (a)(1) establishes the content of forest plans: forest-wide goals and objectives, forest-wide standards and guidelines, management areas and associated management prescriptions, identification of lands not suited for timber production, and monitoring and evaluating requirements.

Paragraph (a)(2) characterizes the nature of forest-wide objectives as estimates of the goods, services, or activities intended to be produced or achieved. In case of conflict, adherence

to the standards and guidelines as required by the consistency provisions of § 219.34(b) would take precedence over the attainment of objectives. The relationship of objectives to the consistency requirements is explained under the section-by-section discussion for § 219.34.

Paragraph (b) would clearly identify project decisionmaking as normally being the point of authorization for site-specific activities. Paragraph (c) expands upon paragraph (b) and provides further definition of the relationship between NFMA (forest planning and project decisionmaking) and NEPA. Paragraph (c) would establish the requirement for a programmatic EIS to accompany a forest plan revision or major amendment, while project decisionmaking would be identified as normally being the point of irretrievable resource commitment requiring a site-specific rather than programmatic disclosure of environmental effects.

The characterization of project decisionmaking as the point normally authorizing the irreversible commitment of resources is consistent with the description of the nature of forest plan decisions. The basis for this relationship between plans and projects rests largely upon the requirements for compliance with NEPA. In a landmark court case (*State of California* v. *Block*, 690 F.2d 753 (9th Cir. 1982)), the Ninth Circuit stated that "the critical inquiry in considering the adequacy of an EIS prepared for a large scale, multi-step project is not whether the project's site-specific impact should be evaluated in detail, but when such detailed evaluation should occur". The court determined that "[t]his threshold is reached when, as a practical matter, the agency proposes to make an irreversible and irretrievable commitment of the availability of resources' to a project at a particular site."

A requirement to disclose a project's site-specific impacts at the time of proposing an irreversible and irretrievable commitment of resources would impose an unbearable burden upon a forest plan EIS if such commitments were to be made in the forest plan for the ten-year plan period. It is, as a practical matter, impossible for a forest plan to identify all of the projects to be implemented for a ten-year period or to adequately disclose their site-specific environmental effects in an accompanying EIS. In addition, many activities occurring on a forest are initiated by forest users and not the Forest Service. The relationship of projects initiated by others and projects planned by the Forest Service is continuously changing. Furthermore, new information regarding the relationship and effects of actions within any given ecosystem are constantly being developed. No matter how sophisticated forest models become, it is doubtful that the order and relationship of possible activities can ever be forecast with enough precision to fulfill environmental laws or the realities of a changing world at the forest plan approval stage. As a result, the forest plan is best viewed not as an aggregate of 10–15 years worth of project decisions (irreversible and irretrievable resource commitments), but rather as a dynamic management system which provides the framework for further decisionmaking at the project level.

Paragraph (d) would establish the forest plan as the mechanism by which other levels of planning and decisionmaking are integrated into on-the-ground management. Paragraph (d) also recognizes that forest planning responds to laws, regulations, Executive orders, direction issued through the Forest Service directive system, and national, regional, inter-regional, or sub-regional planning and decision documents.

Regional supplements to the Forest Service Manual or Handbooks could be issued. Direction could also be developed and provided through regional or sub-regional planning and decision documents. This would provide the Regional Forester with the flexibility to develop the type of documents relevant to the particular needs of the region. This might range from an inter-forest demand study provided for informational purposes to establishment of regional resource standards and guidelines through a supplement to the Forest Service Manual. Any resource decision must be integrated into the forest plans through amendment or revision, however, in order to be effective on a particular forest. This can be achieved through the Regional Forester's decision document or on a forest-by-forest basis. Either way, however, NEPA compliance would be necessary as part of the amendment or revision processes.

Although the RPA Program no longer functions as a source of national resource outputs to be disaggregated to the forest level, it still retains an important link to forest planning. Under paragraph (d), upon publication of a new RPA Program, the Regional Foresters and Forest Supervisors would be required to review and consider the new RPA Program during monitoring and evaluation. This provides a checkpoint for considering the Program along with any other new direction which may have been issued subsequent to approval of the forest plan (see § 219.35(c)(3)).

Paragraph (d) would also reflect the possible need for inter-regional or sub-regional planning and decision documents which cross regional or forest boundaries. In contrast to the existing regulation which patterned planning documents parallel to administrative structure, this paragraph recognizes that many issues and ecosystems cross regional boundaries or occur within only a portion of a region. Subsequently, consistent with the intent to keep planning as flexible and relevant as possible, this text specifically recognizes that inter-regional or sub-regional planning may be needed.

219.34 Forest plan implementation and consistency. Paragraph (a) of this section would identify both NEPA compliance and a determination of consistency with the forest plan as required steps prior to project approval.

Paragraph (b) would describe how forest plan consistency is determined. A determination of consistency with the forest plan is based on adherence to the forest-wide standards and guidelines and the standards and guidelines included in management prescriptions for specific management areas. Consistency with the forest plan would not be determined in relation to forest plan objectives.

Although some may believe it is desirable to include objectives in the consistency determination, such an approach would be directly counter to the conceptual foundation of the nature of forest plans. Forest plans provide the framework within which further decisions at the project level are made. That framework is largely defined by the standards and guidelines which preclude or impose limitations on resource management activities, generally for the purposes of environmental protection or public safety. Standards and guidelines are explicit requirements which describe any activities not permitted to occur in a specified area or which establish instructions on how activities must be implemented in order to achieve their intended purpose for environmental protection or other needs. Individual projects can generally be readily assessed for their compliance with standards and guidelines.

In contrast, achievement of objectives is dependent on the cumulative results of individually authorized projects. As previously noted, a forest plan is not,

and cannot be, the document which authorizes approval of all the projects which would occur during the ten-year plan period. Also, as described at § 219.33(a)(2)), objectives represent estimates of the goods, services, or activities intended to be produced or achieved and their attainment is dependent upon funding, market conditions, and other variable factors. Therefore, it would be inappropriate to base consistency determinations on estimates of outputs which may result from projects not yet evaluated or authorized and which are subject to unpredictably fluctuating conditions.

The consistency requirements of paragraph (b) would recognize that objectives cannot be portrayed as having the same certainty of achievement as standards and guidelines. Objectives are the best possible estimates of what should occur when management prescriptions are implemented in accordance with the standards and guidelines. Given the uncertainties of ever-changing conditions and the limitations of even the most sophisticated forecasting models, forest plans can only represent the best estimate of specific outputs. What forest plans can assure, however, is the manner in which the resources will be managed as defined by the standards and guidelines.

As a practical matter, it would be very difficult to evaluate the achievement of forest plan objectives on a project-by-project basis even if it were desirable to do so. Resource objectives are defined as cumulative totals for the 10-year plan period and achievement of the plan can only be viewed from a decadal perspective. Project-by-project consistency could only be assessed if project listings were identified in the forest plan with their associated share of outputs. Since it is not realistic to complete the NEPA disclosure and project authorization for such a 10-year listing, the basis for such an assessment would be subject to some degree of uncertainty. In recognition of the shortcomings of such an approach, subpart B would not require activity schedules and does not link consistency determinations to any type of project-specific output.

Paragraph (b)(1) requires that plans, permits, contracts, and various other instruments issued by the Forest Service for use and occupancy of National Forest System lands are required to be consistent with forest plans subject to valid existing rights. This is a restatement of the requirements of NFMA and the existing regulation.

Paragraph (b)(2) requires documentation of consistency findings during project approval and provides appeal opportunities in accordance with 36 CFR part 217, Requesting Review of National Forest Plans and Project Decisions. It also recognizes possible appeal opportunities for permittees or contract holders in accordance with 36 CFR part 251, subpart C, Appeal of Decisions Relating to Occupancy and Use of National Forest System Lands. These provisions assure that the public has an opportunity to review and question consistency findings.

Paragraph (b)(3) would establish provisions for those situations where a project, contract, permit, or other previously approved decision exists which may be inconsistent with a newly approved amendment or revision of a forest plan. Under such circumstances, the amendment or revision must address such previously approved decisions and such decisions may be excluded from applicability to the newly revised or amended plan, provided they are so identified when approving the amendment or revision.

The provisions of paragraph (b)(3) are intended to address problems which occur when there is a change in a forest plan. At any point in time, there are numerous projects on a forest which have been approved, but not yet implemented, or which are already under permit, contract, etc. In many cases, a considerable additional investment of staff time and money may be needed to continuously review and modify such projects, permits, or contracts with every change of the forest plan. Rather than require a continuous recycling of such decisions with every change to the forest plan, paragraph (b)(3)(i) allows exemptions provided they are identified in the amendment or revision decision. It is intended to reduce the workload associated with amendment or revision as well as provide concise direction on how such situations will be handled. It should be noted that nothing in the provision prohibits the immediate application of an amendment to all forest activities if appropriate.

Unless excluded from applicability by paragraph (b)(3)(i), paragraph (b)(3)(ii) required that projects approved prior to an amendment or revision would have to be assessed for consistency with the newly amended or revised plan. These consistency findings would be documented to provide assurance that such projects are indeed consistent with the plan.

The appeal provisions for paragraph (b)(3)(ii) would vary from paragraph (b)(2). Unlike paragraph (b)(2) which addresses the appealability of a consistency determination included in a decision document at the time of project approval, paragraph (b)(3)(ii) addresses those situations where a project has already been approved but not yet implemented through a permit or contract. Unless the project is modified to such an extent that a new decision document is issued, there is no basis for appealing the consistency of the previously approved project with an amended or revised forest plan. This is because no new NEPA decision document has been issued. Since only decisions in NEPA decision documents are appealable under 36 CFR part 217, the documentation of consistency as described by paragraph (b)(3)(ii) is not appealable.

Paragraph (b)(4) would list the options available to a responsible official when faced with a project proposal inconsistent with the forest plan. An important feature of this provision is recognition of the role of valid existing rights as required by NFMA. The options are to: modify the proposal to make it consistent; reject the proposal; or amend the forest plan to permit the proposal.

Paragraph (c) would provide that an approved forest plan remains effective until approval of an amendment or revision. This is to clarify that plan direction remains valid during the time that change is being evaluated but has not yet been approved.

Paragraph (d) would describe how a forest plan is to be implemented if any portion of the plan is stayed as a result of an administrative appeal. This paragraph would assure that there is no gap in applicable management direction as a result of stays by providing for non-stayed provisions to continue to be applied and stayed provisions to be substituted with the immediately previous version, unless otherwise directed by the Appeal Reviewing Officer.

Paragraph (e) would require that the Forest Supervisor develop budget proposals based on the forest plan, which is similar to the requirement of § 219.10(e) in the existing regulation. In addition, this paragraph directs that the Forest Supervisor will strive for efficient and effective use of funds to implement the forest plan or specific provisions of the Annual Appropriations Act. This is in recognition of the importance of sound fiscal management in both the development and implementation of annual budgets and acknowledges that actual appropriations may not always match the funds requested for implementation of the forest plan.

Section 219.35 Forest plan monitoring and evaluation. This section is designed

to strengthen the role and visibility of monitoring and evaluation in the forest planning process. Paragraph (a) would require systematic monitoring and periodic evaluation to determine if changes are needed in the plan or in how the plan is being implemented.

Paragraph (b) would list three specific results to be achieved by the monitoring and evaluation requirements in forest plans. Unlike the existing regulation (§ 219.12(k)) which is more specific but limited in scope, paragraph (b) would direct that monitoring and evaluation requirements provide for (1) assessing proper implementation of projects, (2) determining the effectiveness of plan implementation in achieving the intended results of the plan, and (3) identifying the availability of new information which may affect the plan. As a result, a concise yet broader framework would be established for making sure the plan is functioning as was envisioned when it was approved.

Paragraph (c) provides for the identification of inventory and research needs to support forest planning efforts as well as an on-going review of any new direction issued subsequent to plan approval. The identification of new information would serve to keep the plans dynamic and responsive to changing conditions. This includes serving as a systematic means for recognizing new direction, such as new laws, regulations, or Executive orders, and assessing any changes which may subsequently be appropriate for the forest plan. The provision for identifying inventory and research needs recognizes the importance of sound data and scientific knowledge upon which to base forest plans. These needs were also specifically recognized in Section 6 of NFMA. These provisions establish a visible link between forest planning and research, while also promoting the development and maintenance of forest data needed for future planning by requiring the identification of current "and anticipated" data needs.

Paragraph (d) would introduce a new requirement for an annual monitoring and evaluation report to be transmitted to the Regional Forester and made available to the public. This provision reflects the concept that planning is an on-going process dependent upon continuous review and feedback. These annual reports would assure the Regional Forester and public a much greater role in the monitoring and evaluation process by providing the opportunity to periodically receive information on the status of plan implementation, as well as the Forest Supervisor's assessment of whether or not change is needed in the plan or how it is being implemented. As a result, communication between the Forest Supervisor, Regional Forester, and the public about the progress of plan implementation should be enhanced and a stronger foundation established for keeping the plans dynamic and responsive documents.

Section 219.36 Forest plan revision. This section would establish a distinctly different process for forest plan revision than is contained in the existing regulation at § 219.12(a). Rather than requiring repetition of the "zero" based process which was used for initial development of the forest plans, it would focus revision on those aspects of the forest plan which need to be changed. This concept of a "need for change" based revision is a key aspect of Subpart B and was discussed earlier in the preamble under the section entitled "Critique of Land Management Planning".

The concept of a "need for change" based revision introduces a fundamental change to the revision process. Unlike the "zero" based approach for initial plan development which is designed to consider alternatives for all aspects of forest management, "need for change" based revision only focuses on the aspects which aren't functioning adequately. Alternatives only vary according to the aspects of the forest plan under consideration for change. In this manner, the revision process stays focused on the real choices to be made rather than diverting time and attention for evaluating changes or writing voluminous pages of analysis that don't truly lead to better resource management decisions. The concept of "need for change" based revision is also accompanied by several other key changes in the planning process which are described in the following discussions.

Paragraph (a) would identify the circumstances which trigger revision. In addition to routinely scheduled revisions about every ten but no more than fifteen years, revisions would be triggered when conditions have significantly changed such that fundamental parts of the forest plan are no longer appropriate to implement. (For clarification of the distinction between revision and major amendment, see the section-by-section preamble discussion for § 219.37.)

Paragraph (b) would identify the Regional Forester as the responsible official for revision, as is the case in the existing regulation. (§ 219.10(a)(1)).

Paragraph (c) would describe how the public and other governments would be provided an opportunity to become involved in the revision process. These provisions reflect a notably different approach to initiating the revision process than is found in the existing regulation. The changes are intended to be responsive to findings of the Critique of Land Management Planning regarding improvements needed in the planning process and the public's ability to participate in it.

Paragraph (c) requires notice of the revision process in the **Federal Register** and to all individuals and organizations on the Forest's previously established mailing list (see § 219.39(a)(1)). It also provides an opportunity for comment on the information provided by the Regional Forester. This comment period is an important opportunity for the public to comment on which aspects of the plan need to be changed and the appropriateness of the anticipated alternatives and analytical procedures. As a result, the Regional Forester will be able to modify the revision process accordingly in response to the public's review prior to a large investment of time and effort to fully develop and evaluate alternatives in a proposed plan and draft EIS.

One distinct change reflected in paragraph (c)(1) is that rather than identifying issues, the revision effort is initiated by identifying specific aspects of the forest plan which need to be changed. This clearly reflects the "need for change" based revision concept. Another distinct change reflected in paragraph (c)(1) is that the Forest Supervisor would tentatively identify the areas of needed change, with review and concurrence by the Regional Forester. It is after this tentative identification that the public involvement process is initiated to verify the accuracy of their assessment.

In the existing regulation, revision is initiated by involving the public in the identification of issues. Although this was a logical starting point for the development of initial forest plans, the revision process will have the benefit of several years of on-going communication with the public related to project decisionmaking and monitoring and evaluation. Thus, the Forest Supervisor and Regional Forester should already have a good idea of how the public feels about management of the forest and the adequacy of the forest plan. After repeated requests in the past asking the public to identify forest management issues, the complaint is sometimes heard of "How many times do we have to tell you?" This new approach to initiating public involvement is a way to avoid another

open-ended request for issues and show the public that the agency has been listening.

Paragraph (c)(1) would also include changes which provide for public comment not only on the tentative identification of which aspects of the plan need changed, but also on a summary of the analytical procedures anticipated to be used and a brief description of the alternatives anticipated to be considered. This is intended to give the public an active role in assessing how the revision would be conducted.

The intended effect of these changes is two-fold and directly responsive to the Critique of Land Management Planning. First, they would help to shorten the time period between initiating the revision process with the public and issuance of the proposed plan and draft EIS. According to findings of the Critique, one of the concerns often raised internally and externally was the length of time required to complete a plan. Under the provisions of paragraph (c)(1), the Forest Supervisor and Regional Forester do preliminary work in preparation for the revision process, resulting in time-savings once the public involvement efforts begin. By investing more effort prior to initiating public involvement, the public should not be subjected to the long delays which often proved frustrating and confused meaningful communication.

The second intended effect is also directly responsive to the Critique. Under the provisions of paragraph (c)(1), there is better opportunity for more meaningful public involvement and comment. Although at first glance it might appear that the "up front" efforts are counter to the concept of early and on-going public involvement, in reality these "up front" efforts should greatly help this public involvement concept become a reality. By providing the public with the results of the Regional Forester's initial evaluation regarding "need for change", anticipated alternatives, and anticipated analysis procedures, the public is provided with substantive, comprehensive information upon which to base their comments. The approach should promote a more focused means for the public to respond while simultaneously expanding their scope to a broader perspective of the overall revision process. In addition, this approach treats revision as part of an on-going process of forest management rather than an isolated event distinct from previous decisions or communications with the public.

Paragraph (c)(3) would establish specific coordination requirements to assure early and on-going communication with representatives of other Federal agencies and State, local, and Indian tribal governments. These provisions are intended to strengthen the requirements found at § 219.7(d) of the existing regulation. Paragraph (c)(3) would retain the requirement to meet early in the revision process and would increase emphasis on the need for on-going communication throughout the revision process. In addition, it would add a new requirement to meet again with interested representatives during the public comment period of the proposed plan and draft EIS. This is considered an important point in the process for assuring that the interests of other governments are fully recognized. These changes are intended in part to respond to findings of the Critique of Land Management Planning that revealed a better understanding of mutual roles and enhanced communication is often needed in order to properly coordinate planning efforts with other government interests.

Paragraph (d) would provide the Regional Forester with the discretion to determine the level and type of analysis needed to adequately disclose trade-offs and make an informed decision. It would identify the need for environmental, economic, and social analysis and would direct that such analysis be commensurate with the data available and decisions being made. Allowable procedures are limited to only generally accepted analysis and evaluation methods.

The provisions of paragraph (d) introduce a noteworthy change from the existing regulation. The intent is to allow analytical efforts to be focused on the critical questions raised by forest plan revision rather than dispersed across a wide range of standardized analytical requirements which may not be relevant to local conditions and concerns. Such flexibility is especially warranted with the "need for change" approach to forest plan revision. Since this approach is designed to allow each forest to focus on only those aspects of the forest plan which need changed, forests will likely vary to a considerable extent as to what that focus will be. This variation is likely to be much greater during revision than initial plan development when all forest planning efforts were "zero" based. This variation is in addition to the inherent differences in local conditions found among National Forests in the country. For example, the analysis needed to support forest plan decisions on a forest intensively managed for wildlife and recreation values but with little or no commercial timber resources would be considerably different from the analytical needs for a major timber-producing forest with economically dependent communities and highly controversial commodity trade-offs.

The flexibility provided by paragraph (d) is also intended to enhance an overall understanding and confidence level in analytical procedures. Findings of the Critique of Land Management Planning clearly indicate that many people, both internally and externally, distrust analytical procedures and view computer models as mysterious "black boxes" which produced incomprehensible and unverifiable answers. This has occurred in part because of rigorous, standardized. analytical requirements which demanded creation of complex computer models. In many cases, neither agency personnel nor the public have had confidence in the data required to run the large, complex models nor enough confidence in the results to understand and properly use them in decisionmaking. The approach reflected by paragraph (d) keeps analytical procedures highly focused and relevant to local decisionmaking needs and thus should help to alleviate this problem. Computer models would be better tailored and more streamlined to meet specific decisionmaking needs. The time and effort of forest analysts would be able to focus on developing a more in-depth understanding of the data specifically relevant for the decisions to be made and communicating that information to the public and decisionmakers.

Although paragraph (d) would provide enhanced flexibility to tailor analysis to meet local needs, this should not be interpreted as de-emphasizing the importance of sound analysis nor to imply that less analysis will occur. Although these provisions are certainly intended to reduce the amount of unproductive or counterproductive analysis, they may or may not reduce the overall quantity of analysis conducted on any given forest. Similarly, by limiting the Regional Forester to only generally accepted analysis and evaluation methods, the quality and validity of analysis conducted is safeguarded. This is not intended to inhibit the use of innovative or state-of-the-art analysis methods, but rather to assure that any methods used are scientifically sound. Revision of the agency's planning direction (FSM 1920) in concert with adoption of a final rule will provide Forest Service personnel more specific direction regarding generally accepted methods of analysis. This direction will be available for

public review and comment prior to being finalized.

Paragraph (e) would provide requirements for the programmatic environmental impact statement which would accompany each forest plan revision. The no-action alternative would be described based on the current plan using analytical techniques comparable to those used for other alternatives. Actual outputs and effects resulting from forest plan implementation would be displayed for comparative purposes.

Although it might seem logical to simply use the outputs and effects in the current plan to describe the no-action alternative, such an approach would be misleading and confusing. First, the data and analytical procedures available for forest plan revision are likely to be improved from those used in the initial development of the plan. Therefore, the no-action alternative should be evaluated using comparable data and techniques to provide a good basis for comparison with the other alternatives. Secondly, during revision, the public is able to relate to what actually happened during plan implementation, not what was supposed to happen. In some cases, these may be notably different. Thus, the actual outputs and effects would be provided to allow a basis for comparing alternatives to what actually occurred when the current plan was implemented.

Paragraph (e)(1)(ii) would require a display of environmental, social, and economic effects and clarifies that the total effect of the proposed changes on the entire forest management program will be displayed. This provision provides a fundamental distinction between revision and major amendment. Although revision focuses on only those aspects of the plan which need changes, the effects on the entire forest management program would be displayed. For example, if the only aspect of a forest plan which needed to be changed during revision involved the standards and guidelines for developed recreation, then only the standards and guidelines for developed recreation would vary among the alternatives. The effects of the alternatives would be displayed for the entire forest program, however, with all other aspects of the forest program remaining constant among alternatives, unless affected by the developed recreation standards and guidelines. For example, the outputs of all other resources, projected economic effects, etc. would be displayed for all alternatives. This approach is designed to support the principle of integrated resource planning as required by NFMA.

The economic requirements of paragraph (e)(1)(iii) would list five displays required in the EIS. These are intended to provide a measure of the efficiency of plan alternatives and an estimate of their effects on income, employment, and receipt shares to State and local governments. Although this provision retains the role of economic considerations in forest planning required by NFMA, it does represent some change in the way the economic analysis would be conducted.

The most important change is that benchmark analysis previously conducted as part of the Analysis of the Management Situation is no longer required. Volume 2 of the Critique, "National Forest Planning: Searching for a Common Vision," criticized the use of the benchmarks on the grounds that they overemphasized the role of economic efficiency analysis in planning. Others have criticized the benchmarks on the grounds that they frequently produce output estimates that are so far above or below the actual operating experience of the agency that they are of questionable utility in constructing feasible alternatives. Regardless of whether or not these criticisms are valid, the agency believes that the benchmarks are no longer routinely needed because they are inconsistent with an approach to plan revision that is based on "need for change". Benchmarks implicitly assume that all decisions in a forest plan need in-depth re-evaluation. Future revisions, in contrast, will focus analysis on only those aspects of the plan identified as needing change.

Similarly, the regulation no longer has detailed requirements for the range of alternatives that needs to be developed and for the procedures to be followed in the evaluation of these alternatives. With respect to the range of alternatives, plan revision would still be subject to NEPA rules, which require that a broad range of reasonable alternatives be developed to address the issues identified in the preliminary scoping process. Procedures for evaluating alternatives can be expected to vary from one forest plan revision to another, depending on the issues that each revision effort will address.

Paragraph (e)(1)(iv) would provide for a brief summary of the review and consideration given to the objectives and interests of other governments. This provision is similar to the requirements of § 219.7(c) in the existing regulation. Although less detailed in nature, this text should result in little or no substantive change from the current requirements.

Paragraph (e)(2) would describe provisions for public notice and comment of the proposed plan and draft EIS, approval of the final plan, determination of effective date, and appeal rights. There is no substantive change in this provision from the existing regulation.

Section 219.37 Forest plan amendment. This section provides for two types of amendments to forest plans. Major amendments would occur when there is a significant change to the plan or the relationship between multiple-use goals and objectives is substantially altered. Minor amendment occurs when the changes are of a less encompassing nature. The provision for two types of amendments is similar to the existing regulation, with the concept of "major amendment" paralleling the concept of "significant amendment" in the existing regulation. The adjective "major" was substituted for "significant" to avoid confusion with the term "significance" as used in the context of NEPA. The criteria for determining significance for NEPA compliance differs from criteria relevant for distinguishing the significance of amendments in compliance with NFMA, which has caused considerable confusion both within the agency and among the public.

This section would differ significantly from the existing regulation with regards to the analytical requirements associated with major amendment. The existing regulation requires the same process to be used for significant amendment as for revision and initial plan development; this section would eliminate this requirement. Both revision and major amendment would be based on the "need to change" concept rather than on "zero" based evaluation.

Revision would be distinguished from major amendment by two main factors. First, the circumstances warranting a revision have a more widespread impact on the forest plan so that the entire document needs to be reviewed to determine the aspects which need to be changed. In contrast, the degree of change needed to a forest plan for a major amendment is within definable limits and would not necessitate reviewing the entire plan. Secondly, the revision process requires that alternative evaluation address the forest program in its entirety, even though many elements of the program may remain constant among alternatives if there is no "need to change". The evaluation process for a major amendment is limited only to the changes being proposed and not the entire forest program.

Paragraph (b) would provide that a major amendment is always accompanied by an EIS, so that the

public is assured an opportunity to review and comment upon proposed major changes to the forest plan. Paragraph (c) provides that a minor amendment would be accompanied by an EIS only when the change is being made in conjunction with a project decision requiring an EIS. There is, however, a provision for public notice and, as required by the appeal regulation at 36 CFR 217.10(a), at least a seven day delay between the public notice of the decision and implementation of the minor amendment to allow an opportunity for administrative appeal. The absence of an EIS requirement for minor amendments reflects the more limited nature of changes made by minor amendment and the appropriateness of a more expeditious process for completing them.

Section 219.38 Interdisciplinary approach. An interdisciplinary team would be used for preparing forest plan amendments and revisions and for development of the annual monitoring and evaluation report. Team membership would be limited to Forest Service or other Federal government personnel, although other persons may be involved when specialized knowledge is not available on the team.

Although less detailed than the discussion of the interdisciplinary approach in the existing regulation (§ 219.5), this section represents no substantive change in the role of the interdisciplinary team. Consideration was given to allowing membership of the interdisciplinary team to be expanded to individuals not employed by the Federal government. Such a change would be responsive to findings of the Critique of Land Management Planning which indicated that more direct participation of other governments in the planning process would be beneficial ("Effectiveness of Planning Coordination", Vol. 6, p. 20). Interest has also been expressed by some members of the public that the involvement of private citizens as interdisciplinary team members could help to strengthen communication and meaningful participation.

The desirability of this approach was identified by the Committee of Scientists during development of the existing regulation (44 FR 26614; May 4, 1979). As was the case at that time, a major obstacle to expanding team membership to non-Federal individuals is the Federal Advisory Committee Act enacted by Congress in 1972. This Act imposes substantial procedural requirements on any advisory committee. An advisory committee may be described generally as any group that includes non-Federal employees that is established or utilized by Federal agencies for obtaining advice or recommendations on any matter. Examples of the procedural requirements include advance public notice of all meetings in the **Federal Register** and that all meetings be open to the general public.

Since membership by non-Federal employees would place interdisciplinary teams under the requirements of this Act, the ability of these teams to function in an efficient manner would be greatly reduced. Although the agency fully endorses the desired improvements in communication with the other governments and the public, membership on the interdisciplinary team is not viewed as a requisite to do so. In fact, it would be disadvantageous if expanded membership on interdisciplinary teams were to be viewed as providing some segments of the public better access to the planning process than was available to other segments. It is recognized that cooperating agencies do have interests and responsibilities which merit special coordination efforts, but interdisciplinary team membership does not appear to be a valid option for establishing such ties.

As a result. this section does not directly respond to the finding of the Critique. Instead, however, the text does allow the team to "involve other persons during appropriate steps in the process . . ." to clearly signal that the team is not to function in isolation when specialized knowledge can be gained from sources outside the team. It is believed this approach will allow meaningful communication with other governments and the public without the rigorous formality of a designated advisory committee.

Section 219.39 Public participation and government coordination. This section fully endorses the findings of the Critique of Land Management Planning which highlighted the critical role of on-going and meaningful public involvement and strengthened coordination with other Federal agencies and State, local, and Indian tribal governments. Paragraph (a) asserts the integral and on-going nature of public participation and government coordination. The on-going nature of involvement activities is echoed in other sections of the preliminary text, especially the requirement for an annual monitoring and evaluation report and the process used to initiate forest plan revision.

Paragraph (a) would strengthen the role of public participation and government coordination by clearly focusing the intent of such activities into three areas. First, conflict resolution is identified in recognition that the agency should actively seek ways of achieving informed consent among interested publics. Second, the paragraph would state that the intent is to inform and involve interested persons and groups in decisionmaking. Although this does not diminish the responsibility and authority held solely by agency personnel for management of the National Forests, it clearly signals that public involvement and coordination activities are not to be isolated undertakings kept distant from the decisionmaking process. Third, this paragraph recognizes the importance of coordination with the objectives of other governments. Unlike the existing regulation where coordination efforts were described for "other public planning efforts" (§ 219.7), this paragraph intentionally expands the focus to the broader term "objectives". This is more encompassing since coordination efforts are likely needed for a variety of on-going activities and policies rather than just other planning efforts.

The provision of paragraph (a)(1) for each Forest Supervisor to maintain a mailing list of interested individuals and organizations is intended to assure a means by which anyone can be informed of planning activities. The listing of specific government entities to be included on the list (§ 219.39(a)(1)(i)–(iv)) is similar to the listing at § 219.7(b) of the existing regulation.

Although the existing regulation had separate sections for public participation (§ 219.6) and coordination with other public planning efforts (§ 219.7), these topics are combined into one section. This is not intended to diminish the role or importance of either one, but rather reflects the relevance of the nature and intent of involvement activities to both the public and governments.

In developing this combined section, it was recognized that the Critique of Land Management Planning identified specific concerns related to cooperating agencies. In particular, cooperating agencies and governments felt they often had jurisdictions and authorities which merited a stronger distinction between their role in the process and that of the general public. This section in no way attempts to refute that perspective. In fact, the requirement in § 219.36(c)(3) would specifically identify the need for special coordination efforts with other agencies and governments and would add a new requirement for meeting with interested government

representatives during the public comment period for the proposed plan and draft EIS. This is directly responsive to a recommendation in the Critique Report on "Effectiveness of Planning Coordination" (Vol.6) to establish a formal coordination step between issuance of draft forest plans and final forest plans.

Section 219.40 Integrated resource management. This section would contain specific requirements for resource management. The provisions of this section are responsive to requirements of NFMA and do not attempt to encompass all of the laws, regulations, and Executive orders under which National Forests are managed. Integration of all such requirements would be beyond the reasonable scope of any one regulation and are unnecessary to repeat since compliance is already mandatory.

In contrast to the existing regulation which contained individual sections for each resource, all resource direction is integrated into one section. This in part is intended to reaffirm a strong commitment to the concepts of integrated resource management and an ecosystem approach to planning. Although such a restructuring is somewhat symbolic in nature, it represents an endorsement of these fundamental concepts and their important role in forest planning.

The opening paragraph would describe the purpose of this section as providing for an integrated, ecosystem approach to management and ensuring environmental protection and maintenance of the long-term productivity of the land. Paragraph (a) would direct that plans provide for integrated management and coordination of all resource uses and values on a multiple-use sustained-yield basis. It would provide a listing of various uses and values to be considered, in addition to providing for various support needs such as development and maintenance of infrastructure and land ownership.

These two paragraphs would establish the foundation for a fully integrated forest plan which provides direction for all resource uses and values. These provisions, in conjunction with the requirements of § 219.33(a), would assure that plans will address all resource uses and values through establishment of forest-wide multiple-use goals and objectives, forest-wide standards and guidelines, and management area prescriptions. As a result, forest plans would describe how all resources will be managed to achieve a desired future condition of the forest in addition to establishing standards and guidelines for environmental protection to assure the long-term productivity and sustainability of resources while the goals and objectives are being achieved.

In contrast to the existing regulation, this section does not define goals and objectives for specific resources nor prescribe requirements for how each resource will be evaluated during revision or amendment. Although direction of this nature may have been appropriate for guiding development of initial forest plans, it is not as relevant when revision is "need for change" based rather than a "zero" based effort. Any adjustments needed to the goals and objectives of a forest plan would be evident through monitoring and evaluation and included when identifying the "need to change" a forest plan as part of the revision process (§ 219.36(c)(1)). Similarly, the type and degree of analysis needed for evaluating each resource will vary depending on what aspects of the forest plan have been identified as needing change. Where analytical guidance is appropriate for various resource evaluations, appropriate directives will be issued in the Forest Service directives system.

Paragraph (b) describes how the diversity provision of NFMA (Sec.6(g)(3)(B)) will be achieved. This paragraph provides for diversity by defining four key resource requirements; conservation of threatened and endangered species, maintenance of viable populations by identifying and ensuring the conservation of sensitive species, protection of rare or unique biological communities, and providing the habitat capability to support populations of species at selected levels for commercial, recreational, scientific, subsistence, or aesthetic values. A fifth procedural provision supports these four resource requirements by requiring that management indicators be selected and monitored. Management indicators would include species or communities reflective of the four associated resource requirements.

The first requirement, conservation of threatened or endangered species, is based on provisions of the Endangered Species Act of 1973. The second requirement, maintenance of viable populations by identifying and ensuring the conservation of sensitive species, would require an assessment of potential impacts to species viability only for sensitive species. This is intended to focus viability evaluations on species whose viability is a concern rather than evaluating other species whose long-term persistence is not perceived to be at risk. Sensitive species would be designated in the forest plan by the Regional Forester for each forest planning area. The third requirement, protection of rare or unique biological communities, would recognize that diversity is reflected by communities and not just individual species. The fourth requirement, providing habitat capability for selected population levels of various species, is designed so that the forest plan determines the desired population levels of those species whose viability is not at particular risk. This determination would occur within the context of forest-wide multiple-use goals and objectives.

The fifth requirement, identification and monitoring of management indicators, is an essential procedural provision in support of the previous four resource requirements. By requiring monitoring of management indicators, there is a systematic means of assessing the achievement of the four resource requirements. By requiring monitoring "relative to the goals, objectives, and standards and guidelines established in the forest plan", flexibility is provided as to what is being monitored and how it is monitored. Depending upon how the goals, objectives, and standards and guidelines in the forest plan are described, either population numbers or habitat conditions could be monitored. This is intended to allow monitoring requirements to be suited to the nature of the species or community in question.

The concept of management indicators in this paragraph varies from the concept of management indicator species as described in the existing regulation (§ 219.19(a)(1)). First, this section does not portray management indicators to be ecological indicators. The concept of ecological indicators assumes that changes to an indicator species provides a valid reflection of changes to the welfare of a group of associated species. As evidenced by the "Keystone Report" ("Biological Diversity on Federal Lands—Report of a Keystone Policy Dialogue") and as discussed in a report of the Critique of Land Management Planning, "National Forest Planning Under RPA/NFMA: What Needs Fixing?" (Volume 11, p. 33–35), there is diminishing scientific support for this concept. Secondly, this paragraph expands management indicators to include biological communities and special habitats rather than being limited to only individual species. This recognizes the important role of biological communities in providing diversity and the ecological contributions of various structural elements within those communities.

The definition of viable population, as used in paragraph (b)(2) and defined at § 219.32, varies from the definition described in the existing regulation (§ 219.19). The definition of viable population in the existing regulation states that "a viable population shall be regarded as one which has the estimated numbers and distribution of reproductive individuals to insure its continued existence is well distributed in the planning area." The preliminary regulatory text would modify that definition to better address biological considerations. With the existing definition, individual National Forests are the spatial units within which viability must occur. Planning difficulties have been encountered with this requirement. Some species have populations whose space needs often include more than one National Forest. For these species, it is impossible to have viable populations on each National Forest. The current definition does not clarify intent for these cases.

The new definition defined at § 219.32 would state a viable population is "a population of plants or animals whose estimated number and distribution of reproductive individuals provides a high likelihood of continued existence, generally throughout its current range." It should be noted that in this definition current range becomes the spatial unit for population viability, and the problem of populations whose space needs include more than one National Forest would be overcome. By making home range the space where a population is defined, administrative boundaries would become unimportant in defining viability: population viability would become more an ecological consideration. With the condition that populations continue to exist generally throughout current range, the definition would be responsive to the intent for distribution of individuals and sub-populations. This definition generally would require existing population distribution but would allow reduced population densities.

Paragraph (c)(1) would provide direction for determining the allowable sale quantity (ASQ) and long-term sustained-yield timber capacity (LTSY). It prohibits the ASQ from exceeding LTSY unless necessary to meet overall multiple-use objectives. This is responsive to Section 13 of NFMA. This paragraph would also require, as a general rule, projected timber sale levels to be constant or increasing over time; i.e, once the ASQ is determined for the plan period, projected sale levels for future decades must equal or exceed the ASQ of the first decade. A similar provision, commonly known as non-declining yield, is in the existing regulation at § 219.16(a)(1). An exception to non-declining yield is provided in the paragraph if multiple-use objectives could be better attained.

Paragraph (c)(1) would also require projected sale levels for future decades to be based on regulated volume. Depending on stand conditions there is sometimes volume which is not regulated; i.e., it is not included in the growth and yield projections for growing stock, such as dead or down material. Although this non-regulated volume is a notable source of volume in some areas, it is difficult to properly calculate over time. Therefore, this provision was added to clarify that only regulated volume, which is readily predictable, would be included when projecting sale levels to be used in meeting the requirements for non-declining yield and LTSY.

Paragraph (c)(2) provides for a forest structure that enables perpetual timber yield. This is essentially a timber scheduling safeguard to ensure that there is sufficient growing stock at the end of the projection period (typically 150 years) to sustain the ASQ thereafter. This provision is similar to the existing regulation at § 219.16(a)(2)(iv) and is typically implemented through use of an "ending inventory constraint" in scheduling models.

Paragraph (c)(3) requires the accumulation of volume sold from suitable-scheduled lands over the decade of the plan period not to exceed the ASQ unless certain conditions for exceptions are met. This is responsive to Section 13 of NFMA. Another provision requires that only volume included in the calculation of ASQ is to be charged to the ASQ when sold. This ensures that any other volume sold will not be used to measure accomplishment of the ASQ during the decade.

Paragraph (c)(4) provides direction on how to determine the starting point for the ten-year period upon which the ASQ is based. This is in response to confusion which has occurred regarding whether the ten-year period starts upon signature of the Record of Decision, the effective date of the forest plan, or upon some interval aligned with normal Forest Service reporting procedures. This provision clarifies that the starting point will be aligned with the start of a fiscal year and further explains how this will be determined. This simplifies reporting procedures and reduces the confusion which could occur if recordkeeping requirements for the plan did not match normal agency reporting intervals.

Paragraph (c)(5) would establish a limit on the volume which may be sold annually if the ten-year period for the ASQ expires before the plan has been revised or amended. Such a provision is deemed necessary since the ASQ is only valid for a ten-year period even if the plan is not revised until after the tenth year. Although Section 6 of NFMA expressly allows a quantity in excess of the annual ASQ to be sold provided the decadal total is not exceeded, it states that provision in terms of "the decade covered by the plan." Once the tenth year is surpassed, the limitation imposed by the decadal total becomes meaningless. Therefore, this paragraph addresses how such a situation would be handled. It directs that the ASQ would be extended for the number of years anticipated until the forest plan is amended or revised by multiplying the average annual ASQ by that number of years. In addition, any shortfall in the achievement of the ASQ during the first ten years would also be permitted to be sold. This approach is intended to provide the same level and flexibility of timber sale volume as was permitted during the first decade of the forest plan.

Paragraph (c)(6) would describe circumstances under which two or more forests may be combined for the purposes of determining LTSY. This is responsive to section 13 of NFMA and reflects an interpretation of "commercial forest land" as the agency perceives Congress had intended.

Paragraph (c)(7) would require that all even-aged stands scheduled for harvest during the plan period will generally have reached culmination of mean annual increment of growth unless certain exceptions apply. This provision is responsive to Section 6(m)(1) of NFMA and is similar to § 219.16(a)(2)(iii) of the existing regulation. The requirement for completion of an EIS with a 90-day comment period prior to amending the forest plan to provide for certain other exceptions is intended to respond to the requirement of NFMA (Section 6(m)(2)) that requires specific public involvement procedures.

Paragraph (c)(8) would require a forest plan to include the planned timber sale program by displaying the ASQ and proportion of probable harvest methods for the decade. Section 6(f)(2) of NFMA requires plans to reflect the planned timber sale program. Since the forest plan is a programmatic document which does not commit to project decisions, it is beyond the scope of a forest plan to identify specific timber sale projects to be implemented during the plan period. Although a listing of possible timber sales for the ten-year plan period is

currently found in forest plans, such a display has proven to be misleading and is often interpreted to imply that the forest plan embodies site-specific timber sale decisions which are instead authorized later during project decision-making. Paragraph (c)(8) would not require such a listing of timber sales. Instead, the requirement to display the planned timber sale program would be met by describing ASQ and the proportion of probable harvest methods, two representative indicators of anticipated harvest activity which are consistent with the programmatic nature of a forest plan.

Paragraph (d) would provide for the identification of special conditions or hazards to the resources. This is responsive to section 6(g)(2)(c) of NFMA and reflects a restructuring of § 219.27(a)(2), § 219.27(a)(3) and § 219.27(a)(12) of the existing regulation. There is no substantive change from § 219.27(a)(2) or § 219.27(a)(3), although the latter has been abbreviated. The direction on air quality currently in § 219.27(a)(12) of the existing regulation has been rewritten to be more consistent with the requirements of the Clean Air Act.

Paragraph (e) would provide for the protection and conservation of soil and water resources. This is a fundamental aspect of providing for environmental protection and maintenance of the long-term productivity of resources. It reflects a merging of § 219.27(a)(1) and § 219.27(a)(4) of the existing regulation with no substantive change.

Paragraph (f) would impose five limitations on the use of even-aged management. Paragraph (f)(1) requires that clear-cutting be used only when determined to be the optimum method for sustaining important forest values identified in the forest plan. This is responsive to section 6(3)(F)(i) of NFMA. Paragraph (f)(2) requires that openings be shaped and blended, which is responsive to section 6(g)(3)(F)(iii) of NFMA and is similar to § 219.27(d)(1) in the existing regulation. Dispersion requirements currently issued in the regional guides would now be located in the forest plans.

Paragraph (f)(3) establishes provisions for maximum size of harvest areas. This is responsive to section 6(g)(3)(F)(iv) of NFMA and is similar to § 219.27(d)(2) in the existing regulation. Limitations presently issued in regional guides would be located in forest plans. The size limitations identified in the existing regulation would not be included in paragraph (f)(3). Recent research findings, as reflected by the "New Perspectives in Forestry" concept, have indicated there may be significant benefits to reconsidering the desirable size of clearcuts. In light of the changing scientific opinion on this topic, the prescriptive nature of the existing regulation appears potentially counterproductive to the concepts of integrated resource management. Therefore, rather than establishing such limitations through regulation, paragraph (f)(3) would provide that the limitations be established through the forest planning process. This approach would allow more flexibility to change as scientific knowledge continues to evolve. There is a requirement to complete an EIS and obtain Regional Forester approval prior to amending the forest plan for certain project-by-project exceptions. This is in order to comply with the requirement of NFMA assuring public review of such exceptions and approval by the line officer one level above the Forest Service officer who normally would approve the harvest proposal.

Paragraph (f)(4) would require that standards be set in the forest plan regarding dispersion of openings. This is similar to § 219.27(d)(1) in the existing regulation. Standards currently found in the regional guide would be located in the forest plan.

Paragraph (g) would impose two limitations on road construction. Paragraph (g)(1) is responsive to provisions of section 8(c) of NFMA and is similar to § 219.27(a)(10) of the existing regulation. Paragraph (g)(2) is responsive to provisions of section 8(b) of NFMA and is similar to § 219.27(a)(11) of the existing regulation.

Paragraph (h) would provide special attention to riparian zones. This is responsive to section 6(3)(E)(iii) of NFMA and is similar to § 219.27(e) of the existing regulation.

Section 219.41 Lands not suited for timber production. This section would describe procedures for identifying lands not suited for timber production. Paragraph (a) would clarify that suitability determinations are incorporated into forest plans through management area standards and guidelines, with verification of the determination occurring during project evaluation. This provision for project-level verification is based on the fact that the site-specific data needed for accurate suitability determinations is generally only obtained or confirmed during project planning. Therefore, although the forest plan would contain the best possible estimates of the quantity and location of unsuited lands, the final determination appropriately occurs at the project level.

Paragraph (b) would describe a two-staged process for identifying unsuited lands. First, it would list six criteria which would serve as an initial screen and which do not vary among alternatives. Lands which are not identified as unsuited during the initial screening are then evaluated during a second screening which reviews them in the context of alternatives and economic factors. Lands would be identified as unsuited during this second screening if standards and guidelines in the alternative preclude timber production. They would also be unsuited if, based on economic factors, timber production is clearly not feasible on the land. For both the first and second screening levels, that lands determined to be unsuited would be identified on maps, either in the forest plan or the planning records, or otherwise described in a manner in which they can be readily recognized.

The requirement for mapping or otherwise readily identifying unsuited lands is designed to facilitate the ten-year review of unsuited lands that is required by NFMA. Having these lands clearly identified provides an improved basis for determining if conditions have changed to the extent that they have become suitable. This also reflects how the ten-year suitability review would be focused on only those lands which were determined to be unsuited in the initial forest plan rather than a re-evaluation of the entire forest land base.

Eliminating lands from the suitable base due to economics is directly linked to the ability to map lands deemed uneconomic. NFMA requires that lands be identified as not suited for timber production considering "physical, economic, and other pertinent factors to the extent feasible * * *" (Section 6(k)). The proper method for including economic considerations has been subject to much debate during and subsequent to development of the existing regulation. This section takes a simpler approach which is intended to be more effective in meeting the intent of NFMA.

In contrast to the existing regulation which screens unsuited lands based on their contribution to cost-efficiency in meeting overall forest objectives, this section removes the economic screen from the influences of changing management objectives and fluctuating conditions. Previously, the amount of land screened out as unsuited due to economics was dependent on the goals and objectives of the alternative as well as the numerous assumptions needed to build the models to perform forest-wide cost efficiency analysis. As a result, any change in the data regarding management costs, output values, or

other analytical data potentially triggered a different "answer" regarding unsuited lands.

This section uses the economic screen to identify where "timber production is clearly not feasible on the land now or in the future" (§ 219.41(b)(2)(ii)). It is not intended to eliminate marginally economic lands that would tend to shift from suitable to unsuitable designation based on analytical assumptions or market conditions which are likely to fluctuate over time. Instead, the lands excluded by the economic screen are those for which there is no reasonable expectation that they could ever be marketable even as conditions change. By having those lands specifically identifiable on maps or other means by which they would be readily recognizable, the public can more easily review the results of this screen to assess whether the lands are "clearly not feasible" for timber production. This shifts the determination to consideration of tangible on-the-ground conditions rather than the subtleties of varying economic assumptions in scheduling models.

In conjunction with changes in the economic screen, paragraph (b)(3) introduces the new concept of "suitable-scheduled" and "suitable-unscheduled" lands. "Suitable-scheduled" lands are needed for timber production and used in determining the ASQ and long-term sustained-yield timber capacity. In contrast, "suitable-unscheduled" lands are not needed to meet the goals and objectives of the forest plan, including financial and economic considerations, or there is a need to defer a determination of their suitability. These lands are not used in determining the ASQ or long-term sustained-yield timber capacity.

This is the point at which consideration would be given to factors such as fluctuating market demand or the role of timber production within the overall set of goals and objectives for the forest. For example, if the supply capabilities of a forest exceed the market demand for timber, the lands which are not needed to meet market demand (as expressed through the objectives of the forest plan) would be identified as "suitable-unscheduled".

Similarly, it is at this point that consideration is given to the relative costs and benefits of the timber sale program. Forest Service policy as set forth on page 5.28 of "The Forest Service Program for Forest and Rangeland Resources: A Long-Term Strategic Plan" (Recommended 1990 RPA Program, USDA. Forest Service, May 1990) states that "the benefits of commercial timber sale programs for individual national forests will exceed the costs of the timber program." The Forest Service envisions a process of monitoring costs and benefits over time and making necessary adjustments to the timber sale program through procedures for amendment and revision of forest plans. The Forest Service will soon publish a notice in the **Federal Register** containing a detailed description of how this policy will be implemented and its relationship to forest planning. The public will have an opportunity to comment on this forthcoming notice. Those comments will be used in finalizing procedures for implementing the policy. They will also be used, to the extent applicable, when developing the proposed rule at 36 CFR part 219, subpart B.

The "suitable-unscheduled" determination would be appropriate when there is a need to defer the determination of suitability. For example, this would apply if there is inadequate scientific information currently available to determine whether a portion of the land-base would be needed for an over-riding multiple-use objective, such as protection of an endangered species. In these situations of uncertainty where results of scientific studies or other evaluations are expected to become available within the reasonably distant future, the "suitable-unscheduled" category would be appropriately used.

Paragraph (c) would impose the same limitations on harvesting "suitable-unscheduled" lands as is imposed on unsuited lands. A ten-year review of unsuited lands would be required, however, whereas the "suitable-scheduled" and "suitable-unscheduled" designations would be addressed through normal revision or amendment procedures.

In total, this section would establish a process for identifying unsuited lands which is simpler, more easily verified due to its specificity in identifying unsuited lands, and less subject to fluctuating analytical assumptions. As a result, the ten-year review would focus on determining if conditions have changed on unsuited lands rather than re-evaluating the entire land base in the context of overall forest objectives and conditions. This would expedite the review process and is consistent with the requirements of NFMA. The impact of fluctuating economic conditions and other changing factors is still recognized, but in the context of scheduling suitable lands rather than as a factor in identifying unsuited lands. Thus, the more complex forest-wide analysis associated with these fluctuating conditions need not occur at the time of the ten-year suitability review.

Section 219.42 Evaluation for special designations. Paragraph (a) would require that roadless, undeveloped areas be evaluated for wilderness designation during forest plan revision unless Federal legislation provides contrary direction. Roadless, undeveloped areas are defined to be at least 5000 acres in size unless contiguous to existing or Administration-endorsed units of the National Wilderness Preservation System. Due to the differing conditions in the eastern part of the country, a provision is added so that the size limitation does not apply east of the 100th meridian.

Paragraph (b) of this section provides for evaluation of eligibility for wild and scenic river designation during revision if legislation requires such an evaluation or there is new information or changed conditions which indicates a need to change the forest plan. Although wild and scenic rivers were not addressed in this existing regulation, this addition was made since recommendations for wild and scenic river designation, as is the case for wilderness, are made in forest plans with the final decision made by Congress.

Paragraph (c) provides direction for considering Research Natural Areas during forest plan revision and is substantively unchanged from the existing regulation at § 219.25.

Conclusion

The text of preliminary subpart B, which is being offered for consideration and discussion, is set out in full at the end of this Notice. The Forest Service is interested in hearing from individuals, organizations, other public agencies and governments, and Forest Service personnel about the approach described in this Advanced Notice of Proposed Rulemaking. To aid in analysis of comments, it would be helpful if reviewers would key their comments to specific sections or topics. Respondents should also know that in analyzing and considering comments, the Forest Service will give more weight to substantive comments than to simple "yes", "no", or "check off" responses to form letter/questionnaire-type submissions.

Dated: February 6, 1991.

F. Dale Robertson,

Chief.

PART 219—PLANNING, SUPART B—IMPLEMENTING AND CHANGING LAND AND RESOURCE MANAGEMENT PLANS

Sec.

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Section 219.30 Purpose and principles.

(a) The regulations in this subpart set forth the procedures for fulfilling the requirements for land and resource management planning (hereafter, forest planning) set forth in the Forest and Rangeland Renewable Resources Planning Act of 1974 (hereafter, "RPA") as amended by the National Forest Management Act of 1976 (hereafter, "NFMA"). Specifically, these rules address:

(1) How forest plans are to be implemented, amended and revised;

(2) How forest plans relate to project decisionmaking;

(3) How forest plans relate to compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321) (hereafter "NEPA") and implementing regulations; and

(4) How forest plans fit within the agency's overall resource planning and decisionmaking framework.

(b) These rules reflect the statutory and administrative principles which guide National Forest System resource planning and management.

(1) The National Forest System is to be managed for the multiple-use and sustained-yield of goods, services, and environmental and amenity values in an ecologically sound manner in order to meet the needs and desires of the American people.

(2) Forest planning occurs within an overall resource planning and decisionmaking framework, ranging from the development of broad guidance at the national and regional level to site-specific resource decisions at the project level.

(3) A forest plan provides the framework for establishing how a National Forest will be managed to fulfill its multiple-use role while integrating environmental and economic factors.

(4) Forest planning requires an interdisciplinary approach to ensure the integration of multiple-use values and understanding of ecosystem relationships.

(5) On-going and open communication with the public and other Federal agencies and State, local, and Indian tribal governments is an integral and vital part of forest plan implementation, monitoring and evaluation, amendment, and revision.

(6) Forest plans should provide for continuity of forest management while being dynamic documents which can be readily and efficiently adjusted in response to changing conditions and new information in a manner that reflects the need to gradually phase in changes which have significant impacts on people and communities.

(7) Forest plan revision should primarily focus on those aspects of the forest plan meriting reconsideration.

(8) Monitoring and evaluation play a key role in the adaptive nature of forest plans by indicating when changes may be required.

(9) Forest planning should be understandable and timely in order to enhance meaningful public participation and result in sound, responsive resource decisions.

(10) The analysis and evaluation associated with forest planning should be integrated with NEPA compliance and should be commensurate with the nature of the decisions being made.

Section 219.31 Applicability and transition.

(a) The regulations of this subpart are applicable to the National Forest System as defined by 16 U.S.C. 1609. Their provisions are effective February 15, 1991, except as follows:

(1) Any forest plan which was under development but not completed at the time of issuance of this subpart remains subject to the requirements of 36 CFR part 219, subpart A, until such time as the forest plan is approved.

(2) The Regional Guide for the Pacific Southwest Region shall remain subject to the requirements of 36 CFR part 219, subpart A, until such time as all forest plans in the Region are approved. At that time, the Regional Guide shall become subject to the requirements of paragraph (d) of this section.

(3) The requirements of § 219.41 and § 219.42 of this subpart shall not trigger the need to amend or revise a forest plan prior to such time as a forest plan revision has been initiated in accordance with the rules of this subpart.

(b) Any amendment or revision begun under the rules of subpart A of this part shall be prepared and completed in accordance with the rules of this subpart.

(c) Notwithstanding the use of the term "forest plan" in these regulations, the provisions of this subpart apply to all components of the National Forest System including, but not limited to, the National Grasslands. One forest plan may be prepared for all lands for which a Forest Supervisor has responsibility; or separate forest plans may be prepared for each National Forest, or combination of National Forests, within the jurisdiction of a single Forest Supervisor. Also, a single forest plan may be prepared where one National Forest is administered by several Forest Supervisors.

(d) Within two years of February 15, 1991, the Regional Forester shall identify a process and timetable for phasing out the existence of the regional guide prepared under Subpart A of this part. The Regional Forester may utilize appropriate methods as described by § 219.33(d)(2) and § 219.33(d)(3) of this subpart in order to maintain those aspects of the regional guide for which there is an on-going regional need or to develop new regional direction. The Regional Forester shall publish a notice in the **Federal Register** briefly summarizing a draft version of the process and timetable and shall provide an opportunity for the public to review and comment. At a minimum, the Regional Forester shall provide a 60-day comment period for the review. After consideration of the public comments, the Regional Forester shall publish a notice in the **Federal Register** describing the final version of the process and timetable that will be used for phasing out the regional guide.

Section 219.32 Definitions.

For purposes of this subpart the following terms shall mean:

Allowable sale quantity: The maximum quantity of timber that may be sold for a decade from suitable-scheduled lands covered by the forest plan.

Class I Area: A geographic area designated for the most stringent degree of protection from future degradation of air quality. The Clean Air Act designates as mandatory Class I areas each National Park over 6,000 acres and each National Wilderness over 5,000 acres that existed as of the date of

enactment (August 7, 1977). Wilderness and additions to Wilderness designated by law after this date are not Class I areas unless they have been redesignated as such.

Diversity: The distribution and abundance of plant and animal communities and species within the land area controlled by the forest plan.

Environmental and amenity values: Valued aspects of our natural and cultural heritage. In an economic framework, these values may include user values, existence values, and option values.

Evaluation: When used in the context of monitoring and evaluation, the analysis and interpretation of information collected through monitoring.

Even-aged management: The application of a combination of actions that results in the creation of stands in which trees of essentially the same age grow together. The difference in age between trees forming the main canopy level of a stand usually does not exceed 20 percent of the age of the stand at harvest rotation age. Clearcut, shelterwood, or seed tree cutting methods produce even-aged stands.

Forested land: Land at least 10 percent occupied by forest trees of any size or formerly having had such tree cover and not currently developed for non-forest use.

Goal: A concise statement that describes a desired future condition normally expressed in broad, general terms that are timeless, in that there is no specific date by which the goal is to be achieved.

Goods and services: The various commodities and uses obtained from forest and rangeland resources.

Infrastructure: The facilities, utilities, and transportation systems needed to meet public and administrative needs.

Integrated pest management: A process for selecting strategies to regulate forest pests in which all aspects of a pest-host system are studied and weighed. A basic principle in the choice of strategy is that it be ecologically compatible or acceptable.

Long-term sustained-yield timber capacity: The highest uniform wood yield from suitable-scheduled lands that may be sustained in perpetuity consistent with the forest plan.

Management area: An area mapped in the forest plan to which one or more management prescriptions are applied.

Management indicators: Plant or animal species, communities, or special habitats selected for emphasis in planning and monitored during forest plan implementation to assess the effects of management on their conditions and trends.

Management practices: A specific activity, course of action, or treatment undertaken on a National Forest.

Management prescription: A composite of the specific multiple-use direction applicable to all or part of a management area that generally includes, but is not limited to, goals, objectives, standards and guidelines, and probable management practices.

Monitoring: The collection of information generally on sample basis to determine the effects of resource management.

NEPA procedures: As used in this subpart, the process by which a responsible official complies with the requirements of the National Environmental Policy Act of 1969, as implemented by the requirements of 40 CFR Parts 1500 through 1508 and supplemented by the Forest Service NEPA procedures (Forest Service Manual 1950 and Forest Service Handbook 1909.15) issued through the Forest Service Directives System (36 CFR part 200).

Objectives: Concise, time-specific statements of measurable planned results that respond to goals.

Planning area: The area of the National Forest System controlled by a decision document.

Plan period: The period of time for which a forest plan is in effect, normally 10 years but no longer than 15 years.

Present Net Value: The difference between the discounted value (benefits) of all outputs to which monetary values or established market prices are assigned and the total discounted costs of managing the planning area.

Programmatic environmental impact statement: The document disclosing the environmental consequences of a program or plan which guides or prescribes the use of resources, allocates resources, or establishes rules and policies in contrast to disclosure of the environmental consequences of a site-specific project.

Project: One or more site-specific activities designed to accomplish a specific, on-the-ground purpose or result.

Regulated Volume: The quantity of timber in the allowable sale quantity that is based on the growth and yield projections for growing stock.

RPA Assessment and Program: The RPA Assessment is prepared every ten years and describes the potential of the nation's forests and rangelands to provide a sustained flow of goods and services. The RPA Program is prepared every five years to chart the long-term course of Forest Service management of the National Forests, assistance to State and private landowners, and research. They are prepared in response to Sections 3 and 4 of the Forest and Rangeland Renewable Resources Planning Act of 1974 (RPA)(16 U.S.C. 1601).

Responsible Official: The Forest Service employee who has the delegated authority to make a specific decision.

Sensitive species: Plant and animal species designated in the forest plan by the Regional Forester which require special consideration to assure viable populations.

Special habitats: Structural elements of ecosystems. These may include, but are not limited to, snags, spawning gravels, fallen trees, aquatic reefs, caves, seeps, and springs.

Standards and Guidelines: Requirements which preclude or impose limitations on resource management activities, generally for the purposes of environmental protection or public safety.

Suitable-scheduled lands: Lands suitable and scheduled for timber production and which are in the land base for the calculation of the allowable sale quantity and long-term sustained-yield timber capacity.

Suitable-unscheduled lands: Lands suitable but not scheduled for timber production and which are not in the land base for the calculation of the allowable sale quantity nor long-term sustained-yield timber capacity.

Timber production: The purposeful growing, tending, harvesting, and regeneration of trees for industrial or consumer use.

Uneven-aged management: The application of a combination of actions needed to simultaneously maintain continuous high-forest cover, recurring regeneration of desirable species, and the orderly growth and development of trees through a range of diameter or age classes. Cutting methods that develop and maintain uneven-aged stands are single-tree selection and group selection.

Viable population: A population of plants or animals whose estimated number and distribution of reproductive individuals provides a high likelihood of continued existence, generally throughout its current range.

Section 219.33 Resource planning and decisionmaking framework.

(a) *Forest Planning and Programmatic Decisionmaking.* Forest plans are broad, programmatic documents which provide the framework for how a National Forest will be managed, but generally do not provide final authorization for irretrievable resource commitments.

(1) Forest plans shall:

(i) Establish forest-wide multiple-use goals and objectives.

(ii) Establish forest-wide standards and guidelines.

(iii) Delineate management areas and associated management prescriptions.

(iv) Identify lands not suited for timber production (§ 219.41).

(v) Establish monitoring and evaluation requirements (§ 219.35).

(2) Forest-wide objectives represent estimates of the goods, services, or activities intended to be produced or achieved during the plan period. Attainment of the objectives is dependent upon funding, market conditions, and other variable factors. In case of conflict between achievement of objectives or adherence to the standards and guidelines as required by § 219.34(b) of this subpart, the standards and guidelines shall take precedence unless the forest plan is amended or revised.

(b) *Project Decisionmaking.* Authorization of site-specific activities within a National Forest normally occurs through project analysis and decisionmaking. Site-specific projects include proposals received from outside the agency as well as those initiated by the agency.

(c) *NEPA Compliance.*

(1) *Forest planning.* In order to provide for environmental analysis and disclosure commensurate with the nature of the decisions being made in forest plans, a programmatic environmental impact statement shall accompany a forest plan revision or major amendment and be prepared in full compliance with and concisely disclose the information required by NEPA.

(2) Project decisionmaking. Project decisionmaking generally requires environmental analysis, disclosure, and decision documentation separate from forest planning. Since it is normally project decisions, rather than forest plans, which authorize the irretrievable commitment of resources, project decisions shall be accompanied by site-specific disclosure of environmental effects in accordance with NEPA procedures. This site-specific disclosure shall be tiered to applicable environmental disclosure in the programmatic environmental impact statement accompanying the forest plan. The Regional Forester may approve a site-specific project in a Record of Decision for a forest plan revision or major amendment only if the environmental consequences of the proposed project and alternatives to the proposed project are specifically disclosed in the final environmental impact statement accompanying the forest plan.

(d) *Relationship of Forest Planning to Other Resources Planning and Decisionmaking.* Forest planning is the mechanism by which other levels of resource planning and decisionmaking are integrated into the on-the-ground management of a National Forest. Forest planning responds to:

(1) Laws, regulations, and Executive orders.

(2) Direction issued through the Forest Service Directives System (36 CFR part 200).

(3) National, inter-regional, regional, or sub-regional planning and decision documents. These include, but are not limited to:

(i) The Renewable Resource Assessment and Program. Regional Foresters and Forest Supervisors shall consider updates due to the RPA Program during monitoring and evaluation.

(ii) Resource management decisions issued on an interregional. regional, or subregional basis such as forest pest management strategies or management of ecosystems that cross forest or regional boundaries. Such decisions shall be effective on a particular unit of the National Forest System only upon incorporation into the forest plan through amendment or revision.

Section 219.34 Forest plan implementation and consistency.

(a) Implementation. Forest plans are implemented through activities undertaken at the project level. Project approval involves additional NEPA compliance and decisionmaking and requires a determination that the project is consistent with the forest plan (§ 219.34(b)).

(b) *Consistency.* A determination of consistency with the forest plan shall be based on adherence to the forest-wide standards and guidelines and the standards and guidelines contained in the management prescriptions of the forest plan (§ 219.33(a)).

(1) Resources plans and permits, contracts, and other instruments issued for the use and occupancy of National Forest System lands shall be consistent with forest plans When a forest plan is revised, resource plans and permits, contracts, and other instruments shall be revised as necessary and as soon as practicable to be made consistent with the revised plans. Any revision in present or future permits, contracts, and other instruments made pursuant to this section shall be subject to valid existing rights

(2) A determination of the consistency of a project with the forest plan shall be included in the decision documentation when approving a project, and such determination is subject to appeal in accordance with the provisions of 36 CFR part 217 or 36 CFR part 251. Subpart C.

(3) The decision document for any revision or amendment to a forest plan shall address the applicability of the amendment or revision to any projects for which a decision has been issued or for activities which were under permit, contract, or other instrument for occupancy and use of National Forest System lands prior to approval of the amendment or revision. Any resulting modification of a permit, contract, or other instrument for occupancy and use of National Forest System lands may be subject to appeal under 36 CFR part 251, Subpart C

(i) Such projects, permits, contracts, or other instruments for occupancy and use of National Forest System lands may be exempted from applicability to an amendment or revision provided such instruments are specifically identified in the decision.

(ii) Unless excluded by paragraph (b)(3)(i) of this section, prior to issuing a permit, contract, or other instrument for occupancy and use of the National Forest System, the responsible official shall determine and document the consistency of such previously approved projects with the newly amended or revised plan. The consistency determination is not appealable unless the project authorization has been changed by issuance of a new decision subject to appeal under 36 CFR part 217.

(4) If a proposed project does not meet consistency requirements, the responsible official may, subject to valid existing rights, either:

(i) Modify the proposal to make it consistent with the forest plan;

(ii) Reject the proposal; or

(iii) Amend the forest plan to permit the proposal.

(5) In situations involving valid existing rights, the determination of consistency must consider applicable statutory and regulatory authorities.

(c) *Implementation During Amendment or Revision Process.* An existing approved forest plan, as amended, remains effective until the approval of an amendment or revision. Lands are to be managed consistent with the existing approved forest plan during the amendment or revision process.

(d) *Implementation During Stay.* In the event that implementation of an amendment or revision to a forest plan

is stayed as the result of an administrative appeal, the Forest Supervisor shall manage the Forest in accordance with non-stayed provisions of the approved forest plan. For those sections of the plan affected by the stay, the Forest Supervisor shall manage in accordance with the immediately previous version of the forest plan unless the Reviewing Officer directs otherwise.

(e) *Budget.* The Forest Supervisor shall develop budget proposals based on the forest plan and shall strive for the efficient and effective use of available funds to implement the plan and specific provisions of the Annual Appropriations Act.

Section 219.35 Forest plan monitoring and evaluation.

(a) Each forest plan shall provide for the systematic monitoring and periodic evaluation of the effects of implementing the management direction in the forest plan in order to determine:

(1) If changes are needed in how the forest plan is being implemented, and

(2) If amendment or revision of the forest plan is needed.

(b) As a minimum, forest plan monitoring and evaluation requirements identified in the forest plan shall provide for assessing, on a sample basis where appropriate, whether:

(1) Projects are being implemented in accordance with the decision document authorizing the project.

(2) The activities occurring during plan implementation are effective in achieving the intended results of the forest plan.

(3) New information has become available which substantially affects the validity of the forest plan.

(c) As part of monitoring and evaluation, the Forest Supervisor shall:

(1) Identify current and anticipated inventory needs and provide for obtaining necessary data.

(2) Identify research needs to ensure management practices do not produce substantial or permanent impairment of the productivity of the land.

(3) Assess whether laws, regulations, Executive orders, Forest Service directives, or other Forest Service decision documents issued subsequent to approval of the forest plan indicate a need to consider changing the forest plan.

(d) Beginning the first full fiscal year after Februrary 15, 1991 the Forest Supervisor shall prepare an annual monitoring and evaluation report, transmit it to the Regional Forester, and make it available to interested individuals, organizations, government agencies, and public officials. The annual report shall:

(1) Summarize the results of monitoring and evaluation, and

(2) Indicate whether there is a need to amend or revise the plan or change how it is being implemented

(e) The requirement for an annual monitoring and evaluation report shall not preclude initiating a forest plan amendment or revision at any time deemed necessary.

Section 219.36 Forest plan revision.

(a) *Initiation.* Revision of a forest plan shall ordinarily occur about every 10 years, but no later than 15 years, from the date of approval of the current plan. Otherwise, revision shall occur when conditions in a unit have significantly changed to the extent that fundamental parts of the forest plan are no longer appropriate to implement. Circumstances that could indicate revision is warranted include, but are not limited to:

(1) Catastrophic natural events that substantially alter resource conditions over most or all of the planning area; and

(2) Changes that have an important effect on the entire forest plan or affect the management of the land and resources throughout a large portion of the area covered by the forest plan.

(b) Responsibility. The Regional Forester is the responsible official for forest plan revision.

(c) *Public Notice of Revision.* The Regional Forester shall publish in the **Federal Register** a notice of intent to revise the forest plan and to prepare an environmental impact statement.

(1) The notice of intent shall identify the provisions of the current plan being proposed for change, a summary of the analytical procedures anticipated to be used, a brief description of the alternatives anticipated to be considered, and the anticipated timetable for completion and shall provide a minimum of a 30-day comment period.

(2) In addition to publication of a notice of intent, the Forest Supervisor shall provide notice of the revision of a forest plan to all individuals and organizations on the mailing list described at § 219.39(a)(1) of this subpart.

(3) The Forest Supervisor shall meet, or designate a representative to meet, with interested representatives of other Federal agencies and State, local, and Indian tribal governments at the beginning of the revision process to establish procedures for coordination and ongoing communication throughout the process. As a minimum, the Forest Supervisor shall provide the opportunity to meet again with interested government representatives during the public comment period for the review of the proposed forest plan revision and draft environmental impact statement. Coordination efforts with governments shall be briefly summarized in the environmental impact statement.

(d) *Analysis.* The Regional Forester shall ensure a systematic process using environmental, social, and economic analysis commensurate with the requirements of § 219.33(a) of this subpart. The Regional Forester shall determine the level and type of analysis appropriate, commensurate with the data available, to adequately disclose trade-offs and to make an informed decision, limiting selection of analytical procedures to generally accepted methods.

(e) *Programmatic Environmental Impact Statement.* The interdisciplinary planning team shall prepare the programmatic environmental impact statement to accompany revision of a forest plan in accordance with the following requirements:

(1) *Display of Alternatives and Environmental Consequences.* The environmental impact statement shall display a range of alternatives and describe the environmental consequences.

(i) The no-action alternative shall be a continuation of the current forest plan and shall be described as follows:

(A) Future outputs and effects shall be projected based on the current plan using analytical procedures comparable to the procedures used to analyze the other alternatives.

(B) The actual outputs and known quantitative effects which resulted from monitoring and evaluation of plan implementation shall be displayed for comparative purposes.

(ii) Estimated environmental, social, and economic effects of each alternative shall be described and displayed; that is, the total effect of the proposed changes on the entire forest management program shall be displayed.

(iii) The description of each alternative in the environmental impact statement shall include a display of the following:

(A) Indicators of investment performance, including present net value.

(B) Averages annual federal expenditures and revenues including cash receipts.

(C) Income and employment projections.

(D) Anticipated receipt shares to State and local governments.

(E) Quantitative or qualitative estimates of outputs or effects not assigned market values.

(iv) The environmental impact statement shall briefly summarize review and consideration of the objectives and interests of other Federal agencies and State, local, and Indian tribal governments. affected by resource management activities in the planning area.

(2) *Public notice and comment.* The Regional Forester shall:

(i) Make the draft environmental impact statement and proposed revised forest plan available for public comment for at least 90 days, at convenient locations in the vicinity of the lands covered by the plan, beginning on the date of publication of the notice of availability of the draft environmental impact statement in the **Federal Register.** Copies shall also be available at the office of the Chief of the Forest Service in Washington, DC.

(ii) Following public comment, oversee preparation of a final environmental impact statement and revised forest plan. A record of decision that documents approval of the revision shall be prepared in accordance with NEPA procedures (40 CFR 1505.2).

(iii) Provide public notice of the approval of the revised forest plan in a newspaper of general circulation identified pursuant to the requirements of 36 CFR 217.5. The approved revision shall not become effective until 30 days after the date of public notice.

(f) *Appeal.* The decision to approve a forest plan revision is subject to appeal under the procedures of 36 CFR part 217.

Section 219.37 Forest plan amendment.

(a) *Initiation.* Amendment is appropriate when specific provisions of a forest plan have been identified as needing change. Amendments shall be categorized as either major or minor.

(b) *Major Amendment.* Major amendments shall occur when there is a significant change to the plan but the extent of the change does not warrant a revision (§ 219.36). A 90-day period shall be provided for public review and comment of a major amendment and accompanying environmental impact statement addressing the effects of the proposed amendment.

(1) The effective date shall be determined in the same manner as for approval of a revision (§ 219.36(e)(2)(iii)).

(2) The Regional Forester shall be the responsible official.

(3) Circumstances that could indicate a major amendment is warranted include, but are not limited to:

(i) Changes that significantly change the forest plan but the extent of change is within definable limits and a revision of the entire forest plan is not needed; or

(ii) Changes that substantially alter the relationship between multiple-use goals and objectives.

(c) *Minor Amendment.* A minor amendment shall occur when there is a need to make changes to the forest plan which are not significant enough to warrant a major amendment. An environmental impact statement will not be required for a minor amendment, unless the amendment is being made in conjunction with a project decision which requires preparation of an environmental impact statement in accordance with NEPA.

(1) Notice of all minor amendments shall be provided in a newspaper of general circulation in accordance with 36 CFR part 217. A minor amendment shall be effective no sooner than 7 days after the date of public notice.

(2) The Forest Supervisor shall be the responsible official.

(3) Circumstances that could indicate a minor amendment is warranted include, but are not limited to:

(i) A need to correct minor factual errors in the plan.

(ii) Conditions at a project location warrant a site-specific exception to the forest plan.

(iii) Minor adjustments in management area boundaries or management prescriptions are needed.

(d) *Appeal.* A decision to amend a forest plan is subject to appeal under the procedures of 36 CFR part 217.

Section 219.38 Interdisciplinary approach.

An interdisciplinary team shall be used to amend or revise the forest plan and to develop the annual monitoring and evaluation report. The team, whose members shall represent resources and/or disciplines relevant to the planning area, shall integrate knowledge of the physical, biological, economic and social sciences and environmental design arts. The team may consist of whatever combination of Forest Service and other Federal government personnel is necessary to achieve an interdisciplinary approach and may involve other persons during appropriate steps in the process when specialized knowledge does not exist within the team itself.

Section 219.39 Public participation and government coordination.

(a) Public participation and coordination with other Federal agencies and State, local, and Indian tribal governments is an integral and ongoing part of the implementation, monitoring and evaluation, amendment, and revision of forest plans. The intent is to inform and involve interested parties in land and resource management decisionmaking, to provide for recognizing and coordinating forest management with the objectives of other governments, and to encourage conflict resolution. To the extent practicable, planning activities should be coordinated with owners of lands that are intermingled with, or dependent for access upon, National Forest System lands. To enhance awareness of involvement opportunities, the Forest Supervisor shall:

(1) Maintain a list of individuals, organizations, government agencies, and public officials who have indicated a desire to be informed about forest planning or project activities on the Forest. This shall include:

(i) Designated representatives of other affected Federal agencies.

(ii) The official or agency so designated as a clearinghouse for the affected State(s) agencies, including, if applicable, the Commonwealth of Puerto Rico.

(iii) Designated representatives of Indian tribal governments and Alaska natives.

(iv) Designated representatives of local county or municipal governments.

(2) Periodically provide notice to the general public of the opportunity to be included in the listing. This notice may be achieved in concert with the public notice requirements for the annual monitoring and evaluation report.

(b) The Forest Supervisor shall develop and maintain planning records that document the process to amend or revise the forest plan. Disclosure of information in the planning records is subject to the provisions of the Freedom of Information Act.

(c) Copies of forest plans shall be available for public review at all Forest Service offices on the Forest, in the respective Regional Office, and at one or more additional locations, to be determined by the Forest Supervisor, that will offer convenient access to the public

Section 219.40 Integrated resource management.

Forest planning shall provide an integrated, ecosystem approach to

resource management, ensure environmental protection, and maintain the long-term productivity of the land in accordance with the provisions of this section. Some of these provisions are applicable only to forest plans, while other requirements will be recognized during forest planning but become specifically applicable during project decisionmaking.

(a) Forest plans shall provide for integrated resource management and coordination of all resource uses and values on a multiple-use and sustained-yield basis. Management direction shall be established for applicable resource uses or values including, but not limited to, soil, water, fish, wildlife, grazing, timber, oil, gas, recreation, wilderness, visual, cultural, historic, air, vegetative, and mineral resources and diversity. In addition, forest plans shall establish management direction for developing and maintaining the infrastructure necessary to support the planned resource management program and for developing land ownership and access patterns which meet public needs while protecting or enhancing other resource values.

(b) Forest plans shall provide for diversity of plant and animal species and communities by identifying management indicators and specifying measurable conditions to:

(1) Conserve threatened or endangered species. Standards for the management of species listed under the Endangered Species Act of 1973, as amended, (16 U.S.C. 1501 *et seq.*), shall follow approved recovery plans and biological opinions. Once a species has been listed under the Endangered Species Act of 1973, as amended, the viability requirement of paragraph (b)(2) of this section no longer applies to that species. Habitat needs shall be identified and measures prescribed in the forest plan for the recovery and conservation of threatened or endangered species.

(2) Maintain viable populations of native plant and animal species by designating in the forest plan sensitive species and providing standards and guidelines that will ensure their conservation when an activity or project is proposed that would affect their habitat.

(3) Protect rare or unique biological communities.

(4) Provide habitat capability needed to support populations of species at selected levels for commercial, recreational, scientific, subsistence, or aesthetic values.

(5) Monitor trends in management indicators relative to goals, objectives, and standards and guidelines established in the forest plan. Management indicators shall include:

(i) Threatened or endangered plant and animal species as identified on Federal plats for the planning area (50 CFR 17.11 and 17.12).

(ii) Sensitive species.

(iii) Special habitats and rare or unique biological communities identified for the planning area.

(iv) Species, or groups of species, in the planning area being managed for commercial, recreational, scientific, subsistence, or aesthetic values or uses.

(c) In those cases where the forest plan includes an objective for timber production, the forest plan shall determine the long-term sustained-yield timber capacity and the allowable sale quantity. These determinations shall be based on suitable-scheduled lands.

(1) After establishment of an allowable sale quantity through forest plan amendment or revision, as a general rule, projected timber sale levels by decade shall be constant or increasing over time. Projected timber sale levels for any decade shall not exceed the long-term sustained-yield timber capacity. Exceptions to either of these requirements are permitted in the forest plan only to meet overall multiple-use objectives. These requirements shall apply to regulated volume only.

(2) Projected timber sale levels shall provide for a forest inventory condition that will enable perpetual timber harvest which meets the principle of sustained-yield and multiple-use objectives of the forest plan.

(3) The total volume of timber sold from suitable-scheduled lands over the first decade cannot exceed the allowable sale quantity. Only the timber sold that was included in the calculation of the allowable sale quantity shall be chargeable to the allowable sale quantity. Nothing in this paragraph shall prohibit the Secretary from salvage or sanitation harvesting of timber stands which are substantially damaged by fire, windthrow, or other catastrophe, or which are in imminent danger from insect or disease attack.

(4) The time period to be used for calculating achievement of the allowable sale quantity shall be based on the effective date of the forest plan, a forest plan revision, or any subsequent amendment of the allowable sale quantity, unless otherwise stated in the decision document. The time period shall begin:

(i) At the start of the first fiscal year following the effective date, if the effective date falls within the last six months of a fiscal year; or

(ii) At the start of the fiscal year, if the effective date falls within the first six months of a fiscal year.

(5) At the end of the first decade of the forest plan, the allowable sale quantity for the first decade shall be extended to apply until the allowable sale quantity in the forest plan is amended or the forest plan is revised. The amount of timber which may be sold in the subsequent period of years prior to amendment of the allowable sale quantity or forest plan revision shall not exceed the sum of the following:

(i) The total volume obtained by multiplying the average annual allowable sale quantity for the first decade by the number of years (five or less) until the plan is expected to be amended or revised.

(ii) The difference between the allowable sale quantity for the first decade of the forest plan and the volume of the allowable sale quantity that has been sold.

(6) In those cases where a forest has less than 200,000 acres of land which are capable of producing at least 20 cubic feet/acre/year and which were not withdrawn from the suited land base due to a provision of § 219.41(b)(1) of this subpart, the Regional Forester may combine two or more forests for purposes of determining long-term sustained-yield timber capacity.

(7) All even-aged stands scheduled to be harvested during the plan period will generally have reached culmination of mean annual increment of growth, based on cubic foot measure, except as follows:

(i) This requirement does not apply to silvicultural practices such as thinning or other stand improvement measures; to salvage or sanitation harvesting of stands which are substantially damaged by fire, windthrow, or other catastrophes, or which are in imminent danger from insect or disease attacks; or to cutting for experimental and research purposes.

(ii) Exceptions to this requirement shall be permitted in the forest plan for the harvest of particular species of trees if overall multiple-use goals and objectives would be better attained. Any revision or amendment to a forest plan to permit such exceptions shall be accompanied by an environmental impact statement made available to the public for at least a 90-day comment period.

(8) The plan shall identify the planned timber sale program for the decade by displaying the allowable sale quantity of timber and the proportion of probable timber harvest methods.

(d) Consistent with relative resource values identified in the forest plan, forest plans and project decisionmaking shall provide for the identification of special conditions or hazards to the resources in order to:

(1) Minimize serious or long-lasting hazards from flood, wind, wildfire, erosion, or other natural physical forces unless these are specifically excepted, as in wilderness.

(2) Prevent or reduce serious, long-lasting hazards and damage from pest organisms, utilizing principles of integrated pest management.

(3) Protect air quality related values within Class I areas by:

(i) Providing standards and guidelines for Forest Service management practices which could affect air quality related values, and

(ii) Providing recommendations to the State regarding potential adverse effects from pollution.

(e) Forest plans and project decisionmaking shall provide for the protection and conservation of soil and water resources including streams, streambanks, shorelines, lakes, wetlands, floodplains, and other bodies of water and shall not allow significant or permanent impairment of the productivity of the land.

(f) In project decisionmaking, the responsible official shall ensure that even-aged management is only applied when:

(1) If clearcutting is to be used, it is determined to be the optimum method for sustaining important forest values identified in the forest plan.

(2) The blocks, patches, or strips are shaped and blended to the extent practicable with the natural terrain, to achieve aesthetic, wildlife habitat, or other direction established in the plan.

(3) Maximum sizes of harvested areas are in compliance with standards prescribed during forest planning to best meet overall multiple-use objectives. These sizes shall not apply to areas harvested as part of ecological restoration following natural catastrophes such as fire, windstorm, and insect or disease attack. Other exceptions to the established limits may be exceeded on a project basis only after completion of a forest plan amendment accompanied by an environmental impact statement and Regional Forester review prior to approval.

(4) Dispersion of openings are in compliance with standards prescribed during forest planning to best meet overall multiple-use goals and objectives.

(g) In project decisionmaking, the responsible official shall ensure:

(1) That any roads to be constructed are designed to standards appropriate for intended uses, considering safety, cost of transportation, and impacts on land and resources.

(2) That temporary roads not needed to meet long-term National Forest transportation needs are designed with the goal of re-establishing vegetative cover on the roadway and areas where the vegetative cover has been disturbed, within ten years after the termination of the contract, permit, or lease authorizing the road either through artificial or natural means.

(h) In project decisionmaking, the responsible official shall provide special attention to land and vegetation approximately 100 feet from the edges of all perennial streams, lakes, and other bodies of water. This area shall correspond to at least the recognizable area dominated by the riparian vegetation. No management practices causing detrimental changes in water temperatures or chemical composition, blockages of water courses, or deposits of sediment shall be permitted within these areas which seriously and adversely affect water conditions or fish habitat. Topography, vegetation type, soil, climatic conditions, management objectives, and other factors shall be considered in determining what practices may be performed within these areas or the constraints to be placed upon their performance.

Section 219.41 Lands not suited for timber production

(a) Forest plans shall identify lands not suited for timber production. Such determinations shall be incorporated into management area prescriptions or forest-wide standards and guidelines, with site conditions verified at the time of project evaluation.

(b) The suitability of lands for timber production shall be determined in accordance with the following:

(1) Lands not suited for timber production shall be identified on maps, either in the forest plan or the planning records, or otherwise described in a manner in which they can be readily recognized. Lands shall be identified as not suited for timber production if any of the following conditions apply:

(i) The land has been withdrawn from timber production by an Act of Congress, the Secretary of Agriculture or the Chief of the Forest Service;

(ii) Timber production on these lands would violate statute, Executive order, or regulation;

(iii) The land does not meet the definition of forested land as set forth in § 219.32 of this subpart;

(iv) The land is not physically or biologically capable of growing tree species for commercial use;

(v) Soil and watershed conditions would be irreversibly damaged by harvesting under available technology;

(vi) There is not reasonable assurance that such lands can be adequately reforested within five years of final harvest.

(A) The reforestation requirement of paragraph (b)(1)(vi) shall not prohibit the harvesting of timber when permanent openings are created for wildlife habitat improvement, vistas, recreation uses, or similar purposes.

(B) Research and experience shall be the basis for determining whether the harvest and regeneration practices planned can be expected to result in adequate reforestation. Adequate reforestation means that the cut area will contain the minimum number, size, distribution, and species composition of regeneration as identified in the forest plan. Five years after final harvest means five years after: clearcutting, final overstory removal in shelterwood cutting, seed tree removal cut in seed tree cutting, or selection cutting.

(2) In addition to the lands identified in paragraph (b)(1) of this paragraph, lands in either of the following categories shall be identified as not suited for timber production provided they can be identified on maps, either in the forest plan or the planning records, or otherwise described in a manner that they can be readily recognized:

(i) The management prescription applicable to the land includes standards and guidelines that preclude timber production.

(ii) Based on economic factors, timber production is clearly not feasible on the land now or in the future. Areas identified include lands where there is no reasonable expectation that the timber can be sold, or that the benefits will exceed the costs of the Forest Service to prepare and offer the timber for sale. Factors associated with such lands include excessively high costs and low product value under any anticipated short-term or long-term market conditions. These factors are related to extremely high cost of access, low site productivity, isolated stands, or other similar circumstances affecting the relationship of costs and benefits.

(3) All remaining lands shall be identified as suitable for timber production and placed in one of the following categories:

(i) Lands needed for timber production to meet forest plan multiple-use goals and objectives shall be classified as "suitable-scheduled" and serve as the

basis for determining the allowable sale quantity and long-term sustained-yield timber capacity

(ii) Lands not needed for timber production to meet forest plan multiple-use goals and objectives, including financial and economic considerations, or lands for which there is need to defer a determination as to their suitability shall be identified as "suitable-unscheduled" and shall not be used in determining the allowable sale quantity and long-term sustained-yield timber capacity.

(c) Timber harvesting may occur on lands identified as not suited or "suitable-unscheduled" only for salvage sales, for sales necessary to protect other multiple-use values, or for activities that meet non-timber objectives consistent with the forest plan. Any volume harvested under such conditions shall not be considered chargeable volume and shall not contribute towards accomplishment of the allowable sale quantity. These lands shall continue to be treated for reforestation purposes if necessary to achieve the multiple-use objectives of the plan.

(d) Lands identified as not suited for timber production shall be reviewed at least every ten years. Lands identified as not suited or "suitable-unscheduled" may be redesignated at any time by amendment or revision of the forest plan if conditions have changed. The time period for the ten-year review shall begin upon the effective date of approval of the initial forest plan or the effective date of any forest plan revision or amendment which included a review of all not suited lands.

Section 219.42 Evaluation for special designations.

(a) *Roadless Areas.* Unless Federal statute directs otherwise, all roadless, undeveloped areas shall be evaluated for wilderness designation during forest plan revision. Evaluation of roadless, undeveloped areas for wilderness designation shall be limited to areas:

(1) At least 5,000 acres in size unless contiguous to existing or Administration-endorsed units of the National Wilderness Preservation System.

(2) East of the 100th meridian, having sufficient size as to make practicable its preservation and use in an unimpaired condition.

(b) *Wild and Scenic Rivers:* The eligibility of potential wild and scenic rivers during forest plan revision shall be evaluated if either of the following apply:

(1) Federal 1egislation requires evaluation, or

(2) There is new information or changed conditions which indicate a need to change the forest plan.

(c) *Research Natural Areas.* Forest plan revision shall include consideration of any new information or conditions which could result in the identification of Research Natural Areas. Such areas shall include examples of important forest, shrubland, grassland, alpine, aquatic, and geologic types that have special or unique characteristics of scientific interest and importance and that are needed to complete the national network of Research Natural Areas.

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federal register

Friday
February 15, 1991

Part IV

Department of Education

Foreign Language Materials Acquisition Program; Notice

DEPARTMENT OF EDUCATION

[CDFA No. 84.239]

Foreign Language Materials Acquisition Program Invitations for Applications for New Awards for Fiscal Year (FY) 1991

Purpose of Program: To provide grants to State and local public libraries for the acquisition of foreign language materials to meet the needs of the communities they serve.

Eligible Applicants: State and local public libraries, except that a library may not receive more than one grant under the Foreign Language Materials Acquisition Program in any fiscal year.

Deadline for Transmittal of Applications: May 15, 1991.

Deadline for Intergovernmental Review: July 15, 1991.

Deadline for Comments by State Library Administrative Agency: July 15, 1991.

Applications Available: March 15, 1991.

Available Funds: $976,000.

Estimated Range of Awards: $2,500–$125,000. Under this program, grant awards may not exceed $35,000 except that the Secretary is authorized to use up to 30 percent of the funds available to make grants in amounts between $35,000 and $125,000.

Estimated Average Size of Awards: $30,000 for grant awards $35,000 and below; $73,000 for grant awards between $35,000 and $125,000.

Estimated Number of Awards: 20–25 awards of $35,000 or below; 3–5 awards between $35,000 and $125,000.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 12 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR Part 768.

For Applications or Information Contact: Ray M. Fry, Acting Director, Library Development Staff, Office of Library Programs, U.S. Department of Education, 555 New Jersey Avenue NW., room 404, Washington, DC 20208–5571. Telephone (202) 219–1315. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

Program Authority: 20 U.S.C. 351 *et seq.*

Dated: February 11, 1991.

Christopher T. Cross,

Assistant Secretary.

[FR Doc. 91–3671 Filed 2–14–91; 8:45 am]

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federal register

Friday
February 15, 1991

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Parts 121 and 135

Anti-Drug Program for Personnel Engaged in Specified Aviation Activities; Proposed Rule

FEDERAL AVIATION ADMINISTRATION

14 CFR Parts 121 and 135

[Docket No. 25148; Notice No. 91-6]

RIN 2120-AC33

Anti-Drug Program for Personnel Engaged in Specified Aviation Activities

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: On November 14, 1988, the FAA issued a final rule requiring specified aviation employers and operators to submit and to implement anti-drug programs for personnel performing sensitive safety- and security-related functions. This notice proposes modifications to the scope of the final rule to exclude most entities conducting operations that do not require a part 121 or part 135 certificate from the coverage of the anti-drug rule.

DATES: Send or deliver comments by April 1, 1991.

ADDRESSES: Send or deliver comments on this notice, in duplicate, to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), room 915G, Docket No. 25148, 800 Independence Avenue SW., Washington, DC 20591. Comments must be marked "Docket No. 25148." Comments may be examined in the Rules Docket between 8:30 a.m. and 5 p.m. on weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. William R. McAndrew, Office of Aviation Medicine, Drug Abatement Branch (AAM-220), Federal Aviation Administration, 400 Seventh Street, SW., Washington, DC 20590; telephone (202) 366-6710.

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. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this notice are also invited. Substantive comments should be accompanied by cost estimates. Comments should identify the regulatory docket or notice number and should be submitted in triplicate to the Rules Docket address specified above. All comments received on or before the closing date for comments specified will be considered by the Administrator before taking action on this proposed rulemaking. The proposals contained in this notice may be changed in light of comments received. All comments received 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 substantive public contact with Federal Aviation Administration (FAA) personnel concerned with this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a preaddressed, stamped postcard on which the following statement is made: "Comments to Docket No. 24158." The postcard will be dated and time stamped and mailed to the commenter.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attn: Public Inquiry Center (APA-230), 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Requests must include the notice number identified in this final NPRM. Persons interested in being placed on a mailing list for future rulemaking actions should request a copy of Advisory Circular 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

Background

The rulemaking process that led to promulgation of the final anti-drug regulations began in late 1986. On December 4, 1986, the FAA issued an advance notice of proposed rulemaking (ANPRM) (51 FR 44432; December 9, 1986). The ANPRM invited comment from interested persons on drug and alcohol abuse by personnel in the aviation industry. The ANPRM also solicited comment on the options that the FAA should consider to protect and maintain aviation safety in light of any drug and alcohol use in the aviation industry.

On March 3, 1988, the FAA issued a notice of proposed rulemaking (NPRM) (53 FR 8368; March 14, 1988) that analyzed the comments submitted on the ANPRM and set forth proposed regulations for comment by interested persons. The FAA received over 900 comments in response to the ANPRM and the NPRM.

The FAA also held three public hearings across the country on the proposed regulations contained in the NPRM. Each hearing was recorded by a court reporter and the hearing transcript was placed in the public docket for the rulemaking.

The FAA issued the final anti-drug rule on November 14, 1988 (53 FR 47024; November 21, 1988) requiring certain aviation employers and operators to develop and to implement an anti-drug program for employees performing sensitive safety- or security-related functions. After the final rule was issued, the FAA continued to review the implementation requirements contained in the final anti-drug rule and became aware that the timeframes for employers' submission of their anti-drug program plans for FAA approval were unrealistic. Consequently, on April 11, 1989, the FAA amended the final rule to extend certain compliance dates and make other minor revisions (54 FR 15148; April 14, 1989). Similarly, on December 11, 1989, the FAA amended the final rule to delay the compliance date for drug testing of covered employees located outside the territory of the United States (54 FR 53283; December 27, 1989).

The FAA amended the final rule on January 29, 1990, to allow employers increased flexibility concerning when they may conduct testing, as long as part 67 medical examinees are tested early in the implementation of the employer's anti-drug program (55 FR 3698; February 2, 1990).

As part of its responsibility to provide guidance to the industry on rule compliance, the FAA has continually reviewed the rule's implementation requirements. As a result, the FAA has become concerned about the scope of the final rule, particularly its inclusion of those aviation entities conducting operations otherwise excluded from the requirements of Parts 121 and 135. These operators (hereinafter "§ 135.1(c) operators") are included in the final anti-drug rule under the provisions of 14 CFR 135.1(c), which incorporates most of the operators conducting operations listed in 14 CFR 135.1(b). These operators conduct the following types of operations: Student instruction; nonstop sightseeing flights that take off and land at the same airport and are conducted within a 25-mile radius of that airport (sightseeing flights); ferry or training flights; aerial work operations; sightseeing flights in hot air balloons; nonstop flights within a 25-mile radius of the airport of takeoff for parachute jumps; certain limited helicopter flights conducted within a 25-mile radius of the airport of takeoff; and Federal election campaign flights conducted under FAR § 91.59.

In addition, commencing with the publication of the drug testing rule,

representatives of aviation organizations and employers subject to the final rule expressed serious concern about inclusion of § 135.1(c) operators. According to these representatives, such operations, although they involve compensation, do not require part 121 or part 135 certificates. Those concerned organizations and employers suggest that the final rule be modified in light of the anti-drug program's focus on commercial aviation conducted with operating authority granted under part 121 or part 135.

Comments were submitted concerning this issue by the Aircraft Owners and Pilots Association (AOPA) and the Air Safety Foundation (ASF), copies of which are available for review by interested persons in Docket No. 25148. AOPA suggested that the FAA reassess the reach of the final rule and eliminate or modify its inclusion of those who are not part 121 or part 135 certificate holders, and who do not engage in providing compensated air transportation of passengers. Comments submitted by ASF echo those of AOPA, and both specifically mention elimination of flight instructors from inclusion in the anti-drug program. Additionally, since the final rule was promulgated, several § 135.1(c) entities and the National Association of Flight Instructors have requested exemption from the rule. No exemptions have been granted, but the FAA has continued to evaluate the scope of the final rule.

Based on the concerns expressed by industry and arising from FAA's own evaluation, on March 15, 1990, the FAA extended the compliance deadlines for § 135.1(c) operators to permit further evaluation of the issue (55 FR 10756, March 22, 1990).

The amendment proposed in this notice addresses the need to revise the final rule's inclusion of the § 135.1(c) operators. As proposed, the scope of the anti-drug rule would continue to include all part 121 and 135 certificate holders and air traffic control facilities (ATCS) not operated by the FAA or the U.S. military. With the exception of sightseeing flights for compensation or hire, the scope of the rule would not include the current § 135.1(c) operators.

The NPRM

The section of the final anti-drug rule that addresses the issue of aviation entities whose operations do not require either part 121 or part 135 certificates would be amended by the action proposed in this notice. Part 121 is concerned with requirements affecting domestic, flag and supplemental air carriers and commercial operators of large aircraft. Part 135 is concerned with the requirements affecting air taxi operators and other commercial operators. Traditionally, the FAA regulatory scheme has distinguished those operators not holding part 121 or part 135 certificates as only tangentially related to the commercial air transportation sector and as operationally separate from air carriers with regard to aviation safety issues. This demarcation is so comprehensive that § 135.1(c) operators are excluded from all part 135 requirements, with the sole exception of the requirement to establish a drug testing program.

Parts 121 and 135 were designed to regulate the carriage by aircraft of persons or property for compensation or hire. In contrast, rather than including § 135.1(c) operations under part 135, the general operating and flight rules of part 91 were determined to be sufficient to ensure that the requisite level of aviation safety would be maintained. Except for sightseeing operations, the FAA does not believe that § 135.1(c) operations pose a potential public safety risk sufficient to necessitate the imposition of drug testing, especially when compared to other operations covered by the drug testing requirements.

The FAA is not proposing to delete sightseeing flights from the § 135.1(c) definition of operator. Thus, aviation entities conducting sightseeing flights with airplanes and helicopters would continue to be under the drug testing rule. It is the opinion of the FAA that such sightseeing flights pose a potential public safety risk sufficient to warrant their continued inclusion under the drug testing rule.

The FAA continues to believe that a drug-free aviation industry is a vital necessity. Upon further review, however, it has become apparent that § 135.1(c) operations, other than sightseeing flights conducted with airplanes and helicopters, warrant exclusion from the drug testing rule.

In this respect, application of the drug testing regulations would be no different from the other aspects of aviation safety regulation that reasonably vary in applicability and scope by type of operation. The FAA believes that excluding the § 135.1(c) operators other than those conducting sightseeing flights would have no significant impact on aviation safety and security. Rather, the proposed amendment is consistent with the focus of the rule on sensitive safety- and security-related positions in commercial aviation transportation.

Moreover, under this proposed rulemaking, the limited resources of the Federal Government and the aviation industry would be concentrated on successful implementation of comprehensive and effective anti-drug programs by those portions of the aviation industry where the potential effect on safety is greatest.

Paperwork Reduction Act Approval

The recordkeeping and reporting requirements of the final anti-drug rule, issued on November 14, 1988, were previously submitted to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1980. The OMB approval is under control number 2120-0535. Because this proposed amendment would reduce the recordkeeping and reporting requirements, it is not necessary to amend the prior approval received from OMB.

Economic Evaluation

Executive Order 12291, dated February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if the potential benefits to society for the regulatory change outweigh the potential costs to society.

This proposed rulemaking would eliminate aviation entities currently defined as § 135.1(c) operators, except those conducting sightseeing flights, from being covered by and needing to be in compliance with the requirements of the anti-drug rule.

The original analysis of the anti-drug rule included the costs and benefits for all affected entities and concluded that the overall rule had a positive cost-benefit ratio. This proposed rulemaking would exclude some of those entities (i.e., most § 135.1(c) operators). While the potential public safety risk for those now being excluded would be less than for those remaining under the anti-drug rule, because of the size and nature of their operations, the compliance costs for those now being excluded could have been expected to be higher. As a result, the FAA expects that, for those remaining covered by the rule, the benefits will exceed the costs by an even greater amount.

Regulatory Flexibility Determination

FAA believes that most of the § 135.1(c) operators are small entities that employ few affected employees. The exclusion of some of these operations from compliance with the anti-drug rule would not have a significant impact on these entities. FAA has determined that this rulemaking would not have a significant economic impact on a substantial number of small entities. The maximum cost savings to

any operator is estimated to be $950 per year per affected employee, which is well below the $3,800 threshold set by DOT for significant economic impact. Less than one-third of the small entities subject to the proposed rulemaking would meet the threshold for significant impact.

Trade Impact Statement

This proposed rulemaking would affect only a limited number of domestic aviation operations performed under the provisions of the FAR; therefore, it would have no impact on trade opportunities for United States firms doing business overseas or foreign firms doing business in the United States.

Federalism Implications

The rulemaking action 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, the FAA has determined that this notice does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Conclusion

This notice proposes modifying the scope of the anti-drug rule with respect to certain operators who do not hold a part 121 or part 135 certificate. This modification would provide an overall benefit to public safety by imposing the requirements of the rule only on those sectors of commercial aviation which have the greatest impact on safety.

Pursuant to the terms of the Regulatory Flexibility Act of 1980, the FAA certifies that the proposed modification may have a moderate positive economic impact on a substantial number of small entities. In addition, the modification would not result in an annual effect on the economy of $100 million or more and would not result in a significant increase in consumer prices; thus, the proposed amendment is not a major action pursuant to the criteria of Executive Order 12291. However, because the anti-drug rule involves issues of substantial interest to the public, the FAA has determined that this notice is significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034; February 2, 1979).

List of Subjects

14 CFR Part 121

Air carriers, Air transportation, Aircraft, Aircraft pilots, Airmen, Airplanes, Aviation safety, Drug abuse, Drugs, Narcotics, Pilots, Safety, Transportation.

14 CFR Part 135

Air carriers, Air taxi, Air transportation, Aircraft, Airmen, Airplanes, Aviation safety, Drug abuse, Drugs, Narcotics, Pilots, Safety, Transportation.

For the reasons set forth in the preamble, the Federal Aviation Administration proposes to make the following amendments to parts 121 and 135 of the Federal Aviation Regulations (14 CFR parts 121 and 135):

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

1. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1356, 1357, 1401, 1421–1430, 1472, 1485, and 1502; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983).

2. By revising the first sentence of paragraph A.(5) under section IX of appendix I to part 121 to read as follows:

Appendix I to Part 121—Drug Testing Program

* * * * *

Section IX. * * *

A. * * *

(5) Each employer or operator who becomes subject to the rule as a result of the FAA's issuance of a part 121 or 14 CFR part 135 certificate or as a result of beginning sightseeing operations listed in 14 CFR 135.1(b)(2) for compensation or hire shall submit an anti-drug plan to the FAA for approval, within the timeframes of paragraphs (2), (3), or (4) of this section according to the type and size of the category of operations. * * *

* * * * *

PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS

3. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1421–1431, and 1502; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983).

4. By revising § 135.1(c) to read as follows:

§ 135.1 Applicability.

* * * * *

(c) For the purpose of §§ 135.249, 135.251, and 135.353 "operator" means any person or entity conducting an operation listed in paragraph (b)(2) of this section for compensation or hire.

* * * * *

Issued in Washington, DC, on February 12, 1991.

Jon L. Jordan,

Acting Federal Air Surgeon.

[FR Doc. 91-3707 Filed 2-12-91; 2:01 pm]

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federal register

Friday
February 15, 1991

Part VI

Department of the Treasury

Office of Foreign Assets Control

31 CFR Part 535

Iranian Assets Control Regulations; Final Rule

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 535

Iranian Assets Control Regulations

AGENCY: Office of Foreign Assets Control, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This rule revokes the authority granted by specific license to certain U.S. persons to maintain blocked accounts on their books for monies owed Iranian beneficiaries under standby letter of credit obligations. This action is being taken to comply with an arbitral award issued by the Iran-U.S. Claims Tribunal in The Hague.

EFFECTIVE DATE: February 28, 1991.

FOR FURTHER INFORMATION CONTACT: William B. Hoffman, Chief Counsel (202/535-6020), or Steven I. Pinter, Chief of Licensing (202/535-9449), Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

SUPPLEMENTARY INFORMATION: At the time of the 1979 hostage crisis between the United States and Iran, numerous U.S. persons were account parties on standby letters of credit ("SLCs") issued in favor of Iranian beneficiaries to secure the U.S. parties' contract performance. Under § 535.568 of the Iranian Assets Control Regulations, 31 CFR part 535 (the "Regulations"), the Office of Foreign Assets Control ("FAC") issued specific licenses authorizing an applicant U.S. account party to open a blocked reserve account on its books to cover amounts demanded by an Iranian beneficiary under an SLC (a "568 Account"), in lieu of payment of those amounts by the issuing or confirming U.S. bank into a blocked bank account and reimbursement of the bank by the account party.

On November 12, 1990, the Iran-U.S. Claims Tribunal in The Hague (the "Tribunal"), issued Interlocutory Award ITL 78-A15(1:C)-FT, holding that the United States Government had violated General Principle A of the Declaration of the Government of the Democratic and Popular Republic of Algeria, dated January 19, 1981 (the "Algiers Accords"), by allowing U.S. account parties to hold SLC obligations in 568 Accounts, rather than transferring the funds to the Government of Iran. The Tribunal held that this arrangement violates the obligation of the United States under the Algiers Accords to restore the financial position of Iran, insofar as possible, to that which existed prior to November 14, 1979, except with respect to SLC obligations in the following three categories: (1) Those that are or were at issue in any claim brought before the Tribunal, for so long as such claim is or was pending before the Tribunal, (2) those that are or were at issue in any claim that the Tribunal resolves, or has resolved, or the merits, or (3) those that were at issue in a matter that was settled between the parties.

This rule implements the Tribunal's interlocutory award by revoking authorization to maintain 568 Accounts, effective February 28, 1991, unless the license holder submits documentation to FAC establishing to FAC's satisfaction that the license pertains to an SLC that falls within one of the three categories referenced above. This rule places on the license holder the burden of establishing that the license covering a particular 568 Account is exempt from revocation.

U.S. court preliminary injunctions that block payment by U.S. banks under SLCs, as authorized pursuant to §§ 535.504 and 535.222(g) of the Regulations, are not affected at this time by the Tribunal's interlocutory award. Account parties whose authority to maintain 568 Accounts is revoked may still seek preliminary injunctions against paying allegedly fraudulent calls. This rule also amends the Regulations to authorize the entry of permanent injunctions in favor of any SLC account party who has won its Tribunal case on the merits, if the Iranian beneficiary has nonetheless failed to cancel the SLC.

The United States Government reserves the right to require that account parties provide adequate assurances of indemnification to the United States against liability in the Tribunal for the policies and procedures established in section 535.568 of the Regulations.

Since the Regulations involve a foreign affairs function, the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, does not apply. Because the Regulations are issued with respect to a foreign affairs function of the United States, they are not subject to Executive Order 12291 of February 17, 1981, dealing with Federal regulations.

List of Subjects in 31 CFR Part 535

Injunctions, Iran, Standby letters of credit.

For the reasons set forth in the preamble, 31 CFR part 535 is amended as follows:

PART 535—IRANIAN ASSETS CONTROL REGULATIONS

1. The authority citation for part 535 continues to read as follows:

Authority: Secs. 201-207, 91 Stat. 1626; 50 U.S.C. 1701-1706; E.O. 12170, 44 FR 65729; E.O. 12205, 45 FR 24099; E.O. 12211, 45 FR 26685.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

2. Paragraph (g) of § 535.222 is revised to read as follows:

§ 535.222 Suspension of claims eligible for Claims Tribunal.

* * * * *

(g) Nothing in this section shall apply to any claim concerning the validity or payment of a standby letter of credit, performance or payment bond, or other similar instrument that is not the subject of a determination by the Iran-United States Claims Tribunal on the merits thereof. However, assertion of such a claim through judicial proceedings is governed by the general license in § 535.504. A determination by the Iran-United States Claims Tribunal on the merits that a standby letter of credit, performance bond or similar obligation is invalid, has been paid or otherwise discharged, or has no further purpose, or any similar determination shall operate as a final resolution and discharge or Iran's interest therein and, notwithstanding the provisions of § 535.504, may be enforced by a judicial proceeding to obtain a final judicial judgment or order permanently disposing of that interest.

* * * * *

3. Section 535.568 is amended by adding a new paragraph (k) to the end thereof:

§ 535.568 Certain standby letters of credit and performance bonds.

* * * * *

(k) All specific licenses previously issued under this section to account parties to standby letters of credit are revoked, effective February 28, 1991, unless the license holder submits documentation to the Office of Foreign Assets Control establishing that the specific license pertains to a standby letter of credit obligation that (i) is at issue in any claim brought before the Iran-United States Claims Tribunal ("Tribunal"), (ii) is or was at issue in any claim that the Tribunal resolves, or has resolved, on the merits in favor of

the account party, or (iii) was at issue in a matter that was settled by the parties. The documentation required for such a showing may include such items as a copy of a Tribunal Award, a copy of a signed settlement agreement, or copies of cover pages of recent filings in pending Tribunal cases.

Dated: February 12, 1991.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: February 13, 1991.

Peter K. Nunez,

Assistant Secretary (Enforcement).

[FR Doc. 91-3958 Filed 12-14-91, 12:23 pm]

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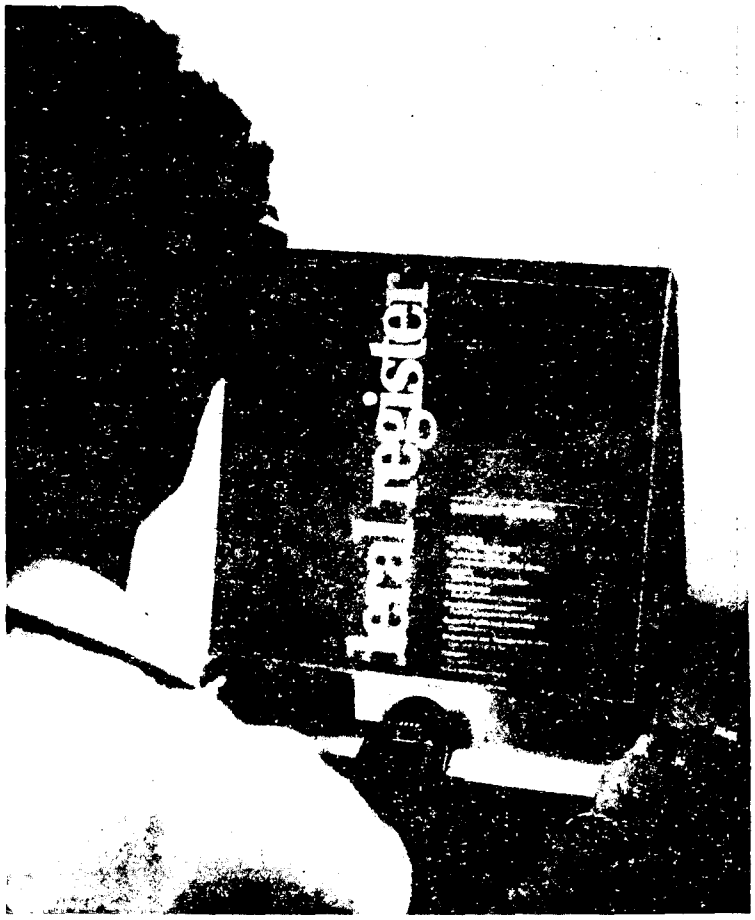

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