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Wednesday
March 15, 1989

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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

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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.

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WHEN: March 30, at 1:00 p.m.
WHERE: 841 Chestnut Street, Room 705, Philadelphia, Pa
RESERVATIONS: Call the Philadelphia Federal Information Center
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WASHINGTON, DC

WHEN: April 11, 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

SALT LAKE CITY, UT

WHEN: April 12, at 9:00 a.m.
WHERE: State Office Building Auditorium, Capitol Hill, Salt Lake City, UT
RESERVATIONS: Call the Utah Department of Administrative Services, 801–538–3010

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DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 401

[Docket No. 6628S]

Wheat Crop Insurance Endorsement

AGENCY: Federal Crop Insurance Corporation, USDA

ACTION: Notice clarifying sales period for wheat in certain South Dakota counties.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) herewith publishes this notice for the purpose of clarifying for all interested parties the period for accepting application for crop insurance on wheat in certain counties in South Dakota. The intent of this notice is to provide clear guidelines for insuring winter wheat, and winter wheat with a coverage option and to identify the counties affected.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: The Wheat Crop Insurance Endorsement (7 CFR 401.101, and the Winter Wheat Coverage Option (7 CFR 401.102) are available for the 1989 crop year in certain counties in the western part of South Dakota.

The sales closing date for accepting applications in those counties for the wheat endorsement with the winter wheat coverage option attached was September 30, 1988.

An apparent confusion exists as to whether the wheat crop insurance endorsement, standing alone, is still available in such counties after September 30, 1988. This matter is currently under review for the 1990 crop year policy provisions.

For purposes of clarification, wheat crop insurance under the provisions of the Wheat Crop Insurance Endorsement (7 CFR 401.101), but without the winter wheat coverage option, is available until April 15, 1989, provided an adequate stand exists for fall-seeded wheat on that date. The sales closing date for spring-seeded wheat is April 15, 1989. This clarification pertains only to the following South Dakota Counties:

Bennett	Hand	Pennington
Brule	Harding	Perkins
Buffalo	Hughes	Potter
Butte	Hyde	Shannon
Charles Mix	Jackson	Stanley
Custer	Jones	Sully
Dewey	Lawrence	Todd
Fall River	Lyman	Tripp
Gregory	Meade	Ziebach
Haakon	Mellette	

Done in Washington, DC on March 3, 1989.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 89–6025 Filed 3–14–89; 8:45 am]

BILLING CODE 3410–08–M

[Docket No. 88–023R]

Food Safety and Inspection Service

9 CFR Parts 327 and 381

Imported Canadian Product: Provision for "Streamlined" Inspection Procedures; Exemption From Official Mark of Inspection; Reopening of Comment Period

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Interim rule; reopening of comment period.

SUMMARY: On January 5, 1989, the Food Safety and Inspection Service (FSIS) published an interim rule that amended the Federal meat and poultry products inspection regulations by providing "streamlined" inspection procedures for the reinspection of Canadian meat and poultry products and by exempting all meat and poultry products imported from Canada from the requirement that such product or containers of product be marked with the official mark of inspection. These actions were a result of the United States-Canada Free-Trade Agreement and the United States-Canada Free-Trade Agreement Implementation Act of 1988, Pub. L. 100–449. The comment period on this interim rule closed on February 6, 1989. FSIS has received requests to reopen the comment period so that additional comments and information could be provided. FSIS is granting these requests and is reopening the comment period for an additional 30 days.

DATE: Comments must be received on or before: April 14, 1989.

ADDRESS: Comments may be mailed to the Policy Office, ATTN: Linda Carey, FSIS Hearing Clerk, Room 3171, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. Any person desiring an opportunity for oral presentation of views as provided under the Poultry Products Inspection Act must make such a request to Patricia Stolfa at (202) 447–3473 so that arrangements may be made for such views to be presented. A record will be made of all views orally presented. All comments submitted in response to this action will be made available for public inspection in the Policy Office between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Patricia Stolfa, Deputy Administrator, International Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–3473.

SUPPLEMENTARY INFORMATION: On January 5, 1989, FSIS published an interim rule that amended the Federal meat and poultry products inspection regulations by providing "streamlined" inspection procedures for the reinspection of Canadian meat and poultry products and by exempting all meat and poultry products imported from Canada from the requirement that such product or containers of product be marked with the official mark of inspection. These actions were a result of the United States-Canada Free-Trade Agreement and the United States-Canada Free-Trade Agreement Implementation Act of 1988, Pub. L. 100–499, which President Reagan signed on January 2, 1988. The comment period on this interim rule closed on February 6, 1989. FSIS has received requests to reopen the comment period so that additional comments and information could be provided. FSIS is granting these

requests and is reopening the comment period for an additional 30 days.

Done at Washington, DC on: March 13, 1989.

Lester M. Crawford,

Administrator, Food Safety and Inspection Service.

[FR Doc. 89-6194 Filed 3-14-89; 8:45 am]

BILLING CODE 3410-DM-M

FEDERAL ELECTION COMMISSION

11 CFR Part 114

[Notice 1989—4]

Trade Association Solicitation

AGENCY: Federal Election Commission

ACTION: Final rule, transmittal of regulation to Congress

SUMMARY: The Commission has revised its regulation at 11 CFR 114.8(f), governing the solicitation of parent and subsidiary corporations by a trade association or a trade association's separate segregated fund. Section 114.8 sets forth the rules under which a trade association may solicit the restricted class of its member corporations. The revision clearly states that a trade association or its separate segregated fund may solicit no part of the restricted class of the parent if the parent corporation is not a member of the association although the parent's subsidiary is a member. The revision also specifies in each sentence the categories of persons who constitute the restricted class. Supplementary information, set out below, provides further information on the revision.

DATES: Further action, including the announcement of an effective date, will be taken after the regulation has been before Congress for 30 legislative days pursuant to 2 U.S.C. 438(d).

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, Federal Election Commission, 999 E Street, NW., Washington, DC 20463, (202) 376-5690 or (800) 424-9530.

SUPPLEMENTARY INFORMATION: The Commission is publishing today the final text of a revised rule at 11 CFR 114.8(f), governing the solicitation of parent and subsidiary corporations by a trade association or its separate segregated fund.

On September 15, 1988, the Commission issued a Notice of Proposed Rulemaking in which it sought comments on proposed revisions of § 114.8(f) and two other regulations. 53 FR 35827. The Commission received no comments in response to the Notice.

Section 438(d) of Title 2, United States Code, requires that any rule or regulation prescribed by the Commission to carry out the provisions of Title 2 of the United States Code be transmitted to the Speaker of the House of Representatives and to the President of the Senate 30 legislative days before they are finally promulgated. This regulation was transmitted to Congress on March 10, 1989.

Explanation and Justification

The Federal Election Campaign Act of 1971, as amended, (the "Act"), 2 U.S.C. 431 *et seq.*, permits trade associations to solicit the executive or administrative personnel, stockholders, and families of such personnel and stockholders (the "restricted class") of the trade association's member corporations, subject to certain conditions. 2 U.S.C. 441b(b)(4)(D). Section 114.8(f) of the Commission's regulations applies this basic rule to situations where a parent corporation is a member of a trade association but its subsidiary is not, or vice versa.

Under the current § 114.8(f), if the parent corporation is a member of a trade association but the subsidiary is not, the trade association or its separate segregated fund may solicit only the restricted class of the parent. To be consistent with the Act, the regulations should further provide that if the subsidiary corporation is a member of a trade association but its parent is not, then the trade association and its separate segregated fund may solicit only the restricted class of the subsidiary; the trade association may not solicit the parent corporation's restricted class. As the Notice of Proposed Rulemaking pointed out, however, current § 114.8(f) states that the trade association is prohibited from soliciting only the "shareholders" of the non-member parent corporation. The revision corrects this language. The Commission notes that this revision does not represent a change in agency policy but rather is a more accurate statement of the current law. It has been the consistent position of the Commission that trade associations may only solicit the restricted class of their member corporations. In addition, unlike the earlier proposed version, the new rule also specifies in each sentence the categories of persons who constitute the relevant restricted class.

List of Subjects in 11 CFR Part 114

Business and industry, Elections.

For the reasons set out in the preamble, Subchapter A, Chapter I, Title 11 of the Code of Federal Regulations is amended as follows:

PART 114—CORPORATE AND LABOR ORGANIZATION ACTIVITY

1. The authority citations for Part 114 is revised to read as follows:

Authority: 2 U.S.C. 431(8)(B), 431(9)(B), 432, 437d(a)(8), 438(a)(8), and 441b.

2. By revising § 114.8(f) to read as follows:

§ 114.8 Trade associations.

* * * * *

(f) *Solicitation of a subsidiary corporation.* If a parent corporation is a member of the trade association but its subsidiary is not, the trade association or its separate segregated fund may only solicit the parent's executive or administrative personnel and their families and the parent's stockholders and their families; it may not solicit the subsidiary's executive or administrative personnel or stockholders or their families. If a subsidiary is a member of the trade association but the parent corporation is not, the trade association or its separate segregated fund may only solicit the subsidiary's executive or administrative personnel and their families and the subsidiary's stockholders and their families; it may not solicit the parent's executive or administrative personnel or stockholders or their families. If both parent and subsidiary are members of the trade association, the executive or administrative personnel and their families and the stockholders and their families of each may be solicited.

* * * * *

Dated: March 10, 1989.

Danny L. McDonald,

Chairman, Federal Election Commission.

[FR Doc. 89-5993 Filed 03-14-89; 8:45 am]

BILLING CODE 6715-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-NM-126-AD; Amdt. 39-6150]

Airworthiness Directives; McDonnell Douglas Model DC-9 Series, Model DC-9-80 Series, Model MD-88, and C-9 (Military) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all McDonnell Douglas Model DC-9 series, Model DC-9-80

series, Model MD–88, and C–9 (Military) series airplanes, which requires inspection of the rudder actuator for internal hydraulic fluid leakage, and replacement if necessary, to ensure that degraded actuators are removed from service. This amendment is prompted by reports of degraded actuators. This condition, if not corrected, could lead to reduced rudder authority and uncontrollable airplane sideslip, should an engine failure occur at takeoff.

DATES: Effective April 12, 1989.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1–L00 (54–60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Stacho, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806; telephone (213) 988–5338.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include a new airworthiness directive (AD), applicable to McDonnell Douglas Model DC–9 series, DC–9–80 series, MD–88, and C–9 (Military) series airplanes, which requires inspection of the rudder actuator for internal hydraulic fluid leakage, and replacement, if necessary, to ensure that degraded actuators are removed from service, was published in the **Federal Register** on October 20, 1988 (53 FR 41192).

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

One commenter requested that the initial inspection of paragraph B. of the proposed AD be changed from 1,000 flight hours to 1,500 flight hours. This commenter operates a large fleet of recently-delivered Model DC–9–80 airplanes, and suggested that the 1,000-hour compliance time unduly penalizes its operation of low-time airplanes. The FAA concurs. In developing an appropriate compliance time for this AD action, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but the practical aspect of incorporating the required inspections into affected operator's maintenance schedules in a timely manner. The FAA has reviewed data submitted by the aircraft manufacturer as to recommended inspections times and parts availability, as well as average aircraft utilization rates of affected operators, and has determined that extending the initial inspection from 1,000 to 1,500 flight hours will provide an acceptable level of safety. The final rule has been revised accordingly.

One commenter requested the repetitive inspection intervals of paragraph C. of the proposed AD, applicable to Model DC–9–80 series airplanes, be extended from 2,500 to 3,000 flight hours so the inspections can be accomplished during the "C" maintenance check. The FAA concurs with this request. In developing the proposed repetitive inspection interval, the FAA had intended that it fall during a time of regular scheduled maintenance for the majority of affected operators. After reviewing the average utilization rates for U.S. operators, the FAA has determined that revising the repetitive inspection intervals to 3,000 flight hours, for all airplanes specified in paragraph B. of the final rule, will provide an acceptable level of safety. The final rule has been revised accordingly.

The FAA has determined that the changes described above will neither impose an additional economic burden on any operator, nor expand the scope of the AD.

One commenter requested that terminating action for the repetitive inspections be included in the AD if the aircraft manufacturer has developed such corrective action. To date, the aircraft manufacturer has not proposed design changes that would preclude the need for these inspections. When such design changes are available, the FAA may consider further rulemaking to provide for terminating action for the inspection requirements of this AD.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described.

There are approximately 1500 Model DC–9 series airplanes in the worldwide fleet. It is estimated that 870 airplanes of U.S. registry will be affected by this AD, that it will take approximately 10 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. (Replacement of the rudder actuator, if necessary, would require 13 manhours to accomplish). Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $348,000.

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

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities, because few, if any, Model DC–9 series airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

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

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

§ 39.13. [Amended]

2. By adding the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC–9 series, Model DC–9–80 series, Model MD–88, and C–9 (Military) series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent uncontrollable airplane sideslip due to an ineffective rudder actuator, accomplish the following:

A. For Model DC–9–11, –12, –13, –14, –15, –15F, –21, and –87 series airplanes: Within 500 flight hours after the effective date of this airworthiness directive (AD), unless already accomplished within the last 1,000 flight hours, inspect the rudder actuator for internal hydraulic fluid leakage in accordance with McDonnell Douglas Alert Service Bulletin A27–291, Revision 3, dated August 24, 1988.

B. For Model DC-9-31, -32, -32F, -33, -34, -34F, -41, -51, -81, -82, -83, and MD-88 series airplanes: Within 1,500 flight hours after the effective date of this AD, unless already accomplished within the last 1500 flight hours, inspect the rudder actuator for internal hydraulic fluid leakage, in accordance with McDonnell Douglas Alert Service Bulletin, A27-291, Revision 3, dated August 24, 1988.

C. If the rudder actuator internal hydraulic fluid leakage is within the limits established in McDonnell Douglas Alert Service Bulletin A27-291, Revision 3, dated August 24, 1988, repeat the inspection specified in paragraph A. or B., above, as follows:

1. For those airplanes specified in paragraph A., at intervals not to exceed 1500 flight hours.

2. For those airplanes specified in paragraph B., at intervals not to exceed 3000 flight hours.

D. Any rudder actuator which exceeds the internal hydraulic fluid leakage limit specified in McDonnell Douglas Alert Service Bulletin A27-291, Revision 3, dated August 24, 1988, must be replaced, prior to further flight, with a rudder actuator within those limits.

E. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

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

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1-L00 (54-60). These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

This amendment becomes effective April 12, 1989.

Issued in Seattle, Washington, on February 21, 1989.

Darrell M. Pederson,

Assistant Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-5909 Filed 03-14-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-NM-15-AD; Amdt. 39-6152]

Airworthiness Directives; McDonnell Douglas Model DC-9-10 Through -30 Series and C-9 (Military) Airplanes, Equipped with a Non-Ventral Aft Pressure Bulkhead

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive, applicable to certain McDonnell Douglas Model DC-9-10 through -30 series and C-9 (Military) series airplanes equipped with a non-ventral aft pressure bulkhead, which requires both visual and high frequency eddy current inspection of the aft pressure bulkhead from the aft side. This amendment is prompted by a recent report of a crack in the aft pressure bulkhead tee cap. If this condition is not corrected, bulkhead tee cap cracks may develop, which could result in rapid depressurization of the fuselage in flight and cause severe structural damage to the airplane.

DATES: Effective March 24, 1989.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1-L00 (54-60). This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Michael N. Asahara, DC9/MD80 Program Manager, Airframe Branch, ANM-122L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5321.

SUPPLEMENTARY INFORMATION: On May 31, 1988, the FAA issued AD 88-13-09, Amendment 39-5954 (53 FR 21411; June 8, 1988), to require the structural inspection of the aft pressure bulkhead using low frequency eddy current inspection techniques from the forward side of the bulkhead of all McDonnell Douglas Model DC-9 series airplanes. That AD was prompted by reports of cracks in the aft pressure bulkhead tee cap. This condition, if not corrected, could result in rapid depressurization of the fuselage, causing structural damage and possible loss of adjacent structures, including damage to control cables, with subsequent loss of airplane control.

Since issuance of AD 88-13-09, a DC-9 operator reported finding a 24-inch crack in the non-ventral aft pressure bulkhead tee while performing an unscheduled heavy maintenance inspection. Preliminary analysis of the tee revealed that the cracks initiated at multiple sites on the forward surface of the upstanding leg of the tee as the result of metal fatigue due to bending and preloads. The crack was detected on an airplane having logged 36,079 landings, with 40,336 total hours on the fuselage. Fractrographic analysis revealed that the crack initiated approximately 12,000 landings prior to its discovery. In light of this new report of cracking, the FAA has determined that the initial inspection threshold for compliance with the inspection requirements of AD 88-13-09 must be reduced to 25,000 landings on airplanes equipped with non-ventral aft pressure bulkheads in order to adequately detect cracking in a timely manner.

The FAA canvassed the affected airline operators, through the Air Transport Association (ATA) of America, and McDonnell Douglas, to ascertain their experience with the low frequency eddy current inspection from the forward side of the bulkhead, as an option provided in AD 88-13-09. From information supplied by those groups, the FAA has determined that, due to the complexity and difficulty in performing that type of inspection, the results may not be reliable and, therefore, the inspection may not be effective. The FAA has determined that a high frequency eddy current inspection of the 5910163-91 and -92 attach tee from the aft side of the bulkhead, coupled with an optically aided visual inspection, will more adequately detect cracking in the attach tee area. In addition, the FAA has determined that sealant must be removed from the inspection area prior to inspection. Further, because of the differences in the eddy current inspection equipment sensitivity, the FAA has determined that the interval between inspections of the 5910163-91 and -92 attach tees must be reduced to 500 landings.

The FAA has determined that, due to the multiple-site nature of the reported cracking, continued operation of airplanes with cracks is unacceptable. Accordingly, this action does not permit the interim repair for certain cracks as currently described in paragraph C.2.a. of AD 88-13-09.

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin A57-231, dated February 24, 1989, which describes high frequency eddy current inspection of the attach tee

area, and repairs or replacement, if necessary.

Since this unsafe condition may exist or develop on other airplanes of the same type design equipped with a non-ventral aft pressure bulkhead, this AD requires repetitive high frequency eddy current inspection of the 5910163–91 and –92 attach tee, coupled with repetitive optically aided visual inspections of the attach tee from the aft side of the bulkhead, and repair or replacement, if necessary. Subsequent inspections are also required after any repair or replacement. Additionally, affected operators are required to remove sealant from the inspection area prior to inspection.

The requirements of this AD differ from and replace the requirements of AD 88–13–09 for airplanes equipped with non-ventral aft pressure bulkheads by: (1) Deleting the option for low frequency eddy current inspections from the forward side of the bulkhead; (2) lowering the initial inspection threshold called out in AD 88–13–09 to 25,000 landings; (3) eliminating the interim repair provided by that AD; and (4) eliminating the optional inspections from the forward side of the bulkhead.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The FAA is currently preparing a similar action to address revised inspection requirements for Model DC–9 series airplanes equipped with a ventral aft pressure bulkhead. However, the proposed compliance time would not preclude a period for public comment. (Therefore, that action will appear as a Notice of Proposed Rulemaking.)

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

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

McDonnell Douglas: Applies to Model DC–9–10 through –30 series and C–9 (Military) series airplanes, equipped with a non-ventral aft pressure bulkhead, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent cracks which could result in structural failure of the nonventral aft ventral pressure bulkhead, accomplish the following:

A. Prior to the accumulation of 25,000 landings or within 500 landings after the effective date of this AD, whichever occurs later, inspect the aft pressure bulkhead attach tee section, in accordance with the following procedures.

1. Remove any sealant from inspection area of the tee section that might hinder optically aided and high frequency eddy current inspections. Clean dirt, grease, and all foreign materials from inspection area using lint-free wipers and 1,1,1 trichloroethane solvent or equivalent;

2. Using an optically aided visual inspection technique, inspect the 5910163–89, –93, –94, and –95 attach tees from the aft side of the bulkhead, in accordance with McDonnell Douglas Alert Service Bulletin A53–231, dated February 24, 1989 (hereinafter referred to as ASB53–231). Repeat this inspection thereafter at interval not to exceed 1,500 landings; and

3. Using a high frequency eddy current inspection technique, in accordance with ASB53–231, inspect the 5910163–91 and –92 attach tees from the aft side of the bulkhead. Repeat this inspection thereafter at intervals not to exceed 500 landings.

B. If cracks are found, prior to further flight, replace the cracked tee cap or repair by splicing in a section of tee cap with a new like or improved part, in accordance with McDonnell Douglas Service Rework Drawings SR09530001, Revision C, dated August 18, 1987, and SR09530001, Revision "Advance D", dated October 29, 1987. Prior to the accumulation of 25,000 landings after the repair or replacement, resume the repetitive inspections in accordance with paragraph A., above.

C. Compliance with the requirements of this AD constitutes terminating action for the requirements of AD 88–13–09, Amendment 39–5954, relating to airplanes equipped with non-ventral aft pressure bulkheads.

Note.—The requirements of AD 88–13–09 relating to airplanes with ventral aft pressure bulkheads are not affected by this AD.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments then send it to the Manager, Los Angeles Aircraft Certification Office.

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1–L00 (54–60). These documents may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 3229 East Spring Street, Long Beach, California.

This amendment becomes effective March 24, 198.

Issued in Seattle, Washington, on February 24, 1989.

Darrell M. Pederson,

Assistant Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–5910 Filed 3–14–89; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 89–NM–04–AD; Amdt. 39–6151]

Airworthiness Directives; Avions Marcel Dassault-Breguet Aviation (AMD–BA) Model Mystere Falcon 50 and 900 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Avions Marcel Dassault-Breguet Aviation (AMD–BA) Model Mystere Falcon 50 and 900 series airplanes, which requires repetitive inspections of the main landing gear (MLG) door emergency release mechanism to detect broken or damaged unlocking pins, and replacement of the pins, if necessary. This amendment is prompted by reports of the MLG door emergency unlocking pin breaking due to fatigue failure. This condition, if not corrected, could prevent emergency extension of the MLG.

EFFECTIVE DATE: March 24, 1989.

ADDRESSES: The applicable service information may be obtained from Falcon Jet Corporation, 777 Terrace Avenue, Hasbrouck Heights, New Jersey 07604. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Adriano Pasion, Standardization Branch, ANM–113; telephone (206) 431–1977. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: The Direction Générale de L'Aviation Civile (DGAC), which is the airworthiness authority of France, has notified the FAA of an unsafe condition which may exist on certain Avions Marcel Dassault Breguet Aviation (AMD–BA) Model Mystere Falcon 50 and 900 series airplanes. There have been two reports of the MLG door emergency unlocking pin breaking due to fatigue failure. This condition, if not corrected, could prevent emergency extension of the MLG.

The DGAC has issued French Airworthiness Directive 88–140–006(B)R1, dated December 28, 1988, which contains procedures for repetitive inspection of the main landing gear door emergency release mechanism for a broken or damaged unlocking pin, and replacement of the pins, if necessary.

This airplane model is manufactured in France and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD requires repetitive inspections of the MLG door emergency release mechanism for a broken or damaged unlocking pin, and replacement, if necessary.

Since a condition exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

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

The FAA has determined that this regulation is an emergency regulation and that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

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

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

2. By adding the following new airworthiness directive:

Avions Marcel Dassault Breguet Aviation (AMD–BA): Applies to Model Mystere Falcon 50 and 900 series airplanes, certificated in any category, equipped with emergency unlocking levers part numbers:

—for Mystere Falcon 50:
F50B793600160 or 160A1 or 161 or 161A1—LH side
F50B793700160 or 160A1 or 161 or 161A1—RH side

—for Mystere Falcon 900:
FGFB793600160 or 160A2 or 161 or 161A2 or F50B793600160A1 or 161 or 161A1—LH side
FGFB793700160 or 160A2 or 161 or 161A2 or F50B793700160A1 or 161 or 161A1—RH side.

Compliance is required as indicated, unless previously accomplished.

To prevent inability to open the main landing gear (MLG) door for MLG emergency extension, accomplish the following:

A. Prior to the accumulation of 1,000 landings on the MLG door emergency unlocking pin, or within 7 days after the effective date of this AD, whichever occurs later, verify the integrity of the MLG door emergency unlocking system by operating the manual opening system, in accordance with the instructions in the AMD–BA Falcon 50 or 900 series (as applicable) Maintenance Manual, Work Card 480.0, paragraph 3.

1. If the unlocking pin is broken or damaged, replace the pin with a serviceable pin of the same part number prior to further flight.

2. If the unlocking pin is not damaged, repeat the inspection prior to accumulation of 2,000 landings. Replace broken or damaged pins in accordance with paragraph A.1., above.

B. Upon the accumulation of 2,000 or more landings on the MLG door emergency unlocking pin, repeat the inspection described in paragraph A., above, at intervals not to exceed 50 landings from last inspection. Replace broken or damaged pins in accordance with paragraph A.1., above.

C. Following the replacement of any unlocking pin with a new pin, repeat the inspection required by paragraphs A. and B., above, at the intervals specified. Replace broken or damage pins in accordance with paragraph A.1., above.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Standardization Branch, ANM–113.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the inspections required by this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Falcon Jet Corporation, 777 Terrace Avenue, Hasbrouck Height, New Jersey 07604. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East

Marginal Way South, Seattle, Washington.

This amendment becomes effective March 24, 1989.

Issued in Seattle, Washington, on February 24, 1989.

Darrell M. Pederson,

Assistant Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-5908 Filed 3-14-89; 8:45 am]

BILLING CODE 4910-13-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1215

Tracking and Data Relay Satellite System (TDRSS)

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: NASA is amending 14 CFR Part 1215, "Tracking and Data Relay Satellite System (TDRSS)," by revising Appendix A to reflect the estimated service rates in 1990 dollars for TDRSS standard services, based on NASA escalation estimates. 14 CFR Part 1215 sets forth the policy governing the Tracking and Data Relay Satellite System (TDRSS) services provided to non-U.S. Government users and the reimbursement for rendering such services. The TDRSS represents a major investment by the U.S. Government with the primary goal of providing improved tracking and data acquisition services to spacecraft in low earth orbit or to terrestrial users.

EFFECTIVE DATE: March 15, 1989.

ADDRESS: Office of Space Operations, Code T, NASA Headquarters, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Eugene Ferrick, 202-453-2030.

SUPPLEMENTARY INFORMATION: The existing regulation was published in the **Federal Register** on March 9, 1983 (48 FR 9845). Each year since that time, 14 CFR Part 1215 has been amended by revising Appendix A to reflect the rate changes for the appropriate calendar years (CY). Since this revision of Appendix A to 14 CFR Part 1215 reflects the rate changes for CY 1990 and involves NASA management procedures and decisions, no public comment is required.

The National Aeronautics and Space Administration has determined that this rule is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601-612, since it will not exert a significant economic impact on a substantial number of small entities, and it is not a major rule as defined in Executive Order 12291.

List of Subjects in 14 CFR Part 1215

Satellites, Tracking and Data Relay Satellite System, Communications equipment, Government contract.

PART 1215—TRACKING AND DATA RELAY SATELLITE SYSTEM (TDRSS)

For reasons set out in the Preamble, 14 CFR Part 1215 is amended as follows:

1. The authority citation for 14 CFR Part 1215 continues to read as follows:

Authority: Sec. 203, Pub. L. 85-568, 72 Stat. 429, as amended; 42 U.S.C. 2473.

2. Appendix A is revised to read as follows:

Appendix A—Estimated Service Rates in 1990 Dollars for TDRSS Standard Services (Based on NASA Escalation Estimate)

TDRSS user service rates for services rendered in CY-90 based on current projections in 1990 dollars are as follows:

Single Access Service—Forward command, return telemetry, or tracking, or any combination of these, the base rate is $164.00 per minute for non-U.S. Government users.

Multiple Access Forward Service—Base rate is $36.00 per minute for non-U.S. Government users.

Multiple Access Return Service—Base rate is $11.00 per minute for non-U.S. Government users.

Robert O. Aller,

Associate Administrator for Space Operations.

[FR Doc. 89-5970 Filed 3-14-89; 8:45 am]

BILLING CODE 7510-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 176

[Docket No. 85F-0400]

Indirect Food Additives: Paper and Paperboard Components

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of mono- and di(2-alkenyl)succinyl esters of polyethylene glycol containing not less than 90 percent of the diester product and in which the alkenyl groups are derived from olefins that contain not less than 95 percent of C_{15}-C_{21} groups. This action responds to a petition by Chevron Chemical Co.

DATES: Effective March 15, 1989; written objections and requests for a hearing by April 14, 1989.

ADDRESS: Written objections may be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Julius Smith, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of September 19, 1985 (50 FR 38035) FDA announced that a food additive petition (FAP 5B3878) had been filed by Chevron Chemical Co., 575 Market St., P.O. Box 3744, San Francisco, CA 94119, proposing that § 176.180 *Components of paper and paperboard in contact with dry food* (21 CFR 176.180) be amended to provide for the safe use of a mixture of substituted polyethylene glycol succinates in the manufacture of paper and paperboard used in contact with dry food.

FDA, in its evaluation of the safety of this additive, has reviewed the proposed nomenclature for the additive and the safety of both the additive and the starting materials used to manufacture the additive. The agency concludes that a more appropriate name for this additive is mono- and di(2-alkenyl)succinyl esters of polyethylene glycol containing not less than 90 percent of the diester product and in Which the alkenyl groups are derived from olefins that contain not less than 95 percent of C_{15}-C_{21} groups. The agency also finds that although the additive has not been found to cause cancer, it may contain minute amounts of ethylene oxide and 1,4-dioxane as impurities carried through the production process. Ethylene oxide and 1,4-dioxane have been shown to cause cancer in test animals. Residual amounts of reactants and impurities in reactants, such as these chemicals, are commonly found as contaminants in chemical products, including food additives.

I. Determination of Safety

Under section 409(c)(3)(A) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(c)(3)(A)), the so-called "general safety clause" of the statute, a food additive cannot be approved for a particular use unless a fair evaluation of the data available to FDA establishes that the additive is safe for that use. The concept of safety embodied in the Food Additives Amendment of 1958 is explained in the

legislative history of the provision: "Safety requires proof of a reasonable certainty that no harm will result from the proposed use of an additive. It does not—and cannot—require proof beyond any possible doubt that no harm will result under any conceivable circumstance." (H. Rept. 2284, 85th Cong., 2d Sess. 4 (1958).) This definition of safety has been incorporated into FDA's food additive regulations (21 CFR 170.3(i)). The anticancer or Delaney clause of the Food Additives Amendment (section 409(c)(3)(A) of the act (21 U.S.C. 348(c)(3)(A)) provides further that no food additive shall be deemed to be safe if it is found to induce cancer when ingested by man or animal.

In the past, FDA has often refused to approve a use of an additive that contained or was suspected of containing even minor amounts of a carcinogenic chemical, even though the additive as a whole had not been shown to cause cancer. The agency now believes, however, that developments in scientific technology and experience with risk assessment procedures make it possible for FDA to establish the safety of additives that contain a carcinogenic chemical but that have not themselves been shown to cause cancer.

In the preamble to the final rule permanently listing D&C Green No. 6, published in the Federal Register of April 2, 1982 (47 FR 14138), FDA explained the basis for approving the use of a color additive that had not been shown to cause cancer, even though it contains a carcinogenic impurity. Since that decision, FDA has approved the use of other color additives and food additives on the same basis.

An additive that has not been shown to cause cancer, but that contains a carcinogenic impurity, may properly be evaluated under the general safety clause of the statute using risk assessment procedures to determine whether there is a reasonable certainty that no harm will result from the proposed use of the additive.

The agency's position is supported by *Scott v. FDA*, 728 F.2d 322 (6th Cir. 1984). That case involved a challenge to FDA's decision to approve the use of D&C Green No. 5, which contains a carcinogenic chemical but has itself not been shown to cause cancer. Relying heavily on the reasoning in the agency's decision to list this color additive, the U.S. Court of Appeals for the Sixth Circuit rejected the challenge to FDA's action and affirmed the listing regulation.

II. Safety of Petitioned Use

FDA estimates that the petitioned use in paper and paperboard products that contact dry food of the additive mono- and di(2-alkenyl)succinyl esters of polyethylene glycol containing not less than 90 percent of the diester product and in which the alkenyl groups are derived from olefins that contain not less than 95 percent of C_{15}–C_{21} groups will result in levels of exposure to this additive that are quite small. FDA does not ordinarily consider chronic testing to be necessary to determine the safety of an additive whose use will result in such low exposure levels (Refs. 1 and 2), and the agency has not required such testing here. However, the agency has reviewed available acute and subchronic studies in the rat and a mutagenicity test with the additive. No adverse effects were reported in these studies.

As stated above, the additive may Contain 1,4-dioxane and ethylene oxide, substances that have been shown to cause cancer in test animals. These impurities may be present as a result of impurities in reactants used to produce the additive. Because the additive itself has not been shown to cause cancer, however, the anticancer clause does not apply.

FDA has evaluated the safety of this additive under the general safety clause, considering all available data and using risk assessment procedures to estimate the upper bound limit of risk presented by the carcinogenic chemicals, 1,4-dioxane and ethylene oxide, that may be present as impurities in the additive. Based on this evaluation, the agency has concluded that the additive is safe under the proposed conditions of use.

The risk assessment procedures that FDA used in this evaluation are similar to the methods that the agency has used to examine the risk associated with the presence of minor carcinogenic impurities in various other food and color additives that contain carcinogenic impurities (49 FR 13018; April 2, 1984). This risk evaluation of the carcinogenic impurities has two aspects: (1) Assessment of the worst-case exposure to the impurities from the proposed use of the additive; and (2) extrapolation of the risk observed in the animal bioassays to the conditions of probable exposure to humans.

A. 1,4-Dioxane

Based on the fraction of the daily diet that may be in contact with surfaces containing the additive mono- and di(2-alkenyl)succinyl esters of polyethylene glycol containing not less than 90 percent of the diester product and in which the alkenyl groups are derived from olefins that contain not less than 95 percent of C_{15} C_{21} groups, and assuming 100 percent migration of the 1,4-dioxane that could be present in the paper containing the additive, FDA estimated the hypothetical worst-case exposure to 1,4-dioxane to be 4.5 nanograms per person per day (Ref. 5). The agency used data from a carcinogenesis bioassay on 1,4-dioxane conducted for the National Cancer Institute (Ref. 4) to estimate the upper bound level of lifetime human risk from the exposure to this impurity that might result from the proposed use of the additive. The results of the bioassay on 1,4-dioxane demonstrated that the material was carcinogenic for female rats under the conditions of the study. The test material caused significantly increased incidence of squamous cell carcinomas and hepatocellular tumors in female rats.

The Center for Food Safety and Applied Nutrition's Cancer Assessment Committee (the Committee) reviewed this bioassay and other relevant data available in the literature and concluded that the findings of carcinogenicity were supported by this information on 1,4-dioxane. The Committee further concluded that the 1,4-dioxane bioassay provided the appropriate basis on which to calculate an estimate of the upper bound level of lifetime risk from potential exposure to 1,4-dioxane stemming from the proposed use of the additive.

The agency used a quantitative risk assessment procedure (linear proportional model) to extrapolate from the dose used in the animal experiment to the very low doses encountered under the proposed conditions of use. This procedure is not likely to underestimate the actual risk from very low doses and may, in fact, exaggerate it because the extrapolation models used are designed to estimate the maximum risk consistent with the data. For this reason, the estimate can be used with confidence to determine, to a reasonable certainty, whether any harm will result from the proposed conditions and levels of use of the food additives.

Based on a worst-case exposure of 4.5 nanograms per person per day, FDA estimates that the upper bound limit of individual lifetime risk from the potential exposure to 1,4-dioxane from use of the subject additive is 1.6×10^{-10}, or less than 2 in 10 billion (Ref. 6). Because of numerous conservatisms in the exposure estimate, lifetime averaged individual exposure to 1,4-dioxane is expected to be substantially less than the estimated daily intake, and, therefore, the calculated upper bound limit of risk would be less. Thus the agency concludes that there is a reasonable certainty of no harm from the exposure to 1,4-dioxane that might

result from the proposed use of the additive.

B. Ethylene Oxide

Based on the fraction of the daily diet that may be in contact with surfaces containing the additive mono- and di(2-alkenyl)succinyl esters of polyethylene glycol containing not less than 90 percent of the diester product and in which the alkenyl groups are derived from olefins that contain not less than 95 percent of C_{15}–C_{21} groups (Ref. 5), FDA estimated the hypothetical worst-case exposure to ethylene oxide from the use of the additive to be 4.5 nanograms per person per day. The agency used data from a carcinogenesis bioassay on ethylene oxide conducted by the Institute of Hygiene, University of Mainz, Federal Republic of Germany (Ref. 3), to estimate the upper bound level of lifetime human risk from the exposure to this impurity that might result from the proposed use of the additive. The results of the bioassay on ethylene oxide demonstrated that the material was carcinogenic for female rats under the conditions of the study. The test material caused significantly increased incidence of squamous cell carcinoma of the forestomach and carcinoma in situ of the glandular stomach.

The Committee reviewed this bioassay and other relevant data available in the literature and concluded that the findings of carcinogenicity were supported by this information on ethylene oxide. The Committee further concluded that the ethylene oxide bioassay provided the appropriate basis on which to calculate an estimate of the upper bound level of lifetime risk from potential exposure to ethylene oxide stemming from the proposed use of the additive.

Based on a worst-case exposure of 4.5 nanograms per person per day, FDA estimates that the upper bound limit of individual lifetime risk from the potential exposure to ethylene oxide from the use of the subject additive is 8×10^{-9}, or less than 8 in 1 billion (Ref. 6). Because of numerous conservatisms in the exposure estimate, lifetime-averaged individual exposure to ethylene oxide is expected to be substantially less than the estimated daily intake, and, therefore, the calculated upper bound limit of risk would be less. Thus, the agency concludes that there is a reasonable certainty of no harm from the exposure to ethylene oxide that might result from the proposed use of the additive.

III. Need for Specifications

The agency has also considered whether specifications are necessary to control the amounts of 1,4-dioxane and ethylene oxide in the additive. The agency finds that specifications are not necessary for the following reasons: (1) Because of the low levels at which 1,4-dioxane and ethylene oxide may be expected to remain as impurities following production of the additive, the agency would not expect these impurities to become components of food at other than extremely low levels; and (2) the upper bound limit of lifetime risk from exposure to these impurities, even under worst-case assumptions, is very low, less than 2 in 10 billion for 1,4-dioxane and less than 8 in 1 billion for ethylene oxide.

IV. Conclusion on Safety

FDA has evaluated the data in the petition and other relevant material and concludes that the proposed use of the additive in paper and paperboard products in contact with dry food is safe, and that § 176.180 (21 CFR 176.180) should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

V. Objections

Any person who will be adversely affected by this regulation may at any time on or before April 14, 1989 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

VI. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Carr, G.M., "Carcinogenicity Testing Programs," *in* "Food Safety: Where Are We?" Committee on Agriculture, Nutrition, and Forestry, U.S. Senate, p. 59, July 1979.

2. Kokoski, C.J., "Regulatory Food Additive Toxicology," *in* "Chemical Safety Regulation and Compliance," Edited by F. Homburger and J.K. Marquis, S. Karger, New York, NY, pp. 24–33, 1985.

3. Dunkelberg, H., "Carcinogenicity of Ethylene Oxide and 1,2-Propylene Oxide Upon Intragastric Administration to Rats," *British Journal of Cancer*, 46:924, 1982.

4. "Bioassay of 1,4-Dioxane for Possible Carcinogenicity," National Cancer Institute, NCI–CG–TR–80, 1978.

5. Memorandum dated November 3, 1987, from Food and Color Additives Review Section to Indirect Additives Branch, "FAP 5B3878—Chevron Chemical Co.—Alkenyl Polyethylene Glycol Succinate as an Emulsifier in Paper and Paperboard."

6. Memorandum dated June 21, 1988, from the Quantitative Risk Assessment Committee to the Office of Toxicological Sciences, Ethylene Oxide and 1,4-Dioxane Impurities (FAP 5B3878).

List of Subjects in 21 CFR Part 176

Food additives, Food packaging, Paper and paperboard.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 176 is amended as follows:

PART 176—INDIRECT FOOD ADDITIVES: PAPER AND PAPERBOARD COMPONENTS

1. The authority citation for 21 CFR Part 176 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 176.180 is amended in paragraph (b)(2) by alphabetically adding a new entry in the table under the headings "List of substances" and "Limitations" to read as follows:

§ 176.180 Components of paper and paperboard in contact with dry food.

* * * * *

(b) * * *
(2) * * *

List of substances	Limitations
* * * * *	
Mono- and di(2-alkenyl)succinyl esters of polyethylene glycol containing not less than 90 percent of the diester product and in which the alkenyl groups are derived from olefins that contain not less than 95 percent of C_{15}–C_{21} groups.	For use only as an emulsifier.
* * * * *	

Dated: March 7, 1989.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89–5994 Filed 3–14–89; 8:45 am]

BILLING CODE 4160–01–M

21 CFR Part 177

[Docket No. 87F–0360]

Indirect Food Additives: Polymers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of polyoxyethylene-grafted polydimethylsiloxane as an extrusion aid in the production of olefin polymers for food contact. This action is in response to a petition filed by Union Carbide Corp.

DATES: Effective March 15, 1989; written objections and requests for a hearing by April 14, 1989.

ADDRESS: Written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Hortense S. Macon, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of December 15, 1987 (52 FR 47637), FDA announced that a food additive petition (FAP 7B4041) had been filed by Union Carbide Corp., Bound Brook, NJ 08805, proposing that § 177.1520 *Olefin polymers* (21 CFR 177.1520) be amended to provide for the safe use of polyoxyethylene-grafted polydimethylsiloxane as an extrusion aid in the production of olefin polymers for use in contact with food.

FDA, in its evaluation of the safety of this additive, reviewed the safety of both the additive and the starting materials used to manufacture the additive. Although polyoxyethylene-grafted polydimethylsiloxane has not been found to cause cancer, it may contain minute amounts of ethylene oxide and 1,4-dioxane as impurities from its production. These chemicals have been shown to cause cancer in test animals. Residual amounts of reactants and byproducts, such as these chemicals, are commonly found as contaminants in chemical products, including food additives.

I. Determination of Safety

Under section 409(c)(3)(A) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(c)(3)(A)), the so-called "general safety clause" of the statute, a food additive cannot be approved for a particular use unless a fair evaluation of the data available to FDA establishes that the additive is safe for that use. The concept of safety embodied in the Food Additives Amendment of 1958 is explained in the legislative history of the provision: "Safety requires proof of a reasonable certainty that no harm will result from the proposed use of an additive. It does not—and cannot—require proof beyond any possible doubt that no harm will result under any conceivable circumstance." (H. Rept. No. 2284, 85th Cong., 2d Sess. 4 (1958).) This definition of safety has been incorporated into FDA's food additive regulations (21 CFR 170.3(i)). The anticancer or Delaney clause of the Food Additives Amendment (section 409(c)(3)(A) of the act (21 U.S.C. 348(c)(3)(A))) provides further that no food additive shall be deemed to be safe if it is found to induce cancer when ingested by man or animal.

In the past, FDA has often refused to approve the use of an additive that contained or was suspected of containing even minor amounts of a carcinogenic chemical, even though the additive as a whole had not been shown to cause cancer. The agency now believes, however, that developments in scientific technology and experience with risk assessment procedures make it possible for FDA to establish the safety of additives that contain carcinogenic chemicals but that have not themselves been shown to cause cancer.

In the preamble to the final rule permanently listing D&C Green No. 6, published in the **Federal Register** of April 2, 1982 (47 FR 14138), FDA explained the basis for approving the use of a color additive that had not been shown to cause cancer, even though it contains a carcinogenic impurity. Since that decision, FDA has approved the use of other color additives and food additives on the same basis.

An additive that has not been shown to cause cancer, but that contains a carcinogenic impurity, may properly be evaluated under the general safety clause of the statute using risk assessment procedures to determine whether there is a reasonable certainty that no harm will result from the proposed use of the additive.

The agency's position is supported by *Scott* v. *FDA*, 728 F. 2d 322 (6th Cir. 1984). That case involved a challenge to FDA's decision to approve the use of D&C Green No. 5, which contains a carcinogenic chemical but has itself not been shown to cause cancer. Relying heavily on the reasoning in the agency's decision to list this color additive, the U.S. Court of Appeals for the Sixth Circuit rejected the challenge to FDA's action and affirmed the listing regulation.

II. Safety of Petitioned Use

FDA estimates that the petitioned use of polyethylene-grafted polydimethylsiloxane will result in extremely low levels of exposure to this additive. The agency calculated the estimated daily intake of the additive based on considerations such as the migration of the additive under the most severe intended use conditions and the types of food-contact articles that may contain this substance. The agency estimated the daily intake for the additive to be 428 micrograms per person per day.

FDA does not ordinarily consider chronic testing to be necessary to determine the safety of an additive

whose use will result in such low exposure levels (Refs. 1 and 2), and has not required such testing here. However, the agency has reviewed available data from acute studies, subchronic rat and dog studies, and mutagenicity tests with the additive. No adverse effects were observed in these studies, except for marginal histopathology effects at the highest dose level in the subchronic dog study. Based upon the agency's further review of this subchronic dog study, FDA determined that there is an adequate margin of safety for the proposed use of the additive.

Because polyoxyethylene-grafted polydimethylsiloxane has not been shown to cause cancer, the anticancer clause does not apply to it. However, FDA has evaluated the safety of this additive under the general safety clause, considering all available data and using risk assessment procedures to estimate the upper bound limit of risk presented by the carcinogenic chemicals that may be present as impurities in this additive. Based on this evaluation, the agency has concluded that the additive is safe under the proposed conditions of use.

The risk assessment procedures that FDA used in this evaluation are similar to the methods that the agency has used to examine the risk associated with the presence of minor carcinogenic impurities in various other food and color additives that contain carcinogenic impurities (see, e.g., 49 FR 13018 and 13019; April 2, 1984). This risk evaluation of the carcinogenic impurities ethylene dioxide and 1,4-dioxane has two aspects: (1) Assessment of the worst case exposure to the impurities from the proposed use of the additive and (2) extrapolation of the risk observed in the animal bioassays to the conditions of probable exposure to humans.

A. 1,4-Dioxane

Based on the fraction of the daily diet that may be in contact with surfaces containing polyoxyethylene-grafted polydimethylsiloxane, and on the level of 1,4-dioxane that may be present in the additive (Ref. 5), FDA estimated the hypothetical worst-case exposure to 1,4-dioxane from the use of this additive to be 0.18 microgram per person per day. The agency used data in a carcinogenesis bioassay on 1,4-dioxane conducted for the National Cancer Institute (Ref. 4) to estimate the upper-bound level of lifetime human risk from exposure to this chemical stemming from the proposed use of the additive. The results of the bioassay on 1,4-dioxane indicated that the material was carcinogenic for female rats under the conditions of the study. The test material caused significantly increased incidence of squamous cell carcinomas and hepatocellullar tumors in female rats.

The Center for Food Safety and Applied Nutrition's Cancer Assessment Committee (the committee) reviewed this bioassay and other relevant data available in the literature and concluded that the findings of carcinogenicity were supported by this information on 1,4-dioxane. The committee further concluded that the 1,4-dioxane bioassay provided the appropriate basis on which to calculate an estimate of the upper-bound level of lifetime human cancer risk from potential exposure to 1,4-dioxane stemming from the proposed use of the additive.

The agency used a quantitative risk assessment procedure (linear proportional model) to extrapolate from the dose used in the study with male rats (the most sensitive animals) to the very low doses encountered under the proposed conditions of use. This procedure is not likely to underestimate the actual risk from very low doses and may, in fact, exaggerate it because the extrapolation models used are designed to estimate the maximum risk consistent with the data. For this reason, the estimate can be used with confidence to determine to a reasonable certainty whether any harm will result from the proposed conditions and levels of use of the food additive.

Based on a worst-case exposure of 0.18 microgram per person per day, FDA estimates that the upper-bound limit of individual lifetime risk from potential exposure to 1,4-dioxane from use of the subject additive is 6.3×10^{-9} or less than 1 in 158 million. (Ref. 6). Because of numerous conservatisms in the exposure estimate, lifetime-averaged individual exposure to 1,4-dioxane is expected to be substantially less than the estimated daily intake, and therefore, the calculated upper-bound risk would be less. Thus, the agency concludes that there is a reasonable certainty of no harm from exposure to 1,4-dioxane that might result from the proposed use of the additive.

B. Ethylene Oxide

Based on the fraction of the daily diet that may be in contact with surfaces containing polyoxyethylene-grafted polydimethylsiloxane, and on the level of ethylene oxide that may be present in the additive, FDA estimated the hypothetical worst-case exposure to ethylene oxide from the use of this additive to be 0.18 microgram per person per day (Ref. 5). The agency used data from a carcinogenesis bioassay on ethylene oxide conducted by the Institute of Hygiene, University of Mainz, Federal Republic of Germany (Ref. 3), to estimate the upper-bound level of lifetime human risk from exposure to this chemical stemming from the proposed use of this additive. The results of the bioassay on ethylene oxide indicated that this material was carcinogenic for female rats under the conditions of the study. The test material caused significantly increased incidence of squamous cell carcinoma of the forestomach and carcinoma *in situ* of the glandular stomach.

The Center for Food Safety and Applied Nutrition's Cancer Assessment Committee reviewed this bioassay and other relevant data available in the literature and concluded that the finding of carcinogenicity was supported by this information on ethylene oxide. The committee further concluded that the ethylene oxide bioassay provided an appropriate basis on which to estimate an upper-bound level of human risk from potential exposure to ethylene oxide stemming from the proposed use of the additive.

Based on a worst-case exposure of 0.18 microgram per person per day, FDA estimates that the upper bound limit of individual lifetime risk from potential exposure to ethylene oxide from the use of the subject additive is 3.3×10^{-7} or less than 1 in 3 million (Ref. 6). Because of numerous conservatisms in the exposure estimate, lifetime-averaged individual exposure to ethylene oxide is expected to be substantially less than the estimated daily intake, and therefore, the calculated upper-bound risk would be less. Thus, the agency concludes that there is a reasonable certainty of no harm from the exposure to ethylene oxide that might result from the proposed use of the additive.

C. Need for Specifications

The agency has also considered whether specifications are necessary to control the amount of 1,4-dioxane and ethylene oxide in the food additive. The agency finds that specifications are not necessary for the following reasons: (1) Because of the low levels at which ethylene oxide and 1,4-dioxane may be expected to remain as imputities following production of the additive, the agency would not expect these impurities to become components of food at other than extremely small levels; and (2) the upper-bound limit of lifetime risk from exposure to these impurities, even under worst-case assumptions, is very low, less than 1 in 158 million for 1,4-dioxane and less than 1 in 3 million for ethylene oxide.

D. Conclusion on Safety

FDA has evaluated the available data and other relevant material and concludes that the proposed use of the additive in olefin polymers is safe, and that § 177.1520 should be amended in paragraph (b) as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

III. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Carr, G. M., "Carcinogenicity Testing Programs" *in* "Food Safety: Where Are We?," Committee on Agriculture, Nutrition, and Forestry, U.S. Senate, p. 59, July 1979.

2. Kokoski, C. J., "Regulatory Food Additive Toxicology," *in* "Chemical Safety Regulations and Compliance," Edited by F. Homburger and J. K. Marquis, S. Karger, New York, NY, pp. 24–33, 1985.

3. Dunkelberg, H., "Carcinogenicity of Ethylene Oxide and 1,2-Propylene Oxide upon Intragastric Administration to Rats," *British Journal of Cancer*, 46:924, 1982.

4. "Bioassay of 1,4-Dioxane for Possible Carcinogenicity," National Cancer Institute, NCI–CG–TR–80, 1978.

5. Memorandum dated August 16, 1988, from Food and Color Additives Review Section to Indirect Additives Branch, "FAP 7B4041—Union Carbide Corp., polyoxyethylene-grated polydimethylsiloxane as an extrusion aid in the production of olefin polymers."

6. Memorandum dated September 14, 1988, from the Quantitative Risk Assessment Committee to the Office of Toxicological Sciences. Ethylene Oxide and 1,4-Dioxane Impurities FAP 7B4041.

IV. Objections

Any person who will be adversely affected by this regulation may at any time on or before April 14, 1989, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 177

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR Part 177 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 177.1520 is amended in paragraph (b) by alphabetically adding a new entry in the table under the headings "Substance" and "Limitations" to read as follows:

§ 177.1520 Olefin polymers.

* * * * *

(b) * * *

Substance	Limitations
* * * * *	
Polyoxyethylene-grafted polydimethylsiloxane (CAS Reg. No. 68937–54–2).	For use as an extrusion aid in the production of extruded olefin polymers that comply with § 177.1520(c) at levels not to exceed 0.3 percent by weight of the polymer. The finished polymer is used in contact with foods under conditions of use B through H described in Table 2 of § 176.170 of this chapter.
* * * * *	

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Dated: March 9, 1989.

Ronald G. Chesemore,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89–5995 Filed 3–14–89; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

Exempt Chemical Preparations

AGENCY: Drug Enforcement Administration (DEA).

ACTION: Interim rule and request for comments.

SUMMARY: This interim rule amends § 1308.24 of Title 21 of the Code of Federal Regulations. The below-listed chemical preparations and mixtures which contain controlled substances replace the list of exempt chemical preparations set forth in § 1308.24(i). This action is DEA's periodic review of the exempt chemical preparation list. Preparations included in the list are exempted from the application of specific provisions of the Comprehensive Drug Abuse Prevention and Control Act of 1970, and from certain Drug Enforcement Administration regulations.

DATES: Effective date: April 1, 1989. Comments must be submitted on or before April 14, 1989.

ADDRESS: Comments should be submitted to the Administrator, Drug Enforcement Administration, 1405 I Street, NW., Washington, DC 20537. Attn: Federal Register Representative.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug Control Section, Telephone: (202) 633–1366.

SUPPLEMENTARY INFORMATION: The Controlled Substances Act as amended by the Dangerous Drug Diversion Control Act of 1984 authorizes the Attorney General in accordance with 21 U.S.C. 811(g)(3)(B) to exempt from specific provisions of the Act, a compound, mixture, or preparation which contains any controlled substance, which is not for administration to a human being or animal and which is packaged in such form or concentration, or with adulterants or denaturants, so that as packaged it does not present any significant potential for abuse.

The Deputy Assistant Administrator of the Drug Enforcement Administration's Office of Diversion Control has received applications pursuant to § 1308.23 of Title 21 of the Code of Federal Regulations requesting approval of exempt status provided for in 21 CFR 1308.24. The Deputy Assistant Administrator hereby finds that each of the following preparations and mixtures is intended for laboratory, industrial, educational, or special research purposes, is not intended for general administration to man or animal, and either (a) contains no narcotic controlled substances and is packaged in such a form or concentration that the packaged quantity does not present any significant potential for abuse, (b) contains either a narcotic or non-narcotic controlled substance and one or more adulterating or denaturing agents in such a manner, combination, quantity, proportion, or concentration that the preparation or mixture does not present any potential for abuse, or (c) the formulation of such preparation or mixture incorporates methods of denaturing or other means so that the controlled substance cannot in practice be removed, and therefore the preparation or mixture does not present any significant potential for abuse. The Deputy Assistant Administrator further finds that exemption of the following chemical preparations and mixtures is consistent with the public health and safety as well as the needs of the researchers, chemical analysts, and suppliers of these products.

The Deputy Assistant Administrator for the Office of Diversion Control hereby certifies that these matters will have no significant impact upon small businesses or other entities within the meaning and intent of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. The addition of preparations to the list of exempt chemical preparations has the effect of exempting them from certain sections of the Controlled Substances Act of 1970 and its regulations.

It has been determined that these changes are internal matters which do not require formal OMB review.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

Under the authority vested in the Attorney General by section 202(d) of the Act (21 U.S.C. 811(g)(3)(B)) and delegated to the Administrator of the Drug Enforcement Administration by regulations of the Department of Justice (28 CFR Part 0.100), and redelegated to the Deputy Assistant Administrator of the Drug Enforcement Administration, Office of Diversion Control, pursuant to 47 FR 43370, the Deputy Assistant Administrator of the Office of Diversion Control hereby amends 21 CFR Part 1308 as set forth below.

PART 1308—SCHEDULE OF CONTROLLED SUBSTANCES

1. The authority for Part 1308 continues to read:

Authority: 21 U.S.C. 811, 812, 871(b).

2. In § 1308.24(i) the table is revised to read as follows:

§ 1308.24 Exempt chemical preparations.

(i) * * *

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

Dated: February 28, 1989.

EXEMPT CHEMICAL PREPARATIONS

Supplier	Product	Form of product	Date
Abbott Laboratories			
Abbott Laboratories	125I Cholylglycyltyrosine Reagent Solution, No. 7816	Plastic Bottle: 20ml	04/07/78
Abbott Laboratories	125I-Thyroxine Reagent Solution	Plastic Bottle: 25ml, 5ml	04/22/76
Abbott Laboratories	ADx Benzoylecgonine Fluorescein Tracer Solution	Bottle: 3.2 ml	12/02/86
Abbott Laboratories	ADx Cannabinoids Fluorescein Tracer Solution	Bottle: 3.2ml	12/02/86
Abbott Laboratories	ADx Cannabinoids Reagent Pack (No. 9671-55)	Reagent Pack: 50 tests	12/02/86
Abbott Laboratories	ADx Cocaine Metabolite Reagent Pack (No. 9670-55)	Reagent Pack: 50 tests	12/02/86
Abbott Laboratories	ADx Opiates Fluorescein Tracer Solution	Bottle: 3.2 ml	12/02/86
Abbott Laboratories	ADx Opiates Reagent Pack (No. 9673-55)	Reagent Pack: 50 tests	12/02/86
Abbott Laboratories	Amphetamine Bulk Calibrators, B-F	Flask: 2 liter	10/09/85
Abbott Laboratories	Amphetamine Bulk Controls, L and H	Flask: 2 liter	12/09/85
Abbott Laboratories	Amphetamine Class QC Primary B-F,L,M,H No. 9667 (B-F,L,M,H) QC.	Carboy: 10L Flask: 4L, 2L, 1L, 500 ml, 250 ml, 200 ml, 100 ml Bottle: 5ml.	11/22/88
Abbott Laboratories	Amphetamine Stock Standard No. 97072, 97072 A-B	Carboy: 20L, 10L Flask: 4L, 2L, 1L, 500 ml, 250 ml, 200 ml, 100 ml Bottle: 950ml, 500ml, 100ml, 5ml.	11/22/88
Abbott Laboratories	Amphetamine Stock Standard, No. 97072	Bottle: 125ml	09/30/85
Abbott Laboratories	Amphetamine/Metamphetamine QC Primary Bulk Control M, No. 9668-M.	Flasks: 1 liter, 250 ml, and 200 ml	11/10/87
Abbott Laboratories	Amphetamine/Methamphetamine II Bulk Calibrators B-F Code No. 1A99 (B-F).	20L, 10L Carboy; 6L, 2L, 1L, 250 ml, 200 ml Flask	08/26/88
Abbott Laboratories	Amphetamine/Methamphetamine II Bulk Controls (L,M,H) Code No. 1A99 (L,M,H).	20L, 10L Carboy; 6L, 2L, 1L, 250 ml, 200 ml Flask	08/26/88
Abbott Laboratories	Amphetamine/Methamphetamine II Calibrators B-F No. 1A99 B-F.	5 ml Vial	08/26/88
Abbott Laboratories	Amphetamine/Methamphetamine II Calibrators No. 1A99-01.	Kit: 6 Vials	08/26/88
Abbott Laboratories	Amphetamine/Methamphetamine II Controls (L,M,H) No. 1A99-L,M,H.	5 ML Vial	08/26/88
Abbott Laboratories	Amphetamine/Methamphetamine II Controls No. 1A99-10.	Kit: 3 Vials	08/26/88
Abbott Laboratories	Amphetamine/Methamphetamine (II) QC Primary B-F,L,M,H No. 1A99 (B-F,L,M,H) QC.	Carboy: 10L Flask: 4L, 2L, 1L, 500 ml, 250 ml, 200 ml, 100 ml Bottle: 5ml.	11/22/88

EXEMPT CHEMICAL PREPARATIONS—Continued

Supplier	Product	Form of product	Date
Abbott Laboratories	Amphetamine/Methamphetamine QC Primary B-F,L,M,H No. 9668 (B-F,L,M,H) QC.	Carboy: 10L Flask: 4L, 2L, 1L, 500 ml, 250 ml, 200 ml, 100 ml Bottle: 5ml.	11/22/88
Abbott Laboratories	Amphetamine/Methamphetamine QC Primary Standard Control M, No. 9668-M.	Bottle: 5 ml	11/10/87
Abbott Laboratories	Barbital Buffer 0.05 Molar	Plastic Bottle: 25ml, 5ml	04/22/76
Abbott Laboratories	Barbital Buffer, 0.06 M Reagent Solution No. 7824	Plastic Bottle: 2.5ml	04/07/78
Abbott Laboratories	Barbiturates Bulk Calibrator B-F No. 9669 B-F	Carboy: 9.5, 19 L	07/01/88
Abbott Laboratories	Barbiturates Bulk Control L,H No. 9669 L,H	Carboy: 9.5, 19 L	07/01/88
Abbott Laboratories	Barbiturates QC Primary B-F,L,M,H. No. 9669 (B-F,L,M,H) QC.	Carboy: 10L Flask: 4L, 2L, 1L, 500 ml, 250 ml, 200 ml, 100 ml Bottle: 5 ml.	11/22/88
Abbott Laboratories	Barbiturates QC Primary Bulk Control M, No. 9669-M	Flasks: 1 liter, 250 ml, and 200 ml	11/10/87
Abbott Laboratories	Barbiturates QC Primary Standard Control M, No. 9669-M.	Bottle: 5 ml	11/10/87
Abbott Laboratories	Benzodiazepine Serum QC Primary B-F,L,M,H No. 9682 (B-F,L,M,H)-QC.	Carboy: 10L Flask: 4L, 2L, 1L, 500 ml, 250 ml, 200 ml, 100 ml Bottle: 5 ml.	11/22/88
Abbott Laboratories	Benzodiazepines Bulk Calibrator No. 9674 B-F	Carboy: 9.5, 19 L	07/18/88
Abbott Laboratories	Benzodiazepines Bulk Calibrators, A-F No. 9674	Flasks: 2 liter	04/21/86
Abbott Laboratories	Benzodiazepines Bulk Control L,H No. 9674 L,H	Carboy: 9.5, 19 L	07/18/88
Abbott Laboratories	Benzodiazepines Bulk Controls, L and H No. 9674	Flasks: 2 liter	04/21/86
Abbott Laboratories	Benzodiazepines QC Primary Bulk Control M, No. 9674-M.	Flasks: 1 liter, 250 ml, and 200 ml	11/10/87
Abbott Laboratories	Benzodiazepines QC Primary Bulk Control M, No. 9674-M.	Flasks: 1 liter, 250 ml, and 200 ml	11/10/87
Abbott Laboratories	Benzodiazepines QC Primary, B-F,L,M,H No. 9674 (B-F,L,M,H) QC.	Carboy: 10L Flask: 4L, 2L, 1L, 500 ml, 250 ml, 200 ml, 100 ml Bottle: 5ml.	11/22/88
Abbott Laboratories	Benzoylecgonine Stock Standard No. 97182, 97182 A-B.	Carboy: 20L, 10L Flask: 4L, 2L, 1L, 500 ml, 250 ml, 200 ml, 100 ml,Bottle: 950ml, 500ml, 100ml, 5ml.	11/23/88
Abbott Laboratories	Benzoylecgonine Stock Standard, No. 97182	Bottle: 125ml	11/21/85
Abbott Laboratories	CG RIA Diagnostic Kit No. 7815	Kit: 100 tests	04/07/78
Abbott Laboratories	Cannabinoids Bulk Calibrators B-F	Flasks: 2 liters	10/24/86
Abbott Laboratories	Cannabinoids Bulk Calibrators B-F	Flask: 6 liters	06/19/87
Abbott Laboratories	Cannabinoids Bulk Controls L,M, and H	Flask: 6 liters	06/19/87
Abbott Laboratories	Cannabinoids Bulk Controls L,M,H	Flasks: 2 liters	10/24/86
Abbott Laboratories	Cannabinoids Bulk Tracer (No. 94192)	Flasks: 4 liters	10/27/86
Abbott Laboratories	Cannabinoids Stock Standard (No. 94568)	Bottle: 125 ml	06/19/87
Abbott Laboratories	Cannabinoids Stock Standard (No. 94193)	Bottle: 125 ml	10/24/86
Abbott Laboratories	Cannabinoids Stock Tracer (No. 94194)	Flask: 5 ml	10/27/86
Abbott Laboratories	Cannabinoids-GS Bulk Calibrators B-F No. 3897 B-F	20 L, 10 L Carboy; 6 L, 2 L, 1 L, 250 ml, 200 ml Flask	07/28/88
Abbott Laboratories	Cannabinoids-GS Bulk Controls (L,M,H) Code No. 3897 (L,M,H).	20 L, 10 L Carboy; 6 L, 2 L, 1 L, 250 ml, 200 ml Flask	07/28/88
Abbott Laboratories	Cannabinoids-GS Bulk Tracer Code No. 95826	10 L Carboy; 6 L, 2 L Flask	07/28/88
Abbott Laboratories	Cannabinoids-GS Calibrators B-F No. 3897 B-F	5 ml Vial	07/28/88
Abbott Laboratories	Cannabinoids-GS Calibrators No. 3897-01	Kit: 6 Vials	07/28/88
Abbott Laboratories	Cannabinoids-GS Controls (L,M,H) No. 3897-L,M,H	5 ml Vial	07/28/88
Abbott Laboratories	Cannabinoids-GS Controls No. 3897-10	Kit: 3 Vials	07/28/88
Abbott Laboratories	Cannabinoids-GS Reagent Pack 100 Test No. 3897-20.	Kit: 100 Tests	07/28/88
Abbott Laboratories	Cannabinoids-GS Tracer Code No. 3897-T	5 ml Vial	07/28/88
Abbott Laboratories	Cholylglycine Antiserum (Rabbit) Reagent Solution No. 7817.	Plastic Bottle: 20ml	04/07/78
Abbott Laboratories	Cocaine Metabolite Bulk Calibrator B-F No. 9670 B-F	Carboy: 9.5, 19 L	07/07/88
Abbott Laboratories	Cocaine Metabolite Bulk Calibrator, B-F No. 9670	Flask: 2 liter	10/28/85
Abbott Laboratories	Cocaine Metabolite Bulk Controls L,H No. 9670-L,H	Carboy: 9.5, 19 L	07/07/88
Abbott Laboratories	Cocaine Metabolite Bulk Controls, L and H No. 9670	Flask: 2 liter	10/28/85
Abbott Laboratories	Cocaine Metabolite Bulk Tracer No. 97075	Carboy: 10, 20 L	07/07/88
Abbott Laboratories	Cocaine Metabolite Bulk Tracer, No. 9670	Flask: 4 liter	10/29/85
Abbott Laboratories	Cocaine Metabolite QC Primary B-F, L, M. H, No. 9670 (B-F, L, M, H)-QC.	Carboy: 10L Flask: 4L, 2L, 1L, 500 ml, 250 ml, 200 ml, 100 ml, Bottle: 5 ml.	11/23/88
Abbott Laboratories	Cocaine Metabolite QC Primary Bulk Control M, No. 9670-M.	Flasks: 1 liter, 250 ml, and 200 ml	11/10/87
Abbott Laboratories	Cocaine Metabolite QC Primary Standard Control M, No. 9670-M.	Bottle: 5 ml	11/10/87
Abbott Laboratories	Cocaine Metabolite Stock Tracer, No. 9670	Vial: 5ml	10/29/85
Abbott Laboratories	Methadone Bulk Calibrators (B-F) Code No. 9676 (B-F).	20 L, 10 L Carboy; 6 L, 2 L, 1 L, 250 ml, 200 ml Flask	09/02/88
Abbott Laboratories	Methadone Bulk Calibrators (L,M,H) Code No. 9676 (L,M,H).	20 L, 10 L Carboy; 6 L, 2 L, 1 L, 250 ml, 200 ml Flask	09/02/88
Abbott Laboratories	Methadone Bulk Stock Standard Code No. 95952	10 L Carboy; 6 L, 2 L, 1 L Flask	09/02/88
Abbott Laboratories	Methadone Calibrators No. 9676-01	Kit: 6 Vials	09/02/88
Abbott Laboratories	Methadone Calibrators B-F No. 9676 B-F	5 ml Vial	09/02/88
Abbott Laboratories	Methadone Controls L,M,H No. 9676-L,M,H	5 ml Vial	09/02/88
Abbott Laboratories	Methadone Controls No. 9676-10	Kit: 3 Vials	09/02/88
Abbott Laboratories	Methadone Stock Standard Code No. 95720	1 L, 500 ml, 100 ml Bottle	09/02/88
Abbott Laboratories	Morphine Stock Standard, No. 97291	Vial: 125ml	10/16/85
Abbott Laboratories	Morphine Stock Standard, No.97291 A-B	Carboy: 20L, 10L Flask: 4L, 2L, 1L, 500 ml, 250 ml, 200 ml, 100 ml Bottle: 950ml, 500ml, 100ml, 5ml.	11/22/88
Abbott Laboratories	Multiconstituent Bulk Controls L,M,H (No. 9687-L,M,H).	Flask: 10 liters	09/03/87
Abbott Laboratories	Nordiazepam Serum Stock Standard No. 94941, 94941 A,B.	Carboy: 20L, 10L Flask: 4L, 2L, 1L, 500 ml, 250 ml, 200 ml, 100 ml Bottle: 950 ml,500 ml,100 ml,5 ml.	11/22/88

EXEMPT CHEMICAL PREPARATIONS—Continued

Supplier	Product	Form of product	Date
Abbott Laboratories	Nordiazepam Stock Standard No. 97757, 97757 A,B	Carboy: 20L, 10L Flask: 4L, 2L, 1L, 500 ml, 250 ml, 200 ml, 100 ml Bottle: 950ml, 500ml, 100ml, 5ml.	11/22/88
Abbott Laboratories	Nordiazepam Stock Standard, No. 97757	Bottle: 125ml	04/21/86
Abbott Laboratories	Opiate Bulk Calibrators, B-F No. 9673	Flasks: 2 liter	05/07/86
Abbott Laboratories	Opiate Bulk Controls, L and H No. 9673	Flasks: 2 liter	05/07/86
Abbott Laboratories	Opiates Bulk Tracer, No. 97458	Flask: 4 liter	05/07/86
Abbott Laboratories	Opiates QC Primary (B-F,L,M,H) QC No. 9673 (B-F,L,M,H) QC.	Carboy: 10L Flask: 4L, 2L, 1L, 500 ml, 250 ml, 200 ml, 100 ml Bottle: 5ml.	11/22/88
Abbott Laboratories	Opiates QC Primary Bulk Control M, No. 9673-M	Flasks: 1 liter, 250 ml, and 200 ml	11/10/87
Abbott Laboratories	Opiates QC Primary Standard Control M, No. 9673-M	Bottle: 5 ml	11/10/87
Abbott Laboratories	Opiates Stock Tracer, No. 98718	Bottle: 30ml	05/07/86
Abbott Laboratories	Phencyclidine Bulk Calibrator, B-F No. 9672	Flask: 2 liter	03/21/86
Abbott Laboratories	Phencyclidine Bulk Control M No. 9672	Flask: 2 Liters	09/26/86
Abbott Laboratories	Phencyclidine Bulk Controls, L and H No. 9672	Flask: 2 liter	03/21/86
Abbott Laboratories	Phencyclidine QC Primary (B-F,L,M,H) QC No. 9672 (B-F,L,M,H) QC.	Carboy: 10L Flask: 4L, 2L, 1L, 500 ml, 250 ml, 200 ml, 100 ml Bottle: 5ml.	11/22/88
Abbott Laboratories	Phencyclidine Stock Standard, No. 97158, 97158 A-B	Carboy: 20L, 10L Flask: 4L, 2L, 1L, 500 ml, 250 ml, 200 ml, 100 ml Bottle: 950ml, 500ml, 100ml, 5ml.	11/22/88
Abbott Laboratories	Phencyclidine Stock Standard, No. 97158	Bottle: 125ml	11/21/85
Abbott Laboratories	Phenobarbital Enzyme Inhibitor Stock	Vial: 2ml	01/20/84
Abbott Laboratories	Phenobarbital Stock Solution 1 mg/ml Code No. 94312.	Plastic Bottle: 125 ml	03/23/87
Abbott Laboratories	Phenobarbital Stock Solution 10 mg/ml Code No. 94313.	Plastic Bottle: 125 ml	03/23/87
Abbott Laboratories	Phenobarbital Stock Standard Solution	Bottle: 1 liter	08/12/82
Abbott Laboratories	Polyethylene Glycol 8000, 16% Solution in 0.09 M Barbital Buffer, No 7541.	Plastic Bottle: 300 ml, 150 ml	09/21/77
Abbott Laboratories	Secobarbital Bulk Calibrator, B-F No. 9669	Flask: 2 liter	03/21/86
Abbott Laboratories	Secobarbital Bulk Controls, L and H No. 9669	Flask: 2 liter	03/21/86
Abbott Laboratories	Secobarbital Stock Standard No. 97171, 97171 A,B	Carboy: 20L,10L Flask: 4L, 2L, 1L, 500 ml, 250 ml, 200 ml, 100 ml Bottle: 950 ml, 500 ml, 100 ml, 5 ml.	11/22/88
Abbott Laboratories	Secobarbital Stock Standard, No. 97171	Bottle: 125ml	11/21/85
Abbott Laboratories	Spectrum Phenobarbital Calibrator II-VI, Nos. 9755, 9757, 9759, 9761, 9763.	Bottle: 4ml	10/03/85
Abbott Laboratories	Spectrum Phenobarbital Control, Nos. 9876, 9878, 9880. (L,M,H).	Bottle: 4ml	10/03/85
Abbott Laboratories	T 4 RIA (PEG) Diagnostic Kit	Kit: 500 tests, 100 tests, 50 tests.	04/22/76
Abbott Laboratories	TDx Amphetamine/Methamphetamine Calibrator, No. 9668-01.	Bottles: 4ml	08/23/85
Abbott Laboratories	TDx Amphetamine/Methamphetamine Controls, No. 9668-10.	Bottles: 4ml	08/23/85
Abbott Laboratories	TDx Barbiturates Calibrators No. 9669 B-F	5 ml Vial	07/01/88
Abbott Laboratories	TDx Barbiturates Calibrators No. 9669-01	Kit: 5 Vials, 5 ml each	07/01/88
Abbott Laboratories	TDx Barbiturates Calibrators, B-F No. 9669	Bottle: 4 ml	10/08/85
Abbott Laboratories	TDx Barbiturates Control L,H No. 9669 L,H	5 ml Vial	07/01/88
Abbott Laboratories	TDx Barbiturates Control, L and H No. 9669	Bottle: 4ml	10/08/85
Abbott Laboratories	TDx Barbiturates Controls No. 9669-10	Kit: 2 Vials, 5 ml each	07/01/88
Abbott Laboratories	TDx Benzodiazepines Calibrator No. 9674 B-F	5 ml Vial	07/18/88
Abbott Laboratories	TDx Benzodiazepines Calibrators No. 9674-01	Kit: 5 Vials, 5 ml each	07/18/88
Abbott Laboratories	TDx Benzodiazepines Calibrators, No. 9674-01	Bottles: 4ml	04/21/86
Abbott Laboratories	TDx Benzodiazepines Controls L,H No. 9674 L,H	5 ml Vial	07/18/88
Abbott Laboratories	TDx Benzodiazepines Controls L,H No. 9674-10	Kit: 2 Vials, 5 ml each	07/18/88
Abbott Laboratories	TDx Benzodiazepines Controls, No. 9674-10	Bottles: 4ml	04/21/86
Abbott Laboratories	TDx Cannabinoids Calibrators B-F (9671-02)	Bottle: 5 ml	06/19/87
Abbott Laboratories	TDx Cannabinoids Calibrators B-F (No. 9671-01)	Bottles: 5 ml	10/24/86
Abbott Laboratories	TDx Cannabinoids Controls L,M, and H (9671-11)	Bottle: 5 ml	06/19/87
Abbott Laboratories	TDx Cannabinoids Controls L,M,H (No. 9671-10)	Bottles: 5 ml	10/24/86
Abbott Laboratories	TDx Cannabinoids Fluorescein Tracer Solution (No. 9671-T).	Bottle: 5 ml	10/27/86
Abbott Laboratories	TDx Cannabinoids Reagent Pack (No. 9671-20)	100 tests	10/27/86
Abbott Laboratories	TDx Cocaine Metabolite Calibrator B-F No. 9670 B-F	5 ml Vial	07/07/88
Abbott Laboratories	TDx Cocaine Metabolite Calibrator, B-F No. 9670	Bottle: 4ml	10/02/85
Abbott Laboratories	TDx Cocaine Metabolite Calibrators No. 9670-01	Kit: 5 Vials, 5 ml each	07/07/88
Abbott Laboratories	TDx Cocaine Metabolite Control L,H No. 9670 L,H	5 ml Vial	07/07/88
Abbott Laboratories	TDx Cocaine Metabolite Control, L and H No. 9669	Bottle: 4ml	10/02/85
Abbott Laboratories	TDx Cocaine Metabolite Controls No. 9670-10	Kit: 2 Vials, 5 ml each	07/07/88
Abbott Laboratories	TDx Cocaine Metabolite Fluorescein Tracer Solution No. 9670 T0001.	Kit: 100 Vials, 5 ml each	07/07/88
Abbott Laboratories	TDx Cocaine Metabolite Fluorescein Tracer Solution No. 9670-T.	Box: 5 ml Vial	07/07/88
Abbott Laboratories	TDx Cocaine Metabolite Reagent Pack	Reagent well: 5ml	10/02/85
Abbott Laboratories	TDx Cocaine Metabolite Reagent Pack No. 9670-20	Kit: 100 Tests	07/07/88
Abbott Laboratories	TDx Multiconstituent Controls L,M,H (No. 9687-L,M,H)	Bottle: 5 ml	09/03/87
Abbott Laboratories	TDx Opiates Calibrators, B-F No. 9673	5 ml Vial	05/07/86
Abbott Laboratories	TDx Opiates Controls, L and H No. 9673	Vials: 5ml	05/07/86
Abbott Laboratories	TDx Opiates Fluorescein Tracer Solution No. 9673 T0001.	Box: 10 Vials, 5 ml each	07/08/88
Abbott Laboratories	TDx Opiates Reagent, Pack No. 9673-20, 100 tests	Reagent Well: 5ml , 100 tests	05/07/86
Abbott Laboratories	TDx Phencyclidine Bulk Calibrator B-F No. 9672 B-F	Carboy: 9.5, 19 L	07/18/88

EXEMPT CHEMICAL PREPARATIONS—Continued

Supplier	Product	Form of product	Date
Abbott Laboratories	TDx Phencyclidine Bulk Calibrator B-F No. 9672 B-F	5 ml Vial	07/18/88
Abbott Laboratories	TDx Phencyclidine Bulk Control L,M,H No. 9672 L,M,H.	Carboy: 9.5, 19 L	07/18/88
Abbott Laboratories	TDx Phencyclidine Calibrators B-F No. 9672-01	Kit: 5 Vials, 5 ml each	07/18/88
Abbott Laboratories	TDx Phencyclidine Calibrators, B-F No. 9672	Bottle: 4ml	10/09/85
Abbott Laboratories	TDx Phencyclidine Control M No. 9672	Bottle: 4ml	09/26/86
Abbott Laboratories	TDx Phencyclidine Controls L,M,H No. 9672 L,M,H	5 ml Vial	07/18/88
Abbott Laboratories	TDx Phencyclidine Controls No. 9672-10	Kit: 3 Vials, 5 ml each	07/18/88
Abbott Laboratories	TDx Phencyclidine Controls, L and H No. 9672	Bottle: 4ml	10/09/85
Abbott Laboratories	TDx Phenobarbital Bulk Calibrators No. 9500 B-F	Carboy: 10 L, 20 L	06/16/88
Abbott Laboratories	TDx Phenobarbital Bulk Calibrators No. 9500 L,M,H	Carboy: 10 L, 20 L	06/16/88
Abbott Laboratories	TDx Phenobarbital Calibrator-0.0, 5.0, 10.0, 20.0, 40.0, and 80.0 mcg/ml.	Kit ctg: 6 vials	08/31/81
Abbott Laboratories	TDx Phenobarbital Calibrators B-F No. 9500 B-F	5 ml Vial	06/16/88
Abbott Laboratories	TDx Phenobarbital Calibrators No. 9500-01	5 Vials, 5 ml each	06/16/88
Abbott Laboratories	TDx Phenobarbital Controls No. 9500 L,M,H	5 ml Vial	06/16/88
Abbott Laboratories	TDx Phenobarbital Controls No. 9500-10	Kit: 3 Vials, 5 ml each	06/16/88
Abbott Laboratories	TDx Phenobarbital Controls—15.0, 30.0, 50.0 mcg/ml	Kit ctg: 3 vials	08/31/81
Abbott Laboratories	TDx Systems Multiconstituent Controls for Abused Drug (No. 9687-10).	Kit: 6 Bottles	09/03/87
Abbott Laboratories	Thyroxine Antiserum (Sheep, Rabbit, or Goat)	Plastic Bottle: 200ml, 20ml	04/22/76
Abbott Laboratories	Thyroxine Binding Globulin, Thyroxine I 125	Glass Bottle: 13ml. Plastic Bottle: 250ml	04/22/76
Abbott Laboratories	d-Amphetamine (II) Bulk Stock Standard Code No. 95947.	10 L Carboy; 6 L, 2 L, 1 L Flask	08/26/88
Abbott Laboratories	d-Amphetamine (II) Stock Standard Code No. 95934	1 L, 500 ml, 100 ml Bottle	08/26/88
Abbott Laboratories	d-Amphetamine (II) Stock Standard No. 95934, 95934 A-B.	Carboy: 20L, 10L Flask: 4L, 2L, 1L, 500 ml, 250 ml, 200 ml, 100 ml Bottle: 950ml, 500ml, 100ml,5ml.	11/22/88
Adri/Technam			
Adri/Technam	3-Ortho-Carboxymethylmorphine	Screw Cap Vial	05/03/73
Adri/Technam	5-Ethyl-5-(1-Carboxy-n-propyl) Barbituric Acid	Screw Cap Vial	05/03/73
Adri/Technam	5-Ethyl-5-(1-Carboxy-n-propyl) Barbituric Acid-Bovine Serum Albumin.	Vaccine Vial: 10ml	05/03/73
Adri/Technam	5-Ethyl-5-(1-Carboxy-n-propyl) Barbituric Acid-Rabbit Serum Albumin.	Vaccine Vial: 10ml	05/03/73
Adri/Technam	Barbiturate Standard	Screw-cap vial: 10ml	07/17/76
Adri/Technam	Barbituric Acid Sensitized Red Blood Cells	Vaccine Vial: 50ml	05/03/73
Adri/Technam	Benzoyl Ecgonine	Screw-cap vial: 10ml	04/18/74
Adri/Technam	Benzoyl Ecgonine Sensitized Red Blood Cells	Vaccine Vial: 50ml	05/03/73
Adri/Technam	Benzoyl Ecgonine Standard	Screw-cap vial: 10ml	07/17/76
Adri/Technam	Benzoyl Ecgonine-BSA	Vaccine Vial	07/21/75
Adri/Technam	Benzoyl Ecgonine-RSA	Vaccine Vial	07/21/75
Adri/Technam	CMM-BSA and CMM-RSA (Carboxymethylmorphine Bovine Serum Albumin or Carboxymethylmorphine Rabbit Serum Albumin).	Vaccine Vial: 10ml	05/03/73
Adri/Technam	Cannabuse Cannabidiol Standard	Disks: 25/package	05/03/85
Adri/Technam	Cannabuse Delta 8 THC Carboxylic Acid Standard	Disks: 25/package	09/19/84
Adri/Technam	Cannabuse Delta 8 THC Carboxylic Acid Standard	Vial: 6 ml	09/19/84
Adri/Technam	Cannabuse Delta 9 THC Carboxylic Acid Standard	Vial: 6 ml	09/19/84
Adri/Technam	Cannabuse Delta 9 THC Carboxylic Acid Standard	Disks: 25/package	09/19/84
Adri/Technam	Cannabuse Delta 9 THC Standard	Vial: 6 ml	09/19/84
Adri/Technam	Cannabuse Delta 9 THC Standard	Disks: 25/package	09/19/84
Adri/Technam	Drug Standards, Acid/ Neutral Mixture A and B	Disks: 25/package	11/15/85
Adri/Technam	Drug Standards, Basic Mixture A and B	Disks: 25/package	11/15/85
Adri/Technam	Methadone Standard	Screw-cap vial: 10ml	07/17/76
Adri/Technam	Morphine Sensitized Red Blood Cells	Vaccine Vial: 50ml	05/03/73
Adri/Technam	Morphine Standard (in distilled water)	Screw-cap vial: 10ml	07/17/77
Adri/Technam	Tropinecarboxylic Acid (ecgonine)	Screw-cap Bottle: 10ml	05/03/73
American Monitor Corporation			
American Monitor Corporation	Qualify I	Glass Vial: 10ml	10/09/75
American Monitor Corporation	Qualify II	Glass Vial: 10ml	10/09/75
Amersham Corporation			
Amersham Corporation	Amerlex T-3 RIA Kit, IM 2000, IM 2001, IM 2004	Kit: 50 tests, 100 tests, 400 tests	02/18/80
Amersham Corporation	Amerlex T-4 RIA Kit, IM 2010, IM 2011, IM 2014	Kit: 50 tests, 100 tests, 400 tests	02/06/80
Amersham Corporation	Amerlex-M B-hCG Radioimmunoassay Kit IM 3091,IM 3094.	Kit: 100 tests, 400 tests	06/19/85
Amersham Corporation	Amerlex-M T3 RIA Kit, 1M.3001, 1M.3004	Kit: 100 Tests 400 Tests	08/27/86
Amersham Corporation	Amerlex-M T4 RIA Kit, 1M.3011, 1M.3014	Kit: 100 Tests 400 Tests	08/27/86
Amersham Corporation	Codeine (N-methyl-C14) Hydrochloride	Custom Preparation	03/27/72
Amersham Corporation	Morphine (N-methyl-C14) Hydrocloride No. CFA-363	Vial: 0.32 to 1.89mg	03/27/72
Amersham Corporation	Pheno [2-14C] barbital Catalog No. CFA 537	Vial: 0.39 to 5.85mg	11/05/74
Amersham Corporation	Prolactin RIA Kit, IM 1060, 1061	Kit: 50 tests, 100 tests	03/28/80
Amersham Corporation	T-3 Uptake (MAA) Kit-IM 1020, IM 1021, IM 1024	Kit: 50 tests, 100 tests, 400 tests	02/05/79
Amersham Corporation	[1(N)-3H] Hydromorphone TRQ 4729	Vial: 47.5-95 micrograms	07/31/87
Amersham Corporation	[1(n)-3H] Codeine, No. TRK 448	Ampoule: 0.002mg to 0.015mg	02/26/74
Amersham Corporation	[1(n)-3H] Morphine, No. TRK-447	Vial: 0.002 mg to 0.015 mg	02/26/74
Amersham Corporation	[1,7,8(n)-3H]Dihydromorphine, No. TRK-450	Vial: 0.0008 mg to 0.008 mg	02/26/74
Amersham Corporation	[15, 16(n)-3H] Etorphine, Catalog No. TRK 476	Vial: 3.45 to 6.9 micrograms	11/19/74
Amersham Corporation	[15,16(n)-3H] Etorphine Catalog No. TRK 476	Vial: 13.8 to 27.6 micrograms	02/17/75

EXEMPT CHEMICAL PREPARATIONS—Continued

Supplier	Product	Form of product	Date
Amersham Corporation	[2(n)-3H] Lysergic Acid Diethylamide, No. TRK. 461	Vial: 0.003mg to 0.04mg	05/22/74
Amersham Corporation	[2-14C] Diazepam Catalog No. CFA.591	Multidose Glass Vial: 56mm x 25mm	09/28/77
Amersham Corporation	[N-methyl-3H] Diazepam Catalog Code: TRK.572	Multidose Glass Vial: 56mm x 25mm	09/28/77
Applied Sciences Laboratories			
Applied Sciences Laboratories	Allylisobutylbarbituric Acid	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Alphaprodine HCL	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Alphenal	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Alprazolam	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Amobarbital	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Amphetamine HCL	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Aprobarbital	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Barbital	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Barbiturates, Mixture 4	Vial: 10ml	10/04/72
Applied Sciences Laboratories	Benzoylecgonine Tetrahydrate	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Benzphetamine HCL	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Butabarbital	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Butethal	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Chloral Hydrate	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Chlordiazepoxide HCL	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Clonazepam	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Clorazepate Dipotassium	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Cocaine	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Codeine	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Delta-9-Tetrahydrocannabinol	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Depressants, Mixture 3	Vial: 10ml	10/04/72
Applied Sciences Laboratories	Dextropropoxyphene HCL	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Diacetylmorphine HCL	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Diallybarbituric acid	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Diazepam	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Diethylpropion HCL	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Dihydrocodeine	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Dimethyltryptamine	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Drug Mix Four	Ampoule: 1 ml	11/03/86
Applied Sciences Laboratories	Drug Mix One	Ampoule: 1 ml	10/21/86
Applied Sciences Laboratories	Drug Mix Three	Ampoule: 1 ml	11/03/86
Applied Sciences Laboratories	Drug Mix Two	Ampoule: 1 ml	10/21/86
Applied Sciences Laboratories	Ecgonine HCL	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Ethchlorvynol	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Ethinamate	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Ethylmorphine HCL	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Fenfluramine HCL	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Fentanyl	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Flurazepam HCL	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Glutethimide	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Halazepam	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Hexobarbital	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Hydrocodone Bitartrate	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Hydromorphone HCL	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Levorphanol Tartrate	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Lorazepam	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Lysergic Acid	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Lysergic Acid N-(methylpropyl) amide	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Lysergic Acid diethylamide	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Meperidine HCL	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Mephobarbital	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Meprobamate	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Mescaline	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Methadone HCL	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Methamphetamine HCL	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Methaqualone HCL	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Methohexital	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Methylphenidate	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Methyprylon	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Mixture 1-Opiates	Vial: 1ml	10/04/72
Applied Sciences Laboratories	Mixture 2-Stimulants	Vial: 1ml	10/04/72
Applied Sciences Laboratories	Mixture 3-Depressants	Vial: 1ml	10/04/72
Applied Sciences Laboratories	Mixture 4-Barbiturates	Vial: 1ml	10/04/72
Applied Sciences Laboratories	Mixture 5-Kit of Representatives	Vial: 1ml	10/04/72
Applied Sciences Laboratories	Morphine	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Nalorphine	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Norcodeine HCL	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Normorphine	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Opiates, Mixture 1	Vial: 10ml	10/04/72
Applied Sciences Laboratories	Oxazepam	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Oxycodone HCL	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Oxymorphone HCL	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Paraldehyde	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Pemoline	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Pentazocine	Vial: 1ml	04/16/85

EXEMPT CHEMICAL PREPARATIONS—Continued

Supplier	Product	Form of product	Date
Applied Sciences Laboratories	Pentobarbital	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Phenazocine HBr	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Phencyclidine HCL	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Phendimetrazine Bitartrate	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Phenobarbital	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Phentermine	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Prazepam	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Psilocybin	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Psilocyn	Vial: 1ml	11/06/87
Applied Sciences Laboratories	Secobarbital	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Stimulants, Mixture 2	Vial: 10ml	10/04/72
Applied Sciences Laboratories	Temazepam	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Thebaine	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Thiamylal	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Triazolam	Vial: 1ml	04/16/85
Armed Forces Institute of Pathology			
Armed Forces Institute of Pathology	11-nor-9-carboxy-delta 8-THC in Ethanol Ampules	Glass Ampule: 1mg/ml, 1ml, 5ml, 10ml	01/25/82
Astral Medical Systems			
Astral Medical Systems	Barbital Buffer	Plastic bag: 12.2g/bag	05/01/85
Astral Medical Systems	Barbital Lactate Buffer	Plastic bag: 18g/bag	05/01/85
Astral Medical Systems	Isoenzyme Buffer	Plastic bag: 14g/bag	05/01/85
Astral Medical Systems	Tris-Barbital Sodium Barbital Buffer	Plastic bag: 18g/bag	05/01/85
BHP Diagnostix, Inc.			
BHP Diagnostix, Inc.	Kallestad TDM Multi-Calibrator-Pilot Lot B-G	Kit: 7-3 ml Vials; 3 ml Vial	08/18/88
BHP Diagnostix, Inc.	Kallestad TDM Multi-Calibrator-Pilot-Lot Phenobarbital	3ml, 6ml, 10ml, 30ml, 50ml Vial	08/18/88
BHP Diagnostix, Inc.	Kodak Ektachem-DT Calibrator	Bottle: 6ml	01/05/85
Baxter Healthcare Corporation, Dade Division			
Baxter Healthcare Corporation, Dade Division.	(125I) Human TSH Tracer (Lyophilized), Catalog No. CA-2691.	Glass Vial: 10 ml	09/09/86
Baxter Healthcare Corporation, Dade Division.	(125I) Human TSH Tracer, Catalog No. CA-2611	Glass Vial: 10 ml	09/09/86
Baxter Healthcare Corporation, Dade Division.	Absorbed Plasma and Serum Reagents Kit (Catalog No. B4233-2).	Kit: 5 Vials	03/10/87
Baxter Healthcare Corporation, Dade Division.	Absorbed Plasma and Serum Reagents Kit B4233-2	Glass Vial: 5ml (Lyophilized Material)	08/16/71
Baxter Healthcare Corporation, Dade Division.	Anticonvulsant Drug Controls, Levels I and II, Catalog No. CA-2419 and CA-2420.	Glass Vial: 3.5 ml	09/09/86
Baxter Healthcare Corporation, Dade Division.	Bovine Chemistry Control I.X Special Order Request B5107-55XX.	Bottle: 18ml (Lyophilized Material)	01/29/86
Baxter Healthcare Corporation, Dade Division.	Bovine Chemistry Control II.X Special Order Request B5107-65XX.	Bottle: 18 ml (Lyophilized Material)	01/29/86
Baxter Healthcare Corporation, Dade Division.	Buffered Thrombin (Bovine) Catalog No. B4233-40	Bottle: 5ml (Lyophilized Material)	01/24/86
Baxter Healthcare Corporation, Dade Division.	Clinical Assays GammaCoat (125I) Phenobarbital Radioimmunoassay Kits Catalog No. CA-2545, CA-2565.	Kit: 50 Assays, 500 Assays	09/09/86
Baxter Healthcare Corporation, Dade Division.	Clinical Assays GammaCoat (125I) Phenytoin Radioimmunoassay Kit Catalog No. CA-2537, CA-2557.	Kit: 50 Assays, 500 Assays	09/09/86
Baxter Healthcare Corporation, Dade Division.	Clinical Assays GammaCoat (125I) T3 Uptake Radioimmunoassay Kit Catalog No. CA-2539, CA-2539J, CA-2559, CA-2559J.	Kit: 100 Assays, 100 Assays, 500 Assays, 500 Assays	09/09/86
Baxter Healthcare Corporation, Dade Division.	Clinical Assays GammaDab (125I) HS-HTSH Radioimmunoassay Kit Catalog No. CA-1573.	Kit: 125 Assays	09/09/86
Baxter Healthcare Corporation, Dade Division.	Clinical Assays GammaDab (125I) HTSH Radioimmunoassay Kit Catalog No. CA-2591J.	Kit: 125 Assays	09/09/86
Baxter Healthcare Corporation, Dade Division.	Dade Immunoassay Control, Level I-Low	Bottle: 9ml (Lyophilized Material)	04/25/86
Baxter Healthcare Corporation, Dade Division.	Dade Immunoassay Control, Level II-Intermediate	Bottle: 9ml (Lyophilized Material)	04/25/86
Baxter Healthcare Corporation, Dade Division.	Dade Immunoassay Control, Level III-High	Bottle: 9ml (Lyophilized Material)	04/25/86
Baxter Healthcare Corporation, Dade Division.	Dade Tri-Rac R Tri Level Immunoassay Controls	Bottle: 9ml 6 bottles per kit (Lyophilized Material)	04/11/85
Baxter Healthcare Corporation, Dade Division.	Data-Fi Fibrin Monomer Control Catalog Nos. B4233-30 & B4233-38.	Glass Vial: 5ml (Lyophilized Material)	01/24/86
Baxter Healthcare Corporation, Dade Division.	Data-Fi Protamine Sulfate Reagents Kit (Catalog No. B4233-30).	Kit: 10 Vials	03/10/87
Baxter Healthcare Corporation, Dade Division.	Data-Fi Thrombin Reagent	Bottle: 5ml (Lyophilized Material)	05/18/81
Baxter Healthcare Corporation, Dade Division.	Data-Fi Thrombin Reagent	Bottle: 9 ml (Lyophilized Material)	07/20/83
Baxter Healthcare Corporation, Dade Division.	HTSH Non-Specific Binding Reagent, Catalog No. CA-2752.	Glass Vial: 3.5 ml	09/09/86

EXEMPT CHEMICAL PREPARATIONS—Continued

Supplier	Product	Form of product	Date
Baxter Healthcare Corporation, Dade Division.	HTSH Non-Specific Binding Reagent, Catalog No. CA-2780.	Glass Vial: 3.5 ml	09/09/86
Baxter Healthcare Corporation, Dade Division.	Human TSH Controls Levels I and II, Catalog No. CA-2452 and CA-2453.	Glass Vial: 3.5 ml	09/09/86
Baxter Healthcare Corporation, Dade Division.	Moni-Trol Level I Chemistry Control, Assayed, Special Order Request. B5103-XXX.	Bottle: 9ml (Lyophilzed Material)	01/20/84
Baxter Healthcare Corporation, Dade Division.	Moni-Trol Level I.X Special Order Request B5106-5X	Bottle: 18ml (Lyophilized Material)	06/30/83
Baxter Healthcare Corporation, Dade Division.	Moni-Trol Level II Chemistry Control, Assayed, Special Order Request. B5103-XXX, B5113-XXX.	Bottle: 9ml (Lyophilized Material)	01/20/84
Baxter Healthcare Corporation, Dade Division.	Moni-Trol Level II.X Special Order Request B5106-6X	Bottle: 18ml (Lyophilized Material)	06/30/83
Baxter Healthcare Corporation, Dade Division.	Moni-Trol. ES Level I Chemistry Control, Assayed.	Bottles: 9ml, 6.7ml (Lyophilized Material)	07/15/83
Baxter Healthcare Corporation, Dade Division.	Moni-Trol. ES Level I.X Special Order Request Catalog No. B5106-75AAA Catalog No. B5106-1XAAA.	Bottle: 18ml, 9ml (Lyophilized Material)	06/27/86
Baxter Healthcare Corporation, Dade Division.	Moni-Trol. ES Level II Chemistry Control, Assayed	Bottle: 9ml, 6.7ml (Lyophilized Material)	07/15/83
Baxter Healthcare Corporation, Dade Division.	Moni-Trol. ES Level II.X Special Order Request Catalog No. B5106-85AAA Catalog No. B5106-2XAAA.	Bottle: 18ml, 9ml (Lyophilized Material)	06/27/86
Baxter Healthcare Corporation, Dade Division.	Owren's Veronal Buffer	Bottle: 18ml	08/16/71
Baxter Healthcare Corporation, Dade Division.	Rabbit Anti-Human TSH Serum, Catalog No. CA-2109	Glass Vial: 20 ml	09/09/86
Baxter Healthcare Corporation, Dade Division.	Stratus Phenobarbital Calibrators B, C, D, E, & F	Glass Vial: 3ml	06/27/83
Baxter Healthcare Corporation, Dade Division.	Stratus Phenobarbital Conjugate	Glass Vial: 6ml	01/25/82
Baxter Healthcare Corporation, Dade Division.	Stratus Phenobarbital Fluorometric Enzyme Immunoassay Kit (Catalog No. B5700-22).	Kit: 120 tests	03/10/87
Baxter Healthcare Corporation, Dade Division.	Stratus TDM Control Level I-Low B5700-2	Glass Vial: 9ml (Lyophilized Material)	01/21/82
Baxter Healthcare Corporation, Dade Division.	Stratus TDM Control Level II-Intermediate B5700-3	Glass Vial: 9ml (Lyophilized Material)	01/21/82
Baxter Healthcare Corporation, Dade Division.	Stratus TDM Control Level III-High B5700-4	Glass Vial: 9ml (Lyophilized Material)	01/21/82
Baxter Healthcare Corporation, Dade Division.	Stratus Therapeutic Drug Monitoring (TDM) Controls (Catalog No. B5700-1).	Kit: 9 Vials	03/10/87
Baxter Healthcare Corporation, Dade Division.	Thrombin Reagent (Bovine)	Bottle: 5ml (Lyophilized Material)	08/16/71
Baxter Healthcare Corporation, Dade Division.	Tri Rac R Immunoassay Control Level II Intermediate	Bottle: 9 ml (Lyophilized Material)	04/11/85
Baxter Healthcare Corporation, Dade Division.	Tri Rac R Immunoassay Control Level III High	Bottle: 9 ml (Lyophilized Material)	04/11/85
Baxter Healthcare Corporation, Dade Division.	Tri-Rac R Immunoassay Control, Level I-Low	Bottle: 9ml (Lyophilized Material)	04/11/85
Beckman Instruments, Inc.			
Beckman Instruments, Inc.	Beckman B-1 Buffer	Plastic Vial: 15 g	05/22/79
Beckman Instruments, Inc.	Beckman Buffer B-2	Packet: 18.16 g	04/24/71
Beckman Instruments, Inc.	Beckman ICS Drug Calibrators A, B, C, D, and E	Vials: 5ml	10/29/80
Beckman Instruments, Inc.	Beckman ICS Drug Control Sera	Kit containing: 6-1ml bottles	11/11/80
Beckman Instruments, Inc.	Beckman ICS Phenobarbital Conjugate	Vial: 5ml	10/29/80
Beckman Instruments, Inc.	Beckman LD Buffer	Bottle: 14.3 grams	07/31/86
Beckman Instruments, Inc.	Beckman LD Buffer	Bottle: 14.3 grams	07/31/86
Beckman Instruments, Inc.	Paragon Electrophoresis System: Immunofixation Electrophoresis (IFE) Kit.	Plastic Tray: 3.5ml	07/31/86
Beckman Instruments, Inc.	Paragon Electrophoresis System: Lactate Dehydrogenase Isoenzyme Electrophoresis (LD) Kit.	Plastic Tray: 3.5ml	07/31/86
Beckman Instruments, Inc.	Paragon Electrophoresis System: Protein Electrophoresis (SPE-II) Kit.	Plastic Tray: 3.5ml	07/31/86
Becton Dickinson & Company			
Becton Dickinson & Company	Antibody Coated Tubes	Metallized Plastic Bag: 50 Tubes/Bag	02/13/78
Becton Dickinson & Company	Barbital Buffer Solution, Catalog No. 246514	Bottle: 1 ounce	08/01/84
Becton Dickinson & Company	Euthyroid Reference Standard, Catalog No. 237418	Vial: 4ml	09/27/78
Becton Dickinson & Company	Human Thyroid Stimulating Hormone (hTSH) Radioimmunoassay Kit [125I], Catalog No. 262994.	Kit: 200 tubes	09/04/86
Becton Dickinson & Company	Human Thyroid Stimulating Hormone (hTSH) Radioimmunoassay Kit (125I), Catalog No. 258423.	Kit: 250 tubes	08/01/84
Becton Dickinson & Company	IQ Immunochemistry System, Thyroid Stimulating Hormone, Catalog No. 3010.	Kit: 25 tests	06/30/87
Becton Dickinson & Company	Neonatal TSH Antiserum, Catalog No. 244716	Vial: 50 ml	08/01/84
Becton Dickinson & Company	Precipitating Antiserum, Catalog No. 247618	Vial: 50 ml	08/01/84
Becton Dickinson & Company	Simul Trac Free T4/TSH Antiserum, No. 262641	Vial: 1 oz.	02/21/86
Becton Dickinson & Company	Simul Trac Free T4[57 Co]/TSH[125I] Radioimmunoassay Kit, No. 262625.	Kit: 200 tubes	02/21/86
Becton Dickinson & Company	T3 Antibody Coated Tubes, Catalog No. 237213	Box containing 100 tubes	09/27/78
Becton Dickinson & Company	T3 Tracer Solution, Catalog No. 237728	Bottle: 125ml	09/27/78
Becton Dickinson & Company	T4 Tracer Solution, Catalog No. 232611	White NALGENE Polypropylene Bottle: 125 ml.	02/13/78

EXEMPT CHEMICAL PREPARATIONS—Continued

Supplier	Product	Form of product	Date
Becton Dickinson & Company	TSH (125I) Tracer, Catalog No. 243621	Vial: 50 ml	08/01/84
Becton Dickinson & Company	TSH Antiserum, Catalog No. 263001	Clear Vial: 10ml	09/04/86
Becton Dickinson & Company	TSH Antiserum, Catalog No. 258431	Vial: 50 ml	08/01/84
Becton Dickinson & Company	TSH Standard A, Catalog No. 259829	Amber Vial: 10ml	09/04/86
Becton Dickinson & Company	TSH Standard B, Catalog No. 259837	Amber Vial: 10ml	09/04/86
Becton Dickinson & Company	TSH Standard C, Catalog No. 259845	Amber Vial: 10ml	09/04/86
Becton Dickinson & Company	TSH Standard D, Catalog No. 259853	Amber Vial: 10ml	09/04/86
Becton Dickinson & Company	TSH Standard E, Catalog No. 263052	Amber Vial: 10ml	09/04/86
Becton Dickinson & Company	TSH Standard F, Catalog No. 263061	Amber Vial: 10ml	09/04/86
Becton Dickinson & Company	TSH [125I] Tracer, Catalog No. 259624	Clear vial: 10ml	09/04/86
Behring Diagnostics			
Behring Diagnostics	IEP Buffer, 793001 pH 8.2	Foil Pouch: 6.5 g.	09/17/79
Behring Diagnostics	Immuno-tec II Agarose Plate, 839013, 850013	Foil Pouch: "5.35" x "5.25"	09/17/79
Bio-Rad Laboratories			
Bio-Rad Laboratories	Lyphochek Therapeutic Drug Monitoring Control (TDM), Levels I, II, III.	Vial: 10ml	08/20/84
Bio-Rad Laboratories	Lypochek Immunoassay Control Levels I, II, III	Vial: 10 ml	09/24/87
Bio-Rad Laboratories	Lypochek Quantitative Urine Control Levels I and II	Vial: 20 ml, 50 ml	09/24/87
Bio-Rad Laboratories	Lypochek Unassayed Chemistry Control (Bovine) Levels I, II.	Vial: 20 ml	09/24/87
Bio-Rad Laboratories	Lypochek Unassayed Chemistry Control (Human) Levels I, II.	Vial: 20 ml	09/24/87
Bio-Rad Laboratories	Quantaphase Thyroxine RIA-125I Tracer/Dissociating Reagent.	Plastic bottle: 60ml, 260ml	05/06/81
Bio-Rad Laboratories	Quantaphase Thyroxine RIA-Thyroxine Immunobeads	Plastic bottle: 60ml, 260ml	05/06/81
Bio-Rad Laboratories	Quantimune Barbital Buffer	Plastic Bottle: 1000ml, 250ml, 200ml	05/31/78
Bio-Rad Laboratories	Quantimune Radioimmunoassay T-4 Tracer, Iodine-125.	Vial: 10 ml	07/21/76
Bio-Rad Laboratories	Quantimune T-3 RIA Barbital Buffer	Bottle: 220ml	09/24/82
Bio-Rad Laboratories	Quantimune T-3 RIA Test Kit	Kit: 500 tests, 100 tests	05/31/78
Bio-Rad Laboratories	Quantimune T-4 RIA Kit	Kit: 500 tests	07/01/77
Bio-Rad Laboratories	Quantimune T-4 RIA Test Kit	Kit: 5000 tests, 100 tests	05/31/78
Bio-Rad Laboratories	Quantimune Thyroxine Radioimmunoassay Barbital Buffer.	Plastic Bottle with Screw cap: 1 liter	07/01/77
Bio-Rad Laboratories	Quantimune Thyroxine Radioimmunoassay T-4 125I Tracer/Dissociating Agent.	Glass Serum Vial: 10 ml	07/01/77
Bio-Rad Laboratories	T-4 Competitive Binding Reagent, Iodine-125	Bottle: 385 ml	07/21/76
Bio-Rad Laboratories	Urine Toxicology Control No. C-470-25	Amber Vial: 50ml	09/19/79
Bio-Rad Laboratories, (Chemical Division)			
Bio-Rad Laboratories, (Chemical Division).	Barbital Buffer	Vial: 10ml	07/21/76
Bio-Rad Laboratories, (Chemical Division).	Barbital Buffer Powder	Plastic bottle: 250ml	07/21/76
Bio-Rad Laboratories, (Chemical Division).	Barbital Buffer Powder	Plastic bottle: 250 ml	09/09/77
Bio-Rad Laboratories, (Chemical Division).	Barbital Buffer-Dry Pack	Packages: 9.11 g., 18.21 g., 12.14 g.	05/09/74
Bio-Rad Laboratories, (Chemical Division).	Bio-Rad Electrophoresis Buffer	Bottle: 500ml	12/14/72
Bio-Rad Laboratories, (Chemical Division).	Electrophoresis Buffer, Dry-Pack	Package: 6.15 g.	12/14/72
Bio-Rad Laboratories, (Chemical Division).	Immunoelectrophoresis Barbital Buffer I, pH 8.6	Dry-pack: 25.6 g.	08/06/75
Bio-Rad Laboratories, (Chemical Division).	Immunoelectrophoresis Barbital Buffer II, pH 8.6	Dry-pack: 15.61 g.	08/06/75
Bio-Rad Laboratories, (Chemical Division).	Immunoelectrophoresis Barbital Buffer III, pH 8.6	Dry-pack: 6.82 g.	01/22/76
Bio-Rad Laboratories, (Chemical Division).	Immunoelectrophoresis Barbital Buffer III-a, pH 8.8	Dry-pack: 15.07 g.	08/06/75
Bio-Rad Laboratories, (Chemical Division).	Reagent No. 3	Bottle: 165 ml	12/14/72
Bio-Rad Laboratories, ECS Division			
Bio-Rad Laboratories, ECS Division	LYPHOCHEK Assayed Chemistry Control Serum (Human) Levels I and II.	Vials: 10 ml. each	04/13/88
Bio-Rad Laboratories, ECS Division	LYPHOCHEK Urine Toxicology Control-Law	Vials: 20 ml. each	04/13/88
Biodiagnostic International			
Biodiagnostic International	Liqui-Ura Toxic Control	Vial: 5ml	03/11/85
Biodiagnostic International	Urine - Tox Control	Vial: 5 ml	04/01/85
Bioscientific, Corporation			
Bioscientific, Corporation	ECA Buffer, Catalog No. ECA 05805	Plastic Packet: 18.0 g., 10 packets per box	07/14/77
California Bionuclear Corporation			
California Bionuclear Corporation	Amobarbital-2-C-14, Catalog No. 72077	Screw Cap Vial: 50 microcuries, 0.1, 0.5, and 1.0 millicuries.	01/08/75

EXEMPT CHEMICAL PREPARATIONS—Continued

Supplier	Product	Form of product	Date
California Bionuclear Corporation	Cocaine (methoxy-C-14) Catalog No. 72182	Screw Cap Vial: 50 microcuries, 0.1, 0.5, and 1.0 millicuries.	01/08/75
California Bionuclear Corporation	D-Amphetamine (propyl-1-C-14) Sulfate, Catalog No. 72078.	Screw Cap Vial: 50 microcuries, 0.1, 0.5, and 1.0 millicuries.	01/08/75
California Bionuclear Corporation	DL-Amphetamine (propyl-1-C-14) Sulfate, Catalog No. 72079.	Screw Cap Vial: 50 microcuries, 0.1, 0.5, and 1.0 millicuries.	01/08/75
California Bionuclear Corporation	Meperidine (N-methyl-C-14) Hydrochloride, Catalog No. 72508.	Screw Cap Vial: 50 microcuries, 0.1, 0.5, 1.0 millicuries.	01/08/75
California Bionuclear Corporation	Mescaline (aminomethylene-C-14) Hydrochloride, Catalog No. 72512.	Screw Cap Vial: 50 microcuries, 0.1, 0.5, 1.0 millicuries.	01/08/75
California Bionuclear Corporation	Methadone (heptanone-2-C-14) Hydrochloride, Catalog No. 72516.	Screw Cap Vial: 50 microcuries, 0.1, 0.5, 1.0 millicuries.	01/08/75
California Bionuclear Corporation	Methamphetamine (propyl-1-C-14) Sulfate, Catalog No. 72517.	Screw Cap Vial: 50 microcuries, 0.1, 0.5, 1.0 millicuries.	01/08/75
California Bionuclear Corporation	Methylphenidate (carbonyl-C-14) Hydrochloride, Catalog No. 72550.	Screw Cap Vial: 50 microcuries, 0.1, 0.5, 1.0 millicuries.	01/08/75
California Bionuclear Corporation	Morphine (n-methyl-C-14) Hydrochloride, Catalog No. 72560.	Screw Cap Vial: 50 microcuries, 0.1, 0.5, 1.0 millicuries.	01/08/75
California Bionuclear Corporation	Pentobarbital-2-C-14, Catalog No. 72618	Screw Cap Vial: 50 microcuries, 0.1, 0.5, 1.0 millicuries.	01/08/75
California Bionuclear Corporation	Secobarbital-2-C-14, Catalog No. 72675	Ampule: 50 microcuries, 0.1, 0.5, and 1.0 millicuries	01/08/75
Cambridge Medical Diagnostics, Incorporated			
Cambridge Medical Diagnostics, Incorporated.	125I Human Parathyroid Hormone 44-68	Vial: 5ml	03/29/85
Cambridge Medical Diagnostics, Incorporated.	125I-Tetraiodothyronine	Vial: 11ml	03/29/85
Cambridge Medical Diagnostics, Incorporated.	125I-Triiodothyronine	Vial: 11ml	03/29/85
Cambridge Medical Diagnostics, Incorporated.	Donkey Anti Goat Gamma Globulin	Vial: 5ml	03/29/85
Cambridge Medical Diagnostics, Incorporated.	Parathyroid Hormone (Human 1-84) Standard	6 Vials: 5ml each	03/29/85
Cambridge Medical Diagnostics, Incorporated.	Parathyroid Hormone Assay Buffer	Vial: 10ml	03/29/85
Cambridge Medical Diagnostics, Incorporated.	T3 AntiSerum (Rabbit)	Vial: 11ml	03/29/85
Cambridge Medical Diagnostics, Incorporated.	T3 Standard	Vial: 1ml	03/29/85
Cambridge Medical Diagnostics, Incorporated.	T4 Antiserum (Rabbit)	Vial: 11ml	03/29/85
Cambridge Medical Diagnostics, Incorporated.	T4 Standard	Vial: 1ml	03/29/85
Ciba Corning Diagnostics Corp			
Ciba Corning Diagnostics Corp	AACC Tox	Glass Vial: 30ml	01/20/86
Ciba Corning Diagnostics Corp	Gilford Bi-Level Anticonvulsant/Antiasthmatic Control	Kit Contains: 5 Vials each level	10/22/85
Ciba Corning Diagnostics Corp	Gilford Bi-Level Anticonvulsant/Antiasthmatic Control, Level I & II.	Vials: 10ml	10/22/85
Ciba Corning Diagnostics Corp	Gilford Bi-Level Toxicology Control	Kit: Contains: 5 Vials each level	12/16/85
Ciba Corning Diagnostics Corp	Gilford Bi-Level Toxicology Control, Level I & II	Vials: 10ml	12/16/85
Ciba Corning Diagnostics Corp	Gilford TDM Control Levels I–III	Vial: 6ml	10/22/85
Ciba Corning Diagnostics Corp	Gilford Tri Level TDM Control	Kit Contains: 5 Vials each level	10/22/85
Ciba Corning Diagnostics Corp	Gilford Urine Control II	Vial: 30ml	05/22/85
Ciba Corning Diagnostics Corp	Gilford Urine Toxicology Control	Vial: 30ml	12/16/85
Ciba Corning Diagnostics Corp	Immophase Ferritin Controls	Glass Vial: 3 ml	01/19/87
Ciba Corning Diagnostics Corp	Immophase Ferritin Standards	Glass Vial: 5 ml	09/16/86
Ciba Corning Diagnostics Corp	Magic Ferritin 2000 Standard	Plastic Vial: 1 ml	01/19/87
Ciba Corning Diagnostics Corp	Magic Ferritin Controls	Plastic Vial: 5 ml	01/19/87
Ciba Corning Diagnostics Corp	Magic Ferritin Standards	Polypropylene Vial: 3 ml	09/16/86
Ciba Corning Diagnostics Corp	Magic Ferritin Zero Standard	Plastic Vial: 50 ml	01/19/87
Ciba Corning Diagnostics Corp	Magic Lite Ferritin Bulk Lite Reageant	Plastic Vial: 50 ml	02/16/88
Ciba Corning Diagnostics Corp	Magic Lite Ferritin Bulk Solid Phase	Plastic Vial: 200 ml	02/16/88
Ciba Corning Diagnostics Corp	Magic Lite Ferritin Lite Reageant	Plastic Vial: 10 ml	02/16/88
Ciba Corning Diagnostics Corp	Magic Lite Ferritin Solid Phase	Plastic Vial: 50 ml	02/16/88
Ciba Corning Diagnostics Corp	Magic Lite T3 Bulk Solid Phase	Plastic Vial: 200 ml	02/16/88
Ciba Corning Diagnostics Corp	Magic T4 Antibody	Plastic Vial: 50 ml and 200 ml	02/16/88
Ciba Corning Diagnostics Corp	Reagent A- Alt 14	Vial: 15 ml	03/24/79
Ciba Corning Diagnostics Corp	Reagent A- Alt 7	Vial: 15 ml	03/24/79
Ciba Corning Diagnostics Corp	Reagent A-Ammonia 10	Vial: 10 ml	03/24/79
Ciba Corning Diagnostics Corp	Special Barbital Buffer Set, Catalog No. 470182	Vial: 3 per kit	04/17/79
Ciba Corning Diagnostics Corp	Universal Electrophoresis Film Agarose, Catalog No. 470100.	Plates: 12 per kit	04/17/79
Ciba Corning Diagnostics Corp	Universal PHAB Buffer Set Catalog No. 470180	Kit: 3 vials per kit	09/26/79
Cone Biotech, Inc.			
Cone Biotech, Inc.	QCM-UTI	Vial: 20ml	03/07/85
Cone Biotech, Inc.	RIATRAC-Three Level Ligand Assay Controls	Vials: 8ml	02/27/84

EXEMPT CHEMICAL PREPARATIONS—Continued

Supplier	Product	Form of product	Date
Cone Biotech, Inc.	UDM-CAP/AACC Forensic Urine Drug Testing Survey (Initial Phase).	Bottle: 60 ml	06/31/87
Diamedix Corporation			
Diamedix Corporation	Barbital-Acetate Buffer, Powder 709-317	Package: 20 envelopes-10.65 g. per envelope	07/27/72
Diamedix Corporation	CEP Plate-Amebiasis Testing 40 Test No. 730-274	Plate: 40mm x 80mm x 2.5mm	08/09/73
Diamedix Corporation	CEP VI No. 709-339	Plate: 40mm x 80mm x 2.5mm	08/09/73
Diamedix Corporation	Counterelectrophoresis (CEP) Plates for Trichinosis Testing.	Plastic plates: 40mm x 80mm x 2.5mm	06/16/75
Diamedix Corporation	EDTA (0.014M)-GVB Buffer, 753-034	Bottle: 5ml	08/09/73
Diamedix Corporation	EDTA (0.01M)-GVB Buffer, 753-031	Bottle: 5ml	08/09/73
Diamedix Corporation	GVB(3+) Buffer 753-037	Bottle: 50ml	08/09/73
Diamedix Corporation	Glucose-GVB 1 Buffer, 753-036	Bottle: 50ml	08/09/73
Duo Research, Inc.			
Duo Research, Inc.	Drug Testing Assessment Program Quality Control Samples.	Kit: 25 bottles	12/26/86
Duo Research, Inc.	Drug Testing Assessment Program-Quality Control Sample.	Bottle: 65ml	02/27/86
Duo Research, Inc.	Drug Testing Assessment Program-Quality Control Sample Kit.	Kit: 5-65ml bottles	02/27/86
E.I. duPont de Nemours & Co., Incorporated			
E.I. duPont de Nemours & Co., Incorporated.	(1) PREP Sample Preparation and Analysis Kit	Kit containing following:	09/25/78
E.I. duPont de Nemours & Co., Incorporated.	(2) PREP Buffer/Internal Standard and Liquid Chromatography Verifier.	Box containing following:	09/25/78
E.I. duPont de Nemours & Co., Incorporated.	(2a) PREP Liquid Chromatography Verifier	Vial: 10ml (1 vial/box)	09/25/78
E.I. duPont de Nemours & Co., Incorporated.	(2b) PREP Buffer/Internal Standard	Vial: 100ml (3 vials/box)	09/25/78
E.I. duPont de Nemours & Co., Incorporated.	(3) PREP Calibrators	Box containing following:	09/25/78
E.I. duPont de Nemours & Co., Incorporated.	(3a) PREP Calibrator-Level 1	Vial: 10ml (1 vial/box)	09/25/78
E.I. duPont de Nemours & Co., Incorporated.	(3b) PREP Calibrator-Level 2	Vial: 10ml (1 vial/box)	09/25/78
E.I. duPont de Nemours & Co., Incorporated.	(3c) PREP Calibrator-Level 3	Vial: 10ml (1 vial/box)	09/25/78
E.I. duPont de Nemours & Co., Incorporated.	(3d) PREP Calibrator-Level 4	Vial: 10ml (1 vial/box)	09/25/78
E.I. duPont de Nemours & Co., Incorporated.	(4) PREP Controls	Box containing following:	09/25/78
E.I. duPont de Nemours & Co., Incorporated.	(4a) PREP Control-Low Level	Vial: 10ml (2 vials/box)	09/25/78
E.I. duPont de Nemours & Co., Incorporated.	(4b) PREP Control-High Level	Vial: 10ml (2 vials/box)	09/25/78
E.I. duPont de Nemours & Co., Incorporated.	DuPont Drug Calibrators- Levels 1 through 5	Vial: 6ml (1 vial and 2 vials/box)	04/04/86
E.I. duPont de Nemours & Co., Incorporated.	DuPont Phenobarbital Assay	Vial: 6 ml	10/13/86
E.I. duPont de Nemours & Co., Incorporated.	DuPont U Amp Enzyme Pack Reagent	Bottle: 1 liter	10/19/87
E.I. duPont de Nemours & Co., Incorporated.	DuPont U Barb Enzyme Pack Reagent	Bottle: 1 liter	10/19/87
E.I. duPont de Nemours & Co., Incorporated.	DuPont U Benz Enzyme Pack Reagent	Bottle: 1 liter	10/19/87
E.I. duPont de Nemours & Co., Incorporated.	DuPont U COC Enzyme Pack Reagent	Bottle: 1 liter	10/19/87
E.I. duPont de Nemours & Co., Incorporated.	DuPont U OPI Enzyme Pack Reagent	Bottle: 1 liter	08/28/87
E.I. duPont de Nemours & Co., Incorporated.	DuPont Urine Drugs-of-Abuse Calibrator (Levels 0,1,2)	Box: 6 Vials, 6ml Vial	07/27/87
E.I. duPont de Nemours & Co., Incorporated.	DuPont Urine Drugs-of-Abuse Control	Vial: 6 ml	08/03/87
E.I. duPont de Nemours & Co., Incorporated.	DuPont aca Barbiturate Screen Analytical Test Pack	Plastic Packs: 25 tests	12/23/84
E.I. duPont de Nemours & Co., Incorporated.	DuPont aca Barbiturate Screen/Benzodiazepine Screen Calibrator.	6 Vials: 3ml	02/23/84
E.I. duPont de Nemours & Co., Incorporated.	DuPont aca Benzodiazepine Screen Analytical Test Pack.	Plastic Packs: 25 tests	02/23/84
E.I. duPont de Nemours & Co., Incorporated.	Phenobarbital Calibrator- Level 1	Vial: 6ml (1 vial/box)	04/02/86
E.I. duPont de Nemours & Co., Incorporated.	Phenobarbital Calibrator- Level 2	Vial: 6ml (1 vial/box)	04/02/86
E.I. duPont de Nemours & Co., Incorporated.	Phenobarbital Calibrator- Level 3	Vial: 6ml (1 vial/box)	04/02/86
E.I. duPont de Nemours & Co., Incorporated	Phenobarbital Calibrator- Level 4	Vial: 6ml (1 vial/box)	04/02/86

EXEMPT CHEMICAL PREPARATIONS—Continued

Supplier	Product	Form of product	Date
E.I. duPont de Nemours & Co., Incorporated.	Phenobarbital Calibrator- Level 5	Vial: 6ml (1 vial/box)	04/02/86
E.I. duPont de Nemours & Co., Incorporated.	Theophylline Calibrator Levels 1, 2 and 3	Vial: 6 ml. Box contains 2 vials each level	09/21/88
E.I. duPont de Nemours & Co., Incorporated.	Thyroid Rotor	Foil Pouch: 1 Rotor Shelf Carton: 10 Rotors Box: 5 Shelf Cartons (50 Rotors).	10/25/88
E.I. duPont de Nemours & Co., Incorporated.	Thyronine (TU) Uptake Flex(tm) Reagent Cartridge	Plastic container: 2.3ml (20 tests)	04/28/86
E.I. duPont de Nemours & Co., Incorporated.	Urine Amphetamine (U Amp) Test Pack	Carton: 50 tests	08/27/87
E.I. duPont de Nemours & Co., Incorporated.	Urine Barbiturate (U Barb) Test Pack	Carton: 50 tests	08/27/87
E.I. duPont de Nemours & Co., Incorporated.	Urine Benzodiazepine (U Benz) Test Pack	Carton: 50 tests	08/27/87
E.I. duPont de Nemours & Co., Incorporated.	Urine Cocaine (U COC) Test Pack	Carton: 50 tests	08/27/87
E.I. duPont de Nemours & Co., Incorporated.	Urine Opiate (U OPI) Test Pack	Carton: 50 tests	07/08/87
E.I. duPont de Nemours & Co., Incorporated.	aca PHNO Analytical Test Pack	Carton: 40 tests packs	08/25/77
E.I. duPont de Nemours & Co., Incorporated.	aca Thryonine Uptake Analytical Test Pack	Plastic Pack: 1 test	08/25/83
E.I. duPont de Nemours & Co., Inc., Medical Products			
E.I. duPont de Nemours & Co., Inc., Medical Products.	5-Cyclohexenyl-3,5,-Dimethyl barbituric Acid (3H(G)), Catalog No. NET-426.	Combi-Vial: 250 microcuries, 1 millicurie, and 5 millicuries.	01/04/77
E.I. duPont de Nemours & Co., Inc., Medical Products.	Acetaldehyde (1,2-14C) as Paraldehyde, Catalog No. NEC-158.	Pyrex Glass Breakseal Tube: 250 microcuries, 1 millicurie.	01/04/77
E.I. duPont de Nemours & Co., Inc., Medical Products.	Cocaine, Levo-[Benzoyl] [3.4-3H(N)] Catalog No. NET-510.	Combi-Vial: 100 microcuries, 250 microcuries	01/04/77
E.I. duPont de Nemours & Co., Inc., Medical Products.	Diazepam [Methyl-3H] Catalog No. NET-564	Combi-Vial: 0.250 millicuries, 1.0 millicurie	09/06/79
E.I. duPont de Nemours & Co., Inc., Medical Products.	Dihydromorphine [7,8-3H(N)]	Combi-Vial: 250 microcuries, 1 millicurie	01/04/77
E.I. duPont de Nemours & Co., Inc., Medical Products.	Dihydromorphine[N-Methyl-3H] NET-658	Combi-Vial: 0.250 millicuries, 1.0 millicurie	02/29/80
E.I. duPont de Nemours & Co., Inc., Medical Products.	Flunitrazepam [Methyl-3H] NET-567	Combi-Vial: 0.250 millicuries, 1.0 millicurie	04/29/87
E.I. duPont de Nemours & Co., Inc., Medical Products.	LSD [N-Methyl-3H] NET-638	Combi-Vial: 0.250 millicuries, 1.0 millicurie	11/06/79
E.I. duPont de Nemours & Co., Inc., Medical Products.	Mazindol (4'-3H) Catalog No. NET-816	Combi-Vial: 0.250 millicuries, 1.0 millicurie	05/17/84
E.I. duPont de Nemours & Co., Inc., Medical Products.	Methylenedioxymethamphetamine, (+)3,4-[N-methyl-3H] NET-957.	Combi-Vial: 0.0250 millicuries, 0.25 millicuries, 1.0 millicuries.	08/25/75
E.I. duPont de Nemours & Co., Inc., Medical Products.	Methylphenidate, +/- threo[methyl-3H] NET-857	Combi-Vial: 0.250 millicuries, 1.0 millicurie	06/11/84
E.I. duPont de Nemours & Co., Inc., Medical Products.	Morphine [N-methyl-3H] NET-653	Combi-Vial: 0.250 millicuries, 1.0 millicurie	02/29/80
E.I. duPont de Nemours & Co., Inc., Medical Products.	N-[1-(2-Thienyl) Cyclohexyl]-3,4-Piperidine (Piperidyl-3,4-3H) NET-886.	Combi-Vial: 0.250 millicuries, 1.0 millicurie	06/11/84
E.I. duPont de Nemours & Co., Inc., Medical Products.	Phencyclidine [Piperidyl-3,4-3H(N)], Catalog No. NET-630.	Combi-Vial: 0.250 millicuries, 1.0 millicurie	09/06/79
E.I. duPont de Nemours & Co., Inc., Medical Products.	d-Amphetamine Sulfate (3H(G)), Catalog No. NET-140.	Combi-Vial: 250 microcuries, 1 millicurie, and 5 millicuries.	01/04/77
EM Diagnostic Systems, Inc.			
EM Diagnostic Systems, Inc.	EMDS Antiepileptic Drug Calibrator Item No. 67630/95.	Box: 3 Vials, 5 ml each	06/11/86
EM Diagnostic Systems,Inc.	EMDS Test Packs, Phenobarbital (PHENO) Item No. 67677/95.	Carton: 48 Test Packs	09/09/86
EM Diagnostic Systems, Inc.	Easytest Phenobarbital Assay Item No. 67534/93	Cuvette: 1.8ml (40 cuvettes /carton)	06/11/86
Eastman Kodak Company			
Eastman Kodak Company	KODATROL Control I Control and Diluent Set	1 Set: 2 amber glass vials ea. 6 ml 1 Box: 12 sets	07/21/88
Eastman Kodak Company	KODATROL Control II Control and Diluent Set	1 Set: 2 amber glass vials ea. 6 ml 1 Box: 12 sets	07/21/88
Eastman Kodak Company	Kodak EKTACHEM Specialty Calibrator	Vial: 3ml	09/13/85
Eastman Kodak Company	Kodak EKTACHEM Specialty Control I	Vial: 3ml	09/13/85
Electro-Nucleonics Laboratories, Incorporated			
Electro-Nucleonics Laboratories, Incorporated.	VIRGO IPA Immuno-Precipitation Assay for Phenobarbital.	Kit	11/30/82
Endocrine Metabolic Center			
Endocrine Metabolic Center	0.1% Lysozyme-Barbital Buffer, 0.05M	Glass Bottle: 2 liter	05/28/87
Endocrine Metabolic Center	1% Lysozyme-Barbital Buffer, 0.05M	Glass Bottle: 2 liter	05/28/87
Endocrine Metabolic Center	Barbital Buffer, 0.05M	Plastic Bottle: 3000 ml	05/28/87
Endocrine Metabolic Center	Barbital Buffer, 0.1M	Plastic Bottle: 3000 ml	05/28/87
Endocrine Metabolic Center	Tracer Diluent	Glass Bottle: 1 or 2 liter	05/28/87

EXEMPT CHEMICAL PREPARATIONS—Continued

Supplier	Product	Form of product	Date
Environmental Diagnostics, Inc.			
Environmental Diagnostics, Inc.	EZ-Screen: Cannabinoid Enzyme Conjugate	Ampule: 1 ml	02/03/87
Environmental Diagnostics, Inc.	EZ-Screen: Cannabinoid Kit Catalog No. 216-2BP	Kit: 1 test	02/03/87
Environmental Diagnostics, Inc.	EZ-Screen: Cannabinoid Positive Control	Ampule: 1 ml	02/03/87
Fisher Scientific			
Fisher Scientific	Electrophoretic Buffer No. 1 pH 8.60, Ionic Strength 0.05, Catalog No. E-1.	Packet: 12.14 g	10/27/72
Fisher Scientific	Electrophoretic Buffer No. 2, pH 8.60, Ionic Strength 0.075, Catalog No. E-2.	Packet: 18.16 g	10/27/72
Fisher Scientific	Owren's Veronal Buffer, CS1094-34	Vial: 10 ml	08/18/86
Fisher Scientific	Owren's Veronal Buffer, CS1094-38	Vial: 25 ml	08/18/86
Fisher Scientific	SeraChem Abnormal Clinical Chemistry Control Serum (Human) Unassayed No. 2906.	Vial: 5ml, 10ml	04/16/82
Fisher Scientific	SeraChem Abnormal Clinical Chemistry Control Serum (Human), Assayed No. 2905.	Vial: 5ml	04/16/82
Fisher Scientific	SeraChem Clinical Chemistry Control Serum (Bovine), Unassayed Level I No. 3110.	Vial: 5ml, 10ml	04/16/82
Fisher Scientific	SeraChem Clinical Chemistry Control Serum (Bovine), Unassayed Level II No. 3111.	Vial: 5ml, 10ml	04/16/82
Fisher Scientific	SeraChem Normal Clinical Chemistry Control Serum (Human), Assayed No. 2907.	Vial: 5ml	04/16/82
Fisher Scientific	Serachem Normal Clinical Chemistry Control Serum (Human), Unassayed No. 2908.	Vial: 5ml, 10ml	04/16/82
Fisher Scientific	TDM Cal	Kit: 7 Vials	11/26/86
Fisher Scientific	TDM Cal (B-F)	Vials: 5 ml	11/26/86
Fisher Scientific	Thera Chem TDC Therapeutic Drug Controls, Low and High Levels, 2840-58.	Kit: 6 vials	01/12/84
Fisher Scientific	TheraChem-Plus TDC Therapeutic Drug Controls, Tri-Level, No. 2845-94.	Kit: 9 vials	03/19/86
Fisher Scientific	Therapeutic Drug Control, High Level III, No. 2848-31	Vial: 5ml	03/19/86
Fisher Scientific	Therapeutic Drug Control, High Level, 2842-31	Vial: 5ml	01/12/84
Fisher Scientific	Therapeutic Drug Control, Low Level I, No. 2846-31	Vial: 5ml	03/19/86
Fisher Scientific	Therapeutic Drug Control, Low Level, 2841-31	Vial: 5ml	01/12/84
Fisher Scientific	Therapeutic Drug Control, Mid-Range Level II, No. 2847-31.	Vial: 5ml	03/19/86
Fisher Scientific	Urine Chemistry Control (Human) Level II, No. 2935-80.	Vial: 25ml	04/06/78
Fisher Scientific	Urine Toxicology Control No. 2950-61	Vial: 25ml	04/06/78
Flow Laboratories			
Flow Laboratories	DGV No. 28-010	Bottle: 125 ml	04/16/73
Flow Laboratories	Human 'O' DGV (Dextrose Gelatin Veronal Buffer) No. 28-080.	Glass Vial: 100 ml	10/14/76
GIBCO Laboratories			
GIBCO Laboratories	Complement Fixation Buffer Solution, pH 7.3-7.4, NDC 0118115-0247-1.	Bottle: 1 liter	01/28/74
GIBCO Laboratories	Complement Fixation Buffer Solution, pH 7.3-7.4, NDC 011815-0247-2.	Bottle: 500 ml	04/05/77
GIBCO Laboratories	Dextrose-Gelatin-Veronal Buffer Solution NDC No. 815-0566-1 and No. 815-0566-2.	Bottle: 100 and 500 ml	07/05/73
GIBCO Laboratories	Electrophoresis Buffer Solution, pH 8.6, NDC 011815-0245-1.	Bottle: 1 liter	01/28/74
GIBCO Laboratories	I.E.P. Buffer Solution pH 8.2 NDC 011815-0246-1	Bottle: 1 liter	01/28/74
Gelman Sciences, Inc.			
Gelman Sciences, Inc	Drug Control Set No. 51911	Set: 3 vials of 50 ml each	04/06/72
Gelman Sciences, Inc	Drug Standard Set, No. 51910	Set: 3 vials of 2 ml each	04/06/72
Gelman Sciences, Inc	Hi-Phore Buffer	Glass Vial: 15 g.	02/11/82
Gelman Sciences, Inc	High Resolution Buffer-Tris Barbital Buffer No. 51104	Vial: 10 dr	12/22/71
Gumm Chem. Co			
Gumm Chem. Co	Niflow Initial Additive	Drums: 5 Gallons	09/30/85
Gumm Chem. Co	Niflow Maintenace Additive	Drums: 5 Gallons	09/30/85
Hach Chemical Co			
Hach Chemical Co	pH 8.3 Buffer Powder Pillows. No. 898-98	Pillow: 1 g. each	11/30/71
Helena Laboratories			
Helena Laboratories	CK-LD Buffer Catalog No. 5808	Packet: 18.332 g., 10 packets/box	03/26/86
Helena Laboratories	Electra B1 Buffer, Catalog No. 5016	Packet: 12.14 g. 10 packets/box	12/28/73
Helena Laboratories	Electra B2 Buffer , Catalog No. 5017	Packet: 18.2 g. 10 packets/box	12/28/73
Helena Laboratories	Electra HR Buffer, Catalog No. 5805	Packet: 18.1 g. 10 packets/box	12/28/73
Helena Laboratories	HDL Electrophoresis Buffer	Packet: 36 g.	12/18/85
Helena Laboratories	Isoamylase Cathode Buffer	Packet: 9.7 g.	12/18/85
Helena Laboratories	Isoamylase Kit Catalog No. 5925	Kit: 2 Packets Cathode Buffer	01/24/86
Helena Laboratories	Owren's Veronal Buffer Cat. No. 5375	Plastic Bottle: 125 ml	09/15/88
Helena Laboratories	REP-HDL-12 Isoenzyme Kit Cat. No. 3187	Kit: 10 Plates (5.8" X 2.18")	09/15/88
Helena Laboratories	REP-HDL-30 Isoenzyme Kit Cat. No. 3186	Kit: 10 Plates (5.8" X 5.5")	09/15/88

EXEMPT CHEMICAL PREPARATIONS—Continued

Supplier	Product	Form of product	Date
Helena Laboratories	REP-HDL-6 Isoenzyme Kit Cat. No. 3188	Kit: 10 Plates (5.8" X 1.25")	09/15/88
Helena Laboratories	REP-Lipo-12 Kit Cat. No. 3181	Kit: 10 Plates (5.8" X 2.18")	09/15/88
Helena Laboratories	REP-Lipo-30 Kit Cat. No. 3180	Kit: 10 Plates (5.8" X 5.5")	09/15/88
Helena Laboratories	REP-Lipo-6 Kit Cat. No. 3182	Kit: 10 Plates (5.8" X 1.25")	09/15/88
Helena Laboratories	REP-SP-12 Isoenzyme Kit Cat. No. 3171	Kit: 10 Plates (5.8" X 2.18")	09/15/88
Helena Laboratories	REP-SP-30 Isoenzyme Kit Cat. No. 3170	Kit: 10 Plates (5.8" X 5.5")	09/15/88
Helena Laboratories	REP-SP-6 Isoenzyme Kit Cat. No. 3172	Kit: 10 Plates (5.8" X 1.25")	09/15/88
Helena Laboratories	Super Z-12XHDL Cholesterol Supply Kit Catalog No. 5470.	Kit: 3 Packages buffer 36 g.	01/24/86
Helena Laboratories	Titan Gel High Resolution Protein Buffer	Packet: 25.9 g	04/12/83
Helena Laboratories	Titan Gel High Resolution Protein Kit Catalog No. 3040.	Kit: 10 Plates (90mm X 75mm) , 2 Packages Buffer	03/03/86
Helena Laboratories	Titan Gel High Resolution Protein Plate	Plate: (90mm X 75mm)	03/03/86
Helena Laboratories	Titan Gel IFE Buffer	Packet: 25.9 g	12/18/85
Helena Laboratories	Titan Gel IFE Plate	Plate: (90mm X 75mm)	03/05/86
Helena Laboratories	Titan Gel Immuno Fix Kit Catalog No. 3046	Kit: 10 Plates (90mm X 75mm), 2 Packets IFE Buffer	01/24/86
Helena Laboratories	Titan Gel Iso Dot LDH Buffer	Packet: 19.6 g	01/07/86
Helena Laboratories	Titan Gel Iso Dot LDH Isoenzyme Plate	Plate: (90mm X 75mm)	12/18/85
Helena Laboratories	Titan Gel Iso Dot LDH Kit Catalog No. 3062	Kit: 10 Plates (90mm X 75mm),1 Packet Iso Dot LDH Buffer.	01/24/86
Helena Laboratories	Titan Gel LD Buffer	Packet: 21.5 g	11/26/86
Helena Laboratories	Titan Gel LD Isoenzyme Diluent	Bottle: 10 ml	11/26/86
Helena Laboratories	Titan Gel LDH Isoenzyme Buffer	Packet: 22.7 g	03/07/83
Helena Laboratories	Titan Gel LDH Isoenzyme Plate	Plate: (90mm X 75mm)	12/18/85
Helena Laboratories	Titan Gel LDH Isoenzyme Reagent	Vial: 2ml, 10 vials/box	01/07/86
Helena Laboratories	Titan Gel Lipoprotein Buffer	Packet: 17.3 g	12/18/85
Helena Laboratories	Titan Gel Lipoprotein Kit Catalog No. 3045	Kit: 1 Packet Buffer	01/24/86
Helena Laboratories	Titan Gel Lipoprotein Plate	Plate: (90 x 75 mm)	01/09/87
Helena Laboratories	Titan Gel Multi-Slot Lipo-17 Kit Catalog No. 3095	Kit: 10 plates (81 x 143 mm) 1 Packet Buffer (21.6 g)	01/09/87
Helena Laboratories	Titan Gel Multi-Slot Lipo-17 Plate	Plate: (81 x 143 mm)	01/09/87
Helena Laboratories	Titan Gel Multi-Slot SP-17 Kit Catalog No. 3091	Kit: 10 plates (81 x 143 mm) 1 Packet Buffer (29.1 g)	01/09/87
Helena Laboratories	Titan Gel Multi-Slot SP-17 Plate	Plate: 81 x 143 mm	01/09/87
Helena Laboratories	Titan Gel Serum Protein Buffer	Packet: 29.1 g	04/12/83
Helena Laboratories	Titan Gel Serum Protein Kit Catalog No. 3041	Kit: 10 Plates (90mm X 75mm), 1 Packet Buffer	01/24/86
Helena Laboratories	Titan Gel Serum Protein Plate	Plate: (90mm X 75mm)	12/18/85
Helena Laboratories	Titan Gel Silver Stain Buffer	Packet: 25.9g	12/18/85
Helena Laboratories	Titan Gel Silver Stain Kit Catalog No. 3035	Kit: 10 Plates (90mm X 75mm), 2 Packets Buffer	01/24/86
Helena Laboratories	Titan Gel Silver Stain Plate	Plate: (90mm X 75mm)	03/03/86
Helena Laboratories	Titan Gel-PC LDH Isoenzyme Kit Catalog No. 3053	Kit: 10 Plates (90mm X 75mm), 1 Packet LDH Buffer, 1 Box LDH Reagent.	01/24/86
Helena Laboratories	Titan Gel-PC LDH Isoenzyme Plate	Plate: (90mm X 75mm)	12/18/85
Helena Laboratories	Titan III Agar Catalog No. 5023	Packet: 5 g. (5 Packets/box)	12/28/73
Helena Laboratories	Titan IV IE Plate (large)	Package: plates, 3 by 4 in.	12/28/73
Helena Laboratories	Titan IV IE Plate (small)	Package: plates, 1 by 3 in.	12/28/73
Helena Laboratories	Titan IV IE Plate Kit	Kit: 12 small (1 by 3 in.) IE plates,1 box B1 Buffer	12/28/73
Helena Laboratories	Titan IV IE Plate Kit	Kit: 10 large (3 by 4 in.) IE plates, 1 box B1 Buffer	12/28/73
Hycor/ICI Scientific			
Hycor/ICL Scientific	Drugs of Abuse Urine Control, CONFIRMATION	Box: 4-100 ml Bottles	10/21/88
Hycor/ICL Scientific	Drugs of Abuse Urine Control, SCREEN	Box: 4-30 ml Bottles	10/21/88
ICL Scientific			
ICL Scientific	Therapeutic Drug Control I, TDC I (High Level)	Glass Vial: 10ml	08/14/85
ICL Scientific	Therapeutic Drug Control I, II, III, Tri-Level TDC Multi-pack.	Glass Vials (12): 10ml	08/14/85
ICL Scientific	Therapeutic Drug Control II, TDC II (Mid-Level)	Glass Vial: 10ml	08/14/85
ICL Scientific	Therapeutic Drug Control III, TDC III (Low Level)	Glass Vial: 10ml	08/14/85
ICN Micromedic Systems, Inc.			
ICN Micromedic Systems, Inc	Immunogen: BZ-A	Plastic Vial: 1.5 ml	02/29/88
ICN Micromedic Systems, Inc	Immunogen: BZ-B	Plastic Vial: 1.5 ml	02/29/88
ICN Micromedic Systems, Inc	Immunogen: CD-A	Plastic Vial: 1.5 ml	02/29/88
ICN Micromedic Systems, Inc	Immunogen: M-A	Plastic Vial: 1.5 ml	02/29/88
ICN Micromedic Systems, Inc	Immunogen: M-B	Plastic Vial: 1.5 ml	02/29/88
ICN Micromedic Systems, Inc	Immunogen: TF-A	Plastic Vial: 1.5 ml	02/29/88
ICN Micromedic Systems, Inc	Micromedic Combostat THC/Cocaine STANDARDS-2, 3, and 4.	Amber Glass Vial: 2 ml Plastic Bottle: 100 ml	02/24/88
ICN Micromedic Systems, Inc	Micromedic CrackPot 57Co/125I Tracer Solution	Plastic Bottle: 25 ml, 1000 ml	02/24/88
ICN Micromedic Systems, Inc	Micromedic Morphine 125I Tracer Solution	Bottle: 50 ml, 1000 ml	02/29/88
ICN Micromedic Systems, Inc	Micromedic Morphine Standards 2, 3 and 4	Bottle: 5 ml, 100 ml	02/29/88
Industrial Analytical Laboratory, Inc.			
Industrial Analytical Laboratory, Inc	11-Nor-Carboxy-Delta-9-Tetrahydrocannabinol	Ampule: 1ml	09/04/85
Industrial Analytical Laboratory, Inc	11-hydroxy-delta-9-tetrahydrocannabinol	Ampule: 1 ml	02/18/87
Industrial Optical			
Industrial Optical	Opti-Kleen	Bottle: 5 gallon	06/24/81

EXEMPT CHEMICAL PREPARATIONS—Continued

Supplier	Product	Form of product	Date
Innotron of Oregon, Inc.			
Innotron of Oregon, Inc.	Innofluor Phenobarbital Calibrators 0.0, 3.0, 8.0, 20.0, 40.0, and 80.0 mcg/ml.	Bottle: 3 ml	07/09/87
Innotron of Oregon, Inc.	Phenobarbital Stock Tracer	Vial: 5 ml	09/23/87
Janssen Pharmaceutica, Inc.			
Janssen Pharmaceutica,Inc	3H Alfentanil	Vial: 0.5 ml	02/01/87
Janssen Pharmaceutica,Inc	3H Fentanyl	Vial: 0.5 ml	02/01/87
Janssen Pharmaceutica,Inc	3H Sufentanil	Vial: 0.5 ml	02/01/87
Janssen Pharmaceutica,Inc	Alfentanil Radioimmunoassay Kit	Kit: 200 tests	05/13/85
Janssen Pharmaceutica,Inc	Fentanyl Radioimmunoassay Kit	Kit: 200 tests	05/13/85
Janssen Pharmaceutica,Inc	Sufentanil Radioimmunoassay Kit	Kit: 500 tests	05/13/85
Kallestad Diagnostics			
Kallestad Diagnostics	Barbital Buffer 901	Vial	05/19/81
Kallestad Diagnostics	IEP Buffer No. 900	Vial: 7 Dram	12/26/78
Kallestad Diagnostics	Immunoelectrofilm Catalog No. 910	1 Film Sealed in Cardboard Container	03/11/80
Kallestad Diagnostics	Immunoelectrofilms, Catalog No. 1013	Styrofoam Container: 25 films	06/22/87
Kallestad Diagnostics	Immunoelectrophoresis Reagent Kit, Catalog No. 1012.	Kit: 3 Vials	06/22/87
Kallestad Diagnostics	Quanticoat 125I-T3 Uptake Kit Catalog No. 823	Kit: 400 Determinations	12/16/85
Kallestad Diagnostics	Quanticoat 125I-T3 Uptake Kit, Catalog No. 833	Kit: 100 tests	06/24/81
Kallestad Diagnostics	Quanticoat 125I-T3 Uptake Reagent Catalog No. 785	Bottle: 500ml	12/16/85
Kallestad Diagnostics	Quanticoat 125I-T3 Uptake Reagent No. 834	2 Glass Bottles: 110ml	06/24/81
LKB Instruments, Inc.			
LKB Instruments, Inc.	Tris-barbiturate Buffer pH 8.6	Packet: each 6.788 g. 20 packets/box	05/15/78
Lemmon Company			
Lemmon Company	Etorphine Standard Solution	Plastic Carboy: 1 Liter	10/31/83
MCI Biomedical			
MCI Biomedical	IEP Buffer, pH 8.2, 0.04 Ionic Strength	Package: 6.510 grams	08/28/72
Materials & Technology Systems			
Materials & Technology Systems	5-Ethyl-5-(1-Carboxy-N-Propyl) Barbituric Acid	Screw Cap Vial: 8ml	05/03/73
Materials & Technology Systems	5-Ethyl-5-(1-Carboxy-N-Propyl) Barbituric Acid Bovine Serum Albumin or Rabbit Serum Albumin.	Vaccine Vial: 8ml	05/03/73
Materials & Technology Systems	5-Ethyl-5-(1-Carboxy-N-Propyl) Barbituric Acid Sensitized RBC.	Vaccine Vial: 8ml	05/03/73
Materials & Technology Systems	Barbiturate Standard	Screwcap Vial: 10ml	09/17/76
Materials & Technology Systems	Benzoyl Ecgonine	Screw Cap Vial: 25mg and 100 mg	04/18/74
Materials & Technology Systems	Benzoylecgonine Standard	Screwcap Vial: 10ml	09/17/76
Materials & Technology Systems	Carboxymethyl-Morphine	Screw Cap Vial: 8ml	05/03/73
Materials & Technology Systems	Carboxymethyl-Morphine Bovine Serum Albumin or Rabbit Serum Albumin.	Vaccine Vial: 8ml	05/03/73
Materials & Technology Systems	Carboxymethylmorphine Sensitized RBC	Vaccine Vial: 50ml	05/03/73
Materials & Technology Systems	Ecgonine Bovine Serum Albumin or Rabbit Serum Albumin..	Vaccine Vial: 8ml	05/03/73
Materials & Technology Systems	Ecgonine Sensitized RBC	Vaccine Vial: 50ml	05/03/73
Materials & Technology Systems	Methadone Standard	Screwcap Vial: 10ml	09/17/76
Materials & Technology Systems	Morphine Standard	Screw Cap Vial: 10ml	07/17/73
Materials & Technology Systems	Tropinecarboxylic Acid	Screw Cap Vial: 8ml, 10ml	05/03/73
Medi-Chem, Inc.			
Medi-Chem, Inc	Barbiturate Test Set (Sodium Secobarbital Standard 10mg % w/v) Catalog No. 250.	Bottle: 120ml	02/22/74
Medical Analysis Systems, Inc			
Medical Analysis Systems, Inc	ACE II Calibrator for the DuPont aca Level 1	Glass Vial: 22 X 38mm, 5ml	08/07/86
Medical Analysis Systems, Inc	ACE II Calibrator for the DuPont aca Level 2	Glass Vial: 22 X 38mm, 5ml	08/07/86
Medical Analysis Systems, Inc	ACE II Calibrator for the DuPont aca Level 3	Glass Vial: 22 X 38mm, 5ml	08/07/86
Medical Analysis Systems, Inc	ChemTrak Liquid Unassayed	Vial: 15ml	04/30/85
Medical Analysis Systems, Inc	Chemistry Control Assayed, Level 1, 2, & 3	Vial: 15ml	04/30/85
Medical Analysis Systems, Inc	Chemistry Control, Level 1, 2, & 3	Vial: 15ml	04/30/85
Medical Analysis Systems, Inc	Liquid Urine Calibrator Level 1 and 2	Vial: 5 ml	04/03/87
Medical Analysis Systems, Inc	Liquid Urine Control Level 1	Vial: 5 ml	04/03/87
Medical Analysis Systems, Inc	chemTRAK Liquid Unassayed Therapeutic Drug Control Level 2.	Kit: 6 x 5ml Vials	10/08/86
Medical Analysis Systems, Inc	chemTRAK Liquid Unassayed Therapeutic Drug Control Level 3.	Kit: 6 x 5ml Vials	10/08/86
Medical Analysis Systems, Inc	chemTRAK Liquid Unassayed Therapeutic Drug Control Level 1.	Kit: 6 x 5ml Vials	10/08/86
Meloy Labs, Inc.			
Meloy Labs, Inc	Counterelectrophoresis Plates, G-301	Plates: 10 determinations	09/05/73
Meloy Labs, Inc	Immunoelectrophoresis Plates, G-201	Plates: 6 / unit	09/05/73
Merck and Co., Inc.			
Merck and Co., Inc	Cocaine -d3 HCl Catalog # MD-3677	Ampule: 2 or 5 ml	06/13/88
Merck and Co., Inc	Codeine -d3 H_2O (N-methyl-d3) No. MD-3776	2 ml, 5ml ampule Carton: 5 ampules	09/06/88
Merck and Co., Inc	Codeine-d3 Catalog # MD-3678	Ampule: 2 or 5 ml	06/13/88

EXEMPT CHEMICAL PREPARATIONS—Continued

Supplier	Product	Form of product	Date
Merck and Co., Inc	DL-1 Phenyl-2-aminopropane 1,1,2,3,3,3,-d6 (Amphetamine-d6) Catalog # MD-3682.	Ampule: 2 or 5 ml	06/13/88
Merck and Co., Inc	DL-1Phenyl-2-methylam-inopropane-1,1,2,3,3,3-d6 HCl (Methamphetamine d6) Catalog # MD-3683.	Ampule: 2 or 5 ml	06/13/88
Merck and Co., Inc	DL-1-Phenyl-2-aminopropane-1,1,2,3,3,3-d6 HCL No. MD-3778.	2 ml, 5 ml amber ampule Carton: 5 ampules	09/06/88
Merck and Co., Inc	Ecgonine -d3 Methyl Ester HCl Catalog # MD-3679	Ampule: 2 or 5 ml	06/13/88
Merck and Co., Inc	Morphine -d3 HCl 3H20 (N-methyl-d3) No. MD-3777	2 ml, 5 ml ampule Carton: 5 ampules	09/06/83
Merck and Co., Inc	Morphine -d3 HCl Catalog # MD-3680	Ampule: 2 or 5 ml	06/13/88
Merck and Co., Inc	O-Benzoylecgonine-d3 Catalog # MD-3676	Ampule: 2 or 5 ml	06/13/88
Merck and Co., Inc	Phen-d5-cyclidine HCl Catalog # MD-3681	Ampule: 2 or 5 ml	06/13/88
Micromedic Systems			
Micromedic Systems	Micromedic Neonatal T4 125I Tracer Solution	Nalgene Bottle: 4 oz.	06/25/87
Micromedic Systems	Micromedic Neonatal T4 Elution Solution	Nalgene Bottle: 2 oz.	06/25/87
Micromedic Systems	Neonatal T4 125I Tracer Solution	Vial: 30ml	05/21/80
Micromedic Systems	Neonatal T4 Buffer Solution	Bottle: 8ounce	05/21/80
Micromedic Systems	T3 RIA 125I Tracer Solution	Vial: 30ml	12/14/76
Micromedic Systems	T3 RIA Buffer Solution	High Density Polyethylene Bottle: 8 ounce	12/14/76
Micromedic Systems	T3 Uptake 125I Tracer Solution	Vial: 30ml	12/14/76
Micromedic Systems	T3 Uptake Buffer Solution	High Density Polyethylene Bottle: 8 ounce	12/14/76
Micromedic Systems	T4 RIA 125I Tracer Solution	Vial: 30ml	12/14/76
Micromedic Systems	T4 RIA Buffer Solution	High Density Polyethylene Bottle: 8 ounce	12/14/76
Miles Laboratories, Inc.			
Miles Laboratories,Inc.	Ames Phenobarbital Assay, Kit Contains: Phenobarbital Standards; 10, 20, 40, & 60mcg/ml.	6.1 ml Vials	03/01/79
Miles Laboratories, Inc	Ames Phenobarbital Controls, 15mcg/ml, 30mcg/ml, 50mcg/ml.	Vial: 6.1ml	05/21/80
Miles Laboratories, Inc	Cliniria T-3 Uptake Test, Kit Contains: (1)125I T-3 Uptake Reagent & (2) Separating Reagent.	200ml Bottles	11/10/78
Miles Laboratories, Inc	Clinistat Calibrator Nos. 1 and 2	Vial: 1ml	12/19/80
Miles Laboratories, Inc	Clinistat Control B,C,D,and E	Vial: 1ml	12/19/80
Miles Laboratories, Inc	Seralute Total T-4 (RIA) 125I Reagent Kit, No.3304, No.3305.	Kit: 20 columns, 100 columns	03/28/77
Miles Laboratories, Inc	Seralyzer ARIS Drug Assay Control	Vial: 1ml	01/17/84
Miles Laboratories, Inc	Seralyzer ARIS Drug Assay High Calibrator	Vial: 0.5ml	01/17/84
Miles Laboratories, Inc	Seralyzer ARIS Drug Assay Low Calibrator	Vial: 0.5ml	01/17/84
Miles Laboratories, Inc	Seralyzer ARIS Phenytoin Reagent Strips	Bottle Containing 25 and 50 Strips	05/28/86
Miles Laboratories, Inc	T-4 Buffer	Glass Screwtop Vial: 3/4 ounce	03/28/77
Miles Laboratories, Inc	TDA Cross-Reactivity Cocktails	Glass Vial: 1ml	02/01/83
Miles Laboratories, Inc	TEK-CHEK Special Urine Control (supplemental)	Vial: 25ml	05/01/70
Miles Laboratories, Inc	Tetralute	Bottle: 4.9 g	07/29/70
Miles Laboratories, Inc	Thyrolute I125, Reagent Kit, No.5250	Kit: 20 columns	12/02/74
Miles Laboratories, Inc	Thyrolute I125, Reagent Kit, No.5252	Kit: 100 columns	12/02/74
Monobind, Inc.			
Monobind, Inc	Monobind T3 Antibody Reagent	Test Tube w/Cap: 70ml	11/08/77
Monobind, Inc	Monobind T3 Tracer Reagent	Wheaton Glass Container: 55ml	11/08/77
Monobind, Inc	Monobind T4 Antibody Reagent	Test Tube w/Cap: 70ml	11/08/77
Monobind, Inc	Monobind T4 Tracer Reagent	Wheaton Glass Container: 55ml	11/08/77
Monobind, Inc	Monobind TSH Antibody Reagent	Test Tube w/Cap: 10.5ml	11/08/77
Monobind, Inc	Monobind TSH Non-Specific Buffer	Wheaton Glass: 1.05ml	11/08/77
Monobind, Inc	Monobind TSH Precipitating Reagent	Plastic Container w/Cap : 105ml	11/08/77
Monobind, Inc	Monobind TSH Tracer Reagent	Wheaton Glass Container 10.5ml	11/08/77
Monobind, Inc	T3 Adsorbent Reagent	Glass Bottle: 110ml, 50ml Plastic Bottle: 260ml	05/15/78
Monobind, Inc	T3 Uptake Tracer Reagent	Glass Bottle: 55ml, 30ml Plastic Bottle: 125ml	05/15/78
Monobind, Inc	TSH Radioimmunoassay Test System	Kit: 100 Tests	11/08/77
Monobind, Inc	Thyroxine Radioimmunoassay Test System	Kit: 100 Tests	11/08/77
Monobind, Inc	Triiodothyronine Radioimmunoassay Test System	Kit: 100 tests	11/08/77
Monoclonal Antibodies, Inc.	8F		
Monoclonal Antibodies, Inc	Test Kit for Cocaine Metabolites in Urine	Kit: 50 tests	10/17/86
Monoclonal Antibodies, Inc	Test Kit for Opiates in Urine	Kit: 50 tests	10/17/86
Monoclonal Antibodies, Inc	Test Kit for Tetrahydrocannabinol (THC) in Urine	Kit: 50 tests	10/17/86
Nuclear Diagnostics, Inc.			
Nuclear Diagnostics, Inc	SPINSEP-TBG Reagent Catalog No. 17100	Polypropylene Bottle: 105ml	12/15/77
Nuclear Diagnostics, Inc	TETRIA P.E.G. Antiserum Catalog No. 16100A	Polypropylene Bottle: 55ml	03/10/78
Nuclear Diagnostics, Inc	TETRIA P.E.G. Reagent Catalog No. 16100	Polypropylene Bottle: 105ml	07/08/77
Nuclear Diagnostics, Inc	TETRIA P.E.G. Reagent Catalog No. 16100R	Polypropylene Bottle: 55ml	03/10/78
Nuclear Diagnostics, Inc	TRIA-P.E.G. Antiserum Catalog No. 12100A	Polypropylene Bottle: 55ml	03/10/78
Nuclear Diagnostics, Inc	TRIA-P.E.G. Reagent Catalog No. 12100R	Polypropylene Bottle: 55ml	03/10/78
OMI International Corporation			
OMI International Corporation	Compound N Solution	Steel Drum: 55 gallon	10/01/75
Organon Teknika Corp.			
Organon Teknika Corp	ASSURE, Levels I & II	Vial: 10 ml	06/27/80
Organon Teknika Corp	Bovine QAS Clinical Study	6 Vials/Kit (10ml/vial)	04/28/80
Organon Teknika Corp	Liothyronine T3 125I	Boston Round Amber Bottle: 16 ounce	01/20/76

EXEMPT CHEMICAL PREPARATIONS—Continued

Supplier	Product	Form of product	Date
Organon Teknika Corp	Liothyronine T3 125I	Boston Round Amber Bottle: 4 ounce	02/18/79
Organon Teknika Corp	Midwest/ Illinois/New Jersey Quality Control Program, Level I & II.	Vial: 10 ml, 10 vials/kit	04/16/81
Organon Teknika Corp	Owren's Veronal Buffer for FIBRIQUIK	Bottle: 37 ml	05/07/80
Organon Teknika Corp	PACP I & II	Kit: 36 vials/kit	03/07/80
Organon Teknika Corp	PROFILE Anticonvulsant Levels I & II	Vial: 10 ml	11/28/80
Organon Teknika Corp	Platelin	Vial: 7.3ml	03/13/72
Organon Teknika Corp	Platelin Plus Activator	Vial: 7.3ml	03/13/72
Organon Teknika Corp	Profile General Set	Kit Ctg: 6 vials	02/22/82
Organon Teknika Corp	Profile General-Levels I & II	Vial: 5 ml	02/22/82
Organon Teknika Corp	Quality Assurance Serum Level I	Vial: 16.5 ml, 6 vials/kit	08/17/78
Organon Teknika Corp	Quality Assurance Serum Level II	Vial: 16.5 ml, 6 vials/kit	08/17/78
Organon Teknika Corp	Russell's Viper Venom Reagent	Vial: 7.3ml containing 48 mg of powder	07/08/74
Organon Teknika Corp	Simplastin	Vial: 4.7ml, 7.3ml, and 16.5ml	03/13/72
Organon Teknika Corp	Simplastin-A	Vial: 7.3ml	03/13/72
Organon Teknika Corp	T-4 125I Reagent	Boston Round Bottle: 2 ounce, amber bottle, 7 dr.	01/20/76
Organon Teknika Corp	T-4 Antiserum (rabbit)	Boston Round Bottle: 4 ounce, clear bottle, 7 dr.	01/20/76
Organon Teknika Corp	TETRA-TAB-RIA T4 Diagnostic Kit	Kit: 40tests, 200tests	01/20/76
Organon Teknika Corp	TETRA-TUBE RIA T4 Diagnostic Kit	Kit: 100 tests, 500 tests	06/03/83
Organon Teknika Corp	TGTR Set	Package: 4 Tests per set	03/13/72
Organon Teknika Corp	TRI-TAB T3 Uptake Diagnostic Kit	Kit: 200 Tests	01/20/76
Organon Teknika Corp	TRI-TAB T3 Uptake Diagnostic Kit	Kit: 40 tests	02/18/79
Organon Teknika Corp	Unassayed Chemistry Serum Control, Levels I & II	Vial: 25 ml	06/27/80
Ortho Diagnostic Systems, Inc.			
Ortho Diagnostic Systems, Inc.	Activated ThromboFAX No. 721000	Bottle: 3.2ml	09/21/71
Ortho Diagnostic Systems, Inc	Ortho Activated PTT Reagent	Glass Vial: 30 determination size, 100	05/23/83
Ortho Diagnostic Systems, Inc	Ortho Plasma Coagulation Control Level I	Glass Vial: 5ml	10/25/83
Ortho Diagnostic Systems, Inc	Ortho Plasma Coagulation Control Level II	Glass Vial: 5ml	10/25/83
Othro Diagnostic Systems, Inc	ORTHO Owren's Buffer	Kit: 6-20 ml vials	08/26/88
Pacific Hemostasis			
Pacific Hemostasis	Barbital Buffered Saline	Vial: 100ml	05/24/84
Pacific Hemostasis	Barbital Buffered Saline with Heparin	Vial: 90ml	05/24/84
Pacific Hemostasis	Diluting Fluid	Vial: 20ml	05/24/84
Pantex			
Pantex	Immuno T3 Kit: (1)L-Triiodothyronine 125I (2)1st Antiserum (3)2nd Antiserum (4)Diluent (5)Standards.	Kit Containing Bottles: (1)10ml (2)10ml (3)50ml (4)5ml (5)3ml.	01/04/79
Pantex	Immuno-Digoxin Kit Containing: (1)Digoxin 125I (2)1st Antiserum (3) 2nd Antiserum (4)Diluent.	Kit Containing Bottles: (1)10ml (2)20ml (3)50ml (4)5ml	01/04/79
Pantex	Immuno-Estriol 125I Kit: 2nd Antiserum	Bottle: 50ml	01/04/79
Pantex	Immuno-Estriol Kit: (1)Estriol 3H RIA (2)Estriol 3H Recovery (3)1st Antiserum (4)2nd Antiserum (5)Diluent (6)Buffer (7)Standards.	Kit Containing Bottles: (1)10ml (2)5ml (3)10ml (4)20ml (5)100ml (6)50ml (7)5ml.	01/04/79
Pantex	Immuno-T4 Kit: (1)Thyroxine 125I (2)1st Antiserum (3)2nd Antiserum (4)Diluent (5)Standards.	Kit Containing Bottles: (1)100ml,1000ml (2)50ml (3)100ml (4)5ml (5)3ml.	01/04/79
Pantex	Immuno-Testosterone 125I Kit: (1)Testosterone 125I (2)1st Antiserum (3)2nd Antiserum (4)Diluent (5)Standards.	Kit Containing Bottles: (1)10ml (2)10ml (3)50ml (4)100ml (5)5ml.	01/04/79
Pantex	T3 Uptake Kit: L-Triiodothyronine 125I	Bottle: 100ml, 1000ml	01/04/79
Perkin-Elmer Corporation			
Perkin-Elmer Corporation	Amphetamine Polarization Fluoroimmunoassay Kit	Kit: 100 tests	12/18/86
Perkin-Elmer Corporation	Barbiturates Polarization Fluoroimmunoassay Kit	Kit: 100 tests	12/18/86
Perkin-Elmer Corporation	Cocaine Polarization Fluoroimmunoassay Kit	Kit: 100 tests	12/18/86
Perkin-Elmer Corporation	Methadone Polarization Fluoroimmunoassay Kit	Kit: 100 tests	12/18/86
Perkin-Elmer Corporation	Morphine Polarization Fluoroimmunoassay Kit	Kit: 100 tests	12/18/86
Perkin-Elmer Corporation	Opiates Polarization Fluoroimmunoassay Kit	Kit: 100 tests	12/18/86
Princeton Separations, Inc.			
Princeton Separations, Inc	Panagel 16	Pouch: 1 slide	06/29/87
Princeton Separations, Inc	Panagel 8	Pouch: 1 slide	06/29/87
Princeton Separations, Inc	Panagel Electrobuffer	Fiber Drum: 25 kg	06/29/87
Princeton Separations, Inc	Panagel Electrode Buffer	Pouch: 18.3 gms	06/29/87
Princeton Separations, Inc	Panagel LD Isoenzyme Electrode Buffer	Pouch: 11.85 gms	06/29/87
Princeton Separations, Inc	Panagel LD Isoenzyme Slide	Pouch: 1 slide	06/29/87
Quantimetrix			
Quantimetrix	Quantimetrix Anticonvulsant Serum Drug Control, Liquid Level II Control No. 17-0303-2.	Polyethylene Dropper Bottle: 15ml	04/16/86
Quantimetrix	Quantimetrix Antidepressant Serum Drug Control, Liquid Level I Control No. 17-0303-1.	Polyethylene Dropper Bottle: 15ml	04/16/86
Quantimetrix	Quantimetrix Antidepressant Serum Drug Control, Liquid Level I Control No. 17-0305-1.	Polyethylene Dropper Bottle: 15ml	04/16/86
Quantimetrix	Quantimetrix Antidepressant Serum Drug Control, Liquid Level II Control No. 17-0305-2.	Polyethylene Dropper Bottle: 15ml	04/16/86
Quantimetrix	Urine Drugs of Abuse Control Catalog No. 12-2411-1	Dropper Bottle: 15 ml	02/23/87

EXEMPT CHEMICAL PREPARATIONS—Continued

Supplier	Product	Form of product	Date
Quin-Tec, Inc.			
Quin-Tec, Inc	Additive SB-1	Drum: 55 gals	05/11/87
Quin-Tec, Inc	Quin-Tec Brightener 402	Plastic Pail: 5 gallons, Plastic Drum: 55 gallons	10/13/81
Quin-Tec, Inc	Quin-Tec Brightener 404	Plastic Pail: 5 gallons, Plastic Drum: 55 gallons	10/13/81
Radian Corporation			
Radian Corporation	3, 4-Methylenedioxy-amphetamine-D5 0.1 mg/ml	2 ml amber ampule	10/19/88
Radian Corporation	3, 4-Methylenedioxy-amphetamine-D5 1.0 mg/ml	2 ml amber ampule	10/19/88
Radian Corporation	3, 4-Methylenedioxy-methamphetamine-D5 0.1 mg/ml	2 ml amber ampule	10/19/88
Radian Corporation	3, 4-Methylenedioxy-methamphetamine-D5 1.0 mg/ml	2 ml amber ampule	10/19/88
Radian Corporation	Diazepam-D5 0.1 mg/ml	2 ml amber ampule	10/19/88
Radian Corporation	Diazepam-D5 1.0 mg/ml	2 ml amber ampule	10/19/88
Radian Corporation	Ecgonine Methyl Ester-D3 1.0 mg/ml	2 ml amber ampule	10/19/88
Radian Corporation	Ecgonine Methyl Ester-D3 0.1 mg/ml	2 ml amber ampule	10/19/88
Radian Corporation	Hydrocodone -D3 0.1 mg/ml	2 ml amber ampule	10/19/88
Radian Corporation	Hydrocodone -D3 1.0 mg/ml	2 ml amber ampule	10/19/88
Radian Corporation	Hydromorphone -D3 0.1 mg/ml	2 ml amber ampule	10/19/88
Radian Corporation	Hydromorphone -D3 1.0 mg/ml	2 ml amber ampule	10/19/88
Radian Corporation	Methadone -D5 0.1 mg/ml	2 ml amber ampule	10/19/88
Radian Corporation	Methadone -D5 1.0 mg/ml	2 ml amber ampule	10/19/88
Radian Corporation	Methaqualone -D4 0.1 mg/ml	2 ml amber ampule	10/19/88
Radian Corporation	Methaqualone -D4 1.0 mg/ml	2 ml amber ampule	10/19/88
Radian Corporation	Nordiazepam -D5 0.1 mg/ml	2 ml amber ampule	10/19/88
Radian Corporation	Nordiazepam -D5 1.0 mg/ml	2 ml amber ampule	10/19/88
Radian Corporation	Oxazepam -D5 0.1 mg/ml	2 ml amber ampule	10/19/88
Radian Corporation	Oxazepam -D5 1.0 mg/ml	2 ml amber ampule	10/19/88
Radian Corporation	Propoxyphene -D5 0.1 mg/ml	2 ml amber ampule	10/19/88
Radian Corporation	Propoxyphene -D5 1.0 mg/ml	2 ml amber ampule	10/19/88
Research Triangle Institute			
Research Triangle Institute	11-Nor-9-carboxy-delta-9 THC Blood Standards Kit	Kit Containing: 18-21ml Ampuls; 1-5ml Ampul	10/26/81
Research Triangle Institute	11-Nor-9-carboxy-delta-9 THC Plasma Standards Kit	Kit Containing: 18-21ml Ampuls; 1-5ml Ampul	10/26/81
Research Triangle Institute	Delta-9 THC Blood Standards Kit	Kit Containing: 16-2ml Ampuls; 1-5ml Ampul	10/26/81
Research Triangle Institute	Delta-9 THC Plasma Standards Kit	Kit Containing: 16-2ml Ampuls; 1-5ml Ampul	11/02/81
Research Triangle Institute	Iodine Kit for Radioimmunoassay of 11-Nor-9-carboxy-delta-9 THC in Blood.	Kit Containing: 26-1ml Ampuls; 2-20ml Vials; 2-250ml Bottles.	10/26/81
Research Triangle Institute	Iodine Kit for Radioimmunoassay of 11-Nor-9-carboxy-delta-9 THC in Plasma.	Kit Containing: 24-1ml Ampuls; 2-20ml Vials; 2-250ml Bottles.	10/26/81
Research Triangle Institute	Iodine Kit for Radioimmunoassay of Delta-9 THC	Kit Containing: 20-1ml Ampules; 2-20ml Vials; 2-250ml Bottles.	10/20/80
Research Triangle Institute	Iodine Kit for Radioimmunoassay of Delta-9 THC in Blood.	Kit Containing: 22-1ml Ampules; 2-20ml Vials; 2-250ml Bottles.	07/10/81
Research Triangle Institute	Tritium Kit for Radioimmunoassay of Delta-9 THC	Kit Containing: 20-1ml Ampules; 2-20ml Vials; 2-250ml Bottles.	06/27/80
Roche Diagnostic Sytstems, Inc.			
Roche Diagnostic Systems, Inc.	125I T3 (for T3 Uptake Radioassay)	Vial: 15ml	07/22/81
Roche Diagnostic Systems, Inc.	Abuscreen 125I Amphetamine Reagent	Vial: 30ml, 500ml	02/15/83
Roche Diagnostic Systems, Inc.	Abuscreen 125I Benzoylecgonine Reagent	Vial: 30ml, 500ml	02/15/83
Roche Diagnostic Systems, Inc.	Abuscreen 125I Methaqualone Reagent	Vial: 30ml, 500ml	02/15/83
Roche Diagnostic Systems, Inc.	Abuscreen 125I Morphine Reagent	Vial: 30ml, 500ml	02/15/83
Roche Diagnostic Systems, Inc.	Abuscreen 125I Oxazepam Reagent	Vial: 30ml, 500ml	03/06/87
Roche Diagnostic Systems, Inc.	Abuscreen 125I Phencyclidine Reagent	Vial: 30ml, 500ml	02/15/83
Roche Diagnostic Systems, Inc.	Abuscreen 125I Secobarbital Reagent	Vial: 30ml, 500ml	02/15/83
Roche Diagnostic Systems, Inc.	Abuscreen 125I Tetrahydrocannabinol Reagent	Vial: 500ml, 30ml	08/14/81
Roche Diagnostic Systems, Inc.	Abuscreen 125I-LSD Reagent	Vial: 500ml, 30ml	01/28/84
Roche Diagnostic Systems, Inc.	Abuscreen EIA Barbiturate Conjugate Reagent	Vial: 30 ml	10/02/86
Roche Diagnostic Systems, Inc.	Abuscreen EIA Barbiturate Enzyme Immunoassay Test Kit for Barbiturate Metabolites.	Kit: 100 Tests	10/02/86
Roche Diagnostic Systems, Inc.	Abuscreen EIA Barbiturate Negative Control	Vial: 4 ml	04/15/87
Roche Diagnostic Systems, Inc.	Abuscreen EIA Barbiturate Positive Calibrator 50-1200 (in increments of 50) ng/ml.	Vial: 4 ml	10/02/86
Roche Diagnostic Systems, Inc.	Abuscreen EIA Barbiturate Positive Control	Vial: 4 ml	04/15/87
Roche Diagnostic Systems, Inc.	Abuscreen EIA Cannabinoid Positive Calibrator 50-1200 (in increments of 50) ng of THC derivative/ml.	Vial: 4ml	08/28/86
Roche Diagnostic Systems, Inc.	Abuscreen EIA Cannabinoid THC Conjugate Reagent	Vial: 30ml	08/28/86
Roche Diagnostic Systems, Inc.	Abuscreen EIA Cannabinoids Enzyme Immunoassay Test Kit for Cannabinoids.	Kit: 100 Tests	08/28/86
Roche Diagnostic Systems, Inc.	Abuscreen EIA Cannabinoids Negative Control	Vial: 4 ml	04/15/87
Roche Diagnostic Systems, Inc.	Abuscreen EIA Cannabinoids Positive Control	Vial: 4 ml	04/15/87
Roche Diagnostic Systems, Inc.	Abuscreen EIA Cocaine Metabolite Benzoylecgonine Conjugate Reagent.	Vial: 30ml	05/28/86
Roche Diagnostic Systems, Inc.	Abuscreen EIA Cocaine Metabolite Benzoylecgonine Positive Calibrator 50-1200 (in increments of 50) ng/ml.	Vial: 4ml	05/28/86
Roche Diagnostic Systems, Inc.	Abuscreen EIA Cocaine Metabolite Enzyme Immunoassay Test Kit for Benzoylecgonine.	Kit: 100 tests	05/28/86
Roche Diagnostic Systems, Inc.	Abuscreen EIA Cocaine Metabolite Negative Control	Vial: 4 ml	04/15/87
Roche Diagnostic Systems, Inc.	Abuscreen EIA Cocaine Metabolite Positive Control	Vial: 4 ml	04/15/87
Roche Diagnostic Systems, Inc.	Abuscreen EIA Morphine Conjugate Reagent	Vial: 30ml	05/28/86

EXEMPT CHEMICAL PREPARATIONS—Continued

Supplier	Product	Form of product	Date
Roche Diagnostic Systems, Inc.	Abuscreen EIA Morphine Enzyme Immunoassay Test Kit for Morphine and Morphine Metabolites.	Kit: 100 tests	05/28/86
Roche Diagnostic Systems, Inc.	Abuscreen EIA Morphine Negative Control	Vial: 4 ml	04/15/87
Roche Diagnostic Systems, Inc.	Abuscreen EIA Morphine Positive Calibrator 50-1200 (in increments of 50) ng/ml.	Vial: 4ml	05/28/86
Roche Diagnostic Systems, Inc.	Abuscreen EIA Morphine Positive Control	Vial: 4 ml	04/15/87
Roche Diagnostic Systems, Inc.	Abuscreen Positive Ref. Control (Benzodiazepines) 25, 50, 75, 100 ng/ml or 150-1000 (in increments of 50) ng/ml.	Vial: 5ml, 100ml	03/06/87
Roche Diagnostic Systems, Inc.	Abuscreen Positive Ref. Control(LSD) 0.1, 0.2, 0.25, 0.3, 0.4, 0.5, 0.6, 0.7, 0.75, 0.8, 0.9, 1.0, 1.25, 1.5, 1.75, 2.0, 2.5, 5.0 or 10.0 ng/ml.	Vial: 5ml, 100ml	01/28/86
Roche Diagnostic Systems, Inc.	Abuscreen Positive Reference Control (Amphetamine) 100, 500, 750, 1000, 1500,or 2000 ng/ml.	Vial: 6.6ml, 100 ml	02/15/83
Roche Diagnostic Systems, Inc.	Abuscreen Positive Reference Control (Barbiturate) 50, 100, 200, 300, 400, 500, 750, 1000,or 2000 ng/ml.	Vial: 6.6ml, 100 ml	02/15/83
Roche Diagnostic Systems, Inc.	Abuscreen Positive Reference Control (Benzoylecgonine) 100, 150, 200, 300, 400, 500, 600, 750, 1000, or 2000 ng/ml.	Vial: 6.6ml, 100 ml	02/15/83
Roche Diagnostic Systems, Inc.	Abuscreen Positive Reference Control (Methaqualone) 100, 300, 500, 750, 1000,or 2000 ng/ml.	Vial: 6.6ml, 100 ml	02/15/83
Roche Diagnostic Systems, Inc.	Abuscreen Positive Reference Control (Morphine) 40, 50, 100, 150, 200, 300, 500, 600,or 1000 ng/ml..	Vial: 6.6ml, 120ml	02/15/83
Roche Diagnostic Systems, Inc.	Abuscreen Positive Reference Control (Phencyclidine) 10, 12.5, 25, 50, 75, 100, 200, or 500 ng/ml.	Vial: 6.6ml, 120ml	02/15/83
Roche Diagnostic Systems, Inc.	Abuscreen Positive Reference Control Cannabinoid 20, 25, 50, 100, 150, 200, 300, 400, or 500 ng/ml.	Vial: 6.6ml, 100 ml	02/20/84
Roche Diagnostic Systems, Inc.	Abuscreen Positive Reference Controls for Amphetamine (Single Level).	Kit: 2 Vials	10/12/87
Roche Diagnostic Systems, Inc.	Abuscreen Positive Urine Reference Std. (Oxazepam or Desmethyldiazepam) 25, 50, 75, 100 ng/ml or 150-1000 (in increments of 100) ng/ml.	Vial: 5ml, 100ml	08/28/86
Roche Diagnostic Systems, Inc.	Abuscreen Positive Urine Reference Std.(LSD) 0.1, 0.2, 0.25, 0.3, 0.4, 0.5, 0.6, 0.7, 0.75, 0.8, 0.9, 1.0, 1.25, 1.5, 1.75, 2.0, 2.5, 5, or 10 ng/ml.	Vial: 5ml, 60 ml, & 100 ml	01/28/86
Roche Diagnostic Systems, Inc.	Abuscreen Radioimmunoassay for Amphetamine	Kit: 100 tests, 2500 tests	02/15/83
Roche Diagnostic Systems, Inc.	Abuscreen Radioimmunoassay for Amphetamine High Specificity.	Kit: 100 tests, 2500 tests	09/13/85
Roche Diagnostic Systems, Inc.	Abuscreen Radioimmunoassay for Barbiturates	Kit: 100 tests, 2500 tests	02/15/83
Roche Diagnostic Systems, Inc.	Abuscreen Radioimmunoassay for Benzodiazepines	Kit: 100 tests, 2500 tests	03/06/87
Roche Diagnostic Systems, Inc.	Abuscreen Radioimmunoassay for Cannabinoids	Kit: 100 Tests 2500 Tests	08/14/81
Roche Diagnostic Systems, Inc.	Abuscreen Radioimmunoassay for Cocaine Metabolite	Kit: 100 Tests, 2500 Tests	02/15/83
Roche Diagnostic Systems, Inc.	Abuscreen Radioimmunoassay for LSD (Lysergic Acid Diethylamide).	Kit: 100 tests, 2500 tests	01/28/86
Roche Diagnostic Systems, Inc.	Abuscreen Radioimmunoassay for Methaqualone	Kit: 100 tests, 2500 tests	02/15/83
Roche Diagnostic Systems, Inc.	Abuscreen Radioimmunoassay for Morphine	Kit: 100 tests, 2500 tests	02/15/83
Roche Diagnostic Systems, Inc.	Abuscreen Radioimmunoassay for Phencyclidine (PCP).	Kit: 100 tests, 2500 tests	02/15/83
Roche Diagnostic Systems, Inc.	Abuscreen Reference Controls for Amphetamine (Multi-Level).	Kit: 3 Vials	10/12/87
Roche Diagnostic Systems, Inc.	Abuscreen Reference Controls for Barbiturate (Multi-Level).	Kit: 3 Vials	10/12/87
Roche Diagnostic Systems, Inc.	Abuscreen Reference Controls for Barbiturate (Single-Level).	Kit: 2 Vials	10/12/87
Roche Diagnostic Systems, Inc.	Abuscreen Reference Controls for Benzodiazepines (Single-Level).	Kit: 2 Vials	10/12/87
Roche Diagnostic Systems, Inc.	Abuscreen Reference Controls for Cannabinoids (Multi-Level).	Kit: 3 Vials	10/12/87
Roche Diagnostic Systems, Inc.	Abuscreen Reference Controls for Cannabinoids (Single-Level).	Kit: 2 Vials	10/12/87
Roche Diagnostic Systems, Inc.	Abuscreen Reference Controls for Cocaine Metabolite (Multi-Level).	Kit: 3 Vials	10/12/87
Roche Diagnostic Systems, Inc.	Abuscreen Reference Controls for Cocaine Metabolite (Single-Level).	Kit: 2 Vials	10/12/87
Roche Diagnostic Systems, Inc.	Abuscreen Reference Controls for LSD (Lysergic Acid Diethylamide) (Multi-Level).	Kit: 3 Vials	10/12/87
Roche Diagnostic Systems, Inc.	Abuscreen Reference Controls for LSD (Lysergic Acid Diethylamide) (Single-Level).	Kit: 2 Vials	10/12/87
Roche Diagnostic Systems, Inc.	Abuscreen Reference Controls for Methaqualone (Single-Level).	Kit: 2 Vials	10/12/87
Roche Diagnostic Systems, Inc.	Abuscreen Reference Controls for Morphine (Multi-Level).	Kit: 3 Vials	10/12/87
Roche Diagnostic Systems, Inc.	Abuscreen Reference Controls for Morphine (Single-Level).	Kit: 2 Vials	10/12/87
Roche Diagnostic Systems, Inc.	Abuscreen Reference Controls for Phencyclidine (PCP) (Multi-Level).	Kit: 3 Vials	10/12/87
Roche Diagnostic Systems, Inc.	Abuscreen Reference Controls for Phencyclidine (PCP) (Single-Level).	Kit: 2 Vials	10/12/87
Roche Diagnostic Systems, Inc.	Agglutex Amphetamine Latex Reagent	Vial: 2ml	06/27/83

EXEMPT CHEMICAL PREPARATIONS—Continued

Supplier	Product	Form of product	Date
Roche Diagnostic Systems, Inc.	Agglutex Amphetamine Positive Human Urine Control	Vial: 5ml	06/27/83
Roche Diagnostic Systems, Inc.	Agglutex Amphetamine Test Kit	Kit: 20 tests, 100 tests	02/15/83
Roche Diagnostic Systems, Inc.	Agglutex Barbiturate Latex Reagent	Vial: 2ml	06/27/83
Roche Diagnostic Systems, Inc.	Agglutex Barbiturate Positive Human Urine Control	Vial: 5ml	06/27/83
Roche Diagnostic Systems, Inc.	Agglutex Barbiturate Test Kit	Kit: 20 tests, 100 tests	06/27/83
Roche Diagnostic Systems, Inc.	Agglutex Methaqualone Latex Reagent	Vial: 2ml	06/27/83
Roche Diagnostic Systems, Inc.	Agglutex Methaqualone Positive Human Urine Control	Vial: 5ml	06/27/83
Roche Diagnostic Systems, Inc.	Agglutex Methaqualone Test Kit	Kit: 20 tests, 100 tests	06/27/83
Roche Diagnostic Systems, Inc.	Agglutex Morphine Latex Reagent	Vial: 2ml	06/27/83
Roche Diagnostic Systems, Inc.	Agglutex Morphine Positive Human Urine Control	Vial: 5ml	06/27/83
Roche Diagnostic Systems, Inc.	Agglutex Morphine Test Kit	Kit: 20 tests, 100 tests	06/27/83
Roche Diagnostic Systems, Inc.	Agglutex Phencyclidine (PCP) Test Kit	Kit: 20 tests, 100 tests	06/27/83
Roche Diagnostic Systems, Inc.	Agglutex Phencyclidine Latex Reagent	Vial: 2ml	06/27/83
Roche Diagnostic Systems, Inc.	Agglutex Phencyclidine Positive Human Urine Control	Vial: 5ml	06/27/83
Roche Diagnostic Systems, Inc.	Amerifluor Florescent Immunoassay-Phenobarbital	Kit: 100 tests	04/30/82
Roche Diagnostic Systems, Inc.	Anti-T3 Reagent 125I T3 (for T3 Radioimmunoassay)	Vial: 15ml	07/22/81
Roche Diagnostic Systems, Inc.	Anti-T4 Reagent 125I T4 (for T4 Radioimmunoassay)	Vial: 15ml	07/22/81
Roche Diagnostic Systems, Inc.	COBAS FP Phenobarbital Calibrators	Kit: 6 Vials	11/13/84
Roche Diagnostic Systems, Inc.	COBAS FP Phenobarbital Calibrators B through F	Vial: 5ml	11/13/84
Roche Diagnostic Systems, Inc.	COBAS FP Phenobarbital Tracer Reagent	Vial: 5ml	11/13/84
Roche Diagnostic Systems, Inc.	COBAS FP Reagents for Phenobarbital	Kit: 100 tests	11/13/84
Roche Diagnostic Systems, Inc.	COBAS FP TDM Controls	Kit: 6 Vials	11/13/84
Roche Diagnostic Systems, Inc.	Immunizing Preparation No. 1, 2, 3, 4, 5, 6, 7, or 8.	Vial: 10, 20, 50, or 100ml	01/25/83
Roche Diagnostic Systems, Inc.	Immunizing Preparation No. 9	Vial: 10ml, 20ml, 50ml, or 100ml	07/24/84
Roche Diagnostic Systems, Inc.	Immunizing Preparation No. 9A	Vial: 10ml, 20ml, 50ml, or 100ml	07/24/84
Roche Diagnostic Systems, Inc.	Immunizing Preparation No. 10	Vial: 10ml, 20ml, 50ml, or 100ml	04/02/86
Roche Diagnostic Systems, Inc.	Immunizing Preparation No. 10A	Vial: 10ml, 20ml, 50ml, or 100ml	04/02/86
Roche Diagnostic Systems, Inc.	Immunizing Preparations No. 1A, 2A, 3A, 4A, 5A, 6A, 7A, & 8A.	Vial: 10ml, 20ml, 50ml, or 100ml	07/12/83
Roche Diagnostic Systems, Inc.	NSB Reagent	Vial: 2ml	07/22/81
Roche Diagnostic Systems, Inc.	TDM Controls, Levels I through III	Vial: 5ml	11/13/84
Rowley Biochemical Institute, Inc.			
Rowley Biochemical Institute, Inc.	Aldehyde Fuchsin Solution	Bottle: Pint, Quart, Gallon	02/02/84
Rowley Biochemical Institute, Inc.	Aldehyde Thionin Solution	Bottle: Pint, Quart, Gallon	02/02/84
Rowley Biochemical Institute, Inc.	Mayer's Hematoxylin Solution	Bottle: Pint, Quart, Gallon	02/02/84
Schering Corp.			
Schering Corp.	Hepaquik	Vial: 9 Dram and Plate	07/16/72
Serono Diagnostics, Inc.			
Serono Diagnostics, Inc.	rT3 Barbital Buffer	Glass Vial: 120ml	10/26/84
Serono Diagnostics, Inc.	rT3-125I	Glass Vial: 13ml	10/26/84
Serono Diagnostics, Inc.	rT3-Antiserum	Glass Vial: 13ml	10/26/84
Sherwood Medical Company			
Sherwood Medical Company	Lancer Fibrinogen Determination, Reagent Kit Catalog No. 8889-007608.	Kit	04/17/75
Sigma Chemical Co.			
Sigma Chemical Co.	1-Tetrahydrocannabinol, Product No. T-4764	Sealed Ampule: 1ml	06/30/77
Sigma Chemical Co.	1-Tetrahydrocannabinol, Product No. T-4764	Vial: 1ml	05/11/81
Sigma Chemical Co.	5,5-Diallylbarbituric Acid, Product No. D-6013	Sealed Ampule: 1ml	06/30/77
Sigma Chemical Co.	6-Tetrahydrocannabinol, Product No. T-4889	Vial: 1ml	05/11/81
Sigma Chemical Co.	ALT Reagent A, Stock No. 57-10	Vial: 30ml	06/27/79
Sigma Chemical Co.	ALT Reagent A, Stock No. 57-2	Vial: 10ml	06/27/79
Sigma Chemical Co.	AST Reagent A, Stock No. 56-10	Vial: 30ml	06/27/79
Sigma Chemical Co.	AST Reagent A, Stock No. 56-2	Vial: 10ml	06/27/79
Sigma Chemical Co.	Acid Hematoxylin Solution, No. 285-2	Bottle: 25ml, 100ml	08/06/73
Sigma Chemical Co.	Adenosine Phosphate Substrate, Product No. 675-1	Bottle: 4 ounce	07/25/83
Sigma Chemical Co.	Allylcyclopentylbarbituric Acid (A-7787)	Sealed Ampule: 1ml	04/10/85
Sigma Chemical Co.	Allylisobutylbarbituric Acid (A-1038)	Sealed Ampule: 1ml	04/10/85
Sigma Chemical Co.	Alphaprodine Hydrochloride (A-1537)	Ampule: 1ml	08/27/84
Sigma Chemical Co.	Alphenal (A-1163)	Ampule: 1ml	04/10/85
Sigma Chemical Co.	Ammonia Reagent , Stock No. 170-10	Vial: 10ml	02/17/77
Sigma Chemical Co.	Ammonia Reagent Kit: Stock No. 170-10	Kit: 10 Vials	02/17/77
Sigma Chemical Co.	Ammonia Reagent Stock No. 170-10	Vial: 30ml	12/13/77
Sigma Chemical Co.	Ammonia in Plasma Kit	Kit: 100 tests, 30 tests	12/13/77
Sigma Chemical Co	Amobarbital, Product No. A-5142	Sealed Ampule: 1ml	06/30/77
Sigma Chemical Co	Antibody Sensitized Sheep Erythrocytes (EA7S)	Vials: 2ml and 5X 2ml	04/02/86
Sigma Chemical Co	Aprobarbital, Product No. A-7023	Sealed Ampule: 1ml	06/30/77
Sigma Chemical Co	Barbital Buffer, Product No. B-6632	Polyethylene Vial: 30ml	05/11/77
Sigma Chemical Co	Barbital Buffer with Albumin Stock No. 880-3	Vial: 20ml	07/11/80
Sigma Chemical Co	Barbital, Product No. B-8632	Sealed Ampule: 1ml	06/30/77
Sigma Chemical Co	Benzphetamine Hydrochloride, Product No. B-8765	Sealed Ampule: 1ml	06/08/84
Sigma Chemical Co	Bufotenine Monooxalate, Product No. B-8757	Sealed Ampule: 1ml	06/30/77
Sigma Chemical Co	Butabarbital, Product No. B-8882	Sealed Ampule: 1ml	06/30/77
Sigma Chemical Co	Butalbital, Product No. B-5514	Sealed Ampule: 1ml	09/19/83
Sigma Chemical Co	Butethal (B-7516)	Ampule: 1ml	09/05/85
Sigma Chemical Co	Cannabidiol, Product No. C-6395	Sealed Ampule: 1ml	08/29/79
Sigma Chemical Co	Cannabidiol, Product No. C-6395	Vial: 1ml	05/11/81

EXEMPT CHEMICAL PREPARATIONS—Continued

Supplier	Product	Form of product	Date
Sigma Chemical Co	Cannabinol, Product No. C-6520	Sealed Ampule: 1ml	08/29/79
Sigma Chemical Co	Cannabinol, Product No. C-6520	Vial: 1ml	05/11/81
Sigma Chemical Co	Chloral Hydrate, Product No. C-6516	Sealed Ampule: 1ml	06/30/77
Sigma Chemical Co	Chlorazepam Dipotassium Salt (C-9531)	Ampule: 1ml	05/24/85
Sigma Chemical Co	Chlordiazepoxide (C-4782)	Ampule: 1ml	09/05/85
Sigma Chemical Co	Clonazepam, Product No. C-4404	Sealed Ampule: 1ml	C6/08/84
Sigma Chemical Co	Cocaine Hydrochloride Product No. C-1528	Sealed Ampule: 1ml	09/19/83
Sigma Chemical Co	Codeine. Product No. C-1653	Sealed Ampule: 1ml	09/19/83
Sigma Chemical Co	D-Amphetamine Sulfate, Product No. A-3278	Vial: 1ml	05/11/81
Sigma Chemical Co	DL-Amphetamine HCL, Product No. A-5017	Sealed Ampule: 1ml	06/30/77
Sigma Chemical Co	Dextropropoxyphene Hydrochloride (D-8901)	Ampule: 1ml	09/27/84
Sigma Chemical Co	Diazepam, Product No. D-9900	Sealed Ampule: 1ml	06/08/84
Sigma Chemical Co	Diethylpropion Hydrochloride, Product No. D-7274	Sealed Ampule: 1ml	09/19/83
Sigma Chemical Co	Diphenoxylate (D-0780)	Ampule: 1ml	09/05/85
Sigma Chemical Co	Drug Standard Mix 1, D-3155	Ampule: 2ml	04/18/86
Sigma Chemical Co	Drug Standard Mix 2, D-3030	Ampule: 2ml	04/18/86
Sigma Chemical Co	Ethinamate (E-8508)	Ampule: 1ml	04/10/85
Sigma Chemical Co	Fenfluramine Hydrochloride, Product No. F-1884	Sealed Ampule: 1ml	09/19/83
Sigma Chemical Co	Flunitrazepam No. F-8763	Vial: 1 ml	06/30/87
Sigma Chemical Co	Flurazepam Dihydrochloride, Product No. F-9134	Sealed Ampule: 1ml	06/08/84
Sigma Chemical Co	Gelatin Veronal Buffer (GVB2+) No. G-6514	Vial: 50 ml, 250ml	09/15/86
Sigma Chemical Co	Glutethimide, Product No. G-3134	Sealed Ampule: 1ml	06/30/77
Sigma Chemical Co	Glycerophosphate Substrate, Product No. 675-2	Bottle: 4 ounce	07/25/83
Sigma Chemical Co	Glycerophosphate Substrate, Product No. 704-1	Bottle: 4 ounce	07/25/83
Sigma Chemical Co	Hexobarbital, Product No. H-2007	Sealed Ampule: 1ml	06/30/77
Sigma Chemical Co	Hydromorphone Hydrochloride No. H-7141	Vial: 1 ml	06/30/87
Sigma Chemical Co	Ibogaine HCL, Product No. I-4630	Sealed Ampule: 1ml	06/30/77
Sigma Chemical Co	LDH Electrophoresis Buffer, Stock No. 705-1	Amber Jar: 30ml	01/04/77
Sigma Chemical Co	LDH-P Reagent No. 125-10	Vial: 30ml	05/29/73
Sigma Chemical Co	LDH-P Reagent No. 125-100	Vial: 100ml	05/29/73
Sigma Chemical Co	Lorazepam (L-0140)	Ampule: 1ml	05/24/85
Sigma Chemical Co	Lysergic Acid, Product No. L-5881	Sealed Ampule: 1ml	06/30/77
Sigma Chemical Co	Mayer's Hematoxylin Solution, No. MHS-1	Bottle: 25ml, 100ml	08/06/73
Sigma Chemical Co	Mebutamate (M-3772)	Ampule: 1ml	09/05/85
Sigma Chemical Co	Medazepam (M-7646)	Ampule: 1ml	05/24/85
Sigma Chemical Co	Meperidine Hydrochloride (M-1020)	Ampule: 1ml	08/27/84
Sigma Chemical Co	Mephobarbital, Product No. M-3514	Vial: 1ml	05/11/81
Sigma Chemical Co	Meprobamate (M-0271)	Ampule: 1ml	05/24/85
Sigma Chemical Co	Mescaline HC1, Product No. M-5153	Sealed Ampule: 1ml	06/30/77
Sigma Chemical Co	Methadone Hydrochloride, Product No. M-3268	Sealed Ampule: 1ml	09/19/83
Sigma Chemical Co	Methamphetamine HC1, Product No. M-5260	Sealed Ampule: 1ml	06/30/77
Sigma Chemical Co	Methaqualone Hydrochloride, Product No. M-3393	Sealed Ampule: 1ml	09/19/83
Sigma Chemical Co	Methylphenidate Hydrochloride (M-1145)	Ampule: 1ml	10/31/84
Sigma Chemical Co	Methyprylon, Product No. M-1769	Sealed Ampule: 1ml	06/08/84
Sigma Chemical Co	Morphine-3-B-D Glucuronide, Product No. M-4266	Ampule: 1ml	10/21/82
Sigma Chemical Co	N,N-Diethyltryptamine, Product No. D-0392	Vial: 1ml	05/11/81
Sigma Chemical Co	N,N-Dimethyltryptamine, Product No. D-6263	Sealed Ampule: 1ml	06/30/77
Sigma Chemical Co	Nalorphine Hydrochloride	Ampule: 1ml	08/27/84
Sigma Chemical Co	Oxazepam, No. O-1755	Vial: 1 ml	06/30/87
Sigma Chemical Co	Oxycodone Hydrochloride, Product No. O-2628	Sealed Ampule: 1ml	09/19/83
Sigma Chemical Co	Paraldehyde, Product No. D-3778	Ampule: 1ml	10/21/82
Sigma Chemical Co	Pemoline, Product No. P-3518	Sealed Ampule: 1ml	06/30/77
Sigma Chemical Co	Pentazocine Hydrochloride, Product No. P-7530	Sealed Ampule: 1ml	09/19/83
Sigma Chemical Co	Pentobarbital, Product No. P-3393	Sealed Ampule: 1ml	06/30/77
Sigma Chemical Co	Phencyclidine, No. P-7043	Vial: 1 ml	06/30/87
Sigma Chemical Co	Phendimetrazine, Product No. P-3524	Vial: 1ml	05/11/81
Sigma Chemical Co	Phenobarbital Prod. No. P-3643	Sealed Ampule: 1ml	06/30/77
Sigma Chemical Co	Phentermine Hydrochloride, Product No. P-7655	Sealed Ampule: 1ml	09/19/83
Sigma Chemical Co	Phenylacetone, Product No. P-2024	Vial: 1ml	05/11/81
Sigma Chemical Co	Prazepam, No. P-7168	Vial: 1 ml	06/30/87
Sigma Chemical Co	SGOT 10 Assay Vial No. 55-10	Vial: 30ml	05/29/73
Sigma Chemical Co	SGOT Reagent No. 155-10	Vial: 30ml	05/29/73
Sigma Chemical Co	SGOT Reagent No. 155-100	Vial: 100ml	05/29/73
Sigma Chemical Co	SGOT Single Assay Vial No. 55-1	Vial: 3ml	05/29/73
Sigma Chemical Co	SGOT Single Assay Vial No. 55-5	Vial: 15ml	05/29/73
Sigma Chemical Co	SGPT 10 Assay Vial No. 55-10P	Vial: 30ml	05/29/73
Sigma Chemical Co	SGPT Assay Vial No. 55-5P	Vial: 15ml	05/29/73
Sigma Chemical Co	SGPT Reagent No. 155-100P	Vial: 100ml	05/29/73
Sigma Chemical Co	SGPT Reagent No. 155-10P	Vial: 30ml	05/29/73
Sigma Chemical Co	SGPT Single Assay Vial No. 55-1P	Vial: 3ml	05/29/73
Sigma Chemical Co	Secobarbital, Product No. S-4006	Sealed Ampule: 1ml	06/30/77
Sigma Chemical Co	Temazepam, No. T-4903	Vial: 1 ml	06/30/87
Sigma Chemical Co	Thebaine, Product No. T-5270	Sealed Ampule: 1ml	09/19/83
Sigma Chemical Co	Thiamylal Sodium, Product No. T-6896	Sealed Ampule: 1ml	06/08/84
Sigma Chemical Co	Thiopental (T-1022)	Ampule: 1ml	08/27/84
Sigma Chemical Co	Trizma-Barbital Buffer, Stock No. 710-1	Amber Jar: 30ml	01/04/77
Sigma Chemical Co	Tropacocaine, Product No. T-4516	Vial: 1ml	05/11/81
Smart Chemical Co.			
Smart Chemical Co	Regal 180XL	Plastic Drum: 55 gallon	06/12/86

EXEMPT CHEMICAL PREPARATIONS—Continued

Supplier	Product	Form of product	Date
Supelco, Inc.			
Supelco, Inc	Alk Mix No. 04-9210	Vial: 1ml	08/28/73
Supelco, Inc	Amobarbital, No. 04-9170	Ampule: 1ml	12/22/72
Supelco, Inc	Amph. Mix Catalog No. 4-9205	Glass Ampule: 2ml	06/09/86
Supelco, Inc	Amphetamine No. 04-9165	Ampule: 1ml	12/22/72
Supelco, Inc	Anticonvulsant Mixture No.1; No. 04-9202	Glass Serum Bottle: 50ml	06/16/77
Supelco, Inc	Antiepileptic Calibration Standard Kit, No. 4-9259	Kit: 3 Ampules	05/21/80
Supelco, Inc	Antiepileptic Calibration Standards, Nos.4-9256, 4-9257, 4-9258.	Glass Ampule: 5ml	05/21/80
Supelco, Inc	Aprobarbital No. 04-9171	Ampule: 1ml	12/22/72
Supelco, Inc	Barb. Mix 1, Catalog No. 4-9200	Glass Ampule: 2ml	06/09/86
Supelco, Inc	Barb. Mix 2, Catalog No. 4-9201	Glass Ampule: 2ml	06/09/86
Supelco, Inc	Barbital, Catalog No. 4-9279	Glass Ampule: 10ml	06/09/86
Supelco, Inc	Barbiturates Test Mix Catalog No. 4-9295	Ampule: 2 ml	02/25/87
Supelco, Inc	Cannabidiol, No. 04-9221	Ampule: 1ml	11/27/74
Supelco, Inc	Cannabinol, No. 04-9235	Ampule: 1ml	11/27/74
Supelco, Inc	Cocaine, No. 04-9188	1000 mcg /Glass Ampule	06/05/75
Supelco, Inc	Codeine No. 04-9161	Ampule: 1ml	12/22/72
Supelco, Inc	Cyclobarbital No. 04-9175	Ampule: 1ml	12/22/72
Supelco, Inc	Delta-1 THC, No. 04-9237	Ampule: 1ml	11/27/74
Supelco, Inc	Delta-6 THC, No. 04-9238	Ampule: 1ml	11/27/74
Supelco, Inc	Dextroamphetamine, No. 4-9185	Glass Ampule: 1ml	05/21/80
Supelco, Inc	Glutethimide No. 04-9173	Ampule: 1ml	12/22/72
Supelco, Inc	Heroin No. 04-9162	Ampule: 1ml	12/22/72
Supelco, Inc	Hexobarbital No. 04-9177	Ampule: 1ml	12/22/72
Supelco, Inc	Mephobarbital No. 04-9178	Ampule: 1ml	12/22/72
Supelco, Inc	Meprobamate, No. 4-9184	Glass Ampule: 1ml	05/21/80
Supelco, Inc	Methadone No. 04-9163	Ampule: 1ml	12/22/72
Supelco, Inc	Methamphetamine No. 04-9168	Ampule: 1ml	12/22/72
Supelco, Inc	Methaqualone, No. 04-9183	1000 mcg /Glass Ampule	06/05/75
Supelco, Inc	Morphine No. 04-9160	Glass Ampule: 1000mcg	03/08/78
Supelco, Inc	Pentobarbital No. 04-9179	Glass Ampule: 1000mcg	03/08/78
Supelco, Inc	Phenobarbital No. 04-9181	Glass Ampule: 1000mcg	03/08/78
Supelco, Inc	Psilocybin, No. 04-9191	1000 mcg /Glass Ampule	06/05/75
Supelco, Inc	Secobarbital No. 04-9180	Glass Ampule: 1000mcg	03/08/78
Syva Co.			
Syva Co	AccuLevel Phenobarbital Test Control Stock Solution	Flask: 50ml	10/31/85
Syva Co	AccuLevel Phenobarbital Test Kit (Catalog No.10C019) Contains: (1)AccuLevel Phenobarbital Control.	(1)Glass Vial: 6ml; (2)Glass Vial: 9ml, 12 Vials per test kit.	01/24/86
Syva Co	Advance T-3 Uptake Assay	Kit: 100 tests	05/11/82
Syva Co	Advance Thyroxin Assay	Kit: 100 tests	05/11/82
Syva Co	Antiepileptic Drug Control	Vial: 10ml , Lyophilized	08/27/74
Syva Co	Emit 700 Amphetamine Assay Catalog No. 3C919	Bottle: 180ml	10/12/84
Syva Co	Emit 700 Barbiturate Assay Catalog No. 3D919	Bottle: 180ml	10/12/84
Syva Co	Emit 700 Calibrator A Catalog No. 3A919	Bottle: 3ml	10/05/84
Syva Co	Emit 700 Calibrator B Catalog No. 3A969	Bottle: 3ml	10/05/84
Syva Co	Emit 700 Cannabinoid (100) Assay Catalog No. 3M919.	Bottle: 180ml	10/12/84
Syva Co	Emit 700 Cannabinoid (100) Calibrator Catalog No. 3M969.	Bottle: 3ml	10/09/84
Syva Co	Emit 700 Cannabinoid (20) Assay, Catalog No. 3M959	Plastic Bottle: 180ml	09/15/86
Syva Co	Emit 700 Cannabinoid Control Set Catalog No. 3M989	2 Bottles: 3ml	10/09/84
Syva Co	Emit 700 Cocaine Metabolite Assay Catalog No. 3H919.	Bottle: 180ml	10/12/84
Syva Co	Emit 700 Control Set A Catalog No. 3A939	2 Bottles: 3ml	10/09/84
Syva Co	Emit 700 Control Set B Catalog No. 3A989	2 Bottles: 3ml	10/09/84
Syva Co	Emit 700 Methaqualone Assay Catalog No. 3Q919	Bottle: 180ml	10/19/84
Syva Co	Emit 700 Opiate Assay Catalog No. 3B919	Bottle: 180ml	10/12/84
Syva Co	Emit 700 Phencyclidine Assay Catalog No. 3J919	Bottle: 180ml	10/12/84
Syva Co	Emit AED-No. 1 Calibrator	Vial: 3ml , Lyophilized	08/27/74
Syva Co	Emit AED-No. 2 Calibrator	Vial: 3ml , Lyophilized	08/27/74
Syva Co	Emit AED-No. 3 Calibrator	Vial: 3ml , Lyophilized	08/27/74
Syva Co	Emit AED-No. 4 Calibrator	Vial: 3ml , Lyophilized	08/27/74
Syva Co	Emit AED-No. 5 Calibrator	Vial: 3ml , Lyophilized	08/27/74
Syva Co	Emit Convenience Pack: T-Uptake Assay (Thyroid Hormone Binding Ratio).	Kit: 100 Tests Ea. Kit-Plastic Cassette: 16 ml	05/09/88
Syva Co	Emit HVA Amphetamine Assay Catalog No. 3C619	Kit: 2500 Assays	06/30/88
Syva Co	Emit HVA Barbiturate Assay Catalog No. 3D619	Kit: 2500 Assays	06/30/88
Syva Co	Emit HVA Calibrator Kit Catalog No. 3A619	Kit: 500 Tests Each Kit -2 Glass Bottles 100 ml	05/10/88
Syva Co	Emit HVA Cannabinoid 100 ng Assay Control Kit, Catalog No. 3M739.	Kit: 2 Bottles, 50 ml. ea.	07/15/88
Syva Co	Emit HVA Cannabinoid 100 ng. Assay Calibrator Kit, Catalog No. 3M729.	Kit: 3 Bottles 50 ml. ea.	07/15/88
Syva Co	Emit HVA Cannabinoid 100 ng. Assay Kit, Catalog No. 3M719.	Kit: 2500 Assays	07/15/88
Syva Co	Emit HVA Cocaine Metabolite Assay Catalog No. 3H619.	Bottle: 125 ml	05/10/88
Syva Co	Emit HVA Control Kit Catalog No. 3A629	Kit: 500 Tests Each Kit-2 Glass Bottles -100 ml	05/10/88

EXEMPT CHEMICAL PREPARATIONS—Continued

Supplier	Product	Form of product	Date
Syva Co.	Emit HVA Opiate Assay Catalog No. 3B619	Bottle: 125 ml	05/10/88
Syva Co.	Emit HVA Phencyclidine Assay Catalog No. 3J619	Bottle: 125 ml	05/19/88
Syva Co.	Emit Phenobarbital Enzyme Reagent B	Vial: 6 ml , Lyophilized	08/27/74
Syva Co.	Emit Qst Phenobarbital Bulk Powder Reagent	Steel Drum: 7 gallon	06/05/86
Syva Co.	Emit Qst Primidone Assay Catalog No. 60819	Glass Vial: 6ml, 50 Vials/Kit	11/12/85
Syva Co.	Emit Serum Barbiturate-Enzyme Reagent B	Bottle: 3ml	05/22/79
Syva Co.	Emit Tox Serum Benzodiazepine Assay Kit Containing: Emit Enzyme Reagent B.	Bottle: 3ml	02/01/79
Syva Co.	Emit d.a.u. Amphetamine Assay Catalog Nos. 3C019, 3C119.	Kit: 100 tests, 1000 tests	09/27/84
Syva Co.	Emit d.a.u. Benzodiazepine Assay Catalog Nos. 3F019, 3F119.	Kit: 100 tests, 1000 tests	09/27/84
Syva Co.	Emit d.a.u. Cannabinoid 100 ng Assay, Catalog No. 3M119.	Kit: 1000 tests	09/12/86
Syva Co.	Emit d.a.u. Cannabinoid 20ng Assay Catalog No. 3M619.	Kit: 100 tests	02/10/86
Syva Co.	Emit d.a.u. Cannabinoid 20ng Enzyme Reagent B	Vial: 10ml Lyophilized Powder	02/10/86
Syva Co.	Emit d.a.u. Cannabinoid Assay Catalog No. 3M019	Kit: 100 tests	09/24/84
Syva Co.	Emit d.a.u. Cannabinoid Urine Calibrator Set	Kit: 3 Vials, 3ml Each	01/03/80
Syva Co.	Emit d.a.u. Cocaine Metabolite Assay Catalog Nos. 3H019, 3H119.	Kit: 100 tests, 1000 tests	09/27/84
Syva Co.	Emit d.a.u. Low Calibrator A	Bottle: 5ml	07/20/84
Syva Co.	Emit d.a.u. Low Calibrator A, Catalog No. 3C579	5 ml vial	10/06/88
Syva Co.	Emit d.a.u. Medium Calibrator A, Catalog No. 3C569	5 ml vial	10/06/88
Syva Co.	Emit d.a.u. Medium Calibrator B	Bottle: 5ml	08/03/84
Syva Co.	Emit d.a.u. Methadone Assay Catalog Nos. 3E019, 3E119.	Kit: 100 tests, 1000 tests	10/05/84
Syva Co.	Emit d.a.u. Monoclonal Amphetamine/Methamphetamine Assay, Catalog No3C549 100 tests, 3C559 1000 tests.	Kit: 100 tests, 1000 tests	10/06/88
Syva Co.	Emit d.a.u. Opiate Assay Catalog Nos. 3B019, 3B119	Kit: 100 tests, 1000 tests	09/27/84
Syva Co.	Emit d.a.u. Phencyclidine Assay Kit Containing: (1)Emit Phencyclidine Enzyme Reagent B.	Bottle: 6ml	02/01/79
Syva Co.	Emit d.a.u. Barbiturate Assay Catalog Nos. 3D019, 3D119.	Kit: 100 tests, 1000 tests	09/27/84
Syva Co.	Emit d.a.u. Low Calibrator B	Bottle: 5ml	08/03/84
Syva Co.	Emit d.a.u. Medium Calibrator A	Bottle: 5ml	07/20/84
Syva Co.	Emit-Tox Serum Barbiturate Assay	Kit: 50 tests	05/22/79
Syva Co.	Emit-Qst Phenobarbital Assay, Catalog Number 6D819.	Kit: 50 vials	01/18/84
Syva Co.	Emit-Tox Serum Calibrators Low and Medium	Bottle: 3ml	02/01/79
Syva Co.	Emit-d.a.u. Methaqualone Assay	Kit: 100 tests	04/27/82
Syva Co.	Emit-st Amphetamine Assay	Vial: 3ml, 80 vials/kit	10/03/80
Syva Co.	Emit-st Barbiturate Assay	Vial: 3ml, 80 vials/kit	10/03/80
Syva Co.	Emit-st Benzodiazepine Assay	Vial: 3ml, 80 vials/kit	10/03/80
Syva Co.	Emit-st Cannabinoid Assay Catalog No. 3M319	Vial: 6ml, 80 vials/kit	09/27/84
Syva Co.	Emit-st Cannabinoid Calibrator	Vial: 3ml, 2 vials/kit	07/10/81
Syva Co.	Emit-st Cannabinoid Controls	Vial: 3ml, 2 vials/kit	07/10/81
Syva Co.	Emit-st Opiate Assay	Kit: 3ml, 80 vials/kit	10/03/80
Syva Co.	Emit-st Phencyclidine Assay	Vial: 3ml, 80 vials/kit	01/07/81
Syva Co.	Emit-st Serum Barbiturate Assay	Vial: 3ml, 80 vials/kit	02/16/81
Syva Co.	Emit-st Serum Benzodiazepine Assay	Vial: 3ml, 80 vials/kit	02/16/81
Syva Co.	Emit-st Serum Calibrator	Vial: 3ml	02/16/81
Syva Co.	Emit-st Serum Controls	Vial: 3ml, 2 vials/kit	02/16/81
Syva Co.	Emit-st Serum Phencyclidine Assay	Vial: 3ml, 80 vials/kit	02/16/81
Syva Co.	Emit-st Urine Calibrator A	Vial: 1ml, 3 vials/kit	10/03/80
Syva Co.	Emit-st Urine Cocaine Metabolite Assay	Vial: 3 ml, 80 vials/kit	03/16/82
Syva Co.	Emit-st Urine Controls A	Vial: 1ml, 6 vials/kit	10/03/80
Syva Co.	Emit-st Urine Methadone Assay	Vial: 3ml, 80 vials/kit	03/22/82
Syva Co.	Emit-st Urine Methaqualone Assay	Kit: 80 vials	04/27/82
Syva Co.	Emit-st Urine Methaqualone Calibrator	Vial: 3ml	04/27/82
Syva Co.	Emit-st Urine Methaqualone Controls	Vial: 3ml	04/27/82
Technicon			
Technicon	Ammonium Sulfate Reagent No. T01-1139	Glass Bottle: 1 and 4 liters	01/31/80
Technicon	Set Point RA-1000 Systems T4 Standards Product No. T03-1481-01.	Glass Bottles: 5ml (Standard 1 Fill Volume=5ml) (Standards 2-6 Fill Volume=1.5ml).	08/02/85
Technicon	T4 Agglutinator Reagent No. T11-1484	Glass Bottle: 10ml	08/02/85
Technicon	TQC T.D.M. Calibrator 1, No. T13-1150	Glass Vial: 15ml	01/31/80
Technicon	TQC T.D.M. Control A, No. T13-1115	Glass Vial: 15ml	01/31/80
Technicon Instruments Corporation			
Technicon Instruments Corporation	Agar Gel Plates No. 8794	Plate: 25ml	08/01/72
Technicon Instruments Corporation	Agar Gel Plates, No. 7114	Plate: 15 ml	01/15/87
Technicon Instruments Corporation	Buffer No. 3017	Vial 250 ml	08/31/71
Technicon Instruments Corporation	Buffer No. 8793	Vial: 250ml	08/01/72
Technicon Instruments Corporation	Diluting Fluid No. 3400	Vial: 10ml	08/31/71
Technicon Instruments Corporation	Electrode Buffer, DR07172	Bulk	12/26/74
Technicon Instruments Corporation	LD Electrode Buffer, DR07173	Bulk	02/12/79
Technicon Instruments Corporation	Ligand Control I-No.4814, II-No.4824, and III-No.4834	Vials: 5ml	02/24/81

EXEMPT CHEMICAL PREPARATIONS—Continued

Supplier	Product	Form of product	Date
Technicon Instruments Corporation	Partial Thromboplastin (Dried), No.3491	Vial: 1ml and 5 ml	08/31/71
Technicon Instruments Corporation	Therapeutic Drug Monitoring Survey (Z Series)	Vials: 5 ml	09/24/86
Technicon Instruments Corporation	Therapeutic Monitor Level I No.4881	Vial: 3ml	01/20/83
Technicon Instruments Corporation	Therapeutic Monitor Level II No.4882	Vial: 3ml	01/20/83
Technicon Instruments Corporation	Therapeutic Monitor Level III No.4883	Vial: 3ml	01/20/83
Technicon Instruments Corporation	Toxicology Survey (T Series)	Vials: 20 ml, 50 ml	09/24/86
Technicon Instruments Corporation	Toxicology Urine Control No. 0841	Vial: 10ml	06/11/82
Technicon Instruments Corporation	Toxicology Urine Control No. 0842	Vial: 3ml	06/11/82
Technicon Instruments Corporation	Urine Control No. 0277	Vial: 25ml	04/14/81
Technicon Instruments Corporation	Urine Toxicology Survey (UT Series)	Vials: 50 ml	09/24/86
Tempil Division. Big Three Industries, Inc.			
Tempil Division. Big Three Industries, Inc.	Tempilaq Striped Mylar	Plastic Sheet: 6 by 12 in. 50 sheets per envelope	09/22/76
The Theta Corp.			
The Theta Corp.	Allobarbital No. FP305	Vial: 2ml	04/10/73
The Theta Corp.	Amobarbital No. FP313	Vial: 2ml	04/10/73
The Theta Corp.	Amphetamine No. FP604	Vial: 2ml	04/10/73
The Theta Corp.	Anileridine No. FP203	Vial: 2ml	04/10/73
The Theta Corp.	Aprobarbital No. FP306	Vial: 2ml	04/10/73
The Theta Corp.	Barbital No. FP314	Vial: 2ml	04/10/73
The Theta Corp.	Benzoylecgonine FP-1001	Vial: 2ml	01/24/87
The Theta Corp.	Butabarbital No. FP315	Vial: 2ml	04/10/73
The Theta Corp.	Butalbital No. FP307	Vial: 2ml	04/10/73
The Theta Corp.	Chloral Betaine No. FP502	Vial: 2ml	04/10/73
The Theta Corp.	Chloral Hydrate No. FP501	Vial: 2ml	04/10/73
The Theta Corp.	Cocaine No. FP601	Vial: 2ml	04/10/73
The Theta Corp.	Codeine No. FP102	Vial: 2ml	04/10/73
The Theta Corp.	Cyclobarbital No. FP308	Vial: 2ml	04/10/73
The Theta Corp.	Dihydrocodeine No. FP108	Vial: 2ml	04/10/73
The Theta Corp.	Diphenoxylate No. FP205	Vial: 2ml	04/10/73
The Theta Corp.	Ethchlorvynol No. FP508	Vial: 2ml	04/10/73
The Theta Corp.	Ethylmorphine No. FP106	Vial: 2ml	04/10/73
The Theta Corp.	FP207	Vial: 2ml	09/04/80
The Theta Corp.	FP210	Vial: 2ml	05/15/84
The Theta Corp.	FP214	Vial: 2ml	04/10/84
The Theta Corp.	FP327	Vial: 2ml	04/10/84
The Theta Corp.	FP405	Vial: 2ml	03/08/79
The Theta Corp.	FP411	Vial: 2ml	05/15/84
The Theta Corp.	FP412	Vial: 2ml	05/15/84
The Theta Corp.	FP416	Vial: 2ml	05/15/84
The Theta Corp.	FP512	Vial: 2ml	03/08/79
The Theta Corp.	FP513	Vial: 2ml	03/08/79
The Theta Corp.	FP514	Vial: 2ml	05/15/84
The Theta Corp.	FP515	Vial: 2ml	03/08/79
The Theta Corp.	FP556	Vial: 2ml	04/10/84
The Theta Corp.	FP601A	Vial: 2ml	05/15/84
The Theta Corp.	FP607	Vial: 2ml	05/15/84
The Theta Corp.	FP609	Vial: 2ml	05/15/84
The Theta Corp.	Fentanyl No. FP211	Vial: 2ml	04/10/73
The Theta Corp.	Glutethimide No. FP404	Vial: 2ml	04/10/73
The Theta Corp.	Heptabarbital No. FP309	Vial: 2ml	04/10/73
The Theta Corp.	Hexabarbital No. FP303	Vial: 2ml	04/10/73
The Theta Corp.	Hydrocodone No. FP107	Vial: 2ml	04/10/73
The Theta Corp.	Hydromorphone No. FP103	Vial: 2ml	04/10/73
The Theta Corp.	Levorphanol No. FP208	Vial: 2ml	04/10/73
The Theta Corp.	Marker Mixture No. FPM-104	Vial: 2ml	04/10/73
The Theta Corp.	Marker Mixture No. FPM-201	Vial: 2ml	04/10/73
The Theta Corp.	Meperidine No. FP201	Vial: 2ml	04/10/73
The Theta Corp.	Mephobarbital No. FP301	Vial: 2ml	04/10/73
The Theta Corp.	Meprobamate No. FP402	Vial: 2ml	04/10/73
The Theta Corp.	Methadone No. FP206	Vial: 2ml	04/10/73
The Theta Corp.	Methamphetamine No. FP603	Vial: 2ml	04/10/73
The Theta Corp.	Metharbital No. FP302	Vial: 2ml	04/10/73
The Theta Corp.	Methohexital No. FP304	Vial: 2ml	04/10/73
The Theta Corp.	Methylphenidate No. FP605	Vial: 2ml	04/10/73
The Theta Corp.	Monthly Urine Test No. FPM-103	Vial: 2ml	04/10/73
The Theta Corp.	Morphine No. FP101	Vial: 2ml	04/10/73
The Theta Corp.	Oxycodone No. FP109	Vial: 2ml	04/10/73
The Theta Corp.	Oxymorphone No. FP104	Vial: 2ml	04/10/73
The Theta Corp.	Paraldehyde No. FP506	Vial: 2ml	04/10/73
The Theta Corp.	Pentobarbital No. FP318	Vial: 2ml	04/10/73
The Theta Corp.	Phenazocine No. FP213	Vial: 2ml	04/10/73
The Theta Corp.	Phenmetrazine No. FP606	Vial: 2ml	04/10/73
The Theta Corp.	Phenobarbital No. FP320	Vial: 2ml	04/10/73
The Theta Corp.	Piminodine No. FP202	Vial: 2ml	04/10/73
The Theta Corp.	Probarbital No. FP319	Vial: 2ml	04/10/73
The Theta Corp.	Secobarbital No. FP310	Vial: 2ml	04/10/73

EXEMPT CHEMICAL PREPARATIONS—Continued

Supplier	Product	Form of product	Date
The Theta Corp.	Talbutal No. FP311	Vial: 2ml	04/10/73
The Theta Corp.	Test Mixture SM No. 1	Vial: 2ml	06/19/74
The Theta Corp.	Test Mixture SM No. 2	Vial: 2ml	06/19/74
The Theta Corp.	Test Mixture SM No. 3	Vial: 2ml	06/19/74
The Theta Corp.	Test Mixture SM No. 4	Vial: 2ml	06/19/74
The Theta Corp.	Test Mixture SP No. 1	Vial: 2ml	06/19/74
The Theta Corp.	Test Mixture SP No. 2	Vial: 2ml	06/19/74
The Theta Corp.	Test Mixture SP No. 3	Vial: 2ml	06/19/74
The Theta Corp.	Test Mixture SP No. 4	Vial: 2ml	06/19/74
The Theta Corp.	Test Mixture TM No. 1	Vial: 2ml	06/19/74
The Theta Corp.	Test Mixture TM No. 2	Vial: 2ml	06/19/74
The Theta Corp.	Thiamylal No. FP322	Vial: 2ml	04/10/73
The Theta Corp.	Thiopental No. FP321	Vial: 2ml	04/10/73
The Theta Corp.	Vinbarbital No. FP312	Vial: 2ml	04/10/73
The Theta Corp.	Weekly Urine Test (FDA) No. FPM-101	Vial: 2ml	04/10/73
The Theta Corp.	Weekly Urine Test (States) No. FPM-102	Vial: 2ml	04/10/73
Toxi-Lab, Inc.			
Toxi-Lab, Inc.	Proficiency Sample	Plastic Bottle Containing 40 ml	06/22/82
Toxi-Lab, Inc.	Special Toxi-Discs	Plastic Vial or Bottle Containing 50 Standard Discs	03/30/77
Toxi-Lab, Inc.	Supplemental Standard Toxi-Discs No. SD-4 Catalog No. 234.	Plastic Vial Containing 50 Standard Discs	06/15/88
Toxi-Lab, Inc.	Supplemental Standard Toxi-Discs No. SD-5 Catalog No. 235.	Plastic vial containing 50 standard discs	06/15/88
Toxi-Lab, Inc.	Supplemental Standard Toxi-Discs No. SD-6 Catalog No. 236.	Plastic vial containing 50 standard discs	06/15/88
Toxi-Lab, Inc.	Toxi-Control	Plastic Bottle Containing 50 ml	03/30/77
Toxi-Lab, Inc.	Toxi-Control THC	Plastic Bottle Containing 50 ml	10/05/83
Toxi-Lab, Inc.	Toxi-Disc A Series	Plastic Vial Containing 50 Standard Discs	05/06/75
Toxi-Lab, Inc.	Toxi-Disc B Series	Plastic Vial Containing 50 Standard Discs	05/06/75
Toxi-Lab, Inc.	Toxi-Discs Library II, No. 3 Catalog No. 131C	Plastic vial containing 50 standard discs	06/15/88
Toxi-Lab, Inc.	Toxi-Discs Library II, No. 1 Catalog No. 131A	Plastic vial containing 50 standard discs	06/15/88
Toxi-Lab, Inc.	Toxi-Discs Library II, No. 10 Catalog No. 131K	Plastic vial containing 50 standard discs	06/15/88
Toxi-Lab, Inc.	Toxi-Discs Library II, No. 11, Catalog No. 131L	Plastic vial containing 50 standard discs	06/15/88
Toxi-Lab, Inc.	Toxi-Discs Library II, No. 12 Catalog No. 131M	plastic vial containing 50 standard discs	06/15/88
Toxi-Lab, Inc.	Toxi-Discs Library II, No. 2 Catalog No. 131B	Plastic vial containing 50 standard discs	06/15/88
Toxi-Lab, Inc.	Toxi-Discs Library II, No. 5 Catalog No. 131E	Plastic via containing 50 standard discs	06/15/88
Toxi-Lab, Inc.	Toxi-Discs Library II, No. 8 Catalog No. 131H	Plastic vial containing 50 standard discs	06/15/88
Toxi-Lab, Inc.	Toxi-Discs THC	Plastic Vial Containing 50 Standard Discs	10/05/83
Toxi-Lab, Inc.	Toxi-Grams	Glass Jar Containing 50 or 100 Chromatograms	09/24/80
Toxi-Lab, Inc.	Toxi-Lab Cannabinoid (THC) Screen	Kit: 50 tests	10/05/83
Travenol Labs (Clinical Assays Division)			
Travenol Labs (Clinical Assays Division).	(125I) Human TSH Radioimmunoassay kit	Kit: 125 determinations	11/16/77
Travenol Labs (Clinical Assays Division).	(125I) Human TSH Tracer	Glass Vial: 6ml	11/16/77
Travenol Labs (Clinical Assays Division).	Anticonvulsant Drug Controls	Kit: 500 determinations, 50 determinations	11/16/77
Travenol Labs (Clinical Assays Division).	Assay buffer CA-742	Polypropylene Bottle: 150ml	03/14/77
Travenol Labs (Clinical Assays Division).	CA-380 Phenobarbital Serum Standard 1:101 dilution of 1.0 ug/ml.	Septem sealed glass vial: 2ml	11/16/77
Travenol Labs (Clinical Assays Division).	CA-381 Phenobarbital Serum Standard 1:101 dilution of 3.0 ug/ml.	Septem sealed glass vial: 2ml	11/16/77
Travenol Labs (Clinical Assays Division).	CA-382 Phenobarbital Serum Standard 1:101 dilution of 10 ug/ml.	Septem sealed glass vial: 2ml	11/16/77
Travenol Labs (Clinical Assays Division).	CA-383 Phenobarbital Serum Standard 1:101 dilution of 30 ug/ml.	Septem sealed glass vial: 2ml	11/16/77
Travenol Labs (Clinical Assays Division).	CA-384 Phenobarbital 1:101 dilution of 100 ug/ml	Septem sealed glass vial: 2ml	11/16/77
Travenol Labs (Clinical Assays Division).	CA-419 Anticonvulsant Drug Control, Level I	Septem sealed glass vial: 2ml	11/16/77
Travenol Labs (Clinical Assays Division).	CA-420 Anticonvulsant Drug Control, Level II	Septem sealed glass vial: 2ml	11/16/77
Travenol Labs (Clinical Assays Division).	Human TSH standards, 2.0 ulU/ml, 5.0 ulU/ml, 10 ulU/ml, 20 ulU/ml, 50 ulU/ml.	Glass vials: 2ml	11/16/77
Travenol Labs (Clinical Assays Division).	Rabbit Anti-Human TSH Serum	Glass vial: 20ml	11/16/77
Utak Laboratories			
Utak Laboratories	Toxicology Control-High Range Anticonvulsants No. 71910.	Bottle: 10ml	04/14/80
Utak Laboratories	Toxicology Control-High Range Barbiturates No. 71916.	Bottle: 10ml	04/14/80
Utak Laboratories	Toxicology Control-High Range Hypnotic Plus Acetaminophem, No. 71918.	Bottle: 10ml	04/14/80
Utak Laboratories	Toxicology Control-High Range Hypnotic Plus Salicylate, No. 71920.	Bottle: 10ml	04/14/80

EXEMPT CHEMICAL PREPARATIONS—Continued

Supplier	Product	Form of product	Date
Utak Laboratories	Toxicology Control-Mid Range Anticonvulsants No. 71911.	Bottle: 10ml	04/14/80
Utak Laboratories	Toxicology Control-Mid Range Barbiturates No. 71917.	Bottle: 10ml	04/14/80
Utak Laboratories	Toxicology Control-Mid Range Hypnotic Plus Acetaminophem, No. 71919.	Bottle: 10ml	04/14/80
Utak Laboratories	Toxicology Control-Mid Range Hypnotic Plus Salicylate, No. 71921.	Bottle: 10ml	04/14/80
Utak Laboratories	Toxicology Serum Control Dried # 88112	Bottle: 10ml	07/29/82
Utak Laboratories	Toxicology Serum Control Dried #88113	Bottle: 10ml	07/29/82
Utak Laboratories	Toxicology Serum Control Dried #88120	Bottle: 10ml	07/29/82
Utak Laboratories	Toxicology Serum Control-Dried Catalog Nos. 44610, 44612, 44632, 44635, 44636, 44637, 44642, 44645, 44646, 44647, 44658.	In Bottles	05/24/76
Utak Laboratories	Toxicology Urine Control Dried #88100	Bottle: 20ml	07/29/82
Utak Laboratories	Toxicology Urine Control Dried #88121	Bottle: 10ml	07/29/82
Utak Laboratories	Toxicology Urine Control-Dried Catalog Nos. 44650, 44651, 44652, 44653.	Bottle: 1 oz	05/24/76
Wescor, Inc.			
Wescor, Inc	Osmocoll	Bottle: 9 ml	12/05/86
Wein Laboratories, Inc.			
Wien Laboratories, Inc	ANS Buffer pH 8.6 Catalog No. T-5144	Plastic Bottle: 100ml	05/14/75
Wien Laboratories, Inc.	Buffer Reagent pH 8.6 Catalog No. T-5065	Bottle: 4 oz	12/22/72
Wien Laboratories, Inc	Coated Charcoal Suspension No. T-5077	Bottle: 4 oz	12/22/72
Wien Laboratories, Inc	T3 Buffer Reagent Catalog No. T-5156	Plastic Vial: 20ml	09/13/78
Windsor Laboratories, Inc.			
Windsor Laboratories, Inc	Calibrators FPR Phenobarbital	Kit: 6 Vials	10/30/86
Windsor Laboratories, Inc	Phenobarbital Fluorescence Polarization Immunoassay Kit.	Kit: 100 tests	11/20/86

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Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

Dated: February 28, 1989.

[FR Doc. 89-5615 Filed 3-14-89; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Part 990

[Docket No. R-89-1400; FR-2437]

Revision to the Performance Funding System: Insurance Costs

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule.

SUMMARY: Section 118(a) of the Housing and Community Development Act of 1987 amended the United States Housing Act of 1937 to require HUD to act by June 15, 1988 to revise the Performance Funding System (PFS) to accurately reflect the increase in insurance costs incurred by Public Housing Agencies (PHAs), including Indian Housing Authorities (IHAs). In response to this requirement, the Department submitted a draft interim rule to Congress on June 15, 1988 for prepublication review (as required by section 7(o) of the Department of HUD Act) and published the rule on July 5, 1988 (53 FR 25152). That rule revised the PFS by increasing the monthly allowable expense level per unit by $8.45 for PHAs' first fiscal year starting in 1989. This final rule discusses the comments received and adopts as final the provisions of the interim rule.

EFFECTIVE DATE: May 1, 1989.

FOR FURTHER INFORMATION CONTACT: Theodore R. Daniels, Director, Project Financial Management and Occupancy Division, Office of Public Housing, Room 4208, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 755-8145. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act Statement

There are no information collection requirements contained in this rule, which would be subject to approval by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520).

II. Background

The PFS provides a means of calculating a PHA's eligibility for operating subsidy each year that is based on deducting the Allowable Expense Level (AEL) approved for the previous year, adjusted for changes in circumstances from the previous year and for inflation, from estimated income for the next year. (Throughout this preamble the term "PHA" and "PHAs" includes reference to Indian Housing Authority and Indian Housing Authorities.) Since the increase in insurance costs over the last few years has clearly outpaced what was permitted under the PFS to cover insurance costs, Congress had provided additional funds to be distributed to PHAs to cover these costs. The amounts distributed amounted to $7.94 per unit in 1987 and $4.36 per unit in 1988, but these distributions were not reflected in the rule governing the PFS. In the HCD Act of 1987, Congress directed HUD to take action to permanently adjust the PFS to compensate for these increased costs. Therefore, the interim rule published in 1988 revised the PFS to increase the AEL permanently by $8.45, the amount determined by HUD to be needed to reflect increases in insurance costs over the period. (See the preamble to the interim rule, 53 FR 25152, for an expanded discussion of the history of insurance cost coverage.)

Before issuance of that rule, the Council of Large Public Housing Authorities (CLPHA) had submitted a petition for rulemaking to HUD seeking a change in the way insurance costs are covered under the PFS. CLPHA had advocated establishing a separate

element of the PFS to cover insurance and risk protection costs only, which would be adjusted at the end of the fiscal year to reflect the actual costs of a PHA. Disputes between HUD and a PHA would be handled under a system of appeals, to be conducted by administrative law judges, under standards providing that an increase to cover actual costs would be denied only if a finding were made that the amount by which the actual costs exceeded the estimated cost for insurance and risk protection was the result of the PHA's unreasonable action, or if there was insufficient operating subsidy funding to cover the increase. This approach was considered during the development of the interim rule and rejected. (See the discussion of an appeals process below, in section III.B. of this preamble.)

III. Public Comments

The Department received ten public comments on this rule. Six of the comments were from PHAs, and four were from associations of PHAs or PHA officials. Three of the comments were basically favorable, although one of them stated that provision should be made for future changes in insurance costs. (One of these commenters added that a program not covered by this regulation, the Section 8 Housing Assistance Payments program, is also running into unusual insurance costs that are not covered by the relevant funding mechanism—the administrative fee. That program is outside the scope of this rule.)

The principal criticisms of the rule were that (1) the increase provided is inadequate to compensate PHAs for their increases in insurance costs over the period; (2) an appeals process should be instituted to allow each PHA that had costs higher than the projected increase to seek an additional adjustment, as in CLPHA's petition for rulemaking; and (3) PHAs whose fiscal years started October 1, 1988 missed one year's worth of adjustment for insurance expenses. A few commenters made other suggestions for change in HUD's insurance requirements. One commenter had a question about the adequacy of HUD's prediction of the amount of Federal funding needed for the increase in PFS eligibility made by this rule.

A. Inadequacy of the Increase

The criticism of the amount of the increase in the AEL attributable to increased insurance costs was twofold. First, particular PHAs stated that their increases in insurance costs far outpaced the increase permitted. Second, CLPHA and others stated that using the implicit price deflator for State and local government goods and services to determine the increased amount for insurance was improper, because it inadequately reflected PHA insurance costs, and the number of units used by HUD to calculate the estimated need for Fiscal Year 1989 was too low and therefore underestimates the costs.

The method of calculating the PFS eligibility, generally, is based on estimating a PHA's income for the year, estimating its allowable expenses by applying an inflation factor to the previous year's estimated allowable costs (AEL), and subtracting the second result from the first. The system, as authorized by section 9 of the United States Housing Act of 1937, does not pretend to reflect the actual costs of any particular PHA and, consequently, there is not generally any adjustment for actual income or costs.

HUD recognizes that a PHA's actual insurance costs may not match the amount allowed for such costs in the calculation of PFS eligibility. Even though some elements of a PHA's costs may be more than projected under the formula, other elements are likely to be less. The inflation factor used may not predict all these elements equally well; however, the Department has been unable to find another recognized inflation factor that would work better. (Actually, large PHAs are experiencing lower inflation than HUD's figures assumed.) However, even if insurance costs exceed the estimated inflation-adjusted amount, insurance costs comprise an average of only 5 percent of a PHA's total costs, and therefore any shortfall in this element may well be offset by a surplus with respect to another component of a PHA's budget. Rather than complicate the system by applying different factors to different components, the Department confirms its policy of applying one factor—the best it can find—to the composite AEL.

The Department believes that the adjustment built into the PFS by this rule is on average sufficient. Recognizing that significant change is always possible, however, we will continue to monitor the sufficiency of the PFS to cover this element of general PHA costs.

B. Appeals Process

An appeals process for adjusting the amount allowed a PHA for insurance costs was first proposed by CLPHA in November 1987 in its petition for rulemaking. CLPHA advocates establishing a separate element of the PFS for risk protection coverage, similar to the Utilities Expense Level, and providing an opportunity for any PHA that experiences risk-related costs that are significantly higher than those estimated by HUD to obtain an increase in its PFS eligibility based on documentation of its costs.

The Performance Funding System is based on providing only the amount of subsidy needed to operate a prototype well-managed PHA. It is based on a formula that uses estimates of income and expenses. For expenses, the formula uses the allowable expenses of the PHA in a base year and makes adjustments to them principally for changes in housing stock and for inflation.

There are only a few exceptions in the PFS to the policy of using estimates. To encourage wise investment of excess funds, there is a year end adjustment to estimated income to reflect a target investment income that is based on the rate of return that was achievable during that year. In recognition of the fact that utility rates, and therefore costs, are not within the control of a PHA but are regulated in the public interest by local utility commissions, utility costs are treated as a separate expense item (the Utilities Expense Level), to which a year end adjustment is permitted. There is also provision for a PHA to receive an adjustment to reflect costs beyond its control, such as changes in law during the year.

The policy of minimizing the use of adjustments to reflect actual experience during a year is intended to give PHAs an incentive for cost control. Creation of a separate element of the PFS for insurance costs and permitting adjustments to reflect actual costs would destroy PHAs' incentive for cost control. The Department believes that insurance costs are a type of expense that should be subject to a cost control incentive, since PHAs do have some control over their potential exposure to claims by exercising risk management and loss control. PHAs also do now have a number of choices in obtaining coverage. Most can choose the type of entity from which they obtain coverage for risk protection, since there are now a number of risk retention pools as well as coverage offered by insurance companies. They also have choices about the size of the deductible that will work best for them. They can also solicit bids based on two options—with the limitation that the PHA's sovereign immunity may not be asserted, or without it. With these choices, the Department believes that PHAs should be encouraged to take responsibility for making decisions about the coverage that is appropriate for them.

Also, it should be noted that the appeals process advocated by CLPHA would only be used to increase the cost

of operating subsidies. The proposal would provide an opportunity for a PHA to initiate an adjustment in its PFS eligibility, which a PHA could be expected to exercise only when the PHA believed that an adjustment would be to its advantage. Thus, any PHA whose actual insurance costs were less than the amount provided under the formula would continue to be overcompensated, while those whose costs were greater than the amount provided, would achieve parity between costs and reimbursement.

An appeals process providing for an opportunity for any PHA to appeal its insurance cost coverage would also be costly to the Department in terms of staff time. Accordingly, the Department believes establishing such an appeals process would be administratively infeasible.

For the reasons stated above, the Department again rejects the proposal to establish a separate element of the PFS for risk protection coverage and to permit appeals of the amount included in a PHA's PFS eligibility for that element.

C. October 1, 1988, Fiscal Years

One PHA whose FY 1989 began October 1, 1988, wrote to complain that it would miss one year's funding of increased insurance costs as a result of the interim rule's January 1, 1989, effective date. The Department takes issue with that position.

As noted in the preamble to the interim rule, in both HUD Fiscal Years 1987 and 1988, HUD has distributed funds earmarked by Congress for the purpose of covering higher insurance costs. This rule is intended to provide increased funding for PHAs in HUD FY 1989 and beyond and to build that increase into the PFS permanently. The distributions made to PHAs whose fiscal years begin on October 1 have been made from the HUD funds from its fiscal year that ends on September 30. Thus, HUD's FY 1987 distribution to these PHAs was made in their fiscal year that began on October 1, 1987, and HUD's FY 1988 distribution to them was made in their fiscal year that began on October 1, 1988. These same PHAs will first feel the effect of the permanent change in insurance costs in their fiscal year that begins on October 1, 1989, leaving no gap in increased funding for insurance costs.

D. Other Options

One method of lowering the cost of insurance coverage that has been used is permitting PHAs to self-insure. This has necessitated a HUD waiver of the requirements of the Annual Contributions Contract ("ACC") for "insurance coverage". Of course, this practice is effective only if there are no significant losses—a risk that most PHAs cannot afford to take. One PHA advocates discontinuing this practice. It also advocates providing additional funding to PHAs to establish contingency loss reserves to cover high deductibles in the event of a major loss.

HUD has discontinued the practice of permitting self-insurance now that coverage is again available and relatively affordable. There are only two PHAs operating without insurance or pooled risk protection coverage now, and they are still self-insured only because they have had great difficulty in obtaining insurance. With respect to contingency loss reserves, HUD recognizes some PHA's need for them and will treat them as distinct from other reserves; however, the Department has limited funds to distribute and has chosen to allocate them under the PFS, without any distinction as to whether the funds are used to pay insurance premiums or to fund a high deductible in the event of a major loss.

One PHA suggested that HUD eliminate its requirement that insurers not be allowed to assert the PHA's sovereign immunity as a defense to a claim, because it believes that insurance premiums would be lower if the insurer had that defense available. HUD does now waive the ACC provision to allow PHAs to solicit bids for insurance with or without the availability of the sovereign immunity defense, to determine if any cost savings can be realized.

One suggestion was that HUD should require insurance companies to allow each PHA to participate in attorney selection and to agree to any settlement. The Department believes that it is impractical to restrict an insurer in these respects, since the insurer bases its premium on its ability to control defense proceedings from the point when a claim is made. On the other side of the question of Federal control, was the comment that PHAs should not be subject to ACC requirements concerning the type and amount of insurance coverage carried. Since HUD has a financial interest in the public housing inventory as well as a policy interest in preserving the affordable housing for lower income families, it needs to protect that interest by assuring (via the ACC requirement) that the housing stock will not be confiscated to satisfy a claim against a PHA.

Risk management was touted as the answer to uncontrolled costs by one commenter, who suggested that HUD provide technical assistance of this sort to PHAs. HUD agrees that PHAs should employ risk management tools to reduce their risk protection costs, but HUD is not in a position to provide the expert assistant.

An Objection was registered against HUD's authority to reduce operating subsidy payments on a prorated basis when appropriations are insufficient to cover full payment to all PHAs. HUD is bound, as are other Federal agencies, by the Antideficiency Act (31 U.S.C. 1511–1519) not to obligate more than has been appropriated. As a result, if HUD has insufficient appropriations to cover full finding under the PFS, it must distribute the available funds on an equitable basis. It has accomplished this by reducing each PHA's funding proportionately.

E. Understatement of Cost

CLPHA states that HUD estimates of the total cost of the adjustment provided by this rule understate the need for Federal funds. It points to the fact that the number of units expected to be funded under this rule is 1.2 million, whereas the number of units funded under the FY 1988 distribution was 1.3 million. It is true that the number of units used for these purposes is different. The FY 1988 distribution was made to every PHA, regardless of whether it otherwise receives operating subsidy, whereas the distribution under this rule will be made only to PHAs that receive operating subsidy (1.2 million units). Even if the increase in the AEL effected by this rule causes some PHAs to become eligible for operating subsidy for the first time, the impact on budget requirement would be minimal. If one-third of the PHAs that currently receive no subsidy were to receive an average subsidy of $4.50 per unit as a result of this change to the PFS, the subsidy requirements would increase by $1 million—less than one-tenth of one percent of the total operating subsidy budget.

F. Miscellaneous

One commenter suggested that HUD make available to the public the data it used to determine the increase in insurance costs experienced by PHAs since 1986. HUD will provide the data to anyone upon request. (Please contact Mr. Daniels, whose address and telephone number are provided at the beginning of this rule.)

IV. Findings and Certifications

Environmental review. A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations in 24

CFR Part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying during regular business hours in the Office of Regulations, Room 10276, 451 Seventh Street, SW., Washington, DC 20410.

Economic impact. 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 by the President on February 17, 1981. Analysis of the rule indicates that it is not likely to have an annual effect on the economy of $100 million or more. The rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions, or 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.

Impact on small entities. Under the Regulatory Flexibility Act, 5 U.S.C. 605(b), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities, because its effect would be to implement a statutory directive to increase subsidy to PHAs to reflect increases they have experienced in the costs of insurance coverage in a way that will have a similar effect on small and large PHAs. The insurance costs experienced by a PHA are affected more by location and risk factors than by its size. Therefore, the rule provides no differential treatment based on PHA size.

Executive Order 12612, Federalism. The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism,* has determined that the policies contained in this rule would not have federalism implications and, thus, are not subject to review under the Order. The rule provides for additional financial assistance to PHAs that operate housing under a contract with HUD to serve lower income families. This assistance will not interfere with State or local government functions.

Executive Order 12606, the Family. The General Counsel, as the Designated Official under Executive Order 12606, *The Family,* has determined that this rule does not have potential significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. The rule involves only the provision of additional assistance to agencies that provide assisted housing to lower income families.

Regulatory agenda. This rule was listed as sequence number 1073 under the Office of the Assistant Secretary for Public and Indian Housing in the Department's Semiannual Agenda of Regulations published on October 24, 1988 (53 FR 41974, 42013), pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

Catalog. The Catalog of Federal Domestic Assistance Program Number is 14.146, Low Income Housing Assistance Program (Public Housing).

List of Subjects in 24 CFR Part 990

Grant programs—housing and community development, Low and moderate income housing, Public housing.

Accordingly, the interim rule published on July 5, 1988 at 53 FR 25152 is adopted as final.

Authority: Sec. 9, United States Housing Act of 1937 (42 U.S.C. 1437g); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: March 10, 1989.

Thomas Sherman,

Acting General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 89-6039 Filed 3-14-89; 8:45 am]

BILLING CODE 4210-33-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 601

[T.D. 8217]

Income Tax; Taxable Years Beginning After December 31, 1953 and OMB Control Numbers Under the Paperwork Reduction Act; Certain Cash or Deferred Arrangements Under Employee Plans; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains a correction to Treasury Decision 8217, which was published in the **Federal Register** for Monday, August 8, 1988 (53 FR 29658). The final regulations relate to certain cash or deferred arrangements under employee plans.

FOR FURTHER INFORMATION CONTACT: William D. Gibbs, (202) 377-9372 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction provide the public with guidance needed to comply with the law and affect sponsors of plans that contain cash or deferred arrangements and employees who are entitled to make elections under these arrangements. They reflect changes in the applicable tax laws made by the Revenue Act of 1978.

Need for Correction

As published, T.D. 8217 contains a typographical error that, if not corrected, might cause confusion to taxpayers and practitioners.

Correction of Publication

Accordingly, the publication of the final regulations (T.D. 8217) which was the subject of FR Doc. 88-17720, is corrected as follows:

1. On page 29673, column 1, § 1.401(k)-1(h)(4)(ii), in the next to last line, the language "the ADP test in paragraph (b)(4)(i) of" is removed and the language "the ADP test in paragraph (b)(4)(ii) of" is added in its place.

Dale D. Goode,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 89-6000 Filed 3-14-89; 8:45 am]

BILLING CODE 4830-01-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2610

Payment of Premiums; Interest Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Interim rule.

SUMMARY: This is an amendment to the Pension Benefit Guaranty Corporation's interim regulation on Payment of Premiums, which was published on June 30, 1988 (53 FR 24906). Appendix B to the interim regulation contains a table setting forth the interest rates that are required by statute to be used in valuing a plan's vested benefits for purposes of determining the amount of the premium due to the PBGC. This amendment adds to that table the interest rate applicable to plan years beginning in March 1989.

EFFECTIVE DATE: March 15, 1989.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Senior Counsel, Office of the General Counsel (Code 22500), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006; telephone 202-778-8823 (202-778-

8859 for TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Section 9331 of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, amended section 4006 of the Employee Retirement Income Security Act of 1974 ("ERISA") to establish a two-part premium structure for single-employer plans, *i.e.*, a flat rate per capita assessment and a variable rate assessment based on a plan's unfunded vested benefits, effective for plan years beginning on or after January 1, 1988. Under amended ERISA section 4006(a)(3)(E)(iii)(II), the interest rate used in valuing a plan's vested benefits for purposes of determining the amount of the plan's unfunded vested benefits must equal 80% of the annual yield on 30-year Treasury securities for the month preceding the month in which the plan year begins.

The Pension Benefit Guaranty Corporation's (the "PBGC's") interim regulation on Payment of Premiums (53 FR 24906 (June 30, 1988)) implements these new premium rules. Under § 2610.23(b)(1) of the regulation, the interest rate for valuing vested benefits is determined by reference to the annual yield for 30-year Treasury constant maturities as reported in Fedeal Reserve Statistical Release G.13 and H.15. The required interest rate for a given "premium payment year" (the plan year for which the premium is being paid) is 80% of this rate for the calendar month preceding the calendar month in which the premium payment year begins. As a convenience, the PBGC established an Appendix B to the interim regulation containing a table setting forth the required interest rates for premium payment years beginning in January 1988 and thereafter.

The PBGC is amending Appendix B to add the required interest rate for premium payment years beginning in March 1989. Appendix B to the interim regulation does not prescribe the required interest rates for valuing vested benefits. These rates are prescribed by section 4006(a)(3)(E)(iii)(II) of ERISA and § 2610.23(b)(1) of the regulation. The purpose of Appendix B is merely to collect and to republish these rates in a convenient place. Thus, the interest rates in Appendix B are informational only. Accordingly, the PBGC finds that notice of and public comment on this amendment would be unnecessary and contrary to the public interest. See 5 U.S.C. 553(b). For these same reasons, the PBGC also finds that good cause exists for making these amendments effective immediately. See 5 U.S.C. 553(d)(3).

The PBGC has 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; nor create a major increase in costs or prices for consumers, individual industries, or geographic regions, nor have significant adverse effects on competition, employment, investment, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects 29 CFR Part 2610

Employee Benefit Plans, Pension Insurance, and Pensions.

In consideration of the foregoing, Appendix B to Part 2610 of Chapter XXVI of Title 29, Code of Federal Regulations, is hereby amended as follows:

PART 2610—PAYMENT OF PREMIUMS

1. The authority citation for Part 2610 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1306, 1307, as amended by sec. 9331, Pub. L. 100–203, 101 Stat. 1330.

2. Appendix B to Part 2610 is amended by adding to the table of interest rates therein a new entry to read as follows: The explanatory text is republished for the convenience of the reader and remains unchanged.

Appendix B—Interest Rates for Valuing Vested Benefits

The following table lists the required interest rates to be used in valuing a plan's vested benefits under § 2610.23(b) and in calculating a plan's adjusted vested benefits under § 2610.23(c)(1):

For premium payment years beginning in—	Required interest rate [1]
. . . . .	
March 1989	7.21

[1] The required interest rate listed above is equal to 80% of the annual yield for 30-year Treasury constant maturities, as reported in Federal Reserve Statistical Release G.13 and H.15, for the calendar month preceding the calendar month in which the premium payment year begins.

Issued in Washington, D.C., on this 9th day of March 1989.

Kathleen P. Utgoff,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 89–5942 Filed 3–14–89; 8:45 am]

BILLING CODE 7708–01–M

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 April 1, 1989. 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 April 1, 1989, and will remain in effect until the PBGC issues new interest rates and factors.

EFFECTIVE DATE: April 1, 1989.

FOR FURTHER INFORMATION CONTACT: John Foster, Attorney, Office of the General Counsel, Code 22500, Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006, 202–778–8824 (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"). The recent amendments to Title IV made by the Pension Protection Act ("PPA"), a part of the Omnibus Budget Reconciliation Act of 1987, increase the amount of plan benefits for which an employer is responsible upon plan termination. These new termination rules apply to plan terminations with respect to which the 60-day advance notice to affected parties (the notice of intent to terminate) is issued after December 17, 1987. (For more detail, see the PBGC's Notice of Revised Termination Rules, 53 FR 1905 (January 22, 1988).) However, the PPA does not change the Title IV valuation rules.

Under amended ERISA section 4041(c), all plans wishing to terminate in a distress termination must value guaranteed benefits and "benefit liabilities", i.e., all benefits provided

under the plan as of the plan termination date, using the formulas set forth in Part 2619. Plans terminating in a standard termination may, for purposes of the notice given to the PBGC, use these formulas to value benefit liabilities, although this is not required. (Such plans may value benefit liabilities that are payable as annuities on the basis of a qualifying bid obtained from an insurer.)

Plans that terminate on or after January 1, 1986 (the effective date of the Single-Employer Pension Plan Amendments Act of 1986) and issued notices of intent to terminate prior to December 18, 1987, or against which the PBGC instituted involuntary termination proceedings before that date, shall continue to be responsible for benefit commitments under the plan and to value guaranteed benefits and/or benefit commitments.

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 Nov. 1, 1988 (53 FR 40222 (Oct 14, 1988)). This amendment adds to Appendix B a new set of interest rates and factors for valuing benefits in plans that terminate on or after April 1, 1989, which set reflects an increase of ¼ percent in the immediate interest rate to 8 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 April 1, 1989, and because no adjustment by ongoing plans is required by this amendment, the PBGC finds that good cause exists for making the rates set forth in this amendment effective less than 30 days after publication.

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

List of Subjects in 29 CFR Part 2619

Employee benefit plans, Pension insurance, 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 is revised to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362, as amended by secs. 9312–13, Pub. L. 100–203, 101 Stat. 1330.

2. Rate Set 76 of Appendix B is revised and Rate Set 77 of Appendix B is added to read as follows. The introductory text is republished for the convenience of the reader and remains unchanged.

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

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

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities				
	On or after	And before		k_1	k_2	k_3	n_1	n_2
*	*	*	*	*	*	*		
76	Nov. 1, 1988	Apr. 1, 1989	7.75	1.0700	1.0575	1.0400	7	8
77	Apr. 1, 1989		8.00	1.0725	1.0600	1.0400	7	8

Kathleen P. Utgoff,
Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 89–5943 Filed 3–14–89; 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 April 1989.

EFFECTIVE DATE: April 1, 1989.

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 complete with foreign-based enterprises in domestic or export markets.

List of Subjects in 29 CFR Part 2676

Employee benefit plans, 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 of i_t 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_y
April 1989	.09875	.095	.09	.085	.08	.07375	.07375	.07375	.07375	.07375	.0675	.0675	.0675	.0675	.0675	.06

Issued at Washington, DC, on this 8th day of March 1989.

Kathleen P. Utgoff,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 89-5941 Filed 3-14-89; 8:45 am]

BILLING CODE 7708-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 925

Approval of Missouri's Abandoned Mine Land Reclamation Plan Amendment

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

ACTION: Final rule.

SUMMARY: OSMRE is announcing the approval of a proposed amendment to the Missouri Abandoned Mine Land Reclamation (AMLR) Plan (hereinafter referred to as the Missouri plan) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment includes a complete revision of the Missouri Plan. Substantive changes were proposed pertaining to the agency organizational structure, the procedures for reclamation project ranking and selection, and the AMLR database. Procedures have been added pertaining to liens, appraisals, and rights of entry on private lands and for land acquisition, management, and disposal. After opportunity for public comment and review of the amendment, the Deputy Director has determined that the Missouri amendment meets the requirements of the Surface Mining Control and Reclamation Act and the Secretary's regulations at 30 CFR Part 884.

EFFECTIVE DATE: March 15, 1989.

ADDRESSES: Copies of the full text of the amendment are available for review during regular business hours at the following locations:

Office of Surface Mining Reclamation and Enforcement, Kansas City Field Office, 1103 Grand Avenue, Room 502, Kansas City, Missouri 64106, Telephone: (816) 374-6405.

Missouri Department of Natural Resources, Land Reclamation Program, 205 Jefferson Street, P.O. Box 176, Jefferson City, Missouri 65102, Telephone: (314) 751-4041.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Kovacic, Director, Kansas City Field Office, (816) 374-6405.

SUPPLEMENTARY INFORMATION:

I. Background

Title IV of SMCRA, Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*, establishes an AMLR program for the purposes of reclaiming and restoring lands and water resources adversely affected by past mining. This program is funded by a reclamation fee imposed upon the production of coal. Lands and waters eligible for reclamation are those that were mined or affected by mining and abandoned or left in an inadequate reclamation status prior to August 3, 1977, and for which there is no continuing reclamation responsibility under State/Tribe or Federal law. Title IV of SMCRA establishes the conditions under which States/Tribes may obtain primary authority to implement this reclamation program.

The Secretary of the Interior approved the Missouri AMLR program on January 29, 1982. Information pertinent to the general background, revisions, and amendments to the initial program submission, as well as the Secretary's findings and the disposition of comments can be found in the January 29, 1982, **Federal Register** (47 FR 4253-4254).

Information concerning the previously approved plan and the proposed amendments may be obtained from the agency offices listed under **"ADDRESSES."**

The Secretary has adopted regulations that specify the content requirements of a State reclamation plan and the criteria for plan approval (30 CFR Part 884). The regulations provide that a State may submit to the OSMRE proposed amendments or revisions to the approved reclamation plan. If the amendments or revisions change the scope or major policies followed by the State in the conduct of its reclamation program, the Deputy Director must follow the procedures set out in 30 CFR 884.14 in approving or disapproving an amendment or revision.

II. Discussion of Proposed Amendment

By letter dated August 22, 1988, Missouri submitted a reclamation plan amendment to OSMRE (Administrative Record No. AML-MO 59). The proposed amendment consists of a complete revision to the approved Missouri Plan as provided for by 30 CFR 884.

Specifically, the following areas of the plan are being revised.

1. Organization (30 CFR 884.13(d)(1) and (2)): Missouri is proposing to update certain portions of its AMLR plan to reflect changes that have occurred in the State agency structure. The State has also submitted additional material incorporating into the plan the staffing policies outlined in the State manual of personnel procedures.

2. Project selection (30 CFR 884.13(c)(2)): Missouri has submitted revised project scoring criteria to ensure that projects involving threats to the public health and safety are addressed before lower priority problems. Missouri is also proposing a project prioritization methodology based upon the OSMRE "Abandoned Mine Land Inventory Update Manual, August 1984".

3. Reclamation on private land (30 CFR 884.13(c)(5)): Missouri has submitted procedures to clarify 10 CSR 40–9.060 regarding liens and appraisals on private lands.

4. Rights of entry (30 CFR 884.13(c)(6)): The State has submitted additional material concerning non-concensual entry requirements as specified in 30 CFR 877.13(c).

5. Coordination of Reclamation Activities (30 CFR 884.13(c)(3)): The State has proposed amending its coordination procedures to eliminate the requirement for a State Reclamation Committee. Missouri has proposed procedures for coordinating with the agencies represented in the original State Reclamation Committee and with other interested agencies on an individual basis, in the development of construction projects.

6. Land Acquisition, Management and Disposal (30 CFR 884.13(c)(4)): Missouri has proposed adding a procedure to allow for acquisition of land through sale, donation or condemnation in accordance with the provisions outlined in 30 CFR 879, 10 CSR 40–9.040 and 10 CSR 40–9.050.

7. Database (30 CFR 884.13(f): Missouri is proposing to amend the database pertaining to eligible lands and waters incorporating approved AML inventory sites.

OSMRE announced receipt of the proposed amendment in the October 27, 1988, **Federal Register** (53 FR 43450–43452), and, in the same notice, opened the public comment period and provided opportunity for a public hearing on its substantive adequacy. No public comments were received by November 28, 1988, the close of the public comment period. Since no one requested an opportunity to testify at a public hearing, the scheduled hearing was cancelled.

Following a thorough review of the Missouri amendment, OSMRE notified the State on December 19, 1988 of the need for several nonsubstantive editorial changes and clarifications. On January 13, 1989, Missouri submitted the necessary clarifications and editorial corrections. The Deputy Director has determined that these corrections are insignificant in nature and accordingly require no further public comment.

Under SMCRA, OSMRE codifies the approved requirements of individual States including decisions on State reclamation plans and amendments under Parts 900 and 950 of 30 CFR Subchapter T. Provisions relating to Missouri are found in 30 CFR Part 925.

III. Deputy Director's Findings

In accordance with section 405 of SMCRA, the Deputy Director of OSMRE finds that Missouri has submitted an amendment to its Abandoned Mine Land Reclamation Plan and has determined pursuant to 30 CFR 884.15, that:

1. The State provided adequate notice and opportunity for public comment in the development of the amendment and that the record does not reflect major unresolved controversies.

2. Views of other Federal agencies having an interest in the plan have been solicited and considered.

3. The State has the legal authority, policies and administrative structure necessary to implement the amendment.

4. The plan amendment meets all requirements of the OSMRE, AMLR program provisions.

5. The State has an approved Surface Mining Regulatory Program.

6. The proposed amendment is in compliance with all applicable State and Federal laws and regulations.

Under SMCRA, OSMRE codifies the approved requirements of individual States/Tribes, including decisions on State/Tribe reclamation plans and amendments, under 30 CFR Parts 900 to 950. Provisions relating to Missouri are found in 30 CFR Part 925. Based on the findings above, the Deputy Director is amending 30 CFR 925.20 to codify his approval of the Missouri amendment of August 22, 1988.

IV. Public and Agency Comments

As discussed in the section of this notice entitled "Discussion of Proposed Amendment," OSMRE solicited public comment and provided opportunity for a public hearing on the proposed amendment. Since no one requested an opportunity to testify, the public hearing scheduled for November 21, 1988, was cancelled. No comments were received from the public during the comment period, which closed on November 28, 1988.

Pursuant to 30 CFR 884.14(2), comments were also solicited from various Federal agencies with an actual or potential interest in the Missouri plan. A summary of the comments received and their disposition appears below.

1. The U.S. Fish and Wildlife Service commented that restoration of wetlands should be included as one of the priorities of the Land Reclamation Program, and questioned Missouri's emphasis on restoration of agricultural productivity. In response, the Deputy Director notes that the priorities outlined in the Missouri Plan are identical to those in section 403 of Pub. L. 95–87. Revision of these priorities is not within the scope of this amendment.

2. The U.S. Fish and Wildlife Service commented that the portion of the Missouri Plan enumerating the specific benefits to be considered when selecting reclamation projects should include preservation and/or restoration of wetlands and floodplain values. The Deputy Director finds that this portion of the Missouri Plan has not been revised and that the comment is outside the scope of this amendment.

3. The U.S. Fish and Wildlife Service commented that wetlands should be included in Missouri's project selection criteria. The Deputy Director acknowledges the importance of protecting wetland resources and notes that individual reclamation projects are reviewed prior to approval to ensure that negative impacts to wetlands do not occur.

However, restoration of wetlands is not one of the authorized purposes of the AMLR Fund and is therefore not within the scope of this amendment. The Deputy Director notes that regular coordination between the OSMRE, the U.S. Fish and Wildlife Service and the U.S. Army Corps of Engineers will continue, in order to ensure the protection of wetland resources.

4. The U.S. Fish and Wildlife Service commented that the Rare and Endangered Species list included in the Missouri Plan was out of date and supplied a revised list to the OSMRE. The Deputy Director concurred and required the State to replace the outdated list with the current one.

5. The U.S. Fish and Wildlife Service commented that the maps and legends included in the Missouri Plan reproduced poorly and were hard to read. The Deputy Director notes that the maps are informational only and do not materially affect the implementation of Missouri's AML Program. Original

copies of the maps are available from the State of Missouri and from original reference documents.

V. Deputy Director's Decision

Based upon the findings enumerated above, the Deputy Director is approving the Missouri amendment. A copy of the approved amendment can be obtained by contacting the offices listed under "ADDRESSES".

VI. Procedural Matters

1. Federal Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507 et seq.

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

On November 23, 1987, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or disapproval of State/Tribe AMLR reclamation plans and amendments. Therefore, 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.). No burden will be imposed upon entities operating in compliance with the Act.

3. National Environmental Policy Act

Approval of State/Tribe AMLR plans and amendments is categorically excluded from compliance with the National Environmental Policy Act by the Department of the Interior's Manual; 516 DM 6, Appendix 8, paragraph 8.4B(30).

Effective Date

The final rule is effective upon date of publication. Under 5 U.S.C. 553(d), a rule may not be made effective less than 30 days after publication, unless, among other things, good cause exists and is published with the rule. Good cause exists to make the final rule effective upon publication because:

(1) Missouri's Department of Natural Resources Land Reclamation Program is fully staffed and currently administering the abandoned mine land reclamation program; and

(2) OSMRE wishes to expedite the implementation of the revised AMLR plan amendment.

List of Subjects in 30 CFR Part 925

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Accordingly, 30 CFR Part 925 is amended as set forth herein.

Date: March 8, 1989.

Robert H. Gentile,

Director, Office of Surface Mining Reclamation and Enforcement.

PART 925—MISSOURI

1. The authority citation for Part 925 is revised to read as follows:

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

2. Section 925.20 is revised to read as follows:

§ 925.20 Approval of the Missouri Abandoned Mine Land Reclamation Plan.

The Missouri Abandoned Mine Land Reclamation Plan as submitted on September 11, 1981, is approved.

3. Section 925.25 is revised to read as follows:

§ 925.25 Approval of AML Plan Amendments.

(a) The Missouri AMLR plan amendment submitted to OSMRE on June 22, 1987, is approved effective June 16, 1988.

(b) The amendment to the plan submitted on August 22, 1988, is approved effective March 15, 1989.

Copies of the approved amendments are available at the following locations:

Office of Surface Mining Reclamation and Enforcement, Kansas City Field Office, 1103 Grand Avenue, Room 502 Kansas City, Missouri 64106

Missouri Department of Natural Resources, Land Reclamation Program, 205 Jefferson Street, P.O. Box 176, Jefferson City, Missouri 65102.

[FR Doc. 89-5945 Filed 3-14-89; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD7-89-03]

Temporary Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, Florida

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: The Coast Guard is temporarily changing the regulations governing the PGA and Parker drawbridges at North Palm Beach, Florida, by extending the hours of the existing regulations to provide draw openings on 15-minute intervals throughout each weekday between the morning and evening closed periods. This temporary change is being made to evaluate the effect on peak season vehicle and waterway traffic and to evaluate the rule as a permanent regulation.

DATES: These temporary regulations become effective February 21, 1989 and terminate on April 21, 1989.

ADDRESSES: Comments should be mailed to Commander (oan), Seventh Coast Guard District, Brickell Plaza Federal Building, 909 SE. 1st Avenue, Miami, Florida 33131-3050. The comments and other materials referenced in this notice will be available for inspection and copying on the 4th Floor, of the Brickell Plaza Federal Building, 909 SE. 1st Avenue, Miami, Florida. Normal office hours are between 7:30 a.m. and 4 p.m., Monday through Friday, except holidays. Comments also may be hand-delivered to this address.

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

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the proposed permanent rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgement that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

Prompt implementation is necessary to synchronize the rules with peak seasonal vehicle traffic. The Commander, Seventh Coast Guard District, will evaluate all communications received, the overall effect of this temporary regulation change, and determine if a permanent regulation change is necessary.

Drafting Information

The drafters of this notice are Mr. Walt Paskowsky, Bridge Administration Specialist, project officer, and Lieutenant Commander S.T. Fuger, Jr., project attorney.

Discussion of Temporary Regulations

The PGA and Parker drawbridges presently open on signal, except that, from 7 a.m. to 9 a.m. and 4 p.m. to 7 p.m. Monday through Friday, the PGA opens on the quarter and three quarter-hour

while Parker opens on the hour and half-hour. On weekends and federal holidays both bridges open on the hour, 20 minutes after the hour, and 40 minutes after the hour between 8 a.m. and 6 p.m.

This change which adds 15-minute scheduled openings from 9 a.m. to 4 p.m., Monday through Friday, is intended to space draw openings and virtually eliminate "back to back" openings which can contribute significantly to vehicular traffic delays during these periods.

List of Subjects in 33 CFR Part 117

Bridges.

Temporary Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is temporarily 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); 33 CFR 117.43.

2. In § 117.261, paragraphs (s) and (t) are suspended and new paragraphs (rr) and (ss) are added to read as follows for the period February 21, 1989 through April 21, 1989.

117.261 Atlantic Intracoastal Waterway, St. Marys River to Key Largo

* * * * *

(rr) PGA Boulevard bridge, mile 1012.6. The draw shall open on signal; except that, from 7 a.m. to 9 a.m. and 4 p.m. to 7 p.m., Monday through Friday except federal holidays, the draw need open only on the quarter and three-quarter-hour. From 9 a.m. to 4 p.m. Monday through Friday, except federal holidays, the draw need open only on the hour, quarter-hour, half-hour and three-quarter-hour. On Saturdays, Sundays, and federal holidays from 8 a.m. to 6 p.m, the draw need open only on the hour, 20 minutes after the hour, and 40 minutes after the hour.

(t) Parker bridge, mile 1013.7. The draw shall open on signal; except that, from 7 a.m. to 9 a.m. and 4 p.m. to 7 p.m., Monday through Friday except federal holidays, the draw need open only on the hour and half hour. From 9 a.m. to 4 p.m. Monday through Friday, except federal holidays, the draw need open only on the hour, quarter-hour, half-hour and three quarter-hour. On Saturdays, Sundays, and federal holidays from 8 a.m. to 6 p.m, the draw need open only on the hour, 20 minutes after the hour, and 40 minutes after the hour.

Dated: February 27, 1989.

Martin H. Daniell,

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

[FR Doc. 89–5655 Filed 3–14–89; 8:45 am]

BILLING CODE 4910–14–M

POSTAL SERVICE

39 CFR Part 777

Implementation of the Uniform Relocation Act Amendments of 1987

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule amends the Postal Service's relocation regulations to make them consistent with Title IV of Pub. L. 100–17, the Uniform Relocation Act Amendments of 1987, and, to the extent feasible, with the interpretation of the 1987 amendments by the Federal Highway Administration in its recently published final governmentwide rule. The 1987 amendments made moderate increases in benefit levels, most of which were previously put into effect by the Postal Service in January 1988. In addition, the amendments changed the Uniform Relocation Act to cover virtually any organization, even private persons, if they displace persons or businesses pursuant to a Federal or Federally-assisted program or project. The amendments also provide that the computation of certain relocation benefits be done in accordance with the regulations of the Federal Highway Administration, which is the lead agency, rather than pursuant to a statutory formula. It is the latter amendments that this final rule is primarily implementing.

EFFECTIVE DATE: April 2, 1989.

FOR FURTHER INFORMATION CONTACT: Fred Underwood, (202) 268–3111.

SUPPLEMENTARY INFORMATION: On December 17, 1987, the Postal Service published a final rule implementing those parts of the Uniform Relocation Act Amendments of 1987 (principally increases in benefit levels) concerning which the statute apparently intended little discretion or interpretation would be available to agencies (52 FR 48029). It is the discretionary and interpretive parts of the statute that this final rule is implementing, and the governmentwide rule of the Federal Highway Administration (FHWA) that is being generally followed. We are also making several minor, editorial changes in our regulations.

After notice and comment rulemaking, the FHWA's final rule was published in the **Federal Register** on March 2, 1989 and became effective the same date (54 FR 8912). That document contains a comprehensive explanation of the governmentwide rule, its regulatory background, and the intention of Congress in enacting the Uniform Relocation Act Amendments of 1987.

Although exempt by 39 U.S.C. 410(a) from the provisions of the Administrative Procedure Act regarding rulemaking, 5 U.S.C. 553, the Postal Service ordinarily seeks public comment on changes to its regulations perceived to have an effect on the public. In this case, however, the FHWA has already received and considered voluminous public comment on the substance of the very changes we are adopting. Accordingly, the Postal Service finds it unnecessary to seek further public comment. In addition, the Postal Service ordinarily delays for 30 days the effective date of its final regulations, as also provided by the Administrative Procedure Act, 5 U.S.C. 553(d). In this case, however, we find that the purposes of the 30 day delayed effective date (notification of potential parties affected) are satisfied by the publication of FHWA's final rule. Moreover, the Uniform Relocation Act Amendments of 1987 require that implementing regulations under it bear an effective date no later than two years after enactment, which is April 2, 1989. Accordingly, the Postal Service finds good cause, consistent with the action of the rest of the Federal government, to put these regulations into effect within the April 2 deadline, notwithstanding the provisions of the Administrative Procedure Act.

For the reasons explained above, the Postal Service hereby amends 39 CFR as follows:

List of Subjects in 39 CFR Part 777

Real property acquisition, Relocation assistance.

PART 777—RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES

1. The authority citation for Part 777 continues to read as follows:

Authority: 39 U.S.C. 401.

§ 777.13 [Amended]

2. In § 777.13, paragraph (a) is revised; paragraphs (c)–(q) are redesignated (d)–(r), and new paragraph (c) is added to read as follows:

§ 777.13 Definitions.

(a) *The Act.* The Uniform Relocation Assistance and Real Property

Acquisition Policies Act of 1970 (Pub. L. 91-646; 84 Stat. 1894).

* * * * *

(c) *Small business.* A business having at least one but not more than 500 employees working at the location being acquired.

* * * * *

3. In § 777.13, redesignated paragraph (f)(1) introductory text is amended by removing the words "paragraph (e)(2)" and adding, in their place, the words "paragraph (f)(2)"; redesignated paragraph (f)(1)(ii)(B) is amended by removing the words "at the time of the postal contract to acquire such property" and adding, in their place, the words "on the date title to such property transfers to the Postal Service"; redesignated paragraph (f)(1)(ii)(B) is also amended by removing the word "is" and adding, in its place, the word "in"; redesignated paragraph (f)(2) introductory text is amended by removing the words "paragraph (e)(1)" and adding, in their place, the words "paragraph (f)(1)"; redesignated paragraph (f)(2)(iii) is amended by removing the words "paragraphs (e)(1)(ii)(B) and (e)(1)(iii)" and adding, in their place, the words "paragraphs (f)(1)(ii)(B) and (f)(1)(iii)"; redesignated paragraph (o)(3) is amended by removing the words "paragraph (n)(1) or (n)(2)" and adding, in their place, the words "paragraph (o)(1) or (o)(2)".

4. In § 777.21 paragraph (h) is added reading as follows:

§ 777.21 General procedures.

* * * * *

(h) *Eviction for cause.* Any person occupying real property and not in unlawful occupancy on the date of initiation of negotiations is presumed to be entitled to relocation payments and other assistance unless the Postal Service determines that:

(1) The person received an eviction notice prior to initiation of negotiations and, as a result of that notice, is later evicted; or

(2) The person is evicted after initiation of negotiations for serious or repeated violation of material terms of the lease or occupancy agreement; and

(3) In either case the eviction is not undertaken for the purpose of evading the obligation to make the relocation payments and other assistance available.

§ 777.23 [Amended]

5. In § 777.23, paragraph (e)(3) is redesignated (e)(4); paragraph (l) is redesignated (m); paragraphs (c), (d)(6), (e)(1), (e)(2), and redesignated paragraphs (m)(1), and (m)(3)(i) are revised redesignated paragraph (m)(3)(ix) is deleted; redesignated paragraph (m)(3)(x) is redesignated (m)(3)(ix); and new paragraphs (e)(3), (e)(5), and (1) are added to read as follows:

§ 777.23 Moving expenses.

* * * * *

(c) *Fixed payment for moving expenses. residential moves.* Any person displaced from a dewlling or a seasonal residence is entitled to receive an expense and dislocation allowance as an alternative to a payment for actual moving and related expenses. This allowance shall be determined according to the applicable schedule approved by the Federal Highway Administration. This includes a provision that the expense and dislocation allowance to a person with minimal personal possessions who is in occupancy of a dormitory style room shared by two or more other unrelated persons or a person whose residential move is performed by an agency at no cost to the person shall be limited to $50.

(d) * * *

(6) Relettering signs and replacing stationary on hand at the time of displacement that are made obsolete as a result of the move.

* * * * *

(e) * * *

(1) The business owns or rents personal property which must be moved in connection with such displacement and for which an expense would be incurred in such move; and, the business vacates or relocates from its displacement site; and

(2) The business cannot be relocated without a substantial loss of its existing patronage (clientele or net earnings). A business is assumed to meet this test unless the Postal Service determines that it will not suffer a substantial loss of its existing patronage; and

(3) The business is not part of a commercial enterprise having more than three other entities which are not being acquired by the Postal Service, and which are under the same ownership and engaged in the same or similar business activities.

* * * * *

(5) The business is not operated at a displacement dwelling solely for the purpose of renting such dwelling to others.

* * * * *

(1) *Payment for actual reasonable reestablishment expenses, nonresidential moves.* In addition to the payments available as allowable expenses for nonresidential moves, a small business, farm or non-profit organization may be eligible to receive a payment, not to exceed $10,000 for expenses actually incurred in relocating and reestablishing such small business, farm or non-profit organization at a replacement site.

(1) *Allowable expenses.* Reestablishment expenses must be reasonable and necessary, as determined by the Postal Service. They may include the following:

(i) Repairs or improvements to the replacement real property as required by federal, state, local law, code or ordinance.

(ii) Modifications to the replacement property to accommodate the business operation or make replacement structures suitable for occupancy.

(iii) Construction and installation costs not to exceed $1,500 for exterior signing to advertise the business.

(iv) Installation of security or fire protection devices.

(v) Provision of utilities from right-of-way to improvements on the replacement site.

(vi) Redecoration or replacement of soiled or worn surfaces at the replacement site, such as paint, panelling or carpeting.

(vii) Licenses, fees and permits when not paid as part of the moving expenses.

(viii) Feasibility surveys, soil testing and marketing studies.

(ix) Advertisement of replacement location, not to exceed $1,500

(x) Professional services in connection with the purchase or lease of a replacement site.

(xi) Increased costs of operation during the first two years at the replacement site, not to exceed $5,000, for such items as lease or rental charges, personal or real property taxes, insurance premiums, utility charges including impact fees or one time assessments for anticipated heavy utility usage.

(xii) Other items that the Postal Service considers essential to the reestablishment of the business.

(2) *Non-allowable expenses.* Following is a non-exclusive listing of restablishment expenditures not considered to be reasonable, necessary or otherwise allowable.

(i) Purchase of capital assets such as office furniture, filing cabinets, machinery, or trade fixtures.

(ii) Purchase of manufacturing materials, production supplies, product inventory, or other items used in the normal course of the business operation.

(iii) Interior or exterior refurbishment at the replacement site which are for cosmetic purposes only.

(iv) Interest on money borrowed to make the move or purchase the replacement property.

(v) Payment to a part-time business in the home which does not contribute materially to the household income.

(vi) Payment to a person whose sole business at a replacement dwelling is the rental of such dwelling to others.

(m) * * *

(1) *Self moves.* If the displaced person elects to take full responsibility for all or a part of the move, the Postal Service may approve a payment for the person's moving expenses in an amount not to exceed the lowest of three bids acceptable to the Postal Service. Bids may be obtained by either the displaced person or the Postal Service.

* * * * *

(3) * * *

(i) the cost of moving any structure or other real property improvement.

* * * * *

§ 777.25 [Amended]

6. In § 777.25, paragraph (j) is amended by removing "$4,000" and adding, in its place, "$5,250", and by removing "$15,000" and adding, in its place, "$22,500".

§ 777.28 [Amended]

7. In § 777.28, paragraph (n) is amended by removing the word "regional" and adding, in its place, the words "Service Center".

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 89-5905 Filed 3-14-89; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 372

[OPTS-400027; FRL-3537-6]

Cyclohexane; Toxic Chemical Release Reporting; Community Right-to-Know

AGENCY: Environmental Protection Agency (EPA).

ACTION: Denial of petition.

SUMMARY: EPA is denying a petition to delist cyclohexane from the list of toxic chemicals under section 313 of Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA). The denial is based on EPA's conclusion that cyclohexane is a high volume volatile organic compound that contributes to the formation of tropospheric ozone and other hazardous air pollutants such as formaldehyde. By contributing to ozone pollution, cyclohexane meets the criteria of section 313(d)(2) for both acute and chronic health effects, as well as for ecotoxicity effects.

FOR FURTHER INFORMATION CONTACT:

Robert Israel, Petition Coordinator, Emergency Planning and Community Right-to-Know Information Hotline, Environmental Protection Agency, Mail Stop OS-120, 401 M Street SW., Washington, DC 20460, Toll free: 800-535-0202

In Washington, DC, and Alaska, 202-479-2449.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Statutory Authority

The response to the petition is issued under section 313(d) and (e)(1) of Title III of SARA (Pub. L. 99-499). Title III of SARA is also referred to as the Emergency Planning and Community Right-to-Know Act of 1986.

B. Background

Section 313 of SARA Title III requires certain facilities manufacturing, processing, and using toxic chemicals to report annually their environmental releases of such chemicals. Section 313 establishes an initial list of toxic chemicals that is composed of more than 300 chemicals and chemical categories. Any person may petition EPA to add chemicals to or delete chemicals from the list.

EPA issued a statement of petition policy and guidance in the **Federal Register** of February 4, 1987 (52 FR 3479), to provide guidance regarding the recommended content and format for submitting petitions. EPA must respond to petitions within 180 days either by initiating a rulemaking or by issuing an explanation of why the petition is denied.

II. Description of Petition

On September 9, 1988, EPA received a petition from the Chemical Manufacturers Association (CMA) to delete cyclohexane from the section 313 list of toxic chemicals. The petition was based on CMA's contention that cyclohexane is not toxic and does not meet the section 313 criteria for listing.

III. EPA's Toxicity Concerns for Cyclohexane

Cyclohexane belongs to the category of chemicals known as "volatile organic compounds" (VOCs) which contribute significantly to air pollution problems. In particular, chemical reactions of cyclohexane (and other VOCs) in the atmosphere contribute to the formation of ozone and other air pollutants such as formaldehyde which have a direct and unequivocal negative impact on human health and environmental quality.

Ozone is a severe irritant affecting the mucus membranes of the nose and throat, and impairs the normal functioning of the lungs, especially in sensitive individuals such as asthma or allergy sufferers. Exposure to ozone also leads to impaired functioning of the immune system in animal tests. Available data suggest that ozone exposure may also lead to chronic health effects, including morphological changes to, and impaired functioning of, the lungs.

Ozone also has a severe impact on plant life; agricultural losses alone are estimated at $2 to $3 billion a year due to ozone damage.

IV. Explanation of Denial

EPA has determined that cyclohexane is a VOC that, due to its high volume of production and releases, contributes significantly enough to air pollution concerns to warrant its continued listing as a toxic chemical under section 313.

Cyclohexane is among the 20 highest volume VOCs in production in the U.S.; annual production is over 2 billion pounds. Emissions of cyclohexane exceed 10 million pounds per year. EPA's concerns center around the contribution cyclohexane emissions make to air pollution problems. Cyclohexane emissions contribute to the formation of tropospheric ozone, one of the most intractable and widespread of the nation's environmental problems. The major component of smog, ozone causes serious respiratory problems, and has been implicated in widespread damage to crops and other vegetation. Cyclohexane emissions also contribute to the formation of formaldehyde and other hazardous air pollutants which present a serious health threat. Formaldehyde is a probable human carcinogen and is listed as a toxic chemical for which reporting is required under section 313.

Because cyclohexane is a high volume chemical with substantial emissions, it makes a significant contribution to VOC-related air pollution concerns. Hence, continued listing under section 313 is justified. It is not EPA's intention to include all VOC chemicals on the section 313 list; only those whose volume of use or emissions is large enough to raise substantial VOC concerns. Most high-volume VOC

chemicals are already subject to reporting under section 313.

EPA has carefully considered the rationale for listing cyclohexane under section 313. EPA considers the contribution made by the atmospheric chemical reactions of cyclohexane, which result in the formation of ozone and other hazardous air pollutants, to be of sufficient human health and environmental concern as to justify continuing to list it as a "toxic" chemical for the purposes of section 313 reporting. Specifically, by contributing to ozone pollution, cyclohexane meets the criteria of section 313(d)(2) for both acute and chronic health effects, as well as for ecotoxicity effects.

EPA has also concluded that reporting releases of cyclohexane under section 313 will provide useful information to the public, EPA, and States from the point of view of both ozone and hazardous air pollutant concerns. Specifically, the site-specific type of data collected under section 313 will be valuable for validating and improving current data on VOC emission types, quantities, and sources and will aid in conducting research, and in designing regulations, guidelines, and standards, in the manner envisioned in section 313(h).

While EPA may utilize other statutory mechanisms to obtain emissions data on individual toxic chemicals, VOCs or otherwise, section 313 reporting is an appropriate mechanism for continuing to collect data on cyclohexane as a means of improving the current understanding by EPA, States, and the general public, of the quantities of emissions of these chemicals from manufacturing, processing, and user sources.

List of Subjects in 40 CFR Parts 372

Community right-to-know, Environmental protection, Reporting and recordkeeping requirements, Toxic chemicals.

Dated: March 8, 1989.

Charles L. Elkins,

Acting Assistant Administrator, Office of Pesticides and Toxic Substances.

[FR Doc. 89-5914 Filed 3-14-89; 8:45 am]

BILLING CODE 6560-50-M

Proposed Rules

Federal Register
Vol. 54, No. 49
Wednesday, March 15, 1989

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 ENERGY

Office of the Secretary

10 CFR Part 600

Financial Assistance Rules; Revised Policy on Objective Merit Review of Discretionary Financial Assistance Applications

AGENCY: Department of Energy.

ACTION: Proposed rule.

SUMMARY: The Department of Energy today proposes a revision of Subparts A and B of the Financial Assistance Rules, 10 CFR Part 600, to establish standards for program offices to follow in conducting the objective merit review of discretionary financial assistance applications, to provide authority for program assistant secretaries to issue general solicitations covering broad areas of research for which financial assistance is being made available, and to establish a requirement whereby applicants may receive an evaluation of their submission. In addition, this revision will give recipients of financial assistance research awards expanded authority to rebudget among categories and authority to carry over funds from one funding period to the next, to incur preaward costs, and to extend project periods without prior approval under certain circumstances. These changes will maintain the Federal stewardship over the funds being awarded while simultaneously allowing research to be done more efficiently and productively.

DATES: Written comments on the proposed rule must be received by April 14, 1989.

ADDRESS: Comments should be addressed to: James J. Cavanagh, Director, Business and Financial Policy Division (MA–422), Procurement and Assistance Management, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:
Edward F. Sharp, Business and Financial Policy Division (MA–422), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8192.
Christopher Smith, Office of the Assistant General Counsel for Procurement and Finance (GC–34), U.S. Department of Energy, Washington, DC 20585, (202) 586–1526.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The Department of Energy (DOE) is today proposing to amend its Financial Assistance Rules to establish standards for program offices in setting up procedures for the objective merit review of discretionary financial assistance applications and to allow recipients of financial assistance research awards expanded authority without obtaining prior approval from the Contracting Officer to (1) rebudget among categories; (2) carry over funds from one funding period to the next; (3) incur limited preaward costs; and (4) extend project periods without additional funds.

Also, today's proposed rule establishes an outline for a Department-wide process for the review of applications for financial assistance. Requests for financial assistance funds are to be reviewed and evaluated by the DOE based on scientific merit of the project, applicant's qualifications, adequacy of applicant's facilities and resources, project appropriateness to the mission of the DOE, and other appropriate factors established and set forth by the cognizant program office. The DOE review process is to consist of review by DOE personnel for scientific and technical merit and program policy matters and may include external review by Federal (including DOE) and non-federal personnel either as part of a standing committee, ad hoc committee, or field reader review for scientific and technical merit. The Federal/non-federal composition of the review groups may vary, as long as objective review standards are maintained.

There is another provision of this proposed rule which will allow the issuance of general solicitations such that applications which are in the subject area of one of the listed programs may be treated as having been in response to the general solicitation.

Finally, a provision regarding evaluations provides that, upon request, the applicant will receive a written summary of the evaluation.

The DOE has concluded that the other proposed changes regarding prior approvals, carryovers, preaward costs and project extensions (which are the DOE's implementation of recommendations stemming from the Florida Demonstration Project) will provide additional flexibility to financial assistance recipients and reduce the work involved in managing financial assistance awards without adversely affecting appropriate Federal oversight of certain awards.

II. Proposed Changes to 10 CFR Part 600

Section 600.3 is proposed to be amended by inserting in alphabetical order definitions for "ad hoc committee," "field readers," "objective merit review," "responsible official," and "standing commitee," and changing the definition of "research."

Section 600.9 is proposed to be changed by revising paragraph (a)(1) to provide authority for program assistant secretaries to issue general solicitations. Paragraph (c)(10) is being amended to allow program offices to establish due dates or periods appropriate for the receipt of applications. Multiple receipt dates throughout the year may be established which would permit applications to be "bunched" and reviewed in comparison to each other. Paragraph (c)(12)(vi) is being changed to provide that solicitations must contain specific requirements for non-statutory cost sharing when cost sharing is to be considered in the selection process.

Section 600.16 is proposed to be amended by revising paragraph (a) to establish the responsibility of the program office for setting up an objective merit review system and ensuring its satisfactory functioning. A new paragraph (b) is added to set out basic review requirements, including the goal to normally obtain review by at

least three individuals who have no other responsibilities concerning the financial assistance applications being reviewed. A new paragraph (c) has been added to outline requirements for comparative review. A new paragraph (d) has been added to describe the types of review processes which may be used, which include field readers, standing committees, and ad hoc committees. A new paragraph (e) has been added establishing a requirement for providing the applicant with an evaluation of his/her application. A new paragraph (f) has been added to address situations in which the reviewer has an interest in the application being reviewed. A new paragraph (g) has been added to establish deviation procedures from this part of the rule. Existing paragraphs (b) and (c) have been redesignated paragraphs (h) and (i).

Section 600.103 is proposed to be amended to eliminate all Federal prior approval requirements for a recipient of financial assistance research awards (including those in OMB Circulars A–21 and A–110) except for change in objective or scope, temporary replacement or change of principal investigator, change of key personnel, and change of the institution to which the award is made. It is also proposed to be amended to establish the authority of these recipients to incur preaward costs up to 90 days prior to a new renewal award. The section also provides that, if a recipient takes such an action, the DOE is not obligated to issue an award.

Section 600.106 is proposed to be amended by including a provision allowing recipients of financial assistance research awards to extend the final year of a project period without receiving the prior approval of the DOE. Recipients must take this prior to the originally established expiration date and notify the DOE within ten days of the extension.

Section 600.108 is proposed to be amended to allow recipients of financial assistance research awards to carry over unexpended funds in a continuation award without the prior approval of the DOE.

III. Review Under Executive Order 12291

Today's proposal was reviewed under Executive Order 12291 (February 17, 1981). The DOE has concluded that the rule is not a "major rule" because its promulgation will not 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, or 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 to compete in domestic or export markets. In accordance with requirements of the Executive Order, this rulemaking has been reviewed by the Office of Management and Budget (OMB).

IV. Review Under the Regulatory Flexibility Act

These proposed regulations were reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96–354, 94 Stat. 1164, which requires preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities; i.e., small businesses, small organizations, and small governmental jurisdictions. The DOE has concluded that the proposed rule would only affect small entities as they apply for and receive financial assistance and does not create additional economic impact on small entities. The DOE certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

V. Review Under the Paperwork Reduction Act

No information collection or recordkeeping requirements are imposed upon the public by this proposed rulemaking. Accordingly, no OMB clearance is required under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, *et seq.*, or OMB's implementing regulations at 5 CFR Part 1320.

VI. Review Under the National Environmental Policy Act

The DOE has concluded that promulgation of these wholly procedural rules clearly would not represent a major Federal action having significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, *et seq.* (1976)), the Council on Environmental Quality Regulations (40 CFR Parts 1500–1508), and the DOE guidelines (10 CFR Part 1021) and, therefore, does not require an environmental impact statement pursuant to NEPA.

VII. Review Under Executive Order 12612

Executive Order 12612 requires that regulations or rules be reviewed for substantial direct effects on States, on the relationship between the national government and the States, or in the distribution of power among various levels of governments. If there are sufficient substantial direct effects, E.O 12612 requires preparation of a federalism assessment to be used in all decisions involved in promulgating or implementing a regulation or rule.

Today's proposed regulatory amendments, when finalized, will have a direct effect of State recipients of financial assistance who receive research awards. The number of awards effected is very small, however, and thus there will be insufficient direct effect to warrant the preparation of a federalism assessment by DOE.

VIII. Public Comments

Interested persons are invited to participate in this rulemaking by submitting data, views, or arguments with respect to the proposed changes set forth in this notice. Three copies of written comments should be submitted to the address indicated in the "ADDRESS" section of this notice. All comments received will be available for public inspection in the DOE Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, between the hours of 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. All written comments received by April 14, 1989, will be fully considered prior to publication of a final rule resulting from this proposal. Any information you consider to be confidential must be so identified and submitted in writing, one copy only. The DOE reserves the right to determine the confidential status of the information and to treat it according to our determination.

The Department has concluded that this proposed rule does not involve a substantial issue of fact or law and that the proposed rule should not have substantial impact on the nation's economy or a large number of individuals or businesses. Therefore, pursuant to Pub. L. 95–91, the DOE Organization Act, and the Administrative Procedure Act (5 U.S.C. 553), the Department does not plan to hold a public hearing on this proposed rule.

List of Subjects in 10 CFR Part 600

Administrative practice and procedure, Cooperative agreements/energy, Copyrights, Debarment and suspension, Educational institutions, Energy, Grants/energy, Hospital, Indian tribal governments, Individuals, Inventions and patents; Nonprofit organizations, Reporting requirements, Small businesses.

In consideration of the foregoing, the DOE hereby proposed to amend Chapter

II of Title 10 of the Code of Federal Regulations by amending Part 600 as set fort below.

Issued in Washington, DC, March 7, 1989.

Berton J. Roth,

Deputy Assistant Secretary for Procurement and Assistance Management.

For the reasons set out in the preamble, Part 600 of Chapter II, Title 10 of the Code of Federal Regulations is proposed to be amended as follows:

PART 600—[AMENDED]

1. The authority citation for Part 600 continues to read as follows:

Authority: Sec. 644 and 646, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254 and 7256); Pub. L. 97–258, 96 Stat. 1003–1005 (31 U.S.C. 6301–6308), unless otherwise noted.

§ 600.3 [Amended]

2. Section 600.3 is proposed to be amended by adding new definitions for "Ad hoc committee," "Field readers," and "Objective merit review" in alphabetical order and by revising the definition of "Research" as follows:

"Ad hoc committee" means a temporary committee established to perform a single, specific short-term task, after which the committee disbands.

"Field readers" means persons with expertise to evaluate a specific application or category of applications. Field readers may act as independent individuals or as members of a group with the review generally being done by mail.

"Objective merit review" means a thorough, consistent and independent examination of applications based on pre-established criteria by persons knowledgeable in the field of endeavor for which support is requested. This sort of review is conducted to provide advice to selecting officials based on an evaluation of the scientific or technical merit. The reviewers themselves may be engaged in comparable efforts in institutions or organizations similar to the applicant's or have in the past been directly involved in such activities.

"Responsible official" means the Heads of Departmental Elements/ Program Assistant Secretaries. These individuals are responsible for the system of objective merit review of financial assistance applications funded by their program or department element. The functions associated with the objective merit review may be delegated, but only to the level specified in the relevant sections of this part. The responsible official, however, remains ultimately responsible for the execution of these functions.

"Standing committee" means a long-term committee established to review applications and may be used when required by legislation or when significant numbers of applications on specified topics are received periodically.

"Research" means any specific or engineering activity which (1) constitutes a systematic, intensive study directed specifically toward greater knowledge or understanding of the subject studied and contributes to a continuing flow of new knowledge; or (2) is directed toward applying new knowledge to meet a recognized need; and/or (3) applies such knowledge toward the production of useful methods, including design, development and improvement of prototypes and new processes to meet established requirements.

§ 600.9 [Amended]

3. Section 600.9 is amended by revising paragraphs (a)(1) and (c)(8), (10), and (12)(vi) as follows:

(a) *General.* * * *

(1) A Program Assistant Secretary may annually issue a program notice describing research areas in which financial assistance is being made available. Such notice shall also state whether the research areas covered by the notice are to be added to those listed in a previously issued program rule. If they are to be included, then applications received as a result of the notice may be treated as having been in response to that previously published program rule. If they are not to be included, then applications received in response to the notice are to be treated as unsolicited proposals. Solicitations, e.g., PONS and PRDAS (other than a program rule which serves to solicit applications), may be issued only by a DOE Contracting Officer.

* * * * *

(c) * * *

(8) The names of the responsible DOE Contracting Officer (or, for program notices, the program office contact) to contact for additional information, and, as appropriate, and address where application forms may be obtained;

* * * * *

(10) Appropriate periods or due dates for submission of applications and a statement describing the consequences of late submission. If programs have established a series of due dates to allow for the comparison of applications against each other, these dates shall be indicated in the solicitation;

* * * * *

(12) * * *

(vi) Sources of financing available to the project. Any expectation concerning cost sharing shall be clearly stated. While cost sharing is encouraged, unless the cost sharing expectation is addressed in the solicitation, it shall not be considered in the evaluation process and shall be considered only at the time the award is negotiated.

§ 600.16 [Amended]

4. Section 600.16 is amended by revising paragraph (a), redesignating paragraphs (b) and (c) as (h) and (i), and by adding new paragraphs (b) through (g) as follows:

(a) *General.* (1) Each responsible official must establish and publish in the **Federal Register** the details of the system of objective merit review which covers the financial assistance program administered by each cognizant program office within his or her jurisdiction within 120 days of the issuance of this rule for existing programs and prior to the review of applications for new programs. More than one program may adopt the same system. If a program wants to review an application or group of applications using the criteria and procedure of an already established review system other than its own, it may do so by following the deviation procedures described in paragraph (g) of this section. DOE employees designated by responsible officials by carry out the review process shall ensure that the evaluation of applications is conducted in a fair and objective manner.

(2) Objective merit review of financial assistance applications is intended to be advisory and is not intended to replace the authority of the program official with responsibility for deciding whether an award will be made. It is expected that the cognizant project/program officer (scientific monitor) who normally also reviews the proposal for technical/ scientific merit, will, additionally, review it from a program policy perspective. Nevertheless, the ojbective merit review system must set forth the relationship between the reviewing individuals, or the review committees or groups, and the official who has the final decision-making authority. In defining this relationship, the system must set out, as a minimum, the decision-making and documentation processes to be followed by the authorized official responsible for selecting when and adverse recommendation has been received through the objective merit review process.

(3)(i) This section applies to all new and renewal applications (except applications for conferences/symposia and for awards which come under the

criteria of paragraph (a)(3)(ii) of this section) in programs which make discretionary financial assistance awards and to any other financial assistance programs in which objective merit review is required by the authorizing legislation.

(ii) For projects in which multiple renewals are probable, an objective merit review need not necessarily be done at each renewal, but instead at appropriate points in the overall project period. A determination that a project need not be reviewed at each renewal shall be made in writing by the project officer at the time the initial award is issued, or at least one year prior to the date a renewal award would be issued, and concurred in by an official at least one level above the official responsible for selecting the application for award. The determination shall also indicate the reports required under the award. The criteria on which the determination that a project need not be reviewed at each renewal is based shall be included in the system of objective merit review to be established by the responsible official in accordance with paragraphs (a)(1) and (2) of this section.

(4) Each responsible official shall ensure consistency among DOE field offices in the implementation of the review system(s) for his/her program area.

(5) Each formal review system must contain the elements listed in paragraphs (b) through (e) of this section.

(b) *Basic review standards.* (1) Each application meeting policy and programmatic considerations shall generally be reviewed by at least three qualified persons in addition to the official responsible for selection.

(2) The reviewers of any particular application may be any mixture of federal or non-federal experts, including individuals from within the cognizant program office, except as indicated otherwise below (see paragraphs (b)(3), (5) and (d)(2)(ii) of this section). The DOE shall select external (non-DOE Federal or non-federal) reviewers on the basis of their professional qualifications and expertise in the field of research.

(3) In selecting persons in accordance with § 600.16(b) (1) and (2) to review applications, such selection of additional reviewers should not include, to the extent possible, anyone who, on behalf of the Federal Government, performed or is likely to perform any of the following duties for any of the applications:

(i) Providing substantive technical assistance to the applicant;

(ii) Approving/disapproving or having any decision-making role regarding the application;

(iii) Serving as the project officer or otherwise monitoring or evaluating the recipient's programmatic performance;

(iv) Serving as the Contracting Officer (CO), or performing business management functions for the project; or

(v) Auditing the recipient or the project.

Anyone who has line authority over a person who is ineligible to serve as a reviewer because of the above limitations is also ineligible to serve as a reviewer.

(4) It may occasionally be necessary, after the fact, to change project officer designation, thereby resulting in an individual who participated in the review of an application being appointed as the project officer. This will not be considered a violation of this policy of objective merit review provided the assignment was not expected when the review was conducted.

(5) Persons outside the cognizant program office must not have been employees of that office, including having line authority over that office, for one year prior to participation as a reviewer in the objective merit review process for that program.

(c) *Comparative review.* (1) In order to enhance the validity of the evaluation and rating process, applications can be evaluated in comparison to each other.

(2) If a program area has established a program notice, the responsible official may implement review procedures which will result in applications being evaluated in comparison to each other. Applications in response to that notice may be assigned to a group of field readers, to a standing committee, or to an ad hoc committee, as discussed below, which is capable of reviewing them, and may be considered along with other applications which were submitted in response to the program notice or which are eligible under the most nearly applicable program announcement. For solicitations, review procedures may also permit comparative evaluation with field readers, a standing committee, or an ad hoc committee being used as appropriate.

(d) *Types of review groups*—(1) *Field Readers.* (i) Objective merit review of applications may be obtained by using field readers to whom applications are sent for review and comment. Field readers may also be used as an adjunct to financial assistance application review committees when, for example, the type of expertise needed or the volume of financial assistance applications to be reviewed requires such auxiliary capacity.

(ii) Safeguards should be instituted to ensure that field readers clearly understand the process, their role, and the criteria upon which the applications are to be evaluated.

(iii) For those situations in which a standing committee is the appropriate review mechanism (see paragraph (d)(2) of this section), but a group of field readers must be used instead, it should function as nearly like a committee as possible; e.g., readers must receive all of the applications to be reviewed even though they are in geographically separate locations and all field readers should be instructed to follow the procedures established for evaluating the applications.

(2) *Standing committees.* (i) Standing committees are normally appropriate when required by legislation or when the following conditions prevail:

(A) A sufficient number of applications on specific topics to justify the use of a standing committee(s) is received by the program on a regular basis in accordance with a predetermined review schedule;

(B) There are a sufficient number of persons with the required expertise who are willing and able to (*1*) accept appointments, (*2*) serve over reasonably protracted periods of time, and (*3*) convene at regularly scheduled intervals or at the call of the chairperson; and

(C) The legislative authority for the particular program(s) involved extends for more than one year.

(ii) Persons outside the cognizant program office shall constitute at least half the reviewers on such committees unless a deviation from this requirement has been approved.

(3) *Ad hoc committees.* (i) Ad hoc review committees may not exceed one year in duration and are appropriately used when use of a standing committee is not feasible or when one of the following conditions prevails:

(A) A small number of applications is received on an intermittent basis;

(B) The program is one of limited duration, usually less than one year;

(C) The applications to be reviewed have been solicited to meet a specific program objective and cannot appropriately be reviewed by a standing committee because of subject matter, time constraints, or other limitations;

(D) The volume of applications received necessitates convening an additional committee(s) of available reviewers; or

(E) It is determined that the applications submitted have special review requirements, e.g., construction

of a facility, the complexity of subject matter cuts across the areas of expertise of two or more standing committees, or the subject matter is of a special, nonrecurring nature.

(ii) Ad hoc committees may not be used for reviewing financial assistance applications for any program for which a standing committee has been established (except for paragraph (d)(3)(i)(D) of this section) unless a deviation is approved.

(e) *Review summary.* Upon request, applicants are to be provided with a written summary of the evaluation of their application.

(f) *Reviewers with interest in application being reviewed.* Reviewers must comply with the requirements for the avoidance of conflict of interest established in Section 600.17. A committee or group of field readers which includes as objective merit reviewers any individuals who cannot meet these requirements with regard to a particular application being reviewed, e.g., officials mentioned in paragraphs (b)(3) and (5) of this section, shall operate as follows:

(1) These individuals or officials may not review, discuss, and/or make a recommendation on an application(s) in which they have a conflict of interest.

(2) In the case of a review committee, the committee member must absent himself or herself from the committee meeting during the review and discussion of the application(s) in which he/she has a conflict of interest.

(g) *Deviations.* (1) In any instance in which a program's preestablished review system is not to be used to review an application, group of applications, or class of applications, written prior approval for utilization of a different procedure, which itself must, to the extent possible, conform to the provisions of this section pertaining to objective merit review, must be obtained from the responsible official or his or her designee.

(2) If the deviation sought applies to a class of applications and constitutes a deviation from the requirements of this part, approval for deviation must be obtained in accordance with Section 600.4. If such request for deviation is approved, all details of the review procedure utilized and the proceedings and determination must be fully documented.

* * * * *

5. Section 600.31 is amended by revising paragraph (d) to read as follows:

§ 600.31 Funding.

* * * * *

(d) *Extensions.* (1) For research awards, recipients' awards may extend the expiration date of the final budget period of the project (thereby extending the project period) if additional time beyond the established expiration date is needed to assure adequate completion of the original scope of work within the funds already made available. A single extension, which shall not exceed twelve (12) months, may be made for this purpose, and must be made prior to the originally established expiration date. The recipient must notify the cognizant DOE Contracting Officer in the awarding office in writing within ten (10) days of the extension.

(2) For any type of financial assistance, the DOE may extend any other budget period withiout the need for competition or a justification of restricted eligibility if:

(i) In the case of the final budget period of a project period of a non-research award, the additional time necessary is 18 months or less in total, or for all other budget periods of both research and non-research awards, the additional time necessary is 6 months or less in total; and

(ii) The grantee submits a written request for an extension before the expiration date of the budget period in process and includes a justification for the extension along with an expenditure plan for the use of any additional funds requested. An expenditure plan need not be provided when no additional funds are requested, unless the grantee intends to rebudget funds in such a way as to require DOE prior approval or unless the grantee is instructed otherwise by the Contracting Officer.

* * * * *

§ 600.32 [Amended]

6. Section 600.32 is amended by revising paragraph (c)(2), removing paragraph (d), and redesignating and revising paragraphs (e) and (f) as (d) and (e) as follows:

* * * * *

(c) *Unobligated balances—(1) Other than research grants.* * * *

(2) *Research grants.* Any unobligated balance of funds which remains at the end of any funding period, except the final funding period of the project period, may be carried over to the next funding period, and may be used to defray costs of the period into which it is carried over. The recipient, in the continuation application, shall advise the DOE of the amount of funds to be carried over, the reason the funds remain, and their anticipated use in the next funding period. After review of the information in the continuation application, the DOE may adjust the amount included in the continuation award. The recipient shall not be entitled to reimbursement if a continuation award is not made. The recipient shall also include in the Financial Status Report the amount of the unobligated balance as of the end of each funding period.

(d) *Added funding not required.* Nothing in paragraph (c) of this section shall in any way require the DOE to increase the total amount obligated for the project.

(e) *Adjustments.* Whenever DOE adjusts the amount of an award under this subpart, it shall also make an appropriate upward or downward adjustment to the amount of required cost sharing in order that the adjusted award maintain any required percentage of DOE and non-Federal participation in the costs of the project.

* * * * *

7. Section 600.103 is amended by revising paragraphs (b)(6) and (g) to read as follows:

§ 600.103 Cost determinations.

* * * * *

(b) *Cost principles.* * * *

(6) Before a recipient may make changes in the following areas on research financial assistance awards, the written approval of the cognizant Contracting Officer at the DOE is required: (i) Changes in objectives or scope, (ii) temporary replacement or change of principal investigator or change of key personnel, and (iii) change of the institution to which the award is to be made. All other Federal prior approval requirements, including those in OMB Circulars A–21 and A–110, are waived for research awards. The recipient may maintain such internal prior approval systems as it considers necessary.

* * * * *

(g) *Preaward costs.*—(1) *All awards.* Any preaward expenditures are made at the recipient's risk. Approval of preaward costs by the Contracting Officer or incurrence by the recipient does not impose any obligation on DOE in the absence of appropriations, if an award is not subsequently made, or if an award is made for a lesser amount than the recipient expected.

(2) *Research awards only.* (i) For new or renewal research awards, recipients may incur preaward costs up to ninety (90) days prior to the effective date of the award. Preaward costs for periods preceding 90 days prior to the effective date of the award are allowable only if approved in writing, prior to incurrence, by a DOE Contracting Officer.

(ii) For continuation awards within a multiple year project, prior to recipt of continuation funding, preaward expenditures by recipients are not subject to the limitation or approval requirements of paragraph (g)(2)(i) of this section.

(iii) Preaward costs, as incurred by the recipient, must be necessary for the effective and economical conduct of the proejct, and the costs must be otherwise in accordance with these rules and may not include those specific costs for which agency prior approval is required under the circulars. In any instance in which the circulars permit the agency to grant prior approval to the recipient, it is the Department's intention to do so.

(3) *Other than research awards.* All other financial assistance recipients may incur preaward costs only if the expenditure is approved in writing, prior to incurrence, by the Contracting Officer. In the case of governmental entities, the approval must additionally be reflected on the award notice.

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Rel. No. 34-26609; File No. S7-11-89]

Short and Hedged Tendering In Connection With Partial Tender Offers

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Commission is proposing for comment amendments to Rule 10b-4 under the Securities Exchange Act of 1934, known as the short tendering rule. If adopted, these amendments would redesignate the rule as Rule 14e-4 and would clarify its provision. The amendments are not intended to effect any substantive change in the operation of the current rule. In addition, the Commission is requesting comment on the deregulation of hedged tendering.

DATE: Comments should be received on or before May 15, 1989.

ADDRESS: Comments shoud be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission 450 Fifth Street, NW., Mail Stop 6-9, Washington, DC 20549. Comment letter should refer to File No. S7-11-89. All submissions will be available for public inspection at the Commission's Public Reference Section, 450 5th Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: M. Blair Corkran or Jodie J. Kelley at (202) 272-2848, Office of Trading Practices, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street NW., Mail Stop 5-1, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission is publishing for comment amendments to clarify current Rule 10b-4 ("Rule") [1] under the Securities Exchange Act of 1934 ("Exchange Act") [2] and to redesignate the rule as Rule 14e-4. The Commission is also soliciting comment on the possible deregulation of hedged tendering. The Commission's review of the Rule is prompted by the decision of the Second Circuit in *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Bobker.*[3]

Rule 10b-4 was adopted by the Commission in 1968 [4] for the purpose of prohibiting "short tendering," *i.e.*, tendering more shares than a person owns in order to avoid or reduce the risk of *pro rata* acceptance in tender offers for less than all the outstanding securities of a class or series. The Rule was amended in 1984 [5] to prohibit the practice of "hedged tendering" in connection with partial offers, *i.e.*, tendering and then selling a portion of the tendered shares in the market.

I. Introduction

A. Background

In making a tender offer for securities of a subject company, the bidder can tender for all the outstanding securities of the subject company or for a lesser amount. When a tender offer is made for less than all the outstanding equity securities of a class ("partial offer") and when a greater number of securities are tendered than is sought in the offer, the tendered securities must be accepted on a *pro rata* basis from all tendering securityholders.[6]

Partial offers involve a risk to securityholders of the subject company that not all of the securities tendered will be accepted. This risk is referred to as "proration risk." Before the adoption of Rule 10b-4, securityholders occasionally tendered more securities than they owned in order to diminish proration risk. By tendering a greater number of securities than they owned, and by guaranteeing their tenders,[7] market professionals were able to secure acceptance of a disproportionately larger number of the securities owned and tendered by them than could be secured by other persons who tendered only securities that they owned.[8]

The Commission adopted Rule 10b-4 in 1968 for the specific purpose of prohibiting short tendering.[9] The rule currently provides that it is a "manipulative or deceptive device or contrivance" within the meaning of section 10(b) of the Exchange Act for any person, in response to an offer or invitation for tenders of any security, to tender securities that he does not own.[10] Ownership is defined in paragraph (a) of the Rule. The Rule applies to all tender offers, whether made by a third party or by the issuer of the securities sought.[11]

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[1] 17 CFR 240.10b-4.

[2] 15 U.S.C. 78a *et seq.*

[3] 808 F.2d 930 (2d Cir. 1986) [herein cited as *Bobker*].

[4] Securities Exchange Act Release No. 8321 (May 28, 1968), 33 FR 8269 ("Release 34-8321").

[5] Securities Exchange Act Release No. 20799 (March 29, 1984), 49 FR 13867, 13868 ("Release 34-20799").

[6] Section 14(d)(6) of the Exchange Act, 15 U.S.C. 78n(d)(6); Rule 13e-4(f)(3) under the Exchange Act, 17 CFR 240.13e-4(f)(3). When tendered securities are accepted on a *pro rata* basis, the offeror accepts only a percentage of the securities tendered by each securityholder. The percentage is calculated from a fraction whose numerator represents the total number of securities accepted and whose denominator represents the total number of securities tendered.

[7] Broker-dealers are able to tender by a letter of guarantee that promises the required shares will be delivered to the bidder in accordance with the terms of the offer.

[8] *See* Testimony of Chairman Manuel F. Cohen in Hearings on S. 510 Before the Subcommittee on Securities of the Senate Committee on Banking and Currency, 90th Cong., 1st Sess. 198-99 (1967).

[9] Release 34-8321.

[10] Short and hedged tendering may involve a "manipulative or deceptive device or contrivance" since securityholders that are not market professionals generally would not be aware that their proration risk may be substantially increased as a result of the use of short and hedged tendering by market professionals. Rule 10b-4 also furthers the purpose stated in the preamble of the Exchange Act "to prevent inequitable and unfair practices on * * * exchanges and markets," and is consistent with some of the goals of the Williams Act amendments to the Exchange Act, namely, to "assur[e] fair and equal treatment of all holders of the class of securities that is the subject of a tender offer," and "to eliminate discriminatory treatment among security holders who desire to tender their shares." *See* Securities Act Release No. 6653 (July 11, 1986), 51 FR 25873, and sources cited therein. *See also* text accompaning notes 39 and 40 *infra*. Moreover, it is an appropriate exercise of the Commission's general authority to adopt such rules and regulations "as may be necessary or appropriate to implement the provisions of [the Exchange Act]." Section 23(a) of the Exchange Act, 15 U.S.C. 78w(a).

[11] Although tender offers by an issuer are exempt from the provisions of section 14(d) of the Exchange Act, 15 U.S.C. 78n(d), they are subject to the antifraud provisions of section 14(e) of the Exchange Act, 15 U.S.C. 78n(e). In addition, issuer tender offers by issuers with a class of equity

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Following the adoption of Rule 10b–4, it became apparent that requiring a shareholder to tender from a long position did not prevent market professionals from tendering shares they owned and then selling a portion of their shares before the proration deadline to a purchaser who would then also be able to tender the shares. This practice, known as hedged tendering, permitted tendering persons who hedged their tenders to shift proration risk to others who did not hedge.[12] The avoidance of proration risk was similar to that achieved by short tendering. The Advisory Committee on Tender Offers recommended that the Commission prohibit hedged tendering.[13]

In 1984, the Commission adopted amendments to Rule 10b–4 that were designed to prohibit hedged tendering without unduly affecting tendering practices or the structure of the trading markets during tender offers.[14] The amendments required a tendering person to have a net long position [15] to the extent of the tender not only at the time of tendering, but also at the end of the proration period. In 1985, the Commission adopted a further amendment to Rule 10b–4 to prohibit hedged tendering by use of call options. That amendment required that a tendering person's net long position be reduced by the number of shares underlying any in-the-money call options that the tendering person had written.[16]

B. The Bobker Decision

Jack Bobker, a customer of Merrill Lynch, Pierce, Fenner & Smith Inc. ("Merrill Lynch"), owned and tendered 4,000 shares of Phillips Petroleum Company ("Phillips") common stock in response to a tender offer by Phillips for approximately 50 percent of its outstanding common stock. Before the proration date of the Phillips offer, Bobker sold 2,000 shares of Phillips common stock short, making arrangements through Merrill Lynch to borrow the necessary shares. Shortly thereafter, Merrill Lynch's compliance department cancelled the short sale, apparently on the basis that Bobker would have been in violation of Rule 10b–4 if he had not covered his short position by the proration date.[17] Bobker commenced an arbitration proceeding claiming that his tender and his short sale were "independent transactions" and seeking $23,000 in profits that he allegedly would have earned if Merrill Lynch had not cancelled his short sale. The arbitrators awarded Bobker $11,500 and Merrill Lynch appealed. The District Court adopted the analysis of Rule 10b–4 set forth in the Commission's brief as *amicus curiae* and vacated the arbitration award, finding that the arbitrators had acted in "manifest disregard of the law" with respect to the application of Rule 10b–4 to Bobker's activities.[18] Bobker appealed.

The Second Circuit reversed and held that the arbitrators did not act in "manifest disregard of the law" in the manner in which they disposed of the arbitration proceeding.[19] In reaching that conclusion, the court's opinion emphasized that the arbitrators' "careful and conscientious analysis" of the application of Rule 10b–4 to the facts of the case resulted in "serious doubts * * * about the rationality and interpretation of the 'net long' proviso and how it serves the Rule's avowed purpose of preventing a stockholder such as Bobker from increasing his *pro rata* share of stock tendered and accepted over the *pro rata* share of that tendered by other stockholders." [20]

The court viewed Bobker as having tendered 4000 shares that he owned and continued on own, and then having separately sold 2000 "additional" shares borrowed from non-tendering shareholders.[21] The opinion stated that the "short sale would not enable Bobker to tender more shares than he actually owned or to dilute the *pro rata* acceptance of shares tendered by other shareholders by causing the same shares to be tendered by two or more shareholders by other shareholders." In supporting its view of Bobker's short sale as an indpendent transaction, the court said that Bobker's short sale "amounted to a separate gamble, inherent in every short sale * * * if the market price of Phillips stock, instead of falling, should rise." [22]

The court also noted that the term "net long" is not defined in the Rule, and that the Commission has stated that the meaning of net long is the same as that employed in interpreting Rule 10a–1 (the

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security registered pursuant to Section 12 of the Exchange Act, 15 U.S.C. 78*l*(g), or which is required to file periodic reports pursuant to Section 15(d) of the Exchange Act, 15 U.S.C. 78*o*(d), or which is a closed-end investment company registered under the Investment Company Act of 1940, 15 U.S.C 80a–1 *et seq.*, are subject to Rule 13e–4 under the Exchange Act, 17 CFR 240.13e–4.

[12] Market professionals are able to guarantee their tenders and have ready access to borrowable stock. By short tendering or selling in the market after tendering, the professional can significantly reduce its proration risk, while increasing the proration risk of all those who cannot short or engage in a hedged tender, because the short or hedged tendering increases the number of shares that can be tendered. As the number of tendered shares increases, the percentage of shares accepted from each tendering shareholder decreases. *See* n.6 *supra*.

[13] As stated by the Commission Advisory Committee on Tender Offers:

Notwithstanding contentions that short and hedged tendering operate to increase the efficiency of the market and to reduce the spread between the market price and tender price, thereby benefiting individuals who sell into the market rather than tender, the Committee strongly endorses continuation of Rule 10b–4's prohibition of short tendering and recommends that the rule be strenthened to prohibit specifically hedged tendering. Because short and hedged tendering opportunities are available almost exclusively to market professionals, they appear to provide a substantial, unfair advantage to market professionals. As a result, the Committee found that these techniques created too great a risk of undermining public confidence in the integrity of the markets. Advisory Committee on Tender Offers, Report of Recommendations 47–48 (July 1983) ("Advisory Committee Report") (footnotes omitted).

[14] Release 34–20799.

[15] A person's net long position is determined by offsetting shares owned by any shares sold short. *See* discussion at notes 24 and 25 *infra*.

[16] Securities Exchange Act Release No. 21782 (February 22, 1985), 50 FR 8100. This amendment was also recommended in the Advisory Committee on Tender Offers. Advisory Committee Report 50.

[17] *See* 808 F.2d at 934 n.3. At the time of Bobker's short sale, the transaction did not violate the Rule because paragraph (b)(1) of the Rule requires that a tendering person have a net long position equal to or greater than the amount of shares tendered only at the time of tendering and at the end of the proration period. Had Bobker taken steps to eliminate the short position or reduce his tender by the proration date, no violation would have occurred. Merrill Lynch preempted any such action by Bobker and effectively eliminated Bobker's ability to bring himself into compliance with Rule 10b–4, when it unilaterally cancelled the short sale. However, it seems clear that Bobker did not intend to comply with the net long requirement, because the profits upon which his claim for damages was based would only have accrued if the short position remained open past the proration date.

[18] *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Bobker*, 636 F. Supp. 444 (S.D.N.Y. 1986). "Manifest disregard of the law" by arbitrators is a judicially created ground for vacating an arbitration award. *See Wilko v. Swan*, 346 U.S. 427, 436–437 (1953).

[19] 808 F.2d at 936.

[20] 808 F.2d at 936–37. Two judges joined in the court's opinion. The third judge concurred in the result but disassociated himself from the court's discussion with respect to Rule 10b–4. 808 F.2d at 937–38 (Meskill, J., concurring).

[21] The court viewed the potential tender by the person who bought the Phillips shares from Bobker as substituting for a tender by "non-tendering" persons and thus not affecting the proration pool, apparently assuming that the person from whom Bobker borrowed Phillips shares to complete his short sale would not be able to tender into the offer. Under Rule 10b–4(a)(1), however, a person who would be deemed to own a security but for having lent it is permitted to tender the security. As a practical matter, shareholders who own margin securities held in street name as collateral by broker-dealers are generally not aware when their securities are loaned.

[22] 808 F.2d at 935.

short sale rule) [23] under the Exchange Act.[24] The court cited a 1938 Commission release on Rule 10a–1 explaining that a net long position is determined by offsetting against shares owned any shared sold short by the same person.[25] While specifically declining to decide whether the "net long" requirement of Rule 10b–4 as adminstered by the Commission is invalid, the court refused to grant deference to the Commission's interpretation of the net long proviso as applied to Bobker's short sale because the court viewed the interpretation as being inconsistent with the purpose of the Rule and as lacking a rational basis.[26]

C. Analysis of the Bobker Decision

The Commission believes that Bobker's short sale, assuming it was not covered by the end of the proration period, would have caused Bobker to violate the provisions of Rule 10b–4, which are intended to ensure that all tendering shareholders are subject to equal proration risk. The purpose of the Rule is not to limit the size of the proration pool (although it has that effect), but rather to promote equality of opportunity and of proration risk for all tendering securityholders.[27]

The amendments to Rule 10b–4 adopted by the Commission in 1984 were designed specifically to address the unfairness inherent in transactions such as Bobker's. The release adopting those amendments sets forth an example of hedged tendering that, but for the numbers used, exactly matches Bobker's tender and subsequent sale of shares.[28] Bobker would have participated in the proration pool as an owner of 4000 shares even though his actual net interest in Phillips shares was that of an owner of 2000 shares. His post-tender sale, whether or not structured as a separate transaction,[29] would have enabled him to shift his proration risk to other tendering shareholders.[30] Had Bobker estimated the *pro rata* acceptance rate correctly, he would have had little proration risk, because he would have received the tender offer price or a tender offer-influenced market price for all of his shares. The shares returned by Phillips could be used to cover Bobker's short position. Other tendering shareholders, by contrast, would have had their *pro rata* acceptance reduced to reflect the additional shares tendered by the buyer of Bobker's shares.

II. Proposals

Rule 10b–4 is a complex rule. In light of the Second Circuit's decision in *Bobker*, the Commission believes that it may be appropriate to clarify the Rule's rationale and substantive provisions.[31] Accordingly, the Commission is requesting comment on a proposed redraft of the Rule to clarify its provisions, particularly the net long proviso. The amendments to the Rule are not intended to effect any substantive change in the operation of the Rule.

The Commission also believes that, because the hedged tendering prohibition has been in effect over four years, it is now appropriate to request comment on whether the amendments to the Rule that prohibited hedged tendering have worked as intended and whether the prohibition continues to be appropriate.

A. Clarifying Amendments

The proposed amendments are designed to clarify the requirement of the Rule that all tendering securityholders have a net long position in the securities at least equal to the amount tendered, both when tendering and at the end of the proration period.[32]

In order to remove potential misunderstanding or ambiguity concerning the Rule's application to persons responding to a partial tender offer, paragraph (a)(1) would be restructured to define the term "net long position." [33] A person's "net long position" in a security would equal the excess, if any, of his "long position" in that security over his "short position." A person's "long position," as defined in paragraph (a)(1)(i), would include: (1) Securities to which a person or his agent has title or has purchased but has not yet received, (2) securities for which a person has converted, exchanged, or exercised a standardized call option or an equivalent security, and (3) securities that a person is entitled to receive upon conversion, exchange, or exercise of an equivalent security.[34] A person's "short

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[23] 17 CFR 240.10a–1.

[24] *See* Release 34–8321.

[25] 808 F.2d at 934, *citing* Securities Exchange Act Release No. 1571 (February 5, 1938), 11 FR 10969, 10970 (1946). "[I]f a person maintains two accounts and is short 1000 shares of a security in one and long 1000 shares of the same security in another, any sales of such security by such person are short sales and are subject to the provisions of the [short sale rule]." *Id.*

[26] It should be noted that the court's discussion of Rule 10b–4 is dicta and does not constitute a holding in the case. *See* 808 F.2d at 936.

[27] *See* Release 34–20799, 49 FR at 13868. Consistent with this purpose, the Commission has not, for example, attempted to restrict market activities by non-tendering persons, even though short sales by such persons during the tender offer period potentially have the effect of expanding the proration pool. *See* text at n.45 *infra*.

[28] *See* Release 34–20799 n.7, 49 FR at 13868 n.7.

[29] The effect of Bobker's "separate" short sale was the same as if he had tendered 4000 shares by letter of guarantee, sold 2000 of those shares in the market and delivered them, and then borrowed 2000 shares in order to complete delivery to the bidder. Borrowed shares are not considered part of a person's net long position for purposes of Rule 10b–4.

[30] Unlike the typical speculative short seller, Bobker was not attempting to benefit from a post-tender offer decline in the price of Phillips' stock, because any decline that benefitted his short position would be offset by the reduced value of the tendered shares that were not accepted by the bidder.

Bobker probably was able to borrow shares initially to deliver on his short sale through Merrill Lynch only because Rule 10b–4 restricts market professionals from short and hedged tendering. Several commentators on the 1984 amendments stated that, in an environment in which hedged tendering is permitted, non-professionals will not be able to borrow shares in any partial offer in which such borrowing would be advantageous. *See, e.g.*, letter from J. E. Buck, Secretary, New York Stock Exchange, to George A. Fitzsimmons, Secretary, SEC (February 2, 1982) ("NYSE Comment Letter"); and letter from Joseph McLaughlin, Chairman, Securities Industry Association, to George A. Fitzsimmons, Secretary, SEC (January 5, 1982) ("SIA Comment Letter"). The letters are contained in File No. S7–903.

[31] The Securities Industry Association ("SIA") has urged the Commission to clarify the uncertainty created by the *Bobker* decision. *See* letter from Dennis H. Greenwald, Chairman, SIA, to Richard Ketchum, Director, Division of Market Regulation, Securities and Exchange Commission (March 11, 1987), contained in File No. S7–*11*–89.

[32] As used herein, the "proration period" is the time during which acceptance of securities is made on a *pro rata* basis or by lot, including any extensions thereof, whether or not such period is required by statute or rule.

[33] As the *Bobker* court pointed out, the term net long is not defined in the Rule, and the net long proviso of the Rule was derived from another Commission rule. *See* text at n. 23 *supra*.

[34] Equivalent securities, as defined in paragraph (a)(2), are included in a person's long position for purposes of Rule 10b–4 to obivate the hardship of converting, exchanging, or exercising a tendering person's entire equivalent security position where only a small portion of the shares tendered are accepted by a bidder. A significant difference betwee the tender offer and the short sale context is that ownership of equivalent securities does not establish ownership of the underlying securities for purposes of Rule 3b–3 under the Exchange Act, 17 CFR 240.3b–3, which defines short sales.

Because recent partial tender offers have uniformly required delivery of all shares tendered rather than only those accepted, the Commission requests comment on whether the current ability to tender a subject security based upon mere ownership of an equivalent security is necessary or appropriate. If ownership of equivalent securities did not contribute to a person's long position in the underlying subject security, an equivalent security would have to be converted, exchanged, or exercised prior to tendering such subject securities. This change could be effected by deleting provisions (a)(1)(i)(E), (a)(1)(ii)(C), (a)(2), and (b)(1)(ii), and conforming other provisions in the proposed amendments to the Rule.

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position" would be defined in paragraph (a)(1)(ii) as equivalent to the amount of subject securities that the person (1) has sold, (2) is obligated to return to a lender, (3) is obligated to deliver upon exercise of a non-standardized call option or right pursuant to which the holder may tender, or (4) is obligated to deliver upon exercise of an in-the-money standardized call option sold after a tender offer for the subject security has been announced or otherwise made known by the bidder. These provisions are all drawn from the current Rule.[35]

Paragraph (a)(5) would define a "partial tender offer" as a tender offer for less than all of the outstanding securities subject to the offer where acceptance is by lot or on a *pro rata* basis, or a tender offer for all of the outstanding shares with different offered consideration that involves *pro rata* acceptance. This definition would incorporate current paragraph (c) of the Rule and the staff's interpretive position that Rule 10b–4 applies to any tender offer involving prorationing.[36]

The proposed amendments would reflect the full scope of the Commission's authority to promulgate the Rule by substituting the phrase "it shall be unlawful" in paragraph (b). In addition, the Commission proposes to redesignate the Rule as Rule 14e–4. The redesignation will place the Rule among the provisions specifically relating to tender offers and reflect the primary rationale of the Rule.[37]

In the Williams Act amendments,[38] Congress indicated an intention that each shareholder receive equal treatment based upon the shareholder's interest in the securities that are the subject of a tender offer.[39] The Commission observes that short and hedged tendering require access to borrowed shares, and market professionals have a clear advantage in obtaining access to such shares.[40] A failure to prohibit short or hedged tendering would thus make a shareholder's position in a partial tender offer dependent both on the shareholder's interest in the securities subject to the tender *and* on the shareholder's ability to obtain access to borrowed shares. Was the latter factor a consideration that Congress intended to have influenced the incidence of proration rights?

Paragraph (b) is otherwise unchanged, except to reflect changes made in paragraph (a). Thus, a person may only tender into a partial tender offer if his net long position in the security equals or exceeds the number of securities tendered both at the time of tender and at the end of the proration period of the offer. The Commission requests comment, however, on whether the prohibition of multiple tendering, *i.e.*, tendering to two or more partial offers, set forth in paragraph (b)(3) of the Rule, continues to be appropriate. The Commission has not noted any problem in connection with multiple tendering where it has been permitted, *i.e.*, in offers not subject to the Rule. Moreover, with the elimination of the ten day minimum proration period,[41] the advantages that some tendering persons could obtain by multiple tendering appear to be lessened or eliminated.

Proposed paragraph (c), which permits exemptions, replaces current paragraph (d). Current paragraph (c), which limits the coverage of the rule to certain partial offers, is incorporated in the definition of partial offers in proposed paragraph (a)(5).[42]

Because the proposed amendments are not intended to effect any substantive changes in the current Rule, commentators are invited to address any provisions that might operate differently from those of the current Rule.

B. Deregulation of Hedged Tendering

The Commission also is requesting comment on whether it would be desirable to deregulate hedged tendering, while continuing to restrict short tendering. The principal argument in favor of permitting hedged tendering, put forth by several commentators on the 1984 Rule Amendments,[43] is that the practice of hedged tendering ultimately benefits those shareholders who choose not to tender but rather to sell into the market to avoid proration and other risks. According to this view, the ability to reduce the risk of loss on the returned shares enables risk arbitrageurs to increase the volume of their open market purchases of subject securities and thereby raises the market price. In this sense, as Commissioner Cox argued in his dissent from the Commission's 1984 decision to restrict hedged tendering, the hedged tendering prohibition reduces the price to those shareholders choosing to sell into the market in order to improve the prorationing position of shareholders who choose to tender into the offer. Is there any policy reason to prefer the interests of the one shareholder group over the interests of the other?[44]

Commentators are requested to discuss whether the suggested benefits of permitting hedged tendering mitigate or eliminate the potential adverse effects of the application of *pro rata* acceptance to the additional amount of shares that would be tendered, and whether such practices are either consistent or inconsistent with the

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If the Commission retains the concept of equivalent securities, the proposed new forms of index products involving physical delivery, *see e.g.*, Securities Exchange Act Release No. 26388 (December 22, 1988), 53 FR 52901 (index participations), would not be deemed equivalent securites, *i.e.*, they would have to be exercised before a tender could be based on ownership of the underlying securities. Similarly, a person's unexercised short position in these products would not be part of his short position in the subject security.

[35] The definitions of the terms "equivalent security" in paragraph (a)(2), "subject security" in paragraph (a)(3), "tender" in paragraph (a)(4), and "standardized call option" in paragraph (a)(6) are unchanged from the current Rule.

[36] *See* Release 34–20799 n.13, 49 FR at 13869 n.13.

[37] Rule 10b–4 was adopted by the Commission in response to the suggestion by Congress in 1967 that the Commission exercise its authority under existing Exchange Act antifraud prrovisions to prohibit the "abuse" of short tendering. *See* Securities Exchange Act Release No. 8224 (January 3, 1968), 33 FR 513, citing Sen. Rep. No. 550, 90th Cong. 1st Sess. 5 (1967). Accordingly, the Rule was adopted pursuant to the authority of sections 10(b) and 23(a) of the Exchange Act, 15 U.S.C. 78j(b) and 78w(a). *See* Securities Exchange Act Release No. 8321 (May 28, 1968), 33 FR 8269. Since that time, the Commission has used its additional authority under the Williams Act in adopting amendments to the Rule. *See, e.g.*, Release 34–20799, 49 FR at 13870 (amendments adopted under sections 3(b), 10(a), 10(b), 14(e), 15(b), and 23(a) of the Exchange Act, 15 U.S.C. 78c(b), 78j(a), 78j(b), 78n(e), 78*o*(b), 78w(a)). *Cf.* Securities Exchange Act Release No. 24485 (May 20, 1987) n.19, 52 FR 19885, 19887 n.19.

Proposed Rule 143–4, as amended, would be adopted pursuant to Sections 3(b), 10(a), 10(b), 13(e), 14(e), 15(c), and 23(a) of the Exchange Act, 15 U.S.C. 78c(b), 78j(a), 78j(b), 78m(e), 78n(e), 78*o*(c), and 78w(a). A parallel amendment is proposed for the Commission's exemptive authority in proposed paragraph (c).

[38] *See, e.g.* Exchange Act sections 14(d) (6) and (7), 15 U.S.C. 78n(d)(6) and (7).

[39] "The purpose of [section 14(d)(7)] is to assure . . . equality of treatment among all shareholders who tender their shares." Sen. Rep. No. 550, 90th Cong. 1st Sess. 10 (1967) and House Rep. No. 1711, 90th Cong. 2nd Sess. 11 (1968).

[40] *See* n.30 *supra*.

[41] Rule 14d–8 under the Exchange Act, 17 CFR 240.14d–8, requires bidders to accord pro rata treatment for all shares deposited during the period the offer remains open. *See* Securities Exchange Act Release No. 19336 (December 15, 1982), 47 FR 57679.

[42] The title of the Rule is proposed to be changed to "Prohibited transactions in connection with partial tender offers."

[43] *See* letter from William R. Harman, Principal, Secretary and General Counsel, Morgan Stanley & Co., to George A. Fitzsimmons, Secretary, SEC (December 3, 1981); letter from John A. Williams, Vice President, Merrill Lynch White Weld Capital Markets Group, to George A. Fitzsimmons, Secretary, SEC (November 13, 1981); letter from Sullivan & Cromwell to George A. Fitzsimmons, Secretary, SEC (November 13, 1981); NYSE Comment Letter; and SIA Comment Letter. The letters are contained in File No. S7–903. *See also* Release 34–20799, 49 FR at 13871 (Commissioner Cox, dissenting).

[44] *See* Release 34–20799, Commissioner Cox dissenting.

Congressional intent reflected in the Williams Act. Commentators are also invited to compare the relationship between the market price of securities subject to a partial tender offer and the tender offer price, both before and after the 1984 amendments that prohibited hedged tendering. Finally, commentators are requested to address how deregulation of hedged tendering would affect public confidence in the integrity of the securities markets.

It has also been suggested that the purpose sought by proscribing hedged tendering cannot be achieved effectively without a much more comprehensive regulation, which the Commission does not favor. Rule 10b–4 does not restrict all short sales, because non-tendering persons are not covered by Rule 10b–4. A short sale by a non-tendering person, however, potentially expands the proration pool in the same way as hedged sales by a tendering person, because the purchaser can tender in both cases. The shares that formerly would have been borrowed to effectuate hedged tendering may now be available to facilitate a higher level of short sales by non-tendering persons, and the impact on tendering sharesholders can be similar.[45] The Commission requests comment on the extent of such short sales, and also on whether the ability of broker-dealers to participate as principals in the proration pool while profiting by lending shares to facilitate short sales during a partial tender offer is analogous to, or may be distinguished from, the advantage that market professionals may have if hedged tendering is permitted.

If the Commission determines to permit hedged tendering and determines to adopt the revised Rule, it would delete proposed paragraph (a)(1)(ii)(D) and would delete the words "and at the end of the proration period" from proposed paragraph (b). Accordingly, a tendering securityholder would be required to have a net long position only at the time of tendering.

The Commission is not aware of significant industry support for permitting short tendering.[46] However, because hedged tendering and short tendering have the same purpose and effect,[47] commentators favoring the deregulation of hedged tendering are invited to discuss whether short tendering should also be permitted. Specifically, commentators should consider whether the prohibition on short tendering will have any practical effect if hedged tendering were permitted.[48]

III. Initial Regulatory Flexibility Act Certification and Effects on Competition

Section 603(a)[49] of the Administrative Procedure Act ("APA"),[50] as amended by the Regulatory Flexibility Act ("Flexibility Act"),[51] generally requires the Commission to undertake a regulatory flexibility analysis of all proposed rules, or proposed rule amendments, to determine the impact of such rulemaking on "small entities." [52] Section 605(b) of the Flexibility Act, specifically exempts from this requirement any proposed rule, or proposed rule amendment, which, if adopted, would not "have a significant economic impact on a substantial number of small entities." Because the proposed amendments do not result in substantive changes to the Rule, the Chairman of the Commission has certified that the proposed amendments, if adopted, would not have a significant economic impact on a substantial number of small entities.

Section 23(a) of the Exchange Act [53] requires the Commission to consider the impact any proposed rules would have on competition. While the Commission is not aware of any competitive impact likely to result from the proposal described in this release, commentators are invited to address that issue.

IV. Text of Proposed Rule Amendments

On the basis of the above discussion and analysis, the Commission is proposing to amend Part 240 of Chapter II of Title 17 of the Code of Federal Regulations as follows:

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

1. The authority citation for Part 240 is amended by adding the following citation:

Authority: Sec. 23, 48 stat. 901, as amended (15 U.S.C. 78w), unless otherwise noted. * * * Section 240.14e–4 also issued under the Exchange Act, 15 U.S.C. 78a *et seq.*, and particularly sections 3(b), 10(a), 10(b), 13(e), 14(e), 15(c), and 23(a) of the Exchange Act (15 U.S.C. 78c(b), 78j(a), 78j(b), 78m(e), 78n(e), 78*o*(c), and 78w(a)).

2. Section 240.10b–4 is proposed to be amended by redesignating it as § 240.14e–4, revising the section heading, and revising paragraphs (a)(1), (a)(5), (b) introductory text, (b)(1), (b)(3), and (c), and removing paragraph (d), as follows: The introductory text of paragraph (a) is republished for the convenience of the reader.

§ 240.14e–4 Prohibited transactions in connection with partial tender offers.

(a) *Definitions.* For purposes of this section:

(1) The amount of a person's "net long position" in a subject security shall equal the excess, if any, of:

(i) Such person's "long position," which shall equal the amount of subject securities that such person

(A) Or his agent has title to or would have title to but for having lent such securities, or

(B) Has purchased, or has entered into an unconditional contract, binding on both parties thereto, to purchase but has not yet received, or

(C) Has exercised a standardized call option for, or

(D) Has converted, exchanged, or exercised an equivalent security for, or

(E) Is entitled to receive upon conversion, exchange, or exercise of an equivalent security; over

(ii) Such person's "short position," which shall equal the amount of subject securities or subject securities underlying equivalent securities that such person

(A) Has sold, or has entered into an unconditional contract, binding on both parties thereto, to sell, or

(B) Has borrowed, or

(C) Has written a non-standardized option or granted any other right pursuant to which his shares may be tendered by another person, or

(D) Is obligated to deliver upon exercise of a standardized option sold on or after the date that a tender offer is first publicly announced or otherwise made known by the bidder to holders of the security to be acquired, if the

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[45] For those market professionals who are able to borrow stock, short sales during partial tender offers have always offered an opportunity to profit from an expected post-tender market price decline in the target security.

[46] In 1981, the Commission proposed that short tendering be deregulated. Securities Exchange Act Release No. 18050 (August 21, 1981), 46 FR 43459. In response to nearly unanimous commentary that opposed deregulation of short tendering, the Commission withdrew that proposal. Release 34–207799, 49 FR at 13970.

[47] *See* Release 34–20799, 49 FR at 13869.

[48] *Cf. id.*, 49 FR at 13868 n.7.

[49] 5 U.S.C. 603(a).

[50] 5 U.S.C. 551 *et seq.*

[51] Pub. L. No. 96–354 (September 19, 1980), 94 Stat. 1164 (1980), U.S. Code Cong. & Ad. News 1169.

[52] Although section 601(b) of the Flexibility Act defines the term "small entity," the statute permits agencies to formulate their own definitions. The Commission has adopted definitions of the term small entity for the purposes of Commission rulemaking in accordance with the Regulatory Flexibility Act. Those definitions, as relevant to this proposed rulemaking, are set forth in Rule 0–10, 17 CFR 240.0–10. See Securities Exchange Act Release No. 18452 (January 28, 1982), 47 FR 5215.

[53] 15 U.S.C. 78w(a).

exercise price of such option is lower than the highest tender offer price or stated amount of the consideration offered for the subject security. For the purpose of paragraph (a)(1)(ii)(C), if one or more tender offers for the same security are ongoing on such date, the announcement date shall be that of the first announced offer. For the purpose of determining the net long position as of the end of the proration period, securities that have been tendered and not withdrawn are deemed to be part of the person's long position as of the end of the proration period.

* * * * *

(5) The term "partial tender offer" means a tender offer or request or invitation for tenders for less than all of the outstanding securities subject to the offer in which tenders are accepted either by lot or on a *pro rata* basis for a specified period, or a tender offer for all of the outstanding shares that offers a choice of consideration in which tenders for different forms of consideration may be accepted either by lot or on a *pro rata* basis for a specified period.

* * * * *

(b) It shall be unlawful for any person acting alone or in concert with others, directly or indirectly, to tender any subject security in a partial tender offer:

(1) For his own account unless at the time of tender, and at the end of the proration period or period during which securities are accepted by lot (including any extensions thereof), he has a net long position equal to or greater than the amount tendered in—

(i) The subject security and will deliver or cause to be delivered such security for the purpose of tender to the person making the offer within the period specified in the offer, or

(ii) An equivalent security and, upon the acceptance of his tender will acquire the subject security by conversion, exchange, or exercise of such equivalent security to the extent required by the terms of the offer, and will deliver or cause to be delivered the subject security so acquired for the purpose of tender to the person making the offer within the period specified in the offer; or

* * * * *

(3) If the same security has been tendered in response to any other partial tender offer, unless such other tender has been withdrawn.

(c) This rule shall not prohibit any transaction or transactions which the Commission, upon written request or upon its own motion, exempts, either unconditionally or on specified terms and conditions.

By the Commission.

Date: March 8, 1989.

Jonathan G. Katz,

Secretary.

Regulatory Flexibility Act Certification

I, David S. Ruder, Chairman of the Securities and Exchange Commission, hereby certify pursuant to 5 U.S.C. 605(b) that the proposed amendments to Rule 10b–4 set forth in Securities Exchange Act Release No. 26609, if promulgated will not have a significant economic impact on a substantial number of small entities. The reasons for this certification are that the proposed amendments (i) only prohibit certain conduct and do not impose any recordkeeping, data collection, or reporting requirements on entities subject to the Rule, and (ii) do not result in substantive changes to the Rule.

Dated: March 8, 1989.

David S. Ruder,

Chairman.

[FR Doc. 89–5888 Filed 3–14–89; 8:45 am]

BILLING CODE 8010–01–M

17 CFR Part 240

[Rel. No. 34–26608; File No. S7–10–89]

Customer Protection—Reserves and Custody of Securities

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule amendment.

SUMMARY: The Securities and Exchange Commission ("Commission") is publishing for comment a proposed rule amendment to its customer protection rule. The amendment will expand the categories of instruments that broker-dealers may deliver as collateral to customers from whom they are borrowing government securities. In addition to the instruments currently permitted under the rule, the amendment will allow broker-dealers to deliver as collateral "government securities," as defined in sections 3(a)(42)(A) (*e.g.* securities issued by the Government National Mortgage Association) and 3(a)(42)(B) of the Securities Exchange Act of 1934 ("Exchange Act"), and securities issued or guaranteed by the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Student Loan Marketing Association, or the Financing Corporation. In the interim, the Commission is authorizing the Division of Market Regulation ("Division") to issue a letter to the Public Securities Association stating that the Division will not recommend any action to the Commission if broker-dealers expand, in accordance with the proposed rule amendment, the categories of instruments they deliver as collateral to customers in government securities borrowings.

DATE: Comments should be received by May 1, 1989.

ADDRESSES: Persons wishing to express their views should submit their comments in triplicate addressed to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, NW., Mail Stop 6–9, Washington, DC 20549. Reference should be made to File No. S7–10–89.

FOR FURTHER INFORMATION CONTACT: Michael A. Macchiaroli at (202) 272–2904, Michael P. Jamroz at (202) 272–2372 or Jerry W. Carpenter at (202) 272–3728, Division of Market Regulation, 450 5th Street, NW., Mail Stop 5–1, Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Background

The Commission's customer protection rule, Rule 15c3–3 (17 CFR 240.15c3–3) under the Exchange Act, requires that a broker-dealer, among other things, promptly obtain and thereafter maintain physical possession or control of all fully-paid and excess margin securities carried by it for the account of "customers." [1] Paragraph (b)(3) sets forth certain conditions under which a broker-dealer may borrow for its own use customer fully-paid or excess margin securities without being deemed to be in violation of the rule's possession or control requirement. Paragraph (b)(3)(iii) requires that the broker-dealer and the lender enter into a written agreement that, among other things, specifies that the broker-dealer must provide to the lender collateral consisting exclusively of cash, United States Treasury bills, United States Treasury notes, or an irrevocable letter of credit issued by a bank.

Because the borrowing of government securities plays an important role in the government securities market, the Commission believes that, for purposes of the customer protection rule, the categories of instruments that broker-dealers can provide to customer lenders in government securities borrowings should be expanded. Therefore, the Commission is proposing for comment an amendment to the customer protection rule to allow broker-dealers to provide, in addition to the instruments currently listed in paragraph (b)(3)(iii) of the rule, certain government securities [2] as the collateral in government securities borrowings.

[1] The term "customer" is defined at subparagraph (a)(1) of Rule 15c3–3.

[2] The term "government securities" is defined at Section 3(a)(42) of the Exchange Act.

II. Proposed Change

Currently, paragraph (b)(3)(iii) of the customer protection rule requires that a broker-dealer borrowing securities from a customer provide to that customer collateral "consisting exclusively of cash or United States Treasury bills and Treasury notes or an irrevocable letter of credit issued by a bank as defined in section 3(a)(6)(A) through (C) of the Securities Exchange Act which fully secures the loan of securities * * *." The proposed amendment will allow a broker-dealer that is borrowing government securities to provide to the lender collateral consisting of either the instruments currently listed in paragraph (b)(3)(iii), government securities as defined at sections 3(a)(42)(A) and 3(a)(42)(B) of the Exchange Act, [3] or securities issued or guaranteed by the Federal Home Loan Mortgage Corporation ("Freddie Mac"), the Federal National Mortgage Association ("Fannie Mae"), the Student Loan Marketing Association ("Sallie Mae"), or the Financing Corporation ("FICO"). The proposed amendment excludes zero coupon bonds and "stripped" securities as instruments that may be pledged as collateral.

In a request that the Commission review the categories of instruments that may be provided as collateral to customers in government securites borrowings, the Public Securities Association ("PSA") [4] stated its belief that the liquidity of the government securities market would be improved by permitting broker-dealers to use the government securities set forth in the proposed rule amendment. An increase in liquidity would result because broker-dealers would be afforded greater flexibility in the types of government securities that could be pledged as collateral in the securities borrowing used to cover their short sales and fails to deliver.[5] The PSA also believes that by expanding the pool of government securities that could be pledged as collateral under the customer protection rule, liquidity would be increased because the financing opportunities available to broker-dealers in connection with their market-making activities would be significantly expanded.[6]

The Commission preliminarily believes that the PSA's request, that the Commission expand the categories of instruments that broker-dealers may deliver as collateral to customers in government securities borrowings, and the basis for that request have merit; therefore, the Commission is publishing for comment the proposed rule amendment. The Commission requests comments on the sources of potential costs and benefits associated with the proposed amendment to the customer protection rule and seeks quantification of any costs or benefits identified.

The Commission also requests comments on the propriety of amending the rule to permit broker-dealers to deliver as collateral to customers in borrowings of equity securities or other debt securities the government securities set forth in the proposed rule amendment. Specifically, the Commission seeks information and evidence indicating whether, from the standpoint of customer protection, a distinction should be made between collateral eligible for loans of government securities and collateral eligible for loans of other securities. If appropriate, would such a distinction be based upon the nature or needs of the customer lenders, upon the nature of the borrowed securities or their markets, or upon some other consideration? The Commission also seeks comments and quantifiable data on such questions as: (1) How widespread is the practice of borrowing equity securities or other debt securities from customers (*e.g.*, to cover short sales, fails to deliver, or other similar situations); and (2) to what degree would customer lenders in such transactions accept collateral other than the collateral now permitted by the rule?

III. Regulatory Flexibility Act Certification

Section 603(a) [7] of the Administrative Procedure Act,[8] as amended by the Regulatory Flexibility Act,[9] requires the Commission to undertake a regulatory flexibility analysis of all proposed rules or proposed rule amendments to determine the impact of such rulemaking on "small entities." Section 605(b) of the Regulatory Flexibility Act specifically exempts from this requirement any proposed rule amendment which, if adopted, would not "have a significant economic impact on a substantial number of small entities."

Chairman Ruder has certified that this rule amendment, if adopted, will not have a significant economic impact on a substantial number of small entities because most broker-dealers who are involved in the borrowing of government securities from non-broker-dealers do not fall within the meaning of "small business" or "small organization" as defined by 17 CFR 240.0–10.

IV. Statutory Authority

Pursuant to the Securities Exchange Act of 1934 and particularly sections 15 (c)(3) and 23 thereof, 15 U.S.C. 78o(c)(3) and 78w, the Commission proposes to amend § 240.15c3–3 of Title 17 of the Code of Federal Regulation in the manner set forth below.

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

V. Text of Proposed Amendments

In accordance with the foregoing, it is proposed to amend 17 CFR Part 240 as follows:

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

1. The authority citation for Part 240 continues to read as follows:

Authority: Sec. 23, 48 Stat. 901, as amended (15 U.S.C. 78w) * * * § 240.15c3–3 is also issued under Sec. 15(c)(3), 15 U.S.C. 78o(c)(3).

2. By amending § 240.15c3–3 by revising paragraph (b)(3)(iii) as follows:

§ 240.15c3–3 Customer protection—reserves and custody of securities.

(b) *Physical possession or control of securities.*

(3) * * *

(iii) Specifies that the broker or dealer (A) must provide to the lender, upon the execution of the agreement or by the close of the business day of the loan if

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[3] For a security to fall within the definition of "government securities" found at section 3(a)(42)(B) of the Exchange Act, it must, among other things, be designated an "exempt security" by the Secretary of the Treasury. The current list of designated securities is found at 52 FR 38559 (Oct. 16, 1987).

[4] The PSA represents approximately 300 banks and broker-dealers that underwrite, trade, and distribute U.S. government securities, federal agency securities, certain mortgage-backed securities, and state and local government securities. All primary dealers, designated by the Federal Reserve Bank of New York, in U.S. government securities are members of the PSA.

[5] Since the market for Treasury-issued securities, in particular, depends upon the broker-dealers ability to effectuate short sales without undue expense, flexibility in the government securities which could be used as collateral will increase liquidity.

[6] Currently, a broker-dealer holding government securities that are not allowable collateral under paragraph (b)(3) of the rule must first use those government securities to borrow cash and then pledge the cash as collateral in the securities borrowing.

[7] 5 U.S.C. 603(a).

[8] 5 U.S.C. 551 *et seq.*

[9] Pub. L. No. 96–354, 94 Stat. 1164 (1980).

the loan occurs subsequent to the execution of the agreement, collateral consisting exclusively of cash, United States Treasury bills, United States Treasury notes, or an irrevocable letter of credit issued by a bank as defined in section 3(a)(6) (A) through (C) of the Securities Exchange Act which fully secures the loan of securities or, when the broker or dealer is borrowing government securities, collateral consisting of, in addition to that previously provided for in this section (but excluding zero coupon bonds and "stripped" securities), "government securities" as defined in section 3(a)(42)(A) or section 3(a)(42)(B) of the Securities Exchange Act, or securities issued or guaranteed by the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Student Loan Marketing Association, or the Financing Corporation and (B) must mark the loan to the market not less than daily and, in the event that the market value of all the outstanding securities loaned at the close of trading at the end of the business day exceeds 100 percent of the collateral then held by the lender, the borrowing broker or dealer must provide additional collateral of the type described in paragraph (b)(3)(iii)(A) of this section to the lender by the close of the next business day as necessary to equal, together with the collateral then held by the lender, not less than 100 percent of the market value of the securities loaned; and

* * * * *

By the Commission.

Jonathan G. Katz,

Secretary.

March 8, 1989.

Regulatory Flexibility Act Certification

I, David S. Ruder, Chairman of the Securities and Exchange Commission, hereby certify, pursuant to 5 U.S.C. 605(b), that the proposed amendment to Rule 15c3–3 set forth in Securities Exchange Act Release No. 26608, if adopted, will not have a significant economic impact on a substantial number of small entities. The reason for this Certification is that most broker-dealers who are involved in the borrowing of government securities from non-broker-dealers do not fall within the meaning of "small business" or "small organization" as defined by 17 CFR 240.0–10.

David S. Ruder,

Chairman.

Dated: February 24, 1989.

FR Doc. 89–5952 Filed 3–14–89; 8:45 am]

BILLING CODE 8010-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–6951]

Proposed Flood Elevation Determinations; Florida et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations and proposed base flood elevation modifications listed below for selected locations in the nation. These 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).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed determinations of base (100-year) flood elevations and modified base flood elevations for selected locations in the nation, in accordance with Section 110 and Section 206 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 67.4.

These elevations, together with the floodplain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant 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 that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under Section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the floodplain area. The local community voluntarily adopts floodplain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the floodplain and do not prohibit development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

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.

The proposed base (100-year) flood elevations for selected locations are:

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
FLORIDA	
Braford County (unincorporated areas)	
Santa Fe River:	
At County boundary	*74
At Little Santa Fe Lake Outlet	*144
Little Santa Fe Lake: Along shoreline	*144
Santa Fe Lake: Along shoreline	*144
Maps available for inspection at the Planning and Zoning Department, County Courthouse, Starke, Florida.	
Send comments to The Honorable Lawrence Mosley, Chairman, County Commission, Bradford County, P.O. Box 1148, Starke, Florida 32091.	
Brooker (city), Bradford county	
Santa Fe River: Within community	*89
Maps available for inspection at the City Hall, Brooker, Florida.	
Send comments to the Honorable Thomas B. Hamilton, Mayor, Town of Brooker, P.O. Box 127, Brooker, Florida 32622.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. ^Elevation in feet (NGVD)
Hampton (city), Bradford County	
Santa Fe River: Within community	*140
Maps available for insepection at the City Hall, Hampton, Florida.	
Send Comments to The Honorable Lola Williamson, Mayor, City of Hampton, P.O. Drawer 250, Hampton, Florida 32044.	
ILLINOIS	
Dowell (village), Jackson County	
South Tributary:	
Just downstream of Roosevelt Street	*395
Just downstream of Illinois Central Gulf Railroad	*397
Just downstream of Town Road	*403
North Tributary:	
At mouth	*403
Just downstream of Town Road	*406
Maps available for insepection at the Village Hall, Dowell, Illinois.	
Send comments to The Honorable Samuel Dickerson, Village President, Village of Dowell, Village Hall, Box 92, Dowell, Illinois 62927.	
Muddy (village), Saline County	
Middle Fork Saline River: Within community	*370
Maps available for insepection at the Village Offices in the Gateway Motel, Muddy, Illinois.	
Send comments to The Honorable John Molinarolo, Acting Mayor, Village of Muddy, Village Hall General Delivery, Muddy, Illinois 62965.	
INDIANA	
Carroll County (unincorporated areas)	
Tippecanoe River:	
At southern county boundary	*545
Just downstream of Oakdale Dam	*579
Maps available for insepection at the Planning Commission, County Courthouse, Delphi, Indiana.	
Send comments to The Honorable William Duff, Chairman, County Commissioners, Carroll County, County Courthouse, Delphi, Indiana 46923.	
MAINE	
Belfast (city), Waldo County	
Penobscot Bay:	
U.S. Route 1 at southern corporate limits	*10
Passagassawakeag River upstream of U.S. Route 1	*12
At Common Street	*16
Shoreline at Patterson Point	*19
Shoreline at Perkins Road (extended)	*24
Area approximately 200 feet southeast of U.S. Route 1 crossing over Little River	#1
Maps available for insepection at the City Hall, 71 Church Street, Belfast, Maine.	
Send comments to The Honorable Mary Page Worth, Mayor of the City of Belfast, Waldo County, 71 Church Street, Belfast, Maine 04915.	
Blue Hill (town), Hancock County	
Mill Stream:	
At confluence with Blue Hill Harbor	*12
Approximately 770 feet upstream of High Street Bridge	*59
Blue Hill Bay:	
At Hub Island	*12
At Fogg Cove	*17
McHeard Brook:	
At confluence with McHeard Cove	*12
Approximately 455 feet upstream of State Route 176	*16
Maps available for inspection at the Town Hall, Blue Hill, Maine.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. ^Elevation in feet (NGVD)
Send comments to The Honorable Gordon Emerson, Chairman of the Town of Blue Hill Board of Selectmen, Hancock County, P.O. Box 412, Blue Hill, Maine 04614.	
Jay (town), Franklin County	
Androscoggin River:	
Downstream corporate limits	*331
Approximately 1,300 feet upstream of Riley Dam	*382
Sevenmile Stream:	
Confluence with Androscoggin River	*371
Approximately 8,050 feet upstream of Morse Hill Road Bridge	*386
Meadow Brook:	
At confluence with Sevenmile Stream	*372
Approximately 4,150 feet upstream of State Route 17 Bridge	*373
Maps available for inspection at the Code Enforcement Officer's Vault, 99 Main Street, Jay, Maine.	
Send comments to The Honorable Charles Noonan, Jay Town Manager, Franklin County, 99 Main Street, Town Office, Jay, Maine 04239.	
Jonesport (town), Washington County	
White Creek: Approximately 100 feet upstream of Route 187 to confluence of Mansfield Creek	*13
Mansfield Creek: Entire length within community	*13
Southwest Creek: From confluence with Mansfield Creek to approximately 300 feet upstream of Route 187	*13
Mason Bay:	
From Southwest Creek to approximately 3,000 feet east	*13
From approximately 3,000 feet east of Southwest Creek to Dunn Island	*17
Englishman Bay:	
Shoreline at Shorey Cove on Roque Island	*13
Shoreline near Great Bar	*16
Shoreline near Dunn Island	*17
Shoreline near Great Head on Roque Island	*17
Chandler Bay:	
South of Squire Point on Roque Island	*13
Shoreline at Patten Cove	*13
Shoreline at Bunker Cove	*13
All shoreline in Roque Island Harbor	*16
Just south of Great Bar	*17
South of Bar Island	*18
Bonney Point on Roque Island	*18
Shoreline at Little Pond Beach	*18
Shoreline at Kelly Point	*18
Natt Point	*24
Shoreline at Rhine Point	*24
Southern shoreline of Little Spruce Island	*24
Eastern shoreline of Great Spruce Island	*24
All small islands northeast of Great Spruce Island	*24
Sequin Passage:	
Northwest shoreline of Head Harbor Island	*13
Northeast shoreline of Head Harbor Island	*24
Shoreline at Mark Island	*24
Mistake Harbor:	
All islands in the harbor	*16
Eastern shoreline of Steele Harbor Island	*24
Moosabec Reach:	
Sawyer Cove	*13
Northern shoreline Hopkins Point	*13
Southern shoreline Hopkins Point	*15
Old House Point	*21
Sandy River:	
At Route 187	*13
At confluence of Chandler Bay	*17
Indian River: From confluence with Atlantic Ocean to approximtely 1.5 mile upstream of confluence with Snare Creek	*13
Snare Creek: From confluence of Indian River upstream to Route 187	*13
Hay Creek: Entire length within community	*13
Maps available for inspection at the Town Hall, Jonesport, Maine.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. ^Elevation in feet (NGVD)
Send comments to The Honorable Keith Church, First Selectman of the Town of Jonesport, Washington County, P.O. Box 301, Jonesport, Maine 04649.	
Milbridge (town), Washington County	
Sawyers Brook:	
Approximately 60 feet downstream of Wyman Road	*11
Approximately 240 feet upstream of Washington Street	*11
Sawyers Brook Branch:	
At confluence with Sawyers Brook	*11
Approximately 142 feet upstream of confluence with Sawyers Brook	*12
Narraguagus River:	
At Fish Point	*11
Approximately 500 feet east of intersection of Bayview Street and U.S. Route 1A	*23
Narraguagus River (Shallow Flooding Area): North of Bayview Street and east of Bridge Street (U.S. Route 1A)	#2
Atlantic Ocean:	
West side of Tom Leighton Point Road	*11
Shoreline of Monhonon Cove	*22
Maps available for inspection at the Town Office, Milbridge, Maine.	
Send comments to The Honorable William Treworgy, Manager of the Town of Milbridge, Washington County, P.O. Box 66, Milbridge, Main 04658.	
Nobleboro (town), Lincoln County	
Damariscotta Lake: Entire shoreline within corporate limits	*56
Pemaquid Pond: Entire shoreline within corporate limits	*81
Duckpuddle Pond: Entire shoreline within corporate limits	*81
Salt Bay: Entire shoreline within corporate limits	*10
Maps available for inspection at the Town Clerk's Office, Route 1, Nobleboro, Maine.	
Send comments to The Honorable Bob Spear, Chairman of the Town of Nobleboro Board of Selectmen, Lincoln County, Town Office, Route 1, Box 168, Nobleboro, Maine 04551.	
Owls Head (town), Knox County	
Atlantic Ocean:	
Western end of Ash Island	*12
Western end of Monroe Island	*12
Northwestern end of Sheep Island	*13
Southwestern end of Sheep Island	*18
Southwestern end of Monroe Island	*18
Maps available for inspection at the Municipal Building, Star Route 32, Owls Head, Maine.	
Send comments to The Honorable Jack Rausch, Chairman of the Town of Owls Head Planning Board, Knox County, Star Route 32, Box 176, Owls Head, Maine 04854.	
MICHIGAN	
Manistee (township), Manistee County	
Bar Lake Outlet:	
At mouth	*584
Just upstream of U.S. Highway 110	*585
Manistee River:	
About 1100 feet downstream of CSX railroad	*584
About 450 feet upstream of State Highway 55	*584
Lake Michigan: Along shoreline	*584
Bar Lake : Along shoreline	*585
Maps available for inspection at the Township Hall, 4100 Holden, Manistee, Michigan.	
Send comments to The Honorable John W. Anderson, Supervisor, Township of Manistee, Township Hall, 4100 Holden, Manistee, Michigan 49660.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
NEW HAMPSHIRE	
Durham (town), Strafford County	
Lamprey River:	
At downstream corporate limits	*33
At upstream side of Wiswall Road	63
Oyster River:	
At confluence with Little Bay	*7
At confluence with Hamel Brook	*14
Hamel Brook:	
At confluence with Oyster River	*14
At confluence with Longmarsh Brook	*31
Longmarsh Brook:	
At confluence with Hamel Brook	*31
Approximately 2,650 feet upstream of Longmarsh Road	*34
Little Bay: At confluence with Oyster River	*7
Maps available for inspection at the Town Office Building, 13 Newmarket Road, Durham, New Hampshire.	
Send comments to The Honorable Norman Stiles, Chairman of the Town of Durham Board of Selectmen, Stafford County, Town Office, 13 Newmarket Road, Durham, New Hampshire 03824.	
NORTH CAROLINA	
Moore County (unincorporated areas)	
Bear Creek:	
About 0.9 mile downstream of State Road 705	*353
About 2600 feet upstream of Bear Creek Dam	*363
Crane Creek:	
At mouth	*204
Just downstream of Wood Lake Dam	*214
Jackson Creek:	
About 1.4 miles downstream of State Road 73	*392
About 1300 feet upstream of State Road 73	*414
Jackson Creek Tributary:	
At mouth	*407
Just downstream of Jackson Creek Tributary Dam	*415
Just upstream of Jackson Creek Tributary Dam	*422
Just downstream of State Road 73	*450
Just upstream of State Road 73	*457
About 850 feet upstream of State Road 73	*457
Little River:	
About 2.5 miles downstream of Little River Dam	*200
About 1500 feet upstream of Morrison Road	*209
About 3.3 miles downstream of SR 1802	*263
Just downstream of Thaggards Lake Dam	*285
Just upstream of Thaggards Lake Dam	*292
Just downstream of Farm Road	*325
Woods Lake: Along shoreline	*229
Wads Creek:	
At mouth	*315
About 2200 feet upstream of Wads Creek Farm Road	*326
Aberdeen Creek:	
At CSX railroad	*284
Just downstream of Loch Dornoch Dam	*341
Just upstream of Loch Dornoch Dam	*348
Just downstream of St. Andrews Drive East	*349
Just upstream of St. Andrews Drive East	*358
Just downstream of Morganton Road	*364
Aberdeen Creek Tributary:	
About 3100 feet downstream of Aberdeen Tributary Dam	*358
Just downstream of Aberdeen Tributary Dam	*359
Just upstream of Aberdeen Tributary Dam	*366
Just upstream of U.S. Route 15	*372
Maps available for inspection at the Planning Office, County Courthouse, Carthage, North Carolina.	
Send comments to The Honorable David McNeill, Manager, Moore County, County Courthouse, Carthage, North Carolina 28327.	
Pinehurst (village), Moore County	
Aberdeen Creek:	
Just upstream of Morganton Road	*365
About 550 feet upstream of Morganton Road	*366

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps available for inspection at the Village Hall, Pinehurst, North Carolina.	
Send comments to The Honorable Andy Wilkison, Village Administrator, Village of Pinehurst, P.O. Box 1793, Pinehurst, North Carolina 28374.	
Whispering Pines (village), Moore County	
Little River:	
About 0.6 mile downstream of SR 1802	*280
Just downstream of Thaggards Lake Dam	*285
Just upstream of Thaggards Lake Dam	*292
About 0.6 mile downstream of SR 1838	*301
Maps available for inspection at the Village Hall, Pine Ridge Road, Whispering Pines, North Carolina.	
Send comments to The Honorable Josef Croes, Village Manager, Village of Whispering Pines, Pine Ridge Road, Whispering Pines, North Carolina 28327.	
OHIO	
Allen County (unincorporated areas)	
Dug Run:	
About 1050 feet downstream of Pioneer Road	*790
About 4000 feet upstream of Eastown Road	*828
Dug Run Tributary:	
At mouth	*816
Just downstream of Eastown Road	*824
Lost Creek:	
Just upstream of Reservoir Road	*865
Just downstream of Drop Structure	*881
Just upstream of Drop Structure	*891
About 2000 feet upstream of Drop Structure	*894
Little Ottawa River:	
Just upstream of Fort Amanda Road	*827
Just downstream of Shawne Road	*859
Freed Ditch:	
Just upstream of McClain Road	*881
Just downstream of Interstate 75	*883
Tributary A:	
At mouth	*831
About 2500 feet upstream of mouth	*839
Tributary B:	
At mouth	*840
About 300 feet upstream of Hall Drive	*846
Tributary D:	
Just upstream of McClain Road	*881
About 1050 feet downstream of Breese Road	*886
Riley Creek:	
Just upstream of Putnam Road	*784
About 1.2 miles upstream of Bentley Road	*815
Ottawa River:	
Just upstream of Adgate Road	*833
About 2100 feet upstream of Conrail	*840
Pike Run:	
About 1450 feet downstream of Brower Road	*832
Just downstream of Brower Road	*837
Lost Creek Tributary:	
About 0.9 mile downstream of 6th Street	*882
Just downstream of 6th Street	*887
Maps available for inspection at the Lima/Allen County Regional Planning Commission, 212 North Elizabeth Street, Lima, Ohio.	
Send comments to The Honorable Robert Townsend, President, Board of Commissioners, Allen County, County Courthouse, Lima, Ohio 45801.	
Butler (village), Richland County	
Clear Fork Mohican River:	
About 0.6 mile downstream of State Route 95	*1,053
About 0.4 mile upstream of State Route 95	*1,071
Maps available for inspection at the Village Hall, 33 Elm Street, Butler Ohio.	
Send comments to The Honorable Paul E. Bowen, Mayor, Village of Butler, Village Hall, Box 307, 33 Elm Street, Butler, Ohio 44822.	
Paulding County (unincorporated areas)	
Auglaize River:	
About 1.21 miles downstream of State Route 637	*702

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
About 1.40 miles upstream of State Route 637	*704
Flatrock Creek:	
About 0.55 mile downstream of confluence of Opossum Run	*714
About 0.96 mile upstream of County Route 107	*723
About 950 feet downstream of Norfolk Southern Railway	*738
About 1.02 mile upstream of State Route 49	*745
Maps available for inspection at the County Commissioner's Office, County Courthouse, Paulding, Ohio.	
Send comments to The Honorable Joseph Vogel, President, County, Commissioners, Paulding County, Courthouse, Paulding, Ohio 45879.	
Sabina (Village), Clinton County	
Wilson Creek:	
About 1100 feet downstream of Plymouth Pike	*1,032
About 1400 feet upstream of Polk Road	*1,040
Mary's Fork:	
Just upstream of CSX railroad	*1,043
Just upstream of Howard Street	*1,047
Maps available for inspection at the Municipal Building, 99 North Howard Street, Sabina, Ohio.	
Send comments to The Honorable Richard Corns, Mayor, Village of Sabina, Municipal Building, 99 North Howard Street, Sabina, Ohio 45169.	
OKLAHOMA	
Logan County (unincorporated areas)	
Cottonwood Creek:	
Confluence with Cimarron River	*926
Upstream side of Industrial Road	*947
Downstream side of State Route 74	*995
Bird Creek:	
Confluence with Cottonwood Creek	*929
Approximately .8 mile upstream of Interstate Route 35	*995
Deer Creek:	
Confluence with Cottonwood Creek	*991
Downsteam of 3rd upstream crossing of County Road	*1,009
Chisholm Creek:	
Confluence with Cottonwood Creek	*964
Downstream of 4th upstream crossing of County Road	*1,015
Maps available for inspection at the Logan County Courthouse, 301 E. Harrison, Guthrie, Oklahoma.	
Send comments to The Honorable James R. Ferrell, Chairman of the Logan County Commission, Logan County Courthouse, 301 E. Harrison, Guthrie, Oklahoma 73044.	
OREGON	
Lake County (unincorporated areas)	
North Goose Lake Basin:	
Approximately 26,900 feet downstream of Stock Drive Road	*4,710
Approximately 770 feet upstream of Stock Drive Road	*4,730
Approximately 15,900 feet upstream of State Highway 66	*4,767
Chewaucan River:	
Approximately 2,250 feet downstream of State Highway 31	*4,348
Approximately 1,675 feet upstream of State Highway 31	*4,375
Approximately 400 feet upstream of Mill Street	*4,401
Maps are available for review at the Lake County Courthouse, 513 Center Street, Lakeview, Oregon.	
Send comments to The Honorable Arthur Sheer, Chairperson, Lake County Board of Commissioners, Lake County Courthouse, 513 Center Street, Lakeview, Oregon 97630	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. ^Elevation in feet (NGVD)
PENNSYLVANIA	
Ashville (borough), Cambria County	
Clearfield Creek:	
At downstream corporate limits	*1,614
Approximately .2 mile upstream of State Route 36	*1,626
Maps available for inspection at the Borough Building, Hickory Street, Ashville, Pennsylvania.	
Send comments to The Honorable Gregg Lidwell, President of the Borough of Ashville Council, Cambria County, P.O. Box 135, Ashville, Pennsylvania 16613.	
Conneaut (township), Erie County	
East Branch Conneaut Creek:	
At abandoned railroad	*840
At confluence of Crane Creek	*871
Crane Creek:	
At Confluence with East Branch Conneaut Creek	*871
At corporate limits	*878
Temple Creek:	
At Confluence with East Branch Conneaut Creek	*861
At corporate limits	*869
Maps available for inspection at the Conneaut Municipal Building, Conneaut, Pennsylvania.	
Send comments to The Honorable Carl W. Summerville, Chairman of the Township of Conneaut Board of Supervisors, Erie County, R.D. 1, Albion, Pennsylvania 16401.	
Creekside (borough), Indiana County	
Crooked Creek:	
At downstream corporate limits	*1,033
At upstream corporate limits	*1,037
McKee Run:	
At confluence with Crooked Creek	*1,036
At upstream corporate limits	*1,038
Maps available for inspection at Mr. Shaeffer's home, Box 234, Creekside, Pennsylvania.	
Send comments to The Honorable Erwin Shaeffer, President of the Creekside Borough Council, Indiana County, Box 234, Creekside, Pennsylvania 15732.	
Green (township), Indiana County	
North Branch Two Licks Creek:	
Approximately 1,440 feet downstream of confluence with Pompey Run	*1,336
Approximately 0.7 mile upstream of State Route 240	*1,417
Dixon Run:	
Downstream corporate limits	*1,261
Upstream corporate limits	*1,322
Maps available for inspection in care of Ms. Ruth Batik, Township Secretary, R.D. 2, Cherrytree, Pennsylvania.	
Send comments to The Honorable Martin Butterbaugh, Chairman of the Township of Green Board of Supervisors, Indiana County, R.D. #2, Box 121, Clymer, Pennsylvania 15724.	
Irvona (borough), Clearfield County	
Clearfield Creek:	
At downstream corporate limits	*1,370
At upstream corporate limits	*1,376
Maps available for inspection at the Borough Building, Berwind Street, Irvona, Pennsylvania.	
Send comments to The Honorable Randy Dubler, Councilman for the Borough of Irvona, Clearfield County, Box 64, Irvona, Pennsylvania 16656.	
Lower Towamensing (township), Carbon County	
Aquashicola Creek:	
At downstream corporate limits	*410
Approximately 0.55 mile upstream of S.R. 2009	*454
Buckwha Creek:	
At confluence with Aquashicola Creek	*444
Approximately 0.34 mile upstream of Chestnut Ridge Railway	*474
Mill Creek:	
At confluence with Aquashicola Creek	*410
Approximately 0.36 mile upstream of S.R. 2001	*614
Maps available for inspection at the Municipal Building, R.D. 32, Box 1211A, Palmerton, Pennsylvania.	
Send comments to The Honorable George Robinson, Chairman of the Township of Lower Towamensing Board of Supervisors, Carbon County, P.O. Box 105, Aquashicola, Pennsylvania 18012.	
New Ringgold (Borough), Schuylkill County	
Little Schuylkill River:	
At downstream corporate limits	*549
At upstream corporate limits	*573
Maps available for inspection at the Borough Hall, New Ringgold, Pennsylvania.	
Send comments to The Honorable Edward Gaydos, President of the New Ringgold Borough Council, Schuylkill County, 250 Gerald Avenue, Orwigsburg, Pennsylvania 17961.	
North Manheim (township), Schuylkill County	
Mahonney Creek:	
At Meadow Drive (I-964)	*489
Approximately 0.45 mile upstream of State Route 443	*594
Schuylkill River:	
At downstream corporate limits	*487
Approximately 1.2 miles upstream of State Route 183	*553
Maps available for inspection at the Township Municipal Building, North Manheim, Pennsylvania.	
Send comments to The Honorable Barbara Miller, Mayor of the Township of North Manheim, Schuylkill County, R.D. 4, Box 4499 Pottsville, Pennsylvania 17091.	
Patton (borough), Cambria County	
Little Chest Creek:	
At confluence with Chest Creek	*1,738
At the confluence with an Unnamed Tributary to Little Chest Creek	*1,795
Unnamed Tributary at Little Chest Creek:	
At confluence with Little Chest Creek	*1,795
Approximately 50 feet upstream of upstream corporate limits	*1,799
Maps available for inspection at the Borough Building, 4th and Magee Streets, Patton, Pennsylvania.	
Send comments to The Honorable Paul J. Short, Borough of Patton Councilman, Cambria County, 4th and Magee Streets, Patton, Pennsylvania 16668.	
Petrolia (borough), Butler County	
South Branch Bear Creek:	
Downstream corporate limits	*1,152
Upstream corporate limits	*1,178
Maps available for inspection at Mr. Steel's residence, Box 92, Petrolia, Pennsylvania.	
Send comments to The Honorable Michael Steel, Sr., Mayor of the Borough of Petrolia, Butler County, Box 92, Petrolia, Pennsylvania 16050.	
Shelocta (borough), Indiana County	
Crooked Creek:	
Approximately 0.15 mile downstream of State Route 156	*995
Approximately 0.36 mile upstream of State Route 156	*1,000
Maps available for inspection at the Indiana County Courthouse, Indiana, Pennsylvania.	
Send comments to The Honorable Richard Wilton, President of the Shelocta Borough Council, Indiana County, Box 36, Shelocta, Pennsylvania 15774.	
Walker (township), Schuylkill County	
Little Schuylkill River:	
Approximately .6 mile downstream of confluence with Brushy Run	*635
Approximately 1.5 miles upstream of State Route 443	*742
Maps available for inpection at the Municipal Building, Walker, Pennsylvania.	
Send comments to The Honorable Richard Celmer, Chairman of the Township of Walker Board of Supervisors, Schuylkill County, McArthur Plaza, 3722 Lehigh Street, Whitehall, Pennsylvania 18052-3439.	
Weatherly (borough), Carbon County	
Hazle CreeK:	
Approximately 960 feet upstream of confluence with Black Creek and Quakake Creek	*1,032
Approximately 0.5 mile upstream of Main Street (SR 4010)	*1,153
Maps available for inspection at the Municipal Building, 10 Wilbur Street, Weatherly, Pennsylvania.	
Send comments to The Honorable Beverly Knepper, Manager of the Borough of Weatherly Council, Carbon County, 10 Wilbur Street, Weatherly, Pennsylvania 18255.	
TENNESSEE	
Maury County (unicorporated areas)	
Rutherford Creek:	
At mouth	*581
About 1.2 miles upstream of Warren Road	*714
Little Bigby Creek:	
At mouth	*577
Just downstream of Neely Hollow Road	*671
Lytle Creek:	
At mouth	*587
Just upstream of Iron Bridge Road	*592
Just downstream of State Route 50	*628
Just upstream of State Route 50	*634
Just downstream of CSX railroad	*638
Just upstream of CSX railroad	*643
Just downstream of Mooresville Pike	*651
Aenon Creek:	
At mouth	*661
About 0.8 mile upstream of Port Royal Road	*691
Carters Creek:	
At mouth	*595
Just downstream of Carters Creek Pike	*674
Grassy Branch:	
At mouth	*672
About 500 feet upstream of Port Royal Road	*694
Greenlick Creek:	
Just upstream of Hicks Lane	*580
At confluence of Greenlick Creek Tributary	*620
Greenlick Creek Tributary:	
At mouth	*620
About 1.5 miles above mouth	*646
McCormack Branch:	
At mouth	*686
Just upstream of Beach Grove Road	*739
McCutcheon Creek:	
At mouth	*659
About 0.3 mile upstream of Duplex Road	*708
Duck River:	
About 1.6 miles downstream of Industrial Park Drive	*575
At confluence of Bear Creek	*589
Sugar Fork:	
About 0.85 mile downstream of confluence of Quality Creek	*608
About 0.75 mile downstream of confluence of Quality Creek	*609
Sugar Creek:	
About 400 feet upstream of confluence of Quality Creek	*619

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. ^Elevation in feet (NGVD)
Just upstream of City of Mount Pleasant corporate limits	*654
Maps available for inspection at the County Courthouse, Columbia, Tennessee.	
Send comments to The Honorable Michael C. Greene, County Executive, Maury County, County Courthouse, Room 101, Columbia, Tennessee 36401.	
TEXAS	
Austin County, unincorporated areas	
Allens Creek:	
Approximately 1,740 feet downstream of Mixville Road	*145
At the City of Sealy downstream corporate limits	*161
Allens Creek Tributary:	
At confluence with Allens Creek	*149
Approximately 0.50 mile upstream of FM Route 1458	*154
Bullinger Creek:	
At the Town of San Felipe upstream corporate limits	*147
Approximately 2.01 miles upstream of State Route 36	*199
Brazos River:	
At downstream County boundary	*106
At FM Route 1458 extended	*127
Approximately 79 feet downstream of State Route 159	*162
At upstream County boundary	*165
Maps available for inspection at the County Courthouse, 1 East Main Street, Bellville, Texas.	
Send comments to The Honorable LeRoy H. Greve, Austin County Judge, 1 East Main Street, Bellville, Texas 77418.	
Colorado County (unincorporated areas)	
Colorado River:	
Approximately 2.2 miles downstream of Interstate Route 10	*191
Approximately 7.8 miles upstream of abandoned Railroad Bridge	*222
Maps available for inspection at 400 Spring Street, Columbus, Texas.	
Send comments to The Honorable Lester J. Cranek, Colorado County Judge, P.O. Box 236, Columbus, Texas 78934.	
Columbus (City), Colorado County	
Colorado River:	
At intersection of Interstate Route 10 and State Route 71	*193
Approximately .6 mile upstream of State Route 71	*202
Maps available for inspection at 605 Spring Street, Columbus, Texas.	
Send comments to The Honorable R. Richard Heffley, Mayor of the City of Columbus, Colorado County, P.O. Box 87, Columbus, Texas 78934.	
Dayton Lakes (City), Liberty County	
Trinity River:	
Downstream corporate limits	*36
Upstream corporate limits	*36
Maps available for inspection at the grocery store on Trinity Road and County Engineer's Office, Dayton Lakes, Texas.	
Send comments to The Honorable Charles Follis, Mayor of the City of Dayton Lakes, Liberty County, Rt. 1, Box 724, Dayton Lakes, Texas 77535.	
Gregg County (unincorporated areas)	
Hawkins Creek:	
Approximately 900 feet upstream of County Route 2275	*321

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. ^Elevation in feet (NGVD)
Approximately 0.88 mile upstream of Bacel Road	*344
Elm Branch:	
Upstream side of Amy Street	*364
Approximately 0.50 mile upstream of Amy Street	*392
Grace Creek:	
At downstream corporate limits	*373
Approximately 50 feet upstream of County Route 1844	*418
McCann Creek:	
At downstream corporate limits	*357
Approximately 1.0 mile upstream of corporate limits	*402
Ray Creek:	
At downstream corporate limits	*342
Upstream side of County Route 1844	*420
Oak Branch Creek:	
Approximately 0.54 mile downstream of County Route 2751	*335
Approximately 650 feet upstream of Sunnybrook Road	*406
Murray Creek:	
Approximately 0.80 mile downstream of U.S. Route 259 southbound	*341
Approximately 70 feet upstream of Sunnybrook Road	*421
Oakland Creek:	
At downstream corporate limits	*380
Approximately 0.63 mile upstream of corporate limits	*407
Eastman Lake Creek:	
Approximately 400 feet downstream of Hollybrook Drive	*388
Approximately 0.78 mile upstream of Hollybrook Drive	*415
Maps available for inspection at the Engineer's Office, 101 Methvin Street, 1st Floor, County Courthouse, Longview, Texas.	
Send comments to The Honorable Henry Atkinson, Gregg County Judge, P.O. Box 3143, Longview, Texas 75606.	
San Felipe (town), Austin County	
Bullinger Creek:	
Approximately 1.46 miles downstream of Remmert Road	*129
At upstream corporate limits	*147
Maps available for inspection at the City Offices, 1483 F.M. 1458 N., San Felipe, Texas.	
Send comments to The Honorable Kenneth Currens, Mayor of the Town of San Felipe, Austin County, P.O. Box 129, San Felipe, Texas 77473.	
Sealy (city), Austin County	
Allens Creek:	
Approximately 200 feet downstream of the downstream corporate limits	*161
Approximately 1,480 feet upstream of U.S. Route 90	*180
Maps available for inspection at the City Hall, 415 Main Street, Sealy, Texas.	
Send comments to The Honorable Betty Rinbeck, Mayor of the City of Sealy, Austin County, P.O. Box 517, Sealy, Texas 77474.	
Sulphur Springs (city), Hopkins County	
Rock Creek:	
Approximately 0.9 mile downstream of confluence of Gena Creek	*421
Approximately 600 feet upstream of Holiday Drive	*476
Town Branch:	
Approximately 850 feet downstream of Loop 301	*443
At downstream side of Putman Street	*484
Gena Creek:	
At FM 1870	*440
Approximately 1.2 miles upstream of FM 1870	*457

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. ^Elevation in feet (NGVD)
South Town Branch:	
Downstream corporate limits	*466
Approximately 80 feet upstream of Gilmer Street	*491
Coleman Creek:	
Approximately 0.5 mile downstream of State Route 19	*436
Approximately 1,200 feet downstream of Interstate Route 30 & U.S. Route 67	*529
Turtle Creek:	
At State Route 11	*481
Approximately 2,400 feet upstream of Loop 313	*500
Maps available for inspection at the City Hall, Sulphur Springs, Texas.	
Send comments to The Honorable Margin Latham, Mayor of the City of Sulphur Springs, Hopkins County, 125 South Davis, Sulphur Springs, Texas 75482.	
VIRGINIA	
Purceville (town), Loudon County	
South Fork Catoctin Creek:	
Approximately 375 feet downstream of downstream corporate limits	*485
Approximately 125 feet upstream of upstream corporate	*518
Maps available for inspection at the Town Office, 141 E. Main Street, Purceville, Virginia.	
Send comments to The Honorable Jerry M. Schiro, Manager of the Town of Purceville, Loudon County, P.O. Box 936, Purceville, Virginia 22132.	
WISCONSIN	
Amery (city), Polk County	
Apple River:	
Just upstream of Griffin Street	*1,052
Just downstream of Amery Dam	*1,059
Just upstream of Amery Dam	*1,068
About 1.0 miles upstream of Amery Dam	*1,068
Maps available for inspection at the city Hall, 118 Center Street, Amery, Wisconsin.	
Send comments to The Honorable Duane R. Riley, Mayor, City of Amery, City Hall, 118 Center Street, Amery, Wisconsin 54001.	
Eleva (village), Trempealeau County	
Adams Creek:	
At mouth	*855
Just downstream of Eleva Pond Dam	*857
Just upstream of Eleva Pond Dam	*868
Just downstream of Eau Claire Road	*868
Just upstream of Eau Claire Road	*874
Buffalo River:	
About 650 feet downstream of Main Street	*853
About 625 feet upstream of Chimney Rock Road	*855
Maps available for inspection at the Village Hall, Eleva, Wisconsin.	
Send comments to The Honorable David A. Everson, Village President, village of Eleva, Village Hall, P.O. Box 206, Eleva, Wisconsin 54738.	
Plum City (village), Pierce County	
Plum Creek:	
Just downstream of confluence of Rush Coulee	*799
About 700 feet downstream of East Street	*811
Rush Coulee:	
At mouth	*799
About 2100 feet upstream of Main Street	*827
Maps available for inspection at the Village Hall, 501 Main Street, Plum City, Wisconsin.	
Send comments to The Honorable James A. Glaus, Village President, Village of Plum City, Village Hall, 501 Main Street, Plum City, Wisconsin 54761.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Price County (unincorporated areas)	
South Fork Flambeau River:	
About 1.6 miles downstream of County Highway F	*1,396
About 700 feet upstream of Balsam Road	*1,442
Maps available for inspection at the County Zoning Department, Lake Avenue, Phillips, Wisconsin.	
Send comments to The Honorable Edgar Granberg, Chairman, County Board, Price County, Lake Avenue, Philips, Wisconsin 54555.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Send comments to The Honorable Edgar Granberg, Chairman, County Board, Price County, Lake Avenue, Phillips, Wisconsin 54555.	
Shawano (city), Shawano County	
Wolf River:	
About 0.6 mile downstream of Lieg Avenue	*797
Just downstream of Shawano Dam	*798
Just upstream of Shawano Dam	*804
At confluence of Shawano Creek	*804
Shawano Creek: Within community	*804
Shawano Lake: Within community	*804

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps available for inspection at the Building Department, City Hall, 213 East Green Bay Street, Shawano, Wisconsin.	
Send comments to The Honorable Lee M. Schrader, Mayor, City of Shawano, City Hall, 213 East Green Bay Street, Shawano, Wisconsin 54166.	

The proposed modified base (100-year) flood elevations for selected locations are:

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Florida	City of Key Colony Beach, Monroe County.	Atlantic Ocean	About 1000 feet north of the intersection of 8th Street and Ocean Drive West.	*9	*6
			Along shoreline	*15	*13
		Gulf of Mexico	About 1000 feet north of the intersection of 8th Street and Ocean Drive West.	*9	*6
			At the intersection of the Sadowski Causeway and the Overseas Highway.	*10	*9
	Maps available for inspection at the Building Official's Office, City Hall, Key Colony Beach, Florida.				
	Send comments to The Honorable Samuel J. Feiner, Mayor, City of Key Colony Beach, P.O. Box 141, Key Colony Beach, Florida 33051.				
Florida	City of Key West, Monroe County.	Atlantic Ocean	At the intersection of United Street and Simonton Street.	*8	*6
			About 900 feet south of the intersection of Atlantic Boulevard and Bertha Street along the Atlantic coastline.	*12	*13
		Gulf of Mexico	At the intersection of Roosevelt Boulevard and Eisenhower Drive.	*8	*6
			Along the Stock Island Gulf coastline	*12	*13
	Maps available for inspection at the Building Department, 604 Simonton Street, Key West, Florida.				
	Send comments to The Honorable Richard Witker, City Manager, City of Key West, P.O. Box 1409, Key West, Florida 33041.				
Florida	City of Layton, Monroe County.	Gulf of Mexico	About 700 feet south of the intersection of South Layton Drive and Sands Lane.	*11	*7
			About 500 feet north of the intersection of Zane Grey Creek Road and Overseas Highway.	*16	*13
	Maps available for inspection at the City Hall, Layton, Florida.				
	Send comments to The Honorable Peter Riley, Mayor, City of Layton, P.O. Box 778, Layton, Florida 33001.				
Florida	Unincorporated Areas of Monroe County.	Atlantic Ocean	At the intersection of North Bahama Drive and San Juan Street on Duck Key.	*12	*6
			Along the shoreline of Angelfish Key	*19	*16
		Gulf of Mexico	About 10,000 feet upstream of the confluence of of Rookery Branch and North Prong.	None	*4
			Along the shoreline	None	*26
		Biscayne	At the intersection of Old Dixie Highway and State Road 905.	*13	*8
			Along the shoreline at Snapper Point	*12	*17
		Florida Bay	At the intersection of Bayview Drive and Palm Drive on Lower Matecumbe Key.	*12	*6
			Along the northwest shoreline of Shell Key	None	*15
	Maps available for inspection at the County Building Offices in Stock Island, Plantation Key and Marathon, Florida.				
	Send comments to The Honorable Tom Brown, Administrator, Monroe County, P.O. Box 1680, Key West, Florida 33040.				
Michigan	Township of Bridgeton, Newaygo County.	Muskegon River	About 0.6 mile downstream of Warner Avenue	None	*619
			About 1.8 miles upstream of Warner Avenue	None	*622

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Township Hall, 4382 Maple Island Road, Twin Lake, Michigan, 49457. Send comments to The Honorable Richard Kooistra, Supervisor, Township of Bridgeton, Township Hall, 4382 Maple Island Road, Twin Lake, Michigan 49457.					
Michigan	Township of Brooks, Newaygo County.	Muskegon River	About 1.0 mile upstream of State Highway 37	None	*648
			About 4.5 miles upstream of State Highway 37	None	*664
Maps available for inspection at 46 North State Street, Newaygo, Michigan. Send comments to The Honorable David Hummel, Supervisor, Township of Brooks, 46 North State Street, Newaygo, Michigan 49337.					
North Carolina	Town of Aberdeen, Moore County.	Aberdeen Creek	About 1,000 feet downstream of U.S. Route 1	None	*321
			About 1,800 feet upstream of Pages Dam	None	*334
Maps available for inspection at the Town Hall, Aberdeen, North Carolina. Send comments to The Honorable J. Curtis McInnis, Mayor, Town of Aberdeen, P.O. Box 785, Aberdeen, North Carolina 28315.					
North Carolina	Town of Pinebluff, Moore County.	Aberdeen Creek	About 1,000 feet downstream of SR 1105	None	*301
			About 2,300 feet upstream of SR 1105	None	*308
Maps available for inspection at the Town Hall, Pinebluff, North Carolina. Send comments to The Honorable Donald S. Cunningham, Mayor, Town of Pinebluff, P.O. Box 367, Pinebluff, North Carolina 28373.					
North Carolina	Town of Robbins, Moore County.	Bear Creek	About 700 feet downstream of State Road 705	None	*356
			About 300 feet downstream of Bear Creek Dam.	None	*361
Maps available for inspection at the Town Hall, Robbins, North Carolina. Send comments to The Honorable John L. Frye, Jr., Mayor, Town of Robbins, P.O. Box 296, Robbins, North Carolina 27325.					
North Carolina	Town of Southern Pines, Moore County.	Aberdeen Creek Tributary	Just upstream of U.S. Route 15	None	*372
			Just downstream of Pinecrest School Road	None	*375
			Just upstream of Pinecrest School Road	None	*386
			About 2,450 feet upstream of Pinecrest School Road.	None	*386
		Aberdeen Creek	Just upstream of Morganton Road	None	*365
			About 550 feet upstream of Morganton Road	None	*366
Maps available for inspection at the Town Hall, Southern Pines, North Carolina. Send comments to The Honorable Kyle Sonneberg, Town Manager, Town of Southern Pines, P.O. Box 870, Southern Pines, North Carolina 28387.					
Oklahoma	Guthrie, City Logan County.	Cottonwood Creek	Approximately 528 feet downstream of College Avenue.	*930	*931
			Approximately 660 feet downstream of confluence of Cottonwood Creek cut-off channel.	*934	*935
		Deer Creek	Approximately 1 mile upstream of confluence with Cottonwood Creek.	None	*992
			Approximately 1.2 miles upstream of confluence with Cottonwood Creek.	None	*993
		Chisholm Creek	Approximately 1.2 miles upstream of crossing of county road.	None	*992
			Approximately 1.4 miles upstream of crossing of county road.	None	*993
Maps available for inspection at the City Hall, 101 North 2nd, Guthrie, Oklahoma. Send comments to the Honorable James Weems, Mayor of the City of Guthrie, Logan County, P.O. Box 908, Guthrie, Oklahoma 73044.					
Oregon	City of Burns Harney County.	Drainage D	Approximately 1,300 feet south and 250 feet west of the intersection of West Pierce Street and South Nevada Avenue.	#1	None
			Approximately 100 feet west of a point located 50 feet northeast along Saginaw Avenue from the southern corporate limits.	#1	None
Maps available for inspection at the City Recorder's Office, City Hall, 242 South Broadway, Burns, Oregon. Send comments to The Honorable Joe F. Hayse, Mayor, City of Burns, City Hall, 242 South Broadway, Burns, Oregon 97720.					
Oregon	City of Hines Harney County.	Drainage D	Approximately 110 feet downstream of King Avenue Culvert.	#1	*4195
			Approximately 120 feet upstream of King Avenue Culvert.	#1	*4200
			Approximately 640 feet upstream of King Avenue Culvert (At Western Corporate Limits).	#1	*4206

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 300 feet North of the intersection of King Avenue and Tennyson Avenue.	#1	#1
		Drainage D Split to King Avenue.	At Saginaw Avenue	#1	*4181
			Approximately 100 feet upstream of Tennyson Avenue.	#1	*4198

Maps available for inspection at the City Recorder's Office, City Hall, 101 East Barnes, Hines, Oregon.

Send comments to the Honorable Charles I. Walker, Mayor, City of Hines, City Hall, 101 East Barnes, Hines, Oregon 97738.

Tennessee	Unincorporated Areas of Williamson County.	Harpeth River	About 1.0 mile downstream of CSX Railroad	*634	*634
			Just downstream of Douglas Street	*645	*645
		West Harpeth River	Just downstream of confluence of Liepers Fork	*647	*647
			Just downstream of Interstate 65	None	*752
		Rutherford Creek	At county boundary	None	*714
			Just downstream of Bethesda Road	None	*783
		Aenon Creek	At county boundary	None	*691
			About 1,300 feet upstream of Duplex road	None	*704
		Murfrees Fork	At mouth	*657	*657
			Just downstream of Evergreen Road	None	*752
		Grassy Branch	At county boundary	None	*694
			About 0.4 mile upstream of Duplex Road	None	*711
		Five Mile Creek	At mouth	*648	*648
			About 0.5 mile upstream of Goose Creek Bypass.	None	*679
		McCutcheon Creek	At county boundary	None	*708
			About 1.5 miles upstream of county boundary	None	*743
		Leipers Fork	At mouth	*647	*647
			Just downstream of Bailey Road	None	*670

Maps available for inspection at the County Courthouse, 1320 West Main Street, Suite 125, Franklin, Tennessee.

Send comments to The Honorable Robert A. Ring, County Executive, Williamson County, County Courthouse, 1320 West Main Street, Suite 125, Franklin, Tennessee 37064.

Washington	Clallam County (Unincorporated Areas).	Jimmycome-lately Creek	At the confluence with Sequim Bay	None	*8
			Aproximately 3,60 feet upstream of State Highway 101.	None	*60
		Clallam River	Approximately 1,950 feet upstream of Weel Road.	*21	*21
			Just downstream of State Highway 112	None	*34
			Approximately 1,350 feet upstream of 3rd Crossing of Highway 112.	None	*62
		Soleduck River	Approximately 6,800 feet downstream of Quillayute Road.	None	*147
			Just downstream of Quillayute Road	None	*160
		Dungeness	Approximately 2,500 feet downstream of Marine Drive.	*12	*8
			Just downstream of Marine Drive	*18	*19
			Approximately 300 feet upstream of Marine Drive.	*23	*21
			Approximately 3,200 feet upstream of the confluence with Matriotti Creek.	*41	*41
			Approximately 50 feet downstream of Woodcock Gaskell Road.	*83	*82
			Just downstream of Old Olympic Highway	*109	*109
			Approximately 60 feet upstream of Old Olympic Highway.	*113	*112
			Approximately 50 feet upstream of Chicago, Milwaukee, St. Paul & Pacific Railroad.	*204	*205
			Approximately 150 feet downstream of the confluence with Bear Creek.	*315	*312
			Approximately 6,400 feet upstream of the confluence with Caraco Creek.	*664	*665
		Elwha River	Approximately 7,700 feet downstream from the divergence of Elwha River Overflow.	None	*7
			Approximately 5,700 feet downstream from the divergence of Elwha River Overflow.	*13	*12
			Approximately 2,100 feet downstream from the divergence of Elwha River Overflow.	*31	*24
		Strait of Juan De Fuca (at Bullman Beach).	Approximately 1,850 feet west along the shoreline from the crossing of Highway 112 over Bullman Creek.	None	*16
			Approximately 250 feet north of the crossing of Highway 112 over Bullman Creek.	None	*10

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 1,750 feet east along shoreline from the crossing of Highway 112 over Bullman Creek.	None	*14
		Strait of Juan De Fuca (at Clallam Bay).	Approximately 1,250 feet north of the intersection of Front Street with Washington Street.	*12	*16
			Approximately 1,450 feet north along shoreline from the intersection of Division Street and Front Street.	*12	*13
			Approximately 250 feet east of the intersection of Front Street with Washington Street.	*12	*8
			Approximately 700 feet south along shoreline from the intersection of Division Street and Front Street.	*12	*13
			Approximately 100 feet north of the crossing of Slip Point Road over Falls Creek.	*12	*12
			Approximately 2,600 feet east along shoreline from crossing of Slip Point Road over Falls Creek.	*12	*14
			Approximately 3,250 feet east along shoreline from crossing of Falls Creek and Slip Point Road.	*12	*8
			Approximately 700 feet north of intersection of Slip Point Road with Bogachiel Street.	*12	*10
			Approximately 250 feet north of the intersection of Salt Air Street with Fisherman Street.	*12	*12
			Approximately 2,000 feet north along shoreline from the intersection of Salt Air Street with Fisherman Street.	*12	*15
		Strait of Juan D Fuca (at Crescent Bay).	Approximately 2,600 feet due north of the intersection of ACI Park Access Road and Crescent Beach Road.	None	*12
			Approximately 1,400 feet along shoreline north of the intersection of ACI Park Access Road and Crescent Beach Road.	None	*9
			Approximately 175 feet north of the intersection of Crescent Beach Road and ACI Park Access Road.	None	*8
			Approximately 1,200 feet along shoreline east of the intersection of ACI Park Access Road and Crescent Beach Road.	None	*10
			Approximately 600 feet north of the crossing of Crescent Beach Road over Salt Creek.	None	*8
			Approximately 1,800 feet north along the shoreline from the crossing of Crescent Beach Road over Salt Creek.	None	*12
		Strait of Juan De Fuca (at Angeles Point).	On the shoreline approximately 500 feet northwest from the intersection of Place Road and Dan Kelly Road.	*12	*10
			Approximately 2,375 feet north of the intersection of Charles Road and Elwha Road.	*12	*9
			On the shoreline approximately 1,600 feet northeast from the intersection of a private road with Lower Elwha Road.	*12	*10
		Strait of Juan D Fuca (at Morse Creek).	Approximately 2,200 feet west of the mouth of Morse Creek.	*12	*11
			At the mouth of Morse Creek	*12	*9
			On trhe shoreline approximately 2,000 feet east from the mouth of Morse Creek.	*12	*11
		Strait of Juan De Fuca (at Dungeness Bay).	Approximately 4,800 feet west along the shoreline from the intersection of Three Crabs Road and Dungeness Road.	*12	*8
			Just east of the intersection of Three Crabs Road with Golden Sands Place.	*12	*8
			Approximately 350 feet east from the intersection of Golden Sands Place with Three Crabs Road.	*12	*9
			At the mouth of Casselery Creek	*12	*8
		Strait of Juan De Fuca (at Washington Harbor).	On the shoreline about 2,000 feet north of the entrance to Sequim Bay.	None	*8
		Strait of Juan De Fuca (at Diamond Point).	Approximately 575 feet north of the intersection of Diamond Point Road with Diamond Point Boulevard.	None	*9
			Approximately 500 feet north of the intersection of Diamond Point Road with Diamond Point Boulevard.	None	*8

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 1,050 feet southeast of the intersection of Diamond Point Road with Diamond Point Boulevard.	None	*8

Maps are available for review at the Clallam County Courthouse, 223 East Fourth Street, Port Angeles, Washington.

Send comments to The Honorable Dorothy Duncan, Chairperson, Clallam County Board of Commissioners, 223 East Fourth Street, Port Angeles, Washington 98362.

Issued: March 8, 1989.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 89-5801 Filed 3-14-89; 8:45 am]

BILLING CODE 6718-03-M

Notices

Federal Register
Vol. 54, No. 49
Wednesday, March 15, 1989

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

National Volunteer Advisory Council Meeting—Change of Date and Location

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given of a meeting of the National Volunteer Advisory Council, change of date and location as previously noticed, 54 FR 8577, March 1, 1989.

From: March 17, 1989, 9:00 a.m., Grand Hyatt Hotel, 1000 H Street NW., Washington, DC.

To: March 16, 1989, 9:00 a.m., Omni Shoreham Hotel, 2500 Calvert St., NW., Washington, DC.

Purpose: To select nominees for the President's Volunteer Action Awards for 1989 and hold the regular Council meeting.

In accordance with the determination of the Director of ACTION, this meeting will be partially closed to the public from 9:00 a.m. until 1:00 p.m., pursuant to subsection (c)(9)(B) of section 552b of Title 5, United States Code. The determination of the Director of ACTION is available for public inspection at 806 Connecticut Avenue, NW., Washington, DC. 20525, during regular business hours of 8:30 a.m. to 5:30 p.m.

FOR FURTHER INFORMATION CONTACT: Alyse Best, Special Assistant to the Director, at (202) 634–9380.

Signed this 10th day of March 1989, in Washington, DC.

Donna M. Alvarado,
Director of ACTION.

Date: March 10, 1989.

[FR Doc. 89–5983 Filed 3–14–89; 8:45 am]
BILLING CODE 6050–28–M

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

March 10, 1989.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 447–2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Reinstatement

Farmers Home Administration, 7 CFR 1980–D Rural Housing Loans, FmHA 1980–16, –17, –18, –21

Recordkeeping; On occasion

Individuals or households; State or local governments; Businesses or other for-profit; Small businesses or organizations; 20,084 responses; 11,836 hours; not applicable under 3504(h)

Jack Holston (202) 382–9736.

Donald E. Hulcher,
Acting Departmental Clearance Officer.

[FR Doc. 89–6026 Filed 3–14–89; 8:45 am]
BILLING CODE 3410–01–M

COMMISSION ON CIVIL RIGHTS

West Virginia Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a community forum of the West Virginia Advisory Committee to the Commission will convene at 1:30 p.m. and adjourn at 4:30 p.m. on March 21, 1989, at the Governor's Conference Room, State Capitol Building., Charleston, WV 25305. The purpose of the meeting is to hear presentations on the current civil rights laws in West Virginia, their enforcement, and the prospect of new legislation.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Adam R. Kelly (304/652–4141) or John I. Binkley, Director of the Eastern Regional Division of the Commission at (202/523–5264 or TDD 202/276–8117). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Division office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 2, 1989.

Melvin L. Jenkins,
Acting Staff Director.

[FR Doc. 89–6015 Filed 3–14–89; 8:45 am]
BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

MCTL Implementation Technical Advisory Committee; Partially Closed Meeting

A meeting of the MCTL Implementation Technical Advisory Committee will be held March 16, 1989, at 10:00 a.m., in the Herbert C. Hoover

Building, Room 1617–F, 14th Street and Constitution Avenue NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis in the implementation of the Militarily Critical Technologies List (MCTL) into the Export Administration Regulations as needed. The meeting is called on short notice because of COCOM deliberations which have just recently been scheduled.

Agenda

General Session

1. Opening Remarks by the Commerce Representative.
2. Introduction of Members and Visitors.
3. Presentation of Papers or Comments by the Public.
4. Election of Committee Chairman.
5. Discussion of Unilateral Technical Data Controls.

Executive Session

6. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control programs and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittee thereof, dealing with the classified materials listed in 5 U.S.C. 552(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 the 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. For further information or copies of the minutes call Ruth D. Fitts, 202–377–4959.

Date: March 6, 1989.

Betty A. Ferrell,

Director, Technical Advisory Committee Unit, Office of Technology and Policy Analyses.

[FR Doc. 89–6012 Filed 3–14–89; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

International Trade Administration

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[Docket No. 80998–6243]

Allocation of Duty-Exemptions for Calendar Year 1989 Among Watch Producers Located in the Virgin Islands and Guam

AGENCY: Import Administration, International Trade Administration, Department of Commerce; and Office of the Secretary, Department of the Interior.

ACTION: Allocation of duty-exemptions for calendar year 1989 among producers located in the Virgin Islands and Guam.

SUMMARY: This action allocates 1989 duty-exemptions for watch producers located in the Virgin Islands and Guam pursuant to Pub. L. 97–446.

FOR FURTHER INFORMATION CONTACT: Faye Robinson, (202) 377–1660.

SUPPLEMENTARY INFORMATION: Pursuant to Pub. L. 97–446, the Departments of the Interior and Commerce (the Departments) share responsibility for the allocation of duty exemptions among watch assembly firms in the U.S. insular possessions and the Northern Mariana Islands. The total quantity of watches and watch movements which may be entered free of duty from the insular possessions and the Northern Mariana Islands is 6,700,000 units. Of this amount, 4,700,000 units may be allocated to Virgin Islands producers, 1,000,000 to Guam producers, 500,000 to American Samoa producers and 500,000 to Northern Mariana Islands producers (53 FR 52678).

The criteria for the calculation of the 1989 duty-exemption allocations among insular producers are set forth in § 303.14 of the regulations (15 CFR Part 303) as amended on December 29, 1988 (53 FR 52678). The amendments to § 303.14 of the regulations dated December 30, 1988 (53 FR 52994) are not included in the criteria because these amendments were effective only with respect to entries made and wages and taxes paid on or after January 1, 1989.

The Departments have verified the data submitted on application form ITA–334P by producers in the territories and inspected the current operations of all producers in accordance with § 303.5 of the regulations.

The verification established that in calendar year 1988 the Virgin Islands watch assembly firms shipped 3,438,149 watches and watch movements into the customs territory of the United States under Pub. L. 97–446. The dollar amount of creditable corporate income taxes paid by Virgin Islands producers during calendar year 1988 plus the creditable wages paid by the industry during calendar year 1988 to residents of the territory totalled $6,825,179.

There is only one producer in Guam. Publication of the Guam data, accordingly, would disclose competitively sensitive information. The calendar year 1989 Virgin Islands and Guam annual allocations set forth below are based on the data verified by the Departments in the Virgin Islands and Guam. The allocations reflect adjustments made in data supplied on the producers' annual application forms (ITA Form–334P) as a result of the Departments' verification; and reallocation of duty-exemptions which have been voluntarily relinquished by some producers pursuant to § 303.6(b)(2) of the regulations.

The duty-exemption allocations for calendar year 1989 in the Virgin Islands are as follows:

Name of firm	Annual allocation
Belair Quartz, Inc.	500,000
Hampden Watch Co., Inc.	300,000
Master Time Co., Ltd.	550,000
Progress Watch Co., Inc.	700,000
Unitime Industries, Inc.	770,000
Tropex, Inc.	500,000
Timex, V.I., Inc.	750,000

The duty-exemption allocation for Guam is as follows:

Name of Firm	Annual Allocation
Timewise Ltd.	800,000

Timothy N. Bergan,

Deputy Assistant Secretary for Import Administration.

Timothy W. Glidden,

Acting Assistant Secretary, for Territorial and International Affairs.

[FR Doc. 89–6013 Filed 3–14–89; 8:45 am]

BILLING CODE 3510–DS–M; 4310–93–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Issuance of Endangered Species Permit; Archie Carr Center for Sea Turtle Research (P436)

On November 23, 1988, notice was published in the **Federal Register** (53 FR 47568) that an application had been filed by the Archie Carr Center for Sea Turtle Research, Department of Zoology, University of Florida, Bartham Hall, Gainesville, Florida 32611, for a permit to take the following species of sea turtles for scientific research: Green turtle (*Chelonia mydas*), loggerhead turtle (*Caretta caretta*), hawksbill turtle (*Eretmochelys imbricata*), leatherback turtle (*Dermochelys coriacea*), olive ridley turtle (*Lepidochelys olivacea*), and Kemp's ridley turtle (*Lepidochelys kempi*).

Notice is hereby given that on February 21, 1989, as authorized by the provisions of the Endangered Species Act of 1973, the National Marine Fisheries Service issued a Permit for the above taking, subject to certain conditions set forth therein.

Issuance of this Permit, as required by the Endangered Species Act of 1973, is based on the finding that such Permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of the Permit; and (3) will be consistent with the purposes and policies set forth in section 2 of the Act. This Permit was also issued in accordance with and is subject to Parts 220–222 of Title 50 CFR, of the National Marine Fisheries Service regulations governing endangered species permits.

The Permit is available for review in the following offices:

Office of Protected Resources, National Marine Fisheries Service, 1335 East West Hwy., Room 7324, Silver Spring, Maryland 20910; and

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Blvd., St. Petersburg, Florida 33702.

Date: March 9, 1989.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 89–6005 Filed 3–14–89; 8:45 am]

BILLING CODE 3510–22–M

Issuance of Marine Mammals Permit; Micke Grove Zoo (P416)

On December 1, 1988, notice was published in the **Federal Register** (53 FR 48572) that an application had been filed by the Micke Grove Zoo, 11793 N. Micke Grove Road, Lodi, California 95240, to permanently maintain a beached/stranded harbor seal (*Phoca vitulina*) for public display purposes.

Notice is hereby given that on March 9, 1989, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the National Marine Fisheries Service issued a Permit for the above taking, subject to certain conditions set forth therein.

Issuance of this Permit is based on a finding that the proposed taking is consistent with the purposes and policies of the Marine Mammal Protection Act. The Service has determined that Micke Grove Zoo offers an acceptable program for education or conservation purposes. The Micke Grove Zoo facilities are open to the public on a regularly scheduled basis and access is not limited or restricted other than by an admission fee.

The Permit is available for review in the following offices:

Office of Protected Resources, National Marine Fisheries Service, 1335 East West Hwy., Rm 7324 Silver Spring, Maryland 20910; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

Date: March 3, 1989.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 89–6006 Filed 3–14–89; 8:45 am]

BILLING CODE 3510–22–M

[Modification No. 2 to Permit No. 558]

Marine Mammals Permit Modification; Loro Parque (P365)

Notice is hereby given that pursuant to the provisions of § 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), Public Display Permit No. 558 issued to Loro Parque, S.A., 38400 Puerto de la Cruz, Tenerife, Spain, on July 9, 1986 (51 FR 26176) and modified on July 31, 1987 (52 FR 29406) is further modified as follows:

Section B.7 is changed to read

B.7 The authority to capture or otherwise acquire these marine mammals shall extend from the date of issuance through December 31, 1989. The terms and conditions of this Permit (Sections B and C) shall remain in effect as long as one of the marine mammals taken hereunder is maintained in captivity under the authority and responsibility of the Permit Holder.

This modification became effective on January 1, 1989.

Documents pertaining to the Permit and all modifications are available for review in the following Offices:

Office of Protected Resources, National Marine Fisheries Service, 1335 East West Hwy., Room 7324, Silver Spring, Maryland 20910.

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731–7415.

Dated: March 9, 1989.

Nancy Foster, PH.D.

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 89–6007 Filed 3–14–89; 8:45 am]

BILLING CODE 3510–22–M

National Technical Information Service

Intent To Grant Exclusive Patent License

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Perkin-Elmer Corporation, having a place of business at 761 Main Avenue Norwalk, CT 06859–0181, an exclusive right in the United States and foreign countries to practice the invention embodied in U.S. Patent Application SN 7–212,390 "Process and Apparatus for Direct Ultrasonic Mixing Prior to Analysis." The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license may be granted unless, within sixty days from the date of this published notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments, and other materials relating to the intended license must be submitted to Charles Bevelacqua, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

A copy of the instant patent application may be purchased from the NTIS Order Desk by writing to 5285 Port

Royal Road, Springfield, VA 22161 or by telephone at 703–487–4650.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 89–5950 Filed 3–14–89; 8:45 am]

BILLING CODE 3510–04–M

COMMODITY FUTURES TRADING COMMISSION

Advisory Committee on CFTC-State Cooperation; Meeting

This is to give notice, pursuant to section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. I, section 10(a), that the Commodity Futures Trading Commission's Advisory Committee on CFTC-State Cooperation will conduct a public meeting in the Fifth Floor Hearing Room at the Commission's Washington, DC, headquarters located at Room 532, 2033 K Street, NW., Washington, DC 20581, April 11, 1989, beginning at 10:00 a.m. and lasting until 3:30 p.m. The agenda will consist of:

Agenda

1. Opening remarks—Wendy L. Gramm, Chairman, CFTC; Fowler C. West, Commissioner, CFTC and Chairman, Advisory Committee on CFTC-State Cooperation;
2. Report on the activities of the Securities and Commodities Fraud Working Group and the recent formation of regional Securities and Commodities Fraud Task Forces by the Department of Justice;
3. Discussion of methods for developing educational tools about investment fraud for use in consumer education programs in public schools;
4. Presentation of the film, "The Boiler Room", produced by the Arizona Corporation Commission and the Arizona Department of Education;
5. Report by the Industry Council for Tangible Assets on its self-regulatory efforts regarding bank-financed precious metals programs;
6. Discussion of the proposed Commission rule on hybrid and related instruments;
7. Report on the Commission's leverage report to Congress;
8. Status report on the proposed NASAA Model State Commodity Code;
9. Report on the formation of the Florida boiler room task force; and
10. Discussion of other questions of concern to Advisory Committee members.

The Advisory Committee was created by the Commodity Futures Trading Commission for the purpose of receiving advice and recommendations on matters of joint concern to the States and the Commission arising under the Commodity Exchange Act, as amended. The purposes and objectives of the Advisory Committee on CFTC-State Cooperation are more fully set forth in the March 31, 1988 Sixth Renewal Charter of the Advisory Committee.

The meeting is open to the public. The Chairman of the Advisory Committee, Commissioner Fowler C. West, is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Advisory Committee should mail a copy of the statement to the attention of: The Advisory Committee on CFTC-State Cooperation c/o Commissioner Fowler C. West, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, before the meeting. Members of the public who wish to make oral statements should also inform Commissioner West in writing at the foregoing address at least three business days before the meeting.

Reasonable provision will be made, if time permits, for an oral presentation of no more than five minutes each in duration.

Issued by the Commission in Washington, DC, on March 8, 1989.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 89–5980 Filed 3–14–89; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

SUMMARY: This collection was previously published in Vol. 53, No. 208, on Thursday, October 27, 1988.

Title, Applicable Form, and Applicable OMB Control Number: Wage Rates and Fringe Benefits; No Form; and OMB Control Number 0701–0102.

Type of Request: Resubmission.

Average Burden Hours/Minutes Per Response: 1 hour.

Frequency of Response: On occasion.

Number of Respondents: 165.

Annual Burden Hours: 165.

Annual Reponses: 165.

Needs and Uses: The Service Contract Act requires Air Force contractors to pay wages and fringe benefits that are compatible with those prevailing in the local area where the work is to be performed. Section 4(c) of the Act provides that the parties to the contract may request a hearing to establish prevailing rates when negotiated wages and fringe benefits appear to be substantially at variance with local rates. The Air Force needs the Wage Rates and Fringe Benefits survey to determine prevailing local rates and, when necessary, to support its position during formal hearings.

Affected Public: State or local governments; Businesses or other for-profit; Non-profit institutions; and Small businesses or organizations.

Frequency: Continuing.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Dr. J. Timothy Sprehe.

Written comments and recommendations on the proposed information collection should be sent to Dr. J. Timothy Sprehe at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

Written request for copies of the information collection proposal should be sent to Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

March 9, 1989.

[FR Doc. 89–5968 Filed 3–14–89; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.128H]

Vocational Rehabilitation Service Projects for American Indians with Handicaps Program; Information Collection Requirements

Applicable Regulations

On February 6, 1989, a notice was published in the Federal Register inviting applications for new awards for fiscal year 1989 under the Vocational Rehabilitation Service Projects for American Indians with Handicaps Program (54 FR 5650. Detailed information concerning this program was included in that notice.

The purpose of this notice is to provide additional data concerning the information collection requirements contained in the applicable regulations for this program in 34 CFR Parts 369 and 371.

The information collection requirements, including selection criteria, for Parts 369 and 371 are pending approval by the Office of Management and Budget. If any substantive changes are made in the information collection requirements for this program, applicants will be given an opportunity to revise or resubmit their applications.

For Applications or Information Contact: Joseph DePhillips, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3324 Switzer Building, Washington, DC 20202–2575. Telephone: (202) 732–1329.

Program Authority: 29 U.S.C. 777(b)

Dated: March 10, 1989.

Madeleine Will,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 89–6031 Filed 3–14–89; 8:45 am]

BILLING CODE 4000–01–M

[CFDA 84.060A]

Notice Inviting Applications for New Awards Under the Indian Education Act of 1988, Subpart 1 (Formerly Part A)—Formula Grant Program for Fiscal Year 1989

Purpose: Provides grants to local educational agencies (LEAs) and certain Indian tribes and organizations that received funds under this program in fiscal year 1988, and, if sufficient funds become available, as determined under the Act, to schools operated by the Bureau of Indian Affairs (BIA). Supplementary projects that meet the special educational and culturally related academic needs of Indian children enrolled in the applicant schools are supported.

Deadline for Transmittal of Applications: May 1, 1989.

Deadline for Intergovernmental Review: June 30, 1989.

Applications Available: March 17, 1989.

Available Funds: The appropriation for this program for fiscal year 1989 is $49,248,000, of which $46,583,400 will be allocated only to those LEAs and tribal schools that received funds under this program in fiscal year 1988. The remaining $2,665,000 is available for allocation to BIA-operated schools. The following estimates are based on the appropriation for fiscal year 1989 for LEAs and tribal schools that received awards in fiscal year 1988. The Secretary has no basis upon which to provide estimates for range, average size or numbers of awards to BIA-operated schools.

Estimated Range of Awards: $1,150 to $1,140,329.

Estimated Average Size of Awards: $41,802.

Estimated Number of Awards 1,112.

Note: The Department is not bound by any estimates in this notice.

Project Period: 12 to 36 months.

Applicable Regulations: (a) The Indian Education Program Regulations, 34 CFR Parts 250 and 251; (b) the Education Department General Administrative Regulations, 34 CFR Parts 75, 77, 78, 79, 80 and 85.

FOR APPLICATIONS OR INFORMATION CONTACT: Julia Lesceux, U.S. Department of Education, 400 Maryland Avenue, SW., Room 2177, Washington, DC 20202–6335, telephone: (202) 732–5146.

Program Authority: 25 U.S.C. 2601–2606, 2651

Dated: March 9, 1989.

Beryl Dorsett,

Assistant Secretary, Office of Elementary and Secondary Education.

[FR Doc. 89–6032 Filed 3–14–89; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Intent To Negotiate a Grant With the State of New Mexico; New Mexico Research and Development Institute

AGENCY: Department of Energy.

ACTION: Intent to negotiate a Grant with the state of New Mexico, New Mexico Research and Development Institute (NMRDI).

SUMMARY: "Planning Phase for the New Mexico Improved Oil Recovery Project." The U.S. Department of Energy (DOE), Idaho Operations Office, through the DOE Bartlesville Project Office, intends to negotiate on a noncompetitive basis a cost share grant for approximately $287,000 with NMRDI, Santa Fe, New Mexico. This action is prompted by the consummation of Joint Powers Agreement #1 (JPA#1) to the Memorandum of Understanding between the DOE and the State of New Mexico, which defines the research proposal and the participants, and specifies cost-sharing. The grant will be to develop and validate advanced methods of reservoir characterization for oil recovery processes through interdisciplinary and multi-institutional efforts focused at a field laboratory at a New Mexico reservoir. The goal of the New Mexico Improved Oil Recovery Project (MNIORP) will not be to study specific EOR processes, but rather various injection schemes that will be utilized to aid in reservoir characterization. The field laboratory will be available for use by industry, universities, states, and federal laboratories. As defined in JPA#1, this effort is further broken down into the following tasks: (1) Select a small oil producing field within New Mexico, (2) contract for site operation, (3) establish a project office, (4) select a steering committee, and technical review panel, (5) initiate pressure testing of the reservoir, (6) drill and core a well, (7) analyze initial data, and (8) plan for future activities. The authority and justification for determination of noncompetitive financial assistance (DNCFA) is DOE Financial Assistance Rules 10 CFR Part 600.7(b)(2)(i), (B) and (C). The activities would be conducted by the applicant using its own resources or those donated or provided by third parties; however, DOE support of that activity would enhance the public benefits to be derived and DOE knows of no other entity which is conducting or is planning to conduct such activities. The applicant is a unit of government and the activity to be supported is related to performance of a governmental function within the subject jurisdiction, thereby precluding DOE provision of support to another entity.

The State of New Mexico has entered into a Memorandum of Understanding with the Federal Government and has begun cooperative efforts in the areas of resource characterization, research technology development, and technology transfer in order to successfully make New Mexico fossil energy reserves available to the consumer in a safe, economic, and environmentally acceptable manner. The activities proposed in JPA#1 to the Memorandum of Understanding are in support of a public purpose and are as directed by the Memorandum of Understanding. Public response may be addressed to the contract specialist below.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Idaho Operations Office, 785 DOE Place, Idaho Falls, Idaho 83402, Trudy Thorne, Contract Specialist (208) 526–9519.

Date: March 7, 1989.

H. Brent Clark,

Director, Contracts Management Division

[FR Doc. 89–6027 Filed 3–14–89; 8:45 am]

BILLING CODE 6450–01–M

Advisory Committee on Nuclear Facility Safety Notice of Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Name: Advisory Committee on Nuclear Facility Safety.

Date and Time: Thursday, March 30, 1989, 8:30 p.m. to 6:00 p.m.; Friday, March 31, 1989, 9:00 a.m. to 1:00 p.m.

Place: U.S. Department of Energy, Forrestal Building, Room BE–089, 1000 Independence Avenue, SW., Washington, DC 20585.

Contact: Wallace R. Kornack, Executive Director, ACNFS, S–2, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone: 202/586–4400.

Purpose of the Committee: The Committee was established to provide the Secretary of Energy with advice and recommendations concerning the safety of the Department's production and utilization facilities. as defined in section 11 of the Atomic Energy Act of 1954. as amended (42 U.S.C. 2014).

Tentative Agenda

March 30, 1989 Meeting

8:30–5:30 Subcommittee Reports
- Review of Savannah River Plant Issues
- Restart Strategy Status
- Reactor Safety Improvement Program Status
- Water Hammer Report
- Safety Policy
- Committee Business

5:30–6:00 Public Comment

March 31, 1989 Meeting

9:00–12:30 DOE Environmental Cleanup Plans and Issues

12:30–1:00 Public Comment

Public Participation: This meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Wallace R. Kornack at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts: The transcript of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room, IE–190, Forrestal Building, 1000 Independence Ave., S.W., Washington, DC, between 9:00 a.m. and 4:00 p.m. Monday through Friday, except Federal holidays.

Issues at Washington, DC on March 10, 1989.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 89–6028 Filed 3–14–89; 8:45 am]

BILLING CODE 6450–01–M

Energy Information Administration

Agency Information Collections Under Review By the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of requests submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The listing does not include information collection requirements contained in new or revised regulations which are to be submitted under 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, or extension; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden, and (13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed on or before April 14, 1989.

ADDRESS: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards, at the address below.)

FOR FURTHER INFORMATION CONTACT: *For further information and copies of relevant materials contact:* Jay Casselberry, Office of Statistical Standards (EI–70), Energy Information Administration, M.S. lH–023, Forrestal Building, 1000 Independence Ave., SW., Washington, DC 20585, (202) 586–2171.

SUPPLEMENTARY INFORMATION: If you anticipate that you wi11 be submitting comments, but find it difficult to do so within the period of time allowed by this Notice, you should advise the OMB DOE Desk Officer of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the DOE contact listed above.)

The energy information collection submitted to OMB for review was:

1. International Affairs and Energy Emergencies
2. IE–417R
3. 1901–0288
4. Major Electric Power System Emergency Report
5. Extension
6. Annually
7. Mandatory
8. State and local governments, Businesses or other for profit, Federal agencies or employees
9. 40 respondents annually
10. 45 responses annually
11. The estimated average hours per response for each of the respondents is 2.39 burden hours.
12. The estimated total reporting hours are 130.
13. IE–417P will provide the DOE with information regarding the location of where emergency electric power supply situations exist on an electric power system or on a regional electric system. The data also provide DOE with a basis for determining the appropriate Federal action to relieve an electrical energy supply emergency. Respondents are electric utilities.

Authority: Sec. 5(a), 5(b), and 13(b), Pub. L. 93–275, Federal Energy Administration Act of 1974, (15 U.S.C. 764(a), 764(b), and 772(b); and Sec. 202(c) and 311 of the Federal Power Act, (16 U.S.C. 82a(c) and 825j.

Issued in Washington, DC, March 9, 1989.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 89–6029 Filed 03–14–89; 8:45 am]

BILLING CODE 6450–01–M

FEDERAL ENERGY REGULATORY COMMISSION

[Docket No. ER88-444-000 et al.]

Iowa Public Service Co. et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

March 9, 1989.

Take notice that the following filings have been made with the Commission:

1. Iowa Public Service Company

[Docket No. ER88-444-000]

Take notice that Iowa Public Service Company (IPS) on February 28, 1989, submitted in response to a request from Commission Staff, additional cost and Operational data to support the proposed Full Requirements Wholesale—Service Schedule No. 2 Original Issue Sheets Nos. 5 and 6, and executed Full Requirements Power Agreements filed on May 31, 1988, to permit the following Iowa municipalities to receive services pursuant to the filed rates: Auburn, Denver, Estherville, Hudson, Livermore, Pocahontas, Rockford, and Sergeant Bluff.

IPS requests a waiver of the Commission's regulations and allow the Agreements to become effective as of their respective operative dates. The earliest operative date is May 1, 1987.

These amendments have been served on all the affected municipalities and the Iowa Utilities Board.

Comment date: March 23, 1989, in accordance with Standard Paragraph E at the end of this notice.

2. Kanawha Valley Power Company

[Docket No. ER88-499-001]

Take notice that in accordance with the Commission's January 31, 1989 Order in Docket No. ER88-499-001, Kanawha Valley Power Company (Kanawha) submitted its required compliance filing. Kanawha states that its compliance filing sets forth the calculation of the amounts in excess of the Commission-approved settlement rate levels collected by Kanawha from Appalachian Power Company (Appalachian) together with interest computed under the Commission's regulations. According to Kanawha, a refund check in the appropriate amount was forwarded to Appalachian on February 15, 1989.

Kanawha further states that a copy of its compliance filing was either served upon or supplied to all parties of the record, Appalachian Power Company, the Virginia State Corporation Commission and the Public Service Commission of West Virginia.

Comment date: March 23, 1989, in accordance with Standard Paragraph E at the end of this document.

3. Southwestern Public Service Company

[Docket No. ER85-477-002]

Take notice that on March 1, 1989, Southwestern Public Service Company (Southwestern) tendered for filing its compliance filing in compliance with the Commission's order issued February 1, 1989.

Comment date: March 23, 1989, in accordance with Standard Paragraph E at the end of this notice.

4. Idaho Power Company

[Docket No. EC89-7-000]

Take notice that on February 27, 1989, Idaho Power Company ("Idaho Power" on the "Company"), a Maine corporation, and Idaho power Migrating Corporation ("IPMC"), an Idaho corporation, pursuant to section 203 of the Federal Power Act, filed an application for authorization for Idaho Power to be merged with and into IPMC.

It is stated that IPMC is a wholly owned subsidiary of Idaho Power. Idaho Power provides electric service in the States of Idaho, Oregon, and Nevada.

It is further stated that the principle purposes of the proposed merger are as follows:

(1) Incorporation in Idaho will promote better understanding of the Company by state and local government authorities and by its customers.

(2) After the Migration, the Company's business will be subject only to the corporation laws of the State of Idaho, and other states in which it operates, and the Company will be relieved of miscellaneous expenses incident to compliance with Maine laws. No additional annual taxes will be payable to the State of Idaho as a result of the change.

(3) The issuance of stock, bonds and other long-term debt by the Company is now subject to regulation by the Idaho Public Utilities Commission, the Wyoming Public Service Commission, the Oregon Public Utility Commission, and the Federal Energy Regulatory Commission. The effect of the Migration will be to exempt the Company from such duplicative regulation by the Federal Energy Regulatory Commission and the expenses attendant thereto. Regulation by the other state regulatory commissions will continue.

(4) The Migration will enable the Company to qualify for an exemption from the Public Utility Holding Company Act of 1935 (the "1935 Act") in the event that its business plans may at some future time contemplate the establishment of subsidiaries to engage in the transmission and/or generation of electric power for resale. Several relevant exemptions from the 1935 would require the Company to be incorporated in one of the states in which it operates. The Company has under study plans to construct a transmission line and certain generating facilities. Determination of whether to place the transmission line and generating facilities in subsidiary companies would depend, among other things, upon the action of various regulatory bodies.

Applicants state that upon the effective date of the merger each outstandng share of Idaho Power Common Stock and Preferred Stock will automatically be converted into one share of IPMC Common Stock and comparable series of IPMC Preferred Stock, respectively. Each outstanding certificate presenting shares of Idaho Power Common Stock and Preferred Stock will continue to represent the same number of shares of Common Stock and Preferred Stock of IPUC, respectively.

Comment date: March 27, 1989, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. 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 Rules 211 and 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 the comment date. 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. 89-5919 Filed 3-14-89; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 9194-000 New Jersey]

Passaic Valley Water Commission; Availability of Environmental Assessment

March 9, 1989.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for major license, less than 5 megawatts, for the Little Falls Hydroelectric Project located on the Passaic River in Passaic County, near Little Falls, New Jersey, and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project, with appropriate mitigative measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 1000, of the Commission's offices at 825 North Capitol Street NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 89-5922 Filed 3-14-89; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 2392-004, et al.]

Hydroelectric Applications, Georgia-Pacific Corp.; Applications Filed With the Commission

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1a. Type of Application: New Major License.

b. Project No.: 2392.004.

c. Date Filed: December 27, 1988.

d. Applicant: Georgia-Pacific Corporation.

e. Name of Project: Gilman Project.

f. Location: On the Connecticut River in Essex County, Vermont and Coos County, New Hampshire.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. Applicant Contact: Mr. David G. Blanchette, Georgia-Pacific Corporation, Gilman, VT 05904, (802) 892-5515.

i. FERC Contact: Steven H. Rossi, (202) 376-9814.

j. Comment Date: May 5, 1989.

k. Description of Project: The existing operating project commenced operation in 1941 and was issued an initial license in 1965, which will expire in 1990. The licensee has filed for a new license for the continued operation of the project. The existing project consists of: (1) the Gilman Dam, (a) a concrete gravity structure approximately 170 feet long and 29 feet high, and (b) a rock-filled timber crib dam approximately 108 feet long and 40 feet high, each with a crest elevation of 828.3 feet USGS; (2) 5-foot-high flashboards bringing the normal water surface elevation to 833.3 feet USGS; (3) a hydraulically operated crest gate 18 feet high and 27 feet wide; (4) a reservoir having an area of 130 acres, a storage capacity of 705 acre-feet, and a normal water surface elevation of 833.3 feet USGS; (5) a powerhouse containing four turbine-generator units, one rated at 2,250 kW, one rated a 1,000 kW, and two rated at 800 kW each for a total rated capacity of 4,850 kW; (6) a 200-foot-long transmission line; and (7) appurtenant facilities. The project generates an average of 25,750 MWh annually. The dam is owned by the applicant. The existing project would be subject to Federal takeover under Sections 14 and 15 of the Federal Power Act. The cost of the existing project is $4,848,500.

l. Purpose of Project: Project power would continue to be sold to New England Power Company.

m. This notice also consists of the following standard paragraphs: B, C and Dl.

2a.Type of Application: Transfer of License.

b. Project No.: 5000-014.

c. Date Filed: February 1, 1989.

d. Applicant: Trafalgar Power Inc. and Trafalgar Power Limited Partnership.

e. Name of Project: Kayuta Lake Project.

f. Location: On the Black River in Oneida County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. Applicant Contacts:

Mr. Arthur H. Steckler, President, Trafalgar Power Inc., Smith and Canal Streets, Franklin, NH 03235.

Mr. John M. Cutler, McCarthy, Sweeney & Harkaway, P.C., 1750 Pennsylvania Avenue, NW., Washington, DC 20006, (202) 393-5710.

i. FERC Contact: Steven H. Rossi, (202) 376-9814.

j. Comment Date: April 10, 1989.

k. Description of Transfer: On February l, 1989, Trafalgar Power Inc. (licensee) and Trafalgar Power Limited Partnership (transferee) filed a joint application for transfer of a minor license for the Kayuta Lake Project No. 5000.

The purpose of the proposed transfer of license is to facilitate the financing of the project.

The proposed transfer would not result in any changes in the operation of the project. All engineering, design, and feasibility studies performed would be transferred to the transferee. The transferee states that it would comply with all the terms and conditions of the license.

l. This notice also consists of the following standard paragraphs: B and C.

3a. Type of Application: Transfer of License.

b. Project No.: 9685-004.

c. Date Filed: February 1, 1989.

d. Applicant: Trafalgar Power, Inc.

e. Name of Project: Cranberry Lake Project.

f. Location: On the Oswegatchie River, in St. Lawrence County, New York.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)—825(r).

h. Applicant Contact: Arthur H. Steckler, President, Trafalgar Power, Inc., Smith and Canal Streets, Franklin, NH 03235, (514) 273-8891.

i. FERC Contact: Mary Nowak (202) 376-9634.

j. Comment Date: April 19, 1989.

k. Description of Project: The Trafalgar Power, Inc. proposes to transfer the license for the Cranberry Lake Project No. 9685 to Trafalgar Power Limited Partnership. The transfer is requested in order to facilitate the financial arrangements of the project. The transferee states that it will comply with all of the terms and conditions of the license.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

4a. Type of Application: Transfer of License.

b. Project No.: 9709-005.

c. Date Filed: February 1, 1989.

d. Applicant: Trafalgar Power Inc. and Trafalgar Power Limited Partnership.

e. Name of Project: Herkimer Project.

f. Location: On the West Canada Creek in Herkimer County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. Applicant Contacts:

Mr. Arthur H. Steckler, President, Trafalgar Power Inc., Smith and Canal Streets, Franklin, NH 03235.

Mr. John M. Cutler, McCarthy, Sweeney & Harkaway, P.C, 1750 Pennsylvania Avenue, NW., Washington, DC 20006, (202) 393-5710.

i. FERC Contact: Steven H. Rossi, (202) 376–9814.

j. Comment Date: April 10, 1989.

k. Description of Transfer: On February 1, 1989, Trafalgar Power Inc. (licensee) and Trafalgar Power Limited Partnership (transferee) filed a joint application for transfer of a minor license for the Herkimer Project No. 9709.

The purpose of the proposed transfer of license is to facilitate the financing of the project.

The proposed transfer would not result in any changes in the operation of the project. All engineering, design, and feasibility studies performed would be transferred to the transferee. The transferee states that it would comply with all the terms and conditions of the license.

l. This notice also consists of the following standard paragraphs: B and C.

5a. Type of Application: Transfer of License.

b. Project No.: 9821–010.

c. Date Filed: February 1, 1989.

d. Applicant: Trafalgar Power Inc. and Trafalgar Power Limited Partnership.

e. Name of Project: Ogdensburg Project.

f. Location: On the Oswegatchie River in St. Lawrence County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825(r)

h. Applicant Contacts:

Mr. Arthur H. Steckler, President, Trafalgar Power Inc., Smith and Canal Streets, Franklin, NH 03235.

Mr. John M. Cutler, McCarthy, Sweeney & Harkaway, P.C, 1750 Pennsylvania Avenue, NW., Washington, DC 20006, (202) 393–5710.

i. FERC Contact: Steven H. Rossi, (202) 376–9814.

j. Comment Date: April 10, 1989.

k. Description of Transfer: On February 1, 1989, Trafalgar Power Inc. (licensee) and Trafalgar Power Limited Partnership (transferee) filed a joint application for transfer of a major license for the Ogdensburg Project No. 9821.

The purpose of the proposed transfer of license is to facilitate the financing of the project.

The proposed transfer would not result in any changes in the operation of the project. All engineering, design, and feasibility studies performed would be transferred to the transferee. The transferee states that it would comply with all the terms and conditions of the license.

l. This notice also consists of the following standard paragraphs: B and C.

6a. Type of Application: Surrender of License.

b. Project No.: 9876–005.

c. Date Filed: January 17, 1989.

d. Applicant: Clearwater Hydro Associates.

e. Name of Project: Village Creek.

f. Location: On Village Creek near Birmingham, Jefferson County, Alabama.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. Applicant Contacts: Mr. Charles Gresham, 634 E. Inskip Road, #80, Knoxville, TN 37912.

i. FERC Contact: Michael Dees, (202) 376–9414.

j. Comment Date: April 10, 1989.

k. Description of Project: On February 2, 1988, a license was issued to construct, operate, and maintain the Village Creek Project No. 9876. The project would consist of: (1) an existing gravity dam 550 feet long and 115 feet high; (2) an existing 440 acre reservoir; (3) a proposed intake structure and a penstock six feet in diameter; (4) a proposed reinforced concrete powerhouse 24 feet by 24 feet by 30 feet high housing a 1,100-kW hydropower unit; (5) a proposed 12.47-kV three-phase transmission line 1.3 miles long; and (6) appurtenant facilities.

Licensee states that the project is no longer economically feasible because of the existing buyback rate structure.

l. Anyone desiring to be heard or to make any protest about this action should file a motion to intervene or a protest with the Federal Energy Regulatory Commission in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 or 385.214 (1985). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in section 385.211 for protests. To become a party, or to participate in any hearing that might be held, a person must file a motion to intervene in accordance with the Commission's Rules. The Commission's address is: 825 North Capitol Street NE., Washington, DC 20426.

7a. Type of Application: Preliminary Permit.

b. Project No.: 10718–000.

c. Date filed: January 10, 1989.

d. Applicant: JDJ Energy Company.

e. Name of Project: Pomme de Terre Water Power Project.

f. Location: Pomme de Terre Lake, Pomme de Terre River, near Hermitage, in Hickory County, Missouri.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Doyle W. Jones, P.E., JDJ Energy Company, Rt. 5, Box 483, Malvern, AR 72104, (501) 844–4435.

i. FERC Contact: Mary Nowak—(202) 376–9634.

j. Comment Date: May 1, 1989.

k. Description of Project: The proposed project would utilize the existing Corps of Engineers' dam and would consist of: (1) a proposed 300-foot-long penstock 8 feet in diameter; (2) a proposed powerhouse containing two turbine generating units having a total installed capacity of 4,625 kilowatts; (3) a proposed 13.8-kilovolt transmission line 600 feet long; and (4) appurtenant facilities. The applicant estimates that the average annual generation would be 12,450,000 kilowatthours. The applicant estimates that the cost of the studies under permit would be $30,000.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

8a. Type of Application: Preliminary Permit.

b. Project No.: 10728–000.

c. Date Filed: February 6, 1989.

d. Applicant: City of Marseilles and City of Ottawa.

e. Name of Project: Marseilles Dam.

f. Location: On the Illinois River near Marseilles, La Salle County, Illinois.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Poundstone, Etscheid & Associates, Inc., Michael A. Etscheid P.E., Northpoint Professional Centre, Suite 2, Streator, IL 61364.

i. FERC Contact: Michael Dees (202) 376–9414.

j. Competing Application: 10654–000, filed September 1, 1988.

k. Comment Date: May 5, 1989.

l. Description of Project: The proposed project would utilize the existing Corps of Engineers' Marseilles Lock and Dam and reservoir and would consist of: (1) an existing canal; (2) reconstructuring an existing concrete powerhouse to house four new hydropower units with a combined capacity of 10,600 kW; (3) a reconstructed tailrace; (4) upgrading an existing 400-foot-long transmission line; and (5) appurtenant facilities. The estimated annual energy production is 60 GWh. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $80,000.

m. This notice also consists of the following standard paragraphs: A8, A10, B, and C.

9a. Type of Application: Major License.

b. Project No.: 10228–000.

c. Date Filed: January 2, 1987.

d. Applicant: WV Hydro, Inc.

e. Name of Project: Cannelton.

f. Location: On the Ohio River in Hancock County, Kentucky.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: James B. Price, 120 Calumet Ct., Aiken, SC 29801, (803) 642–2749.

i. FERC Contact: Charles T. Raabe (202) 376–9778.

j. Comment Date: May 12, 1989.

k. Description of Project: The proposed project would utilize the existing U.S. Army Corps of Engineers' Cannelton Locks and Dam, and would consist of: (1) A 190-foot-wide, 80-foot-deep intake at the left bank; (2) a 190-foot-wide, 250-foot-long powerhouse containing 3– 26,670–kW bulb-type turbine/generator units, each operated at a 20.8-foot head and at a flow of 17,667cfs each; (3) a 190-foot-wide, 51-foot-long tailrace; (4) a 4.16/161–kV switchyard; (5) a 700-foot-long, 161–kV transmission line; and (6) appurtenant facilities. Applicant estimates that the average annual generation would be 370,000,000 kWh. Project power would be sold to Southern Indiana Gas & Electric Company.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

10.a Type of Application: License (less than 5 MW).

b. Project No.: 2610–002.

c. Date filed: December 16, 1988.

d. Applicant: Northern States Power Co.

e. Name of Project: Saxon Falls.

f. Location: On the Montreal River in Iron County, Wisconsin, and Gogebic County, Michigan.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. William J. Madden, Jr., Bishop, Cook, Purcell & Reynolds, 1400 L. St. NW., Washington, DL 20005–3502, (202) 371–5715.

i. FERC Contact: Michael Dees (202) 376–9414.

j. Comment Date:

k. Description of Project: The existing Saxon Falls Project consists of: (1) A dam 40 feet high and 510 feet long; (2) a reservoir with a storage capacity of 550 acre-feet and a surface area of 69 acres; (3) a 6-foot diameter steel conduit 1,607 feet long; (4) a steel surge tank 23.5 feet in diameter and 59.50 feet high, (5) two 4.5-foot diameter steel penstocks each 156 feet long; (6) a reinforced concrete powerhouse containing two equally sized generating units for a total installed capacity rated at 1,500 kW; (7) a substation with step-up transformer; (8) a 92.4-kV transmission line 0.25 mile long from powerhouse to substation and a 34.5-kV line for connection with applicant's interconnected transmission system; and (9) appurtenant facilities.

The applicant estimated from historical generation that the average annual energy generation will be 12,283 MWh. The applicant is the sole owner of the existing project facilities and has no plans to modify the existing facilities or operation.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

11a. Type of Application: Surrender of License.

b. Project No.: 10028–001.

c. Date Filed: August 29, 1988.

d. Applicant: Tultex Corporation.

e. Name of Project: Mayo Dam.

f. Location: On the Mayo River in Rockingham County, North Carolina.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: David M. Coombe, 410 Severn Ave., Suite 313, Annapolis, MD 21403, (301) 268–8820.

i. FERC Contact: Charles T. Raabe (202) 376–9778.

j. Comment Date: April 21, 1989.

k. Description of Project: The proposed project would have consisted of: (1) A 560-foot-long stone masonry dam including a 350-foot-long, 15-foot-high uncontrolled spillway with a crest elevation of 585.4 feet MSL; (2) a headgate structure containing five wooden lift gates and trash racks; (3) a 10-acre reservoir with a storage capacity of approximately 85 acre-feet at a normal water surface elevation of 585.4 feet MSL; (4) a levee approximately 30 feet long; (5) a 38.5-foot by 20-foot reinforced concrete open flume powerhouse; (6) a 50-foot-long by 25-foot-wide tailrace excavated in ledge, discharging into the Mayo River at a normal tailwater elevation of 571.4 feet MSL; (7) a control house containing switchgear, project metering, and a programmed controller; (8) a 0.33–MW induction generator; (9) the 480-volt generator leads; (10) a three-phase, 500–kVA, 480/4,160-volt step-up transformer; (11) a 200-foot-long, 4.16–kV overhead transmission line; and (12) appurtenant facilities.

Licensee states that the construction and operation of this project is not economically feasible and that financial strategies have been exhausted. Therefore, licensee has requested that its license be terminated. The license was issued March 9, 1988 and would have expired February 28, 2028. The licensee has not commenced construction of the project.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

12a. Type of Application: Preliminary Permit.

b. Project No.: 10724–000.

c. Date filed: January 30, 1989.

d. Applicant: Blycol, Inc.

e. Name of Project: Oregon Hydropower Project.

f. Location: On the Rock River, near Oregon, in Ogle County, Illinois.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)—825(r).

h. Applicant Contact: Mr. Andrew R. Blystra, 1481 Ring Road, Calumet City, IL 60409, (312) 730–1100.

i. FERC Contact: Mary Nowak (202) 376–9634.

j. Comment Date: May 12, 1989.

k. Competing Application: Project No. 10716; Date Filed: January 3, 1989.

l. Description of Project: The proposed project would consist of the following facilities: (1) An existing 867.5-foot-long timber crib dam approximately 12 feet high; (2) an existing reservoir 900 acres in surface area with a storage capacity of 3,500 acre-feet, and a normal surface elevation of 670.50 feet mean sea level; (3) a rehabilitated powerhouse containing three new generating units for a total installed capacity of 1,200 kilowatts; (4) a proposed 12,000-volt transmission line approximately 600 feet long; and (5) appurtenant facilities. The applicant estimates that the average annual generation is 11,000 kilowatthours. The existing dam is owned by the Illinois Department of Conservation and the City of Oregon. The applicant estimates that the cost of the studies under permit would be $95,000.000.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

13a. Type of Application: Minor License.

b. Project No.: 10624–000.

c. Date Filed: July 11, 1988.

d. Applicant: French Paper Company.

e. Name of Project: French Paper Company Project.

f. Location: On the St. Joseph River in Berrien County, Michigan.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. Applicant Contacts:

Mr. R. Dale Clark, French Paper Company, 100 French Street, Niles, MI 49120, (616) 683–1100

Mr. Michael L. Magliola, P.E., Parsons Brinckerhoff Quade, & Douglas, Inc., 230 West Monroe Street, Chicago, IL 60606, (312) 782–8150

Mr. J. Edward French, French Paper Company, 100 French Street, Niles, MI 49120, (616) 683–1100

Mr. William J. Madden, Jr., Bishop, Cook, Purcell & Reynolds, 1400 L Street, NW., Washington, DC 20005–3502, (202) 371–5700

i. FERC Contact: Steven H. Rossi, (202) 376–9814.

j. Comment Date: May 12, 1989.

k. Description of Project: The existing project has been operating since 1922 and consists of: (1) Niles Dam, a concrete gravity overflow structure 321 feet long and 13 feet high in the St. Joseph River, topped by 2.3-foot-high flashboards; (2) a headrace 100 feet wide and about 600 feet long, bypassing the northwest end of the dam; (3) a powerhouse 115 feet long, 55 feet wide and 56 feet high, equipped with four turbine-generator units in two open flumes, with a total installed capacity of 1,300 kW; (4) a reservoir on the St. Joseph River of about 80 acres, a storage capacity of about 510 acre-feet with a water surface elevation of 653.75 feet MSL; (5) a 7-foot-long transmission line; and (6) appurtenant facilities. In addition there is a proposed fish passage to be constructed near the northwest abutment of the dam, composed of reinforced concrete, 10 feet wide, about 220 feet long with 16 steps, and with appurtenant water conveyance and attraction facilities. The applicant estimates the average annual generation would be 5,000,000 kWh. The existing dam is owned by the applicant.

l. Purpose of Project: Project power would be used internally by the applicant and sold to Indiana and Michigan Electric Company.

m. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

14a. Type of Application: Preliminary Permit.

b. Project No.: 10726 000.

c. Date Filed: February 2, 1989.

d. Applicant: City and County of San Francisco.

e. Name of Project: Calaveras Reservoir/Dam Power.

f. Location: The project would utilize the Calaveras Reservoir and outlet works and the Upper Alameda Diversion Dam and tunnel, owned by the applicant and located in Alameda and Santa Clara Counties, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. Applicant Contact: Mr. James D. Cooney, San Francisco Water Department, 425 Mason Street, San Francisco, CA 94102, (415) 923–2467.

i. Commission Contact: Mr. James Hunter (202) 376–1943.

j. Comment Date: April 17, 1989.

k. Competing Application: Project No. 10658; Date Filed: September 9, 1988.

l. Description of Project: The proposed project would consist of: (1) The 230-foot-high Calaveras Dam and 31.55 billion-gallon reservoir; (2) a 40-foot-long, 36-inch-diameter penstock; (3) a powerhouse downstream of the reservoir containing one or more generating units; and (4) a second power generation site, the location and capacity of which would be determined during the term of the preliminary permit. Total generating capacity is expected to be less than five megawatts. The estimated cost of permit activities is $50,000.

m. This notice also consists of the following standard paragraphs: A8, A10, B, C, and D2.

Standard Paragraphs

A3. Development application—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A5. Preliminary permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A7. Preliminary permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A8. Preliminary permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit and development applications or notices of intent. Any competing preliminary permit or development application or notice of intent to file a competing preliminary permit or development application must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice. A competing license application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specifiy the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

A10. Proposed scope of studies under permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, protests, or motions to intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and service of responsive documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular

application to which the filing refers. Any of the above-named documents must be filed by providing, the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Dean Shumway, Director, Division of Project Review, Federal Energy Regulatory Commission, Room 203–RB, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. Agency comments—States, agencies established pursuant to federal law that have the authority to prepare a comprehensive plan for improving, developing, and conserving a waterway affected by the project, federal and state agencies exercising administration over fish and wildlife, flood control, navigation, irrigation, recreation, cultural or other relevant resources of the state in which the project is located, and affected Indian tribes are requested to provide comments and recommendations for terms and conditions pursuant to the Federal Power Act as amended by the Electric Consumers Protection Act of 1986, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88–29, and other applicable statutes. Recommended terms and conditions must be based on supporting technical data filed with the Commission along with the recommendations, in order to comply with the requirement in section 313(b) of the Federal Power Act, 16 U.S.C. a8251(b), that Commission findings as to facts must be supported by substantial evidence.

All other federal, state, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the statutes listed above. No other formal requests will be made. Responses should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the applicant. If an agency does not respond to the Commission within the time set for filing, it will be presumed to have no comments., One copy of an agency's response must also be sent to the Applicant's representatives.

D2. Agency comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: March 10, 1989, Washington, DC.

Lois D. Cashell,

Secretary.

[FR Doc. 89–6024 Filed 3–14–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP89–493–000 et al.]

CNG Transmission Corporation et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. CNG Transmission Corporation

[Docket No. CP89–493–000]

March 6, 1989.

Take notice that on December 28, 1988, CNG Transmission Corporation (CNG), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP89–493–000 an application pursuant to section 7(c) of the Natural Gas Act, for a certificate of public convenience and necessity authorizing it to render long-term firm transportation service for three industrial cogeneration developers, Albany Cogeneration Associates (ACA), Onondaga Cogeneration Limited Partnership (Onondaga) and Indeck Energy Services, Inc. (Indeck), and to construct and operate related transmission facilities in West Virginia, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

CNG proposes to transport up to 25,634 dekatherms (dt) of natural gas per day on a firm basis, 15,360 dt per day for Onondaga, 6,274 dt per day for ACA, and 4,000 dt per day for Indeck. The ACA and Onondaga quantities would be delivered to Niagara Mohawk Power Corporation and the Indeck quantities to National Fuel Gas Supply Corporation. All quantities would be transported at the rates set forth in Rate Schedule TF of CNG's FERC Gas Tariff, Original Volume No. 1. CNG states that it has reserved the right to interrupt deliveries for up to 65 days and has agreed to waive D–1 Demand charges for each day during which an interruption occurs.

CNG proposes to construct and operate the following facilities in order to render the long-term, firm transportation service; (a) replacement of 45.85 miles of 12-inch pipeline known as TL–263 with 20-inch pipeline; (b) replacement of 125 horsepower with 300 horsepower of compression at CNG's McDonald Station; (c) addition of 880 horsepower of compression at CNG's Oscar Nelson Station; (d) 2,160 horsepower of new compression to be known as Jackson Station to be located near the junction of CNG line No. TL–263 and line H–171 in Kanawha County, West Virginia; (e) 1,200 horsepower of new compression to be known as the Guyan Station to be located between the existing Oscar Nelson and McDonald Stations; (f) replacement of 0.55 miles of 10-inch pipeline known as line No. H–171 with 20-inch pipeline; and (g) construction of two metering and regulation stations which would enable CNG to receive the Appalachian gas purchased by ACA, Onondaga, and Indeck for transportation. The total cost of facilities is estimated to be $30,530,372. CNG proposes to finance this project with funds on has or with funds obtained from its parent company, CNG Natural Gas Company.

Comment date: March 27, 1989, in accordance with Standard Paragraph F at the end of this notice.

2. Colorado Interstate Gas Company

[Docket No. CP89–922–000]

March 6, 1989.

Take notice that on February 28, 1989, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP89–922–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Union Pacific Resources Company (Union Pacific), a natural gas producer, under its blanket authorization issued in Docket No. CP86–589–000, *et al.*, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

CIG would perform the proposed interruptible transportation service for Union Pacific, pursuant to an interruptible transportation service agreement dated November 1, 1988. The transportation agreement is effective for a primary term of 15 years and year-to-year thereafter subject to termination at the end of the 15th year or any contract year thereafter by 90 days written notice by either party. CIG proposes to transport up to a maximum of 50,000 Mcf of natural gas per day; on an average day up to 45,500 Mcf; and on an annual

basis 16,425,000 Mcf of natural gas for Union Pacific. CIG proposes to receive the subject gas at various existing points of receipt located in the states of Kansas, Wyoming and Colorado and redeliver the gas, less fuel gas and lost and unaccounted-for gas, for the account of Union Pacific in Texas and Oklahoma. CIG avers that no new facilities are required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's Regulations. CIG commenced such self-implementing service on November 1, 1988, as reported in Docket No. ST 89-842-000.

Comment date: April 20, 1989, in accordance with Standard Paragraph G at the end of this notice.

3. Northwest Pipeline Corporation

[Docket No. CP89-932-000]

March 7, 1989.

Take notice that on March 1, 1989, Northwest Pipeline Corporation, (Northwest) 295 Chipeta Way, Salt Lake City, Utah 84108 filed in Docket No. CP89-932-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Williams Gas Marketing Company (Williams), under its blanket authorization issued in Docket No. CP86-578-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest would perform the proposed interruptible transportation service for Williams, a marketer of natural gas, pursuant to a transportation agreement dated February 10, 1988, as amended June 10, 1988, October 21, 1988, December 5, 1988, and December 8, 1988, under its Rate Schedule TI-1. The term of the transportation agreement is from the date of execution and shall remain in full force and effect for a term continuing on a month to month basis, subject to termination upon 30 business days written notice by either party. Northwest proposes to transport on a peak day up to 770,000 MMBtu; on an average day up to 10,000 MMBtu; and on an annual basis 3,600,000 MMBtu for Williams. Northwest proposes to transport the subject gas through its transmission system from any transportation receipt to any transportation delivery points. It is stated that the natural gas transported under the transportation agreement may be received on behalf of Williams by any local distribution company or affiliate of Williams which has an appropriate contractual arrangement with Williams. It is alleged that at this time Northwest understands that Williams has arranged for deliveries to the distribution systems of Northwest Natural Gas Company, Washington Natural Gas Company, and Cascade Natural Gas Corporation. Northwest avers that no new facilities are required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's Regulations. Northwest commenced such self-implementing service on February 16, 1989, as reported in Docket No. ST89-2273-000.

Comment date: April 21, 1989, in accordance with Standard Paragraph G at the end of this notice

4. Tennessee Gas Pipeline Company

[Docket No. CP89-919-000]

March 7, 1989.

Take notice that on February 28, 1989, Tennessee Gas Pipeline Company (Tennessee), P. O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89-919-000 a request pursuant to § 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP87-115-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Tennessee proposes to transport natural gas on an interruptible basis for Texas-Ohio Gas, Inc. (Texas-Ohio). Tennessee explains that service commenced January 27, 1989 under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-2199. Tennessee further explains that the peak day quantity would be 15,000 dekatherms, the average daily quantity would be 15,000 dekatherms, and that the annual quantity would be 5,475,000 dekatherms. Tennessee explains that it would receive natural gas for the account of Texas-Ohio at points of receipt located Offshore Louisiana and in the states of Pennsylvania and Texas. Tennessee states that the points of delivery are located in the states of Texas, Louisiana and Pennsylvania.

Comment date: April 21, 1989, in accordance with Standard Paragraph G at the end of this notice.

5. Northwest Pipeline Corporation

[Docket No. CP89-941-000]

March 8, 1989.

Take notice that on March 2, 1989, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89-914-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of CP National Corporation (CP National), under Northwest's blanket certificate issued in Docket No. CP86-578-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northwest requests authorization to transport, on an interruptible basis, up to a maximum of 45,000 MMBtu of natural gas per day for CP National, a local distribution company, from receipt points located in Colorado, Oklahoma, Oregon, Utah, Washington and Wyoming to delivery points located in Colorado, Idaho, New Mexico, Oklahoma, Oregon, Utah, Washington and Wyoming. Northwest anticipates transporting, on an average day 800 MMBtu and an annual volume of 300,000 MMBtu.

Northwest states that the transportation of natural gas for CP National commenced January 27, 1989, as reported in Docket No. ST89-2276-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to Northwest in Docket No. CP86-578-000.

Comment date: April 24, 1989 in accordance with Standard Paragraph F at the end of the notice.

6. Columbia Gas Transmission Corporation

[Docket No. CP89-939-000]

March 8, 1989.

Take notice that on March 2, 1989, Columbia Gas Transmission Corporation (Applicant), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP89-939-000 a request pursuant to §§ 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act for authorization to abandon approximately 3.9 miles of 3-inch pipeline and appurtenant facilities located in Hardin County, Ohio, under Applicant's blanket certificate issued in Docket No. CP83-76-000 pursuant to section 7 of the Natural Gas Act. In addition, Applicant also requests authority under §§ 157.205 and 157.212

to establish a new point of delivery of Columbia Gas of Ohio, Inc. (COH) at the interconnection of certain new facilities to be constructed by COH, all as more fully set forth in the request on file with the Commission and open to public inspection.

COH would construct approximately 21.6 miles of 10-inch pipeline from the East Liberty area, Logan County, Ohio, to a proposed new point of delivery by Applicant to COH from Applicant's 12- and 16-inch pipelines located in Hardin County, Ohio. It is stated that such facilities would be utilized by COH to serve its existing market area in the Mt. Victory, Ohio area including a new Honda of America plant under construction in East Liberty, Logan County, Ohio. Applicant states that its 3.9 miles of 3-inch pipeline and appurtenant facilities (Mt. Victory System), presently in the area, will no longer be required for service to COH upon completion of COH's new facilities. Accordingly, Applicant further states that it proposes to abandon such facilities and sell the rights-of-way associated therewith to COH for the utilization in the construction and operation of its facilities.

Applicant also states that it does not serve any customers other than COH from the facilities to be sold and thus, the abandonment will not result in the abandonment of service to any natural gas consumer.

The quantities to be provided through the new point of delivery are within Applicant's currently authorized level of service to COH and would not result in revisions to either peak day or seasonal entitlements, it is stated. The sales to be made through the point of delivery would be under Applicant's currently effective service agreement with COH under Rate Schedule CDS, it is further stated.

Comment date: April 24, 1989, in accordance with Standard Paragraph G at the end of this notice.

7. Texas Gas Transmission Corporation

[Docket No. CP89-936-000]

March 8, 1989.

Take notice that on March 2, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89-936-000 an application pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Energy Marketing Exchange, Inc. (Energy Exchange), a marketer of natural gas, under Texas Gas' blanket certificate issued in Docket No. CP88-686-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Gas proposes to transport, on an interruptible basis up to 100,000 MMBtu per day for Energy Exchange. Texas Gas states that construction of facilities would not be required to provide the proposed service.

Texas Gas further states that the maximum day, average day, and annual transportation volumes would be approximately 100,000 MMBtu, 50,000 MMBtu and 36,500,000 MMBtu respectively.

Texas Gas advises that service under § 284.223(a) commenced January 18, 1989, as reported in Docket No. ST89-1933.

Comment date: April 24, 1989, in accordance with Standard Paragraph G at the end of this notice.

8. Northern Natural Gas Company

[Docket No. CP89-956-000]

March 9, 1989.

Take notice that on March 6, 1989, Northern Natural Gas Company, Division of Enron Corp., (Northern) 1400 Smith Street, Houston, Texas 77251, filed in Docket No. CP89-956-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas under its blanket authorization issued in Docket No. CP86-435-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern proposes to transport natural gas on an interruptible basis for Chevron U.S.A. Inc. (Chevron). Northern explains that the service commenced under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST-89-2390. Northern proposes to transport on a peak day up to 75,000 MMBtu; on an average day up to 56,250 MMBtu; and on an annual basis up to 27,375,000 MMBtu. Northern proposes to receive and deliver the gas at various points in Texas.

Comment date: April 24, 1989 in accordance with Standard Paragaph F at the end of the notice.

9. Texas Gas Transmission Corporation

[Docket No. CP89-935-000]

March 9, 1989.

Take notice that on March 2, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89-935-000 a request to §§ 157.205 and 284.223 of the Commission's Regulations (18 CFR 157.205 and 284.223) for authorization to transport natural gas for Sun Operating Limited Partnership (Sun), pursuant to Texas Gas's blanket certificate issued in Docket No. CP88-686-000 and section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, Texas Gas requests authority to transport up to 1.2 billion Btu of natural gas per day on an interruptible basis on behalf of Sun pursuant to a transportation agreement dated January 4, 1989. Texas states that the transportation agreement provides for Texas Gas to receive gas from a point in Block 146, South Marsh Island Area, offshore Louisiana, and to redeliver the gas into the facilities of ANR Pipeline Company in Block 146, South Marsh Island Area, Offshore Louisiana.

Texas Gas indicates it would provide the service on a month-to-month basis unless terminated upon thirty days written notice. Texas Gas states that it would charge the rates provided by its Rate Schedule IT.

It is indicated that the estimated maximum daily volume and average daily volume would be 1.2 billion Btu and the estimated annual volume would be 438 billion Btu. Texas Gas states it commenced a 120-day transportation service for Sun on January 21, 1989, as reported in Docket No. ST89-2091. Texas gas indicates that it would render the service through the use of Texas Gas's existing facilities.

Comment date: April 24, 1989, in accordance with Standard Paragraph G at the end of this notice.

10. Tennessee Gas Pipeline Company

[Docket No. CP89-949-000]

March 9, 1989.

Take notice that on March 6, 1989, Tennessee Gas Pipeline Company (Tennessee), Post Office Box 2511, Houston, Texas 77252, filed in Docket No. CP89-949-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Shell Offshore, Inc. (Shell), a natural gas producer, under its blanket authorization issued in Docket No. CP87-115-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Tennessee would perform the proposed interruptible transportation

service for Shell, pursuant to an interruptible transportation service agreement dated January 16, 1989. The transportation agreement is effective for a primary term of one month and month-to-month thereafter subject to termination by either party at any time upon at least 30 days written notice by either party. Tennessee proposes to transport 35,000 dekatherms (dth) of natural gas on a peak and average day; and on an annual basis 12,775,000 dth of natural gas for Shell. Tennessee proposes to receive the subject gas at various existing points of receipt located offshore Louisiana and in the state of Louisiana for redelivery to interconnections with Southern Natural Gas, Columbia Gulf Transmission Company and Transcontinental Gas Pipe Line Corporation. Tennessee avers that no new facilities are required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's Regulations. Tennessee commenced such self-implementing service on February 1, 1989, as reported in Docket No. ST89-2351-000.

Comment date: April 24, 1989, in accordance with Standard Paragraph G at the end of this notice.

11. Northern Natural Gas Company

[Docket No. CP89-954-000]

March 9, 1989.

Take notice that on March 6, 1989, Northern Natural Gas Company, Division of Enron Corp., (Northern) 1400 Smith Street, Houston, Texas 77251, filed in Docket No. CP89-954-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas under its blanket authorization issued in Docket No. CP86-435-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern proposes to transport natural gas on an interruptible basis for Damson Oil Corporation (Damson). Northern explains that the service commenced under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-2388. Northern proposes to transport on a peak day up to 10,000 MMBtu; on an average day up to 7,500 MMBtu; and on an annual basis up to 3,650,000 MMBtu. Northern proposes to receive and deliver the gas at various points in Texas.

Comment date: April 24, 1989, in accordance with Standard Paragraph G at the end of this notice.

12. United Gas Pipe Line Company

[Docket No. CP89-938-000]

March 9, 1989.

Take notice that on March 2, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-938-000 a request pursuant to § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service on behalf of the Polaris Corporation (Polaris), a local distribution company, under its blanket certificate issued in Docket No. CP88-6-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United states that it proposes to transport natural gas on behalf of Polaris from various points of receipt located in Louisiana and Texas to two points of delivery located in Louisiana.

United further states that the maximum daily, average daily and annual quantities that it would transport on behalf of Polaris would be 20,600 MMBtu equivalent, 20,600 MMBtu equivalent, and 2,472,000 MMBtu equivalent of natural gas, respectively.

United indicates that in Docket No. ST89-2184, filed with the Commission on February 9, 1989, it reported that transportation service for Polaris had begun under the 120-day automatic authorization provisions of § 284.223(a).

Comment date: April 24, 1989, in accordance with Standard Paragraph G at the end of this notice.

13. National Fuel Gas Supply Corporation

[Docket No. CP89-881-000]

March 9, 1989.

Take notice that on February 22, 1989, National Fuel Gas Supply Corporation (National), Ten Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP89-881-000, as supplemented on March 2, 1989, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate sales taps for the delivery of natural gas to three end users to be served by an affiliate, National Fuel Gas Distribution Corporation (Distibution) (§157.211), and to relocate one delivery point for deliveries of gas to Distribution (§ 157.212), under the certification authorization issued in Docket No. CP83-4-000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the application that is on file with the Commission and open to public inspection.

National proposes to construct and operate sales taps and delivery points to provide service to end user customers of Distribution, and to serve Distribution, as listed below. National states that the proposed sales taps/delivery points are not prohibited by any of its existing tariffs and that the additional taps would have no significant impact on National's peak day and annual deliveries. National estimates that the new customers would increase its peak day deliveries by 4,804 Mcf and the relocated delivery point for Distribution would accommodate 13,000 Mcf on a peak day.

Customer	Location	Estimated volume Mcf/year
Distribution	Hamburg, NY [1]	2,190,000
Allegany Particalboard Limited.	McKean Co., PA	250,000
Charles R. Heeter	Jefferson Co., PA	150
Roger F. Post	Erie Co., PA	150

Comment date: April 24, 1989, in accordance with Standard Paragraph G at the end of this notice.

[1] The location is described as Line T, relocated as proposed in Docket No. CP89-85.

Standard Paragraph

G. Any person or 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 therefor, 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. 89-5921 Filed 3-14-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-98-000]

Colorado Interstate Gas Co.; Proposed Changes in FERC Gas Tariff

March 9, 1989.

Take notice that Colorado Interstate Gas Company ("CIG"), on March 2, 1989, tendered for filing the following tariff sheets to revise its FERC Gas Tariff, Original Volume No. 1:

Twelfth Revised Sheet No. 2
Original Sheet No. 61G5
Original Sheet No. 61G6
Original Sheet No. 61G7
Original Sheet No. 61G8
Original Sheet No. 61G9
Original Sheet No. 61G10
Original Sheet No. 61G11
Original Sheet No. 61G12

CIG states that the above-referenced tariff sheets are being filed to incorporate a buyout-buydown cost recovery procedure under § 2.104 of the Commission's Regulations. Under the proposed filing, CIG will allocate its buyout-buydown costs between its jurisdictional and nonjurisdictional customers, absorb 50 percent of the jurisdictional portion of the buyout-buydown costs, and recover 50 percent of such costs through fixed surcharges applicable to its jurisdictional firm sales customers. CIG states that the total of the jurisdictional portion of the buyout-buydown costs related to this filing are $23,741,401. Therefore, CIG is proposing to recover $11,870,700 from its affected jurisdictional firm sales customers.

CIG has requested that the Commission accept this filing, to become effective March 3, 1989.

CIG states that copies of the filing were served upon all of its affected firm sales 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 §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 16, 1989. 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 in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-5932 Filed 3-14-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-2-32-000]

Colorado Interstate Gas Co.; Quarterly Purchased Gas Adjustment

March 9, 1989.

On March 1, 1989, Colorado Interstate Gas Company ("CIG") filed the following proposed tariff sheets to reflect a quarterly purchased gas adjustment ("PGA"):

Thirty-Eighth Revised Sheet No. 7
Thirty-Eighth Revised Sheet No. 8

CIG requests that these proposed tariff sheets be made effective on April 1, 1989.

CIG states that this filing, *inter alia*, reflects no change in demand, and a 0.22¢ decrease in the commodity rate for the G-1, P-1, SG-1, H-1, F-1, and PS-1 Rate Schedules, compared with rates filed by CIG on February 13, 1989 in Docket No. RP85-122, *et al.* In the event the Commission does not act, or does not act favorably on the compliance filing in Docket No. RP85-122, *et al.*, then CIG requests that the Commission accept effective April 1, 1989, *Alternate* Thirty Eighth Revised Sheet Nos. 7 and 8 which were also submitted for filing.

CIG states that copies of this filing have been served upon CIG's jurisdictional customers and public bodies, and are otherwise available for public inspection at CIG's offices in Colorado Springs, Colorado.

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 §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 16, 1989. 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 in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-5937 Filed 3-14-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-92-000]

El Paso Natural Gas Co.; Tariff Filing

March 9, 1989.

Take notice that El Paso Natural Gas Company ("El Paso"), on March 3, 1989, tendered for filing pursuant to Part 154 of the Federal Energy Regulatory Commission ("Commission") Regulations Under the Natural Gas Act, in compliance with the Commission's Order No. 509, *et seq.*, Third Revised Sheet Nos. 232 and 233 to its FERC Gas Tariff, Original Volume No. 1-A.

El Paso states that it currently has on file with the Commission Rate Schedule T-3 that conforms to §§ 284.7 and 284.8(d) of the Commission's Regulations for firm transportation service and Rate Schedule T-1 that conforms to §§ 284.7 and 284.9(d) of the Commission's Regulations for interruptible transportation service, both of which are contained in El Paso's FERC Gas Tariff, Original Volume No. 1-A. The offshore transportation rates contained in Rate Schedules T-3 and T-1, from time to time, will be applicable to all OCS transportation service performed by El Paso.

El Paso further states that the tendered tariff sheets add a new paragraph 20.3(b) to section 20, Operating Provisions for Firm Transportation Service, of El Paso's FERC Gas Tariff, Original Volume No. 1-A, which provides that in the event that two or more shippers seek to obtain the firm capacity that one or more shippers offer to relinquish on the OCS during the open season conducted by El Paso such capacity will be reallocated on a pro rata basis. El Paso also states that at the conclusion of open season and thereafter firm capacity on the OCS will be available for contract on a first come/first served basis, as it becomes available and that allocation of contracted firm capacity on the OCS will be on a pro rata basis.

It is also stated that inasmuch as El Paso is already an open access transporter, the requirements for declaring open season for interruptible capacity on the OCS does not apply to El Paso.

El Paso requested that the tendered tariff sheets become effective thirty (30) days after the date of filing.

Copies of the filing were served upon all shippers utilizing the El Paso system and all interested state regulatory 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 §§ 385.214 and 351.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 16, 1989. 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 in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-5924 Filed 3-14-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-3-33-000]

El Paso Natural Gas Co., Proposed Change in Rates

March 9, 1989.

Take notice that El Paso Natural Gas Company ("El Paso"), on March 1, 1989, tendered for filing pursuant to Part 154 of the Federal Energy Regulatory Commission's ("Commission") Regulations Under the Natural Gas Act, a notice of a Quarterly Adjustment in Rates, effective April 1, 1989, for jurisdictional gas service rendered to sales customers served by El Paso's interstate gas transmission system under rate schedules affected by and subject to section 19, Purchased Gas Cost Adjustment Provision ("PGA"), of the General Terms and Conditions in El Paso's FERC Gas Tariff, First Revised Volume No. 1.

El Paso states that it has tendered certain tariff sheets in compliance with its PGA provisions which reflect a net decrease of $0.2070 per dth below those rates placed in effect on January 1, 1989 at Docket No. TQ89-2-33-000. The decrease of $0.2070 per dth, after elimination of the Current Adjustment reflected in El Paso's Interim PGA effective January 1, 1989, results in a Current Adjustment of $.3138 per dth. Regarding the Surcharge Adjustment, El Paso will continue not collecting such surcharge in accordance with the Commission's September 30, 1988 order accepting and suspending El Paso's Quarterly PGA filing at Docket No. TQ89-1-33-000, *et al.*, effective October 1, 1988.

Copies of the filing were served upon all of El Paso's interstate pipeline system sales customers and all interested state regulatory 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 § 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 16, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestant 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 in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-5925 Filed 3-14-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-97-000]

Northwest Pipeline Corp.; Proposed Change in FERC Gas Tariff

March 9, 1989.

Take notice that on March 2, 1989, Northwest Pipeline Corporation (Northwest) submitted for filing, to be a part of its FERC Gas Tariff, the following tariff sheets.

First Revised Volume No. 1

Twenty-Sixth Revised Sheet No. 10-A

Original Volume No. 1-A

Fifth Revised Sheet No. 202

Original Volume No. 2

Sixth Revised Sheet No. 2.2

Northwest states the purpose of the filing is to reflect a new Fuel Reimbursement Percentage of 1.55%, to be effective April 1, 1989, pursuant to the provisions contained in Northwest's FERC Gas Tariff, Volumes 1, 1-A, and 2.

Northwest requests an effective date of April 1, 1989 for each of the respective tariff sheets, which date is 30 days from the date of filing.

A copy of this filing has been served on Pacific Interstate Transmission Company, Northwest's jurisdictional customers, and affected state regulatory commissions.

Any persons desiring to be heard or 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 Rules 211 or 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 16, 1989. 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. 89-5928 Filed 3-14-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-96-000]

Northwest Pipeline Corp.; Proposed Change in FERC Gas Tariff

March 9, 1989.

Take notice that on March 2, 1989, Northwest Pipeline Corporation ("Northwest") submitted for filing, to be a part of its FERC Gas Tariff, the following tariff sheets, to be effective April 1, 1989:

First Revised Volume No. 1

Fifth Revised Sheet No. 33
Fourth Revised Sheet No. 41
First Revised Sheet No. 110
Third Revised Sheet No. 117
Second Revised Sheet No. 118
Second Revised Sheet No. 119

Original Volume No. 1-A

Second Revised Sheet No. 417
Third Revised Sheet No. 418
First Revised Sheet No. 418-A
Original Sheet No. 418-B
Fifth Revised Sheet No. 419
First Revised Sheet No. 420
Second Revised Sheet No. 421
Original Sheet No. 421-A

Northwest states that these sheets were filed to incorporate revisions to the nomination, determination of deliveries, imbalances and penalty provisions currently stated in Northwest's tariff.

A copy of this filing is being served on Northwest's jurisdictional sales and transportation customers and affected state commissions.

Any person desiring to be heard or 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 §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 16, 1989. 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 in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-5933 Filed 3-14-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-227-010]

Paiute Pipeline Co.; Notice of Compliance Filing

March 9, 1989.

Take notice that on March 3, 1989, Paiute Pipeline Company (Paiute), pursuant to section 4 of the Natural Gas Act and Part 154 of the Commission's Regulations thereunder, tendered for filing certain revised tariff sheets in compliance with the Commission's Order issued on January 31, 1989 in Docket Nos. RP88-227-000 and RP88-227-005.

Paiute states that the Commission's January 31, 1989 Order, among other things, accepted Original Sheet Nos. 77 and 78 to Paiute's Original Volume No. 1 and Original Sheet No. 71 and Sheet Nos. 72-79 of its Original Volume No. 1-A, subject to certain conditions, and directed that Paiute refile, within 30 days of the date of the Order, tariff sheets that conformed to the Commission's Order.

In response to the Commission's Order, Paiute filed revised tariff sheets to conform to the Commission's Order. To accomplish this purpose, Paiute submitted tariff sheets which further define rates and penalties for authorized and unauthorized D-2 and R-2 annual entitlement overruns.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 16, 1989. 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. 89-5929 Filed 3-14-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-85-000 and RP89-85-001]

Sea Robin Pipeline Co.; Proposed Changes in FERC Gas Tariff

March 9, 1989.

Take notice that on March 1, 1989, Sea Robin Pipeline Company (Sea Robin), Post Office Box 1478, Houston, Texas 77251-1478, filed pursuant to § 284.305(e) of the Federal Energy Regulatory Commission's (Commission) Regulations, tariff sheets to Original Volume No. 1 of its FERC Gas Tariff. The tariff sheets filed by Sea Robin are:

To Be Effective April 1, 1989

Second Revised Sheet No. 70
Original Sheet No. 70-A

Sea Robin states that these tariff sheets are filed, as required by Order No. 509 issued December 9, 1988, as amended by Order No. 509-A issued February 21, 1989, to establish the manner in which firm capacity will be reallocated under § 284.304(c) of the Commission's Regulations in the event that more than one Shipper seeks to obtain the firm capacity relinquished.

In Docket No. RP89-85-001, Sea Robin states that it provides notice to the Commission of its intent to continue use, after April 1, 1989, its previously certificated rates for transportation services provided under Rate Schedules X-5, X-11, X-12, and X-13.

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, or or before March 16, 1989, and in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385-214).

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 desiring to become a party must 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. 89-5930 Filed 3-14-89; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

[Docket No. RP89-90-000]

Superior Offshore Pipeline Co.; Election To Continue Use of Current Transportation Rates

March 9, 1989

Take notice that on February 28, 1989, Superior Offshore Pipeline Company (SOPCO), pursuant to Commission Order No. 509-A, filed its notification of election to use its current blanket transportation rate of $0.01 per MMBtu for the transportation services provided after April 1, 1989.

Pursuant to § 284.305(d)(2), SOPCO submits that its continued use of its current $0.01 per MMBtu transportation rates would not be unjust and unreasonable for the following reasons:

(1) The current cost-based $0.01 per MMBtu transportation rates were approved by the Commission following a through evaluation of the actual costs incurred in providing the transportation services in Docket No. RP86-101 as an integral part of SOPCO's voluntary election to become an open-access blanket certificate holder under Part 284 of the Commission's Regulations;

(2) The current $0.01 per MMBtu rate is a one-part rate calculated upon a volumetric basis and thus is the sole basis upon which SOPCO recovers its operating costs as well as its return and related taxes as it only provides transportation services and does not purchase and resell any natural gas whatsoever;

(3) The amount of the current $0.01 per MMBtu transportation rate must be viewed as *de minimus* in terms of the overall costs associated with delivering natural gas production onshore to any eligible shipper, and to impose the additional regulatory burden of justifying its $0.01 per MMBtu transportation rate would serve no regulatory purpose whatsoever.

For the foregoing reasons, SOPCO requests that it be permitted to continue to charge its current cost-justified $0.01 per MMBtu transportation for blanket transportation service until such time as it seeks the requested authority pursuant to Section 4 of the Natural Gas Act, to modify its existing rate.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure [18 CFR 385.214, 385.211 (1988)]. All such motions or protests should be filed on or before

March 16, 1989. 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. 89-5927 Filed 3-14-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-84-000]

Tennessee Gas Pipeline Co.; Filing

March 9, 1989.

Take notice that on March 2, 1989, Tennessee Gas Pipeline Company (Tennessee) submitted for filing (1) Original Tariff Sheet Nos. 208C and 208D in Second Revised Volume No. 1 of its FERC Gas Tariff to be effective April 1, 1989, and (2) notification of its election to continue to use its current rates for certain OCS transportation services after April 1, 1989.

Tennessee states that the purpose for filing Original Sheet Nos. 208C and 208D is to comply with Commission Order Nos. 509 and 509-A. The tariff sheets describe the procedures Tennessee will implement pursuant to the Commission orders. In particular, the sheets set forth the manner in which Tennessee will satisfy requests for firm OCS transportation services at the open season to be conducted for ten days commencing April 1, 1989. At any time after the open season Tennessee states that it will satisfy requests received for firm OCS transportation services from any available capacity on a first-come, first served basis. To the extent a request for a firm transportation service cannot be satisfied from available capacity, Tennessee shall provide the requesting shipper with a list of existing firm shippers within ten (10) days after receiving the request. In the event the requesting shipper finds an existing firm shipper who is willing to relinquish all or a portion of its firm service entitlement, Tennessee shall satisfy the request for firm service by providing a replacement service.

Additionally, Tennessee states that it is providing notification of its election and its justification to continue to use its current rates for certain OCS transportation services after April 1, 1989, rendered pursuant to the following Tennessee Rate Schedules:

A. Firm Transportation Services—T-173, T-174, T-175 and T-176.

B. Interruptible Transportation Services—T-77, T-136, T-144, T-145, T-148, T-165 and T-172.

Although Tennessee does not believe any waivers are necessary for the Commission to accept the filed tariff sheets to be effective April 1, 1989, Tennessee requests the Commission grant any waivers it deems necessary.

Tennessee states that copies of its filings are available for inspection at its principal place of business in the Tenneco Building, Houston, Texas and have been mailed to all affected customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 16, 1989. 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. 89-5934 Filed 3-14-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-95-000]

Texas Eastern Transmission Corp.; Compliance Filing In FERC Gas Tariff

March 9, 1989.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on March 2, 1989, tendered for filing, in compliance with the Commission's Order Nos. 509 and 509A, issued in Docket Nos. RM88-14 and RM88-15, certain tariff sheets.

Texas Eastern is making this instant filing in order to (1) set forth tariff provisions in its Rate Schedules FT-1 and IT-1 which expand the applicability of the Rate Schedules to firm and interruptible transportation on the OCS, and (2) file a statement explaining why Texas Eastern believes that continued use of current rates to perform transportation pursuant to certificates other than Part 284 blanket transportation certificates is not unjust, unreasonable, or unduly discriminatory.

The tariff sheets being filed herewith are proposed to be effective April 1, 1989, the effective date required in order to comply with § 284.305(e) of the Commission's Regulations.

Copies of the filing were served on Texas Eastern's 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 Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 16, 1989. 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. 89-5935 Filed 3-14-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-79-000]

Texas Sea Rim Pipeline Co., Inc.; Tariff Filing

March 9, 1989.

Take notice that on March 3, 1989, Texas Sea Rim Pipeline Company, Inc. ("Texas Sea Rim"), 12450 Greenspoint Drive, Houston, Texas 77060-1991, filed, pursuant to section 4 of the Natural Gas Act and § 154.63 of the Commission's Regulations, to increase its present transportation rates reflected in the following tariff sheets:

First Volume No. 1

Original Sheet No. 2a

Original Volume No. 2

First Revised Sheet No. 5

Texas Sea Rim also requests that it be permitted to file under the "minor rate" increase filings provisions of 18 CFR 154.63(b)(1) and 154.63(b)(4).

Copies of the filing were served on Texas Sea Rim's customers.

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 Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or

before March 16, 1989. 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. 89-5931 Filed 3-14-89; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

[Docket Nos. CP89-852-000, CP89-853-000, CP89-854-000, CP89-855-000, CP89-856-000, CP89-857-000, CP89-858-000, CP89-859-000, CP89-860-000, CP89-862-000, and CP89-863-000]

Transcontinental Gas Pipe Line Corp.; Applications

March 9, 1989.

Take notice that on February 21, 1989, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP89-852-000, *et al.*, applications pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon firm sales entitlement to eleven customers, all as more fully set forth in the applications on file with the Commission and open to public inspection.[1]

Transco states that pursuant to § 284.10 of the Commission's Regulations, the customer, as noted in the Appendix, converted firm sales entitlements under their respective Service Agreements to firm transportation under Transco's Rate Schedule FT. Transco states that it now requests to abandon firm sales entitlements to each customer associated with the reductions in firm sales service to be effective as of the dates noted in the Appendix. Transco states that pursuant to § 284.10(f)(2), the exercise of contract conversion rights by a firm sales customer under § 284.10(d) constitutes consent by the customer to the abandonment of sales service to the extent of the conversion.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 30, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules and Practice and Procedure (18 CFR 385.214 or 385.211) 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 the subject to the jurisdiction confered 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 application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed adandonment are 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 Transco to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[1] See attached appendix for details of each application, including customer name, rate schedule, revised sales entitlement, etc.

Docket No.	Filed	Customer	Rate schedule	Firm sales entitlement (Mcf/d)			Effective date of reduction
				Current	Reduction	Revised	
CP89-852-000	2/21/89	Commissioners of Public Works of the City of Greenwood.	CD-2	8,600	1,290	7,310	12/9/88
				7,310	1,290	6,020	1/1/89
CP89-853-000	2/21/89	Public Service Company of North Carolina, Inc	CD-2	134,810	23,790	111,020	1/1/89
CP89-854-000	2/21/89	Clinton—Newberry Natural Gas Authority	CD-2	7,747	1,353	6,394	1/1/89
CP89-855-000	2/21/89	East Central Alabama Gas District	G-1	2,790	419	2,371	12/20/88
				2,371	418	1,953	1/1/89
CP89-856-000	2/21/89	Eastern Shore Natural Gas Company	CD-3	22,900	3,435		12/19/88
					3,435	16,030	1/1/89
CP89-857-000	2/21/89	North Carolina Natural Gas Corporation	CD-2	120,710	20,290	100,420	1/1/89
CP89-858-000	2/21/89	Delmarva Power & Light Company	CD-3	54,800	8,220	46,580	10/1/88
CP89-859-000	2/21/89	Philadelphia Electric Company	CD-3	107,697	19,005	88,692	1/1/89
CP89-860-000	2/21/89	Consolidated	CD-3	275,844	48,678	227,166	1/1/89
CP89-862-000	2/21/89	Piedmont Natural Gas Company	CD-2	174,420	30,780	143,640	1/1/89
CP89-863-000	2/21/89	Union Gas Company	CD-3	10,350	3,000	7,350	1/8/89

[FR Doc. 89-5923 Filed 3-14-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-99-000]

U-T Offshore System; Proposed Changes in FERC Gas Tariff

March 9, 1989.

Take notice that on March 2, 1989, U-T, Offshore System (U-TOS) tendered for filing its FERC Gas Tariff, First Revised Volume No. 1.

According to U-TOS, an entirely new Volume No. 1 (First Revised Volume No. 1) is being submitted because so many changes in its presently effective Original Volume No. 1 are required in order to comply with the Commission's Order Nos. 509 and 509-A.

U-TOS proposes to continue to charge its presently effective rates, which are being collected, subject to refund, in Docket No. RP89-38-000. The principal changes relate to changes being made to comply with Order Nos. 509 and 509-A. In this connection, a new Rate Schedule FT is included which relates to the procedures to be followed in allocating available firm capacity on the U-TOS system.

U-TOS proposes that the rates contained in the Schedule of Rates

(Original Sheet No. 5) become effective on April 1, 1989, subject to refund in Docket No. RP89–38–000. U–TOS also proposes that the remainder of first Revised Volume No. 1 become effective on April 1, 1989, without suspension.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulation Commission, 825 North Capitol Street, NE. Washington, DC 20426, in accordance with Rule 211 or 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 March 16, 1989. 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 in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89–5936 Filed 3–14–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ89–3–42–000]

Transwestern Pipeline Co.; Proposed Changes in FERC Gas Tariff

March 9, 1989.

Take notice that on March 2, 1989, Transwestern Pipeline Company (Transwestern) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet:

57th Revised Sheet No. 5

Transwestern states this tariff sheet is filed pursuant to its Purchased Gas Adjustment provision set forth in Article 19.4 of the General Terms and Conditions of Transwestern's FERC Gas Tariff, Second Revised Volume No. 1. The Current Adjustment reflected herein represents an increase of $0.2914/dth as measured against Transwestern's flex PGA filing in Docket No. TF89–8–42, which became effective on March 2, 1989.

The proposed effective date for the tariff sheet listed above is April 1, 1989.

Copies of the filing were served on Transwestern's 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 §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 16, 1989. 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 available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89–5926 Filed 3–14–89; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–3536–91]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202 382–2740).

SUPPLEMENTARY INFORMATION:

Office of Solid Waste and Emergency Response

Title: Generator Requirements—Exports of Hazardous Waste (EPA ICR #0820); OMB #2050–0035. This is an extension of a currently approved collection.

Abstract: The requirements for generators and transporters of hazardous waste for export include: providing notification of intent to export, obtaining consent from the receiving government, attaching the consent to the manifest, filing an annual report summarizing information on all wastes exported, filing exception reports where applicable, and delivering a copy of the manifest to U.S. Customs. The Agency uses the information as an enforcement tool, and to determine whether the right to export is being abused and if additional controls are necessary or desirable.

Burden Statement: The estimated average public burden for this collection of information is about 20 minutes for reporting and 45 minutes for the recordkeeping per respondent, per shipment. This estimate includes all aspects of the information collection including time for reviewing instructions, gathering and maintaining the data needed, and submitting reports.

Respondents: Generators or Transporters of Hazardous Waste.

Estimated No. of Respondents: 1,300.

Estimated Total Annual Burden on Respondents: 5,356 hours.

Frequency of Collection: Each Shipment of Hazardous Waste.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223), 401 M Street, SW., Washington, DC 20460,

and

Tim Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place, NW., Washington, DC 20503, (Telephone (202) 395–3084).

Date: March 3, 1989.

Paul Lapsley,

Information and Regulatory Systems Division.

[FR Doc. 89–5972 Filed 3–14–89; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3536–8]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the

information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202 382–2740).

SUPPLEMENTARY INFORMATION:

Office of Solid Waste and Emergency Response

Title: Surface impoundment retrofitting requirements—information request (ICR #1494). This is a new collection.

Abstract: This is a model letter directed to owners and operators of surface impoundments, for use by EPA in enforcement of the retrofit requirements of RCRA § 3005(j)(1). The letter requests information from the impoundment facility on: whether it will retrofit or close, anticipated closure date, date of last receipt of waste, measures taken to retrofit, and extent of on-site storage of waste.

Burden Statement: The estimated average public reporting burden for this collection of information is 6 hours per respondent, per letter. This estimate includes all aspects of the information collection including time for reviewing instructions, gathering and maintaining the data needed, and preparing and submitting letter.

Respondents: Owners and Operators of Surface Impoundments.

Estimated No. of Respondents: 143.

Estimated Total Annual Burden on Respondents: 858 hours.

Frequency of Collection: One time.

Send comments regarding the burden estimate, or any other aspect of these information collections, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223), 401 M Street, SW., Washington, DC 20460,

and

Tim Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place, NW., Washington, DC 20530.

OMB Responses to Agency PRA Clearance Requests: EPA ICR #0262.02; RCRA hazardous waste permit application Part A; was approved 02/21/89, OMB #2050–0034: expires 12/31/91.

EPA ICR #0278; Notice of supplemental registration of a distributor; was approved 02/17/89; OMB #2070-00441; expires 02/29/92.

EPA ICR #0261.06; Notification of hazardous waste activity; was approved 02/21/89; OMB #2050–0028; expires 06/30/89.

Date: March 3, 1989.

Paul Lapsley,

Information and Regulatory Systems Division.

[FR Doc. 89–5973 Filed 3–14–89; 8:45 am]

BILLING CODE 6560–50–M

[OPP–180809; FRL–3537–2]

Receipt of an Application for a Specific Exemption to Use Avermectin B_1; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Florida Department of Agriculture and Consumer Services (hereafter referred to as the "Applicant") for use of avermectin B_1 (AGRI-MEK 0.15 EC™) to control two-spotted spider mites (*Tetranychus urticae*) on 5,400 acres of strawberries in Florida. Avermectin B_1 (CAS 63AB) contains a mixture of avermectins containing > 80% avermectin B_{1a} (5-0-demethyl avermectin A_{1a}) and < 20% avermectin B_{1b} (5-0-demethyl-25-de(1-methylpropyl-25-(1-methylethyl)avermectin A_{1a}). In accordance with 40 CFR 166.24, EPA is soliciting comment before making the decision whether or not to grant this specific exemption request.

DATE: Comments must be received on or before March 30, 1989.

ADDRESS: Three copies of written comments, bearing the identification notation "OPP–180809" should be submitted by mail to:

Public Docket and Freedom of Inforamtion Section, Field Operations Division (H750 6C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 246, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information (CBI)." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for inspection in Rm. 246 at the address given above from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail:

Libby Pemberton, Registration Division (H750 5C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any provisions of FIFRA if he determines that emergency conditions exist which require such exemption.

The Applicant has requested the Administrator to issue a specific exemption for the use of avermectin B_1, manufactured as AGRI-MEK 0.15 EC™, by Merck & Co., Inc., on strawberries in Florida. No tolerances have been established for avermectin B_1 on any raw agricultural commodities.

Information in accordance with 40 CFR Part 166 was submitted in part of this request. The Applicant proposes ground applications applied at a rate of 16 ounces of product per acre per application. A maximum of four applications will be made per acre per crop season. Treatment would not be allowed 3 days prior to harvest.

The Applicant indicates that Florida's strawberry industry has dramatically increased acreage of a single variety, the Selva. Unfortunately, Selvas has proven to be extremely susceptible to the two-spotted mites. The Applicant also states that the extremely warm winter seasons allowed the unseasonable increase in mite populations. An additional factor in allowing the increase of this pest was the loss of Plictran, which was the primary miticide used on strawberries. Additionally, currently registered pesticides have failed to control high population levels for a variety of reasons. Lack of efficacy eliminates malathion, diazinon, naled, methyl parathion, and parathion. Fenbutatin-oxide and propargite are limited in their efficacy. Mevinphos and dicofol are limited by resistant populations throughout the area. The product Safer soap has resulted in crop phytotoxicity under Florida crop production conditions.

The Applicant indicates that without adequate control of the spider mites a potential loss of $10 million could occur from this pest.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require that the Agency publish notice in the Federal Register and solicit public comment on an application involving the first food use of pesticide. Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above.

The Agency, accordingly, will review and consider all comments received during the comment period.

Dated: March 3, 1989.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 89-5915 Filed 3-14-89; 8:45 am]

BILLING CODE 6560-50-M

[OPP-180808; FRL-3537-3]

Receipt of an Application for a Specific Exemption to Use Avermectin B_1; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the California Department of Food and Agriculture (hereafter referred to as the "Applicant") for use of avermectin B_1 (AVID 0.15 EC™) to control two-spotted spider mites (*Tetranychus urticae*) and European red mites (*Panonychus ulmi*) on 21,500 acres of pears in California. Avermectin B_1 (CAS 63AB) contains a mixture of avermectins containing > 80% avermectin B_{1a} (5-0-demethyl avermectin A_{1a}) and < 20% avermectin B_{1b} (5-0-demethyl-25-de(1-methylpropyl-25-(1-methylethyl)avermectin A_{1a}). In accordance with 40 CFR 166.24, EPA is soliciting comment before making the decision whether or not to grant this specific exemption request.

DATE: Comments must be received on or before March 30, 1989.

ADDRESS: Three copies of written comments, bearing the identification notation "OPP-180808" should be submitted by mail to:

Public Docket and Freedom of Information Section, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 246, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information (CBI)." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for inspection in Rm. 246 at the address given above from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail:

Libby Pemberton, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. (703-557-1806).

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any provisions of FIFRA if he determines that emergency conditions exist which require such exemption.

The Applicant has requested the Administrator to issue a specific exemption for the use of avermectin B_1, manufactured as AVID 0.15 EC™, by Merck & Co., Inc., on pears in California. No tolerances have been established for avermectin B_1 on any raw agricultural commodities.

Information in accordance with 40 CFR Part 166 was submitted as part of this request. The Applicant proposes ground applications applied at a rate of 10 to 20 ounces of product per acre per application. A maximum of two applications will be made per crop season. Applications would be made through October 31, 1989.

The Applicant indicates that the percent control with registered alternatives has been steadily decreasing over the past five years. Those products include hexakis, amitraz, dicofol, chinomethionat, foliar spray oil, formetanate, and propargite.

The Applicant indicates that without adequate control of the mites economc losses expected could total over $5 million.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require that the Agency publish notice in the Federal Register and solicit public comment on an application involving the first food use of pesticide. Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above.

The Agency, accordingly, will review and consider all comments received during the comment period.

Dated: February 24, 1989.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 89-5916 Filed 3-14-89; 8:45 am]

BILLING CODE 6560-50-M

[OPP-180807; FRL-3537-4]

Receipt of an Application for a Specific Exemption to Use Avermectin B_1; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Oregon Department of Agriculture (hereafter referred to as the "Applicant") for use of avermectin B_1 (AGRI-MEK 0.15 EC Miticide/Insecticide ™) to control two-spotted spider mites (*Tetranychus urticae*); yellow spider mites (*Eotetranychus carpini*); and McDaniel spider mites (*Tetranychus mcdanieli*) on 18,000 acres of pears in Oregon. Avermectin B_1 (CAS 63AB) contains a mixture of avermectins containing > 80% avermectin B_{1a} (5-0-demethyl avermectin A_{1a}) and < 20% avermectin B_{1b} (5-0-demethyl-25-de(1-methylpropyl-25-(1-methylethyl) avermectin A_{1a}). In accordance with 40 CFR 166.24, EPA is soliciting comment before making the decision whether or not to grant this specific exemption request.

DATE: Comments must be received on or before March 30, 1989.

ADDRESS: Three copies of written comments, bearing the identification notation "OPP-180807" should be submitted by mail to: Public Docket and Freedom of Information Section, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Rm. 246, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information (CBI)." Information so marked will not be

disclosed except in accordance with procedures set forth in 40 CFR Part 2. A Copy of the comment that does contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for inspection in Rm. 246 at the address given above from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Libby Pemberton, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–1806).

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any provisions of FIFRA if he determines that emergency conditions exist which require such exemption.

The Applicant has requested the Administrator to issue a specific exemption for the use of avermectin B_1, manufactured as AGRI–MEK 0.15 EC Miticide/Insecticide ™, by MSD AGVET, a division of Merck & Co., Inc., on pears in Oregon. No tolerances have been established for avermectin B_1 on any raw agricultural commodities.

Information in accordance with 40 CFR Part 166 was submitted as part of this request. The Applicant proposes ground applications applied at a rate of 10 to 20 ounces of product per acre per application. A maximum of two applications will be made per crop season. Treatment would not be allowed 7 days prior to harvest. Applications would be made from April 20, 1989 through September 1, 1989.

The Applicant indicates that during the past three years there has been an increasing and alarming mite resistance to registered miticides. Growers have been making four and five applications (either individual or combinations of pesticides using cyhexatin, hexakis, oxamyl, amitraz, dicofol, formetanate, chinomethionat, ethion and/or parathion).

The Applicant indicates that without adequate control of the mites economic losses expected would primarily come in the form of loss of fruit size, set, and quality. Losses in fruit size and lower fruit quality, without the requested acaricide this year, could total over $4.5 million.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require that the Agency publish notice in the **Federal Register** and solicit public comment on an application involving the first food use of a pesticde. Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above.

The Agency, accordingly, will review and consider all comments received during the comment period.

Dated: February 27, 1989.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 89–5917 Filed 3–14–89; 8:45 am]

BILLING CODE 6560–50–M

[PF–509; FRL–3536–3]

Ciba-Geigy Corp.; Amended and Withdrawn Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the filing of an amendment to pesticide petition (PP) 9F3706 and the withdrawal of PP 2F2618 by the Ciba-Geigy Corp.

ADDRESS: By mail, submit written comments to:

Public Docket and Freedom of Information Section, Field Operations Division (H–7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Rm. 246, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in this public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (TS–767C), Attention: Product Manager (PM) named in petition, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, contact the PM named in each petition at the following office/telephone number:

Product manager	Office location/ telephone number	Address
Lois Rossi (PM 21).	Rm. 227, CM #2, 703–557–1900.	1921 Jefferson Davis Hwy., Arlington, VA.
Robert Taylor (PM 25).	Rm. 245, CM #2, 703–557–1800.	Do.

SUPPLEMENTARY INFORMATION: EPA has received from the Ciba-Geigy Corp., Agricultural Division, P.O. Box 18300, Greensboro, NC 27419, an amendment to PP 9F3706, which proposed to amend 40 CFR 180.434 by proposing to establish a regulation to permit the combined residues of the fungicide 1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]methyl)-1H-1,2,4-triazole and its metabolites determined as 2,4-dichlorobenzoic acid, by adding the raw agricultural commodity grass seed screenings at 10 parts per million (ppm). The notice of the petition to amend 40 CFR Part 180 by establishing a regulation for the fungicide was originally published in the **Federal Register** of February 22, 1989 (54 FR 7597). (PM 21)

EPA also gives notice that the Geigy-Corp. has submitted a request to withdraw without prejudice PP 2F2618 for propazine on sorghum forage and fodder at 1.0 ppm; milk and eggs at 0.02 ppm; meat, fat, and meat byproducts of cattle, goats, hogs, horses, and sheep (excluding liver and kidney) at 0.05 ppm; liver and kidney of cattle, goats, hogs, horses, poultry, and sheep at 0.10 ppm; and sorghum grain and sorghum, sweet at 0.25 ppm. Notice of the petition appeared in the **Federal Register** of February 24, 1982 (47 FR 8087). Ciba-Geigy has recently voluntarily cancelled all its propazine-containing products. (PM 25).

Authority: 21 U.S.C. 346a.

Dated: February 27, 1989.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 89–5832 Filed 3–14–89; 8:45 am]

BILLING CODE 6560–50–M

[OPP-180804; FRL-3536-4]

Emergency Exemptions; Cyromazine, etc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted specific exemptions for the control of various pests to the seven States listed below. Seven crisis exemptions were also initiated, and two by the United States Department of Agriculture/APHIS. These exemptions, issued during the months of October, November, and December, are subject to application and timing restrictions and reporting requirements designed to protect the environment to the maximum extent possible. Information on these restrictions is available from the contact persons in EPA listed below.

DATES: See each specific or crisis exemption for its effective dates.

FOR FURTHER INFORMATION CONTACT: See each emergency exemption for the name of the contact person. The following information applies to all contact persons: By mail:

Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716, CM#2, 1921 Jefferson Davis Highway, Arlington, VA. (703-557-1806).

SUPPLEMENTARY INFORMATION: EPA has granted specific exemptions to the:

1. Arizona Commission of Agriculture and Horticulture for the use of cyromazine on lettuce (head only) with rotation to alfalfa, sudan grass, and wheat to control leafminers; November 23, 1988, to March 31, 1989. (Gene Asbury)

2. California Department of Food and Agriculture for the use of triadimefon on artichokes to control powdery mildew; December 5, 1988, to October 31, 1989. (Libby Pemberton)

3. California Department of Food and Agriculture for the use metalaxyl on strawberries to control *Phytophthora fragariae* (red stele disease); November 23, 1988, to April 30, 1989. (Gene Asbury)

4. California Department of Food and Agriculture for the use of prometryn on parsley to control cheeseweed, burning nettle, and shepherd's purse; December 12, 1988, to May 31, 1989. (Libby Pemberton)

5. Florida Department of Agriculture and Consumer Services for the use of diquat dibromide on green peppers and tomatoes to control nightshade and parthenium; December 28, 1988, to August 31, 1989. (Libby Pemberton)

6. Florida Department of Agriculture and Consumer Services for the use of methyl bromine with chloropicrin on watermelons to control nematodes, fungi, and weeds; November 23, 1988, to April 1, 1989. (Robert Forrest)

7. Illinois Department of Agriculture for the use of sethoxydim on Canola (rape seed) to control volunteer grains and grasses; November 28, 1988, to May 1, 1989. (Jim Tompkins)

8. Montana Department of Agriculture for the use of chlorpyrifos on wheat to control Russian wheat aphid; November 23, 1988, to October 18, 1989. Montana had initiated a crisis exemption for this use. (Robert Forrest)

9. Puerto Rico Department of Agriculture for the use of fenvalerate on pineapples to control *Batrachedra comosae* moths; October 18, 1988, to September 30, 1989. (Gene Asbury)

10. Tennessee Department of Agriculture for the use of chlorothalonil on mushrooms to control dry bubble, stripe blast, and brown spot diseases; November 1, 1988, to October 31, 1989. (Gene Asbury)

Crisis exemptions were initiated by the:

1. California Department of Food and Agriculture on November 4, 1988, for the use of zinc phosphide on sugarbeets to control meadow mice. Since it was anticipated that this program would be needed for more than 15 days, California has requested a specific exemption to continue it. This program will last until April 30, 1989. (Libby Pemberton)

2. Florida Department of Agriculture and Consumer Services on November 22, 1988, for the use of cyromazine on carrots to control leafminers. This program has ended. (Gene Asbury)

3. Florida Department of Agriculture and Consumer Services on December 14, 1988, for the use of iprodione on cabbage to control white mold. Since it was anticipated that this program would be needed for more than 15 days, Florida has requested a specific exemption to continue it. The need for this program is expected to last until April 30, 1989. (Libby Pemberton)

4. Florida Department of Agriculture and Consumer Services on December 29, 1988, for the use of Tilt (propiconazole) on celery to control early blight. Since it was anticipated that this program would be needed for more than 15 days, Florida is expected to request a specific exemption to continue it. The need for this program is expected to last until January 1, 1990. (Jim Tompkins)

5. Oklahoma Department of Agriculture on November 23, 1988, for the use chlorpyrifos on wheat to control greenbugs. This program has ended. (Robert Forrest)

6. Texas Department of Agriculture on December 20, 1988, for the use of (S)-cyano(3-phenoxyphenyl)methyl-(S)-4-chloro-alpha-(1-methylethyl) benzenaecetate on kale, kohlrabi, and mustard greens to control cabbage loopers. Since it was anticipated that this program would be needed for more than 15 days, Texas has requested a specific exemption to continue it. The need for this program is expected to last until November 30, 1989. (Libby Pemberton)

7. Washington Department of Agriculture on October 12, 1988, for the use of chlorpyrifos on wheat to control Russian wheat aphid. This program has ended. (Robert Forrest)

8. United States Department of Agriculture/APHIS on December 22, 1988, for the use of methyl bromide on imported pineapples to control various plant pests. Since it was anticipated that this program would be needed for more than 15 days, USDA/APHIS is expected to request a specific exemption to continue it. The need for this program is expected to last until December 22, 1991. (Libby Pemberton)

9. United States Department of Agriculture/APHIS on November 10, 1988, for the use of ethylene oxide on hemp seed imported as wild bird feed to control plant diseases. This program has ended. (Jim Tompkins)

Authority: 7 U.S.C. 136.

Dated: March 2, 1989.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 89-5834 Filed 3-14-89; 8:45 am]

BILLING CODE 6560-50-M

[OPP-180810; FRL-3537-5]

Receipt of Application for Specific Exemption to Use Oxyfluorfen; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Illinois Department of Agriculture (hereafter referred to as "Applicant") for use of the herbicide oxyfluorfen (goal) to control broadleaf weeds in horseradish in Illinois. EPA is soliciting comment before making the decision whether or not to grant this specific exemption request.

DATE: Comments must be received on or before March 30, 1989.

ADDRESS: Three copies of written comments, bearing the identification notation "OPP-180810," should be submitted by mail to: Public Docket and Freedom of Information Section, Field Operations Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Rm. 236, Crystal Mall 2 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not market confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for inspection in Rm. 236 at the address given above from 8 a.m. to 4 p.m., Monday through Friday excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Gene Asbury, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716C, Crystal Mall 2 1921 Jefferson Davis Highway, Arlington, VA, (703-557-1806).

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any registration provision of FIFRA if he determines that emergency conditions exist which require such exemption.

The Applicant has requested the Administrator to issue a specific exemption to permit the use of the herbicide oxyfluorfen (CAS 42874 03 3) available as Goal 1.6E, EPA Reg. No. 707-174, to control broadleaf weeds in horseradish. Information in accordance with 40 CFR Part 166 was submitted as part of this request.

Illinois has requested authorization to apply 2.5 pints of Goal 1.6E herbicide (0.5 pounds active ingredient) per acre as a ground spray application on 1,000 acres of horseradish in Madison, Monroe and St. Clair counties. Goal 1.6E is a selective herbicide recommended for preemergence control of certain broadleaf weeds. Goal 1.6E will be applied in a minimum of 40 gallons of water per acre.

According to the Applicant, weed control in horseradish fields in Illinois is mainly limited to mechanical means. The rising costs of fuel and labor in the past years has made the use of cultivation increasingly impractical. Five to ten cultivations at $13,000/acre/operation costs the grower $65 to $130/season for between row weed control and three hand hoeings at $100/acre for weed control within the row. Net savings could amount to between $317,000 to $382,000 with proper weed control.

Oxyfluorfen was referred to Special Review in January of 1980 because pesticide products containing oxyfluorfen as an active ingredient were shown to be contaminated with perchloroethylene (PCE), a liver carcinogen in B6C3F1 mice. The Special Review process was completed on June 23, 1982, and the decision was made to continue registration of the herbicide subject to certain restrictions (on PCE) pertaining to formulation of the product (47 FR 27118).

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require publication of a notice in the **Federal Register** of receipt of an application for a specific exemption proposing use of a pesticide which contains an active ingredient which has been the subject of a Special Review and is intended for a use that could pose a risk similar to the risk posed by any use of a pesticide which is or has been the subject of a Special Review (40 CFR 166.24(a)(5)).

Accordingly, interested persons may submit written views on this subject to the Field Operations Division (TS-757C), at the address given above. The Agency will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Illinois Department of Agriculture.

Dated: March 3, 1989.

Anne E. Lindsay,

Director Registration Division, Office of Pesticide Programs.

[FR Doc. 89-5918 Filed 3-14-89; 8:45 am]

BILLING CODE 6560-50

[OPP-240084; FRL-3536-2]

State Registrations of Pesticides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received notices of registration of pesticides to meet special local needs under section 24(c) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, from 30 States. A registration issued under this section of FIFRA shall not be effective for more than 90 days if the Administrator disapproves the registration or finds it to be invalid within that period. If the Administrator disapproves a registration or finds it to be invalid after 90 days, a notice giving that information will be published in the **Federal Register.**

DATE: The last entry for each item is the date the State registration of that product became effective.

FOR FURTHER INFORMATION CONTACT: Owen F. Beeder, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716A, CM #2, 1921 Jefferson Davis Highway, Arlington, VA. 22202 (703)-557-7893.

SUPPLEMENTARY INFORMATION: This notice only lists the section 24(c) applications submitted to the Agency. The Agency has 90 days to approve or disapprove each application listed in this notice. Applications that are not approved are returned to the appropriate State for action. Most of the registrations listed below were received by the EPA in September through December of 1989. Receipts of State registrations will be published periodically. Of the following registrations, none involve a changed-use pattern (CUP). The term "changed-use pattern" is defined in 40 CFR 162.3(k) as a significant change from a use pattern approved in connection with the registration of a pesticide product. Examples of significant changes include, but are not limited to, changes from a nonfood to food use, outdoor to indoor use, ground to aerial application, terrestrial to aquatic use, and nondomestic to domestic use.

Arizona

EPA SLN No. AZ 88 0024. Sandoz Crop Protection Corp. Registration is for Javelin Biological Insecticide to be used on jojoba to control loopers. September 31, 1988.

EPA SLN No. AZ 88 0025. FMC Corp. Registration is for Capture 2 EC Insecticide/Miticide to be used on jojoba to control armyworms and loopers. October 19, 1988.

EPA SLN No. AZ 88 0027. Gowan Co. Registration is for Gowan Methyl Parathion 7.5 to be used on jojoba to

control aphids, grasshoppers, leaf miners, and several other pests. October 20, 1988.

EPA SLN No. AZ 88 0028. Mobay Corp. Registration is for DF 75% Dry Flowable Herbicide to be used on alfalfa to treat irrigation furrows. December 3, 1988.

Arkansas

EPA SLN No. AR 88 0004. Ciba-Geigy Corp., Agricultural Chemicals Div. Registration is for D-Z-N Diazinon 50 WP to be used on nursery stock to control fire ants. September 26, 1988.

EPA SLN No. AR 88 0005. Ciba-Geigy Agricultural Chemicals Div. Registration is for D-Z-N Diazinon AG 500 to be used on nursery stock to control fire ants. September 26, 1988.

EPA SLN No. AR 88 0006. Ciba-Geigy Agricultural Chemicals Div. Registration is for Triumph 4 E Insecticide to be used on tees, greens, and aprons of golf courses and on sod farms to control various insects. September 26, 1988.

California

EPA SLN No. CA 88 0023. Merced County Agricultural Commissioner. Registration is for Pyrenone Space Spray to be used on sweet potatoes in storage facilities to control Drosophila fruit flies. September 21, 1988.

EPA SLN No. CA 88 0024. Sandoz Crop Protection Corp. Registration is for Javelin Biological Insecticide to be used on jojoba to control loopers. October 4, 1988.

EPA SLN No. CA 88 0026. Victoria Island Farms. Registration is for Lorsban 4E Insecticide to be used on asparagus to control asparagus aphids. October 17, 1988.

EPA SLN No. CA 88 0027. Toulumne County Agricultural Commissioner. Registration is for Tennesee Brand Tri-Basic Copper Sulfate to be used on greenhouse-grown cucumbers and tomatoes to control mites. October 20, 1988.

EPA SLN No. CA 88 0028. Santa Barbara County Dept. of Agriculture. Registration is for Weedar E–3 Broadleaf Herbicide to be used on riverbeds (dry) to control willows. October 24, 1988.

EPA SLN No. CA 88 0029. Tuolumne County Dept. of Agriculture. Registration is for Kelthane 35 Agricultural Miticide Wettable Powder to be used on greenhouse-grown cucumbers to control mites. March 26, 1988.

EPA SLN No. CA 88 0030. Modoc County Dept. of Agriculture. Registration is for Ortho Diquat Herbicide H/A to be used on field peas grown for seed for use as a desiccant to allow harvest of seed. November 17, 1988.

EPA SLN No. CA 88 0032. Monrovia Nursery Co. Registration is for Agrimycin 17 to be used on ornamentals not listed on the Federal label. November 29, 1988.

EPA SLN No. CA 88 0034. Rohm and Haas Co. Registration is for Goal 1.6E Herbicide to be used on onions to control canarygrass and several other weeds. December 7, 1988.

EPA SLN No. CA 88 0037. California Seed Association. Registration is for Fumitoxin Tablets to be used on alfalfa seed for export only to control various insects listed on the current Federally registered product. December 27, 1988.

EPA SLN No. CA 88 0038. California Seed Association, Registration is for Fumitoxin Tablets to be used on clover seed for export only to control various insects listed on the current Federally registered product. December 27, 1988.

Colorado

EPA SLN No. CO 88 0006. Sandoz Crop Protection Corp. Registration is for Banvel Herbicide to be used on small grains to control various weeds. April 8, 1988.

EPA SLN No. CO 88 0007. Fairfield American Corp. Registration is for Permanone VC 40 to be used on various locations in fields and protected locations in rodent habitat to control rodents. June 7, 1988.

EPA SLN No. CO 88 0008. Fairfield American Corp. Registration is for Permanone Pyrenone Liquid Dust to use at end of bait tubes to control various rodents. June 7, 1988.

EPA SLN No. CO 88 0009. Fairfield American Corp. Registration is for Pyrenone (4–0.05) Permanone 0.5 Dust to be used on insect bait tubes to control various rodents. June 7, 1988.

EPA SLN No. CO 88 0010. FMC Corp. Registration is for Talstar 10 WP to be used on nonedible ornamental plants, flowers, and nonbearing plants to control aphids. July 22, 1988.

EPA SLN No. CO 88 0011. Fairfield American Corp. Registration is for Permanone Tick Repellent to be used as clothing treatment only to control mosquitoes, ticks, and chiggers. November 1, 1988.

EPA SLN No. CO 88 0012. Schall Chemical Co. Registration is for Mer-Cap RTU to be used on potatoes to control various rots and molds. November 1, 1988.

EPA SLN No. CO 88 0013. Drexel Chemical Co. Registration is for Drexel Carbaryl 4L to be used on spruce, fir, and Douglas-fir to control tussock moths. November 1, 1988.

EPA SLN No. CO 88 0014. Fermenta Plant Protection Co. Registration is for Bravo 500 to be used on dry beans to control various plant diseases. November 1, 1988.

EPA SLN No. CO 88 0017. Hopkins Agricultural Chemical Co. Registration is for Ramik Green to be used on levees and ditch banks and around farm buildings to control ground squirrels. November 2, 1988.

EPA SLN No. 88 0019. Rhone-Poulenc AG Co. Registration is for Temik Brand 10G to be used on commercially grown ornamental plants to control certain insects, mites, and nematodes. December 27, 1988.

EPA SLN No. 88 0020. Rhone Poulenc AG Co. Registration is for Rovral Fungicide to be used on dry bulb onions to control botrytis blight and purple blotch. December 27, 1988.

EPA SLN No. CO 88 0021. Fermenta Plant Protection. Registration is for Bravo 720 to be used on dry beans to control rust, downy mildew, and cercospora leafspot. December 27, 1988.

EPA SLN No. CO 88 0021. Fermenta Plan Protection. Registration is for Bravo 720 to be used on dry beans to control rust, downy mildew, and cercospora leafspot. December 27, 1988.

Connecticut

EPA SLN No. CT 88 0010. FMC Corp. Registration is for Talstar 10 WP to be used on nonedible ornamental plants, flowers, and nonbearing plants and trees to control aphids, army worms, blackvine weevils and several other pests. October 12, 1988.

Delaware

EPA SLN No. DE 88 0002. Delaware Dept. of Agriculture Plant Industry Section. Registration is for Menthol to be used on honeybee hives to control tracheal mites. July 11, 1988.

Florida

EPA SLN No. FL 88 0014. FMC Corp. Registration is for Freshgard 71 to be used on citrus for postharvest treatment for control of citrus canker. September 30, 1988.

EPA SLN No. FL 88 0015. FMC Corp. Registration is for Freshgard 70 to be used on citrus for postharvest treatment for control of citrus canker. September 30, 1988.

EPA SLN No. FL 88 0016 Ciba-Geigy Agricultural Div. Registration is for Tilt 3.6 E to be used on sugarcane seed to control pineapple disease. October 3, 1988.

EPA SLN No. FL 88 0017. Custom Control and Pumps. Registration is for Custom-Chlor to be used on citrus

postharvest to control citrus canker. October 6, 1988.

EPA SLN No. FL 88 0018. Hopkins Agricultural Chemical Co. Registration is for Ramik Green to be used on ditchbanks of sugarcane fields to control rats. October 6, 1988.

EPA SLN No. FL 88 0019. Chempar, A Division of Lipha Chemicals. Registration is for Rozol Parafinized Pellets for Field Rodent Control to be used on various outdoor locations to control field rodents. October 17, 1988.

EPA SLN No. FL 88 0020. Agri-Chem, Inc. Registration is for Agri-Chlor 10 to be used on citrus for citrus canker quarantine. October 17, 1988.

EPA SLN No. FL 88 0021. Agricultural Division, Ciba-Geigy Corp. Registration is for Triumph 4E Insecticide to be used on tees, greens, and aprons of golf courses and on lawns and sod farms to control various insects. October 17, 1988.

EPA SLN No. FL 88 0022. Mobay Corp. Agricultural Chem. Div. Registration is for Nemacur 3 Turf Nematicide to be used on leather leaf fern to control nematodes. October 17, 1988.

EPA SLN No. FL 88 0023. Thompson-Hayward Chemical Co. Registration is for Sodium Hypochlorite Solution to be used on various citrus for quarantine use for control of citrus canker. November 4, 1988.

EPA SLN No. FL 88 0024. Platte Chemical Co. Registration is for Clean Crop Curbit EC Herbicide to be used on cucumbers, melons, and watermelons for preemergence control of certain annual grasses and broadleaf weeds. November 8, 1988.

EPA SLN No. FL 88 0025. Allied Universal Corp. Registration is for Chlorine Gas to be used on various citrus for quarantine use for control of citrus canker. November 7, 1988.

EPA SLN No. FK 88 0026. Allied Universal Corp. Registration is for Pool Guard Chlorinating Solution to be used on various citrus for quarantine use to control citrus canker. November 8, 1988.

EPA SLN No. FL 88 0027. B & W Quality Growers, Inc. Registration is for Kocide 101 to be used on watercress to control cercospora (leaf spot). November 18, 1988.

EPA SLN No. FL 88 0029. Uncal Chemicals Div., Uncal Corp. Registration is for Enquik to be used on peanuts to control various weeds. December 20, 1988.

Hawaii

EPA SLN No. HI 88 0001. Sandoz Crop Protection Corp. Registration is for Thuricide 32B to be used on watercress to control diamondback moths. December 30, 1988.

EPA SLN No. HI 88 0004. Platte Chemical Co. Registration is for Clean Crop Superior 70 Oil to be used on bananas to control black leaf streak. November 30, 1988.

Idaho

EPA SLN No. ID 88 0009. Platte Chemical Co. Registration is for Clean Crop Cheat Stop 90 WDG to be used on deep-furrow seeded winter wheat to control cheatgrass (downy brome). October 24, 1988.

EPA SLN No. ID 88 0010. E.I. du Pont de Nemours & Co. Registrations is for Du Pont Benlate 50 DF Fungicide to be used on sweet corn for seed treatment control of seed-borne diseases caused by Penicillium sp. Aspergillus. October 28, 1988.

Indiana

EPA SLN No. IN 88 0011. Aceto Agricultural Chemicals Corp. Registration is for Dimethogon 25 PW Dimethoate Insecticide to be used on soybeans to control two-spotted spider mites. August 2, 1988.

EPA SLN No. IN 88 0013. Platte Chemical Co., Inc. Registration is for Clean Crop Diazinon 500–AG to be used on soybeans to control spider mites. August 3, 1988.

EPA SLN No. IN 88 0014. Drexel Chemical Co. Registration is for Drexel Diazinon Insecticide to be used on soybeans to control spider mites. August 4, 1988.

EPA SLN No. IN 88 0015. Agricultural Division, Ciba-Geigy Corp. Registration is for Triumph 4E Insecticide to be used on tees, greens, and aprons of golf courses and on sod farms to control various insects. August 10, 1988.

EPA SLN No. IN 88 0016. Gowan Co. Registration is for Prokil Dimethoate E267 to be used on soybeans to control spider mites. August 11, 1988.

EPA SLN No. IN 88 0017. FMC Corp. Registration is for Talstar 10 WP to be used on ornamental trees, shrubs, plants, and flowers grown in the field to control aphids, armyworms, and several other pests. September 19, 1988.

Kansas

EPA SLN No. KS 88 0001. FMC Corp. Ag. Chemical Group. Registration is for Furadan 4 Flowable Insecticide/Nematicide to be used on sorghum to control chinchbugs and greenbugs. April 20, 1988.

EPA SLN No. KS 88 0002. FMC Corp. Ag. Chemical Group. Registration is for Furadan 4 Flowable Insecticide/Nematicide to be used on sorghum to control chinchbugs and greenbugs. April 27, 1988.

EPA SLN No. KS 88 0003. Uniroyal Chemical Co., Inc. Registration is for Comite to be used on corn to control mites. June 17, 1988.

Louisiana

EPA SLN No. LA 88 0008. Fermenta Plant Protection Co. Registration is for Bueno 6 to be used on cotton to control postemergence weeds. September 7, 1988.

EPA SLN No. LA 88 0009. Fermenta Plant Protection Co. Registration is for Arsonate Liquid to be used on cotton to control postemergence weeds. September 7, 1988.

EPA SLN No. LA 88 0010. Fermenta Plant Protection Co. Registration is for DSMA Liquid to be used on cotton to control postemergence weeds. September 7, 1988.

EPA SLN No. LA 88 0011. Coopers Animal Health, Inc. Registration is for Saber Insecticide Ear Tags to be used on beef and nonlactating dairy cattle and calves to control horn flies and face flies. September 12, 1988.

Maine

EPA SLN No. ME 88 0004. FMC Corp. Registration is for Furadan 4F Insecticide/Nematicide to be used on strawberries to control root weevils. September 22, 1988.

Michigan

EPA SLN No. MI 88 0011. Chevron Chemical Co. Registration is for Ortho Diquat H/A Herbicide to be used on potatoes for desiccation of potato plants to facilitate harvest. October 27, 1988.

Minnesota

EPA SLN No. MN 88 0001. Metropolitan Mosquito Control District, St. Paul. Registration is for Zoecon Altosid Liquid Larvicide Mosquito Growth Regulator to be used on field sites as larvicide growth regulator for control of mosquitoes. June 30, 1988.

Missouri

EPA SLN No. MO 88 0006. FMC Corp., Agricultural Chemical Group. Registration is for Command 4 EC Herbicide to be used on soybeans to control selected weed species applied preemergence. November 28, 1988.

Montana

EPA SLN No. MT 88 0002. J.T. Eaton & Co., Inc. Registration is for Eaton's Answer for the Control of Pocket Gophers to be used on rangeland, cropland, forest, and noncrop areas to control pocket gophers. December 28, 1988.

Nevada

EPA SLN No. NV 88 0008. Hopkins Agricultural Chemical Co. Registration is for Ramik Green to be used inside and outside of buildings, loading areas, under granaries, garbage dumps, etc. to control rats. September 16, 1988.

EPA SLN No. NV 88 0009. Fermenta Plant Protection Co. Registration is for Dacthal W–75 to be used on alfalfa grown for seed to control dodder. November 3, 1988.

EPA SLN No. NV 88 0010. J.T. Eaton & Co., Inc. Registration is for Eaton's Answer for the Control of Pocket Gophers to be used on rangeland, cropland, forest, and noncrop areas to control pocket gophers. November 18, 1988.

New Hampshire

EPA SLN No. NH 88 0002. FMC Corp. Agricultural Chemical Group. Registration is for Furadan 4 Flowable to be used on alfalfa new-seedling establishments to control alfalfa blotch, leafminers, and potato leafhoppers. November 8, 1988.

New Jersey

EPA SLN No. NJ 88 0005. Dow Chemical Co. Agricultural Products Dept. Registration is for Dursban TC to be used on plenum-type structures to control termites. September 16, 1988.

EPA SLN No. NJ 88 0006. Bellemead Develoment Corp. Registration is for Rodeo to be used on meadowlands to control phragmites. October 20, 1988.

EPA SLN No. NJ 88 0007. FMC Corp. Registration is for Furadan 15 Granules to be used on alfalfa to control nematodes, potato leafhoppers, and several other pests. October 26, 1988.

EPA SLN No. NJ 88 0008. FMC Corp. Registration is for Furadan 15 Granules to be used on nonbearing fruit trees to control nematodes. October 28, 1988.

North Carolina

EPA SLN No. NC 88 0008. Nor-Am Chemical Co. Registration is for Carzol SP to be used on greenhouse-grown ornamental plants to control thrips. September 15, 1988.

North Dakota

EPA SLN No. NC 88 0002. Coopers Animal Health, Inc. Registration is for Sabeř Insecticide Ear Tags to be used on beef and nonlactating dairy cattle and calves. October 5, 1988.

Ohio

EPA SLN No. OH 88 0010. Ciba-Geigy Agricultural Div. Registration is for Triumph 4E Insecticide to be used on lawns and golf courses and sod farms to control several pests. December 20, 1988.

South Dakota

EPA SLN No. SD 88 0002. Chempar, a Div. of Lipha Chemicals. Registration is for Rozol Pocket Gopher Bait to be used on rangelands, pastures, golf courses, rights-of-way and other noncrop areas. October 28, 1988.

Tennessee

EPA SLN No. TN 88 0006. Rhone Poulenc Ag Co. Registration is for Temik Brand 15G Aldicarb Pesticide to be used on soybeans to control nematodes. October 4, 1988.

EPA SLN No. TN 88 0007. Rhone Poulenc Ag Co. Registration is for Weedone 2,4-DP to be used on loblolly pine plantations to control certain species of hardwood brush and broadleaf weeds. October 4, 1988.

EPA SLN No. TN 88 0008. Rhone Poulenc Ag Co. Registration is for Weedone 2,4-DP to be used on forest sites in preparation to control oaks, elm, cherry, willow, and other similar species before planting seedlings. October 4, 1988.

EPA SLN No. TN 88 0009. Fairfield American Corp. Registration is for Permanone Tick Repellent to be used on domestic animals to control mosquitoes, ticks, and chiggers. October 28, 1988.

EPA SLN No. TN 88 0010. Beekeepers of Tennessee. Registration is for Menthol (100%) to be used on over-wintering honey bee hives to control tracheal mites. December 21, 1988.

EPA SLN No. TN 88 0011. Ed Heathman and Frank Heathman. Registration is for Menthol Crystals to be used on over-wintering honey bee hives to control tracheal mites. December 21, 1988.

Texas

EPA SLN No. TX 88 0001. Ciba-Geigy Corp., Agricultural Div. Registration is for Tilt Fungicide to be used on corn grown for seed to control corn leaf blight. September 15, 1988.

EPA SLN No. TX 88 0002. Wilbur Ellis Co. Registration is for Wilbur-Ellis Lorsban 50 SL to be used on stored planting seed to control various insect pests. September 28, 1988.

EPA SLN No. TX 88 0003. Pennwalt Corp. Registration is for Decco 240 Liquid Chlorine to be used on fruit and vegetable packing houses for sanitation. October 21, 1988.

EPA SLN No. TX 88 0006. E.I. du Pont de Nemours & Co. Registration is for Du Pont Sana XL Insecticide 0.66 EC to be used on cotton to control several pests. December 28, 1988.

EPA SLN No. TX 88 0007. E.I. du Pont de Nemours & Co. Registration is for Du Pont Sana XL Insecticide 0.66 EC to be used on cotton to control several pests. December 28, 1988.

Utah

EPA SLN No. UT 88 0004. Fermenta Plant Protection Co. Registration is for Dacthal W–75 to be used on alfalfa grown for seed to control dodder. November 3, 1988.

Virginia

EPA SLN No. VA 88 0007. Virginia Department of Agriculture and Consumer Service. Registration is for Methanol 100 to be used on honey bee colonies to control tracheal mites. November 16, 1988.

Washington

EPA SLN No. WA 88 0011. Sandoz Crop Protection Corp. Registration is for Spur 22 EW Insecticide to be used on alfalfa grown for seed only to control several pests. July 7, 1988.

EPA SLN No. WA 88 0012. FMC Corp. Agricultural Chemical Group. Registration is for Thiodan 3 EC to be used on seeded alfalfa to control spotted alfalfa aphids. June 21, 1988.

EPA SLN No. WA 88 0022. BASF Corp. Registration is for Poast Herbicide to be used on cabbage, carrots, and red beets for postemergence control of watergrass and other grass weeds. September 20, 1988.

EPA SLN No. WA 88 0023. Fermenta Plant Protection Co. Registration is for Daconil 2787 Flowable Fungicide to be used on nonbearing and flowering ornamental fruit trees. October 6, 1988.

EPA SLN No. WA 88 0024. Aceto Agricultural Chemicals Corp. Registration is for Dimethoate 267 E.C. to be used on wheat to control aphids and mites. October 18, 1988.

EPA SLN No. WA 88 0025. Wilbur-Ellis Co. Registration is for Dimethoate 267 to be used on wheat to control aphids. October 25, 1988.

EPA SLN No. WA 88 0026. American Cyanamid Co. Registration is for Prowl Herbicide to be used on alfalfa grown for seed to control several weeds. December 8, 1988.

Wyoming

EPA SLN No. WY 88 0006. Hopkins Agricultural Chemical Co. Registration is for Ramik Green to be used on various locations in the State to control ground squirrels. September 20, 1988.

EPA SLN No. WY 88 0008. Coopers Animal Health, Inc. Registration is for Sabeř Insecticide Ear Tags to be used on beef and nonlactating dairy cattle to control horn and face flies. October 17, 1988.

EPA SLN No. WY 88 0009. Gustafson, Inc. Registration is for Gustafson Flo-Pro IMZ Flowable Systemic Fungicide to be used on wheat and barley to control common root rot and barley leaf stripe. September 22, 1988. (Sec. 24, as amended, 92 Stat. 835 (7 U.S.C. 136).)

Dated: February 24, 1989.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 5833 Filed 3–14–89; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

[Report No.1769]

Petitions for Reconsideration and Clarification and Applications for Review of Actions in Rule Making Proceedings

March 9, 1989.

Petitions for reconsideration and clarification and applications for review have been filed in the Commission rule making proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, NW., Washington, DC, or may be purchased from the Commission's copy contractor International Transcription Service (202–875–3800). Oppositions to these petitions and applications must be filed within 15 days of the date of public notice of the petitions and applications in the **Federal Register**. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of § 73.1206: Broadcast of Telephone Conversations. (MM Docket No. 85–37, RM's 2564, 2571 & 4680) Number of petitions received: 2

Subject: Regulatory Policies and International Telecommunications. (CC Docket No. 86–494) Number of petitions received: 1

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Bastrop, Louisiana) (MM Docket No. 878–242, RM–5604) Number of petitions received: 1

Subject: Amendment of Parts 2 and 22 of the Commission's Rules and Permit Liberalization of Technology and Auxiliary Service Offerings in the Domestic Public Cellular Radio Telecommunications Service for Rural Cellular Service. (Gen Docket No. 87–390) Number of petitions received: 1

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Springdale, Arkansas, Carthage, Aurora and Willard, Missouri. (MM Docket No. 87–474, RM's 5855, 5878 & 5915) Number of petitions received: 2

Subject: Amendment of Parts 13 and 80 of the Rules concerning ship radio officer qualifying service endorsements. (Gen Docket No. 88–37) Number of petitions received: 1

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Evans, Martinez and Warrenton, Georgia) (MM Docket No. 88–51, RM's 6076 & 6265) Number of petitions received: 1

Applications for Review Filed

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Ponte Verde Beach, Florida) (MM Docket No. 85–376, RM's 4988 & 5378) Number of applications received: 1

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89–5977 Filed 3–14–89; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–821–DR]

Amendment to Notice of a Major Disaster Declaration; Kentucky

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Kentucky (FEMA–821–DR), dated February 24, 1989, and related determinations.

DATED: March 8, 1989.

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 February 24, 1989, 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 February 24, 1989:

The counties of Caldwell, Carlisle, Christian, Graves, Marshall, McCracken, and Trigg for Individual Assistance and 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. 89–5951 Filed 3–14–89; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL MARITIME COMMISSION

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.: 224–200096–003.

Title: North Carolina Terminal Agreement.

Parties:

North Carolina State Ports Authority
Senator Linie (USA) Inc.

Synopsis: The Agreement extends the term of the basic agreement for an additional two year period.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: March 10, 1989.

[FR Doc. 89–5902 Filed 3–14–89; 8:45 am]

BILLING CODE 6730–01–M

[Docket No. 89–07]

Inquiry Into Laws, Regulations and Policies of the Government of Ecuador Affecting Shipping in the United States/Ecuador Trade

AGENCY: Federal Maritime Commission.

ACTION: Notice of inquiry.

SUMMARY: The Federal Maritime Commission in response to information received from the Overseas Enterprises, Inc., a U.S.-owned carrier, and the Department of State, regarding the effect

of laws, regulations and policies of the Government of Ecuador on shipping conditions in the United States/Ecuador trade, is issuing this Notice of Inquiry to provide interested parties an opportunity to submit comments on shipping conditions in that trade. These comments will assist the Commission in determining whether issuance of a countervailing rule pursuant to section 19(1)(b) of the Merchant Marine Act, 1920, is warranted.

DATE: Comments due on or before April 14, 1989.

ADDRESS: Comments (Original and 15 copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573, (202) 523–5725.

FOR FURTHER INFORMATION CONTACT: Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573, (202) 523–5740.

SUPPLEMENTARY INFORMATION: On December 22, 1988, the Department of State ("DOS") transmitted to the Federal Maritime Commission ("FMC" or "Commission") a letter from Overseas Enterprises, Inc. ("OEI"), a U.S.-owned company, wherein OEI advises that it has been unable to reestablish a liquid bulk service in the U.S./Ecuador trade ("Trade") because of the Government of Ecuador's ("GOE") requirement that OEI employ U.S.-flag vessels in such a service. OEI contends that such a requirement arises from GOE cargo reservation laws which are applied only in the trade between the United States and Ecuador. OEI concludes that the cargo reservation laws of Ecuador have created conditions unfavorable to shipping in the Trade.

By letter of January 19, 1989, Commission staff requested that DOS advise the Commission of any efforts being made by the U.S. Embassy in Quito to reach a satisfactory resolution to the situation alleged by OEI and any other information that DOS may have regarding OEI's allegations. On February 8, 1989, DOS responded to the Commission's January 19 letter. This response included correspondence from OEI and the GOE's Director General of the Merchant Marine ("DIGMER"), as well as a copy of Resolution No. 012/87, a cargo reservation law. DOS reports that its involvement began in October 1987, when OEI initially requested assistance. DOS advises that the U.S. Embassy in Quito and the Consulate General in Guayaquil have raised the issue of OEI a number of times with GOE authorities in an effort to resolve the situation through diplomatic channels. It reports, however, that no such resolution has been reached and that it continues to seek a satisfactory resolution and will report further to the Commission on its efforts.

DOS states that OEI ceased operations in the Trade in 1983 when GOE laws allegedly made OEI participation impossible. Resolution No. 20/83 of 1983 reserved 50 percent of Ecuadorian imports of solid and liquid bulk cargo for Ecuadorian-flag vessels or foreign-flag vessels chartered by Ecuadorian shipping companies, and 50 percent for vessels flying the flag of the country of origin of the cargo. GOE Resolution No. 012/87 of March 1987, supercedes the 1983 resolution. Resolution No. 012/87 reserves solid and liquid bulk import cargo from the United States to Ecuador for Ecuadorian-flag vessels belonging to Ecuadorian shipping companies, or foreign vessels chartered by Ecuadorian shipping companies, or vessels flying the flag of the United States. The stated rationale in Resolution No. 012/87 for narrowing the application of the cargo reservation law solely to the trade between the United States and Ecuador is that 88 percent of Ecuador's imported bulk cargo originates "in the Gulf of the United States."

DOS and OEI communications indicate that OEI was informed by DIGMER that it could not operate a liquid bulk service in the U.S. Gulf to Ecuador trade unless it operates U.S.-flag vessels. OEI advises that the U.S. merchant marine does not have any vessels of the size and capabilities necessary to offer such a service in the Trade. OEI alleges, therefore, that the GOE has created a situation wherein an Ecuadorian-flag carrier, Maritima Transligra, has been given a monopoly position in the liquid bulk trade. Further, it is reported that OEI continues to receive inquiries from shippers interested in employing OEI services in the Trade, but the OEI has been unable to provide the service requested due to its inability to obtain traffic rights from DIGMER. DOS states that the allegations made by OEI have serious implications for U.S./Ecuador relations as well as for U.S. shipping policy.

OEI's allegations raise possible issues under section 19(1)(b) of the Merchant Marine Act, 1920, 46 U.S.C. app. 876(1)(b) ("Section 19").[1] On its face, Resolution No. 012/87 appears to restrict access of third-flag carriers to the Trade as well as limit the ability of a U.S. company to employ non-U.S.-flag vessels in the Trade. Further, the Resolution appears to restrict the ability of shippers to select the carrier of their choice. In order to assist the Commission in determining whether issuance of a countervailing rule pursuant to section 19 is warranted, interested parties are requested to submit information, comments and data concerning the current status and effects of GOE laws, rules and policies on the operations of carriers currently operating or proposing to operate in the Trade and on the ability of shippers to employ their preferred carriers.

Comments in response to this Notice of Inquiry need not necessarily be limited to the effect of specified GOE laws, rules and policies on solid or liquid bulk services. The Commission is interested in obtaining any and all information relating to any GOE laws and policies which may adversely affect shipping services in the Trade.

By letter the Commission is also requesting that the Department of State inform the Commission of its most recent efforts and prospects for a diplomatic resolution of the situation.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 89–5967 Filed 3–14–89; 8:45 am]

BILLING CODE 6730–01–M

[1] Section 19(1)(b) authorizes and directs the Federal Maritime Commission to "make rules and regulations affecting shipping in the foreign trade not in conflict with law in order to adjust or meet general or special conditions unfavorable to shipping in the foreign trade, * * * which arise out of or result from foreign laws, rules, or regulations * * *."

FEDERAL RESERVE SYSTEM

[Docket No. R–0661]

Risk on Automated Clearing House Transactions; Clarification and Extension of Comment Period

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed policy statement; clarification and extension of comment period.

SUMMARY: On March 2, 1989, the Board of Governors of the Federal Reserve System ("Board") published for comment several changes in the way that Federal Reserve Banks treat automated clearing house ("ACH") transactions. (54 FR 8822). Comments were due by April 3, 1989. The Board has extended the deadline for comments an additional 60 days, so the new deadline is June 2, 1989. In addition, the proposed policy statement is clarified by specifying that the proposed changes

only apply to commercial ACH transfers, not to Treasury payments.

DATE: Comments must be received by June 2, 1989.

ADDRESS: Comments, which should refer to Docket No. R–0661, may be mailed to the Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551, to the attention of Mr. William W. Wiles, Secretary, or delivered to room B–2223 between 8:45 a.m. and 5:15 p.m. Comments may be inspected in room B–1122 between 9:00 a.m. and 5:00 p.m., except as provided in § 261.8 of the Board's Rules Regarding Availablity of Information, 12 CFR 261.8.

FOR FURTHER INFORMATION CONTACT: Florence Young, Adviser, Division of Federal Reserve Bank Operations (202/452–3955); Oliver I. Ireland, Associate General Counsel (202/452–3625), or Elaine M. Boutilier, Senior Attorney, Legal Division (202/452–2418), Board of Governors of the Federal Reserve System, Washington, DC 20551. For the hearing impaired only, Telecommunications Device for the Deaf ("TDD"), Earnestine Hill or Dorothea Thompson (202/452–3544).

SUPPLEMENTARY INFORMATION: On March 2, 1989, the Board requested comments on proposals related to reducing risks related to ACH payments. These proposals included specifying the finality for ACH payments and procedures for reversing entries if finality is not to be granted. In response to a request, the Secretary of the Board, acting pursuant to delegated authority, 12 CFR 265.2(a)(6), has extended the comment period for 60 days.

In addition, it is clarified that these proposed changes to the treatment of ACH transactions apply only to commercial ACH transactions; they do not apply to any payments that are made pursuant to regulations of the U.S. Treasury Department, such as direct deposit of Social Security payments.

By order of the Secretary of the Board, acting pursuant to delegated authority, 12 CFR 265.2(a)(6), March 7, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89–5903 Filed 3–14–89; 8:45 am]

BILLING CODE 6210–01–M

First United Corporation et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have 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.

Each 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.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 5, 1989.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *First United Corporation*, Oakland, Maryland; to engage *de novo* through its subsidiary, Oakfirst Life Insurance Corporation, Phoenix, Arizona, in underwriting as reinsurer credit life and credit accident and health insurance issued by Security of America Life Insurance Company in connection with extensions of credit made by Applicant's subsidiary bank, First United National Bank & Trust, Oakland, Maryland, pursuant to § 225.25(b)(8) of the Board's Regulation Y. These activities will be conducted in Garrett and Allegany Counties, Maryland.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Farmers Capital Bank Corporation*, Frankfort, Kentucky; to engage *de novo* through its subsidiary, Money One Credit Corporation, Frankfort, Kentucky, in the consumer finance business pursuant to § 225.25(b)(1) of the Board's Regulation Y. These activities will be conducted in the State of Kentucky.

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *PSB Financial Corporation*, Many, Louisiana; to engage *de novo* in providing individuals, businesses, and nonprofit organizations with tax planning and preparation services pursuant to § 225.25(b)(21) of the Board's Regulation Y. These activities will be conducted in West Louisiana and East Texas. Comments on this application must be received by March 31, 1989.

Board of Governors of the Federal Reserve System, March 8, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89–5904 Filed 3–14–89; 8:45 am]

BILLING CODE 6210–01–M

GENERAL ACCOUNTING OFFICE

Exemptions of Remote or Inconsequential Financial Interests Under 18 U.S.C. 208(b)

AGENCY: General Accounting Office

ACTION: Notice of Exemptions Adopted Under 18 U.S.C. 208(b)

Federal government employees are prohibited by 18 U.S.C. 208(b) (1982) from participating in any particular matter affecting their financial interests. Section 208(b) permits the Comptroller General to exempt from the prohibition financial interests which are too remote or too inconsequential to affect the integrity of the services expected of General Accounting Office employees who hold such interests. Section 208(b)(2) requires that exempted financial interests be published in the **Federal Register.**

In accordance with the provisions of section 208(b)(2), the Comptroller General has determined that the following financial interests are too remote or too inconsequential to affect the integrity of GAO employees' services.

a. Securities issued by the United States Government or agencies thereof.

b. Policy holdings in an insurance company.

c. Deposits in a bank, savings and loan association, credit union or similar financial institution.

d. Shares of a widely held, diversified mutual fund and the holding of such fund, provided the employee has no role in investment decisions made by the

fund. The term mutual fund will be broadly construed to include any publicly traded pooling arrangement used for the purpose of diversification of investments, such as tax exempt bond funds. A fund is widely held if the holdings of an employee, his spouse, minor children, partners and organizations in which he serves as an officer, director, trustee or employee or in which he is negotiating for employment, constitute less than 1 percent of the number of investors and hold less than 1 percent of the assets of the fund. A fund is diversified if no more that 20 percent of its investments are in any single industry.

e. The investment interests of an organization exempt from taxation under 26 U.S.C. 501(c)(3), provided the employee has no role in making investment decisions for that organization. This exemption applies where an employee is an officer, director, trustee or employee of an organization such as a church or university, or arrangement concerning future employment with such an organization.

FOR FURTHER INFORMATION CONTACT: Frances McCoy, Management-Employee Relations, GAO Office of Personnel, (202) 275–3889.

James F. Hinchman,

General Counsel.

[FR Doc. 89–5944 Filed 3–14–89; 8:45 am]

BILLING CODE 1610–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Program Announcement Number 907; For Development and Initiation of a National Laboratory Training Network for State Laboratories

Introduction

The Centers for Disease Control (CDC) announces the availability of funds in Fiscal Year 1989 for a cooperative agreement with the Association of State and Territorial Public Health Laboratory Directors (ASTPHLD) to develop and implement a National Laboratory Training Network for laboratorians within the States.

Authority

This project is authorized by section 317(k)(3) of the Public Health Service Act, as amended.

Eligible Applicants

Assistance will be provided only to the Association of State and Territorial Public Health Laboratory Directors (ASTPHLD) for this project. ASTPHLD is an organization that represents all the public health laboratory officials of each State and Territory. By working through its own membership, the ASTPHLD Training Committee, other affiliate organizations, and the Public Health Foundation, ASTPHLD has developed a unique knowledge and understanding of the needs and operations of State health laboratory agencies. The members of ASTPHLD have already gained an enormous wealth of experience in information systems and laboratory training and have identified laboratory training programs as a priority need for State health agencies. As an organization, ASTPHLD has direct, familiar, and certain access to its own membership of chief public health laboratory officials, and therefore, has the capacity to meet the objectives of this agreement in a timely, and forthright manner.

Availability of Funds

It is expected that up to $1,000,000 will be available during FY 1989 to support this cooperative agreement for a 12-month budget period. Estimated cost of the remaining years of this 5-year project will be $1,000,000 each. Continuation awards within the 5-year project period, will be made on the basis of satisfactory progress in meeting project objectives and is subject to the availability of funds. The funding estimate outlined above may vary and is subject to change.

Purpose

The purposed cooperative agreement is intended to address the need to maintain effective laboratory information and management systems and for State health agencies to practice effective laboratory training.

The objective is to establish a National Laboratory Training Network consisting of seven Area Laboratory Training Alliances. Each area resource office will consist of space for staff and an area library to house training products available for continuous use within the area. There will be an area resource director and a CDC training advisor to assist State training coordinators in the delivery, assessment and evaluation of training activities; promote interstate communication; and serve ASTPHLD in training related activities.

The field training efforts will include HIV/retrovirus test procedures. Training may occur at any site within any State in the region. States will work together to conduct area training needs assessments (TNA) to guide the development of training products. After the TNA is conducted, the area resource director will work with the State training coordinator to identify resources and utilize available training services to meet the need in their States.

Program Requirements

1. ASTPHLD Activities

a. Maintain and provide to the public health laboratory community management and information systems. These systems include, but are not limited to, work measurement standards, standard cost accounting methodology, consolidated annual reports of State and territorial public health laboratory activities, annual laboratory work force profiles, personnel classification guides, and data processing systems.

b. Develop an implementation plan for the National Laboratory Training Network, selecting sites for resource offices and providing oversight through the ASTPHLD.

c. Develop a mechanism for submitting initiatives for the seven area laboratory training alliances (ALTA). Develop guidelines for ALTA resource office operations.

d. Select seven Area Resource Directors who will administer the Area Resource Office and serve as the focus for communication among CDC, States within area alliances, ASTPHLD, and the National Laboratory Training Network Office (ASTPHLD headquarters). These Area Resource Directors will also assist in conducting and analyzing training needs assessments, develop and maintain training resource roster of content specialists and training products, coordinate the area alliance training calendar, promote area development of training products, and maintain a resource library.

e. Maintain a forum for effective exchange of information and methodologies which prove to be effective in promoting the transfer of laboratory technology and the improvement of laboratory services in the U.S.

f. Evaluate the effectiveness of the National Laboratory Training Network in meeting the training needs of the Nation's laboratories.

g. Develop a plan to establish and strengthen new Federal, state and local health partnerships to address high priority laboratory issues and national laboratory objectives.

2. CDC Activities

a. Provide a forum for communication, coordination, collaboration and

consensus development among the participants in the National Laboratory Training Network as well as a similar forum for a national laboratory partnership.

b. Serve as a collaborator in the design, development, promotion, and evaluation of laboratory training materials.

c. Provide the interface between the educational and technical experts who develop and deliver laboratory training.

d. Compile and maintain national laboratory training resource guides and national training calendars.

e. Collaborate in the development and delivery of train-the-trainer workshops and seminars.

f. Collaborate in the evaluation of the overall effectiveness of the National Laboratory Training Network.

g. Collaborate in establishment of a Federal/State/Private Partnership to promote quality laboratory practice to achieve national health objectives.

Review and Evaluation Criteria

The application will be reviewed and evaluated on the following:

A. Extent to which the applicant understands the requirements, problems, objectives, complexities, and interactions required of this cooperative agreement;

B. Degree to which proposed objectives are clearly stated, realistic, measurable, time-phased, and related to the purpose of this project;

C. Degree to which the applicant provides evidence of an ability to carry out the proposed project and the extent to which the applicant institution documents demonstrated capability to achieve objectives similar to those of this project;

D. Extent to which professional personnel involved in this project are qualified, including evidence of past achievements appropriate to this project; and

E. Adequacy of plans for administering the project.

Executive Order 12372 Review

The application is not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number assigned to this program is 13.262.

Application Submission and Deadline

The Association of State and Territorial Public Health Laboratory Directors has been notified of the availability of funds for this project and must submit an original and two copies of application form PHS 5161–1 to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road NE., Room 300 (E–14), Atlanta, Georgia 30305 on or before April 15, 1989.

Where to Obtain Additional Information

If you are interested in obtaining additional information regarding this project, please refer to Announcement Number 907 and contact the following:

Business: Terry Maricle, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 300 (E–14), Atlanta, Georgia 30305, Telephone: (404) 842–6575 or FTS 236–6575.

Technical: Carl H. Blank, Division of Training (G–25), Training and Laboratory Program Office, Centers for Disease Control, Atlanta, Georgia 30333, Telephone: (404) 639–3874 or FTS 236–3874.

Dated: March 7, 1989.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 89–5907 Filed 3–14–89; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

[Docket No. 88N–0335]

Frank Veterinary Laboratories et al.; Drugs Containing Sulfamethazine, Sulfaquinoxaline, Sulfamerazine, Sulfathiazole, Sulfapyridine, or Sulfanilmaide for Oral, Injectable, Intramammary, or Intrauterine Use in Food-Producing Animals; Refusal to Approve NADA's

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA), Center for Veterinary Medicine (CVM), is issuing a final order refusing to approve certain new animal drug applications (NADA's) for drugs containing sulfamethazine, sulfaquinoxaline, sulfamerazine, sulfathiazole, sulfapyridine, or sulfanilamide for oral, injectable, intramammary, or intrauterine use in food-producing animals. Each of the NADA's in question was listed in a notice of opportunity for a hearing, published in the Federal Register of November 15, 1988 (53 FR 46050), on a proposal by CVM to refuse approval of the NADA's. This action is being taken because the sponsors either did not respond to the notice of opportunity for a hearing by December 15, 1988, as provided by the November 15, 1988, notice, or affirmatively elected not to avail themselves of an opportunity for a hearing on the refusal to approve the applications.

DATES: The refusals to approve certain NADA's are effective March 15, 1989; distribution of the products must cease May 15, 1989.

FOR FURTHER INFORMATION CONTACT: Philip J. Frappaolo, Center for Veterinary Medicine (HFV–240), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4940.

SUPPLEMENTARY INFORMATION:

I. Background Information

In the Federal Register of November 15, 1988 (53 FR 46050) (corrected December 12, 1988 (53 FR 49968), and December 23, 1988 (53 FR 51950)), CVM provided a notice of opportunity for a hearing on its proposal to refuse approval of 142 listed pending NADA's sponsored by 11 firms for products covered by § 510.450 (21 CFR 510.450). Section 510.450 provides for interim marketing of drugs that contain sulfamethazine, sulfaquinoxaline, sulfamerazine, sulfathiazole, sulfapyridine, or sulfanilamide for oral, injectable, intramammary, or intrauterine use in food-producing animals and that are the subject of pending applications. The notice of opportunity for a hearing gave sponsors until December 15, 1988, to request a hearing on the proposed refusal.

II. List of Firms Having NADA's Subject to This Notice

1. Frank Veterinary Laboratories, 149 East Thompson, West St. Paul, MN 55118.
2. Veterinary Laboratories, Inc., 12340 Santa Fe Dr., Lenexa, KS 66215.
3. Illini Skylab, Inc., 1000 Macomb Rd., Rushville, IL 62681.
4. Salsbury Laboratories, Inc., 2000 Rockford Rd., Charles City, IA 50616–9989.
5. Norden Laboratories, Inc., 601 West Cornhusker Highway, Lincoln, NE 68521.

III. Affected NADA's and Grounds for Refusing Approval

All the pending NADA's for the sulfonamide-containing drugs affected by this notice are listed in the tables below, by the same drug groups and in

the same format used in the November 15, 1988, notice of opportunity for a hearing. The tables list each pending NADA, current sponsor, and product name. The grounds on which CVM provided an opportunity for a hearing on the proposed refusal to approve each listed NADA under section 512(d)(1) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360b(d)(1)) and FDA's regulations were provided in detail in the November 15, 1988, notice of opportunity for a hearing, which is being made a part of this notice by reference.

Frank Veterinary Laboratories, Veterinary Laboratories, Inc., and Illini Skylab, Inc., did not respond to the November 15, 1988, notice of opportunity for a hearing and CVM is refusing to approve those firms' NADA's. Salsbury Laboratories, Inc., by a letter dated December 14, 1988, stated that it elected not to request a hearing on the proposal to refuse approval of 11 of its pending NADA's, and CVM is refusing to approve those applications. Norden Laboratories, Inc., by a letter dated December 8, 1988, stated that it elected not to request a hearing on the proposal to refuse approval of two of its pending NADA's, and CVM is refusing to approve those applications. Therefore, under section 512(d)(1) of the act and § 514.200 (21 CFR 514.200), CVM is issuing this refusal to approve the following NADA's for the listed products, effective March 15, 1989. Because the NADA's are no longer pending, the products may no longer be marketed under § 510.450. To facilitate an orderly transition to the use of approved new animal drugs, however, distribution of the products is not required to cease until May 15, 1989.

NADA number	Sponsor	Product name
	A. SULFAMETHAZINE ALONE	
099-846	Salsbury Laboratories, Inc.	Sodium Sulfamethazine, 12.5% Drinking, Water Solution
099-904	Veterinary Laboratories, Inc.	Sulfamethazine Boluses, 15 Grams
099-910	Veterinary Laboratories, Inc.	Sulfamethazine Sodium Solution 25%
099-998	Illini Skylab, Inc.	Liquid Vimethazine-25
100-024	Veterinary Laboratories, Inc.	Sulfamethazine Solution 25%
100-028	Illini Skylab, Inc.	Vimethazine
100-071	Frank Veterinary Laboratories.	Frank Sodium Sulfamethazine Sorbitol Solution
100-126	Illini Skylab, Inc.	Sulfamethazine Boluses
	B. SULFATHIAZOLE ALONE OR IN COMBINATION WITH OTHER SULFA PRODUCTS	
099-857	Salsbury Laboratories.	Sodium Sulfathiazole Soluble Powder
100-025	Veterinary Laboratories, Inc.	Tri-Sul 2MT Triple Sulfa Solution 24% Sulfamethazine sodium Sulfathiazole sodium Sulfamerazine sodium
100-099	Illini Skylab, Inc.	Thiazole-Sodium Sulfathiazole sodium
100-117	Illini Skylab, Inc.	Thiazole-Sodium Sulfathiazole sodium
	C. SULFAQUINOXALINE ALONE OR IN COMBINATION WITH OTHER SULFA PRODUCTS	
099-867	Salsbury Laboratories, Inc.	Sulquin-40 Medicated Premix Sulfaquinoxaline
100-029	Illini Skylab, Inc.	20% Sulfa-Pol Liquid Concentrate Sulfamerazine Sulfamethazine Sulfaquinoxaline
	D. SULFAMERAZINE	
None.		
	E. SULFAPYRIDINE ALONE OR IN COMBINATION WITH OTHER SULFA PRODUCTS	
099-986	Norden Laboratories, Inc.	Tri-Sulfa-G Sulfonamide Solution Sulfamethazine Sulfathiazole Sulfapyridine
100-070	Frank Veterinary Laboratories.	Frank Triple Sulfa Solution (INJ) Sulfamethazine sodium Sulfathiazole sodium Sulfamerazine sodium
100-072	Frank Veterinary Laboratories.	Frank Triple Sulfa Solution Oral 12% Sulfamethazine sodium Sulfathiazole sodium Sulfapyridine sodium
	F. SULFANILAMIDE ALONE OR IN COMBINATION WITH OTHER SULFA PRODUCTS	
099-851	Salsbury Laboratories, Inc.	Sulfanilamide
099-861	Salsbury Laboratories, Inc.	Sulfanilamide Boluses
099-880	Veterinary Laboratories, Inc.	Tri-Metha Bolus Sulfanilamide Sulfathiazole Sulfamethazine
100-123	Illini Skylab, Inc.	Triple Sulfa Bolus Sulfanilamide Sulfathiazole Sulfamethazine
	G. NEW ANIMAL DRUGS CONTAINING SULFONAMIDES IN COMBINATION WITH NUTRIENTS OR OTHER DRUGS	
099-844	Salsbury Laboratories, Inc.	Hog & Cattle Sulfa Sulfathiazole sodium sesquihydrate Ethylenediamine dihydroiodide Potassium chloride Sodium chloride Sodium carbonate monohydrate
099-856	Salsbury Laboratories, Inc.	Hog & Cattle Sulfa with Vitamins and Electrolytes Sulfathiazole sodium sesquihydrate Potassium chloride Sodium chloride Sodium carbonate Vitamin A Vitamin D_3
099-862	Salsbury Laboratories, Inc.	SM-15 and SM-30 Sulfa Boluses with Electrolytes Sulfamethazine Sodium Potassium Calcium Magnesium Chloride
099-863	Salsbury Laboratories, Inc.	90-90-60 Sulfa Boluses with Electrolytes Sulfathiazole Sulfanilamide Sulfamethazine Calcium Chloride Magnesium Potassium Sodium
099-864	Salsbury Laboratories, Inc.	T-M-P 80 Boluses with Electrolytes Sulfathiazole Sulfamethazine Sulfapyridine Calcium Chloride Magnesium Potassium Sodium
099-865	Salsbury Laboratories, Inc.	Triple Sulfa Boluses with Electrolyte 240 Grains & 480 Grains Sulfathiazole Sulfamethazine Sulfanilamide Calcium Chloride

NADA number	Sponsor	Product name
		Magnesium Potassium Sodium
099–868	Veterinary Laboratories, Inc.	Sulfa-Urea Bolus Urea Sulfanilamide Sulfathiazole
099–907	Veterinary Laboratories, Inc.	Sulfathiazole Uterine Boluses Sulfathiazole Urea
099–983	Illini Skylab, Inc.	Triple Sulfa with Electrolytes Sulfamethazine sodium Sulfathiazole sodium Sulfamerazine sodium Sodium Potassium Calcium Magnesium as chloride, carbonate, sulfate, and lactate, plus trace amounts of cobalt, zinc, copper, manganese, and iron
099–988	Norden Laboratories, Inc.	Sulkamycin-S Powder Sulfamethazine Neomycin sulfate
100–027	Illini Skylab, Inc.	Sulfa-Pol Plus TA Soluble Concentrate Sulfamethazine sodium Sulfamerazine sodium Sulfaquinoxaline sodium Thiamine hydrochloride Vitamin A palmitate water
100–098	Illini Skylab, Inc.	Vi-Lite Sodium Sulfathiazole with Electrolytes Sodium sulfathiazole Sodium Potassium Calcium Magnesium Ethylenediamine dihydriodide Vitamin A Vitamin D Iron occurring as chloride, carbonate, sulfate, phosphate, and lactate plus trace amounts of cobalt, zinc, copper, and manganese
100–118	Illini Skylab, Inc.	Sulfamethazine Boluses wtih Electrolytes Sulfamethazine Sodium Potassium Calcium Magnesium
100–122	Illini Skylab, Inc.	Triple Sulfa Boluses with Electrolytes Sulfanilamide Sulfathiazole Sulfamethazine Potassium, calcium, magnesium, sodium, and trace amounts of cobalt, zinc, manganese, copper, and iron.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director of the Center for Veterinary Medicine (21 CFR 5.84).

Dated: March 8, 1989.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 89–5996 Filed 3–14–89; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 89F–0051]

Minnesota Mining and Manufacturing Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Minnesota Mining and Manufacturing Co. has filed a petition proposing that the food additive regulations be amended to provide for additional vinylidene fluoride-hexafluoropropene copolymers as adjuvants in the production of olefin polymers.

FOR FURTHER INFORMATION CONTACT: Gillian Robert-Baldo, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 9B4129) has been filed by Minnesota Mining and Manufacturing Co., 3M Center, St. Paul, MN 55144–1000, proposing that § 177.1520 *Olefin polymers* (21 CFR 177.1520) be amended to provided for additional vinylidene fluoride-hexafluoropropene copolymers as adjuvants is the production of olefin polymers.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: March 7, 1989.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89–5939 Filed 3–14–89; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 89F–0042]

Pfizer Central Research, Pfizer, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Pfizer Central Research, Pfizer, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of polydextrose in sweet sauces, toppings, and syrups.

FOR FURTHER INFORMATION CONTACT: John W. Gordon, Center for Food Safety and Applied Nutrition (HFF–334), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–426–5487.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 9A4126) has been filed by Pfizer Central Research, Pfizer, Inc., 235 East 42nd St., New York, NY 10017, proposing that the food additive regulations be amended to provide for the safe use of polydextrose in sweet sauces, toppings, and syrups.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: February 23, 1989.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89-5940 Filed 3-14-89; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 89N-0092]

Drug Export; Demerol® Hydrochloride (Meperidine Hydrochloride, USP)

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Sterling Drug Inc. has filed an application requesting approval for the export of the human drug Demerol® Hydrochloride (meperidine hydrochloride, USP) to Canada.

ADDRESS: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Rudolf Apodaca, Division of Drug Labeling Compliance (HFD-310), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8063.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 99-660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of drugs that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Sterling Drug Inc., 90 Park Ave., New York, NY 10016, has filed an application requesting approval for the export of the drug Demerol® Hydrochloride (meperidine hydrochloride, USP), to Canada. This product is used in the relief of moderate to severe pain in may medical, surgical, obstetrical, and dental situations. The application was received and filed in the Center for Drug Evaluation and Research on February 24, 1989, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by March 27, 1989, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802, Pub. L. 99-660 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: March 6, 1989.

Daniel L. Michels,

Director, Office of Compliance, Center for Drugs Evaluation and Research.

[FR Doc. 89-5997 Filed 3-14-89; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 89N-0093]

Drug Export; Hypaque® Meglumine 18%

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Sterling Drug Inc. has filed an application requesting approval for the export of the human drug Hypaque® Meglumine 18% to Canada.

ADDRESS: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any further inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Rudolf Apodaca, Division of Drug Labeling Compliance (HFD-310), Center for Drug Evaluation Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8063.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 99-660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of drugs that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Sterling Drug Inc., 90 Park Ave., New York, NY 10016, has filed an application requesting approval for the export of the drug Hypaque® Meglumine 18%, to Canada. This product is used as a radiopaque contrast media. The application was received and filed in the Center for Drug Evaluation and Research on February 24, 1989, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by March 27, 1989, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802, Pub. L. 99-660 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: March 6, 1989.

Daniel L. Michels,

Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 89-5998 Filed 3-14-89; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 89N-0091]

Drug Export; Marcaine® (Bupivacaine Hydrochloride Injection, USP) and Marcaine® E (Bupivacaine and Epinephrine Injection, USP)

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Sterling Drug Inc. has filed an application requesting approval for the export of the human drug Marcaine® (bupivacaine hydrochloride injection, USP) and Marcaine® E (bupivacaine and epinephrine injection, USP) to Canada.

ADDRESS: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Rudolf Apodaca, Division of Drug Labeling Compliance (HFD-310), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8063.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 99-660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of drugs that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Sterling Drug Inc., 90 Park Ave., New York, NY 10016, has filed an application requesting approval for the export of the drug Marcaine® (bupivacaine hydrochloride injection, USP) and Marcaine® E (bupivacaine and epinephrine injection, USP), to Canada. This product is used as a long acting local anesthetic for epidural anesthesia, nerve block, and infiltration. The application was received and filed in the Center for Drug Evaluation and Research on February 24, 1989, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by March 27, 1989, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802, Pub. L. 99-660 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: March 6, 1989.

Daniel L. Michels,

Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 89-5999 Filed 3-14-89; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 89N-0073]

Public Meeting; Development of Educational Information for Women Considering Implantation of Breast Prostheses

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a 2-day meeting to develop educational materials for women considering surgical implantation of breast prostheses devices. FDA is inviting interested persons, including device manufacturers, health professional organizations, industry and consumer groups, and health educators to attend the meeting. Because of space constraints, attendance can be assured only for those persons who make telephone reservations.

DATES: The open meeting will be held on Wednesday, March 22, 1989, 9 a.m. to 5:30 p.m., and Thursday, March 23, 1989, 8 a.m. to 3 p.m. Interested persons, whether or not they are able to attend, may submit written comments on the issues described in this notice by May 15, 1989. Telephone reservations regarding attendance should be made with the contact person listed below by March 20, 1989.

ADDRESSES: The meeting will be held at the Days Inn, Congressional Park, 1775 Rockville Pike, Rockville, MD 20852. Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, referencing the docket number found in the heading of this notice.

FOR FURTHER INFORMATION CONTACT: Joan M. Rudick, Center for Devices and Radiological Health, (HFZ-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4190.

SUPPLEMENTARY INFORMATION: Classification of medical devices in commercial distribution is required by the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301-392). In the **Federal Register** of June 24, 1988 (53 FR 23856), FDA published a final rule classifying 51 general and plastic surgery devices. In that rule, FDA classified the silicone inflatable breast prosthesis (21 CFR 878.3530) and the silicone gel-filled breast prosthesis (21 CFR 878.3540) into class III. The effect of classifying a device into class III is to require each manufacturer of such devices, to submit to FDA a premarket approval application (PMA) that includes information providing reasonable assurance of the safety and effectiveness of the device.

In the **Federal Register** of November 2, 1988 (53 FR 44239), FDA announced a meeting of the agency's General and Plastic Surgery Devices Advisory Committee (the committee) to be held on November 22, 1988. The committee discussed the types of data needed to assess the safety and effectiveness of these breast prostheses devices. As part of that discussion, the committee recommended, and FDA agreed, that the agency should develop an educational program to assure that women considering surgical implantation of breast prostheses devices are fully informed of the benefits and risks associated with the devices before consenting to the surgical procedure.

In response to the committee's recommendation, FDA developed a plan to convene relevant members of health professional groups, the industry, consumer groups, and health educators to develop educational materials for women regarding breast implants. In the Federal Register of December 29, 1988 (53 FR 52790), FDA announced another meeting of the committee to be held on January 26, 1989. At that time the committee agreed with FDA's plans to convene a meeting to develop the educational materials.

Accordingly, FDA is inviting interested persons to attend this meeting. Interested persons who will be unable to attend the meeting may submit written comments to the Dockets Management Branch (address above) that set forth their view on the issues outlined in this notice. Minutes of the meeting will be made available. Submission of written comments is encouraged. The comments will be carefully considered before the educational materials are approved for use.

Dated: March 9, 1989.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-5938 Filed 3-10-89; 10:53 am]

BILLING CODE 4160-01-M

National Institutes of Health

National Institute of Dental Research; Meeting for Industry and Research Representatives Regarding the NIDR "Long-Range Plan for the 1990s"

The National Institute of Dental Research (NIDR) has initiated the development of a Long-Range Research Plan for the 1990s. As part of this effort, a set of research recommendations has been proposed be expert panels for each of the following six areas:

(1) Dental Caries, Fluoride Studies, Nutrition, Pulp Biology, and Restorative Materials;

(2) Periodontal Diseases and Dental Implants;

(3) Congenital Craniofacial Malformations, Acquired Craniofacial Defects, Dentofacial Malrelations, and Minealized Tissue Studies;

(4) AIDS, Salivary Glands and Secretions, and Soft Tissue Diseases;

(5) Orofacial Pain and Oral Sensory-motor Dysfunctions; and

(6) Aging, Epidemiology, Health Promotion/Disease Prevention, Science Transfer, and Psychoneuroimmunology.

The NIDR is inviting representatives of private industry to discuss specific Long-Range Research Plan recommendations which may be appropriate for collaborative efforts. For this purpose, a meeting will be convened on May 16, 1989, in Building 31, Conference Room 10, National Institutes of Health, Bethesda, Maryland, from 9 a.m. to adjournment.

The meeting will be open to the public. Attendance will be limited to space available.

For further information, please contact Dr. James Lipton, Chief, Planning and Evaluation Section, Office of Planning, Evaluation, and Communications, NIDR, NIH, Room 2C-36, Building 31, 9000 Rockville Pike, Bethesda, MD 20892 (telephone 301/496-6705).

Dated: March 8, 1989.

James B. Wyngaarden,

Director, NIH.

[FR Doc. 89-5978 Filed 3-14-89; 8:45 am]

BILLING CODE 4140-01-M

Consensus Development Conference on Oral Complications of Cancer Therapies: Diagnosis, Prevention, and Treatment

Notice is hereby given of the NIH Consensus Development Conference on "Oral Complications of Cancer Therapies: Diagnosis, Prevention, and Treatment," sponsored by the National Institute of Dental Research, the National Cancer Institute, the Clinical Center, and the Food and Drug Administration in collaboration with the NIH Office of Medical Applications of Research. The conference will be held on April 17-19, 1989, in the Masur Auditorium of the Warren Grant Magnuson Clinical Center (Building 10) at the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

The oral cavity is a common site of complications resulting from cancer therapies. Surgical, medical (chemotherapeutic), and radiation treatments all have acute and chronic effects on the mouth and oral functions. Oral complications are frequent and serious and contribute to the morbidity and mortality of cancer patients.

Dental and medical professionals debate the usefulness of treating oral complications before beginning cancer therapy. Controversy exists concerning the most effective means of limiting oral complications by pretherapy interventions and the strategies indicated for management of acute and chronic complications arising during cancer therapy.

The conference will bring together dentists and physicians, including specialists in oral medicine, oncology, oral surgery, radiotherapy, surgery and pathology, nurses, other health care professionals, pharmacists, pharmacologists, and representatives of the public. Following two days of presentations by dental and medical experts and discussion by the audience, a consensus panel will weigh the scientific evidence and formulate a draft statement in response to several key questions:

- Is there a role for pretherapy interventions affecting the oral cavity in reducing the incidence of oral complications in the cancer patient?
- Which pretreatment strategies are optimal to prevent or minimize oral complications?
- What are the most effective strategies for management of acute oral complications occurring during cancer therapy?
- What are the indicated strategies for management of chronic oral complications following cancer therapy?
- What are the directions for future research?

On the final day of the meeting, the Consensus Panel chairman will read the draft statement to the conference audience and invite comments and questions.

Information on the program may be obtained from: Kathleen Edmonds, Prospect Associates, 1801 Rockville Pike, Suite 500, Rockville, Maryland (301) 468-6555.

Dated: March 9, 1988.

James B. Wyngaarden

Director, NIH.

[FR Doc. 89-5979 Filed 3-14-89; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N-89-1898; FR-2529]

Policy on Establishment of Ceiling Rents for Indian Housing

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of HUD Policy on Establishment of Ceiling Rents for Indian Housing.

SUMMARY: This Notice informs the public that HUD Indian Field Offices will consider applications from Indian Housing Authorities (IHAs) for waiver of the requirements of 24 CFR 913.107 and for permission to adopt rents for projects or dwelling units that will

establish a cap on the total tenant payment computed under that section. Where the conditions set out in this Notice are met, HUD will waive the cited regulation to permit IHAs to establish ceiling rents for Indian rental housing projects. Section 102(a) (entitled "Economic Rent") of the Housing and Community Development Act of 1987 (1987 Act) amended section 3(a) of the United States Housing Act of 1937 (1937 Act) to allow IHAs to establish, upon approval by HUD, maximum rents, or "ceiling rents," in Indian housing projects. Until HUD proposes a rule for public comment and adopts a final rule for effect, IHAs may apply to HUD for permission to establish ceiling rents that are not more than a family would pay under the present income-based formula and not less than the average monthly amount of debt service and operating expenses attributed to units of similar size in Indian housing projects owned and operated by the IHA.

EFFECTIVE DATE: March 15, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Dominic Nessi, Director, Office of Indian Housing, Department of Housing and Urban Development, Room 4232, 451 Seventh Street SW., Washington, DC 20410; telephone number (202) 755–1015. Hearing- or speech-impaired persons may call HUD's TDD number (202) 426–0015. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The collection of information requirements contained in this Notice have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 and have been assigned OMB control number 2577–0118, which expires February 28, 1990. Public reporting burden for each of these collections of information is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided in this Notice under the heading *Other Matters.* Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street SW., Room 10276, Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

I. Introduction

Section 102(a) of the 1987 Act amended section 3(a) of the 1937 Act to permit IHAs to establish, upon approval by HUD, ceiling rents in Indian housing projects. Section 3(a) of the 1937 Act (implemented by HUD at 24 CFR 913.107) requires that the tenant's rent be based on the tenant family's income. The Act establishes the tenant's rent as the highest of (1) 30 percent of the family's monthly adjusted income; (2) 10 percent of the family's monthly income; or, (3) if a family receives welfare assistance and the grant is subject to adjustment in accordance with actual housing costs, any portion of that assistance designated for housing costs. (For purposes of this Notice, section 3(a) rent will be referred to as "income-based rent". The term "rent" refers to the total tenant payment that is payable by the tenant, including any utility allowance.)

Section 102(a) amended section 3(a) to allow an IHA to establish, with HUD approval, a maximum rent that would be not more than the present income-based rent and not less than the average monthly amount of debt service and operating expenses attributed to units of similar size in Indian housing projects owned and operated by the IHA. (For purposes of this Notice, section 102(a) rent will be referred to as "ceiling rent".)

Ceiling rents are based on the *dwelling unit,* whereas rents under section 3(a) of the 1937 Act are based on the tenant family's *income.* Section 102(a) authorizes an IHA to establish ceiling rents as an alternative rent, but IHAs are not required to do so. An IHA may establish ceiling rents for particular classes of units, particular projects, or the entire inventory of the IHA.

Tenants do not have a right to ceiling rents if an IHA does not adopt them. However, once ceiling rents have been established by an IHA, each family residing in, and each new tenant of, an affected dwelling unit would be charged the *lower* of the ceiling rent for that unit or the family's income-based rent. There is no limitation on the time period that a family in Indian housing may be eligible for ceiling rents. If a family on ceiling rent experiences a change in financial circumstances such that an income-based rent would be lower than the ceiling rent, the family must be given the benefit of the lower rent.

The IHA may revoke or raise its ceiling rents at any time after giving reasonable notice to the affected tenants. The IHA must revoke or change its ceiling rents if directed by HUD to do so for reasonable cause.

II. Applicability

This Notice applies only to Indian rental housing projects assisted under the 1937 Act. It does not apply to the Turnkey III and Mutual Help Homeownership programs. (The current regulations already provide a cap on tenant payment for these programs. See 24 CFR 905.416(a)(2) and 24 CFR 904.107(h).) Although section 102(a) of the 1987 Act also authorizes ceiling rents in public housing projects and in lower income housing projects assisted under section 8 that contain more than 2,000 dwelling units, this Notice does not apply to public housing projects or to any section 8 program fitting that description.

III. Purpose of Ceiling Rent

Since 1982, income-based rent has been the only method available to IHAs for calculating rent. The purpose of ceiling rents is to provide a cap on rents for families whose incomes have increased since moving into Indian housing to a point where an income-based rent exceeds the value of the housing provided.

The legislative history of section 102(a) shows that Congress, in authorizing ceiling rents, was concerned with easing the burden of these increased rents on working families. There is usually very little, if any, alternative rental housing on Indian reservations. In many instances, Indian housing projects provide the only rental housing. Ceiling rents will assure that Indian families are not required to pay more than their housing is worth because they have no other option, other than leaving the reservation.

HUD considers the burden of increased rents on Indian families with no alternative housing sufficiently significant to permit consideration of individual waiver requests from IHAs seeking relief from the requirements of 24 CFR 913.107 for rent based on income until the necessary rule revisions implementing section 102(a) are effective. Therefore, IHAs that choose to establish ceiling rents in Indian housing projects may apply to HUD for approval in accordance with the procedures outlined below. (IHAs should be aware that the terms of approval of ceiling rents may be affected by the final rule on ceiling rents.)

IV. Determining Ceiling Rent

Section 102(a) provides an IHA with an alternative method for calculating rent. (Section 102(a) has no effect on income-eligibility requirements for admission to Indian housing.) IHAs may establish ceiling rents, with HUD

approval, at an amount that the IHA determines reflects the value of the unit. However, ceiling rents may not be less than the average monthly amount of debt service and operating expenses attributed to dwelling units of a given size in Indian housing projects owned and operated by the IHA.

An IHA may establish ceiling rents for all dwelling units in a project or for one or more classes of units. A class of units may be based on any reasonable classification so long as the classification is *unit-based* (*e.g.*, number of bedrooms). The classification may *not* be *tenant-based, i.e.*, applicable to particular families because of their personal circumstances, rather than the characteristics of the housig in which they live.

If an IHA establishes ceiling rents in an Indian housing project, with HUD approval, each family living in an affected dwelling unit would pay the lower of a ceiling rent or an income-based rent. In situations where a family's income is so low that the ceiling rent for the unit rented by that family is an amount higher than income-based rent would be, the family would pay the income-based rent. Ceiling rents are intended for families whose incomes have increased to the point that an income-based rent exceeds the value of the housing provided.

Section 102(a) provides that the *minimum* amount that a ceiling rent may be is the sum of the average monthly debt service and the average monthly operating expense attributed to units of similar size owned by the IHA. An example appears as an appendix to this notice showing a method for determining this total average nonthly amount ("TAMA").

The average monthly debt service is an amount imputed by HUD based on total development and modernization costs for the IHA. When the legislative provision implemented by this notice was originally drafted in the early 1980s, all developmnent and modernization programs were funded by debt instruments that were tied to specific projects and became liabilities of an IHA. In practice, however, these debt obligations were paid by HUD, and assignment of debt to the IHA was more of an accounting than a substantive transaction. As many of these debts as possible were forgiven, starting with passage of section 3004 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA). (See 53 FR 31274 (Aug. 17, 1988) for HUD's Statement of Policy on loan forgiveness.) Subsequent development and modernization funding was provided in the form of grants rather than loans to IHAs. Certain Federal Financing Bank debt instruments and long-term bonds issued on behalf of IHAs, however, could not be forgiven in the same manner and remain as long-term IHA debt obligations. The net effect is that there is no relationship between the amount of HUD development and modernization funding provided and an IHA's current debt obligations. When two otherwise identical IHAs are examined, one may have no unforgiven debts while the other may have large unforgiven debts.

Both the 1987 Act and its legislative history make it apparent that the operating costs and debt service amounts Congress intended to be used in establishing an "economic rent" were to be based on an *attributed* amount. Therefore, HUD will impute debt service using total grant funding, forgiven debt, and outstanding debt. This conforms to the intent of the legislation and avoids treating an IHA that has had all debt forgiven differently from an otherwise identical IHA with a large outstanding debt obligation because the debt instruments used were not subject to forgiveness.

The average monthly operating expense is one-twelfth of the sum of: (1) All annual operating expenses reported on the Statement of Operating Receipts and Expenditures as of the end of the most recent fiscal year and (2) the aggregate annual utility allowances for all tenant paid utilities; *minus* the sum of (1) excess utility charges and (2) annual costs, if any, associated with units approved for deprogramming.

The sum of the debt service and operating expenses, or TAMA, is to be distributed over all IHA units, except those approved for deprogramming, whether or not ceiling rents are proposed for all units, with an adjustment only for unit size (number of bedrooms), with a larger unit to receive a larger portion of the IHA'S TAMA than a smaller unit.

The distribution by unit size is accomplished using a unit rent relationship based on the rent of a two-bedroom unit (100%). The rent relationships vary from 70% of the two-bedroom rent for an efficiency to 182% of the two-bedroom rent for a six-bedroom unit. Ihe adjustment factors for all units are as follows: zero-bedroom units (efficiencies), 0.70; one-bedroom units, 0.85; two-bedroom units, 1.00; three-bedroom units, 1.25; four-bedroom units, 1.40; five-bedroom units, 1.61; six-bedroom units, 1.82.

HUD believes that the need for ceiling rents in a project can be shown by the IHA demonstrating that there are tenant families paying rents that are excessive for the housing provided. For example, the IHA may show that there are families paying rents that exceed rents for comparable unassisted rental housing in the area, as determined by the IHA in an informal survey of such comparable housing. In comparing Indian housing dwelling units to unassisted rental housing, IHAs should use private rental housing of similar age, condition, amenities, design, and size in the same market area. The IHA may show, if available, that there are families that pay more than the current effective Section 8 Existing Housing Certificate Program's Fair Market Rents (FMRs) for comparable housing in the area.

In the absence of private market units to provide a basis for determining comparable rents or FMRs representative of the Indian area, an IHA may offer other evidence acceptable to HUD that ceiling rents are necessary to ensure that families do not pay more in rent than the fair rental value of the dwelling units.

V. Requirements for HUD Approval

To gain the necessary waiver of the income-based rent requirement of 24 CFR 913.107 and permission to adopt ceiling rents in an Indian housing project or projects owned and operated by an IHA, the IHA must submit a written request to the appropriate HUD Indian Field Office and must:

(1) Demonstrate the number of families currently residing in units owned and operated by the IHA that are paying rent of an amount calculated as required by 24 CFR 913.107 that exceeds the value of the housing provided, as determined by the IHA through an informal survey of comparable unassisted rental units, the current effective FMRs under the section 8 Existing Housing Certificate Program for that locality, or other method.

(2) State the unit sizes and projects, the ceiling rents proposed in each case, and the number of units to which each ceiling rent will apply;

(3) State the statutory minimum ceiling rent for each unit size for which ceiling rents are proposed (the average monthly amount of debt service and operating expenses attributed to units of similar size in projects owned and operated by the IHA);

(4) Estimate the direct financial impact of the ceiling rents by stating the number of families affected, the average dollar amount of rent reduction per family, and the total cost of the rent reductions.

The HUD Indian Field Office will notify the IHA in writing whether the

requirements of 24 CFR 913.107 will be waived and permission granted to adopt ceiling rents as proposed in the IHA's application. HUD's decision will be based upon the need for rent relief in the units for which ceiling rents are proposed as determined by the number of families paying excessive rents.

VI. Other Matters

The collection of information requirements contained in this notice have been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), and approved sections IV and V of this Notice have been determined by the Department to contain collection of information requirements. Information on these requirements is provided as follows:

Description	Number of Respondents	Responses per Respondent	Total Annual Responses	Hrs per Response	Total Hours
Section IV					
Determining Ceiling Rents	100	1	100	5	500
Section V					
Gathering data to submit for approval	100	1	100	12	1,200
Revise, adopt and implement policies and procedures	100	1	100	2	200
Recordkeeping:—create files to retain copies of package submitted for HUD approval—create logs to track interim determination for families who go off and on program due to change in income	100	1	100	1	100
Total estimated annual burden					2,000

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C 4332. The Finding is available for public inspection during regular business hours at the Office of Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this Notice does not have a potential significant impact on family formation, maintenance, and general well-being and, thus, is not subject to review under the Order. The Notice merely announces an alternative method of setting tenant payments for rent in public housing, which will assist families to afford decent, safe, and sanitary, housing of their choice. The General Counsel has also determined, as the Designated Official for HUD under section 6(a) of Executive Order 12612, *Federalism*, that the policies contained in this Notice do not have federalism implications and, thus, are not subject to review under that Order.

Dated: March 9, 1989.

Thomas Sherman,

Acting General Deputy, Assistant Secretary for Public and Indian Housing.

Appendix

Example for Determining Average Monthly Debt Service and Operating Expenses for Units of Similar Size

1. Debt Service (total annual debt or imputed debt payments made by or on the behalf of HUD)		$120,000
2. Operating Expenses (Line 620 from the Statement of Operating Receipts and Expenditures for the IHA's most recent fiscal year)		$214,800
3. Total Costs (not including tenant-paid utilities) (Line 1 plus Line 2)		$334,800
4. Total Monthly Cost (Line 3 divided by 12)		$27,900
5. Average Monthly Cost (not including tenant-paid utilities) (Line 4 divided by number of units*)		$372
6. Total Adjustment Factors:		
0.70X0 efficiency units		
0.85X0 1-bedroom units		
1.00X25 2-bedroom units	25	
1.25X25 3-bedroom units	32	
1.40X25 4-bedroom units	36	
1.61X0 5-bedroom units		
1.82X0 6-bedroom units		
		93
7. Average 2-bedroom basecost (line 4 divided by line 6)		$300
8. Minimum Ceiling Rents (not including tenant-paid utilities):		
0-bedroom units (0.70XLine 7)		
1-bedroom units (0.85XLine 7)		
2-bedroom units (1.00XLine 7)		$300
3-bedroom units (1.25XLine 7)		$375
4-bedroom units (1.40XLine 7)		$420
5-bedroom units (1.61XLine 7)		
6-bedroom units (1.82XLine 7)		

*Whether or not ceiling rent is proposed for these units, and irrespective of the method of financing on any individual project or class of dwelling units.

[FR Doc. 89-5948 Filed 3-14-89; 8:45 am]

BILLING CODE 4210-33-M

[Docket No. N-89-1913; FR-2597]

Policy on Establishment of Ceiling Rents for Public Housing

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of HUD Policy on Establishment of Ceiling Rents for Public Housing.

SUMMARY: This Notice informs the public that HUD will consider applications from public housing agencies (PHAs) for waiver of the requirements of 24 CFR 913.107 and for permission to adopt rents for projects or dwelling units that will establish a cap on the total tenant payment computed under that section. Where the conditions set out in this Notice are met, HUD will waive the cited regulation to permit PHAs to establish ceiling rents in public housing projects. Section 102(a) (entitled "Economic Rent") of the Housing and Community Development Act of 1987 (1987 Act) amends section 3(a) of the United States Housing Act of 1937 (1937 Act) to allow PHAs to establish, upon approval by HUD, maximum rents, or "ceiling rents," in public housing

projects. Until HUD proposes a rule for public comment and adopts a rule for effect, PHAs may apply to HUD for permission to establish ceiling rents that are not more than a family would pay under the present income-based formula and not less than the average monthly amount of debt service and operating expenses attributed to units of similar size in public housing projects owned and operated by the PHA.

EFFECTIVE DATE: March 15, 1989.

FOR FURTHER INFORMATION CONTACT: Nancy Chisholm, Director, Policy Staff, Office of Public and Indian Housing, Department of Housing and Urban Development, Room 4118, 451 Seventh Street SW., Washington, DC 20410; telephone number (202) 755–6713. Hearing or speech impaired persons may call HUD's TDD number (202) 426–0015. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The collection of information requirements contained in this notice have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 and have been assigned OMB control number 2577 –0117. Public reporting burden for each of these collections of information is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided in this Notice under the heading *Other Matters*. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street SW., Room 10276, Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

I. Introduction

Section 102(a) of the 1987 Act amends section 3(a) of the 1937 Act to permit PHAs to establish, upon approval by HUD, ceiling rents in public housing projects. Section 3(a) of the 1937 Act (implemented by HUD at 24 CFR 913.107) requires that a tenant's rent be based on the tenant family's income. The Act establishes a tenant's rent as the highest of (1) 30 percent of the family's monthly adjusted income; (2) 10 percent of the family's monthly income; or (3) if the family receives welfare assistance and the grant is subject to adjustment in accordance with actual housing costs, any portion of that assistance designated for housing costs. (For purposes of this Notice, section 3(a) rent will be referred to as "income-based rent." The term "rent" refers to the total tenant payment that is payable by the tenant, including any utility allowance.)

Section 102(a) amends section 3(a) to allow PHAs to establish, with HUD approval, maximum rents that would be not more than the present income-based rent and not less than the average monthly amount of debt service and operating expenses attributed to units of similar size in public housing projects owned and operated by the PHA. (For purposes of this Notice, section 102(a) rent will be referred to as "ceiling rent.") A ceiling rent would be available for any one family residing in public housing for a period of up to 36 months.

Ceiling rents are based on the *dwelling unit*, whereas rents under section 3(a) of the 1937 Act are based on the tenant family's *income*. Section 102(a) authorizes PHAs to establish ceiling rents as an alternative rent, but PHAs are not required to do so. A PHA may establish ceiling rents for particular units, particular projects, or the entire inventory of the PHA.

Tenants do not have a right to ceiling rents if a PHA does not adopt them. However, once ceiling rents have been established by a PHA, each family residing in and each new tenant of an affected dwelling unit would be charged the *lower* of the ceiling rent for that unit or the family's income-based rent. A PHA may revoke or raise its ceiling rents at any time after giving reasonable notice to the affected tenants. A PHA must revoke or change its ceiling rents if directed by HUD to do so for reasonable cause.

II. Applicability

This Notice applies only to public rental housing projects assisted under the 1937 Act. It does not apply to Indian rental housing projects or Turnkey III programs. (Although section 102(a) of the 1987 Act also authorizes ceiling rents in Indian rental housing projects and in lower income housing projects assisted under section 8 that contain more than 2,000 dwelling units, this Notice does not apply either to Indian housing or to any section 8 program fitting that description. Ceiling rents for Indian housing are the subject of a separate notice. The section 8 provision will be addressed in the Department's proposed rule on ceiling rents.)

III. Purpose of Ceiling Rent

Since 1982, the income-based rent has been the only method available to PHAs for calculating rent. The purpose of ceiling rents is to provide a cap on rents for families whose incomes have increased since moving into public housing to a point where an income-based rent is unreasonable for the housing provided.

The legislative history of section 102(a) shows that Congress, in authorizing ceiling rents, established a three-year limitation on ceiling rent benefits for a tenant family residing in public housing to encourage higher-income families to seek housing on the private market after a reasonable time. (See H.R. Rep. No. 100–122, 100th Cong., 1st Sess. 12, (1987).) HUD policy has always been that families that were income-eligible at initial occupancy may continue to reside in public housing even though their incomes increase to an amount that would make them ineligible for occupancy were they applying at that time. Therefore, a PHA may not force tenant families paying ceiling rent to move once the 36-month period has expired. However, tenant families for whom the 36-month period expires will no longer be eligible for ceiling rents and must be charged an income-based rent after that time.

HUD believes that tenant families should not pay more in rent for public housing than comparable housing would cost on the private rental market. Therefore, HUD has determined that an equitable ceiling rent would be an amount equal to the current effective Section 8 Existing Housing Certificate Program's Fair Market Rents (FRMs) for the area of, if a PHA finds that the FMRs substantially exceed or understate the fair rental value of some or all of the PHA's units, an amount equal to comparable unassisted rental housing in the area, as determined by the PHA in a survey of such comparable housing. In any event, section 102(a) provides that ceiling rents may not be less than the average monthly amount of debt service and operating expenses attributed to units of similar size in public housing projects owned and operated by the PHA. In comparing public housing dwelling units to unassisted rental housing, PHAs should use private rental housing of similar age, location, condition, amenities, design, and size in the same market area.

HUD considers issues such as the burden of increased rents on working families in public housing projects sufficiently significant to permit consideration of individual waiver

requests from PHAs seeking relief from the requirements of 24 CFR 913.107 for rent based on income until the necessary rule revisions implementing section 102(a) are effective. Therefore, PHAs that choose to establish ceiling rents in public housing projects may apply to HUD for approval in accordance with the procedures outlined below. (PHAs should be aware that the terms of approval of ceiling rents under this waiver may be affected by the final rule ceiling rents.)

IV. Determining Ceiling Rent

Section 102(a) provides a PHA with an alternative method for calculating rent. (Section 102(a) has no effect on income-eligibility requirements for admission to public housing.) PHAs may establish ceiling rents, with HUD approval, that are not less than the average monthly amount of debt service and operating expenses attributed to dwelling units of a given size in public housing projects owned and operated by the PHA.

A PHA may establish ceiling rents for all dwelling units in a project or for one or more classes of units. A class of units may be based on any reasonable classification so long as the classification is *unit-based (e.g.,* number of bedrooms). The classification may *not* be *tenant-based, i.e.,* applicable to particular families because of their personal circumstances, rather than the characteristics of the housing they live in.

HUD believes that the need for ceiling rents in a project can be shown by the PHA's demonstrating that there are tenant families paying rent of an amount greater than the current effective section 8 Existing Housing Certificate Program's Fair Market Rents (FMRs) for the area or, if a PHA finds that the FMRs substantially exceed or understate the fair rental value of some or all of the PHA's units, an amount equal to comparable unassisted rental housing in the area, as determined by the PHA in a survey of such comparable housing. In comparing public housing dwelling units to unassisted rental housing, PHAs should use private rental housing of similar age, condition, amenities, design, and size in the same market area.

If a PHA establishes ceiling rents in a public housing project, with HUD approval, each family living in an affected dwelling unit would pay the lower of a ceiling rent or an income-based rent. In situations where a family's income is so low that the ceiling rent for the unit rented by that family is an amount higher than income-based rent would be, the family would pay the income-based rent. Ceiling rents are intended for families whose incomes have increased to the point that an income-based rent is unreasonable for the housing provided.

Families that are eligible for ceiling rent may benefit from ceiling rent for a cumulative total of 36 months. A family may go on and off a ceiling rent because of changed financial circumstances, and any months during which a family pays an income-based rent will not count toward the 36-month limitation. However, if the family goes back on a ceiling rent, all previous months spent on a ceiling rent will count toward the 36-month limitation.

Section 102(a) provides that the *minimum* amount that a ceiling rent may be is the sum of the average monthly debt service and the average monthly operating expense attributed to units of similar size owned by the PHA. An example appears as an appendix to this Notice showing a method whereby a PHA may determine this total average monthly amount ("TAMA").

The average monthly debt service is an amount imputed by HUD based on total development and modernization costs for the PHA. When the legislative provision implemented by this Notice was originally drafted in the early 1980s, all development and modernization programs were funded by debt instruments that were tied to specific projects and became liabilities of a PHA. In practice, however, these debt obligations were paid by HUD, and assignment of debt to the PHA was more of an accounting than a substantive transaction. As many of these debts as possible were forgiven, starting with passage of section 3004 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA). (See 53 FR 31274 (Aug. 17, 1988) for HUD's Statement of Policy on loan forgiveness.) Subsequent development and modernization funding was provided in the form of grants rather than loans to PHAs. Certain Federal Financing Bank debt instruments and long-term bonds issued on behalf of PHAs, however, could not be forgiven in the same manner and remain as long-term PHA debt obligations. The net effect is that there is no relationship between the amount of HUD development and modernization funding provided and a PHA's current debt obligations. When two otherwise identical PHAs are examined, one may have no unforgiven debts while the other may have large unforgiven debts.

Both the 1987 Act and its legislative history make it apparent that the operating costs and debt service amounts Congress intended to be used in establishing an "economic rent" were to be based on an *attributed* amount. Therefore, HUD will impute debt service using total grant funding, forgiven debt, and outstanding debt. This conforms to the intent of the legislation and avoids treating a PHA that has had all debt forgiven differently from an otherwise identical PHA with a large outstanding debt obligation because the debt instruments used were not subject to forgiveness.

The average monthly operating expense is one-twelfth of the sum of: (1) all annual operating expenses reported on the Statement of Operating Receipts and Expenditures as of the end of the most recent fiscal year and (2) the aggregate annual utility allowances for all tenant paid utilities; *minus* the sum of (1) excess utility charges and (2) annual costs, if any, associated with units approved for deprogramming.

The sum of the debt service and operating expenses, or TAMA, is to be distributed over all PHA units, except those approved for deprogramming, whether or not ceiling rents are proposed for all units, with an adjustment only for unit size (number of bedrooms), with a larger unit to receive a larger portion of the PHA's TAMA than a smaller unit.

The distribution by unit size is accomplished using a unit rent relationship, which is based on the rent of a two-bedroom unit (100%). The rent relationships vary from 70% of the two-bedroom rent for an efficiency to 182% of the two-bedroom rent for a six-bedroom unit. The adjustment factors for all units are as follows: Zero-bedroom units (efficiencies), 0.70; one-bedroom units, 0.85; two-bedroom units, 1.00; three-bedroom units, 1.25; four-bedroom units, 1.40; five-bedroom units, 1.61; six-bedroom units, 1.82.

When calculating the *minimum* amount that ceiling rents in public housing projects may be, *i.e.,* the average monthly debt service and operating expenses attributed to units of similar size owned by the PHA, a PHA may follow the three-step procedure shown in the example in the appendix to this notice. The result of the procedure is the *minimum* that the ceiling rent may be. However, HUD believes that it is fair and in keeping with the purpose of section 102(a) that ceiling rents should be set at an amount equal to the current effective Section 8 FMRs for existing housing in the same area or, if a PHA determines that the FMRs substantially exceed or understate the fair rental value of some or all of the PHA's units, an amount equal to comparable unassisted rental housing in the area, provided such amounts are not less than

the statutory minimum. FMRs for each fiscal year are published annually by HUD in the **Federal Register.**

V. Requirements for HUD Approval

To gain the necessary waiver of the income-based rent requirement of 24 CFR 913.107 and permission to adopt ceiling rents in a public housing project or projects owned and operated by a PHA, the PHA must submit a written request to the appropriate HUD Field Office and must:

(1) State the number of families currently residing in units owned and operated by the PHA that are paying rent of an amount calculated as required by 24 CFR 913.107 that is greater than the current effective Fair Market Rent (FMR) under the Section 8 Existing Housing Certificate Program for that locality or, if the proposed ceiling rents are based on the results of a comparability study conducted by the PHA, greater than rents of projects and/or units used as the basis for the study;

(2) State the unit sizes and projects, the ceiling rents proposed in each case, and the number of units to which each ceiling rent will apply;

(3) State the statutory minimum ceiling rent for each unit size for which ceiling rents are proposed (the average monthly amount of debt service and operating expenses attributed to units of similar size in projects owned and operated by the PHA);

(4) State whether the proposed ceiling rents are Section 8 Existing Fair Market Rents, are based on a comparability survey, or are the statutory minimum ceiling rent. If the proposed ceiling rents are based on a comparability survey, provide information on the survey, identify the rents of unassisted projects and/or units which are generally comparable to the projects and/or units designed for ceiling rents, and show any adjustments made to the private market rents for any differences between the private market units and the public housing units that would affect the rental value, such as amenities, locations, design, age, condition, size, or other characteristics; and

(5) Estimate the direct financial impact of the ceiling rents by stating the number of families affected, the average dollar amount of rent reduction per family, and the total cost of the rent reductions.

The HUD Field Office will notify the PHA in writing whether the requirements of 24 CFR 913.107 will be waived and permission granted to adopt ceiling rents as proposed in the PHA's application. HUD's decision will be based upon the need for rent relief in the units for which ceiling rents are proposed as determined by the number of families paying excessive rents compared to the FMRs for the area or rents for comparable unassisted housing.

VI. Other Matters

The collection of information requirements contained in this Notice have been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. §§ 3501 et seq.) and approved. Sections IV and V of this Notice has been determined by the Department to contain collection of information requirements. Information on these requirements is provided as follows:

Description	Number of respondents	Responses per respondent	Total annual responses	Hours per response	Total hours
Section IV:					
Determining ceiling rents	775	1	775	5	3,875
Section V:					
Gathering data to submit for approval	775	1	775	12	9,300
Revise, adopt and implement policies and procedures	775	1	775	2	1,550
Recordkeeping:					
Create files to retain copies of package submitted for HUD approval					
Create logs to track iterim determination for families who go off and on program due to change in income	775	1	775	1	775
Total estimated annual burden					15,500

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding is available for public inspection during regular business hours at the Office of Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410.

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this Notice does not have a potential significant impact on family formation, maintenance, and general well-being and, thus, is not subject to review under the Order. The Notice merely announces an alternative method of setting tenant payments for rent in public housing, which will assist families to afford decent, safe, and sanitary housing of their choice. The General Counsel has also determined, as the Designated Official for HUD under section 6(a) of Executive Order 12612, *Federalism*, that the policies contained in this Notice do not have federalism implications and, thus, are not subject to review under that Order.

Dated: March 9, 1989.

Thomas Sherman,

Acting General Deputy, Assistant Secretary for Public and Indian Housing.

APPENDIX

Example for Determining Average Monthly Debt Service and Operating Expenses for Units of Similar Size

Step 1

1. Operating expenses (Line 620) from the Statement of Operating Receipts and Expenditures for the PHA's most recent fiscal year	$190,000
2. Cost of utility allowances for tenant-paid utilities for the PHA's most recent fiscal year	30,000
3. Add line 1 and line 2	220,000
4. Cost of excess utilities (Line 070) from Form HUD–52599 for the PHA's most recent fiscal year	5,200

5. Costs associated with deprogrammed units, if any, for the PHA's most recent fiscal year	0
6. Add line 4 and line 5	5,200
7. Subtract line 6 from line 3	214,800
8. Imputed debt service costs based upon total development and modernization costs (this figure will be provided to the PHA by the HUD Field Office upon request)	120,000
9. Add lines 7 and 8	334,800
10. Total average monthly amount (line 9 divided by 12)	27,900
Step 2	
Number of units owned by PHA*	
Times adjustment factor:	
0-bedroom units 20×0.70	14
1-bedroom units 40×0.85	34
2-bedroom units 20×1.00	20
3-bedroom units 20×1.25	25
4-bedroom units 0×1.40	0
5-bedroom units 0×1.61	0
6-bedroom units 0×1.82	0
Total	93
Step 3	
Calculate the two-bedroom minimum monthly rent:	
1. Enter line 10 from Step 1	27,900
2. Enter Total from Step 2	93
3. Calculate 2-bedroom minimum monthly rent (line 1 divided by line 2	300
4. Calculate the minimum monthly rents for other size units:	
a. 0-bedroom (line 3×.70)	210
b. 1-bedroom (line 3×.85)	255
c. 3-bedroom (line 3×1.25)	375
d. 4-bedroom (line 3×1.40)	N/A
e. 5-bedroom (line 3×1.61)	N/A
f. 6-bedroom (line 3×1.82)	N/A

*Whether or not ceiling rent is proposed for these units, and irrespective of the method of financing on any individual project or class of dwelling units.

[FR Doc. 89-5949 Filed 3-14-89; 8:45 am]

BILLING CODE 4210-33-M

Office of Public Housing

[Docket No. N-89-1955]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Public Housing, HUD.

ACTION: Notice.

SUMMARY: The Proposed information collection requirement below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). It is also requested that OMB complete its review within five days.

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: March 9, 1989.

Thomas Sherman,

Director, Office of Public Housing.

Proposal: Processing of applications for Fiscal Year 1989 Funds for Public Housing Resident Management.

Office: Public housing.

Description of the Need for the Information and Its Proposed Use: This new information collection is required in connection with the issuance of a Notice of Fund Availability which announces the availability of $2.5 million for the Public Housing Resident Management Program for Fiscal Year 1989. The Program will provide technical assistance funding to promote "formation and development of resident management entities."

Form number: None.

Respondents: Non-profit institutions.

Frequency of Submission: One time only.

Reporting Burden:

	Number of respondents	X	Frequency of responses	X	Hours per response	=	Burden hours
Application Development	150		1		16		2,400

Total Estimated Burden Hours: 2,400.

Status: New.

Contact: Roger W. Braner, HUD (202) 755-7970; John Allison, OMB, (202) 395-6880.

Date: March 9, 1989.

[FR Doc. 89-6040 Filed 3-14-89; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO-150-09-4830-11]

Meetings; National Public Lands Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting of the National Public Lands Advisory Council.

SUMMARY: Notice is hereby given that the National Public Lands Advisory Council will meet April 13 and 14, 1989. The meeting will be held in Room 7000 A&B of the Main Interior Building, 18th and C Streets, NW., Washington, DC. The meeting hours will be 8:00 a.m. to 12:00 p.m. on Thursday, April 13, and 8:00 a.m. to 5:00 p.m. on Friday, April 14. The proposed agenda for the 2-day meeting is:

Thursday, April 13: Morning: Election of Council Officers for 1989; Status report on natural resource legislation;

Discussion and presentation of Council resolutions to Secretary of the Interior; Address by Interior Secretary Manuel Lujan, Jr., Meeting of Council Subcommittees (Energy and Minerals, Lands, and Renewable Resources).

Friday, April 14: Morning: Council old and new business, to include setting of agendas for future Council sessions and status report on the wild horse and burro program: Meeting of Council Subcommittees.

Afternoon: Public statement period; Final meetings of Council Subcommittees; Reports from Subcommittees to full Council and consideration of Council resolutions.

All meetings of the Council are open to the public. Opportunity will be given for members of the public to make oral statements to the Council, beginning at 1:00 p.m. on Friday, April 14. Speakers should address national public lands issues and are encouraged to submit a copy of their written comments by April 7 to the Bureau of Land Management's Washington, DC, office of at the address listed below. Depending on the number of people who wish to address the Council, it may be necessary to limit the length of oral presentations.

DATES: April 13 and 14—Council Meeting. April 14—Public Statements.

ADDRESS: Copies of public statements should be mailed by April 7 to: Director (150), Bureau of Land Management, MS–5558, Department of the Interior, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Karen Slater, Washington, DC Office, Bureau of Land Management, telephone (202) 343–5101.

SUPPLEMENTARY INFORMATION: The Council advises the Secretary of the Interior through the Director, Bureau of Land Management, regarding policies and programs of a national scope related to public lands and resources under the jurisdiction of BLM.

Robert F. Burford,

Director.

[FR Doc. 89–6038 Filed 3–14–89; 8:45 am]

BILLING CODE 4310–84–M

Minerals Management Service

[DES 89–2]

Gulf of Mexico Region; Availability of the Draft Environmental Impact Statement and Intent To Hold Public Hearings Regarding Proposed Central and Western Gulf of Mexico Sales 123 (March 1990) and 125 (August 1990)

March 10, 1989.

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Minerals Management Service (MMS) has prepared a draft Environmental Impact Statement (EIS) relating to the proposed 1990 Outer Continental Shelf (OCS) oil and gas lease sales of available unleased blocks in the central and western Gulf of Mexico (GOM). The proposed Central Gulf Sale 123 will offer for lease approximately 32.1 million acres, and the Western Gulf Sale 125 will offer approximately 27.8 million acres. Single copies of the draft EIS can be obtained from the Minerals Management Service, Gulf of Mexico Region, Attention: Public Information Office, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana 70123.

Copies of the draft EIS will be available for review by the public in the following libraries: Austin Public Library, 402 West Ninth Street, Austin, Texas; Houston Public Library, 500 McKinney Street, Houston, Texas; Dallas Public Library, 1513 Young Street, Dallas, Texas; Brazoria County Library, 410 Brazoport Boulevard, Freeport, Texas; LaRatama Library, 505 Mesquite Street, Corpus Christi, Texas; Texas Southmost College Library, 1825 May Street, Brownsville, Texas; Rosenberg Library, 2310 Sealy Street, Galveston, Texas; Texas State Library, 1200 Brazos Street, Austin, Texas; Texas A&M University, Evans Library, Spence and Lubbock Streets, College Station, Texas; University of Texas, Lyndon B. Johnson School of Public Affairs Library, 2313 Red River Street, Austin, Texas; The University of Texas at Dallas Library, 2601 North Floyd Road, Richardson, Texas; Lamar University, Gray Library, Virginia Avenue, Beaumont, Texas; Texas Tech University, Law Library, 1802 Hartford Street, Lubbock, Texas; East Texas State University Library, 2600 Neal Street, Commerce, Texas; Stephen F. Austin State University, Steen Library, Wilson Drive, Nacogdoches, Texas; University of Texas, 21st and Speedway Streets, Austin, Texas; University of Texas Law School, Tarlton Law Library, 727 East 26th Street, Austin, Texas; Baylor University Library, 13125 Third Street, Waco, Texas; University of Texas at Arlington, 701 South Cooper Street, Arlington, Texas; University of Houston-University Park, 4800 Calhoun Boulevard, Houston, Texas; University of Texas at El Paso, Wiggins Road and University Avenue, El Paso, Texas; Abilene Christian University, Margaret and Herman Brown Library, 1600 Campus Court, Abilene, Texas; Texas Tech University Library, 18th and Boston Street, Lubbock, Texas; University of Texas at San Antonio, John Peace Boulevard, San Antonio, Texas; Tulane University, Howard Tilton Memorial Library, 7001 Freret Street, New Orleans, Louisiana; Louisiana Tech University, Prescott Memorial Library, Everet Street, Ruston, Louisiana; New Orleans Public Library, 219 Loyola Avenue, New Orleans, Louisiana; Louisiana State Library, 760 Riverside Road, Baton Rouge, Louisiana; Lafayette Public Library, 301 W. Congress Street, Lafayette, Louisiana; Calcasieu Parish Library, 411 Pujo Street, Lake Charles, Louisiana; McNeese State University, Luther E. Frazar Memorial Library, Ryan Street, Lake Charles, Louisiana; Nicholls State University, Nicholls State Library, Leighton Drive, Thibodaux, Louisiana; University of Southwestern Louisiana, Dupre Library, 302 East St. Mary Boulevard, Lafayette, Louisiana; LUMCOM, Library, Star Route 541, Chauvin, Louisiana; Harrison County Library, 14th and 21st Avenues, Gulfport, Mississippi; Gulf Coast Research Lab., Gunter Library, 703 East Beach Drive, Ocean Springs, Mississippi; Auburn University at Montgomery, Library, Taylor Road, Montgomery, Alabama; University of Alabama Libraries, 809 University Boulevard East, Tuscaloosa, Alabama; Mobile Public Library, 701 Government Street, Mobile, Alabama; Montgomery Public Library, 445 South Lawrence Street, Montgomery, Alabama; Gulf Shores Public Library, Municipal Complex, Route 3, Gulf Shores, Alabama; Dauphin Island Sea Lab, Marine Environmental Science Consortium, Library, Bienville Boulevard, Dauphin Island, Alabama; University of South Alabama, University Boulevard, Mobile, Alabama; University of Florida Libraries, University Avenue, Gainesville, Florida; Florida A&M University, Coleman Memorial Library, Martin Luther King Boulevard, Tallahassee, Florida; Florida Atlantic University, Library, 20th Street, Boca Raton, Florida; University of Miami Library, 4600 Rickenbacker Causeway, Miami, Florida; University of Florida, Holland Law Center Library, Southwest 25th Street and 2nd Avenue, Gainesville, Florida; St. Petersburg Public Library, 3745 Ninth Avenue North, St. Petersburg, Florida; West Florida Regional Library, 200 West Gregory Street, Pensacola, Florida; Florida Northwest Regional Library System, 25 West Government Street, Panama City, Florida; Leon County Public Library, 127 North Monroe Street, Tallahassee, Florida; Lee County Library, 3355 Fowler Street, Fort Myers, Florida; Charlotte-Glades Regional Library System, 2280 NW Aaron Street, Port Charlotte, Florida;

Tampa-Hillsborough County Public Library System, 800 North Ashley Street, Tampa, Florida; Key Largo Public Library, 99551 No. 3 Overseas Highway, Key Largo, Florida; Selby Public Library, 1001 Boulevard of the Arts, Sarasota, Florida; Monroe County Public Library, 700 Fleming Street, Key West, Florida.

Two public hearings pertaining to these lease sales will be held at the following locations and times: Minerals Management Service, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, Conference Room 111, New Orleans, Louisiana 70123, April 25, 1989, 9:00 a.m.; Rosenberg Library, 2310 Sealy, Room 125, Galveston, Texas 77550, April 25, 1989, 9:00 a.m. The purpose of these public hearings is to provide the Department of the Interior and MMS with information from individuals, public and private groups, and Government Agencies to further evaluate the potential effects of the proposed lease sales. Pertinent testimony and comments will be addressed in the final EIS for Sales 123 and 125.

Persons who wish to testify at these hearings are requested to contact the Regional Supervisor, by writing the Office of Leasing and Environment (LE-2), Gulf of Mexico Region, 1201 Elmwood Park Boulevard, Room 311, New Orleans, Louisiana 70123, or by telephone (504) 736-2540, no later than 3:30 p.m., April 21, 1989. Unscheduled speakers may have an opportunity to speak following testimony of those who have made arrangements in advance, if time permits. Oral testimony should be limited to 10 minutes. Testimony may be supplemented by a written statement which, if submitted at a hearing, will be considered as part of the hearing record. Those unable to attend the hearing may submit written statements until the close of the comment period, May 9, 1989. Written statements will receive the same degree of consideration in the final EIS as oral testimony presented at the hearing.

Approved:

Carolita Kallaur,

Acting Associate Director for Offshore Minerals Management.

John H. Farrell,

Acting Director, Office of Environmental Project Review.

Date: March 10, 1989.

[FR Doc. 89-5947 Filed 3-14-89; 8:45 am]

BILLING CODE 4320-MR-M

Onshore Oil and Gas Production Accounting, Transfer of Responsibility

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice to lease operators to report onshore production data.

SUMMARY: On May 9, 1988, the Minerals Management Service (MMS) published a Notice of Final Rulemaking in the **Federal Register** [53 FR 16408] to amend its regulations to provide for lease operators to report onshore production data to MMS, as a result of the transfer of accounting responsibility from the Bureau of Land Management (BLM). As stated in the Final Rule, MMS is following a phased conversion schedule to accomplish the transfer. Phases 1A and 1B conversions have been completed. The purpose of this notice is to inform operators on onshore leases/agreements that phases 2, 3, and 4 will be converted simultaneously. These operators will begin reporting production data to MMS for the August 1989 production month, the report for which is due to MMS by October 15, 1989.

Conversion Date: Phases 2, 3, and 4 operators are required to begin reporting onshore production data to MMS for the August 1989 production month, the report for which is due to MMS by October 15, 1989.

FOR FURTHER INFORMATION CONTACT: John Russo, Deputy Chief, Production Accounting Division, Royalty Management Program, Minerals Management Service, Denver Federal Center, Building 85, P.O. Box 25165, Mail Stop 657, Denver, Colorado 80225, (303) 231-3520.

SUPPLEMENTARY INFORMATION: Phase 1a of the conversion schedule transferred leases/agreements under the jurisdiction of the Rawlins, Wyoming, BLM District Office. Phase 1b converted leases/agreements under the jurisdiction of the Colorado, Montana, and Utah BLM State Offices and the remaining leases/agreements under the jurisdiction of the Wyoming BLM State Office. Phases 2, 3, and 4 convert leases/agreements under the jurisdiction of the Alaska, California, Eastern States, Nevada, and New Mexico (which includes the Tulsa District Office) BLM State Offices.

Prior to the conversion date, MMS will provide affected operators with information regarding various aspects of the conversion. This information will include a listing of all leases, agreements, and well reference data in MMS's data base for purposes of comparison and reconciliation prior to conversion.

Affected operators will be assigned a unique five-digit operator number which is required to be reported on the Monthly Report of Operations, form MMS-3160.

The MMS will also provide operators with reporting instructions and training sessions to facilitate an orderly transfer of production reporting from BLM.

Dated: March 8, 1989.

Jerry D. Hill,

Associate Director for Royalty Management.

[FR Doc. 89-5906 Filed 3-14-89; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before March 4, 1989. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by March 30, 1989.

Carol D. Shull,

Chief of Registration, National Register.

FLORIDA

Leon County

Tall Timbers Plantation, Co. Rd. 132, 3 mi. W of US 319, Tallahassee vicinity, 89000240

Sarasota County

Blalock House (Venice MPS), 241 S. Harbor Dr., Venice, 89000235

Levillain—Leton House (Venice MPS), 229 S. Harbor Dr., Venice, 89000234

INDIANA

Fountain County

Carnegie Library of Covington, 622 S. Fifth St., Covington, 89000239

Harrison County

Corydon Historic District (Boundary Increase), Roughly bounded by Summit, Maple & Walnut Sts., College Ave., Chestnut, Capitol, Poplar, Water, Beaver & Mulberry Sts., Corydon, 89000243

Marion County

Kuhn, Charles, House, 340 W. Michigan St., Indianapolis, 89000237

Morgan County

Bradford Estate, 5040 IN 67 North, Martinsville, 89000236

Vanderburgh County

Bernardin—Johnson House, 17 Johnson Pl., Evansville, 89000238

MISSOURI

Jackson County

Unity School of Christianity Historic District, Jct. US 50 and Colborn Rd., Unity Village, 89000246

NEBRASKA

Lancaster County

Lancaster Block, 6201—6205 Havelock Ave., Lincoln, 89000245

Watkins, Albert, House, 920 D St., Lincoln, 89000244

NEW JERSEY

Camden County

Solomon Wesley United Methodist Church, 291–B Davistown Rd./Asyla Rd., Blackwood, 89000241

NORTH CAROLINA

Buncombe County

Grove Park Historic District, Roughly bounded by Evelyn Pl., Macon Ave., Howland Rd., Woodland Rd., Canterbury Ln., Charlotte St., and Murdock Ave., Asheville, 89000247

VERMONT

Washington County

Davis, Parley, House, Town Hwy. 3/RR 1, East Montpelier, 89000242

Montpelier Historic District (Boundary Increase), 70—101 E. State St. and 1 West St., Montpelier, 89000248

WISCONSIN

Dane County

Badger State Shoe Company, 123 N. Blount St., Madison, 89000232

Jefferson County

Copeland—Ryder Company, 411 Wisconsin Dr., Jefferson, 89000233

Waupaca County

Rural on the Crystal Historic District, Roughly bounded by Arbor St., Rapley St., Rural Rd., and Cleghorn St., Rural, 89000231

[FR Doc. 89–5901 Filed 3–14–89; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency For International Development

Microenterprise Advisory Committee; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of the A.I.D. Microenterprise Advisory Committee meeting on April 3, 1989 at the Westpark Hotel, 1900 North Fort Myer Drive, Rosslyn, Virginia. The Committee will discuss guidelines for the implementation of the Agency for International Development's microenterprise program in light of the Agency's microenterprise stocktaking exercise and its FY 1989 microenterprise obligations package.

The meeting will begin at 9:00 a.m. and adjourn at 5:00 p.m. on April 3. The meeting is open to the public. Any interested persons may attend, file written statements with the Committee before or after the meeting, or may present oral statements in accordance with procedures established by the Committee and the extent the time available for the meeting permits.

Dr. Michael Farbman, Chief Employment and Enterprise Development Division, Office of Rural and Institutional Development, Bureau for Science and Technology, is designated as the A.I.D. representative at the meeting. Dr. Ross E. Bigelow, of the same Division, may be deputized to act for Dr. Farbman during part or all of this meeting. It is suggested that those who wish more specific information concerning this meeting contact Dr. Bigelow, 1601 N. Kent Street, Arlington, Virginia 22209, call 704–235–8964.

Michael Farbman,

A.I.D. Representative, Microenterprise Advisory Committee.

Date: March 2, 1989.

[FR Doc. 89–6016 Filed 3–14–89; 8:45 am]

BILLING CODE 6116–01–M

INTERNATIONAL TRADE COMMISSION

[Determination in Investigation No. 731–TA–207 (Final-Remand)]

Cellular Mobile Telephones and Subassemblies Thereof from Japan

In 1985, the U.S. International Trade Commission determined in Investigation No. 731–TA–207 (Final) that an industry in the United States was materially injured by reason of imports from Japan of Cellular Mobile telephones and subassemblies thereof, provided for in items 685.28 and 685.32 of the Tariff Schedules of the United States, that were found by the Department of Commerce to be sold in the United States at less than fair value (USITC Pub. No. 1786 (1985)). That determination was subsequently appealed to The U.S. Court of International Trade and remanded to the Commission for further consideration (*Mitsubishi Electirc Corporation, et al.*, v. *United States and Motorola, Inc.*, Slip Op. 88–152 (October 31, 1988)). On the basis of its consideration of the record [1] developed in its remand investigation, the Commission has made a unanimous affirmative determination.[2] The views were submitted to the Court in response to the remand.

The views of the Commission are contained in USITC Publication 2155 (February 1989), entitled "Cellular Mobile Telephones and Subassemblies Thereof from Japan: Views on Remand in Investigation No. 731–TA–207 (Final)."

By Order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: March 10, 1989.

[FR Doc. 89–6034 Filed 3–14–89; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–293]

Certain Crystalline Cefadroxil Monohydrate; Investigation

AGENCY: International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337 and provisional acceptance of motion for temporary relief.

SUMMARY: Notice is hereby given that a complaint and a motion for temporary relief were filed with the U.S. International Trade Commission on February 1, 1989, under section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), on behalf of Bristol-Myers Company, 345 Park Avenue, New York, New York 10154. The complaint and motion for temporary relief were supplemented on February 24, 1989.

The complaint, as supplemented, alleges violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation by the owner, importer, or consignee, of certain crystalline cefadroxil monohydrate by reason of alleged direct and induced infringement of U.S. Letters Patent 4,504,657; and that there exists an industry in the United States as required by subsection (a)(2) of the section 337. Complainant requests that the Commission institute an

[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] Commissioner Brunsdale, Cass, and Newquist, not present in the initial case, determined on the basis of consideration of the record as supplemented by the remand investigation, that an industry in the United States was materially injured by reason of imports of cellular mobile telephones and subassemblies thereof from Japan.

investigation and, after a full investigation, issue a permanent exclusion order and permanent cease and desist orders.

The motion for temporary relief, as supplemented, requests that the Commission issue a temporary exclusion order and temporary cease and desist orders prohibiting the importation into and sale in the United States of infringing crystalline cefadroxil monohydrate.

ADDRESSES: The complaint and motion for temporary relief, except for any confidential information contained therein, are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–252–1802. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

FOR FURTHER INFORMATION CONTACT: Cheri M. Taylor, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–252–1568.

AUTHORITY: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in § 210.12 of the Commission's Interim Rules of Practice and Procedure, 53 FR 33034, 33057 (Aug. 29, 1988). The authority for provisional acceptance of the motion for temporary relief is contained in § 210.24(e)(8) of the Commission's Interim Rules of Practice and Procedure, 53 FR 33034, 33061 (Aug. 29, 1988).

SCOPE OF INVESTIGATION: Having considered the complaint and motion for temporary relief, the U.S. International Trade Commission, on March 8, 1989, *Ordered That*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation by the owner, importer, or consignee, of certain crystalline cefadroxil monohydrate by reason of alleged direct or induced infringement of the claim of U.S. Letters Patent 4,504,657, and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) Pursuant to § 210.24(e)(8) of the Commission's rules, the motion for temporary relief under subsection (e) of section 337 of the Tariff Act of 1930, which was filed with the complaint, be provisionally accepted for referral to an administrative law judge.

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—

Bristol-Myers Company, 345 Park Avenue, New York, New York 10154.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint and motion for temporary relief are to be served:

Istituto Biochimico, Italiano Industria Giovanni, Lorenzini S.p.A., Via G. Lorenzini 2–4, 20139 Milano, Italy

Kalipharama, Inc., 200 Elmora Avenue, Elizabeth, New Jersey 07207

Purepac Pharmaceutical Co., 200 Elmora Avenue, Elizabeth, New Jersey 07207

Biocraft Laboratories, Inc., 92 Route 46, Elmwood Park, New Jersey 07407

Institut Biochimique, S.A., Via al Ponte 13, 6900 Massagno, Switzerland

Gema S.A., Via Agusta 158, Planta 7, 08006 Barcelona, Spain

(c) Cheri M. Taylor, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street S.W., Room 401J, Washington, DC 20436, shall be the Commission investigative attorney, party to this investigation; and

(4) For the investigation and temporary relief proceedings so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding administrative law judge.

Responses to the complaint, the motion for temporary relief and the notice of investigation must be submitted by the named respondents in accordance with §§ 210.21 and 210.24 of the Commission's Interim Rules of Practice and Procedure, 53 FR 33034, 33059–33063 (Aug. 29, 1988) and 53 FR 49118, 49129–49133 (Dec. 6, 1988). Pursuant to §§ 201.16(d), 210.21(a), and 210.24(e)(9) of the Commission's Rules (19 CFR 201.16(d), 53 FR 33034, 33059 and 53 FR 49118, 49130–49131), such responses will be considered by the Commission if received not later than ten (10) days after the date of service by the Commission of the complaint, the motion for temporary relief and the notice of investigation. Extensions of time for submitting responses to the complaint, the motion for temporary relief and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint, in the motion for temporary relief and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint, the motion for temporary relief, and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint, motion for temporary relief and this notice, and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: March 9, 1989.

[FR Doc. 89–6035 Filed 3–14–89; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–284]

Certain Electric Power Tools Battery Cartridges and Battery chargers; Initial Determination Terminating Respondent on the Basis of Settlement Agreement

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondent on the basis of a settlement agreement: Robert Bosch Power Tool Corporation.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on March 7, 1989.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, DC 20436, telephone 202–252–1000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the

Commission's TDD terminal on 202–252–1810.

Written Comments: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondent. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 500 E Street, SW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reason why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202–252–1805.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: March 6, 1989.

[FR Doc. 89–6037 Filed 3–14–89; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 332–271]

Lime From Mexico; Investigation and Hearing

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of public hearing.

SUMMARY: Following receipt on February 8, 1989, of a request from the U.S. Trade Representative (USTR), the Commission instituted investigation No. 332–271 under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) (the act). As requested by USTR, the Commission will report to the President on the probable economic effect on an industry in the United States of revocation by the Department of Commerce of the outstanding countervailing duty order on lime from Mexico, provided for in subheadings 2522.10.00, 2522.20.00 and 2522.30.00 of the Harmonized Tariff Schedule of the United States. In accordance with USTR's request, the Commission will submit its report to the President within 150 days of the date of the request, or by July 10, 1989.

EFFECTIVE DATE: February 8, 1989.

FOR FURTHER INFORMATION CONTACT: Elizabeth Haines (202–252–1200), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–252–1000.

Background and Scope of Investigation

On February 8, 1989, the Commission received a request from the USTR (copy attached) to "conduct an investigation into, and report to the President on whether, the probable economic effect on an industry in the United States of revocation by the Department of Commerce of the outstanding countervailing duty order on lime from Mexico, 49 FR 35672, would be such that (1) an industry in the United States would be materially injured, or would be threatened with material injury, or (2) the establishment of an industry in the United States would be materially retarded." USTR further stated that the terms used in its request are defined at 19 U.S.C. 1677.

Public Hearing

The Commission will hold a public hearing in connection with this investigation beginning at 9:30 a.m. on May 18, 1989, at the U.S. International Trade Commission Building, 500 E Street SW, Washington, DC. All persons will have the opportunity to appear by counsel or in person, to present information, and to be heard.

Requests to appear at the public hearing should be filed with the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, not later than the close of business (5:15 p.m.) on May 10, 1989. If the number of persons requesting an opportunity to appear by counsel or in person is large, limitation of time for the presentation of oral testimony is in the public interest to ensure that all viewpoints are aired. Accordingly, in scheduling appearances at the hearing, the time to be allotted to witnesses for the presentation of oral testimony will be limited. The Commission will determine appropriate allocations of time based on the number of persons requesting an opportunity to appear. Questioning of witnesses will be limited to members of the Commission and its staff and witnesses should be prepared to provide additional information in response to such questioning.

Any written materials presented at the hearing must be submitted in accordance with the requirements of § 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6).

Written Submissions

Interested persons are invited to submit written statements in the form of one prehearing and/or one posthearing statement (as described below) concerning the investigation, in lieu of, or in addition to, appearances at the public hearing. Commercial or financial information that a submitter desires that the Commission treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6).

A signed original and fourteen (14) copies of each written statement must be submitted to the Commission in accordance with § 201.8(d) of the Commission's rules (19 CFR 201.8(d)). All written submissions, except for confidential business information, will be made available for inspection by the public during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Persons who intend to submit a written statement to the Commission should so inform the Secretary of the Commission no later than the close of business on May 10, 1989. To be assured of consideration by the Commission, a prehearing statement should be submitted not later than the close of business on May 15, 1989. Posthearing statements must be submitted not later than the close of business on May 25, 1989.

The Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who have requested an opportunity to appear at the public hearing or who have indicated an intention to submit a written statement. The service list will be made available to the public on May 11, 1989. The Commission encourages all persons or counsel therefor filing a written statement with the Commission to serve a non-confidential copy of such statement on each person on the service list.

Release of Data

A public version of the tables prepared for inclusion in the Commission's report will be released to

the persons on the service list on May 5, 1989.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: March 7, 1989.

[FR Doc. 89-6036 Filed 3-14-89; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

Missing Children's Assistance Act Final Program Priorities

AGENCY: Office of Juvenile Justice and Delinquency Prevention.

ACTION: Notice of Final FY 1989 Research, Demonstration, and Service Program Priorities and Merit Selection Criteria under the Missing Children's Assistance Act.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP) is publishing its final program priorities for making grants and contracts under the Missing Children's Assistance Act, title IV, section 405, of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended by the Juvenile Justice and Delinquency Prevention amendments of 1988, subtitle F of title VII of Pub. L. 100-690, November 18, 1988.

FOR FURTHER INFORMATION CONTACT: Mary Witten Neal, Director, Missing Children's Program, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue NW., Washington, DC 20531, (202) 724-7655.

SUPPLEMENTARY INFORMATION: Responsibility for establishing annual research, demonstration, and service program priorities and criteria for making grants and contracts pursuant to section 405 of the Missing Children's Assistance Act rests with the Administrator of the Office of Juvenile Justice and Delinquency Prevention. For FY 1989, the final funding priorities for section 405 will be the continuation of three programs. The Acting Administrator is hereby announcing these priorities, specifying merit and performance criteria to be applied in their review.

Listed below are programs currently funded under section 405 of the Missing Children's Assistance Act that will be considered for continued funding in FY 1989 under their existing project period grants.

The Child Victim as Witness Research and Development Program

This program implements and tests new strategies to be used to improve court policies and practices for handling child victim witnesses (405(a)(6)).

Families of Missing Children: Psychological Consequences and Promising Interventions

The purpose of this project is to increase our knowledge of, and develop effective treatment alternatives for, the psychological consequences to families with missing and exploited children (405(a)(4) (A) and (B)).

Reunification of Missing Children

The purpose of this development initiative is to identify promising or effective strategies to assist families in adjusting to the return of a missing child (405(a)(7)).

The following criteria, based on merit, will be considered in assessing the three noncompeting continuation applications (a noncompeting continuation grant is made in support of a new budget period within an approved and existing project period):

(1) The results of title IV funding under the recipient's current award justify further program activity;

(2) The recipient has promptly submitted all required reports;

(3) Adequate grantor agency funds are available to support the project;

(4) The recipient has shown satisfactory progress in achieving the objectives of the project and has met all material terms and conditions of the award;

(5) The recipient's management practices have provided adequate stewardship of grantor agency funds; and

(6) Any other reason that would indicate continued funding would be in the best interest of the Government.

Dated: March 9, 1989.

Approved:

Diane M. Munson,

Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 89-6003 Filed 3-14-89; 8:45 am]

BILLING CODE 4410-18-M

DEPARTMENT OF LABOR

Office of the Secretary

Commission on Workforce Quality and Labor Market Efficiency; Meeting

The Commission on Workforce Quality and Labor Market Efficiency was established under the provisions of the Federal Advisory Committee Act to increase the excellence of the American workforce.

A public meeting of the Commission on Workforce Quality and Labor Market Efficiency will be held on April 4, 1989, commencing at 1:00 p.m., in room S-2508 of the Department of Labor, 200 Constitution Avenue, NW., Washington, DC.

The purpose of the meeting is to focus on the specific recommendations that the Commissioners wish to consider and refine in subsequent meetings.

FOR FURTHER INFORMATION CONTACT: Laurie J. Bassi, Deputy Director, Commission on Workforce Quality and Labor Market Efficiency, U.S. Department of Labor, 200 Constitution Avenue, NW. Room C-2313, Washington, DC 20210, telephone (202) 523-6836.

Individuals or organizations wishing to submit written statements to the Commission on Workforce Quality and Labor Market Efficiency should send 40 copies to the address given above. Papers will be accepted and included in the record of the meeting if received on or before March 28, 1989.

On May 4, 1989 and thereafter, official records of the meeting will be available for public inspection at: Department of Labor, 200 Constitution Avenue, Room C-2313, Washington, DC.

Signed at Washington, DC., this 9th day of March 1989.

Elizabeth Dole,

Secretary of Labor.

[FR Doc. 89-5956 Filed 3-14-89; 8:45 am]

BILLING CODE 4516-23-M

Office of the Assistant Secretary for Veterans' Employment and Training

Funding for Fiscal Year 1989; Stewart B. McKinney Homeless Assistance Act; Homeless Veterans' Reintegration Projects

AGENCY: Office of the Assistant Secretary for Veterans' Employment and Training.

ACTION: Notice.

SUMMARY: This notice sets forth the Fiscal Year 1989 funding procedures for Homeless Veterans' Reintegration Projects (HVRP) operating under Title VII, Subtitle C, section 738 of the Stewart B. McKinney Homeless Assistance Act. Grantees which were funded under the competitive process held by the U.S. Department of Labor, Office of the Assistant Secretary for Veterans' Employment and Training, in FY 1988 will be given the opportunity to apply for additional funds and for a

program extension through September 30, 1990. The purpose of these programs is to expedite the reintegration of homeless veterans into the labor force.

DATE: During March 1989, application instruction will be sent to the current HVRP grantees which were funded through the FY 1988 competitive process as described below. Applications will be due at least sixty days prior to the expiration date of the FY 1988 HVRP grants, but in all cases must be submitted no later than July 15, 1989. Awards will be made between July 1 and September 30, 1989.

FOR FURTHER INFORMATION CONTACT: Ms. Christine Chudd, Office of the Assistant Secretary for Veterans' Employment and Training, 200 Constitution Ave., NW., Rm. S1316, Washington, DC 20210, Telephone (202) 523-9110.

SUPPLEMENTARY INFORMATION: The Office of the Assistant Secretary for Veterans' Employment and Training announces the availability of approximately $1.35 million to extend programs operated by FY 1988 HVRP grantees through September 30, 1990. These grantees were funded as a result of a competition held in FY 1988, and the recipients of the funds are State or local public agencies providing services to the following geographic areas: San Diego, California; San Jose, California; Denver, Colorado; Jacksonville, Florida; Atlanta, Georgia; Boston, Massachusetts; Detroit, Michigan; St. Louis, MIssouri; New York City, New York; Portland, Oregon; Pittsburgh, Pennsylvania; Nashville, Tennessee; San Antonio, Texas; Olympia, Seattle, and Tacoma, Washington, (one grant); and Milwaukee, Wisconsin.

To determine funding levels for the second year, individual negotiations will be held with each grantee. Factors effecting the funding determination will include current spending rate, program performance to date, the number and needs of homeless veterans in the geographic area, and any adjustments to program design and would enhance the probability of long term job retention.

In all likelihood, those grantees with slow start-up will be funded at less than the first year level since carryover funds will be available for several months into the second year. Those grantees who will have little or no carryover funds will most likely receive an amount equal to or more than the first year depending on the factors noted above. It is anticipated that grantees will be funded at 75% to 125% of the first year level. However, the Office of the Assistant Secretary reserves the right not to fund grantees which are performing extremely poor and which show little promise of improvement in a second year of operation.

Signed at Washington, DC, this 9th day of March, 1989.

Donald E. Shasteen,

Assistant Secretary for Veterans' Employment and Training.

[FR Doc. 89-5955 Filed 3-14-89; 8:45 am]

BILLING CODE 4510-79-M

Employment and Training Administration

Accusonic Systems Corp. et al.; Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than March 27, 1989.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than March 27, 1989.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC this 27th day of February 1989.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (Union/workers/Firm)	Location	Date received	Date of petition	Petition number	Articles produced
Accusonic Systems Corp. (Workers)	New Hyde Park, NY	2/27/89	2/14/89	22,515	Transformers, Speakers & Circuit Boards
Beth Energy Mines, Mine No. 84 Complex (UMWA).	Cokeburg, PA	2/27/89	2/3/89	22,516	Coal
Boilermaker Contractor Assoc. (Boilermakers)	Buffalo, NY	2/27/89	2/10/89	22,517	Oil & Gas
Brighton Metal Products (AIW)	Caseville, MI	2/27/89	2/9/89	22,518	Sleeper Cabs
Chanin Clothing Corp. (ACTWU)	New York, NY	2/27/89	2/8/89	22,519	Men's Sportcoats
D'Altrule Industries (OCAW)	Elizabeth, NJ	2/27/89	2/10/89	22,520	Steel Racks
Dollinger Corp. (IUE)	Rochester, NY	2/27/89	2/8/89	22,521	Industrial Filtration Systems
E.F. Hutton (Workers)	New York, NY	2/27/89	2/10/89	22,522	Financial Services
E&L Fashions (ILGWU)	Paterson, NJ	2/27/89	2/8/89	22,523	Ladies' Coats
Eagle Electric Mfg., Co. (UAW)	Long Island City, NY	2/27/89	2/9/89	22,524	Electrical Devices
Eagle Sportogs, Inc. (Company)	Union, NJ	2/27/89	2/8/89	22,525	Silk Screened Clothing
Emhart Industries, Inc.-Hardware Div. (Company)	Berlin, CT	2/27/89	2/7/89	22,526	Locks
Farah Manufacturing Co. (Workers)	El Paso, TX	2/27/89	2/3/89	22,527	Men's & Boy's Coats & Pants
Flake Inc. (Company)	Midland, TX	2/27/89	1/19/89	22,528	Oilfield Goods
George W. Moore, Inc. (Workers)	Waltham, MA	2/27/89	2/3/89	22,529	Set Screws
HEFCO (Company)	Eatontown, NJ	2/27/89	2/14/89	22,530	Air Filters
Heileman/Stag Brewery (Workers)	Belleville, IL	2/27/89	2/13/89	22,531	Beer & Ale

APPENDIX—Continued

Petitioner (Union/workers/Firm)	Location	Date received	Date of petition	Petition number	Articles produced
Hocking Oil Co., Inc. (Company)	Mt. Carmel, IL	2/27/89	2/7/89	22,532	Oil & Gas
J.M. Manufacturing Inc. (Workers)	Denison, TX	2/27/89	2/6/89	22,533	Pipes
Joseph Dorf Assoc. Inc. (Workers)	New York, NY	2/27/89	2/7/89	22,534	Clocks & Blankets
Levi Strauss & Co. Mc Arthur Rd Plant (UGWA)	Maryville, TN	2/27/89	2/2/89	22,535	Warehouse Facility
Levi Strauss & Co. RC Jackson Ave (UGWA)	Maryville, TN	2/27/89	2/2/89	22,536	Warehouse Facility
Maxam, Incorp. (Workers)	Humboldt, KS	2/27/89	1/13/89	22,537	Oil & Gas
Mobay Chemical (OCAW)	Haledon, NJ	2/27/89	2/10/89	22,538	Pagments for Paints
Momentum Technology (Workers)	Morris Plains, NJ	2/27/89	1/30/89	22,539	Computer Hardware
Northwest Mobil Homes, Inc. (Company)	Williston ND	2/27/89	2/3/89	22,540	Mobil Homes
Ormed Mfg., Inc. (Company)	Buffalo, NY	2/27/89	2/14/89	22,541	Surgical Sponges
Phil LLoyd, Inc. (Workers)	Woodward, OK	2/27/89	2/8/89	22,542	Oilfield Services
Phil LLoyd, Inc. (Workers)	Canadian, TX	2/27/89	2/8/89	22,543	Oilfield Services
Pinkham Lumber-Div. of Great Northern Paper (UPIU).	Nashville, ME	2/27/89	2/10/89	22,544	Lumber & Wood Chips
Portage Chip Plant-Div. of Great Northern Paper Co. (UPIU).	Portage, ME	2/27/89	2/10/89	22,545	Woodchips for Paper
S.A.I.M.A. America (Workers)	New York City, NY	2/27/89	2/2/89	22,546	Cases
Saber Construction & Operation Co. (Workers)	Albion, IL	2/27/89	2/19/89	22,547	Oilfield Services
Sherwood Medical Co. (Workers)	Tucson, AZ	2/27/89	2/9/89	22,548	Disposable Medical Products
Spectrum Foods (Workers)	New Stanton, PA	2/27/89	2/10/89	22,549	Food Service
Strataphysics Incorp. (Workers)	Midland, TX	2/27/89	2/7/89	22,550	Oil & Gas
Tenneco Management (Company)	Houston, TX	2/27/89	2/2/89	22,551	Oil & Gas
Tenneco Oil Processing & Marketing	Houston, TX	2/27/89	2/2/89	22,552	Oil & Gas
Tenneco Gas Pipeline Group (Company)	Houston, TX	2/27/89	2/2/89	22,553	Oil & Gas
Tenneco Realty (Company)	Houston, TX	2/27/89	2/2/89	22,554	Oil & Gas
Universal Mfg. (Workers)	Paterson, NJ	2/27/89	8/2/88	22,555	Lighting Ballast
Valex Petroleum Inc. (Workers)	Denver, CO	2/27/89	2/12/89	22,556	Oil & Gas
W.B. Bow Tie Corp. (Workers)	New York, NY	2/27/89	2/8/89	22,557	Ties
Western Kansas Drilling (Workers)	Hays, KS	2/27/89	1/31/89	22,558	Oil & Gas
Zanetis Oil Properties, Inc. (Company)	Olney, IL	2/27/89	1/19/89	22,559	Oil Wells

[FR Doc. 89-5961 Filed 3-14-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-22, 388]

A.J. Boyd Industries, Inc., Andover, NJ; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on January 30, 1989 in response to a worker petition which was filed on behalf of workers at A.J. Boyd Industries, Incorporated, Andover, New Jersey.

The petitioner has requested that the petition be withdrawn. Consequently further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC this 24th of February 1989.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 89-5962 Filed 3-14-89; 8:45 am]

BILLING CODE 4510-30-M

In the matter of Cardinal Drilling Co.; TA-W-21,603 Billings, Montana and operating at various locations in the following States TA-W-21,603A North Dakota, TA-W-21,603B South Dakota; TA-W-21,603C Nevada.

[TA-W-21,603 et al.]

Cardinal Drilling Co.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on January 12, 1989, applicable to all workers of Cardinal Drilling Company, Billings, Montana.

The certification notice is amended to include the States where worker separations have occurred at Cardinal Drilling. Worker separations have occurred since October 1985 at Cardinal Drilling in North Dakota, South Dakota, and Nevada.

The intent of the certification is to cover all workers of the Cardinal Drilling Company in all of its locations. The amended notice applicable to TA-W-21,603 is hereby issued as follows:

All workers of Cardinal Drilling Company, Billings, Montana and operating in the States of North Dakota, South Dakota and Nevada who became totally or partially separated on or after October 1, 1985 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 28th day of February 1989.

Barbara Ann Farmer,

Director, Office of Program Management, UIS.

[FR Doc. 89-5959 Filed 3-14-89; 8:45 am]

BILLING CODE 4510-30-M

Dixilyn-Field Drilling Co.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

TA-W-21,713 Houston, TX
TA-W-21,713A Lafayette, LA

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on January 9, 1989 applicable to all workers of Dixilyn-Field Drilling Company, Houston, Texas.

Based on new information from the company, additional workers were separated from Dixilyn-Field Drilling Company, Lafayette, Louisiana during the period applicable to the petition. The notice, therefore is amended by including the Lafayette, Louisiana location.

The amended notice applicable to TA-W-21,713 is hereby issued as follows:

All workers of Dixilyn-Field Drilling Company, Houston, Texas and Lafayette,

Louisiana who became totally or partially separated from employment on or after October 1, 1985 and before August 30, 1987 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 23rd day of February 1989.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 89-5963 Filed 3-14-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-19,671 et. al.]

Hobart Corp.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In the matter of Hobart Corporation

TA-W-19,671 Torrence Street, Dayton, Ohio.

TA-W-19,671A Huffman Avenue, Dayton, Ohio.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Revised Determinations on Reconsideration on September 21, 1987 applicable to all workers of the Torrence Street Plant in Dayton, Ohio. The Department's denial for workers of the Huffman Avenue Plant was affirmed. The Notice of Revised Determinations was published in the **Federal Register** on September 30, 1987 (52 FR 36645).

Based on new information from the company, an additional worker was retained a few weeks after the September 1, 1987 termination date set in the revised determination. The worker had his claim under appeal with the State Agency until November 29, 1988. The intent of the Department's certification is to include all workers at the Torrence Street plant.

The amended notice applicable to TA-W-19,671 is hereby issued as follows:

All workers of Hobart Corporation's Torrence Street Plant, Dayton, Ohio who became totally or partially separated from employment on or after March 1, 1987 and before October 1, 1987 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

All workers of Hobart Corporation's Huffman Avenue Plant, Dayton, Ohio are denied.

Signed at Washington, DC, this 27th day of February 1989.

Barbara Ann Farmer,

Director, Office of Program Management, UIS.

[FR Doc. 89-5958 Filed 3-14-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-21,730]

Kirkwood Oil & Gas, Casper, Wyoming; Revised Determination on Reconsideration

On February 15, 1989, the Department issued an Affirmative Determination Regarding Application for Reconsideration for workers and former workers at Kirkwood Oil & Gas, Casper, Wyoming. The affirmed notice regarding application for reconsideration will soon be published in the **Federal Register**.

The company provided additional information claiming that it was substantially involved in geological exploration on oil and gas lease properties through 1986.

On reconsideration, the Department found that Kirkwood Oil & Gas has been historically involved in geological exploration on oil and gas lease properties. Approximately half of Kirkwood's revenues were derived from geological prospecting through 1986. Kirkwood's prospecting revenues decreased in 1986 compared to 1985 and declined to only a minor share of its total revenues in 1988.

The exploration and drilling end of the crude oil and natural gas industry is particularly sensitive to the level of imports and changes in the price of crude oil. The impact of crude oil imports and reduced price levels has resulted in sharply declining U.S. exploration and drilling activity since 1985. The total number of U.S. wells completed dropped in 1985, 1986 and 1987.

The declines in revenues at Kirkwood Oil & Gas and the declines in employment in 1985 and 1986 resulted from a decreased demand for exploration and drilling activities from oil and gas industry clients due to the 32 percent increase in U.S. crude oil imports between 1985 and 1987 and the 66 percent drop in U.S. oil wells drilled between 1984 and 1987.

The preponderance of activities performed by workers of Kirkwood Oil & Gas after 1986 are not related to oil and gas drilling and exploration; therefore, workers of the firm from January 1, 1987 to October 31, 1987 are not eligible for the retroactive provisions of section 1421(a)(1)(B) of the Omnibus Trade and Competitiveness Act of 1988. Workers of Kirkwood Oil and Gas falling under the provisions of the Trade Act prior to the 1988 amendments are outside the scope of the Act since they do not produce an article within the meaning of section 222(3) of the Act. Accordingly, a termination date of January 1, 1987 is set in the revised notice of determination.

Conclusion

After careful review of the additional facts obtained on reconsideration, it is concluded that increased imports of articles like or directly competitive with crude oil contributed importantly to the decline in exploration activities and to the total or partial separation of workers at Kirkwood Oil & Gas, Casper, Wyoming. In accordance with the provisions of the Act and the retroactive provisions of section 1421(a)(1)(B) of the Omnibus Trade and Competitiveness Act of 1988, I make the following revised determination:

All workers of Kirkwood Oil & Gas, Casper, Wyoming who became totally or partially separated from employment on or after October 1, 1985 and before January 1, 1987 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 2nd day of March 1989.

Barbara Ann Farmer,

Director, Office of Program Management, UIS.

[FR Doc. 89-5960 Filed 3-14-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-22,291 et al.]

The Lee Apparel Co. Inc.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In the matter of The Lee Apparel Co., Inc.

TA-W-22,291 BROADWAY, VIRGINIA

TA-W-22,324 LENEXA, KANSAS

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued Certifications of Eligibility to Apply for Worker Adjustment Assistance on February 13, 1989 applicable to all workers of The Lee Apparel Company, Incorporated in Broadway, Virginia and Lenexa, Kansas. The Certifications will soon be published in the **Federal Register.**

The Department inadvertently reversed the impact dates for the two worker groups at The Lee Apparel Company. The Broadway petition was dated December 12, 1988 while the Lenexa petition was dated December 1, 1988. The certification notice, therefore is amended by changing the impact date for the Broadway worker group to December 12, 1987 and the Lenexa worker group to December 1, 1987.

The amended notice applicable to TA-W-22,291 and TA-W-22,324 is hereby issued as follows:

All workers of The Lee Apparel Company, Incorporated, Broadway, Virginia who became totally or partially separated from emloyment on or after December 12, 1987 and before November 30, 1988 and all workers of The Lee Apparel Company Incorporated, Lenexa, Kansas who became totally or partially separated from employment on or after December 1, 1987 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 2nd day of March 1989.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 89-5957 Filed 3-14-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-22,331]

S & P Manufacturing Andover, MA; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on January 3, 1989 in response to a worker petition received on January 3, 1989 which was filed by the International Ladies' Garment Workers' Union on behalf of workers at S & P Manufacturing, Andover, Massachusetts.

The petitioning group of workers are included in an investigation of Vatco Industries Corporation, Andover, Massachusetts. Vatco Industries Corporation is the subject of an ongoing investigation for which a determination has not yet been issued (TA-W-22,336). Consequently, further investigation is this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 28th day of February 1989.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 89-5964 Filed 3-14-89; 8:45 am]

BILLING CODE 4510-30-M

Shelby Drilling Co.; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

TA-W-22,069 Englewood, CO
TA-W-22,069A All Locations in Wyoming

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on January 12, 1989 applicable to all workers of Shelby Drilling Company, Englewood, Colorado.

Based on new information from the company, additional workers were separated from Shelby Drilling Company, at various locations in the State of Wyoming during the period applicable to the petition. The notice, therefore is amended by including all locations of Shelby Drilling in Wyoming.

The amended notice applicable to TA-W-22,069 is hereby issued as follows:

All workers of Shelby Drilling Company, Englewood, Colorado and all workers of Shelby Drilling Company in the State of Wyoming who became totally or partially separated from employment on or after October 1, 1985 and before January 1, 1989 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 23rd day of February 1989.

Barbara Ann Farmer,

Director, Office of Program Management, UIS.

[FR Doc. 89-5965 Filed 3-14-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-22,005]

Wright Drilling Co., Harriman, TN; Termination of Investigation

Purusant to section 221 of the Trade Act of 1974, an investigation was initiated on November 18, 1988 in response to a petition which was filed on behalf of workers and former workers at Wright Drilling Company, Harriman, Tennessee.

The investigation revealed that the petitioners worked at the Wright Drilling Company, Sunbright, Tennessee facility and not at the Company's Harriman, Tennessee facility. Workers at Wright Drilling Company, Sunbright, Tennessee are already covered under the Wright Drilling Company, Sunbright, Tennessee petition (TA-W-21,153). An active certification covering the petitioning group of workers remains in effect (TA-W-21,153). No new information is evident which would result in a reversal of the Department's previous determination. Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC, this 23rd day of February 1989.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 89-5966 Filed 3-14-89; 8:45 am]

BILLING CODE 4510-30-M

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 89-13; Exemption Application No. D-6040 et al.]

Grant of Individual Exemptions; Coldwell Banker Commercial Group, Inc. (CBCG), et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the Federal Register of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing he held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In according with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 CFR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Coldwell Banker Commercial Group, Inc. (CBCG) Located in Los Angeles, CA

[Prohibited Transaction Exemption 89–13; Exemption Application No. D–6040]

Exemption

Part I—Exemption for Certain Transactions Involving Investment in a Managed Trust Account

The restrictions of section 406(a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(C)(1) (A) through (D) of the Code shall not apply to employee benefit plan (Participating Plan) investment in a trust account (Managed Trust Account) which is not commingled with the assets of other trust accounts where Coldwell Banker Real Estate Trust Services (the Trust Company) serves as trustee and the Trust Company (or its affiliate) renders investment management services, provided that:

(a) Each investment is authorized in writing by a fiduciary of a Participating Plan who is independent of the Trust Company and any of its affiliates; and

(b) The applicable General Conditions of Part V are met.

Part II—Exemption for Certain Transactions Involving Parties in Interest and Common Trusts

The restrictions of section 406(a)(1)(A) through (D) of the Act an the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to transaction between a party in interest with respect to a Participating Plan and a common or collective trust sponsored and maintained by the Trust Company (Common Trust) if the applicable General Conditions of Part V are met and, at the time of the transaction, the Participating Plan in such Common Trust together with the interests of any other plans maintained by the same employer and/or employee organization in the Common Trust do not exceed 10 percent of the total of all assets in the Common Trust.

Part III—Exemption for Certain Transactions Between Common Trusts for Managed Trust Accounts and the Trust Company or its Affiliates

The restrictions of section 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(E) of the Code, shall not apply to the transaction described below, if the General Conditions of Part V are satisfied:

The payment to the Trust Company of disposition fees (Disposition Fees) under the terms established in the respective Trust Agreement governing the Common Trust or Managed Trust Account (and as described in the summary of facts and representations of the proposed exemption, provided that the payment and terms of such Disposition Fees shall have been approved by an independent fiduciary of the plan at the time the Trust Agreement was entered into and that the total of all fees paid to the Trust Company constitute no more than reasonable compensation.

Part IV—Exemption for Certain Transactions Between Joint Ventures or Partnerships and the Trust Company or Its Affiliates

The restrictions of section 406(b)(3) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1)((F) of the Code, shall not apply to the transaction described below:

The payment of fees or commissions to CBCG or its affiliates by partnerships or joint ventures in which a Common Trust or Managed Trust Account is a partner or joint venturer or by an entity with respect to which a Common Trust or Managed Trust Account has made a loan which is convertible into equity, for Management Services furnished with respect to such partnership or joint venture; provided that the applicable General Conditions of Part V are satisfied and the following conditions are met:

(a) The fees or commissions paid to CBCG or its affiliates are reasonable;

(b) A party which is not affiliated with the Trust Company or its affiliates and which has an equity interest in excess of 10 percent in the partnership, joint venture or the entity to which the loan was made makes the decision to hire the service provider;

(c) Neither the Trust Company nor its affiliates have the power to exercise control over the selection of the service provider (other than through the exercise of a veto for reasonable cause); and

(d) The portion of any fee received by the CBCG or an affiliate from the partnership or joint venture for which the Common Trust or Managed Trust Account is responsible due to its proportionate interest in the partnership or joint venture will be applied as a credit to the Management Fee paid to the Trust Company by the Common Trust or Managed Trust Account.

Part V—General Conditions

(a) All transactions are on terms and conditions that are at least as favorable to the Managed Trust Account(s) and Common Trusts(s) as those in arm's length transactions between unrelated parties would be.

(b) No plan subject to the provisions of Title I of the Act or to section 4975 of the Code may invest in a Common Trust or establish a Managed Trust Account unless the plan has total net assets with a value in excess of $50,000,000 and no such plan may invest more than 5 percent of its assets in any one Common Trust or Managed Trust Account, or more than 10 percent of its assets in Trust Accounts established by the Trust Company or an affiliate.

(c) Prior to making an investment in a Common Trust or Managed Trust Account, a fiduciary for the plan independent of CBCG and its affiliates receives offering materials which disclose all material facts concerning the purpose, structure and operation of such Trust or Trust Account in which it participates.

(d) Each Participating Plan shall receive the following with respect to any Common Trust or Managed Trust Account in which it participates:

(1) Audited Financial Statements, prepared by independent public accountants selected by the Trust Company, not later than 90 days after the end of the Common Trust or Managed Trust Account fiscal year.

(2) Quarterly reports prepared by the Trust Company relating to the overall financial position and operating results of the Common Trust or Managed Trust Account, which will include all fees paid by the common Trust or Managed Trust Account, and by any partnerships or joint ventures in which the Common Trust or Managed Trust Account is invested.

(3) Annual estimates prepared by the Trust Company of the current fair market value of all properties owned by the Common Trust or Managed Trust Account.

(4) Copies of the quarterly reports which the Trust Company is required to file with the California Superintendent of Banks, and an immediate report with regard to any finding by the California Superintendent of Banks involving inappropriate fiduciary behavior with respect to any Managed Trust Account of Common Trust.

(5) In the case of a Common Trust, a list of all of the other investors in the Common Trust.

(e) The Trust Company or its affiliate shall maintain, for a period of six years, the records necessary to enable the persons described in subsection (f) of this Part V to determine whether the conditions of this exemption have been met, except that (i) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of the Trust Company of its affiliates, the records are lost or destroyed prior to the end of the six year period, and (ii) no party in interest shall be subject to the civil penalty that may be assessed under Section 503(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by subsection (f) below.

(f) Notwithstanding any provisions of section 504 (a) (2) and (b) of the Act,

The records referred to in subsection (e) of this Part V shall be unconditionally available at their customary location for examination during normal business hours by:

(1) Any duly authorized employee or representative of the Department, the Internal Revenue Service or the California Superintendent of Banks;

(2) Any fiduciary of a Participating Plan or any duly authorized employee or representative of such fiduciary;

(3) Any contributing employer to any Participating plan or any duly authorized employee or representative of such employer; and

(4) Any participant or beneficiary of any Participating Plan, or any duly authorized employee or representative of such participant or beneficiary.

Part VI—Definitions and General Rules.

For the purpose of this exemption:

(a) An "affiliate" of a person includes:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by or under common control with the person;

(2) Any officer, director, employee, relative of, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner or employee.

(b) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(c) the term "Management Services" means:

(1) Services or real estate brokers and finders in connection with the acquisition or disposition of real property or interests therein.

(2) Services of property managers.

(3) Services of leasing agents in connection with obtaining leases on properties owned by the Common Trust or Managed Trust Account.

(d) The term "relative" means a "relative" as that term is defined in section 3(15) of the Act (or a "member of the family" as that term is defined in section 4975(e)(6) of the Code), or a brother, sister, or a spouse of a brother or sister.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transactions which are the subject of this exemption.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on January 9, 1989 at 54 FR 702.

For Further Information Contact: David Lurie of the Department, telephone (202) 523–8671. (This is not a toll-free number.)

General Motors Retirement Program for Salaried Employees; General Motors Hourly-Rate Employees Pension Plan; and the G.M. Special Pension Plan (together, the Plans)

[Prohibited Transaction Exemption 89–14; Exemption Application Nos. D–7553, D–7555, and D–7555]

Exemption

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to: (1) The use of assets form the Plans for long-term mortgage loans to the Trammell Crow Companies and their affiliates (Crow), where the loan proceeds are used to pay off construction loans originated by construction lenders (the Construction Lenders), in situations where such Construction Lenders are parties in interest with respect to the Plans but are not related to, or affiliated with, the General Motors Corporation, the sponsor of the Plans; and (2) the execution and consummation of tri-party buy-sell agreements for such mortgage loans by the Plans with Crow and the Construction Lenders, and the subsequent assignment of mortgage notes by the Construction Lenders to the Plans pursuant to such agreements, provided that:

(a) Aldrich, Eastman & Waltch, Inc. (AEW), an independent manager for and a fiduciary with respect to the Plans, expressly approves each long-term mortgage loan and recommends approval of the loan to the Pension Investment Committee of General Motors Corporation (the PIC), a fiduciary of the Plans which is independent of both Crow and the Construction Lender, which retains final approval authority over any investments proposed by AEW;

(b) The terms of each such transaction are not less favorable to the Plans than the terms generally available in an arm's-length transaction between unrelated parties;

(c) The long-term mortgage loans represent in the aggregate no more than two percent (2%) of the total assets of the Plans as of the date of approval of each such transaction by the PIC; and

(d) No investment management fee, advisory fee, underwriting fee, or similar compensation is paid to the Construction Lender by the Plans with regard to the transaction.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on December 27, 1988 at 53 FR 52257.

Effective Date: The effective date of this exemption is May 22, 1987.

Temporary Nature of Exemption: This exemption is effective for all long-term mortgage loans and agreements for such loans entered into by the parties described herein since May 22, 1987. However, this exemption will not apply to any loans which are originated after five years from the date on which this exemption is published in the Federal Register.

Written Comments: The applicant submitted several comments with respect to the Notice of Proposed Exemption (the Notice).

Paragraph 7 of the Notice states that the Plans funded the long-term loan for the "Sherwood Forest Project" in Coral Springs, Florida, on September 1, 1988. However, the applicant states that the long-term loan for the "Sherwood Forest Project" was actually funded on September 27, 1988. In addition, the applicant notes that the Plans funded the long-term loan for the "Vinings II Project" in Boca Raton, Florida, on October 31, 1988.

Paragraph 7 of the Notice also states that with respect to the second mortgage interest in the Property (the Second Note) under the long-term loan, the Plans are entitled to a portion of the gross receipts on the property as "additional interest payments." Paragraph 7 states further that the Plans' receipt of these "additional interest

payments" will be subject to an interest rate ceiling calculated to yield to the Plans an overall annual interest rate of return of no more than 15 percent on the Second Note. The applicant states that the 15 percent annual internal rate of return ceiling on the "additional interest payments" is actually based on an inflation-adjusted annual internal rate of return of 15 percent. The Department received three additional comments from interested persons opposing the granting of the exemption. However, after consideration of the entire record, the Department has determined to grant the exemption.

For Further Information Contact: Mr. E.F. Williams of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

Spertus College of Judaica Pension Trust (the Plan) Located in Chicago, Illinois

[Prohibited Transaction Exemption 89–15; Exemption Application No. D–7610]

Exemption

The restrictions of sections 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1) (A) through (E) of the Code, shall not apply to the past sale of certain securities (the Bonds) by the Plan to Spertus College of Judaica, a party in interest with respect to the Plan, provided that the Plan received no less than the fair market value of the Bonds on the date of sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on January 9, 1989 at 54 FR 713.

Effective Date: January 28, 1987.

For Further Information Contact: Alan H. Levitas of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Continental Illinois National Bank and Trust Company of Chicago (Continental) Located in Chicago, Illinois

[Prohibited Transaction Exemption 89–16; Application No. D–7633]

Exemption

The restrictions of sections 406 (a), (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed sale (the Sale) of a mortgage loan participation (the Participation) by Continental as trustee for its collective fund, Continental Illinois Investment Trust for Employee Benefit Plans (CIIT), to Continental in its individual capacity, a party in interest with respect to CIIT; provided that the price paid for the Participation is the greater of either the outstanding principal balance of the Participation or the fair market value of the Participation on the date of the Sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption (the Notice) published on December 27, 1988 at 53 FR 52261.

Written Comments: The Department received two written comments which did not reference or relate directly to the transaction described in the Notice. Accordingly, after consideration of the entire record, the Department has determined to grant the proposed exemption.

For Further Information Contact: Mrs. B.S. Scott of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Crane Cams, Inc. Second Amended and Restated Profit Sharing Plan and Trust (the Plan) Located in Hallandale, Florida

[Prohibited Transaction Exemption 89–17; Exemption Application No. D–7717]

Exemption

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the cash sale by the Plan of a parcel of unimproved real property located in Daytona Beach, Florida to Crane Cams, Inc., the sponsor of the Plan; provided that all terms of such sale are at least as favorable to the Plan as those which the Plan could obtain in an arm's-length transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on January 19, 1989 at 54 FR 2242.

For Further Information Contact: Ronald Willett of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Pocono Pines Corporation Defined Benefit Plan and the Pocono Pines Corporation Profit Sharing Plan (Collectively, the Plans) Located in Pocono Pines, Pennsylvania

[Prohibited Transaction Exemption 89–18; Exemption Application No. D–7726]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the Plans' proposed loans of $56,666 each to Pocono Pines Corporation, the Employer, the Plans' sponsor and, as such, a disqualified person with respect to the Plans; provided the terms and conditions are similar to those obtainable by the Plans in an arm's-length transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on January 19, 1989 at 54 FR 2243.

For Further Information Contact: Mrs. B.S. Scott of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Operating Engineers Local No. 37 Pension Fund (the Plan) Located in Baltimore, MD

[Prohibited Transaction Exemption 89–19; Exemption Application No. D–7728]

Exemption

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed purchase by the Plan of two parcels of improved real property (Parcel Two and Parcel Three), for the total cash consideration of $345,000, from Operating Engineers, Inc., a party in interest with respect to the Plan, provided the amount paid by the Plan for Parcel Two and Parcel Three is not more than fair market value at the time the transaction is consummated.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on January 9, 1989 at 54 FR 715.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Orloff, Lowenbach, Stifelman and Siegel, P.A. Employees' Profit Sharing Plan (the Plan) Located in Roseland, NJ

[Prohibited Transaction Exemption 89–20; Exemption Application No. D–7749]

Exemption

The restrictions of section 406(a), 406 (b)(1), and (b)(2) of the Act and the sanctions resulting from the application of setion 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to: (1) The loan (the New Loan) by the Plan of $350,000 to Orloff, Lowenbach, Stifelman and Siegel, P.C. (the Employer), a party in interest with respect to the Plan; and (2) the guarantee of repayment of the New Loan by the principals of the Employer, provided the terms of the transactions are at least as favorable to the Plan as those obtainable in arm'slength transactions with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on January 9, 1989 at 54 FR 716.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Vascular Surgery, P.C. Money Purchase Pension Plan and Vascular Surgery, P.C. Profit Sharing Plan (Collectively, the Plans) Located in Omaha, Nebraska

[Prohibited Transaction Exemption 89–21 Exemption Application Nos. D–7783 and D–7784]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed cash sale (the Sale) by the Plans of certain collectibles to Dr. and Mrs. John W. Smith, disqualified persons with respect to the Plans; provided that the terms and conditions of the Sale are similar to those which the Plans might obtain in an arm's-length transaction with an unrelated party.

For a more completed statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on January 19, 1989 at 54 FR 2244.

For Further Information Contact: Mrs. B.S. Scott of the Department, Telephone (202) 523–8194. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject to the exemption.

Signed at Washington, DC, this 10th day of March 1989.

Robert J. Doyle,

Director of Regulations and Interpretations, Pension and Welfare Benefits Administration.

[FR Doc. 89–6009 Filed 3–14–89; 8:45 am]

BILLING CODE 4510–29–M

[Application No. D–7521 et al.]

Proposed Exemptions; Union Bank, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearings Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Regulations and Interpretations, Room N–5671, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue NW., Washington, DC 20210.

Notice of Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice pendency of the exemption as published in the **Federal Register** and shall inform interested persons at their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file

with the Department for a complete statement of the facts and representations.

Union Bank (the Bank) Located in Los Angeles, California

[Application No. D–7521]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to: (1) The proposed use of assets from certain multi-employer pension plans (the Plans), for which the Bank serves as a directed trustee, directed corporate trustee, directed corporate co-trustee, or custodian, for permanent mortgage loans to persons (the Borrowers), who will use the loan proceeds to pay off construction loans originated by the Bank; and (2) the execution and consummation of tri-party buy-sell agreements for such mortgage loans by the Bank with the Borrowers and the Plans, and the subsequent assignment of mortgage notes by the Bank to the Plans pursuant to such agreements, provided that:

A. Each permanent mortgage loan is expressly approved by a fiduciary independent of the Bank who has authority to manage or control those Plan assets being invested;

B. The terms of each such transaction are no less favorable to the Plan than the terms generally available in an arm's-length transaction between unrelated parties; and

C. No investment management, advisory, underwriting or sales commission or similar compensation is paid to the Bank by the Plan with regard to such transaction.

Temporary Nature of Exemption

This exemption, if granted, will be effective only for those loans which are originated within five years of the date on which the Final Grant of this proposed exemption is published in the **Federal Register.**

Summary of Facts and Representations

1. The Bank serves as a directed trustee, directed corporate trustee, directed corporate co-trustee, or custodian of the Plans. The Plans are 19 multiemployer construction trade Taft-Hartley pension funds with assets of approximately $2.5 billion. The Bank's services to the Plans consist of holding, receiving, handling and disbursing funds as instructed by an independent plan fiduciary. The Bank represents that it has no discretionary authority with respect to the management of assets of the Plans and does not render investment advice with regard to the permanent loans made by the Plans.[1] The Bank states that the only fiduciary relationship it has with the Plans is that of a directed trustee, directed corporate trustee, directed corporate co-trustee, or custodian for such Plans.

2. In the ordinary course of its commercial lending activities, the Bank makes construction loans to the Borrowers, who develop real property for projects such as office buildings, shopping centers, apartment houses, condominium developments, etc. The Bank states that it is one of the leading banks in California in making construction loans and that the borrowers are some of the leading developers in California. The Borrowers, without the assistance of the Bank, normally obtain a commitment for a permanent loan to pay off the Bank's construction loan when the particular project is completed. However, the Bank states that the Plans are precluded from making such permanent loans, as investment for their real estate portfolios, when the Bank is the construction lender for the project. Thus, the Plans must either forego these real estate investment opportunities or remove the Bank as a trustee, corporate trustee, corporate co-trustee, or custodian.

3. The Bank requests an exemption to permit the use of assets of the Plans for permanent loans to the Borrowers, who will use the loan proceeds to pay off the construction loans originated by the Bank. The Plans do not propose to originate any construction loans or to participate in any construction loans originated by the Bank. The Bank states that none of the Borrowers will be parties in interest with respect to the Plans. The Bank also states that no contributing employers of the Plans will participate as contractors or subcontractors on any of the projects which are being financed by the Plans' permanent loans.[2]

4. The Bank represents that no loan origination fees will be paid by the Borrowers to the Bank for permanent financing. The Borrower will obtain commitments for permanent financing either through direct contacts with the Plans or through mortgage bankers. The Banks states that it occasionally acts as a broker, for a fee, in order to find a permanent lender for a project. However, the Bank represents that it has never acted as such a broker for any employee benefit plan for which it acts as a fiduciary and that, in the proposed transaction, the Borrowers will not authorize the Bank to act as an agent for the Borrower to obtain permanent financing for any project.

All of the permanent loans to the Borrowers will be originated by the Plans. Therefore, all loan origination fees will be paid to the Plans. In addition, the Bank states that the Plans will not be required to pay and advisory, investment management, or loan commitment fee to the Bank, although such loans will be treated as assets for the normal directed trustee or custodial administration fees which will be assessed by the Bank. However, the Plans may request the Bank to service the permanent loans, for which the Bank will receive a servicing fee.[3]

5. The Bank represents that in some instances, the Plans and the Borrowers may want the construction loan and the permanent loan to be documented in the same package. In such instances, the parties will enter into a buy/sell arrangement. Such buy/sell arrangements will involve a written tri-party agreement between the Borrower, the Bank (as construction lender), and the Plan (as permanent lender). There will be no tri-party agreements with mortgage bankers. The tri-party agreement will set forth the terms and conditions of both the construction loan

[1] To the extent that, in the ordinary course of business, the Bank or any of its affiliates provides "investment advice" to an employee benefit plan within the meaning of regulation 29 CFR 2510.3–21(c)(1)(ii)(B) and recommends an investment of the plan's assets in a permanent loan where the proceeds will be used to pay off a construction loan originated by the Bank, the presence of an unrelated second fiduciary acting on the Bank's recommendations on behalf of the plan would not be sufficient ot insulate the Bank from fiduciary liability under section 406(b) of the Act. (See Advisory Opinions 84–03A and 84–04A, issued by the Department on January 4, 1984). The Department is unable, as a general matter, to conclude that fiducary self-dealing of this type (if present) is in the interest or protective of a plan and its participants and beneficiaries. Thus, the Department has limited the exemptive relief for the proposed use of the proceeds of the Plans' permanent loans to section 406(a) violations only.

[2] The Department notes that where the construction on the property which secures a mortgage loan made by the Plan was conducted by a contributing employer, and a principal of such employer exercises fiduciary authority in approving the Plan's investment in the mortgage, a prohibited transaction may occur which would not be covered by this exemption.

[3] The Bank states that all servicing arrangements for the Plans' permanent loan portfolios would comply with section 406(b)(2) of the Act and the regulations thereunder.

and the permanent loans. When the Plan makes a commitment to provide a permanent loan for a project upon completion of its construction, pursuant to a buy-sell arrangement, the tri-party agreement will commit the Borrower to us the proceeds of the permanent loan to repay the Bank's construction loan.

In all cases, the Bank as construction lender will have a lien interest in the property which is the subject of the Plans permanent loan commitment. In the absence of a buy-sell arrangement, the Bank states that when its construction loan is paid off with the proceeds of the Plan's permanent loan, the Bank will convey its lien interest in the property to the Borrower, who will simultaneously convey the lien interest to the Plan. However, in a buy/sell arrangement, the Bank will "sell" or assign the existing lien, including the mortgage note and supporting documents, to the Plan. The Bank states that in no case will it advance funds to the Borrower under the permanent loan.

6. The Bank represents that it will not be involved in the decision by the Plans to invest in any permanent loan on a real estate project. In all cases, independent Plan fiduciaries and investment advisers will review the proposed transactions and will examine the interest rates, financial statements, projected returns, appraisals and other factors relating to the investment before advising the Plan to make a permanent loan. The Bank will be subject to the investment directions of the investment managers and advisers for the Plans.

With respect to the construction loans originated by the Bank, the Bank states that it may require the Borrowers to furnish certain information, such as a list of all material dealers, laborers and subcontractors with whom agreements have been made by either the general contractor or the Borrower regarding the construction for a particular project. The Bank requests such information in order to evaluate the credit worthiness of the transactions. However, the Bank states that because it is not involved in the process by which the Plans decide whether to provide permanent financing for particular projects, it will not be aware of any non-economic factors that may be considered by the Plans' fiduciaries in making the investments, such as a requirement that construction on a particular project be performed by contractors and subcontractors who employ only union construction labor.[4]

7. The Bank states that investments by the Plans in real estate projects as permanent lenders are common in the current real estate financing market. The Bank also asserts that the proposed exemption is appropriate for the transactions described herein because of the absence of potential for abuse by the Bank and because a denial would unduly restrict the Plan's choices of potential Borrowers to those who have not secured a construction loan from the Bank, which is merely a directed trustee, directed corporate trustee, directed corporate co-trustee, or custodian for the Plans. The Bank represents that there will be no scheme or arrangement, other than an arm's-length tri-party agreement, between the Borrowers, the Bank, and the Plans regarding the proposed construction and permanent loan financing.

8. In summary, the Bank represents that the proposed transactions will satsify the statutory criteria of section 408(c) of the Act because: (a) the Bank will have no discretionary authority regarding the management or disposition of the assets of the Plans and will not be an investment adviser for the Plans with respect to the proposed loans; (b) the fiduciaries of the Plans, who are independent of the Bank, will make all investment decisions for the Plans, including all decisions relating to the proposed permanent loans; (c) the terms of the permanent mortgage loans will be no less favorable to the Plan than the terms generally available in arm's-length transactions between unrelated parties; (d) no investment management fee, advisory fee, underwriting fee, sales commission, or other similar compensation will be paid to the Bank by the Plans with respect to such transactions; (e) the Bank will play no role in securing permanent loans from the Plans for the Borrowers; and (f) no permanent loans will be made to persons who are parties in interest with respect to the Plans.

For Further Information Contact: Mr. E.F. Williams of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

American Express Company Located in New York, New York

[Application Nos. D–7662 and D–7832]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, American Express Company and its affiliates, including IDS Financial and Shearson Lehman Hutton, Inc. (collectively, American Express), except for E.F. Hutton & Company, Inc., (Hutton), shall not be precluded from functioning as a "qualified professional asset manager" pursuant to Prohibited Transaction Exemption 84–14 (PTE 84–14, 49 FR 9494, March 13, 1984) solely because of American Express's failure to satisfy Section I(g) of PTE 84–14 as a result of its affiliation with Hutton.

Effective Date: If granted, this exemption will be effective as of the date on which American Express became an affiliate of Hutton.

Summary of Facts and Representations

1. Shearson Lehman Hutton Inc. (Shearson), which is incorporated in Delaware, is a wholly-owned subsidiary of Shearson Lehman Brothers Holdings Inc. (Shearson Holdings), which in turn is a majority-owned subsidiary of American Express Company. Both Shearson Holdings and American Express are publicly-owned companies whose stock is traded on the New York Stock Exchange. American Express and its subsidiaries form a diversified financial and travel services company.

On January 13, 1988, over 90 percent of the stock of E.F. Hutton Group Inc. (Hutton Group), the parent company of Hutton, was tendered to SLBP Acquisition Corp. (SLBP), a wholly-owned subsidiary of Shearson Holdings, pursuant to an Agreement and Plan of Merger (Merger Agreement) dated December 2, 1987, as amended on December 28, 1987, entered into among Shearson Holdings, SLBP, and the Hutton Group. On January 21, 1988, as permitted by the terms of the Merger Agreement, SLBP assigned its right to purchase those shares so accepted to Shearson, and Shearson purchased the

[4] The Department notes that section 404(a)(1) of the Act requires, among other things, that a fiduciary of a plan must act prudently, solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries when making investment decisions on behalf of a plan. In order to act prudently in making investment decisions, the trustees must consider, among other factors, the availability, risks and potential return of alternative investments for the plan. Investing plan assets in loans meeting these criteria would not satisfy section 404(a)(1) if such loans would provide the plan with less return, in comparison to risk, than comparable investments available to the plan or if such loans would involve a greater risk to the security of plan assets than other investments offering a similar return.

Thus, in deciding whether and to what extent to invest in mortgage loans, the trustees must consider only factors relating to the interests of the plan participants and beneficiaries in their retirement incomes. A decision to make a loan may not be influenced by a desire to stimulate business in a particular geographic area or to encourage the use of union labor unless the investment, when judged solely on the basis of its economic value, would be equal to or superior to alternative investments available to the plan.

shares. As a result of the acquisition of the Hutton Group stock, Shearson controls the Hutton Group and indirectly controls Hutton.

2. On May 2, 1985, Hutton entered a plea of guilty (the Guilty Plea) to an Information filed in the United States District Court for the Middle District of Pennsylvania. The Information charged that Hutton had violated the federal mail and wire fraud statutes in connection with its handling of certain checking accounts it maintained for the deposit of its own funds during the period from July 1, 1980 to February 28, 1982. As a result of the Guilty Plea, Hutton agreed to pay, and has paid, a criminal fine of $2,000,000 plus $750,000 to defray the costs of the government investigation. Hutton further agreed to establish, and has established, a restitution program for the benefit of commercial banks that may have been damaged by its actions. None of the acts alleged in the Information, however, involved funds or securities owned by any investment advisory or brokerage clients of Hutton or any employee benefit plan for which Hutton or any affiliate is a party in interest.

3. On May 16, 1988, Hutton entered a plea of guilty (the Providence Plea) in the United States District Court for the District of Rhode Island on two counts of violating the Bank Secrecy Act and one count of conspiracy to violate that Act. Hutton agreed to pay, and has paid, an aggregate fine of $1,010,000 as a result of the Providence Plea. The Information filed by the government in connection with the Providence Plea alleges that the conduct of the two brokers, formerly employed at Hutton-Providence, was in violation of the Bank Secrecy Act. The Bank Secrecy Act requires the filing of a Currency Transaction Report, under certain circumstances, if more than $10,000 in cash is deposited with a financial institution. The brokers' unlawful conduct occurred primarily in the period from 1982 to 1983, and no such conduct transpired later than October 1984—more than three years before Shearson acquired its majority interest in Hutton.

4. The applicant represents that although none of the unlawful conduct that occurred at Hutton-Providence involved Hutton's investment management activities or any ERISA plans, Hutton's Guilty Pleas preclude Hutton and its affiliates from serving as a "qualified professional asset manager" (QPAM) pursuant to sections I(g) and V(d) of PTE 84–14. Section I(g) of PTE 84–14 precludes a person who otherwise qualifies as a QPAM from serving as a QPAM if such person or an affiliate thereof has within the 10 years immediately preceding the transaction been either convicted or released from imprisonment as a result of certain criminal activity. For purposes of section I(g) of PTE 84–14, an "affiliate" of a person is defined in relevant part as "any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the person * * *" (PTE 84–14, section V(d)). As such, under this definition American Express, Shearson Holdings and all of their majority-owned subsidiaries would be considered affiliates of Hutton as a result of Shearson's acquisition of a controlling interest in the Hutton Group.

5. Neither American Express nor its wholly-owned direct or indirect subsidiaries were affiliates of Hutton at the time the events underlying the Hutton convictions occurred. They are not now controlled by Hutton or by the individuals involved in the transactions which led to the Hutton convictions. There has been no suggestion that the events leading to the Hutton convictions have extended into the period since Hutton became affiliated with American Express. None of those persons responsible for the transactions leading to the Hutton convictions is now employed by American Express or its subsidiaries.

6. The applicant asserts that failure to grant the requested exemption will prohibit such plans for which American Express or its subsidiaries act as investment manager from engaging in transactions with parties in interest that would otherwise be permitted under PTE 84–14 and will cause plans to forego attractive investment opportunities. The applicant and its subsidiaries typically engage in real estate transactions which may be structured in a variety of different ways, including participating mortgages, joint ventures or other partnership interests, or outright fee ownership. In all of these contexts, there is a significant risk that the party with which the plan is dealing will be a party in interest. Given the size of the plans which the applicant and its subsidiaries represent, the large number of service providers (particularly financial institutions) which such plans engage and the breadth of the ERISA definition of "party in interest", it is not uncommon for a proposed transaction in the private real estate market to involve a party in interest.

Thus, the prohibition against serving as a QPAM would deprive the applicant and its subsidiaries of the ability to render investment advisory services to many ERISA clients that must rely on the QPAM Exemption to avoid inadvertent prohibited transactions. In the absence of the relief requested, the applicant and its subsidiaries could be forced to curtail their future operations as they relate to ERISA clients. In this regard, prior to Shearson's acquisition of Hutton, several of the applicant's subsidiaries were charting their course of future business activities in the expectation that they would be able to avail themselves of the QPAM Exemption.

7. Accordingly, the applicant proposes that for the purposes of section V(d) of PTE 84–14 Hutton not be considered an affiliate of American Express in order that American Express and its subsidiaries may continue to avail themselves of the provisions of PTE 84–14, nothwithstanding the acquisition of Hutton by Shearson and the resultant failure to comply with section I(g) of PTE 84–14.

8. The applicant represents that the following safegaurds will be present to assure that the flexibility which PTE 84–14 provides will be utilized by American Express in a manner protective of and beneficial to both ERISA plans and their participants:

(a) PTE 84–14 includes numerous other conditions all of which would continue to apply and to assure that the best interests of ERISA plans are served;

(b) Many of American Express's ERISA plan clients are large plans, and hence have access to the resources and sophistication needed to properly monitor American Express's performance as investment manager;

(c) All of the Hutton criminal activity in question occurred prior to its acquisition by Shearson. Shearson is fully cooperating with all ongoing government investigations, and Shearson is actively working to install various safeguards and procedures designed to protect against such violations in the future; and

(d) As investment advisers registered under the Investment Advisers Act of 1940 (the Advisers Act), several of the subsidiaries of American Express are subject to the jurisdiction of the Securities and Exchange Commission (SEC) and to the substantive requirements of the Advisers Act. Such subsidiaries must make annual filings with the SEC and is subject to unannounced audits by the SEC to assure compliance with the requirements of the Advisers Act.

9. In addition, the applicant represents that Hutton and Shearson have taken a number of steps to ensure that conduct such as that leading to the Guilty Plea and the Providence Plea will not recur.

In connection with the Guilty Plea, Hutton acted to recompense its depository banks for any harm that may have been caused by the illegal acts. Hutton offered to make full restitution (including interest to date of payment) to any bank with which it maintained a deposit relationship during the period July 1, 1980 to December 31, 1982 for any net uncompensated interest losses incurred by the bank as a result of Hutton's having drawn on uncollected funds without prior written agreement. Hutton's offer to reimburse its banks included unreimbursed service fees, unreimbursed charges in respect of uses of uncollected funds, and interest on the foregoing amounts.

The applicant represents that Hutton also initiated changes in its organizational structure and management practices as follows:

(a) Nearly all of Hutton's financial operations were realigned and subjected to centralized control.

(b) Hutton also installed a computerized Branch Information Processing System to expedite and improve communications between its New York headquarters and its more than 400 branches, which allows Hutton's headquarters in New York to monitor drawdown activity at the branch and regional levels.

(c) Hutton also held instructional meetings for its employees in 18 cities from coast to coast with respect to the nature of the activities that were found unlawful and/or now are enjoined, and explained the revised internal controls and auditing procedures that Hutton was putting in place with respect to its cash concentration system.

10. Subsequent to the Guilty Plea, Hutton Group retained the Honorable Griffin Bell, former Attorney General of the United States and a one time Judge of the United States Court of Appeals for the Fifth Circuit, to conduct an independent inquiry into the cash management practices to which Hutton pleaded guilty.

Judge Bell found that ultimate management responsibility for the practices in question rested with Thomas P. Lynch, then Executive Vice President and Chief Financial Officer of Hutton, and with Thomas P. Morley, then Senior Vice President and Money Mobilizer of Hutton. Judge Bell determined that the practices were developed and carried out by middle management employees who generally believed they were operating within the law, and that Messrs. Lynch and Morley, though not bearing any criminal responsibility for the practices, should have detected and/or prevented them. Following the release of the Bell Report, both Mr. Lynch and Mr. Morley relinquished their positions.

The Bell Report also recommended substantial monetary and other sanctions against other Hutton employees. All of the culpable Hutton employees involved in the activities which led to the Guilty Plea resigned or were dismissed prior to Shearson's acquisition of Hutton Group. In addition, Judge Bell recommended a number of procedural and structural reforms designed to ensure that the practices in question did not recur.

These changes included:

(a) Restructuring the financing, financial control, operations and general counsel functions;

(b) Establishing a separate audit committee to specifically review Hutton's activities and supplement the existing audit committee of Hutton Group, with full access to the chief executive officer and the board of directors; and

(c) Working in conjunction with the Ethics Resource Center in Washington, DC, to develop a corporate code of ethics, supplemented by educational and monitoring programs.

11. In late December 1987, following the announcement of Shearson's acquisition of Hutton, Shearson retained outside counsel to conduct an internal investigation and provide legal advice concerning compliance by Hutton, prior to its acquisition by Shearson, with the reporting requirements of the Bank Secrecy Act.

The investigation revealed certain unreported currency transactions at Hutton branch offices, prior to Shearson's acquisition of Hutton. A majority of potential non-reporting occurred in two New York retail offices, with isolated instances of possible non-reporting found in seven additional Hutton branch offices in the New York metropolitan area. No such instances were found in the offices reviewed outside the New York area. The persons potentially involved in the possible violations were exclusively branch office personnel. Outside counsel is in the process of evaluating the possible involvement of any individuals in these branches and will provide Shearson with a report as to such involvement. Shearson has advised the United States Attorney for the Southern District of New York of Shearson's internal investigation and is cooperating with the United States Attorney in his inquiry.

12. The applicant states that in connection with Shearson's request for an exemption from the Securities and Exchange Commission from the provisions of section 9(a) of the Investment Company Act of 1940,[5] Shearson at its expense has agreed to retain independent auditors:

(a) To confirm that the Shearson currency reporting procedures are in place, and that the computer software program used in connection with the procedures is operational, with respect to each former Hutton branch office;

(b) To review the procedures (i) to determine whether the procedures are reasonably designed to ensure compliance with the currency transaction reporting provisions of the Bank Secrecy Act, (ii) to detect non-compliance with the procedures, and (iii) to make recommendations, if appropriate, for changes in the procedures and staffing necessary reasonably to ensure compliance with applicable law relating to currency transaction reporting; and

(c) To report to Shearson the results of its review.

Upon completion of the auditor's review, Shearson will submit the report and recommendations, if any, to the Commission, together with a report by Shearson setting forth the action it has taken or proposes to take concerning the implementation of the recommendations.

13. The applicant states that as of February 8, 1988, as part of the consolidation of the Hutton branch offices into the Shearson branch office system, each Hutton branch had been made subject to the same internal procedures for processing currency transactions as those to which Shearson is subject. Shearson's procedures with respect to currency transaction reporting were adopted as a means of avoiding the type of situation that occurred at Hutton-Providence. The procedures prohibit the deposit or payment in currency at any Shearson or Hutton branch office. The procedures also mandate that any Shearson or Hutton employee who is asked by a customer to deposit currency in any account, inform the customer that Shearson and Hutton will only accept a non-cash instrument and will not accept cash. The procedures further protect against the kind of irregularities that occurred at Hutton-Providence by requiring Shearson and Hutton employees to

[5] Section 9(a) of the Investment Company Act of 1940 states, in part, that it shall be unlawful for a person to serve as or act in the capacity of employee, officer, director, member of an advisory board, investment advisor, or depositor of any registered investment company, or principal underwriter for any registered open-end company, registered unit investment trust, or registered face amount certificate company if such person, or an affiliate of such person, has engaged in certain criminal activity [as specified in section 9(a)(1)].

notify immediately not only their branch manager, but also Shearson's Compliance Department, if any customer, during a limited period of time, deposits a series of cashier's checks, traveler's checks, money orders or checks in bearer form *(i.e.,* checks made payable to cash or endorsed in blank) that are each under $10,000 but collectively exceed $10,000.

The applicant also notes that as an additional safeguard against irregularities in currency transaction reporting, the procedures expressly forbid Shearson and Hutton brokers and all other Shearson and Hutton employees from engaging in any of the following activities:

(a) Taking possession of currency for a customer;

(b) Escorting a customer to a financial institution to convert currency to an acceptable means of payment; and/or

(c) Advising a customer as to how to "structure" his transaction with a financial institution in order to avoid the financial institution's reporting requirements under the Currency Transaction Reporting Act.

Shearson and Hutton employees are also informed that failure to comply with these procedures will subject the offender to internal disciplinary action and possibly to civil and criminal liability for violating Federal law.

14. In summary, the applicant represents that this proposed exemption satisfies the criteria of section 408(a) of the Act because, among other things: (a) American Express and its subsidiaries are operated independently of Hutton; (b) none of American Express's officers is an officer or employee of Hutton; (c) Hutton's criminal activity in every case took place before its acquisition by Shearson; (d) both Hutton and Shearson have undertaken substantial reforms and put in place procedures designed to prevent any recurrence of the criminal activity; (e) the other provisions of PTE 84–14 taken together with Shearson's independent audit procedures established pursuant to its exemption request under section 9(a) of the Investment Company Act of 1940, are sufficient to assure that the best interests of the ERISA plans and their participants are served; and (f) American Express and its subsidiaries will be able to take advantage of a broader variety of attractive investment opportunities on behalf of the participants and beneficiaries of its clients' plans.

FOR FURTHER INFORMATION CONTACT: Joseph L. Roberts III of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 10th day of March 1989.

Robert J. Doyle,

Director of Regulations and Interpretations, Pension and Welfare Benefits Administration.

[FR Doc. 89–6008 Filed 3–14–89; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 89–17]

NASA Advisory Council (NAC), Aerospace Medicine Advisory Committee (AMAC); Meeting

AGENCY: National Aeronautics Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aerospace Medicine Advisory Committee.

DATE AND TIME: March 28, 1989, 8:30 a.m. to 5 p.m., March 29, 1989, 9 a.m. to 5 p.m., and March 30, 1989, 9 a.m. to 10:30 a.m.

ADDRESS: Capital Gallery East, Room 204, 600 Maryland Avenue SW., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Dr. Janis Stoklosa, Code EBM, National Aeronautics Space Administration, Washington, DC 20546 (202/453–1525).

SUPPLEMENTARY INFORMATION: The Aerospace Medicine Advisory Committee consults with and advises the NASA Office of Space Science and Applications (OSSA) on long-range planning of aerospace medicine research. The Committee will meet to discuss the Life Sciences Strategic Plan, review the Life Sciences Subcommittee activities, receive reports on the NASA Life Support Program, Space Station Construction, Soviet Life Sciences, and other Committee activities. The Committee is chaired by Dr. Harry C. Holloway and is composed of 24 members. The meeting will be open to the public up to the seating capacity of the room (approximately 40 people including members of the Subcommittee).

Type of Meeting: Open

Agenda:

Tuesday, March 28

8:30 a.m.—Opening Remarks.

9 a.m.—NASA Life Support Program Overview and Discussion.

3:30 p.m.—Office of Aeronautics and Space Technology (OAST) Human Factors Overview and Discussion.

5 p.m.—Adjourn.

Wednesday, March 29

9 a.m.—Radiation Program Overview and Discussion.

11:30 a.m.—Space Station Construction Plans.

1:30 p.m.—Overview of Soviet Life Sciences Data.

2:30 p.m.—Operational Medicine Discipline Working Group Activities.
3 p.m.—Life Sciences Strategic Implementation Plan.
4 p.m.—Life Sciences Subcommittee Activities.
4:30 p.m.—Committee Discussion.
5 p.m.—Adjourn.
Thursday, March 30
9 a.m.—Life Support Management Working Group Activities and Recommendations.
10:30 a.m.—Adjourn.

March 8, 1989.

Ann Bradley,

Advisory Committee Management Officer, National Aeronautics Space Administration.

[FR Doc. 89-5960 Filed 3-14-89; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Music Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Composers Prescreening Section) to the National Council on the Arts will be held on April 4-5, 1989, from 9:00 a.m.-5:30 p.m. in room M-14 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89-6017 Filed 3-14-89; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-318]

Baltimore Gas and Electric Co.; Calvert Cliffs Nuclear Power Plant, Unit No. 2; Environmental Assessment and Finding of No Significant Impact

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of a one-time exemption from the requirements of Sections III.D.2(a) and III.D.3 of 10 CFR Part 50 and a temporary amendment to Unit 2 Technical Specification (TS) 3/4.6.1, "Containment Systems," to Facility Operating License No. DPR-69 issued to the Baltimore Gas and Electric Company (the licensee) for operation of the Calvert Cliffs Nuclear Power Plant, Unit No. 2, located in Calvert County, Maryland. The proposed temporary amendment and one-time exemption, submitted via the applications dated December 14 and 21, 1988, respectively, as supplemented on February 17, 1989, would provide up to a four week (28 days) extension to the maximum permissible retest interval of two years for Types B and C containment local leak rate tests (LLRTs).

Need for Environmental Impact Statement

The Commission has found that the proposed exemption and amendment will not result in any additional significant environmental impact and has, therefore, determined not to prepare an environmental impact statement.

Environmental Assessment

Identification of the Proposed Amendment and Exemption

Currently, Section III.D.2(a) and III.D.3 of Appendix J to 10 CFR Part 50 and TS Surveillance Requirement 4.6.1.2.d require Types B and C LLRTs to be performed at intervals no greater than two years (24 months). The licensee has requested a one-time exemption from Sections III.D.2(a) and III.D.3 of Appendix J and a temporary amendment of TS 4.6.1.2.d to provide a retest schedule extension, for Types B and C LLRTs, of up to four weeks (28 days) beyond the maximum two year interval. The proposed one-time exemption and temporary TS amendment are applicable to Calvert Cliffs Nuclear Power Plant Unit 2 only, and would become effective at 11:59 p.m. on March 16, 1989, and expire at 11:59 p.m. on April 13, 1989.

Need for the Proposed Actions

During the previous Unit 2 refueling outage, the LLRT program started at a date apparently too early to support the full Cycle 8 operating cycle, with the first LLRT completed on March 16, 1987.

These actions are requested to permit Calvert Cliffs Unit 2 to complete its full Cycle 8 operating cycle rather than being forced to shutdown early on March 16, 1989, due to coming to the end of its maximum permitted Types B and C LLRT 2-year retest interval. Cycle 8 was the first 24-month operating cycle at Calvert Cliffs Unit 2.

Alternatives to the Proposed Actions

Since we have concluded that the environmental effects of the proposed action are negligible, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested action. This would not significantly reduce the environmental impacts of plant operation but would result in a lower burnup of the fuel to be discharged from the Unit 2 core following Cycle 8 resulting in a higher concentration of U-235 in the discharged fuel. Consequently, the radioactive life of the discharged fuel would be longer than if it had been more fully burned, thus necessitating longer storage in a radioactive waste storage facility, and also, less economical use would have been made of the U-235 contained in the discharged fuel which would result in the utilization of additional natural resources to make up for the electrical energy output capacity lost by not burning the fuel more fully.

Alternative Use of Resources

This action does not involve the use of resources not previously considered by the Commission in the "Final Environmental Statement Relating to Operation of Calvert Cliffs Nuclear Power Plant, Units 1 and 2" dated April 1973.

Environmental Impact of the Proposed Actions

The proposed actions would result in up to a 28 day extension to the 631 day interval allowed between performances of successive LLRTs. The historical performance of the Calvert Cliffs Unit 2 containment structure and a review of all Unit 2 Types B and C LLRT failures indicates that the integrity of the Unit 2 containment would not be significantly affected by this one-time schedular extension of approximately 4% of the allowed surveillance interval. Furthermore, the likelihood of an event

requiring containment isolation and integrity, principally a loss of coolant accident (LCOA), is very small during this short, one-time surveillance interval extension period.

For any significant increase in radiological environmental impact to result from this retest interval extension, a significant degradation in containment integrity subsequently followed by a LOCA, or another event requiring containment isolation, would both be required to occur during the 28 day interval extension. As the likelihood of each individual occurrence during the extension is not significant, the probability of their happening in series during the interval extension is even smaller. On this basis, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed exemption and TS amendment.

With regard to potential nonradiological impacts, the proposed actions involve features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed exemption or TS amendment.

Agencies and Persons Consulted

None.

Finding of No Significant Impact

Based on the aforementioned environmental assessment, the Commission has determined that the proposed exemption or amendment will not have a significant effect on the quality of the human environment.

For further details with respect to this action see: (1) The applications for license amendment and exemption dated December 14 and 21, 1988, and (2) the licensee's supplemental letter dated February 17, 1989. These documents are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and at the Calvert County Library, Prince Frederick, Maryland.

Dated at Rockville, Maryland, this 9th day of March, 1989.

For the Nuclear Regulatory Commission.

Robert A. Capra,

Director, Project Directorate I–1, Division of Reactor Projects I/II.

[FR Doc. 89–5985 Filed 3–14–89; 8:45 am]

BILLING CODE 7590–01–M

Commonwealth Edison Co.; Issuance of Environmental Assessment and Finding of No Significant Impact

[Docket Nos. 50–454 and 50–455]

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. NPF–37 and NPF–66 issued to Commonwealth Edison Company (the licensee), for operation of Byron Station, Units 1 and 2, located in Ogle County, Illinois.

Identification of Proposed Action

The amendment would consist of changes to the Technical Specifications (TS) and would authorize an increase of the storage capacity of the spent fuel pool from 1060 fuel assemblies to 2870 fuel assemblies.

The amendment to the TS is responsive to the licensee's application dated September 3, 1986, as supplemented November 7 and November 24, 1986. The NRC staff has prepared an Environmental Assessment of the Proposed Action, "Environmental Assessment by the Office of Nuclear Reactor Regulation Relating to the Expansion of the Spent Fuel Pool, Facility Operating License Nos. NPF–37 and NPF–66, Commonwealth Edison Company, Byron Station, Units 1 and 2, Docket Nos. 50–454 and 50–455, dated March 9, 1989.

Summary of Environmental Assessment

The "Final Generic Environmental Impact Statement (FGEIS) on Handling and Storage of Spent Light Water Power Reactor Fuel" (NUREG–0575), Volumes 1–3, concluded that the environmental impact of interim storage of spent fuel was negligible and the cost of the various alternatives reflect the advantage of continued generation of nuclear power with the accompanying spent fuel storage. Because of the differences in design, the FGEIS recommended evaluating spent fuel pools expansions on a case-by-case basis.

For Byron Station, Units 1 and 2, the expansion of the storage capacity of the spent fuel pool will not create any significant additional radiological effects or non-radiological environmental impacts.

The occupational radiation dose for the proposed operation of the expanded spent fuel pool is estimated to be less than one percent of the total annual occupational radiation exposure for this facility.

Finding of No Significant Impact

The staff has reviewed the proposed spent fuel pool expansion to the facility relative to the requirements set forth in 10 CFR Part 51. Based on this assessment, the staff concludes that there are no significant radiological or non-radiological impacts associated with the proposed action and that the issuance of the proposed amendment to the license will have no significant impact on the quality of the human environment. Therefore, pursuant to 10 CFR 51.31, no environmental impact statement needs to be prepared for this action.

For further details with respect to this action, see (1) the application for amendment to the Technical Specifications dated September 3, 1986, as supplemented November 7 and November 24, 1986; and additional information provided by the licensee in letters dated December 11, 1986, March 11 and December 22, 1987, and May 26, June 1 and August 17, 1988; (2) the FGEIS on Handling and Storage of Spent Light Water Power Reactor Fuel (NUREG–0575), (3) the Final Environmental Statement for Byron Station, Units 1 and 2, dated April 1982, and (4) the Environmental Assessment dated March 9, 1989.

These documents are available for public inspection at the Commission's Public Document Room 2120 L Street NW., Washington, DC 20555 and at the Rockford Public Library, 215 N. Wyman Street, Rockford, Illinois 61101.

Dated at Rockville, Maryland, this 9th day of March 1989.

For the Nuclear Regulatory Commission.

Daniel R. Muller,

Director, Project Directorate III–2, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 89–5987 Filed 3–14–89; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards; Subcommittee on Mechanical Components; Meeting

The ACRS Subcommittee on Mechanical Components will hold a meeting on March 29, 1989, Room P–110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to the public attendance.

The agenda for subject meeting shall be as follows:

Wednesday, March 29, 1989—8:30 a.m. until 12:30 p.m.

The Subcommittee will continue its review of the NRC Staff's generic letter on MOV reliability.

Oral statements may be 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 portions 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 identified below as far in advance as practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, 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 therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Elpidio Igne (telephone 301/492–8192) 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.

Date: March 9, 1989.

Gary Quittschreiber,

Chief, Project Review Branch No. 2.

[FR Doc. 89–5984 Filed 3–14–89; 8:45 am]

BILLING CODE 7590–01–M

Commonwealth Edison Co.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

[Docket Nos. 50–454, 50–455, 50–456 and 50–457]

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. NPF–37 and NPF–66, issued to Commonwealth Edison Company, for operation of Byron Station, Units 1 and 2 located in Ogle County, Illinois and Facility Operating License Nos. NPF–72 and NPF–77, issued to the licensee, for operation of Braidwood Station, Units 1 and 2 located in Will County, Illinois.

This amendment requests dated February 17, 1989, are being made in accordance with Generic Letter 88–06 to change the Administrative Control Section, Section 6.0 of Technical Specifications, to include the removal of the organizational figures, a position change from Radiation Chemistry Technical to Radiation Protection Technician, several position title changes, a clarification to the distribution requirements for Onsite Reviews and typographical or editorial changes.

Before issuance of these proposed license amendments, the Commission will have made 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 these amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facilities in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (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.

These proposed Technical Specification (TS) amendments request several changes. The first change involves the removal of organizational Figures 6.2–1and 6.2–2 and the revision of TS 6.2.1 and 6.2.2 in accordance with the guidance provided in Generic Letter 88–06. The second proposed revision involves a position change from Radiation Chemistry Technician to Radiation Protection Technician in TS 6.2.2 and 6.12. The third proposed revision corrects several position titles that changed due to corporate reorganization. The fourth change clarifies the distribution requirements for onsite review documentation discussed in TS 6.5.2. The fifth and last change are typographical corrections.

In accordance with Generic Letter 88–06, these amendments replace the organizational Figures 6.2–1 and 6.2–2 in Technical Specifications with more general organizational requirements. These general requirements capture the essence of those organizational features depicted on the figures that are necessary for ensuring safe operation.

The proposed revisions to the Technical Specifications will require organizational charts to be maintained in the Quality Assurance Manual. In addition, the important organizational features depicted on the organizational figures are also contained in other regulatory controlled documents. Chapter 13 of the Updated Final Safety Analysis Report (UFSAR) contains details of the organizational structure and description of the Conduct of Operations. This information is required by 10 CFR 50.71 to be maintained and updated annually. Also a Quality Assurance (QA) program is required for Byron and Braidwood by 10 CFR 50, Appendix B. In addition to the organizational charts, the Quality Assurance Manual and Topical Report CE–1–A contain descriptions of the functional responsibilities and reporting requirements.

None of the proposed changes are initiating events for an accident, therefore, the probability of an occurrence of an accident is not affected. Even though the organizational figures are being removed, TS 6.2.1a is being revised to require the organizational figures be maintained in the Quality Assurance Manual. In addition, TS 6.2.1 proposed revisions adds general requirements that capture the essence of the organizational features included in the figures. Also, important organizational features are contained in other regulatory controlled documents. Therefore, safe plant operation is not affected and the consequence of any accidents presented in the UFSAR are not impacted by the changes.

The proposed changes do not revise any functional or design parameters used at the station. These changes do not modify any equipment or systems or cause the unit to be operated in a different manner. Therefore, the possibility of a new or different kind of accident is not created.

All the proposed changes are administrative, editorial or typographical and, as such, do not affect any margins of safety. The proposed organization changes do not affect safe operation of the plant. Creation of a Radiation Protection Technican position in lieu of a Radiation Chemistry Technican adequately meets the requirements for Health Physics coverage identified in NUREG 0452. Updating position titles, clarifying documentation distribution requirements and typographical and editorial changes, facilitie plant operations but do not affect safe operations.

For the reasons stated above, the staff believes these proposed amendments involve no 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 Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of the **Federal Register** notice. Written comments may also be delivered to P-216, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By April 14, 1989, the licensee may file a request for 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. If a request for 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 of the designated Atomit 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 particulatity the interest of the petitioner in the proceeding, and how that interest may be affected by the results to 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 a 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 proceedings 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 intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement 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 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 amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the 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 notice 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 Service Branch, or may be delivered to the Commission's Public Document Room, 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 Daniel R. Muller: petitioner's name and telephone number; date petition was mailed; plant number; 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—Rockville, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Michael Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603, 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 2.174(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and for Byron Station, the Rockford Public Library, 215 N. Wyman Street, Rockford, Illinois 61101; for Braidwood Station, the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60603.

Dated at Rockville, Maryland, this 9th day of March 1989.

For the Nuclear Regulatory Commission.

Stephen P. Sands,

Project Manager, Project Directorate III–2, Division of Reactor Projects—III, IV, V and Special Projects.

Leonard N. Olshan,

Project Manager, Project Directorate III–2, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 5986 Filed 3–14–89; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50–254, 50–265, 50–237 and 50–249]

Commonwealth Edison 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 an amendment to Operating License Nos. DPR–29 DRP–30, issued to Commonwealth Edison Company, for operation of Quad Cities Station, Units 1 and 2 located in Rock Island County, Illinois and Provisional Operating License No. DRP–19 and Operating License No. DPR–25, issued to Commonwealth Edison Company, for operation of Dresden Nuclear Power Station, Units 2 and 3 located in Grundy County, Illinois.

These amendment requests dated February 17 and 21, 1989 for Dresden and Quad Cities (respectively), revise the "Administrative Controls" Section (section 6.0) of Technical Specifications (TS) to include: (1) Removal of station and corporate organization charts, (2) Position title changes for Radiation Protection and Chemistry Technicians and Supervisors to reflect a recent division of the Rad/Chem organization into two separate departments, (3) Changes to most of the station and corporate position descriptions, titles, lines of authority, and responsibilities, and (4) Miscellaneous typographical and editorial changes. Commonwealth Edison Company's proposed revision of Section 6 is intended to conform TS with the guidelines of Generic Letter 88–06 and to reflect the changes associated with a major company reorganization.

Before issuance of these proposed license amendments, the Commission will have made 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 these amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facilities in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (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.

In accordance with Generic Letter 88–06, these amendments replace organizational Figures 6.1–1 and 6.1–2 in Technical Specifications with more general organizational requirements. These general requirements capture the essence of those organizational features depicted on the figures that are necessary for ensuring safe operation.

The proposed revisions of the Technical Specifications will require organizational charts to be maintained in the Quality Assurance Manual. In addition, the important organizational features depicted on the organizational figures are also contained in other regulatory controlled documents. The Updated Final Safety Analysis Report (UFSAR) contains details of the organizational structure and description of the Conduct of Operations. This information is required, by 10 CFR 50.71, to be maintained and updated annually. In addition to organization charts, the Quality Assurance Manual contains descriptions of functional responsibilities and reporting requirements.

None of the propsed changes are initiating events for an accident, therefore, the probability of an occurrence of an accident is not affected. All important organizational features will still be maintained in regulatory documents. Station and Corporate positions are being reorganized to enhance safe plant operation by improving channels of communication and authority. Therefore, the consequences of any accident presented in the UFSAR are not impacted by these changes to Section 6 of the TS.

The proposed changes do not revise any functional or design parameters used at the station. These changes do not modify any equipment or systems, or cause the unit to be operated in a different manner. Therefore, the possibility of a new or different kind of accident is not created.

All the proposed changes are administrative, editorial, or typographical in nature and, as such, do not affect any margins of safety. The proposed organization changes do not adversely affect safe operation of the plant. Updating position descriptions, titles, lines of authority and responsibilities will facilitate plant operations without affecting safety margins.

For the reasons stated above, the Commission proposes a determination that the requested amendments do not involve significant hazards consideration.

The Commission 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 Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of the **Federal Register** notice. Written comments may also be delivered to P–216, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 2120 L Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By April 14, 1989, 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. If a request for 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 of 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 to 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 a 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 proceedings 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 intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement 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 amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the 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 notice period. However, should circumstances change during the notice period such that a 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 Service Branch, or may be delivered to the Commission's Public Document Room, 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 Daniel R. Muller: petitioner's name and telephone number; date petition was mailed; plant number; 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—Rockville, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Michael Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603, 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 2.174(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and for Quad Cities Station, the Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021; for Dresden Station, the Morris Public Library, 604 Liberty Street, Morris, Illinois 60450.

Dated at Rockville, Maryland, this 9th day of March 1989.

For the Nuclear Regulatory Commission.

Byron L. Siegel,

Project Manager, Project Directorate III–2, Division of Reactor Projects—III, IV, V and Special Projects.

Thierry M. Ross,

Project Manager, Project Directorate III–2, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 89–5968 Filed 3–14–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–373, and 50–374]

Commonwealth Edison 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 an amendment to Operating License Nos. NPF–11 and NPF–18, issued to Commonweatlh Edison Company, for operation of LaSalle County Station, Units 1 and 2 located in LaSalle County, Illinois.

These amendments request dated February 17, 1989, are being made in accordance with Generic Letter 88–06 to change the Administrative Control Section, Section 6.0 of Technical Specifications, to include the removal of the Organizational figures, a position change from Radiation Chemistry Technical to Radiation Protection Technician, several position title changes, a clarification to the distribution requirements for onsite reviews and typographical or editorial changes.

Before issuance of these proposed license amendments, the Commission will have made 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 these amendments requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (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 proposed Technical Specification amendment requests several changes. The first change involves the removal of organizational Figures 6.1–1 and 6.1–2 and the revision of Technical Specifications (TS) 6.1.A, 6.1.B, and 6.1.C in accordance with the guidance provided in Generic Letter 88–06. The second proposed revision involves a position change from Radiation Chemistry Technician to Radiation Protection Technician in TS 6.1.C and 6.1.1.1. The third proposed revision corrects several position titles that changed due to corporate reorganization. The fourth change clarifies the distribution requirements for onsite review documentation discussed in TS 6.2. The fifth and last change are to correct typographical errors.

In accordance with Generic Letter 88–06, these amendments replace the Organization Figures 6.1–1 and 6.1–2 in Technical Specifications with more general organizational requirements. These general requirements capture the essence of those organizational features depicted on the figures that are necessary for ensuring safe operation.

The proposed revisions to the Technical Specifications will require organizational charts to be maintained in the Quality Assurance Manual. In addition, the important organizational features depicted on the organizational figures are also contained in other regulatory controlled documents. The Updated Final Safety Analysis Report (UFSAR) contains details of the organizational structure and description of the Conduct of Operations. This information is required by 10 CFR 50.71 to be maintained and updated annually. In addition to the organizational charts, the Quality Assurance Manual contains descriptions of the functional responsibilities and reporting requirements.

None of the proposed changes are initiating events for an accident, therefore, the probability of an occurrence of an accident is not affected. Even though the organizational figures are being removed, TS 6.1 is being revised to require the organizational figures be maintained in the Quality Assurance Manual. In addition, TS 6.1 proposed revision adds general requirements that capture the essence of the organizational features included in the figures. Also, important organizational features are contained in other regulatory controlled documents. Therefore, safe plant operation is not affected and the consequence of any accidents presented in the UFSAR are not impacted by the changes.

The proposed changes do not revise any functional or design parameters used at the station. These changes do not modify any equipment or systems or cause the unit to be operated in a different manner. Therefore, the possibility of a new or different kind of accident is not created.

All the proposed changes are administrative, editorial or typographical and, as such, do not affect any margins of safety. The proposed organization changes do not affect safe operation of the plant. Creation of a Radiation Protection Technician position in lieu of a Radiation Chemistry Technician adequately meets the requirements for Health Physics coverage identified in NUREG 0452. Updating position titles, clarifying documentation distribution requirements and typographical and editorial changes, facilitate plant operations but do not affect safe operations.

For the reasons stated above, the staff believes these proposed amendments involve no 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 Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of the **Federal Register** notice. Written comments may also be delivered to P–216, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 2120 L Street, NW, Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By April 14, 1989, 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. If a request for 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 of 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 to 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 a 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 proceedings 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 intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement 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 amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the 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 notice 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 Service Branch, or may be delivered to the Commission's Public Document Room, 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 Daniel R. Muller: petitioner's name and telephone number; date petition was mailed; plant number; 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—Rockville, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Michael Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or request 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 2.174(a)(1)(i)–(v) and 2.714(d).

For further details with respects to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and for LaSalle County Station, the Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348.

Dated at Rockville, Maryland, this 9th day of March 1989.

For the Nuclear Regulatory Commission.

Paul C. Shemanski,

Project Manager, Project Directorate III–2, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 89–5989 Filed 3–14–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–295, and 50–304]

Commonwealth Edison 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 an amendment to Operating License Nos. DPR–39 and DPR–48, issued to Commonwealth Edison Company, for operation of Zion Station, Units 1 and 2 located in Lake County, Illinois.

This amendment request dated February 22, 1989, is being made in accordance with Generic Letter 88–06 to change the Administrative Controls section of the Zion Technical Specification, section 6.0, to include several position title changes, a clarification to the distribution requirements for onsite reviews and typographical or editorial changes.

Before issuance of these proposed license amendments, the Commission will have made 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 these amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facilities in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (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 first proposed revision corrects several position titles that change due to corporate reorganization. The second proposed revision revises TS 6.1 to be in agreement with NRC Generic Letter 88–06. The third revision adds clarification to reporting and responsibility requirements of new corporate officer titles. The fourth and last change involves minor editorial corrections.

In accordance with Generic Letter 88–06, these amendments replace the organizational structure in the Technical Specifications with more general organizational requirements. These general requirements capture the essence of those organizational features that are necessary for ensuring safe operation. The proposed revisions will require organizational charts which had been previously removed, to be maintained in the Quality Assurance Manual. In addition, the important organizational features depicted on the organizational charts are also contained in other regulatory controlled documents. Chapter 12 of the Updated Final Safety Analysis Report (UFSAR) contains details of the organizational structure and description of the Conduct of Operations. This information is required by 10 CFR 50.71 to be maintained and updated annually. In addition to the organizational charts, the Quality Assurance Manual contains descriptions of the functional responsibilities and reporting requirements.

None of the proposed changes are initiating events for an accident, therefore, the probability of an occurrence of an accident is not affected. TS 6.1 is being revised to require the organizational figures be maintained in the Quality Assurance Manual. Also, important organizational features are contained in other regulatory controlled documents. Therefore, safe plant operation is not affected and the consequence of any accidents presented in the UFSAR are not impacted by the changes.

The proposed changes do not revise any functional or design parameters used at the station. These changes do not modify any equipment or systems or cause the unit to be operated in a different manner. Therefore, the possibility of a new or different kind of accident is not created.

All the proposed changes are administrative, editorial or typographical and, as such, do not affect any margins of safety. The proposed organization changes do not affect safe operation of the plant. Creation of a Radiation Protection Technician position in lieu of a Radiation/Chemical Technician adequately meets the requirements for Health Physics coverage identified in NUREG 0452. Updating position titles, clarifying documentation distribution requirements and typographical and editorial changes, facilitate plant operations but do not affect safe operations.

For the reasons stated above, the staff believes these proposed amendments involve no 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 Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of the **Federal Register** notice. Written comments may also be delivered to P–216, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 2120 L Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By April 14, 1989, 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. If a request for 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 of 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 to 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 a 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 proceedings 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 intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement 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 amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place issuance of the amendment.

If the 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 notice 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 Service Branch, or may be delivered to the Commission's Public Document Room, 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 Daniel R. Muller; petitioner's name and telephone number; date petition was mailed; plant number; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of General Counsel—Rockville, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Michael Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603, 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 2.174(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and for Zion Station, the Waukegan Public Library, 128 N. County Street, Waukegan Illinois 60085.

Dated at Rockville, Maryland, this 9th day of March 1989.

For the Nuclear Regulatory Commission.

Chandu P. Patel,

Project Manager, Project Directorate III–2, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 89–5990 Filed 3–14–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–458]

Gulf States Utilities Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 35 to Facility Operating License No. NPF–47, issued to Gulf States Utilities Company, (the licensee), which revised the Technical Specifications for operation of the River Bend Station, Unit 1, located in West Feliciana Parish, Louisiana.

The amendment was effective as of the date of its issuance.

The amendment revised the Technical Specifications to (1) allow performance of a limited number of Type C leak rate tests of liquid filled lines during refueling activities; and (2) increase the decay time required for the irradiated fuel before the vent and drain line pathways can be opened for the purpose of performing the local leak rate tests.

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 1, which are set forth in the license amendments.

The Notice of Consideration of Issuance of Amendment was published in the **Federal Register** on October 24, 1988 (53 FR 41634). No request for a hearing or petition for leave to intervene was filed following the notices.

The Commission has prepared an Environmetnal Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment.

For further details with respect to the action, see: (1) The application for amendment dated September 28, 1988, as supplemented November 30, 1988, and modified February 6, 1989; (2) Amendment No. 35 to Facility Operating License No. NPF–47; and (3) the Commission's related Safety Evaluation and Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555; and at the Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803. A copy of item (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—III, IV, V and Special Projects.

Dated at Rockville Maryland, this 3rd day of March 1989.

For the Nuclear Regulatory Commission.

Walter A. Paulson,

Project Manager, Project Directorate—IV, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89–5991 Filed 3–14–89; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34–26618; File No. SR–NYSE–89–03]

Self-Regulatory Organization; Proposed Rule Change by New York Stock Exchange, Inc. Relating to Electronic Resolution of Uncompared Exchange Transactions

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on March 6, 1989, the New York Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change sets forth in detail the operational requirements of the Exchange's electronic system for resolving uncompared ("Questioned") trades known as the "Correction System".

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in item IV below and is set forth in sections (A), (B), and (C) below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The Exchange has developed and tested a method of resolving uncompared transactions ("Questioned Trades") by an electronic means, and is known as the "Correction System". While the "Correction System" can, and will, if approved by the Commission, operate independently of any other system, the Exchange intends it to eventually become a subsystem of the Overnight Comparison System. (Please refer to File Number SR–NYSE–88–36 for a complete description of the Overnight Comparison System and proposed new Rule 130.)

Since the electronic "Correction System" represents a significant departure from the present paper Form process ("Questioned Trades"), whose operational requirements are contained in Exchange Rule 134.A, the staff is of the opinion that it should be implemented in stages, so that the Exchange community can gradually become familiar with it, and obtain a measure of the benefits of electronic processing now. It is proposed that the operational requirements of the "Correction System" operate in tandem with the operational requirements of the "QT" procedure currently contained in Exchange Rule 134.A, with essentially the same time-frames.

The gradual implementation schedule provides that initially, stocks whose ticker symbols beginning with the letter

"A" will be resolved via the "Correction System" rather than the paper Form procedure. As experience is gained and it becomes apparent that no operational problems exist, stocks whose ticker symbols beginning with "B", "C", etc. will be added. The "Correction System" will only be used to resolve "regular way" uncompared transactions in listed stocks, and will not apply to uncompared transactions in listed bonds.

At such time as "overnight" or "next day" comparison, as set forth in proposed new Exchange Rule 130 may become effective, the Exchange will submit an appropriate filing to the Securities and Exchange Commission, proposing the provisions of the "Correction System", containing necessary changes to the time frames contained therein, as an amendment to current Rule 134.A.

(2) Statutory Basis for the Proposed Rule Change

The Exchange believes that electronic processing of uncompared trades as provided by the "Correction System" will streamline and greatly increase the efficiency of Post Trade processing, not only in an environment of "next day" comparison, but in today's environment of resolving uncompared trades on the third business day after the trade date.

Even in today's environment, the electronic processing of the "Correction System", to the extent that it is expanded to stocks other than those whose ticker symbols begin with the letter "A", will eliminate much of the paper Form handling and errors in handwriting and keypunching. This will help protect investors and the public interest, as called for in section 6(b)(5) of the Act. The proposed rule change meets other requirements of section 6(b)(5), in that it will help prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade and foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities. It also meets requirements of section 17A(a)(1) in that it will enhance the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe the proposed rule change will impose any burden on competition not in furtherance of the purposed of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has not solicited comments on the proposed rule change and no unsolicited comments have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

In view of the fact that the electronic "Correction System" has been installed, tested and found to be operationally viable, the Exchange believes that it can assist its clearing members in the rapid and efficient resolution of "Questioned Trades" now, within current time-frames, to the extent that stocks whose ticker symbols beginning with letters of the alphabet other than the letter "A" are added to the system. The Exchange also believes that it will be beneficial to the Exchange community to permit its clearing members to gain as much experience as possible in operating the system before such time as proposed new Rule 130 may become effective. For these reasons, the Exchange requests that the Commission find good cause to grant accelerated approval to the proposed rule change pursuant to section 19(b)(2) of the Securities Exchange Act of 1934, as amended.

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so find or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by April 5, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: March 9, 1989.

FR Doc. 89-6019 Filed 3-14-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26620; File No. SR-NYSE-89-04]

Self-Regulatory Organization; Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange, Inc.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on March 6, 1989, the New York Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-Regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The development of the Overnight Comparison System cost the Exchange approximately 5.4 million dollars in software and hardware charges. Annual operating costs are expected to be approximated 800 thousand dollars.

To recover these costs, a pricing program has been developed through an annual access charge, an equipment charge, and a usage fee.

The Exchange has established fees for hardware installation and maintenance and System access and usage for its "Correction System" for the electronic resolution of uncompared Exchange transactions.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in item IV below and is set forth in Sections (A), (B), ad (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The Exchange has developed a system that must be used to resolve uncompared ("Questioned';') trades electronically by using a cathode-ray tube terminal, rather than the labor-intensive manual procedures contained in Exchange Rule 134.A. This system is know as the "Correction System", and will become part of its Overnight Comparison System. (Please refer to File Number SR–88–36 for a complete description of the Overnight Comparison System and proposed new Rule 130.)

In brief, the "Correction System" consists of cathode-ray tube terminals installed in the offices of clearing member firms and specialists and/or their spaces in the Questioned Trade Control Center, located on the Exchange premises, which will be used by them to resolve their uncompared ("Questioned") trades. By placing the appropriate response next to each uncompared trade displayed on the screen, clearing members and specialists may accept (OK) or reject (DK) it be pressing a button, rather than using the labor-intensive process of distributing multiple-copy QT Forms to the contra-parties to their uncompared trades. The process of making corrections on the Forms and delivering them to the processor of a Qualified ClearingAgency to be key-punched into its comparison system will be eliminated.

The "Correction System" can be used with the present time-frame requirements of Rule 134.A, which, in the main, requires QTs to be resolved by the third business day after the trade date, or the new time-frames of proposed new Rule 130 for overnight or "next day" comparision. (For a complete description of the "Correction System", please refer to File Number SR–89–03.)

Because of the significant amount of preparation work that must be accomplished before the new System can be operational, the Exchange has already begun to contact specialists and clearing firms to arrange to have the necessary equipment installed. For example, terminal equipment and associated connecting lines with their ancillary equipment must be ordered and installed in their offices by approximately 100 clearing member firms and specialists. In addition, a number of these firms will want to install additional terminal equipment at the Exchange. After the equipment is installed, it must be tested with each firm and their operations personnel must be trained in its use.

However, the Exchanges' clearing member firms and specialists will not incur charges until the "Correction System" has actually begun to process uncompared trades. The fees charged by the Exchange will vary according to the particular method of connecting to the System that is chosen. In general, there is an access fee, and usage fee.

If a member organization elects to use Exchange terminal equipment, there is also a hardware and maintenance fee.

The various methods that can be used are as follows:

- Firms can connect to the System directly by computer-to-computer links. They will purchase and maintain their own terminal equipment. The Exchange will only charge an access and usage fee.
- Firms can purchase and maintain their own terminal equipment or lease it from the Exchange. They will arrange with a communications carrier for a "dedicated" or "private" line connecting that equipment and the "Correction System". The Exchange will charge an access and usage fee. If the Exchange's terminal equipment is used, there will also be a hardware and maintenance fee.
- Firms can use a so-called "dial-up" connection between their offices and the "Correction System". They will be charged a line fee by a communications carrier only for the period of time that they use the line. The Exchange will charge an access and usage fee. If the Exchange's terminal equipment is used, there will also be a hardware and maintenance fee.
- Firms can use a common terminal located on the Exchange's premises. They will be charged an access and usage fee, which will include the Exchange's hardware and maintenance costs of the equipment.
- Firms that have terminal equipment in the Exchange's Questioned Trade Control Center will be required to use equipment designed especially for the Exchange because of the limited amount of available space. The Exchange will charge an access and usage fee, which will include the Exchange's hardware and maintenance costs of the equipment, as well as the Exchange's development costs.

(2) *Basis Under the Act for the Proposed Rule Change*

The basis under the Act for the proposed rule is section 6(b)(4) under the Securities Exchange Act of 1934 requiring that a national securities exchange have rules that provide for the equitable allocation of reasonable dues, fees and other charges among its members.

(B) Self-Regulatory Organizations Statement on Burden on Competition

The Exchange does not believe the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has not solicited comments on the proposed rule change and no unsolicited comments have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of the Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

Copies of the submission, all subsequent amendments, all statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for

inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549.

Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by April 5, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 9, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-6020 Filed 3-14-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-26621; File Nos. SR-NYSE-89-01; SR-Amex-89-03; SR-CBOE-89-01]

Self-Regulatory Organizations; Proposed Rule Changes by the New York Stock Exchange, Inc., American Stock Exchange, Inc., and Chicago Board Options Exchange, Inc.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on February 24, 1989, the New York Stock Exchange, Inc. ("NYSE") filed with the Securities Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organizations.[1] The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule amendments will require that member organizations develop and implement specific criteria and standards for approving customer accounts for uncovered short options transactions. The rules will also require that member organizations establish a minimum net equity requirement for approving and maintaining such accounts. If the customer does not meet the member organization's specific criteria/standards, approval of the account may only be made by the member organization's Senior Registered Options Principal or Compliance Registered Options Principal. The reasons for approving any such account must be recorded and the records maintained by the member organization. The rules further require that the member organization develop and implement specific written procedures concerning the member organization's supervisory review of customer accounts with uncovered short option transactions. Additionally, the rules will require that member organizations furnish to customers a written description of the risks involved in selling (writing) uncovered short option transactions, at or prior to the customer's initial uncovered short option transaction. The Council has designed a prototype risk disclosure document (Exhibit B) which may be used to satisfy the requirements of these rules. This written disclosure document is in addition to the Options Disclosure Document required to be provided to customers trading in options pursuant to Exchange Rule 726 (Delivery of Options Disclosure Document and Prospectus).

The amendments were developed by the Options Self-Regulatory Council, consisting of representatives of the American Stock Exchange, Chicago Board Options Exchange, Midwest Stock Exchange, National Association of Securities Dealers, New York Exchange, Philadelphia Stock Exchange and Pacific Stock Exchange. (the "Council"). The Exchange, and the other members of the Options Self-Regulatory Council, believe that these rules will increase the level and degree of member firm supervision with respect to customer transactions in uncovered options.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Items IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B) and (C) below of the most significant aspets of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) *Purpose*—Each of the members of the Options Self-Regulatory Council have determined to adopt and file uniform rules with respect to customer uncovered short option transactions. The proposed rules are intended to increase customer awareness of the risks entailed in selling uncovered short option contracts and to intensify member organization supervision of customer accounts engaged in uncovered short option transactions.

(b) *Statutory Basis*—The proposed rule change is consistent with the requirements of the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange in that it requires both enhanced supervision of customers' uncovered option transactions and increased disclosure of the specific risks of such transactions.

Therefore, the proposed rule change is consistent with Section 6(b)(5) of the Act, which provides, in pertinent part, that the rules of the Exchange be designed to promote just and equitable principles of trade and to protect the investing public.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposal does not impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

During the course of the drafting of the proposed rule changes, the members of the Options Self-Regulatory Council solicited comments from a wide representation of the broker-dealer community. Representatives of the compliance and sales departments of a number of brokerage firms attended several meetings where the proposed rule changes were discussed. Although no formal written comments were solicited, the proposed rule changes represent a consensus of the views expressed at those meetings.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

[1] On February 14, 1989, the American Stock Exchange ("Amex") and the Chicago Board Options Exchange ("CBOE") filed with the Commission substantially identical proposed rule changes. *See* File Nos. SR-Amex-89-03; SR-CBOE-89-01. The Amex and CBOE proposals modify Amex Rules 921, 922, and 926 and CBOE Rules 9.7, 9.8, and 9.15, respectively. Hereinafter, the terms "self-regulatory organizations" and "exchange" refer to the NYSE, Amex, and CBOE.

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 40549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file numbers in the caption above and should be submitted by [April 5, 1989].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: March 9, 1989.

Exhibit A—Opening of Accounts

NYSE Rule 721(a)—(d) [No change.]

Uncovered Short Option Accounts

(e) Each member and member organization transacting business with the public in writing uncovered short option contracts shall develop, implement and maintain specific written procedures governing the conduct of such business which shall include, at least, the following:

1. Specific criteria and standards to be used in evaluating the suitability of a customer for writing uncovered short option transactions;

2. Specific procedures for approval of accounts engaged in writing uncovered short option contracts, including written approval of such accounts by a Registered Options Principal;

3. Designation of the Senior Registered Options Principal or the Compliance Registered Options Principal as the person responsible for approving customer accounts which do not meet the specific criteria and standards for writing uncovered short option transactions and for maintaining written records of the reasons for every account so approved;

4. Establishment of specific minimum net equity requirements for initial approval and maintenance of customer accounts writing uncovered short option transactions; and

5. Requirements that customers approved for writing uncovered short options transactions be provided with a special written description of the risks inherent in writing uncovered short option transactions, at or prior to the initial writing of an uncovered short option transaction [See Rule 725(c)].

* * * Supplementary Material

.10—30 [No Change.]

.40 For purposes of Rule 721 (Opening of Accounts), Rule 722 (Supervision of Accounts) and Rule 726 (Delivery of Options Disclosure Document and Prospectus), the term writing uncovered short option positions shall include combinations and any other transaction which involve naked writing.

Supervision of Accounts

Duty to Supervise; Senior Registered Options Principal Rule 722

(a) [No change in first paragraph]

Every member and member organization shall also develop and implement specific written procedures concerning the manner of supervision of customer accounts maintaining uncovered short (written) option positions and specifically providing for frequent supervisory review of such accounts.

Delivery of Options Disclosure Document and Prospectus

NYSE Rule 726(a)—(d) [No Change.]

Uncovered Short Options Risk Disclosure

(c) The written description of risks required by Rule 721 shall be in a format prescribed by the Exchange or in a format developed by the member or member organization, provided it contains substantially similar information as the prescribed Exchange format and has received prior written approval of the Exchange.

Exhibit B—Rule 726 Risk Description

Special Statement for *Uncovered* Option Writers

There are special risks associated with uncovered option writing which expose the investor to potentially significant loss. Therefore, this type of strategy may not be suitable for all customers approved for options transactions.

1. The potential loss of uncovered call writing is unlimited. The writer of an uncovered call is in an extremely risky position, and may incur large losses if the value of the underlying instrument increases above the exercise price.

2. The writer of an uncovered put option bears a risk of loss if the value of the underlying instrument declines below the exercise price. Such loss could be substantial if there is a significant decline in the value of the underlying instrument.

3. Uncovered option writing is thus suitable only for the knowledgeable investor who understands the risks, has the financial capacity and willingness to incur potentially large losses, and has sufficient liquid assets to meet applicable margin requirements, and in connection with uncovered put writing, is able to purchase the underlying instrument in the event that the option is exercised.

4. For combination writing, where the investor writes both a put and a call on the same underlying instrument, the potential risk is unlimited.

5. If a secondary market in options were to become unavailable, investors could not engage in closing transactions, and an option writer would remain obligated until expiration or assignment.

Note: It is expected that you will read the booklet entitled CHARACTERISTICS AND RISKS OF STANDARDIZED OPTIONS available from your broker. In particular your attention is directed to the chapter entitled Risks of Buying and Writing Options. This statement is not intended to enumerate all of the risks entailed in writing uncovered options.

[FR Doc. 89-6021 Filed 3-14-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-26617; File No. SR-PSE-89-02]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by Pacific Stock Exchange, Inc.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 16, 1989, the Pacific Stock Exchange Incorporated ("PSE" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE submits this rule filing pursuant to Rule 19b-4 under the Act. The PSE proposes to change its Listing Fee Schedule to include families of funds. This change would provide that families of close-end funds are eligible for the second tier of the PSE's current listing fee schedule.

Currently, under the first tier of the listing fee schedule, original listing fees of common stock are $7,500.00. Under the second tier, original listing fees of secondary issues, i.e. preferred stocks, warrants, bonds, and rights, are $2,500.00. The proposed change would include the second and all subsequent funds in a family of funds in the second tier fee schedule.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory orgnization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Propsed Rule Changes

Currently, the PSE has a two-tiered Listing Fee Schedule. Original listings of common stocks are $7,500.00. Companies that have secondary issues listed are charged original listing fees of $2,500.00 for these secondary issues. Secondary issues include preferred stocks, warrants, bonds, and rights.

The two-tiered original listing fee was established in January 1987 to attract more multiple listings and to reflect that, generally, additional listings cost the PSE significantly less to process than the original listing.[1]

In recent months, there has been a proliferation of closed-end funds managed and sponsored by a number of investment companies. Possibly because of the popularity of baskets of stocks and program trading at the institutional level, the retail firms have offered these new closed-end funds as a similar investment concept.

It is proposed to apply the policy of reduced listing fees to the additional funds of the same family once the first fund is fully listed. Lower listing fees for common stocks of closed-end funds is justified because of the cost savings for secondary issues, and because they offer recognizable economies of scale. It is predicted that the reduced rate will attract groups of new listings. The Exchange believes that the proposal to reduce listing fees of additional securities in a family of closed-end funds underwritten and managed by the same sponsor or investment manger involves the same type of cost savings and economies of scale that were the basis for its decision to adopt a two-tiered listing fee structure. Processing multiple listing applications from the same sponsor simplifies and streamlines the regulatory review. Examinations of these substantially identical, though separate, listing applications of investment companies can be handled more efficiently than multiple applications for common stocks or different companies, even those with parent/subsidiary relationships. Although each fund is a unique registrant, the one sponsor in a multiple fund relationship provides the PSE with all ongong listing related information. Accordingly, the PSE's correspondence and liaison dealings can be handled through that one contact.[2]

The proposed rule filings is consistent with section 6(b)(4) of the Act in that it provides an equitable allocation of reasonable fees among persons using PSE facilities.

(B) Self-Regulatory Organization's Statement on Burden on Competition

PSE does not believe that the proposed rule filing imposes a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The PSE has not solicited nor received comments on the proposed fee change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed changes are effective on filing pursuant to section 19(b)(3)(A)(ii) of the Act, and Rule 19b–4(e) thereunder, in that they adopt a due, fee or other charge imposed by the PSE. At any time within 60 days of the date of filing of the proposed rule change the Commission may summarily abrogate the proposed rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC, 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commissison's Public Reference Section, 450 Fifth Street, NW., Washington, DC, 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR–PSE–89–02 and should be submitted by April 5, 1989.

For the Commission, by the Division of Market Regulation, purusant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: March 9, 1989.

[FR Doc. 89–6022 Filed 3–14–89; 8:45 am]

BILLING CODE 8010–01–M

[1] *See* Securities Exchange Act Release No. 24123 (February 20, 1987), 52 FR 6641.

[2] *See* letter dated February 24, 1989, from James C. McKee, Manager, Listings, PSE, to Howard Kramer, Assistant Director, Division of Market Regulation.

[Rel. No. 35–24833]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

March 9, 1989.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by April 3, 1989 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the manner. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Mississippi Power Company, et al. (70-7528)

Mississippi Power Company ("Mississippi Power"), 2992 West Beach, Gulfport, Mississippi 39501, Georgia Power Company ("Georgia Power"), 333 Piedmont Avenue, NE., Atlanta, Georgia 30308, and Gulf Power Company ("Gulf Power"), 500 Bayfront Parkway, Pensacola, Florida 32501, each a wholly owned, electric utility subsidiary companies of The Southern Company ("Southern"), a registered holding company, have filed an application under sections 9(a) and 10 of the Act.

By orders dated May 16, 1978 (HCAR No. 20543), September 18, 1985 (HCAR No. 23833) and February 8, 1980 (HCAR No. 21414), Mississippi Power, Georgia Power and Gulf Power, respectively, have acquired, by purchase or lease, coal hopper railroad cars for use in transporting coal in dedicated unit train service to their respective coal-fired generating plants. Georgia Power currently has approximately 1,300 railcars operating to transport coal to three of its plants. In addition, Mississippi Power has entered into a lease agreement, on behalf of itself and Gulf Power, with respect to 495 railcars for the transportation of coal to Plant Daniel, which is owned by Mississippi Power and Gulf Power as tenants-in-common. Alabama Power Company ("Alabama") and Savannah Electric and Power Company ("Savannah"), also wholly owned, electric utility subsidiary companies of Southern, currently do not own or lease coal hopper railroad cars. The total number of such railcars owned or leased by Southern system companies is the approximately 1,795 railcars that are currently owned or leased by Mississippi Power, Georgia Power and Gulf Power.

It is stated that the approximately 1,795 railcars have been acquired by Mississippi Power, Georgia Power and Gulf Power based upon their anticipated needs for coal. However, due to changes in coal burn forecasts, fuel prices, adjustments to the Southern electric system's economic dispatch procedures and other causes, Mississippi Power, Georgia Power and Gulf Power may, from time-to-time, need fewer than the approximately 1,795 railcars then currently available. Railcars owned or leased by Mississippi Power, Georgia Power and/or Gulf Power may be made available to one or more of the other Southern system operating companies, including Alabama and Savannah, which may have a need for such railcars.

It is further stated that it also may be desirable and economically advantageous to lease or sublease railcars not currently needed by Mississippi Power, Georgia Power and/or Gulf Power to nonaffiliate companies. To the extent that fewer than the approximately 1,795 railcars currently available are needed, Mississippi Power, Georgia Power and Gulf Power seek authorization to lease or sublease such railcars to nonaffiliate companies from time-to-time on or prior to December 31, 1992. In the event that additional railcars are acquired by purchase or lease by Mississippi Power, Georgia Power, Gulf Power, Alabama and/or Savannah, further authorization to lease or sublease such railcars to nonaffiliate companies will be sought from the Commission.

Central and South West Corporation, et al. (70-7643)

Central and South West Corporation ("CSW"), 2121 San Jacinto Street, Suite 2500, Dallas, Texas 75201, a registered holding company, and five of its operating subsidiaries, Central Power and Light Company ("CPL"), P.O. Box 2121, Corpus Christi, Texas 78403, Public Service Company of Oklahoma ("PSO"), P.O. Box 201, Tulsa, Oklahoma 74102, Southwestern Electric Power Company ("SWEPCO"), P.O. Box 21106, Shreveport, Louisiana 71156, West Texas Utilities Company ("WTU"), P.O. Box 841, Abilene, Texas 79604, and Transok, Inc. ("Transok"), P.O. Box 3008, Tulsa, Oklahoma 74101 and CSW's service company subsidiary, Central and South West Services, Inc. ("CSWS"), 2121 San Jacinto Street, Suite 2500, Dallas, Texas 75201, (together, "Subsidiaries") have filed an application-declaration under section 6(a), 7, 9(a), 10, 12(b) and 12(f) of the Act and Rules 43, 45 and 50(a)(5) thereunder.

CSW and its Subsidiaries propose to continue through March 31, 1991 their short-term borrowing program authorized by prior Commission order, dated April 2, 1987 (HCAR No 24363). The borrowing program would be coordinated through the use of the CSW system money pool ("Money Pool"). The program would make funds available to the Subsidiaries for interim financing of their capital expenditure programs and their other working capital needs, and to repay previous borrowings incurred for such purposes. Funds for the Money Pool would be available from surplus funds from the treasuries of CSW and its operating subsidiaries, from proceeds from the sale of commercial paper notes by CSW and bank borrowings by CSW and the Subsidiaries.

The maximum anticipated borrowing levels requested by CSW and its Subsidiaries are as follows: CSW—$600 million, CPL—$200 million, PSO—$100 million, SWEPCO—$150 million, WTU—$50 million, Transok—$80 million, and CSWS—$25 million, with an aggregate principal amount not to exceed $600 million.

To provide funds for the Money Pool, CSW requests authorization to issue and sell commercial paper. The commercial paper would have varying maturities of not more than nine months from the date of issue, and may be issued and sold by CSW from time to time through March 31, 1991. CSW requests that its commercial paper transactions be excepted under Rule 50(a)(5) from the competitive bidding requirements of Rule 50.

CSW and the Subsidiaries also request authorization to borrow money from banks to extent that the surplus funds of CSW and the Subsidiaries are insufficient to meet the Subsidiaries' requests for short-term loans. Such borrowing will not be made unless it would produce a lower cost of money than the issue of CSW's commercial paper, and in any event, they will not bear a rate of interest higher than the effective cost of money for unsecured prime commercial bank loans prevailing on the date of such borrowing. The borrowings would be evidenced by promissory notes, maturing no more than 24 months from the date of issue, and will be prepayable in whole at any time or in part from time to time, without penalty. Compensation arrangements under lines of credit with banks for CSW and its Subsidiaries are on a balance or fee basis. In general, fees are ¼ of 1% per annum on the average unused portion of the commitment, and balance arrangements require average balances of 5% of the amount of the commitment.

In addition, CSW requests authorization to borrow funds managed by trust departments of banks if such borrowings result in a cost of money equal to or less than that available from the sale of commercial paper or other bank borrowings.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-6023 Filed 3-14-89; 8:45 am]

BILLING CODE 8010-01-M

[File No. 270-87]

Forms Under Review by Office of Management and Budget; Revising; Rule 15c3-3

Agency Clearance Officer: Kenneth A. Fogash, Deputy Executive Director, (202) 272-2142.

Upon Written Request Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs, 450 5th Street, NW., Washington, DC 20549.

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 has submitted for OMB approval a revision of Rule 15c3-3 under the Securities Exchange Act of 1934 (15 U.S.C. 78(a) *et seq.*) that would amend the rule to allow broker-dealers to pledge certain "government securities" as collateral in government securities borrowings. One thousand respondents incur an average burden of 110 hours per year to comply with the rule.

The estimated average burden hours are made solely for the purposes of the paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the cost of SEC 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 SEC rules and forms to Kenneth A. Fogash, Deputy Executive Director, 450 5th Street, NW., Washington, DC 20549-6004, and Gary Waxman, Clearance Officer, Officer of Management and Budget, Paperwork Reduction Project (3235-0078), Room 3208, New Executive Office Building, Washington, DC 20503.

Jonathan G. Katz,

Secretary.

March 8, 1989.

[FR Doc. 89-5953 Filed 3-14-89; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Order 89-3-27]

Fitness Determination of Helitrans Air Service, Inc.

AGENCY: Department of Transportation.

ACTION: Notice of commuter air carrier fitness determination, order to show cause.

SUMMARY: The Department of Transportation is proposing to find that Helitrans Air Service, Inc., is fit, willing, and able to provide commuter air service under section 419(c)(2) of the Federal Aviation Act.

RESPONSES: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Air Carrier Fitness Division, Room 6401, Department of Transportation, 400 7th Street, SW., Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than March 27, 1989.

FOR FURTHER INFORMATION CONTACT: Janet A. Davis, Air Carrier Fitness Division, Department of Transportation, 400 7th Street, SW., Washington, DC 20590, (202) 366-9721.

Dated: March 10, 1989.

Patrick V. Murphy, Jr.,

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 89-6010 Filed 3-14-89; 8:45 am]

BILLING CODE 4910-62-M

[Order 89-3-28]

Fitness Determination of Panama Aviation, Inc.

AGENCY: Department of Transportation.

ACTION: Notice of commuter air carrier fitness determination, order to show cause.

SUMMARY: The Department of Transportation is proposing to find Panama Aviation, Inc., fit, willing, and able to provide commuter air service under section 219(d)(2) of the Federal Aviation Act.

Responses: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Air Carrier Fitness Division, P-56, Department of Transportation, 400 Seventh Street, SW., Room 6401, Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than March 27, 1989.

FOR FURTHER INFORMATION CONTACT: Mrs. Kathy Lusby Cooperstein, Air Carrier Fitness Division (P-56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-9721.

Dated: March 10, 1989.

Patrick V. Murphy, Jr.,

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 89-6011 Filed 3-14-89; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petitions for Exemption or Waiver of Compliance

In accordance with 49 CFR §§ 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received requests for an exemption from or waiver of compliance with a requirement of its safety standards. The individual petitions are described below, including the party seeking relief, the regulatory provisions involved, and the nature of the relief being requested.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. Any interested parties desiring an opoortunity for oral comment, should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number RST-84-21) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Communications received before April 28, 1989, will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.-5 p.m.) in Room 8201, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

The individual petitions seeking an exemption or waiver of compliance are as follows:

Southern Pacific Transportation Company (Waiver Petition Docket Number RSGM-88-20)

The Southern Pacific Transportation Company (SP) seeks a permanent waiver of compliance with the Safety Glazing Standards (49 CFR 223.17) for all SP locomotives. This portion of the standards requires each locomotive fully equipped with FRA glazing to be stencilled on an interior wall as follows: "FULLY EQUIPPED FRA PART 223 GLAZING." The petitioner states that all locomotives are in compliance with 49 CFR Part 223; therefore, the presence of the stencil required under § 223.17 is no

longer useful and has become a burden to maintain.

Ann Arbor Railroad (Waiver Petition Docket Number RSGM–88–21)

The Ann Arbor Railroad seeks a permanent waiver of compliance with the provisions of the Safety Glazing Standards (49 CFR Part 223) for one locomotive and three cabooses. The petitioner operates the one locomotive primarily in yard service in the City of Toledo, Ohio. The three cabooses are used for yard moves in Toledo, Ohio and in road service between Toledo, Ohio and Ann Arbor, Michigan, a distance of approximately 45 miles. The Ann Arbor Railroad states that it has have not had any incidents or injuries involving glazing.

Weber Industries (Waiver Petition Docket Number RSGM–88–22)

Weber Industries seeks a permanent waiver of compliance with the provisions of the Safety Glazing Standards (49 CFR Part 223) for nine passenger cars used in an excursion/dinner train. The cars will operate over approximately 32.4 miles of the Iowa Interstate Railroad between Council Bluffs and Hillis, Iowa.

The Laramie Valley Rail Preservation Association (Waiver Petition Docket Number RSGM–88–24)

The Laramie Valley Rail Preservation Association seeks a permanent waiver of compliance with the provisions of the Safety Glazing Standards (49 CFR Part 223) for one railway postal service passenger car, which will be operated in excursion service over approximately 60 miles of the Wyoming/Colorado Railroad between Laramie and Fox Park, Wyoming. The majority of the operating area is rural, mountainous terrain. The Wyoming/Colorado Railroad indicates no reported acts of vandalism or accidents involving locomotive glazing.

The Sisseton Southern Railway (Waiver Petition Docket Number RSGM–88–25)

The Sisseton Southern Railway (SSOR) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for two locomotives. The locomotives operate over aporoximately 38 miles of main line track that extends primarily through a rural area between Millbank and Sisseton, South Dakota. The petitioner states that there have been no incidents of rock throwing or gunfire directed at their locomotives. The petitioner feels that the installation of FRA certified glazing would impose an undue financial burden on the company to protect against situations it does not encounter.

The Buffalo Southern Railroad, Inc. (Waiver Petition Docket Number RSGM–88–26)

The Buffalo Southern Railroad, Inc., seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for four locomotives. The locomotives operate on approximately 40 miles of track between Buffalo and Gowanda, New York. The area of operation is through rural, light industrial, and urban regions.

Connecticut Central Railroad (Waiver Petition Docket Number RSGM–88–27)

The Connecticut Central Railroad (CCL) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for one caboose. The petitioner uses this caboose on a train that operates once a day Monday through Friday. The train operates over approximately 17.2 miles of track in mostly residential/rural areas near Middletown, Connecticut. The Petitioner states the caboose is used only as a platform for the conductor during pickup moves and that it is not occupied during train movements. The CCL feels that the installation of FRA certified glazing would not enhance railroad employee or public safety.

West Jersey Railroad (Waiver Petition Docket Number RSGM–88–28)

The West Jersey Railroad (WJR) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for two locomotives. The petitioner states that the two locomotives will operate over approximately 17.4 miles of track between Salem and Swedesboro, New Jersey. WJR states that the operating area is rural and not prone to vandalism. The petitioner therefore feels that the installation of FRA certified glazing would be an unnecessary financial burden to its operation.

Herzog Contracting Corporation (Waiver Petition Docket Number RSGM–88–29)

The Herzog Contracting Corporation seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for its trackmobiles now leased to various railroads. At the present time, 20 trackmobiles are leased. The petitioner states that the trackmobiles are primarily used for maintenance-of-way projects. The company indicates that the required FRA glazing materials are not readily available, are expensive, and would require field installation. The petitioner therefore feels that the installation of certified glazing would present a financial burden to its operation.

El Dorado Railway Company (Waiver Petition Docket Number RSGM–88–30)

The El Dorado Railway (EDW) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for three locomotives. These locomotives will be operated over approximately 5.5 miles in a sparsely populated area near El Dorado, Arkansas. The petitioner states that the railroad has not experienced an accident involving locomotive glazing since it began operations in 1905.

Mount Hood Railway Company (Waiver Petition Docket Number RSGM–88–31)

The Mount Hood Railway Company (MH) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for one caboose. The caboose will operate at speeds up to 15 mph in mostly rural terrain between Hood River and Dee, Oregon, a distance of approximately 16 miles. There have been no reported acts of vandalism or accidents involving glazing. The carrier therefore feels that the installation of FRA certified glazing would be an unnecessary financial burden to its operation.

Buffalo and Pittsburgh Railroad, Inc. (Waiver Petition Docket Number RSGM–88–32)

The Buffalo and Pittsburgh Railroad, Inc. (BPRR) seeks a temporary waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for two locomotives, PS 10 and PS 11. The two locomotives will be operated over approximately 110 miles of track between Punxsutawney, Pennsylvania and Salamanca, New York. The petitioner states that the cost to retrofit these units with FRA certified glazing would present a financial burden since the locomotives are not owned by the railroad and are only in temoorary use.

Sequatchie Valley Railroad and the Southern Alabama Railroad (Waiver Petition Docket Number RSGM–88–33)

The Sequatchie Valley Railroad (SQVR) and the Southern Alabama Railroad (SUAB) seek a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for five locomotives. Four locomotives will be operated on the SQVR railroad between

Bridgeport, Alabama and Dunlap, Tennessee, a distance of approximately 39.9 miles. One locomotive will be operated on the SUAB railroad between Troy, Alabama and Goshen, Alabama, a distance of approximately 12.2 miles. The petitioners state that windows in all five locomotives are equipped with a shatterproof glass and that application of FRA glazing would be a financial burden.

St. Lawrence Railroad (SLAW) (Waiver Petition Docket Number RSGM–88–34)

The St. Lawrence Railroad (SLAW) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for two locomotives. One locomotive will be operated in the train yard at Norfolk, New York and the other locomotive will operate between Ogdensburg and Raymondville, New York, a distance of approximately 30 miles. The railroad seeks the waiver of compliance because of the financial burden.

Huron and Eastern Railroad Company, Inc. (Waiver Petition Docket Number RSGM–88–35)

The Huron and Eastern Railroad Company, Inc. (HERS) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for three locomotives and one caboose. The HERS states that it normally operates one train a day over approximately 82.6 miles of track between Huron and Sanilac Counties in Michigan. The petitioner states that it has been in operation over 21 years without experiencing vandalism, shootings, stoning or similar incidents. Therefore, it feels that the added cost of meeting the standards of Part 223 is not justified.

Ohio Central Railroad, Inc. (Waiver Petition Docket Number RSGM–88–36)

The Ohio Central Railroad, Inc. (OCRI) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for one locomotive. This locomotive operates between Harmon and Zanesville, Ohio, a distance of approximately 71 miles. The petitioner states that the train passes generally through rural area and at speeds not to exceed 25 mph. Vandalism is not known to be a problem.

Braswell Sand and Gravel Company, Inc. (Waiver Petition Docket Number RSGM–89–1)

The Braswell Sand and Gravel Company, Inc. seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for one locomotive. The locomotive is operated once or twice weekly as a switch engine along a siding adjoining the Kansas City Southern Railroad near Wilton, Arkansas. Vandalism is not known to be a problem.

Springfield Terminal Railway Company (Waiver Petition Docket Numbers RSGM–89–2 and LI–89–1)

The Springfield Terminal Railway Company seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) and the Locomotive Safety Standards (49 CFR Part 229) for its TM 4500 Trackmobiles. This equipment is being operated on the Medford Running Track, the Wakefield Junction Running Track and the Danvers Running Track in northeast Massachusetts.

Florida Midland Railroad (Waiver Petition Docket Number RSGM–89–3)

The Florida Midland Railroad seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for one locomotive. The petitioner plans to operate the locomotive on either its Leesburg Branch or Gordonville Branch, both of which are located in a basically rural area in central Florida. The Leesburg Branch consists of approximately 15 miles of track between Wildwood and Leesburg, Florida. The Gordonville Branch consists of approximately 5.9 miles of track located between Winter Haven and Gordonville, Florida. Operation will be during daylight hours at a maximum speed of 25 mph.

ARMCO, Inc. (Waiver Petition Docket Number RSGM–89–4)

The ARMCO, Inc. seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for five switcher locomotives. The locomotives operate over approximately 5 miles of industrial lead track located in Ashland, Kentucky. The area of operation is totally industrial with no known problems of vandalism or stoning of locomotives.

Carolina Coastal Railway (Waiver Petition Docket Numbers RSGM–89–5 and SA–89–4)

The Carolina Coastal Railway seeks a permanent waiver with certain provisions of the Safety Glazing Standards (49 CFR Part 223) and the Safety Appliance Standards (49 CFR Part 231) for one locomotive. The petitioner anticipates operating the locomotive as a reserve unit, during daylight hours only, on approximately 17 miles of track between Pinetown and Belhaven, North Carolina. Operating speeds will be restricted to 10 mph. The operating area is rural and serves no major population centers. The petitioner states that the locomotive is equipped with shatterproof glazing which is not FRA certified and that it is not currently feasible to modify the vertical side steps to meet the requirements of Part 231. There are no known incidents of vandalism concerning locomotives in this area.

Wayne County Chamber of Commerce (Waiver Petition Docket Numbers (RSGM–89–6 and SA–89–5)

The Wayne County Chamber of Commerce seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) and the Safety Appliance Standards (49 CFR Part 231) for one locomotive. The petitioner plans to operate the locomotive on approximately 25 miles of track owned by the Lackawaxen and Stourbridge Railroad Corporation. The track is located between Honesdale and Lackawaxen, Pennsylvania and is situated in a rural area which includes some small towns. Vandalism is not known to be a problem in this area of operation. The portion of the request pertaining to the Safety Appliance Standards concerns switching steps and uncoupling arrangements.

Louisville, New Albany, and Corydon Railroad Company (Waiver Petition Docket Number RSGM–89–8)

The Louisville, New Albany and Corydon Railroad Company (LNAC) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for three passenger coaches. The petitioner plans to operate these coaches as part of a tourist train between Corydon, Indiana and Corydon Junction, Indiana, a distance of approximately 7.7 miles. The track is rated as Class 2 with a timetable speed limit of 20 mph. The area of operation is rural and vandalism is not known to be a problem. Due to the area and speed of operation, the LNAC feels that the installation of FRA certified glazing in these coaches is unnecessary and would create an undue financial hardship in the start up costs.

Issued in Washington, DC, on March 9, 1989.

J.W. Walsh,
Associate Administrator for Safety.

[FR Doc. 89-6002 Filed 3-14-89; 8:45 am]

BILLING CODE 4910-06-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration Office of Hazardous Materials Transportation; Applications for Renewal or Modification of Exemptions or Applications To Become a Party to an Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of Applications for Renewal or Modification of Exemptions or Application To Become a Party to an Exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Except as otherwise noted, renewal application are for extension of the exemption terms only. Where changes are requested (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) they are described in footnotes to the application number. Application numbers with the suffix "X" denote renewal; application numbers with the suffix "P" denote party to. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comment period closes March 28, 1989.

ADDRESS COMMENTS TO: Dockets Branch, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 Seventh Street SW., Washington, DC.

Application Number	Applicant	Renewal of Exemption
1862-X	Greer Hydraulics, Inc., Cleveland, OH.	1862
3600-X	U.S. Department of Defense, Falls Church, VA.	3600
4262-X	Schlumberger Well Services, Houston, TX.	4262
4453-X	Atlas Powder Company, Dallas, TX.	4453
4453-X	Laverty Supply, Inc., Indianola, IA.	4453
4453-X	ETI Explosives Technologies International Inc., Wilmington, DE.	4453
4453-X	Kentucky Powder Company, Lexington, KY.	4453
4453-X	Laurel Explosives, Inc., East Bernstadt, KY.	4453
4719-X	Allied-Signal Inc./ Engineered Materials Sector, Morristown, NJ.	4719
4884-X	Airco, The BOC Group, Inc., Murray Hill, NJ.	4884
5704-X	Aerojet Solid Propulstion Company, Sacramento, CA.	5704
6293-X	Hercules Incorporated, Wilmington, DE (See Footnote 1).	6293
6484-X	Angus Chemical Company, Northbrook, IL (See Footnote 2).	6484
6614-X	Steelcrete Company, Novi, MI.	6614
6614-X	Arco Industries, Inc., Milwaukee, WI.	6614
6614-X	Hasa Chemicals, Inc., Saugus, CA.	6614
6614-X	Clearwater Chemical Corporation, Clearwater, FL.	6614
6752-X	3M Transportation Co., St. Paul, MN.	6752
6824-X	Bio-Lab, Incorporated, Decatur, GA.	6824
7052-X	SAB NiFE A/S, Denmark.	7052
7060-X	Airborne Express, Inc., Wilmington, OH.	7060
7607-X	Radian Corporation, Herndon, VA.	7607
7616-X	Consolidated Rail Corporation (Conrail), Philadelphia, PA.	7616
7616-X	Norfolk Southern Corporation, Norfolk, VA.	7616
7616-X	Union Pacific Railroad Company, Omaha, NE.	7616
7616-X	Burlington Northern Railroad, Overland Park, KS.	7616
7616-X	Soo Line Railroad Company, Milwaukee, WI.	7616
7616-X	Grand Trunk Western Railroad Company, Pontiac, MI.	7616
7730-X	The Western Company of North America, Fort Worth, TX.	7730
7735-X	Rheem Container Corporation, Danbury, CT.	7735
7835-X	Messer Griesheim Industries, Inc., Valley Forge, PA.	7835
7886-X	W.M. Barr & Company, Inc., Memphis, TN.	7886
7969-X	Crosby & Overton, Inc., Long Beach, CA.	7969
8008-X	Wheaton Aerosols Company, Mays Landing, NJ.	8008
8151-X	Ropak West, Inc., La Mirada, CA.	8151
8184-X	Austin Powder Company, Cleveland, OH.	8184
8196-X	GCS Container Service, SA, Chiasso, Switzerland.	8196
8228-X	U.S. Department of Treasury (BATF), Washington, DC.	8228
8230-X	G. Frederick Smith Chemical Company, Columbus, OH.	8230
8232-X	GCS Container Service, SA, Chaisso, Switzerland.	8232
8363-X	IMR Powder Company, Piattsburgh, NY.	8363
8363-X	X-Pio, Inc., Piattsburgh, NY.	8363
8453-X	Nelson Brothers, Inc., Parrish, AL.	8453
8518-X	Crosby & Overton Inc., Long Beach, CA.	8518
8518-X	Lomita Gasoline Company, Long Beach, CA.	8518
8554-X	Piedmont Explosives, Inc., Statesville, NC.	8554
8569-X	Allied-Signal Aerospace Company, Tempe, AZ.	8569

Application Number	Applicant	Renewal of Exemption
8573-X	All Pure Chemical Company, Inc., Tracy, CA.	8573
8573-X	Alstar Company, Tracy, CA.	8573
8691-X	Aluminum Company of America (ALCOA), Pittsburgh, PA.	8691
8706-X	Prairie State Equipment, Inc., Sioux Falls, SD.	8706
8757-X	Y-Z Industries, Inc., Snyder, TX.	8757
8917-X	Fluor Daniel, Bellaire, TX.	8917
8958-X	Track of the Wolf, Inc., Brooklyn Park, MN.	8958
8962-X	HTL/Kin-Tech Division/Pacific Scientific Co., Duarte, CA.	8962
8978-X	SAB NIFE A/S, Denmark.	8978
8978-X	Whittaker-Yardney Power Systems, Pawcatuck, CT.	8978
8978-X	Whittaker-Yardney Power Systems, Waltham, MA.	8978
8988-X	Western Atlas International, Inc., Houston, TX.	8988
8991-X	Lea-Ronal, Inc., Freeport, NY.	8991
8998-X	Oil-Air Hydraulic, Inc., Brookshire, TX.	8998
9014-X	Hunter Drums Limited, Bramalea Ontario, Canada.	9014
9017-X	Mobay Corporation, Pittsburgh, PA.	9017
9036-X	The Marison Company, South Elgin, IL.	9036
9052-X	Chemical Handling Equipment Company, Inc., Toledo, OH.	9052
9108-X	Austin Powder Company, Cleveland, OH.	9108
9108-X	Explosives Technologies International (ETI), Wilmington, DE.	9108
9108-X	E.J. duPont de Nemours & Company, Inc., Wilmington, DE.	9108
9129-X	Weldex Corporation, Grafton, MA.	9129
9164-X	Fabricated Metals, Inc., San Leandro, CA (See Footnote 3).	9164
9174-X	National Aeronautics and Space Administration, Washington, DC.	9174
9275-X	Merrell Dow Pharmaceuticals, Inc., Cincinnati, OH.	9275
9275-X	The Upjohn Company, Kalamazoo, MI.	9275
9275-X	Fritzsche, Dodge & Olcott, Inc., New York, NY.	9275
9275-X	Noxell Corporation, Hunt Valley, MD.	9275
9275-X	Ortho Pharmaceutical Corporation, Somerset, NJ.	9275
9275-X	A.H. Robins Company, Richmond, VA.	9275
9275-X	Shaklee Corporation, Hayward, CA.	9275
9275-X	Carter-Wallace, Inc., Cranbury, NJ.	9275
9275-X	BIC Corporation, Milford, CT.	9275
9275-X	The Procter & Gamble Distributing Company, Cincinnati, OH.	9275
9275-X	Firmenich, Incorporated, Princeton, NJ.	9275
9275-X	Amway Corporation, Ada, MI.	9275
9275-X	Liz Claiborne Cosmetics, North Bergan, NJ.	9275
9275-X	Scentura Creations, Atlanta, GA.	9275
9275-X	Mary Kay Cosmetics, Dallas, TX.	9275
9275-X	Parfums Stern, New York, NY.	9275
9275-X	Giorgio of Beverly Hills, Santa Monica, CA.	9275
9275-X	Avon Products, Inc., New York, NY.	9275
9275-X	Warner-Lambert Company, Morris Plains, NJ.	9275
9275-X	DuPont Pharmaceuticals, Inc., Waukegan, IL.	9275
9346-X	Pennzoil Company, Houston, TX.	9346
9346-X	Pennzoil Company, Houston, TX (See Footnote 4).	9346
9386-X	Pacific Scientific, HTL Division, Duarte, CA.	9386
9401-X	Arbel-Fauvet-Rail, Paris, France.	9401
9401-X	ATOCHEM, Paris, France, In.	9401
9401-X	Societe Nationale De Wagons-Reservoirs, Paris, France.	9401
9402-X	Arbel-Fauvet-Rail, St. Laurent-Balngy, France.	9402
9402-X	Atochem, Paris, France.	9402
9402-X	NAACO, S.A., Paris, France.	9402
9402-X	ALGECO, Paris, France.	9402
9402-X	Exploitation De Services Industriels Et De Forets, Paris, France, NS.	9402
9415-X	Sonoco Plastic Drum, Inc., Lockport, IL.	9415
9450-X	Marison Company, South Elgin, IL.	9450
9617-X	Explosives Technologies International, Wilmington, DE (See Footnote 5).	9617
9672-X	Texas Alkyls, Inc., Westport, CT.	9672
9673-X	Mauser Packaging, Limited, Litchfield, CT.	9673
9689-X	Olin Chemicals Corporation, Stamford, CT.	9689
9697-X	E.I. du Pont de Nemours & Company, Inc., Wilmington, DE.	9697
9716-X	Comdyne I, Inc., West Liberty, OH.	9716
9716-X	Johnson Industries Corporation, West Liberty, OH (See Footnote 6).	9716
9719-X	Great Southern Airways, Orlando, FL.	9719
9730-X	Air Products and Chemicals, Inc., Allentown, PA.	9730
9735-X	Hagag-Lloyd, AG, Hamburg, West Germany.	9735
9736-X	Aqua-Tech, Incorporated, Port Washington, WI (See Footnote 7).	9736
9748-X	Greif Bros. Corporation, Springfield, NJ.	9748
9783-X	Helios Container Systems, Inc., Addison, IL (See Footntoe 8).	9783

Application Number	Applicant	Renewal of Exemption
9789-X	E.I. du Pont Nemours & Company, Inc., Wilmington, DE (See Footnote 9).	9789
9924-X	U.S. Department of Energy, Washington, DC.	9924
10020-X	Allwaste, Houston, TX (See Footnote 10).	10020
10126-X	Moli Energy Limited, Burnaby, B.C., Canada (See Footnote 11).	10126
10127-X	Morton Thiokol, Inc., Huntsville, AL (See Footnote 12).	10127

(1) To authorize the increase of nitric acid from 13% to 16% contained in spent mixed acid for shipment in cargo tanks.

(2) To authorize shipment of the following additional materials classed as flammable liquids; Nitromethane, 31%; Nitroethane, 31%; and 1-Nitropropane, 38% for shipment in cargo tanks.

(3) To authorize the addition of other specific products and sludges such as lube oil sludge, anti freeze sludge, cutting oil sludge, lubricating oils, greases and inks, for shipment in cargo tanks.

(4) To modify exemption to authorize seventeen (17) coupled tank cars instead of twelve (12) tank cars, for shipment of oil, n.o.s.

(5) To authorize cargo vessel as an additional mode of transportation.

(6) To authorize a larger size fiber reinforced plastic cylinder for shipment of certain nonflammable and flammable compressed gases.

(7) To authorize use of 8-gallon 17c drums and 6-gallon 37A60 drums, for shipment of various hazardous substances.

(8) To authorize cargo vessel as additional mode of transportation.

(9) To authorize the addition of chromium complex solutions, classed as flammable liquids, corrosive, n.o.s., for shipment in DOT Specification 57 portable tanks.

(10) To authorize any Corrosive solid, n.o.s. materials; to be shipped in non-DOT run-on/off containers and to provide for additional containers of 3/16 inch steel instead of the current 1/4 inch steel.

Application Number	Applicant	Parties to, Exemption
4884-P	Matheson Gas Products Secaucus, NJ.	4884
6309-P	Preferred Foam Products, Inc. Old Saybrook, CT.	6309
6309-P	Eastern Foam Systems Inc. Stratford, CT.	6309
7052-P	Honeywell Inc., DASD/San Mateo Facility Albuquerque, NM.	7052
7991-P	Norfolk and Western Railway Company Roanoke, VA.	7991
7991-P	Southern Railway Company Roanoke, VA.	7991
8451-P	Teledyne McCormick Selph Hollister, CA.	8451
8554-P	Pacco Inc. South Olympia, WA.	8554
8582-P	The Cedar Rapids and Iowa City Railway Company Cedar Rapids, IA.	8582
8966-P	Alstar Company Tracy, CA.	8966
8988-P	Halliburton Logging Services, Inc. Houston, TX.	8988
8995-P	Eastern Foam Systems, Inc. Stratford, CT.	8995
9058-P	Halliburton Logging Services, Inc. Houston, TX.	9058
*9416-P	Hess and Clark, Inc. Ashland, OH.	9416
9672-P	Akzo Chemical Inc. Chicago, IL.	9672
9785-P	NYK Line chiyoda-ku, Tokyo 100, Japan.	9785
*9110-P	Kerr-McGee Chemical Corporation, Oklahoma City, OK.	9110
9956-P	DX Systems, Inc. Houston, TX.	9956

This notice of receipt of applications for renewal of exemptions and for party to an exemption is published in accordance with Part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on March 9, 1989.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Transportation.

[FR Doc. 89-5911 Filed 3-14-89; 8:45 am]

BILLING CODE 4910-60-M

Research and Special Programs Administration

Hazardous Materials Transportation; Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of Applicants for Exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft.

DATE: Comment period closes April 12, 1989.

ADDRESS COMMENTS TO: Dockets Branch, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street, SW., Washington, DC.

NEW EXEMPTIONS

Application Number	Applicant	Regulation(s) Affected	Nature of Exemption Thereof
10129-N	General Defense Corporation, York, PA.	49 CFR 173.56	To authorize shipment of an explosive projectile, Class A explosive in non-DOT specification packaging approved by the US Department of Defense. (modes 1, 2, 3)
10130-N	UF Strainrite, New Haven, CT	49 CFR Part 173, Subparts E, F, and H.	To authorize the manufacture, marking and sale of a non-DOT specification flexible, disposable woven polypropylene bulk container bag for shipment of corrosive, solids, oxidizers, poison B solids and flammable solids. (modes 1, 2, 3)
10131-N	Fomo Products Inc., Norton, OH	49 CFR 173.1200(a)(8)(A), (E), 173.306(a)(3)(i), (V), 178.33a-2(b).	To authorize shipment of a nonflammable, nonpoisonous compressed gas, consumer commodity, Class ORM-D, in a non-DOT specification 1-liter aerosol can similar to the DOT Specification container except for capacity. (modes 1, 2, 3)
10132-N	AmeriBrom, Inc., New York, NY	49 CFR 173.252(a)(4)	To authorize shipment of Bromine, classed as a corrosive material in a non-DOT specification ISO portable tank of 1250 liter capacity. (modes 1, 2, 3)
10133-N	Goex, Inc., Cleburne, TX	49 CFR 173.68, 173.86, 175.3	To authorize shipment of Detonating primers, Class A explosive, to be shipped as a Class C explosive, when contained in specially designed packaging. (modes 1, 2, 3, 4, 5)
10134-N	Allied-Signal Aerospace Company, Tempe, AZ.	49 CFR 173.302, 175.3, 178.44	To authorize manufacture, marking and sale of a non-DOT specification cylinder similar to the 3HT cylinder for shipment of a gas mixture of 98 percent Argon and 2 percent Helium, compressed gas n.o.s., classed as a nonflammable gas. (modes 1, 2, 3, 4, 5)
10135-N	Ciba-Geigy Corporation, Hawthorne, NY.	49 CFR 173.168	To authorize shipment of lithium amide, powdered classed as a flammable solid in DOT specification 56 portable tanks constructed of T-304 stainless steel. (mode 1)
10136-N	Mitisubishi International Corporation, New York, NY.	49 CFR 173.268	To authorize a shipment of Nitric Acid (over 40 percent), classed as an oxidizer in a non-DOT 55-gallon steel drum with a polyethylene liner. (modes 1, 3)
10138-N	Betz Laboratories, Inc., Trevose, PA.	49 CFR 172.326(d)	To authorize use of the generic n.o.s. and ID number rather than specific ID number when portable tanks with materials of the same hazard class but requiring different ID numbers are being transported in closed vehicles. (mode 1)
10139-N	Mitsubishi International Corporation, Portland, OR.	49 CFR 173.266(c)	To authorize shipment of hydrogen peroxide solution (3 percent hydrogen peroxide by weight), classed as an oxidizer in non-DOT specification 5-liter polyethylene bottles with a minimum wall thickness of 1.4mm overpacked in DOT specification 12A fiberboard boxes containing not over 4 bottles each. (modes 1, 3)
10140-N	AGA Gas, Inc., Cleveland, OH	49 CFR 173.302	To authorize transportation of liquid Oxygen, Nitrogen, Argon, Carbon dioxide, and Nitrous oxide, classed as nonflammable gases in a non-DOT specification pressure vessel (pallet tank) at 95 percent filling capacity. (mode 1)
10141-N	General Electric Company, Pleasanton, CA.	49 CFR 173.421	To authorize shipment of rhenium metal without marking "Radioactive" on the inner packaging or the exterior packaging and without the required certification. (modes 1, 2, 3, 4)
10142-N	Tuscarora Plastics, Inc., Reston, VA.	49 CFR 173.119(a)(23), 173.245(a)(18), 178.210.	To authorize manufacture, marking, and sale of a non-DOT specification fiberboard carton comparable to the DOT specification 12A fiberboard carton except for handholds for shipment of flammable liquids, n.o.s., classed as flammable liquids and corrosive liquid n.o.s., classed as corrosive materials. (modes 1, 2, 3, 4)
10143-N	Eurocom Imports, Inc., Dallas, TX	49 CFR 173.302	To authorize shipment of non-flammable compressed gas mixtures (Neon—Argo and Helium—Neon) and Neon, classed as non-flammable gas in a non-DOT specification aluminum seamless cylinder similar to the DOT spec 39 cylinder. (modes 1, 2, 3)

This notice of receipt of applications for new exemptions is published in accordance with Part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on March 9, 1989.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Transportation.

[FR Doc. 89-5912 Filed 3-14-89; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds; Amwest Surety Insurance Co.; Revision of Power of Attorney Forms

Federal bond-approving officers are advised that Amwest Surety Insurance Company, a California corporation, has informed the Financial Management Service that it has revised its form of Power of Attorney with respect to all Amwest Surety Insurance Company's bonds issued to all beneficiaries.

As of February 21, 1989, all Amwest Surety Insurance Company's Powers of Attorney not bearing the legend "UN-A1007 (REV. 2/89)" in the lower left hand corner have been revoked.

An Amwest Surety Insurance Company bond executed on or after February 21, 1989, should be accompanied by an executed Power of Attorney on form UN-A1007 (Rev. 2/89). The revised Power of Attorney form can be easily recognized by the heading printed in red on the top of the form:

"Limited Power of Attorney

(Read Carefully)"

The new Power of Attorney requires that the name of the principal, the penal sum of the bond, and the bond number be entered on the face of the Power of Attorney. All new Powers of Attorney have been witnessed by the Company on or after February 21, 1989.

Questions regarding Amwest Surety Insurance Company's Powers of Attorney should be directed to Amwest Surety Insurance Company, P.O. Box 4500, Woodland Hills, CA 91365-4500, Attention: Underwriting Department; telephone (818) 704-1111.

Mitchell A. Levine,

Assistant Commissioner, Comptroller, Financial Management Service.

Dated: March 10, 1989.

FR Doc. 89-6001 Filed 3-10-89; 8:45 am]

BILLING CODE 4810-35-M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 49
Wednesday, March 15, 1989

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).

COMMISSION ON CIVIL RIGHTS

Rescheduling of Executive Session Portion of Commission Meeting

The executive session portion of the March 17 Commission meeting covering internal personnel matters, previously announced in 54 FR 10067 (March 9, 1989), has been rescheduled. This closed session will now take place at approximately 8:00 a.m., before the convening of the public portion of the meeting.

William H. Gillers,
Solicitor.
March 10, 1989.

[FR Doc. 89-6033 Filed 3-10-89; 5:04 pm]
BILLING CODE 6335-01-M

COMMITTEE ON EMPLOYEE BENEFITS TO THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 3:00 p.m., Tuesday, March 21, 1989.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. The Committee's agenda will consist of matters relating to (a) the general administrative policies and procedures of the Retirement Plan, Thrift Plan, Long-Term Disability Income Plan, and Insurance Plan for Employees of the Federal Reserve System; (b) general supervision of the operations of the Plans; (c) the maintenance of proper accounts and accounting procedures in respect to the Plans; (d) the preparation and submission of an annual report on the operations of each of such Plans; (e) the maintenance and staffing of the Office of the Federal Reserve Employee Benefits System; and (f) the arrangement for such legal, actuarial, accounting, administrative, and other services as the Committee deems necessary to carry out the provisions of the Plans.

Specific items include: (A) Issues regarding the Operations Review of the Office of Employee Benefits; and (B) impact of IRS rules on the System Retirement Plans.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Date: March 13, 1989.
William W. Wiles,
Secretary of the Board.
[FR Doc. 89-6113 Filed 3-14-89; 8:45 am]
BILLING CODE 6210-01-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

March 10, 1989.

TIME AND DATE: 10:00 a.m., Tuesday, March 14, 1989.

PLACE: Room 600, 1730 K Street NW., Washington, DC.

STATUS: Closed [Pursuant to 5 U.S.C. 552b(c)(10)].

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Birchfield Mining, Inc.*, Docket No. WEVA 87-272. (Issues include consideration of petitions for discretionary review.

It was determined by a unanimous vote of Commissioners that a meeting be held on this item in closed session and that no earlier announcement of the meeting was possible.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen, (202) 653-5629/(202) 566-2673 for TDD Relay.

Jean H. Ellen,
Agenda Clerk.
[FR Doc. 89-6087 Filed 3-13-89; 12:56 pm]
BILLING CODE 6735-01-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

March 9, 1989.

TIME AND DATE: 10:00 a.m., Thursday, March 16, 1989.

PLACE: Room 600, 1730 K Street NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument on the following:

1. *BethEnergy Mines, Inc.*, Docket No. PENN 87-94, etc. (Issues include whether BethEnergy violated 30 CFR 75.1704).

Any person intending to attend this hearing who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

TIME AND DATE: Immediately following oral argument.

STATUS: Closed [Pursuant to 5 U.S.C. 552b(c)(10)].

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *BethEnergy Mines, Inc.*, Docket No. PENN 87-94, etc. (See above listing)

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen, (202) 653-5629/(202) 566-2673 for TDD Relay.

Jean H. Ellen,
Agenda Clerk.
[FR Doc. 89-6088 Filed 3-13-89; 12:56 pm]
BILLING CODE 6735-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, March 20, 1989.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance betweeen 20th and 21st Streets, NW., Washington DC, 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposals regarding the Board's performance management program.
2. Building proposals regarding the Helena Branch of the Federal Reserve Bank of Minneapolis.
3. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
4. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: March 10, 1989.
Jennifer J. Johnson,
Associate Secretary of the Board.
[FR Doc. 89-6018 Filed 3-10-89; 4:20 pm]
BILLING CODE 6210-01-M

TENNESSEE VALLEY AUTHORITY

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: March 13, 1989, 54 FR 10480.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m. (gst) Wednesday, March 15, 1989.

PREVIOUSLY ANNOUNCED PLACE OF MEETING: Andrew Johnson Theater, Tennessee Performing Arts Center, 505 Deaderick Street, Nashville, Tennessee.

CHANGES IN THE MEETING: Each member of the TVA Board of Directors has approved the addition of the following item to the previously announced agenda:

F—Unclassified

5. TVA Code III Pay, Manager and Specialist.

CONTACT PERSON FOR MORE INFORMATION: Alan Carmichael, Manager, Public Affairs, or a member of his staff can respond to requests for information about this meeting. Call 615–632–8000, Knoxville, Tennessee. Information is also available at TVA's Washington Office, 202–479–4412.

Edward S. Christenbury,

General Counsel and Secretary to the Board.

[FR Doc. 89–6042 Filed 3–14–89; 11:48 am]

BILLING CODE 8120–01–M

Corrections

Federal Register
Vol. 54, No. 49
Wednesday, March 15, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. 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.

ENVIRONMENTAL PROTECTION AGENCY

[OPP-150003A; FRL-3523-3]

Dinoseb Pesticide Products for Submission of Claims for Indemnification and Request for Disposal; Amended and Final Notice

Correction

In notice document 89-3817 beginning on page 7372 in the issue of Friday, February 17, 1989, make the following correction:

On page 7377, in the third page-column, in the first table-column, under "Puregro" in the first line, "011202-205" should read "001202-205".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPP-180803; FRL-3519-8]

Receipt of an Application for a Specific Exemption To Use Avermectin B_1; Solicitation of Public Comment

Correction

In notice document 89-3417 beginning on page 6957 in the issue of Wednesday, February 15, 1989, make the following correction:

On page 6957, in the 2nd column, under **SUMMARY**, in the 12th line, remove "□" and insert "<".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[Opp-3400; FRL 3526-9]

Pesticides for Which Registration Standards Have Been Issued

Correction

In notice document 89-4131 beginning on page 7740 in the issue of Wednesday, February 22, 1989, make the following correction:

On page 7749, in the third column, at the beginning of the fifth line from the bottom, the numbers should read "2-(2, 4-".

BILLING CODE 1505-01-D

[OPTS-51726; FRL-3521-1]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

Correction

In notice document 89-3519 beginning on page 6963 in the issue of Wednesday, February 15, 1989, make the following corrections:

1. On page 6963, in the third column, under **P 89-245**, in the third line, "Block" should read "Blocked".

2. On the same page, in the same column, under **P 89-246**, in the third line, "Block" should read "Blocked".

3. On the same page, in the same column, under **P 89-247**, in the third line, "Block" should read "Blocked".

4. On the same page, in the same column, under **P 89-248**, in the third line, "Block" should read "Blocked".

BILLING CODE 1505-01-D

[OPTS-51727; FRL-35209]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

Correction

In notice document 89-3518 beginning on page 6959 in the issue of Wednesday, February 15, 1989, make the following corrections:

1. On page 6961, in the first column, under **P 89-287**, in the first line, "Vanberbilt" should read "Vanderbilt"; and in the sixth line, "lubricants" was misspelled.

2. On the same page, in the second column, under **P 89-293**, in the fourth line, "neogentyl" should read "neopentyl".

3. On page 6962, in the 3rd column, under **P 89-327**, in the 10th line, "trichlorophyenylsilane" should read trichlorophenylsilane".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-060-09-4920-10-9335, WYW97410 FD and PT]

Proposed Exchange; Schedule for Public Meetings

Correction

In notice document 89-4393 beginning on page 8243 in the issue of Monday, February 27, 1989, make the following corrections:

1. On page 8243, in the third column, in **SUPPLEMENTARY INFORMATION**, in the fourth paragraph, in the fifth line, "2,500" should read "2,560".

2. On the same page, in the same column, in the fifth paragraph, in the 14th line, the sentence begining with "The" should read "The specific areas of interest for comments are as follows:".

3. On page 8244, in the first paragraph, in the second line, "neither" should read "either".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Office of Hearings and Appeals

43 CFR Part 4

Special Rules Applicable to Surface Coal Mining Hearings and Appeals

Correction

In proposed rule document 89-5373, beginning on page 9852 in the issue of Wednesday, March 8, 1989, make the following correction:

§ 4.1366 [Corrected]

On page 9854, in the first column, in § 4.1366(d)(1), in the sixth line, "application" should read "applicant".

BILLING CODE 1505-01-D

federal register

Wednesday
March 15, 1989

Part II

National Aeronautics and Space Administration

48 CFR Parts 1801, 1804, 1805, et al.
Acquisition Regulation; Miscellaneous Amendments to NASA FAR Supplement; Final Rule

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1801, 1804, 1805, 1807, 1815, 1816, 1822, 1823, 1832, 1834, 1835, 1836, 1837, 1842, 1843, 1845, 1846, 1847, 1848, 1852, and 1853

[NASA FAR Supplement Directive 85-14]

Acquisition Regulation; Miscellaneous Amendments to NASA FAR Supplement

AGENCY: Office of Procurement, Procurement Policy Division, NASA.

ACTION: Final rule.

SUMMARY: This document amends the NASA Federal Acquisition Regulation Supplement (NFS) to reflect a number of miscellaneous changes implementing higher level issuances and other changes dealing with NASA internal or administrative matters.

EFFECTIVE DATE: March 20, 1989.

FOR FURTHER INFORMATION CONTACT: W. A. Greene, Chief, Regulations Development Branch, Procurement Policy Division (Code HP), Office of Procurement, NASA Headquarters, Washington, DC 10546, Telephone: (202) 453-8923.

SUPPLEMENTARY INFORMATION:

Background

The major changes involve: (1) Implementation of Federal Acquisition Circular 84-42; (2) pension portability; and (3) the Service Contract Act. Numerous editorial and typographical changes have been made in clauses and provisions to improve readability and to conform with FAR drafting conventions. However, while the clauses and provisions have been redated, substantive meanings have not been altered where such editing has been performed.

The NASA FAR Supplement, of which this rule is a part, is available in its entirety on a subscription basis from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. It is not distributed to the public, either in whole or in part, directly by NASA.

Impact

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The regulations herein are in the exempted category. NASA certifies that this regulation 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.). The regulation imposes no burdens on the public within the ambit of the Paper Work Reduction Act, as implemented at 5 CFR Part 1320.

List of Subjects in 48 CFR Parts 1801, 1804, 1805, 1807, 1815, 1816, 1822, 1823, 1832, 1834, 1835, 1836, 1837, 1842, 1843, 1845, 1846, 1847, 1848, 1852, and 1853

Government procurement.

S. J. Evans,

Assistant Administrator for Procurement.

1. The authority citation for 48 CFR Parts 1801, 1804, 1805, 1807, 1815, 1816, 1822, 1823, 1832, 1834, 1835, 1836, 1837, 1842, 1843, 1845, 1846, 1847, 1848, 1852, and 1853 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1801—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. In Subpart 1801.2, 1801.270-4 is revised to read as follows:

1801.270-4 Numbering.

NFSDs and PNs are numbered consecutively, prefixed by the last two digits of the calendar year of issuance of the current edition of the NASA FAR Supplement.

PART 1804—ADMINISTRATIVE MATTERS

1804.7102-7 [Amended]

3. In 1804.7102-7, paragraph (b)(2) is revised to read as follows:

* * * * *

(b) * * *

(2) After the letter contract is definitized, contract modifications shall be numbered beginning with the next sequential number following that of the last modification to the letter contract.

PART 1805—PUBLICIZING CONTRACT ACTIONS

1805.303-71 [Amended]

4. In 1805.303-71, the introductory text to paragraph (b)(1) is revised to read as follows:

* * * * *

(b) Definitive contracts and supplemental agreements. (1) This paragraph (b)(1) does not pertain to supplemental agreements covering overruns or incremental funding actions or to contracts or supplemental agreements that require approval of the Assistant Administrator for Procurement pursuant to 1804.7203. It does pertain to contracts, supplemental agreements, and the execution of options that are in an amount of $10,000,000 or over for the Stennis Space Center, Headquarters Contracts and Grants Division, Space Station Procurement Office, and the NASA Resident Office—JPL and $25,000,000 or over for Ames Research Center, Goddard Space Flight Center, Johnson Space Center, Kennedy Space Center, Langley Research Center, Lewis Research Center, and Marshall Space Flight Center. It also pertains to any procurement action that, in the judgment of the contracting officer, has Headquarters public information implications (e.g., the transfer of personnel from one State to another). Such contracts and supplemental agreements shall not be distributed nor shall any source outside NASA be informed that the contractual instrument has been signed by both parties until the procedures in paragraphs (b)(1)(i) and (b)(1)(ii) following are carried out:

* * * * *

PART 1807—ACQUISITION PLANNING

5. Part 1807 is amended as set forth below:

1807.103 [Amended]

a. In 1807.103, introductory paragraph (b)(1) is revised to read as follows:

* * * * *

(b) Approval of procurement plans. (1) Whenever the estimated cost of the procurement (including options and/or later phases of the same program/project) meets the thresholds below, procurement plans shall, as a minimum, be reviewed and approved as follows:

b. In 1807.103, paragraph (b)(2) is removed, and paragraph (b)(3) is redesignated as paragraph (b)(2).

c. Section 1807.170-1 is revised to read as follows:

1807.170-1 Procurement plans requiring approval by NASA Headquarters.

(a) Procurement plans shall describe the procurement, including options, and later phases contemplated for the same program or project, for example Phase C/D. Approval of the procurement plan does not constitute approval of later phases. In order to consider changes that may occur from an initial procurement, later phases exceeding the thresholds in 1807.103 above, require approval of a separate plan.

(b) Each procurement plan prepared for approval by NASA Headquarters shall be prepared on NASA Forms 1451 and 1452. Form 1451, Request for Procurement Plan Approval, shall be completed as follows:

(1) *Item I. A descriptive short title.* In this item, include only a descriptive short title of the procurement. A detailed description of the proposed procurement

shall be included in subsequent pages as required. The information to be provided consists of—

(i) A clear and concise description, including intended use, of the item or service to be procured;

(ii) The number of units, delivery schedule, and/or period of performance (note: if a schedule of major events will enhance the plan, it should also be included);

(iii) An identification of any option provision, including the periods covered and estimated costs;

(iv) An identification of any later phases if the procurement is to be a phased procurement including the estimated cost thereof; and

(v) A statement as to whether the contractor will be required to comply with detailed specifications, meet performance requirements, perform a mission, or furnish a level of effort.

(2) *Item 2. Name of installation.* Give the name of the installation responsible for the procurement.

(3) *Item 3. Plan prepared by.* Give the name of the individual who prepared the plan.

(4) *Item 4. Date.* Enter the date the plan is prepared.

(5) *Item 5. Responsible technical office.* Identify the office (by title) that will be responsible for technical monitoring of the contract. Include a technical point of contact and telephone number.

(6) *Item 6. Total estimated cost of this procurement.* Provide one figure for the total estimated cost of the proposed procurement, including options. When options are involved, show the cost for each separately on subsequent pages as a breakout from total cost.

(7) *Item 7. Proposed funding by fiscal year and unique project number (UPN).* Identify the funding amounts by appropriation, fiscal year, and UPN for the procurement covered by the plan. When funding is obtained from multiple projects, provide a complete identification of each fund source. Include the following statement: "Obligations may not exceed those authorized in the Headquarters-approved Annual Operating Plan."

(8) *Item 8. Full and open competition.* Check appropriate box to indicate whether full and open competition is provided for or whether other than full and open competition is contemplated.

(9) *Item 9. Type of contract.* State the type of contract recommended for the procurement. On subsequent pages, discuss the contract type and the rationale for its selection. If an incentive contract is proposed, discuss the type or types of incentive considered most suitable for the accomplishment of the procurement objectives.

(10) *Item 10. Facilities and Government-furnished property.* (i) Indicate, by checking the appropriate box, whether the procurement will require providing any existing, new, or modified Government property. When other Government property is to be provided, identify the items and dollar amounts involved. The dollar amounts provided in Item 10 shall not be included in those specified under Items 6 and 7 unless the property or facilities are part of the procurement. If dollar amounts in Item 10 are included under Items 6 and 7, they should be so annotated under this item on the following pages.

(ii) If the proposed contract, exclusive of options, will be for a shorter period than the program useful life of any required facilities (as defined in FAR 45.301) and the facilities cannot be used for any purpose other than the program effort being contracted for, then the procurement plan shall discuss the feasibility of acquiring the right to use the facilities for longer than the proposed contract period as well as the proposed procurement strategy for accomplishing this use. The following shall be considered:

(A) If program uncertainties for continuing beyond the contract period of performance are sufficient, it may be in the Government's best interests to acquire use of the facilities during only that time. This strategy may make the facilities more costly to the Government for the contract period than if a contractual arrangement for longer use were made. However, it should reduce the program risks associated with longer Government facilities obligations; and

(B) If it is in the Government's best interests to acquire the right to use the facilities for longer than the proposed contract period in order to take advantage of economies in long-term facilities investment, then the proposed contractor's obligations, the Government's obligations that will encourage long-term investment, and the contract cost strategy for facilities shall be addressed. There are many alternative long-term investment approaches available for the contracting officer to consider. Some examples of representative strategies include requiring the contractor to—

(1) Enter into a long-term lease of the facilities from a lessor, subject to the lease being canceled if the prime contractor does not continue to perform the requirement throughout the useful life of the facilities (e.g., the contractor is not selected in a subsequent recompetition of the requirement);

(2) Purchase the facilities, with depreciation and cost-of-money accelerated for the contract period of performance, at the conclusion of which the Government has a unilateral option to purchase the facilities at the depreciated value (at or near $-0-) based on the contractor's depreciation schedule. The facilities could then be provided to the successor contractor as Government property; and

(3) Purchase the facilities, with depreciation and cost-of-money over the useful life of the facilities. At the completion of the contract period of performance, either the Government would purchase the facilities at their depreciated value, or the successor contractor would be required to purchase the facilities, also at their depreciated value, and continue the prior contractor's depreciation approach.

(11) *Item 11. Procurement action schedule.* Indicate the date the procurement plan was submitted to Headquarters for review and approval. For all other entries, provide only the number of calendar days required to complete the action (beginning at the time the previous action was scheduled to be completed) in order to meet the program schedule.

(c) *Additional pages*—(1) *General.* Additional pages to the plan should include any information required from the Form 1451 items. Include any comments required by paragraph (a) above not covered elsewhere and any other information needed to amplify or clarify any item. In addition—

(i) Identify any deviations from the FAR or NFS (A separate request for deviation must be submitted. See 1807.103(b)(2) above.);

(ii) Identify any special conditions or clauses required;

(iii) Identify all separate approvals required in support of the proposed procurement;

(iv) Include a copy of any comments by legal counsel for the contracting office (or a statement that counsel has no objection to the plan), and describe actions taken in response to them (counsel's concurrence will satisfy this item); and

(v) Discuss consideration given to participation by small business, including minority business enterprises.

(2) *Competition.* Describe how competition will be sought and promoted. If appropriate, discuss how it will be sustained through the course of the acquisition. If full and open competition is not contemplated, cite the authority in FAR 6.202 or 6.302; identify the source(s); and discuss why it cannot

be obtained. When effective subcontract competition is both feasible and desirable, describe how such subcontract competition will be sought, promoted, and sustained throughout the course of the competition. Identify any known barriers to increasing subcontract competition and address how to overcome them.

(3) *Relationship to other procurements, relevant data, and studies.* Discuss the relationship of this procurement to any active contracts, including their status of completion. Identify the extent to which their product may affect this procurement. Indicate whether performance under them should be permitted to continue during the competitive phase of this action. Discuss all relevant data and studies, whether obtained under contract or through in-house efforts, and state whether they will be made available to all offerors participating in the competition. If data or studies are available, but it is not planned to make them available to prospective offerors, state why.

PART 1815—CONTRACTING BY NEGOTIATION

6. Part 1815 is amended as set forth below:

1815.613–70 [Amended]

a. In 1815.613–70, the word "may" is removed, and the word "shall" is added in its place.

1815.613–71 [Amended]

b. In 1815.613–71, paragraph (a)(4) is revised to read as follows:

(a) * * *

(4) The formal SEB procedures (1870.303, App. I) may be used in other competitively negotiated procurements, if the source selection official determines it desirable to do so.

c. Subpart 1815.10, consisting of 1815.1003, 1815.1003–1, 1815.1003–2, 1815.1003–3, and 1815.1003–4, is revised to read as follows:

Subpart 1815.10—Preaward, Award, and Postaward Notifications, and Mistakes

Subpart 1815.10—Preaward, Award, and Postaward Notifications, Protests, and Mistakes

1815.1003 Debriefing of unsuccessful offerors.

1815.1003–1 Scope of subpart.

This subpart sets forth NASA policy and procedures for debriefing unsuccessful offerors in all competitive negotiated procurements.

1815.1003–2 Policy.

(a) NASA shall debrief an unsuccessful competitor in accordance with FAR 15.1003. It is essential that debriefings be conducted in a scrupulously fair, objective, and impartial manner, and that the information given the proposer be absolutely factual and consistent with—

(1) The findings of the Source Evaluation Board (SEB) and the basis on which the Selection Official made the decision; or

(2) The findings of the technical and contracting officers and the basis on which the contracting officer made the decision if SEB procedures were not employed.

(b) Unless authorized by the Assistant Administrator for Procurement, the Source Selection Statement for alternative system design concepts under the Major System Acquisitions process is not to be released to competing offerors or the general public until the release of the Source Selection Statements for full-scale development.

1815.1003–3 Designated officials.

Debriefings are to be conducted by senior NASA officials. When the selection has been made by the Administrator, the Administrator will designate an official familiar with the rationale for the selection to conduct the debriefings, with participation by cognizant field installation personnel, if deemed necessary. When the selection has been made by the Field Installation Director or a Headquarters Staff or Program Office head, the Center Director or Official-in-Charge of the Headquarters office shall designate an official and necessary supporting staff to perform the debriefing. When SEB procedures were not applied, the installation Procurement Officer, or designee, shall perform the debriefing.

1815.1003–4 Procedures.

(a) The recipient of a written or oral debriefing request shall immediately refer the request to the installation procurement officer.

(b) The procurement officer, upon receipt of a debriefing request, shall inform the designated official and other concerned officials at the installation and, in the case of procurement actions where an Associate Administrator or the Administrator was the Selection Official, the cognizant NASA Headquarters personnel.

(c) If an unsuccessful offeror in a negotiated procurement submits, prior to the award of the contract, a written request for a debriefing, such a debriefing will be provided at the earliest feasible time. This normally shall be after announcement of the selection decision and prior to award of the contract. ("Selection decision" means the final selection of the one successful contractor, or the contractors where more than one contract is to be awarded). If the selection decision involves more than one contractor pursuant to the major System Acquisition process, the debriefing will be limited in such a manner that it does not prematurely disclose innovative concepts, designs, and approaches of the successful contractor(s) that would result in a transfusion of ideas which also could inhibit contractors during the early phase from offering their best and most promising ideas for meeting the mission need. However, when the exigency of the situation will not permit delaying the award in order to debrief unsuccessful offerors, such debriefings may be conducted after award.

(d) A summary of the results of each debriefing, signed by the conducting NASA official, shall be placed in the contract file.

PART 1816—TYPES OF CONTRACTS

7. Part 1816 is amended as set forth below:

1816.203–4 [Amended]

a. In 1816.203–4, paragraph (a) is removed, and paragraphs (b) through (g) are redesignated (a) through (f), respectively.

b. In newly redesignated paragraph (a), the word "also" is removed.

1816.307–70 [Amended]

8. In 1816.307–70, paragraph (c), the word "fee" is added between the words "cost-plus-fixed" and "contracts.".

PART 1822—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

9. Part 1822 is amended as set forth below:

a. Subpart 1822.6 is amended by adding 1822.608–4 to read as follows:

1822.608–4 Award pending final determination.

The Procurement Officer shall approve, with the concurrence of the Director, Industrial Relations Office (Code NR), certifications for immediate award in accordance with FAR 22.608–4(b). The contracting officer shall give written notice of the decision to award through Code NR to the DOL.

b. Subpart 1822.10 is revised to read as follows:

Subpart 1822.10—Service Contract Act of 1965

Subpart 1822.10—Service Contract Act of 1965

1822.1000 General.

(a) Pending issuance of FAR coverage, the NASA Procurement Regulation (NPR) (48 CFR Chapter 18, Subpart 1812.10) shall continue to govern labor requirements regarding service contracts. This subpart is substantively identical to the NPR, except for 1822.1008. It is reproduced here with current textual citations and updated cross-references for the user's convenience.

(b) This subpart sets forth policies and procedures for carrying out the provisions of the Service Contract Act of 1965, as amended (41 U.S.C. 351 et seq.); the provisions of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201 et seq.), as they pertain to service contracts; the implementing regulations prescribed in 29 CFR Parts 4 and 1925; and instructions issued by the Secretary of Labor.

(c) For NASA, "agency labor advisor" means the Director, Industrial Relations Office, NASA Headquarters (Code NR).

(d) All requests for determinations and exemptions relating to the Service Contract Act shall be submitted in writing, coordinated by appropriate procurement personnel, and forwarded to Code NR.

1822.1001 Statutory requirements.

The Service Contract Act of 1965, referred to in this subpart as the "Act," includes the following general requirements with respect to service contracts entered into by Federal agencies:

(a) Regardless of the contract amount, no contractor or subcontractor holding a Federal service contract shall pay any employee engaged in such work less than the minimum wage specified in Section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201 et seq.);

(b) Federal service contracts in excess of $2,500 shall contain the provisions required by the Act with respect to such matters as minimum wages, including fringe benefits, to be paid the various classes of service employees engaged in the performance of the contract, safe and sanitary working conditions, notification to employees of the compensation required under the Act, and wages they would be paid if employed by the Federal Government;

(c) Successor contractors performing on contracts in excess of $2,500 must pay wages and fringe benefits at least equal to those agreed upon for substantially the same services performed in the same locality in any bona fide collective bargaining agreement entered into by the predecessor contractor (unless such wages and fringe benefits are determined to be substantially at variance with those which prevail for services of a similar character in the locality);

(d) Service contractors performing on contracts in excess of $2,500 to which no predecessor contractor's collective bargaining agreement applies, shall pay their employees at least the wages and fringe benefits found by the Department of Labor to prevail in the locality or, in the absence of a wage determination, the minimum wage set forth in the Fair Labor Standards Act; and

(e) See 1822.1002–4 for statutory exemptions and 1822.1002–5 for regulatory exemptions.

1822.1002 Applicability.

1822.1002–1 General.

Subject to statutory exemptions or administrative exemptions by the Secretary of Labor under Section 4(b) of the Act (41 U.S.C. 353), the Act applies to all Federal contracts the purpose of which is to furnish services in the United States through the use of service employees.

1822.1002–2 Geographical coverage of the Act.

(a) The Act is applicable to all service contracts performed within the United States, irrespective of amount.

(b) The Act is not applicable to contracts performed outside the United States. In addition, a contract that is performed essentially outside the United States, with only an incidental portion performed within the United States, is not covered by the Act.

1822.1002–3 Definitions and types of covered service contract illustrated.

(a) *Definitions.* For this subpart, unless otherwise indicated, terms used herein are defined as follow:

(1) "Administrator" means the Administrator of the Wage and Hour Division, United Stated Department of Labor, or the Administrator's authorized representative.

(2) "Contract" includes any contract subject wholly or in part to provisions of the Act and any subcontract at any tier thereunder.

(3) "Contractor" includes a subcontractor whose subcontract is subject to provisions of the Act.

(4) "Professional Employee" is not restricted to the traditional professions of law, medicine, and theology. It includes those professions that have a recognized status and that are based on the acquirement of professional knowledge through prolonged study. Title 29, Part 541, Code of Federal Regulations, defines the term "professional employee" and provides a listing of occupations generally considered to be held by professionals.

(5) "Service Employee" means any person employed in connection with a contract entered into by the United States and not exempted under Section 7 of the Act (41 U.S.C. 356), the principal purpose of which is to furnish services

in the United States (other than any person employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in 29 CFR, Part 541); and shall include all such persons regardless of any contractual relationship that may be alleged to exist between a contractor or subcontractor and such persons.

(6) "United States" includes any State of the United States, the District of Columbia, Puerto Rico, and the Virgin Islands, Outer Continental Shelf Lands, as defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.), American Samoa, Guam, Wake Island, Eniwetok Atoll, Kwajalein Atoll, and Johnston Island, but does not include any other territory under the jurisdiction of the United States or any U.S. base or possession within a foreign country.

(7) "Wage Determination" includes any determination of minimum wage rates or fringe benefits made pursuant to the provisions of Section 2(a) and 4(c) of the Act (41 U.S.C. 351 and 353) for application to the employment in a locality of any class or classes of service employees in the performance of any contract in excess of $2,500 that is subject to the provisions of the Act.

(b) *Types of covered service contracts illustrated.* Types of contracts, the principal purpose of which is to furnish services through the use of service employees, are too numerous and varied to permit an exhaustive listing. The following list is illustrative, however, of the types of services called for by such contracts that have been found to come within the coverage of the Act (see 29 CFR 4.130 for additional examples):

(1) Aerial spraying.
(2) Aerial reconnaissance for fire detection.
(3) Ambulance service.
(4) Cafeteria and food service.
(5) Chemical testing and analysis.
(6) Clothing alteration and repair.
(7) Custodial, janitorial, and housekeeping services.
(8) Drafting and illustrating.
(9) Electronic equipment maintenance and operation and engineering support services.
(10) Film processing.
(11) Fire fighting and protection.
(12) Geographical field surveys and testing.
(13) Grounds maintenance.
(14) Guard and watchman security service.
(15) Landscaping (other than part of construction).
(16) Laundry and dry cleaning.
(17) Linen supply services.
(18) Lodging and/or meals.
(19) Mail hauling.
(20) Mailing and addressing services.
(21) Maintenance and repair of all types of equipment.
(22) Mess attendant services.
(23) Mortuary services.
(24) Motor pool operation.
(25) Packing and crating.
(26) Parking services.
(27) Snow removal.
(28) Stenographic reporting.
(29) Support services at installations.
(30) Taxicab services.
(31) Tire and tube repairs.
(32) Transporting property or personnel (except as explained in 29 CFR 4.118).
(33) Trash and garbage removal.
(34) Tree planting and thinning, clearing timber or brush, etc. (but see 29 CFR 4.116(b) and 4.131(f)).
(35) Warehouse or storage.

1822.1002–4 Statutory exemptions.

Each of the following transactions is exempt from the Service Contract Act of 1965, as amended, by its terms:

(a) *Contracts for construction or repair.* Any contract of the United States or District of Columbia for construction, alteration, and/or repair, including painting and decorating of public buildings or public works;

(b) *Work under the Walsh-Healey Public Contracts Act.* Any work required to be done in accordance with the provisions of the Walsh-Healey Public Contracts Act (49 Stat. 2036);

(c) *Contracts for the carriage of freight or personnel.* Any contract for the carriage of freight or personnel by vessel, airplane, bus, truck, express, railway line or oil or gas pipeline where published tariff rates are in effect;

(d) *Contracts for communication services.* Any contract for the furnishing of services by radio, telephone, telegraph, or cable companies, subject to the Communications Act of 1934;

(e) *Contracts for public utility services.* Any contract for public utility services, including electric light and power, water, steam, and gas;

(f) *Employment contracts.* Any employment contract providing for direct services to a Federal agency by an individual or individuals; or

(g) *Operation of postal contract stations.* Any contract with the U.S. Postal Service, the principal purpose of which is the operation of postal contract stations.

1822.1002–5 Administrative limitations, variations, tolerances, and exemptions.

(a) The Secretary of Labor may, under the Act, provide such reasonable limitations and may make such rules and regulations allowing reasonable variations, tolerances, and exemptions to and from any or all provisions of the Act (except Section 10) as may be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business (41 U.S.C. 353(b)). Requests for variations, tolerances, and exemptions from the Act shall be submitted in writing through contracting channels to the Industrial Relations Office, NASA Headquarters (Code NR).

(b) Pursuant to the authority cited in paragraph (a) above, the Secretary of Labor has exempted the following types of contracts from all provisions of the Act:

(1) Contracts entered into by the United States with common carriers for the carriage of mail by rail, air (except air star routes), bus, and ocean vessel, where such carriage is performed on regularly scheduled runs of the trains, airplanes, buses, and vessels over regularly established routes and accounts for an insubstantial portion of the revenue therefrom.

(2) Any contract entered into by the U.S. Postal Service with an individual owner-operator for mail service where it is not contemplated at the time the contract is made that such owner-operator will hire any service employee to perform the services under the contract except for short periods of vacation time or for unexpected contingencies or emergency situations such as illness or accident.

(3) Contracts for the carriage of freight or personnel where such carriage is subject to rates covered by Section 10721 of the Interstate Commerce Act.

(4) The following types of equipment are exempt from all provisions of the Act, subject to the restrictions in (b)(4)(ii), (iii), and (iv) below:

(i) Contracts principally for the maintenance, calibration and/or repair of—

(A) Automated data processing equipment and office information/word processing systems;

(B) Scientific equipment and medical apparatus or equipment where the application of microelectronic circuitry or other technology of at least similar sophistication is an essential element (for example, Federal Supply Classification (FSC) Group 65, Class 6515, "Medical Diagnostic Equipment;" Class 6525, "X-Ray Equipment;" FSC Group 66, Class 6630, "Chemical Analysis Instruments;" Class 6665, "Geographical and Astronomical Instruments" are largely composed of the types of equipment exempted hereunder); and

(C) Office/business machines not otherwise exempt pursuant to paragraph (a) above, where such services are

performed by the manufacturer or supplier of the equipment.

(ii) The exemptions set forth in this paragraph (b)(4) shall apply only under the following circumstances:

(A) The items of equipment are commercial items which are used regularly for other than Government purposes, and are sold or traded by the contractor in substantial quantities to the general public in the course of normal business operations;

(B) The contract services are furnished at prices which are, or are based on, established catalog or market prices for the maintenance, calibration, and/or repair of such commercial items. An "established catalog price" is a price included in a catalog price list, schedule, or other form that is regularly maintained by the manufacturer or the contractor, is either published or otherwise available for inspection by customers, and states prices at which sales are currently, or were last, made to a significant number of buyers constituting the general public. An "established market price" is a current price, established in the usual course of trade between buyers and sellers free to bargain, which can be substantiated from sources independent of the manufacturer or contractor;

(C) The contractor utilizes the same compensation (wage and fringe benefits) plan for all service employees performing work under the contract as the contractor uses for equivalent employees servicing the same equipment of commercial customers; and

(D) The contractor certifies in the contract to the provisions in this paragraph (b)(4)(ii).

(iii) Determinations of the applicability of this exemption shall be made in the first instance by the contracting officer prior to contract award. In making a judgment that the exemption applies, the contracting officer shall consider all factors and make an affirmative determination that all of the above conditions have been met.

(iv) If the Department of Labor determines after contract award that any of the above requirements for exemption has not been met, the exemption will be deemed inapplicable, and the contract shall become subject to the Service Contract Act, effective as of the date of the Department of Labor determination. If the contracting officer receives such a determination from DOL, guidance shall be obtained from NASA Headquarters (Code H, who will coordinate with Codes NR and G) prior to taking any actions.

1822.1002–6 Remanufacturing of equipment.

(a) Contracts principally for remanufacturing of equipment which is so extensive as to be equivalent to manufacturing are subject to the Walsh-Healey Act rather than to the Service Contract Act. Remanufacturing shall be deemed to be manufacturing when the criteria in paragraph (a) (1) or (2) below are met.

(1) Major overhaul of an item, piece of equipment, or material which is degraded or inoperable, and under which all of the following conditions exist:

(i) The item or equipment is required to be completely or substantially torn down into individual component parts;

(ii) Substantially all of the parts are reworked, rehabilitated, altered and/or replaced;

(iii) The parts are reassembled so as to furnish a totally rebuilt item or piece of equipment;

(iv) Manufacturing processes similar to those which were used in the manufacturing of the item or piece of equipment are utilized;

(v) The disassembled components, if usable (except for situations where the number of items or pieces of equipment involved are too few to make it practicable) are commingled with existing inventory and, as such, lose their identification with respect to a particular piece of equipment;

(vi) The items or equipment overhauled are restored to original life expectance, or nearly so; and

(vii) Such work is performed in a facility owned or operated by the contractor.

(2) Major modification of an item, piece of equipment, or material which is wholly or partially obsolete, and under which all of the following conditions exist:

(i) The item or equipment is required to be completely or substantially torn down;

(ii) Outmoded parts are replaced;

(iii) The item or equipment is rebuilt or reassembled;

(iv) The contract work results in the furnishing of a substantially modified item in a usable and serviceable condition; and

(v) The work is performed in a facility owned or operated by the contractor.

(b) Remanufacturing does not include the repair of damaged or broken equipment which does not require a complete teardown, overhaul, and rebuild as described in paragraphs (a) (1) and (2) above, or the periodic and routine maintenance, preservation, care, adjustment, upkeep, or servicing of equipment to keep it in usable, serviceable, working order. Such contracts typically are billed on an hourly rate (labor plus materials and parts) basis. Any contract principally for this type of work is subject to the Service Contract Act. Examples of such work include:

(1) Repair of an automobile, truck, or other vehicle, construction equipment, tractor, crane, aerospace, air conditioning and refrigeration equipment, electric motors, and ground powered industrial or vehicular equipment;

(2) Repair of typewriters and other office equipment (see 1822.1002–5(b)(4));

(3) Repair of appliances, radios, televisions, calculators and other electronic equipment;

(4) Inspecting, testing, calibrating, painting, packaging, lubricating, tuning-up, or replacing internal parts of equipment listed in paragraph (b) (1), (2), and (3) above; and

(5) Reupholstering, reconditioning, repairing, and refinishing furniture.

1822.1003 Department of Labor regulations.

Pursuant to the Service Contract Act of 1965, as amended, the Department of Labor has issued Parts 4 and 1925, and Part 6, Title 29, Code of Federal Regulations, providing for the administration and enforcement of the Act. The regulations include coverage of the following matters relating to the requirements of the Act:

(a) Service contract labor standards provisions and procedures (Subpart A, Part 4 (29 CFR));

(b) Wage determination procedures (Subpart B, Part 4 (29 CFR));

(c) Application of the Service Contract Act of 1965, as amended, (rulings and interpretations) (Subpart C, Part 4 (29 CFR));

(d) Compensation standards (Subpart D, Part 4 (29 CFR));

(e) Enforcement (Subpart E, Part 4 (29 CFR));

(f) Safe and sanitary working conditions (Part 1925 of Title 29, CFR); and

(g) Rules of practice for administrative proceedings enforcing service contract labor standards (Part 6 of Title 29, CFR).

1822.1004 Contract clauses.

(a) *Clause for Federal service contracts in excess of $2,500.* Procurement offices (except as provided in 1822.1002–4 and 1822.1002–5) shall include the clause at 1852.222–41, Service Contract Act of 1965, As Amended, in all solicitations which may result in contracts in excess of $2,500 and in contracts in excess of $2,500

(including any transaction for an indefinite amount unless the procurement office has knowledge that it will not exceed $2,500) where the principal purpose of the contract is to furnish services in the United States through the use of service employees.

(b) *Clause for Federal service contracts not in excess of $2,500.* Procurement offices (except as provided in 1822.1002–2, 1822.1002–4 and 1822.1002–5) shall include the clause at 1852.222–40, Service Contract Act of 1965—Contracts of $2,500 or Less (April 1984) in every solicitation and contract not in excess of $2,500, which has as its principal purpose the furnishing of services through the use of service employees.

(c) *Basic Ordering Agreements and Blanket Purchase Agreements.* In the case of a basic ordering agreement or blanket purchase agreement, the amount for purposes of including the clause in paragraph (a) or (b) above shall be the aggregate amount of all orders estimated to be placed for one year after the effective date of the agreement. If a basic ordering agreement continues or is extended, an estimate shall be made annually for each year after the first, and the agreement modified accordingly.

(d) *Price Adjustment Clause.* See 1852.222–43 and 1822.1050–2(b) for the Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multi-year and Option Contracts) (April 1984) clause and instructions for its use.

1822.1005 Administration and enforcement.

1822.1005–1 Responsibilities of Department of Labor.

The Secretary of Labor is authorized and directed to administer and enforce the provisions of the Act, to make rules and regulations, issue orders, make decisions, and take other appropriate action under the Act.

1822.1005–2 Notice of intention to make a service contract.

(a) For any contract exceeding $2,500 which may be subject to the Act, the contracting agency shall file with the Department of Labor its notice of intention to make a service contract. With respect to recurring or known requirements, such notices shall be filed not less than 60 days (nor more than 120 days, except with the approval of the Wage and Hour Division) prior to (1) any invitation for bids, (2) request for proposals, (3) commencement of negotiations, (4) exercise of option or contract extension, (5) annual anniversary date of a multi-year contract subject to annual fiscal appropriations of the Congress, or (6) each biennial anniversary date of a multi-year contract not subject to such annual appropriations, if so authorized by the Wage and Hour Division. Notices with regard to solicitations where such planning is not feasible shall be submitted as soon as possible, but not later than 30 days prior to the above contracting actions. The notice will be filed on SF 98/98a, Notice of Intention To Make a Service Contract and Response To Notice. Any attachments necessary to support or clarify the notice will also be furnished. The notice will be filed with the Wage and Hour Division, Employment Standards Administration, Department of Labor, through the Industrial Relations Office, NASA Headquarters (Code NR). To avoid delays because of a later issuance of wage determinations by the Department of Labor in response to the notice, the contracting office shall make every effort to file it as early as possible; however, the original and four copies of the notice must be filed so as to reach NASA Headquarters (Code NR) at least 70 days (but no more than 120 days, except with prior approval) prior to issuance of any solicitation or the commencement of negotiation. The SF 98/98a and attachments shall be completed pursuant to instructions on the forms and shall also contain the applicable information required by (b) and (c) below. Care must be taken to insure that all required information is provided to avert return without action by the Department of Labor or NASA Headquarters (Code NR). The "Response" portion of the original of the SF 98 will be completed by the Department of Labor and returned directly to the contracting office, advising of any determinations of minimum monetary wage and fringe benefits applicable to the contract. Supplies of SF 98 and 98a are available in all GSA supply depots under stock numbers 7540–926–8972 and 7540–118–1008, respectively.

(b) (See 1822.1008.)

(c) If the service to be furnished under the proposed contract will be substantially the same as services being furnished in the same location by an incumbent contractor whose contract the proposed contract will succeed, and if the incumbent contractor is furnishing such services through the use of service employees whose wages and fringe benefits are the subject of one or more collective bargaining agreements, the contracting officer shall obtain from the contractor two copies of each collective bargaining agreement, together with any related documents specifying the wage rates and fringe benefits currently or prospectively payable under such agreement, and submit them with the SF 98/98a. If the services are being furnished at more than one location and the collectively bargained wage rates and fringe benefits are different at different locations or do not apply to one or more locations, the contracting officer shall identify the locations to which the agreements have application. If the collective bargaining agreement does not apply to all service employees under the contract, the contracting officer shall identify the employees and/or work subject to the collective bargaining agreement. See (h) below for notice to interested parties, which is required at least 30 days prior to issuance of the solicitation. (See 1822.1005–3(c) concerning collective bargaining agreements that are considered not to be entered into as a result of arms-length negotiations or that are at substantial variance with the wages and fringe benefits prevailing in the locality.) (Note that the successionship provisions of the Act do not apply if the contract services are to be performed in a locality different than where performed by the predecessor contractor.)

(d) If exceptional circumstances prevent the filing of the notice of intention by the time required in paragraph (a) above, the notice shall be submitted to the Department of Labor through NASA Headquarters (Code NR) as soon as practicable with a detailed explanation of the special circumstances which prevented timely submission.

(e) Requests to expedite issuance of wage determinations or to check the status of a particular request should be made to NASA Headquarters (Code NR). Director contact with Department of Labor officials for this purpose is not authorized.

(f) *Place of performance unknown.* (1) Where the place of performance of a contract for services subject to the Act is unknown at the time of solicitation, the solicitation need not initially contain a wage determination. The contracting agency shall, upon identification of firms participating in the procurement in response to an initial solicitation, file with the Wage and Hour Division, Employment Standards Administration, Department of Labor, its notice of intention to make a service contract (SF 98/98a). In addition to the requirements contained in paragraph (a) above, such submission shall identify each location where the work may be performed as indicated by participating firms. Subsequent amendments to the solicitation setting forth the wage determinations and any necessary change in the date and time for

submission of final bids shall be made upon receipt of wage determinations. An applicable wage determination must be obtained for each firm participating in the bidding for the location in which it would perform the contract. The appropriate wage determination shall be incorporated in the resultant contract documents and shall be applicable to all work performed thereunder (regardless of whether the successful contractor subsequently changes the place(s) of contract performance).

(2) There may be unusual situations, as determined by the Department of Labor upon consultation with NASA Headquarters (Code NR) where the procedure in paragraph (f)(1) above is not practicable in a particular situation, in which event the Department of Labor may authorize a modified procedure which may result in the subsequent issuance of wage determinations for one or more composite localities.

(g) If any invitation for bids, request for proposals, bid opening, or commencement of negotiations for a proposed contract for which a wage determination was provided in response to a Standard Form 98 has been delayed for whatever reason, more than 60 days from the date of such procurement action as indicated on the submitted Standard Form 98, the contracting office shall contact the Wage and Hour Division through NASA Headquarters (Code NR) for the purpose of determining whether the wage determination issued pursuant to the initial submission is still current. Any revision of a wage determination received by the contracting agency as a result of such communication or upon discovery by the Department of Labor of a delay, shall supersede and replace the earlier response as the wage determination applicable to such procurement, subject to the time frames set forth in 1822.1005–3(a).

(h) Notice to interested parties. If, pursuant to paragraph (n) of the Service Contract Act (SCA) clause or through other means, the contracting officer is aware or has reason to believe that the incumbent contractor or a subcontractor is negotiating or has consummated a collective bargaining agreement with a bargaining agent representing service employees performing on the contract, both the contractor and bargaining agent(s) shall be notified of the pending acquisition at least 30 days prior to all applicable estimated procurement dates, including issuance of bid solicitation, bid opening, date of award, commencement of negotiations, receipt of proposals, or the commencement date of a contract resulting from a negotiation, option, or extension, as the case may be. This notification shall be made by registered letter, return receipt requested, and shall set forth all pertinent dates.

(i) Procedures for computation of the rates required by paragraph (m) of the SCA clause and the note following are as follows:

(1) Wages paid blue collar employees shall be the basic hourly rate for each class. The rate shall be Wage Board pay schedule step two for nonsupervisory service employees and step three for supervisory service employees. Determinations of applicable Wage Board rates are as follows:

(i) Where the place of performance is known, the rates applicable to that location shall be used; or

(ii) Where the place of performance is not known, the rates applicable to the contracting activity's location shall be used.

(2) Wages paid white collar employees shall be an hourly rate for each class. The rate shall be obtained by dividing the general pay schedule step one biweekly rate by 80.

(3) Local civilian personnel offices can assist in determining and providing grade and salary data.

(4) The Department of Labor develops standardized fringe benefits. The approved standard and any subsequent modification shall be furnished by NASA Headquarters (Code NR).

1822.1005–3 Contract minimum wage determination and fringe benefit specifications.

(a) *Prior to award.* Solicitations and contracts for more than $2,500 shall contain an attachment (wage determination or appropriate revisions) issued by the Administrator in response to the notice required under 1822.1005–2(a) setting forth the minimum wages and fringe benefits for service employees to be employed thereunder. However, the applicability of wage determinations and revisions thereto is subject to the following:

(1) A wage determination or revision shall not apply if no collective bargaining agreement exists and the wage determination or revision is received by the Federal agency less than 10 days before the opening of bids in formally advertised procurements, unless the contracting officer finds that there is a reasonable time to notify bidders thereof. In the case of procurements entered into pursuant to negotiations (or in the case of the execution of an option or an extension of the initial contract term), wage determinations or revisions received by the agency after award (or execution of an option or extension of term, as the case may be) of the contract shall not be effective, provided that the contract start of performance is within 30 days of such award (or execution of an option or extension of term). If the contract does not specify a start of performance date which is within 30 days from the award, and/or if performance of such procurement does not commence within this 30-day period, the Department of Labor shall be notified through NASA Headquarters (Code NR) and any wage determination or revision received by the agency not less than 10 days before commencement of the contract shall be effective.

(2) A wage determination or revision based on a collective bargaining agreement shall not apply if the contracting agency has received notice of the existence of the collective bargaining agreement less than 10 days before bid opening in formally advertised contracts and the contracting officer determines that there is not reasonable time to incorporate a new wage determination in the solicitation. Similarly, a wage determination or revision based on a collective bargaining agreement shall not apply if notice of the terms of the new or changed collective bargaining agreement is received by the agency after award of a successor contract to be entered into pursuant to negotiations or as a result of the execution of a renewal option or an extension of the initial contract term, provided that the contract start of performance is within 30 days of such award or renewal option or extension. If the contract does not specify a start of performance date which is within 30 days from the award, and/or performance of such procurement does not commence within this 30-day period, any notice of the term of a new or changed collective bargaining agreement received by the agency not less than 10 days before commencement of the contract will be effective for purposes of the successor contract under section 4(c) of the Act.

(3) The limitations in paragraph (a)(2) above apply only if the notices required by 1822.1005–2(a) and 1822.1005–2(h) have been given.

(b) *Subsequent to award.* If a required wage determination is not included in the solicitation or contract (either because the notice required by 1822.1005–2 (a) or (h) is not filed or is not filed in the time provided) and if the contracting officer receives a wage determination from the Department of Labor within 30 days of the late filing of the notice or the discovery by the Department of Labor of the failure to

include a wage determination required by this part, the contracting officer shall immediately contact NASA Headquarters (Code H) for guidance. If NASA Headquarters so authorizes,

(1) The contracting officer shall attempt to negotiate a bilateral modification to:

(i) Incorporate the appropriate clause(s), if not previously included;

(ii) Incorporate the wage determination which shall be effective as of the date of issuance unless otherwise specified; and

(iii) Equitably adjust the contract price to compensate for any increased cost of performance under the contract caused by the wage determination.

(2) If the contracting officer is unable to negotiate a contract modification incorporating the wage determination, the contract file shall be documented to show the efforts made.

(3) If the contracting officer questions the applicability of the Service Contract Act to the contract, the matter shall be forwarded for resolution to the Industrial Relations Office, NASA Headquarters (Code NR).

(c) *Review of collective bargaining agreements and wage determinations.* (1) If a contracting officer believes that an incumbent contractor's collective bargaining agreement was not entered into as a result of arms-length negotiations, procedures in accordance with (4) below shall be followed.

(2) Immediately upon receipt of a wage determination not predicated upon a collective bargaining agreement, the contracting officer shall examine the wage determination to ascertain whether it is correct and whether it conforms with the wages and fringe benefits prevailing for services of a character similar in the locality. If the wage determination is at substantial variance with the prevailing rates, the contracting officer shall proceed in accordance with (c)(3) below.

(3) A full statement of the facts shall be transmitted immediately to NASA Headquarters (Code NR) for appropriate action.

(4) If wages and fringe benefits provided for in a collective bargaining agreement are substantively at variance with those prevailing for services of a character similar in the locality, the contracting officer shall proceed as follows:

(i) Review immediately the agreement to ascertain if a hearing (1822.1051) is warranted.

(ii) Submit a request for hearing, when warranted, to NASA Headquarters (Code NR). Sufficient payroll data shall accompany this request to support a prima facie showing that the bargained-for rates, in fact, are substantially at variance with those prevailing for services of a character similar in the locality. Except under extraordinary circumstances, as determined by the Administrator, a request for hearing shall not be considered by the Secretary unless received by the Department of Labor more than 10 days before the award of an advertised contract or prior to the commencement of a negotiated contract or contract extension, through option or otherwise.

(d) *Late receipt of wage determinations.* If the SCA wage determination requested in accordance with the filing periods in 1822.1005–2(a) is not received in time, the contracting officer should proceed using the latest wage determination included in the existing contract (but see 1822.1005–3(a)(1) above). The contracting officer shall notify NASA Headquarters (Code NR) in writing of each case when compelled to proceed without a new wage determination due to a delayed response from the Department of Labor.

(e) *Seniority list.* In cases of a contract performed at a Federal facility where employees may be hired/retained by a succeeding contractor, the incumbent prime contractor is required to furnish a certified list of all service employees on the contractor's or subcontractor's payroll during the last month of the contract, together with anniversary dates of employment, to the contracting officer no later than 10 days before contract completion. At the commencement of the succeeding contract, the contracting officer shall provide a copy of the list to the successor contractor. This list will be used for determining employee eligibility for vacation fringe benefits which are based on length of service with predecessor contractors (where such benefit is required by an applicable wage determination), unless an applicable collective bargaining agreement provides otherwise.

1822.1005–4 Additional classifications of service employees (conformable rates).

When any classes of service employees which are to be engaged in the performance of the contract are not listed in the wage and fringe benefit determination attached to the contract, the procedures in paragraph (a) of the clause in 1852.222–41 shall be followed. However, the contracting officer's report to the Department of Labor shall be submitted through the Office of Industrial Relations, NASA Headquarters (Code NR).

1822.1005–5 Notice of award.

(a) Standard Form 99, Notice of Award of Contracts, shall be used to report the award of any contract in excess of $10,000 but less than the small purchase ceiling subject to the Act to the Department of Labor. No report is required for contracts of $10,000 or less. The report shall be submitted with the initial order under an indefinite delivery type contract or basic ordering agreement, or the initial call under a blanket purchase agreement, when they contain the clause in 1852.222–41. The completed original and one copy with the interleaved carbon shall be forwarded to the Administrator, Wage and Hour Division, Department of Labor, Washington, DC 20210. The form shall be completed as follows:

(1) *Items 1 through 7 and 12 and 13:* Self-explanatory;

(2) *Item 8:* Enter the notation "Service Contract Act";

(3) *Item 9:* Leave blank;

(4) *Item 10:* Enter the notation "Major Category," and indicate beside this entry the general service area into which the contract falls (e.g., food services, custodial-janitorial service, garbage collection, insect and rodent control, laundry and dry cleaning services);

(5) *Item 11:* Enter the dollar amount of the contract, or the estimated dollar value with the notation "estimated" if the exact amount is not known. If neither the exact nor the estimated dollar value is known, enter "indefinite," or "Not to exceed $_____"; and

(6) *Item 14:* Leave blank.

Supplies of Standard Form 99 are available in all GSA supply depots under stock number 7540–634–4049.

(b) Awards of contracts in excess of the small purchase ceiling are reported automatically through the Federal Procurement Data System from information extracted from Individual Procurement Act Reports (NASA Form 507). Therefore, SF 99 is not required for procurements for which NASA Form 507 is prepared.

1822.1005–6 Department of Labor form.

The contracting officer shall furnish the contractor with Department of Labor Form WH publication 1313 (poster) at the time of contract award and shall ensure that the form is in the possession of the contractor for appropriate posting prior to performance of the contract. The form advises employees of their benefits under the Act and satisfies the notice requirements in paragraph (f) of the contract clause prescribed in 1852.222–41. Contractors are required to post the

form at a prominent and accessible place at the worksite. Supplies of the form may be obtained from the Wage and Hour Division, Department of Labor, Washington, DC 20210.

1822.1005-7 Inquiries concerning the Act.

Contractors or contractor employees who inquire concerning the administration and enforcement of the Act shall be advised that such matters fall within the jurisdiction of the Department of Labor and shall be given the address of the appropriate Regional Director of the Wage and Hour Division of the Department of Labor (see FAR 22.609).

1822.1005-8 Contract modifications.

(a) *Bilateral contract modifications.* Generally, a bilateral contract modification affecting the scope of the work is regarded as a new contract for purposes of the Act and the regulations there-under. Therefore, prior to entering into such modification, the contracting officer shall forward Standard Form 98/98a to NASA Headquarters (Code NR) in accordance with the procedure set forth in 1822.1005-2(a), except that:

(1) In the "Estimated Solicitation Date" block, enter the date the information is needed; and

(2) In Block 6, enter "Modification of Existing Contract for_____ [describe type of services] Services."

Bilateral contract modifications that are unrelated to the labor requirements of a contract shall not be deemed to create a new contract for purposes of the Act, nor shall insignificant changes related to labor requirements.

(b) *Extension of contract through exercise of option or otherwise.* A new contract shall be deemed entered into for purposes of the Act when the period of performance of an existing contract is extended pursuant to an option clause or otherwise. Prior to extending the period of performance of the contract, the contracting officer shall forward SF 98/98a as provided in (a) above.

1822.1005-9 Withholding of contract payments and contract termination.

(a) *Withholding.* (1) As provided by the Act, any violation of the stipulations required by the clauses (1852.222-40 or 1852.222-41) renders the party responsible liable for a sum equal to the amount of any deductions, rebates, refunds, or underpayment of compensation due to any employee engaged in the performance of the contract. Upon the written request of the Department of Labor at a level no lower than an Assistant Regional Administrator, so much of the accrued payment due on the contract under which the violations occurred shall be withheld as is necessary to pay the employees under that contract or under any other contract between the Government prime contractor and the Federal Government, provided the other contract is not assigned pursuant to 31 U.S.C. 203 or 41 U.S.C. 15. Any withheld sums shall be held in a deposit fund. On order of the Secretary, any compensation which the Head of a Federal agency or the Secretary has found to be due pursuant to the Act shall be paid directly to the underpaid employees from any accrued payments withheld under the Act.

(2) If the accrued payments withheld are insufficient to reimburse all underpaid service employees, the Government may bring an action against the contractor, subcontractor, or any contract sureties to recover the remaining amount of underpayments. Any sums thus recovered shall be held in the deposit fund and shall be paid, on order of the Secretary, directly to the underpaid employees. Any sum not paid to an employee because of inability to do so within three years shall be transferred to the Treasury of the United States as miscellaneous receipts.

(b) *Termination.* In addition, as provided by the Act, any failure to comply with the requirements of any of the provisions of the contract clauses set forth under 1852.222-40, 1852.222-41, and 1852.222-43 may be grounds for termination, by written notice, of the contractor's right to proceed with the contract work. In this event, the Government may enter into other contracts or arrangements for completion of the work, charging the terminated contractor with any additional cost.

1822.1005-10 Cooperation with the Department of Labor.

The contracting officer shall cooperate with representatives of the Department of Labor in the examination of records, interviews with service employees, and all other aspects of investigations undertaken by the Department of Labor. When requested, agencies shall furnish to the Administrator, Wage and Hour Division, any available information with respect to contractors, subcontractors, their contracts, and the nature of the contract services. Violations apparent to the contracting agency and complaints received shall be promptly referred to the appropriate regional office of the Department of Labor. In no event, however, shall complaints by employees be disclosed to the employer.

1822.1005-11 Role of the Comptroller General.

The Act provides that the Comptroller General shall distribute a list to all Federal agencies, giving the names of persons or firms which have been found to be in violation of the Act. Unless the Secretary of Labor otherwise recommends, no Government contract shall be awarded to any violator so listed or to any firm, corporation, partnership or association in which such violator has a substantial interest until three years have elapsed from the date of publication of the list containing the name of the violator.

1822.1005-12 Disputes concerning labor standards.

Disputes arising out of the Service Contract Act labor standards provisions of a contract shall not be subject to the general disputes clause of the contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 4, 6, and 8. Disputes within the meaning of this subsection include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

1822.1005-50 Wage determination and fringe benefits.

The regulations of the Department of Labor provide that the Administrator shall determine the minimum monetary wages and specify the fringe benefits to be furnished the various classes of service employees in the appropriate localities in which they are to be employed under contracts subject to determinations under the Act (see 29 CFR 4.3). The regulations further provide that these determinations will be available for public inspection during business hours at the Wage and Hour Division, Employee Standards Administration, U.S. Department of Labor. In addition, copies will be made available on request at regional offices of the Wage and Hour Division.

1822.1008 Procedures for preparing notice.

The contracting officer shall supplement the SF 98/98a with the following information (see 1822.1005-2):

(a) *Item 6.* Insert on the far left side of the block one or more of the following codes identifying the type of proposed action:

Code and Proposed Action

I New contract (use *only* when services are not presently being performed).

II Recompetition of services.

III Contract modifications affecting the scope of the work.
IV Extension of contract performance through exercise of an option or otherwise.
V Other. Identify a contract for more than two years and not subject to annual appropriations as "multiple year R&D."

(b) *Item 8.* (1) If the proposed contract will be awarded under Section 8(a) of the Small Business Act, insert both the Small Business Administration and the name of the subcontractor.

(2) If there is an incumbent contractor, include as part of the wage data submitted the incumbent's wage rate ranges and current actual wage rates being paid to the various classes of non-exempt, unrepresented employees.

(3) If there is no incumbent contractor, furnish whatever information is available on wages and fringe benefits currently being paid in the locality.

(4) If no wage determination is available for the particular contract, insert "None" in Item 8.b.

(c) *Item 10.* Add the solicitation number, if known.

(d) *Item 12.* (1) When entering into a new service contract, list all classes of work expected to be performed under the contract under this item, regardless of whether the class of employees is considered professional, executive, administrative, or hourly. However, if submission of the SF 98/98a is in connection with any action other than a new contract (Code I in paragraph (a) above), list only the classes of work that the incumbent indicates are "nonexempt."

(2) When classifications include both categories of employees covered by a collective bargaining agreement and those not represented by a union, mark the classifications that are unionized with an asterisk.

(3) If the classification of work is not known, use the most descriptive job title available for the work to be performed under the contract.

(e) *Item 13.* If the number of employees is not known, the estimated hours required to perform the tasks should be indicated so that staffing estimates can be determined and listed.

(f) *Item 14.* Include in this item the wage rates that would be paid if the employees were subject to 5 U.S.C. 5332 (GS grades).

1822.1050 Extensions of contract performance period.

1822.1050–1 General.

A number of NASA service contracts are written for a period of one year with an option on the part of the Government to renew the contract for additional one-year periods at the same or other price or rates. Since the exercise of an option results in the performance of services for a new or different period not included in the term for which the contractor is obligated to furnish services, or for which the Government is obligated to pay under the original contract in the absence of such action to extend it, the contract for the option (additional) period is within the contemplation of the Service Contract Act in the same position as a wholly new contract with respect to application of the Act's provisions and the regulations thereunder. (See 29 CFR 4.145.)

1822.1050–2 Contract price adjustment.

(a) The following requirements shall apply to firm fixed-price contracts, time and material contracts, and labor-hour contracts which contain the clause in 1852.222.41 (i.e., contracts in excess of $2,500) and which provide for Government option renewal.

(1) For firm fixed-price contracts:

(i) When the scope of work called for in the solicitation for the original contract period and any renewal option period is the same, the offeror shall be required by the solicitation to submit with the offer, and the Schedule of any resulting contract shall contain, a single listing of the classes of service employees subject to the Service Contract Act, and the number of labor hours to be supplied by each class applicable to both the original contract period and to any renewal option period.

(ii) When the scope of work called for in the solicitation for the original contract period and any renewal option period differs, the offeror shall be required by the solicitation to submit with the offer, and any resulting contract shall contain in the Schedule, for the original contract period and any renewal option period, respectively, a separate listing of both classes of the Service Contracts Act service employees and the number of labor hours to be supplied by each class.

(2) For time and material contracts and labor hour contracts. The offeror shall be required by the solicitation to submit with the offer, and the Schedule of any resulting contract shall contain, a listing of the classes of Service Contract Act service employees for the initial contract and any renewal period, and the contract unit price labor rates, in the same format as set forth in the Service Contract Act determination for each class.

(b) The clause at 1852.222–43, Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiyear and Option Contracts), shall be inserted in firm fixed-price contracts, time and material contracts, and labor-hour contracts which contain the clause in 1852.222–41 (i.e., contracts in excess of $2,500) and which contain an option to renew. It should be noted that the adjustments under (c)(2) and (c)(3) of the clause may be applicable to the base period as well as to subsequent periods. (The clause in 1852.222–43 shall not be used in cost-type contracts.)

1822.1051 Hearings.

A successor contractor's obligation (see 1822.1001(c)) cannot be avoided unless it is found after a hearing that the bargained for wages and fringe benefits are substantially at variance with those which prevail for services of a character similar in the locality. Hearings may be requested by any interested party, including the contractor, a union, or the contracting agency. Details pertaining to hearings are in 29 CFR 4.10. Any request for a hearing from a NASA contracting office will be coordinated with, and forwarded to, NASA Headquarters (Code NR).

PART 1823—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

10. Subpart 1823.71 is amended by revising 1823.7102 to read as follows:

1823.7102 Procedures.

The contracting officer shall obtain the necessary frequency authorization and other procedural details from the installation's spectrum manager.

PART 1832—CONTRACT FINANCING

11. Part 1832 is amended as set forth below:

a.In Subpart 1832.7, 1832.705–2 is revised to read as follows:

1832.705–2 Clauses for limitation of cost or funds.

As authorized by FAR 52.232–22, the contracting officer shall substitute "Contract Funding clause" for "Schedule," wherever that word appears in the clause at FAR 52.232–22.

1832.705–270 [Amended]

b. In 1832.705–270, paragraph (d) is removed.

c. In Subpart 1832.9, 1832.908 is revised to read as follows:

1832.908 Contract clause.

When the clause at FAR 52.232–25 is used, it shall be used with its Alternate II as authorized by FAR 32.908(c)), modified by deleting the words "and contract number" from paragraph (c)(4).

The following paragraph shall be inserted in Alternate II as (c)(2)(iv) in lieu of the FAR paragraph at that location:

(iv) The Contractor shall submit a TFS Form 3881 to the installation awarding this contract. If a TFS Form 3881 previously submitted to the installation awarding this contract is still valid, resubmittal is not necessary, unless requested by NASA.

PART 1834—MAJOR SYSTEM ACQUISITION

12. Part 1834 is amended by adding 1834.005–1 to read as follows:

1834.005–1 Competition.

(a) In procurements subject to the provisions of OMB Circular No. A–109, Major Systems Acquisitions, and NASA Management Instruction 7100.14, or other similar phased-type procurements, it is NASA policy to ensure competition in the selection of contractors for award. Phase B usually covers the exploration of design concepts while Phase C/D deals with developing and fabricating equipment in accordance with designs that have proven acceptable. In such procurements, where Phase B is subject to full and open competition and all offerors are made aware that a continuous process of "down-selection" will be used, then the subsequent C/D solicitation and award are considered to be a continuum of the initial competition (Phase B) and the entire process is considered full and open competition. To this end, Phase B should be synopsized in accordance with FAR 5.201 and solicit all known potential sources to explore design concepts. In addition to the other information required by FAR 5.207, the synopsis should state that the subsequent solicitation for Phase C/D will build on the design concepts selected in Phase B and that NASA intends to solicit offers on that procurement only from those firms which were successful in Phase B. The Phase B RFP should also include this statement.

(b) Solicitations must be issued for Phase C/D and a source selection accomplished, unless an appropriate Justification for Other Than Full and Open Competition has been approved; "technical" down-selection from Phase B to Phase C/D without the issuance of a Phase C/D solicitation is not appropriate. Solicitations for Phase C/D should be limited to those firms which successfully completed Phase B or to those which can otherwise demonstrate that they meet the design requirements of Phase B. Procurements for Phase C/D must be properly synopsized, and state that it is the second phase of a phased procurement and that the Phase C/D solicitation is being issued to the offerors who successfully completed the Phase B design requirements, and identify the firms which are being solicited for Phase C/D. The synopsis must also state that any other potential offeror for Phase C/D must meet the Phase B requirement. If a prospective offeror, other than a successful contractor in Phase B, responds to the synopsis, the contracting officer shall allow the offeror to compete, but caution the interested firm that any product offered must satisfy the requirement for an equivalent mature design concept acceptable to NASA delineated in Phase B.

(c) Phased procurements which meet the conditions in (a) and (b) above are considered to be full and open competition. If only one contractor successfully completed Phase B and, after soliciting offers from more than one source, no other potential offeror responded to the solicitation for Phase C/D, the award shall be reported as a "noncompetitive procurement using competitive procedures" (see NFS 1804.671–4(m)).

(d) When the conditions in (a) and (b) above can not be met or where NASA chooses to develop an independent design after Phase B products have been evaluated, the procurement should proceed on the basis of full and open competition unless circumstances justify using one of the exceptions set forth in FAR 6.302 or one of the exclusions under FAR Subpart 6.2. In any event, the synopsis requirements of FAR 5.201 apply. (For this purpose, an "independent design" can be: (1) A synthesis of the Phase B products; (2) a totally new design developed by NASA; or (3) a combination thereof.)

PART 1835—RESEARCH AND DEVELOPMENT CONTRACTING

1835.070 [Amended]

13. In 1835.070, the title is revised to read "NASA contract clauses and solicitation provision."

PART 1836—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

1836.609 and 1836.609–70 [Removed]

14. Sections 1836.609 and 1836.609–70 are removed.

PART 1837—SERVICE CONTRACTING

15. Subpart 1837.1 is amended as set forth below:

a. Section 1837.101 is added to read as follows:

1837.101 Definitions.

"Pension portability" means the recognition and continuation in a successor service contract of the predecessor service contract's pension rights and benefits for contractor employees.

b. Section 1837.110 is revised to read as follows:

1837.110 Solicitation provisions and contract clauses.

The contracting officer shall obtain the Assistant Administrator for Procurement's (Code HP) approval before using in a solicitation contract, or negotiated contract modification for additional work any installation-developed clause involving pension portability.

c. Section 1837.170 is added to read as follows:

1837.170 Pension portability.

It is NASA's policy not to require pension portability in service contracts. However, if it is in the Government's best interest, NASA may consider the inclusion of pension portability requirements in a service contract under the following conditions:

(a) Only defined contribution plans shall be permitted in portability provisions;

(b) At a minimum, vesting shall be 100 percent at contract completion or termination; and

(c) There must be a clear description of the plan, including coverage regarding service, pay, and benefits, as appropriate, from prior contractors.

PART 1842—CONTRACT ADMINISTRATION

16. In Subpart 1842.2, 1842.202–71 is revised to read as follows:

1842.202–71 Delegations to audit offices.

The following procedures apply when delegations are made to audit offices:

(a) NASA installations shall utilize the services of other Government audit organizations for performance of contract cost audit and other audit functions except when audits will be performed by NASA auditors. The Defense Contract Audit Agency (DCAA) has been designated as the DOD agency responsible for the performance of audit functions for NASA contracts, except those awarded to educational institutions for which other agencies have audit cognizance under OMB Circular No. 88, those with Canadian contractors (see paragraph (d) below), and those for which NASA will perform audits. To ensure that audit services are performed expeditiously, audit

delegations shall be sent to the appropriate audit office immediately after execution of all cost-reimbursement, labor-hour, and time-and-materials contracts and all fixed-price contracts containing cost-reimbursement or price adjustment clauses. Audit functions include but are not limited to contract cost and price audits, estimating systems surveys, reviews of accounting systems (see also 1815.871(b)), and approval of vouchers for provisional payment.

(b)(1) Delegations shall be sent to cognizant audit offices as listed in the Defense Contract Audit Agency Directory (Headquarters and Field Offices) or in other Government agency directories.

(2) Audit responsibilities for the Department of Health and Human Services (HHS) do not include reviewing and processing vouchers. Consequently, where audit responsibility has been delegated to HHS under OMB Circular No. A–88, contracts shall not designate HHS as the billing office for invoice submission. Instead, contracts should direct invoices to the office administering the contract or as otherwise arranged (see SF 26, Block 10, and SF 33, Block 23).

(c)(1) NASA Form 1433, Letter of Audit Delegation, shall be used to delegate the audit function and to amend previous delegations. Distribute copies of the contract and NASA Form 1433 as follows:

(i) Audit office: One copy of the contract and three NASA Forms 1433.

(ii) Contractor: One NASA Form 1433.

(iii) Cognizant NASA fiscal or financial management office: One NASA Form 1433.

(2) When HHS is designated as the audit office, item 12 on NASA Form 1433 shall be marked "Not applicable."

(d)(1) For contracts with the Canadian Commercial Corporation (CCC), audits are automatically arranged by the Department of Defense Production (Canada) (DDP) in accordance with agreements between NASA and DDP. Audit reports are furnished to DDP. Upon advice from DDP, CCC will certify the invoice and forward it with Standard Form 1034, Public Voucher, to the contracting officer for further processing and transmittal to the fiscal or financial management officer.

(2) For contracts placed directly with Canadian firms, audits are requested by the contracting officer from the Audit Services Branch, Comptroller of the Treasury, Department of Finance, Ottawa, Ontario, Canada. Invoices are approved by the auditor on a provisional basis pending completion of the contract and final audit. These invoices, accompanied by SF 1034, are forwarded to the contracting officer for further processing and transmittal to the fiscal or financial management officer. Periodic advisory audit reports are furnished directly to the contracting officer.

(3) Audits performed by the Audit Services Branch are normally conducted under DDP regulations.

PART 1843—CONTRACT MODIFICATIONS

17. Subpart 1843.2, consisting of 1843.205, 1843.205–70, and 1843.270, is revised to read as follows:

1843.205 Contract clauses.

As permitted by the clause preface, when the clause at FAR 52.243–1, 52.243–2, or 52.243–3 (Changes—Fixed-Price, Changes—Cost-Reimbursement, or Changes—Time-and-Materials or Labor-Hours) is used, the 30-day period within which the contractor must assert its right to an adjustment may be varied not to exceed 60 days.

1843.205–70 NASA contract clause.

(a) The contracting officer may use the clause at 1852.243–70, Engineering Change Proposals, in contracts to require the contractor to submit engineering change impact evaluation information, including the maximum equitable adjustment resulting from the change. The term "price" in paragraph (b) of the clause may be changed to suit the specific type of contract. A local format may be substituted for the second reference in clause paragraph (a) to DOD–STD–480A. The basic clause is suitable for fixed-price contracts.

(b) If it is desirable to preclude a large number of small-dollar, contractor-initiated engineering changes and to reduce the administrative cost of reviewing them, the contracting officer shall use the clause with its Alternate I.

(c) If the contract is a cost-reimbursement contract, the contracting officer shall use the clause with its Alternate II.

1843.270 Originating engineering change proposals.

Either party to the contract may originate engineering changes. The originator must provide detailed information supporting and documenting the proposed change so that the Government can evaluate the technical, cost, and schedule effects of implementing the change and can price the change in advance, when possible.

PART 1845—GOVERNMENT PROPERTY

18. Part 1845 is amended as set forth below:

a. In Subpart 1845.1, 1845.106 is revised to read as follows:

1845.106 Government property clauses.

In addition to the applicable Government property clauses prescribed in FAR 45.106, the contracting officer shall insert the following clause(s) and provision as appropriate.

1845.106–70 [Amended]

b. In 1845.106–70, the title is revised to read "NASA contract clauses and solicitation provision."

c. In Subpart 1845.3, 1845.302–72 is added to read as follows:

1845.302–72 Long term facilities use.

For procurements in which (a) the proposed contract, exclusive of options, will be for a shorter period than the useful life, for the program, of any required contractor-owned or leased facilities, and (b) the facilities are unlikely to be needed by the contractor for any purpose other than the program effort being contracted for, see 1807.170–1(i).

PART 1846—QUALITY ASSURANCE

1846.470 [Amended]

19. In 1846.470, a period is placed after the word "contracts", and the remainder of the sentence is removed.

PART 1847—TRANSPORTATION

1847.305–70 [Amended]

20. In 1847.305–70, paragraph (a) is revised to read as follows:

(a) The contracting officer shall insert the clause at 1852.247–70, Returnable Containers, in contracts involving the purchase of gas or other supplies in contractor-furnished returnable, reusable containers, if the contractor retains title to the containers.

PART 1848—VALUE ENGINEERING

21. Part 1848 is amended by revising Subpart 1848.1, consisting of 1848.102, 1848.103, 1848.104, and 1848.104–2, and Subpart 1848.2, consisting of 1848.201 and 1848.201–70 to read as follows:

Subpart 1848.1—Policies and Procedures

1848.102 Policies.

(a) The exemptions permitted under FAR 48.102(a) are granted on a case-by-case basis, or for specific classes of

contracts, by the Assistant Administrator for Procurement.

(b) Profit or fee shall be excluded when calculating instant or future contract savings, except that in calculating instant or future contract savings on firm-fixed-price contracts when the parties have not set out a specific figure for profit, the contracting officer shall use the total contract price as the basis for calculating the savings.

(c) The FAR requires agencies to establish procedures for funding and payment of the contractor's share of collateral savings and future contract savings. Therefore, the contracting officer shall notify the responsible technical official of the potential for awarding the contractor future or collateral savings if the submitted value engineering change proposal (VECP) is accepted. (See 1848.103.) Upon acceptance, the contracting officer shall obtain the concurrence of the program office and amend the instant contract to reflect payment of future or collateral savings.

1848.103 Processing value engineering change proposals.

Upon receipt of a VECP, the contracting officer shall promptly forward it to the technical officer responsible for the contract, indicating—

(a) The date the VECP was received;

(b) The date by which the contractor must be informed of the Government's acceptance or rejection of the VECP unless additional time is required for evaluation;

(c) The date by which the contracting officer must know of the technical officer's decision in order to timely accept or reject the VECP;

(d) The need for information required to inform the contractor if the VECP is to be rejected or if additional time is needed for evaluating the VECP;

(e) The potential for awarding concurrent, future, or collateral savings to the contractor if the VECP is accepted;

(f) That if the VECP is accepted, precise information will be needed with regard to the type of savings, Government costs, etc., that can be expected from its acceptance;

(g) The need for a procurement request setting forth the specification changes to be used in any contract modification accepting the VECP in whole or in part; and

(h) The need for additional funds if acceptance of the VECP results in negative instant contract savings.

1848.104 Sharing arrangements.

1848.104-2 Sharing collateral savings.

The contracting officer may make the determination that the cost of calculating and tracking collateral savings will exceed the benefits to be derived.

Subpart 1848.2—Contract Clauses

1848.201 Clauses for supply or service contracts.

1848.201-70 NASA conditions.

(a) *General.* The Assistant Administrator for Procurement may exempt a contract or a class of contracts from the requirements of FAR Part 48.

(b) *Value engineering incentive.* Unless the chief of the contracting activity authorizes its inclusion, the contracting officer shall not include the VE incentive clause in solicitations and contracts that fall under the exemptions at FAR 48.201(a)(1) through (5). With respect to the sixth exception (FAR 48.201(a)(6)), the procurement officer may not authorize inclusion of a VE clause in a contract or class of contracts exempted by the Assistant Administrator for Procurement.

(c) *Value engineering program requirement.* NASA contracting officers shall insert the VE program requirement clause (the clause at FAR 52.248-1 used with its Alternate I or II) in (1) initial production contracts for major systems and (2) major systems R&D contracts for full-scale development, unless the contracting officer determines that its use is inappropriate and documents the file to reflect that determination. The VE program requirement clause (FAR 52.248-1, Value Engineering, used with its Alternate I or II) is appropriate for an R&D major systems contract only if the contract specifications contain detailed requirements that, in the contracting officer's judgment, lend themselves to VE.

(d) *Research and development.* The contracting officer may not insert either the VE incentive clause (FAR 52.248-1, Value Engineering) or the VE program requirement clause (FAR 52.248-1, Value Engineering, used with its Alternate I or II) in an R&D contract where the statement of work is essentially an incorporation by reference of the prospective contractor's proposal. If any other part of the statement of work in such a contract reflects a Government specification that might profit from or be improved by application of VE techniques, the contracting officer shall consider inserting the VE incentive clause (FAR 52.248-1, Value Engineering) or VE program requirement clause (FAR 52.248-1, Value Engineering, used with its Alternate I or II), to refer to that part.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

22. Part 1852 is amended as set forth below:

1852.214-71 [Amended]

a. In 1852.214-71, the date "(December 1988)" is revised to read "(March 1989)," and the word "lowest" is removed.

1852.216-70 and 1852.216-71 [Removed]

b. Sections 1852.216-70 and 1852.216-71 are removed.

1852.216-72 [Amended]

c. In 1852.216-72, the reference "1852.203-4(g)" is revised to read "1852.203-4(f)."

1852.216-82 [Amended]

d. In 1852.216-82, paragraph (a) is revised to read as follows:

* * * * *

(a) During the term of the contract, the Contractor is obligated to provide not less than ____ % [Insert minimum percentage of direct labor hours] nor more than ____ % [Insert maximum percentage of direct labor hours] of the following direct labor hours:

Labor Category
Direct Labor Hours
[Insert applicable labor categories, direct labor hours in each labor category, and total direct labor hours.]

e. Sections 1852.222-40, 1852.222-41, and 1852.222-43 are added to read as follows:

1852.222-40 Service Contract Act of 1965—Contracts of $2,500 or Less.

As prescribed in 1822.1004(b), insert the following clause:

Service Contract Act of 1965—Contracts of $25,000 or Less (April 1984)

Except to the extent that an exemption, variation, or tolerance would apply if this were a contract in excess of $2,500, the Contractor and any subcontractor hereunder shall pay all employees engaged in performing work on the contract not less than the minimum wage specified under Section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended. Regulations and interpretations of the Service Contract Act of 1965, as amended, are contained in 29 CFR Part 4 and are hereby incorporated by reference in this contract.

(End of clause)

1852.222-41 Service Contract Act of 1965, as amended.

As prescribed in 1822.1004(a), insert the following clause:

Service Contract Act of 1965, as Amended (April 1984)

This contract is subject to the Service Contract Act of 1965, as amended (41 U.S.C. 351 et seq., hereafter referred to as the "act"), and is subject to the following provisions and to all other applicable provisions of the Act and regulations of the Secretary of Labor issued thereunder (29 CFR Part 4).

(a) *Compensation.* (1) Each service employee employed in the performance of this contract by the Contractor or any subcontractor shall be paid not less than the minimum monetary wages and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor or authorized representative, as specified in any wage determination attached to this contract.

(2) If there is such a wage determination attached to this contract, any class of service employee which is not listed therein and which is to be employed under this contract (i.e., the work to be performed is not performed by any classification listed in the wage determination), shall be classified by the Contractor, so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed class of employees shall be paid the monetary wages and furnished the fringe benefits as are determined pursuant to the procedures in this clause.

(3) Such conforming procedure shall be initiated by the Contractor prior to the performance of contract work by such unlisted class of employee. A written report of the proposed conforming action, including information regarding the agreement or disagreement of the authorized representative of the employees involved or, where there is no authorized representative, the employees themselves, shall be submitted by the Contractor to the Contracting Officer no later than 30 days after such unlisted class of employees performs any contract work. The Contracting Officer shall review the proposed action and promptly submit a report of the action, together with the agency's recommendation and all pertinent information, including the position of the Contractor and the employees, through NASA Headquarters (Code NR) to the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, for review. The Wage and Hour Division will approve, modify, or disapprove the action or render a final determination in the event of disagreement within 30 days of receipt or will notify the Contracting Officer within 30 days of receipt that additional time is necessary.

(4) The final determination of the conformance action by the Wage and Hour Division shall be transmitted to the Contracting Officer, who shall promptly notify the Contractor of the action taken. Each affected employee shall be furnished by the Contractor with a written copy of such determination, or it shall be posted as a part of the wage determination.

(5) The process of establishing wage and fringe benefit rates that bear a reasonable relationship to those listed in a wage determination cannot be reduced to any single formula. The approach used may vary from wage determination to wage determination depending on the circumstances. Standard wage and salary administration practices which rank various job classifications by pay grade pursuant to point schemes or other job factors may, for example, be relied upon. Guidance may also be obtained from the way different jobs are rated under Federal pay systems (Federal Wage Board Pay System and the General Schedule) or from other wage determinations issued in the same locality. Basic to the establishment of any conformable wage rate(s) is the concept that a pay relationship should be maintained between job classifications based on the skill required and the duties performed.

(6) In the case of a contract modification, an exercise of an option or extension of an existing contract, or in any other case where a Contractor succeeds a contract under which the classification in question was previously conformed pursuant to this section, a new conformed wage rate and fringe benefits may be assigned to such conformed classification by indexing (i.e., adjusting) the previous conformed rate and fringe benefits by an amount equal to the average (mean) percentage increase (or decrease, where appropriate) between the wages and fringe benefits specified for all classifications to be used on the contract which are listed in the current wage determination, and those specified for the corresponding classifications in the previously applicable wage determination. Where conforming actions are accomplished in accordance with this paragraph prior to the performance of contract work by the unlisted class of employees, the Contractor shall advise the Contracting Officer of the action taken but the other procedures in paragraph (a)(3) of this clause need not be followed.

(7) No employee engaged in performing work on this contract shall in any event be paid less than the currently applicable minimum wage specified under Section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended.

(8) The wage rate and fringe benefits finally determined pursuant to paragraphs (a)(2) and (3) of this clause shall be paid to all employees performing in the classification from the first day on which contract work is performed by them in the classification. Failure to pay such unlisted employees the compensation agreed upon by the interested parties and/or finally determined by the Wage and Hour Division retroactive to the date such class of employees commenced contract work shall be a violation of the Act and this contract.

(9) Upon discovery of failure to comply with paragraphs (a)(2) through (8) of this clause, the Wage and Hour Division shall make a final determination of conformed classification, wage rate, and/or fringe benefits which shall be retroactive to the date such class of employees commenced contract work.

(b) *Adjustment of compensation.* If, as authorized pursuant to Section 4(d) of the Act, the term of this contract is more than one year, the minimum monetary wages and fringe benefits required to be paid or furnished thereunder to service employees shall be subject to adjustment after one year and not less often than once every two years, pursuant to wage determinations to be issued by the Wage and Hour Division, Employment Standards Administration, Department of Labor, as provided in the Act.

(c) *Obligation to furnish fringe benefits.* The Contractor or subcontractor can only discharge the obligation to furnish fringe benefits specified in the attachment or conformed thereto by furnishing any equivalent combinations of bona fide fringe benefits, or by making equivalent or differential payments in cash, in accordance with the applicable rules set forth in 29 CFR, Part 4, Subpart D.

(d) *Minimum wage.* In the absence of a minimum wage attachment for this contract, neither the Contractor nor any subcontractor under this contract shall pay any person performing work under the contract (regardless of whether they are service employees) less than the minimum wage specified by Section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended. Nothing in this provision shall relieve the Contractor or any subcontractor of any other obligation under law or contract for the payment of a higher wage to any employee.

(e) *Successorship.* If this contract succeeds a contract subject to the Act, under which substantially the same services were furnished in the same locality and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, in the absence of the minimum wage attachment for this contract setting forth such collectively bargained wage rates and fringe benefits, neither the Contractor nor any subcontractor under this contract shall pay any service employee performing any of the contract work (regardless of whether or not such employee was employed under the predecessor contract), less than the wages and fringe benefits provided for in such collective bargaining agreements, to which such employee would have been entitled if employed under the predecessor contract, including accrued prospective wages and fringe benefits provided for under such agreement. No Contractor or subcontractor under this contract may be relieved of the foregoing obligation unless the limitations of 29 CFR 4.1b(b) apply or unless the Secretary of Labor or the Secretary's authorized representative (i) determines as provided in 29 CFR 4.11 that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arms-length negotiations, or (ii) finds after a hearing as provided in 29 CFR 4.10 that the wages and/or fringe benefits provided for in such agreement are substantially at variance with those which prevail for services of a character similar in the locality. Where it is found in accordance with the review procedures provided in 29 CFR 4.10 and/or 4.11 and Parts 6 and 8 that some or all of the wages and/or fringe benefits contained in a predecessor Contractor's collective bargaining agreement are substantially at

variance with those which prevail for services of a character similar in the locality, and/or that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's-length negotiations, the Department will issue a new or revised wage determination setting forth the applicable wage rates and fringe benefits. Such determination shall be made part of the contract or subcontract, in accordance with the decision of the Administrator, the Administrative Law Judge, or the Board of Service Contract Appeals, as the case may be, irrespective of whether such issuance occurs prior to or after the award of a contract or subcontract. 53 Comp. Gen. 401 (1973). In the case of a wage determination issued solely as a result of a finding of substantial variance, such determination shall be effective as of the date of the final administrative decision.

(f) *Notification to employees.* The Contractor and any subcontractor under this contract shall notify each service employee commencing work on this contract of the minimum monetary wage and any fringe benefits required to be paid pursuant to this contract, or shall post the wage determination attached to this contract. The poster provided by the Department of Labor (Publication WH 1313) shall be posted in a prominent and accessible place at the worksite. Failure to comply with this requirement is a violation of Section 2(a)(4) of the Act and of this contract.

(g) *Safe and sanitary working conditions.* The Contractor or subcontractor shall not permit any part of the services called for by this contract to be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of the Contractor or subcontractor which are unsanitary or hazardous or dangerous to the health or safety of the service employees engaged to furnish these services, and the Contractor or subcontractor shall comply with the safety and health standards applied under 29 CFR Part 1925.

(h) *Records and employee interview.* (1) The Contractor and each subcontractor performing work subject to the Act shall make and maintain for three years from the completion of the work, records containing the information specified below for each employee subject to the Act and shall make them available for inspection and transcription by authorized representatives of the Wage and Hour Division, Employment Standards Administration of the U.S. Department of Labor.

(i) Name and address and social security number of each employee.

(ii) The correct work classification or classifications, rate or rates of monetary wages paid and fringe benefits provided, rate or rates of fringe benefit payments in lieu thereof, and total daily and weekly compensation of each employee.

(iii) The number of daily and weekly hours so worked by each employee.

(iv) Any deductions, rebates, or refunds from the total daily or weekly compensation of each employee.

(v) A list of monetary wages and fringe benefits for those classes of service employees not included in the wage determination attached to this contract but for which such wage rates or fringe benefits have been determined by the interested parties or by the Administrator or authorized representative, pursuant to the labor standards in paragraph (a) of this clause. A copy of the report required by paragraph (a)(3) of this clause shall be deemed to be such a list.

(vi) Any list of the predecessor Contractor's employees which had been furnished to the Contractor pursuant to paragraph (o) of this clause.

(2) The Contractor shall also make available a copy of this contract for inspection or transcription by authorized representatives of the Wage and Hour Division.

(3) Failure to make and maintain or to make available such records for inspection and transcription shall be a violation of the regulations and this contract, and in the case of failure to produce such records, the Contracting Officer, upon direction of the Department of Labor and notification of the Contractor, shall take action to cause suspension of any further payment or advance of funds until such violation ceases.

(4) The Contractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.

(i) *Pay periods.* The Contractor shall unconditionally pay to each employee subject to the Act all wages due free and clear and without subsequent deduction (except as otherwise provided by law or regulations, 29 CFR Part 4), rebate, or kickback on any account. Such payments shall be made no later than one pay period following the end of the regular pay period in which such wages were earned or accrued. A pay period under this Act may not be of any duration longer than semi-monthly.

(j) *Withholding of payment and termination of contract.* The Contracting Officer shall withhold or cause to be withheld from the Government prime Contractor under this or any other Government contract with the prime Contractor such sums as Department of Labor requests or such sums as an appropriate official of the Department of Labor requests or such sums as the Contracting Officer decides may be necessary to pay underpaid employees employed by the Contractor or subcontractor. In the event of failure to pay any employees subject to the Act all or part of the wages or fringe benefits due under the Act, the agency may, after authorization or by direction of the Department of Labor and written notification to the Contractor, take action to cause suspension of any further payment or advance of funds until such violations have ceased. Additionally, any failure to comply with the requirements of this clause relating to the Act may be grounds for termination of the right to proceed with the contract work. In such event, the Government may enter into other contracts or arrangements for completion of the work, charging the Contractor in default with any additional cost.

(k) *Subcontractors.* The Contractor agrees to insert this clause in all subcontracts subject to the Act. The term "Contractor" as used in this clause in any subcontract, shall be deemed to refer to the subcontractor, except in the term "Government prime Contractor."

(l) *Service employee.* As used in this clause, the term "service employee" means any person engaged in the performance of this contract other than any person employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in Part 541 of Title 29, Code of Federal Regulations, as of July 30, 1976, and any subsequent revision of those regulations. The term "service employee" includes all such persons regardless of any contractual relationship that may be alleged to exist between a contractor or subcontractor and such persons.

(m) *Federal wage board (blue collar) and general schedule (white collar) wages and fringe benefits applicable to service employee classifications.* The classes of service employees set forth in an attachment to this contract expected to be employed under the contract with the Government would be subject, if employed by the contracting agency, to the provisions of 5 U.S.C. 5341 or 5332 and would, if so employed, be paid not less than the rates of wages and fringe benefits set forth in such attachment. This statement and such attachment are furnished for informational purposes only.

(n) *Collective bargaining agreements applicable to service employees.* If wages to be paid or fringe benefits to be furnished any service employees employed by the Government prime contractor or any subcontractor under the contract are provided for in a collective bargaining agreement that is or will be effective during any period in which the contract is being performed, the Government prime Contractor shall report this fact to the Contracting Officer together with full information as to the application and accrual of such wages and fringe benefits, including any prospective increases, to service employees engaged in work on the contract, and a copy of the collective bargaining agreement. This report shall be made upon commencing performance of the contract, in the case of collective bargaining agreements effective at such time, and, in the case of agreements or provisions or amendments thereof effective at a later time during the period of contract performance, such agreements shall be reported promptly after negotiation thereof.

(o) *Seniority list.* Not less than 10 days prior to completion of any contract being performed at a Federal facility where service employees may be retained in the performance of the succeeding contract and subject to a wage determination which contains vacation or other benefit provisions based upon length of service with a Contractor (predecessor) or successor (4.173 of Regulations, 29 CFR Part 4), the incumbent prime Contractor shall furnish to the Contracting Officer a certified list of the names of all service employees on the Contractor's or subcontractor's payroll during

the last month of contract performance. Such list shall also contain anniversary dates of employment on the contract either with the current or predecessor Contractors of each such service employee. The Contracting Officer shall turn over such list to the successor Contractor at the commencement of the succeeding contract.

(p) *Regulations incorporated by reference.* Rulings and interpretations of the Act are contained in Regulations, 29 CFR Part 4, and are hereby incorporated by reference in this contract.

(q) *Contractor's certification.* (1) By entering into this contract, the Contractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has substantial interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of the sanctions imposed pursuant to Section 5 of the Act.

(2) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract pursuant to Section 5 of the Act.

(3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(r) *Variations, tolerances, and exemptions involving employment.* Notwithstanding any of the provisions in paragraphs (a) through (p) of this clause relating to the Act, the following employees may be employed in accordance with the following variations, tolerances, and exemptions, which the Secretary of Labor, pursuant to Section 4(b) of the Act (prior to its amendment by Pub. L. 92–473), found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business:

(1) Apprentices, student-learners, and workers whose earning capacity is impaired by age, physical or mental deficiency, or injury may be employed at wages lower than the minimum wages otherwise required by Section 2(a)(1) or 2(b)(1) of the Act, without diminishing any fringe benefits or cash payments in lieu thereof required under Section 2(a)(2) of the Act, in accordance with the conditions and procedures prescribed for the employment of apprentices, student-learners, handicapped persons, and handicapped clients of sheltered workshops under Section 14 of the Fair Labor Standards Act of 1938, as amended, and regulations issued by the Administrator (29 CFR Parts 520, 521, 524, and 525).

(2) The Administrator will issue certificates under the Act for the employment of apprentices, student-learners, handicapped persons, or handicapped clients of sheltered workshops not subject to the Fair Labor Standards Act of 1938, as amended, or subject to different minimum rates of pay under the two acts, authorizing appropriate rates of minimum wages (but without changing requirements concerning fringe benefits or supplementary cash payments in lieu thereof), applying procedures prescribed by the applicable regulations issued under the Fair Labor Standards Act of 1938 (29 CFR Parts 520, 521, 524, and 525).

(3) The Administrator will also withdraw, annul, or cancel such certificates in accordance with the regulations in 29 CFR Parts 525 and 528.

(s) *Apprentices.* Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed and individually registered in a bona fide apprenticeship program registered with a State Apprenticeship Agency which is recognized by the U.S. Department of Labor, or if no such recognized agency exists in a State, under a program registered with the Bureau of Apprenticeship and Training, Employment and Training Administration, U.S. Department of Labor. Any employee who is not registered as an apprentice in an approved program shall be paid the wage rate and fringe benefits contained in the applicable wage determination for the journeyman classification of work actually performed. The wage rates paid apprentices shall not be less than the wage rate for their level of progress set forth in the registered program, expressed as the appropriate percentage of the journeyman's rate contained in the applicable wage determination. The allowable ratio of apprentices to journeymen employed on the contract work in any craft classification shall not be greater than the ratio permitted to the Contractor as to his entire work force under the registered program.

(t) *Tips.* An employee engaged in an occupation in which he or she customarily and regularly receives more than $30 a month in tips may have the amount of tips credited by the employer against the minimum wage required by Section 2(a)(1) or Section 2(b)(1) of the Act, in accordance with Section 3(m) of the Fair Labor Standards Act and regulations, 29 CFR Part 531; provided however, that the amount of such credit may not exceed $1.24 per hour beginning January 1, 1980, and $1.34 per hour after December 31, 1980. To utilize this proviso—

(1) The employer must inform tipped employees about this tip credit allowance before the credit is utilized;

(2) The employees must be allowed to retain all tips (individually or through a pooling arrangement and regardless of whether the employer elects to take a credit for tips received);

(3) The employer must be able to show by records that the employee receives at least the applicable Service Contract Act minimum wage through the combination of direct wages and tip credit; and

(4) The use of such tip credit must have been permitted under any predecessor collective bargaining agreement applicable by virtue of Section 4(c) of the Act.

(u) *Disputes concerning labor standards.* Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 4, 6, and 8. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(End of clause)

Note: The classes of service employees expected to be employed under the contract that would be subject, if employed by the contracting agency, to the provisions of 5 U.S.C. 5341 or 5332 and the corresponding monetary wages and fringe benefits will be set forth in an attachment to the contract, as required under paragraph (m) of the clause. The attachment will specifically state that such wages and fringe benefits do not represent a minimum wage determination for the contract and are furnished for informational purposes only. (See 1822.1005-2(i).)

1852.222-43 Fair Labor Standards Act and Service Contract Act— price adjustment (multiyear and option contracts).

As prescribed in 1822.1050–2(b), insert the following clause:

Fair Labor Standards Act and Service Contract Act—Price Adjustment (April 1984)

(a) The Contractor warrants that the prices in this contract do not include any allowance for any contingency to cover increased costs for which adjustment is provided under this clause.

(b) The minimum prevailing wage determination, including fringe benefits, issued pursuant to the Service Contract Act of 1965, as amended (41 U.S.C. 351 et seq.), by the Administrator, Wage and Hour Division, U.S. Department of Labor, current at the beginning of each renewal option period shall apply to any renewal of this contract. When no determination has been made as applied to this contract, then the Federal minimum wage as established by Section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201 et seq.), current at the beginning of each renewal option period, shall apply to any renewal of this contract.

(c) When, as a result of (1) the Department of Labor determination of minimum prevailing wages and fringe benefits applicable at the beginning of the renewal option period, (2) an increased or decreased wage determination otherwise applied to the contract by operation of law, or (3) an amendment to the Fair Labor Standards Act enacted subsequent to award of this contract, affecting minimum wage, which becomes applicable to this contract under law, the Contractor increases to decreases wages or fringe benefits of employees working on this contract to comply therein, the contract price or contract unit price labor rates will be adjusted to reflect such increases or decreases. Any adjustment will be limited to increases or decreases in wages or fringe benefits as described above, and the concomitant increases or decreases in social security and unemployment taxes and workmen's compensation insurance, but shall not include any amount for general and administrative costs, overhead, or profits. In firm fixed-price contracts, the adjustment will be based on labor hours specified in the Schedule for the particular option period. In time and material contracts and labor-hour contracts, the contract unit price set forth in the Schedule will be adjusted.

(d) The Contractor shall notify the Contracting Officer of any increases claimed under this clause within thirty (30) days after the effective date of the wage change, unless this period is extended by the Contracting Officer in writing. In the case of any decrease under this clause, the Contractor shall promptly notify the Contracting Officer of such decrease, but nothing herein shall preclude the Government from asserting a claim within the period permitted by law. The notice shall contain a statement of the amount claimed and any other relevant data in support thereof, which may reasonably be required by the Contracting Officer. Upon agreement of the parties, the contract price or contract unit price labor rates shall be modified in writing. Pending agreement on, or determination of, any such adjustment and its effective date, the Contractor shall continue performance.

(e) The Contracting Officer or an authorized representative shall, until expiration of three (3) years after final payment under the contract, have access to and the right to examine any directly pertinent books, documents, papers and records of the Contractor.

(End of clause)

1852.232-22 and 1852.232-25 [Removed]

f. Sections 1852.232-22 and 1852.232-25 are removed.

g. Sections 1852.232-75, 1852.232-77, 1852.232-80, 1852.232-81, and 1852.232-82 are revised to read as follows:

1852.232-75 Security for advance payments.

As prescribed in 1832.412, insert the following clause:

Security for Advance Payments (March 1989)

During the period of time that advance payments may be made under this contract and so long as they remain unliquidated, the Contractor shall not mortgage, pledge, or otherwise encumber, or permit to be encumbered, any of the Contractor's assets now owned or hereafter acquired, or permit any preexisting mortgages, liens, or other encumbrances to remain on or attach to any assets of the Contractor that are allocated to the performance of this contract and with respect to which the Government has a lien under this contract, without the Contracting Officer's prior written consent.

(End of clause)

1852.232-77 Limitation of funds (fixed-price contract).

As prescribed in 1832.705-270(a), insert the following clause. Contracting officers are authorized, in appropriate cases, to revise clause paragraphs (a), (b), and (g) to specify the work required under the contract, in lieu of using contract item numbers. The 60-day period may be varied from 30 to 90 days, and the 75 percent from 75 to 85 percent:

Limitation of Funds (Fixed-Price Contract) (March 1989)

(a) Of the total price of items _____ through _____, the sum of $_____ is presently available for payment and allotted to this contract. It is anticipated that from time to time additional funds will be allocated to the contract in accordance with the following schedule, until the total price of said items is allotted:

Schedule for Allotment of Funds

Date _____ Amounts _____

(b) The Contractor agrees to perform or have performed work on the items specified in paragraph (a) above up to the point at which, if this contract is terminated pursuant to the Termination for Convenience of the Government clause of this contract, the total amount payable by the Government (including amounts payable for subcontracts and settlement costs) pursuant to paragraphs (f) and (g) of that clause would, in the exercise of reasonable judgment by the Contractor, approximate the total amount at the time allotted to the contract. The Contractor is not obligated to continue performance of the work beyond that point. The Government is not obligated in any event to pay or reimburse the Contractor more than the amount from time to time allotted to the contract, anything to the contrary in the Termination for Convenience of the Government clause notwithstanding.

(c) (1) It is contemplated that funds presently allotted to this contract will cover the work to be performed until _____.

(2) If funds allotted are considered by the Contractor to be inadequate to cover the work to be performed until that date, or an agreed date substituted for it, the Contractor shall notify the Contracting Officer in writing when within the next 60 days the work will reach a point at which, if the contract is terminated pursuant to the Termination for Convenience of the Government clause of this contract, the total amount payable by the Government (including amounts payable for subcontracts and settlement costs) pursuant to paragraphs (f) and (g) of that clause will approximate 75 percent of the total amount then allotted to the contract.

(3) (i) The notice shall state the estimated date when the point referred to in paragraph (c)(2) above will be reached and the estimated amount of additional funds required to continue performance to the date specified in paragraph (c)(1) above, or an agreed date substituted for it.

(ii) The Contractor shall, 60 days in advance of the date specified in paragraph (c)(1) above, or an agreed date substituted for it, advise the Contracting Officer in writing as to the estimated amount of additional funds required for the timely performance of the contract for a further period as may be specified in the contract or otherwise agreed to by the parties.

(4) If, after the notification referred to in subdivision (3)(ii) above, additional funds are not allotted by the date specified in paragraph (c)(1) above, or an agreed date substituted for it, the Contracting Officer shall, upon the Contractor's written request, terminate this contract on that date or on the date set forth in the request, whichever is later, pursuant to the Termination for Convenience of the Government clause.

(d) When additional funds are allotted from time to time for continued performance of the work under this contract, the parties shall agree on the applicable period of contract performance to be covered by these funds. The provisions of paragraphs (b) and (c) above shall apply to these additional allotted funds and the substituted date pertaining to them, and the contract shall be modified accordingly.

(e) If, solely by reason of the Government's failure to allot additional funds in amounts sufficient for the timely performance of this contract, the Contractor incurs additional costs or is delayed in the performance of the work under this contract, and if additional funds are allotted, an equitable adjustment shall be made in the price or prices (including appropriate target, billing, and ceiling prices where applicable) of the items to be delivered, or in the time of delivery, or both.

(f) The Government may at any time before termination, and, with the consent of the Contractor, after notice of termination, allot additional funds for this contract.

(g) The provisions of this clause with respect to termination shall in no way be deemed to limit the rights of the Government under the default clause of this contract. The provisions of this Limitation of Funds clause are limited to the work on and allotment of funds for the items set forth in paragraph (a) above. This clause shall become inoperative upon the allotment of funds for the total price of said work except for rights and obligations then existing under this clause.

(h) Nothing in this clause shall affect the right of the Government to terminate this contract pursuant to the Termination for Convenience of the Government clause of this contract.

(End of clause)

1852.232-80 Date of incurrence of costs.

As prescribed in 1832.705-270(b), insert the following clause:

Date of Incurrence of Costs (March 1989)

The Contractor shall be entitled to reimbursement for costs incurred on or after _____ in an amount not to exceed $_____ that, if incurred after this contract had been entered into, would have been reimbursable under this contract.

(End of clause)

1852.232-81 Contract funding.

As prescribed in 1832.705-270(c), insert the following clause:

Contract Funding (March 1989)

(a) For purposes of payment of cost, exclusive of fee, in accordance with the Limitation of Funds clause, the total amount allotted by the Government to this contract is $_____. This allotment is for $_____ and covers the following period of performance: _____.

(b) An additional amount of $_____ is obligated under this contract for payment of fee.

(End of clause)

1852.232-82 Submission of requests for progress payments.

As prescribed in 1832.502-470, insert the following clause:

Submission of Requests for Progress Payments (March 1989)

The Contractor shall request progress payments in accordance with the Progress Payments clause by submitting to the Contracting Officer an original and two copies of Standard Form (SF) 1443, Contractor's Request for Progress Payment, and the contractor's invoice (if applicable). The Contracting Officer's office is the designated billing office for progress payments for purposes of the Prompt Payment clause.

(End of clause)

1852.233-1 [Removed]

h. Section 1852.233-1 is removed.

i. Sections 1852.235-70, 1852.235-71, and 1852.235-72 are revised to read as follows:

1852.235-70 Scientific and Technical Information Service.

As prescribed in 1835.070(a), insert the following clause:

Scientific and Technical Information Service (March 1989)

(a) The Contractor should make the fullest practicable use of the services provided by the NASA Scientific and Technical Information Facility (STIF) during the conduct of research under this contract. The Contractor, if not already registered with STIF, is encouraged to register by executing express registration forms that will (1) be provided by STIF and (2) inform the Contractor of the products and services available in support of work under the contract.

(b) NASA reserves the right, if any scientific and technical information requested is unavailable, to so notify the Contractor. NASA's failure to furnish any information requested shall not entitle the Contractor to an equitable adjustment.

(End of clause)

1852.235-71 Key Personnel and Facilities.

As prescribed in 1835.070(b), insert the following clause:

Key Personnel and Facilities (March 1989)

(a) The personnel and/or facilities listed below (or specified in the contract Schedule) are considered essential to the work being performed under this contract. Before removing, replacing, or diverting any of the listed or specified personnel or facilities, the Contractor shall (1) notify the Contracting Officer reasonably in advance and (2) submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on this contract.

(b) The Contractor shall make no diversion without the Contracting Officer's written consent; *Provided*, That the Contracting Officer may ratify in writing the proposed change, and that ratification shall constitute the Contracting Officer's consent required by this clause.

(c) The list of personnel and/or facilities (shown below or as specified in the contract Schedule) may, with the consent of the contracting parties, be amended from time to time during the course of the contract to add or delete personnel and/or facilities.

[List here the personnel and/or facilities considered essential, unless they are specified in the contract Schedule.]

(End of clause)

1852.235-72 Plan for new technology reporting.

As prescribed in 1835.070(c), insert the following provision:

Plan for New Technology Reporting (March 1989)

The Offeror shall, in the proposal in response to this solicitation, provide estimates of the cost and manpower requirements to perform the new technology reporting required by the clause at 1852.227-70, New Technology, which is to be included in any resulting contract. In addition, if selected for negotiation, the Offeror will be required to submit for approval before contract execution a detailed plan setting forth the manner in which the Offeror will meet the new technology reporting requirements of the New Technology clause. This plan shall, at a minimum—

(a) Identify the specific areas of technical effort that are considered likely to generate new technology;

(b) Describe the means by which project supervisory and technical personnel will be advised of the responsibilities, details, and benefits of new technology reporting;

(c) Describe the procedures to be established, maintained, and followed for reviewing the effort to be undertaken for the purposes of identification and reporting (disclosure) of new technology within the time periods and in the manner prescribed by the New Technology clause;

(d) Describe the procedure for timely submission of the interim and final new technology reports required by the New Technology clause;

(e) Describe the procedures for (1) selecting either NASA's New Technology clause or another patent rights clause for inclusion in subcontracts having as a purpose the conduct of experimental, developmental, research, design, or engineering work, and (2) providing prompt notification of either the award of such subcontracts or a subcontractor's refusal to accept the clause; and

(f) Identify the individual(s) assigned substantial and specific responsibilities for ensuring compliance with the requirements of the New Technology clause, as well as their qualifications and organizational placement to discharge these responsibilities.

(End of provision)

1852.236-70 [Removed]

j. Section 1852.236-70 is removed.

k. Sections 1852.236-71, 1852.236-72, and 1852.242-70 are revised to read as follows:

1852.236-71 Additive or deductive items.

As prescribed in 1836.370(a), insert the following provision:

Additive or Deductive Items (March 1989)

(a) The low bidder for purposes of award shall be the conforming responsible bidder offering the low aggregate amount for the first or base bid item, plus or minus (in order of priority listed in the Schedule) those additive or deductive bid items providing the most features of the work within the funds determined by the Government to be available before bids are opened. If addition of another bid item in the listed order of priority would make the award exceed those funds for all bidders, it shall be skipped and the next subsequent additive bid item in a lower amount shall be added for each bid if award on it can be made within the funds.

(b) An example for one bid is an amount available of $100,000, a bidder's base bid of $85,000, and four successive additives of $10,000, $3,000, $6,000, and $4,000. In this example, the aggregate amount of the bid for purposes of award would be $99,000 for the base bid plus the first and fourth additives, the second and third additives being skipped because either of them would cause the aggregate bid to exceed $100,000.

(c) All bids shall be evaluated on the basis of the same additive or deductive bid items. The listed order of priority must be followed only for determining the low bidder. After determination of the low bidder, award in the best interests of the Government may be made to that bidder on its base bid and any combination of its additive or deductive bid items for which funds are determined to be available at the time of the award, provided that award of the combination of bid items does not exceed the amount offered by any other conforming responsible bidder for the same combination of bid items.

(End of provision)

1852.236-72 Bids with unit prices.

As prescribed in 1836.370(b), insert the following provision:

Bids With Unit Prices (March 1989)

(a) All extensions of the unit prices bid will be subject to verification by the Government. If there is variation between the unit price and any extended amounts, the unit price will be considered to be the bid.

(b) If a modification to a bid based on unit prices that provides for a lump-sum adjustment to the total estimated cost is submitted, the application of the lump sum adjustment to each unit price in the bid must be stated. If it is not stated, the lump-sum adjustment shall be applied on a pro rata basis to every unit price in the bid.

(End of provision)

1852.242-70 Technical direction.

As prescribed in 1842.7001, insert the following clause:

Technical Direction (March 1989)

(a) Performance of the work under this contract is subject to the written technical direction of the Contracting Officer Technical

Representative (COTR), who shall be specifically appointed by the Contracting Officer in writing in accordance with NASA FAR Supplement 1842.270. "Technical direction" means a directive to the Contractor that approves approaches, solutions, designs, or refinements; fills in details or otherwise completes the general description of work or documentation items; shifts emphasis among work areas or tasks; or furnishes similar instruction to the Contractor. Technical direction includes requiring studies and pursuit of certain lines of inquiry regarding matters within the general tasks and requirements in Section C of this contract.

(b) The COTR does not have the authority to, and shall not, issue any instruction purporting to be technical direction that—

(1) Constitutes an assignment of additional work outside the statement of work;

(2) Constitutes a change as defined in the changes clause;

(3) In any manner causes an increase or decrease in the total estimated contract cost, the fixed fee (if any), or the time required for contract performance;

(4) Changes any of the expressed terms, conditions, or specifications of the contract; or

(5) Interferes with the contractor's rights to perform the terms and conditions of the contract.

(c) All technical direction shall be issued in writing by the COTR.

(d) The Contractor shall proceed promptly with the performance of technical direction duly issued by the COTR in the manner prescribed by this clause and within the COTR's authority. If, in the Contractor's opinion, any instruction or direction by the COTR falls within any of the categories defined in paragraph (b) above, the Contractor shall not proceed but shall notify the Contracting Officer in writing within 5 working days after receiving it and shall request the Contracting Officer to take action as described in this clause. Upon receiving this notification, the Contracting Officer shall either issue an appropriate contract modification within a reasonable time or advise the Contractor in writing within 30 days that the instruction or direction is—

(1) Rescinded in its entirety; or

(2) Within the scope of the contract and does not constitute a change under the changes clause of the contract, and that the Contractor should proceed promptly with its performance.

(e) A failure of the contractor and contracting officer to agree that the instruction or direction is both within the scope of the contract and does not constitute a change under the changes clause, or a failure to agree upon the contract action to be taken with respect to the instruction or direction, shall be subject to the Disputes clause of this contract.

(f) Any actions(s) taken by the contractor in response to any direction given by any person other than the Contracting Officer or the COTR shall be at the Contractor's risk.

(End of clause)

Alternate I (March 1989)

As prescribed in 1842.7001(b), substitute Alternate I as paragraph (d) of the basic clause.

(d) The Contractor shall proceed promptly with the performance of technical directions duly issued by the COTR in the manner prescribed by this clause and within the COTR's authority. If, in the Contractor's opinion, any instruction or direction by the COTR falls within any of the categories defined in paragraph (b) above, the Contractor shall not implement instruction or the direction but shall notify the Contracting Officer in accordance with the Notification of Changes clause (FAR 52.243-7) of this contract.

1852.243-1, 1852.243-2, 1852.243-3 [Removed]

1. Sections 1852.243-1, 1852.243-2, and 1852.243-3 are removed.

m. Sections 1852.243-70, 1852.245-70, 1852.245-71, 1852.245-72, 1852.245-73, 1852.245-75, 1852.245-77, 1852.245-78, 1852.245-79, 1852.245-80, 1852.246-70, 1852.247-70, 1852.247-71, 1852.247-73, 1852.249-72, and 1852.252-70 are revised to read as follows:

1852.243-70 Engineering change proposals.

As prescribed in 1843.205-70, insert the following clause with any appropriate alternates:

Engineering Change Proposals (March 1989)

(a) The Contracting Officer may, at any time, request in writing that the Contractor prepare and submit an engineering change proposal (ECP), as that term is defined in DOD-STD-480A. Upon receiving this request, the Contractor shall submit to the Contracting Officer the information specified by, and in the format required by, paragraph 4.6 of DOD-STD-480A.

(b) The ECP shall include a "not-to-exceed" price and delivery adjustment, or a "not-less-than" price and delivery adjustment, acceptable to the Contractor if the Government subsequently orders the proposed change. If the change is ordered, the equitable adjustment to the contract shall not be greater than the "not-to-exceed" or less than the "not-less-than" amount. This paragraph (b) does not preclude revision or correction of an ECP in accordance with paragraphs 4.10 and 4.11 of MIL-STD-480A. Concurrent with the submission of any ECP under this contract, the Contractor shall, in accordance with FAR 15.804-6, submit to the Contracting Officer a completed Standard Form 1411, Contract Pricing Proposal Cover Sheet. At the time of agreement upon the price of the ECP, the Contractor shall, in accordance with 15.804-2 and 15.804-4, submit to the Contracting Officer a signed Certificate of Current Cost or Pricing Data.

(End of clause)

Alternate I (March 1989)

As prescribed in 1843.205-70(b), add the following paragraph (c) to the basic clause.

(c) If the price adjustment proposed for any Contractor-originated ECP (excluding any Government-requested ECP or value engineering change proposal) is _____ [insert percent of contract price or dollar value.] or less, the change shall be made at no adjustment to the contract price.

Alternate II (March 1989)

As prescribed in 1843.205-70(b) substitute the following sentence for the second sentence in paragraph (b) of the basic clause.

Change orders issued in accordance with the changes clause of this contract shall not be considered an authorization to the Contractor to exceed the estimated cost in the contract Schedule, in the absence of a statement in the change order or other contract modification increasing the estimated cost.

1852.245-70 Acquisition of existing government equipment.

As prescribed in 1845.106-70(a), insert the following clause:

Acquisition of Centrally Reportable Equipment (March 1989)

(a) "Centrally reportable equipment," as used in this clause, means plant equipment, special test equipment (including components), special tooling, and non-flight space property (including ground support equipment) (1) generally commercially available and used either as a separate item or as a component of a system, (2) having an acquisition cost of $1,000 or more (unless a lower threshold is specified elsewhere in this contract), and (3) is identifiable by a manufacturer and model number.

(b)(1) Before acquiring (including acquiring by fabricating) any item of centrally reportable equipment under this contract (unless for incorporation into flight-qualified or flight-monitoring deliverable end items), the Contractor shall provide to the Contracting Officer, at the earliest possible date, a description of the item sufficiently detailed to enable screening of existing Government inventories.

(2) For this purpose, the Contractor shall (i) prepare a separate DD Form 1419, DOD Industrial Plant Equipment Requisition, for each item of centrally reportable equipment to be acquired and (ii) forward it through the Contracting Officer to the NASA Equipment Management System (NEMS) Coordinator at the cognizant NASA installation at least 30 days in advance of the date the Contractor intends to acquire or begin fabricating the item. If a certificate of non-availability is not received within that period, the Contractor may proceed to acquire the item, subject to any other applicable provisions of this contract. Instructions for preparing the DD Form 1419 are contained in NASA FAR Supplement 1845.7103. The same data may be provided in an alternate format when requesting other than Defense Industrial Plant Equipment Center (DIPEC) controlled items.

(3) Upon receiving the item described on the DD Form 1419 (regardless of whether it is Contractor-acquired or Government-furnished), the Contractor shall prepare and

submit a DD Form 1342 or equivalent data, in accordance with NASA FAR Supplement 1845.505–670.

(End of clause)

1852.245–71 Installation-provided Government property.

As prescribed in 1845.106–70(b), insert the following clause:

Installation-Provided Government Property (March 1989)

(a) In performance of work under this contract, certain Government property identified in the contract shall be made available to the Contractor on a no-charge-for-use basis by the installation's Supply and Equipment Management Officer. That property shall be utilized in the performance of this contract at the installation that provided the property or at such other installations or locations as may be specified elsewhere in this contract. Under this clause, the Government retains accountability for as well as title to the property, and the Contractor assumes user responsibilities prescribed in the installation property management directives listed elsewhere in this contract.

(b) (1) The official accountable recordkeeping and financial control and reporting of the property subject to this clause shall be retained by the Government and accomplished by the installation's Supply and Equipment Management and Financial Management Officers. However, the Government will provide the Contractor a record of all items of such property, including copies of all transaction documents used to describe changes to this record. The Contractor shall maintain this record and transaction documentation in such a condition that, at any stage of completion of work under this contract, the status of the—property, including location, utilization, consumption rate, and identification, can be readily ascertained.

(2) The Contractor shall also adhere to all other procedures (and be subject to sanctions related to those procedures) prescribed by the installation's director that have been established for the management of installation property. The records and documentation shall be made available, upon request, to the installation's Supply and Equipment Management Officer and any other formally designated representatives of the Contracting Officer.

(c) If the Government fails to provide the Government property specified in this contract and that failure adversely affects the Contractor's ability to perform the contract, the Contracting Officer shall, upon timely written request from the Contractor, (1) make a determination of the effect on the Contractor and (2) equitably adjust the contract in accordance with the procedure provided in the FAR 52.243 changes clause of this contract. Equitable adjustments made pursuant to this paragraph (c), however, shall not include adjustments in fee, unless the property to be provided was described in specific quantities of specific items.

(d) Government property made available under this clause shall in every respect be subject to the provisions of the FAR 52.245 Government property clause of this contract, except as provided in paragraphs (a), (b), and (c) above and as may otherwise be provided in this contract with respect to (1) the Contractor's responsibilities for repair and maintenance of Government property, or (2) the Contractor's liability for any loss of or damage to such property that is attributable to the Contractor's failure to maintain and administer a program for maintenance and repair in accordance with sound industrial practice.

(End of clause)

Alternate I (March 1989)

As prescribed in 1845.106–70(b)(3), insert the following as subparagraph (b)(3) of the basic clause:

(3) The contractor shall not utilize the installation's central receiving facility for receipt of Contractor-acquired property. However, the Contractor shall provide listings suitable for establishing accountable records of all such property received, on a quarterly basis, to the Contracting Officer and the Supply and Equipment Management Officer.

1852.245–72 Liability for Government property furnished for repair and services.

As prescribed in 1845.106–70(c), insert the following clause:

Liability for Government Property Furnished for Repair or Other Services (March 1989)

(a) This clause shall govern with respect to any Government property furnished to the Contractor for repair or other services that is to be returned to the Government. Such property, hereinafter referred to as "Government property furnished for servicing," shall not be subject to any clause of this contract entitled Government-Furnished Property or Government Property.

(b) The official accountable recordkeeping and financial control and reporting of the property subject to this clause shall be retained by the Government. The Contractor shall maintain adequate records and procedures to ensure that the Government property furnished for servicing can be readily accounted for and identified at all times while in its custody or possession or in the custody or possession of any subcontractor.

(c) The Contractor shall be liable for any loss or destruction of or damage to the Government property furnished for servicing (1) caused by the Contractor's failure to exercise such care and diligence as a reasonable prudent owner of similar property would exercise under similar circumstances, or (2) sustained while the property is being worked upon and directly resulting from that work, including, but not limited to, any repairing, adjusting, inspecting, servicing, or maintenance operation. The Contractor shall not be liable for loss or destruction of or damage to Government property furnished for servicing resulting from any other cause except to the extent that the loss, destruction, or damage is covered by insurance (including self-insurance funds or reserves).

(d) In addition to any insurance (including self-insurance funds or reserves) carried by the Contractor and in effect on the date of this contract affording protection in whole or in part against loss or destruction of or damage to such Government property furnished for servicing, the amount and coverage of which the Contractor agrees to maintain, the Contractor further agrees to obtain any additional insurance covering such loss, destruction, or damage that the Contracting Officer may from time to time require. The requirements for this additional insurance shall be effected under the procedures established by the FAR 52.243 changes clause of this contract.

(e) The Contractor shall hold the Government harmless and shall indemnify the Government against all claims for injury to persons or damage to property of the Contractor or others arising from the Contractor's possession or use of the Government property furnished for servicing or arising from the presence of that property on the Contractor's premises or property.

(End of clause)

1852.245–73 Financial reporting of Government-owned/contractor-held property.

As prescribed in 1845.106–70(d), insert the following clause (note that when the clause is used with its Alternate I or Alternate II, the word "annually" in paragraph (a) must be replaced by "monthly" or "quarterly," as appropriate):

Financial Reporting of Government-Owned/Contractor-Held Property (March 1989)

(a) The Contractor shall prepare and submit annually a NASA Form 1018, Report of Government-Owned/Contractor-Held Property, in accordance with 1845.505–14 and the instructions on the form and in section 1845.7101 of the NASA FAR Supplement, except that the reporting of space hardware shall be required only as directed in clause 1852.245–78, Space Hardware Reporting, of this contract, if applicable.

(b) If administration of this contract has been delegated to the Department of Defense, the original and three copies of NASA Form 1018 shall be submitted through the DOD Property Administrator to the NASA office identified below. If the contract is administered by NASA, the forms shall be submitted directly to the following NASA office:_____[Insert the address and office code of the organization within the cognizant NASA installation responsible for control and distribution of the NF 1018.]

(c) The annual reporting period shall be from July 1 of each year to June 30 of the following year. The report shall be submitted by July 31.

(d) The Contractor agrees to insert this reporting requirement in all first-tier subcontracts, except that the requirement shall provide for the submission of the subcontractors' reports to the Contractor, not to the Government. The Contractor shall require the subcontractors' reports to be submitted in sufficient time to meet the reporting date in paragraph (c) above.

(e) The Contractor's report shall consist of a consolidation of the subcontractors' reports and the Contractor's own report.

(End of clause)

Alternate I (March 1989)

As prescribed in 1845.106–70(d), insert the following paragraph (c) for paragraph (c) of the basic clause and modify paragraph (a) accordingly:

(c) The monthly report is due no later than the last day of the month following the month being reported.

Alternate II (March 1989)

As prescribed in 1845.106–70(d), insert the following paragraph (c) for paragraph (c) of the basic clause and modify paragraph (a) accordingly:

(c) The quarterly report is due no later than the last day of the month following the quarter being reported.

1852.245–75 Title to equipment.

As prescribed in 1845.106–70(f), insert the following clause:

Title to Equipment (March 1989)

(a) In accordance with the FAR 52.245 Government property clause of this contract, title to equipment and other tangible personal property acquired by the Contractor with funds provided for conducting research under this contract and having an acquisition cost less than $_____ [Insert a dollar value not less than $5,000] shall vest in the Contractor upon acquisition, provided that the Contractor has complied with the requirements of the FAR 52.245 Government property clause.

(b) Upon completion or termination of this contract, the Contractor shall submit to the Contracting Officer a list of all equipment with an acquisition cost of $_____ [Insert the dollar value specified in paragraph (a)] or more acquired under the contract during the contract period. The list shall include a description, manufacturer and model number, date acquired, cost, and condition information, and shall be submitted within 30 calendar days after completion or termination of the contract, in accordance with Federal Acquisition Regulation subsection 45.606–5.

(c) Title to the property specified in paragraph (b) above vests in the Contractor, but the Government retains the right to direct transfer of title to property specified in paragraph (b) above to the Government or to a third party within 180 calendar days after completion or termination of the contract. Such transfer shall not be the basis for any claim by the Contractor.

(d) Title to all Government-furnished property remains vested with the Government (see the FAR 52.245 Government property clause).

(e) Title to the contractor-acquired property listed below shall vest with the Government.

[List any contractor-acquired property for which vesting of title with the Government is appropriate or insert "None"]

(End of clause)

1852.245–77 List of installation-provided property and services.

As prescribed in 1845.106–70(h), insert the following clause:

List of Installation-Provided Property and Services (March 1989)

In accordance with the Installation-Provided Government Property clause of this contract, the Contractor is authorized use of the types of property and services listed below, to the extent they are available, while on-site at the NASA installation.

(a) Office space, work area space, and utilities. The Contractor shall use Government telephones for official purposes only. Pay telephone stations are available for the convenience and use of employees in making unofficial calls, both local and long distance.

(b) General- and special-purpose equipment, including office furniture.

(1) Equipment to be made available to the Contractor for use in performance of this contract on-site and at such other locations as approved by the Contracting Officer is listed in Attachment _____ [Insert attachment number or "not applicable" if no equipment is provided]. The Government retains accountability for this property under the Installation-Provided Government Property clause, regardless of its authorized location.

(2) If the Contractor acquires property as a direct cost under this contract, this property also shall become accountable to the Government upon its entry into the NASA Equipment Management System (NEMS) in accordance with the property-reporting requirements of this contract.

(3) The Contractor shall not bring on-site for use under this contract any property owned or leased by the Contractor, or other property that the Contractor is accountable for under any other Government contract, without the Contracting Officer's prior written approval.

(c) Supplies from stores stock.

(d) Publications and blank forms stocked by the installation.

(e) Safety and fire protection for Contractor personnel and facilities.

(f) Installation service facilities: _____ [Insert the name of the facilities or "None"].

(g) Medical treatment of a first-aid nature for Contractor personnel injuries or illnesses sustained during on-site duty.

(h) Cafeteria privileges for Contractor employees during normal operating hours.

(i) Building maintenance for facilities occupied by Contractor personnel.

(j) Moving and hauling for office moves, movement of large equipment, and delivery of supplies. Moving services shall be provided on-site, as approved by the Contracting Officer.

(k) The responsibilities of the Contractor as contemplated by paragraph (a) of the Installation-Provided Government Property clause are defined in the following property management directives and installation supplements to these Directives:

(1) NHB 4200.1, NASA Equipment Management Manual.

(2) NHB 4200.2, NASA Equipment Management System (NEMS) User's Guide for Property Custodians.

(3) NHB 4300.1, NASA Personal Property Disposal Manual.

(4) NHB 4100.1, NASA Materials Inventory Management Manual.

(End of clause)

1852.245–78 Space hardware reporting.

As prescribed in 1845.106–70(i), insert the following clause:

Space Hardware Reporting (March 1989)

In accordance with the Financial Reporting of Government-Owned/Contractor-Held Property clause of this contract, the reporting of certain specified items of space hardware is required on a NASA Form 1018, Report of Government-Owned/Contractor-Held Property. The reporting of space hardware is in addition to the requirements of other property reporting on the form. At present, the items of space hardware to be reported are the following: _____ [Insert the space hardware to be reported for the particular contract]. The Contracting Officer shall update this list prior to June 1 of each year to be applicable beginning with the next reporting period.

(End of clause)

1852.245–79 Use of Government-owned property.

As prescribed in 1845.106–70(j), insert the following provision:

Use of Government-Owned Property (March 1989)

(a) The offeror ( ) does, ( ) does not intend to use in performance of any contract awarded as a result of this solicitation existing Government-owned facilities (real property or plant equipment), special test equipment, or special tooling (including any property offered by this solicitation). The offeror shall identify any offered property not intended to be used. If the offeror does intend to use any of the above items, the offeror must furnish the following information required by Federal Acquisition Regulation (FAR) 45.205(b), NASA FAR Supplement (NFS) 1845.102–70, and NFS 1845.104(b):

(1) Identification and quantity of each item. Include the item's acquisition cost if it is not property offered by this solicitation.

(2) For property not offered by this solicitation, identification of the Government contract under which the property is accountable and written permission for its use from the cognizant Contracting Officer.

(3) Amount of rent, calculated in accordance with FAR 45.403 and the clause at FAR 52.245–9, Use and Charges, unless the property has been offered on a rent-free basis by this solicitation.

(4) The dates during which the property will be available for use, and if it is to be used in more than one contract, the amounts of respective uses in sufficient detail to support proration of the rent. This information is not required for property offered by this solicitation.

(b) The offeror ( ) does, ( ) does not request additional Government-provided property for use in performing any contract awarded as a result of this solicitation. If the offeror requests additional Government-provided property, the offeror must furnish—

(1) Identification of the property, quantity, and estimated acquisition cost of each item; and

(2) The offeror's written statement as prescribed by FAR 45.302–1(a)(4).

(c) If the offeror intends to use any Government property (paragraph (a) or (b) above), the offeror must also furnish the following:

(1) The date of the last Government review of the offeror's property control and accounting system, actions taken to correct any deficiencies found, and the name and telephone number of the cognizant property administrator.

(2) A statement that the offeror has reviewed, understands, and can comply with all property management and accounting procedures in the solicitation, FAR Subpart 45.5, and NFS Subparts 1845.5, 1845.70, and 1845.71.

(3) A statement indicating whether or not the costs associated with subparagraph (2) above, including plant clearance and/or plant reconversion costs, are included in its cost proposal.

(End of provision)

1852.245–80 Use of Government production and research property on a no-charge basis.

As prescribed in 1845.106–70(k), insert the following clause:

Use of Government Production and Research Property on a No-Charge Basis (March 1989)

In performing this contract, the Contractor is authorized to use on a no-charge, noninterference basis the Government-owned production and research property provided to the Contractor under the contract(s) specified below and identified in the cognizant Contracting Officer's letter approving use of the property. Use is authorized on the basis that it will not interfere with performance of the Government contract(s) under which the property was originally furnished. Use shall be in accordance with the terms and conditions of these contracts and the cognizant Contracting Officer's approval letter.

Contract No(s): [Insert the contract number(s) under which the Government property is accountable].

(End of clause)

1852.246–70 Space Transportation System (STS) personnel reliability program.

As prescribed in 1846.270(a), insert the following clause:

Space Transportation System (STS) Personnel Reliability Program (March 1989)

(a) In implementation of the STS Personnel Reliability Program, described in NASA Management Instruction (NMI) 8610.13, the Government shall identify personnel positions that are mission critical. Some of the positions as identified may now or in the future be held by employees of the Contractor. Upon notification by the Contracting Officer that a mission-critical position is being or will be filled by one or more of the Contractor's employees, the Contractor shall (1) provide the affected employees with a clear understanding of the investigative and medical requirements and, (2), to the extent permitted by applicable law, assist the Government by furnishing personal data and medical records.

(b) The standard that will be used in certifying individuals for a mission-critical position is that they must be determined to be competent and reliable in the performance of their assigned duties in accordance with the screening requirements of the NMI. If the Government determines that a Contractor employee occupying or nominated to occupy a mission-critical position will not be certified for such duty, the Contracting Officer shall (1) furnish to the employee the specific reasons for its action; (2) advise the employee that he/she may avail himself/herself of the review procedures that are a part of the certification system; and (3) furnish him/her a copy of those procedures upon request.

(c) If a Contractor employee who has been nominated for (but has not yet filled) a mission-critical position is not certified, the Contractor agrees to defer the appointment to the position until the employee has had an opportunity to pursue the referenced procedures. If the employee is an incumbent to the position, the Contractor agrees, upon the request of the Government, to remove him/her from the position temporarily pending an appeal of the action under the review procedures. If any employee not certified elects not to take action under the procedures, or, if having taken action, is not successful in obtaining a reversal of the determination, the Contractor agrees not to appoint the employee to the position, or if already appointed, to promptly remove the employee.

(End of clause)

1852.247–70 Returnable containers.

As prescribed in 1847.305–70(a), insert the following clause:

Returnable Containers (March 1989)

(a) Containers shall remain the Contractor's property but shall be loaned without charge to the Government for a period of 30 days after their delivery to the f.o.b. point specified in the contract. Beginning with the first day after this loan period expires, to and including the day the containers are delivered to the Contractor (if the original delivery was f.o.b. origin) or are delivered or made available for delivery to the Contractor's designated carrier (if the original delivery was f.o.b. destination), the Government shall pay the Contractor a rental of $____ [Insert dollar amount for container rental.] per container per day, regardless of type or capacity.

(b) This rental charge will be computed separately for containers of each type, size, and capacity, and for each delivery point named in the contract. A credit of 30 container days will accrue to the Government for each container, regardless of type or capacity, delivered by the Contractor. A debit of 1 container day will accrue to the Government for each container for each day after delivery to the f.o.b. point specified in the contract. At the end of the contract, if the debit total exceeds the credit total, rental shall be charged for the difference. If the credit total equals or exceeds the debit total, no rental shall be charged. No rental shall accrue to the Contractor in excess of the replacement value per container specified in paragraph (c) below.

(c) For each container lost or damaged beyond repair while in the Government's possession, the Government shall pay the Contractor the replacement value as follows, less the allocable rental paid for that container:

[Insert the container types, sizes, capacities, and associated replacement values.]

(d) Containers lost or damaged beyond repair and paid for by the Government shall become Government property, subject to the following: If any lost container is located within _____ [Insert number of calendar days.] calendar days after payment by the Government, it may be returned to the Contractor by the Government, and the Contractor shall pay the Government the replacement value, less rental computed in accordance with paragraph (a) above, beginning at the expiration of the loan period specified in paragraph (a) above, and continuing to the date on which the cylinder was delivered to the Contractor.

(End of clause)

1852.247–71 Protection of the Florida manatee.

As prescribed in 1847.7001, insert the following clause:

Protection of the Florida Manatee (March 1989)

(a) Pursuant to the Endangered Species Act of 1973 (Pub. L. 93–205), as amended, and the Marine Mammals Protection Act of 1972 (Pub. L. 92–522), the Florida Manatee (Trichechus Manatus) has been designated an endangered species, and the Banana and Indian Rivers within and adjacent to NASA's Kennedy Space Center (KSC) have been designated as a critical habitat of the Florida Manatee.

(b) Contractor personnel involved in vessel operations, dockside work, and selected disassembly functions shall be provided training relative to (1) habits and characteristics of the Florida Manatee, (2) provisions of the applicable laws, (3) personal liability of workers under the laws, and (4) operational restrictions imposed by KSC.

(c) All vessel operations shall be conducted within the posted speed restrictions, and vessels shall be operated at minimum controllable speeds in all KSC waters. Shallow-water operations are prohibited.

(d) Training will be conducted by personnel of the U.S. Fish and Wildlife Service (USFWS). The contractor agrees to cooperate with the USFWS by allowing access at reasonable times and places (including shipboard) to USFWS personnel, and by making available such contractor

personnel as are required to have the training. Arrangements for training will be made as follows:

(1) For personnel involved in tug, barge, or marine operations, through the Lockheed Space Operations Contractor, Transportation Coordination Center, Kennedy Space Center, Florida, telephone (407) 867–5330.

(2) For all other personnel, through the Systems Training and Employee Development Branch, Code PM–TNG, telephone (407) 867–2737.

(e) The contractor shall incorporate the provisions of this clause in applicable subcontracts (including vendor deliveries).

(End of clause)

1852.247–73 Shipment by Government bills of lading.

As prescribed in 1847.305–70(c), insert the following clause:

Shipment by Government Bills of Lading (March 1989)

(a) The Contractor shall ship items deliverable under this contract, if the transportation cost per shipment exceeds $100, by Government bills of lading (GBLs). At least 15 days before shipment, the Contractor shall request in writing GBLs from: _____ [Insert name, title, and mailing address of designated transportation officer or other official delegated responsibility for GBLs]. If time is limited, requests may be by telephone: _____ [Insert appropriate telephone number]. Requests for GBLs shall include the following information.

(1) Item identification/description.

(2) Origin and destination.

(3) Individual and total weights.

(4) Dimensions and total cubic footage.

(5) Total number of pieces.

(6) Total dollar value.

(7) Other pertinent data.

(b) The Contractor shall prepay transportation charges of $100 or less per shipment. The Government shall reimburse the contractor for these charges if they are added to the invoice as a separate line item supported by the paid freight receipts. If paid receipts in support of the invoice are not obtainable, a certificate as described below must be completed, signed by an authorized company representative, and attached to the invoice.

"I certify that the shipments identified below have been made, transportation charges have been paid by (company name), and paid freight or comparable receipts are not obtainable.

Contract or Order Number: _____

Destination: _____"

(End of clause)

1852.249–72 Termination (utilities).

As prescribed in 1849.505–70, insert the following clause. The period of 30 days may be varied not to exceed 90 days.

Termination (utilities) (March 1989)

The Government, at its option, may terminate this contract by giving written notice not less than 30 days in advance of the termination's effective date.

(End of clause)

1852.252–70 Compliance with NASA FAR Supplement.

As prescribed in 1852.107–70, insert the following clause:

Compliance With NASA FAR Supplement (March 1989)

Any statements in this contract requiring compliance with specific provisions of the Federal Acquisition Regulation (e.g., Subpart 45.5) shall be construed to require compliance also with any corresponding implementing or supplementing provisions in the NASA FAR Supplement in effect on the date of this contract.

(End of clause)

N. Section 1852.245–74 is added to read as follows:

1852.245–74 Contractor accountable on-site Government property.

As prescribed in 1845.106–70(e), insert the following clause:

Contractor Accountable On-Site Government Property (March 1989)

(a) In performance of work under this contract, certain Government property identified in the contract shall be provided to the Contractor on a no-charge-for-use basis by the installation's Supply and Equipment Management Officer. That property shall be utilized in the performance of this contract at the installation that provided the property or at such other installations or locations as may be specified elsewhere in this contract. The Contractor assumes accountability and user responsibilities for the property.

(b) Government property provided shall in every respect be subject to the provisions of the FAR 52.245 Government property clause of this contract. In addition, the contractor is responsible for managing this property in accordance with the guidelines provided by the installation's Supply and Equipment Management Officer or any other formally designated representatives of the Contracting Officer. The guidelines include but are not limited to requiring the Contractor to—

(1) Use economic order quantity (EOQ) methods for routine stock replenishment;

(2) Utilize the Federal Cataloging System;

(3) Comply with shelf-life requirements;

(4) Provide for accountability and control (using the NASA Equipment Management System (NEMS)) of all equipment costing $1000 and over, plus that equipment designated as "sensitive";

(5) Provide for physical inventory of all controlled equipment at least every 3 years;

(6) Provide for sample inventories of materials plus complete inventories every 5 years;

(7) Conduct walk-through utilization inspections;

(8) Screen NEMS before acquiring any equipment costing $1000 or over, plus equipment designated by the installation as sensitive and costing $500 and over;

(9) Support the Equipment Acquisition Document (EAD) process; and

(10) Use Government sources as the first source of supply.

(c) Data requirements relating to the guidelines in paragraph (b) above are specified under Section F, Deliveries or performance.

(End of clause)

PART 1853—FORMS

1853.223 [Removed]

23. Section 1853.223 is removed.

[FR Doc. 89–4315 Filed 3–14–89; 8:45 am]

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Wednesday
March 15, 1989

Part III

Department of Agriculture

Animal and Plant Health Inspection Service

9 CFR Parts 1, 2, and 3
Animal Welfare; Proposed Rules

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 1

[Docket No. 88-013]

Animal Welfare—Definition of Terms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: This is a request for supplemental comments on the narrow issue of the interrelationship between Part 1 of the Animal Welfare Act regulations and our proposal to amend Part 3 of the regulations. We are proposing to amend Part 1 of the regulations concerning animal welfare, in order to update, clarify and expand the list of definitions. These changes are intended to inform the public of the scope of the regulations and to facilitate enforcement of them. These changes, many of which are required by amendments enacted on December 23, 1985, to the Animal Welfare Act (7 U.S.C. 2131, *et seq.*), complement changes we are proposing to make to Part 2 of the regulations concerning animal welfare (Regulations) and to Part 3 of the regulations concerning animal welfare (Standards).

DATES: We will consider written comments addressing only the interrelationship of Parts 1 and 2 of the regulations with the proposed standards of Part 3, as explained in greater detail in the Supplementary Information which follows, that are postmarked or received on or before May 15, 1989.

ADDRESS: Send an original and three copies of your comments to Helene R. Wright, Chief, Regulatory Analysis and Development Staff, PPD, APHIS, USDA, Room 1000, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 88-013. Comments received may be inspected at the APHIS Public Reading Room, Room 1141, U.S. Department of Agriculture, 14th and Independence Avenue SW., Washington, DC, 8:00 a.m. to 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. R.L. Crawford, Director, Animal Care Staff, REAC, APHIS, USDA, Room 268, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7833.

SUPPLEMENTARY INFORMATION:

Background

This document would amend and expand 9 CFR Part 1, entitled "Definition of Terms" which provides the definitions for the terms used in the regulations in 9 CFR Part 2, and the standards in 9 CFR Part 3 for the humane handling, care, treatment, and transportation of regulated animals used for research or exhibition purposes, sold as pets, or transported in commerce. The Definitions, Regulations, and Standards are established pursuant to the authority in the Animal Welfare Act, as amended (7 U.S.C. 2131, *et seq.*) (the Act). This law requires the Secretary to promulgate regulations and standards governing the humane handling, housing, care, treatment, and transportation of certain animals by dealers, research facilities, exhibitors, operators of auction sales, carriers, and intermediate handlers. The standards and regulations must include minimum requirements with respect to handling, housing, feeding, sanitation, veterinary care, and other matters specified in section 13 of the Act (7 U.S.C. 2143). Upon publication of a final rule, these definitions will provide specific meanings for the most important terms used in the regulations and standards.

In a document published in the **Federal Register** on March 31, 1987 (52 FR 10292-10298), we proposed to amend the Animal Welfare regulations, 9 CFR Parts 1 and 2, "Definition of Terms" and "Regulations," to comply with the 1985 amendments to the Animal Welfare Act, and to expand, clarify, and revise the current regulations.

Comments were solicited concerning both proposals for a 60-day period ending June 1, 1987. This period was twice extended and ended on August 27, 1987. We received a total of 7,857 comments: 1,438 were from the research community; 987 were from dealers and exhibitors; and 5,432 were from members of the public, including humane organizations and animal welfare societies. All of the comments that were timely received were considered. Those raising objections or suggesting changes to the proposed definitions are discussed below. Comments received after the close of the comment period have not been considered.

In response to the numerous comments received, we determined that certain changes to our proposal are necessary. These changes, discussed below, have been incorporated in this revised rule. In addition, many of the comments we received in response to our March 31, 1987 proposal to amend Part 2 suggested that certain additional terms should be defined. We have also determined that certain terms appearing in the proposed rule to amend Part 3 require definition so that the public can understand them. We are therefore adding several definitions, as discussed below, to make the regulations in Parts 2 and 3 easier to understand, thereby increasing compliance and making them more effective.

Each definition addressed below has been given its own heading to assist the reader in locating a particular term. Comments concerning the proposed definitions as a whole are discussed first under the heading, "General."

Supplemental Request for Comments on Interrelationship of Parts 1, 2, and 3 of the Animal Welfare Regulations

We received 334 comments (309 from members of the research community and 25 from members of the general public) suggesting that we revise the proposed rules for Parts 1 and 2, "Definition of Terms" and "Regulations," and publish a second proposal in the **Federal Register** for public comment. We also received 445 comments (400 from members of the research community and 45 from members of the general public) suggesting that we revise the proposals for Parts 1 and 2 and publish them along with our proposal for standards for the exercise of dogs and for a physical environment to promote the psychological well-being of nonhuman primates. These specific standards are mandated by the 1985 amendments to the Act.

We have determined to respond to the comments we received addressing the proposed rules, and to publish revised rules for Parts 1 and 2 in the same issue of the **Federal Register** as our proposal to amend Part 3 of the regulations, titled "Standards." The revised rules reflect our consideration of the nearly 8,000 comments received, our experience in administering and enforcing the regulations, and our ongoing consultation with the U.S. Department of Health and Human Services and other interested agencies. It is our present determination that upon their adoption as final rules, the revised provisions of Parts 1 and 2 will conform with the requirements of the Animal Welfare Act, as amended.

Accordingly, we are publishing Parts 1 and 2 at this time, revised from our initial proposal, as explained in detail below, to assist the public in reviewing the proposed standards for Part 3. At the urging of many commenters, we are publishing the revised rules for Parts 1 and 2 as a proposal, for the sole purpose of soliciting comments on the narrow

issue of the interrelationship of the definitions and regulations in Parts 1 and 2 with the standards we are proposing in Part 3. The public is therefore invited to comment exclusively on this issue. We will not consider comments going beyond this issue.

General

We received 307 comments (281 from the research community, 25 from members of the general public, and 1 from an exhibitor) generally endorsing the definitions as proposed but suggesting that some require clarification or revision. We received 74 comments (72 from the research community and 2 from dealers) citing the need for reorganization of the proposed regulations as a whole (Parts 1 and 2), and for clarification in general. We have further clarified or revised those definitions as necessary, based upon the comments received.

Sixteen commenters from the research community felt generally that the definitions as proposed are too rigid and specific. We disagree. The proposed definitions must be specific to be meaningful to the persons subject to the Act and to the regulations, and to enable those persons to comply with the regulations. Except as explained below, the provisions of the initial proposed rule for Part 1 continue to be included in this revised rule based on the reasons set forth in that proposal.

Administrative Unit

The 1985 amendments to the Act require that each research facility establish an Institutional Animal Committee composed of not fewer than three members (7 U.S.C. 2143(b)(1)). Of the three members, at least one must be a doctor of veterinary medicine and at least one must not be affiliated in any way with the facility, other than as a member of the Committee. Section 13(b)(1)(C) of the Act provides that "in those cases where the Committee consists of more than three members, not more than three members shall be from the same administrative unit of such facility." (7 U.S.C. 2143(b)(1)(C).) In our March 31, 1987, proposal to amend Part 2 of the regulations, we proposed requirements in § 2.35 for the composition of the Committee. As mandated by the Act, proposed § 2.35(a)(6) provided that "[i]f the Committee consists of more than three members, not more than three members shall be from the same administrative unit of such facility; * * *" This provision is included in Part 2, as revised, published elsewhere in this issue of the **Federal Register**. (See companion docket No. 88–014.)

We received 465 comments (440 from the research community and 25 from members of the general public) requesting that the term "administrative unit" be defined. We are therefore including the following definition of that term:

> The organizational or management unit at the departmental level of a research facility.

For universities, corporations, and other research facilities, departments such as the Department of Medicine, Department of Research and Development, the Department of Chemistry, the Department of Pharmacology, the Department of Psychology, and the Department of Zoology would each be an administrative unit for purposes of Committee membership.

Ambient temperature

Three commenters stated that the proposed definition of the term "ambient temperature" is vague. Except for the addition of the word "air" before "temperature" the proposed definition has been in the regulations since 1970. We have not learned of any problems in understanding and applying this term during the past 18 years. In the absence of any problems arising from the definition of "ambient temperature" the definition remains as initially proposed.

Animal; Dog; Cat

We proposed to define the term "animal" as follows:

> any live or dead dog, cat, nonhuman primate (monkey, ape), guinea pig, hamster, rabbit, or any other warmblooded animal, which is being used, or is intended for use for research, teaching, testing, experimentation, or exhibition purposes, or as a pet. This term excludes: Birds, rats and mice bred for use in research, and horses and other farm animals, such as, but not limited to livestock or poultry, used or intended for use as food or fiber, or livestock or poultry used or intended for use for improving animal nutrition, breeding, management, or production efficiency, or for improving the quality of food or fiber. With respect to a dog, the term means all dogs including those used for hunting, security, or breeding purposes.

This proposed definition prompted numerous comments, although the only substantive change we proposed to make in the current definition was to delete the phrase "which is domesticated or raised in captivity or which normally can be found in the wild state." This qualifying phrase modifies "any other warmblooded animal" in the current definition. We received 318 comments (293 from the research community and 25 from members of the general public) generally endorsing the proposed definition. More than 1,000 commenters (991 from the general public, 24 from the research community, and 2 dealers) stated that the definition should encompass all warmblooded animals, including rats, mice, birds, and farm animals. We received 322 comments (297 from the research community and 25 from members of the general public) stating their agreement with excluding laboratory rats and mice from the definition.

When first enacted in 1966 the Act defined the term "animal" as meaning "live dogs, cats, monkeys (nonhuman primate mammals), guinea pigs, hamsters, and rabbits." In 1970 the definition was amended to include other warm-blooded animals, and to specifically exclude horses "not used for research purposes" and other farm animals when used for agricultural purposes.

Since the Animal Welfare regulations were amended in 1972 to incorporate the 1970 amendments to the Act, the definition of "animal" has included the six kinds of animals listed above and "any other warmblooded animal, which is domesticated or raised in captivity or which normally can be found in the wild state, and is being used, or is intended for use, for research, testing, experimentation, or exhibition purposes, or as a pet." The definition of "animal" has excluded "birds, rats and mice, and horses and other farm animals, such as, but not limited to livestock or poultry, used or intended for use as food or fiber, or livestock or poultry used or intended for use for improving animal nutrition, breeding, management, or production efficiency, or for improving the quality of food or fiber."

We are not changing our definition of "animal" to include horses not used for biomedical research, and other farm animals when used for agricultural purposes, because the Act does not give us authority to include them (7 U.S.C. 2132(g)). Neither are we changing our definition of "animal" to include birds, rats and mice. We do have the authority to regulate these animals, though except for wild rats and mice, we have never covered them in our regulations. However, in response to the comments we received, we are considering developing regulations and standards for them. Development of new regulations and standards requires detailed analysis of the issues involved, followed by drafting of proposed rules. It is a time-consuming process. We do not believe it would be in the best interests of animal welfare in general if we were to delay promulgating the

regulations we have proposed. We also do not believe Congress intended that we delay promulgating regulations concerning other animals pending the possible development and drafting of regulations and standards for birds, rats and mice. Therefore, we are not changing our proposed definition of "animal" to include birds, rats and mice in this rule. If we propose regulations and standards governing birds, rats and mice, we will also propose to amend the definition of "animal" to include them. We do want to note that wild rats and mice are covered by our proposed definition, though laboratory-bred rats and mice are not. We are revising the definition of "animal" to clarify this point.

We received 303 comments (278 from the research community and 25 from members of the general public) suggesting that we delete the reference to "all warmblooded animals" in the preamble statement that "[a]ll warmblooded animals are covered by the Act," because it is misleading. Although the preamble to a proposed rule does not have the force of law, we agree that this reference could have been more precise since the Act excludes certain warmblooded animals, such as horses and farm animals, not used for research purposes.

We received 103 comments (102 from the research community and 1 from a member of the general public) stating that the definition of "animal" should not include reference to "dead" animals, and 5 comments from the research community suggesting that when the regulations are meant to include dead animals the term should be so qualified. The Act defines "animal" as both live or dead animals (7 U.S.C. 2132(g)), and accordingly the Animal Welfare regulations have defined "animal" in this manner since 1972. The word "dead" was added to the definition of "animal" as part of the 1970 amendments to the Act, due to the mistreatment of animals obtained for euthanasia and preparation as laboratory specimens. Inclusion of dead animals in the regulations is determined to be necessary based upon our experience in enforcing the regulations, to prevent abuse of these animals. We agree that many of the standards proposed in companion docket number 87-004, Part 3—"Standards," published elsewhere in this issue of the **Federal Register**, would not apply to dead animals, and we have added footnotes to proposed Subparts A and D in Part 3, to make clear that those standards would refer to live animals unless otherwise specified.

We received 50 comments from the research community stating that the definition of "cat" likewise should not include reference to dead cats. We disagree, since the Act defines animal as any "live or dead dog, cat, * * *" and since our experience indicates the necessity to include this protection in the regulations for the reasons explained above. No change is made to the definition of "cat" in this rule.

Thirty-two commenters from the research community stated that the definition of "dog" should not include the word "dead." For the same reasons provided above regarding animals and cats, no change is made in the definition of "dog" in the rule.

We received 2 comments from the research community stating that all rodents, including gerbils and guinea pigs, should be excluded from the regulations. Guinea pigs have been included in the Act since it was first enacted in 1966. At that time the Act covered 6 kinds of animals: Dogs, cats, guinea pigs, hamsters, rabbits, and nonhuman primates. Gerbils became a regulated species when the 1970 amendments to the Act expanded the definition of "animal" to include "such other warm-blooded animal, as the Secretary may determine is being used, or is intended for use for research, testing, * * *." We do not have the authority to remove these animals from the coverage of the regulations. No change is made to the definition of "animal" based upon these comments.

Thirty-one commenters from the research community stated that the definition of "animal" should refer to "nonhuman primates (monkeys and apes)" instead of to "monkey (nonhuman primate mammal)." We agree that use of the term "nonhuman primates" is more precise because all nonhuman primates, not just monkeys and apes, are covered by the regulations. We are revising the definition of "animal" to reflect this change. Except for this revision, the definition of "animal" remains as initially proposed.

Attending veterinarian; Licensed veterinarian

The definition of "attending veterinarian" as initially proposed would mean:

> a person who has graduated from a veterinary school accredited by the American Veterinary Medical Association's Council on Education or has a certificate issued by the American Veterinary Medical Association's Education Commission for Foreign Veterinary Graduates, has received training and/or experience in the care and management of the species being attended, and who has direct or delegated responsibility for activities involving animals at a registered or licensed facility. The veterinarian must be accredited by the U.S. Department of Agriculture in accordance with regulations issued under the Animal Welfare Act.

We received 548 comments (519 from the research community, 2 from dealers, 1 from an exhibitor, and 26 from members of the general public) stating that reference to USDA accreditation should be deleted from the definition of "attending veterinarian" and that the requirement to be accredited by USDA be clarified vis-a-vis state licensure requirements. Eleven commenters from the research community suggested that we use a term other than "accredited."

There is no requirement for state licensure in the definition. Our use of the term "accredited" was intended as a means of ensuring that attending veterinarians have training and/or experience in animal welfare, including humane handling, care, and treatment of laboratory animals, in order to provide adequate veterinary care in accordance with the Animal Welfare regulations. We agree that another term, such as "registered," should be substituted for the term, "accredited," to avoid confusion with the Accreditation of Veterinarian regulations in 9 CFR Parts 160, 161, and 162. The Department is in the process of developing standards for "accreditation" (or "registration") under the Animal Welfare regulations, for publication as a proposed rule at a later date. In the interim, we are removing the references to "accreditation" from Parts 1 and 2, as revised.

The proposed definition generated numerous comments expressing concern that otherwise qualified veterinarians would not satisfy the terms of the definition and would not be eligible to serve as attending veterinarians. We received 114 comments from the research community stating that under the proposed definition there would be an inadequate number of qualified or trained veterinarians to satisfy the demand for them. Five commenters expressed particular concern that otherwise qualified veterinarians might not be eligible to be attending veterinarians because they are graduates of foreign schools and do not have a certificate issued by the American Veterinary Medical Association's (AVMA) Education Commission for Foreign Veterinary Graduates. The definition as originally proposed would exclude graduates of European programs who can be licensed to practice in some states which do not require certification by the AVMA Education Commission for Foreign

Veterinary Graduates. These veterinarians would not be allowed to serve as attending veterinarians even within the state of licensure under the terms of the definition.

It was never our intent to disqualify otherwise qualified foreign educated veterinarians. We are revising the definition to include those veterinarians who are determined by the Administrator to have equivalent formal education. We believe that there will be an adequate supply of veterinarians satisfying the revised definition of "attending veterinarian."

Similarly, the definition of "licensed veterinarian" is changed to include those who graduated from an accredited school of veterinary medicine or who have received equivalent formal education, as determined by the Administrator, and are licensed to practice veterinary medicine in some state.

The initially proposed definition of "attending veterinarian" would require training and/or experience in the care and management of the species being attended. We received 407 comments (378 from the research community, 3 from exhibitors, and 26 from members of the general public) stating that this requirement is vague. Five dealers commented that veterinarians should not be required to have experience with the particular species being attended. We disagree since the variation among the different species of animals requires that the attending veterinarian be familiar with the different requirements to promote the animals' welfare. We also believe the terms "care and management" are commonly understood and applied in animal husbandry and are adequate to provide guidance to attending veterinarians. Accordingly, we are retaining this requirement in the revised definition.

Four commenters stated their concern that the proposed definition of "attending veterinarian" would improperly shift responsibility from the Institutional Animal Care and Use Committee (Committee) to the "Attending Veterinarian." Three commenters from the research community stated that we should substitute the word "authority" for "responsibility" in the definition.

The Committee, or IACUC, has defined areas of responsibility and authority under the Act and the regulations, and the definition of "attending veterinarian" does not shift this burden. However, to make this clear, we are incorporating the suggested wording change to alleviate any concern that the "attending veterinarian" would have responsibilities which properly belong to the Committee. Moreover, the facility, in accordance with Part 2 of the regulations, as revised, is responsible for activities involving animals and for establishing and maintaining the Committee.

The definition of "attending veterinarian" would be as follows:

> a person who has graduated from a veterinary school accredited by the American Veterinary Medical Association's Council on Education, or has a certificate issued by the American Veterinary Medical Association's Education Commission for Foreign Veterinary Graduates, or has received equivalent formal education as determined by the Administrator; has received training and/or experience in the care and management of the species being attended; and who has direct or delegated authority for activities involving animals at a registered or licensed facility.

Business hours

We received a number of comments regarding the proposed definition of "business hours" as meaning "the hours between 7 a.m. and 7 p.m., Monday through Friday, except for statutory Federal holidays, each week of the year." We received 449 comments (424 from the research community and 25 from members of the general public) stating that the proposed hours are not the normal business hours for licensees and research facilities. We received 394 comments (332 from the research community, 22 from dealers, 9 from exhibitors, and 31 from members of the general public) stating that business hours should de defined as the normal business hours of the regulated entity, and 51 commenters (18 dealers and 33 from the research community) stated that business hours should be an 8-hour period between 7 a.m. and 7 p.m. We agree that some clarification of the definition is necessary to make clear our intent that for some reasonable time during the hours from 7 a.m. to 7 p.m. daily, every facility must make its animal housing facility(ies), animal use areas, and records available for APHIS inspection without an appointment or scheduled inspection being required. The facility would not have to be open during all hours between 7 a.m. and 7 p.m., and could be open fewer than 8 hours. For example, if a facility is open from noon until 7 p.m., it must be available for inspection at all times during those hours.

Accordingly, the definition of "business hours" is revised to be "a reasonable number of hours between 7 a.m. and 7 p.m., Monday through Friday, except for statutory Federal holidays, each week of the year, during which inspections by APHIS may be made."

Under this revised definition, facilities must be available for APHIS inspection every Monday through Friday, and not just on the days they are open for business or trade, since some facilities may be part-time operations or seasonal businesses but maintain animals year-round. The proposed range of hours would help avoid problems we have encountered in the past with some facilities which seem never to be open when APHIS inspectors arrive, or which purport to be open only at "other" times.

Commerce

Two commenters from the research community stated that the proposed definition of "commerce" should be clarified. We do not believe that the definition is unclear. We believe that the changes made to the current definition to indicate that intrastate activities are considered to be in commerce for purposes of the Act, and the inclusion of trade, traffic, transportation, or other commerce with any foreign country, will aid understanding of the term. The definition of "commerce" remains as proposed.

Committee

We received a number of comments concerning the proposed definition of "Committee." We received 311 comments (286 from the research community and 25 from members of the general public) stating that the Institutional Animal Care and Use Committee should be given the name used in the Act, that is, the Institutional Animal Committee, and 308 commenters (283 from the research community and 25 members of the general public) stated that research facilities should be given flexibility to identify the Committee by whatever name it selects. We received 121 comments from the research community stating that there is no statutory authority for requiring establishment of a Committee. This contention is incorrect. Section 13(b) of the Act authorizes the Secretary to require that each research facility establish at least one Institutional Animal Committee composed of members with sufficient ability "to assess animal care, treatment, and practices in experimental research * * *" (7 U.S.C. 2143(b)). We proposed the name "Institutional Animal Care and Use Committee" because it is descriptive of the areas of concern to the Committee, while the name "Institutional Animal Committee" is general and could lead to concern that the Committee would be involved in areas beyond the scope of the regulations. Our concern is not with the

name assigned to the Committee by a facility, but that the Committee, regardless of its name, carry out its responsibilities and duties. We proposed this name for purposes of uniformity and ease of reference. The definition of "Committee," including the name "Institutional Animal Care and Use Committee", remains as originally proposed.

Endangered species

We received one comment from the research community stating that the proposed definition of "endangered species" should be more specific than "those species defined in the Endangered Species Act (16 U.S.C. 1531, *et seq.*) and as it may be subsequently amended." Another comment from the research community stated that the definition should read any "endangered or threatened species as listed under the Endangered Species Act of 1973 as amended." The Endangered Species Act includes species which are determined to be endangered or threatened because of certain factors set forth in the statute. Accordingly, our proposed definition encompasses the definition suggested by the latter commenter. We believe it is impractical to be more specific in the definition of "endangered species," since the list of species covered by the Endangered Species Act is a changing one, with additions and deletions.

Euthanasia

We received 324 comments (299 from the research community and 25 from members of the general public) stating that the definition of "euthanasia" should not refer to "immediate" death and that unconsciousness need only be rapid and not "instantaneous." As stated in the Supplementary Information accompanying the March 31, 1987 proposed rule, we believe our proposal describes humane destruction of an animal. Deletion of the requirement that death be "immediate" and requiring instead that unconsciousness need only be rapid instead of instantaneous could result in use of less humane methods of euthanasia which in turn could result in prolonged suffering by the animals. No changes have been made in the definition.

The Supplementary Information accompanying the definition of "euthanasia" stated that the method used should be consistent with the recommendations of the AVMA's current Panel on Euthanasia. Eight commenters from the research community stated that the definition of "euthanasia" should set forth the specific AVMA recommendations on methods of euthanasia. We received 317 comments (292 from the research community and 25 from members of the general public) stating that all reference to the AVMA Panel on Euthanasia recommendations should be removed from the proposal since the AVMA Panel is an independent body, not subject to APHIS direction. We disagree with these comments for the following reasons. The definition as originally proposed would allow use of any humane method for euthanizing animals and does not refer to the AVMA Panel on Euthanasia recommendations. We believe it is appropriate to allow facilities to determine which humane method they wish to use. If there is a question as to whether a certain method would be considered humane, we will issue a written opinion, upon request. We believe that the recommendations of the AVMA's current Panel on Euthanasia would meet the requirements of the proposed definition. For that reason, we referred to the recommendations in the Supplementary Information to provide further guidelines to facilities in determining what methods will be considered humane. This reference is not part of the regulations.

Exotic animal

We received 358 comments (333 from the research community and 25 from members of the general public) stating that the definition of "exotic animal" as proposed would include nonhuman primates, hamsters, and some other rodents, and that these species should be excluded from this term. Five commenters (2 from the research community, 1 exhibitor, 1 dealer, and 1 member of the general public) stated that the proposed definition is confusing in general.

The proposal defined "exotic animal" as:

> any animal not identified in the definition of "animal" provided in this Part that is native to a foreign country or of foreign origin or character, is not native to the United States, or was introduced from abroad. This term specifically includes animals such as, but not limited to, lions, tigers, leopards, elephants, camels, llamas, antelope, anteaters, kangaroos, and water buffalo. Species of foreign domestic cattle, such as, Ankole, Gayal, Yak are included in this group.

We agree that there could be some confusion as a result of the definition, since many animals commonly found in the United States or generally not considered exotic are "not native to the United States, or were introduced from abroad." In fact many species of dogs are not native to the United States. Therefore, we are clarifying the definition to exclude those animals specifically included in the definition of "animal." We are also removing llamas from the definition of "exotic animal" in this revised rule because of the increasing numbers of llamas used on farms for breeding purposes.

Farm animal

We received 319 comments (294 from the research community and 25 from members of the general public) stating that the proposed definition of "farm animal" is confusing since it defines farm animals in terms of their use rather than their species. Seven commenters stated that our definition should be consistent with the definition of "animal" as set forth in the Animal Welfare Act. The Act excludes the following animals from the definition of "animal":

> horses not used for research purposes and other farm animals, such as, but not limited to livestock or poultry, used or intended for use as food or fiber, or livestock or poultry used or intended for improving animal nutrition, breeding, management or production efficiency, or for improving the quality of food or fiber.

The proposed definition is consistent with the definition of "animal" provided in the Act, in that it is the use or intended use which excludes farm animals from the Act, not their species. We are expanding the definition to include all the uses listed in the Act, in accordance with the commenters' suggestion, to avoid confusion.

Four commenters stated that the definition should refer to "warmblooded" domestic species to be consistent with the definition of "animal." We believe that this is unnecessary since "animal," as defined in the regulations, is limited to warmblooded species and there is no need to further identify farm animals as warmblooded.

As stated above, we are including llamas in the definition of farm animals when used or intended for use as farm animals, as set forth in the Act.

Housing facility

We received 60 comments from the research community objecting to the proposed definition of "housing facility" as "any land, premises, shed, barn building, trailer, or other structure or area housing or intended to house animals." These commenters stated that "housing facility" should be renamed "animal facility" and that these facilities should be distinguished from "animal study area," "acute research study area," "chronic research study area," and "holding facility." We have

considered those comments but do not agree with them. We believe there is no reason to distinguish animal study area, acute research study areas, chronic research study areas, and holding facilities for purposes of the standards, since these areas are all included within housing facilities and are subject to inspection and compliance with the regulations regardless of their name or research purpose. Also, the term "housing facility" applies to any facility used by any person subject to the Act to house animals, and is not limited to research facilities. The regulations pertaining to housing facilities contained in Part 2—"Regulations" and the proposed rule for Part 3—"Standards", published elsewhere in this issue of the **Federal Register** (see companion docket nos. 88–014 and 87–004, respectively), are equally applicable to all persons subject to the Act and to all parts of housing facilities. The definition remains as originally proposed.

Hybrid cross

Fourteen commenters from the research community objected to the proposed differentiation between domestic and wild hybrid cross animals and stated that all hybrids should be considered wild animals. The general consensus within the Agency remains that hybrid cross animals should be considered to be domesticated animals. For this reason and for the reasons provided in the Supplementary Information accompanying the March 31, 1987 proposed rule, the definition of "hybrid cross" remains as initially proposed.

Impervious surface

The proposed definition of "impervious surface" includes the requirement that "[f]luids on such surfaces will bead or run off, * * *". We received 363 comments (338 from research community and 25 from members of the general public) objecting to this portion of the definition because some nonpermeable floor surfaces will not cause fluids to bead up or fun off, but otherwise do meet the definition of "impervious surface." We agree that this can be the case with some impervious surfaces and are modifying this provision in the definition. Our concern is that the surfaces be those that can be readily cleaned and that they not absorb material which could contaminate the surface and cause problems with sanitization. The definition, as revised, includes surfaces on which fluid beads up and runs off and surfaces from which fluids can be removed without their being absorbed into the surface material.

Two dealers and two commenters from the research community stated that some species do not require impervious surfaces and that for some species impervious surfaces may in fact be detrimental to their well-being. We agree, and have addressed these situations in the standards provided in the proposed rule for Part 3—"Standards", published elsewhere in this issue of the **Federal Register** in companion docket no. 87–004. Those proposed standards require impervious surfaces in defined instances.

We received 317 comments (292 from the research community and 25 from members of the general public) stating that the requirements that impervious surfaces not retain odors is inappropriate since odors are a function of cleaning and not the surface. We disagree, since some surfaces absorb disturbing odors regardless of how well they are cleaned. This requirement remains in the definition.

Indoor housing facility

We received 352 comments (326 from the research community, 25 from members of the general public, and 1 from an exhibitor) stating that the requirement that an "indoor housing facility" must be capable of maintaining humidity levels of 30 to 70 percent is too rigid and should be deleted from the definition. We disagree, and we believe the required range of a 30 to 70 percent humidity level is a reasonable one. Most species of animals that would be housed in indoor housing facilities require humidity levels within this range for their general health and welfare. This is reflected in the standards provided in the proposed rule for Part 3—"Standards" and published elsewhere in this issue of the **Federal Register** in companion docket no. 87–004. We do not believe compliance with this requirement will prove burdensome. Facilities receiving NIH funds for research currently must provide assurance that they are in compliance with the requirements contained in the NIH Guide for the Care and Use of Laboratory Animals. The Guide provides humidity levels within this same range for dogs, cats, and nonhuman primates. The Guide provides a range of 40 to 70 percent for most other warmblooded animals. Moreover, since 1967, indoor housing facilities have been required under our regulations to have the capability of controlling the environment within the facility. The definition remains as originally proposed.

Inspector

In the March 31, 1987 proposal, we proposed to define the term, "Veterinary Services representative," as "any inspector or other person employed by the Department who is responsible for the performance of a function under the Act." (In accordance with a change in internal policy, the term, "Veterinary Services representative," has been replaced with "APHIS official" in the revised rule.) The term "inspector" also appears in Part 2 and 3 of the regulations (see companion docket nos. 88–014 and 87–004, respectively) but was not separately defined in the March 31, 1987 proposal. We believe it would be helpful to the public to define the term "inspector." Because an inspector is an APHIS official, the definition of each term would be the same. Accordingly, the term "inspector" is defined to mean "any person employed by the Department who is authorized to perform a function under the Act and the regulations in 9 CFR Parts 1, 2, and 3."

Major operative experiment

We received 74 comments, all from the research community, stating that the definition of "major operative experiment" should be changed from "any surgical intervention that penetrates and exposes a body cavity or that has the potential for producing a permanent disability" to any surgical intervention that both penetrates and exposes a major body cavity and/or is intended to cause physical or physiological impairment. We disagree.

It is necessary to define this term since the 1985 amendments to the Act plainly require standards providing that no animal be used in more than one major operative experiment from which it is allowed to recover, except (1) in cases of scientific necessity, (2) in cases of special circumstances as determined by the Secretary, or (3) when otherwise required by a research protocol (7 U.S.C. 2143(a)(3) (D) and (E)). There is no basis under the Act for requiring that a procedure result in an actual impairment or that it be performed with the established intent of causing physical or physiological impairment for it to be termed a "major operative experiment." The intended effect in performing a procedure cannot be relied upon to determine whether a procedure should be termed "major" or "minor" since that effect may or may not be accomplished. We consider that the potential for disability is sufficient to warrant considering the procedure to be "major." We do not regulate the intent underlying

experimentation, and intent should not enter into a definition of what is considered to be a "major operative experiment." The definition remains as originally proposed.

Mobile or traveling housing facility

Our proposal, published elsewhere in this issue of the **Federal Register** (see companion docket no. 87–004), to revise Part 3, Subparts A and D, would allow dogs, cats, and nonhuman primates to be maintained in four different types of animal housing facilities: indoor, outdoor, sheltered, and mobile or traveling housing facilities. Definitions for indoor, outdoor, and sheltered animal housing facilities were included in our March 31, 1987 proposal to revise Part 1 (see 52 FR 10292–10298). However, no definition of the term "mobile or traveling housing facility" was proposed. Therefore, we are adding a definition of the term as follows:

> a transporting vehicle, such as a truck, trailer, or railway car, used to house animals while traveling for exhibition or public education purposes.

These purposes would include circuses, carnivals, traveling zoos, education exhibits, and traveling animal acts.

Non-conditioned animals

One exhibitor commented that the proposed definition of "non-conditioned animal" is vague. The current definition is "animals which have not been subjected to special care and treatment for sufficient time to stabilize and, where necessary, to improve their health to make them more suitable for research purposes." Since 1967 the definition of this term has been substantially as we proposed, except that the definition referred only to animals intended for use in research facilities. The proposed definition deletes the phrase "to make them more suitable for research purposes," making the term applicable to animals used by all persons subject to the Act and the regulations. We believe this change is necessary since it is equally applicable to animals held by dealers and exhibitors and to animals in transport. We inadvertently did not explain this change in the Supplementary Information to the proposed rule. The definition remains as proposed in the March 31, 1987 proposal.

Outdoor housing facility

The current definition of "outdoor housing facility" is "any structure or building, housing or intended to house animals, which does not meet the definition of "indoor housing facility"." In the March 31, 1987 proposal and in this rule, we added a definition for another type of housing facility, known as a "sheltered housing facility." Accordingly, we proposed to define the term "outdoor housing facility" as a structure, land, or premise, housing or intended to house animals, 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." Revising the definition became necessary because a sheltered housing facility is neither an outdoor nor an indoor housing facility. In this document, we are also adding a definition of the term, "mobile or traveling housing facility," which is another type of housing facility that may be used to house animals under the regulations. (Proposed specifications pertaining to sheltered and mobile or traveling animal housing facilities when used to house dogs, cats, and nonhuman primates appear in the proposed rule for Part 3—"Standards," companion docket no. 87–004, published elsewhere in this issue of the **Federal Register.** To avoid having to amend the definition of "outdoor housing facility" each time another type of housing facility is authorized for use under the regulations, we are revising the definition in this rule to mean "a structure, land, or premise, housing or intended to house animals, which does not meet the definition of any other type of housing facility provided in the regulations and in which temperatures cannot be controlled within set limits."

Three commenters (2 from the research community and 1 exhibitor) stated that a more stringent definition of "outdoor housing facility" is necessary. We believe that this is unnecessary and could prove to be too limiting in application. We encourage the design and development of animal facilities which provide animals with natural environments appropriate for the species of animal housed and which allow ready access to runs and similar areas for exercise and social interaction. We believe that providing a more exacting definition could discourage the construction of animal housing facilities of this type.

Painful procedure

We received 345 comments (320 from the research community and 25 from members of the general public) stating that the definition of "painful procedure" should be revised to be consistent with the "U.S. Government Principles for the Utilization and Care of Vertebrate Animals Used in Testing, Research, and Training" which appears in the U.S. Public Health Service Policy on Humane Care and Use of Laboratory Animals ("PHS Policy"). All PHS-conducted or supported activities involving animals must comply with the PHS Policy. Principle V provides that "[p]rocedures with animals that may cause more than momentary or slight pain or distress should be performed with appropriate sedation, analgesia, or anethesia. Surgical or other painful procedures should not be performed on unanesthetized animals paralyzed by chemical agents." We used similar language in the proposed definition of "painful procedure" and, as provided in Principle IV, we proposed using human beings as the reference point for determining whether a procedure is a "painful procedure." Principle IV states that "[u]nless the contrary is established, investigators should consider that procedures that cause pain or distress in human beings may cause pain or distress in other animals." We believe that our proposed definition is consistent with the PHS Policy and with the advice of the commenters, and that no revision is necessary. We received 142 comments from the research community stating that this approach is too anthropomorphic. We believe that using human standards of pain is necessary to properly define when a procedure is to be considered painful and to make the definition meaningful to those persons applying it. The definition remains as originally proposed.

Paralytic drug

In accordance with section 13(a)(3)(C)(iv) of the Act, (7 U.S.C. 2143(a)(3)(C)(iv)), § 2.30(e)(9) of the revised rule for Part 2 (see companion docket no. 88–014) provides that each research facility that engages in a painful practice or procedure using an animal must prohibit the use of paralytic drugs without anesthesia. Section 2.30(e)(10), as revised, would require that the research facility establish a written policy to ensure compliance with the prohibition. These provisions were originally proposed in § 2.30(e)(4) at 52 FR 10312.

We received 31 comments from the research community in response to the proposed rule stating that the term "paralytic drug" should be defined. We agree and are adding a definition of the term as follows:

> a drug which causes partial or complete loss of muscle contraction and which has no anesthetic or analgesic properties, so that the animal cannot move, but is completely aware of its surroundings and can feel pain.

This definition is in accordance with the generally accepted usage of the term among professionals and professional

organizations and is consistent with the intent of the Act.

Pet animal

We received 5 comments (4 from the research community and 1 from a dealer) stating that the definition of "pet animal" should exclude exotic or wild animals. We agree and intended to exclude them by using the phrase "any animal that has commonly been kept as a pet animal" in the definition. To clarify this point further we are adding examples of common household pets to the definition, such as dogs, cats, guinea pigs, rabbits, and hamsters.

Positive physical contact

Our proposal to amend Part 3, Subpart A (see companion docket no. 87–004), would require that individually housed dogs receive positive physical contact with humans. We are adding a definition of the term "positive physical contact" as it is commonly understood by the public, that is, "petting, stroking, or other touching, which is beneficial to the well-being of the animal."

Primary enclosure

We did not receive any comments addressing the proposed definition of "primary enclosure." We are replacing the word "chain" in the rule with "tether," however, to include all like devices used to restrict an animal's radius of movement.

Principal investigator (investigator)

The revised rule for Part 2 of the regulations (see companion docket no. 88–014) would require that research facilities impose certain duties and responsibilities on the principal investigator in planning and carrying out the animal care and use procedure (ACUP) of a research project. We are adding a definition of the term "principal investigator" as "an employee of a research facility responsible for a proposal to conduct research and for the design and implementation of research involving animals." This is the meaning of the term as it is used in the research community. It is also the meaning of the term as it is used by the U.S. Public Health Service in its "Public Health Service Policy on Humane Care and Use of Laboratory Animals." The Policy provides guidelines, issued by the U.S. Public Health Service under the Health Research Extention Act of 1985, for the proper care and treatment of animals used in biomedical and behavioral research. We are adding the definition to Part 1 of the regulations so that members of the general public will share the same understanding of the term.

Protocol

We proposed to define the term "Protocol" as "an investigator's plan for the use of animals in a study of a biomedical problem." We received 409 comments (384 from the research community and 25 from members of the general public) objecting to use of the term "protocol" and to our proposal to require review and approval of protocols by a facility's Institutional Animal Care and Use Committee. We received 342 comments (317 from the research community and 25 from members of the general public) stating that the term is not defined in the Animal Welfare Act and should be deleted from the regulations altogether.

Although the term is not defined in the Act it does appear in section 13 of the Act (7 U.S.C. 2143), which mandates the imposition of certain responsibilities upon research facilities and upon their Committee for carrying out the purposes of the Act. We believe that use of the term "protocol" is therefore proper. We understand from the comments we received that use of this term may imply to some research facilities that APHIS would be involved in the evaluation of the design, outlines, guidelines, and scientific merit of proposed research. That is not our intent. Our concern is with the animal care and use portion of the research, that is, how the research will treat or affect an animal, the condition of an animal, and the circumstances under which an animal is maintained. Accordingly, to clarify our intentions and avoid any misunderstanding, the term "protocol" is changed in this revised rule to "animal care and use procedure" ("ACUP"). The definition is also clarified to include an investigator's plan for the care of animals in addition to a plan for the use of animals.

The comments we received concerning our statutory authority to require review of what is now termed the "animal care and use procedure" are addressed in companion docket number 88–014, Part 2—"Regulations," published elsewhere in this issue of the **Federal Register**.

Research facility

Thirty-seven commenters from the research community stated that the word "biomedical" should not appear in the definition of "research facility." In writing our proposed definition of "research facility," we tried to follow the language of the Act as closely as possible. This term appears in the Act's definition of "research facility" (7 U.S.C. 2132(e)).

Nineteen commenters from the research community stated that the definition of "research facility" should exclude government agencies responsible for protection and management of the wildlife resources of a state. Again, in writing our proposed definition of "research facility," we tried to follow the language of the Act as closely as possible, and the Act allows no specific exclusion of government agencies of the type described by the commenters.

After carefully considering these comments, we have decided to adopt the Act's definition of "research facility" and use it in our regulations. We believe this would avoid confusion and ensure that our regulations accomplish the intent of the Act. The only change we are making in the definition is to replace the term "Secretary" with the term "Administrator."

Retail pet store

In our proposed definition of "retail pet store," reference to exhibiting nonpet animals was inadvertently omitted, although it was included in the Supplementary Information. We are revising the definition of "retail pet store" from that appearing in the March 31, 1987 proposal to exclude establishments or persons exhibiting or offering to exhibit any wild or exotic or other nonpet species of warmblooded animals (except birds), such as skunks, raccoons, nonhuman primates, squirrels, ocelots, foxes, coyotes, etc., in addition to those selling or offering to sell these nonpet species. These establishments and persons would be required to obtain a license under Part 2 of the regulations.

We are also adding a fifth exclusion for retail pet stores that exhibit animals in a room that is separate from or adjacent to a retail pet store, in an outside area, or anywhere off the pet store premises. If the pet animals are taken off the premises for purposes of exhibition, such as at schools, parades, or shopping malls, or are placed in outside areas or areas adjacent to the pet store for use in a petting zoo-type exhibit, the establishment or person exhibiting the pet animals must obtain a license under Part 2 of the regulations. This exclusion would prevent exhibitors from claiming to be retail pet stores in order to avoid being licensed in accordance with Part 2 of the regulations.

We are deleting mink from the list of pet animals sold by retail pet stores in response to a comment regarding the proposed definition of "wild animal." We are doing so because of their vicious nature. Mink are not regulated animals,

however, when used or intended for use solely for food or fiber purposes.

Sanitize

We received 4 comments from the research community stating that "sanitize" should be redefined so as to require removal of dirt, debris and harmful contamination, instead of requiring removal and destruction, to the maximum degree that is practical, of any agents injurious to health. The definition of "sanitize" has been the same as we proposed since 1966. We do not believe it appropriate to delete the requirement to destroy injurious agents since elimination of these agents results in a more healthful environment for animals that may be exposed to them. The definition remains as proposed.

Sheltered housing facility

Three commenters from the general public stated that the definition of "sheltered housing facility" should be deleted as this type of facility could lead to mistreatment of the housed animals. In the proposed rule for Part 3—"Standards" (see companion docket no. 87–004 published elsewhere in this issue of the **Federal Register**), we have proposed specifications for this type of housing facility which include requirements for heating, cooling, ventilation, cleaning, drainage, and lighting. We believe that a sheltered housing facility which is in compliance with these proposed standards can be effectively used to house animals in a humane manner in accordance with the Act.

Wild animal

We proposed to define "wild animal" as:

> any animal which is now or historically has been found in the wild, or in the wild state, within the boundaries of the United States, its territories, or possessions. This term includes, but is not limited to animals such as: Buffalo, deer, skunk, opossum, raccoon, armadillo, coyote, squirrel, fox, wolf.

One dealer and one member of the general public commented in disagreement with our proposed definition. One dealer stated that ferrets and mink should be classified as wild animals, and 9 dealers and 2 exhibitors stated that deer, llama, and buffalo should be classified as domestic animals. As explained above under "Retail pet store," we agree that mink should be considered a "wild animal" due to its vicious nature. The definition of "wild animal" will be changed to include mink. We disagree with the comment with regard to ferrets, however, since they are considered to be easily handled and relatively nondangerous, and are now commonly bred and kept as pet animals. We also disagree with classifying deer as domestic animals. Although some individuals may be raised in captivity and would be considered tame, most deer are found in the wild. However, we do agree with the commenters with regard to buffalo. Buffalo are nearly extinct in the wild. Most now exist in game preserves, where they are displayed in natural settings. Under these circumstances they are not wild animals. Therefore, we are removing them from the definition of "wild animal." We are making no change in the definition of "wild animal" with regard to llamas because llamas were not include as wild animals in our proposed definition of the term. We also want to make it clear that wild rats and mice are included in the definition of wild animal, as distinguished from rats and mice bred in captivity for use in research, and that wild rats and mice are regulated animals under the Act.

We received no comments concerning the remaining definitions and they remain in this rule as originally proposed.

Miscellaneous

As a result of a change in internal policy, the term "Veterinary Services" is replaced with "APHIS" wherever it appears and the definition of "Veterinary Services" is not included in this revised rule. We have defined "APHIS" to mean "the Animal and Plant Health Inspection Service, United States Department of Agriculture."

In order to be consistent with this change in policy, the term "Veterinary Services representative," is replaced with "APHIS official." We proposed to define the term, "Veterinary Services representative" to mean "any inspector or other person employed by the Department who is responsible for the performance of a function under the Act." We have added a definition of the term "inspector" in this revised rule, as explained above. For this reason, the definition of "APHIS official" does not specifically refer to inspectors. We are using the word "authorized" in place of "responsible" in the definition of "APHIS official" because the Secretary of Agriculture is responsible for performance under the Act. Department employees are authorized to perform certain functions. We are also clarifying the definition by including the performance of functions under the regulations as well as under the Act, because the regulations are promulgated under the Act. Accordingly, "APHIS official" is defined to mean "any person employed by the Department who is authorized to perform a function under the Act and the regulations in 9 CFR Parts 1, 2, and 3."

We are correcting the following typographical errors which appeared in the March 31, 1987 proposal:

(1) We are correcting two errors in the proposed definition of "Class "B" licensee (dealer)". In the first sentence the reference to "§ 1.1(q)" has been changed to "§ 1.1" since we are not lettering the paragraphs, and in the second sentence "at an auction sale" has been corrected to read "of an auction sale."

(2) We are similarly changing the reference to "§ 1.1(x)" in the definition of "Class "C" licensee (exhibitor)" to "§ 1.1" since we are not lettering the paragraphs.

(3) In the definition of "endangered species," the closing parentheses are placed after the statutory citation instead of the period.

Statutory authority for this Proposed Rule

This proposed rule is issued pursuant to the Animal Welfare Act (Act), as amended, 7 U.S.C. 2131–2157. Congress recently added significantly to the Secretary's responsibilities under the Act by amendments in the Food Security Act of 1985, Pub. L. No. 99–198, approved December 23, 1985. 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 mandates that the Secretary of Agriculture promulgate regulations and standards to govern the humane handling, care, treatment, and transportation of animals by dealers, exhibitors, research facilities, carriers, and intermediate handlers. To accomplish this, the Secretary must define certain key words used in the regulations and standards so that persons subject to the Act, regulations, and standards can comply with their requirements.

The Act itself defines some of the terms which appear in this rule. The Act also authorizes the Secretary to promulgate such rules, including additional definitions, as he deems necessary to effectuate the purposes of the Act.

Executive Order 12291

On March 31, 1987, the Department published proposed rules to amend Part 1—"Definition of Terms" and Part 2—"Regulations," of the Animal Welfare regulations (52 FR 10292, 10298) in order to implement the 1985 amendments to the Animal Welfare Act, Pub. L. 99-198, the "Food Security Act." The proposed action was reviewed pursuant to Executive Order 12291 and it was determined that it did not constitute a "major rule." We solicited comments with regard to the proposed rules, and have made modifications to those rules as explained in the "Supplementary Information." At this time, we are also publishing a proposal to revise the standards contained in 9 CFR Part 3—"Standards," published elsewhere in this issue of the **Federal Register.**

In revising Parts 1 and 2, and in preparing the proposed rule for Part 3, we assessed the economic effects of the regulations in accordance with the requirements of Executive Order 12291. We considered alternative approaches to carrying out our statutory mandate, many of which we adopted. A regulatory impact analysis of revised Parts 1 and 2, and the proposal for Part 3 was prepared. Based on that analysis, which included consideration of both quantifiable and nonquantifiable effects of the rules, the Administrator has determined that Parts 1 and 2 would have an impact on the economy in excess of $100 million annually, and would constitute a "major rule."

The following requirements under Parts 1 and 2 represent some of the major costs to the regulated industries: (1) The establishment and responsibilities of the animal care and use committees; (2) aseptic surgical facilities and adequate pre- and post-procedural care; (3) increased responsibilities for attending veterinarians; (4) additional administrative responsibilities; (5) increases in license fees; and (6) identification for dogs and cats less than 16 weeks of age.

The economic impacts of these rules are discussed in more detail in a regulatory impact analysis, which is available for public inspection in Room 1141 of the South Building, U.S. Department of Agriculture between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays (address above). Main findings of this analysis are summarized below.

SUMMARY OF REGULATORY IMPACT ANALYSIS

Costs	Benefits
Direct	Direct
Regulated industry	Increased public satisfaction from improved animal welfare*.
Capital expenditure:	
(all parts) $876 million	Improved research information*.
(parts 1-2) $142 million	Productivity gains for regulated industries*.
Annual costs:	
(all parts) $207 million	
(parts 1-2) $126 million	
APHIS program costs Impact on federal sites* $2 million.	
Indirect	Indirect
Opportunity costs for users of biomedical research (goods and service), pet industry, and animal exhibits*.	Market effects for suppliers of animal husbandry products*.
Increased federal financial support for biomedical community*.	Non-market effects*.
Non-market effects*.	

* Not quantified.

Compliance with more stringent federal regulations on the humane care and treatment of animals used for research, testing, teaching, exhibition, and business ventures would result in major direct and indirect effects imposed on the regulated industries and the general economy. An examination of the estimated cost impacts indicates that the amended regulations constitute a "major rule" based on annual effects in excess of $100 million on the economy and large cost increases on regulated industries for animal uses and maintenance, in particular to the biomedical research community. However, this study could not properly assess the relative significance of these cost increases on the regulated industry or the presence of adverse effects on competition, innovation, and the ability of domestic enterprises to compete with foreign enterprises in international markets.

Regulated persons or establishments will be required to spend approximately $876 million in capital expenditures over the next two or three years. Of this amount approximately 16 percent is attributable to Parts 1 and 2. If Parts 1 and 2 were enforced separately, regulated research facilities will be required to spend approximately $142 million to renovate, equip, replace, or construct aseptic surgical facilities, and provide for adequate per- and post-surgical care. Capital expenditures attributable to Part 3 include costs for renovation, equipment replacement, and new construction of animal housing facility space. Capital expenditures to improve animal housing facilities would result from the new minimum standards for general environmental conditions, space or primary enclosure size requirements, exercise of dogs, and enrichment of nonhuman primate enclosures.

In addition to capital expenditures, total annual operating exenditures estimated at $207 million will also be required. Approximately 60 percent of this total ($126 million) is accounted for by Parts 1 and 2, primarily the requirements for the establishment and operations of the institutional animal care and use committees, additional responsibilities for attending veterinarians, and record-keeping requirements. Annual expenditures attributable to Part 3 would result from the need for additional personnel (animal handlers) to execise dogs, and the daily maintenance of animal housing facilities.

An important result of this regulatory analysis is that policy decisions must consider other direct and indirect effects associated with the promulgation and enforcement of federal rules. Increased federal legislation causes important economic benefits and costs which are unevenly distributed among registrants and licensees. Direct benefits accrue to society by knowing that animals may be better cared for and treated humanely. The value of these social benefits are subject to personal preferences and concerns. Improvements in the well-being of regulated animals may also provide gains in productivity to the industry. On the other hand, increased costs of compliance will be passed from the regulated industry to consumers who purchase their goods and services. For example, the field of biomedical research and education depends heavily on the use of animals to conduct tests and experiments. Increased costs for animal uses have broader economic and health implications for all of us. Study results do not suggest that these regulations would cause establishments to abandon the use of animals since current biomedical research outlays are in excess of $12.8 billion per year. Nonetheless, there could be important effects associated with allocating additional funds or expenditures to comply with the amended animal welfare regulations.

Regulatory Flexibility Act

As part of the regulatory impact analysis performed by the Department we have analyzed the potential impact on small entities of Parts 1 and 2, as revised, and the proposal to amend Part

3 of the Animal Welfare regulations, as required by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Based upon our analysis, we have determined that Parts 1 and 2 of the regulations would affect all regulated small entities, primarily by increases in annual license fees and identification requirements for dogs and cats. However, these economic impacts would not be significant. It is anticipated that the largest impact on small entities would result from Part 3—"Standards", if it is implemented as proposed. 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.

Executive Order 12372

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

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 will be submitted for approval to the Office of Management and Budget (OMB). Your written comments will be considered if you submit them to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. You should submit a duplicate copy of your comments to Helene R. Wright, Chief, Regulatory Analysis and Development Staff, PPD, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

List of Subjects in 9 CFR Part 1

Animal welfare, Animal housing, Dealers, Exhibitors, Research facilities, Humane animal handling.

Accordingly, we are proposing to amend 9 CFR Part 1 as follows:

PART 1—DEFINITION OF TERMS

1. The authority citation for Part 1 would be revised to read as follows:

Authority: 7 U.S.C. 2133, 2135, 2136, 2140, 2141, 2142, 2143, 2146, 2147, 2151; 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 1.1 would be revised to read as follows:

§ 1.1 Definitions

For the purposes of this subchapter, unless the context otherwise requires, the following terms shall have the meanings assigned to them in this section. The singular form shall also signify the plural and the masculine form shall also signify the feminine. Words undefined in the following paragraphs shall have the meaning attributed to them in general usage as reflected by definitions in a standard dictionary.

"Act" means the Act of August 24, 1966 (Pub. L. 89–544), (commonly known as the Laboratory Animal Welfare Act), as amended by the Act of December 24, 1970 (Pub. L. 91–579), (the Animal Welfare Act of 1970), the Act of April 22, 1976 (Pub. L. 94–279), (the Animal Welfare Act of 1976), and the Act of December 23, 1985 (Pub. L. 99–198), (the Food Security Act of 1985), and as it may be subsequently amended.

"Administrative unit" means the organizational or management unit at the departmental level of a research facility.

"Administrator" means the Administrator of the Animal and Plant Health Inspection Service, U.S. Department of Agriculture, or any other official of the Animal and Plant Health Inspection Service to whom authority has been delegated to act in his stead.

"Ambient temperature" means the air temperature surrounding the animal.

"Animal" means any live or dead dog, cat, nonhuman primate, guinea pig, hamster, rabbit, or any other warmblooded animal, which is being used, or is intended for use for research, teaching, testing, experimentation, or exhibition purposes, or as a pet. This term excludes: Birds, rats and mice bred for use in research, and horses and other farm animals, such as, but not limited to livestock or poultry, used or intended for use as food or fiber, or livestock or poultry used or intended for use for improving animal nutrition, breeding, management, or production efficiency, or for improving the quality of food or fiber. With respect to a dog, the term means all dogs including those used for hunting, security, or breeding purposes.

"Animal act" means any performance of animals where such animals are trained to perform some behavior or action or are part of a show, performance, or exhibition.

"Animal care and use procedure" (ACUP) means an investigator's plan for the care and use of animals in a study of a biomedical problem.

"APHIS" means the Animal and Plant Health Inspection Service, United States Department of Agriculture.

"APHIS official" means any person employed by the Department who is authorized to perform a function under the Act and the regulations in 9 CFR Parts 1, 2, and 3.

"Area Veterinarian in Charge" means a veterinarian or his designee, employed by APHIS, who is assigned by the Administrator to supervise and perform the official work of APHIS in a given State or States. As used in Part 2 of this subchapter, the Area Veterinarian in Charge shall be deemed to be the person in charge of the official work of APHIS in the State in which the dealer, exhibitor, research facility, intermediate handler, carrier, or operator of an auction sale has his principal place of business.

"Attending veterinarian" means a person who has graduated from a veterinary school accredited by the American Veterinary Medical Association's Council on Education, or has a certificate issued by the American Veterinary Medical Association's Education Commission for Foreign Veterinary Graduates, or has received equivalent formal education as determined by the Administrator; has received training and/or experience in the care and management of the species being attended; and who has direct or delegated authority for activities involving animals at a facility subject to the jurisdiction of the Secretary.

"Business hours" means a reasonable number of hours between 7 a.m. and 7 p.m., Monday through Friday, except for legal Federal holidays, each week of the year, during which inspections by APHIS may be made.

"Business year" means the 12-month period during which business is conducted, and may be either on a calendar or fiscal-year basis.

"Carrier" means the operator of any airline, railroad, motor carrier, shipping line, or other enterprise which is engaged in the business of transporting any animals for hire.

"Cat" means any live or dead cat (Felis catus) or any cat-hybrid cross.

"Class "A" licensee" (breeder) means a person subject to the licensing requirements under Part 2 and meeting the definition of a "dealer" (§ 1.1), and whose business involving animals consists only of animals that are bred and raised on the premises in a closed or stable colony and those animals acquired for the sole purpose of maintaining or enhancing the breeding colony.

"Class "B" licensee" means a person subject to the licensing requirements under Part 2 and meeting the definition of a "dealer" (§ 1.1), and whose business includes the purchase and/or resale of any animal. This term includes brokers, and operators of an auction sale, as such individuals negotiate or arrange for the purchase, sale, or transport of

animals in commerce. Such individuals do not usually take actual physical possession or control of the animals, and do not usually hold animals in any facilities. A class "B" licensee may also exhibit animals as a minor part of the business.

"Class "C" licensee" (exhibitor) means a person subject to the licensing requirements under Part 2 and meeting the definition of an "exhibitor" (§ 1.1), and whose business involves the showing or displaying of animals to the public. A class "C" licensee may buy and sell animals as a minor part of the business in order to maintain or add to his animal collection.

"Commerce" means trade, traffic, transportation, or other commerce—

(1) Between a place in a State and any place outside of such State, including any foreign country, or between points within the same State but through any place outside thereof, or within any territory, possession, or the District of Columbia; or

(2) Which affects the commerce described in this part.

"Committee" means the Institutional Animal Care and Use Committee established under section 13(b) of the Act. It shall consist of at least three (3) members, one of whom is the attending veterinarian of the research facility and one of whom is not affiliated in any way with the facility other than as a member of the Committee. The research facility shall establish the Committee for the purpose of evaluating the care, treatment, housing, and use of animals, and for certifying compliance with the Act by the research facility.

"Dealer" means any person who, in commerce, for compensation or profit, delivers for transportation, or transports, except as a carrier, buys, or sells, or negotiates the purchase or sale of: Any dog or other animal whether alive or dead (including unborn animals, organs, limbs, blood, serum, or other parts) for research, teaching, testing, experimentation, exhibition, or for use as a pet; or any dog for hunting, security, or breeding purposes. This term does not include: A retail pet store, as defined in this section, unless such store sells any animals to a research facility, an exhibitor, or a dealer (wholesale); or any person who does not sell, or negotiate the purchase or sale of any wild or exotic animal, dog, or cat and who derives no more than $500 gross income from the sale of animals other than wild or exotic animals, dogs, or cats, during any calendar year.

"Department" means the U.S. Department of Agriculture.

"Deputy Administrator" means the Deputy Administrator for Veterinary Services or any other official of Veterinary Services to whom authority has been delegated to act in his stead.

"Dog" means any live or dead dog (Canis familiaris) or any dog-hybrid cross.

"Dwarf hamster" means any species of hamster such as the Chinese and Armenian species whose adult body size is substantially less than that attained by the Syrian or Golden species of hamsters.

"Endangered species" means those species defined in the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and as it may be subsequently amended.

"Euthanasia" means the human destruction of an animal accomplished by a method which produces instantaneous unconsciousness and immediate death without evidence of pain or distress, or a method that utilizes anesthesia produced by an agent which causes painless loss of consciousness and subsequent death.

"Exhibitor" means any person (public or private) exhibiting any animals, which were purchased in commerce or the intended distribution of which affects commerce, or will affect commerce, to the public for compensation, as determined by the Secretary. This term includes carnivals, circuses, animal acts, zoos, and educational exhibits, exhibiting such animals whether operated for profit or not. This term excludes retail pet stores, horse and dog races, organizations sponsoring and all persons participating in State and county fairs, livestock shows, rodeos, field trials, coursing events, purebred dog and cat shows and any other fairs or exhibitions intended to advance agricultural arts and sciences as may be determined by the Secretary.

"Exotic Animal" means any animal not identified in the definition of "animal" provided in this part that is native to a foreign country or of foreign origin or character, is not native to the United States, or was introduced from abroad. This term specifically includes animals such as, but not limited to, lions, tigers, leopards, elephants, camels, antelope, anteaters, kangaroos, and water buffalo, and species of foreign domestic cattle, such as Ankole, Gayal, and Yak.

"Farm animal" means any domestic species of cattle, sheep, swine, goats, llamas, or horses, which are normally and have historically, been kept and raised on farms in the United States, and used or intended for use as food or fiber, or for improving animal nutrition, breeding, management, or production efficiency, or for improving the quality of food or fiber. This term also includes animals such as rabbits, mink, and chinchilla, when they are used solely for purposes of meat or fur, and animals such as horses and llamas when used solely as work and pack animals.

"Federal agency" means an Executive agency as such term is defined in section 105 of Title 5, United States Code, and with respect to any research facility means the agency from which the research facility receives a Federal award for the conduct of research, experimentation, or testing involving the use of animals.

"Federal award" means any mechanism (including a grant, award, loan, contract, or cooperative agreement) under which Federal funds are used to support the conduct of research, experimentation, or testing, involving the use of animals. The permit system established under the authorities of the Endangered Species Act, the Marine Mammal Protection Act, and the Migratory Bird Treaty Act, are not considered to be Federal awards under the Animal Welfare Act.

"Federal research facility" means such department, agency, or instrumentality of the United States which uses live animals for research or experimentation.

"Handling" means petting, feeding, watering, cleaning, manipulating, loading, crating, shifting, transferring, immobilizing, restraining, treating, training, working and moving, or any similar activity with respect to any animal.

"Housing facility" means any land, premises, shed, barn, building, trailer, or other structure or area housing or intended to house animals.

"Hybrid cross" means an animal resulting from the crossbreeding between two different species or types of animals. Crosses between wild animal species, such as lions and tigers, are considered to be wild animals. Crosses between wild animal species and domestic animals, such as dogs and wolves or buffalo and domestic cattle, are considered to be domestic animals.

"Impervious surface" means a surface that does not permit the absorption of fluids. Such surfaces are those that can be thoroughly and repeatedly cleaned and disinfected, will not retain odors, and from which fluids bead up and run off or can be removed without their being absorbed into the surface material.

"Indoor housing facility" means any structure or building with environmental controls housing or intended to house animals and meeting the following three requirements:

(1) It must be capable of controlling the temperature within the building or structure within the limits set forth for that species of animal, of maintaining humidity levels of 30 to 70 percent and of rapidly eliminating odors from within the building; and

(2) It must be an enclosure created by the continuous connection of a roof, floor, and walls (a shed or barn set on top of the ground does not have a continuous connection between the walls and the ground unless a foundation and floor are provided); and

(3) It must have at least one door for entry and exit that can be opened and closed (any windows or openings which provide natural light must be covered with a transparent material such as glass or hard plastic).

"Intermediate handler" means any person, including a department, agency, or instrumentality of the United States or of any State or local government (other than a dealer, research facility, exhibitor, any person excluded from the definition of a dealer, research facility, or exhibitor, an operator of an auction sale, or a carrier), who is engaged in any business in which he receives custody of animals in connection with their transportation in commerce.

"Inspector" means any person employed by the Department who is authorized to perform a function under the Act and the regulations in 9 CFR Parts 1, 2, and 3.

"Isolation" in regard to marine mammals means the physical separation of animals to prevent contact and a separate, noncommon, water circulation and filtration system for the isolated animals.

"Licensed veterinarian" means a person who has graduated from an accredited school of veterinary medicine or has received equivalent formal education as determined by the Administrator, and who has a valid license to practice veterinary medicine in some State.

"Licensee" means any person licensed according to the provisions of the Act and the regulations in Part 2 of this subchapter.

"Major operative experiment" means any surgical intervention that penetrates and exposes a body cavity or that has the potential for producing a permanent disability.

"Minimum horizontal dimension" (MHD) means the diameter of a circular pool of water, or in the case of a square, rectangle, oblong, or other shape pool, the diameter of the largest circle that can be inserted within the confines of such a pool of water.

"Mobile or traveling housing facility" means a transporting vehicle such as a truck, trailer, or railway car, used to house animals while traveling for exhibition or public education purposes.

"Nonconditioned animals" means animals which have not been subjected to special care and treatment for sufficient time to stabilize, and where necessary, to improve their health.

"Nonhuman primate" means any nonhuman member of the highest order of mammals including prosimians, monkeys, and apes.

"Operator of an auction sale" means any person who is engaged in operating an auction at which animals are purchased or sold in commerce.

"Outdoor housing facility" means any structure, building, land, or premise, housing or intended to house animals, which does not meet the definition of any other type of housing facility provided in the regulations and in which temperatures cannot be controlled within set limits.

"Painful procedure" as applied to any animal means any procedure that would reasonably be expected to cause more than slight or momentary pain or distress in a human being to which that procedure was applied, that is, pain in excess of that caused by injections or other minor procedures.

"Paralytic drug" means a drug which causes partial or complete loss of muscle contraction and which has no anesthetic or analgesic properties, so that the animal cannot move, but is completely aware of its surroundings and can feel pain.

"Person" means any individual, partnership, firm, joint stock company, corporation, association, trust, estate, or other legal entity.

"Pet animal" means any animal that has commonly been kept as a pet in family households in the United States, such as dogs, cats, guinea pigs, rabbits, and hamsters. This term excludes exotic animals and wild animals.

"Positive physical contact" means petting, stroking, or other touching which is beneficial to the well-being of the animal.

"Primary conveyance" means the main method of transportation used to convey an animal from origin to destination, such as motor vehicle, plane, ship, or train.

"Primary enclosure" means any structure or devide 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. In the case of animals restrained by a tether (e.g., dogs on chains), it includes the shelter and the area within reach of the tether.

"Principal investigator" means an employee of a research facility responsible for a proposal to conduct research and for the design and implementation of research involving animals.

"Quorum" means a majority of the Committee members.

"Random source" means dogs and cats obtained from animal pounds or shelters, auction sales, or from any person who did not breed and raise them on his or her premises.

"Registrant" means any research facility, carrier, intermediate handler, or exhibitor not required to be licensed under section 3 of the Act, registered pursuant to the provisions of the Act and the regulations in Part 2 of this subchapter.

"Reseach facility" means any school (except an elementary or secondary school), institution, organization, or person that uses or intends to use live animals in research, tests, or experiments, and that (1) purchases or transports live animals in commerce, or (2) receives funds under a grant, award, loan, or contract from a department, agency, or instrumentality of the United States for the purpose of carrying out research, tests, or experiments: *Provided*, That the Administrator may exempt, by regulation, any such school, institution, organization, or person that does not use or intend to use live dogs or cats, except those schools, institutions, organizations, or persons, which use substantial numbers (as determined by the Administrator) of live animals the principal function of which schools, institutions, organizations, or persons, is biomedical research or testing, when in the judgment of the Administrator, any such exemption does not vitiate the purpose of the Act.

"Retail pet store" means any outlet where only the following animals are sold or offered for sale, at retail, for use as pets: Dogs, cats, rabbits, guinea pigs, hamsters, gerbils, rats, mice, gophers, chinchilla, domestic ferrets, domestic farm animals, birds, and coldblooded species. Such definition excludes—

(1) Establishments or persons who deal in dogs used for hunting, security, or breeding purposes;

(2) Establishments or persons exhibiting, selling, or offering to exhibit or sell any wild or exotic or other nonpet species or warmblooded animals (except birds), such as skunks, raccoons, nonhuman primates, squirrels, ocelots, foxes, coyotes, etc.;

(3) Any establishment or person selling warmblooded animals (except birds, and laboratory rats and mice) for research or exhibition purposes; and

(4) Any establishment wholesaling any animals (except birds, rats and mice).

(5) Any establishment exhibiting pet animals in a room that is separate from or adjacent to the retail pet store, or in an outside area, or anywhere off the retail pet store premises.

"Sanitize" means to make physically clean and to remove and destroy, to the maximum degree that is practical, agents injurious to health.

"Secretary" means the Secretary of Agriculture of the United States or his representative who shall be an employee of the Department.

"Sheltered housing facility" means 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.

"Standards" means the requirements with respect to the humane housing, exhibition, handling, care, treatment, temperature, and transportation of animals by dealers, exhibitors, research facilities, carriers, intermediate handlers, and operators of auction sales as set forth in Part 3 of this subchapter.

"State" means a State of the United States, the District of Columbia, Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, or any other territory or possession of the United States.

"Transportation device" means an interim vehicle or device, other than man, used to transport an animal between the primary conveyance and the terminal facility or in and around the terminal facility of a carrier or intermediate handler.

"Transporting vehicle" means any truck, car, trailer, airplane, ship, or railroad car used for transporting animals.

"Weaned" means that an animal has become accustomed to take solid food and has so done, without nursing, for a period of at least 5 days.

"Wild animal" means any animal which is now or historically has been found in the wild, or in the wild state, within the boundaries of the United States its territories, or possessions. This term includes, but is not limited to, animals such as: Deer, skunk, opossum, raccoon, mink, armadillo, coyote, squirrel, fox, wolf.

"Wild state" means living in its original, natural condition; not domesticated.

"Zoo" means any park, building, cage, enclosure, or other structure or premise in which a live animal or animals are kept for public exhibition or viewing, regardless of compensation.

Done at Washington DC, this 7th day of March 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-5611 Filed 3-9-89; 2:09 pm]

BILLING CODE 3410-34-M

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9 CFR Part 2

[Docket No. 88-014]

Animal Welfare Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: This is a request for supplemental comments on the narrow issue of the interrelationship between Part 2 of the Animal Welfare Act regulations and our proposal to amend Part 3 of the regulations. We are proposing to amend the Animal Welfare regulations, 9 CFR Part 2. As part of our revision, we are proposing to add some new sections and revise others. New sections would provide regulations on Institutional Animal Care and Use Committees, Attending Veterinarians, and Veterinary Care. These amendments are necessary to comply with the amendments to the Animal Welfare Act (7 U.S.C. 2131, *et seq.*) ("Act") contained in Pub. L. 99-198, "The Food Security Act of 1985," enacted December 23, 1985. We are also proposing to add new sections on Holding Facilities and Handling to improve enforcement of the Act. We are proposing to revise other portions of the regulations in content and/or format to aid the public in understanding and using the regulations for the humane care, treatment, handling, and transportation of regulated animals. Rewriting the regulations is intended to make them easier to understand, thereby increasing compliance and making them more effective.

DATE: We will consider written comments addressing only the interrelationship of Parts 1 and 2 of the regulations with the proposed standards of Part 3, as explained in greater detail in the supplementary information which follows, that are postmarked or received on or before May 15, 1989.

ADDRESS: Send an original and three copies of your comments to Helene R. Wright, Chief, Regulatory Analysis and Development Staff, PPD, APHIS, USDA, Room 1000, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 88-014. Comments received may be inspected at the APHIS Public Reading Room, Room 1141, U.S. Department of Agriculture, 14th and Independence Avenue, SW., Washington, DC, 8:00 a.m. to 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. R.L. Crawford, Animal Care Staff, REAC, APHIS, USDA, Room 268, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7833.

SUPPLEMENTARY INFORMATION:

Background

In a document published in the **Federal Register**, on March 31, 1987 (52 FR 10298-10322), we proposed to revise the regulations contained in 9 CFR 2.1 through 2.130. These regulations pertain to licensing of dealers and exhibitors and registration of facilities and common carriers; recordkeeping for and identification of animals; holding periods and facilities; inspections; Institutional Animal Care and Use Committees; adequate veterinary care; and other areas relating to the humane care, handling, treatment, and transportation of animals. These changes have been proposed under the authority of the Animal Welfare Act (the Act), as amended (7 U.S.C. 2131, *et seq.*). They include some specific new requirements mandated by the 1985 amendments to the Act, contained in Pub. L. 99-198, "The Food Security Act of 1985," enacted December 23, 1985. The Act requires the Department to promulgate regulations and standards governing the humane handling, housing, care, treatment and transportation of certain animals by dealers, research facilities, exhibitors, carriers, and intermediate handlers. The standards and regulations must include minimum requirements with respect to handling, housing, feeding, sanitation, veterinary care, the use of pain relieving drugs, exercise for dogs, psychological well-being of nonhuman primates, recordkeeping, and other matters specified in section 13 of the Act, as amended (7 U.S.C. 2143).

We solicited comments concerning the proposal for a 60-day period ending June 1, 1987. The comment period was twice extended and ended on August 27, 1987. We did not consider comments and materials received after the closing date of August 27, 1987. We received a total of 7,857 comments addressing our proposal for Parts 1 and 2: 1,438 were

from the research community; 987 were from dealers and exhibitors; and 5,432 were from members of the general public. We included comments received from humane societies and groups representing the public in the areas of animal welfare and animal rights with comments received from the general public.

We received 344 comments (319 from the research community and 25 from members of the general public) stating that the Department should accord careful consideration to all of the comments received as required by the Administrative Procedure Act. We wish to assure the commenters, regulating persons, and members of the general public that the Department has carefully considered all of the comments that were received by the end of the comment period, and that we have revised the March 31, 1987 proposal on the basis of those comments where we considered it to be appropriate. These changes, discussed below, have been incorporated in this revised rule. We received much constructive input and appreciate the response.

Supplemental Request for Comments on the Interrelationship of Parts 1, 2, and 3 of the Animal Welfare Regulations

We received 334 comments (309 from members of the research community and 25 from members of the general public) suggesting that we revise the proposed rules for Parts 1 and 2, "Definition of Terms" and "Regulations," and publish a second proposal in the Federal Register for public comment. We also received 445 comments (400 from members of the research community and 45 from members of the general public) suggesting that we revise the proposals for Parts 1 and 2 and publish them along with our proposal for standards for the exercise of dogs and for a physical environment to promote the psychological well-being of nonhuman primates. These specific standards are mandated by the 1985 amendments to the Act.

We have decided to respond to the comments we received addressing the proposed rules, and to publish revised rules for Parts 1 and 2 in the same issue of the Federal Register in which we publish our proposal to amend Part 3 of the regulations, titled "Standards." The revised rules reflect our consideration of the nearly 8,000 comments received, our experience in administering and enforcing the regulations, and our ongoing consultation with the U.S. Department of Health and Human Services and other interested agencies. It is our present determination that upon their adoption as final rules, the revised provisions of Parts 1 and 2 conform with the requirements of the Animal Welfare Act, as amended.

Accordingly, we are publishing Parts 1 and 2 at this time, revised from our initial proposal, as explained in detail below. The revised rule for Part 2 contains specific regulations required by the 1985 amendments to the Act. These include regulations setting forth the responsibilities of Institutional Animal Care and Use Committees (IACUCs); requirements for Committee approval of animal care and use procedures in research involving animals; training by research facilities; use of pain relieving drugs; and inspection of animal use areas by the Committee. We believe that publication of the revised proposal for Part 2 concerning the administrative and institutional responsibilities of persons subject to the Act will assist the public in reviewing the proposed standards in Part 3 by placing the proposed standards in context. Also, many of the terms used in Part 3 are defined in Part 1, and a revised proposed rule containing definitions of those terms will aid the public in understanding the standards. The Department has decided upon this approach in the hope that it will answer many of the issues that would otherwise be raised in considering the standards contained in Part 3.

By way of example, we received 3 comments in response to proposed Part 2 (2 from dealers and 1 from a member of the general public) endorsing exercise for dogs and 13 comments (12 from dealers and 1 from a member of the general public) opposing mandatory exercise for dogs. One member of the general public commented in opposition to allowing dogs to be kept on tethers.

The requirements for exercise of dogs are directed by the Act (7 U.S.C. 2143(a)(2)(B)). They are contained in Subpart A of our proposed revision of Part 3, published elsewhere in this issue. (See companion docket no. 87-004.) We invite public comment in response to the proposed rule to amend Part 3.

At the urging of many commenters, we are publishing the revised rules for Parts 1 and 2 for the sole purpose of soliciting comments on the narrow issue of the interrelationship of the definitions and regulations in Parts 1 and 2 with the standards we are proposing in Part 3. The public is therefore invited to comment exclusively on this issue. We will not consider comments going beyond this issue.

Comments raising objections or suggesting changes to the March 31, 1987 proposal are discussed below in this supplementary information. Due to the length of this document and the scope of the issues addressed, subheadings are provided in the supplementary information to guide the reader through the material. Section numbers are used in the subheadings wherever possible to further assist the reader. We have provided the number of comments received and their source (e.g., research community, members of the general public) pertaining to each section because this information may be of interest to some readers. Except as explained in this supplementary information, the provisions of the March 31, 1987 proposal have been included in this revised rule for the reasons set forth in that proposal.

In our discussion of the comments we received, we refer to both the proposed rule published March 31, 1987 and to this revised proposed rule. In order to assist the reader in distinguishing between these two documents, we use the terms "proposed" or "proposal" when referring to the March 31, 1987 proposed rule. We use the terms "revised" or "revision" when referring to this revised rule.

In the supplementary information to proposed Parts 1 and 2, we stated that, based upon the information available to the Department, the proposed rules were issued in conformance with Executive Order 12291 and Secretary's Memorandum No. 1512-1, and that they had been determined not to be "major rules" (52 FR 10295 and 10307). We also stated that the information collection provisions included in proposed Part 2 had been submitted for approval to the Office of Management and Budget (OMB) (52 FR 10307) and that proposed Part 1 contained no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*). We further stated that the proposed rules would not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act (52 FR 10295 and 10307-10308).

We received 851 comments (825 from the research community, 25 from members of the general public, and 1 from a dealer) stating that the Department should perform the regulatory analyses required for: (1) A "major rule" under Executive Order 12291; (2) determining the impact on small entities in accordance with the Regulatory Flexibility Act; and (3) the Paperwork Reduction Act. Commenters demanded that we consider in our analysis the burden of administrative requirements required of the attending veterinarian and the Institutional

Animal Care and Use Committee under the proposal. We received 861 comments (834 from the research community, 1 from an exhibitor, and 26 from members of the general public) stating their disagreement with our statement that the proposed regulations are not a "major rule" under Executive Order 12291 and that the regulations would not impose significant financial burdens on registrants and licensees.

In conducting the regulatory analyses referenced above, we considered Parts 1 and 2 separately. The determinations we made were preliminary ones. Now, with more information available to us, including the comments we received, we have determined to consider the combined impact of Parts 1, 2, and 3. We have determined that, considered together, the rules for Parts 1, 2, and 3 are a major rule. A discussion of the regulatory analyses performed appears under the headings, "Executive Order 12291," "Regulatory Flexibility Act," and "Paperwork Reduction Act."

General Comments

We received 939 comments (910 from members of the general public, 25 from the research community, 3 from exhibitors, and 1 from a dealer) expressing general support for the proposed regulations. We also received 296 comments (295 from members of the general public and 1 from the research community) in support of the proposed regulations and stating that the Department should not lessen them due to pressure from associations for biomedical research. We received 256 comments (189 from members of the general public, 44 from the research community, 16 from dealers, and 1 from an exhibitor) expressing general opposition to stronger regulations. We also received many comments expressing specific objections to the proposed regulations.

We received 1,060 comments (1,034 from the research community and 26 from members of the general public) stating that the proposed rules exceed our statutory authority under the Act and are not consistent with the intent of Congress. We disagree with these comments and believe that ample statutory authority exists for these regulations. In the supplementary information which follows, we respond to those comments challenging our statutory authority for specific provisions of the regulations and our carrying out of congressional intent.

We received 613 comments (588 from the research community and 25 from members of the general public) stating that the Department did not coordinate with the Secretary of Health and Human Services (HHS) in issuing the proposed regulations, as required by the Act. Section 15 of the Act directs that:

> [t]he Secretary shall consult and cooperate with other Federal departments, agencies, or instrumentalities concerned with the welfare of animals used for research, experimentation or exhibition, or administration of statutes regulating the transportation in commerce or handling in connection therewith of any animals when establishing standards pursuant to section 13 and in carrying out the purposes of this Act. The Secretary shall consult with the Secretary of Health and Human Services prior to issuance of regulations. (7 U.S.C. 2146(a)).

The Department did consult extensively with HHS. On numerous occasions before issuing the proposed regulations, we discussed the issues with HHS representatives and provided HHS with copies of each draft of our proposal for review and comment. HHS indicated its concurrence with the proposed regulations. In evaluating the comments received in response to the proposal and in preparing this revised rule, we have consulted extensively and on an ongoing basis with HHS. A representative from The National Institutes of Health was detailed to work with APHIS and to provide the HHS position on all issues affecting the research community that were raised by the commenters. We also convened a meeting with representatives of HHS to discuss and resolve outstanding differences between HHS and the Department. Through this give and take we achieved what we understand to be a mutually satisfactory resolution of many of our outstanding differences. We believe that this revised rule is reasonable and, based upon our ongoing communication with HHS, that it could be readily implemented in the research community.

We received 106 comments (105 from the research community and 1 from a member of the general public) stating that the regulations as proposed would be inconsistent with other federal regulations. We disagree with the import of this characterization. We believe that any remaining differences between Parts 1 and 2 of the Animal Welfare regulations, as revised, and those related regulations of other agencies, particularly those of HHS, are necessitated by requirements contained in the Act. As stated in the preceding paragraph, we have attempted to reconcile differences between HHS and the Department. Our regulations must, however, fulfill the mandate of Congress and must be authorized by the Act, as amended.

We received 1,004 comments (979 from the research community and 25 from members of the general public) objecting to the proposed regulations on the grounds that they would interfere with or impede research. The Department has remained especially sensitive throughout the rule-making process to this issue. Congress stated in the 1985 amendments that "[n]othing in [the] Act (i) except as provided in paragraph (7) of [subsection (a)] shall be construed as authorizing the Secretary to promulgate rules, regulations, or orders with regard to the design, outlines, or guidelines of actual research or experimentation by a research facility as determined by such facility; (ii) except as provided * * * shall be construed as authorizing the Secretary to promulgate rules, regulations, or orders with regard to the performance of actual research or experimentation by a research facility as determined by such research facility; * * *" (7 U.S.C. 2143(a)(6)(A) (i) and (ii)). Paragraph (7) of subsection (a) provides that the Secretary will require each research facility to show upon inspection and to report at least annually that it is in compliance with the Act and that professionally acceptable standards governing the care, treatment, and use of animals are being followed during research or experimentation. It also requires the research facilities to provide information and assurances concerning painful procedures, and an explanation for any deviation from the standards promulgated under section 13(a) of the Act (7 U.S.C. 2143(a)(7)). Nevertheless, the Act imposes new responsibilities upon research facilities, as well as others subject to the Act, which necessarily impact upon the internal workings of research facilities. There are some costs necessarily associated with changes of this kind. Regulated persons who must alter their internal procedures and structure and their lines of reporting and responsibility to accommodate the 1985 amendments to the Act may feel that the regulations impose an undue burden. We believe, however, that the burdens imposed on research facilities are statutorily required and are reasonable in order to effectuate the purposes of the Act and the 1985 amendments to the Act, and that they are the minimum necessary to accomplish those goals.

We received 315 comments (290 from the research community and 25 from members of the general public) stating that APHIS has failed to show a rational connection between the proposed rules and the agency record. We have been charged with the responsibility of administering and enforcing the Animal Welfare Act since it was enacted in 1966. Our experience has revealed areas

in which more stringent regulations are necessary. The supplementary information contained in the March 31, 1987 proposed rule and in this revised rule highlight areas where additional regulatory efforts have proven necessary. These revised regulations provide mechanisms designed to prevent circumvention of the Act and the regulations and to assist the Department in its enforcement efforts. They are based either on the 1985 amendments to the Act or on the Department's experience in enforcing the regulations. We believe these revisions would better effectuate the intent of Congress to promote animal welfare.

We received 622 comments (597 from the research community and 25 from members of the general public) stating that the proposed regulations improperly enlist Institutional Animal Care and Use Committees and attending veterinarians as enforcement agents of the federal government, and 1 comment from a member of the research community in support of their use as Department agents. The duties of the Committee and the attending veterinarian at research facilities are more fully described in this supplementary information under the discussion of Subparts C and D, "Institutional Animal Care and Use Committee and Other Requirements for Research Facilities" and "Attending Veterinarian and Adequate Veterinary Care." We note that responsibility for compliance with the Act and the regulations and for providing necessary assurances has always rested with the institutions and with the legally responsible institutional officials. Many of their duties can most effectively be carried out through the Committee and the attending veterinarian acting as agents of the facility and its officials, since the Committee and attending veterinarian are usually in the best position to determine whether the research facility is in compliance. For this reason, the Act imposes many oversight and supervisory responsibilities on them. We believe that the reassignment of responsibilities to the research facility from the Committee and attending veterinarian in Subparts C and D of this revised rule clarifies our intent that institutions act through them while remaining ultimately responsible.

We received comments from 105 members of the general public opposing the use of animals for research altogether. We have made no changes based on these comments. It would be beyond our authority to ban the use of animals in research. Our regulations are authorized by the Act, and the Act specifically states that "the use of animals is instrumental in certain research and education for advancing knowledge of cures and treatment for diseases and injuries which afflict both humans and animals; * * *" (7 U.S.C. 2131(b)).

Seventy-four commenters (72 from the research community and 2 dealers) stated that the proposed regulations are poorly organized and written, and that clarification is needed. We believe that this supplementary information and the revised proposed rule that follows provides the necessary reorganization and clarification.

Two commenters from the research community stated that APHIS will be unable to enforce the regulations. We disagree with the commenters based upon the Department's enforcement record. Congress has entrusted the Department with enforcement of the Animal Welfare Act and with the promulgation and enforcement of regulations under the Act since the Act's enactment in 1966. We will continue our best efforts to meet this responsibility and to perform in accordance with the mandate of Congress.

Subpart A—Licensing

We received 295 comments (270 from the research community and 25 from members of the general public) generally endorsing the proposal regarding Subpart A.

Section 2.1 Requirements and application

Proposed § 2.1 sets forth who must obtain a license under the Animal Welfare regulations and provides the application procedure for obtaining a license. It details the information which an applicant must provide and where an applicant must file to become licensed. This section also provides the application fee and renewal application fee. (Annual license fees are provided in proposed § 2.6.) Exemptions from the requirement to be licensed are included in this section along with a provision for obtaining a voluntary license in very limited circumstances. Renewal procedures are provided and grounds for denial, suspension, or revocation of a license are included in this section as well. Grounds for denial of an initial license application are addressed in detail in proposed § 2.11.

Before addressing the comments received concerning proposed § 2.1, we note the following clarifications we are making in this revised rule. First, proposed § 2.1(a)(1) would require that:

> Any person, 18 years of age or older, operating or desiring to operate as a dealer, exhibitor, or operator of an auction sale except persons who are exempted from the licensing requirements under paragraph 3 of this subsection, must have a license.

We are concerned that this provision could be misconstrued as allowing a person under 18 years of age to operate as a dealer, exhibitor, or operator of an auction sale without having to obtain a license. We believe that most readers understand that persons must be at least 18 years of age to be eligible to obtain a license to operate as a dealer, exhibitor, or operator of an auction sale, and that a license is required to operate in those capacities. The intent underlying the minimum age requirement was stated in the supplementary information to the proposed rule. We have revised the final rule to reflect our intent more accurately.

Second, under § 2.5, as revised in this rule, licenses are valid and effective unless they are terminated, suspended, or revoked, or expire at the end of the 1-year term. The proposed rule provided that licenses would be valid and effective for 1 year, and did not distinguish between initial license applications and applications for additional 1-year terms. We have made conforming changes throughout Subpart A to differentiate between new license applications and license renewals. Accordingly, proposed § 2.1(a)(2) is revised to require an applicant for renewal of a license to indicate all premises, facilities, or sites where animals are kept or the licensee operates on the application for renewal. We are also replacing "termination date" with "expiration date," wherever it is used to mean the calendar end of the 1-year license term, as in § 2.1(e).

Section 2.1 of the current regulations provides that persons who are exempt from the licensing requirement under section 3 of the Act do not have to apply for a license to operate as a dealer, exhibitor, or operator of an auction sale where dogs or cats are sold affecting commerce. We proposed to revise § 2.1 by identifying those persons exempt from the licensing requirements under section 2 or section 3 of the Act.

We received 35 comments pertaining to § 2.1, as proposed. Four commenters from the general public stated that proposed § 2.1 would allow too many exemptions from the requirement to obtain a license. Section 2 of the Act (7 U.S.C. 2132(f)) defines the term "dealer" as:

> any person who, in commerce, for compensation or profit, delivers for transportation, or transports, except as a

carrier, buys, or sells, or negotiates the purchase or sale of, (1) any dog or other animal whether alive or dead for research, teaching, exhibition, or use as a pet, or (2) any dog for hunting, security, or breeding purposes, except that this term does not include—(i) a retail pet store except such store which sells any animals to a research facility, an exhibitor, or a dealer; or (ii) any person who does not sell, or negotiate the purchase or sale of any wild animal, dog, or cat and who derives no more than $500 gross income from the sale of other animals during any calendar year;

The regulatory exemptions proposed are either statutorily mandated or are in accordance with the intent of the Act, which is to regulate the commercial use of animals, other than their use as food or fiber.

Twelve dealers stated that the proposed exemptions from the licensing requirement for retail pet stores and for persons who maintain three or fewer breeding female dogs or cats and who sell the offspring born and raised on their premises for pets or exhibition would be improper. The Act requires that dealers and exhibitors must be licensed, and specifically provides that "any retail pet store or other person who derives less than a substantial portion of his income (as determined by the Secretary) from the breeding and raising of dogs or cats on his own premises and sells any such dog or cat to a dealer or research facility shall not be required to obtain a license as a dealer or exhibitor under this Act." (7 U.S.C. 2133). As defined in the Act, the term "dealer" does not include retail pet stores, except those which sell any animals to a research facility, exhibitor, or a dealer (7 U.S.C. 2132(f)). Accordingly, the proposed exemptions are statutorily required and will continue to be included in the regulations.

We are making a change in proposed § 2.1(a)(3)(i) to delete mink from the listing of pet-type animals which retail pet stores can sell and still be exempt from the licensing requirement. This change is in accordance with the revised definition of "retail pet store" in the revised rule for Part 1— "Definition of Terms," published elsewhere in this issue. (*See* companion docket no. 88–013.)

We are also correcting proposed § 2.1(a)(3)(iii) to read "Any person who maintains a total of three (3) or fewer breeding female dogs and/or cats * * *." This section is intended to exempt the hobby breeders who derive less than a substantial portion of their income from the breeding and sale of dogs or cats, in accordance with section 3 of the Act (7 U.S.C. 2133). The correction would clarify that a person having a combined total of three or fewer breeding female dogs, or three or fewer breeding female cats, or three or fewer breeding female dogs and cats qualifies for exemption from the licensing requirement, not a person having three or fewer breeding female dogs and three or fewer breeding female cats.

We are similarly correcting proposed § 2.1(a)(3)(iv) to read "Any person who sells fewer than 25 dogs and/or cats per year * * *." This section is intended to exempt persons who derive less than a substantial portion of their income from the breeding and raising of dogs and cats, and we have determined that the sale of a combined total of fewer than 25 of these animals would qualify a person for this exemption. The correction clarifies that a person selling fewer than 25 dogs, or 25 cats, or 25 dogs and cats qualifies for exemption from the licensing requirement, not a person selling fewer than 25 dogs and fewer than 25 cats.

We are making an additional change in proposed § 2.1(a)(3)(iv) to include terms which were inadvertently omitted from the proposal. The words "teaching, or testing" are added between "research" and "purposes" in the revised rule to make clear that the exemption for sales of fewer than 25 dogs and/or cats applies to sales for research, teaching, and testing purposes, in accordance with the purposes of the Act.

Five commenters (2 dealers, 1 exhibitor, and 2 members of the general public) stated that an additional exemption from the requirement to obtain a license for federal, state, and local parks with free roaming herds of animals native to the area which utilize auctions as part of a herd size control program should be added to the regulations. The legislative history of the Act indicates that the term "dealers" as used in the Act is limited to private persons and entities and nonprofit or charitable institutions, and does not include federal agencies or political subdivisions of state or local governments. (*See* Conference Report No. 1848, at p. 9, August 11, 1966.) There is no authority under the Act to license federal, state, and local governments as dealers, and accordingly no exemptions for them have been provided.

One dealer commented that the licensing requirements should be less stringent and should allow more exemptions, such as for brokers and for sales through classified ads and publications. The Act includes brokers in the definition of "dealer" by referring to any person who "negotiates the purchase or sale" of any of the covered animals and we are statutorily required to license these persons. Furthermore, the Act does not provide an exemption from the licensing requirements for sales accomplished through classified ads and publications. These sales are "in commerce" and are subject to the Act and regulations. The medium through which a sale is accomplished is irrelevant so long as it is in commerce. We do not regulate classified ads or publications; however, we can and do use them to find persons who should be licensed in accordance with the regulations.

One commenter from the research community sought clarification of the licensing requirements applicable to research facilities selling animals. Research facilities acting as dealers are subject to the same regulations as any other dealer and must be licensed in accordance with § 2.1, unless they are a department, agency, or instrumentality of the United States, or of a state or local government, in which case they need not obtain a license.

Three dealers commented that the Department should require anyone selling animals at auction sales to obtain a license. We have found that many individuals sell a number of animals at auctions during the course of a year. We believe that the proposed exemptions are consistent with the Act and provide appropriate threshold points for the imposition of the requirement to obtain a license. Moreover, budgetary and personnel restrictions would prevent us from being able to regulate effectively all of these persons.

Similarly, we disagree with the 3 commenters from the general public who stated that the Department should require licensing of all persons who sell or trade animals at flea market operations. The legislative history of the Act makes clear that the licensing requirement was intended to regulate the commercial sale or use of animals as part of a business concern. Some animal sellers at flea markets sell animals as part of a commercial operation, but many others sell them for use as pets or for personal enjoyment. The proposed licensing requirements and exemptions will still require large volume or commercial sellers to obtain a license.

Three commenters from the research community stated that the Department should delete the requirement that persons who sell exotic or wild animals be licensed as dealers. Licensing of these persons is statutorily mandated (7 U.S.C. 2132(f)).

One research facility objected to the imposition of dealer licensing requirements on sellers of small

quantities of wild animals since research facilities would not be able to purchase small quantities of non-domesticated species from an unlicensed source. The definition of "dealer" in the Act permits an exemption based on dollar amount of sales only for those persons who do not sell wild animals (or dogs or cats) and therefore persons who sell wild animals must be licensed, regardless of the number of animals they sell (7 U.S.C. 2132(f)(ii)). We require research facilities to purchase these animals from licensed sources, in accordance with the Act.

Proposed § 2.1(b) would eliminate voluntary licenses, except for persons who sell fewer than 25 dogs or cats per year for research or teaching purposes. This will prevent people from trying to circumvent certain state and local community laws concerning keeping dangerous animals. We received 2 comments from dealers objecting to the restricted grounds for issuance of voluntary licenses, and suggesting that people who buy only 1 or 2 animals as pets or for breeding purposes would have to buy their animals from a licensed dealer, possibly at higher prices. One commenter from the general public commended us for this provision. We believe the dealers' concern is misplaced. It is not the intent of the Act or of the Department to regulate the acquisition of private pets or animals for personal use and enjoyment

Broader use of voluntary licenses requires greater use of the Agency's limited resources and personnel, which could be utilized more effectively by focusing on animals used in commercial or research operations. The regulation for voluntary licenses remains as proposed, except that reference to the $10 application fee and a provision for annual license fees is included in paragraph (b) for clarification. Reference to the renewal fee for voluntary licenses is also included in § 2.1(e)(1) of the revised rule. Annual license fees are provided in § 2.6 of the regulations for Class "A," Class "B," and Class "C" licensees. However, the proposed regulations inadvertently did not require license fees for voluntary licensees, who, by definition, do not qualify for licensing under any of the Classes. Voluntary licensees operate most like Class "A" licensees, except that they are exempt from the licensing requirements. Accordingly, the annual license fee for a voluntary license would be that of a Class "A" licensee (breeder) under this revised rule.

Five commenters (4 exhibitors and 1 dealer) commented that we should eliminate the $10 application fee for license renewals required by proposed § 2.1(e) and 1 exhibitor suggested having a one-time application fee for the initial license application required by proposed § 2.1(d), instead of the annual $10 application fee. We believe that it is more equitable to charge licensees on a yearly basis to cover annual processing costs, since a one-time fee could overcharge some and undercharge others.

The $10 application fee is also required when a licensee applies for a change in the class of license from that issued to him or her, such as a change from a Class "A" to a Class "B" license. This is necessary because a change in class requires administrative processing that is similar to processing a new application or a renewal application. We have redesignated proposed paragraph (e) as (e)(1) in the revised rule. We have added a new paragraph (e)(2) to the revised rule and revised § 2.6(a) ("Annual licensee fees") to clarify this requirement.

We have revised § 2.1(e)(1) to require licensees to submit a completed application form with their $10 application fee. We believe that it is necessary specifically to require submittal of this form along with the fee since many licensees overlook it.

Section 2.2 Acknowledgement of regulations and standards

We are revising § 2.2 so that it applies to applications for license renewals, as well as to initial license applications. This change is necessary to conform with § 2.5, as revised in this rule, which provides that licenses are valid and effective if renewed, unless terminated, suspended, or revoked.

Section 2.3 Demonstration of compliance with standards and regulations

For the reasons outlined above under the discussion of § 2.1, we are revising proposed § 2.3 in this rule so that it includes applications for license renewals, as well as initial license applications. Accordingly, we have revised paragraph (a) to require that each applicant for a license or renewal of a license must demonstrate compliance with the regulations and standards in Parts 2 and 3 of Subchapter A. We have removed the words, "before a license will be issued" from the requirement because it applies to both initial licenses and license renewals. We have revised paragraph (b) to clarify that it only applies to initial license applications.

We are revising § 2.3(a) to require each applicant to make his or her animals, premises, facilities, vehicles, equipment, other premises, and records available for inspection by APHIS officials during business hours, and at other times mutually agreeable to the applicant and APHIS, rather than "and/or at other times" as proposed. We believe this revision is necessary to prevent licensees from avoiding inspections by being unable to agree to a time with APHIS officials.

We received three comments (2 from the general public and 1 from the research community) expressing support for this section as proposed. Two dealers commented that we should limit the number of opportunities an applicant has for inspection to demonstrate their compliance with the regulations and standards and 1 also commented that applicants should be required to pay the cost of re-inspection. (Demonstration of compliance is a prerequisite to issuance of a license.) We believe this suggestion has merit and that a limit on inspections should be incorporated in the regulations. This section is revised to impose a limit of three pre-licensing inspections. If the applicant is unable to pass inspection after 3 attempts he or she will forfeit the application fee, to help cover the administrative cost of processing their application and the cost of the inspections, and will be ineligible to reapply for a license for a period of 6 months following their last inspection. As is the case for the prior inspections, the applicant will be advised of deficiencies and the necessary corrective measures that must be taken to comply with the regulations and standards, and accordingly to pass inspection. We believe that allowing an applicant 3 opportunities to pass inspection is reasonable, since it would give the applicant notice of any deficiencies found by an inspector and a second chance to rectify any remaining deficiencies found after re-inspection. We also believe that if an applicant is unable to pass inspection after 3 attempts, 6 months provides sufficient time to enable him or her to take the necessary corrective measures which he or she has been unable to provide between the 3 failed inspections.

We are not incorporating the suggestion that licensees pay the cost of re-inspections. The initial application fees and annual fees are intended to help the federal government defray the cost of program operations. We believe that the fees we have assessed are reasonable and equitable for the nature of the operations being licensed, and have determined at this time that additional fees are not appropriate.

Section 2.4 Non-interference with APHIS officials

Under proposed § 2.11(a), APHIS would deny a license to any applicant who "(6) [h]as interfered with, threatened, abused (including verbal abuse), or harassed any [APHIS official] in the course of carrying out his or her duties." As explained below under the subheading, "§ 2.11 Denial of license," and in the supplementary information to the proposal of March 31, 1987, at 52 FR 10300, we explain that we have determined the need to include in the regulations a prohibition against interference with APHIS officials. Also, as explained in greater detail below under that subheading, § 2.11 applies to denial of initial license applications only in this revised rule, and not to renewals. Based on our experience in enforcement efforts, we have determined that it is necessary to require licensees to comply with the prohibition against interference and harassment of APHIS personnel, as well as new applicants. We are therefore removing paragraph (a)(6) from § 2.11 in the final rule and are including its provisions as § 2.4 in the revised rule so that it is applicable to both initial license applicants and licensees.

Section 2.5 Duration of license and termination of license

We did not receive any comments regarding this section as proposed. We are revising § 2.5, however, to clarify that licenses are valid and effective if renewed each year and have not been terminated, suspended, or revoked. Similarly, we are revising proposed paragraph (b) to refer to an application for license renewal. These amendments are necessary to avoid any misconception that every license automatically terminates at the end of its 1-year term and that each year an applicant must follow the procedure applicable to obtaining an initial license. For this reason, and as previously stated, we are replacing the word "termination" with "expiration" in § 2.5 and all of Subpart A wherever it refers to the calendar end of the 1-year license term.

We are making one correction to § 2.5(b) to specify that a licensee will be notified by "certified" mail, rather than first class mail, of the expiration date of a license, to ensure that all licensees have notice that they must renew their license or it will automatically terminate because it has expired. Except for nonsubstantive changes made for clarification, the remaining provisions of this section remain as initially proposed.

Section 2.6 Annual license fees

We received a number of comments addressing the proposal to increase license fees. Thirty-seven dealers expressed opposition to yearly license fees in general. Charging license fees is statutorily mandated. Section 23 of the Act directs the Secretary to charge and collect reasonable license fees "adjusted on an equitable basis taking into consideration the type and nature of the operations to be licensed * * *" (7 U.S.C. 2153).

Nine commenters from the general public and 6 dealers indicated their general support for the increased license fees. One member of the general public stated that the increases were too low. We received 48 comments (32 dealers, 12 exhibitors, and 4 members of the general public) stating that some fee increase is justified, but that the increases we proposed are too high or too drastic a change from the current fee tables. We received 298 comments (273 from the research community and 25 from members of the general public) stating concern that the fee increases could discourage some small dealers from becoming licensed. We have reconsidered the proposed fee structure in light of those comments and are revising them downward as follows: (For ease of comparison, the proposed fees are indicated in parentheses, and the revised fees are indicated without parentheses.)

TABLE 1.—DEALERS, BROKERS, AND OPERATORS OF AN AUCTION SALE—CLASS "A" AND "B" LICENSES

Over	But not over	(Fee)	Fee
$0	$500	$(50)	$30
500	2,000	(100)	60
2,000	10,000	(200)	120
10,000	25,000	(400)	225
25,000	50,000	(600)	350
50,000	100,000	(800)	475
100,000		(1,000)	750

TABLE 2.— EXHIBITORS—CLASS "C" LICENSE

Number of animals	(Fee)	Fee
1 to 5	$(50)	$30
6 to 25	(125)	75
26 to 50	(250)	175
51 to 500	(375)	225
501 and up	(500)	300

We believe these fees are a reasonable increase over the existing fees, and that they are equitably adjusted for the different classes of licensees and for the ranges in dollar volume of business derived from transactions involving animals.

We have removed proposed paragraph (b)(4) from § 2.6 in the revised rule because it could be construed as implying that a dealer can operate without a license. This is not the case. Only persons exempt from the licensing requirements may operate without a license, as provided in § 2.1(a)(3). Proposed paragraphs (b) (5) and (6) are redesignated as paragraphs (b) (4) and (5) in this revised rule.

We are revising paragraphs (b) (1) through (5) to clarify that paragraphs (b) (1) through (3) are applicable to license renewals, paragraph (b)(4) is applicable to initial licenses, and paragraph (b)(5) is applicable to both initial licenses and license renewals.

We received 8 comments (4 from exhibitors, 3 from members of the general public, and 1 from a dealer) regarding the division of fees between the lessor and lessee of animals, as provided by proposed § 2.6(b), paragraphs (1), (2), and (5), stating that either the lessor or lessee should be responsible for including the revenue from a leased animal in determining their annual fee, but not both. We disagree with these comments since both the lessor and lessee derive income from the leased animals. There are two income streams resulting from use of a leased animal, and both business operations are required to pay a fee which is equitable for the nature and type of operation it is. Also, both the lessor and lessee are licensed, and thereby impose costs on the Department to ensure compliance with the regulations and standards. We believe it is proper to require both the lessor and lessee to include their respective income from an animal in determining their annual fee.

We also received 4 comments from the research community and 2 from members of the public suggesting the need to code animals leased to research facilities as a tracing mechanism to ensure that the animals are not used for more than one major operative procedure from which they are allowed to recover. We consider this requirement to be unwarranted since, to the best of our knowledge, animals are rarely, if ever, leased for research purposes. We are not making any changes in § 2.6 based upon this comment.

We are making one change in paragraph (d) for clarification. Paragraph (d) provides that if a person meets the licensing requirements for more than one class of license, he must pay the fee for his predominant type of

business, as determined by the Secretary. The clarification will add that in addition to the fee paid, the class of license that person must obtain will be determined by his or her predominant type of business, since a person cannot have more than one license in accordance with § 2.1(c). The words "obtain a license and" are added following "he shall be required to." We are revising the rule to refer to both masculine and feminine genders. Accordingly, "he" is replaced with "he or she" in § 2.6(d) and throughout the revised rule. Similarly, "his" is replaced with "his or her" wherever it appears.

Section 2.7 Annual report by licensees

We are revising proposed § 2.7 to clarify that it applies to license renewals only, and not to initial license applications.

Proposed § 2.7(a) would provide as follows:

> Each year, within 30 days prior to the termination date of his/her license, a licensee shall file with the Area Veterinarian in Charge an application for license and annual report upon a form which will be furnished to him upon request to the Area Veterinarian in Charge. When the requirements of §§ 2.1, 2.2, 2.3, and 2.6 have been met, the license will be issued subject to the exceptions in §§ 2.5, 2.10, and 2.11.

We are revising proposed § 2.7(a) to refer only to license renewals and the requirement that licensees submit an annual report in order to renew their license. In this revised rule, we refer to the expiration date of the license and have replaced "license" with "license renewal." We are also removing the last sentence of proposed § 2.7(a) because it refers to requirements applicable to issuance of an initial license, and these are set forth in § 2.1(d).

Three dealers and 1 exhibitor commented that clarification is needed concerning requirements to include statements about young animals in their annual reports and in other reports. The requirement to identify all dogs and cats when obtained or when weaned is set forth in proposed § 2.50. All animals must be identified in the licensee's records at his or her facility when born or obtained from outside the premises, in accordance with proposed §§ 2.75 and 2.77. Proposed § 2.7(d) would require exhibitors (Class "C" licensees) to include in their annual report the number of animals owned, held, or exhibited by the licensee either during the previous year or at the time of signing the annual report, whichever is greater. The figure used must include all animals regardless of age, and is the basis for determining the Class "C" license fee. We do not believe this requirement needs further elaboration in the regulations.

We received 8 comments (4 exhibitors, 3 dealers, 1 from the research community) objecting to the requirement provided in proposed § 2.7(e) for licensees to have the attending veterinarian certify in the licensee's annual report that the attending veterinarian understands the regulations and standards under the Act, and that he or she has visited the premises and carried out the responsibilities indicated in the regulations and in the written program of adequate veterinary care. The commenters stated that the requirement to have a written program of veterinary care as provided in proposed § 2.40 is sufficient. We agree that the attending veterinarian should not be required to sign the licensee's annual report in light of the requirements in proposed § 2.40 that licensees maintain a written program of adequate veterinary care which is subject to inspection at the licensee's facility and is sent to the Area Veterinarian in Charge each year. We have therefore deleted this requirement from the revised rule.

Section 2.8 Notification of change of name, address, control, or ownership of business

We have made one correction in this section. The phrase "or by any additional sites" should read "or of any additional sites * * *." We received no comments addressing this section and have made no other substantive changes.

Section 2.10 Licensees whose licenses have been suspended or revoked

Two dealers commented in opposition to our proposal to make license revocations permanent. We were urged to allow the facts and circumstances surrounding the offense leading to revocation to be taken into consideration in determining the appropriate amount of time a former licensee must wait before he or she could apply for a new license, instead of being permanently ineligible. We disagree with these comments. Whether a license should be suspended or revoked is determined after notice and a hearing. Testimony as to the facts and circumstances surrounding the offense would be brought out at the hearing. In such an administrative proceeding conducted in accordance with the Department's Rules of Practice, revocation would be ordered for serious offenses which are determined to warrant this sanction, as compared to suspension, which could be ordered for a stated period of time for less serious offenses. We believe that the commenters' concerns that the facts and circumstances be considered would be amply addressed in the required hearing. Accordingly, revocation of a license will remain a permanent sanction. As discussed below under the next subheading, we are adding to § 2.10(a) the provision from proposed § 2.11(b) stating that any person whose license has been suspended may reapply for a license after the period of suspension is ended. We are revising it, however, to provide that any person whose license has been suspended may apply to the Area Veterinarian in Charge, in writing, for reinstatement of his or her license, rather than having to reapply for a new license. No other substantive changes are made in this section.

Section 2.11 Denial of license

The comments we received addressing proposed § 2.11 deal principally with existing licenses, convincing us of the need to separate the provisions concerning denial of initial license applications from provisions concerning suspended or revoked licenses. We are discussing those comments in this discussion of "§ 2.11, Denial of license," since readers who are more interested in the substance of proposed § 2.11 than that of § 2.10, and who may have commented specifically with regard to § 2.11, may look to this heading for our response instead of the heading, "§ 2.10 Licensees whose licenses have been suspended or revoked."

Many of the comments we received concerning proposed § 2.11 addressed due process issues which would be raised if we suspended or revoked a license. As should be clear from the supplementary information, paragraph (a) and most of paragraph (b) of this section are concerned with denial of initial license applications, and do not have any bearing on suspension or revocation of existing licenses. We have renamed this section "Denial of initial license applications" to avoid any further confusion.

Paragraphs (b) and (c) refer to both suspended licenses and denials of license applications. For purposes of clarity, we are removing the reference to suspended licenses from § 2.11. Accordingly, paragraphs (b) and (c) will address denial of initial license applications exclusively. The content of proposed § 2.11(b) with regard to suspended licenses has been added to § 2.10(a) in the revised rule, and that of § 2.11(c) is already contained in § 2.10(a) so there is no need for further revision.

We received several comments objecting to the proposed reasons for which we would deny a license application and to this section in general. Thirty-three commenters from the research community stated that a plea of nolo contendere (no contest) under state or local cruelty to animals laws within 1 year of application for a license should not be an automatic basis for denial of a license, since a licensee may elect to enter this plea rather than a plea of not guilty, to avoid the time and expense of a full hearing on the charge. In light of this comment, we are revising the rule to provide that if no penalty is imposed as a result of a plea of nolo contendere, the applicant may reapply immediately without having to wait a year. We believe this will accommodate those persons who exercise their rights to enter this plea, while allowing the Administrator to deny a license to persons involved in violations of the cruelty to animals laws.

We received 366 comments (321 from the research community, 11 from dealers, 7 from exhibitors, and 27 from members of the general public) opposing subparagraph (6) as a basis for denial of a license. A similar prohibition against interfering with, threatening, abusing, or harassing any APHIS official in the course of carrying out his or her duties is provided in § 2.4 in the revised rule. Accordingly, we have added § 2.4 to § 2.11(a)(1) in the revised rule so that it remains a basis for denial of a license. As proposed, subparagraph (6) would provide that a license will not be issued to any applicant who "[h]as interfered with, threatened, abused (including verbal abuse), or harassed any Veterinary Services inspector in the course of carrying out his/her duties." The comments stated that this is too ambiguous and subjective a basis for denying or revoking a license. We are retaining this basis for denial of a license because we have determined a geuuine need for it, based upon our experience in enforcing the regulations. First, adequate safeguards against subjective determinations are contained in § 2.11(b) as proposed. which provides that an applicant whose application is denied may request a hearing in accordance with the applicable rules of practice. At a hearing, the Department would have to support its denial of an application in accordance with the rules of practice and would have to show that it is reasonable and not arbitrary and capricious. We believe this is sufficient to avoid subjectivity or arbitrariness from entering into the determination. Second, § 2.11 applies to denial of an application for a license, not suspension or revocation of an issued license. Suspension and revocation procedures include notice and hearing and must satisfy the requirements of due process of law.

We received 318 comments (282 from the research community, 10 dealers, and 26 members of the general public) objecting to proposed paragraph (b) of § 2.11 which provides that the denial of a license would remain in effect until a final legal decision is made following a hearing, on the basis that this could deprive a person of their livelihood for years before they receive the benefit of due process of law.

As explained above, this section applies to initial license applications, not to renewals of existing licenses. Suspension and revocation of an issued license would be in accordance with the requirements of the applicable Departmental rules of practice. Except as previously noted, paragraph (b) remains as initially proposed.

We received 303 comments (278 from the research community and 25 from members of the general public) objecting to proposed § 2.11(c), which provides that a legal entity in which a person whose license application has been [suspended or] denied has a substantial interest, financial or otherwise, will not be licensed within 1 year of the denial [or until completion of the suspension period]. (The bracketed provisions refer to suspended licenses and are contained in § 2.10(a) in the final rule).

One commenter was concerned that the regulation as proposed could prevent a facility from being licensed for a year simply because one of its shareholders had been denied a license. We do not believe this concern is well-founded, as the regulation is limited to legal entities in which a person whose application has been denied has a "substantial" interest. This may or may not apply to a shareholder, depending upon that person's interest. We do not agree with the commenter that the proposed restriction should apply only if that person has a "substantial interest, financial or otherwise, and responsibility for the operation or management of the applicant." Licenses can be issued at the lowest level of legal entity, that is, to individuals. Any person who was engaged in activity serious enough to warrant denial of a license application should not be allowed to continue in operation under the umbrella of another legal entity in which they can exercise *any* measure of control and can influence operations. This is what the proposed regulation is intended to prevent. A similar provision has been included in the regulations since 1970 without problems or objections, and it remains in this revised rule. Except for deletion of references to suspension of licenses which are covered by § 2.10, paragraph (c) remains as initially proposed.

We received 7 comments from the general public stating that the proposed regulations concerning denial and revocation of licenses are too lenient on facilities and on individuals and should be more stringent. We have attempted to strengthen the regulations in areas we believe will enhance our enforcement efforts. We believe that the regulations as proposed and as revised in this rule provide sufficient bases upon which to deny, suspend, or revoke licenses, and will assist us in handling noncompliance and other problematic situations we have encountered in regulating licensees.

Except for the changes described above, Subpart A—Licensing remains in the revised rule as originally proposed.

Subpart B—Registration

Proposed § 2.28, "Annual report of research facilities," is redesignated § 2.31 in this revised rule. Comments received addressing proposed § 2.28 are discussed under the heading, "Subpart C—Institutional Animal Care and Use Committee and Other Requirements for Research Facilities," subheading, "Proposed § 2.28 Annual report of research facilities."

Section 2.25 Requirements and procedures

We received 299 comments (274 from the research community and 25 from members of the general public) stating that § 2.25 as proposed is generally acceptable. Commenters who addressed the proposed registration requirements and procedures were concerned with the requirement that registrants update their registration form every 3 years. As explained in the supplementary information to the proposed rule, this requirement is new to the Animal Welfare regulations. We received 122 comments from the research community and 1 from a member of the general public stating that renewal of registration should be required every 5 years to coincide with the U.S. Public Health Service current requirement for the submission of assurance statements under the Health Research Extension Act of 1985. Five commenters from the research community stated more generally that the proposed requirements should coincide with those of the PHS. The proposed 3-year time period corresponds with other federal recordkeeping requirements, most

notably the USDA records retention and disposition policy, making it the most practical interval for us to administer. The PHS requirement for submission of assurances *up to* every 5 years is not inconsistent with the 3-year period we proposed. We have consulted with representatives from HHS specifically on this point, and they have indicated their willingness to abide by the 3-year registration renewal period as proposed. Accordingly, we are retaining the requirement for renewal of registration every 3 years.

We received one comment from a member of the research community requesting clarification regarding the requirement for registration by federal research facilities. We received another comment from a member of the research community requesting clarification of proposed § 2.25, generally. In response to the first comment, we are clarifying the section to state that federal research facilities are not required to register with the Secretary under the regulations. In response to the second comment, we note that except for provisions requiring research facilities to update their registration every 3 years, § 2.25 as proposed is substantially the same as it has been since 1967. We have experienced few problems in applying its requirements since that time, and we do not believe clarification is necessary.

Except for the clarification regarding federal research facilities, no changes are made in § 2.25 in the revised rule.

Section 2.26 Acknowledgement of regulations and standards

Proposed § 2.26 provides as follows:

> A copy of the regulations and standards in this Subchapter will be supplied with each registration form. The registrant shall acknowledge receipt of such regulations and standards and agree to comply with them by signing a form provided for such purpose by Veterinary Services. Such form shall be filed with the Area Veterinarian in Charge.

We received 299 comments (274 from the research community and 25 from members of the general public) stating that this section as proposed is generally acceptable. One commenter stated that it should be deleted from the regulations. The required acknowledgement is necessary to ensure that registrants have knowledge of the regulations and standards with which they must comply. A similar provision is contained in Subpart A—"Licensing" for the same reason. We believe that the acknowledgement should remain in the regulations.

One commenter requested general publication and distribution of the Animal Welfare Manual and applicable Veterinary Services Memoranda. These are internal USDA, APHIS documents intended to assist APHIS inspectors. They do not contain "rules of general applicability" and accordingly, there is no need to publish them in the Federal Register as part of the regulations.

The proposed section is substantially the same as current § 2.26. It remains as proposed.

Section 2.27 Notification of change of operation

Proposed paragraph (a) of § 2.27 requires that:

> [a] registrant shall notify the Area Veterinarian in Charge by certified mail of any change in the name or address, or any change in the operations or business, which would affect its status as a research facility, exhibitor, carrier, or intermediate handler, within 10 days after making such change.

We received 422 comments (397 from the research community and 25 from members of the general public) objecting that proposed § 2.27(a) is too broad. We received 295 comments (270 from the research community and 25 from members of the general public) expressing concern that the supplementary information is inconsistent with the proposed regulation because it is broader than the proposed regulation. The supplementary information accompanying Subpart B "Registration" states that notification is required "of any change in address, operations or management." The commenters expressed concern that the preamble language would encompass personnel or management changes which do not affect the information required by the registration form. Another commenter was concerned that the preamble implied that failure to report minor management or operations changes would be a violation of the regulations, and that clarification to avoid difficulties in interpreting this requirement is necessary. We are in agreement with these comments and are adopting the clarification suggested by a commenter, to read as follows:

> A registrant shall notify the Area Veterinarian in Charge by certified mail of any change in the name, address, or ownership, or other change in operations affecting its status as a research facility, exhibitor, carrier, or intermediate handler, * * *.

This revision should clarify that notification is required for operational changes which affect this registrant's status as a registered entity, in addition to name and address changes. This requirement will assist us in keeping accurate records on current registrants, and avoid wasting Agency resources when a registrant has gone out of business or has changed its operations.

We received 302 comments (277 from the research community and 25 from members of the general public) stating that notification should be required within 30 days instead of the 10 days proposed. The 10-day period is in the current regulations and has been in the regulations since they were first issued. It has caused no problems or difficulties and is a sufficient amount of time within which affected facilities can report. We are therefore retaining it in the regulations.

Except for the change in paragraph (a) set forth above, § 2.27 remains in the revised rule as initially proposed.

Subpart C—Institutional Animal Care and Use Committee and Other Requirements for Research Facilities

Introduction

Proposed Subpart C elicited numerous and varied comments addressing the proper role, duties, and authority of Institutional Animal Care and Use Committees ("Committees") and research institutions in promoting animal welfare. Many of the commenters expressed particular concern that the proposed regulations placed responsibilities on the Committee and on the attending veterinarian (Subpart D) that they believed should lie with the institution. There was also concern that APHIS was improperly placing the Committee and the attending veterinarian in the position of whistleblower and enforcer of the Animal Welfare regulations.

Research facilities have been required, through their animal care committee and/or attending veterinarian, to provide guidelines and consultation to their research personnel regarding the use of pain relieving drugs since the regulations were revised in accordance with the 1970 amendments to the Act. They have also been required to have a program of adequate veterinary care established and maintained under the supervision and guidance of a veterinarian. The 1985 amendments to the Act placed special significance on these institutional personnel as a means of assuring animal welfare, and represented a significant departure from the then-existing Act. The clear message from Congress was that additional regulatory efforts are needed to enhance animal welfare, to minimize animal pain and distress in research, and to restrict the multiple use of animals in major operative experiments. For the first time, Congress legislated that all research facilities must have an "Institutional Animal Committee" of a statutorily prescribed

composition with inspection and reporting duties (7 U.S.C. 2143(b)). Similar committees are already in place at research facilities receiving grant monies and awards from the U.S. Public Health Service under the Health Research Extension Act of 1985, Pub. L. 99-158, for research, training, and biological testing activities involving animals. Congress also mandated in the 1985 amendments to the Act that research facilities provide training to scientists, animal technicians, and other personnel involved with animal care and treatment. The Act retained the requirement that the facilities provide assurances they are adhering to the standards promulgated under the Act, and requires that they provide an explanation for any deviation from those standards. The 1985 amendments to the Act continue the Secretary's authority "to promulgate such rules, regulations, and orders as he may deem necessary in order to effectuate the purposes of this Act." (7 U.S.C. 2151).

The legislative history of the 1985 amendments to the Act demonstrates that at least one significant proponent in the Senate was of the view that "[v]eterinary inspectors from the U.S. Department of Agriculture cannot be present on a daily basis. However, their enforcement capability can and should be enhanced by the Institutional Animal Committee * * *." Senate Majority Leader Dole's statement, *Congressional Record*, December 18, 1985, at p. S17943.

As part of our response to the mandate from Congress, we proposed three new sections, §§ 2.30, 2.35, and 2.40, to implement the 1985 amendments to the Act. Section 2.30 sets forth responsibilities and requirements specifically imposed upon research facilities. Section 2.35 details the responsibilities and duties of the Institutional Animal Care and Use Committee which each research facility must establish. Section 2.40 details the requirement imposed upon all registrants and licensees to provide and maintain a program of adequate veterinary care and the requirements imposed upon attending veterinarians. This section consolidates the veterinary care regulations currently contained in each subpart of Part 3 and imposes additional requirements based upon the 1985 amendments to the Act.

Reorganization of §§ 2.30 and 2.35

Many comments we received were critical of the allocation of certain duties and responsibilities to the Committee and attending veterinarian rather than to the facility. Most of the comments we received were from members of the research community, the group most affected by the regulations proposed in Subpart C. Unless otherwise indicated, the comments addressed below were received from members of the research community.

Sixty-one commenters stated that too much authority would be given to the attending veterinarian and the Committee under the proposed regulations. We also received 400 comments (375 from the research community and 25 from members of the general public) objecting that the proposed regulations would place too much responsibility on the attending veterinarian and the Committee. Particular duties and areas of responsibility proposed in the regulations were singled out by the commenters as being improper and inappropriate.

The statutory language and the legislative history of the 1985 amendments to the Act support our proposal to impose various duties and responsibilities on the Committee and on the attending veterinarian. We agree, however, with the commenters that the ultimate responsibility for animal welfare at research facilities rests with the institutions themselves. We have carefully considered the comments we received, and have determined to reorganize and restructure portions of Subpart C in this revised rule to place responsibility on the research facilities, except where it is expressly reserved by the Act to the Committee. Similarly, we have revised portions of Subpart D concerning the requirement for a program of adequate veterinary care at research facilities to reflect that many of its aspects are the responsibility of the research facility, unless otherwise required by the Act.

Those areas of responsibility that are reassigned to the research facilities in the revised rule are described below under subject headings for ease of reference. We address the comments we received concerning the substance of the proposed provisions, as opposed to the allocation of responsibility for them, following this discussion.

The following chart provides the derivation of the paragraphs contained in § 2.30 in the final rule, as an additional aid to the reader. The paragraphs listed under the heading, "Revised rule" were derived from the corresponding paragraphs listed under the heading, "Proposed rule."

DERIVATION TABLE

Revised rule	Proposed rule
§ 2.30(a)	§ 2.30(a)
§ 2.30(b)	§ 2.30(b)
§ 2.30(c)	§ 2.30(c)
§ 2.30(d)	§ 2.30(d)
§ 2.30(e)(1)	§ 2.35(b)(3)(v)(A), (B)
§ 2.30(e)(2)	§§ 2.30(e)(1) and 2.35(b)(3)(vi)(A)
§ 2.30(e)(3)	§§ 2.30(e)(2) and 2.35(b)(3)(iv)
§ 2.30(e)(4)	§§ 2.35(b)(3)(iv), (vi)(F)
§ 2.30(e)(5)	§ 2.35(b)(3)(vi)(B)
§ 2.30(e)(6)	§§ 2.30(e)(3) and 2.35(b)(3)(vi)(C)
§ 2.30(e)(7)	§§ 2.30(e)(3) and 2.35(b)(3)(vi)(D)
§ 2.30(e)(8)	§ 2.30(b)(3)(vi)(D)
§ 2.30(e)(9)	§§ 2.30(e)(4) and 2.35(b)(3)(vi)(E)
§ 2.30(e)(10)	§ 2.30(e)
§ 2.30(f)	§§ 2.30(f) and 2.35(b)(3)(vii)(A)-(G)
§ 2.30(g)	§§ 2.30(g) and 2.35(c)
§ 2.30(h)	§ 2.35(d)
§ 2.30(i)	§ 2.35(f)
§ 2.30(j)	§ 2.35(b)(2)(iii)
§ 2.30(k)	§ 2.35(e)
§ 2.30(l)	§ 2.35(b)(3)(i)
§ 2.30(m)	§§ 2.35(b)(2)(i), (iv)

1. *Training.* Section 13(d) of the Act requires the research facility to train personnel involved with animal care and treatment (7 U.S.C. 2143(d)). We had proposed in § 2.35(f) that each research facility provide training for personnel in animal use, care, and treatment and that this training be provided through the Committee and the attending veterinarian. The Committee would review the training and designate those personnel requiring additional training, and the training program would include instruction in certain prescribed areas as well as in other areas the Committee may feel is necessary. We received 487 comments (462 from the research community and 25 from members of the general public) stating that these training requirements should not be included in § 2.35 since they are the facility's responsibility, not the Committee's. We agree that training is ultimately the responsibility of the facility. The Act does not reserve the training requirement to the Committee. Accordingly, in the revised rule we have removed training from § 2.35 and have included it in § 2.30(i) as a requirement for research facilities.

2. *Procedures for personnel to report violations.* Thirty-two commenters from the research community objected to the requirement contained in proposed § 2.35(b)(2)(iii) that the Committee establish procedures for personnel to report violations of the regulations or standards, including problems, deviations, or deficiencies with animal housing, care, or use. As proposed, the

Committee would also review and investigate reports, if warranted, and file a report. The commenters stated that the duty to establish these procedures should be imposed upon the research institution, and not the Committee. We agree that this requirement is not imposed upon the Committee by the Act and we therefore are including it in § 2.30(j) of the revised rule as the facility's responsibility. We continue to believe, however, that the Committee is the appropriate body to review and investigate any reports received because it is established to assess animal care and use and because it has inspection authority under the Act and the regulations. We are retaining that allocation of authority as proposed. The report prepared as a result of the Committee's review would be filed at the same central location as those prepared as part of the Committee's semiannual inspections.

3. *Response to Agency requests for information.* We received two comments objecting to proposed § 2.35(b)(3)(i) which would require the Committee to respond to requests from the Deputy Administrator [Administrator] to make research protocols [ACUPs] involving animals and assurance statements available to the Agency. The commenters stated that this should be the responsibility of the research facility, not the Committee. We agree that the research facility is ultimately accountable for responding to official Department requests, and we are including responsibility for doing so in § 2.30(1) of the revised rule as an additional requirement for research facilities. As explained in the revised rule for Part 1 published elsewhere in this issue, research protocol is changed to ACUP and Deputy Administrator is changed to Administrator. (*See* companion docket no. 88–013.)

4. *Use of pain relieving drugs.* Similarly, although we did not receive any comments regarding proposed § 2.35(b)(3)(iv), which requires the Committee to ensure that pain relieving drugs are used whenever an animal is involved in a painful procedure, the ultimate responsibility for this assurance lies with the facility and we are therefore including this requirement in § 2.30(e) in the revised rule.

5. *Painful procedures.* Ninety-four commenters from the research community objected to Committee responsibility for requiring certain assurances and conduct when painful procedures will be performed, as proposed in § 2.35(b)(3)(v) through (vii). Paragraph (v) of proposed § 2.35(b)(3) provides that the Committee shall require written assurances from the principal investigator that alternative procedures were considered for a procedure likely to cause pain or distress, that there are no other suitable procedures, and that the experiment is not unnecessarily duplicative. Paragraph (vi) of proposed § 2.35(b)(3) provides that the Committee must require that certain conditions are followed in any practice which could be expected to cause pain to animals. Paragraph (vii) of proposed § 2.35(b)(3) would require the Committee to asssure that no animal is used in more than one major operative experiment from which it is allowed to recover, except in certain circumstances. Again, research facilities are ultimately responsible for these assurances and for compliance with the requirements set forth in § 2.35(b)(3)(v) through (vii) as part of its operations. Because the Act does not specifically impose these duties on the Committee, we are placing them in paragraphs (e) and (f) of § 2.30 in the revised rule, as additional requirements for research facilities.

6. *Exceptions.* We did not receive any comments specifically addressing proposed § 2.35(c), which provides that exceptions to compliance with the Animal Welfare regulations and standards shall be made by the Committee only when necessary for the research design and they are specified in the protocol [ACUP]. A similar provision is contained in proposed § 2.30(g) with regard to painful procedures and major operative experiments from which an animal is allowed to recover. Under both sections, the principal investigator would be required to file a report with the Committee explaining any areas of noncompliance. A copy of the report must be kept on file by the facility and made available for Agency inspection or to officials of granting agencies. These provisions are set out in paragraphs (f) and (g) of § 2.30 in the revised rule, as the research facility is ultimately responsible for any exceptions to the Act and regulations, although exceptions must be approved by the Committee.

7. *Written procedures for exercise for dogs and for the psychological well-being of nonhuman primates.* We received 301 comments (276 from the research community and 25 from members of the general public) stating that the responsibility for carrying out the requirements of proposed § 2.35(d) should be imposed on the research facilities, and not the Committee. Thirty-five commenters similarly stated that the responsibility should be imposed on the research facility, which can then delegate authority to the Committee to carry out the requirements.

Proposed § 2.35(d) provides as follows:

> The Committee shall establish, in consultation with the attending veterinarian, written procedures and systems for the exercise of dogs and for the psychological well-being of primates in accordance with the regulations and standards, and a record system indicating that such a procedure or system is being carried out.

Again, the Committee is not required by the Act to establish these procedures, although it is required to inspect for compliance with the Act. Therefore, we are including the substance of proposed § 2.35(d) in § 2.30(h) as a requirement for research facilities in the revised rule.

8. *Federal research facilities.* The requirements contained in proposed § 2.35(e) "Federal research facilities," have also been moved to § 2.30 in the revised rule since they are a responsibility of a research facility, albeit a federal research facility, and not the Committee.

9. *Proposed* § 2.35(g) "Annual report of research facility" requires the Committee Chairman to sign an assurance statement on the Annual Report (VS Form 18–23) certifying that the Committee has carried out the responsibilities and requirements of § 2.35, that the facility is in compliance with the Animal Welfare standards, that the Committee has required a detailed explanation to be provided by the principal investigator when pain relieving drugs are withheld, that all explanations are attached to the annual report, and that the Committee has required that all other exceptions to the standards be required by research protocol [ACUP] and approved by the Committee. We received 49 comments stating that the responsible institutional official with authority to bind the facility should be required to sign the statement, not the Committee Chairman, since the provision of an adequate animal care and use program is the facility's responsibility. Twenty-nine commenters cited the assurance required in § 2.28(b)(9), "Annual report of research facilities," and objected that the additional assurance of the Committee Chairman required in proposed § 2.35(g) is redundant and outside the authority of the Act.

As discussed under the heading "Subpart B—Registration," in this final rule, only the responsible institutional official with authority to bind the facility will be required to sign the annual report. That official may in turn require assurances from the Committee of the kind proposed in § 2.35(g), however, we

are not requiring them in the facility's annual report The substance of the assurances that were required of the Committee Chairman in proposed § 2.35(g) will be deleted from that section and required instead in § 2.35(b)(2)(D) of the revised rule, as part of the Committee's report.

Subpart C of the revised rule has been rewritten to reflect that the areas of responsibility described above have been reassigned and are part of the requirements imposed upon research facilities. Comments we received addressing the substance of the proposed provisions of Subpart C, as opposed to comments addressing responsibility for those areas, are discussed below in the order in which those provisions appear in the revised rule. We believe that discussing the comments in this manner will help guide the reader through the substance of the revised rule.

General

We received 301 comments (276 from the research community and 25 from members of the general public) stating that this subpart should include standards which apply only to research facilities. Subpart C as proposed does apply only to research facilities and we do not find any ambiguity in either the heading or in the requirements themselves to cause the commenters to believe otherwise. We received 28 comments from the research community suggesting that we revise or delete the portions of Subpart C which address the formation and regulation of Institutional Animal Care and Use Committees. We partially agree with this comment and, as explained above, have revised §§ 2.30 and 2.35 which comprise Subpart C to reallocate authority and duties between the institution and the Committee so that the Committee will have only those specifically imposed upon it by the Act.

Seventy commenters suggested that the term "protocol" which appears in this section be changed to conform with the U. S. Public Health Service terminology which refers to "animal use procedure." As stated in the supplementary information accompanying the revised rule for Part 1—"Definition of Terms," published elsewhere in this issue (*see* companion docket no. 88–013), under the heading, "Protocol," the term "protocol" is changed to "animal care and use procedure" and is referred to in this document as the ACUP. The comments we received refer to "research protocols" as that term was used in the proposed rule. The term "research protocol" is used in this document when it is necessary to understand the substance of the comment. In those instances, ACUP appears in brackets following the term. In all other instances, we refer to the animal care and use procedure (ACUP).

Certain of the requirements pertaining to research facilities contained in §§ 2.30, 2.35, and 2.40 require that written policies and procedures be established. These include a written policy for any practice which might reasonably be expected to cause pain to an animal (proposed § 2.30(e)), written procedures and systems for the exercise of dogs and for the psychological well-being of nonhuman primates (proposed § 2.35(d)), and a written program of adequate veterinary care (proposed § 2.40(c)). (The requirement for a written program of adequate veterinary care applies to dealers and licensees, as well as to research facilities.) Research facilities that utilize written standard operating procedures (SOP) may satisfy these requirements by including the written policies and procedures in their SOPs.

Section 2.30 Additional requirements for research facilities

Section 2.30(a). Thirty commenters suggested that paragraph (a) of § 2.30 should specifically reference research facilities using or holding animals for experimentation, in addition to those using or holding animals for "research, testing, or teaching" as proposed. We did not propose to include separately "experimentation" since it is generally considered to be covered by the term "research." Section 2 of the Act defines "research facility" as one which, among other things, uses live animals in "research, tests, or experiments * * *" (7 U.S.C. 2132). Since the Act enumerates these functions, we agree that the regulations should as well. Section 2.30(a) is therefore revised by adding "experimentation" following "research."

We received 131 comments objecting to the requirement contained in proposed § 2.30(a)(2) that research facilities ensure that adequate veterinary care, including the appropriate use of drugs or euthanasia, is provided for at all times. We disagree with these commenters. We believe this requirement is necessary in order to fulfill the requirement of the Act that adequate veterinary care be provided at all times by research facilities (7 U.S.C. 2143(a)(3)(A). Section 2.30(a)(2) remains in the revised rule as initially proposed.

The requirements for adequate veterinary care are provided in Subpart D–"Attending Veterinarian and Adequate Veterinary Care." We are also adding a new paragraph (a)(3) to § 2.30 to state that research facilities are required to establish and maintain a written program of adequate veterinary care, in accordance with § 2.40. Proposed paragraph (a)(3) is redesignated (a)(4) in the revised rule.

Section 2.30(b). We received 322 comments (297 from the research community and 25 from members of the general public) stating that the Institutional Animal Care and Use Committee which § 2.30(b) requires to be established and maintained should be renamed the "Institutional Animal Committee" to be consistent with the Act. For the reasons explained under the heading, "Committee," in the supplementary information to the revised rule for Part 1—"Definition of Terms," published elsewhere in this issue of the **Federal Register** (*see* companion docket no. 88–013), we have determined that "Institutional Animal Care and Use Committee" is more appropriate since it is descriptive of the areas of concern to the Committee and is consistent with the terminology used by the Public Health Service, National Institutes of Health, which utilizes similar committees. No change is made to the name of the Committee in the revised rule.

Section 2.30(c). As proposed, § 2.30(c) would require research facilities to "provide the Committee and the attending veterinarian with the authority to enter all animal areas at any reasonable time in order to carry out their responsibilities." We received 535 comments (510 from the research community and 25 from members of the general public) objecting to this requirement on the grounds that it exceeds our statutory authority, could interfere with research, and could lead to unauthorized release of proprietary information. We believe these concerns are unwarranted.

First, statutory authority exists: the Act directs the Secretary to promulgate standards with respect to animals in research facilities, to include requirements for animal care, treatment, and practices to ensure pain and distress are minimized, for adequate veterinary care with appropriate use of drugs, for consideration of alternatives to any painful procedure, for consultation with a doctor of veterinary medicine in the planning of painful procedures, and for ensuring that an animal is not used in more than one major operative experiment from which it is allowed to recover except if scientifically necessary (7 U.S.C. 2143(a)(3)). The Act specifically authorizes the Committee, of which the

attending veterinarian is a member, to conduct inspections of research facilities, to review practices involving animals and the condition of animals, and to ensure compliance with the provisions of the Act to minimize pain and distress to animals (7 U.S.C. 2143(b)(3)). Section 21 of the Act authorizes the Secretary to "promulgate such rules, regulations, and orders as he may deem necessary in order to effectuate the purposes of [the] Act." (7 U.S.C. 2151).

Second, concerns that inspections at any time could interfere with ongoing research and with research results by disturbing the animals or upsetting the controlled environment could be allayed by providing guidelines for conducting inspections in the facility's written policies and procedures. In this manner, facility personnel, including Committee members and the attending veterinarian, will be informed of any necessary and reasonable restrictions on the timing of inspections before any are performed under these regulations. The establishment of guidelines would help reassure research personnel that the inspection regulations are implemented in good faith. We caution, however, that they must not be used as a means of preventing inspections during research, surgery, or other procedures.

Third, regarding release of trade secret or proprietary information, the scientific or proprietary portion of ongoing research is not the subject of inspection. Moreover, even if trade secrets or proprietary information were apparent on physical inspection, Section 27 of the Act makes it unlawful for any member of the Committee to release any confidential information of the research facility, including trade secrets, and provides sanctions for violations (7 U.S.C. 2157). This statutory deterrent should alleviate concerns about the unauthorized release of proprietary information.

It is necessary that the Committee be assured free access to all animal areas to perform its responsibilities and duties properly. Access to all animal areas at any reasonable time to conduct inspections as the Committee deems appropriate must be assured in order to effectuate the purposes of the Act and as a means of promoting compliance with the Act and the regulations between Committee inspections. Reports are not a substitute for first-hand observation of animal care to ensure compliance.

We are revising § 2.30(c) in the revised rule to require that each research facility must also provide the attending veterinarian with the authority to enter all animal areas at any time, to ensure compliance with the facility's program of adequate care. As explained in greater detail below under the heading, "Subpart D—Attending Veterinarian and Adequate Veterinary Care," this access is necessary to enable attending veterinarians to perform their duties as intended by the Act. Section 2.30(c) is revised to reflect this change.

Section 2.30(d). Proposed § 2.30(d) would require Committee approval only for research protocols [ACUPs] falling under Categories 3 and 4 of the "Categories of Animal Use in Research and Teaching" in proposed § 2.35(b)(3)(ii). which categorize procedures according to the degree of animal pain or distress involved. Procedures that involve "significant but unavoidable pain or distress to the animals" are in Category 3. Procedures that involve "the inflicting of severe pain or distress or chronic, unrelieved pain or distress, or death" are in Category 4. Procedures that involve no pain or minor pain are in Category 1 and 2, respectively.

Nineteen commenters (16 from the general public and 3 from the research community) suggested that the Committee review and approve all research protocols [ACUPs] instead of only those classified in the third and fourth categories of pain. One commenter suggested that the Categories of Animal Use could result in researchers classifying their procedures in Categories 1 and 2 to avoid closer scrutiny.

We initially proposed Committee review of protocols [ACUPs] involving more significant amounts of pain or distress as a means of fulfilling the intent of Congress to minimize animal pain and distress. The Committee would approve of those ACUPs only if they were shown to be justified and scientifically necessary and if alternatives were considered and determined to be unsatisfactory. Closer scrutiny of procedures falling in Categories 3 and 4 was considered appropriate to focus attention on these concerns.

Upon reconsideration of the utility of the "Categories of Animal Use" and the difficulty of designing or selecting a practical and appropriate categorization system, we have decided to adopt the suggestion of these commenters and require approval of all ACUPs by the Committee. This practice is currently required by the U.S. Public Health Service (PHS) and therefore all research facilities receiving grants or awards under the Health Research Extension Act of 1985, Pub. L. 99–158, are already doing so. Accordingly, this requirement should not be a burdensome addition to the requirements already imposed upon research facilities.

For these reasons and as more fully explained below in the discussion of comments addressing proposed § 2.35, we are eliminating the "Categories of Animal Use in Research and Teaching" from the regulations.

We understand that the requirement for Committee review and approval of all ACUPs will impose a greater burden on the Committee's human resources and we have therefore provided a mechanism to enable the Committee to accomplish its tasks. As is more fully explained below in the discussion of § 2.35, approval by a quorum of the Committee will be required for all ACUPs. However, the Committee can assign individual members to review designated ACUPs and to present them to the Committee for approval or disapproval. In this manner, the Committee should not become overburdened or a bottleneck in the research approval process.

We received 596 comments (571 from the research community and 25 from members of the general public) stating that the requirement in proposed § 2.30(d) that the Committee review research protocols [ACUPs] exceeds our statutory authority. We received 382 comments (357 from the research community and 25 from members of the general public) stating that the requirement for protocol [ACUP] review by the Committee should be deleted. The Act provides ample authority for requiring Committee review of "protocols" [ACUPs] and that Committee review is necessary to fulfill the intent of Congress.

Section 13 of the Act (7 U.S.C. 2143) directs the Secretary to promulgate standards to govern the humane handling, care, treatment, and transportation of animals by research facilities and other regulated entities. In addition to the requirements for exercise of dogs and for a physical environment adequate to promote the psychological well-being of nonhuman primates, the Secretary is directed to include requirements for animal care, treatment, and practices in experimental procedures to minimize animal pain and distress; for requiring the principal investigator to consider alternatives to any painful procedure; for requiring consultation with a doctor of veterinary medicine; for use of pain relieving drugs; for pre- and post-surgical care by laboratory workers; and for ensuring that no animal is used in more than one major operative experiment from which it is allowed to recover except in certain circumstances. The Act states that

exception to these standards may be made "only when specified by research protocol and that any such exception shall be detailed and explained in a report outlined under paragraph (7) and filed with the Institutional Animal Committee." (7 U.S.G. 2143(a)(3)(E)).

Paragraph (7) of Section 13 of the Act (7 U.S.C. 2143(a)(7)) directs the Secretary to require each research facility to show upon inspection and through reports that it is complying with the Act and that professionally acceptable standards of care are being followed. In order to do so, each facility must provide information on painful procedures used, assurances that alternatives were considered, assurances that the facility is adhering to the regulations promulgated under section 13 of the Act, and an explanation for any deviation from those regulations (7 U.S.C. 2143(a)(7)).

The Secretary is directed by the Act to require the establishment of a Committee at every research facility, in order to assess animal care, treatment, and practices (7 U.S.C. 2143(b)(1)). The Committee is statutorily directed to:

> Inspect at least semiannually all animal study areas and animal facilities of such research facility and review as part of the inspection—(A) practices involving pain to animals, and (B) the condition of animals to ensure compliance with the provisions of [the] Act to minimize pain and distress to animals. (7 U.S.C. 2143(b)(3)).

The Committee is also directed to file an inspection certification report which includes:

> Reports of any violation of the standards promulgated, or assurances required, by the Secretary, including any deficient conditions of animal care or treatment, any deviations of research practices from originally approved proposals that adversely affect animal welfare, any notification to the facility regarding such conditions, and any corrections made thereafter; * * * (7 U.S.C. 2143(b)(4)).

In order for research facilities to provide the assurances required, they must be cognizant of all procedures at the facility involving animals and they must make a determination that the procedures are in compliance with the Act and the regulations. This can best be accomplished through the Committee. Research facilities will necessarily rely upon Committee inspection reports in order for them to provide the assurances required in their annual report in good faith. The responsible institutional official with authority to bind the facility will need to rely upon the Committee's reports in certifying compliance with the Act and the regulations, as required in § 2.31 of the final rule. Without this mechanism, the assurances and certifications might be successfully challenged as not based on actual knowledge.

We have determined that it is necessary that the Committee review all ACUPs, referred to as "research protocols" in our proposed regulations, in order to fulfill the intent of the Act and to effectuate the express purposes of the Act.

We received 120 comments stating that review of protocols [ACUPs] should be limited to conform with the U.S. Public Health Service policy which requires Committee review of only those components of research protocols related to animal care and use. We believe that much of the resistance to the proposed requirement that the Committee review "research protocols" arises out of a misconception that the Committee would be involved in evaluating the design, outlines, guidelines, and scientific merit of proposed research. As stated in the supplementary information accompanying the revised rule for Part 1—"Definition of Terms," published elsewhere in this issue (*see* companion docket no. 88–013), this is not the case. The Committee will be involved with reviewing how the research will treat or affect an animal, the condition of an animal, and the circumstances under which an animal will be maintained. It will not be involved in evaluating the design, outlines, guidelines, and scientific merit of proposed research. The requirement that the Committee review what is now termed the ACUP remains in this revised rule as proposed, except that the Committee will review all ACUPs, and not just those involving significant or severe degrees of pain or distress.

Two commenters (1 from the general public and 1 from the research community) wanted Committee meetings and ACUP review to be open to the public. There is nothing in the Act which either requires or prohibits conducting Committee business in public. Local sunshine laws may require state agencies to conduct open meetings. Otherwise, the decision whether to do so is left to the research facilities. It will not be addressed in the regulations.

In considering the provisions of proposed § 2.30(d), 2 commenters stated that regulations should be formulated to protect research facilities' trade secrets. The 1985 amendments to the Act added section 27, which declares it unlawful for any member of a Committee to release any confidential information of the research facility, including any which concerns or relates to trade secrets (7 U.S.C. 2157). Section 27 also specifies the punishment for a violation and clearly provides that any injured person has a private cause of action. It is our belief that this statute and other laws regarding trade secrets provide sufficient protection and that the promulgation of regulations is not needed.

Two commenters stated that, under proposed § 2.30(d), the Committee should review and approve not just painful procedures, but also the species of animals to be used for proposed research, the number to be used, the type of housing to be used, any experimental methods to be employed, and the training of investigators. As stated above, we proposed the requirement for review of the procedures classified in Categories 3 and 4 because the stated intent of Congress in amending the Act was to minimize animal pain and distress, multiple major surgeries, and unnecessary duplication of animal research. The Committee is required and authorized to assess animal care, treatment, and practices in experimental research. There is no indication in the Act or in the the legislative history of the Act that Congress intended the Committee to consider the species and number of animals used, the housing to be used, experimental methods, or training of investigators, other than as they affect animal care, treatment, and procedures. Requirements for training are imposed by the Act upon the facilities (7 U.S.C. 2143(d)). All exceptions to the regulations and standards must be explained and justified by the ACUP and approved by the Committee. Accordingly, we do not agree that additional reference to Committee review of these areas is needed.

Except for the change explained above to require review of all ACUPs by the Committee, § 2.30(d) remains in the revised rule as originally proposed.

Section 2.30(e). As described above, areas of responsibility have been reassigned from the Committee to the research facility and accordingly are added to § 2.30. Comments concerning the substance of those provisions will now be addressed in the order in which they appear in the revised rule, beginning with § 2.30(e). We will discuss the material under subject headings. The section designations used in the proposed rule have been changed and are not used. However, we have included the former section designations as they appeared in the proposed rule so that the reader can cross-reference the proposal.

Painful procedures. In enacting the 1985 amendments to the Act, Congress

was particularly and expressly concerned with minimizing animal pain and distress. Toward this end, proposed § 2.30(e) would require research facilities to establish a written policy applicable to any practice which may be painful to an animal. The policy must require various measures to be taken when painful procedures are performed and must be designed to ensure that these measures are adequately followed. Proposed § 2.35 contains similar requirements although it places the responsibility for ensuring compliance with those measures on the Committee. As fully explained above under the heading, "Reorganization of §§ 2.30 and 2.35," we are in agreement with the comments which suggested that responsibility for these matters belongs to the research facilities and not the Committee, and we have revised § 2.30(e) to reflect this reallocation of responsibility.

Section 2.30(e) applies to all painful procedures and to those that might reasonably be expected to be painful. The use of pain relieving drugs, anesthetics, analgesics, and tranquilizers does not mean that a procedure is not painful. This section applies to all procedures that involve pain or that might be expected to involve pain, whether or not the pain is relieved.

Each paragraph of § 2.30(e) is discussed individually below in numbered sections because the section is rather lengthy. Each discussion begins with the requirement of the revised rule and then explains its derivation from the proposal. Comments concerning the different provisions are then addressed. We believe this approach will assist the reader in understanding the requirements and rationale of this revised rule.

1. Section 2.30(e)(1) of the revised rule directs the research facility to require written assurance from the principal investigator to the Committee that alternative procedures were considered but were not suitable, and that the experiment does not unnecesssarily duplicate previous experiments. The assurance must be given before a painful procedure can be undertaken. The assurance must also indicate what information sources were consulted, what alternative procedures were considered, and what techniques are planned to minimize pain and discomfort to the animals. This requirement was originally imposed upon the Committee in proposed § 2.35(b)(3)(v) and on the research facility in proposed § 2.30(d).

We received a number of comments concerning this assurance. We received 402 comments (377 from the research community and 25 from members of the general public) objecting to the assurance required of the principal investigator as either duplicative or not authorized by the statute. We have, by reorganizing §§ 2.30 and 2.35, eliminated duplicative assurances. In the revised rule, the assurance is only required of the research facility. The assurance is not only authorized by the statute, but is in fact mandated by it. Section 13(a)(3)(B) of the Act requires that the principal investigator consider alternatives to painful procedures and section 13(a)(7)(B)(i) of the Act requires research facilities to provide an assurance demonstrating that this has been done (7 U S.C. 2143(a)). The assurance is therefore necessary to enable the research facility to comply with the Act.

We received 138 comments (136 from members of the general public and 2 from the research community) expressing their belief that there is a need for greater proof that alternative methods were sought or considered and that the experiment is not unnecessarily duplicative. One member of the general public commented that the requirement for an assurance that a painful procedure is not unnecessarily duplicative needs clarification.

Our consultation with HHS included consideration of this provision. Representatives from HHS were concerned that the phrase "unnecessarily duplicat[ive]" could be misconstrued. They pointed out that intentional replication of research is often an essential component of research, either for validation of the findings of others or to establish an in-house model of research that was developed elsewhere. They also pointed out that section 13(e) of the Act requires the Secretary to establish an information service at the National Agricultural Library to provide information which "could prevent unintended duplication of animal experimentation * * *" (7 U.S.C. 2143(e)). Section 1(b)(3) of the Act, however, includes a finding of the Congress that "measures which eliminate or minimize the unnecessary duplication of experiments on animals can result in more productive use of Federal funds; * * *" (7 U.S.C. 2131(b)(3)). Deliberate duplication of research can be deemed necessary if approved by the Committee. We do not agree that additional clarification of the regulation is needed.

Eight commenters suggested rewording the assurance required in proposed § 2.35(b)(3)(v)(B) from "[T]he assurance is to indicate what information sources were consulted, * * *" to "[t]he assurance is to indicate to the satisfaction of the Committee * * *." For the following reasons, we do not agree that this change is necessary. The requirements of § 2.30, including the requirement that the Committee approve the ACUP, must be satisfied before a painful procedure can commence. Sections 2.30(d) and (e) of the final rule require the principal investigator to provide a written statement to the Committee stating that alternative procedures were considered and that the procedure is not unnecessarily duplicative, as part of the Committee's ACUP review and approval process. The ACUP would not be approved by the Committee unless it is satisfied with the assurance. Moreover, it is the responsibility of the research facility to require this assurance and they in turn must certify that they have in fact done so as part of their annual report. These provisions taken together should be sufficient to prevent unnecessary duplication of research.

2. Section 2.30(e)(2) of the revised rule provides that the research facility must require the principal investigator to consult with the attending veterinarian in the planning of a painful procedure, and that the principal investigator must consult with the attending veterinarian during the procedure under certain circumstances. The attending veterinarian must be allowed to observe the procedure at any time to ensure compliance with the regulations. In proposed § 2.35(b)(3)(vi)(A), the Committee was directed to require the principal investigator to consult with the attending veterinarian. In proposed § 2.30(e)(1) the research facility was required to establish a written policy ensuring that this consultation is conducted.

We received 148 comments stating that the phrase "and during the procedure" should be deleted from proposed § 2.30(e)(1). The commenters expressed concern that consultation during the conduct of an approved procedure would be prohibitively costly and would place the attending veterinarian in the position of policing the institution for compliance with the Animal Welfare regulations. We had intended that the attending veterinarian must be readily available during the course of a painful procedure to consult in the event of special, unanticipated, or unusual situations, and have therefore rephrased the requirement in the revised rule to make clear our intent. We also believe that the attending veterinarian should be allowed to make random checks of procedures to assure that the

regulations and standards are being followed. We have found that on occasion the attending veterinarian has become aware of a noncompliance situation in a classroom or laboratory and has been prevented from remedying it. We have also learned of instances where the attending veterinarian has been prevented from entering an animal area once a procedure has begun. To ensure that these situations do not occur, and that the attending veterinarian is not obstructed in performing his or her duties, the attending veterinarian must have the authority to conduct random oversight inspections of procedures in progress. We have clarified § 2.30(e)(2) in the revised rule to reflect that the attending veterinarian must be available for consultation during a painful procedure as well as during ACUP planning and development. It also requires that the research facility ensure that the attending veterinarian is allowed access to all animal and research areas to observe the procedure at any time during the course of the procedure, in order to fulfill the requirements of paragraph (e)(2).

3. Section 2.30(e)(3) of the revised rule requires research facilities to require the use of pain relieving drugs, anesthetics, analgesics, and tranquilizers to minimize pain unless they are withheld in accordance with the provisions of § 2.30(e)(4), and that they be administered in accordance with the directions and recommendations of the attending veterinarian and in accordance with the accepted or established use of the drugs. Proposed § 2.35(b)(3)(iv) would have required the Committee to ensure that pain relieving drugs are used in any painful procedure unless an exemption is approved by the Committee and the attending veterinarian. Proposed § 2.30(e)(2) would have required the research facility to establish a written policy ensuring the proper use of pain relieving drugs. For the reasons stated above under the heading, "Reorganization of §§ 2.30 and 2.35," in this revised rule the research facility, not the Committee, is responsible for requiring that pain relieving drugs are used unless withholding them is scientifically necessary, fully explained and justified in the ACUP, and approved by the attending veterinarian and the Committee, in accordance with § 2.30(e)(4).

One commenter objected in general to the requirement that pain relieving drugs be used in any procedure that would reasonably be expected to cause pain or distress in a human subject. The commenter stated that this is not always consistent with current veterinary practice. We believe that the exemption provision in § 2.30(e)(4) adequately addresses those instances when use of pain relieving drugs is not consistent with current veterinary practice, and that the presumption should remain in favor of providing pain relieving drugs, in order to carry out the purposes of the 1985 amendments to the Act.

4. Section 2.30(e)(4) of the revised rule provides that research facilities must require that pain relieving drugs, anesthetics, analgesics, and tranquilizers be reduced in amount or withheld only if scientifically necesssary, fully explained in the ACUP, and approved by the attending veterinarian and the Committee. The drugs can then be reduced in amount or withheld only for as long as necessary, as specified in the ACUP. Proposed § 2.30(e)(2) would require each research facility to establish a written policy providing for the proper use of pain relieving drugs. Proposed § 2.35(b)(3)(iv) would place responsibility for ensuring the proper use of pain relieving drugs on the Committee and would provide that pain relieving drugs could only be minimized or withheld if fully explained and justified in the research protocol [ACUP] and agreed to by the Committee and the attending veterinarian. Proposed § 2.35(b)(3)(vi)(F) would place specific responsibility on the Committee for prohibiting the withholding of pain relieving drugs except when scientifically necessary and approved by the Committee and the attending veterinarian.

We received 138 comments (136 from members of the general public and 2 from the research community) stating that stronger regulations requiring pain relieving drug use are necessary. We disagree that stronger regulations are needed. Responsibility for requiring proper use of pain relieving drugs is placed on the research facility in this revised rule in response to the comments suggesting that the facility and not the Committee is ultimately responsible for this assurance. The responsible institutional official will be required to certify in the annual report that the research facility has complied with the regulations concerning use of pain relieving drugs. Accordingly, we believe that additional regulations are not necessary.

One commenter objected to the authority given to the attending veterinarian to overrule in effect the Committee's decision with regard to the grant or denial of an exemption from the requirement to use pain relieving drugs, since the Act only requires consultation. The Act requires that pain and distress be minimized or eliminated. We believe that the attending veterinarian, by virtue of his or her training, duties, and responsibility, is qualified to make this assessment on behalf of the animals. It is the responsibility of the principal investigator to convince the Committee and the attending veterinarian that scientific necessity justifies withholding drugs. If the Committee is convinced of the scientific necessity, it too can attempt to convince the attending veterinarian. We believe that full concurrence by the Committee and the attending veterinarian is necessary in this area, due to the stated intent of Congress.

5. Section 2.30(e)(5) of the final rule directs research facilities to require that the attending veterinarian provide training of laboratory personnel in the proper use of pain relieving drugs so as to minimize pain and distress to animals. Proposed § 2.35(b)(3)(vi)(B) would have required the Committee to require that the principal investigator provide for the proper use of pain relieving drugs in accordance with established or accepted veterinary procedures, and provide for training of laboratory personnel to carry out those procedures. We did not receive any comments addressing the substance of the requirement as proposed. However, as part of the reassignment of responsibilities and the reorganization of §§ 2.30 and 2.35, responsibility for training of laboratory personnel in those procedures is placed on the research facility in the revised rule.

We also believe that the attending veterinarian is in the best position and is most qualified to provide training of laboratory personnel in the proper use of pain relieving drugs because of his or her expertise in medicine and in established or accepted veterinary procedures. Accordingly, while research facilities are ultimately responsible for ensuring that this training is provided, we believe that it is most appropriately carried out through the attending veterinarian.

6. Section 2.30(e)(6) of the revised rule directs research facilities to require that all pre-procedural, procedural, and post-procedural care be provided by laboratory workers or surgical personnel, in accordance with the attending veterinarian's instructions and established veterinary medical and nursing procedures. It also directs research facilities to require that this care and the qualifications of those personnel be evaluated and approved by the attending veterinarian. Proposed

§ 2.30(e)(3) would have required each research facility to establish a written policy ensuring all pre-surgical, surgical, and post-surgical care by laboratory workers is in accordance with established veterinary medical and nursing procedures, and ensuring that the care, surgical rooms, and qualifications of surgical personnel have been evaluated and approved by the attending veterinarian. Proposed § 2.35(b)(3)(vi)(C) would have required the Committee to require that pre-surgical and post-surgical care be provided by laboratory workers, in accordance with the instructions of the attending veterinarian and established veterinary medical and nursing procedures. In the revised rule, this responsibility is placed on the research facility because, as discussed under the heading, "Reorganization of §§ 2.30 and 2.35," the facility is ultimately responsible for proper care.

Also, because the facility is responsible for the acts of its employees, it is ultimately responsible for ensuring their qualifications. Evaluation of the qualifications of personnel is carried out through the attending veterinarian because he or she is most qualified to evaluate those qualifications.

In the revised rule, the requirements imposed on the research facilities encompass pre-procedural, procedural, and post-procedural care, and are not limited to surgical procedures. This revision is necessary because painful procedures, as defined in the revised rule for Part 1 (*see* companion docket no. 88-013), published elsewhere in this issue, include any procedure that would reasonably be expected to cause more than slight or momentary pain or distress in a human being to which that procedure was applied. Therefore, practices or procedures that might reasonably be expected to be painful procedures, are not limited to surgical procedures. The Act directs the Secretary to promulgate requirements "for animal care, treatment, and practices in experimental procedures to ensure that animal pain and distress are minimized, including adequate veterinary care * * *" (7 U.S.C. 2143(a)(3)(A)). All procedures must be covered by the required program of adequate veterinary care in accordance with the Act. Accordingly, it is necessary to direct that research facilities require that personnel rendering pre-procedural, procedural, and post-procedural care perform in accordance with the instructions of the attending veterinarian, and that the care and the qualifications of personnel be evaluated and approved by the attending veterinarian, in order to ensure adequate veterinary care and to effectuate the mandate of the Act.

Six commenters stated that the word "veterinary" preceding "medical and nursing procedures" should be deleted from proposed § 2.35(b)(3)(vi)(C). We believe that it is more precise to specify veterinary medical and nursing procedures when we are referring to care and procedures involving animals. Therefore, the word "veterinary" is retained in § 2.30(e)(6) in the revised rule.

7. Section 2.30(e)(7) of the revised rule provides that research facilities must require that all survival surgeries be conducted only in facilities intended for that purpose, that they be operated and maintained under aseptic conditions, and that surgical rooms be evaluated and approved by the attending veterinarian. Proposed § 2.30(e)(3) would have required each research facility to establish a written policy ensuring, among other things, that surgical rooms be evaluated and approved by the attending veterinarian. Proposed § 2.35(b)(3)(vi)(D) would have required the Committee to require that all aseptic survival surgeries be conducted in facilities intended for that purpose, that such facilities be operated and maintained under aseptic conditions, and that any surgery be performed or directly supervised by trained, experienced personnel. This responsibility has been placed on the research facility in the revised rule since the facility is ultimately responsible for the proper conduct of surgeries.

We received 12 comments suggesting that we restrict the requirements for "all aseptic survival surgeries" to non-rodent species. The regulations do not apply to laboratory bred rats and mice and therefore no such restriction is necessary.

We also received 387 comments (362 from the research community and 25 from members of the general public) objecting to the requirement that all aseptic survival surgeries be conducted in facilities intended for that purpose as too restrictive. One commenter suggested that we distinguish between major and minor surgical procedures. We disagree with these comments. The suggested major/minor distinction would likely lead to disputes over what should be considered major and what minor. By its terms, the requirements provided in § 2.30(e) are limited to painful procedures. We believe that this is the appropriate distinction upon which to base the requirements contained in paragraph (e)(7). We are therefore retaining the requirements stated above for all survival surgeries which are painful procedures.

8. Section 2.30(e)(8) of the revised rule provides that research facilities must require that any surgery be performed or directly supervised by trained, experienced personnel. Proposed § 2.35(b)(3)(vi)(D) would have required the Committee to require that all aseptic survival surgeries be performed or directly supervised by trained, experienced personnel. For the reasons provided under the heading, "Reorganization of §§ 2.30 and 2.35," and because responsibility for the proper conduct of surgical procedures ultimately belongs to the facility, this responsibility is placed on the research facility in the revised rule.

9. Section 2.30(e)(9) of the revised rule requires research facilities to prohibit the use of paralytic drugs without anesthesia. Proposed § 2.30(e)(4) would require each research facility to establish a written policy prohibiting the use of paralytic drugs without anesthesia and proposed § 2.35(b)(3)(vi)(E) would require the Committee to do so as well. For the reasons provided under the heading, "Reorganization of §§ 2.30 and 2.35," this responsibility is placed on the research facility in the revised rule, since it is ultimately responsible for rendering proper care.

Thirty-one commenters stated that "paralytic drug" should be defined in the regulations. We agree and are including a definition of "paralytic drug" in revised Part 1—"Definition of Terms," published elsewhere in this issue of the **Federal Register** (*See* companion docket no. 88-013.)

One commenter suggested strengthening the proposed regulations by stating the level of surgical anesthesia that should be required in order to use a paralytic drug. We believe that this is a matter that should be left to the research facility's program for providing adequate veterinary care. Also, consultation with the attending veterinarian should include matters such as the proper level of surgical anesthesia.

10. Section 2.30(e)(10) of the revised rule requires research facilities to establish a written policy to ensure compliance with the provisions of §§ 2.30(e) (1) though (9). Proposed § 2.30(e) would have required research facilities to establish a written policy limited to ensuring the various aspects of veterinary care and procedures provided in proposed § 2.30(e). Due to the reassignment of responsibilities in Subpart C, the written policy must be extended to cover additional areas of

animal care and treatment. For this reason, the requirement to establish a written policy is revised to cover the provisions of paragraphs (e) (1) through (9).

We received 123 comments stating that establishing a written policy for the veterinary consultation required by proposed § 2.30(e)(1) (§ 2.30(e)(2) in the revised rule) is unnecessary. Since facilities are responsible for requiring this consultation and for maintaining a program of adequate veterinary care, and must certify that the required care is being provided in accordance with the Animal Welfare regulations and standards, it is necessary that each research facility have a written policy so that the rules all personnel must follow are clear. The written policy must be provided to all principal investigators so that they can comply with its provisions. Distribution of the policy will ensure that all personnel have knowledge of the required consultations and procedures for minimizing and reducing animal pain, and can be held responsible by facilities for compliance with it. A written policy will also reduce any confusion over what is required before a painful procedure can be performed, and will standardize procedures within a research facility. Without a written policy the research facility would not be able to adequately monitor compliance by its personnel and could not assure that the requirements of the law were being followed. We have retained the requirement that a written policy be established requiring veterinary consultation and the other provisions of § 2.30(e) in this revised rule.

Section 2.30(f) Multiple major operative experiments. Section 2.30(f)(1) of the revised rule states that research facilities using or holding animals for research, testing, or teaching must establish and follow written procedures which assure that no animal is used in more than one major operative experiment from which it is allowed to recover except under the circumstances provided in the regulation. Proposed § 2.30(f) would have required research facilities to establish procedures which assure that no animal is used in more than one major operative experiment from which it is allowed to recover except as provided in proposed § 2.35. Proposed § 2.35(b)(3)(vii) would have required the Committee to assure that no animal is so used except in certain circumstances provided in proposed § 2.35(b)(3)(vii) (A) through (G) of the section. Because the research facility is ultimately responsible for assuring the proper use of animals, the requirements to assure that no animal is used in more than one major operative experiment from which it is allowed to recover except in certain circumstances and to establish procedures which assure this are placed on the facility. We are requiring, in this revised rule, that the procedures be in writing so that all personnel will have knowledge of them.

We received 39 comments objecting to the limitation on major operative experiments using the same animal. The commenters stated that this would interfere with research involving extensive behavior training or other research.

We understand that this requirement may interfere with some research which involves animals used in multiple surgeries which are unrelated, or which are not part of the same procedure, or which do not fall under any of the exceptions provided in the regulations. This is precisely what the Act intended. Section 13(a)(2)(D) of the Act requires the Secretary to promulgate standards including requirements that "no animal is used in more than one major operative experiment from which it is allowed to recover except in cases of—(i) scientific necessity; or (ii) other special circumstances as determined by the Secretary; * * *" (7 U.S.C. § 2143(a)(2)(D)). The regulations prevent multiple use of animals only when there is no scientific necessity or other special circumstances justifying it. The regulations include a mechanism for obtaining permission from the Secretary if special circumstances exist which are not included in the regulations. We believe that this regulation will not interfere with the justified use of an animal in multiple surgeries.

Four commenters from the general public stated that the regulation provides too many exceptions from the prohibition against multiple surgeries, and that the exceptions are too broad. One commenter stated that the terms "major operative experiment" and "scientific necessity" should be defined and that the exceptions should not apply to animals used in teaching and demonstration exercises. We believe that the exceptions provided in the regulation are all necessary exceptions to the prohibition of the Act. We also believe the exceptions are stated narrowly. The exception for scientific necessity requires approval by the Committee and is not subject to unilateral interpretation by the investigator. The Committee is the appropriate body to evaluate whether or not a proposed procedure is scientifically necessary, and we do not believe it is necessary to define this term. The term "major operative experiment" is defined in Part 1—"Definition of Terms." (*See* companion docket no. 88–013, published elsewhere in this issue.) Whether exceptions should be made for animals used in research, testing, teaching and demonstration exercises is left to the research facilities, however the exceptions granted must still fall within one of the circumstances provided in the regulation in order to use an animal in multiple major operative experiments. No changes have been made based upon this comment.

Section 2.30(g) Exceptions. Section 2.30(g) of the revised rule provides the limited circumstances under which exceptions to the Animal Welfare standards and regulations can be made. It also provides the reporting procedure which must be followed if an exception is made by a research facility.

Responsibility for granting exceptions is placed on the research facility in the revised rule, since it is the research facility's responsibility under the Act to certify compliance with the standards and regulations and to explain any deviation from the standards (7 U.S.C. 2143(a)(7)(B)). The Committee must first approve the ACUP since its duty is to assess animal care, treatment, and practices, and since the Act requires that any exceptions to the standards be made only when specified by research protocol and when detailed and explained in a report filed with the Committee (7 U.S.C. 2143(a)(3)(E)). The research facility can grant exceptions to the standards and regulations only when necessary for the accomplishment of the research design, and only if the exception: (1) Is specified in the ACUP; (2) is explained in detail; and (3) is approved by the Committee. The principal investigator must file a report with the Committee before it reviews the ACUP, detailing the areas of noncompliance. The facility must keep a copy of the report on file and make it available to APHIS inspectors and officials of funding Federal agencies. The facility must attach a copy of all reports detailing and explaining exceptions to compliance to its annual report.

As revised, § 2.30(g) consolidates the provisions of proposed §§ 2.30(g) and 2.35(c). Proposed § 2.30(g) would have allowed exceptions to the requirements of proposed § 2.30 (e) and (f) (animal care assurances and procedures assuring against multiple use of animals in major operative experiments, respectively) to be made only when specified by the "research protocol" [ACUP] and approved by the Committee. The principal investigator would be required to detail and explain

the exception in a written report to be filed with the Committee and attached to the facility's annual report to the Department. It would also provide for withholding of pain relieving drugs when scientifically necessary. (This provision has been included in § 2.30(s)(4) of the revised rule.) Proposed § 2.35(c) would have allowed the Committee to grant exceptions only when necessary for the accomplishment of the research design, specified in the "research protocol" [ACUP], and explained in detail. The principal investigator would be required to file a report with the Committee explaining the exception in detail. A copy of the report would be required to be kept on file by the facility and to be available for inspection by USDA inspectors or officials of granting agencies.

Under the revised rule, only the Committee is authorized to approve exceptions to compliance with the regulations and standards, however it is made clear that the research facility is ultimately responsible for any exceptions granted.

We received 33 comments objecting to the proposed requirement that the principal investigator first file a written report, and suggesting that an oral report to the Committee is sufficient. We cannot make any changes based upon this comment since the Act specifically requires that exceptions to the standards be detailed and explained in a report and filed with the Committee (7 U.S.C. 2143(a)(3)(E)). The Act also requires a written explanation from research facilities for any deviation from the standards. Because of these specific requirements in the Act, we do not have the authority to require only an oral report instead of a written report.

Six commenters stated that the procedure provided in proposed § 2.30(g) for approval of exceptions to the requirements of proposed § 2.30 (e) and (f) should also be available for exceptions from other requirements in the regulations. We believe that the revised rule is broad enough to cover exceptions from any of the Animal Welfare regulations and will allay the commenters concerns that exceptions to regulations other than § 2.30 (e) and (f) be possible.

Section 2.30(h) Exercise for dogs and psychological well-being of primates. As stated in the discussion of the reassignment of responsibilities from the Committee to the research facility under the heading, "Reorganization of §§ 2.30 and 2.35," the research facility is responsible in this revised rule for establishing written procedures and systems for the exercise of dogs and for the psychological well-being of primates in accordance with the regulations and standards, and for establishing a record system indicating that such a procedure or system is being carried out. This must be done in consultation with the attending veterinarian. (These procedures may be included in the facility's standard operating procedure, although this is not mandatory.) The proposed standards for exercise of dogs and to promote the psychological well-being of nonhuman primates are provided in a related document published elsewhere in this issue. (*See* companion docket no. 87-004.)

We received 357 comments (332 from the research community and 25 from members of the general public) stating that the requirement for establishing these procedures and systems should be implemented by the attending veterinarian, rather than the Committee as originally proposed, to avoid conflicts between the attending veterinarian and the other Committee members. The reassignment of responsibility for these procedures to the research facility removes the possibility of conflict between the Committee and the attending veterinarian. The Committee will still be responsible for inspecting animal areas to ensure that pain and distress are minimized and it is also required to approve of any ACUPs which deviate from the standards of Part 3. These functions should not conflict with the attending veterinarian's consultative role in developing written procedures and systems. No change is made as a result of these comments.

We received 505 comments (480 from the research community and 25 from members of the general public) objecting to the requirement for a separate record system to document that these procedures are being carried out. The requirements for exercise of dogs and for promoting the psychological well-being of nonhuman primates are two of the primary directives of the 1985 amendments to the Act. We believe that a separate record system provides a vital mechanism to ensure compliance with the regulations and to give our inspectors a means of checking for compliance. This is particularly so with regard to exercise for dogs and promoting the psychological well-being of nonhuman primates. Unlike tangible requirements, such as cage sizes and cleanliness which can be observed at all times, there must be written verification that the procedures concerning exercise for dogs and psychological well-being of nonhuman primates are being followed in order to ensure compliance. We believe that the required recordkeeping is reasonable and will ensure compliance. No change is made in the regulations based upon this comment.

Section 2.30(i) Training. The requirement to provide for the training and continuing education of personnel was imposed upon the research facilities in the proposed rule. However, the task of reviewing the status of the training and the qualifications of researchers, and of designating those personnel needing additional training was imposed on the Committee in proposed § 2.35(f). This requirement is also imposed on research facilities in § 2.30(i) of the revised rule, because the Act makes the facilities responsible for training (7 U.S.C. 2143(d)). We have determined, however, that this responsibility should be carried out through the attending veterinarian, since the training will be in areas in which the attending veterinarian has expertise, such as proper drug usage and pre- and post-procedural care. (The proposed rule would require training in proper pre-surgical and post-surgical care of animals. For the reasons set forth in our discussion of § 2.30(e)(6) under the subheading, "Painful procedures," this requirement applies to all procedures in order to ensure adequate veterinary care, and is not limited to surgical procedures.)

Nineteen commenters stated that the proposed training requirements are beyond the scope of the Act. We have considered this comment, but are making no changes based upon it. The training requirements are either specifically stated in the Act or are necessary adjuncts of the areas of animal care in which instruction is required by the Act (7 U.S.C. 2143(d)). For example, the requirement in § 2.30(i)(4)(ix) to provide training in the proper use of pain relieving drugs is a necessary adjunct of "includ[ing] instruction on research or testing methods that minimize or eliminate the use of animals or limit animal pain or distress; * * *" (7 U.S.C. 2143(d)(2)).

We are making some changes in the requirements for annual review of the status and qualifications of personnel who use animals, because other institutional mechanisms exist for discovering deficiencies in the level of training and qualification. We have also eliminated the requirement for training in the area of animal ethics. These modifications are discussed below in this section.

Two commenters noted their support for the proposed training requirements and suggested more stringent training requirements. We believe the training requirements contained in § 2.30(i) are within the scope of the Act and satisfy

the intent of the Act. If, after the regulations are in effect, it appears that more stringent regulations are necessary, we will consider proposing additional or revised regulations.

Seventy-nine commenters suggested that training should be made available to individuals based upon the species of animal they use or some other specific need. Proposed § 2.35(f)(2) would have required that the training "be made available annually or as appropriate to the individuals and their responsibilities" and a similar provision is maintained in this revised rule. We are concerned that the proposed language could be misconstrued as requiring that only the frequency and not the substance of training be appropriate to the individuals and their responsibilities. Section 2.30(i)(2) is clarified in the revised rule to reflect that both the substance of the training must be appropriate to the individuals and their responsibilities, as well as the frequency of the training that is made available to them. Under the rule, the research facilities can determine whether training should be based upon the species of animal used, or whether other criteria should be used, in accordance with their determination of what is appropriate, so long as the areas listed in § 2.30(i)(4) are covered.

We received 560 comments (535 from the research community and 25 from members of the general public) objecting to the requirement of proposed § 2.35(f)(3) that the Committee annually review the status of training and qualifications of researchers who use animals. The commenters stated that this would be costly and impractical. Although responsibility for this review is placed on the research facility in this revised rule, we anticipate that the same objection will be raised, as the facility must bear the cost of the review. Representatives of HHS have pointed out that internal mechanisms exist in research facilities, such as performance appraisals, which would highlight the need for additional training, and that facilities should be afforded an opportunity to satisfy the requirements of the Act by developing monitoring procedures which utilize these existing mechanisms. We agree that some facilities may have adequate means of reviewing the status of training and the qualifications of personnel, and we are revising the requirement for annual review at research facilities. Research facilities could avoid a separate annual review as required by § 2.30(i)(3) in the revised rule, if they have a written policy requiring that they annually review their personnel in the areas of training and qualifications.

We received 434 comments (409 from the research community and 25 from members of the general public) suggesting that the areas of instruction required in paragraph (4) be listed in two groups: one for all employees and one for employees involved with animal care, use, and treatment. By its terms, the training required by § 2.30(i) in the revised rule is limited to those persons involved with animal use, care, and treatment. Those persons who do not have this contact with animals would not be required to undergo the requisite training. Accordingly there is no need to divide the areas identified in § 2.30(i)(4) into two parts as the commenters suggested. Training of personnel who are not involved with animal care, use, and treatment is left to the determination of the research facilities, because it is beyond the scope of the Act.

Proposed § 2.35(f)(4)(i) would require instruction in "[h]umane methods of animal maintenance and experimentation and animal ethics; * * *." Eight commenters suggested that the requirement for instruction in animal ethics be deleted and another 37 commenters suggested substituting "research ethics" for "animal ethics." We agree that the term "animal ethics" invites differing philosophical views over what the substance and content of the instruction should be, making regulation difficult. Therefore, we are deleting the reference to "animal ethics." The remaining required areas of instruction fulfill the intent of the Act.

We received 299 comments (274 from the research community and 25 from members of the general public) objecting to paragraph (4)(xi) of proposed § 2.35(f). As proposed, it would have required instruction in "[o]ther training, techniques, or procedures the Committee, or the Secretary, may feel is necessary." Responsibility for this determination is reassigned to the research facility as part of the reorganization of §§ 2.30 and 2.35. The commenters stated that paragraph (xi) is meaningless for compliance purposes and should be deleted. We disagree. The Secretary must have the flexibility to require training in additional areas if it is determined to be necessary. Also, as scientific knowledge evolves, it could become apparent that additional or different training in new technologies is needed, and the Secretary must have the authority under the regulations to require this training in order to fulfill the intent of the Act.

Except for those changes discussed above, the substance of proposed § 2.35(f) remains as originally proposed. However, responsibility for compliance with the requirement to provide training is placed on the research facility in § 2.30(i) of the revised rule.

Section 2.30(j) Reporting. Proposed § 2.35(b)(2)(iii) would require the Committee to establish a reporting procedure for personnel or employees to report violations of the Animal Welfare regulations, including problems, deviations, or deficiencies with animal housing, care, or use. The Committee would review and investigate reports of violations and would then prepare and file a report at a central location. It would also protect Committee members and personnel from discrimination or reprisal for reporting violations. The Act requires that the Committee file an inspection certification report, including reports of any violations or deficient conditions of animal care or treatment, any deviations of research practices from originally approved proposals that adversely affect animal welfare, any notification to the facility regarding such conditions, and any corrections made (7 U.S.C. 2143(b)(4)(A)). The Act does not specifically mandate that the Committee devise a reporting procedure for personnel to report violations. Accordingly, this responsibility is reassigned to the research facilities in § 2.30(j) of the revised rule. The Committee, however, is still required to review and investigate reports, under the revised rule. The Committee is in the best position to do so because it is established to assess animal care and use, and has inspection authority under the Act. Research facilities are also required to establish the central location for filing reports under the revised rule. This requirement is set forth in § 2.30(m).

We received 367 comments (342 from the research community and 25 from members of the general public) stating that the proposal to require a reporting procedure to report violations or deficiencies to the Committee exceeds the authority of the Act, as the Act refers to training for these procedures only. Section 13(d) of the Act requires each research facility to provide training including instruction on "methods whereby deficiencies in animal care and treatment should be reported." (7 U.S.C. 2143(d).) This directive presumes the establishment of a reporting procedure. The legislative history of the 1985 amendments to the Act which require this training makes this point eminently clear. In the *Congressional Record* of

December 18, 1985, at page S17943, Senator Dole stated:

> [i]t is intended that all personnel be acquainted with the provisions of this Act and instructed to report deficiencies promptly to ensure that the facility is in compliance at all times. No one should be discriminated against for reporting violations of the Act. Veterinary inspectors from the U.S. Department of Agriculture cannot be present on a daily basis. However, their enforcement capability can and should be enhanced by the Institutional Animal Committee and personnel in laboratories must be protected against any reprisal for reporting mistreatment of animals.

The Conference Report included in the *Congressional Record* of December 17, 1985 at page H12421 states, "[a]ll personnel are intended to be acquainted with the provisions of this Act and instructed to report deficiencies promptly to ensure that the institution is in compliance at all times. No employee shall be discriminated against for reporting violations." We believe the Act intended that a mechanism for reporting violations and deficiencies be implemented at research facilities as a vital means of ensuring compliance with the Act and the regulations. The Secretary is authorized to promulgate regulations deemed necessary to effectuate the purposes of the Act, including the reporting of violations and deficiencies. The requirement for a reporting procedure therefore does not exceed the statutory authority.

Two members of the general public and 1 commenter from the research community stated that the reporting provisions should include protection for the employer as well as for employees and Committee members. The legislative history cited above addresses protection against reprisal or discrimination for employees who report violations. It is silent on employers and facilities that report personnel as being in violation of the Act or regulations. The Act intends that facility personnel function as checks on each other and on the facility as a whole, and relies on the facility to monitor its own house. The facilities have the resources to safeguard themselves and their supervisory officials and we do not believe that regulations providing this protection are warranted.

Section 2.30(k) Federal research facilities. Proposed § 2.35(e) would have required federal research facilities to establish an Institutional Animal Care and Use Committee (Committee) having the same duties and functions as nonfederal research facilities except that the Committee would report deficiencies to the head of the federal agency conducting the research instead of to APHIS, and the head of the federal agency would be responsible for all corrective action and for granting of all exceptions to inspection protocol. As stated in the initial paragraphs of the supplementary information to Subpart C, we have determined that it is more appropriate to include this provision in § 2.30 since it is directed to the research entity and not the Committee. It is § 2.30(k) in the revised rule.

We received two comments concerning proposed § 2.35(e) "Federal research facilities," both from members of the research community. The comments stated that "institutional official responsible for animal care and use" should be substituted for "head" of the federal agency, because authority to administer animal care may be delegated to another official in the agency. We disagree and have used the language appearing in the Act. The Department is not involved in a determination by an agency "head" to delegate authority in accordance with agency internal procedure. We cannot by regulation place this authority at a lower level than that legislated by Congress. No change is made in the revised rule.

Section 2.30(1) Reviews. Proposed § 2.35(b)(3)(i) would require the Committee to make all research protocols [ACUPs] and assurance statements required by PHS or other funding Federal agencies available for review upon the request of the Administrator, to assure compliance with the Act. Department inspectors would be required to maintain the confidentiality of the requested material. Under the reorganization described above, the responsibility for responding to a Departmental request ultimately rests with the research facility or responsible institutional official acting on behalf of the research facility, and is included in § 2.30 in the revised rule as subsection (1).

We received 529 comments (504 from the research community and 25 from members of the general public) objecting to the requirement to make all protocols [ACUPs] and assurance statements available to APHIS. Some of the concerns focused on public release of the materials. Others were that the requirement exceeds statutory authority. As to the latter concern, the Secretary has authority under the Act to require production of all ACUPs and assurance statements as part of the authority to require each research facility to show, upon inspection, that the provisions of the Act are being followed (7 U.S.C. 2143(a)(7)). Section 16 of the Act authorizes the Secretary to make investigations or inspections as he or she deems necessary to determine whether any provision of the Act or the regulations and standards have been or are being violated (7 U.S.C. 2146(a)). Review of ACUPs and assurance statements would provide important information and would be key indicators as to whether any of the provisions of the Act or regulations are being violated or have been violated.

We understand the research facilities' concern with public release of these documents, particularly before a violation of the Act or the regulations has been established. We agree in part with commenters who stated that this material should not be retained by USDA and possibly subject to release to the public in response to Freedom of Information Act requests to USDA. Section 2.30(1) is revised to reflect that these materials will not be removed from the research facilities' premises unless there has been an alleged violation or the material is needed for an investigation or other enforcement purposes.

Thirty-eight commenters requested clarification as to when the Administrator could request that "protocols" and assurance statements be made available for review by the Department. These documents would be requested whenever there is reason to believe there may be noncompliance with the Act or the regulations, when needed to investigate possible or alleged violations, and when needed for other enforcement purposes.

Section 2.30(m) Reports. Proposed § 2.35(b)(2)(iv) would require that any reports required by proposed § 2.35 be kept on file at the research facility for at least 3 years and be made available for inspection and review by APHIS inspectors and any funding Federal agency. We did not receive any comments addressing this proposed requirement. We have revised the requirement in this rule, however, to provide that, upon notification from the Administrator, research facilities must retain records for more than 3 years pending completion of an investigation or proceeding, as required by § 2.81. This is a nonsubstantive change because research facilities are subject to the provisions of § 2.81.

Proposed § 2.35(b)(2)(i) would require that the Committee file its inspection certification report at a central location at the research facility. We are including the requirement that research facilities maintain a central location for filing reports.

The proposed rule referred to inspection and review of reports by APHIS inspectors. We have revised

these provisions to provide for inspection and review of reports by APHIS officials as a result of the change in terms used for APHIS personnel, as described in a related document published elsewhere in this issue of the Federal Register, docket no. 88-013, Part 1—"Definition of Terms." The term "APHIS official" as defined in Part 1 would include an APHIS inspector.

The research facility is ultimately responsible for retaining the Committee's reports and assurance statements. Accordingly, this provision has been placed in § 2.30 in the revised rule as paragraph (m). We have also revised it to refer to any reports required by Part 2, instead of § 2.35 as originally proposed, due to the reorganization of §§ 2.30 and 2.35.

Section 2.31 Annual report of research facilities. Proposed § 2.28 requires each research facility to submit an annual report to the Area Veterinarian in Charge. This was proposed under Subpart B—"Registration." We believe it is more appropriate to include this requirement under Subpart C—"Institutional Animal Care and Use Committees and Other Requirements for Research Facilities," since it applies only to research facilities. Accordingly, it is redesignated as § 2.31 in the revised rule. The comments we received concerning the annual report refer to proposed § 2.28 and we will refer to the proposed section and paragraph designations in addressing the substance of those comments.

General. We received numerous comments addressing the annual report required of research facilities, the information we are requiring to be included in the report, and the proposed certifications of the report.

We received 443 comments (417 from the research community and 26 from members of the general public) stating that the proposed regulation exceeds the Department's statutory authority. We believe that the annual report and its contents are not only authorized, but are mandated by the Act. Section 13(a)(7)(A) of the Act states the Secretary "shall require each research facility to show upon inspection, and to report at least annually, that the provisions of this Act are being followed * * *" (7 U.S.C. 2143(a)(7)(A)). The Act goes on to specify information that the research facilities must provide in their report. We believe that the information we are requiring in the report is either specifically required by the Act or is necessary to enable the Department to determine if the facility is in compliance with the Act and the regulations.

We also received 168 comments from the research community objecting that the information required to be provided on the annual report would involve extensive record-keeping and reporting beyond the requirements of the Act. The assurances and information required of research facilities by § 2.28 are required by section 13 of the Act. This information enables the Department to inspect for compliance with the regulations and standards under the Act, and enables the Secretary to submit the comprehensive and detailed annual written report to Congress required by section 25 of the Act (7 U.S.C. 2155).

We received 456 comments (431 from the research community and 25 from members of the general public) requesting that the annual report be revised and simplified. They also stated that § 2.28 as proposed would require redundant assurances. We agree that simplification of the report is desirable, and we have modified the report requirements in the revised rule.

One commenter from the research community stated that the annual report should be revised to include all pertinent information. We are currently reviewing the annual report form, Form VS 18-23. The form will be updated and revised as necessary to include all information that will now be required by the regulations.

Two commenters from the research community suggested that we incorporate the registration update required by § 2.25 in the annual report. These two reporting requirements serve very different purposes. We believe that combining them would create problems rather than simplify matters. The registration update is required of all registrants every 3 years so that the Department can maintain accurate records of the identity and location of registrants. The annual report is, as its name indicates, a yearly report required only from research facilities. Not all registrants are research facilities. If the two different reporting requirements were combined for the research facilities, yet another reporting system would have to be devised for those registrants who are not research facilities, to avoid unnecessary or inapplicable information collection. We believe it prudent to keep these two reporting requirements distinct.

Proposed § 2.28(a). As proposed, § 2.28(a) would require the Chief Executive Officer (CEO) of the facility, the attending veterinarian, and the chairman of the Institutional Animal Care and Use Committee (Committee) to sign the annual report. Proposed § 2.28(b)(9) would require a statement by the CEO that the attending veterinarian and the Committee have the authority to enter any animal area to carry out their responsibilities, that the Committee has satisfactorily carried out its responsibilities, and that the facility is in compliance with the Act, regulations, and standards. Section 2.28(c) would require the attending veterinarian and the Committee chairman to certify the annual report, in accordance with §§ 2.40(e)(2)(iii) and 2.35(g) of the proposed rule.

Fifty-five commenters from the research community stated that only the CEO should be required to sign the report. Ninety-six commenters from the research community stated that reference to the "CEO" in proposed § 2.28(b)(9) should be changed to "institutional official" to coincide with the PHS Policy. Four commenters from the research community stated that the report and assurances are the responsibility of the facility and should not require other certification. We agree that the assurances of compliance required in the report are the responsibility of the institution, not the Committee Chairman or the attending veterinarian, because it is the ultimate responsibility of the facility to ensure compliance with the Act and the regulations. Therefore, we are revising the rule to require that the annual report be signed only by the CEO or a "responsible institutional official with authority to bind the facility." This revision means that it needn't be the CEO who signs the report, however the institutional official who does sign the report must be authorized to bind the facility. We originally proposed in § 2.28(a) to require the signature of all three individuals as a means of detecting noncompliance at facilities. For example, if an attending veterinarian refused to sign the report, we would suspect that he or she was, in some way, not satisfied with the facility's administration of the program of veterinary care. In order to satisfy this concern, which we still have, we are also amending proposed § 2.28(a) to include a mechanism for including all dissenting views in the annual report. This is described in greater detail below under the discussion of proposed § 2.28(c).

Proposed § 2.28(b). As proposed, § 2.28(b)(1) states that the annual report shall "[s]how that professionally acceptable standards governing the care, treatment, and use of animals, * * * were followed by the research facility; * * *". We received 411 comments (386 from the research community and 25 from members of the

general public) objecting to use of the word "show" and stating that the report can only state this fact, not show it. We received 168 comments from the research community suggesting that we change "show" to "ensure" or "assure." A number of the commenters pointed out that facilities must show their compliance with the Act and regulations through inspections, as required by section 13 of the Act (7 U.S.C. 2143(a)(7)). We agree with the commenters and have changed "show" to "assure" in § 2.31(b)(1) of the revised rule. We have also revised the rule to require assurance that professionally acceptable standards were followed during pre- and post-procedural care, in place of pre- and post-surgical care, because adequate veterinary care must be provided for all procedures in accordance with the Act.

Proposed § 2.28(b)(2) requires an assurance in the annual report that the principal investigator has considered alternatives to painful procedures. We received 313 comments (288 from the research community and 25 from members of the general public) suggesting that we combine this assurance with proposed paragraph (b)(7) and that we clarify paragraph (b)(2). Proposed paragraph (b)(7) requires the names and numbers of animals upon which painful procedures were conducted and pain relieving drugs were withheld. A detailed statement of explanation as to why drugs were not used must be attached to the annual report. We disagree with the commenters. Section 13 of the Act requires that alternatives be considered for all procedures likely to produce pain or distress (7 U.S.C. 2143(a)(7)(B)(i)). This requirement applies to all painful procedures, whether or not the pain is relieved. Accordingly, paragraph (b)(2) requires assurances that alternatives were considered with respect to all painful procedures, regardless of whether or not pain relieving drugs are used or withheld. Proposed paragraph (b)(2) is far broader than the limited circumstances covered in paragraph (b)(7), which is limited to painful procedures for which pain relieving drugs (anesthetics, analgesics, or tranquilizing drugs) are withheld.

By design, the assurance required in proposed paragraph (b)(2), that alternatives to painful procedures were considered, precedes proposed paragraphs (b) (5) and (6) which concern painful or potentially painful procedures. Proposed paragraph (b)(5) pertains to procedures involving no pain, distress, or use of pain relieving drugs. Proposed paragraph (b)(6) pertains to painful procedures for which pain relieving drugs were administered. The assurance required in § 2.28(b)(2) would apply to the procedures in the succeeding paragraphs. If the requirement for assurance that alternatives to painful procedures have been considered were combined with proposed paragraph (b)(7) it could be construed as pertaining only to those procedures for which pain relieving drugs are withheld, contrary to the requirement of the Act. For this reason, no changes will be made to paragraph proposed (b)(2) in the revised rule, or to its placement within the section.

Although we did not receive any comments concerning the specific provisions of proposed § 2.28(b)(3) which requires assurance that the facility is adhering to the standards and regulations under the Act and that an explanation for any deviation from them be attached to the annual report, we are revising it to include assurance that the facility required that exceptions to the standards and regulations be specified and explained in an ACUP and approved by the Committee. We believe that these changes are consistent with the requirements of section 13(a)(7) of the Act (7 U.S.C. 2143(a)(7)) and with §§ 2.30 and 2.35 of this revised rule.

We received 391 comments (366 from the research community and 25 from members of the general public) objecting to the requirement of proposed paragraph (b)(4) that the annual report state the location of facilities where animals are housed or used in actual research, testing, teaching, or experimentation. One commenter stated a concern that if facilities must provide the specific sites within the facilities where animals are held, the information would be accessible to the public through the Freedom of Information Act and could compromise their security.

It is necessary for APHIS to know the location of animals at research facilities in order to inspect all animal sites, as required by the Act. This information is essential for enforcement purposes, as evidenced by the case of a research facility at a major university which maintained nonhuman primates for years, hidden from APHIS inspectors, by failing to disclose the animal site to APHIS.

We believe the commenters' concerns about revealing the location of animal areas are unwarranted. This information has been required in the annual report since the regulations were revised in 1972 to incorporate the 1970 amendments to the Act, and there is no indication that a facility's security was compromised because third persons learned the whereabouts of laboratory animals through Freedom of Information Act requests. Furthermore, once APHIS has inspected a facility, an inspection form is completed which details the location of animals at each site. This form is filed with the Agency and may potentially be disclosed through Freedom of Information Act requests. Therefore, leaving this information out of the annual report may not prevent third persons from obtaining the information.

We are clarifying proposed paragraph (b)(4) in the revised rule to also require the location of the facility or facilities where animals are held for future use in research, testing, teaching, or experimentation, to avoid any confusion that we are only requiring this information for animals in actual use.

Since deletion of this requirement would not have the effect intended by the commenters, and since the information is necessary for the Department to comply with the Act, paragraph (b)(4) will remain as proposed except for the above clarification.

Thirty-five commenters from the research community stated that facilities should be required to identify animals by their scientific names on the annual report, rather than by their common names, in order to obtain factual information and for accuracy in the collection and utilization of the information. One commenter stated that this information is necessary for the public and the legislators, so that policy regarding the use of animals in research can be appropriately established. Proposed paragraphs (b) (5) through (8) of § 2.28(b) would require facilities to "[s]tate the common names and the numbers of animals" maintained or used for the various purposes described in those paragraphs. The requirement to identify animals by their common names has been part of the annual report since the report was first established under the 1970 amendments to the Act. Common names are likewise used in the Department's annual report to Congress. No problems or difficulties arising from the reporting system for facilities or the use of common names of animals have become apparent to us. Based upon our experience, we do not believe that it is necessary to require use of scientific names on annual reports. We received 92 comments from the research community stating that the requirement of proposed § 2.28(b)(6) to report the number of animals "upon which experiments, teaching, research, surgery, or tests were conducted involving accompanying pain or distress to the

animals" with the use of pain relieving drugs, and of proposed § 2.28(b)(7) to report the number of animals similarly used but for which the use of pain relieving drugs would adversely affect the procedures and are withheld, exceeds the Department's statutory authority. Proposed paragraph (b)(7) also provides that "[a] detailed statement on the procedures producing pain or distress in these animals and explaining the reasons such drugs were not used shall be attached to the annual report." Thirty commenters from the research community objected to this requirement as exceeding the statutory authority, and 369 commenters (344 from the research community and 25 members of the general public) objected to this requirement and suggested that we change it to conform with the statutory language which requires "information on procedures likely to produce pain or distress in any animal * * *" (7 U.S.C. 2143(a)(7)(B)).

We disagree with these commenters; we have the statutory authority to require the information in the form proposed.

One of the stated purposes of the Act is to "insure that animals intended for use in research facilities * * * are provided humane care and treatment; * * *" (7 U.S.C. 2131). Another is to provide requirements to "ensure that animal pain and distress are minimized * * * with the appropriate use of anesthetic, analgesic, tranquilizing drugs, or euthanasia; * * *" (7 U.S.C. 2143(a)(3)(A)). Accordingly, section 13(a)(3)(E) of the Act allows "exception to such standards * * * only when specified by research protocol and that any such exception shall be detailed and explained in a report outlined under paragraph (7) and filed with the Institutional Animal Committee" (7 U.S.C. 2143(a)(3)(E)). Paragraph (7)(A) of section 13(a) of the Act mandates that the Secretary "shall require each research facility to show upon inspection, and to report at least annually, that the provisions of this Act are being followed and that professionally acceptable standards governing the care, treatment, and use of animals are being followed by the research facility during actual research or experimentation." (7 U.S.C. 2143(a)(7)(A)). Paragraph (7)(B) of section 13(a) requires research facilities to provide:

(i) Information on procedures likely to produce pain or distress in any animal and assurances demonstrating that the principal investigator considered alternatives to those procedures;

(ii) assurances satisfactory to the Secretary that such facility is adhering to the standards described in this section; and

(iii) an explanation for any deviation from the standards promulgated under this section. (7 U.S.C. 2143(a)(7)(B)).

We believe that these provisions of the Act authorize the Secretary to require the common names and the numbers of all animals upon which painful procedures were conducted. The required information is necessary to enable us to determine, upon inspection and through annual reports of facilities, that the Act is being complied with, and that the intent of Congress—to ensure that research animal pain and distress are minimized—is being advanced. The Agency must be able to make this determination in order to fulfill our annual reporting obligation to Congress, in accordance with section 25 of the Act (7 U.S.C. 2155).

The additional requirement in proposed § 2.28(b)(7) for a detailed statement explaining the reasons why pain relieving drugs, which are required by the Act unless it is scientifically necessary to withhold them, were not used, is mandated by section 13 of the Act, as set forth above. The statement is a necessary component of a facility's assurance that the provisions of the Act are being followed, "that professionally acceptable standards governing the care, treatment, and use of animals are being followed by the research facility during actual research or experimentation," and that the "facility is adhering to the standards * * *" (7 U.S.C. 2143(a)(7) (A) and (B)). Current § 2.28(a)(4) contains a similar requirement for a "brief statement" explaining why pain relieving drugs have been withheld. We believe the proposal to require a detailed statement of reasons for not using pain relieving drugs reflects the intent of Congress in amending the Act and that this requirement is mandated by section 13 of the Act (7 U.S.C. 2143(a)). For these reasons, paragraphs (b) (6) and (7) remain as proposed in § 2.31 of the revised rule.

Six commenters from the research community stated that the requirement of proposed § 2.28(b)(8) to report the number of animals being bred, conditioned or held for use, teaching, testing, experiments, research, or surgery, but not yet used, should be revised to reflect more accurately the number of animals held for use but not used. One commenter expressed concern that the number of unused animals at a facility is highly variable and changes daily so that the annual report would not provide an accurate figure. It would also not be an accurate means of determining the number of animals held by all facilities since animals are transferred between facilities and would be counted multiple times. In addition, some animals may be used in a procedure, and then held for another use, and would be counted at least twice: once as an animal used for teaching, testing, experiments, research, or surgery under paragraphs (b) (5), (6), or (7), and a second time as an animal being bred, conditioned, or held for use, teaching, testing, an experiment, research, or surgery under paragraph (b)(8).

We do not believe that it is necessary to revise paragraph (b)(8). That paragraph requires an accounting of all animals that have not yet been used and are being bred, conditioned, or held for future use by a facility. It is true that a transferred animal would be included in the annual report of each facility in which it is placed since it would be "new" to that facility. It is also true that an animal that was used in a procedure that is completed and is being held for use in another procedure would be included under paragraph (b)(8).

We received 314 comments (289 from the research community and 25 from members of the general public) suggesting that the substance of paragraph (b)(8) should be combined with paragraph (b)(4) so that there is a single requirement for reporting the number of animals at a facility. We disagree. Proposed paragraph (b)(4) of § 2.28 pertains to location of animals at a facility, not the number of animals. These are two distinct reporting requirements which the Department uses separately in the Department's annual report to Congress. Combining these requirements would complicate our reports and would not reduce the effort required of reporting facilities to present this data. Since there would be no beneficial effect gained from adopting the commenters' suggestion, both requirements remain in the revised rule.

Proposed paragraph (b)(9) of § 2.28 would require a statement by the CEO in the annual report stating: (1) That the attending veterinarian and the Committee members have authority to enter any animal area in the facility at any reasonable time to carry out their responsibilities under the regulations; (2) that the Committee has satisfactorily carried out its responsibilities; and (3) that the facility is in compliance with the Act, regulations, and standards. We received 305 comments (280 from the research community and 25 from members of the general public) stating that the statement concerning access by

the attending veterinarian and the Committee members to animal areas is redundant and unnecessary because it would be included within the assurances of compliance required in proposed paragraphs (b) (1) and (3). The commenters also objected to requiring the CEO's signature. We believe it is appropriate to require a separate statement by the CEO addressing these three concerns. Although paragraphs (b) (1) and (3) of proposed § 2.28 generally address compliance with the standards and regulations, we feel it is important that the CEO or responsible institutional official with authority to bind the facility bear responsibility for assuring that the statements made in the annual report are accurate and that the facility is in compliance. We believe that this accountability is necessary to ensure that the annual reports are meaningful and reliable.

For the reasons provided above in connection with proposed § 2.28(a), either the Chief Executive Officer or the "responsible institutional official with authority to bind the facility" may make the required statement in the annual report, and § 2.31(b)(9) is revised accordingly, in response to the comments received.

Thirty-seven commenters from the research community stated that the term "reasonable time" in proposed § 2.28(b)(9) should be defined, and 344 commenters (319 from the research community and 25 members of the general public) stated that the Committee members should not be allowed unrestricted entry to animal areas at any time if entry would interfere with ongoing research or the protection of proprietary information. Thirty commenters suggested that the Committee members and the attending veterinarian should have "reasonable access" to animal areas instead of "authority to enter any animal area, at any reasonable time" as proposed. The commenters stated that allowing reasonable access would prevent undue disturbance of the animals or controlled environmental conditions, prevent interference with research, and would protect proprietary information. The commenters suggested that "reasonable access" would require consultation with the principal investigator before entry into an animal area if research is being conducted, unless the Committee has reason to believe there is a problem related to animal welfare.

We do not believe that "reasonable time" requires additional clarification in the regulations. Research facilities can clarify what is a reasonable time through their written procedures or through guidelines issued by the CEO or responsible institutional official with authority to bind the facility. As previously explained in the discussion of Subpart C under the subheading, "§ 2.30(c)," it is not our intent to interfere with ongoing research, but we feel strongly that the Committee must have authority to enter all animal and research areas at any reasonable time without having to fulfill formal procedures as a prerequisite, and that the attending veterinarian must have authority to enter all animal or research areas at any time in order to ensure compliance with the program of adequate veterinary care. Section 2.31(b)(9) is revised to reflect this change. We do not intend that the Committee and attending veterinarian make a practice of barging into animal areas, and in this respect we agree that the principal investigator should be consulted as the commenter suggests. We do not believe it is appropriate to include a requirement for this in the regulations, however. Each facility is free to establish guidelines or a policy regarding consultation and to establish its own written procedures. We will retain the requirement that the annual report contain a statement, signed by the CEO or responsible institutional official, certifying that the Committee members have authority to enter any animal or research area at any reasonable time in order to carry out their responsibilities, and that the attending veterinarian is permitted access to all animal or research areas at any time.

Proposed § 2.28(c). We proposed in § 2.28(c) that the annual report be certified by the attending veterinarian and the Committee Chairman, in addition to being signed by the CEO under paragraph (a). We also proposed in § 2.28(c) that the annual report indicate the concurrence or nonconcurrence of the nonaffiliated member of the Committee.

Four commenters from the research community stated that the report and its assurances should be the responsibility of the CEO and should not require any other certifications. We received 370 comments (345 from the research community and 25 from members of the general public) stating that the entire paragraph should be deleted since the signature of the CEO required in paragraph (a) would be sufficient. One commenter was concerned that the proposed certification requirements improperly placed the burden of responsibility for the facility's compliance on the attending veterinarian and the Committee Chairman, and that at most they should be required certify to performance of their duties and fulfillment of their responsibilities. Others were concerned with the veto power given the attending veterinarian and the Committee Chairman, and the potential for abuse. One commenter noted that requiring the attending veterinarian to certify the annual report could place members of the Committee at odds with each other by giving one member the power that the Committee as a whole should have, and that this would undermine the ability of the Committee to perform its intended role.

Having considered the comments, we have determined that only the CEO or responsible institutional official with authority to bind the facility need sign and certify the annual report. Therefore, we are deleting the requirement from proposed § 2.28(c) that the attending veterinarian and Committee Chairman certify the annual report. The requirement that the CEO or responsible institutional official sign the annual report is already contained in paragraph (a) of § 2.31 in the revised rule, and we are adding a requirement that this official must also certify the report.

We received 179 comments from the research community stating that the requirement contained in proposed § 2.28(c) that the nonaffiliated member of the Committee indicate concurrence or nonconcurrence with the annual report should be deleted. Three members of the general public and one member of the research community stated that the annual report should reflect all dissenting opinions, and not single out the nonaffiliated member of the Committee. Some of the commenters pointed out that the Act, in Section 13, provides a mechanism for filing a minority view in connection with the inspection certification report prepared by the Committee (7 U.S.C. 2143(b)(4)(A)). The commenters further point out that the Committee report is separate from the annual report of the facility, and that the nonaffiliated member's view would appear to be irrelevant for purposes of submitting the facility's annual report.

Upon reconsideration of the requirement, we agree with the commenters that the emphasis on the concurrence or nonconcurrence of the nonaffiliated member of the Committee should be broadened to provide for the concurrence or nonconcurrence of any member of the Committee. We have revised this requirement to give all members of the Committee an equal opportunity to express a minority or nonconcurring view. To assure that the

members are afforded this opportunity, the CEO or responsible institutional official with authority to bind the facility will be required to certify that he or she circulated the report to the Committee members for their review and that each was advised that they could add a minority report or indicate their nonconcurrence. We intend that the report would be circulated to each member with an attached routing slip containing a blank space in which the member could indicate that he or she read the report and concurred or did not concur, and that he or she was attaching a minority report to be included with the annual report. The slip would be replaced with a new blank slip for each Committee member's review. In this manner, confidentiality between the responsible institutional official and between each member of the Committee would be maintained. The annual report must contain a space in which the CEO or responsible institutional official states that all Committee members had an opportunity to indicate nonconcurrence, and to state whether any minority reports are attached. As stated above, the CEO or responsible institutional official would be required to certify these statements.

We believe that this requirement will allow each member an opportunity to express dissent from the annual report and that his or her opinion will be forwarded to the Department. This is particularly important for ensuring that the nonaffiliated member is not excluded from Committee functions. The nonaffiliated member's purpose is to provide representation for general community interests, and this may or may not result in that member being at odds with the other members of the Committee. We are aware of circumstances where the nonaffiliated member of the Committee has been prevented from meaningful participation in Committee functions or shut out of Committee meetings altogether because he or she presents a contrary or unpopular view. This mechanism should alert the Department to the need for further inspections or investigations of the facility. Accordingly, § 2.28(c) is revised to provide for the concurrence or nonconcurrence of all members of the Committee with the annual report.

Section 2.35 Institutional Animal Care and Use Committee

The remaining provisions of § 2.35 in the revised rule are those areas either specifically assigned by the Act to the Committee or necessary to implement the provisions of the Act which mandate Committee action. Many of the comments we received concerning § 2.35 as proposed have been addressed under the headings, "Introduction," "General," and "Reorganization of §§ 2.30 and 2.35." The comments we received addressing the remaining provisions are discussed below. Unless otherwise noted, the comments were received from members of the research community.

General. We received a number of comments addressing proposed § 2.35 and the role of the Committee in general. Some comments were made concerning use of the Committee as an instrumentality of the facility, both for enforcing the regulations and for performing tasks assigned to the facilities by the Act. The reassignment of responsibilities is fully detailed in a preceding section of this supplementary information, under the heading, "Reorganization of §§ 2.30 and 2.35."

Two commenters from the general public stated that the Committees were not given adequate authority in the proposed regulations. The Act prescribes the areas of authority delegated to the Committee and the revised rule is in accordance with the Act. The research facilities remain free to delegate authority to the Committee to perform additional duties on behalf of the facility. We believe it is best to leave this determination to the research facilities.

Fourteen members of the general public commented that the Department should promulgate national standards, instead of delegating responsibility to the Committees. We are proposing to do so in the proposed rule for Part 3—"Standards," published elsewhere in this issue. (*See* companion docket no. 87–004.) Part 3 provides the standards for the humane handling, care, treatment, and transportation of different animals covered by the Act. The Act requires that the Committees inspect the facilities for compliance with the Act and regulations and assess and report on animal care at the facility. The Committee is necessarily responsible for approving deviations from the standards as part of its duties under the Act; however it does not set the standards. We believe the concern of the commenters has been addressed in proposed Part 3.

We received 168 comments objecting to proposed § 2.35, on the basis that it would require extensive recordkeeping and reporting requirements beyond those required by the Act. We acknowledge that § 2.35 will add new recordkeeping and reporting requirements, however, these are all mandated by the Act and are necessary in order to assure compliance with the Act, regulations, and standards.

Membership. We received 2 comments from members of the general public suggesting that the regulations provide protection for Committee members from possible reprisals. Similar committees have existed in accordance with the PHS Policy at institutions receiving grants or awards under the Health Research Extension Act of 1985, without incident, to our knowledge. We do not feel it necessary to include regulations to protect Committee members at this time.

Two commenters stated that having the chief executive officer (CEO) of the research facility select the Committee members, as proposed in § 2.35(a)(2), biases the Committee. Section 13(b)(1) of the Act states that "[e]ach Committee shall be appointed by the chief executive officer of each such facility * * *" (7 U.S.C. 2143(b)(1)). This is not a matter within the Department's discretion and the regulation will necessarily remain as proposed.

We received 465 comments (440 from the research community and 25 from members of the general public) stating that the CEO should be allowed to delegate his or her responsibilities under the Act. Delegation of authority is a matter left to the facilities in accordance with their charter and by-laws. Delegation should only be to an administrative official who is not involved in the actual conduct of research, however, in order to comply with the intent of the Act that the Committee members be selected by a legally responsible official who is in a position to select a suitable Committee as described by the Act. No change is required in the regulations since this is an internal institutional matter.

Paragraph (a)(4) of proposed § 2.35 states that Committee members "shall possess sufficient ability to assess animal care, treatment, and practices in experimental research as determined by the needs of the research facility." One commenter expressed concern that the paragraph seems to state that each individual Committee member must possess "expertise" in animal care, treatment, and practices in experimental research. The commenter recommended that the paragraph be clarified to state that the Committee as a whole must have this expertise, but not each and every single member. We disagree with the commenter. The plain language of paragraph (a)(4) is sufficiently clear and is taken from the Act which provides that Committee members must have sufficient ability to assess animal care, and related matters. Committee members must possess some knowledge of animals, but "expertise" in these

areas is not required. This ability is required for each of the Committee members, not just for the Committee as a whole. Another commenter stated that "special" ability to assess animal care should not be required. It is not. Paragraph (4) requires "sufficient" ability to assess animal care, not "special" ability. Section 2.35(a)(4) remains as originally proposed.

Paragraph (a)(5)(i) of proposed § 2.35 states that of the Committee members, "At least one shall be a Doctor of Veterinary Medicine who is the attending veterinarian for the research facility and who is accredited by the U.S. Department of Agriculture in accordance with regulations issued by the Secretary under the Animal Welfare Act; * * *." As explained in a related document published elsewhere in this issue of the **Federal Register**, docket no. 88-013, Part 1—"Definition of Terms," we are removing references to "accreditation" from these regulations pending the Department's renaming and development of standards for the Animal Welfare "accreditation" program.

We received 398 comments (373 from the research community and 25 from members of the general public) stating that research facilities should be given the flexibility of assigning another staff veterinarian to the Committee in place of the attending veterinarian. There is nothing in the Act or regulations to prevent research facilities from delegating the duties of the attending veterinarian on the Committee to another veterinarian; however, final responsibility for those duties rests with the attending veterinarian. Section 2.35(a)(5) is revised to clarify that the duties of the attending veterinarian may be delegated to a staff veterinarian.

Proposed paragraph (a)(5)(ii) of proposed § 2.35 would require that of the Committee members, "At least one shall not be affiliated in any way with such facility other than as a member of the Committee and shall not be a member of the immediate family of a person who is affiliated with such facility. The Secretary intends that such person will provide representation for general community interests in the proper care and treatment of animals." The requirement to have a nonaffiliated Committee member is contained in section 13 of the Act (7 U.S.C. 2143(b)(1)(B)). We received many comments concerning the selection of the nonaffiliated member, particularly from the general public. We received 1,518 comments from members of the general public stating that the regulations should ensure that the nonaffiliated member of the Committee is a vigorous and effective community representative and should not be required to possess the medical ability to assess animal care. In other words, any person interested in the humane use of animals could serve on the Committee as the nonaffiliated member. One commenter from the research community suggested that the nonaffiliated member be selected from a list of candidates nominated by recognized humane groups. Under the statute, and as provided in the regulations, the CEO of the research facility appoints the members of the Committee. Other than the criteria provided by the Act and the regulations promulgated under the Act, we do not feel it is appropriate to dictate the manner of selection or to define further the members' attributes. Neither the Act nor the regulations require that the nonaffiliated member be a veterinarian or medically trained.

Nine members of the general public and 1 commenter from the research community stated that there should be more than one nonaffiliated member serving on the Committee. The Act requires that "at least one member—(i) shall not be affiliated in any way with such facility other than as a member of the Committee * * *" (7 U.S.C. 2143(b)(1)(B)(i)). The research facility can determine to have more than one nonaffiliated member but only one is statutorily required. Section 2.35(a)(5)(ii) remains as originally proposed.

Proposed paragraph (a)(6) of § 2.35 would provide that "[i]f the committee consists of more than three members not more than three members shall be from the same administrative unit of such facility; * * *." We received 465 comments (440 from the research community and 25 from members of the general public) requesting that the term "administrative unit" be defined. We have done so in a related document, docket no. 88-013, Part 1—"Definition of Terms," published elsewhere in this issue. The term "administrative unit" would mean the following:

> The organizational or management unit at the departmental level of a research facility.

Paragraph (7) of proposed § 2.35(a) requires that the facility maintain a current list of Committee members containing their names, degrees, positions, qualifications, addresses, and telephone numbers. The attending veterinarian must maintain a copy of the current list and it must be available for inspection by APHIS officials We received 492 comments (467 from the research community and 25 from members of the general public) stating that home addresses and telephone numbers of the Committee members should not be a part of the records accessible to the public and 108 comments stating that only the Committee Chairman's business address should be required rather than the home addresses of all the Committee members. We agree that the list need not contain the home addresses and telephone numbers of the Committee members and that only the Committee Chairman's business address and phone number should be required. Paragraph (7) is revised to reflect this change.

Duties and responsibilities—1. *General.* Proposed § 2.35(b) specifies the duties and responsibilities that the Committee must perform in accordance with the Act. A number of the duties that were contained in this proposed section were not imposed on the Committee by the Act, and have been reassigned to the research facility. A more complete explanation of the reassignment of duties and responsibilities, and precise section references are contained under the heading, "Reorganization of §§ 2.30 and 2.35."

2. *Inspections.* In the supplementary information to the proposed rule, we invited comments addressing how inspections could be carried out at research facilities having a large number of animal sites and study areas. We received 289 comments stating that the Committee should be allowed to delegate inspection and/or review responsibilities to a subcommittee or to other personnel, and that their inspection reports could then be evaluated by a quorum of the Committee. We also received 485 comments (460 from the research community and 25 from members of the general public) urging APHIS to consult with officials of the U.S. Public Health Service on requirements for Committee inspection before promulgating a final rule. The commenters felt that this would be both helpful for the research facilities, which would have to comply with both the Animal Welfare regulations and the PHS Policy on Committee inspections if they receive grants or awards under the Health Research Extension Act of 1985, and for APHIS since the Policy provides guidelines for the accomplishment of inspections and evaluations. As pointed out by some commenters, at most facilities the same Committee will be responsible for complying with the Animal Welfare regulations and the PHS Policy.

Representatives from HHS advised the Department that the PHS Policy

allows the Committee to determine at its discretion "the specific means to accomplish the semiannual evaluation of institutional programs and facilities, however, the IACUC remains responsible for the accuracy and adequacy of the evaluation and report." Facilities can work within their existing organizational structures to accomplish the requisite inspections and evaluations. Under the PHS Policy, the IACUC can appoint a subcommittee or designate personnel to perform the inspections, as 289 commenters suggested.

Having consulted with HHS and having considered the comments we received, we agree that the Committee should be able to appoint subcommittees composed of at least 2 Committee members to perform inspections. We have revised § 2.35(b) in this rule to allow each Committee at a research facility to designate a subcommittee to perform inspections, however, no Committee member who wishes to participate in an inspection may be excluded from participation in that inspection. The right of each Committee member to participate in any inspection conducted under Subpart C is set forth in § 2.35(b)(1)(v) of the revised rule. Section 13 of the Act requires that all formal actions of the Committee must be performed by a quorum of the Committee, and inspections are specifically included as formal actions (7 U.S.C. 2143(b)(2)). In order to satisfy the Act, § 2.35 is further revised to require the subcommittees to present their findings and recommendations, including inspection certification reports, and Committee recommendations based upon inspections, to a quorum of the Committee for formal action.

One commenter stated that the Committee should have the authority to suspend activities as it does under the PHS Policy. We agree with the commenter that painful procedures that are not in compliance with the Act and regulations should be suspended and that this can be accomplished through the Committee. Under the PHS Policy, the Institutional Animal Care and Use Committee may suspend an activity that it previously approved, if it determines that the activity is not being conducted in accordance with applicable provisions of the Animal Welfare Act, the NIH Guide for the Care and Use of Laboratory Animals, the institution's Assurance, or the requirements of the PHS Policy which must be met in order for a proposed research project or a significant change in a research project to be approved.

We believe that authority to suspend approval of ACUPs is necessary for the Committee to function effectively and to act on behalf of the research facility in monitoring compliance. For this reason, we proposed to include in the assurance statement required from the Committee as part of its inspection report, a statement that all painful procedures are in accordance with the "research protocols" [ACUPs] approved by the Committee and any approved changes to the "research protocols" [ACUPS], and that if the procedures "are not in accordance with the approved 'protocol' [ACUP] that the investigator(s) has been instructed to cease such methods and procedures immediately and to comply with the 'protocols' [ACUPs], procedures, and practices that were approved by the Committee." (Proposed § 2.35(b)(2)(i)(D)). We have added paragraph (iv) to § 2.35(b)(1) in this revised rule to clarify that the Committee has authority to withdraw its approval. The effect of Committee withdrawal of approval is provided in § 2.35(b)(3) in the revised rule.

The research facility is responsible for directing that the research, testing, or teaching cease, otherwise the facility would not be in compliance with the regulations. We are requiring in § 2.35(b)(1)(iv) that the Committee direct the CEO to instruct the principal investigator to cease immediately any research, testing, or teaching involving pain to animals that is not in compliance with the approved ACUP, because it is the research facility's responsibility to direct cessation of activities that are not in accordance with the approved ACUP. In order to ensure that there is no added delay in ordering cessation of such activities, we are requiring that the Committee notify the CEO or responsible institutional official of noncompliance with an approved ACUP involving a painful procedure in its deficiency notification report, as provided in § 2.35(b)(2)(ii).

Forty-four commenters objected to the proposed requirement of § 2.35(b)(1)(i) that the Committee inspect all animal study areas and animal facilities at least twice a year, no more than 6 months apart, stating that it is too specific. Section 13(b)(3) of the Act requires that the Committee conduct inspections "at least semiannually" (7 U.S.C. 2143(b)(3)). We proposed that the inspections be conducted no more than 6 months apart to ensure that the underlying purpose for requiring semiannual inspections is carried out, that is, to ensure that throughout the course of the year each animal area is in compliance with the Act and the regulations. The utility of the inspections is maximized if neither too much nor too little time elapses between inspections. The PHS Policy requires the Institutional Animal Care and Use Committee to inspect the institution's animal facilities at least once every 6 months. This too seems designed to ensure that the twice yearly inspections are effectively spaced out over the course of the year, and is consistent with the proposed rule.

We are revising the requirement for twice yearly inspections to provide that inspections must be performed "at least twice a year, 6 months apart" rather than "no more than 6 months apart" as proposed. We are not requiring that inspections be performed at precise 6-month intervals to the day, but rather that they be performed at some time during the month or 30-day period in which the Committee performs its inspections. We believe that this requirement, as revised, allows facilities sufficient flexibility and time to conduct inspections. We are also revising the regulations to require that at research facilities maintaining multiple animal sites, Committee inspections of all animal sites and animal facilities must be completed within 30 days of commencing the first site inspection so that the Committee can complete and file a comprehensive inspection report. This requirement is necessary for APHIS officials and inspectors to have complete and current inspection reports to review when inspecting research facilities. This requirement is contained in § 2.35(b)(1)(vi) of the revised rule.

We received 307 comments (282 from the research community and 25 from members of the general public) suggesting that first priority for inspections should be given to areas for which exception requests have been submitted in accordance with proposed § 2.35(b)(1)(iii). We appreciate the concern that those animal study areas may require additional attention to ensure that they are in compliance with the Act and the regulations; however, the Act requires at least semiannual inspection of all animal study areas. There is no provision in the Act for assigning priorities to the order of inspections of the different animal study areas—they must all be inspected. The research facility may decide the order of inspections.

3. *Reports.* Under proposed § 2.35(b)(2), the Committee is directed to file an inspection certification report after each inspection which contains the following: (1) The date the inspection was made; (2) the signature of a majority of the Committee members and any minority views of the Committee; (3)

reports of violations of the regulations, standards, or assurances; (4) deficiencies in animal care or treatment; (5) Committee findings and recommendations; (6) any deviations from originally approved "protocols" [ACUPs] that adversely affect animal welfare; (7) notification to the facility of conditions, deviations, or deficiencies; (8) corrections made by the facility; and (9) any other information pertinent to the activities of the Committee and to the animal facilities. The report must also include an assurance statement by the Committee that its members have reviewed all painful procedures using animals and that the procedures are in accordance with approved ACUPs or approved changes to the ACUPs, and, if the procedures are not in accordance with approved ACUPs, that the investigator has been instructed to cease those practices immediately and to comply with the approved ACUPs.

We have revised the proposed rule to require that all inspection certification reports must be completed and filed by the Committee in a timely fashion. We believe that 10 business days from completion of the site inspections required under § 2.35(b)(1) is a reasonable timeframe to impose on the Committee and that it is necessary to ensure that the required information is on file and is current.

We have also revised the rule to reflect the fact that subcommittees of at least 2 Committee members may perform inspections. This is provided in § 2.35(b)(1)(i) of the revised rule. The subcommittee must present its findings to a quorum of Committee members for formal action, as required under § 2.35(b)(2)(i) of the revised rule.

Under proposed § 2.35(b)(2)(ii), the Committee must notify the research facility of deficiencies found during an inspection. If the deficiencies remain uncorrected 30 days after notification and opportunity for correction, the Committee must notify the Administrator and any funding Federal agency and provide them with a copy of the report and the notification given to the facility. The Committee must also provide any APHIS inspector and any funding Federal agency of the project with a copy of any report showing deficiencies in complying with the regulations and standards which remain uncorrected.

We received 471 comments (446 from the research community and 25 from members of the general public) objecting to the requirement of proposed § 2.35(b)(2)(i) that the Committee's inspection certification reports be available to APHIS officials and to officials of funding Federal agencies for copying. Under section 13 of the Act, the Committee reports must be kept on file for at least 3 years at the facility and must be available for inspection by APHIS and any funding Federal agency (7 U.S.C. 2143(b)(4)(B)). It is necessary for APHIS inspectors to be able to copy reports to obtain documentation of noncompliance and to conduct investigations of possible noncompliance. These are the occasions when inspectors would need to copy the Committee reports. The requirement remains as initially proposed.

We received 307 comments (282 from the research community and 25 from members of the general public) stating that the Committee should not be required to monitor projects on an ongoing basis to assess deviations from originally approved protocols [ACUPs], as required by the assurance statement that is part of the Committee's report under proposed § 2.35(b)(2)(i)(D). This requirement is mandated by section 13(b)(4)(A) of the Act. It requires that the Committee's report include "any deficient conditions of animal care or treatment, any deviations of research practices from originally approved proposals that adversely affect animal welfare, * * *" (7 U.S.C. 2143(b)(4)(A)). Ongoing practices and procedures must necessarily be reviewed in order to comply with this requirement. No change is made in the revised rule based upon this comment.

We received 321 comments (296 from the research community and 25 from members of the general public) objecting to the assurance statement required in proposed § 2.35(b)(2)(i)(D) on the grounds that it is too complicated. We have simplified the assurance by using the term "ACUP" in place of "research protocols, procedures, and practices" as originally proposed, since this term encompasses the areas of concern to the Committee in reviewing painful procedures. Also, as explained above, the instruction to cease using methods and procedures that are not in compliance with the approved ACUP must come from the research facility because the CEO or responsible institutional institutional official must certify compliance with the Act, regulations, and standards on the facility's annual report, and must report any deviations from the regulations. The Committee can be required only to provide assurance regarding matters of which it has first-hand knowledge. Accordingly, paragraph (b)(2)(i)(D)(3) is revised to require assurance that the Committee has notified the CEO or responsible institutional official of the research facility to instruct the investigator to cease using the noncomplying methods and procedures.

We received 527 comments (502 from the research community and 25 from members of the general public) stating that research facilities should be allowed more than 30 days to correct deficiencies found in the course of Committee inspections. We received 149 comments suggesting a means of requesting an extension in the event that a deficiency cannot be corrected within 30 days for justifiable reasons, such as if more time is required to purchase new primary enclosures or to repair the physical plant. We do not agree with the commenters' suggestion that the regulations should provide a formal means of requesting an extension of time to correct deficiencies. Rather, APHIS will continue to consider non-compliance matters on a case-by-case basis, as it has in the past.

Two commenters requested clarification of the requirement contained in proposed § 2.35(b)(2)(ii) for reporting deficiencies to the Deputy Administrator. As previously explained, the reference to the Deputy Administrator is changed to the Administrator. We have revised the notification procedure to reflect the fact that the facility is ultimately responsible for compliance with the Act and regulations, and that the CEO or responsible insitutitional official must certify the facility's compliance in the annual report. Accordingly, § 2.35(b)(2)(ii) is revised to require that the Committee notify the CEO of the research facility or the official responsible for animal care if the CEO has delegated authority to that official, as well as the administrative unit representative, of any deficiencies found, including noncompliance with an approved ACUP involving a painful procedure. This notification must be done, in writing, within one business day of discovery. The Committee must also provide a copy of its inspection certification report citing a deficiency to the CEO or the institutional official responsible for animal care, and to the administrative unit representative. The facility then has 30 days to correct the deficiency. If it remains uncorrected 30 days after notification of the CEO or other responsible institutional official, the Committee must notify the Administrator and any funding Federal agency of the uncorrected deficiency in accordance with section 13(b)(4)(C) of the Act (7 U.S.C. 2143(b)(4)(C)). We are requiring that this must be done within 5 days of completion of the 30-day correction period to avoid further delay. The Committee must provide a copy of

its inspection certification report and a copy of its written notification of deficiency to the Administrator. The Committee must also file a copy of its inspection certification report and written notification of deficiencies at the central repository maintained by the facility in accordance with § 2.30(m) for all reports required in this Subchapter so that they are available to APHIS officials and inspector(s), and to any funding Federal agency. The proposed rule erroneously referred to the "administrative representative" and not to the "administrative unit representative" as intended. Section 2.35(b)(2)(ii) of the revised rule reflects these changes.

We did not receive any comments addressing proposed § 2.35(b)(2)(iv), which requires that reports remain on file for at least 3 years at the research facility and be available for inspection and review by APHIS inspectors and any funding Federal agency. This requirement is set forth in § 2.30(m) of this rule, and it is revised to require that, upon notification from the Administrator, research facilities must also retain records pending completion of an investigation or proceeding under the Act, and until their disposition is authorized by the Administrator.

4. *Reviews.* Following the reorganization of §§ 2.30 and 2.35, and the reassignment of duties and responsibilities so that only statutorily mandated duties are imposed on the Committee, and the revisions to Subpart C described above, the remaining reviewing functions of the Committee under the proposed rule would be as follows:

(i) No research, testing, or teaching involving [ACUPs] falling under Categories 3 and 4 in this paragraph performed by a facility's personnel at any location shall commence prior to approval by the Committee [of the ACUP]. Prior to granting approval, the Committee shall ensure that [ACUPs] in any of the categories listed [in the Categories of Animal Use in Research and Testing] contain provisions for acceptable and proper animal care, treatment, practices, methods, and use of pain-relieving drugs. (Proposed § 2.35(b)(3)(ii)).

(ii) The Committee shall approve an [ACUP] only when animal pain, distress, and functional or sensory impairment are minimized; all survival surgery is performed using aseptic procedures; adequate veterinary care is planned for and provided; multiple use of such animal(s) is justified for the purpose of conserving an endangered species or marine mammals or as an essential related component of a particular project or [ACUP]; and the appropriate use of anesthetics, analgesics, tranquilizing drugs, or euthanasia, when necessary, and that the use of such drugs is in accordance with established or accepted veterinary medical procedures and usage. The use of such drugs shall be in accordance with the instructions of the attending veterinarian.

(Proposed § 2.35(b)(3)(iii)).

As previously discussed under the heading "§ 2.30(d)," we have determined that the Committee must review and approve all ACUPs before any research, testing, or teaching involving animals can commence, and § 2.35(b)(3)(i) of this revised rule (formerly proposed § 2.35(b)(3)(ii)) is revised accordingly. Requiring review of all ACUPs, not just those involving painful procedures, is consistent with PHS Policy and avoids the need for determining the degree of pain or distress that can reasonably be anticipated to result from a proposed procedure.

We had originally proposed that "no research, testing, or teaching involving protocols falling under Categories 3 and 4 of the Categories of Animal Use in Research and Teaching performed by a facility's personnel at any location shall commence prior to approval by the Committee." (Proposed § 2.35(b)(3)(ii)). Using the "Categories of Animal Use in Research and Testing" was proposed as a means of classifying animal procedures into 4 categories, ranging from those involving little or no pain or distress to those involving severe or unrelieved pain or distress. The Committee would be required to review the ACUPs for procedures falling in the categories involving higher degrees of pain, Categories 3 and 4, to ensure that they contained provisions for acceptable and proper animal care, treatment, practices, methods, and use of pain relieving drugs. Examples of the types of procedures typically falling into the different categories were provided in the proposed Categories of Animal Use.

We received numerous and varied comments regarding the proposed Categories, ranging from general approval and suggestions that the proposed categories be incorporated into the Annual Report (VS Form 18–23) (12 commenters) to disapproval and suggestions that they be deleted because the commenters found them confusing and/or inappropriate (77 commenters). Four commenters recommended that the proposed categories be revised to include additional detail, including further categorization and definition.

It became clear from our review of the comments that a fair number of the commenters were misconstruing the proposed examples as fixed categorizations of procedures into the 4 proposed categories. This was certainly not our intent in providing the examples. As stated in the supplementary information accompanying the proposed rule at 52 FR 10302, "[t]hese [Categories of Animal Use in Research and Teaching] are for the guidance of the investigator in planning the research protocol [ACUP] and for the Committee in determining the level of pain or distress to be allowed and the necessity of such pain or distress when approving the protocol [ACUP] * * *. The list of examples is not all inclusive but is provided as guidance for where a particular protocol [ACUP] might be classified in relation to the pain or distress involved."

Despite this explanation of the examples provided for each category, we received 72 comments objecting to all toxicity studies being classified as Category 3. Toxicity studies were included as an example of the type of procedure which would typically but not necessarily fall under Category 3 as involving "significant but unavoidable pain or distress to the animals." A toxicity study which did not involve this level of pain or distress would not be in Category 3 under the proposed rule.

Other comments addressing the proposed Categories of Animal Use included one from a member of the general public suggesting that a fifth category for "severe pain" be included, and one from a member of the research community generally approving of the proposed categories.

The proposed Categories of Animal Use was selected from among several like categorizations and was developed by the Scientists Center for Animal Welfare. This categorization was the result of many conferences and seminars addressing the issue of how to classify procedures involving differing levels of pain and is currently in use in 20 or more research facilities. As a result of the comments received, we have considered a number of alternatives for addressing the concerns raised by the commenters. One alternative considered was using a different categorization system. It is likely, however, that similar issues would be raised in response to any proposed categorization of types of procedures. We also considered proposing additional examples of the types of procedures that would typically fall into the different categories, in response to the comments requesting additional definition and categorization, however these too could be misconstrued as fixed categorizations rather than as examples provided for guidance. We next considered removing the examples from the rule to avoid any misconception as to whether they were actually fixed categorizations. This would likely raise concerns that the

regulations did not provide sufficient guidance and would leave facilities subject to challenge if they did not require their Committees to review procedures regarded by the Department as involving significant pain or distress.

Having carefully considered the comments and the various alternatives summarized above, we have determined to remove the Categories of Animal Use in Research and Teaching and to require Committee review and approval of all procedures involving warm-blooded animals covered by the Act. As stated above, we believe that it is necessary that the Committee review all ACUPs to enable research facilities to provide assurance that their facilities are in compliance with the Act, regulations, and standards. Without this review, the CEO or institutional official with responsibility for animal care could not, in good faith, certify the facility's compliance in its annual report. This requirement will avoid subjective determinations as to how to categorize pain or distress and challenges to those determinations after the procedures in question have been undertaken. This approach is consistent with PHS Policy and similar practices already exist at many of the institutions responsible for complying with these regulations. Accordingly, the requirement for Committee review and approval of all ACUPs will not disrupt the practices employed at many research facilities.

We are also revising the rule to relieve the burden this requirement will impose upon the Committee by incorporating, in part, the practice authorized by the PHS Policy for assigning ACUPs to individual members of the Committee for preliminary review, unless a Committee member requests in-depth review by a quorum of the Committee. Under the revised rule, the reviewing member of the Committee is responsible for reviewing an assigned ACUP and for advising the principal investigator if modification is needed in order to obtain the necessary Committee approval. The Committee member must present his or her findings to a quorum of the Committee for formal action and must recommend approval or disapproval of the ACUP. A quorum of the Committee must approve the ACUP before the proposed research, testing, or teaching can proceed. One commenter noted that the PHS Policy allows an individual Committee member to approve a proposed research project. We are requiring Committee approval of ACUPs in accordance with the section 13(b)(2) of the Act which requires a quorum for all formal actions of the Committee (7 U.S.C. 2143(b)(2)).

One member of the general public commented that unanimous approval by the Committee should be required for all protocols [ACUPs]. This is contrary to the Act, which requires a quorum for all formal actions of the Committee (7 U.S.C. 2143(b)(2)). "Quorum" is defined by the Act as a majority of the Committee members (7 U.S.C. 2132(m)). No change is made in the revised rule based upon this comment.

Also, in accordance with PHS Policy, we are providing a mechanism to enable the Committee to require that an approved practice or procedure be suspended, in accordance with proposed and revised § 2.35(b)(2)(i)(D), if it determines that a procedure or practice is not being performed in accordance with the approved ACUP. We are providing that the Committee can do so by withdrawing or suspending its approval of an ACUP. Section 2.30(d) requires Committee approval for all ACUPs before they commence, and section 13(a)(3)(E) of the Act requires that any exceptions to the standards be specified in the ACUP and explained in a report filed with the Committee (7 U.S.C. 2143(a)(3)(E)). Accordingly, once Committee approval is withdrawn, the procedure or practice must cease or the research facility is in violation of the regulations. Section 2.35(b)(3)(i) of the revised rule is changed to provide that no research, testing, or teaching involving warm-blooded animals covered by the Act shall continue if the Committee suspends its approval.

Eight commenters from the general public urged that painful experiments should not be allowed at all. One of the stated purposes of the 1985 amendments to the Act is to minimize animal pain and distress (7 U.S.C. 2143(b)(3)). The Act is clear, however, in its direction that except as provided in section 13(a)(6) of the Act, it does not authorize the Secretary to promulgate regulations "with regard to the design, outlines, or guidelines of actual research or experimentation by a research facility as determined by such facility; * * *" (7 U.S.C. 2143(a)(6)(A)(i)) and the Department therefore does not have the authority to prohibit all painful experiments.

Three commenters from the general public suggested that in determining whether to approve a proposed ACUP, the Committee should compare the public gain which would result from the research versus the pain inflicted on the animal. Although the Act does not direct the Committee to make this judgment, it does direct the Committee to ensure compliance with the Act to "minimize pain and distress to animals" and to inspect research facilities for compliance with the Act, regulations, and standards (7 U.S.C. 2143(b)(3)). One of the stated findings of Congress set forth in the Act is that "measures which eliminate or minimize the unnecessary duplication of experiments on animals can result in more productive use of federal funds" and "measures which help meet the public concern for laboratory animal care and treatment are important in assuring that research will continue to progress." (7 U.S.C. 2131). Proposed § 2.35(b)(3)(iii) provides the bases upon which the Committee will approve or disapprove a proposed ACUP. The bases enumerated include provision for the commenters' concerns. We further believe that the provision for a nonaffiliated member of the Committee who is "intended to provide representation for general community interests in proper care and treatment of animals" (7 U.S.C. 2143(b)(1)(B)(iii)) will bring these considerations to bear in Committee deliberations, and that the Committee as a whole will keep the purposes of the Act in mind in performing its duties. No change is made based upon this comment and it is redesignated as § 2.35(b)(3)(ii) in the revised rule.

Two commenters stated that the language in proposed § 2.35(b)(3)(iii) should be changed from "The Committee shall approve such protocols only when * * *" to "The Committee shall approve procedures only when * * *." We have revised this paragraph by replacing the term "protocol" with "ACUP."

We are also numbering the conditions listed in proposed § 2.35(b)(3)(iii) in the revised rule which must be satisfied for the Committee to approve an ACUP, and are correcting the typographical and grammatical errors that appeared in it.

We received 478 comments from members of the general public in regard to proposed § 2.35(b)(3)(ii) concerning the need for stronger and stricter requirements for reporting painful procedures and use of pain relieving drugs, and for better identifying those procedures not involving pain, procedures involving unrelieved pain, and procedures involving pain relieved with drugs. We have addressed these comments separately from those concerning the proposed Categories of Animal Use because they more properly concern the research facility's annual report, VS Form 18–23 than proposed § 2.35(b)(3)(ii). The annual report requires an accounting of the number of animals utilized in procedures involving no pain, unrelieved pain, and relieved pain. We are aware of instances where

animals are reported under Column 'C', "no pain" because the pain is relieved with drugs. This is improper because the relief of pain does not make the procedure one which does not involve pain. As noted previously, 12 commenters felt that the proposed Categories of Animal Use should be used on VS Form 18–23, instead of the current designations.

We believe that the combination of Committee review of all ACUPs, requiring Committee approval of all proposed ACUPs before they can commence, Committee inspections, and the research facility's responsibility to assure that pain and distress are minimized will result in more accurate reporting of painful procedures. The annual report, VS Form 18–23 will also be clarified to require that painful procedures be reported as such, regardless of whether or not pain is relieved.

We received 40 comments stating that "Committee" should appear in § 2.35(b)(3) of the final rule in place of "attending veterinarian" wherever the phrase "in accordance with the instructions of the attending veterinarian" appears. The phrase appears in proposed § 2.35(b)(3)(iii) only in regard to the use of pain relieving drugs. The requirements in the remaining paragraphs of proposed § 2.35(b)(3) are incorporated in § 2.30 of the revised rule because they are the responsibility of the research facility. Procedures and practices which must be done in accordance with the instructions of the attending veterinarian, as provided in proposed § 2.35(b)(3), are those which pertain to providing proper veterinary care, and providing for animal health and well-being, such as the proper use of drugs and pre- and post-procedural care. As explained previously, adequate veterinary care must be provided in all research procedures and is not limited to those involving surgery. Section 2.35(b)(3) of this rule is revised accordingly. These are areas within the expertise of the attending veterinarian, as opposed to the Committee, and remain subject to the instructions of the attending veterinarian in the revised rule.

Subpart D—Attending Veterinarian and Adequate Veterinary Care Introduction

As explained above under the heading, "Subpart C—Institutional Animal Care and Use Committee and Other Requirements for Research Facilities" and under the subheading, "Reorganization of §§ 2.30 and 2.35," in this revised rule we are reassigning responsibility to the research facilities for certain duties that had been placed upon the attending veterinarian in the proposed rule. These changes are made in response to the concerns raised by 480 commenters (455 from the research community and 25 from members of the general public) who stated that as proposed, § 2.40(e) would place the attending veterinarian in the position of enforcement agent for the Department. These changes should also allay the concerns of the four commenters from the research community who stated that the Committee was improperly given veterinary responsibilities in § 2.35 of the proposed rule.

With this reorganization of §§ 2.30, 2.35, and 2.40, and the reassignment of responsibilities, we believe that the research facility, the Committee, and the attending veterinarian will serve as an effective built-in institutional quality assurance mechanism. The Act requires standards for adequate veterinary care, and consultation with a veterinarian in the planning of any painful procedure. The regulations in this revised rule are intended to ensure proper planning and conduct of research procedures and adequate veterinary care.

Although ultimate responsibility for many of the responsibilities originally placed on the Committee and the attending veterinarian in the proposed rule is placed on the research facility in the revised rule, many of these responsibilities must still be performed under the guidance or supervision of the attending veterinarian or in consultation with the attending veterinarian because they fall within his or her expertise. Accordingly, § 2.30 of this rule has been revised to require each research facility using or holding animals for research, testing, or teaching to establish, maintain, and abide by a written program of adequate veterinary care in accordance with § 2.40. (A research facility may or may not include the written program of adequate veterinary care in its standard operating procedure (SOP) if it employs a full-time attending veterinarian.)

In Subpart D, paragraph (e) of proposed § 2.40, "Research facilities," is most affected by the reassignment of responsibility. For example, proposed § 2.40(e)(2) would have required the attending veterinarian to provide consultation and guidance in areas of veterinary care. In the revised rule, it is the research facility's responsibility to require and ensure that the attending veterinarian performs those functions.

General. Proposed § 2.40 would require a written program of adequate veterinary care between a dealer, exhibitor, or research facility, and its attending veterinarian, which includes a program for disease control and prevention, pest and parasite control, pre- and post-procedural or surgical care, nutrition, euthanasia, proper and appropriate use of anesthetics, analgesics, tranquilizers, and any other pain relieving drugs.

We received comments addressing the nature of the program of adequate veterinary care generally, and the frequency of program review by the Area Veterinarian in Charge that should be required when there is a part-time as opposed to a full-time attending veterinarian. These areas of commenters' concern are clarified in the revised rule and are discussed below.

We received 10 comments (8 from the research community and 2 from dealers) generally in favor of strengthening the current regulations concerning veterinary care and 35 comments (27 from dealers and 8 from exhibitors) generally opposed to strengthening the requirements. We have determined, based upon our experience, and for the reasons provided in the supplementary information to the proposed rule, published in the **Federal Register**, March 31, 1987, (*see* 52 FR at 10303), that enhanced requirements for adequate veterinary care are necessary to promote the health and well-being of animals.

We received 329 comments (304 from the research community and 25 from the general public) expressing concern that the tone of proposed Subpart D is negative and will create a confrontational relationship between attending veterinarians and research personnel and/or Committee members, rather than a cooperative relationship. We believe that the reorganization of §§ 2.30, 2.35, and 2.40 in the revised rule should allay this concern, because it resolves any disputes over areas of expertise and responsibility. With the reassignment of the areas of responsibility of the research facilities, Committee members, and attending veterinarians in this revised rule, we believe the regulations will result in a synergistic relationship which fosters animal welfare.

Attending veterinarian. Proposed § 2.40(a) would require each licensee or registrant to have an attending veterinarian who is "accredited" by the U.S. Department of Agriculture in accordance with regulations issued by the Secretary under the Act. The attending veterinarian would be responsible for providing adequate veterinary care to the animals in accordance with the written program of adequate veterinary care required in

proposed paragraphs (b) and (c) of § 2.40.

We received numerous comments from the research community addressing "accreditation" of the attending veterinarian. Forty-six commenters from the research community objected that proposed § 2.40(a) is unacceptable without the details of "accreditation" being included; 507 commenters (482 from the research community and 25 members of the general public) stated a more general concern that the process for "accrediting" veterinarians was not explained in the proposed rule. One hundred commenters from the research community stated that APHIS is not in a position to establish professional qualifications for "accreditation" of attending veterinarians.

As previously explained in this supplementary information, and under the heading, "Attending veterinarian," in a related document, Part 1—"Definition of Terms," published elsewhere in this issue of the Federal Register, docket no. 88-013, we are removing references to "accreditation" from the regulations pending the Department's renaming and development of standards for the "accreditation" program. Proposed standards will be published separately at a later date in a proposed rule. We believe that this action will satisfy the commenters' concerns.

Program of adequate veterinary care. Proposed § 2.40(b) would require the attending veterinarian to establish, maintain, and supervise programs of disease control and prevention, pest and parasite control, pre- and post-procedural care, nutrition, euthanasia, and adequate veterinary care for all animals on the premises of the dealer, exhibitor, or research facility. The programs must also include the proper and appropriate use of anesthetics, analgesics, tranquilizers, and euthanasia, when indicated. The reader should note that the requirement for a program of pre- and post-procedural care in proposed § 2.40(b) applies to all research procedures and processes involving animals and is not limited to surgical procedures. Accordingly, we have revised all of the provisions of § 2.40 in this rule to refer to pre- and post-procedural care in place of pre- and post-surgical care wherever it appears.

In addition to the comments objecting to the allocation of responsibilities among the facilities, the Committee, and the attending veterinarian, we also received 64 comments from members of the research community stating that the establishment, maintenance, and supervision of a program of adequate veterinary care in research facilities should be the responsibility of the Committee, and not the attending veterinarian. We do not agree that this responsibility should be imposed on the Committee. The Act does not require the Committee to develop a program of adequate veterinary care. Moreover, only one member of the Committee, the attending veterinarian, would be certain to have the requisite expertise to do so. As previously explained under the discussion of Subpart C, we have determined that responsibilities not imposed by the Act on the Committee should be placed on the facility.

Establishment and maintenance of the program of adequate veterinary care is the responsibility of the facility, as provided in § 2.30 of the revised rule. Accordingly, proposed § 2.40(b) is revised to state that responsibility for establishing and maintaining a program for adequate veterinary care is on the dealer, exhibitor, and research facility, instead of the attending veterinarian. The program would remain under the supervision and control of the attending veterinarian, however, because of the attending veterinarian's expertise. We have also clarified paragraph (b), to provide that programs for disease control and prevention, pest and parasite control, pre- and post-procedural care, nutrition, the proper and appropriate use of anesthetics, analgesics, tranquilizers, and euthanasia when indicated, are all elements of a program of adequate veterinary care and must be included by a dealer, exhibitor, and research facility in order to have a comprehensive program as intended by the Act.

Two commenters from the research community stated that the Department should promulgate regulations on what constitutes an adequate program of veterinary care. The elements that must be included in a program of adequate veterinary care are provided in § 2.40(b) of the revised rule. They are programs for disease control and prevention, pest and parasite control, pre- and post-procedural care, nutrition, euthanasia, and the appropriate use of pain relieving drugs. It is the responsibility of the dealer, exhibitor, or research facility to ensure that its program of veterinary care adequately covers those areas. We are also revising § 2.40(c) to require that these areas be included in the written program for adequate veterinary care. In addition, § 2.40(d) of this revised rule requires daily observation of each animal in order to administer properly the program of adequate veterinary care. The clarification of these paragraphs in the revised rule to specify the elements that comprise a program of adequate veterinary care should satisfy the commenters' concern.

Three exhibitors commented that a responsible official of the dealer, exhibitor, and research facility should coordinate with the attending veterinarian in developing a program of adequate veterinary care. We believe that the concerns raised by this comment have been addressed in the revised rule, which requires dealers, exhibitors, and research facilities to establish and maintain the program of veterinary care and requires the program to be under the control and supervision of the attending veterinarian. The suggested coordination will result from this requirement, if properly implemented.

We received 25 comments from members of the research community stating that veterinarians are not trained for the role of determining what anesthesia and analgesics to provide. We believe the attending veterinarian has this expertise and is best suited to provide guidance concerning the proper use of pain relieving drugs and the need for them. One commenter stated that requiring the principal investigator to provide anesthesia and analgesics in accordance with the attending veterinarian's recommendation places the attending veterinarian in the position of deciding critical experimental issues, and this is not the role for which the attending veterinarian is trained. We disagree with the commenters. Under proposed § 2.40(e)(2)(i), the attending veterinarian is required to provide consultation and guidance to the principal investigator and to laboratory personnel during both planning and development of the ACUP and during the performance of the actual research. The principal investigator can consult with the attending veterinarian regarding the special needs and requirements of the research and experimental design, and together they can resolve outstanding matters concerning the use of pain relieving drugs. Additional review of determinations regarding the use of drugs is provided under § 2.35. Under that section, the ACUP must be reviewed and approved by the Committee, and the principal investigator must explain why an exception to the requirement to provide for the use of pain relieving drugs is justified. We do not believe that the attending veterinarian will be in the position of deciding critical experimental issues that are outside the scope of his or her expertise or duties.

We received 10 comments (3 from dealers and 7 from exhibitors) stating

that the attending veterinarian should not have to be present for routine health care procedures, such as vaccinations and worming. We agree with the commenters. For this reason, there was no proposed requirement that the attending veterinarian be present at all times for those procedures, nor is there one in the revised rule. The requirement is that the program of adequate veterinary care, including the procedures involved in administering a program of adequate veterinary care, be conducted under the supervision and control of the attending veterinarian. This does not require the attending veterinarian's presence at all times. No change is made in the revised rule based upon this comment.

Proposed § 2.40(c) would require that a written program of adequate veterinary care between the dealer, exhibitor, or research facility and the "Doctor of Veterinary Medicine" be drawn up and reviewed annually by APHIS. It would also require that the program provide for regularly scheduled visits by the veterinarian as appropriate to the facility's needs, if a part-time or consulting veterinarian is the attending veterinarian. Each dealer, exhibitor, and research facility would be required to keep a copy of the program on file on the premises and to provide a copy to the Area Veterinarian in Charge annually. Proposed paragraph (c) would also provide minimum requirements that must be included in the written program of adequate veterinary care, in addition to the areas of care provided in paragraph (b).

Six commenters from the research community stated that the term "attending veterinarian" should appear in place of "Doctor of Veterinary Medicine." We agree and have made this change in the revised rule. We intended specifically that the attending veterinarian, not any "Doctor of Veterinary Medicine," be involved in the development of the program of veterinary care. We have revised paragraph (c) accordingly.

We received 315 comments (290 from members of the research community and 25 members of the general public) stating that the written program of adequate veterinary care required in proposed § 2.40(c) reads like a contract between the facility and a part-time or consulting attending veterinarian and therefore would not be appropriate for full-time or staff attending veterinarians. Representatives of HHS suggested that institutions with a full-time attending veterinarian on staff should not be required to prepare and submit annually for review a separate program document, since they would have a program of adequate veterinary care in place through established positions, lines of authority, and standard operating procedures. We agree in part with the HHS suggestion. We believe that if a dealer, exhibitor, or research facility has established a written program of adequate veterinary care, separately or as part of its standard operating procedure, and has a full-time attending veterinarian on staff, it need not annually prepare and submit to APHIS a separate document for the program of adequate veterinary care. This is because the written program or SOP, coupled with the established lines of authority and responsibility, would address the requirement for maintaining a program of adequate veterinary care. We also agree that if a dealer, exhibitor, or research facility has a written program of adequate veterinary care and a full-time attending veterinarian on staff, it is sufficient if the written program of adequate veterinary care is reviewed by APHIS inspectors in the course of their regular duties, on the premises, rather than requiring the dealer, exhibitor, or research facility to redraft and submit a copy of their program annually to the Area Veterinarian in Charge. Dealers, exhibitors, and research facilities that have a full-time attending veterinarian on staff generally are less likely to change their attending veterinarian than are those with a part-time or consulting attending veterinarian, and therefore changes to the program of adequate veterinary care due to changes in personnel are less likely. Additionally, full-time staff attending veterinarians can make daily personal observations or receive reports on animal conditions and care from employees under their supervision, and are in a position to respond promptly to veterinary care needs with trained personnel. Part-time or consulting attending veterinarians would not have the same opportunity to observe and to act.

We are requiring in the revised rule that if a dealer, exhibitor, or research facility utilizes the services of a part-time or consulting attending veterinarian, it must provide the Area Veterinarian in Charge with its written program of adequate veterinary care, prepared and signed by its attending veterinarian, on an annual basis. We are requiring that a part-time or consulting attending veterinarian prepare and sign the written program of adequate veterinary care annually in order to verify that it is the current program of veterinary care being implemented by the attending veterinarian and the dealer, exhibitor, or research facility. The dealer, exhibitor, or research facility must also keep a copy of the program on file at its premises at all times. We are revising § 2.40(c) in this rule to clarify these differences for dealers, exhibitors, or research facilities that have a full-time attending veterinarian on staff and those that utilize the services of a part-time or consulting attending veterinarian. They appear in paragraphs (c) (1) and (2) of § 2.40 in the revised rule.

Thirty-seven commenters (36 from the research community and 1 exhibitor) stated that the program of veterinary care should be reviewed every 3 years, instead of annually, to coincide with registration renewal. We are retaining the requirement for annual review. The need for adequate veterinary care has nothing to do with registration renewal every 3 years. Rather, it is concerned with the daily health needs of the animals. The commenters do not mention the fact that the requirement for annual review of the program of veterinary care also applies to dealers and exhibitors We believe that annual review is desirable in any event, because of changes in the technology of veterinary care delivery, and changes in accepted procedures.

Four dealers commented that visits by a part-time or consulting attending veterinarian should not be required to be by appointment, but should only be required to be made on a routine basis. Proposed § 2.40(c) requires "regularly scheduled visits appropriate to the facility's needs." There is no requirement for visits by appointment. Our concern is that visits be sufficiently frequent to provide adequate veterinary care, as "appropriate to the facility's needs." No change is made to this provision in the revised rule.

We have made one additional change to proposed paragraph (c). In providing the minimum requirements that must be included in the written program of adequate veterinary care, we omitted reference to the areas of veterinary care that must be included. These are the areas of veterinary care identified in § 2.40(b) of both the proposed and the revised rules. This reference is added as new paragraph (c)(3) and proposed paragraphs (c) (1) through (6) are redesignated as (c)(3) (i), (ii), and (iv) through (vii) in the revised rule. This change also responds to the 2 comments we received from members of the research community who stated that regulations should be provided on what determines adequate veterinary care.

Observation of animals and care for sick, diseased, injured, lame, or blind

animals. Proposed § 2.40(d) would require daily observation of animals by the dealer, exhibitor, veterinarian, animal caretaker in charge, or someone under their direct supervision. In drafting proposed § 2.40(d), we inadvertently omitted research facilities from the entities required to observe each animal daily. We believe this subsection was understood to apply to research facilities since the second sentence refers to animals obtained for research purposes. Also, proposed § 2.40(e)(2) imposes requirements on the attending veterinarian of a research facility in addition to those contained in paragraphs (a) through (d). The term "research facility" is added following "exhibitor" in the revised rule. The term "veterinarian" was intended to refer to an attending veterinarian, and is modified in the revised rule accordingly.

We received two comments from the research community stating that provision should also be included for observation of the animals by the principal investigator. We agree with this comment since the investigator is qualified to perform the required observation. The revised rule is changed to include observation by the investigator.

One exhibitor and 1 member of the research community commented that the requirement for daily observation of the animals is excessive. One commenter noted that it is impractical to require the veterinarian of a large facility, such as large exhibition facilities or game farms, to observe each animal daily, and that observation might actually be detrimental to the proper management of some species, such as bears isolated for cubbing. We disagree with the commenter. The requirement for daily observation of most species has been part of the regulations since 1967 without resultant problems. It is also consistent with the NIH Guide for the Care and Use of Laboratory Animals, which states that "[a]nimals should be observed and cared for by qualified personnel every day, including weekends and holidays, * * *" (p. 28). Daily observation is a necessary part of good husbandry practices. It is extremely important that this requirement be retained in order to detect possible problems, including detection of disease and abnormal behavior. Also, it is not necessary that one individual observe all the animals. The proposed regulation would require daily observation by "the dealer, exhibitor, [research facility], [attending] veterinarian, [principal investigator], or animal caretaker in charge, or someone under their direct supervision." (Bracketed terms are added to the regulation in the revised rule.) We are clarifying this provision in the revised rule to provide that someone under the direct supervision of the attending veterinarian, principal investigator, or animal caretaker in charge would be allowed to perform the required observation if he or she is required to report promptly his or her findings to trained personnel and veterinary care is promptly provided. In this manner, the need to provide necessary veterinary care will be promptly identified and communicated to responsible and trained personnel. We do not believe that objections to the requirement are valid. The requirement is retained in the revised rule.

Proposed § 2.40(d) would also require that "each facility provide veterinary care or humanely dispose of sick, diseased, injured, lame, or blind animals, unless this would be inconsistent with the research purposes for which the animal was obtained and is being held * * *." It would also require compliance with any state or local law requiring holding of animals suspected of being diseased for a specified period of time.

We received 31 comments from the research community proposing that the term "unhealthy" be substituted for "sick, diseased, injured, lame or blind" in proposed § 2.40(d). We disagree with the commenters since an animal can be lame or blind and still be considered "healthy." Substitution of "unhealthy" will not cover all of the conditions listed in the proposed regulation. The substance of the requirement, to provide veterinary care or to humanely dispose of animals that are "sick, diseased, injured, lame, or blind," has been included in the regulations since 1967 and has not presented any problems to our knowledge. Reference to "sick, diseased, injured, lame, or blind," animals will remain in the revised rule. We are revising the provision of the proposed rule requiring "[t]he facility" to provide veterinary care or humanely dispose of sick, diseased, injured, lame, or blind animals. It is revised to clarify that this requirement applies to all research facilities, dealers, and exhibitors.

Research facilities. Proposed § 2.40(e) would impose additional requirements on the attending veterinarian of a research facility. It would require the attending veterinarian to be a member of the Institutional Animal Care and Use Committee and provide that he or she has "authority to enter all animal rooms, sites, facilities, and animal use areas, at any time."

The requirements imposed on the attending veterinarian of a research facility in the proposed rule include providing consultation and guidance to principal investigators and laboratory personnel during planning and development of an ACUP, and during actual research, whenever a procedure is likely to produce pain or distress in an animal. Proposed paragraphs (A) through (D) of § 2.40(e)(2)(i) identify specific areas in which the attending veterinarian must provide consultation and guidance. Proposed § 2.40(e)(2)(ii) would require the attending veterinarian to establish a recordkeeping system and a standard operating procedure which indicates and assures the proper use of drugs and proper pre- and post-surgical care on a daily basis. Proposed § 2.40(e)(2)(iii) would require the attending veterinarian to sign an assurance statement on the research facility's annual report, VS Form 18–23, certifying that he or she has authority to enter all animal areas, that he or she has carried out the requirements of § 2.40, and that he or she has read and understands the regulations and standards contained in Parts 2 and 3 of the Animal Welfare regulations.

In the revised rule, § 2.40(e)(1), the research facility is directed to require that the attending veterinarian be a member of the Committee. Similarly, it is the research facility's responsibility, under § 2.40(e)(2)(i), to require the attending veterinarian to provide the requisite consultation and guidance. Also, as discussed in this supplementary information under the heading, "Subpart B—Registration," only the chief executive officer or the institutional official with responsibility for animal care will be required to sign the facility's annual report. This is consistent with the PHS Policy. Accordingly, paragraph (iii) is deleted from § 2.40(e)(2) in the revised rule.

Many of the comments we received addressing proposed § 2.40(e) were from members of the research community. Therefore, unless otherwise indicated, the source of the comments discussed in this section is the research community.

Ten commenters stated that the word "all" should be deleted from paragraphs (e)(1) ("The attending veterinarian shall have * * * authority to enter all animals rooms, sites, facilities, and animal use areas, at any time"), (e)(2)(i)(D) (the attending veterinarian shall provide consultation and guidance in "[e]valuation and approval of all animal surgical areas"), and (e)(2)(iii)(A) (attending veterinarian shall sign an assurance statement on the facility's annual report certifying that he or she

has "authority to enter all animal areas"). Proposed § 2.40(e)(2)(iii) is removed from the revised rule since the attending veterinarian is not required to sign the annual report. The other references to "all" remain as proposed, because we believe it is essential that all animal rooms and animal areas be accessible to the attending veterinarian to assure proper and adequate veterinary care and to carry out the intent of the Act. The requirements that the attending veterinarian provide consultation and guidance in the areas of evaluation and approval of all animal surgical areas and qualifications of personnel involved with animal surgery are ultimately the responsibility of the facility and are included in § 2.30 in the revised rule. The facility must assure, however, that evaluation and approval of all animal surgical areas and qualifications of personnel are done in accordance with instructions of the attending veterinarian. Accordingly, § 2.40(e)(2)(i)(D) of the revised rule retains the requirement that the research facility require the attending veterinarian to provide consultation and guidance with respect to evaluation and approval of all animal surgical areas and qualifications of personnel involved with animal surgery.

Fifteen commenters stated that the attending veterinarian should be allowed access to enter animal rooms, sites, facilities, and animal use areas only "at any reasonable time," rather than "at any time" as proposed in § 2.40(e)(1). The commenters expressed concern that entry by the attending veterinarian in an animal study area during a procedure could be disruptive. We have determined that access "at any time" is imperative to prevent obstruction by those principal investigators for whom there is never a "reasonable" time to allow entry by the attending veterinarian. It is desirable that the attending veterinarian consult with the investigator to determine what would be a reasonable time and that the attending veterinarian be able to examine the ACUP in making this determination so as not to disrupt procedures or a controlled research environment. This may be done as part of the consultation and guidance provided during ACUP planning and development, and during actual research. Moreover, as previously discussed in the discussion of § 2.30(b) under the heading, "§ 2.30 Additional requirements for research facilities," research facilities could establish guidelines in the facility's written policies and procedures to help reassure personnel that this right of access would be exercised in good faith. It is important, however, that the attending veterinarian retain the right to have access at any time to ensure compliance with the program of adequate veterinary care, for the benefit of the animal.

Forty-four commenters stated that the requirements imposed on the attending veterinarian in proposed § 2.40(e)(2) properly belong to the Committee. We do not agree. The Act requires that the principal investigator consult with a doctor of veterinary medicine in the planning of any procedure likely to produce pain or distress in an experimental animal (7 U.S.C. 2143(a)(3)(C)). The areas listed in proposed paragraphs (A) through (D) of § 2.40(e)(2)(i) are necessary components of research planning and development and of veterinary care.

Proposed § 2.40(e)(2) states that:

> In addition to the requirements set forth in paragraphs (a) through (d) of this section, the attending veterinarian of a research facility shall:
>
> (i) provide consultation and guidance to principal investigators and other laboratory personnel during protocol [ACUP] planning and development, and during actual research, whenever any procedure is likely to produce pain or distress in an animal. Such consultation and guidance shall include at least the following areas:
>
> (A) the proper use of tranquilizers, analgesics, anesthetics, and euthanasia according to the accepted, or common veterinary practice procedures;
>
> (B) provision for adequate pre-surgical and post-surgical care by laboratory workers in accordance with current established veterinary medical and nursing procedures;
>
> (C) agreement to the withholding of tranquilizers, anesthesia, analgesia, or euthanasia only when scientifically necessary and only for the necessary period of time; and
>
> (D) evaluation and approval of all animal surgical areas and qualifications of personnel involved with animal surgery.
>
> (ii) establish a recordkeeping system and standard operating procedure, which indicates and assures that the proper drugs are being used and that proper pre-surgical and post-surgical care, are being carried out on a daily basis; [1]

Forty-eight commenters stated that the areas provided in proposed paragraph (D) of § 2.40(e)(2)(i) should be the responsibility of the research facility, not the attending veterinarian. We agree that the areas listed in proposed paragraph (D) of subsection (e)(2)(i) (evaluation and approval of all animal surgical areas and qualifications of personnel involved with animal surgery) as well as those listed in proposed paragraphs (e)(2)(i)(A) through (C) are ultimately the responsibility of the research facility. We believe, however, they should be carried out with consultation and guidance from the attending veterinarian and in accordance with his or her instructions, because the attending veterinarian is best qualified to advise in these areas. Evaluation of animal surgical areas and the qualifications of personnel will be accomplished through the attending veterinarian in the revised rule, though they remain the ultimate responsibility of the facility.

We received 506 comments (481 from the research community and 25 from members of the general public) stating that proposed paragraph (e) of § 2.40 implied that the attending veterinarian would be required to be present during all actual research and that this is impractical and unnecessary. It is not our intent that the attending veterinarian must be present at all times during all actual research or during all actual research that might produce pain or distress in an animal. Rather our intent is that the attending veterinarian must be available for consultation and to provide guidance, and must have free access to all animal areas if he or she determines it is necessary to be present during the conduct of research procedures. During our consultations with representatives from HHS, they stated that many institutions interpreted proposed § 2.40(e) as requiring the attending veterinarian's presence. They suggested the following clarifying modification to paragraph (e)(2)(i): "Provide consultation and guidance to principal investigators and other laboratory personnel during [ACUP] planning and development, and if deemed necessary by the IACUC [Committee] during actual research, whenever any procedure is likely to produce pain or distress in an animal." We agree that the attending veterinarian should be present during actual research that is likely to produce pain or distress in animals if requested by the Committee. We also believe the attending veterinarian should be present if requested by the investigator, if complaints from personnel or humane groups are received, or to observe the research for compliance with the approved ACUP, the facility's written policy under § 2.30(e)(10), and the facility's program of adequate veterinary care. The revised rule is modified to clarify that the attending veterinarian's presence during actual research that is likely to produce pain or distress is required only under these circumstances.

[1] Paragraph (iii) is not repeated here since the requirement for the attending veterinarian to sign the annual report is removed from the revised rule.

One commenter objected to the requirement in proposed § 2.40(e)(2)(i) that the principal investigator consult with and receive guidance from the attending veterinarian during ACUP planning and development and during actual research whenever a procedure would be likely to produce pain or distress. Section 13(a)(3)(C)(i) of the Act specifically mandates this consultation in the planning of "any practice which could cause pain to animals." (7 U.S.C. 2143 (a)(3)(C)(i)). For this reason and for the reasons stated above in our discussion of required consultation and guidance, no change is made in the revised rule based upon this comment.

We received 40 comments stating that the requirement of proposed § 2.40(e)(2)(ii), that the attending veterinarian establish a recordkeeping system to assure proper drug usage and proper pre- and post-surgical care, be deleted. Twenty-nine commenters noted that procedures for proper drug use and pre- and post-surgical care would be provided in the ACUP, making a separate recordkeeping system unwarranted. We agree with the commenters insofar as requiring assurance of proper care is the institution's responsibility. We believe that the research facility should have some means of verifying the elements of proper veterinary care and that their written program of adequate veterinary care should provide for a recording system which indicates compliance with proper veterinary care procedures. We have revised paragraph (ii) in this rule to reflect that research facilities are required to have their attending veterinarian establish, as part of the facility's program of adequate veterinary care, procedures and a recording system in their program of adequate veterinary care which indicate and assure proper drug usage and proper pre- and post-procedural care.

Four commenters stated that only the institutional official responsible for animal care should be required to sign the annual report, Form VS 18–23. We agree for the reasons set forth under the heading, "Subpart B—Registration" and have removed paragraph (iii) from the revised rule.

No other changes are made to § 2.40 in the revised rule.

Subpart E—Identification of Animals, Time and method of identification

In proposed § 2.50, we proposed animal identification requirements intended to strengthen those of the existing regulations. We received 5 comments (2 from dealers and 3 from the general public) generally endorsing the stricter identification requirements and in favor of use of tags, tattoos, or both as the most reliable means of identification. One commenter urged that the type of marking provided in the regulations be by a humane method. Another commenter noted the need for requiring adequate recordkeeping as a means of verification of the animals' identity.

We have reconsidered the proposed requirements in light of the commenters' concern for stricter identification requirements in general. We believe that the requirements contained in proposed § 2.50 will result in more animals held by all classes of dealers and by research facilities being properly identified by tagging or by an approved tattoo. In this regard, we have reconsidered allowing class "A" dealers to identify live dogs or cats on the premises by "an accurate and distinctive description," a tattoo marking, or an official tag, and have determined that all animals on the premises should be identified by tattoo or official tag. We are eliminating the option to identify animals by description from proposed § 2.50(a)(3) since it could result in inaccuracies or improper substitution of animals. With this method of identification removed from the regulations, we believe that the requirements in paragraph (a)(3) can be combined with those of (a)(1). Accordingly, § 2.50(a)(1) is revised to require identification by tag or tattoo, of all live dogs and cats held on the premises, purchased, or otherwise acquired, sold, or otherwise disposed of or removed from the premises.

The commenter noting concern about humane methods of identification was most concerned that the method used not be unreasonably painful or distressful, such as ear tagging could be. The regulations are sufficiently clear in their requirement that tags must be attached "by means of a collar made of material generally considered acceptable to pet owners" and provides guidelines as to what would be considered acceptable and what would be unacceptable. Unacceptable materials are those such as wire, elastic, or sharp metal, that might cause discomfort or injury to the animals. Ear tagging is not an acceptable means of identification. We do not believe that additional regulations concerning the means of tagging are needed at this time.

Although we did not receive any comments addressing proposed § 2.50(b), we wish to clarify that it requires identification of all live dogs or cats under a Class "B" dealer's control, or on his premises, and not just those that are purchased or otherwise acquired. The word, "or," was inadvertently omitted from paragraph (b) in the proposal. To correct any misconception we are revising paragraph (b)(1) to read as follows:

"When live dogs or cats are held, purchased, or otherwise acquired, they shall be immediately identified—

We are making a conforming change in paragraph (c) for the same reason.

We did not receive any other comments concerning the remaining sections of proposed Subpart E, however we have determined that some revision is necessary.

We have clarified proposed § 2.50(e) by revising paragraph (e)(1) to include animals from any exempt source. Proposed paragraph (e)(2) is therefore removed from the revised rule because it is subsumed in paragraph (e)(1). We have revised proposed paragraph (e)(1) by redesignating its provisions as paragraphs (e)(1)(i), (ii), and (e)(2) in the revised rule to make it easier to follow. Paragraph (e)(1) of the proposed rule would provide that all live dogs or cats delivered for transportation, transported, purchased or otherwise acquired, sold, or disposed of by a research facility be identified at the time of delivery, purchase, sale, disposal, or acquisition by either: (1) An official tag or tattoo that was affixed to the animal at the time it was acquired by the research facility, or (2) a tag, tattoo, or collar applied to the dog or cat by the research facility which individually identifies the dog or cat by description or number. The latter alternative is redesignated as paragraph (e)(1)(ii) in the revised rule. We have determined that a tag, tattoo, or collar would identify the dog or cat by number only, and not by description, due to space and other practical limitations. We are removing identification by description from this provision in the revised rule.

Subpart F—Stolen Animals

Proposed § 2.60 would provide that "[a]ny person subject to the Act shall not buy, sell, exhibit, use for research, transport, or offer for transportation, any stolen animal." One of the findings of Congress on which the Act is premised is that "regulation of animals and activities as provided in [the] Act is necessary * * * in order (3) to protect the owners of animals from the theft of their animals by preventing the sale or use of animals which have been stolen." (7 U.S.C. 2131(b)). Section 2.60 was proposed in order to prevent the buying and selling of stolen animals and those obtained under questionable circumstances, since the requirements of marking for identification and

recordkeeping have proven insufficient to stop these practices.

We received 377 comments (352 from the research community and 25 from members of the general public) stating that proposed § 2.60 should either be deleted from the regulations entirely or that it should be limited to persons "knowingly or willfully" engaging in activities using stolen animals. Fourteen commenters (2 from the research community and 12 from members of the general public) stated that they are in favor of the proposed regulation.

As stated above, we have determined that this section is necessary and it remains in the rule, as revised. We have considered the comments stating that the regulations should prohibit only willful or knowing use of stolen animals and have determined that the resultant regulation would be ineffective and virtually unenforceable. We are concerned that persons seeking to use the animals as provided in the regulation would choose to remain ignorant of the circumstances under which the animal was obtained. We have also considered adding an exception for circumstances in which the person holding the animal has made reasonable, good faith efforts to determine whether the animal was stolen or its origin. We have determined that the proposed regulation would be most effective in preventing theft of animals if the various activities involving stolen animals listed in the regulation constitute a *per se* violation of the regulations. Only in this manner can we be certain that persons subject to the Act will use best efforts in endeavoring to avoid using stolen animals. We are hopeful that the incidence of stolen animals will subside if the market for them is eliminated. Section 2.60 remains in the revised rule as originally proposed.

Subpart G—Records

Dealers and exhibitors

We received 5 comments (1 from the research community, 1 from an exhibitor, and 3 from the general public) noting the need for stricter recordkeeping requirements in general. We believe that the additional recordkeeping requirements proposed in Subpart G will assist the Department by enhancing traceability of the animals, which is one of the prime objectives of the recordkeeping requirements, and will be a valuable tool in combatting the sale of animals obtained unlawfully.

We are clarifying § 2.75 in this revised rule to reflect that it applies to dealers other than operators of auction sales and brokers, and to exhibitors. This clarification is necessary because operators of auction sales and brokers are dealers under the Act (7 U.S.C. 2131(f)) and under the definition of "dealer" contained in Part 1—"Definition of Terms" (see companion docket no. 88–013, published elsewhere in this issue), because they negotiate the purchase or sale of animals, in commerce, for compensation or profit. Section 2.77 provides the recordkeeping requirements applicable to operators of auction sales and brokers to whom animals are consigned.

Proposed § 2.75 would impose recordkeeping requirements upon dealers and exhibitors that are substantially similar to those required under current § 2.75, except that dealers and exhibitors would also be required to maintain in their records the vehicle license number and state, and the driver's license number and state of anyone not licensed or registered under the Act from whom a dog or cat is acquired. This requirement was not included in proposed § 2.75(b) and we have determined that it is equally appropriate to include it for animals other than dogs and cats. This requirement was proposed to facilitate tracing the seller and the source of the animals, particularly when the source or origin of the animals is in question. Five commenters from the general public stated their approval of this requirement.

One member of the general public suggested that we require owner release statements which acknowledge ownership of the animals whenever they are acquired or sold, or possession is otherwise transferred. We are concerned that anyone who contrives to sell or transfer stolen animals would likely be willing to provide a fraudulent owner release statement. Secondly, a person subject to the Act might attempt to defend against a charge of violating § 2.60 by pleading good faith reliance on the owner release statement and could argue that it is not reasonable to require a person to go beyond obtaining the statement to satisfy themselves that the animals were not stolen. This would affect the Department's efforts to enforce § 2.60 of the regulations effectively under those circumstances or to prosecute persons charged for activities involving stolen animals. Because of these concerns with the commenter's suggestion, we are not requiring an owner release statement at this time. If we determine that it should be included in some form in the regulations, we will publish a notice of proposed rulemaking and solicit public comments on the proposal.

One exhibitor commented that APHIS, and not licensees, should maintain dealer records, such as the Record of Disposition of Dogs and Cats (VS Form 18–6). The Department is authorized under sections 10 and 12 of the Act to require that dealers and exhibitors maintain records with respect to the purchase, sale, transportation, identification, and previous ownership of animals (7 U.S.C. 2140, 2142). The Department is also authorized under sections 10 and 12 of the Act to inspect and copy those records (7 U.S.C. 2140, 2142). No change is made in the revised rule based upon this comment.

Section 2.75 remains as originally proposed.

Proposed 2.76 would similarly require research facilities to maintain in their records the vehicle license number and state, and the driver's license number and state of the person from whom a dog or cat was purchased or otherwise acquired if that person is not licensed or registered under the Act. Proposed § 2.76 would also require research facilities to maintain in their records the USDA license or registration number of that person if that person is licensed or registered under the Act. Current § 2.76 is more general in its requirement that research facilities maintain a license number if that person is licensed under the Act.

The requirement to maintain the vehicle license number and state, and the driver's license number and state of the person who owned or consigned the animal(s) for sale was omitted from proposed § 2.77(a). We have determined that it is equally appropriate to impose this requirement on dealers who are operators of auction sales and brokers, for the reasons stated above. Accordingly, § 2.77(a) is revised to include this requirement. We are also revising § 2.77(a) in this rule to include the date of birth or approximate age of the animal in the description required, because this requirement was inadvertently omitted from the proposed rule.

We received 303 comments (278 from members of the research community and 25 from members of the general public) stating that the requirement to maintain a record of the USDA license or registration number is not in the Act and that APHIS has failed to demonstrate how requiring it would benefit animal welfare. Section 10 of the Act requires research facilities to make and retain records with respect to the purchase, sale, transportation, identification, and previous ownership of live dogs and cats, as the Secretary may prescribe (7 U.S.C. 2140). Section 12 of the Act

authorizes the Secretary to promulgate recordkeeping requirements governing the purchase, handling, or sale of animals, in commerce, by research facilities (7 U.S.C. 2142). The requirement for maintaining a record of the USDA license or registration number of the person from whom live dogs or cats are obtained allows the Department to trace the origin of the animals and thereby locate dealers who may be suspected of selling unlawfully obtained animals. Without mechanisms which enable the Department to locate persons selling stolen animals, the Department would be unable to fulfill one of the stated purposes of the Act, "to protect the owners of animals from the theft of their animals by preventing the sale or use of animals which have been stolen." (7 U.S.C. 2131(b)(3)). Congress further authorized the Secretary "to promulgate such rules, regulations, and orders as he may deem necessary in order to effectuate the purposes of [the] Act." (7 U.S.C. 2151). The ability to trace persons selling animals is more important now than ever, because fewer pound animals are being conditioned for research purposes and the demand by the research facilities for experimental animals is increasing. There also appears to be increasing transfer of animals between research facilities, making it necessary to trace the sellers' identity through multiple previous owners. The requirement to obtain the license or registration number of all persons from whom a research facility obtains dogs or cats therefore remains as initially proposed, as it is necessary and reasonable under the circumstances.

Three members of the general public commented that the regulations should be revised to state that research facilities should buy animals from licensed sellers only. We believe that the Act fully covers this issue and that further regulation is not necessary. Section 7 of the Act provides:

> It shall be unlawful for any research facility to purchase any dog or cat from any person except an operator of an auction sale subject to section 12 of this Act or a person holding a valid license as a dealer or exhibitor issued by the Secretary pursuant to this Act unless such person is exempted from obtaining such license under section 3 of this Act. (7 U.S.C. 2137).

Proposed § 2.1 was intended to better identify persons exempt from the licensing requirements of the Act, as discussed in the supplementary information to Subpart A—Licensing, under the heading, "Requirements and application." We do not agree that additional provisions need be included in the regulations at this time No change is made in the revised rule as a result of this comment.

Health certification and identification

Proposed § 2.79 would continue the requirement of current § 2.79 that a health certificate, executed and issued by a licensed veterinarian, must accompany any dog, cat, or nonhuman primate delivered by a dealer, research facility, exhibitor, operator of an auction sale, broker, or department, agency, or instrumentality of the United States or of any State or local government, to an intermediate handler or carrier for transportation in commerce. It further provides that VS Form 18–1 may be used for health certification by a licensed veterinarian. VS Form 18–1 is the "U.S. Interstate and International Certificate of Health Examination for Small Animals."

One commenter from the research community stated that federal institutions that are dealers are not required to sign Form 18–1. Nevertheless, the Act does require any "department, agency, or instrumentality of the United States having laboratory animal facilities," to provide health certificates (7 U.S.C. 2144). Section 14 of the Act requires that they comply with paragraphs (a), (f), (g), and (h) of section 13 (7 U.S.C. 2143), and section 13(f) provides the requirement for a health certificate to accompany dogs, cats, and "additional kinds or classes of animals designated by regulation of the Secretary." (7 U.S.C. 2144.)

We intended to impose these prohibitions on persons who transport animals in commerce themselves, rather than limiting the prohibitions to persons who deliver the animals to carriers or intermediate handlers, but inadvertently did not do so in the proposed rule. Imposing these prohibitions on persons who transport animals in commerce themselves is necessary because increasing numbers of dealers, research facilities, and other persons are transporting animals themselves, rather than using carriers and intermediate handlers to do so. The health and safety concerns underlying the minimum age requirement and health certification requirement apply equally to the animals in transport, regardless of the legal status of the person transporting the animal, and it is inconsistent with these concerns to place the prohibitions on carriers and intermediate handlers only.

Therefore, § 2.79 is revised in this rule by extending its prohibitions to any dealer, research facility, operator of an auction sale, broker, or department, agency, or instrumentality of the United States or of any State or local government transporting any dog, cat, or nonhuman primate in commerce. This would apply to federal agencies as well. We are similarly extending the prohibition of § 2.130 to any person transporting dogs or cats in commerce.

We also note that in our proposal to amend Part 3—"Standards" (see companion docket no. 87–004, published elsewhere in this issue), we are proposing to make the transportation standards included in Subparts A–D applicable to any person subject to the Act who transports the regulated animals in commerce, rather than restricting the standards to carriers and intermediate handlers as in the current regulations.

Subpart H—Compliance with Standards and Holding Period

Compliance with standards

Proposed § 2.100(a) would require the following:

> Each dealer, exhibitor, operator of an auction sale and research facility shall comply in all respects with the regulations set forth in Part 2 and the standards set forth in Part 3 of this subchapter for the humane handling, care, treatment, housing, and transportation of animals: Provided, however: That exceptions to the standards in Part 3 may be made for research facilities only when such exceptions are specified in the research protocol; are explained in detail in a report filed with the Institutional Animal Care and Use Committee; and are approved by the Committee.

Seven commenters objected to the wording of proposed § 2.100(a). Four commenters from the research community objected to use of the term "research protocol" in the proposed regulation. Three of those commenters and 2 additional commenters from the research community stated that the statutory language should be used instead. A seventh commenter, also from the research community, stated that the phrase "are explained in detail in a report filed with the Institutional Animal Care and Use Committee; and are approved by the Committee" should be removed from the regulation.

We consider these comments to be unjustified. The proposed language is taken from the statute. Section 13(a)(3)(E) of the Act plainly states "that exception to such standards may be made only when specified by research protocol and that any such exception shall be detailed and explained in a report outlined under paragraph (7) and filed with the Institutional Animal Committee." (7 U.S.C. 2143(a)(3)(E).) The term "research protocol" is taken directly from the statute. However, as explained in Part 1—"Definition of

Terms," docket no. 88-013, published elsewhere in this issue of the **Federal Register**, we have replaced it with "animal care and use procedure" (ACUP) everywhere it appears in proposed Parts 1 and 2. This change is to satisfy concerns voiced by members of the research community and HHS that the Department would be interfering in research design. The requirement that exceptions to the standards be detailed and explained in a report to the Committee is also directly from the statute and remains in the revised rule. We are revising § 2.100 to also require that exceptions from the provisions of § 2.131, "Handling," may be made by research facilities when specified in the ACUP, explained in detail in a report filed with the Committee, and are approved by the Committee. This change is necessary because § 2.131 pertains to the humane handling of all animals covered by the Act and is derived from the standards in Part 3. We have included it in Part 2 because all persons subject to the Act must comply with it when handling all animals covered by the Act.

Proposed § 2.100(b) would apply to carriers and intermediate handlers, and would require that they comply with the regulations in Part 2 and the standards in Part 3 pertaining only to the humane transportation of animals in commerce. Proposed § 2.100(a) would apply to dealers, exhibitors, operators of auctions sales, and research facilities, and would require that they comply with the regulations in Parts 2 and 3 in their entirety. We have determined that because intermediate handlers hold animals for several days while awaiting transportation in commerce, they should be required to comply with all of the standards in Part 3 for the humane handling, care, treatment, and housing of animals during these holding periods, and not just those pertaining to transportation. We are therefore revising § 2.100(a) in the final rule to include intermediate handlers and we are removing them from § 2.100(b) in the revised rule.

Except for these three changes, § 2.100 remains as proposed.

Holding period

Proposed § 2.101(a) would require a 5-day holding period for dogs and cats by dealers and exhibitors following their acquisition of the animal. One dealer objected to the 5-day holding period. Section 5 of the Act provides as follows:

> No dealer or exhibitor shall sell or otherwise dispose of any dog or cat within a period of five business days after the acquisition of such animal or within such other period as may be specified by the Secretary * * * (7 U.S.C. 2135).

Five days is considered to be the appropriate holding period under most circumstances We consider that this is a reasonable period of time to allow persons to locate missing animals, and to enable a dealer or exhibitor to determine whether a dog or cat is fit for further transfer. Accordingly, the 5-day holding period remains in the revised rule. We are revising the rule, however, to ensure that animals are held 5 full days. We are concerned that if a dealer or exhibitor obtains an animal late in the day on a Monday, for example, that it could count that Monday as one business day and dispose of the animal early on Friday by counting Friday as one business day as well. This would not allow owners sufficient time to locate their missing animals. This problem would be compounded if the dealer or exhibitor is open for business over the weekend and counts Saturday and Sunday as business days. Using the time of acquisition in the example set forth above, an animal obtained late Thursday night might be disposed of first thing Monday morning, without allowing its owner a reasonable period of time to locate the missing animal. To prevent this occurrence, we are revising § 2.101(a) to provide that, except as otherwise provided in paragraph (a), any live dog or cat acquired by a dealer or exhibitor must be held for 5 full days, not including the day the animal was acquired. We are also providing that the 10-day holding period applicable to live dogs or cats acquired by a dealer or exhibitor from any private or contract pound or shelter excludes the day the animal was acquired.

We intended that all time periods provided in § 2.101 would exclude time in transit. This exclusion was inadvertently omitted from the initial requirement of paragraph (a) that "[a]ny live dog or cat acquired by a dealer [3] or exhibitor shall be held by him, under his supervision and control, for a period of not less than 5 business days after acquisition of such animal." Reference to excluding time in transit has been included in this revised rule, as well.

We proposed certain exceptions to the 5-day holding period in § 2.101(a). The second exception stated in the proposed regulation would allow dealers or exhibitors who obtained dogs or cats obtained from governmentally owned and operated pounds or shelters to hold the animals for only 24 hours, instead of the 5-day period otherwise required, if the animals completed a 5-day holding period at the governmentally owned and operated pound or shelter.

We received 5 comments from members of the general public objecting to the proposed exception for dealers and exhibitors who obtain dogs or cats from governmentally owned and operated pounds or shelters which would excuse them from the 5-day holding period. We agree with the commenters that this exception should be removed from the regulations. Based upon our review of the comments, we have determined that a 1-day holding period would not provide owners with a reasonable period of time to recover lost animals that have been placed in the pound or shelter, and that eliminating the 5-day holding period for dogs and cats obtained from governmentally owned and operated pounds or shelters would not be in the best interests of the animals or their owners and would not be in keeping with the intent of the Act. Therefore, we are retaining the 5-day holding period in the final rule for all dogs and cats obtained by a dealer or exhibitor, except as follows:

(1) In the revised rule we are requiring a 10-day holding period, not including the day of acquisition, for dogs and cats acquired or obtained by a dealer or exhibitor from a private or contract animal shelter or pound. A holding period for animals obtained from a private or contract shelter or pound was not included in the proposal because proposed § 2.132 would have prohibited class "B" dealers from obtaining random source dogs or cats from those sources. Accordingly, it was not necessary to provide a holding period. As explained below under the heading, "§ 2.132 Procurement of random source dogs and cats, dealers," the revised rule provides that class "B" dealers may obtain random source dogs and cats from private or contract pounds or shelters and must comply with the holding period required under §§ 2.101 and 2.132. We believe that a 10-day holding period for dogs and cats obtained from a private or contract pound is appropriate and reasonable because holding periods for these animals are determined by local laws and vary greatly. Holding periods may not even be required under some local laws. Moreover, animals held in private or contract pounds often are from several different towns or counties, depending upon the contract arrangement, and the 10-day period will allow owners additional time to locate lost or stolen animals;

(2) Dogs and cats that have completed a 5-day holding period with another dealer or exhibitor, or a 10-day holding period with another dealer or exhibitor if obtained from a private or contract shelter or pound, may be sold or

otherwise disposed of by subsequent dealers or exhibitors after a 24-hour holding period;

(3) Any dogs and cats suffering from disease, emaciation, or injury may be destroyed by euthanasia before completing the requisite holding period; and

(4) Any dogs and cats that are 120 days of age or less and that have been obtained from the person that bred and raised the animal may be disposed of by dealers or exhibitors after a 24-hour holding period.

The comments we received expressed concern that lost or stolen animals could be sold to research facilities before their owners are able to locate them. Proposed § 2.101 provides holding periods for dogs and cats that are applicable to dealers and exhibitors. One of the reasons for requiring holding periods is to allow owners of lost or stolen animals a reasonable time to locate their animals before they are sold or otherwise disposed of by the dealer or exhibitor.

We have determined that research facilities obtain dogs and cats from sources other than dealers and exhibitors which must comply with § 2.101, and exempt sources. Some of these dogs and cats may be lost or stolen animals. We believe that an effective way to protect owners of lost or stolen animals would be to impose a similar holding requirement on research facilities that obtain dogs and cats from those other sources.

Accordingly, we are requiring in this revised rule that research facilities that obtain dogs and cats from sources other than dealers, exhibitors, and exempt persons must hold the animals for 5 full days, not including the day of acquisition, after acquiring the animal, excluding time in transit. Research facilities would still be subject to the identification of animals requirements in § 2.50. We believe that this measure is necessary to effectuate the purpose of the Act and that it is authorized under Section 21 of the Act (7 U.S.C. 2151).

We are revising paragraph (b) of § 2.101 to include reference to § 2.131, "Handling," for the reasons set forth above in this supplementary information, under the heading, "Holding period."

Holding facility

We are correcting a typographical error in proposed § 2.102(a)(3). That paragraph incorrectly references § 2.4. We have changed it in the revised rule to refer to § 2.1, as we intended.

Subpart I—Miscellaneous

Section 2.125 Information as to business

Proposed § 2.125 would require persons subject to the Act to provide to any Veterinary Services representative information concerning any business of theirs which may be requested in connection with enforcement of the Act and the Animal Welfare regulations. The proposal differs from the current regulation only in that carriers and intermediate handlers would also be required to furnish business information upon the request of a Veterinary Services representative. (Reference to "Veterinary Services representative" is changed to "APHIS official" in the revised rule.) The current regulation only applies to dealers, exhibitors, operators of auction sales, and research facilities.

We received 16 comments from the research community stating that the proposal would exceed our authority under the Act and that we have gone beyond the intent of the 1985 amendments to the Act. Another 4 commenters from the research community stated that proposed § 2.125 should be deleted for this reason. We believe these comments are unjustified, because the requirements contained in proposed § 2.125 have been in effect since 1967 with respect to dealers, exhibitors, and research facilities, and have not been subject to challenge. Nor have we encountered difficulty in obtaining compliance from the research community. Section 10 of the Act provides authority for requiring recordkeeping by dealers, exhibitors, and research facilities with respect to the "purchase, sale, transportation, identification, and previous ownership" of animals. Research facilities must make and retain required records with respect to live dogs and cats only. Authority to include carriers and intermediate handlers is specifically provided in Section 10 of the Act which further expressly requires that "[s]uch records shall be made available at all reasonable times for inspection and copying by the Secretary." (7 U.S C 2140.) Section 12 of the Act authorizes the Secretary to promulgate "recordkeeping requirements governing the purchase, handling, or sale of animals, in commerce, by dealers, research facilities, and exhibitors at auction sales and by the operators of such auction sales." (7 U.S.C. 2142.) Section 21 authorizes the Secretary to promulgate regulations in order to effectuate the purposes of the Act (7 U.S.C. 2151). The Department has determined that it is necessary to expand the scope of current § 2.125 to include carriers and intermediate handlers because of their increased involvement in handling animals in commerce. Expanding the scope of this regulation is also necessary to enhance enforcement efforts. We believe that ample authority is provided by the Act for requiring this information.

We received 302 comments (277 from the research community and 25 from members of the general public) objecting to proposed § 2.125 on the basis that the Act states that only those records required by the Act to be kept need to be made available to APHIS. Current and proposed § 2.125 would require the furnishing of any information "concerning the business of the [persons subject to the act] which may be requested by such representative [of APHIS] in connection with the enforcement of the provisions of the Act, the regulations and the standards in this subchapter." In order to carry out the Department's enforcement authority, Congress expressly authorized the Secretary to "promulgate such rules, regulations, and orders as he may deem necessary in order to effectuate the purposes of this Act." (7 U.S.C. 2151.) Authority to require that business information that is pertinent to enforcing the provisions of the Act and the Animal Welfare regulations be provided to the Department upon request is necessary in order to carry out the intent of Congress. This authority must apply equally to all information which may assist efforts to enforce the provisions of the Act and the regulations, but which is not specifically required to be kept by the Act, in order for the Department to be able to effectively enforce the regulations.

We received 48 comments (46 from the research community, 1 from an exhibitor, 1 from a member of the general public) suggesting we define "proprietary and business information" and clarify proposed § 2.125 to indicate that APHIS cannot use it to obtain proprietary information. We do not agree that these modifications are necessary. Current § 2.125 has been part of the Animal Welfare regulations since 1967. There have been no complaints that it has been wrongfully used to obtain proprietary information. The information required to be provided under the regulation is that which pertains to the conduct of business by persons subject to the Act. The information is necessary for the Department to effectively carry out its regulatory and enforcement authority under the Act.

For the above reasons no change is made to proposed § 2.125 in the revised rule.

One commenter from the research community stated that we should clarify the requirements for compliance by federal research facilities under proposed § 2.125. Federal research facilities are not required to be registered under the Act; however, they are directed to comply with "the standards and other requirements promulgated by the Secretary for a research facility under section 13 (a), (f), (g), and (h)." (7 U.S.C. 2144.) Except for the information required in the annual report of research facilities, they would not be required to furnish information to APHIS under § 2.125.

Section 2.126 Access and inspection of records and property

Proposed § 2.126 would require dealers, exhibitors, research facilities, intermediate handlers, and carriers to provide access to Department representatives for inspection of their premises, animals, and records, to copy records, and to take photographs to document conditions and/or areas of noncompliance. We received 193 comments from the research community stating that reference to access to records and to taking photographs should either be deleted from the section or that the proposal should be revised to limit access to records and photographing of the premises. We received 139 comments from the research community stating that the entire section should be deleted or revised within the limits of the Department's statutory authority under the Act. One commenter from the research community expressed concern that photographs could become available to the public through loss, theft, or FOIA requests. Statutory authority for Departmental access to conduct inspections of premises and records and to copy records is provided in Sections 10 and 16 of the Act (7 U.S.C. 2140, 2146). Section 10 of the Act requires persons subject to the Act to make and retain records as prescribed by the Secretary and provides that:

> [s]uch records shall be made available at all reasonable times for inspection and copying by the Secretary." (7 U.S.C. 2140).

Section 16 provides that:

> [t]he Secretary shall make such investigations or inspections as he deems necessary to determine whether [any person subject to the Act] has violated or is violating any provision of this Act or any regulation or standards issued thereunder, and for such purposes, the Secretary shall, at all reasonable times, have access to the places of business and the facilities, animals, and those records required to be kept pursuant to section 10 of any such [person]."

It further requires that these inspections be conducted at least once each year and that follow-up inspections be conducted until all deficiencies or deviations are corrected (7 U.S.C. 2146(a)).

The Department's authority to take photographs to document deficiencies has been upheld in an unpublished decision by a United States Court of Appeals following the Department's Judicial Officer's decision in *In re: Donald Stumbo, d.b.a. Stumbo Farms*, 43 Agric. Dec. 1079 (1984).

We believe that § 2.126 as proposed is within the Department's authority under the Act and that no revision is necessary.

Two dealers commented that Department representatives should make appointments before conducting inspections. We disagree with the commenters. The Act provides that the Secretary shall have access "at all reasonable times" (7 U.S.C. 2146(a)) and that persons subject to the Act must make their records available "at all reasonable times for inspection and copying by the Secretary." (7 U.S.C. 2140). We have found that the ability to conduct unannounced inspections enhances our enforcement efforts and is vital to encouraging actual and ongoing compliance with the Act. It is also necessary for determining whether inspection findings are reliable indicators of the actual conduct of business by the inspected entity. We are concerned that setting appointments would allow noncomplying persons to prepare for inspection, while operating at other times in noncompliance, because they feel secure they will not be inspected by the Department without warning. For this reason, no change is made in the revised rule based upon this comment.

We received 6 comments (4 dealers and 2 exhibitors) stating that the property surrounding an animal facility should either not be subject to inspection or that there should be a limit, such as 100 feet, on the surrounding area subject to inspection. Department representatives will continue to inspect surrounding land areas in order to detect problems with pests, odors, drainage, and trash or abandoned material, all of which can affect animal welfare. We agree that at some distance from a regulated person's permises, the condition of the area no longer has any bearing on the welfare of animals on the premises. However, the distance would vary in every situation, depending on the type of housing facility used, the area under the control of the regulated person, and other factors. Because these factors vary so widely and so unpredictably, it is not practical for us to specify a limit in the regulations.

We received 6 comments (5 from members of the research community and 1 dealer) stating that specific criteria should be established for the conduct of inspections by APHIS inspectors. As stated in proposed § 2.126, Department representatives will inspect facilities, property, records, and animals as considered necessary to enforce the provisions of the Act and the regulations and standards contained in Subchapter A—"Animal Welfare." The standards contained in Part 3—"Standards," provide specific site requirements which must be satisfied by persons subject to the Act holding animals. In a related document published elsewhere in this issue we are proposing standards applicable to dogs, cats, guinea pigs, hamsters, rabbits, and nonhuman primates. (*See* companion docket no. 87-004.) We believe that further specification of criteria is not necessary at this time. We encourage comments concerning the proposed standards, because they also contain criteria that will be used in conducting inspections.

One member of the general public commented that the regulations should include inspection of humane societies, animal shelters, pounds, and the like. These types of shelters are subject to regulation and inspection if they sell animals for a regulated purpose, such as to research facilities or to dealers.

Eleven commenters from the research community stated that federal facilities should be subject to inspection by the Department. We do not have authority under the Act to inspect facilities operated by federal agencies; however, they must comply with section 13 (a), (f), (g), and (h) of the Act, and must submit an annual report to APHIS each year. Accordingly, government owned and operated pounds are exempt from inspection by APHIS.

Section 2.128 Inspection for missing animals

Proposed § 2.128 would require dealers, exhibitors, research facilities, carriers, and intermediate handlers to allow access by "police or other officers of law enforcement agencies with general law enforcement authority (not those agencies whose duties are limited to enforcement of local animal regulations)" to enter the premises to inspect animals and records for the purpose of locating animals that are missing. Ten commenters from the research community stated that the section should be deleted from the regulations. One commenter stated that it violates the requirements of due

process of law and the Fourth Amendment protection against unreasonable searches and seizures. The commenter stated that searches for missing animals should be conducted under the existing procedures of local, state, and/or federal law enforcement agencies.

The Department is required by the Act to promulgate rules and regulations requiring persons subject to the Act to allow inspections to search for missing animals. Section 17 of the Act directs the Secretary to "promulgate rules and regulations requiring [persons subject to the Act] to permit inspection of their animals and records at reasonable hours upon request by legally constituted law enforcement agencies in search of lost animals." (7 U.S.C. 2147). Under the proposed rule, the searches must be conducted in accordance with the conditions and limitations provided in paragraphs (a) and (b) of § 2.128. Paragraph (a)(1) would require the law officer to furnish a written description of the missing animal, and the name and address of its owner before making the search. Accordingly, there must be a reasonable basis to believe that the animal is on the premises. We believe that § 2.128 does not violate any Constitutional rights. Cooperation to conduct these searches is required because the person holding a missing or stolen animal may not have any intent to do so and may not be aware that the animal has been stolen due to falsified shipping or purchase records. The regulations have required cooperation in searching for missing animals since 1967 without incident or challenge and remains in the revised rule.

Six commenters from the research community stated that the section should be clarified to include local animal regulations enforcement officers, humane association officers, and APHIS inspectors, and to extend the searches to animals undergoing experimentation or research procedures. We are unwilling to make these changes because the Act and the legislative history are clear that humane association and animal control officers are not authorized to conduct searches for missing animals. The officers conducting the searches must have general law enforcement authority, as required by the Act. Furthermore, both the Act and the legislative history underlying it are clear that Congress did not intend for the Department to interfere with the conduct of actual research (*See* H.R Report No. 1848 (August 11, 1966)). Nor did Congress intend for private persons or groups to use this provision as a means of interfering with research facilities by using it to gain entry.

Concern that APHIS is not authorized to search for missing animals is inappropriate. APHIS inspectors are authorized to inspect animals and animal records in the course of a regular inspection or an inspection to determine if there is a violation of the Act or any of the regulations, including § 2.60. The searches identified in § 2.128 are limited to those conducted by law enforcement agencies and so there is no need for mention of APHIS inspectors.

Accordingly, proposed § 2.128 remains as initially proposed.

Section 2.129 Confiscation and destruction of animals

We received 1 comment from the research community objecting to the reference to the International Union for the Conservation of Nature and Natural Resources (IUCN) in proposed § 2.129(c) as inappropriate because the U.S. Department of Interior, Fish and Wildlife Service (FWS) is statutorily authorized to identify and list threatened and endangered species. The commenter also suggested identifying nonhuman primates as an endangered species along with marine mammals. The commenter suggested that the Department should consult with the appropriate government agency having statutory authority regarding importation or use of an endangered species, once a confiscated animal has been identified as an endangered species. Proposed 2.129(c) would direct the Administrator to consult with certain agencies and the IUCN, when possible, before making any decision regarding destruction of a confiscated animal that is designated an endangered species.

Proposed § 2.129(c) concerns internal Agency procedure only and is not directed to any person subject to the Act and the regulations. Accordingly, we are removing it from the revised rule. Before making any decision regarding the destruction of a confiscated animal that is an endangered species, however, the Administrator will, when possible, consult with representatives of FWS, the National Marine Fisheries Service, Department of Commerce, or other appropriate government agencies, and the IUCN.

We did not receive any other comments concerning proposed § 2.129. However, we are revising this section to clarify that any animal confiscated under this section, not just certain ones, may be placed with other licensees or registrants which comply with the standards and regulations, and that the costs for this will be borne by the dealer, exhibitor, intermediate handler, carrier, or research facility from whom the animals were confiscated. In order to make this clear, we are breaking proposed § 2.129(b) into two portions, now designated as (b) and (c), and are making editorial changes to the proposed requirements. We are also removing the separate reference to operators of auction sales from paragraph (a) because they are dealers.

Section 2.130 Minimum age requirements

We did not receive any comments concerning proposed § 2.130. Proposed § 2.130 would prohibit any person from delivering a dog or cat to a carrier or intermediate handler for transportation in commerce unless the animal is at least 8 weeks of age and has been weaned. The only exception is for transportation in commerce to a registered research facility. We inadvertently failed to include a prohibition which would prevent any person subject to the Act from transporting a dog or cat in commerce by themselves, that is, without using a carrier or intermediate handler, unless the animal is at least 8 weeks of age and is weaned, except for transport in commerce to a research facility. We have included this prohibition in the revised rule.

Section 2.131 Handling

Sections 3.111 and 3.135 of Part 3—"Standards," Subparts E and F provide handling requirements for marine mammals and warmblooded animals other than dogs, cats, rabbits, hamsters, guinea pigs, and nonhuman primates respectively. Section 3.135 was included as part of Part 3, Subpart F, which was added when Congress amended the Act in 1970 to include all warmblooded animals used for research or exhibition purposes, or sold as pets. Section 3.111 was added in 1979 when standards covering marine mammals were added to Part 3. Subparts A through D do not contain comparable provisions. As stated in the supplementary information accompanying the proposed rule for Part 2, published March 31, 1987, 52 FR 10306, our experience has demonstrated the necessity for handling regulations to protect the welfare of all animals covered by the Act, and to enable the Department to better prosecute cases of inhumane handling and treatment. Accordingly, proposed § 2.131 would provide handling regulations applicable to all animals covered by the Act. In this revised rule, §§ 3.111 and 3.135 are removed from Part 3 and replaced with § 2.131.

Proposed § 2.131(a) would require that:

(a)(1) Handling of all animals shall be done as expeditiously and carefully as possible in a manner that does not cause unneccessary discomfort, trauma, overheating, excessive cooling, behavioral stress, or physical harm.

(2) Care shall be exercised to avoid harm to the handlers of such animals and to avoid unnecessary harm to the animals.

(3) Physical abuse or deprivation of food or water shall not be used to train, work, or otherwise handle animals.

Two commenters from the research community stated that proposed § 2.131 should be deleted from the final rule. One of the commenters objected that the requirement to protect animals from "unnecessary discomfort, trauma, overheating, excessive cooling, behavioral stress, or physical harm" is vague and that as proposed, a person subject to the Act would not understand their responsibilities under the regulations. Another 108 commenters from the research community objected to use of the term "behavioral stress" in proposed § 2.131(a)(1).

Proposed § 2.131 contains language, including that which the commenters objected to, that is substantially similar to the provisions of current §§ 3.111 and 3.135. Sections 3.111 and 3.135 have proven effective in enforcement efforts. They provide in part as follows:

(a) Handling of animals shall be done as expeditiously and carefully in a way so as not to cause unnecessary discomfort, behavioral stress, or physical harm to the animal. Care should be exercised also to avoid harm to the handler.

We have not been presented with any legal challenges to this language.

Our experience in enforcing these handling regulations has demonstrated the need for similar regulations for all animals covered by the Act. The Act requires that the Secretary promulgate minimum requirements to govern the humane handling of animals (7 U.S.C. 2143(a)(1)). Section 2.131 therefore remains in the revised rule. It should be noted that in accordance with §§ 2.30(g) and 2.35(b)(3) of the revised rule, exceptions to compliance with this regulation by a research facility in order to accomplish a research design must be explained in detail and justified by the ACUP, and must be approved by the Committee.

We are removing proposed paragraph (a)(2) from the revised rule because APHIS is charged with regulating the care of animals, not handlers, and because the requirement to exercise care to avoid unnecessary harm to the animals is contained in paragraph (a)(1). Accordingly, proposed paragraph (a)(3) is redesignated (a)(2) in this revision of Part 2.

We also received 99 comments (96 from members of the research community and 3 from exhibitors) objecting to proposed paragraph (a)(3) which concerns physical abuse and food and water deprivation, as unnecessarily restrictive and stating that its terms should either be defined and clarified or deleted. One commenter from the research community stated that the institutions should have responsibility for monitoring food or water deprivation. In the course of our consultation with representatives of HHS, they expressed concern that the proposed regulation was contrary to the Act's provision that the Act shall not be construed as "authorizing the Secretary to promulgate rules, regulations, or orders with regard to the design, outlines, or guidelines of actual research or experimentation by a research facility as determined by such facility; * * *" (7 U.S.C. 2143(a)(6)(A)). They stated that the withholding of food and other experimental methods should be addressed by the investigator, reviewed by peers, and reviewed by the Committee.

In response to the commenters, we again note that under §§ 2.30(g) and 2.35(b)(3), exceptions to compliance with this regulation by a research facility in order to accomplish a research design must be explained in detail and justified by the ACUP, and must be approved by the Committee. However, our experience has demonstrated the necessity to maintain this regulation prohibiting physical abuse or deprivation of food or water to train, work, or otherwise handle animals. These have been common methods of training animals in the past, as they are fast and simple and effective. But they can also be cruel and inhumane, and they are often unnecessary as other methods can accomplish the same ends in time. Paragraph (a)(3) therefore remains in the revised rule as proposed, except for one clarifying change. We have added the words "of animals" following "Physical abuse * * *."

Paragraph (b) of proposed § 2.131 would require as follows:

(b)(1) Animals shall be exhibited only for periods of time and under conditions consistent with their good health and well-being.

(2) A responsible and knowledgeable uniformed employee or attendant must be present at all times during periods of public contact.

(3) At a minimum, when dangerous animals such as lions, tigers, wolves, bears, or elephants are allowed to have contact with the public, the animals must be under the direct control and supervision of a knowledgeable and experienced animal handler.

(4) If public feeding of animals is allowed, the food must be provided by the animal facility and shall be appropriate to the type of animal and its nutritional needs and diet.

In addition to a comment from a member of the general public in support of proposed paragraph (b)(2), we received 2 comments (1 from an exhibitor and 1 from a member of the research community) stating that the term "uniformed" should be deleted from the paragraph.

Our intent in requiring a uniformed employee or attendant to be present at all times during periods of public contact was to ensure that the person responsible for the animal and knowledgeable about it was readily identifiable to members of the public. It is necessary that the viewing public be able to visually and readily determine who and where the attendant is at all times, both for the public's safety and for the safety of the animal. As uniforms are not necessarily available, and other means can be used to make an individual identifiable, we have replaced "uniformed" with the term "readily identifiable" in the revised rule in response to the comments.

Paragraph (c) of proposed § 2.131 would require as follows:

(c)(1) During public exhibition, any animal must be handled so there is minimal risk of harm to the animal and to the public, with sufficient distance and/or barriers between the animal and the general viewing public so as to assure safety to the animals and to the public.

(2) Performing animals shall be allowed a rest period between performances at least equal to the time for one performance.

(3) Young or immature animals shall not be exposed to rough or excessive public handling or exhibited for periods of time which would be detrimental to their health or well-being.

(4) Drugs, such as tranquilizers, shall not be used to facilitate, allow, or provide for public handling of the animals.

One member of the general public commented that the rest period that would be required under proposed paragraph (c)(2) should be extended to 3 times the performance time rather than a period of time equal to the performance time. Current §§ 3.111 and 3.135 require a rest period equal to the performance time. Experience with this requirement has demonstrated that it provides an adequate rest period. We are not aware of any negative behavior by performing animals or problems with the animals as a result of this length rest period. No change is made in proposed paragraph (c)(2) in the revised rule.

One member of the general public commented that dangerous animals should not be allowed contact with the public. The regulations in proposed paragraphs (b) and (c) of § 2.131 do not create a right of exhibitors to allow contact between wild or dangerous animals and the public. Proposed § 2.131(c) would require that in order to publicly exhibit an animal, an exhibitor must handle animals so that there is minimal risk of harm to the public. Proposed § 2.131(b) sets forth the conditions that apply to public exhibition of an animal if, and only if, handling an animal so that there is minimal risk of harm to the public would allow public exhibition. We are reversing the order of proposed paragraphs (b) and (c) in the revised rule in order to make clear that exhibitors do not have a right to allow contact between the public and dangerous animals.

Section 2.132 Procurement of random source dogs and cats, dealers

In order to carry out the intent of Congress and to "protect the owners of animals from the theft of their animals by preventing the sale or use of animals which have been stolen" (7 U.S.C. 2131(b)(3)), we proposed to limit the sources from which class "B" dealers can acquire live random source dogs and cats. We proposed to limit those sources to State, county, or city owned and operated pounds or shelters. Under the proposed regulation, class "B" dealers would not be able to obtain random source dogs and cats from nongovernment pounds or shelters or from individuals who did not breed and raise the dogs and cats on their own premises. Nonrandom source dogs and cats could be obtained from persons who bred and raised the dogs and cats on their own premises.

One intended effect of the proposed regulation was to prevent the sale of random source dogs and cats to dealers at flea markets, auctions, and trade-day type sales. Our objective was to prevent the theft of animals for purposes of selling them to dealers who in turn would sell the stolen animals to research facilities.

Another intended effect of the proposed regulation was to eliminate the indiscriminate impoundment of "lost" animals by contract pound operators who are also licensed dealers. In the past several years, we have learned of increasing numbers of complaints and allegations that contract private animal pounds that are also licensed dealers under the Act have been overzealous in impounding dogs and cats. There are allegations that the impounded dogs and cats are not always stray or lost animals. In addition, the Agency has become aware of several instances where licensed dealers obtained stolen dogs and cats, or obtained dogs and cats under false pretenses or misrepresentation.

We proposed in § 2.132, to prohibit dealers from obtaining live random source dogs and cats from private or contract pounds or shelters, or from individuals who did not breed and raise the dogs and cats on their own premises. The proposed regulation would prevent operators of contract or private pounds or shelters from operating as class "B" dealers and selling their animals to research facilities. Our objective again was to prevent pound operators from obtaining dogs and cats from questionable sources, holding them for a short period, and then selling them to research facilities. We also intended to prevent pound operator-dealers from intermingling the animals and selling those dogs and cats that must be held by the pound operator for the requisite holding period pending identification and return to their owner, with those that have completed the requisite holding period and may be sold to research facilities or otherwise disposed of. The proposed regulation would also have the effect of preventing class "B" dealers from obtaining random source dogs and cats from other dealers for resale.

We received 2,865 comments from members of the general public supporting the proposed limitation of sources from which class "B" dealers can obtain random source dogs and cats. We also received 21 comments from members of the research community and 3 comments from dealers expressing support for proposed § 2.132.

We also received 167 comments from members of the research community objecting to the proposed regulation on the grounds that it exceeds our statutory authority, would limit the availability of animals for use by research facilities, and/or would increase the cost of animals to research facilities.

We believe that objections to the proposed regulation stating that it exceeds our statutory authority are incorrect. As expressed above and in the supplementary information to the proposal, preventing the theft of dogs and cats for the purpose of selling them to research facilities was one of the principal concerns prompting enactment of the Animal Welfare Act. To effectuate this purpose, the revised rule provides a number of measures, such as the records required by §§ 2.75 and 2.76 and the prohibition contained in § 2.60 against buying, selling, or using stolen animals, which were designed to prevent the sale of stolen animals and accordingly discourage the practice of stealing animals for sale to research facilities. Section 21 of the Act authorizes the Secretary to "promulgate such rules, regulations, and orders as he may deem necessary in order to effectuate the purposes of [the] Act." (7 U.S.C. 2151). The statutory authority for proposed § 2.132 is clear.

We have considered those comments which stated that preventing the sale of dogs and cats obtained from private or contract pounds or shelters would cut off a legitimate and valuable source of research animals and would drastically increase the cost of available animals. We understand that research facilities need a continuing source of dogs and cats for research. It was not our intent to reduce the available supply of dogs and cats for research purposes, but instead to exert better control over the source of dogs and cats for dealers.

To accommodate the need for a supply of research animals and to ensure that those animals are legally acquired by dealers for sale to research facilities, we are revising § 2.132 as follows: We are removing the prohibition against the purchase and sale of random source dogs and cats by dealers. We will allow dogs and cats from private or contract animal pounds to be obtained and sold by dealers and registrants, but with certain restrictions in order to better ascertain how, where, from whom, and when the dogs and cats were obtained by the pound, and when they were sold to the dealer. Any licensee or registrant who also operates a private or contract pound or shelter must maintain two physically separate and distinct animal facilities, one for the pound or shelter and one for the dealer or registered facility. The dealer or registrant must also maintain separate and accurate records at each facility. Dealers must comply with the 10-day holding period required in § 2.101, regardless of whether the dog or cat was obtained from a contract pound or shelter operated by the dealer or registrant, or from another contract pound or shelter.

Any licensee or registrant under the Act who also operates a private or contract pound or shelter must maintain records in accordance with §§ 2.75 and 2.76 for live nonrandom source dogs and cats. Because the information required by §§ 2.75 and 2.76 is not available for lost or stray animals, the following information is required to be maintained by the pound or shelter for lost or stray

dogs and cats: (1) An accurate description of the dog or cat; (2) how, where, from whom, and when the dog or cat was obtained; (3) how long the dog or cat was held by the pound or shelter before being transferred to the dealer operation; and (4) the date the dog or cat was transferred to the dealer operation. The information must be maintained in separate records, at both the pound or shelter and at the licensed or registered operation.

We believe that these restrictions and recordkeeping requirements will result in reducing the ease and temptation of transferring impounded animals to the dealer operation before any required holding period has been completed at the pound or shelter. They should also make it easier to trace the source of an animal in order to locate a missing dog or cat. We also believe that they will assist the Agency in our efforts to protect the owners of lost or stolen animals. These restrictions and recordkeeping requirements will provide us with adequate controls on the sale and movement of dogs and cats and will allow this resource to continue to be utilized as a source of research animals.

We are also revising § 2.132 to clarify that live nonrandom source dogs and cats may be obtained from hobby breeders, because the animals would have been bred and raised on the individual's premises.

We are including an express prohibition against any person subject to the Act obtaining random source dogs or cats by use of false pretenses, misrepresentation, or deception, as an additional safeguard against dealers using their other status as a pound or shelter to obtain dogs and cats and immediately transferring the animal to the dealer operation for sale to a research facility. This is also intended to prevent them from obtaining animals by claiming they will give it a "good home" and then selling it for research purposes.

We received 1 comment from a member of the research community stating that the regulations should allow dogs and cats held in government operated shelters to be available if they have been held for a 7-day period and there is public notice. This was not addressed in the regulations as the holding period at government pounds and the sale of animals held there is governed by local law. No change is made based upon this comment.

Statutory Authority

This rule is issued pursuant to the Animal Welfare Act (Act), as amended, 7 U.S.C. 2131–2157. Congress recently added significantly to the Secretary's responsibilities under the Act, particularly with regard to the use of animals by research facilities, in the Food Security Act of 1985, Pub. L. No. 99–198, approved December 23, 1985. 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 animal dealers and exhibitors obtain a license from the Secretary, and that research facilities, carriers, and intermediate handlers register with the Secretary. The Act directs the Secretary to issue specific regulations concerning, inter alia, recordkeeping, veterinary care, handling, transportation, identification of animals, and holding period requirements. In addition, the 1985 amendments require the Secretary to issue expanded regulations governing the use of animals in research facilities. Section 21 of the Act continues to authorize the Secretary to issue such regulations as he deems necessary to effectuate the purposes of the Act.

The recent amendments mandate that these regulations are to include standards for care, treatment, and practices in experimental procedures which will minimize pain and distress. The Secretary is to require that researchers consider alternatives to painful procedures and that, with regard to painful procedures, researchers must consult a veterinarian; use adequate tranquilizers, anesthetics, and analgesics; and provide for adequate pre- and post-surgical care. Moreover, exceptions to these standards may be made only when specified by research protocol and explained in a report mandated in the Act.

The Act also mandates that the Secretary issue regulations requiring research facilities to show and report that they are complying with the Act and that they are following professionally acceptable standards in the care and treatment of animals during research. The Act directs the Secretary to require each research facility to establish a committee to assess the facility's use and treatment of animals. The Act specifies the composition of the committee, including the requirement that each committee must be composed of at least three members and that each committee must have at least one member who is a veterinarian and at least one who represents the community interest in proper animal care. The Act mandates many of the committee's responsibilities, including that it inspect and report at least semi-annually on the condition and use of animals and report any violations of the standards. The Secretary is also to require each research facility to provide training for all personnel involved in animal care.

This rule contains regulations required by the 1985 amendments as well as modifications to existing regulations based on the Department's experience in administering the Act.

Executive Order 12291

On March 31, 1987, the Department published proposed rules to amend Part 1—"Definition of Terms" and Part 2—"Regulations," of the Animal Welfare regulations (52 FR 10292, 10298) in order to implement the 1985 amendments to the Animal Welfare Act, Pub. L. 99–198, the "Food Security Act." The proposed action was reviewed pursuant to Executive Order 12291 and it was determined that it did not constitute a "major rule." We solicited comments with regard to the proposed rules, and have made modifications to those rules as explained in the "Supplementary Information." At this time, we are also publishing a proposal to revise the standards contained in 9 CFR Part 3—"Standards," published elsewhere in this issue of the **Federal Register**.

In revising Parts 1 and 2, and in preparing the proposed rule for Part 3, we assessed the economic effects of the regulations in accordance with the requirements of Executive Order 12291. We considered alternative approaches to carrying out our statutory mandate, many of which we adopted. A regulatory impact analysis of revised Parts 1 and 2, and the proposal for Part 3 was prepared. Based on that analysis, which included consideration of both quantifiable and nonquantifiable effects of the rules, the Administrator has determined that Parts 1 and 2 would have an impact on the economy in excess of $100 million annually, and would constitute a "major rule."

The following requirements under Parts 1 and 2 represent some of the major costs to the regulated industries: (1) The establishment and responsibilities of the animal care and use committees; (2) aseptic surgical facilities and adequate pre- and post-procedural care; (3) increased responsibilities for attending veterinarians; (4) additional administrative responsibilities; (5) increases in license fees; and (6) identification for dogs and cats less than 16 weeks of age.

The economic impacts of these rules are discussed in more detail in a regulatory impact analysis, which is available for public inspection in Room

1141 of the South Building, U.S. Department of Agriculture between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays (address above). Main findings of this analysis are summarized below.

SUMMARY OF REGULATORY IMPACT ANALYSIS

Costs	Benefits
Direct	Direct
Regulated industry	Increased public satisfaction from improved animal welfare*
Capital expenditure:	
(All parts) $876 million	Improved research information*
(Parts 1–2) $142 million	Productivity gains for regulated industries*
Annual costs:	
(All parts) $207 million	
(Parts 1–2) $126 million	
APHIS program costs $2 million.	
Impact on Federal sites*	
Indirect	Indirect
Opportunity costs for users of biomedical research (goods and service), pet industry, and animal exhibits*.	Market effects for suppliers of animal husbandry products*
Increased Federal financial support for biomedical community*	Non-market effects*
Non-market effects*	

* Not quantified.

Compliance with more stringent federal regulations on the humane care and treatment of animals used for research, testing, teaching, exhibition, and business ventures would result in major direct and indirect effects imposed on the regulated industries and the general economy. An examination of the estimated cost impacts indicates that the amended regulations constitute a "major rule" based on annual effects in excess of $100 million on the economy and large cost increases on regulated industries for animal uses and maintenance, in particular to the biomedical research community. However, this study could not properly assess the relative significance of these cost increases on the regulated industry or the presence of adverse effects on competition innovation, and the ability of domestic enterprises to compete with foreign enterprises in international markets.

Regulated persons or establishments will be required to spend approximately $876 million in capital expenditures over the next two or three years. Of this amount approximately 16 percent is attributable to Parts 1 and 2. If Parts 1 and 2 were enforced separately, regulated research facilities will be required to spend approximately $142 million to renovate, equip, replace, or construct aseptic surgical facilities, and provide for adequate pre- and post-surgical care. Capital expenditures attributable to Part 3 include costs for renovation, equipment replacement, and new construction of animal housing facility space. Capital expenditures to improve animal housing facilities would result from the new minimum standards for general environmental conditions, space or primary enclosure size requirements, exercise of dogs, and enrichment of nonhuman primate enclosures.

In addition to capital expenditures, total annual operating expenditures estimated at $207 million will also be required. Approximately 60 percent of this total ($126 million) is accounted for by Parts 1 and 2, primarily the requirements for the establishment and operations of the institutional animal care and use committees, additional responsibilities for attending veterinarians, and record-keeping requirements. Annual expenditures attributable to Part 3 would result from the need for additional personnel (animal handlers) to exercise dogs, and the daily maintenance of animal housing facilities.

An important result of this regulatory analysis is that policy decisions must consider other direct and indirect effects associated with the promulgation and enforcement of federal rules. Increased federal legislation causes important economic benefits and costs which are unevenly distributed among registrants and licensees. Direct benefits accrue to society by knowing that animals may be better cared for and treated humanely. The value of these social benefits are subject to personal preferences and concerns. Improvements in the well-being of regulated animals may also provide gains in productivity to the industry. On the other hand, increased costs of compliance will be passed from the regulated industry to consumers who purchase their goods and services. For example, the field of biomedical research and education depends heavily on the use of animals to conduct tests and experiments. Increased costs for animal uses have broader economic and health implications for all of us. Study results do not suggest that these regulations would cause establishments to abandon the use of animals since current biomedical research outlays are in excess of $12.8 billion per year. Nonethelsss, there could be important effects associated with allocating additional funds or expenditures to comply with the amended animal welfare regulations.

Regulatory Flexibility Act

As part of the regulatory impact analysis performed by the Department we have analyzed the potential impact on small entities of Parts 1 and 2, as revised, and the proposal to amend Part 3 of the Animal Welfare regulations, as required by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Based upon our analysis, we have determined that Parts 1 and 2 of the regulations would affect all regulated small entities, primarily by increases in annual license fees and identification requirements for dogs and cats. However, these economic impacts would not be significant. It is anticipated that the largest impact on small entities would result from Part 3—"Standards", if it is implemented as proposed. 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.

Executive Order 12372

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

Paperwork Reduction Act

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the information collection provisions that are included in this proposed rule will be submitted for approval to the Office of Management and Budget (OMB). Your written comments will be considered if you submit them to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. You should submit a duplicate copy of your comments to Helene R. Wright, Chief, Regulatory Analysis and Development Staff, PPD, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

List of Subjects

9 CFR Part 2

Licensing, registration, identification of animals, records, Institutional Animal Care and Use Committees and Adequate Veterinary Care, Miscellaneous.

9 CFR Part 3

Animal welfare, Humane animal handling, Pets, Transportation.

Accordingly, we are proposing to amend 9 CFR Part 2 as follows:

1. Part 2 is revised to read as follows:

PART 2—REGULATIONS

Subpart A—Licensing

Subpart B—Registration

Subpart C—Institutional Animal Care and Use Committee and Other Requirements for Research Facilities

Subpart D—Attending Veterinarian and Adequate Veterinary Care

Subpart E—Identification of Animals

Subpart F—Stolen Animals

Subpart G—Records

Subpart H—Compliance with Standards and Holding Period

Subpart I—Miscellaneous

Authority: 7 U.S.C. 2133, 2135, 2136, 2140–2144, 2146, 2147, 2151; 7 CFR 2.17, 2.51, and 371.2(d).

Subpart A—Licensing

§ 2.1 Requirements and application.

(a)(1) Any person operating or desiring to operate as a dealer, exhibitor, or operator of an auction sale, except persons who are exempted from the licensing requirements under paragraph (a)(3) of this section, must have a valid license. A person must be 18 years of age or older to obtain a license. A person seeking a license shall apply on a form which will be furnished by the Area Veterinarian in Charge in the State in which that person operates or intends to operate. The applicant shall provide the information requested on the application form, including a valid mailing address through which the licensee or applicant can be reached at all times, and a valid premises address where animals, animal facilities, equipment, and records may be inspected for compliance. The applicant shall file the completed application form with the Area Veterinarian in Charge.

(2) If an applicant for a license or license renewal operates in more than one State, he or she shall apply in the State in which he or she has his or her principal place of business. All premises, facilities, or sites where such person operates or keeps animals shall be indicated on the application form or on a separate sheet attached to it. The completed application form, along with the application fee indicated in paragraph (d) of this section, and the annual license fee indicated in table 1 or 2 of § 2.6 shall be filed with the Area Veterinarian in Charge.

(3) The following persons are exempt from the licensing requirements under section 2 or section 3 of the Act:

(i) Retail pet stores which sell nondangerous, pet-type animals, such as dogs, cats, birds, rabbits, hamsters, guinea pigs, gophers, domestic ferrets, chinchilla, rats, and mice, for pets, at retail only. *Provided that:* Anyone wholesaling any animals or selling any wild or exotic animals or other nonpet animals retail, or selling any animals for research or exhibition shall have a license;

(ii) Any person who sells or negotiates the sale or purchase of any animal except wild or exotic animals, dogs, or cats, and who derives no more than $500 gross income from the sale of such animals to a research facility, an exhibitor, a dealer, or a pet store during any calendar year and is not otherwise required to obtain a license;

(iii) Any person who maintains a total of three (3) or fewer breeding female dogs and/or cats and who sells the offspring of these dogs or cats, which were born and raised on their premises, for pets or exhibition, and is not otherwise required to obtain a license;

(iv) Any person who sells fewer than 25 dogs and/or cats per year which were born and raised on his or her premises, for research, teaching, or testing purposes or to any research facility and does not otherwise qualify for licensing. The sale of any dog or cat not born and raised on the premises for research purposes requires a license;

(v) Any person who arranges for transportation or transports animals solely for the purpose of breeding, exhibiting in purebred shows, boarding (not in association with commercial transportation), grooming, or medical treatment, and is not otherwise required to obtain a license;

(vi) Any person who buys, sells, transports, or negotiates the sale, purchase, or transportation of any animals used only for the purposes of food or fiber (including fur);

(vii) Any person who breeds and raises domestic pet animals for direct retail sales to others for his or her own use and who buys no animals for resale and who sells no animals to a research facility, an exhibitor, a dealer, or a pet store (e.g., a purebred dog or cat fancier) and does not otherwise qualify for licensing;

(viii) Any person who buys animals solely for his or her own use or enjoyment and does not sell or exhibit animals, or otherwise qualify for licensing.

(b) Any person who sells fewer than 25 dogs or cats per year for research or teaching purposes and who does not otherwise qualify for a license may obtain a voluntary license, provided the animals were born and raised on his or her premises. A voluntary licensee shall comply with the requirements for dealers set forth in this part and the Specifications for the Humane Handling, Care, Treatment, and Transportation of

Dogs and Cats set forth in Part 3 and shall agree in writing on a form furnished by APHIS to comply with all the requirements of the Act and this subchapter. Voluntary licenses will not be issued to any other persons. To obtain a voluntary license the applicant shall submit to the Area Veterinarian in Charge the application fee of $10 plus an annual license fee. The class of license issued and the fee for a voluntary license shall be that of a Class "A" licensee (breeder). Voluntary licenses will not be issued to any other persons or for any other class of license.

(c) No person shall have more than one license.

(d) A license will be issued to any applicant, except as provided in §§ 2.10 and 2.11, when the applicant:

(1) Has met the requirements of this section and of §§ 2.2 and 2.3; and

(2) Has paid the application fee of $10 and the annual license fee indicated in § 2.6 to the Area Veterinarian in Charge and the payment has cleared normal banking procedures.

(e)(1) On or before the expiration date of the license, a licensee who wishes a renewal shall submit to the Area Veterinarian in Charge a completed application form and the application fee of $10, plus the annual license fee indicated in § 2.6 by certified check, cashier's check, personal check, or money order. A voluntary licensee who wishes a renewal shall also submit the $10 application fee plus an annual license fee. An applicant whose check is returned by the bank will be charged a fee of $15 for each returned check. One returned check will be deemed nonpayment of fees and will result in denial of license. Payment of fees must then be made by certified check, cashier's check, or money order. An applicant will not be licensed until his or her payment has cleared normal banking procedures.

(2) The $10 application fee must also be paid if an applicant is applying for a changed class of license. The applicant may pay such fees by certified check, cashier's check, personal check, or money order. An applicant whose check is returned by a bank will be charged a fee of $15 for each returned check and will be required to pay all subsequent fees by certified check, money order, or cashier's check. A license will not be issued until payment has cleared normal banking procedures.

(f) The failure of any person to comply with any provision of the Act, or any of the provisions of the regulations or standards in this subchapter, shall constitute grounds for denial of a license, or for its suspension or revocation by the Secretary, as provided in the Animal Welfare Act.

§ 2.2 Acknowledgment of regulations and standards.

APHIS will supply a copy of the applicable regulations and standards to the applicant with each request for a license application or renewal. The applicant shall acknowledge receipt of the regulations and standards and agree to comply with them by signing the application form before a license will be issued or renewed

§ 2.3 Demonstration of compliance with regulations and standards.

(a) Each applicant must demonstrate that his or her premises and any animals, facilities, vehicles, equipment, or other premises used or intended for use in the business comply with the regulations and standards set forth in Parts 2 and 3 of this subchapter. Each applicant for an initial license or license renewal must make his or her animals, premises, facilities, vehicles, equipment, other premises, and records available for inspection during business hours and at other times mutually agreeable to the applicant and APHIS, to ascertain the applicant's compliance with the standards and regulations.

(b) In the case of an application for an initial license, the applicant must demonstrate compliance with the regulations and standards, as required in paragraph (a) of this section, before APHIS will issue a license. If the applicant's animals, premises, facilities, vehicles, equipment, other premises, or records do not meet the requirements of this subchapter, APHIS will advise the applicant of existing deficiencies and the corrective measures that must be completed to come into compliance with the regulations and standards. The applicant will have two more chances to demonstrate his or her compliance with the regulations and standards through re-inspection by APHIS. If the applicant fails the third inspection he or she will forfeit the application fee and cannot re-apply for a license for a period of 6 months following the third inspection. Issuance of the license will be denied until the applicant demonstrates upon inspection that the animals, premises, facilities, vehicles, equipment, other premises and records are in compliance with all regulations and standards in this Subchapter.

§ 2.4 Non-interference with APHIS officials.

A licensee or applicant for an initial license shall not interfere with, threaten, abuse (including verbal abuse), or harass any APHIS official in the course of carrying out his or her duties.

§ 2.5 Duration of license and termination of license.

(a) A license issued under this part shall be valid and effective unless:

(1) The license has been revoked or suspended pursuant to section 19 of the Act.

(2) The license is voluntarily terminated upon request of the licensee, in writing, to the Veterinarian in Charge.

(3) The license has expired or been terminated under this part.

(4) The applicant has failed to pay the application fee and the annual license fee as required in §§ 2.1 and 2.6. There will be no refund of fees if a license is terminated prior to its expiration date.

(b) Any person who is licensed must file an application for a license renewal and an annual report form (VS Form 18–3) as required by § 2.7, and pay the required fees, on or before the expiration date of the present license or the license shall expire and automatically terminate on its anniversary date. The licensee will be notified by certified mail at least 60 days prior to the expiration date of the license. Failure to comply with the annual reporting requirements, or to pay the required license fees prior to the expiration date of the license, shall result in automatic termination of such license on the anniversary date of the license.

(c) Licensees must accept delivery of registered mail or certified mail notice and provide the Area Veterinarian in charge notice of their address in conformity with the requirements in § 2.1.

(d) Any person who seeks the reinstatement of a license that has been automatically terminated must follow the procedure applicable to licensees set forth in § 2.1.

(e) Licenses are issued to persons for specific premises and do not transfer upon change of ownership, nor are they valid at a different location.

(f) A license which is invalid under this part shall be surrendered to the Area Veterinarian in charge. If the license cannot be found, the licensee shall provide a written statement so stating to the Area Veterinarian in charge.

§ 2.6 Annual license fees.

(a) In addition to the application fee of $10 required to be paid upon the application for a license, license renewal, or changed class of license under § 2.1, each licensee shall submit to the Area Veterinarian in Charge the

annual license fee prescribed in this section. Paragraph (b) of this section indicates the method used to calculate the appropriate fee. The amount of the fee is determined from Table 1 or 2 of this section.

(b)(1) Class "A" license. The annual license renewal fee for a Class "A" dealer shall be based on 50 percent of the total gross amount, expressed in dollars, derived from the sale of animals to research facilities, dealers, exhibitors, retail pet stores, and persons for use as pets, directly or through an auction sale, by the dealer or applicant during his or her preceding business year (calendar or fiscal) in the case of a person who operated during such a year. If animals are leased, the lessor shall pay a fee based on 50 percent of any compensation received from the leased animals and the lessee shall pay a fee based upon the net compensation received from the leased animals, as indicated for dealers in Table 1 of this section.

(2) Class "B" license. The annual license renewal fee for a Class "B" dealer shall be established by calculating the total amount received from the sale of animals to research facilities, dealers, exhibitors, retail pet stores, and persons for use as pets, directly or through an auction sale, during the preceding business year (calendar or fiscal) less the amount paid for the animals by the dealer or applicant. This net difference, exclusive of other costs, shall be the figure used to determine the license fee of a Class "B" dealer. If animals are leased, the lessor and lessee shall each pay a fee based on the net compensation received from the leased animals calculated from Table 1 of this section.

(3) The annual license renewal fee for a broker or operator of an auction sale shall be that of a class "B" dealer and shall be based on the total gross amount, expressed in dollars, derived from commissions or fees charged for the sale of animals, or for negotiating the sale of animals, by brokers or by the operator of an auction sale, to research facilities, dealers, exhibitors, retail pet stores, and persons for use as pets, during the preceding business year (calendar or fiscal).

(4) In the case of a new applicant for a license as a dealer, broker or operator of an auction sale who did not operate during a preceding business year, the annual license fee will be based on the anticipated yearly dollar amount of business, as provided in paragraphs (b)(1), (2), and (3) of this section, derived from the sale of animals to research facilities, dealers, exhibitors, retail pet stores, and persons for use as pets, directly or through an auction sale.

(5) The amount of the annual fee to be paid upon application for a class "C" license as an exhibitor under this section shall be based on the number of animals which the exhibitor owned, held, or exhibited at the time the application is signed and dated or during the previous year, whichever is greater, and will be the amount listed in Table 2. Animals which are leased shall be included in the number of animals being held by both the lessor and the lessee when calculating the annual fee. An exhibitor shall pay his or her annual license fee on or before the expiration date of the license and the fee shall be based on the number of animals which the exhibitor is holding or has held during the year (both owned and leased).

(c) The license fee shall be computed in accordance with the following tables:

TABLE 1.—DEALERS, BROKERS, AND OPERATORS OF AN AUCTION SALE—CLASS "A" AND "B" LICENSE

Over	But not over	Fee
$ 0	$ 500	$ 30
500	2,000	60
2,000	10,000	120
10,000	25,000	225
25,000	50,000	350
50,000	100,000	475
100,000		750

TABLE 2.—EXHIBITORS—CLASS "C" LICENSE

Number of Animals	Fee
1 to 5	$ 30
6 to 25	75
26 to 50	175
51 to 500	225
501 and up	300

(d) If a person meets the licensing requirements for more than one class of license, he shall be required to obtain a license and pay the fee for the type business which is predominant for his operation, as determined by the Secretary.

(e) In any situation in which a licensee shall have demonstrated in writing to the satisfaction of the Secretary that he or she has good reason to believe that the dollar amount of his or her business for the forthcoming business year will be less than the previous business year, then his or her estimated dollar amount of business shall be used for computing the license fee for the forthcoming business year: *Provided, however:* That if the dollar amount upon which the license fee is based for that year does in fact exceed the amount estimated, the difference in amount of the fee paid and that which was due under paragraphs (b) and (c) of this section based upon the actual dollar business upon which the license fee is based, shall be payable in addition to the required annual license fee for the next subsequent year, on the anniversary date of his or her license as prescribed in this section.

§ 2.7 Annual report by licensees.

(a) Each year, within 30 days prior to the expiration date of his or her license, a licensee shall file with the Area Veterinarian in Charge an application for license renewal and annual report upon a form which the Area Veterinarian in Charge will furnish to him or her upon request.

(b) A person licensed as a dealer shall set forth in his or her license renewal application and annual report the dollar amount of business, upon which the license fee is based, from the sale of animals, directly or through an auction sale, to research facilities, dealers, exhibitors, retail pet stores, and persons for use as pets, by the licensee during the preceding business year (calendar or fiscal), and any other information as may be required thereon.

(c) A licensed dealer who operates as a broker or an operator of an auction sale shall set forth in his or her license renewal application and annual report the total gross amount, expressed in dollars, derived from commissions or fees charged for the sale of animals by the licensee to research facilities, dealers, exhibitors, retail pet stores, and persons for use as pets, during the preceding business year (calendar or fiscal), and any other information as may be required thereon.

(d) A person licensed as an exhibitor shall set forth in his or her license renewal application and annual report the number of animals owned, held, or exhibited by him or her, including those which are leased, during the previous year or at the time he signs and dates the report, whichever is greater.

§ 2.8 Notification of change of name, address, control, or ownership of business.

A licensee shall promptly notify the Area Veterinarian in Charge by certified mail of any change in the name, address, management, or substantial control or ownership of his business or operation, or of any additional sites, within 10 days of any change.

§ 2.9 Officers, agents, and employees of licensees whose licenses have been suspended or revoked.

Any person who has been or is an officer, agent, or employee of a licensee whose license has been suspended or revoked and who was responsible for or participated in the violation upon which the order of suspension or revocation was based will not be licensed within the period during which the order of suspension or revocation is in effect.

§ 2.10 Licensees whose licenses have been suspended or revoked.

(a) Any person whose license has been suspended for any reason shall not be licensed in his or her own name or in any other manner within the period during which the order of suspension is in effect. No partnership, firm, corporation, or other legal entity in which any such person has a substantial interest, financial or otherwise, will be licensed during that period. Any person whose license has been suspended for any reason may apply to the Area Veterinarian in Charge, in writing, for reinstatement of his or her license.

(b) Any person whose license has been revoked shall not be licensed in his or her own name or in any other manner; nor will any partnership, firm, corporation, or other legal entity in which any such person has a substantial interest, financial or otherwise, be licensed.

(c) Any person whose license has been suspended or revoked shall not buy, sell, transport, exhibit, or deliver for transportation, any animal during the period of suspension or revocation.

§ 2.11 Denial of initial license application.

(a) A license will not be issued to any applicant who:

(1) Has not complied with the requirements of §§ 2.1, 2.2, 2.3, and 2.4 and has not paid the fees indicated in § 2.5;

(2) Is not in compliance with any of the regulations or standards in this subchapter;

(3) Has had a license revoked or whose license is suspended, as set forth in § 2.10;

(4) Has been fined, sentenced to jail, or pled nolo contendere (no contest) under State or local cruelty to animal laws within 1 year of application, except that if no penalty is imposed as a result of the plea of nolo contendere the applicant may reapply immediately; or

(5) Has made any false or fraudulent statements, or provided any false or fraudulent records to the Department.

(b) An applicant whose license application has been denied may request a hearing in accordance with the applicable rules of practice for the purpose of showing why the application for license should not be denied. The license denial shall remain in effect until the final legal decision has been rendered. Should the license denial be upheld, the applicant may again apply for a license 1 year from the date of the final order denying the application.

(c) No partnership, firm, corporation, or other legal entity in which a person whose license application has been denied has a substantial interest, financial or otherwise, will be licensed within 1 year of the license denial.

Subpart B—Registration

§ 2.25 Requirements and procedures.

(a) Each research facility other than a federal research facility, carrier, and intermediate handler, and each exhibitor not required to be licensed under section 3 of the Act and the regulations of this subchapter, shall register with the Secretary by completing and filing a properly executed form which will be furnished, upon request, by the Area Veterinarian in Charge. The registration form shall be filed with the Area Veterinarian in Charge for the State in which the registrant has his or her principal place of business, and shall be updated every 3 years by the completion and filing of a new registration form which will be provided by the Area Veterinarian in Charge. Where a school or department of a university or college uses or intends to use animals for research, tests, experiments, or teaching, the university or college rather than the school or department will be considered the research facility and will be required to register with the Secretary. An official who has the legal authority to bind the parent organization shall sign the registration form.

(b) In any situation in which a school or department of a university or college demonstrates to the Secretary that it is a separate legal entity and its operations and administration are independent of those of the university or college, the school or department will be registered rather than the university or college.

(c) A subsidiary of a business corporation, rather than the parent corporation, will be registered as a research facility or exhibitor unless the subsidiary is under such direct control of the parent corporation that the Secretary determines that it is necessary that the parent corporation be registered to effectuate the purposes of the Act.

§ 2.26 Acknowlegement of regulations and standards.

APHIS will supply a copy of the regulations and standards in this subchapter with each registration form. The registrant shall acknowledge receipt of and shall agree to comply with the regulations and standards by signing a form provided for this purpose by APHIS, and by filing it with the Area Veterinarian in Charge.

§ 2.27 Notification of change of operation.

(a) A registrant shall notify the Area Veterinarian in Charge by certified mail of any change in the name, address, or ownership, or other change in operations affecting its status as a research facility, exhibitor, carrier, or intermediate handler, within 10 days after making such change.

(b)(1) A registrant which has not used, handled, or transported animals for a period of at least 2 years may be placed in an inactive status by making a written request to the Area Veterinarian in Charge. A registrant shall file an annual report of its status (active or inactive). A registrant shall notify the Area Veterinarian in Charge in writing at least 10 days before using, handling, or transporting animals again after being in an inactive status

(2) A registrant which goes out of business or which ceases to function as a research facility, carrier, intermediate handler, or exhibitor, or which changes its method of operation so that it no longer uses, handles, or transports animals, and which does not plan to use, handle, or transport animals again at any time in the future, may have its registration cancelled by making a written request to the Area Veterinarian in charge. The former registrant is responsible for reregistering and demonstrating its compliance with the Act and regulations should it start using, handling, or transporting animals at any time after its registration is canceled.

Subpart C—Institutional Animal Care and Use Committee and Other Requirements for Research Facilities

§ 2.30 Additional requirements for research facilities.

(a) Each research facility using or holding animals for research, experimentation, testing, or teaching shall ensure:

(1) That animal pain and distress are minimized;

(2) That adequate veterinary care including the appropriate use of anesthetics, analgesics, tranquilizing drugs, or euthanasia, is provided at all times;

(3) That a written program of adequate veterinary care is established and maintained in accordance with § 2.40; and

(4) That animals are housed and cared for according to this subchapter and that any deviations are fully explained by the principal investigator and are approved by the Institutional Animal Care and Use Committee.

(b) Each research facility shall establish and maintain an Institutional Animal Care and Use Committee (Committee).

(c) Each research facility shall provide the Committee with the authority to enter all animal areas at any reasonable time and shall provide the attending veterinarian with the authority to enter all animal areas at any time, in order to carry out their responsibilities.

(d) Each research facility must require that the animal care and use procedure (ACUP) for any procedures and practices involving live warmblooded animals be approved by the Committee, prior to the start of research, testing, or teaching involving an animal; that the principal investigator consider alternatives to any procedure likely to produce pain or distress in an experimental animal; and that the principal investigator document such considerations in a written statement to the Committee as required by § 2.30(e).

(e) Each research facility that engages in any practice or procedure using an animal that might reasonably be expected to be a painful procedure must:

(1) Prior to the beginning of such practice or procedure, require that the principal investigator for each such practice or procedure provide written assurance to the Committee that:

(i) Alternative procedures have been considered and that no other procedures are suitable; and

(ii) The experiment does not unnecessarily duplicate previous experiments. The assurance must indicate what information sources were consulted, what other procedures were considered, and what techniques will be used to minimize pain and discomfort to the animals;

(2) Require that the principal investigator consult with the attending veterinarian during ACUP planning and development and during actual research, and ensure that the attending veterinarian is allowed access to all animal and research areas at any time during actual research:

(i) If deemed necessary by the Committee;

(ii) If requested by the investigator;

(iii) If in response to complaints regarding the research or procedures; or

(iv) If the attending veterinarian is observing the research for compliance with an approved ACUP, the facility's program of adequate veterinary care, or the facility's written policy established in accordance with paragraph (e)(10) of this section;

(3) Require that pain relieving drugs, anesthetics, analgesics, and tranquilizers are used to minimize pain unless they are withheld in accordance with the provisions of paragraph (4), and that they are administered in accordance with the directions and recommendations of the attending veterinarian and in accordance with the accepted or established use of the drugs;

(4) Require that pain relieving drugs, anesthetics, analgesics, and tranquilizers be reduced in amount or withheld only if scientifically necessary, and fully explained and justified in the ACUP and approved by the attending veterinarian and the Committee. The research facility must require that these drugs be reduced in amount or withheld only for as long as necessary as specified in the ACUP and approved by the Committee;

(5) Require that the attending veterinarian provide training of laboratory personnel in the proper use of pain relieving drugs, anesthetics, analgesics, and tranquilizers so as to minimize pain and distress;

(6) Require that all pre-procedural, procedural, and post-procedural care be provided by laboratory workers or surgical personnel in accordance with the instructions of the attending veterinarian and established veterinary medical and nursing procedures, and that this care and the qualifications of the personnel be evaluated and approved by the attending veterinarian;

(7) Require that all survival surgeries be conducted only in facilities intended for that purpose, that the facilities be operated and maintained under aseptic conditions, and that surgical rooms be evaluated and approved by the attending veterinarian;

(8) Require that any surgery be performed or directly supervised by trained, experienced personnel;

(9) Prohibit the use of paralytic drugs without anesthesia; and

(10) Establish a written policy to ensure compliance with paragraphs (e)(1) through (9) of this section.

(f)(1) Each research facility using or holding animals for research, testing or teaching shall establish and follow written procedures which assure that no animal is used in more than one major operative experiment from which it is allowed to recover except:

(i) When scientifically necessary and approved by the Committee;

(ii) When required by or related to other surgical procedures and approved by the Committee;

(iii) When required to reduce or conserve the number of marine mammals or endangered species of animals used and approved by the Committee;

(iv) When required to protect the health and well-being of the animal as determined by the attending veterinarian;

(v) When the procedure is a routine, elective veterinary surgical, or diagnostic procedure; or

(vi) In other special circumstances as determined by the Secretary on an individual basis. Written requests and supporting data should be sent to the Administrator, APHIS, USDA, 6505 Belcrest Road, Federal Building, Room 756, Hyattsville, MD 20782.

(2) Cost savings alone is not adequate reason for performing multiple survival surgical procedures.

(g) Exceptions. Exceptions to compliance with the standards and regulations set forth under Title 9 CFR, Chapter 1, Subchapter A—Animal Welfare, may be made by the research facility only when necessary in order to accomplish the research design, and when specified in the ACUP, explained in detail, and approved by the Committee. The principal investigator must file a report with the Committee prior to ACUP review explaining the areas of noncompliance in detail. A copy of the report must be kept on file by the facility and must be available for inspection by APHIS inspectors or officials of granting agencies. A copy of all written reports detailing and explaining exceptions to compliance with the standards and regulations must be attached to the facility's annual report.

(h) Exercise for dogs and psychological well-being of primates. The research facility shall establish, in consultation with the attending veterinarian, written procedures and systems for the exercise of dogs and for the psychological well-being of primates in accordance with the regulations and standards, and a record system documenting that such a procedure or system is being carried out.

(i) Training. (1) Each research facility shall provide for the training and continuing education of scientists, research technicians, animal technicians, and other personnel involved with animal use, care, and treatment at the facility.

(2) This training shall be reviewed by the Committee and the attending veterinarian, shall be appropriate to the

individuals and their responsibilities, and shall be made available annually or as appropriate to the individuals and their responsibilities.

(3) The research facility shall review the status of the training and qualifications of researchers to use animals at least once a year, and shall review the list of research personnel and shall designate those who require additional training. The review may be part of another review of personnel as long as the research facility has a written policy ensuring that all personnel are reviewed annually in these areas.

(4) This training shall be available for review by Department inspectors. Training shall include instruction in at least the following areas:

(i) Humane methods of animal maintenance and experimentation;

(ii) Research or testing methods that minimize or eliminate the use of animals or limit animal pain or distress;

(iii) Utilization of the information service at the National Agricultural Library;

(iv) Methods whereby deficiencies in animal care and treatment should be reported;

(v) The basic needs of each species of animal;

(vi) Familiarization with the intent and requirements of the Animal Welfare Act;

(vii) How to handle and care properly for the various species of animals used by the facility;

(viii) Proper pre-procedural and post-procedural care of animals;

(ix) Proper use of anesthetics, analgesics, and tranquilizers in the species of animals used by the facility, including the common or accepted use of these drugs in those species for which the drug is not licensed;

(x) Acceptable aseptic surgical methods and procedures;

(xi) Other training, techniques, or procedures the research facility or the Secretary, may feel is necessary.

(j) *Procedures for personnel to report violations.* The research facility shall establish a reporting procedure whereby laboratory or research facility personnel or employees can report violations of any regulation or standard established under the Act including problems, deviations, or deficiencies with animal housing, care, or use. The Committee shall review and, if warranted, investigate any such reports, in addition to the twice yearly inspections, and shall prepare and file a report at the central location specified in § 2.30(m), indicating the nature of the problem or complaint, the Committee's findings, and any corrective actions taken. No facility employee, Committee member, or laboratory personnel shall be discriminated against or be subject to any reprisal for reporting violations of any regulation or standard under the Act.

(k) *Federal research facilities.* Each federal research facility shall establish an Institutional Animal Care and Use Committee which shall have the same composition, duties, and responsibilities required of nonfederal research facilities by this section and by § 2.35 with the following exceptions:

(1) The Committee shall report deficiencies to the head of the federal agency conducting the research rather than to APHIS;

(2) The head of the federal agency conducting the research shall be responsible for all corrective action to be taken at the facility and for the granting of all exceptions to inspection protocol.

(l) *Reviews.* Upon the request of the Administrator, the research facility shall make available for review all ACUPs involving animals and all assurance statements required by the U.S. Public Health Service (PHS) or any other funding Federal agency. APHIS inspectors will maintain the confidentiality of the information and will not remove the materials from the research facilities' premises unless there has been an alleged violation, or unless they are needed to investigate a possible violation or for other enforcement purposes.

(m) Reports. Any reports required by this part shall remain on file at a central location maintained by the research facility for at least 3 years and shall be available for inspection and review by APHIS officials and inspectors and any funding Federal agency. Upon notification from the Administrator, research facilities must retain specified records for more than 3 years pending completion of an investigation or proceeding under the Act, as required by § 2.81.

§ 2.31 Annual report of research facilities.

(a) The reporting facility shall be that segment of the research facility, or that department, agency, or instrumentality of the United States, that uses or intends to use live animals in research, tests, experiments, or for teaching. Each reporting facility shall submit an annual report to the Area Veterinarian in Charge for the State where the facility is located on or before December 1 of each calendar year. The report shall be signed and certified by the CEO or a responsible institutional official with authority to bind the facility, and shall cover the previous federal fiscal year.

(b) Such report shall:

(1) Assure that professionally acceptable standards governing the care, treatment, and use of animals, including appropriate use of anesthetic, analgesic, and tranquilizing drugs, during pre- and post-procedural care, and during actual research, teaching, testing, surgery, or experimentation were followed by the research facility;

(2) Assure that the principal investigator has considered alternatives to painful procedures;

(3) Assure that the facility is adhering to the standards and regulations under the Animal Welfare Act, and that it has required that exceptions to the standards and regulations be specified and explained by the ACUP and approved by the Committee. An explanation for any deviation from the standards and regulations shall be attached to the report;

(4) State the location of the facility or facilities where animals were housed or used in actual research, testing, teaching, or experimentation, or held for these purposes;

(5) State the common names and the numbers of animals upon which teaching, research, experiments, or tests were conducted involving no pain, distress, or use of pain-relieving drugs. Routine procedures (e.g., injections, tattooing, blood sampling) should be reported with this group;

(6) State the common names and the numbers of animals upon which experiments, teaching, research, surgery, or tests were conducted involving accompanying pain or distress to the animals and for which appropriate anesthetic, analgesic, or tranquilizing drugs were used;

(7) State the common names and the numbers of animals upon which teaching, experiments, research, surgery, or tests were conducted involving accompanying pain or distress to the animals and for which the use of appropriate anesthetic, analgesic, or tranquilizing drugs would adversely affect the procedures, results, or interpretation of the teaching, research, experiments, surgery, or tests. A detailed statement on the procedures producing pain or distress in these animals and explaining the reasons such drugs were not used shall be attached to the annual report;

(8) State the common names and the numbers of animals being bred, conditioned or held for use in teaching, testing, experiments, research, or surgery but not yet used for such purposes; and

(9) Include a statement by the CEO or responsible institutional official with

authority to bind the facility that the Institutional Animal Care and Use Committee has authority to enter any animal or research area at any reasonable time, and that the attending veterinarian has authority to enter any animal or research area at any time, in order to carry out their responsibilities as set forth under §§ 2.35 and 2.40; and that the Committee has satisfactorily carried out its responsibilities; and that the facility complies with the Act, regulations, and standards.

(c) The CEO or responsible institutional official with authority to bind the facility shall certify on the annual report that the annual report was circulated to each member of the Committee and that each member of the Committee was given the opportunity to express concurrence or nonconcurrence with the report, and to attach a minority report to the annual report. The certification must indicate whether any member of the Committee indicated nonconcurrence. All minority reports provided to the CEO or responsible institutional official under this paragraph must be attached to the annual report. Each member's concurrence or nonconcurrence will be held confidential by the CEO and responsible institutional official.

§ 2.35 Institutional Animal Care and Use Committee.

(a) Membership.

(1) Each research facility shall establish and maintain an Institutional Animal Care and Use Committee (Committee);

(2) The members of each Committee shall be appointed by the Chief Executive Officer of the research facility;

(3) The Committee shall be composed of a Chairman and at least two additional members;

(4) Committee members shall possess sufficient ability to assess animal care, treatment, and practices in experimental research as determined by the needs of the research facility;

(5) Of the members of the Committee:

(i) At least one shall be a Doctor of Veterinary Medicine who is the attending veterinarian for the research facility. The Committee-related duties of the attending veterinarian may be delegated to a staff veterinarian in accordance with the written policy and procedures of the research facility;

(ii) At least one shall not be affiliated in any way with the facility other than as a member of the Committee and shall not be a member of the immediate family of a person who is affiliated with the facility. The Secretary intends that such person will provide representation for general community interests in the proper care and treatment of animals;

(6) If the Committee consists of more than three members, not more than three members shall be from the same administrative unit of the facility;

(7) The research facility shall maintain an up-to-date list of Committee members and shall indicate for each member his or her name, degrees, position, and qualifications. The business address and telephone number of the Chairman must also be included on the list. A copy of the current list of Committee members shall be maintained by the attending veterinarian for the facility and shall be made available for inspection by APHIS officials.

(b) Duties and Responsibilities. (1) Inspections. (i) The Committee or a subcommittee composed of at least 2 Committee members shall inspect at least twice a year, 6 months apart, all animal study areas and animal facilities of the research facility and shall review as part of the inspection:

(A) All practices and procedures involving pain to animals; and

(B) The condition of all animals, in order to ensure compliance with the provisions of the Act to minimize pain and distress to the animals.

(ii) The Committee or subcommittee shall use Title 9, Chapter 1, Subchapter A—Animal Welfare, as a basis of its inspection of animal areas and facilities.

(iii) Exceptions to the requirement of inspection of animal study areas may be made by the Secretary if the animals are studied in their natural environment and the study area prohibits easy access. Requests for such exemption shall be addressed to the Administrator, APHIS, USDA, Room 756, 6505 Belcrest Road, Hyattsville, MD 20782, and shall clearly set forth the reasons why such inspections cannot be made.

(iv) The Committee may suspend or withdraw its approval of ACUPs for research, testing, or teaching involving pain to animals that it previously approved if it determines upon inspection that the practice or procedure is not being conducted in accordance with the previously approved ACUP or is not in accordance with the Animal Welfare Act, regulations, or standards. The Committee must direct the CEO or responsible institutional official to instruct the principal investigator to cease noncomplying activities immediately.

(v) No Committee member wishing to participate in an inspection conducted under this subpart may be excluded from participating in the inspection.

(vi) If the research facility maintains multiple animal sites, the Committee must complete its inspection of all animal study areas or animal facilities within 30 days of commencing the first inspection.

(2) Reports. (i) Committee inspection certification report. After each inspection performed by a subcommittee, the subcommittee must present its findings to a quorum of the Committee for approval and formal action. After each inspection is completed, or upon the approval of the presentation of findings if the inspection is performed by a subcommittee, the Committee must file an inspection certification report at a central location at the research facility established in accordance with § 2.30(m). The Committee must file its inspection certification report within 10 business days of completing its inspection of all animal study areas or animal facilities. The reports shall be available to APHIS officials and to officials of funding Federal agencies for inspection and copying. Inspection certification reports shall contain at least the following:

(A) The date the inspection was made;

(B) The signature of a majority of the Committee members and any minority views of the Committee;

(C) Reports of:

(1) Any violations of the regulations, standards, or assurances required by the Secretary, including any deficient conditions of animal care or treatment and any findings and recommendations of the Committee;

(2) Any deviations of research practices from originally approved ACUPs that adversely affect animal welfare;

(3) Any notification to the facility regarding such conditions, deviations, or deficiencies;

(4) Any corrections made by the facility; and

(5) Any other information pertinent to the activities of the Committee and the status or condition of the animal facilities; and

(D) An assurance statement by the Committee that its members have reviewed all painful procedures using animals and that the procedures:

(1) Are in accordance with the ACUPs approved by the Committee; or

(2) Are in accordance with any changes or special procedures approved by the Committee; or

(3) Are not in accordance with the approved ACUPs and that the Committee has notified the CEO or institutional official responsible for animal care to instruct the investigator(s) to cease such methods and procedures immediately and to comply with the ACUPs approved by

the Committee under paragraph (b)(3) of this section.

(ii) Deficiency notification reports.

(A) The Committee shall notify the CEO or institutional official responsible for animal care and the administrative unit representative, in writing, of any deficiencies in compliance with the Act, regulations, or standards found during an inspection, and of any noncompliance with an approved ACUP involving a painful procedure, within 1 business day of discovery of the deficiency. The Committee shall file a copy of the deficiency notification in the central location established at the research facility in accordance with § 2.30(m).

(B) The Committee shall provide the CEO or other institutional official responsible for animal care and the administrative unit representative with a copy of the report required under paragraph (b)(2)(i) of this section.

(C) If 30 days after notification of the deficiency any deficiency remains uncorrected, the Committee shall notify the Administrator and any funding Federal agency of the deficiency, in writing, within 5 business days of the expiration of the 30-day correction period. The Committee shall also provide a copy of its report and its notification of the deficiency to the Administrator and to any funding Federal agency.

(3) Reviews. (i) No research, testing, or teaching involving warm-blooded animals covered by the Act performed by a facility's personnel at any location shall commence prior to approval of the ACUP of the research, testing, or teaching by the Committee, nor shall it continue if the Committee withdraws or suspends its approval. An individual member of the Committee may be assigned to review an ACUP and to suggest needed modification of the ACUP to the principal investigator. The Committee member must present his or her recommendation for approval or disapproval to a quorum of the Committee for formal action. Prior to granting approval, the Committee shall ensure that the ACUP contains provisions for acceptable and proper animal care, treatment, practices, methods, and use of pain-relieving drugs. A quorum of the Committee must review a proposed ACUP upon the request of any member of the Committee.

(ii) The Committee shall approve an ACUP only when:

(A) Animal pain, distress, and functional or sensory impairment are minimized;

(B) All survival surgery is performed using aseptic procedures;

(C) Adequate veterinary care is planned for and provided;

(D) Proposed multiple use of animal(s) which undergo surgery is justified for the purpose of conserving an endangered species or marine mammals or as an essential related component of a particular project or ACUP; and

(E) Provision is made for the appropriate use of anesthetics, analgesics, tranquilizing drugs, or euthanasia when necessary, and that the use of these drugs is in accordance with established or accepted veterinary medical procedures and usage. The use of these drugs shall be in accordance with the instructions of the attending veterinarian.

Subpart D—Attending Veterinarian and Adequate Veterinary Care

§ 2.40 Attending veterinarian and veterinary care.

(a) Each research facility, dealer, or exhibitor shall have an attending veterinarian who shall provide adequate veterinary care to its animals in compliance with this section.

(b) Each research facility, dealer, or exhibitor shall establish and maintain programs of adequate veterinary care, including programs for disease control and prevention, pest and parasite control, pre- and post-procedural care, nutrition, euthanasia, and the proper and appropriate use of anesthetics, analgesics, tranquilizers, and euthanasia when indicated, for all animals on the premises of the dealer, exhibitor, or research facility. These programs shall be under the supervision and control of the attending veterinarian.

(c) Written program of adequate veterinary care. (1) If a part-time or consulting attending veterinarian is utilized, the dealer, exhibitor, or research facility shall submit annually to the Area Veterinarian in Charge a written program of adequate veterinary care, prepared and signed by its attending veterinarian. The program shall include regularly scheduled visits by the attending veterinarian appropriate to the needs of the dealer, exhibitor, or research facility. The dealer, exhibitor, or research facility must keep a copy of the written program on file at the premises.

(2) If a full-time attending veterinarian is utilized, the dealer, exhibitor, or research facility shall have a written program of adequate veterinary care which will be reviewed by APHIS inspectors on the premises during inspections.

(3) The written program of adequate veterinary care shall include at least the following:

(i) The facility's name and address;

(ii) The veterinarian's name and address;

(iii) Provision for programs of disease control and prevention, pest and parasite control, pre- and post-procedural care, nutrition, euthanasia, and the proper and appropriate use of anesthetics, analgesics, and tranquilizers;

(iv) How the programs are to be established and reviewed;

(v) The frequency of visits to be made to the premises by the veterinarian to assure adequate veterinary care and supervision of required programs;

(vi) The method or system of euthanasia to be utilized, by species, and who shall be authorized to perform it; and

(vii) The dated signature of the attending veterinarian and of a legally responsible official of the research facility, dealer, or exhibitor.

(d) Each animal shall be observed daily by the dealer, exhibitor, attending veterinarian, research facility, principal investigator, the animal caretaker in charge, or someone under the direct supervision of the attending veterinarian, principal investigator, or the animal caretaker in charge, who is required to report promptly his or her findings to trained personnel. Any necessary veterinary care shall be promptly provided. All research facilities, dealers, or exhibitors shall provide veterinary care to or humanely dispose of sick, diseased, injured, lame, or blind animals unless such action is inconsistent with the research purposes for which the animal was obtained and is being held: *Provided, however:* That this provision shall not affect compliance with any State or local law requiring the holding, for a specified period, of animals suspected of being diseased.

(e) Research facilities. (1) Each research facility shall require that the attending veterinarian be a member of the Committee and that he or she shall have the authority to enter all animal rooms, sites, facilities, animal use areas, and animal research areas at any time.

(2) In addition to the requirements set forth in paragraphs (a) through (d) of this section, the research facility shall require the attending veterinarian:

(i) To provide consultation and guidance to principal investigators and other laboratory personnel during ACUP planning and development, and during actual research, whenever any procedure is likely to produce pain or distress in an animal, if the attending veterinarian's presence and consultation is deemed necessary by the Committee,

is requested by the investigator, is in response to complaints regarding the research or procedures, or if the attending veterinarian is observing the research for compliance with the facility's written policy established in accordance with § 2.30(e)(10), an approved ACUP, or the written program of adequate veterinary care. Such consultation and guidance shall include at least the following:

(A) The proper use of tranquilizers, analgesics, anesthetics, and euthanasia according to the accepted, or common veterinary practice procedures;

(B) Provision for adequate pre- and post-procedural care by laboratory workers in accordance with current established veterinary medical and nursing procedures;

(C) Agreement to the withholding of tranquilizers, anesthesia, analgesia, or euthanasia only when scientifically necessary and only for the necessary period of time; and

(D) Evaluation and approval of all animal surgical areas and qualifications of personnel involved with animal surgery.

(ii) To establish, as part of the program of adequate veterinary care, procedures and a recording system which indicate and assure that the proper drugs are being used and that proper pre- and post-procedural care is being carried out on a daily basis.

Subpart E—Identification of Animals

§ 2.50 Time and method of identification.

(a) A class "A" dealer (breeder) shall identify all live dogs and cats on the premises as follows:

(1) All live dogs and cats held on the premises, purchased, or otherwise acquired, sold or otherwise disposed of, or removed from the premises for delivery to a research facility or exhibitor or to another dealer, or for sale, through an auction sale or to any person for use as a pet, shall be identified by an official tag of the type described in § 2.51 affixed to the animal's neck by means of a collar made of material generally considered acceptable to pet owners as a means of identifying their pet dogs or cats,[1] or shall be identified by a distinctive and legible tattoo marking acceptable to and approved by the Administrator.

(2) Live puppies or kittens, less than 16 weeks of age, shall be identified by:

(i) An official tag as described in § 2.51;

(ii) A distinctive and legible tattoo marking approved by the Administrator; or

(iii) A plastic-type collar acceptable to the Administrator which has legibly placed thereon the information required for an official tag pursuant to § 2.51.

(b) A class "B" dealer shall identify all live dogs and cats under his or her control or on his or her premises as follows:

(1) When live dogs or cats are held, purchased, or otherwise acquired, they shall be immediately identified:

(i) By affixing to the animal's neck an official tag as set forth in § 2.51 by means of a collar made of material generally acceptable to pet owners as a means of identifying their pet dogs or cats [1]; or

(ii) By a distinctive and legible tattoo marking approved by the Administrator.

(2) If any live dog or cat is already identified by an official tag or tattoo which has been applied by another dealer or exhibitor, the dealer or exhibitor who purchases or otherwise acquires the animal may continue identifying the dog or cat by the previous identification number, or may replace the previous tag with his own official tag or approved tattoo. In either case, the class B dealer or class C exhibitor shall correctly list both official tag numbers or tattoos in his or her records of purchase which shall be maintained in accordance with §§ 2.75 and 2.77. Any new official tag or tattoo number shall be used on all records of any subsequent sales by the dealer or exhibitor, of any dog or cat.

(3) Live puppies or kittens, less than 16 weeks of age, shall be identified by:

(i) An official tag as described in § 2.51;

(ii) A distinctive and legible tattoo marking approved by the Administrator; or

(iii) A plastic-type collar acceptable to the Administrator which has legibly placed thereon the information required for an official tag pursuant to § 2.51.

(4) When any dealer has made a reasonable effort to affix an official tag to a cat, as set forth in paragraphs (a) and (b) of this section, and has been unable to do so, or when the cat exhibits serious distress from the attachment of a collar and tag, the dealer shall attach the collar and tag to the door of the primary enclosure containing the cat and take measures adequate to maintain the identity of the cat in relation to the tag. Each primary enclosure shall contain no more than one weaned cat without an affixed collar and official tag, unless the cats are identified by a distinctive and legible tattoo or plastic-type collar approved by the Administrator.

(c) A class "C" exhibitor shall identify all live dogs and cats under his or her control or on his or her premises, whether held, purchased, or otherwise acquired:

(1) As set forth in (b)(1) or (b)(3) of this section, or

(2) By identifying each dog or cat with:

(i) An official USDA sequentially numbered tag that is kept on the door of the animal's cage or run;

(ii) A record book containing each animal's tag number, a written description of each animal, the data required by § 2.75(a), and a clear photograph of each animal; and

(iii) A duplicate tag that accompanies each dog or cat whenever it leaves the compound or premises.

(d) Unweaned puppies or kittens need not be individually identified as required by paragraphs (a) and (b) of this section while they are maintained as a litter with their dam in the same primary enclosure, provided the dam has been individually identified.

(e)(1) All live dogs or cats, including those from any exempt source, delivered for transportation, transported, purchased or otherwise acquired, sold, or disposed of by a research facility, shall be identified at the time of such delivery for transportation, purchase, sale, disposal, or acquisition in one of the following ways:

(i) By the official tag or tattoo which was affixed to the animal at the time it was acquired by the research facility, as required by this section; or

(ii) By a tag, tattoo, or collar, applied to the live dog or cat by the research facility and which individually identifies the dog or cat by number.

(2) Both official tag or tattoo numbers shall be correctly listed in the records of purchase, acquisition, disposal, or sale which shall be maintained in accordance with § 2.76.

(f)(1) All animals, except dogs and cats, delivered for transportation, transported, purchased, sold, or otherwise acquired or disposed of by any dealer or exhibitor shall be identified by the dealer or exhibitor at the time of delivery for transportation, purchase, sale, acquisition or disposal, as provided for in this paragraph and in records maintained as required in §§ 2.75 and 2.77.

[1] In general, well fitted collars made of leather or plastic will be acceptable under this provision. The use of certain types of chains presently used by some dealers may also be deemed acceptable. APHIS will determine the acceptability of a material proposed for usage as collars from the standpoint of humane considerations on an individual basis in consultation with the dealer or exhibitor involved. The use of materials such as wire, elastic, or sharp metal that might cause discomfort or injury to the dogs or cats is not acceptable.

(2) When one or more animals, other than dogs or cats, are confined in a container, the animal(s) shall be identified by:

(i) A label attached to the container which shall bear a description of the animals in the container, including:

(A) The number of animals;

(B) The species of the animals;

(C) Any distinctive physical features of the animals; and

(D) Any identifying marks, tattoos, or tags attached to the animals;

(ii) Marking the container with a painted or stenciled number which shall be recorded in the records of the dealer or exhibitor together with:

(A) A description of the animal(s);

(B) The species of the animal(s); and

(C) Any distinctive physical features of the animal(s); or

(iii) A tag or tattoo applied to each animal in the container by the dealer or exhibitor which individually identifies each animal by description or number.

(3) When any animal, other than a dog or cat, is not confined in a container, it shall be identified on a record, as required by § 2.75, which shall accompany the animal at the time it is delivered for transportation, transported, purchased, or sold, and shall be kept and maintained by the dealer or exhibitor as part of his or her records.

§ 2.51 Form of official tag.

(a) The official tag shall be made of a durable alloy such as brass, bronze, or steel, or of a durable plastic. Aluminum of a sufficient thickness to assure the tag is durable and legible may also be used. The tag shall be one of the following shapes:

(1) Circular in shape and not less than 1¼ inches in diameter, or

(2) Oblong and flat in shape, not less than 2 inches by ¾ inch and riveted to an acceptable collar.

(b) Each tag shall have the following information embossed or stamped on so that it is easily readable:

(1) The letters "USDA";

(2) Numbers identifying the State and dealer, exhibitor, or research facility (*e.g.*, 39–AB); and

(3) Numbers identifying the animal (*e.g.*, 82488).

(c) Official tags shall be serially numbered. No individual dealer, exhibitor, or research facility shall use any identification tag number more than once within a 5-year period.

§ 2.52 How to obtain tags.

Dealers, exhibitors, or research facilities may obtain, at their own expense, official tags from commercial tag manufacturers[2]. At the time the dealer, exhibitor, or research facility is issued a license or is registered, the Department will assign identification letters and numbers and inform them of the identification letters and numbers to be used on the official tags.

§ 2.53 Use of tags.

Official tags obtained by a dealer, exhibitor, or research facility, shall be applied to dogs or cats in the manner set forth in § 2.50 and in as close to consecutive numerical order as possible. No tag number shall be used to identify more than one animal. No number shall be repeated within a 5-year period.

§ 2.54 Lost tags.

Each research facility, dealer, or exhibitor shall be held accountable for all official tags acquired. In the event an official tag is lost from a dog or cat while in the possession of a research facility, dealer, or exhibitor, the research facility, dealer, or exhibitor shall make a diligent effort to locate and reapply the tag to the proper animal. If the lost tag is not located, the research facility, dealer, or exhibitor shall affix another official tag to the animal in the manner prescribed in § 2.50, and record the tag number on the official records.

§ 2.55 Removal and disposal of tags.

(a) When a dog or cat wearing or identified by an official tag arrives at a research facility, the facility may continue to use that tag to identify the dog or cat or the research facility may replace the tag as indicated in § 2.50(e). All tags removed by a research facility shall be retained and disposed of as indicated in this section.

(b) If a dealer, exhibitor, or research facility finds it necessary to euthanize a live dog or cat to which is affixed or which is identified by an official tag, or upon the death of a dog or cat from other causes, the dealer, exhibitor, or research facility shall remove and retain the tag for the required period, as set forth in paragraph (c) of this section.

(c) All official tags removed and retained by a dealer, exhibitor, or research facility shall be held until called for by an APHIS official or for a period of 1 year.

(d) When official tags are removed from animals for disposal, the tags must be disposed of so as to preclude their reuse for animal identification. No animal identification number shall be used within any 5-year period following its previous use.

[2] A list of the commercial manufacturers who produce these tags and are known to the Department may be obtained from the Area Veterinarian in Charge. Any manufacturer who desires to be included in the list should notify the Administrator.

Subpart F—Stolen Animals

§ 2.60 Prohibition on the purchase, sale, use, or transportation of stolen animals.

Any person subject to the Act shall not buy, sell, exhibit, use for research, transport, or offer for transportation, any stolen animal.

Subpart G—Records

§ 2.75 Records: Dealers and exhibitors.

(a)(1) Every dealer other than operators of auction sales and brokers to whom animals are consigned, and exhibitor shall make, keep, and maintain records or forms which fully and correctly disclose the following information concerning each dog or cat purchased or otherwise acquired, owned, held, or otherwise in his or her possession or under his or her control, or which is transported, euthanized, sold, or otherwise disposed of by that dealer or exhibitor. The records shall include any offspring born of any animal while in his or her possession or under his or her control.

(i) The name and address of the person from whom a dog or cat was purchased or otherwise acquired whether or not the person is required to be licensed or registered under the Act;

(ii) The USDA license or registration number of the person if he or she is licensed or registered under the Act;

(iii) The vehicle license number and state, and the driver's license number and state of the person, if he or she is not licensed or registered under the Act;

(iv) The name and address of the person to whom a dog or cat was sold or given and that person's license or registration number if he or she is licensed or registered under the Act;

(v) The date a dog or cat was acquired or disposed of, including by euthanasia;

(vi) The official USDA tag number or tattoo assigned to a dog or cat under §§ 2.50 and 2.54;

(vii) A description of each dog or cat which shall include:

(A) The species and breed or type;

(B) The sex;

(C) The date of birth or approximate age; and

(D) The color and any distinctive markings;

(viii) The method of transportation including the name of the initial carrier or intermediate handler or, if a privately owned vehicle is used to transport a dog or cat, the name of the owner of the privately owned vehicle;

(ix) The date and method of disposition of a dog or cat, e.g., sale, death, euthanasia, or donation.

(2) Record of Dogs and Cats on Hand (VS Form 18–5) and Record of Disposition of Dogs and Cats (VS Form 18–6) are forms which may be used by dealers and exhibitors to make, keep, and maintain the information required by paragraph (a)(1) of this section.

(3) The USDA Interstate and International Certificate of Health Examination for Small Animals (VS Form 18–1) may be used by dealers and exhibitors to make, keep, and maintain the information required by paragraph (a)(1) of this section and § 2.79.

(4) One copy of the record containing the information required by paragraph (a)(1) of this section shall accompany each shipment of any dog or cat purchased or otherwise acquired by a dealer or exhibitor. One copy of the record containing the information required by paragraph (a)(1) of this section shall accompany each shipment of any dog or cat sold or otherwise disposed of by a dealer or exhibitor: *Provided, however:* That information which indicates the source and date of acquisition of a dog or cat need not appear on the copy of the record accompanying the shipment. One copy of the record containing the information required by (a)(1) of this section shall be retained by the dealer or exhibitor.

(b)(1) Every dealer other than operators of auction sales and brokers to whom animals are consigned, and exhibitor shall make, keep, and maintain records or forms which fully and correctly disclose the following information concerning animals other than dogs and cats, purchased or otherwise acquired, owned, held, leased, or otherwise in his or her possession or under his or her control, or which is transported, sold, euthanized, or otherwise disposed of by that dealer or exhibitor. The records shall include any offspring born of any animal while in his or her possession or under his or her control.

(i) The name and address of the person from whom the animals were purchased or otherwise acquired;

(ii) The USDA license or registration number of the person if he or she is licensed or registered under the Act;

(iii) The vehicle license number and state, and the driver's license number and state of the person, if he or she is not licensed or registered under the Act;

(iv) The name and address of the person to whom an animal was sold or given;

(v) The date of purchase, acquisition, sale, or disposal of the animal(s);

(vi) The species of the animal(s); and

(vii) The number of animals in the shipment.

(2) Record of Animals on Hand (other than dogs and cats) (VS Form 18.19) and Record of Acquisition, Disposition, or Transport of Animals (other than dogs and cats) (VS Form 18.20) are forms which may be used by dealers and exhibitors to keep and maintain the information required by paragraph (b)(1) hereof concerning animals other than dogs and cats except as provided in § 2.79.

(3) One copy of the record containing the information required by paragraph (b)(1) of this section shall accompany each shipment of any animal(s) other than a dog or cat purchased or otherwise acquired by a dealer or exhibitor. One copy of the record containing the information required by paragraph (b)(1) of this section shall accompany each shipment of any animal other than a dog or cat sold or otherwise disposed of by a dealer or exhibitor; *Provided, however:* That information which indicates the source and date of acquisition of any animal other than a dog or cat need not appear on the copy of the record accompanying the shipment. The dealer or exhibitor shall retain one copy of the record containing the information required by paragraph (b)(1) of this section.

§ 2.76 Records: Research facilities.

(a) Every research facility shall make, keep, and maintain records or forms which fully and correctly disclose the following information concerning each live dog or cat purchased or otherwise acquired, owned, held, or otherwise in their possession or under their control, transported, euthanized, sold, or otherwise disposed of by such research facility. The records shall include any offspring born of any animal while in the research facility's possession or under its control.

(1) The name and address of the person from whom a dog or cat was purchased or otherwise acquired whether or not the person is required to be licensed or registered under the Act;

(2) The USDA license or registration number of the person if he or she is licensed or registered under the Act;

(3) The vehicle license number and state, and the driver's license number and state of the person, if he or she is not licensed or registered under the Act;

(4) The date of acquisition of each dog or cat;

(5) The official USDA tag number or tattoo assigned to each dog or cat under §§ 2.50 and 2.54;

(6) A description of each dog or cat which shall include:

(i) The species and breed or type of animal;

(ii) The sex;

(iii) The date of birth or approximate age; and

(iv) The color and any distinctive markings;

(7) Any identification number or mark assigned to each dog or cat by the research facility.

(b) In addition to the information required to be kept and maintained by every research facility concerning each live dog or cat under paragraph (a) of this section, every research facility transporting, selling, or otherwise disposing of any live dog or cat to another person, shall make and maintain records or forms which fully and correctly disclose the following information:

(1) The name and address of the receiver to whom a live dog or cat is transported, sold, or otherwise disposed of;

(2) The date of transportation, sale, euthanasia, or other disposition of the animal; and

(3) The method of transportation, including the name of the initial carrier or intermediate handler, or if a privately owned vehicle is used to transport the dog or cat, the name of the owner of the privately owned vehicle.

(c)(1) The USDA Interstate and International Certificate of Health Examination for Small Animals (VS Form 18–1) and Record of Dogs and Cats on Hand (VS Form 18–5) are forms which may be used by research facilities to keep and maintain the information required by paragraph (a) of this section.

(2) The USDA Interstate and International Certificate of Health Examination for Small Animals (VS Form 18–1), and Record of Disposition of Dogs and Cats (VS Form 18–6) are forms which may be used by research facilities to keep and maintain the information required by paragraph (b) of this section.

(d) One copy of the record containing the information required by paragraphs (a) and (b) of this section shall accompany each shipment of any live dog or cat sold or otherwise disposed of by a research facility: *Provided, however:* That information which indicates the source and date of acquisition of any dog or cat need not appear on the copy of the record accompanying the shipment. One copy of the record containing the information required by paragraphs (a) and (b) of this section shall be retained by the research facility.

§ 2.77 Records: Operators of auction sales and brokers.

(a) Every operator of an auction sale or broker shall make, keep, and maintain records or forms which fully and correctly disclose the following information concerning each animal consigned for auction or sold, whether or not a fee or commission is charged:

(1) The name and address of the person who owned or consigned the animal(s) for sale;

(2) The name and address of the buyer or consignee who received the animal;

(3) The USDA license or registration number of the person(s) selling, consigning, buying, or receiving the animals if he or she is licensed or registered under the Act;

(4) The vehicle license number and state, and the driver's license number and state of the person, if he or she is not licensed or registered under the Act;

(5) The date of the consignment;

(6) The official USDA tag number or tattoo assigned to the animal under §§ 2.50 and 2.54;

(7) A description of the animal which shall include:

(i) The species and breed or type of animal;

(ii) The sex of the animal; and

(iii) The date of birth or approximate age; and

(iv) The color and any distinctive markings;

(8) The auction sales number or records number assigned to the animal.

(b) One copy of the record containing the information required by paragraph (a) of this section shall be given to the consignor of each animal, one copy of the record shall be given to the purchaser of each animal: *Provided, however:* That information which indicates the source and date of consignment of any animal need not appear on the copy of the record given the purchaser of any animal. One copy of the record containing the information required by paragraph (a) of this section shall be retained by the operator of such auction sale, or broker, for each animal sold by the auction sale or broker.

§ 2.78 Records: Carriers and intermediate handlers.

(a) In connection with all live animals accepted for shipment on a C.O.D. basis or other arrangement or practice under which the cost of an animal or the transportation of an animal is to be paid and collected upon delivery of the animal to the consignee, the accepting carrier or intermediate handler, if any, shall keep and maintain a copy of the guarantee in writing of the consignor of the shipment for the payment of transportation charged for any animal not claimed as provided in § 2.80, including, where necessary, both the return transportation charges and an amount sufficient to reimburse the carrier for out-of-pocket expenses incurred for the care, feeding, and storage of the animal. The carrier or intermediate handler at destination shall also keep and maintain a copy of the shipping document containing the time, date, and method of each attempted notification and the final notification to the consignee and the name of the person notifying the consignee, as provided in § 2.80.

(b) In connection with all live dogs, cats, or nonhuman primates delivered for transportation, in commerce, to any carrier or intermediate handler, by any dealer, research facility, exhibitor, operator of an auction sale, broker, or department, agency, or instrumentality of the United States or of any State or local government, the accepting carrier or intermediate handler shall keep and maintain a copy of the health certification completed as required by § 2.79, tendered with each live dog, cat, or nonhuman primate.

§ 2.79 Health certification and identification.

(a) No dealer, research facility, exhibitor, operator of an auction sale, broker, or department, agency, or instrumentality of the United States or of any State or local government shall deliver to any intermediate handler or carrier for transportation, in commerce, or shall transport in commerce any dog, cat, or nonhuman primate unless the dog, cat, or nonhuman primate is accompanied by a health certificate executed and issued by a licensed veterinarian. The health certificate shall state that:

(1) The licensed veterinarian inspected the dog, cat, or nonhuman primate on a specified date which shall not be more than 10 days prior to the delivery of the dog, cat, or nonhuman primate for transportation; and

(2) When so inspected, the dog, cat, or nonhuman primate appeared to the licensed veterinarian to be free of any infectious disease or physical abnormality which would endanger the animal(s) or other animals or endanger public health.

(b) The Secretary may provide exceptions to the health certification requirement on an individual basis for animals shipped to a research facility for purposes of research, testing, or experimentation when the research facility requires animals not eligible for certification. Requests should be addressed to the Administrator, APHIS, USDA, Room 756, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

(c) No intermediate handler or carrier to whom any live dog, cat, or nonhuman primate is delivered for transportation by any dealer, research facility, exhibitor, broker, operator of an auction sale, or department, agency, or instrumentality of the United States or any State or local government shall receive a live dog, cat, or nonhuman primate for transportation, in commerce, unless and until it is accompanied by a health certificate issued by a licensed veterinarian in accordance with paragraph (a) of this section, or an exemption issued by the Secretary in accordance with paragraph (b) of this section.

(d) The U.S. Interstate and International Certificate of Health Examination for Small Animals (VS Form 18–1) may be used for health certification by a licensed veterinarian as required by this section.

§ 2.80 C.O.D. shipments.

(a) No carrier or intermediate handler shall accept any animal for transportation, in commerce, upon any C.O.D. or other basis where the cost of the animal or the cost for any transportation or any other incidental or out-of-pocket expense is to be paid and collected upon delivery of the animal to the consignee, unless the consignor guarantees in writing the payment of all transportation, including any return transportation, if the shipment is unclaimed or the consignee cannot be notified in accordance with paragraphs (b) and (c) of this section, including reimbursing the carrier or intermediate handler for all out-of-pocket expenses incurred for the care, feeding, and storage or housing of the animal.

(b)(1) Any carrier or intermediate handler receiving an animal at a destination on a C.O.D. or other basis where the cost of the animal or the cost for any transportation or other incidental or out-of-pocket expense is to be paid and collected upon delivery of the animal to the consignee shall attempt to notify the consignee at least once every 6 hours for a period of 24 hours after arrival of the animal at the animal holding area of the terminal cargo facility. The carrier or intermediate handler shall record the time, date, and method of each attempted notification and the final notification to the consignee, and the name of the person notifying the consignee, on the shipping document and on the copy of the shipping document accompanying the C.O.D. shipment. If the consignee cannot be

notified of the C.O.D. shipment within 24 hours after its arrival, the carrier or intermediate handler shall return the animal to the consignor, or to whomever the consignor has designated, on the next practical available transportation, in accordance with the written agreement required in paragraph (a) of this section and shall notify the consignor. Any carrier or intermediate handler which has notified a consignee of the arrival of a C.O.D. or other shipment of an animal, where the cost of the animal, or the cost for any transportation, or other incidental or out-of-pocket expense is to be paid and collected upon delivery of the animal to the consignee, which is not claimed by the consignee within 48 hours from the time of notification, shall return the animal to the consignor, or to whomever the consignor has designated, on the next practical available transportation, in accordance with the written agreement required in paragraph (a) of this section and shall notify the consignor.

(c) It is the responsibility of any carrier or intermediate handler to provide care, feed, and hold properly any animal accepted for transportation, in commerce, under a C.O.D. or other arrangement where the cost of the animal or the cost of any transportation or other incidental or out-of-pocket expense is to be paid and collected upon delivery of the animal until the consignee accepts shipment at destination or until returned to the consignor or his or her designee should the consignee fail to accept delivery of the animal or if the consignee could not be notified as prescribed in paragraph (b) of this section.

(d) Nothing in this section shall be construed as prohibiting any carrier or intermediate handler from requiring any guarantee in addition to that required in paragraph (a) of this section for the payment of the cost of any transportation or out-of-pocket or other incidental expenses incurred in the transportation of any animal.

§ 2.81 Records, disposition.

(a) No dealer, exhibitor, broker, operator of an auction sale, research facility, carrier, or intermediate handler shall, for a period of 1 year, destroy or dispose of, without the consent in writing of the Administrator, any books, records, documents, or other papers required to be kept and maintained under this part.

(b) Unless otherwise specified, the records required to be kept and maintained under this part shall be held for 1 year after an animal is euthanized or disposed of and for any period in excess of one year as necessary to comply with any applicable Federal, State, or local law. Whenever the Administrator notifies a dealer, exhibitor, broker, operator of an auction sale, research facility, carrier, or intermediate handler in writing that specified records shall be retained pending completion of an investigation or proceeding under the Act, the dealer, exhibitor, broker, operator of an auction sale, research facility, carrier, or intermediate handler shall hold those records until their disposition is authorized by the Administrator.

Subpart H—Compliance With Standards and Holding Period

§ 2.100 Compliance with standards.

(a) Each dealer, exhibitor, operator of an auction sale, intermediate handler, and research facility shall comply in all respects with the regulations set forth in Part 2 and the standards set forth in Part 3 of this subchapter for the humane handling, care, treatment, housing, and transportation of animals: *Provided, however:* That exceptions to the standards in Part 3 and the provisions of § 2.131 may be made for research facilities only when such exceptions are specified in the animal care and use procedure (ACUP), are explained in detail in a report filed with the Committee, and are approved by the Committee.

(b) Each carrier shall comply in all respects with the regulations in Part 2 and the standards in Part 3 setting forth the conditions and requirements for the humane transportation of animals in commerce and their handling, care, and treatment in connection therewith.

§ 2.101 Holding period.

(a) Any live dog or cat acquired by a dealer [3] or exhibitor shall be held by him or her, under his or her supervision and control, for a period of not less than 5 full days, not including the day of acquisition, after acquiring the animal, excluding time in transit: *Provided, however:*

(1) That any live dog or cat acquired by a dealer or exhibitor from any private or contract animal pound or shelter shall be held by that dealer or exhibitor under his or her supervision and control for a period of not less than 10 full days, not including the day of acquisition, after acquiring the animal, excluding time in transit;

(2) Live dogs or cats which have completed a 5-day holding period with another dealer or exhibitor, or a 10-day holding period with another dealer or exhibitor if obtained from a private or contract shelter or pound, may be sold or otherwise disposed of by subsequent dealers or exhibitors after a minimum holding period of 24 hours by each subsequent dealer or exhibitor, excluding time in transit;

(3) Any dog or cat suffering from disease, emaciation, or injury may be destroyed by euthanasia prior to the completion of the holding period required by this section; and

(4) Any live dog or cat, 120 days of age or less, that was obtained from the person that bred and raised such dog or cat, may be exempted from the 5-day holding requirement and may be disposed of by dealers or exhibitors after a minimum holding period of 24 hours, excluding time in transit. Each subsequent dealer or exhibitor must also hold each such dog or cat for a 24-hour period excluding time in transit.

(b) During the period in which any dog or cat is being held as required by this section, the dog or cat shall be unloaded from any means of conveyance in which it was received, for feed, water, and rest, and shall be handled, cared for, and treated in accordance with the standards set forth in Part 3, Subpart A, of this subchapter and § 2.131 of this part.

(c) Research facilities that obtain dogs and cats from sources other than dealers, exhibitors, and exempt persons shall hold the animals for 5 full days, not including the day of acquisition, after acquiring the animal, excluding time in transit, before they may be used by the facility. Research facilities shall comply with the identification of animals requirements set forth in § 2.50 during this period.

§ 2.102 Holding facility.

(a) If any dealer or exhibitor obtains the prior approval of the Area Veterinarian in Charge, he may arrange to have another person hold animals for the required period provided for in paragraph (a) of § 2.101: *Provided that:*

(1) The other person agrees in writing to comply with the regulations in Part 2 and the standards in Part 3 of this subchapter and to allow inspection of his premises by an APHIS official during business hours; and

(2) The animals remain under the total control and responsibility of the dealer or exhibitor.

(3) Approval will not be given for a dealer or exhibitor holding a license as set forth in § 2.1 to have animals held for purposes of this section by another licensed dealer or exhibitor. Veterinary

[3] An operator of an auction sale is not considered to have acquired a dog or cat which is sold through the auction sale.

Services Form 18.9 shall be used for approval.

(b) If any research facility or intermediate handler obtains prior approval of the Area Veterinarian in Charge, it may arrange to have another person hold animals: *Provided that:*

(1) The other person agrees in writing to comply with the regulations in Part 2 and the standards in Part 3 of this subchapter and to allow inspection of the premises by an APHIS official during business hours;

(2) The animals remain under the total control and responsibility of the research facility or intermediate handler; and

(3) In the case of a research facility, a legally responsible official of the research facility agrees in writing that the other person or premises is a recognized animal site under its research facility registration. Veterinary Services Form 18.9 shall be used for approval.

Subpart I—Miscellaneous

§ 2.125 Information as to business; furnishing of same by dealers, exhibitors, operators of auction sales, research facilities, intermediate handlers, and carriers.

Each dealer, exhibitor, research facility, intermediate handler, and carrier shall furnish to any APHIS official any information concerning the business of the dealer, exhibitor, operator of an auction sale, research facility, intermediate handler or carrier which the APHIS official may request in connection with the enforcement of the provisions of the Act, the regulations and the standards in this subchapter. The information shall be furnished within a reasonable time and as may be specified in the request for information.

§ 2.126 Access and inspection of records and property.

(a) Each dealer, exhibitor, research facility, intermediate handler, or carrier, shall, during business hours, allow APHIS officials:

(1) To enter its place of business;

(2) To examine records required to be kept by the Act and the regulations in this part;

(3) To make copies of the records;

(4) To inspect the facilities, property and animals, as the APHIS officials consider necessary to enforce the provisions of the Act, the regulations and the standards in this subchapter; and

(5) To take photographs to document conditions and/or areas of noncompliance in the facility.

(b) The use of a room, table, or other facilities necessary for the proper examination of the records and inspection of the property or animals shall be extended to APHIS officials by the dealer, exhibitor, research facility, intermediate handler or carrier, or his agents and employees.

§ 2.127 Publication of names of persons subject to the provisions of this part.

APHIS will publish lists of persons licensed or registered in accordance with the provisions of this part in the **Federal Register.** The lists may be obtained upon request from the Area Veterinarian in Charge.

§ 2.128 Inspection for missing animals.

(a) Each dealer, exhibitor, research facility, intermediate handler and carrier shall, upon request, during business hours, allow, under the following conditions, police or officers of other law enforcement agencies with general law enforcement authority (not those agencies whose duties are limited to enforcement of local animal regulations) to enter his or her place of business to inspect animals and records for the purpose of seeking animals that are missing:

(1) The police or other law officer shall furnish to the dealer, exhibitor, research facility, intermediate handler or carrier a written description of the missing animal and the name and address of its owner before making a search.

(2) The police or other law officer shall abide by all security measures required by the dealer, exhibitor, research facility, intermediate handler or carrier to prevent the spread of disease, including the use of sterile clothing, footwear, and masks where required, or to prevent the escape of an animal.

(b) An inspection for missing animals by law enforcement officers shall not extend to animals that are undergoing actual research or experimentation by a research facility as determined by the research facility.

§ 2.129 Confiscation and destruction of animals.

(a) If an animal being held by a dealer, exhibitor, intermediate handler, carrier, or by a research facility when it is no longer required by the research facility to carry out the research, test, or experiment for which it has been utilized, is found by an APHIS official to be suffering as a result of the failure of the dealer, exhibitor, intermediate handler, carrier, or research facility to comply with any provision of the regulations or the standards set forth in this subchapter, the APHIS official shall make a reasonable effort to notify the dealer, exhibitor, intermediate handler, carrier, or research facility of the condition of the animal(s) and request that the condition be corrected and that adequate care be given when necessary to alleviate the animal's suffering or distress, or that the animal(s) be destroyed by euthanasia. In the event that the dealer, exhibitor, intermediate handler, carrier, or research facility refuses to comply with this request, the APHIS official may confiscate the animal(s) for care, treatment, or disposal as indicated in paragraph (b) of this section, if, in the opinion of the Administrator, the circumstances indicate the animal is in danger of harm.

(b) In the event that the APHIS official is unable to locate or notify the dealer, exhibitor, intermediate handler, carrier, or research facility as required in this section, the APHIS official shall contact a local police or other law officer to accompany him to the premises and shall provide for adequate care when necessary to alleviate the animal's suffering. If in the opinion of the Administrator, the condition of the animal(s) cannot be corrected by this temporary care, the APHIS official shall confiscate the animals.

(c) Confiscated animals may be placed, by sale or donation, with other licensees or registrants which comply with the standards and regulations and can provide proper care, or they may be euthanized. The dealer, exhibitor, intermediate handler, carrier, or research facility from whom the animals were confiscated shall bear all costs incurred in performing the placement or euthanasia activities authorized by this section.

§ 2.130 Minimum age requirements.

No dog or cat shall be delivered by any person to any carrier or intermediate handler for transportation, in commerce, or shall be transported in commerce by any person, except to a registered research facility, unless such dog or cat is at least eight (8) weeks of age and has been weaned.

§ 2.131 Handling.

(a)(1) Handling of all animals shall be done as expeditiously and carefully as possible in a manner that does not cause unnecessary discomfort, trauma, overheating, excessive cooling, behavioral stress, or physical harm.

(2) Physical abuse of animals or deprivation of food or water shall not be used to train, work, or otherwise handle animals.

(b)(1) During public exhibition, any animal must be handled so there is minimal risk of harm to the animal and

to the public, with sufficient distance and/or barriers between the animal and the general viewing public so as to assure the safety of animals and the public.

(2) Performing animals shall be allowed a rest period between performances at least equal to the time for one performance.

(3) Young or immature animals shall not be exposed to rough or excessive public handling or exhibited for periods of time which would be detrimental to their health or well-being.

(4) Drugs, such as tranquilizers, shall not be used to facilitate, allow, or provide for public handling of the animals.

(c)(1) Animals shall be exhibited only for periods of time and under conditions consistent with their good health and well-being.

(2) A responsible, knowledgeable, and readily identifiable employee or attendant must be present at all times during periods of public contact.

(3) At a minimum, when dangerous animals such as lions, tigers, wolves, bears, or elephants are allowed to have contact with the public, the animals must be under the direct control and supervision of a knowledgeable and experienced animal handler.

(4) If public feeding of animals is allowed, the food must be provided by the animal facility and shall be appropriate to the type of animal and its nutritional needs and diet.

§ 2.132 Procurement of random source dogs and cats, dealers.

(a) A class "B" dealer may obtain live random source dogs and cats only from:

(1) Other dealers who are licensed under the Animal Welfare Act and in accordance with the regulations in Part 2;

(2) State, county, or city owned and operated animal pounds or shelters; and

(3) A legal entity organized and operated under the laws of the State in which it is located as an animal pound or shelter, such as a humane shelter or contract pound.

(b) A class "B" dealer shall not obtain live random source dogs and cats from individuals who have not bred and raised the dogs and cats on their own premises.

(c) Live nonrandom source dogs and cats may be obtained from persons who have bred and raised the dogs and cats on their own premises, such as hobby breeders.

(d) Any person subject to the Act shall not obtain live random source dogs or cats by use of false pretenses, misrepresentation, or deception.

(e) Any licensee or registrant under the Act who also operates a private or contract animal pound or shelter shall comply with the following:

(1) The animal pound or shelter shall be located on premises that are physically separated from the licensed or registered facility. The animal housing facility of the pound or shelter shall not be adjacent to the licensed or registered facility.

(2) Accurate and complete records shall be separately maintained by the licensee or registrant and by the pound or shelter. The records shall be in accordance with §§ 2.75 and 2.76, unless the animals are lost or stray. If the animals are lost or stray, the pound or shelter records shall provide:

(i) An accurate description of the animal;

(ii) How, where, from whom, and when the dog or cat was obtained;

(iii) How long the dog or cat was held by the pound or shelter before being transferred to the dealer; and

(iv) The date the dog or cat was transferred to the dealer.

(3) Any dealer who obtains or acquires a live random source dog or cat from a private or contract pound or shelter, including a pound or shelter they operate, shall hold the dog or cat for a period of at least 10 full days, not including the day of acquisition, excluding time in transit, after acquiring the animal, and otherwise in accordance with § 2.101.

Done at Washington, D.C., this 7th day of March 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-5612 Filed 3-9-89; 2:10 pm]

BILLING CODE 3410-34-M

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9 CFR Part 3

[Docket No. 87-004]

Animal Welfare—Standards

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations for the humane handling, care, treatment, and transportation of dogs and cats, guinea pigs and hamsters, rabbits, and nonhuman primates. The regulations for dogs, cats, and nonhuman primates would be completely revised and rewritten. The regulations for guinea pigs, hamsters, and rabbits would be amended: to revise the space requirements for primary enclosures; to amend the temperature requirements in cargo spaces in primary conveyances; and to reinstate various transportation requirements. These actions are necessary to update the regulations, to make them more consistent with other Federal regulations concerning the handling, care, treatment, and transportation of these animals, and to comply with the recent amendments to the Animal Welfare Act (7 U.S.C. 2131, *et seq.*), enacted December 23, 1985. Rewriting the regulations is also intended to make them easier to understand, thereby increasing compliance and making them more effective.

DATES: We will consider written comments postmarked or received on or before August 14, 1989.

ADDRESS: Send an original and three copies of your comments to Helene R. Wright, Chief, Regulatory Analysis and Development Staff, PPD, APHIS, USDA, Room 1000, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 87-004. Comments received may be inspected at the APHIS Public Reading Room, Room 1141, U.S. Department of Agriculture, 14th Street and Independence Avenue, SW., Washington, DC, 8:00 a.m to 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. R.L. Crawford, Director, Animal Care Staff, REAC, APHIS, USDA, Room 268, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7833.

SUPPLEMENTARY INFORMATION:

General Background and Statutory Information

Regulations on the humane handling, care, treatment, and transportation of (1) dogs and cats, (2) guinea pigs and hamsters, (3) rabbits, and (4) nonhuman primates, are contained in 9 CFR Part 3. Subpart A contains the regulations concerning dogs and cats; Subpart B contains the regulations concerning guinea pigs and hamsters; Subpart C contains the regulations concerning rabbits; and Subpart D contains the regulations concerning nonhuman primates. The regulations in each of these Subparts include minimum standards for handling, housing, feeding, watering, sanitation, ventilation, shelter, and veterinary care. The regulations are issued and enforced by the Animal and Plant Health Inspection Service (APHIS), of the United States Department of Agriculture (USDA), under authority of the Animal Welfare

Act, as amended (the Act) (7 U.S.C. 2131, *et seq.*).

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 amendments direct 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.

Previously Proposed Regulations

In response to the 1985 amendments to the Act, we proposed, on March 31, 1987, to revise 9 CFR Parts 1 and 2. Part 1 includes definitions of terms used throughout our regulations. Part 2 includes general requirements for licensing and registration of facilities; recordkeeping and identification of animals; holding periods and facilities; Institutional Animal Care and Use Committees; adequate veterinary care, and other areas of general concern relevant to the humane care, handling, treatment and transportation of all animals and individuals subject to our regulations. (52 FR 10292–10322).

Documents containing Parts 1 and 2, as revised in accordance with our consideration of the nearly 8,000 comments we received in response to the March 31, 1987 proposal, our ongoing consultation with the U.S. Department of Health and Human Services and other interested agencies, and our experience in enforcing the regulations, appear elsewhere in this issue of the **Federal Register.** The revised rules for Parts 1 and 2 are published for the sole purpose of soliciting comments on the narrow issue of the interrelationship of Parts 1 and 2 with the Part 3 standards we are proposing in this document. All comments on this issue should not be combined with substantive comments on the Part 3 standards and must reference docket nos. 88–013 and 88–014. We will refer to those documents at various points in our discussion of the proposed amendments to Part 3.

The revised rule for Part 2 contains provisions and procedures for allowing exceptions by research facilities in compliance with the Animal Welfare regulations, including the standards proposed in this document, when necessary for the conduct of biomedical research. Exceptions or deviations from the regulations must first be explained, reviewed, and approved in accordance with the procedures set forth in Part 2. We refer the reader to 2.30(g), 2.35(b)(3), and 2.100, published elsewhere in this issue of the **Federal Register** for these provisions.

Consultation and cooperation with other Federal departments, agencies, or instrumentalities

The amendments to the Act also direct the Secretary of Agriculture to

> Consult and cooperate with other Federal departments, agencies, or instrumentalities concerned with the welfare of animals used for research, experimentation or exhibition, or administration of statutes regulating the transportation in commerce or handling in connection therewith of any animals when establishing standards pursuant to section 2143 of this title and in carrying out the purposes of this chapter.

(Section 1757, 99 Stat. 1649, Pub. L. 99–198, amending 7 U.S.C. 2145(a))

Accordingly, we consulted with the Department of the Interior, U.S. Fish and Wildlife Service (USFWS), which regulates transportation of wild birds and animals into the United States.

The amendments also specifically direct the Secretary of Agriculture to "consult with the Secretary of Health and Human Services prior to issuance of regulations." (See § 1757, 99 Stat. 1649, Pub. L. 99–198, amending 7 U.S.C. 2145(a).) The Department of Health and Human Services, through the Public Health Service, National Institutes of Health (NIH), currently issues guidelines on the care and use of animals studied in biomedical research. The animals include dogs and cats, guinea pigs and hamsters, rabbits, and nonhuman primates. These NIH guidelines are contained in a document entitled "Guide for the Care and Use of Laboratory Animals" (NIH Guide or Guidelines).[1] The Guide is widely accepted by scientific institutions as a primary reference on animal care and use. Compliance with the NIH Guidelines is not mandatory except to obtain NIH funding, but most research laboratories in the United States do comply. While the Animal Welfare Act and regulations address a broader range of activities and facilities than the NIH Guide, Congress' intent in requiring consultation with the Department of Health and Human Services is to ensure that, whenever possible, the regulations and the NIH Guidelines are consistent:

> The Conferees expect the Secretary of Agriculture to have full responsibility for enforcement of the Animal Welfare Act. However, the Conferees also recognize that a portion of the nation's research facilities fall under regulation from more than one agency. While the legislative mandate of each agency is different, and they may regulate different aspects of animal care, it is hoped that the agencies continue an open communications to avoid conflicting regulations wherever possible or practice. [sic]

(*See* Conference Report, *Congressional Record* of December 17, 1985, at page H12422.)

We consider our mandate to consult with the Department of Health and Human Services to be extremely important. We realize that having harmonious regulations throughout the Federal government on animal welfare matters would eliminate confusion and simplify compliance for the individuals, including research institutions, subject to those regulations. However, our goal in proposing these regulations is to provide for the humane care, handling, treatment, and transportation of various animals. If we adopt regulations identical with those of other Federal Departments, but those regulations are ineffective or inadequate, then we have not met the statutory objective.

We have attempted in these proposed regulations to meet both goals wherever we have determined it is consistent with our responsibility to promote animal welfare. To achieve this, we have consulted extensively with NIH representatives concerning standards for the humane care, handling, treatment, and transportation of dogs and cats, guinea pigs and hamsters, rabbits, and nonhuman primates. We have reviewed our existing regulations and the NIH guidelines. In addition, we have considered comments raised by member agencies of the Interagency Research Animal Committee, which is comprised of federal agencies that conduct research using animals. We have also consulted with experts and professional organizations and have sought their recommendations on appropriate standards to accomplish our goal. After considering all this information, we are proposing extensive revisions to the regulations in 9 CFR Part 3, Subparts A, B, C, and D. In many cases, we are proposing regulations substantially identical to current NIH Guidelines. That is because, in these cases, we believe the NIH Guidelines are appropriate and adequate to provide for the humane care, handling, treatment, and transportation of the animals in question. In other cases, we

[1] The NIH Office for Protection from Research Risks publishes another document called the "Public Health Service Policy on Humane Care and Use of Laboratory Animals," under authority of the Health Research Extension Act of 1985 (Pub. L. 99–158, November 20, 1985). However, the regulations in that document concern mainly the use of tranquilizers and other drugs on animals being used in research, appropriate pre- and post-surgical veterinary care for animals being used in research, and the organization and operation of animal care committees. These subjects are not covered in this proposal, and we therefore do not discuss these NIH requirements in this document.

are proposing to adopt, as our regulations, standards that will provide for the humane handling and care of animals covered by the Act. We will discuss our proposed changes on a subpart-by-subpart basis.

We are proposing to revise Subparts A and D in their entirety in this document so that the regulations are complete and easier to read. However, we are not providing an explanation for nonsubstantive revisions.

Subpart A—Dogs and Cats

Regulations for humane handling, care, treatment, and transportation of dogs and cats are contained in 9 CFR Part 3, Subpart A. These regulations include minimum standards for handling, housing, feeding, watering, sanitation, ventilation, shelter from extremes of weather and temperature, veterinary care, and transportation.

It should be noted that the proposed regulations apply only to live dogs and cats, unless indicated otherwise.

We are proposing to revise and rewrite the current regulations based on our experience administering them. We are also proposing to amend our regulations to add requirements for the exercise of dogs. This is specifically required by the 1985 amendments to the Act. (See Section 1752, 99 Stat. 1645, Pub. L. 99–198, amending Section 13 of the Act). We discuss each topic covered in our proposed regulations below.

Housing Facilities and Operating Standards

Current §§ 3.1 through 3.3 provide requirements for facilities used to house dogs and cats. Current § 3.1, "Facilities, general," contains regulations pertaining to housing facilities of any kind. It is followed by current § 3.2, "Facilities, indoor," and § 3.3, "Facilities, outdoor." We are proposing to amend these sections to provide for an environment that better promotes the health, comfort, and well-being of dogs and cats. We are also proposing 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, published elsewhere in this issue of the **Federal Register**, 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 pens or runs 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" is also included in Part 1, and 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 are proposing for housing facilities are applicable to housing facilities of any kind. As in the current regulations, these standards of general applicability would be included in one section, proposed § 3.1, that would also include many of the provisions in current § 3.1. Additionally, we are proposing amendments to the current regulations that are specific to particular types of housing facilities, and are including those provisions in separate sections of the proposed regulations. In some cases where the current regulations would be unchanged in substance, we have made wording changes to clarify the intent of the regulations.

Housing facilities, general

In proposed § 3.1(b), we are proposing to add the requirements that a dealer's or exhibitor's housing facilities be physically separated from any other business. 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 overall conditions. To avoid this difficulty, we are proposing to require that housing facilities other than those maintained by research facilities and federal research facilities be separated from other businesses. This can be done by using a security fence or by conducting each business in a separate building. For example, if a security fence is used, it would have to be constructed so that it prevents unauthorized humans, and animals the size of dogs, skunks, and raccoons, from going through or under it. We are not imposing 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 research facilities.

Proposed § 3.1(b) would also require 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 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. These areas would have to be kept free of clutter, including equipment, furniture, and stored material, and materials not necessary for proper husbandry practices.

We are proposing to include requirements concerning housing facility surfaces that are common to all types of facilities in proposed § 3.1(c). We are proposing to include requirements specific to particular types of facilities in separate sections. In § 3.1(c)(1), we propose 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 would also apply to houses, dens, and other furniture-type fixtures or objects within the facility.

Proposed § 3.1(c)(1) would also require that any surfaces that come in contact with dogs and cats be free of jagged edges or sharp points that might injure the animals, as well as rust that prevents the required cleaning and sanitization. Because we recognize that as long as water is used to clean animal areas, metal parts will rust, we would allow rust on metal surfaces, as long as it does not reduce structural strength or interfere with proper cleaning and sanitizing.

Section 3.1(c)(2) would 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.

Section 3.1(c)(3) would require that hard surfaces that come in contact with dogs or cats be cleaned daily and sanitized at least every two weeks, and as often as necessary to prevent any accumulation of excreta and disease hazards. Section 3.10(b) provides 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). Floors made of dirt, sand, gravel, grass, or other similar material would have to be raked and spot-cleaned daily, since sanitization is not practicable, and the flooring material would have to be replaced if raking and spot-cleaning are not sufficient to eliminate odors, diseases, pests, insects, or vermin infestation. All other surfaces would have to be cleaned daily and sanitized when necessary to satisfy generally accepted professional and husbandry practices.

In the current regulations, § 3.1(b) provides regulations 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 this proposed rule, provisions concerning water and electric power are set forth in § 3.1(d). We are proposing there to eliminate the qualifying statement cited above, and to *require* that all facilities have reliable and adequate electric power and mechanically pressurized potable running water for the dogs' and cats' drinking needs, for cleaning, and for carrying out other husbandry requirements. Based on our inspections of dealer, exhibitor, and research facilities, we believe that dog and cat facilities subject to the regulations cannot be properly cleaned and maintained without electric power and potable water under pressure. We would require that a pressurized water system be used to ensure that the water supply is of sufficient quantity and availability to meet the needs of the animals and the facility.

We are proposing in § 3.1(e) to expand the regulations in current § 3.1(c) concerning proper storage of food and bedding supplies. We would retain the requirements that food and bedding be stored so as to protect them from vermin infestation or contamination, and that perishable food be refrigerated. Additionally, we are proposing 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 would specify that supplies of food and bedding be stored in containers to protect the supplies from spoilage as well as from infestation and contamination. The supplies would have to be stored off the floor and away from the walls, to allow cleaning around and underneath them. All food would have to be stored so as to prevent contamination or deterioration of its nutritive value. Open supplies of food and bedding would have to be stored in leakproof containers with tightly fitting lids. Substances toxic to dogs and cats would not be allowed to be stored in animal areas or in food storage and preparation areas.

Proposed § 3.1(f) would continue to require that housing facilities provide for removal and disposal of animal and food wastes, bedding, dead animals, and debris, as provided in current § 3.1(d). We are proposing to clarify this requirement so that it includes all fluid wastes and to include a provision that arrangements must be made for removal and disposal of wastes at least daily, and more often if necessary. The proposed regulations would also require that trash containers be leakproof and be tightly closed when not in use, and that no forms of animal waste, including dead animals, be kept in food and animal areas.

Requirements for drainage are currently contained in §§ 3.2(e) and 3.3(d), under the sections concerning indoor facilities and outdoor facilities, respectively. Since all types of animal housing facilities, including our proposed categories of sheltered housing facilities, and mobile or traveling housing facilities, must have some way of disposing of waste and liquids, we would consolidate all drainage and waste disposal requirements in proposed § 3.1(f).

Both current §§ 3.2(e) and 3.3(d) require that a suitable method of eliminating excess water be provided. That requirement would be retained and expanded to pertain to sheltered and to mobile or traveling housing facilities as well. Current § 3.2(e) requires that any drains used be properly constructed and kept in good repair to guard against foul odors. Additionally, where closed drainage facilities are used, they must be equipped with traps and be installed so that they prevent any backup of sewage onto the floor. Those requirements would be retained and expanded for indoor facilities, and the proposed expanded provisions would also apply to other types of facilities where such drainage is appropriate. We would require that disposal and drainage systems also minimize vermin and pest infestation, and disease hazards. As part of this safeguard, we would 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 would also require that puddles of water in animal areas be promptly mopped up or drained so that the animals stay dry.

The requirement in current § 3.1(e) that washing facilities be available to animal caretakers for their own cleanliness would be retained and would appear in proposed § 3.1(g).

Categories of Housing Facilities

The current regulations specify two kinds of housing facilities, "indoor" and "outdoor." These terms are defined in Part 1 of the Animal Welfare regulations, published elsewhere in this issue of the **Federal Register**. (*See* companion docket no. 88-013). Briefly, an indoor housing facility is defined as an enclosed structure or building with environmental controls that is used to house animals. An outdoor housing facility is defined as a structure, building, land, or premises, used to house animals, that cannot be temperature controlled and that does not have a completely enclosed temperature-controlled shelter. We recognize that these two categories of housing facilities do not cover all of the wide variety of facilities used to house dogs and cats. For example, certain facilities, such as those in which animals have access to pens in a building, but also have access from their pens to outside runs, fall somewhere between "indoor" or "outdoor" facilities. Another "grey area" involves traveling animal shows. In order to clarify the intent and applicability of the regulations, we are proposing to add provisions for two additional types of housing facilities that are used to house dogs and cats: "sheltered housing facilities," and "mobile or traveling housing facilities." A sheltered housing facility is defined in Part 1 of the regulations to mean a facility that provides animals with shelter and protection from the elements and temperature extremes at all times, such as a building with a connecting inside/outside run or pen. A mobile or traveling housing facility is defined in Part 1 to mean a transporting vehicle such as a truck, trailer, or railway car, used to house animals while traveling for exhibition or public education purposes. (*See* companion docket no. 88-013, published elsewhere in this issue of the **Federal Register**.)

Temperatures in Housing Facilities

Enclosed housing facilities—that is, indoor facilities, the sheltered portion of sheltered housing facilities, and mobile or traveling facilities—would be required to provide heating, cooling, and ventilation for the health, comfort, and well-being of dogs and cats housed there. The heating and cooling requirements would be set forth for each of the above categories in §§ 3.2(a), 3.3(a), and 3.5(a) respectively. The ventilation requirements would be set forth in §§ 3.2(b), 3.3(b), and 3.5(b) respectively.

In establishing minimum temperatures for these facilities, the proposed regulations take into account whether a particular dog or cat housed there is acclimated to relatively low temperatures, and whether for some other reason, either because of breed, age, or condition, a dog or cat should not be subjected to certain low temperatures. In § 3.2(a) of the current regulations for indoor facilities, the minimum temperature allowed is 50 °F for all dogs and cats in those facilities that are not acclimated to lower temperatures. We are proposing that in indoor, sheltered, and mobile or traveling housing facilties, 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 would also apply the 50 °F minimum to breeds of dogs or cats that cannot tolerate lower temperature without stress and discomfort (e.g., short-haired breeds such as beagles, greyhounds, and Doberman), and to dogs and cats that are sick, aged, young, or infirm. The minimum temperature for all other dogs and cats would be 35 °F (1.7 °C), except in indoor facilities, where the minimum temperature for all other dogs and cats would be 45 °F (7.2 °C)

In the current regulations, there is no maximum temperature specified for indoor housing facilities, although auxiliary ventilation is required when the temperature rises to or above 85 °F (29.5 °C). In this proposed rule, we establish 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, 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).

Because outdoor facilities cannot be temperature-controlled, we believe it is necessary to judge a dog's or cat's suitability for outdoor housing on an individual basis. As provided in proposed § 3.4(4)(1), a dog or cat could not be kept in an outdoor facility if (1) it is not acclimated to the temperatures prevalent in the area or region where the facility is located; (2) it is of a breed that cannot tolerate the prevalent temperatures of the area without stress or discomfort (such as short-haired breeds in cold climates); or (3) it is aged, young, sick or infirm. We recognize that in some situations, particularly in the case of dogs or cats obtained from pounds, it will not be known whether animal has been acclimated to prevailing temperatures. Therefore, in proposed § 3.4(a)(2), we provide that if a dog's or cat's acclimation status is unknown, it must not be kept in an outdoor facility in any month in which, during the preceding 5 years, the temperature at the facility has been less than 35 °F (1.7 °C).

Ventilation of Housing Facilities

The requirements for ventilation of indoor housing facilities that are set forth in § 3.2(b) of the current regulations would be retained in the proposal, and would be extended to apply to all sheltered portions of sheltered, and mobile or traveling, housing facilities to provide for the health, comfort, and well-being of dogs and cats. Based on our inspections of dealer, exhibitor, and research facilities, we are proposing to add (1) that ventilation must also be provided to minimize ammonia levels in these housing facilities; (2) that ventilation in mobile or traveling facilities must minimize exhaust fumes; and (3) that in indoor housing facilities, the relative humidity must be maintained between 30 and 70 percent. Although the 30–70 percent range would apply to all dogs and cats, we expect generally accepted professional and husbandry practices to be followed in providing humidity levels appropriate to particular breeds of dogs and cats. The 30–70 percent range corresponds to the recommendations contained in the NIH Guide. We are not proposing to require that precise humidity levels be maintained in sheltered housing facilities or mobile or traveling facilities. The configuration of many sheltered facilities makes humidity control impracticable, and mobile or traveling housing facilities may travel into many different parts of the United States, with varying levels of humidity.

Lighting in Housing Facilities

The proposed regulations would retain the requirement in § 3.2(c) of the current regulations that indoor housing facilities have ample light to permit routine cleaning and inspection. We are proposing to extend this requirement to all of the enclosed housing facilities included in the proposed regulations. We are also proposing to require in each case that either natural or artificial light be provided for at least 8 hours each day, corresponding to the natural period of daylight. Our experience inspecting licensees' and registrants' facilities has shown us that in the past some licensees and registrants have kept dogs and cats in darkened rooms throughout most of the day. In the case of indoor housing facilities and mobile or traveling housing facilities, we would require that if only artifical light, such as fluorescent light, is used, it must provide full-spectrum illumination. Sheltered facilities, by their nature, allow the animals access to natural light, so the requirement for full-spectrum illumination would not be necessary for those facilities. Also, we would retain the requirement in the current regulations for indoor facilities that primary enclosures be placed so as not to expose to the animals in them to excessive light, and we would extend that requirement to sheltered enclosures. An example of excessive light would be a situation where an animal is housed in the top cage of a stack of cages, near a lighting fixture.

Specific Provisions for Indoor Housing Facilities

Section 3.2(d) of the current regulations, regarding the interior surfaces of indoor housing facilities, requires that those surfaces be substantially impervious to moisture and readily sanitized. In § 3.2(d) of the proposed regulations, we would retain the requirement that all surfaces be impervious to moisture, but would make an exception in the case of ceilings that are replaceable. An example of this would be a suspended ceiling with replaceable panels. The proposed requirements concerning interior surfaces are more stringent for indoor housing facilities than for any other type of facility. Only in indoor facilities, for example, would 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.

Specific Provision for Sheltered Housing Facilities

In proposed § 3.3(d) regarding sheltered housing facilities, we would require that dogs and cats be provided with adequate shelter and protection from the elements.

In order to maintain sanitary conditions in sheltered housing facilities, we would estabish the following requirements in § 3.3(e). 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. Outside floor areas in contact with the animals and exposed to the direct sun could consist of compacted earth, sand, gravel, or grass.

Specific Provisions for Outdoor Housing Facilities

The intent of § 3.3 of the current regulations is to provide adequate standards for the care of animals housed outdoors. However, our inspections of dealers' and exhibitors' facilities in climates with temperature extremes have indicated that some licensees are not meeting what we believe should be

minimum standards for the treatment of dogs and cats. Specifically, we believe that the regulations need to be made more stringent regarding the types of dogs and cats that can be kept outdoors, and regarding what shelter is necessary for dogs and cats kept outdoors. Therefore we are proposing to revise the current requirements for outdoor facilities, to make them more clearly defined and more stringent.

We have discussed earlier in this document the categories of dogs and cats that must not be kept in outdoor housing facilities. With regard to the type of shelter required for dogs and cats housed outdoors, we believe that the current regulations should be expanded to specify what is necessary for better and more humane treatment of the dogs and cats. In essence, the current regulations require that dogs and cats be provided with sufficient shade to protect them from the direct rays of the sun, shelter to keep them dry during rain or snow, and shelter when the atmospheric temperature falls below 50 °F. (10 °C). Additionally, bedding or some other protection is required when the ambient temperature falls below that to which the dog or cat is acclimated.

In § 3.4(b) of this proposed rule, we require that all outdoor facilities housing dogs or cats include a shelter structure that is accessible to all animals in the facility, and that is large enough to allow all animals in the structure to sit, stand, and lie in a normal manner, and to turn about freely. As proposed in § 3.4(d), the shelter structure would have to: (1) Provide adequate shelter and protection from the cold and heat; (2) be protected from the direct rays of the sun and the direct effect of wind, rain, or snow; (3) have a wind break and a rain break at its entrance; and (4) contain clean dry, bedding material. We are also proposing in § 3.4(b) that in addition to the shelter structure, there would have to be a separate outside area of shade provided, large enough to contain all the animals at one time and to protect them from the direct rays of the sun. This shaded area would give the animals relief on hot days, when they would be unlikely to seek shelter in an unventilated structure.

In proposed § 3.4(c), we would require that all building surfaces that are in contact with dogs or cats in outdoor housing facilities be impervious to moisture. Metal barrels, old refrigerators or freezers, and the like would not be permitted as shelter structures. The floors of outdoor housing facilities could be of compacted earth, sand, gravel, or grass, but would have to be kept clean.

Primary Enclosures

We are proposing to amend current § 3.4, "Primary enclosures." The current section provides general requirements for construction and maintenance of primary enclosures, uniform space requirements for each dog or cat housed in a primary enclosure, and provisions regarding litter and resting surfaces for cats and the tethering of dogs on chains. We are proposing to expand the current general requirements, to add some new requirements, and to clarify the existing requirements in accordance with the intent of the amendments to the Act.

The proposed regulations regarding primary enclosures, contained in proposed § 3.6, would require that all primary enclosures meet certain minimum requirements that we believe are necessary for the safety and well-being of dogs and cats. A primary enclosure is defined in Part 1 as "any structure or device used to restrict an animal 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 regulations would be those used by circuses, carnivals, traveling zoos, educational exhibits, and other traveling animal acts and shows. Proposed § 3.6(a) would continue to require that primary enclosures be structurally sound and maintained in good repair to protect the animals from injury, to contain them, and to keep predators out. We would also require that the primary enclosure keep unauthorized humans out. We would 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. We would add the 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 would also require that the primary enclosures be easily cleaned and sanitized.

However, if the floors of primary enclosures consist of earth, sand, gravel, or grass, we would require that they be replaceable, rather than easily cleaned and sanitized.

Additional Primary Enclosure Requirements for Cats

We are proposing to change the space requirements for cats. In general, the proposed regulations would base how much space a cat should have on the animal's weight, and whether it is a nursing mother. The space requirements in §§ 3.4(b) (1) and (3) of the current regulations are uniform for all cats, regardless of size, and require that each cat be given a minimum of 2.5 ft^2, with room to turn about freely, and to easily stand, sit, and lie in a confortable normal position. We believe, based on our inspections of research facilities, that the current minimum space requirements should be increased for all cats. Additionally, because the weight of a cat is a good indicator of its overall size, we believe that floor space requirements should distinguish between cats of different weights. Our proposed standards would provide cats with the space we believe is necessary and at the same time make our regulations correspond to the NIH Guide for the Care and Use of Laboratory Animals. In proposed § 3.6(b)(1), we would require that weaned cats weighing 8.8 lbs (4 kg) or less be provided with at least 3.0 ft^2 (0.28 m^2) of floor space, and that cats weighing over 8.8 lbs (4 kg) be provided with a minimum of 4.0 ft^2 (0.37 m^2) of floor space. Additionally, we would require that each queen with nursing kitten be provided with an additional amount of floor space, equivalent to at least 5 percent of her minimum required floor space for each nursing kittens in the litter. For example, five nursing kittens would require a 25-percent increase and 10 nursing kittens would require a 50-percent increase. The minimum floor space required would be exclusive of any food, water, or litter pans, and the height of the primary enclosure for cats would have to be at least 24 inches (60.96 cm).

All cats housed in the same primary enclosure would have to be compatible. The requirement in current § 3.4(b)(3) that no more than 12 adult nonconditioned cats be housed in the same primary enclosure would be retained and set forth in proposed § 3.6(b)(2). In addition, the following restrictions would apply: queens in heat could not be housed in the same primary enclosure with sexually mature males, except for breeding; queens with litters and kittens under 4 months of age could not be housed in the same primary enclosure with any other adult cats, except when maintained in a breeding colony; and cats with a vicious or

aggressive disposition would have to be housed separately.

In § 3.6(b)(3), we are proposing to retain the current requirement that a receptacle with litter be provided to contain excreta.

The current standards for cats in § 3.4(a)(2)(ii) state that there must be a solid resting surface in each primary enclosure that will comfortably hold all occupants at the same time, and that the resting surface be elevated if the enclosure holds two or more cats. We are proposing to require in § 3.6(b)(4) that all such resting surfaces be elevated, even if only one cat is in the enclosure, and to clarify that the resting surfaces not be counted as part of the minimum floor space. 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.

We are proposing 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 § 3.14 of this subpart other than the marking requirements in § 3.14(a)(6). When the show or act is not traveling, the cats would have to be placed in primary enclosures that meet the minimum requirements of § 3.6. Mobile or traveling shows and acts normally remain in one location for several days and then move to another location, with the movement taking a day or less. Because the animals are less subject to injury in smaller enclosures while traveling, we would allow the use of transport cages during this time. When not traveling, however, the cats would have to be placed in primary enclosures that comply with the minimum space requirements and other requirements of § 3.6.

Additional Primary Enclosure Requirements for Dogs

In proposed § 3.6(c), we would retain the formulas in § 3.4(b)(2) of the current regulations for calculating the floor space for dogs [(length of dog in inches + 6) × (length of dog in inches +6) = required square inches of floor space; required square inches/144 = required square feet]. Because of the great variation in size and body conformation among the various species of dogs, we believe the present formula for calculating space based on body length is more appropriate than a formula based on the weight of the dog. Space requirements based on weight do not allow for the differences in body conformation among different breeds of dogs, such as bulldogs and whippets or greyhounds. Space requirements based on body length do allow for differences in body conformation and would therefore be retained as a more appropriate method for determining minimum space requirements. We are also proposing the require that the minimum height of a primary enclosure be at least 6 inches above the highest point of the body (normally the ears) of the tallest dog in the enclosure when standing in a normal position.

As with cats, nursing mothers would have to be provided with additional space. In proposed § 3.6(c)(1)(ii), we would require that each bitch with nursing puppies be provided with an additional amount of floor space, equal to 5 percent of her minimum floor space, for each nursing puppy in the litter.

In § 3.4(b)(2)(ii) of the current regulations, requirements are set forth for dog houses with chains used as primary enclosures for dogs kept outdoors. In § 3.6(c)(2) of the proposed regulations, we would expand those regulations and would apply the expanded regulations to apply to dogs that are tethered by any means, and not just by chains. We would retain the current requirement that a dog that is tethered be kept from being entangled, and would 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 would retain the current requirement that the tether be of the type commonly used for the size dog involved, and that the tether be attached to the dog by a well-fitted collar. Additionally, we propose to explicitly require that the collar must not cause trauma or injury to the dog. The proposed regulations include the following examples of types of collars that would be prohibited: collars made of wire, flat chains, chains with sharp edges, and chains with rusty or nonuniform links. As in the current regulations, 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 would 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.

We are also proposing that dog housing area where chains or tethers are used must be enclosed by a perimeter fence at least 6 feet in height, so as to protect the dogs, to contain them, and to keep animals that size of dogs, racoons, and skunks from going through or under it.

All dogs housed in the same primary enclosure would have to be compatible. The provision in § 3.4(b)(2) limiting to 12 the number of nonconditioned adult dogs permitted to be housed in the same primary enclosure would be retained in proposed § 3.6(c)(3). Additionally, that proposed paragraph would contain 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, and puppies under 4 months of age must not be housed in the same primary enclosure with adult dogs, except when maintained in a breeding colony; and dogs with a vicious or aggressive disposition must be housed separately.

We are also proposing 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 this subpart, other than the marking requirements in § 3.14(a)(6). When the show or act is not traveling, the dogs would have to be placed in primary enclosures that meet the minimum requirements of § 3.6. Mobile or traveling shows and acts normally remain in one location for several days and then move to another location, with the movement taking a day or less. Because the animals are less subject to injury in smaller enclosures while traveling, we would allow the use of transport cages during this time. When stopped and not traveling, however, the dogs must be placed in primary enclosures that comply with the minimum space and other requirements of § 3.6. As explained above, we are also proposing similar provisions regarding cats in mobile or traveling shows or acts.

Variance

We understand that the proposed minimum space requirements for dogs and cats might require persons subject to the Animal Welfare regulations to rebuild or remodel their facilities and to expend previously unanticipated and unbudgeted monies for new primary enclosures and fixtures. In some instances, major structural modifications might be required to satisfy the proposed space requirements. Until the necessary adjustments were made, many registrants and licensees would not be in compliance with the proposed requirements.

In cases where the effective date of the regulations would not coincide with

a facility's fiscal year, we are aware that budget planning and funding procedures for the next fiscal year would take some time. Once funds have been appropriated, facilities would require additional time to make the necessary space modifications. To allow facilities sufficient time to conform with the proposed minimum space requirements, we are proposing to include a mechanism for issuing variances to eligible persons. This mechanism would be similar to that already in place for licensees and registrants in Subpart E—"Specifications for the Humane Handling, Care, Treatment and Transportation of Marine Mammals."

A "variance" would be issued, in writing, by the Administrator of APHIS, and would allow an eligible registrant or licensee to continue operating even though not fully in compliance with the minimum space requirements for dogs and cats, including minimum space requirements for the exercise of dogs.

The variance would be limited in scope both as to time and to the primary enclosures covered by it, and would specify the portions of the applicant's facilities to which it applied.

Registrants and licensees maintaining or handling dogs or cats, having dogs or cats on their premises or under their control or supervision, and not complying with the minimum space requirements proposed in § 3.6, could apply for a variance. Facilities that are under construction or that are in the design or preliminary construction stages on the date these regulations become effective would not be eligible for a variance, since they could adapt their construction to comply with them. However, a facility that is so nearly complete that it would require substantial modification at a previously unbudgeted and significant cost to bring it into compliance would be eligible for a variance.

A variance could be granted, at the sole discretion of the Administrator, for up to 2 years. We believe that this would allow sufficient time for a registrant or licensee to raise the necessary funds and to contract for the required work, as well as to purchase whatever fixtures or equipment were necessary for it to comply with the minimum space requirements. One extension of up to 1 year could be granted by the Administrator if he or she determined that it was necessary, based upon the facts presented in the application for extension. The extension would be granted if justified due to unforeseen situations that prevented full compliance during the variance period. As an example, unforeseen circumstances for research facilities could be nonallocation of public funds to make the necessary expenditures.

An application for a variance would be required within 60 days of the effective date of these regulations and would have to be in writing. According to the proposed regulations, it must list, in detail, specific reasons why the variance was being requested, and each of the minimum space requirements the facility cannot meet. It must identify the species and number of dogs and cats that would be affected by the variance, and must state the amount of time necessary for the applicant to come into compliance and the estimated cost of compliance.

We are proposing to require a statement from the attending veterinarian concerning the age and health status of the dogs and cats affected by the variance, and addressing whether granting the variance would be detrimental to the affected dogs and cats.

As is presently the case for marine mammals, the Administrator could require the submission of an outside independent expert report, if the Administrator believes it would assist him or her in determining whether the granting of a variance would be detrimental to the health and well-being of the affected dogs and cats. The applicant would bear the cost of the expert report.

The Administrator would grant an application for a variance if he or she determined it was justified, or would deny it if he or she determined that it was not justified or that granting it would be detrimental to the health and well-being of the dogs and cats affected. The grant or denial would be in writing. The applicant could request that the Administrator reconsider his or her decision to deny an application, in accordance with the requirements of § 3.6(d)(4). Similarly, a request for an extension would be granted by the Administrator if he or she determined that it was justified, or denied if he or she determined that it was not justified or that granting it would be detrimental to the health and well-being of the dogs and cats affected. The grant or denial of the extension would also be in writing. The applicant could request that the Administrator reconsider his or her decision to deny an application for an extension, in accordance with the requirements of § 3.6(d)(5). If the extension were granted upon reconsideration, it would be retroactive to the termination date of the initial variance.

Variances would be revocable for bad faith, such as a false representation in the initial application or in the request for extension. They could also be revoked if the purposes for which they were issued were not being carried out, or if detrimental to the health and well-being of the dogs or cats affected.

Exercise and Socialization for Dogs

In accordance with the 1985 amendments to the Act, we have developed standards for the exercise and socialization of dogs and are proposing a new § 3.7, titled "Exercise and socialization for dogs." This section would be divided into four subsections: social contact while being housed, held, or maintained; release for exercise and socialization; methods and period of exercise; and exemptions from exercise.

Social Contact for Dogs

Under the provisions for social contact in proposed § 3.7(a), we would require that all dogs housed, held or maintained by any dealer, exhibitor, or research facility be maintained in compatible groups. We are proposing exceptions to this provision however, for certain situations that involve either the provisions of an animal care and use procedure approved by a research facility's Committee, or the health and well-being of the dogs. Because of the social nature of dogs, we are also proposing to require, with similar exceptions, that all dogs be able to see and hear other dogs. If a dog is unable to see and hear other dogs simply because it is the only dog in a facility, we would require that it receive positive physical contact with humans at least once a day. "Positive physical contact" is defined in Part 1 as "petting, stroking, or other touching, which is beneficial to the well-being of the animal." (*See* companion docket no. 88-013, published elsewhere in this issue of the **Federal Register**.) This contact would have to total at least 60 minutes each day and could be given in one or more periods.

Release for Exercise and Socialization

Provisions for the release of dogs for exercise and socialization are set forth in proposed § 3.7(b). With certain exceptions that are explained below, we are proposing to require that the following categories of dogs, if housed, held, or maintained by any dealer, exhibitor, or research facility, be released at least once a day for exercise and socialization: (1) Dogs that are kept in individual cages or that are kept individually in pens or runs that provide less than four times the space required for that dog, and that do not allow visual and physical contact with other dogs; and (2) dogs housed, held, or maintained in groups that are not provided with the

greater of 80 sq. ft. of space or 150 percent of the minimum space required for all dogs in the group. In some cases, a dog could be physically restricted from other dogs and still receive what we consider adequate social contact with other dogs. For instance, the required socialization could include a dog's being able to nuzzle another dog through a chain link fence.

However, dogs housed, held, or maintained individually would not have to be released if they are kept in pens or runs that provide at least four times the required space for that dog, and that allow the dogs visual and physical contact with other dogs. Also, in certain cases, the approved animal care and use procedure might prohibit the dogs' release for exercise and socialization. In those cases, the dogs would have to be maintained in pens or runs that provide each dog with at least twice the minimum floor space set forth in § 3.6(c)(1) of the proposed subpart with regard to primary enclosures. The exercise area would have to be at least 80 square feet, except that the area would have to provide each dog with at least twice the minimum floor space required by proposed § 3.6(c)(1).

Dogs housed, held, or maintained in groups would not have to be released for exercise if the dogs are maintained in pens or runs that provide the greater of 80 square feet or 150 percent of the space each dog would require under proposed § 3.6(c)(1) if maintained separately. The exercise area would have to be the greater of 80 square feet or 150 percent of the minimum space requirement in § 3.6(c)(1), as calculated for all dogs in the exercise area. For example, the following calculations might be used in the case of six beagles housed together. A 28-inch beagle would require a minimum floor space of 8 square feet. Therefore, 150 percent of six times the minimum per-beagle requirement of 8 square feet is 72 square feet. Since that is less than 80 square feet, the larger space would be required. We believe that 80 square feet is a generally accepted minimum standard, based on comments we received from interested parties in response to a request for information.

The exercise period for all dogs that are released for exercise would have to be at least 30 minutes each day, and could be provided in one or more release periods. The consensus of APHIS veterinarians with training and experience in the care of dogs is that 30 minutes of daily exercise is a reasonable minimum for maintenance of a dog's health and well-being.

Methods of Exercise

Proposed § 3.7(c) provides that the method or type of exercise or release period used may be determined by the attending veterinarian and may consist of one or more methods. Suitable methods would include: walking on a leash; release into a room; release into a run or pen with more than 80 square feet of floor space; or some other similar type of arrangement. While forced exercise methods such as treadmills, carousels, or swimming would not be prohibited, they would not be considered acceptable forms of exercise for the release periods. Congressional intent with regard to the Act was to give dogs an *opportunity* for exercise, not to *force* them to exercise.

Record of Exercise

Under proposed § 3.7(d), the licensee or registrant would have to keep a record of each dog's release for exercise. These records would be subject to APHIS inspection.

Exemptions from Exercise

We recognize that certain situations will require an immediate response from facility personnel when a dog's welfare requires that it be provided less than the minimum standards for release for exercise. We are therefore including a provision in proposed § 3.7(e) that would authorize an attending veterinarian to exempt or restrict a particular dog from its required exercise and social release period, if he or she determines that it is necessary to do so for the dog's health, condition, or well-being. The exemption would have to be recorded by the attending veterinarian, who would be required to review the grant of exemption at least every 30 days to determine if it is still warranted.

Feeding

In proposed § 3.8(a), concerning feeding requirements for dogs and cats, we are proposing to make minor changes to the feeding requirements in current § 3.5(a). In addition to the current provisions, we would require that food given to a dog or cat be appropriate for the animal's age.

We are proposing 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. 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 are proposing to require that food containers that are not discarded be cleaned daily and be sanitized before being used to feed a different dog or cat or social grouping of dogs or cats, and, as currently required, be sanitized at least once every two weeks. Self-feeders for the feeding of dry food would have to be cleaned and sanitized regularly. Measures would have to be taken to prevent molding, deterioration, and caking of the food. Any of the sanitization methods allowed in proposed § 3.10(b)(3) could be used for the sanitization required in proposed § 3.8.

Watering

Currently, § 3.6 contains provisions for offering liquids to dogs and cats and for the cleaning and disinfection of watering receptacles. Section 3.9 of the proposed rule would continue to require that potable water be offered at least twice daily, if it is not continually available, and would 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.

Cleaning of Primary Enclosures

We are proposing to revise and reword the provisions in current § 3.7, and to include them in proposed § 3.10, to clarify the intended requirements for sanitation and other forms of hygiene. The revised section would be titled "Cleaning, Sanitization, Housekeeping, and Pest Control."

Currently, § 3.7(a) requires that excreta must be removed from a primary enclosure "as often as necessary to prevent contamination of the dogs or cats contained therein and to reduce disease hazards and odors." This wording has resulted in differences of opinion between inspectors and regulated persons as to what constitutes "as often as necessary." Therefore, in § 3.10(a), we are proposing to change this wording to require that excreta and food waste be removed from primary enclosures or from under primary enclosures at least daily and as often as necessary. This daily cleaning requirement would apply to all types of housing facilities and to primary enclosures with grill-type floors, and to the ground areas under raised runs with wire or slatted floors. Our experience indicates that daily cleaning is necessary to prevent the accumulation of feces and food waste and to reduce disease hazards, pests, insects, and odors. We are also proposing to require that when a primary enclosure is cleaned by steam or water, any dog or cat in the enclosure be removed during

the cleaning process, to prevent the animal from being involuntarily wetted or injured.

Sanitization of Primary Enclosures and Food and Water Receptacles

The provisions of proposed § 3.10(b) regarding sanitization of primary enclosures and food and water receptacles would be basically the same as those in § 3.7(b) of the current requirements, except that we would allow the option of sanitizing with live steam under pressure. Additionally, we would make minor editorial changes to the current regulations.

Housekeeping

In proposed § 3.10(c), we would revise and reword § 3.7(c) of the current regulations regarding housekeeping to clarify that paragraph's intent. The current regulations require that premises be kept free of trash accumulations and be kept clean enough and in good enough repair to protect the animals and facilitate the husbandry practices required by Subpart 3 of the regulations. We would retain the current requirements, but would add language to clarify that one of the aims of the housekeeping provisions is to keep premises rodent-free; additionally, we would specify what we would require as good housekeeping practices. We would specify that premises must be kept free of accumulations of trash, junk, waste products, and discarded matter such as wood, bricks, and abandoned cars. Weeds, grasses, and bushes would have to be controlled so as to facilitate cleaning and pest control, and to protect the dogs' and cats' health and well-being from hazards such as fox tails, burrs, sharp twigs, and fires.

Pest Control

The provisions of proposed § 3.10(d) regarding pest control would be basically the same as those in § 3.7(d) of the current requirements. We are proposing some minor revisions to simplify the language used. We are also proposing 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.

Employees

Current § 3.8 requires that there be a sufficient number of employees to maintain the prescribed level of husbandry practices required by Subpart A and that husbandry practices be under the supervision of an animal caretaker with a background in animal husbandry or care. We are proposing 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 are not proposing to prescribe a specific number of employees for each facility, because the number of employees needed will vary according to the size and configuration of the facility, and according to the number and type of animals housed there. We would require that a facility have enough employees to carry out proper feeding, cleaning, observation, and other generally accepted professional and husbandry practices.

Social Grouping

We are proposing to slightly revise current § 3.9 regarding social grouping of dogs and cats in order to reduce the stress suffered by certain dogs and cats. Under proposed § 3.12(d), we would allow dogs and cats to be maintained together in the same primary enclosure, or to be maintained in the same primary enclosure with other species of animals, if they are compatible. The present regulations require that dogs and cats be kept separate from each other, and from other animals, regardless of how well they get along together, or whether they are distressed by separation because they have been raised together and are compatible. 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.

Transportation Standards

Consignments to Carriers and Intermediate Handlers

The current obligations imposed upon carriers and intermediate handlers (defined in Part 1 of the regulations) would be expanded 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 had certain duties to fulfill after the shipment has reached its destination. Various obligations are presently contained in current §§ 3.11 and 3.14. We are proposing to consolidate them in one section, proposed § 3.13, and to add some additional ones that are necessary for the dogs' and cats' welfare.

The reader should note that our proposed regulations do not specifically refer to operators of auction sales, unlike the current regulations. The definition of the term "dealer" was amended in 1976 to include any person who "negotiates the purchase or sale" of animals for research, teaching, exhibition, or use as a pet. Operators of auction sales are therefore dealers. However, we did not remove the reference to them in the 1977 amendments to the regulations. We are proposing to do so now, to clarify the regulations. Accordingly, all references to dealers in the regulations would include operators of auction sales.

We would remove from the regulations the requirements that certifications accompanying shipments of dogs and cats include an "assigned accreditation number" (as provided in current § 3.11(c)(4)), because the program under which accreditation numbers are assigned has not been implemented.

Proposed § 3.13(c) would require that written instructions concerning food and water requirements for each dog and cat in the shipment be securely attached to the outside of the primary enclosure before a carrier or intermediate handler can accept it for transport. This requirement is contained in current § 3.14(d). The instructions would have to be easily noticed and read. Current § 3.14 also requires that adult dogs and cats be given food at least once every 24 hours after acceptance for transportation, and water at least once every 12 hours after acceptance for transportation. It is conceivable under these regulations that a dog or cat could have been fed up to 24 hours before being consigned for transport in commerce and would then not be offered food for another 24-hour period. To avoid this occurrence, we are proposing to add a certification requirement to proposed § 3.13(d) that would require that a carrier or intermediate handler not accept a dog or cat for transport in commerce unless certification by the consignor accompanies the animal and specifies in writing the date and time each dog and cat was last provided food and water before acceptance for transport. Proposed § 3.16 would require that the time periods for feeding and watering the dogs after acceptance for transport begin with the time of the last feeding and watering before acceptance for transport. To avoid situations where the carrier or intermediate handler would have to provide food and water immediately after accepting the animals, we would require that the certification also state that the dogs and cats were provided water within the 4 hours before delivery to the carrier or

intermediate handler, and were provided food within 12 hours before delivery to the carrier or intermediate handler.

Carriers and intermediate handlers would not be allowed to accept dogs and cats for transport unless the certification described above is signed and dated by the consignor, and the time of the execution of the certification is included. This certification as well as others required in proposed § 3.13 would have to include the tag number or tattoo assigned to each dog and cat under § 2.50 of the regulations.

The certifications of the consignor regarding the acclimation of a dog or cat to lower temperatures than those prescribed in current §§ 3.16 and 3.17 of the regulations (included in proposed §§ 3.18 and 3.19) would be clarified. Proposed § 3.14(f) would 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. A carrier or intermediate handler would 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.

Proposed § 3.13(g) would retain the provision in current § 3.11(d) that requires the carrier or intermediate handler to attempt to notify the consignee of the arrival of the animal upon arrival, and every 6 hours after arrival. Proposed § 3.13(g) would also include limitations on how long a dog or cat can be held at a terminal facility while waiting to be picked up by the consignee. The same time limitations are imposed under Part 2 of the regulations, § 2.80, "C.O.D. shipments" (*see* companion docket no. 88–014, published elsewhere in this issue of the **Federal Register**), 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. Proposed § 3.13(g) would also 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 would 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.

All of these certifications and notification requirements would help minimize and alleviate many of the stresses of travel for dogs and cats and accordingly are necessary for their general welfare and well-being.

Primary Enclosures Used to Transport Dogs and Cats

We are proposing to reformat current § 3.12, which concerns primary enclosures used to transport dogs and cats, and to move those provisions to proposed § 3.14. Additionally, we are proposing to revise the contents of several paragraphs in the section, and add requirements for surface transportation. When the transportation standards were rewritten in 1978 to incorporate the 1976 amendments to the Act concerning the commercial transportation of animals, the existing standards for surface transportation were inadvertently omitted. Since that time, the standards have pertained to the commercial transportation by common carrier and only a few subsections have pertained to surface transportation by private vehicle. This omission has caused numerous difficulties in the enforcement of standards regarding surface transportation of dogs and cats, and in the prosecution of persons who have improperly handled and transported dogs and cats by private surface vehicle. We are therefore proposing to reinstate the surface transportation standards that were inadvertently omitted in 1978.

We would require in § 3.14(a) that dogs and cats be shipped in primary enclosures. In addition to the requirements in current § 3.12(a) regarding construction of primary enclosures used for transportation, we are proposing to require in § 3.14(a) that the primary enclosure be constructed so that: (1) The animal being transported is at all times securely contained within the enclosure and cannot put any part of its body outside of the enclosure in a way that could injure the animal or people; (2) any material used in or on the enclosure is nontoxic to the animal; and (3) if a slatted or wire mesh floor is used in the enclosure, it be constructed so that the animal cannot put any part of its body through the spaces between the slats or through the holes in the mesh. Unless the dogs and cats are on raised floors made of wire or other nonsolid material, the primary enclosure would have to contain enough previously unused litter to absorb and cover excreta.

In addition to retaining the cleaning and sanitization requirements that currently appear in § 3.12(e), we would also 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.

In proposed § 3.14(c), we set forth ventilation requirements more restrictive than those in the current regulations by removing two of the current options for primary enclosure configurations with regard to ventilation. The current regulations allow the primary enclosures to have ventilation openings on either two, three, or four sides. Studies made by the Civil Aeromedical Institute, Federal Aviation Administration, Oklahoma City, OK, indicate that maximized ventilation with regard to transportation crates is beneficial to the well-being of dogs, by allowing them to adjust better to the high temperatures and humidity encountered when shipped in warm weather. These studies also indicate that, within reason and for short periods of time, increased ventilation in transportation crates is not detrimental to dogs during cold weather. Therefore, we are proposing to require that there be ventilation openings on each of the four walls of primary enclosures used to transport dogs and cats, and that the ventilation openings total at least 8 percent of the total surface of each wall, with the total combined surface area of the ventilation openings comprising at least 14 percent of the total combined surface area of all the walls of the primary enclosure.

Section 3.12(h) of the current regulations requires that a primary enclosure that is permanently affixed to a primary conveyance so that the front opening of the enclosure is its only source of ventilation must face either the outside of the conveyance or an unobstructed aisle or passageway. Because primary enclosures that open directly to the outside of the conveyance may expose the animals in the enclosure to the elements, we are proposing in § 3.14(c)(3) to require that enclosures

with a front opening open only to an unobstructed aisle or passageway. We are also proposing 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. Under the current regulations, § 3.12(b) requires that live dogs or cats transported in the same primary enclosure be of the same species and be maintained in compatible groups. We are proposing 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. Based on our observations of shipments of dogs and cats and on information received from pet owners and dealers, we have determined that shipping companion animals individually may cause them more stress than shipping them together.

We are also proposing in § 3.14(d) that: (1) Puppies or kittens 180 days of age of less may not be transported in the same primary enclosure with adult dogs or cats other than their dams; (2) dogs or cats that are aggressive or vicious must be transported individually in a primary enclosure; and (3) female dogs or cats in season (estrus) must not be transported in the same primary enclosure with any male dog or cat.

The requirement in § 3.12(c) that each dog or cat transported in a primary enclosure have sufficent space to turn about freely in a standing position, and to sit, and lie in a natural position would be retained and moved to proposed § 3.14(e)(1).

Transportation by Air

Because certain requirements for primary enclosures used in surface transportation were omitted from the 1978 revisions to the regulations, the provisions in current § 3.12(d) regarding the number of animals that may be transported in a primary enclosure are designed only for air transportation. We are therefore proposing to set forth the provisions of current § 3.12(d), with some amendments, in proposed § 3.14(f), titled "Transportation by air." We are proposing that a maximum of two live dogs or cats, 6 months of age or more, that are comparable in size, may be transported in the same primary enclosure when shipped by air. The present standard allows only one dog or cat, 6 months or more of age, to a container. Although the current regulations were establish to minimize stress on animals being shipped, we have determined from our observations at airports, and from information received from pet owners and dealers, that it is often more stressful for a dog or cat to travel alone than in an enclosure with a companion animal.

We are also proposing that a maximum of two live puppies, 8 weeks to 6 months of age, of comparable size, and weighing over 20 lb (9 kg) each may be transported in the same primary enclosure. Present standards allow only one such puppy per primary enclosure. The present standards also allow only two live puppies and kittens, 8 weeks to 6 months of age, but not weighing over 20 lb (9 kg) each, to be shipped in the same primary enclosure. We are proposing that it be permissible to transport a maximum of three such puppies or kittens in the same primary enclosure. As we noted above, we believe it is appropriate to allow an animal being shipped the opportunity for companionship, and the small size of the animals described by this provision would allow three animals to be shipped comfortably in standard air shipping enclosures. In proposed § 3.14(f)(4), we would retain the provision in current § 3.12(d) that weaned puppies or kittens less than 8 weeks old and of comparable size, or puppies or kittens that are less than 8 weeks old and are littermates accompanied by their dam, may be shipped in the same primary enclosure to research facilities. This provision is limited to research facilities by the Act.

Transportation by Surface Vehicle

We are proposing to add a new § 3.14(g) regarding transportation by surface vehicle. These provisions would reinstate primary enclosure requirements that were inadvertently omitted when the standards for the commercial transportation of dogs and cats were revised in 1978. We are proposing 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. We would allow shipment of more dogs and cats in surface vehicle enclosures than in air shipping enclosures for several reasons. First, standard enclosures for surface transportation are larger than than those customarily used for air transportation. Additionally, when animals are transported by surface vehicle, there is more opportunity for the driver or another person to check on the animals to ensure that their health is being maintained and that the animals are compatible.

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.

Documents Accompanying Animals

Proposed § 3.14(h) would require 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. Instructions for food and water and for administration of drugs, medication, and other special care would have to be attached to each primary enclosure in a manner that makes them easy to notice, to detach for examination, and to reattach securely.

Primary Conveyances

To protect the health of dogs and cats during transportation in commerce, the regulations in current §§ 3.16 and 3.17 prohibit animals in transporting devices or holding areas of terminal facilities from being subjected to temperatures above or below a specified range. Temperature is also of concern when animals are being transported in the cargo spaces of primary conveyances. Until 1978, requirements concerning allowable temperatures in primary conveyances were included in § 3.13 of the regulations. However, these requirements were inadvertently omitted from the regulations during the last major revision in 1978.

The intervening years have demonstrated the need to reinstated these requirements for two principal reasons: (1) The current requirements concerning temperatures in primary conveyances are inconsistent, because dogs and cats in transporting devices and in holding areas of terminal facilities must not be exposed to temperature outside a specified range, but dogs and cats in animal cargo spaces of primary conveyance—mainly cars and trucks—are not afforded the the same protection; and (2) as air freight rates have risen dramatically during this time, increasing numbers of animals are being shipped by surface transportation—some for very long distances—with no provision that the animals are not subjected to extremes of temperature.

Under the requirements for air transportation in proposed § 3.15(d), we would specify 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. The cargo areas would also have to be pressurized while the conveyance is in the air. In proposed § 3.15(e), we would require that during surface transportation, auxillary 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, 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 are proposing to add requirements in proposed § 3.15(c) that a primary conveyance in a way that provides protection from the elements. Current § 3.13(f) requires that dogs and cats not be transported with any material, substance or device that may reasonably be expected to harm the animals. In proposed § 3.15 (h), we would clarify the intent of that requirement to indicate that the material, substance or device must not accompany the animals only the shipment is conducted "in a such a manner" that might be reasonably be expected to harm the dogs and cats.

Food and Water Requirements

Requirements regarding food and water for dogs and cats being transported, currently contained in § 3.14, would be set forth in proposed § 3.16. We would remove the provision concerning the minimum amount of water that must be offered to dogs or cats under 16 weeks of age. The current regulations require that these dogs and cats be offered at least 60 cc (approximately 2 oz) of potable water within a prescribed time. The minimum amount in the current regulations is so small that we believe the young dogs and cats would be better served by simply falling under the general requirements concerning the offering of potable water.

Current § 3.14(a) requires that dogs and cats be offered water within 12 hours after the start of transportation or acceptance for transportation. Current § 3.14(b) requires that puppies and kittens be provided food at least once every 12 hours, and dogs and cats over 16 weeks of age be provided food at least once every 24 hours. The current regulations specify that these time periods begin at the time the animals are accpeted for transport or the time transport begins, depending on who is carrying out the transport. This method of calculating when the time begins, however, could result in some dogs and cats not being provided water and food for unacceptably lengthy periods of time—in those cases where the animals were provided food and water the maximum time allowed before transport or acceptance for transport, and then not again until the maximum time allowed after transport or acceptance for transport. Therefore, we are proposing in §§ 3.16 (a) and (b) that the time periods for providing food and water to the animals *after* transport or acceptance for transport begin at the time the 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, consignors subject to the regulations would 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. The proposed regulations would require that the certification include the date and times the food and water was offered.

The provisions in current § 3.14(d), concerning a carrier or intermediate handler's responsibility regarding written feeding and watering instructions, would be set forth in proposed § 3.13(c). We are proposing to add the provision that 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. We are proposing this provision based on information from carriers and intermediate handlers, which indicates 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.

§ 3.17 *Care in Transit.* The provisions regading care in transit in current § 3.15 would be set forth in proposed § 3.17. We are proposing some minor reformatting for readability, and three additions to the current provisions. The current regulations require that the driver of a surface vehicle check on the dogs or cats he or she is transporting. In proposed § 3.17(a), we would allow this observation to be conducted either by the operator of the conveyance or a person accompanying the operator, but would 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 would use language that specifies that dogs and cats in obvious physical distress be given veterinary care at the closest available veterinary facility. We are proposing to make this change to clarify our intent as to the meaning of "as soon as possible" in the current regulations.

In proposed § 3.17(c), we would add an exception to the current regulations that prohibit transport in commerce of a dog or cat in physical distress, to allow transport for the purposes of obtaining veterinary care for the condition.

We are proposing to add a subsection § 3.17(e), that would specify that these transportation standards remain in effect and must be complied with until the animal reaches its final destination, or the consignee accepts delivery of the animal. We believe this provision is necessary to prevent any gap in care for the dog or cat and in responsibility for its care.

Terminal Facilities

Current § 3.16 imposes duties on carriers and intermediate handlers holding dogs or cats in animal holding areas of terminals to keep the animals away from inanimate cargo, to clean and sanitize the area, to have an effective pest control program, to provide ventilation, and to maintain the ambient temperature within certain prescribed limits. There is currently no similar obligation imposed on other persons who transport these animals. As a result, under the current regulations, animals could be held in animal holding areas under hazardous conditions.

We are proposing to move the provisions regarding terminal facilities to proposed § 3.18, and would require that the same duties be imposed on any person subject to the regulations who transports dogs or cats and who holds them in the animal holding areas. Because the animals require this minimum level of care no matter which regulated persons are moving them, it is illogical to place these duties only on carriers and intermediate handlers. Also, 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).

Additionally, we are proposing 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 proposed regulations would specify a procedure for measuring the ambient temperature. In cases where a terminal

facility contains more than one primary enclosure, it is possible that several temperature readings would have to be made to determine the ambient temperature at each primary enclosure. Also, proposed § 3.18(e) contains those provisions contained in current § 3.17 that require shelter from the elements for dogs and cats, because the current provisions apply to persons holding a dog or cat in an animal holding area of a terminal facility.

Handling

Current § 3.17 also imposes duties on carriers and intermediate handlers for proper handling and movement of dogs and cats. For reasons explained above under "Terminal facilities," proposed § 3.19 would also 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. 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.

Proposed § 3.19(b) would require that care be exercised to avoid handling primary enclosures in such a way that dogs or cats in the primary enclosures are cuased physical or emotional distress. Because of problems and complaints concerning the handling of dog and cat shipments in baggage areas by airlines, we are proposing 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 would 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.

Subparts B and C—Guinea Pigs, Hamsters, and Rabbits

Regulations on the humane handling, care, treatment, and transportation of guinea pigs, hamsters, and rabbits are contained in 9 CFR Part 3, Subpart B for guinea pigs and hamsters, and Subpart C for rabbits. These regulations include minimum standards for handling, housing, feeding, watering, sanitation, ventilation, shelter from extremes of weather and temperatures, veterinary care, and transportation.

We propose to amend these regulations by revising the space requirements for primary enclosures and by prescribing minimum and maximum temperatures for cargo spaces in primary conveyances. These proposed amendments are discussed in detail below.

Space Requirements for Guinea Pigs

Our current requirements concerning space in primary enclosures used to house guinea pigs (contained in § 3.28(b)(2)) are as follows:

Weight/stage of maturity	Floor area/ animal in ²	Interior height in
Weaning to 350g	60	6.5
> 350g	90	6.5
Breeders	180	6.5

In May of 1987, the National Association for Biomedical Research (NABR) petitioned us to delete the requirement for additional space for breeder guinea pigs.

In its petition, the NABR cited a study performed at Charles River Laboratories, a major laboratory animal breeder located in Wilmington, Massachusetts. This study concerned the effect of cage size on reproductivity. As described in a report accompanying the petition, the study used three groups of 60 female guinea pigs each. One group was housed four guinea pigs to a cage of 720 square inches (180 square inches each), as prescribed by Animal and Plant Health Inspection Service (APHIS) regulations. Another group was housed six to a cage of 720 square inches (120 square inches each), and the third group was housed seven to a cage of 720 square inches (102.86 square inches each). The study showed no significant difference in the reproductive performance (gross litter averages, live births, average weaning litter sizes, and total number of pups weaned during the same timeframe) between the breeder guinea pigs housed according to APHIS regulations and the breeder guinea pigs housed in less space. These results indicate that breeder guinea pigs, including nursing females with litters, do not require floor space in excess of that required for nonbreeder guinea pigs.

The NABR also cited a study performed by the Department of Comparative Medicine of the Milton S. Hershey Medical Center at the Pennsylvania State University at Hershey, Pennsylvania. This study was conducted to determine the percent of available floor space used by groups of breeder guinea pigs. The study compared a group of four guinea pigs housed in a cage of 720 square inches (180 square inches each) with a group of seven guinea pigs housed in a cage the same size (102.86 square inches each). The study hypothesized that a decrease in floor area per animal would lead to increased use of the available floor area as animals tried to avoid stress associated with overcrowding. Conversely, the study also hypothesized that if herding or family grouping were important to the well-being of the animals, a decrease in floor space would not lead to an increased use of the available floor area. A computer-coupled video tracking system recorded the movement of the guinea pigs over 12-hour light and dark cycles. The study revealed that both groups of breeder guinea pigs used the periphery of the cage almost to the exclusion of the center floor space. These results provide a basis for changing our regulations concerning space requirements for breeder guinea pigs.

We have carefully reviewed and analysed the material submitted to us. We believe the data is sound and the petition has merit. Therefore, we propose to delete our requirement for additional space for breeder guinea pigs and to require the same minimum floor space for breeder guinea pigs, including nursing females with litters, as for nonbreeder guinea pigs.

We also propose to revise the space requirements in primary enclosures for nonbreeder guinea pigs weighing more than 350 grams.

Our current regulations require a minimum floor space of 90 square inches for nonbreeder guinea pigs weighing more than 350 grams. By comparison, the NIH Guide recommends 101 square inches for each guinea pig weighing over 350 grams, only slightly less than the 102.86 square inches provided each breeder guinea pigs housed in groups of seven in the Charles River and Hershey Medical Center studies.

Based on all the data available to us, we believe that more floor space for nonbreeder guinea pigs weighing over 350 grams would be beneficial, giving them more space for moving about. Therefore, we propose to increase, from 90 square inches to 101 square inches, the minimum floor space we require for guinea pigs weighing over 350 grams.

We also propose to require that primary enclosures used to house guinea pigs have a minimum interior height of 7 inches. This is an increase of ½ inch

over our current requirement of 6½ inches. We believe than an extra ½ inch in height would benefit guinea pigs by providing additional space for them to make normal postural adjustments.

Space Requirements for Hamsters

Our current requirements concerning space in primary enclosures used to house hamsters (contained in § 3.28(b)(3)) are as follows:

Age	Floor area/animal		Interior height		Maximum population per enclosure
	Dwarf in ²	Other in ²	Dwarf in ²	Other in ²	
Weaning to 5 wks	5.0	10.0	5.0	5.5	20
5 to 10 wks	7.5	12.5	5.0	5.5	16
> 10 wks	9.0	15.0	5.0	5.5	13

In addition, § 3.28(b)(3) requires that a nursing female hamster, together with her litter, be housed in a primary enclosure that contains no other hamsters and that provides at least 25 square inches of floor space for dwarf hamsters and at least 121 square inches of floor space for hamsters other than dwarf.

We believe that increasing both floor area and cage height would benefit hamsters by providing additional room for them to move about and make normal postural adjustments. We have carefully considered the space recommendations contained in the NIH Guide. We believe that they are an improvement over our current regulations. Therefore, we are proposing to adopt the same floor area and cage height requirements as are currently in the NIH Guide. Our requirements for females with litters would not be amended.

The NIH Guide contains the following minimum space recommendations for hamsters:

Weight g	Floor area/animal		Cage height	
	in ²	cm ²	in	cm
60	10	64.52	6	15.24
60 to 80	13	83.88	6	15.24
80 to 100	16	103.23	6	15.24
> 100	19	122.59	6	15.24

The NIH Guide notes that females with litters require additional space and refers readers to our regulations.

We also propose to delete our requirements concerning maximum population per enclosure because we believe that population is not a critical factor affecting the well-being of hamsters, as long as each hamster has at least the minimum amount of floor space that we have proposed.

Space Requirements for Rabbits

Our current requirements concerning space in primary enclosures used to house rabbits (contained in (§ 3.53(b)) are as follows:

Category	Weight/animal		Floor area/animal	
	lbs	(kgs)	in ²	(ft ²)
Groups	3–5	(1.4–2.7)	144	(1)
	6–8	(2.7–4.0)	288	(2)
	>9	(>4.0)	432	(3)
Individual adults	3–5	(1.4–2.7)	180	(1.25)
	6–8	(2.7–4.0)	360	(2.50)
	9–11	(4.0–5.4)	540	(3.75)
	>12	(>5.4)	720	(5.00)
Nursing females	3–5	(1.4–2.7)	576	(4.00)
	6–8	(2.7–4.0)	720	(5.00)
	9–11	(4.0–5.4)	864	(6.00)
	>12	(>5.4)	1080	(7.50)

We believe that rabbits, like guinea pigs and hamsters, would benefit from additional space. Based on all the data available to us, we believe that the current NIH guidelines would provide them with adequate space. These guidelines are different from our current regulations in two ways, which we have carefully considered and believe are improvements over our current regulations: (1) Space recommendations are for individual rabbits only; and (2) there is a minimum interior cage height of 14 inches. Under our proposal, this would mean that rabbits housed in groups would have to be provided the same amount of floor space per rabbit as those housed individually. It would also mean that rabbits would have adequate overhead space to accommodate normal physical posturing.

The NIH Guide contains the following minimum space recommendations for rabbits:

Weight kg	Floor area/animal		Cage height	
	ft²	m²	in	cm
2	1.5	0.14	14	35.56
2–4	3.0	0.28	14	35.56
4–5.4	4.0	0.37	14	35.56
>5.4	5.0	0.46	14	35.56

The NIH Guide notes that females with litters require additional space and refers readers to our regulations.

We also propose to revise our space requirements for females with litters to the following:

	Weight of female rabbit		Minimum area/female & litters [1]		Minimum interior hgt	
	lbs	kgs	ft²	m²	in	cm
Females with litters	4.4	2	4.0	0.37	14	35.56
	4.4–8.8	2–4	5.0	0.46	14	35.56
	8.8–11.9	4–5.4	6.0	0.56	14	35.56
	>11.9	>5.4	7.5	0.70	14	35.56

[1] The minimum floor spaces indicated in the table above are for the nursing female, together with her litter.

The proposed minimum space requirements for females with litters are roughly the same as the current requirements for nursing females. We are proposing new weight categories and a new term for nursing females to make the format of the proposed space requirements for females with litters parallel the format of the proposed space requirements for other rabbits.

Ambient Temperature Requirements in Primary Conveyances

To protect the health of guinea pigs, hamsters, and rabbits during transportation in commerce, the regulations in 9 CFR in Part 3, §§ 3.40, 3.41, 3.65, and 3.66, prohibit animals in transporting devices or holding areas of terminal facilities from being subjected to temperatures above or below a specified range.

Temperature is also of concern when animals are being transported in the cargo spaces of primary conveyances. Until 1977, requirements concerning allowable ambient temperatures in primary conveyances were part of the regulations in 9 CFR Part 3, §§ 3.37 and 3.62. However, these requirements were inadvertently omitted from the regulations during the last major revision in 1977.

The intervening years have demonstrated the need to re-adopt these requirements for two principal rseasons: (1) The current requirements concerning ambient temperatures are inconsistent, because guineas pigs, hamsters, and rabbits in transporting devices and in holding areas of terminal facilities may not be exposed to temperatures outside a specified range, but guinea pigs, hamsters, and rabbits in animal cargo spaces of primary conveyances—mainly cars and trucks—are not afforded the same protection; and (2) as air freight rates have risen dramatically during this time, increasing numbers of animals are being shipped by surface transportation—some for very long distances—with no provision to ensure that the animals are not subjected to extremes of temperature.

We therefore propose to reinstate requirements concerning ambient temperatures in primary conveyances. The proposed requirements, which would be applicable to all types of primary conveyances (motor vehicle, air, rail, and marine), would require animal cargo spaces in primary conveyances transporting live animals to be mechanically sound and to provide fresh air by means of windows, doors, vents, or air conditioning so as to minimize drafts, odors, and moisture condensation. We also propose to require that auxiliary ventilation be used in any animal cargo space containing live guinea pigs, hamsters, or rabbits if the ambient temperature is 75° F (23.9° C) or higher. Furthermore, we propose to require that the ambient temperature in the animal cargo space be maintained at or below 85° F (29.5° C) but no lower than 45° F (7.2° C), except that temperatures below 45° F (7.2° C) would be allowed for hamsters and rabbits if the animals are accompanied by a certificate of acclimation to lower temperatures. Requirements concerning the certificate of acclimation are contained in § 3.35 of the regulations for hamsters and in § 3.60 of the regulations for rabbits. We do not propose to allow guinea pigs to be transported in cargo spaces where the ambient temperature falls below 45° F (7.2° C) because guinea pigs cannot tolerate such low temperatures.

These proposed requirements concerning fresh air and auxiliary ventilation are necessary to ensure that the animals have adequate ventilation. The maximum and minimum ambient temperatures would help ensure that the animals are not subjected to extremes of temperature during transportation in commerce. We recognize, however, that some hamsters and rabbits may be comfortable at temperatures below the lower limits proposed; the provisions concering the certificate of acclimation would allow them to be transported at temperatures below 45° F (7.2° C).

Miscellaneous

We propose to revise §§ 3.40, 3.41, and 3.66 of the regulations, which contain transportation requirements, to clarify that responsibility for meeting these requirements rests with any person who is subject to the Animal Welfare regulations and who transports live guinea pigs, hamsters, or rabbits. Currently, the regulations place this responsibility only with carriers and intermediate handlers. However, other persons, including dealers, exhibitors, and research facilities, including federal research facilities, hold animals in terminal facilities and move animals in transporting devices, and the same temperature restrictions are necessary for the well-being of the animals.

We propose to revise §§ 3.36 and 3.61 of the regulations, which contain requirements for primary enclosures used to transport live guinea pigs, hamsters, and rabbits, to clarify that the responsibility for meeting these requirements rests with any person who

is subject to the Animal Welfare regulations and who offers a live guinea pig, hamster, or rabbit for transportation in commerce.

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 are proposing to revise and rewrite the current regulations based on our experience administering the Act and them. We are also proposing to amend our regulations to add requirements for a physical environment adequate to promote the psychological well-being of nonhuman primates. This is specifically required by the 1985 amendments to section 13 of the Act. (See § 1752, 99 Stat. 1645, Pub. L. 99–198, amending 7 U.S.C. 2143.) We discuss each topic covered in our proposed regulations below.

In preparing to revise and amend Subpart D, we engaged in extensive study of the environmental needs of nonhuman primates that must be met to promote their psychological well-being. We actively sought input from various professional communities that are subject to the regulations. We formed a committee to study the psychological needs of nonhuman primates maintained by the research community and to make specific recommendations to us concerning the various issues presented by the 1985 amendments to the Act. This committee was comprised of APHIS representatives and ten members of the scientific research community. The members were experts recommended by the National Institutes of Health and were appointed by APHIS to formulate recommendations for means of providing an environment to promote the psychological well-being of nonhuman primates. Observers from NIH were also present during committee deliberations, although they were not members of the committee.

We also sought and obtained input from organizations, such as the National Association for Biomedical Research, which represent facilities utilizing nonhuman primates in their research.

We invited animal exhibitors to participate in the development of regulations to promote the psychological well-being of nonhuman primates. The American Association of Zoological Parks and Aquariums, a nonprofit, tax-exempt organization dedicated to the advancement of zoological parks and aquariums for conservation, education, scientific studies and recreation, formed a Primate Study Committee to develop materials concerning space requirements and the various environmental enrichments required by different species of nonhuman primates, based upon their social behavior and species-typical activity, in order to promote their psychological well-being.

The results of these efforts are explained in greater detail below in our discussion of proposed minimum space and environmental requirements.

The regulations we are proposing in this revision of Subpart D are minimum standards to be applied to all species of nonhuman primates. We are continuing to include current footnote 1 of Subpart D in this proposal, although it is revised 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 are proposing 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 are proposing are principally applicable to live nonhuman primates. As stated in proposed footnote 1, the proposed regulations apply only to live nonhuman primates, unless stated otherwise.

Housing Facilities and Operating Standards

Current sections 3.75 through 3.77 provide requirements for facilities used to house nonhuman primates. Current § 3.75, "Facilities, general," contains regulations pertaining to housing facilities of any kind. It is followed by current § 3.76, "Facilities, indoor," and § 3.77, "Facilities, outdoor." We are proposing to amend these sections to provide for an environment that better promotes the psychological well-being of nonhuman primates. We are also proposing 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 (*see* companion docket no. 88–013, published elsewhere in this issue of the **Federal Register**) as "a housing facility which provides the animals with shelter; protection from the elements; and protection from temperature extremes at all times. A sheltered housing facility may consist of runs or pens totally enclosed in a barn or building, or of connecting inside/outside runs or pens with the inside pens in a totally enclosed building." The term "mobile or traveling housing facility", also defined in Part 1, means "a transporting vehicle such as a truck, trailer, or railway car, used to house animals while traveling for exhibition or public education purposes."

Some of the requirements we are proposing for housing facilities are applicable to housing facilities of any kind. As in the current regulations, these standards of general applicability would be included in one section, proposed § 3.75, which would also include many of the provisions in current § 3.75. Additionally, we are proposing amendments to the current regulations that are specific to particular types of housing facilities, and are including those provisions in separate sections of the proposed regulations. In some cases, where the current regulations would be unchanged in substance, we have made wording changes to clarify the intent of the regulations.

Housing facilities, general

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 are proposing 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.).

In proposed § 3.75(b), we are proposing to add the requirement that a dealer's or exhibitor's housing facilities be physically separated from any other business. When a housing facility is located on the same premises as any other business there is likely to be increased traffic and activity which is known to be distressful to nonhuman primates. Also when more than one dealer maintains facilities on the premises, it can be difficult to determine which dealer is responsible for which animals and for the conditions of the facility. This has made inspection and enforcement of the regulations difficult. To avoid these difficulties we are proposing to require that housing facilities, other than those maintained by research facilities and federal

research facilities, be physically separated from other businesses. This can be done by using a security fence or by conducting each business in a separate building. The means of separation used would have to be constructed so that it prevents unauthorized humans, and animals the size of dogs, skunks, and raccoons, from going through it or under it. For example, if a security fence is used, it would have to be at least 6-feet high and constructed in a manner that restricts any unauthorized entry. We are not imposing this requirement 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 research facilities.

We are also proposing in subsection (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 are proposing that they must be kept free of clutter, including equipment, furniture, or stored material, and materials not necessary for proper husbandry practices.

In proposed § 3.75(c) we are proposing to include requirements concerning housing facility surfaces that are common to all types of facilities. The current regulations require that interior surfaces of indoor housing facilities be constructed and maintained so that they are substantially impervious to moisture and may be readily sanitized. They do not specify frequency of sanitization. They also do not provide any requirements for building surfaces used in outdoor housing facilities.

Under our proposal, any surfaces that come in contact with nonhuman primates must be maintained regularly so that they are kept in good condition. Interior surfaces and furniture-type fixtures or objects within the facility, such as perches, swings, and dens, must be made so that they can be readily cleaned and sanitized, or removed or replaced when worn or soiled. We are proposing 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 are requiring instead that they be removed or replaced when worn or soiled. This requirement appears in proposed § 3.75(c)(2). Otherwise, the manner of construction and the materials used must allow for cleaning and sanitization.

Proposed § 3.75(c)(1) would require that surfaces that come in contact with nonhuman primates be free of jagged edges or sharp points that could injure the animals, as well as rust that prevents the required cleaning and sanitization or affects the structural integrity of the surfaces. Because we recognize that as long as water is used to clean animal areas metal parts will rust, we would allow some rust on metal areas, as long as it does not reduce structural strength or interfere with proper cleaning and sanitization because that could present hazards to the animals.

Proposed § 3.75(c)(3) would require that hard surfaces that come in contact with nonhuman primates be cleaned daily and sanitized at least once every two weeks and as often as necessary to prevent any accumulation of excreta or disease hazards, in accordance with generally accepted husbandry practices, unless the nonhuman primates engage in scent marking. 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 primates to have their scent marks eliminated since they lose their territorial claims and their frame of reference. We are therefore proposing that hard surfaces that come in contact with nonhuman primates that scent mark be spot cleaned daily and that they be sanitized at regular intervals that would be determined in accordance with generally accepted professional and husbandry practices. We invite comments on the length of intervals that should be allowed to pass between regular cleanings for those species engaging in scent marking.

We are proposing 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. Proposed § 3.75(c)(3) would provide that outdoor floors could be made of dirt, sand, gravel, grass, or other similar material that can be readily cleaned and is removable.

Proposed § 3.84(b)(3) provides 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, 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. Planted enclosures and floors made of dirt, sand, gravel, grass, or other similar material would have to be raked and spot cleaned daily, since sanitization is not practicable. 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.

In the current regulations, § 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 this proposed rule, provisions concerning water and electric power are set forth in § 3.75(d). We are proposing there to eliminate the qualifying statement cited above, and to *require* reliable electric power that is adequate for heating, cooling, ventilation, lighting, and other husbandry requirements, and mechanically pressurized potable running water for the nonhuman primates' drinking needs and adequate for cleaning and for carrying out other husbandry requirements. Based upon our inspections of dealer, exhibitor, and research facilities, we believe that nonhuman primate facilities subject to the Animal Welfare regulations cannot be properly cleaned and maintained without electric power and running potable water under pressure.

We are proposing in § 3.75(e) to expand the regulations in current § 3.75(c) concerning proper storage of food and bedding supplies. We would retain the requirements that food and bedding be stored so as to protect them from vermin infestation or contamination, and that perishable food be refrigerated. We are proposing requirements to ensure further the quality of the physical environment surrounding nonhuman primates. We are proposing to add a requirement that food and bedding be stored in leakproof containers to protect the supplies from spoilage, contamination, and vermin infestation, and that open food and bedding supplies be kept in leakproof

containers with tightly fitting lids to prevent spoilage and contamination. Proposed § 3.75(e) would require that substances that would be toxic to nonhuman primates be stored away from animal areas and food storage and preparation areas. Only the food and bedding in use could be kept in animal areas and we would require that when they are not in use they must be properly stored. In addition, 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.

The proposed regulations would continue to require that housing facilities provide for removal and disposal of animal and food wastes, bedding, dead animals, and debris, as provided in current § 3.75(d). We are proposing to clarify this requirement so that it clearly applies to all fluid wastes and to include a requirement that arrangements must be made for prompt daily removal and disposal of wastes. Removal and disposal must be done more than once each day if necessary to avoid problems with odors, pests, insects, and diseases. The proposed regulations would also require that trash containers be leakproof and tightly closed when not in use, and that all forms of animal waste, including dead animals, be kept out of food and animal areas.

Requirements for drainage systems are currently provided in §§ 3.76(e) and 3.77(d) for indoor and outdoor facilities, respectively. Because all types of animal housing facilities, including sheltered housing facilities and mobile or traveling housing facilities, require a proper disposal facility and drainage system, we are proposing to consolidate all drainage and waste disposal requirements in proposed § 3.75(f). The requirements for drainage systems would be expanded 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 would 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. Drainage systems must also rapidly eliminate animal wastes and water so that the animals can stay dry. This is necessary because it is known to be distressful to nonhuman primates to be involuntarily wetted.

The requirement contained in current § 3.75(e) that washing facilities be available to animal caretakers for their cleanliness would be retained and would appear in proposed § 3.75(g).

Requirements for different types of housing facilities

The current regulations specify two kinds of housing facilities, indoor and outdoor. These terms are defined in Part 1 of the regulations. (*See* companion docket no. 88-013, published elsewhere in this issue of the **Federal Register**.) An indoor housing facility is defined as "any structure or building with environmental controls housing or intended to house animals" that is fully enclosed and has a continuous connection between the floor, ground, and ceiling, is capable of being temperature and humidity controlled, and has at least one door for entry and exit. An outdoor housing facility is defined as "any structure, building, land, or premise, housing or intended to house animals, and which does not meet the defintion of an indoor housing facility or a sheltered housing facility and in which temperatures cannot be controlled within set limits. We are proposing to add two additional sections containing requirements for sheltered housing facilities and mobile or traveling housing facilities, previously defined in this document.

Requirements for enclosed or partially enclosed housing facilities

Three of the four types of housing facilities that may be used to house nonhuman primates are either enclosed or partially enclosed. They are indoor housing facilities, mobile or traveling housing facilities, and the sheltered portion of sheltered housing facilities. We are proposing to require that all of these enclosed types of housing facilities be required to provide heating, cooling, and ventilation, and to maintain temperatures within the temperature limits provided in current paragraphs (a) and (b) of § 3.76 "Facilities, indoor" as follows:

1. Temperature requirements

Under our proposal, there must be sufficient heat provided to protect nonhuman primates from cold temperatures. The ambient temperature (defined in Part 1 of the regulations as the temperature surrounding the animal) must not fall below 50 °F (10 °C). We would require cooling to protect nonhuman primates from high temperatures. The ambient temperature must not rise above 85 °F (29.5 °C), except that for mobile or traveling housing facilities only, the upper temperature limit is 95 °F (35 °C) when nonhuman primates are present, however auxiliary ventilation such as fans or air conditioning must be provided if the temperature is 85 °F (29.5 °C) or higher. Because the various species of nonhuman primates have different optimal ambient temperatures and different tolerances for higher and lower temperatures, we are proposing to require that the actual ambient temperature maintained be at a level that ensures the health and well-being of the species housed, in accordance with generally accepted professional and husbandry practices.

2. Ventilation

The current requirement in § 3.76(b) for ventilation of indoor housing facilities would be applicable to the three types of enclosed housing facilities to provide for the health, comfort, and well-being of nonhuman primates. For sheltered housing facilities the requirement would only apply to the sheltered portion of the facility since the outdoor portion could not be humidity controlled. We are proposing to add that ventilation must also be provided to minimize ammonia levels in these housing facilities and that mobile or traveling housing facilities must be ventilated to minimize exhaust fumes, to protect the well-being of the nonhuman primates.

3. Relative humidity level

Except in mobile or traveling housing facilities, we would also require that the relative humidity in enclosed facilities be maintained between 30 and 70 percent. The actual relative humdity maintained would depend upon the species housed and 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. For example, certain species of nonhuman primates are known to be less tolerant of a wide range of humidity levels and therefore should be maintained at more specific humidity levels. The NIH Guide provides precise humdity levels for certain species. Individuals subject to our regulations can refer to the NIH Guide for these animals because use of the Guide will maintain actual humidity levels within the requirements of these regulations and conforms with generally accepted professional and husbandry practices.

We are not proposing to require that a precise range of humidity levels be maintained in mobile or traveling

housing facilities since they travel into all parts of the United States which have varying levels of humidity. Typically, the species of nonhuman primates that travel in these facilities are chimpanzees used in circuses and trained animal acts. Chimpanzees can tolerate a wider range of relative humidity levels than most species of nonhuman primates and would not be exposed to an undue health hazard if there is no range of humidity levels specified in the regulations. However, we would require that the relative humidity level be maintained at a level that ensures the health and the well-being of the species housed, in accordance with generally accepted professional and husbandry practices. Operators of mobile or traveling housing facilities as well as all other housing facility operators would still be subject to the general requirement contained in footnote 1 which provides that these regulations must be applied in accordance with customary and generally accepted professional and husbandry practices considered appropriate for each species and accordingly could not expose nonhuman primates to relative humidity levels that are considered hazardous to that species' physical well-being without violating the regulations.

4. Lighting

The proposed regulations would continue the requirement presently imposed upon indoor facilities in current § 3.76(c) to provide adequate light to premit routine inspection and cleaning of the housing facility, and observation of nonhuman primates. This requirement would apply to the three types of enclosed housing facilities included in the proposed regulations. We are proposing in proposed §§ 3.76(c), 3.77(c), and 3.79(d) to require a daily lighting cycle of at least 8 consecutive hours of light and at least 8 consecutive hours of darkness each day in order to maintain a normal lighting cycle for the nonhuman primates' well-being. A diurnal lighting cycle is known to be necessary for nonhuman primates to maintain normal breeding practices and to promote their psychological well-being. We would continue to allow artificial light to be used, but the proposed regulations would specify that it must provide full-spectrum illumination. Safeguards against exposing nonhuman primates to excessive light would be retained and would apply to all enclosed housing facilities

Requirements for outdoor or partially outdoor housing facilities

1. Shelter from the elements.

Outdoor housing facilities cannot be temperature controlled. Our proposal would 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 climactic conditions known to occur at the facility at the time of year they are housed there to be housed in outdoor facilities, in order to protect their physical welfare.

As in current § 3.77(a)–(c) 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, nonhuman primates must be provided with shade from the sun and protection from precipitation so that they remain dry. This requirement appears in proposed § 3.78(b). We would 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 radily cleaned and sanitized in accordance with proposed § 3.75(c). The shelter provided in an outdoor or sheltered housing facility would be required to provide heat to prevent the temperature from falling below 50 °F (10 °C).

The requirement to provide protection from the elements would also be applicable to sheltered housing facilities. We would require that nonhuman primates be provided shelter from the elements at all times. Accordingly, unless the nonhuman primates have continual ready access to the sheltered portion of the facility, some additional form of shelter must be provided that satisfies the requirements contained in paragraphs (a) through (e) of proposed § 3.77.

Proposed §§ 3.77(e) and 3.78(c) would require that the shelters in both sheltered and outdoor housing facilities be large enough to provide protection comfortably to all the nonhuman primate housed in the facility at the same time. Sheltered housing facilities and outdoor housing facilities would be required to have multiple shelters if there are aggressive or dominant animals present that might deter other nonhuman primates from utilizing the shelters when they so desire. We considered multiple shelters necessary under these circumstances in order to prevent the destress that would result if a nonhuman primates was prevented from occupying a shelter because it was intimidated.

2. Perimeter fence.

We are proposing additional requirements for housing facilities having outdoor areas, in order to protect the safety of nonhuman primates and to provide for their well-being. In proposed §§ 3.77(f) and 3.78(d), we would require that unless a natural barrier exists that would restrict the animals to the housing facility and prevent unauthorized humans and animals from having contact with the nonhuman primates, a perimeter fence at least 6 feet in height be placed around the outdoor areas of sheltered housing facilities and outdoor housing facilities, and that it be placed at least 3 feet from the outside wall of the primary enclosure. In certain settings a perimeter fence is not needed because the animals are protected by natural barriers, such as moats or swamps surrounding the facility. The exception for natural boundaries would be subject to the Administrator's approval. The perimeter fence could be slatted, latticed or of other similar design, as long as it is designed and constructed in a manner that restricts unauthorized humans and animals from entering or have 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 would require that it be placed at least 3 feet from the outside wall of the primary enclosure because this is considered to be a sufficient safety zone between the nonhuman primates and the public and would allow sufficient room to use cleaning equipment necessary for cleaning the waste and refuse that nonhuman primates throw into it. The fence would not be required if the outside walls of the primary enclosure are 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 would 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.

Additional safety requirement

We are also proposing 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. Public barriers would be required for sheltered housing facilities under proposed § 3.77(g),

outdoor housing facilities under proposed § 3.78(e), and for mobile or traveling housing facilities under proposed § 3.79(e). The proposed regulations would require barriers preventing unauthorized physical contact between the public and nonhuman primates for fixed public exhibits and traveling animal exhibits, at any time the public is present, both to protect the public and the nonhuman primates. We are also proposing 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. The proposed regulations would permit trained nonhuman primates used in animal acts and uncaged public exhibits to have physical contact with the public, as allowed under § 2.131, but only if the nonhuman primates are under the direct control and supervision of an experienced handler or trainer at all times during the contact, in order to prevent injury to both the nonhuman primates and the public.

Primary enclosures

We are proposing to revise completely current § 3.78, "Primary enclosures." We are doing so in accordance with the 1985 amendments to the Act. Under the amendments, the Secretary of Agriculture is directed to "promulgate standards to govern the humane handling, care, treatment, and transportation of animals by dealers, research facilities, and exhibitors." The standards must include minimum requirements "for a physical environment adequate to promote the psychological well-being of primates." (7 U.S.C. § 2143(a)(2)(B)) Included among the primary enclosures subject to the regulations would be those used by circuses, carnivals, traveling zoos, educational exhibits, and other traveling animal acts and shows. As explained in greater detail below, we are proposing different minimum space and environment requirements for research facilities, dealers, exhibitors, and traveling or mobile animal act exhibitors, in order to promote the psychological well-being of nonhuman primates and to provide for the primates' minimum needs. All primary enclosures would be required to meet the proposed minimum requirements. We consider the proposed requirements to be the minimum necessary for nonhuman primates' health, safety, and psychological well-being.

Our proposal is in contrast to current § 3.78, which provides general requirements for construction and maintenance of primary enclosures and uniform space requirements for every nonhuman primate housed in a primary enclosure.

We are also proposing to add a subsection on social grouping of nonhuman primates within primary enclosures.

General requirements

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." Proposed § 3.80(a) would continue to require that primary enclosures be structurally sound and maintained in good repair to protect the animals from injury, to contain them, and to keep predators out, that they enable the animals to remain dry and clean, that they provide the animals with convenient access to clean food and water, that their floors be constructed in a manner that protects the animals from injury, and that they provide sufficient space for the nonhuman primates to make normal postural adjustments with freedom of movement.

We are also proposing in proposed § 3.80(a) to require specifically that the primary enclosures have no sharp points or edges that could injure the animals, that they keep unauthorized people and predators from entering the enclosure or having physical contact with nonhuman primates, that they provide shelter and protection from extreme temperature and weather conditions that can be dangerous to the animals' health and welfare, that they provide sufficient shade to protect all the animals contained in the enclosure at one time, and that they enable all surfaces to be readily cleaned and sanitized or replaced if worn or soiled.

These additional requirements are intended to provide more specific minimum criteria that must be satisfied by regulated persons maintaining nonhuman primates in order to provide for the welfare of the animals.

Social grouping

We are proposing to include a new subsection of proposed § 3.80 "Primary enclosures" to emphasize that nonhuman primates must be grouped in a primary enclosure with compatible members of their species or with other nonhuman primate species, either in pairs, family groups, or other compatible social groupings, whenever possible and consistent with providing for the nonhuman primates' health, safety, and well-being, unless social grouping is prohibited by an animal care and use procedure and approved by the facility's Committee. Compatibility would be based upon generally accepted professional practices and upon observation of the nonhuman primates to determine that they are in fact compatible. We are proposing this requirement based upon scientific evidence and our experience, both of which indicate that nonhuman primates are social beings in nature and require contact with other nonhuman primates for their psychological well-being. The expert committee convened by APHIS also recommended social grouping to promote the psychological well-being of nonhuman primates. Social deprivation is regarded by the scientific community as psychologically debilitating to social animals. Where social grouping is not possible or is determined by the attending veterinarian to be contrary to providing for the nonhuman primates' health, safety, and well-being as explained below, or is prohibited by an animal care and use procedure approved by the research facility's Committee in accordance with Part 2 of the regulations, we are proposing to require that nonhuman primates be at least able to see and hear other nonhuman primates, unless this is also prohibited by an animal care and use procedure approved by the research facility's Committee. In this case, the isolated individually housed nonhuman primates would be required to have positive physical contact or other interaction with their keeper or with another familiar and knowledgeable person for at least one hour each day. We invite comments addressing the different measures that may be taken to satisfy the requirement to provide positive physical contact or other interaction to individually housed nonhuman primates.

Space and physical environment

As stated above, we are completely revising the minimum space requirements for nonhuman primates set forth in current paragraphs (1) and (2) of § 3.78(b). The current requirements specify that primary enclosures be "constructed and maintained so as to provide sufficient space to allow each nonhuman primate to make normal postural adjustments with adequate freedom of movement" and provide a minimum floor space equal to an area of at least three times the area occupied by each animal when standing on four feet, regardless of the size or condition of the animal. We are also proposing to add requirements for enhancing the environment of the primary enclosures used for maintaining nonhuman

primates, in accordance with the 1985 amendments to the Act.

In preparing our proposal of minimum requirements for a physical environment adequate to promote the psychological well-being of nonhuman primates, we utilized the Agency's expertise and experience in regulating the humane handling, care, and treatment of nonhuman primates. Because this is the first occasion the Agency has been charged with responsibility for regulations to promote the psychological well-being of nonhuman primates, we considered it important and instructive to consult with experts and representatives of regulated industries. We requested their advice on the minimum space and other environmental requirements they considered necessary to meet the psychological needs of nonhuman primates.

As stated previously in this Supplementary Information, the National Institutes of Health (NIH), Public Health Service recommended experts to advise us regarding minimum standards for promoting the psychological well-being of nonhuman primates. A group of 10 nonhuman primate experts was selected and was asked to formulate a recommendation for these minimum standards. We also requested the American Association of Zoological Parks and Aquariums (AAZPA) to recommend minimum requirements. Both groups presented us with a comprehensive report consisting of their recommendations for appropriate space requirements, environmental enhancements, social grouping and interaction, and other minimum standards they considered necessary to promote the psychological well-being of nonhuman primates. The consensus of opinion was that nonhuman primates need physical and mental stimulation for their psychological well-being, to enhance their developmental growth, and to make them better socially adjusted. The reports indicated that the need for stimulation could be met by allowing them sufficient space to engage in species-typical behavior, by providing enclosure complexities such as perches and swings, by providing manipulable objects (such as balls and other objects), and by varying the methods of feeding (such as allowing the primates to forage for food). The reports indicated that social interaction and exercise are equally necessary to promote their psychological well-being and that social grouping increases the primates' physical activity. The reports differed, however, in their recommendations of the precise means, or combination of means, considered necessary to promote the primates' psychological needs. Based on these reports and our observation of and experience with nonhuman primates, and considering the differences of opinion among the various professional communities maintaining nonhuman primates, we have determined that nonhuman primates have an acknowledged need for physical and mental stimulation, and that their needs can be met in various ways.

We have considered the environmental conditions under which nonhuman primates are maintained by regulated persons, and are proposing minimum standards for primary enclosures used by research facilities (including federal research facilities), dealers, exhibitors, and traveling or mobile animal act exhibitors. We have proposed four sets of minimum standards because the environment in which a nonhuman primate is maintained may satisfy some of its needs and may require providing other forms of stimulation or environmental enhancements to satisfy other needs. For example, grouping by families and compatible nonhuman primate species would meet the need for social interaction of primates maintained in permanent zoo exhibits, while creating other needs, such as the need of exhibited animals to have privacy from each other and from the public. In other cases, environmental conditions may restrict the opportunity to provide stimulation through otherwise accepted means because it may not be in the best interest of the primates' safety, health, and well-being to do so. For example, dealers may need to individually house newcomers if placing them in an enclosure with an established group would cause aggressive behavior among the other nonhuman primates. The psychological needs of the individually housed primates would have to be met through other means.

Accordingly, as explained in greater detail below, we are proposing that primary enclosures used to maintain nonhuman primates must provide sufficient space, as set forth in our proposal, and that nonhuman primates must have exercise, social interaction (or human interaction), and environmental enrichments, consistent with their safety, health, and well-being. The minimum amount of space that would be required for each nonhuman primate, and the kind and amount of other means of meeting psychological needs that would be required under our proposal would vary among the four sets of minimum standards and would depend upon all the forms and opportunities for physical and mental stimulation presented to nonhumn primates in the environments typically provided by research facilities, dealers, exhibitors, and mobile or traveling animal act exhibitors, respectively. Under our proposal, when an acknowledged means of providing the stimulation considered necessary for the primates' psychological well-being is amply supplied because of the environment in which the primates are maintained, other requirements for providing stimulation may be affected, as long as a sufficient amount and variety of stimulation is provided to meet the animals' psychological needs.

The proposed space requirements are minimum standards that must be provided to *each* nonhuman primate contained in a primary enclosure, unless otherwise specified. Consequently, if two nonhuman primates are housed together in one enclosure maintained by a research facility, the minimum floor area would be the sum of the minimum floor area space requirements that must be provided to each animal. The minimum height for the animal would likewise be increased, up to twice the greatest height required for any of the nonhuman primates contained in the primary enclosure but not to exceed 84 inches in height. This is because taller enclosures would not fit in most rooms and would not be necessary as long as each animal has a sufficient volume of space. Also, the proposed regulations would not allow the size of a primary enclosure to be reduced because it contains a suspended fixture, such as a swing or a perch.

1. Research facilities, federal research facilities

Our observations of nonhuman primates maintained in research facilities and the advice of the expert committee convened by APHIS, indicate that nonhuman primates used in research typically interact regularly with their human caretakers. Studies involving nonhuman primates often require observation by and physical contact with a principal investigator, perhaps several times each day. In fact, it has been shown that even intrusive procedures, such as drawing blood, are not stressful to chimpanzees maintained in research facilities, if performed by a familiar, trusted caretaker. Interaction with human caretakers, if a positive experience, is considered significant in alleviating distress under experimental conditions and helps promote the psychological well-being of nonhuman

primates maintained in research environments.

Although human interaction provides a primary source of stimulation to nonhuman primates maintained by research facilities, we have determined that other forms of physical and mental stimulation must also be provided. The need for environmental enrichments is explained under the heading, "Additional requirements for research facilities." Specific requirements are proposed in § 3.81, "Additional requirements for research facilities."

We have also determined that nonhuman primates need greater space than that required under the current regulations, so that they can engage in species-typical physical activity that is necessary for their psychological well-being. As stated above, the minimum space requirements we are proposing must be provided to *each* nonhuman primate in an enclosure. Accordingly, nonhuman primates maintained in groups will have larger enclosures in which to engage in physical activity. Communally-housed primates engage in increased physical activity, prompted by their interaction. Those housed individually will have to be released into larger primary enclosures (at least three times the minimum area and twice the minimum height up to 84 inches) for exercise unless they are housed in primary enclosures that provide twice the minimum volume required. This release requirement is also explained in greater detail under the heading, "Additional requirements for research facilities."

We are proposing minimum primary enclosures space requirements that we consider sufficient to promote the psychological well-being of nonhuman primates, in light of the social interaction they receive and the additional environmental enhancements that must also be provided. The minimum enclosure sizes proposed are based on the typical weight of the species, except for brachiating species, in accordance with the following table:

Group	Weight		Floor Area/Animal		Height	
	lbs.	(kg.)	ft.^{2}	(m^2)	in.	(cm.)
1	2.2	(1)	1.6	(0.15)	20	(50.8)
2	2.2–6.6	(1–3)	3.0	(0.28)	30	(76.2)
3	6.6–20.0	(3–10)	4.3	(0.40)	30	(76.2)
4	20.0–33.0	(10–15)	6.0	(0.56)	32	(81.28)
5	33.0–55.0	(15–25)	8.0	(0.74)	36	(91.44)
6	55.0–88.0	(25–40)	25.1	(2.33)	84	(213.36)
7	>88.0	(>40 kg.)	50.0	(4.65)	84	(213.36)

The proposed enclosure sizes are similar to those provided in the NIH Guide, except that the NIH Guide categorizes nonhuman primates by weight into six categories, combining Groups 6 and 7 into one category for all nonhuman primate species over 55.0 pounds. We do not believe it would be appropriate to require the same minimum floor area and height for the larger great apes weighing over 88.0 pounds, such as gorillas, as for the smaller great ape species, since the former are substantially larger in size and consequently require more space for their psychological well-being. Our decision to propose seven weight groups for determining minimum space requirements is in accordance with the recommendations we received from the expert committee on nonhuman primates.

The proposed minimum floor area and height that must be provided by research facilities, including federal research facilities, were also recommended by the committee as sufficient to promote the psychological well-being of nonhuman primates.

Nonhuman primates would be categorized into these seven 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 that 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. Brachiating species are those that typically hang or swing by their arms so that they are suspended in the air and fully extended. The following are examples of the types of nonhuman primates that fall into each group:

Group 1—Marmosets, Tamarins, and infants of various species.
Group 2—Capuchins, Squirrel Monkeys and species of similar size, and juveniles 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 up to 88.0 lbs. (40 kg.) and brachiating species.
Group 7—Great Apes greater than 88.0 lbs. (40 kg.).

We determined it appropriate to provide guidelines to research facilities by proposing these seven weight groups. In most instances, the specified dimensions for the various species will be sufficient to promote the primates' psychological well-being, and the table can be used to determine the minimum space requirements for each species. However, if a nonhuman primate is unable to make normal postural adjustments and movements, or cannot do so without difficulty, notwithstanding the table, it must be provided greater space.

We encourage the design and development of pimary 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 are proposing to allow the use of primary enclosures that do not precisely meet the space requirements otherwise required of research facilities upon application to the Administrator for permission. An applicant would be required to demonstrate both in writing and through use of photographic aids that the proposed primary enclosure provides sufficient space and is designed so that the nonhuman primates can express species-typical behavior. The Administrator would grant the application if he or she determines it meets our requirements for promoting the psychological well-being of the nonhuman primates, or would deny it if he or she determines that it is detrimental to the health and psychological well-being of the nonhuman primates proposed to be housed in the enclosure. The nonhuman primates housed in the enclosure would be excused from the required social release period required in proposed

§ 3.81(a)(3) if the applicant demonstrates that the primary enclosure is designed and constructed in a manner that provides for the nonhuman primates' psychological well-being by allowing them sufficient exercise and social interaction.

Additional requirements are imposed upon research facilities to provide environmental enrichments whenever possible in accordance with the mandate of the Act, as amended, and Part 2 of the Animal Welfare regulations. Since there are unique considerations in many instances because of the necessities of animal care and use procedures, we are proposing to place these additional requirements in a separate section, proposed § 3.81, which follows this discussion of minimum space and environmental requirements. We believe that the space requirements of proposed § 3.80(c)(1) together with the requirements proposed in § 3.81 will promote the psychological well-being of nonhuman primates used in research.

2. Dealers

From our experience in regulating dealers, we have determined that dealers obtain nonhuman primates from various parts of the country and the world. These nonhuman primates are of various species and may have been transported individually or with an established group. In most instances, the time period nonhuman primates are held by dealers is relatively brief. Generally, dealers hold the animals until they are sold, which usually occurs quickly, or until arrangements are made for transferring them to their new owner. Accordingly, nonhuman primates maintained by dealers are typically subject to the stresses of travel and transiency.

Unlike nonhuman primates maintained by research facilities, that have been conditioned so that their health status is stable and known, newly imported are transported nonhuman primates can carry disease organisms requiring quarantine and/or veterinary care. Some may carry disease organisms that do not affect it, but that may affect others primates of the same species from different locales, and other species that may be suspectible. This risk exists even after they have completed a quarantine period. In addition, the stress of shipment makes them more susceptible to disease. Accordingly, health concerns frequently require that nonhuman primates be individually housed, to promote their well-being. These concerns would not impact upon established groups, since all the animals in the group would have been exposed to the same disease hazards and would generally have the same immunities.

Established groups of nonhuman primates are known to have defined social structures, with dominant animals at the head of the pecking order. When new primates of the same or different species are introduced into an established group, aggression among the primates frequently results as they attempt to establish the newcomer's status in the social structure. This aggressive behavior is dangerous for the nonhuman primates and for their caretakers. We believe that the hazards attendant to altering the social composition of an established group for what is generally a brief period may require that individual nonhuman primates obtained by dealers be housed apart from established social groups for the primates' safety, and that they should not be introduced into the group.

Accordingly, we believe that these health and safety concerns justify requiring that nonhuman primates' needs be met through means that do not include physical interaction with other nonhuman primates, in accordance with the determination of the attending veterinarian, unless the primates are part of an established group. Under our proposal, dealers would remain subject to the requirements of paragraph (b), "Social grouping," and must ensure that individually housed nonhuman primates can see and hear other nonhuman primates of their own or compatible species, or have positive physical contact or other interaction with their keeper or other familiar and knowledgeable person for at least one hour a day.

Because social interaction among nonhuman primates maintained by dealers may be restricted for health and safety reasons, we would require that dealers provide multiple enrichments of the physical environment of the primary enclosures that are appropriate for the nonhuman primates' species and age, in order to satisfy the animals' psychological needs. The proposed enrichments are essential for providing sufficient physical and mental stimulation to the nonhuman primates, particularly if they are individually housed. Examples of enrichments we would require include providing perches, swings, mirrors, or other increased cage complexities; providing toys, balls, and objects for the animals to play with or manipulate; and varying the method of feeding to make it more interesting to the primates or to stimulate feeding in nature. We would require multiple enrichments for each animal housed in a primary enclosure.

We are proposing minimum space requirements for individually housed nonhuman primates held by dealers that are twice the minimum floor area and twice the minimum height (up to a maximum of 84 inches) that research facilities would be required to provide. We believe the increase in minimum space requirements over that required of research facilities is necessary to promote physical activity because individually housed nonhuman primates may not be released for exercise and are not as active as those housed in social groups. The reader should note that nonhuman primates maintained in research facilities housed in enclosures providing twice the minimum floor area and twice the minimum height, up to a maximum of 84 inches, are not required to be released for exercise under our proposal. Nonhuman primates held by dealers also have less social interaction with other species than those maintained in research facilities, for reasons cited above, and have less interaction with humans. Increasing the required minimum space will provide an opportunity for greater physical activity and stimulation.

We would require that nonhuman primates housed in pairs, families, or other social groups be provided the same minimum space as research facilities would be required to provide. Unlike the requirements we are proposing for individually housed nonhuman primates, we are not proposing to require twice the minimum space that research facilities must provide to pairs, families, or other social groups, because the nonhuman primates will receive increased physical and mental stimulation through interaction with other group members.

The different species of nonhuman primates would be categorized into the same 7 groups as for research facilities. Because of the increased space provided, the brief time they are held by dealers, and the health and safety reasons cited above, we would not require that the animals be released for exercise or social interaction.

The proposed regulations would allow dealers to provide the same minimum space required of research facilities under certain specifically identified circumstances, when necessary. These purposes are limited to: holding the animal for a required quarantine period, having the animal receive veterinary care as directed by the attending veterinarian, and transporting the animal to or from an auction sale and holding it at the sale. All of these

occasions would be brief. Based on our observation of and experience in regulating dealers we believe that it is necessary to restrict the animals' space under these circumstances so that the dealers can properly observe and handle the nonhuman primates. It would also reduce the possibility of injury to both the nonhuman primate and its handler. The requirement to provide environmental enrichments would remain in full force to provide for the animals' psychological needs during these short-term periods.

3. Exhibitors

We believe that many of the psychological needs of nonhuman primates maintained in zoos are satisfied because they are housed in primary enclosures in social groups in more naturalistic environments. Because of their communal housing they have greater opportunity for physical activity and mental stimulation. Perches and climbing structures are often provided to them in their naturalistic environment so that the viewing public can observe their species-typical behavior. However, we have determined, based upon the information available to us, that their environment necessitates environmental enrichments to accommodate other needs in promoting their psychological well-being. For example, some species of nonhuman primates maintained in permanent zoo exhibits may require privacy and refuge from the public, and from each other, as a result of daily public exposure. Also, unlike nonhuman primates maintained by research facilities and dealers, primates maintained in permanent zoo exhibits are encouraged to mate and reproduce. It has been scientifically shown that nonhuman primates in psychological distress do not engage in normal reproductive behavior. Accordingly, their physical environment must be enriched to promote their psychological well-being, so that they may do so.

We are proposing minimum space and environmental enrichment requirements that are similar to this recommendations presented to us by the American Association of Zoological Parks and Aquariums (AAZPA) in its report. This study was compiled at our request and was the result of a collective effort of a committee of AAZPA members. The AAZPA study categorizes nonhuman primates into seven groups based upon the known social behavior of the animals, as opposed to typical weight of the species. Each nonhuman primate species has different needs, based upon its typical social behavior and physical activity that must be satisfied for their psychological well-being in a zoo or exhibition environment.

The minimum space, environmental enrichments, and social grouping required in the proposed regulations for each group of nonhuman primates is based upon our experience in regulating exhibitors and the industry's recommendations after observation of and experience with the animals. We believe they will be appropriate to promote the psychological well-being of each of the species.

The specific minimum space and environmental requirements are set forth in the rule portion of this document at proposed § 3.80(c)(3), and appear in chart form. The chart divides the various species into 7 groups and offers examples of the types of nonhuman primates included in each. For each grouping, the chart specifies the minimum number of nonhuman primates to be housed together in a primary enclosure, the minimum space requirements for that group, whether shelters are required and if so how many and of what size and the furnishings that are required to enrich the environment in the primary enclosure and provide for the animals' psychological well-being. Except for great apes, we are proposing minimum space requirements for groups of nonhuman primates, in accordance with the AAZPA recommendations, and not for individual animals.

4. Mobile or traveling animal act exhibitors

Our proposal for minimum space and environmental requirements applicable to mobile or traveling animal act exhibitors is in two parts. One part pertains to nonhuman primates that participate daily in animal acts, shows, or training periods outside of their primary enclosure. The second pertains to nonhuman primates that are permanently contained in their primary enclosure. We are proposing regulations in accordance with these two classifications because we have determined, based upon observation and our experience in regulating mobile or traveling animal act exhibitors, that animals used in trained animal acts are generally released daily for training or for performances, except during brief layovers between shows, and that untrained animals are used primarily for public exhibition and are not released. We are not aware of any nonhuman primates used in traveling exhibitions that would justify proposing an additional set of requirements.

Trained, performing nonhuman primates receive a great deal of mental and physical stimulation on a daily basis. Their lives are enriched and varied through multiple performances on a daily basis, and training sessions in between. When performing, the primates are in a close, working relationship with their trainer, and with any other animals in the act. Between performances, the nonhuman primates are given training sessions to sharpen their performances and to learn new routines. We believe that these nonhuman primates' psychological needs are met by their interaction and activity. Accordingly, we do not consider it necessary to require additional environmental enrichments in their primary enclosures. We are proposing in § 3.80(c)(4)(i) that mobile or traveling animal act exhibitors provide the minimum space required of research facilities. We believe this space is sufficient to promote the psychological well-being of the nonhuman primates when they are contained in primary enclosures.

Nonhuman primates used in mobile or traveling animal act exhibits that are not trained and are used for static or stationary exhibits do not receive daily interaction with their caretakers, unlike those maintained in research facilities. Often they are solitary exhibits, such as gorillas held for public viewing, and do not interact with other nonhuman primates. Unlike the nonhuman primates held by dealers, the animals are maintained under these circumstances for long periods, without being released, and therefore require more environmental stimuli and opportunities for physical activity to promote their psychological well-being than nonhuman primates maintained by research facilities, dealers, and exhibitors. We are therefore proposing to require multiple environmental enrichments that allow the different species of nonhuman primates to engage in species-typical behavior. The enrichments required would be similar in kind to those that dealers and exhibitors are required to provide, and they too must be appropriate for the species and age of the animal. We are proposing that the minimum space that must be provided to these nonhuman primates be at least three times the floor area and twice the height (up to a maximum height of 84 inches) that research facilities are required to provide. We believe that enclosures providing this minimum space would be appropriate for housing up to three nonhuman primates under these circumstances, since their social interaction will provide greater opportunity for physical stimulation. The minimum space provided would be required to be increased in accordance

with paragraph (d) of proposed § 3.80 for each additional 1–3 nonhuman primates also housed in the primary enclosure. We believe that the increased minimum space is necessary to encourage and allow greater physical activity and would also be consistent with highway travel restrictions. We believe that if these requirements are met, the psychological needs of these nonhuman primates will be satisfied.

Except where otherwise stated, the minimum space requirements provided in proposed § 3.80(c) are mandatory for each individual nonhuman primate housed in a primary enclosure. Accordingly, the minimum space provided must be increased when nonhuman primates are housed in multiples in a primary enclosure so that each has a sufficient volume of space in which to express species-typical behavior since overcrowding is known to result in nonhuman primates becoming agitated and to cause them to express abnormal behavior. We are proposing to require that primary enclosures be increased in size by the floor area required for each nonhuman primates if it were housed individually and that the minimum height provided by twice that required for the largest nonhuman primate in the enclosure, up to a maximum height of 84 inches. We are not proposing to require that the minimum height provided be increased for each additional animal housed in the primary enclosure since the enlarged area coupled with the doubled height should provide sufficient volume for the nonhuman primates' activity. Also, the maximum height ceiling of 84 inches is a practical limitation since enclosures of greater height would not fit in many rooms.

Based upon the cited authorities and our experience, we believe that these proposed minimum space and environmental enrichment requirements are sufficient to promote the psychological well-being of nonhuman primates maintained by regulated persons.

Variance

We understood that the proposed minimum space requirements for nonhuman primates might require persons subject to the Animal Welfare regulations to rebuild or remodel their facialities and to expend previously unanticipated and unbudgeted monies for new primary enclosures and fixtures. In some instances major structural modifications might be required in order to satisfy the proposed space requirements. Until the necessary adjustments were made, many registrants and licensees would not be in compliance with the proposed requirements.

In cases where the effective date of the regulations would not coincide with a facility's fiscal years, we are aware that budget planning and funding procedures for the next fiscal year would take some time. Once funds have been appropriated, facilities would require additional time to make the necessary space modifications. To allow facilities sufficient time to conform with the proposed minimum space requirements, we are proposing to include a mechanism for issuing variances to eligible persons. This mechanism would be similar to that already in place for licensees and registrants in Subpart E—"Specifications for the Humane Handling, Care, Treatment and Transportation of Marine Mammals."

A "variance" would be issued, in writing, by the Administrator of APHIS, and would allow an eligible registrant or licensee to continue operating even though not fully in compliance with the minimum space requirements for nonhuman primates. A variance would be limited to the proposed minimum space requirements. It would not allow noncompliance with the proposed environmental enrichment, social grouping, and release requirements; these requirements would have to be complied with upon the effective date of the regulations. The variance would be limited in scope both as to time and to the primary enclosures covered by it, and would specify the portions of the applicant's facilities to which it applied.

Registrants and licensees maintaining or handling nonhuman primates, having nonhuman primates on their premises or under their control or supervision, and not complying with the minimum space requirements proposed in § 3.80, would have to apply for a variance. Facilities that are under construction or that are in the design or preliminary construction stages on the date these regulations become effective, would not be eligible for a variance since they could adapt their construction to comply with them. However, a facility that was so nearly complete that it would require substantial modification at a previously unbudgeted and significant cost to bring it into compliance would be eligible for a variance.

A variance could be granted, at the sole discretion of the Administrator, for up to 2 years. We believe that this would allow sufficient time for a registrant or licensee to raise the necessary funds and to contract for the required work, as well as to purchase whatever fixtures or equipment were necessary for it to comply with the minimum space requirements. One extension of up to 1 year could be granted by the Administator if he or she determined that it was necessary, based upon the facts presented in the application for an extension. The extension would be granted if justified due to unforeseen situations that prevented full compliance during the variance period. As an example, unforeseen circumstances for research facilities could be nonallocation of public funds to make the necessary expenditures.

An application for a variance would be required within 60 days of the effective date of these regulations and would have to be in writing. According to the proposed regulations it must list, in detail, specific reasons why the variance was being requested, and each of the minimum space requirements the facility cannot meet. It must identify the species and number of nonhuman primates that would be affected by the variance, and must state the amount of time necessary for the applicant to come into compliance and the estimated cost of compliance.

We are proposing to require a statement from the attending veterinarian concerning the age and health status of the nonhuman primates affected by the variance, and addressing whether granting the variance would be detrimental to the affected nonhuman primates.

As is presently the case for marine mammals, the Administrator could require the submission of an outside independent expert report, if the Administrator believes it would assist him or her in determining whether the granting of a variance would be detrimental to the health and psychological well-being of the affected nonhuman primates. The applicant would bear the cost of the expert report.

The Administrator would grant an application for a variance if he or she determined it was justified, or would deny it if he or she determined that it was not justified or that granting it would be detrimental to the health and psychological well-being of the nonhuman primates affected. The grant or denial would be in writing. The applicant could request that the Administrator reconsider his or her decision to deny an application, in accordance with the requirements of § 3.80(e)(4). Similarly, a request for an extension would be granted by the Administrator if he or she determined that it was justified, or denied if he or she determined that it was not justified or that granting it would be detrimental

to the health and psychological well-being of the nonhuman primates affected. The grant or denial of the extension would also be in writing. The applicant could request that the Administrator reconsider his or her decision to deny an application for an extension, in accordance with the requirements of § 3.80(e)(5). If the extension were granted upon reconsideration, it would be retroactive to the termination date of the initial variance.

Variances would be revocable for bad faith, such as a false representation on the initial application or in the request for extension. They could also be revoked if the purposes for which they were issued were not being carried out, or if they were detrimental to the health and psychological well-being of the nonhuman primates affected.

Additional requirements for research facilities

In proposed § 3.81, "Additional requirements for research facilities," we are proposing environmental enrichments that research facilities would be required to provide, in addition to the minimum space requirements contained in proposed § 3.80(c)(1). We are doing so because the Animal Welfare Act, as amended, and the regulations contained in Part 2 of the Animal Welfare regulations (*see* companion docket no. 88-014, published elsewhere in this issue of the Federal Register impose specific duties on research facilities holding animals for research, testing, or teaching that are not imposed upon other regulated persons or industries, and that can affect their determination of the specific means employed to promote the psychological well-being of nonhuman primates. For example, § 2.30(h) requires that research facilities provide for the psychological well-being of nonhuman primates in accordance with the regulations and standards and that they maintain a record system indicating that they are complying with the regulations. Also, under the regulations in Part 2, Subpart C—"Institutional Animal Care and Use Committee and Other Requirements for Research Facilities," each facility's Committee must, among other things, review and approve a proposed animal care and use procedure [ACUP] before research, testing, or teaching can commence, inspect the facility for compliance with these regulations in accordance with § 2.35, and report deficiencies. Research facilities must also establish a written policy ensuring that the attending veterinarian is consulted in ACUP planning and development. Accordingly, in addition to prescribing the environmental enrichments that research facilities would be required to provide, proposed § 3.81 includes reference to the role of the Committee and the attending veterinarian in promoting the psychological well-being of nonhuman primates.

After considering all the information available to us, including the report of the expert committee on nonhuman primates, we are proposing the following minimum requirements to promote the psychological well-being of nonhuman primates in accordance with the Act, as amended. These requirements are in addition to the minimum space requirements set forth in proposed § 3.80(c)(1).

As explained above under the heading, "Space and physical environment," many of the psychological needs of nonhuman primates used in research facilities are met through their regular interaction with their human caretakers. However, we believe that environmental enrichments must also be provided by research facilities so that the primates can engage in species-typical behavior and receive sufficient physical and mental stimulation at all times. Proposed § 3.81(a)(1) provides examples of the kinds of enrichments that would be required under our proposal. These include: (1) Perches, swings, mirrors, and other cage complexities; (2) toys or objects to manipulate; and (3) varied methods of feeding. We would require a combination of environmental enrichments and that at least one form of enrichment from each type listed be provided. Proposed § 3.81 would also require that research facilities house nonhuman primates in social groupings in primary enclosures whenever possible, to increase their physical activity and for their psychological well-being.

We are proposing additional requirements applicable to individually housed nonhuman primates. In order to ensure that these primates have sufficient opportunity for physical activity, we would require that they be released for at least four hours of exercise each week into an area that has at least three times the floor area and twice the height of their primary enclosure. Release would not be required if they are maintained in a primary enclosure with other nonhuman primates, or if they are maintained in a primary enclosure that is at least twice as great as that required for the species, because they would have greater opportunities to engage in physical activity on an ongoing basis. Under our proposal, nonhuman primates may be placed with compatible species during the required release period. This social interaction would promote their psychological well-being and is known to increase their physical activity.

Proposed § 3.81(a)(4) would also require research facilities to provide for the special psychological needs of individually housed nonhuman primates that are infants or juveniles, that are used in research that does not provide for much activity, and those showing signs of psychological distress. We would require that they consult with the attending veterinarian who would instruct the facility as to the additional environmental enrichments that must be provided to provide for the primates' psychological well-being. These three categories of nonhuman primates are specifically identified in the proposed regulations because we concur with the expert committee on nonhuman primates that they require additional consideration of their needs to promote their psychological well-being. Infants and juveniles are in the formative period of their developmental growth and require physical and mental stimulation for normal development. They also require social interaction with other nonhuman primates so that they can function in accordance with the typical social behavior for their species. Similarly, those required to be inactive lack the physical activity and stimulation considered important for their psychological well-being, and their needs must be provided for in different ways. The special needs of those showing signs of psychological distress must also be individually addressed to prevent the development of psychological disorders. Because the needs and circumstances of individually housed nonhuman primates falling under any of these categories will differ on an individual basis, we believe it is appropriate to require that research facilities consult with their attending veterinarian, who has expertise in the care and treatment of the species being attended, and can prescribe the additional measures deemed necessary to satisfy the primates' psychological needs. We would require the attending veterinarian to keep records of these additional instructions, and they would be subject to APHIS inspection under proposed § 3.81(c).

We are proposing to add a prohibition against confining nonhuman primates in chairs, unless required by an animal care and use procedure and approved by the Committee in accordance with Part 2 of the Animal Welfare regulations, and unless the animal is

released daily for exercise for at least one continuous hour each day during the period of confinement unless continuous restraint in a chair is required by an animal care and use procedure and approved by the Committee. If continuous restraint is approved we are proposing to require that the nonhuman primate be released for exercise for at least one hour before and one hour after the period of restraint. We are proposing to include this prohibition because of the importance of physical activity in promoting the psychological well-being of nonhuman primates.

The proposed regulations would also require that documentation of the release of nonhuman primates and of additional environmental enrichments ordered under paragraph (a)(4) be kept by the attending veterinarian, subject to inspection by APHIS inspectors, and in the case of federal research facilities, to review by officials of any federal funding agency. These records would also be subject to inspection by the Committee in accordance with the regulations in Part 2. (*See* companion docket no. 88–014, published elsewhere in this issue of the Federal Register.)

We recognize that certain situations will require an immediate response from facility personnel when it is necessary to provide less than the minimum standards to a nonhuman primate, due to the condition of the animal, in order to provide for its welfare. We are proposing to include a provision in proposed § 3.81 that would authorize attending veterinarians to exempt or restrict a particular nonhuman primate from its required exercise and social release period if he or she determines that it is necessary for the nonhuman primate's health, condition, or psychological well-being due to the physical or psychological condition of the animal. The exemption would be for a period of up to 30 days and must be recorded by the attending veterinarian and subject to APHIS inspection and in the case of federal research facilities, to review by officials of any federal funding agency. We would require that the research facility be responsible for having the attending veterinarian review the grant of exemption at least every 30 days to determine if it is still warranted under the circumstances. Exemptions would be required to be included in the research facility's annual report and in the Committee's inspection report under § 2.35(b)(2)(i)(C). (*See* companion docket no. 88–014, published elsewhere in this issue of the Federal Register.) We believe that this exemption procedure would fill the need to have short-term authorization for deviation from these proposed standards due to unusual or unanticipated circumstances.

Feeding

We are proposing to revise the provisions of current § 3.79 "Feeding," to include means of enhancing the psychological well-being of nonhuman primates by varying the types of food and the methods of feeding, such as by using task-oriented feeding or allowing the animals to forage for food as in nature. We believe that requiring variation in the nonhuman primates' feeding on a daily basis is a necessary means of providing necessary mental and physical stimulation.

Proposed § 3.82 would require multiple feeding sites if members of dominant nonhuman primate or other species are fed together with other nonhuman primates and would require observation of the feeding practices of the animals to determine that each receives a sufficient amount of food. We believe that this will also enhance the psychological well-being of nonhuman primates by ensuring that each has access to food and will not be prevented from obtaining food due to the aggressive behavior of others.

We are proposing minor changes to current § 3.79 to provide that the amount of food, type of food, and frequency of feeding must be appropriate for the species, size, age, and condition of the nonhuman primate, and must be in accordance with generally accepted professional and husbandry practices and nutritional standards. In accordance with those practices and standards, consideration would also be given to the conditions under which the animal is kept, such as whether it is maintained in a primary enclosure allowing it frequent vigorous activity or if it is maintained in a primary enclosure that is more limiting, and whether it is maintained outdoors in a cold environment or in a warm environment, since these variables may affect the amount of food that is appropriate for the animal. Also, in accordance with Part 2 of the Animal Welfare regulations, any deviation from these standards due to the necessities of research must be justified by an animal care and use procedure approved by the facility's Committee. (See companion docket no. 88–014, published elsewhere in this issue of the Federal Register.)

Proposed § 3.82 would also require that nonhuman primates be fed at least once each day unless otherwise required to provide adequate veterinary care to the animals.

We would continue to require sanitization of food containers at least once every two weeks and would also require that food containers be sanitized anytime they are used to provide food to a different nonhuman primate or social grouping of nonhuman primates. Approved methods for sanitization would be those methods provided in proposed § 3.84(b) for sanitization of primary enclosures.

Watering

We are proposing minor changes to current § 3.80 to require that sufficient potable water be provided to the nonhuman primates. We are retaining 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 are proposing to add a requirement that the water be offered for at least one hour each time it is offered. The attending veterinarian could vary these requirements if he or she determines it is necessary to provide adequate veterinary care to the nonhuman primates. The proposed regulation would continue to require sanitization of water containers at least once every two weeks and would also require sanitization when used to provide water to a different nonhuman primate or social grouping of nonhuman primates. Approved methods of sanitization would be those methods provided in proposed § 3.84(b)(3) for sanitization of primary enclosures.

Cleaning, sanitization, housekeeping, and pest control

In proposed § 3.84 we are proposing requirements similar to those in current § 3.81 concerning cleaning, sanitization, housekeeping, and pest control, in order to provide for the welfare and well-being of nonhuman primates. The proposed revisions to current § 3.81 include requiring removal of excreta and food waste from primary enclosures and from pans underneath primary enclosures with grill-type floors at least daily and as often as necessary, rather than merely "as often as necessary" as in the current regulations, and requiring removal of the animals from a primary enclosure when a cleaning method using water is performed so that they will not be involuntarily wetted or injured. We are proposing to require that fixtures inside of primary enclosures, such as bars and shelves, must be kept clean and be replaced when worn. In addition to requiring sanitization of planted areas inside of primary enclosures and gravel, sand, and dirt surfaces by removing contaminated material, the proposed regulations would require that they be raked and spot cleaned daily. As explained above under the heading "Facilities, general" if the nonhuman primates engage in scent marking, the

primary enclosures must be spot cleaned daily and sanitized at regular intervals established in accordance with generally accepted professional and husbandry practices, so as not to cause those animals psychological distress.

We believe that these additional requirements will enhance the physical environment in which nonhuman primates are maintained through cleanliness and that they are necessary for their general welfare.

We are proposing nonsubstantive changes to current subsections (a)–(d) for purposes of clarity. We believe that these clarifications will make the regulations easier to understand and comply with.

Employees

Current § 3.82 requires that there be a sufficient number of employees to maintain the prescribed level of husbandry practices required by Subpart D and the rendering of husbandry practices be under the supervision of an animal caretaker with a background in animal husbandry or care. We are proposing minor revisions to this section in proposed § 3.85 to make clear that this requirement is imposed upon every person subject to the Animal Welfare regulations, and that the burden of making certain that the supervisor is appropriately qualified is on the employer regulated under the Act. We are not proposing to prescribe a specific number of employees for each facility, because the number of employees needed will vary according to the size and configuration of the facility, and according to the number and type of animals housed there. We would require that a facility have enough employees to carry out proper feeding, cleaning, observation, and other generally accepted professional and husbandary practices.

Social grouping and separation

We are proposing to revise current § 3.83 concerning social grouping of nonhuman primates in primary enclosures in order to promote their psychological well-being. The current regulations provide that when nonhuman primates are housed together they must be maintained in compatible groups and must not be housed in the same enclosure with animal species other than nonhuman primates. We are proposing to allow nonhuman primates to be housed with other nonhuman primate species and with other animal species as long as they are compatible, do not compete with the other species for food and shelter, and will not be hazardous in any way to the health and well-being of each other.

We are proposing to add the following regulations requiring separation of nonhuman primates in the following circumstances: (1) Nonhuman primates exhibiting vicious or overly aggressive behavior must be housed separately and (2) nonhuman primates under quarantine or treatment for a communicable disease must be housed separately. We believe the requirements to house nonhuman primates separately under these limited circumstances are necessary to allow nonhuman primates to peacefully coexist in primary enclosures, as is required for their psychologial well-being, and to protect their physical health and welfare.

The proposed regulations would include provisions for keeping families together and for keeping compatible groups constant. This is because studies of nonhuman primates have shown that they are socialized in a family-oriented manner in nature and that varying a group's composition may lead to distress or aggressive behavior towards new members of the group. Accordingly, we believe these regulations are necessary to promote the psychological well-being of nonhuman primates.

Transportation standards

In preparing our proposal to amend the transportation standards we consulted the "Interagency Primate Steering Committee Guidelines" developed by the United States National Institutes of Health-sponsored Interagency Primate Steering Committee. The Interagency Primate Steering Committee is composed of an inter-agency group of scientists concerned with the care and handling of nonhuman primates. The introduction to the Guidelines states the following:

> Shipment of nonhuman primates by a carrier from one location to another is stressful, even under the best of conditions. The purpose of these guidelines is to minimize the effects of transportation stress on these animals and to have them arrive at their destination in as good a physical condition as possible, with a minimal degree of illness or mortality. Secondly, the guidelines are intended to serve as a reference for adequate care of nonhuman primates for all persons involved with the shipping of these animals.

We also considered the transportation standards proposed by the U.S. Department of the Interior, Fish and Wildlife Service (USFWS) for nonhuman primates imported from abroad.

Based upon our experience enforcing the current regulations, and our consideration of the information available to us, we are proposing the following 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 this revision, we are proposing to include requirements that were previously part of the Animal Welfare regulations but were inadvertently omitted from the 1977 revision of the regulations. When the transportation standards were rewritten in 1977 to incorporate the 1976 amendments to the Act concerning the commercial transportation of animals, the existing standards for surface transportation were not included in the regulations. Since that time, the standards have pertained to the commercial transportation by common carrier and only a few subsections have pertained to surface transportation by private vehicle. This omission has caused numerous difficulties in the enforcement of standards regarding surface transportation of nonhuman primates and in the prosecution of persons who have improperly handled and transported nonhuman primates by private surface vehicle. The reinstated regulations particularly affect provisions concerning ambient temperature specifications during surface transportation that should result in improved traveling conditions for nonhuman primates. They also impose similar requirements on all persons subject to the Animal Welfare regulations engaged in the transportation of nonhuman primates, so that the animals will be afforded necessary protections whenever they are transported in commerce.

Consignments to Carriers and Intermediate Handlers for Transportation

The current obligations imposed upon carriers and intermediate handlers (defined in Part 1 of the regulations and published elsewhere in this issue of the **Federal Register**) would be expanded to ensure the well-being of nonhuman primates during transport in commerce. Certain prerequisites must be satisfied before carriers and intermediate handlers may accept nonhuman primates for transport in commerce. Additionally, the carriers and intermediate handlers have certain duties to fulfill after the shipment has reached its destination. Various obligations are presently contained in current §§ 3.85 and 3.88. We are proposing to consolidate them in one section, proposed § 3.87, and to add some additional ones that are necessary for the nonhuman primates' welfare.

The reader should note that our proposed regulations do not specifically

refer to operators of auction sales, unlike the current regulations. The definition of the term "dealer" was amended in 1976 to include any person who "negotiates the purchase or sale" of animals for research, teaching, exhibition, or use as a pet. Operators of auction sales are therefore dealers. However, we did not remove the reference to them in the 1977 amendments to the regulations. We are proposing to do so now, to clarify the regulations. Accordingly, all references to dealers in the regulations would include operators of auction sales.

In sum, the requirements imposed on carriers and intermediate handlers in current § 3.85 are as follows: (1) Current § 3.85(a) requires that carriers and intermediate handlers not accept a live nonhuman primate for shipment from any person subject to the regulations more than 4 hours before the scheduled departure time of the primary conveyance in which the animal will be shipped, except that this time may be extended by agreement to 6 hours if specific prior scheduling of the shipment has been made. (2) Current § 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 current § 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. The information required to be in the certificate is stated in the regulation. Current § 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 accredited by USDA 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 current §§ 3.90 and 3.91. The information required to be in the certificate is likewise stated in the regulation. Current § 3.85(d) requires carriers and intermediate handlers to notify the consignee of the animal's arrival at least once every 6 hours following arrival of the nonhuman primate at the animal holding area of a terminal facility and to record the time, date, and method of attempted and final notification on the shipping document.

Current § 3.88 requires the following: (1) § 3.88(a) requires that nonhuman primates be offered potable water within the four hours preceding transport in commerce. Dealers, exhibitors, and research facilities are required to provide water to nonhuman primates transported in their own primary conveyance at least every 12 hours after transportation is begun and carriers and intermediate handlers are required to do so at least every 12 hours after they accept the animal for transport.

(2) Current § 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) Current § 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) Current § 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.

We are proposing to place the various prerequisites that must be satisfied before carriers and intermediate handlers can accept a nonhuman primate for transport in commerce in proposed § 3.87, and to add some additional ones that are necessary for the nonhuman primates' well-being. We are also proposing nonsubstantive changes to current § 3.85(a) in proposed § 3.87(a).

Proposed § 3.87(c) would contain the requirements of current § 3.88(d) by requiring that written instructions concerning the food and water requirements for each nonhuman primate in the shipment be securely attached to the outside of the primary enclosure before a carrier or intermediate handler may accept it for transport.

As stated above, current § 3.88(a) provides that nonhuman primates must be provided water at least every 12 hours after acceptance by carriers and intermediate handlers for transportation. Current § 3.88(b) provides that nonhuman primates more than 1 year of age be offered food at least once every 24 hours after acceptance by carriers and intermediate handlers for transportation and that nonhuman primates less than 1 year of age be offered food at least once every 12 hours after acceptance for transportation. It is conceivable under these regulations that a nonhuman primate would have been fed up to 24 hours before being consigned for transportation in commerce and would then not be offered food for another 24-hour period. To avoid this occurrence, and to be sure that nonhuman primates are given water as often as required for their well-being, we are proposing to add a certification requirement in proposed § 3.87(d) that would state that each nonhuman primate in a primary enclosure delivered for transport was last offered food during the 12 hours before delivery to a carrier or intermediate handler and was last offered water during the 4 hours before delivery to a carrier or intermediate handler. It must also state the date and time each nonhuman primate in the primary enclosure was last offered food and water. Carriers and intermediate handlers would not be allowed to accept nonhuman primates for transport unless this certification accompanies the animal, is signed and dated by the consignor, and the date and time it was executed is stated. This certification, as well as the others required in proposed § 3.87, would also have to specify the species of nonhuman primate contained in the primary enclosure.

In addition, as provided under proposed § 3.90, "Food and water requirements," the time periods applicable to carriers and intermediate handlers for feeding and watering the nonhuman primates would begin with the time the animal was last offered food and water, in accordance with the certification. The proposed requirement that the consignor certify that the nonhuman primates were provided water within the 4 hours before delivery to the carrier or intermediate handler, and were offered food within 12 hours before delivery to the carrier or intermediate handler accepting the animals, would avoid situations where the carrier or intermediate handler would have to provide food and water immediately upon acceptance. We are adding these requirements so that carriers and intermediate handlers will be better able to provide any needed care and so that the nonhuman primates being transported will not go more than 12 hours without water or 24 hours without being offered food, if they are 1 year of age or more, and will not go more than 12 hours without being offered food, if they are less than 1 year

of age. We believe these timeframes are appropriate for the health and well-being of nonhuman primates.

We would clarify the certifications required from the consignor regarding conformance of the primary enclosure with the regulations in Subpart D and acclimation of a nonhuman primate to temperatures lower than those prescribed in the regulations. We would require that the certification of acclimation be signed by a veterinarian, that it specify a minimum temperature that the nonhuman primate can safely be exposed to, and that it specify each of the animals contained in the primary enclosure to which the certification is attached, rather than referring to the shipment of animals as a whole. The contents of the certifications are provided in subsections (e) and (f) of proposed § 3.87, respectively. We would clarify current § 3.85(c) by requiring that the temperatures to which a nonhuman primate is exposed must not be lower than the minimum temperature specified by the veterinarian and must be reasonably within the generally and professionally accepted range for the nonhuman primate as determined by the veterinarian, considering its age, condition, and species of the animal, even if it is acclimated to temperatures lower than those prescribed in the regulations.

We are proposing to add limitations on how a nonhuman primate can be held at a terminal facility while waiting to be picked up by the consignee. We are proposing to adopt the time limitations provided in Part 2, § 2.80, "C.O.D. shipments". (*See* companion docket no. 88-014, published elsewhere in this issue of the **Federal Register**.) Accordingly, 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. 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 are proposing to revise current § 3.85(d) to specifically require that carriers and intermediate handlers continue to maintain nonhuman primates in accordance with generally accepted professional and husbandry practices as long as the animals are in their custody and control and until the animals are delivered to the consignee or returned to the consignor or to whomever the consignor designates. We would require the carrier or intermediate handler to obligate the consignor to reimburse it for the expenses incurred by the carrier or intermediate handler in returning the animal. These requirements appear in proposed § 3.87(g).

All of these certifications and notification requirements would help minimize and alleviate many of the stresses of travel for nonhuman primates and are necessary for their general welfare and psychological well-being during travel.

Primary Enclosures Used to Transport Nonhuman Primates

We are proposing to reorganize the provisions of current § 3.86 and to make nonsubstantive changes to this section for clarity. We are proposing the following substantive changes as well.

We are proposing to completely revise the current regulations concerning the number of nonhuman primates that can be transported together in one primary enclosure. The current regulations allow up to ten nonhuman primates to be transported in one primary enclosure. The guidelines issued by the Interagency Primates Steering Committee for the transportation of nonhuman primates state that, as a general principle, nonhuman primates should be transported in individual compartments to avoid transmission of disease except when necessary to minimize social stress. Based upon our experience in regulating the transportation of nonhuman primates and upon consideration of the information available, we have determined that placing this number of nonhuman primates together in a situation that is unusual to and therefore stressful to the animals is dangerous for the animals and to the humans handling them. We are proposing that each nonhuman primate be transported individually in separate primary enclosures that may be connecting, except that the following social groupings may be maintained during transportation: (1) A mother with her nursing infant, (2) an established male-female couple (unless the female is in estrus) or a family group, and (3) a pair of juveniles that have not reached puberty.

The requirements for ventilation openings for primary enclosures that are not permanently affixed to the primary conveyance would be competely revised to provide substantially greater ventilation openings for the nonhuman primates' comfort during travel. The current regulations require that if ventilation openings on two opposite walls of the primary enclosure are present, they comprise at least 16 percent of the surface area of each wall, and if there are ventilation openings on four walls, they comprise at least 8 percent of the surface area of each wall. We are proposing that these requirements be increased to 30 percent and 20 percent, respectively, and that the ventilation openings be located above the midline of the enclosure, since this is safer for the animals and for the humans handling the primary enclosures. The ventilation opening requirements for permanently affixed enclosures that have only one front opening would remain at 90 percent of the surface of the front opening. The proposed revision to the ventilation opening requirements would result in healthier and more comfortable transportation conditions for nonhuman primates, and would therefore promote their psychological well-being.

We are proposing an additional construction requirement that would allow the floor of a primary enclosure to be wire mesh or slatted but it must be designed and constructed so that the nonhuman primate contained inside cannot put any part of its body between the slats or through the mesh in order to prevent injury to the nonhuman primates. Also we would require that primary enclosures be constructed of materials that are nontoxic to the animal and will not otherwise harm their health or well-being.

In proposed § 3.88(f), we are proposing additional marking requirements for the outside of primary enclosures to better ensure that they are handled carefully and in a manner that avoids causing the nonhuman primates additional stress.

We are also proposing 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. If they 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 would require that instructions for food and water, and for administration of drugs, medication, and other special care be attached to the primary enclosure. These requirements would help ensure that the animals are treated and handled in accordance with their individual requirements.

Primary Conveyances

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. We are proposing to reinstate them for surface transportation in these proposed regulations in order to prevent nonhuman primates from being transported under intolerable temperature conditions that would be harmful to their health and physical well-being. The current regulations prescribe upper and lower ambient temperature limits for nonhuman primates held in terminal facilities and prescribe lower temperature limits for nonhuman primates placed on transporting devices. 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 our proposed regulations, all persons subject to the Animal Welfare regulations would be required to maintain the temperature inside a primary conveyance between 45 °F (7.2 °C) and 85 °F (30 °C) during surface transportation at all times a nonhuman primate is present. Because it would be impracticable to monitor the ambient air temperature inside the cargo area during air transportation, we would 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 are also proposing to add requirements that a primary enclosure must 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. These added precautions would avoid exposing nonhuman primates to known causes of distress and would make traveling less stressful for the animals.

Food and Water Requirements

We are proposing to make nonsubstantive changes to the current regulations to make it clear that carriers and intermediate handlers must provide food and water to nonhuman primates being transported within a prescribed number of hours from the time the animals were last offered food and water. We would require consignors subject to the Animal Welfare regulations to certify the date and time the nonhuman primates were last offered food and water. 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 must provide food and water within a prescribed number of hours after they last offered the animal food and water. We are proposing this requirement so that nonhuman primates will not go longer than 24 hours without food or longer than 12 hours without water. The prescribed number of hours differs based upon the age of the nonhuman primate and is the same as in the current regulations. We would also 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. Proper food must be provided, in accordance with § 3.82, however we realize that the necessities of travel may require less variation in the types of food offered and in the method of feeding. Accordingly, footnote 6 of proposed § 3.90 has been added to take the exigencies of travel into account. Requirements for design, construction, and placement of food and water containers would be included for the nonhuman primates' safety, comfort, and well-being. The requirement that carriers and intermediate handlers must not accept nonhuman primates for transport unless written instructions concerning food and water requirements are affixed to the outside of the primary enclosure has been incorporated in proposed § 3.87, as previously discussed. Proposed § 3.90 would require consignors subject to the Animal Welfare regulations to attach securely to the primary enclosure all written instructions concerning the nonhuman primates' food and water requirements during transportation.

Care in Transit

We would clarify current § 3.89 to expressly require compliance with these regulations by any person subject to the Animal Welfare regulations who is transporting a nonhuman primate in commerce, regardless of whether the nonhuman primate is consigned for transport.

We are proposing nonsubstantive changes to this section for purposes of clarity along with the following substantive changes.

We are proposing to require that during surface transportation, regulated persons subject to the regulations must obtain any veterinary care needed for the nonhuman primate at the closest available veterinary facility. During air transportation, carriers or intermediate handlers must arrange for any veterinary care that is needed for the nonhuman primate as soon as possible.

We are also proposing to add an exemption to the current regulations that prohibit the transportation in commerce of a nonhuman primate in obvious physical distress that would 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 are proposing a requirement that would allow only authorized and experienced persons to remove nonhuman primates from their primary enclosures during transport in order to protect both the nonhuman primates, which could injure themselves in frenzied movement, and the people handling them.

We are proposing to add a subsection that would specify that these transportation standards remain in effect and must continue to be complied with until the animal reaches its final destination, or until the consignee takes physical delivery of the animal if the animal has been consigned for transportation. We believe that this provision is necessary to prevent any gap in care for the nonhuman primate and in responsibility for its care.

Terminal Facilities

Current § 3.90 imposes duties on carriers and intermediate handlers holding nonhuman primates in animal holding areas of terminals to keep the animals away from inanimate cargo, to clean and sanitize the area, to have an effective pest control program, to provide ventilation, and to maintain the ambient temperature within certain prescribed limits. Under the current regulations, there is no similar obligation imposed upon other persons who transport these animals. As a result, animals could be held in animal holding areas under hazardous conditions.

We are proposing that the same duties currently imposed upon carriers and intermediate handlers be imposed upon any person subject to the Animal Welfare regulations transporting nonhuman primates and holding them in animal holding areas, since the animals require the same minimum level of care regardless of which regulated persons is transporting the animals.

We would add restrictions to prevent regulated persons from holding nonhuman primates within physical and

visual reach of other animals and other species of nonhuman primates, since this is upsetting to them. We are also proposing that the length of time regulated persons be allowed to hold nonhuman primates in terminal facilities upon arrival be the same as that allowed for consigned animals under proposed § 3.87(g). We believe that this limitation on holding periods in terminal facilities is necessary to prevent regulated persons from leaving nonhuman primates in terminal facilities for any reason, such as to await additional shipments, and that it will help reduce the stress of travel for nonhuman primates.

Proposed § 3.92 would continue the temperature and ventilation requirements contained in current § 3.90 and would also contain the provisions requiring shelter from the elements for nonhuman primates that are currently in § 3.91 "Handling," because they are applicable to regulated persons holding nonhuman primates in animal holding areas of terminal facilities. 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.

Handling

Current § 3.91 imposes duties on carriers and intermediate handlers for proper handling and movement of nonhuman primates. For the reasons explained above under "Terminal facilities," we are proposing that these same duties be imposed upon any person subject to the Animal Welfare regulations handling a nonhuman primate at any time during the course of transportation in commerce, so that the animals' health, safety, and well-being will be protected at all times during transport. The proposed regulations 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. It would also continue to provide requirements for movement of a nonhuman primate on a transporting device. We are proposing 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 are also proposing to require that transporting devices on which nonhuman primates are placed to move them must be covered to protect the nonhuman primates when the outdoor temperature falls below 45 ° (7.2 °C). The current regulations require this protection when the outdoor temperature falls below 50 °(10 °C). We believe that providing this protection becomes necessary at the lower temperature proposed, and that the proposed requirement will protect the health and well-being of nonhuman primates.

Air carriers commonly use conveyor belts and inclined belts for loading and unloading animals into airplane cargo space. These methods of loading can cause psychological distress to the animals. We are proposing to allow nonhuman primates to be placed on inclined conveyor belts used for loading and unloading aircraft only, if an attendant is present at each end of the conveyor belt in case an animal has an extreme adverse reaction. We are proposing to prohibit placing nonhuman primates on unattended conveyor belts or on elevated conveyor belts, such as baggage claim conveyor belts, since these forms of tilted movement cause nonhuman primates extreme distress and alternative means of moving the animals can generally be provided without great inconvenience.

Statutory Authority for This Proposed Rule

This proposed rule is issued pursuant to the Animal Welfare Act (Act), as amended, 7 U.S.C. 2131–2157. Congress, in enacting the Food Security Act of 1985, Pub. L. No. 99–198, added significantly to the Secretary's existing responsibilities to promulgate standards for the care and treatment of animals covered under the Act. The declared policy of the Act is to ensure that animals intended for use in research facilities, as pets, or for exhibition purposes, are provided humane care and treatment; to assure the humane treatment of animals during transportation; and to prevent the sale of stolen animals.

The Act requires that the Secretary of Agriculture promulgate standards to govern the humane handling, care, treatment and transportation of animals by dealers, research facilities, and exhibitors. These standards are to include minimum requirements for handling, housing, feeding, watering, sanitation, ventilation, shelter from extremes of weather and temperatures, adequate veterinary care, and separation of species. The 1985 amendments to the Act specifically require the Secretary to promulgate standards for exercise of dogs and for a physical environment adequate to promote the psychological well-being of primates.

The proposed rule includes changes and additions to the standards required by the 1985 amendments as well as modifications based on the Department's experience in administering and enforcing the Act. The Act authorizes these changes specifically in section 13 (7 U.S.C. 2143) and in the grant of rulemaking authority contained in section 21 (7 U.S.C. 2151).

Executive Order 12291

This proposed action has been reviewed pursuant to the requirements of Executive Order 12291 and it has been determined that it will have an impact in excess of $100 million annually on the regulated industries and the general economy. The Administrator has therefore determined that it would be a "major rule." Some of the major costs to the regulated industries in complying with the proposed regulations would result from: (1) Renovating, equipping, replacing, or constructing animal housing facilities; (2) the exercise for dog requirements; and (3) the psychological well-being of nonhuman primates.

The economic impacts of this rule are discussed in more detail in a Regulatory Impact Analysis, which is available for public inspection in Room 1141 of the South Building, U.S. Department of Agriculture between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays (address above). Main findings of this analysis are summarized below.

SUMMARY OF REGULATORY IMPACT ANALYSIS

Costs	Benefits
Direct	Direct
Regulated industry	Increased public satisfaction from improved animal welfare.*
Capital expenses:	
(all parts) $876 million	Improved research information.*
(parts 1–2) $142 million	Productivity gains for regulated industries.*
Annual costs:	
(all parts) $207 million	
(parts 1–2) $126 million	
APHIS program costs impact on federal sites* $2 million.	
Indirect	Indirect
Opportunity costs for users of biomedical research (goods and service), pet industry, and animal exhibits*.	Market effects for suppliers of animal husbandry products.*

SUMMARY OF REGULATORY IMPACT ANALYSIS—Continued

Costs	Benefits
Increased federal financial support for biomedical community.* Non-market effects*	Non-market effects.*

*Not quantified.

Compliance with more stringent federal regulations on the humane care and treatment of animals used for research, testing, teaching, exhibition, and business ventures would result in major direct and indirect effects imposed on the regulated industry and the general economy. An examination of the estimated cost impacts indicates that the amended regulations constitute a "major rule" based on annual effects in excess of $100 million on the economy and large cost increases on regulated industries for animal uses and maintenance, in particular to the biomedical research community. However, this study could not properly assess the relative significance of these cost increases on the regulated industry or the presence of adverse effects on competition, innovation, and the ability of domestic enterprises to compete with foreign enterprises in international markets.

Regulated persons or establishments will be required to spend approximately $876 million in capital expenditures over the next two or three years. Of this amount approximately 16 percent is attributable to Parts 1 and 2. If Parts 1 and 2 were enforced separately, regulated research facilities will be required to spend approximately $142 million to renovate, equip, replace, or construct aseptic surgical facilities, and provide for adequate pre- and post-surgical care. Capital expenditures attributable to Part 3 include costs for renovation, equipment replacement, and new construction of animal housing facility space. Capital expenditures to improve animal housing facilities would result from the new minimum standards for general environmental conditions, space or primary enclosure size requirements, exercise of dogs, and enrichment of nonhuman primate enclosures.

In addition to capital expenditures, total annual operating expenditures estimated at $207 million will also be required. Approximately 60 percent of this total ($126 million) is accounted for by Parts 1 and 2, primarily the requirements for the establishment and operations of the institutional animal care and use committees, additional responsibilities for attending veterinarians, and record-keeping requirements. Annual expenditures attributable to Part 3 would result from the need for additional personnel (animal handlers) to exercise dogs, and the daily maintenance of animal housing facilities.

An important result of this regulatory analysis is that policy decisions must consider other direct and indirect effects associated with the promulgation and enforcement of federal rules. Increased federal legislation causes important economic benefits and costs which are unevenly distributed among registrants and licensees. Direct benefits accrue to society by knowing that animals may be better cared for and treated humanely. The value of these social benefits are subject to personal preferences and concerns. Improvements in the well-being of regulated animals may also provide gains in productivity to the industry. On the other hand, increased costs of compliance will be passed from the regulated industry to consumers who purchase their goods and services. For example, the field of biomedical research and education depends heavily on the use of animals to conduct tests and experiments. Increased costs for animal uses have broader economic and health implications for all of us. Study results do not suggest that these regulations would cause establishments to abandon the use of animals since current biomedical research outlays are in excess of $12.8 billion per year. Nonetheless, there could be important effects associated with allocating additional funds or expenditures to comply with the amended Animal Welfare regulations.

The Department will collect additional data and refine the analysis with regard to the proposed amendments to Part 3. The results will be available upon publication on the final rulemaking for Part 3. It is not expected that the revised analysis will affect the determination that this rule would have an impact in excess of $100 million annually.

Regulatory Flexibility Act

As part of the regulatory impact analysis performed by the Department in amending the Animal Welfare regulations, we have analyzed the potential impact on small entities of the proposed amendments to Part 3, as required by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Based upon this analysis, the Administrator has determined that the proposed amendments to Part 3, if implemented, would have a significant economic impact on a substantial number of small entities.

The economic impacts of this proposed rule on small entities are discussed in greater detail in the Regulatory Flexibility Analysis, which is available for public inspection in Room 1141 of the South Building, U.S. Department of Agriculture between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

The principal findings of the analysis are summarized below.

Study results indicate that APHIS Animal Welfare regulations would place a significant burden on a substantial number of small licensees that breed, deal or exhibit regulated animals. Total capital expenditures required in the next two or three years are estimated to be approximately $93.9 million. These will affect 2,155 small breeders (77 percent of small licensed breeders), 371 small dealers (37 percent of small dealers) and 1,245 small exhibitors (92 percent of small exhibitors). The expected increase in variable operating costs is $6.8 million. Annual operating expenditures are significantly lower than the estimated capital expenditrues, however, these would affect all small licensees. In comparison to reported annual gross income estimates of $6.6 million for all small breeders and $0.8 million for all small dealers, the added expenditures represent significant impacts.

Of the small licensees, breeders will be most affected. Breeders represent about 57 percent of the small licensees and will incur approximately 66 percent of the total capital and variable cost impacts. An important distributional effect of the regulations is that the impact on breeders will be concentrated in the Central region. Eighty-five percent of small breeders, mainly dog breeders, are located in this region.

Executive Order 12372

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

Paperwork Reduction Act

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the information collection provisions that are included in this proposed rule will be submitted for approval to the Office of Management and Budget (OMB). Your written comments will be considered if you submit them to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. You should submit a duplicate copy of your comments to Helene R. Wright, Chief, Regulatory Analysis and Development Staff, PPD, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

List of Subjects in 9 CFR Part 3

Animal welfare, Humane animal handling, Pets, Transportation.

Accordingly, we propose to amend Part 3 as follows:

PART 3—STANDARDS

1. The authority citation for Part 3 would be revised to read as follows, and the authority citation following all the sections would be removed.

Authority: 7 U.S.C. 2131–2156; 7 CFR 2.17, 2.51, and 371.2(d).

2. The table of contents for Subpart A consisting of §§ 3.1 through 3.19, would be revised to read as follows:

Subpart A—Specifications for the Humane Handling, Care, Treatment, and Transportation of Dogs and Cats

Facilities and Operating Standards

Sec.

Animal Health and Husbandry Standards

Transportation Standards

Subpart A—Specifications for the Humane Handling, Care, Treatment, and Transportation of Dogs and Cats [1]

Facilities and Operating Standards

§ 3.1 Housing facilities, general.

(a) *Structure; construction.* Housing facilities for dogs and cats must be designed and constructed so that they are structurally sound. They must be kept in good repair, and they must protect the animals from injury, contain the animals securely, and restrict other animals and unauthorized humans from entering.

(b) *Condition and site.* Housing facilities and areas used for storing animal food or bedding must be free of any accumulation of trash, waste material, junk, weeds, and other discarded materials. Animal areas inside of housing facilities must be kept neat and free of clutter, including equipment, furniture, and stored material, but may contain materials actually used and necessary for cleaning the area, such as brooms, mops, mop buckets, trash containers, and fixtures necessary for proper husbandry practices, such as tables, cabinets, and sinks. Housing facilities other than those maintained by research facilities and federal research facilities must be physically separated from any other business. If a housing facility is located on the same premises as another business, it must be physically separated from the other business so that unauthorized humans, and animals the size of dogs, skunks, and raccoons are prevented from entering it.

(c) *Surfaces.*—(1) *General requirements.* The surfaces of housing facilities—including houses, dens, and other furniture-type fixtures and objects within the facility—must be constructed in a manner and made of materials that allow them to be readily cleaned and sanitized, or removed or replaced when worn or soiled. Interior surfaces and any surfaces that come in contact with dogs or cats must:

(i) Be free of 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 cleaned daily and sanitized at least once every two weeks, and as often as necessary to prevent any accumulation of excreta and disease hazards. Floors made of dirt, sand, gravel, grass, or other similar material must be raked and spot-cleaned daily, and the contaminated material must be replaced whenever this raking and spot-cleaning is not sufficient to prevent or eliminate odors, diseases, insects, pests, or vermin infestation. All other surfaces of housing facilities must be cleaned daily and sanitized when necessary to satisfy generally accepted husbandry standards and practices. Sanitization may be done using any of the methods provided in § 3.10(b)(3) for primary enclosures.

(d) *Water and electric power.* The housing facility must have reliable electric power adequate for heating, cooling, ventilation, and lighting, and for carrying out other husbandry requirements in accordance with the regulations in this subject. The housing facility must provide adequate mechanically pressurized 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 leakproof containers that protect 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. Perishable food must be refrigerated, 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 and cats must not be stored in animal areas or in food storage and preparation areas.

(f) *Drainage and waste disposal.* Housing facility operators must provide daily (or more often as necessary) removal and disposal of animal and food wastes, bedding, debris, garbage, water, other fluids and wastes, and dead animals. 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. Puddles of water in animal areas must be promptly mopped up or drained so that the animals stay dry. Trash containers in housing facilities and in food storage and food

[1] These minimum standards apply only to live dogs and cats, unless stated otherwise.

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 cold and hot temperatures 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. The ambient temperature must not fall below 45 °F (7.2 °C) at any time, and must not rise above 95 °F (35 °C).

(b) *Ventilation.* Indoor housing facilities for dogs and cats must be sufficiently ventilated at all times when dogs and cats are present to provide for their health, comfort, and well-being, and to minimize odors, drafts, ammonia levels, and moisture condensation. Air, preferably fresh air, must be provided by windows, vents, fans, or air-conditioning. Auxiliary ventilation or air-conditioning must be provided when the ambient temperature is 85 °F (29.5 °C) or higher. The relative humidity must be between 30 and 70 percent.

(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 lighted for at least 8 hours a day, by either natural or artificial light, corresponding to the natural period of daylight. If only artificial light, such as fluorescent light, is provided, it must provide full-spectrum illumination. 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. An example of this would be 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 to protect the dogs and cats from cold and hot temperatures and to provide for their health, comfort, 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. The ambient temperature must not fall below 35 °F (1.7 °C) at any time, and must not rise above 95 °F (35 °C).

(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, comfort, and well-being, and to minimize odors, draft, ammonia levels, and moisture condensation. Air, preferably fresh air, must be provided by windows, doors, vents, fans, or air-conditioning. Auxiliary ventilation, such as exhaust fans 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 lighted for at least 8 hours a day by either natural or artificial light. 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.

(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, 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:

(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 during any month in which, during the preceding 5 years, the temperature at the facility's location has been less than 35 °F (1.7 °C).

(b) *Capacity.* Outdoor facilities for dogs or cats must include a shelter structure that is accessible to all the animals in each outdoor facility, and that is large enough to allow all animals in the shelter structure to sit, stand, and lie in a normal manner, and to turn about freely. In addition to the shelter structure, a separate outside area 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.

(c) *Construction.* Building surfaces in contact with animals in outdoor housing facilities must be impervious to moisture. Metal barrels, old refrigerators or freezers, and the like must not be used as shelter structures. The floors of outdoor housing facilities may be of compacted earth, sand, gravel, or grass, and must be replaced if there are any prevalent odors, diseases, insects, pests, or vermin.

(d) *Shelter from the elements.* Shelters in outdoor facilities for dogs or cats 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.

§ 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 cold and hot temperatures and to provide for their

health, comfort, and well-being. The ambient temperature in the mobile or traveling housing facility must not fall below 50 °F (10 °C) for dogs and cats not acclimated to lower temperatures, for those breeds that cannot tolerate lower temperatures without stress or discomfort (such as short-haired breeds), and for sick, aged, young, or infirm dogs and cats. The ambient temperature must not fall below 35 °F (1.7 °C) at any time, and must not exceed 95 °F (35 °C) for all dogs and cats.

(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, comfort, and well-being of the animals, and to minimize odors, drafts, ammonia levels, moisture condensation, and exhaust fumes. Air, preferably fresh air, 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 °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 lighted for at least 8 hours each day, corresponding to the natural period of daylight. If only artificial light, such as fluorescent light, is provided, it must provide full-spectrum illumination.

§ 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 predators and unauthorized individuals from entering the enclosure;

(v) Enable the dogs and cats to remain dry and clean;

(vi) Provide shelter and protection from extreme temperatures and weather conditions that may be uncomfortable or hazardous to the dogs and cats;

(vii) Provide sufficient shade to shelter all the dogs and cats housed in the primary enclosure at one time;

(viii) Provide the dogs and cats with easy and convenient access to clean food and water;

(ix) Enable all surfaces in contact with the dogs and cats to be readily cleaned and sanitized in accordance with § 3.10(b) of this subpart, or be replaceable when worn or soiled;

(x) Have floors that are constructed in a manner that protects the dogs' and cats' appendages from injury, and that, if of mesh or slatted construction, do not allow the dogs' and cats' appendages to pass through any openings in the floor; and

(xi) Provide sufficient space to allow each dog and cat to turn about freely, to stand, sit, and lie in a comfortable, normal position, and to walk in a normal manner.

(b) *Additional requirements for cats*—(1) *Space.* Each cat, including weaned kittens, that is housed in any primary enclosure must be provided minimum vertical space and floor space as follows:

(i) Each primary enclosure housing cats must be at least 24 in. high (60.96 cm);

(ii) Cats up to and including 8.8 lbs (4 kg) must be provided with at least 3.0 ft^2 (0.28 m^2);

(iii) Cats over 8.8 lbs (4 kg) must be provided with at least 4.0 ft^2 (0.37 m^2);

(iv) Each queen with nursing kittens must be provided with an additional amount of floor space, equivalent to at least 5 percent of her minimum required floor space for each nursing kitten in the litter (e.g., five nursing kittens require a 25-percent increase and 10 nursing kittens require a 50-percent increase); and

(v) The minimum floor space required by this paragraph is exclusive of any food or water pans.

(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. Cats with a vicious or aggressive disposition must be housed separately.

(3) *Litter.* In all primary enclosures having a solid floor, a receptacle containing sufficient clean litter must be provided to contain excreta and body wastes.

(4) *Resting surfaces.* Each primary enclosure housing cats must contain a 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. 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. The resting surfaces are not considered part of the minimum floor space.

(5) *Cats in mobile or traveling shows or acts.* Cats that are part of a mobile or traveling show or act may be kept, while the show or act is traveling from one temporary location to another, in transport containers that comply with all requirements of § 3.14 of this subpart other than the marking requirements in § 3.14(a)(6) of this subpart. When the show or act is not traveling, the cats must be placed in primary enclosures that meet the minimum requirements of this section.

(c) *Additional requirements for dogs*—(1) *Space.* (i) Each dog housed in a primary enclosure (including weaned puppies) must be provided a minimum amount of floor space calculated as follows: find the mathematical square of the sum of the length of the dog in inches (measured from the tip of its nose to the base of its tail) plus 6 inches; then divide the product by 144. The calculation is: (length of dog in inches+6)×(length of dog in inches+6)=required floor space in square inches. Required floor space in inches/144=required floor space in square feet.

(ii) Each bitch with nursing puppies must be provided with an additional amount of floor space, equivalent to at least 5 percent of her minimum required floor space for each nursing puppy in the litter (e.g., five nursing puppies require a 25-percent increase and 10 nursing puppies require a 50-percent increase).

(iii) The interior height of a primary enclosure must be at least 6 inches higher than the highest point of the body (normally the ears) of the tallest dog in the enclosure when it is in a normal standing position.

(2) *Dogs on tethers.* Dogs may be kept on tethers only in outside housing facilities that meet the requirements of § 3.4 of this subpart, and only when the tether meets the requirements of this paragraph. The tether must be attached to the front of the dog's shelter structure or to a post in front of the shelter structure and must be at least three times the length of the dog, as measured from the tip of its nose to the base of its

tail. The tether must allow the dog convenient access to the shelter structure and to food and water containers. The tether must be of the type and strength commonly used for the size dog involved and must be attached to the dog by a well-fitted collar that will not cause trauma or injury to the dog. Collars made of materials such as wire, flat chains, chains with sharp edges, or chains with rusty or nonuniform links are prohibited. The tether must be attached so that the dog cannot become entangled with other objects or come into physical contact with other dogs in the outside housing facility, and so the dog can roam to the full range of the tether. Dog housing areas where dogs are on tethers must be enclosed by a perimeter fence that is at least 6 feet high and that protects the dogs from other animals, contains them if they should free themselves of the tether, and prevents dogs, raccoons, skunks, and animals of similar size from going through it or under it.

(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. 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) *Variance from minimum space requirements*—(1) *Definition.* For the purposes of this subpart, a "variance" means the written permission from the Administrator that is required to operate as a licensee or registrant under the Animal Welfare Act without fully complying with the minimum space requirements provided in this subpart. A variance may be limited in scope both as to time and to the primary enclosures covered by it, and will specify the portions of a registrant's or licensee's facilities covered by the variance.

(2) *Who may apply; eligibility.* Registrants and licensees that maintain or handle dogs or cats, or that have dogs or cats on the premises or under their control or supervision, and that do not comply with one or more of the minimum space requirements provided in this subpart may apply to the Administrator for a variance. Any housing facilities under construction or in the design and preliminary construction stages on the effective date of these regulations are not eligible for a variance, unless the registrant or licensee demonstrates to the Administrator that construction is no nearly complete that a variance is necessary for the registrant or licensee to comply with the minimum space requirements.

(3) *When to apply.* Eligible registrants and licensees requiring a variance in accordance with paragraph (d)(2) of this section must apply to the Administrator within 60 days of the effective date of these regulations.

(4) *Application.* An application for a variance must be in writing and must list in detail each of the minimum space requirements that cannot be complied with, the amount of time necessary for the applicant to come into compliance with the minimum space requirements, the specific reasons why the variance is being requested, the species and number of dogs and cats that will be affected by the variance, and the estimated cost of compliance. A statement from the attending veterinarian concerning the age and health status of the dogs and cats affected by the variance and addressing whether the granting of a variance would be detrimental to the affected dogs and cats must accompany the application. The Administrator may grant the application if he or she determines that it is justified or deny it it he or she determines that it is not justified under the circumstances, or that granting it would be detrimental to the health and well-being of the dogs and cats affected by the variance. The grant or denial will be in writing. The Administrator may require a report to be submitted by an outside expert to help determine whether a variance would be detrimental to the health and well-being of the dogs and cats affected. The cost of the report must be paid by the applicant. The applicant may request that the Administrator reconsider his or her decision to deny an application by writing to the Administrator within ten (10) days after the applicant has received the denial. The applicant must explain, in writing, why he or she believes the variance should have been granted. The Administrator will notify the applicant in writing of the final decision as promptly as circumstances allow.

(5) *Duration and extension.* An initial variance may be granted, at the sole discretion of the Administrator, for the period of time the Administrator determines is necessary for the applicant to comply with the minimum space requirements, based upon the facts presented in the application, up to a maximum time of 2 years. The Administrator may grant a single extension of up to 1 year upon written request if the Administrator determines that it is justified due to unforeseen situations that prevent the registrant or licensee from fully complying during the initial variance period. A written request for an extension must be received by the Administrator at least 60 days before the expiration date of the initial variance. No more than one extension will be granted. The applicant may request that the Administrator reconsider his or her decision to deny an application for extension by writing to the Administrator within ten (10) days after the applicant has received the denial. The applicant must explain, in writing, why he or she believes the extension should have been granted. The Administrator will notify the applicant in writing of the final decision as promptly as circumstances allow. Until a final determination is made, the extention will not be in effect. If the extension is granted on reconsideration, it will be retroactive to the termination date of the initial variance.

(6) *Revocation.* A variance may be revoked by the Administrator at any time if he or she determines that it was obtained in bad faith, that the purpose for which the variance was granted is not being carried out, or that it is detrimental to the health and well-being of the dogs or cats affected. Revocation of a variance will be in writing and will be effective upon receipt.

Animal Health and Husbandry Standards

§ 3.7 Exercise and socialization for dogs.

(a) Social contact while being housed, held, or maintained. (1) All dogs housed, held, or maintained by any dealer, exhibitor, or research facility including federal research facilities, must be maintained in compatible groups *unless*:

(i) Housing in compatible groups is not in accordance with an animal care and use procedure, and the animal care and use procedure has been approved by the research facility's Committee;

(ii) In the opinion of the attending veterinarian such housing would adversely affect the health or well-being of the dog(s); or

(iii) Any dog exhibits aggressive or vicious behavior.

(2) All dogs housed, held, or maintained by any dealer, exhibitor, or research facility, including federal research facilities, must be able to hear and see other dogs *unless*:

(i) Such contact is not in accordance with an animal care and use procedure, and the animal care and use procedure has been approved by the research facility's Committee;

(ii) In the opinion of the attending veterinarian, such contact would adversely affect the health or well-being of the dog(s); or

(iii) Only one dog is housed, held, or maintained by the dealer, exhibitor, or research facility. In such instances, the single dog must receive positive physical contact with humans at least once a day. The positive physical contact with humans must total at least 60 minutes each day and may be given in one or more periods.

(b) Release for exercise and socialization—(1) Dogs housed individually. (i) Dogs housed, held, or maintained by any dealer, exhibitor, or research facility, including federal research facilities, must be released at least once a day for exercise and socialization if they are:

(A) Kept individually in cages; or

(B) Kept individually in pens or runs that provide less than four times the floor space required for that dog by § 3.6(c)(1) of this subpart, and that do not allow visual and physical contact with neighboring dogs (for example, concrete block pens and runs).

(ii) The exercise area must be the larger of 80 square feet or twice the minimum floor space required by § 3.6(c)(1) of this subpart. However, dogs whose release for exercise and socialization is prohibited by an animal care and use procedure approved by the Committee are not subject to the 80-square-feet-minimum provision of this paragraph, but must be maintained in pens or runs that provide each dog with at least twice the minimum floor space required by § 3.6(c)(1) of this subpart.

(iii) Dogs housed, held, or maintained by any dealer, exhibitor, or research facility do not need to be released each day for exercise and socialization if they are kept in pens or runs that:

(A) Provide at least four times the required space for that dog; and

(B) Allow visual and physical contact with neighboring dogs.

(2) Dogs housed, held, or maintained in groups by any dealer, exhibitor, or research facility, including a federal research facility, must be released at least once a day for exercise and socialization, unless the dogs are maintained in pens or runs that provide the greater of 80 square feet or 150 percent of the space each dog would require if maintained separately under the minimum floor space requirements of § 3.6(c)(1) of this subpart. If a run or open area is used for exercise for dogs housed in groups, it must be the greater of 80 square feet or 150 percent of the minimum space requirement for each dog in the exercise area. (For example, a 28-inch beagle requires a minimum floor space of 8 square feet. Therefore, for six beagles housed together, 150 percent of six times the minimum per-beagle requirement of 8 square feet is 72 square feet. This is less than 80 square feet. Therefore, the larger floor space, 80 square feet, would be required.)

(3) Exercise periods must total at least 30 minutes each day and may be given in one or more release periods.

(c) Methods of exercise.

(1) The attending veterinarian must determine the type of exercise to be used. The exercise may be provided by:

(i) Walking on a leash;

(ii) Releasing the dog(s) into an open area;

(iii) Providing access to a run; or

(iv) Some other similar arrangement.

(2) Forced exercise methods or devices such as swimming, treadmills, or carousel type device do not meet the exercise requirements of this section.

(d) Documentation of the release of each dog for exercise must be kept by the registrant or licensee, and is subject to APHIS inspection.

(e) Exemptions. The attending veterinarian may exempt a particular dog from the exercise release period required for it under paragraph (b) of this section, or restrict its participation in the period, if he or she determines that it is necessary to do so for the dog's health, condition, or well-being. The exemption or restriction must be recorded by the attending veterinarian. The attending veterinarian must review the grant of exemption or restriction and observe the animal at least every 30 days to determine whether it is still necessary.

§ 3.8 Feeding.

(a) Dogs and cats must be fed at least once each day, except as otherwise might be required to provide adequate veterinary care. The food must be uncontaminated, wholesome, palatable, and of sufficient quantity and nutritive value to maintain the normal condition and weight of the animal. It must be appropriate for the individual animal's age.

(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 durable material that can be easily cleaned and sanitized or be disposable. If the food receptacles are not disposable, they must be cleaned daily and must be sanitized in accordance with § 3.10(b)(3) of this subpart at least every 2 weeks, and before being used to feed a different dog or cat or social grouping of dogs or cats. 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 cleaned and sanitized as needed in accordance with § 3.10(b)(3) of this subpart. Measures must be taken to ensure there is no molding, deterioration, and caking of feed.

§ 3.9 Watering.

If potable water is not continually available to the dogs and cats, it must be offered to the dogs and cats at least twice daily for periods of not less than 1 hour each time, unless restricted by the attending veterinarian. Water receptacles must be kept clean and must be sanitized in accordance with § 3.10(b)(3) of this subpart at least once every 2 weeks, and before being used to water a different dog or cat or social grouping of dogs or cats.

§ 3.10 Cleaning, sanitization, housekeeping, and pest control.

(a) Cleaning of primary enclosures. Excreta and food waste must be removed from primary enclosures, and from under primary enclosures, at least daily, or more frequently if 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 a primary enclosure is being cleaned by steam or by hosing or flushing with water, any dog or cat in the primary enclosure must be removed to prevent it from being involuntarily wetted or injured. 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. The pans under primary enclosures with grill-type floors and the ground areas under raised runs with wire or slatted floors must be

cleaned at least daily, and 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) A used primary enclosure must be cleaned and sanitized in accordance with this section before it can be used to house another dog or cat.

(2) Primary enclosures for dogs or 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, excrete, 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 a detergent solution so as to remove all organic material and mineral buildup, and by following the washing first with a safe and effective disinfectant rinse, then with a clean water rinse.

(4) Pen, 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, or earth, 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.

§ 3.11 Employees.

Each person subject to the Animal Welfare regulations 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 animal caretaker who has the knowledge, background, and experience in proper husbandry and care of dogs and cats to supervise others. The employer must be certain that the supervisor and other employees can perform to these standards.

§ 3.12 Social grouping.

Dogs and cats housed in the same primary enclosure must be maintained in compatible groups, 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 180 days of age or less may not be housed in the same primary enclosure with adult dogs or cats other than their dams, except when permanently maintained in breeding colonies;

(d) Dogs or cats may not be housed in the same primary enclosure with any other species of animals, unless they are compatible;

(e) Dogs and cats under quarantine or treatment for a communicable disease must be separated from other dogs and cats and other susceptible species of animals to minimize the risk of spread of the disease.

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 phone number of the consignee.

(c) Carriers and intermediate handlers must not accept a dog or cat for transport in commerce unless written instructions concerning in-transit food and water requirements for each dog and cat in the shipment are securely attached to the outside of its primary enclosure in a manner that makes them easily noticed and read.

(d) Carriers and intermediate handlers must not accept a dog or cat for transport in commerce unless the consignor certifies in writing to the carrier or intermediate handler that the dog or cat was offered food during the 12 hours and water during the 4 hours before delivery to the carrier or intermediate handler, and specifies the date and time the dog or cat was last offered food and water. A copy of the certification must accompany the dog or cat to its destination and must include the following information for each primary enclosure:

(1) The consignor's name and address;

(2) The tag number or tattoo assigned to each dog or cat under § 2.50 of the regulations;

(3) A statement by the consignor certifying that each dog or cat contained in the primary enclosure was offered food within 12 hours and water within 4 hours before delivery to the carrier or intermediate handler, and the date and time food and water was last offered; and

(4) The consignor's signature and the date and time the certification was signed.

(e) Carriers and intermediate handlers must not accept a dog or cat for transport in commerce in a primary enclosure unless the primary enclosure meets the requirements of § 3.14 of this subpart, or the consignor certifies in writing to the carrier or intermediate handler that the primary enclosure meets the requirements of § 3.14 of this subpart. Even if the consignor provides this certification, a carrier or intermediate handler must not accept a dog or cat for transport if the primary enclosure is obviously defective or damaged and cannot reasonably be expected to safely and comfortably contain the dog or cat without causing suffering or injury. A copy of the certification must accompany the dog or cat to its destination and must include the following information for each primary enclosure:

(1) The consignor's name and address;

(2) The tag number or tattoo assigned to each dog or cat under § 2.50 of the regulations;

(3) A statement by the consignor certifying that each primary enclosure in the shipment meets the standards for primary enclosures in § 3.14 of this subpart; and

(4) The consignor's signature and the date the certification was signed.

(f) Carriers and intermediate handlers must not accept a dog or cat for transport in commerce unless their holding area and cargo facilities meet the minimum temperature requirements provided in §§ 3.18 and 3.19 of this subpart, or unless the consignor provides them with a certificate signed by a veterinarian and dated no more than 10 days before delivery of the animal to the carrier or intermediate handler for transport in commerce, certifying that the animal is acclimated to temperatures lower than those required in §§ 3.18 and 3.19 of this subpart. Even if the carrier or intermediate handler receives this certification, the temperatures the dog or cat is exposed to while in the carrier's or intermediate handler's custody must not be lower than the minimum temperature specified by the veterinarian in accordance with paragraph (f)(3) of this section. 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 § 2.50 of the regulations;

(3) A statement by a veterinarian, and dated no more than 10 days before delivery, that to the best of his or her knowledge, each of the dogs or cats contained in the primary enclosure is acclimated to air temperatures lower than 45 °F (7.2 °C), but now lower than a minimum temperature, specified on the certificate, that the veterinarian has determined is based on generally accepted temperature standards for the age, condition, and breed of the animals; and

(4) The signature of the veterinarian and the date the certification was signed.

(g) When a primary enclosure containing a dog or cat has arrived at the animal holding area at a terminal facility after transport, the carrier or intermediate handler must attempt to notify the consignee upon arrival and at least once in every 6-hour period thereafter. The time, date, and method of each attempted notification and the actual notification of the consignee, and the name of the person who notifies or attempts to notify the consignee must be written on the carrier's or intermediate handler's copy of the shipping document and on the copy that accompanies the primary enclosure. If the consignee cannot be notified within 24 hours after the dog or cat has arrived at the terminal facility, the carrier or intermediate handler must return the animal to the consignor or to whomever the consignor designates. If the consignee is notified of the arrival and does not accept delivery of the dog or cat within 48 hours after arrival of the dog or cat, the carrier or intermediate handler must return the animal to the consignor or to whomever the consignor designates. The carrier or intermediate handler must continue to provide proper care, feeding, and housing to the dog or cat, and maintain the dog or cat in accordance with generally accepted professional and husbandry practices until the consignee accepts delivery of the dog or cat or until it is returned to the consignor or to whomever the consignor designates. The carrier or intermediate handler must obligate the consignor to reimburse the carrier or intermediate handler for the cost of return transportation and care.

§ 3.14 Primary enclosures used to transport live dogs and cats.

Any person subject to the Animal Welfare regulations 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 or cats are on raised slatted floors or raised floors made of wire mesh, the primary enclosure must contain enough previously unused litter to absorb and cover excreta. The litter must be of a suitably absorbent material that is safe and nontoxic to the dogs and cats.

(b) *Cleaning of primary enclosures.* A primary enclosure used to hold or transport dogs or cats in commerce must be cleaned and sanitized before each use in accordance with the methods provided in § 3.10(b)(3) of this subpart. If the dogs or cats are in transit for more than 24 hours, the enclosures must be cleaned and any litter replaced, or other methods, such as moving the animals to another enclosure, must be utilized to prevent the soiling of the dogs or cats by body wastes.

(c) *Ventilation.* (1) Unless the primary enclosure is permanently affixed to the conveyance, there must be ventilation openings on all four walls of the primary enclosure. The ventilation openings must total at least 8 percent of the surface area of each wall, and the total surface area of all the ventilation openings must be at least 14 percent of the total surface area of all four walls of the primary enclosure. Additionally, at least one-third of the total minimum area required for ventilation must be located on the upper one-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 180 days of age or less may not be transported in the same primary enclosure with adult dogs or acts 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 two live dogs or cats, 6 months of age or older, that are of comparable size, may be transported in the same primary enclosure when shipped via air carrier, and only if all other requirements in this section are met.

(2) No more than two live puppies, 8 weeks to 6 months of age, that are of comparable size, and weighing over 20 lb (9 kg) each, may be transported in the same primary enclosure when shipped via air carrier, and only if all other requirements in this section are met.

(3) No more than three live puppies or kittens, 8 weeks to 6 months of age, that are of comparable size, and weighing 20 lb (9 kg) or less each, may be transported in the same primary enclosure when shipped via air carrier, and only if all other requirements in this section are met.

(4) Weaned live puppies or kittens less than 8 weeks of age and of comparable size, or puppies or kittens that are less than 8 weeks of age that are littermates and are accompanied by their dam, may be transported in the same primary enclosure when shipped to research facilities, including federal research facilities.

(g) *Transportation by surface vehicle.* (1) No more than four live dogs or cats, 8 weeks of age or older, that are of comparable size, may be transported in the same primary enclosure when shipped by surface vehicle (including ground and water transportation) and only if all other requirements of this section are met.

(2) Weaned live puppies or kittens less than 8 weeks of age and of comparable size, or puppies or kittens that are less than 8 weeks of age that are littermates and are accompanied by their dam, may be transported in the same primary enclosure when shipped to research facilities, including federal research facilities.

(h) *Accompanying documents and records.* Shipping documents that must accompany shipments of dogs and cats may be held by the operator of the primary conveyance, for surface transportation only, or must be securely attached in a readily accessible manner to the outside of any primary enclosure that is part of the shipment, in a manner that allows them to be detached for examination and securely reattached, such as in a pocket or sleeve. Instructions for food and water and for administration of drugs, medication, and other special care must be attached to each primary enclosure in a manner that makes them easy to notice, to detach for examination, and to reattach securely.

§ 3.15 Primary conveyances (motor vehicle, rail, air, and marine).

(a) The animal cargo space of primary conveyances used to transport dogs and cats must be designed, constructed, and maintained in a manner that at all times protects the health and well-being of the animals transported in them, ensures their safety and comfort, and prevents the entry of engine exhaust from the primary conveyance during transportation.

(b) The animal cargo space must have a supply of air that is sufficient for the normal breathing of all the animals being transported in it.

(c) Each primary enclosure containing dogs or cats must be positioned in the animal cargo space in a manner that provides protection from the elements and that allows each dog or cat enough air for normal breathing.

(d) During air transportation, including time spent on the ground, dogs and cats must be held or transported in cargo areas that are heated or cooled as necessary to maintain anambient temperature that ensures the health and comfort of the dogs or cats. The cargo areas must be pressurized when the primary conveyance used for air transportation is not on the ground.

(e) During surface transportation, auxiliary ventilation, such as fans, blowers or air conditioning, must be used in any animal cargo space containing live dogs and cats when the ambient temperature within the animal cargo space reaches 85 °F (29.5 °C). Moreover, the ambient temperature may not exceed 95 °F (35 °C) at any time; nor exceed 85 °F (29.5 °C) for a period of more than 4 hours; nor fall below 45 °F (7.2 °C) for a period of more than 4 hours; nor fall below 35 °F (1.7 °F) at any time.

(f) Primary enclosures must be positioned in the primary conveyance in a manner that allows the dogs and cats to be quickly and easily removed from the primary conveyance in an emergency.

(g) The interior of the animal cargo space must be kept clean.

(h) Live dogs and cats may not be transported with any material, substance (e.g., dry ice) or device in a manner that may reasonably be expected to harm the dogs and cats or cause inhumane conditions, unless proper precaution is taken to prevent the injury or inhumane conditions.

§ 3.16 Food and water requirements.

(a) Each dog and cat that is 16 weeks of age or more must be offered food at least once every 24 hours. Puppies and kittens less than 16 weeks of age must be offered food at least once every 12 hours. These time periods apply to dealers, exhibitors, research facilities, including federal research facilities, who transport dogs and cats in their own primary conveyance, starting from the time the dog or cat was last offered food before transportation was begun. These time periods apply to carriers and intermediate handlers starting from the date and time stated on the certificate provided under § 3.13(d). Each dog or cat must be offered food within 12 hours before being transported in commerce. Consignors who are subject to the Animal Welfare regulations must certify that each dog and cat was offered food within the 12 hours preceding delivery of the dog or cat to a carrier or

intermediate handler for transportation in commerce, and must certify the date and time of the feeding, in accordance with § 3.13(d).

(b) Each dog and cat must be offered potable water during the 4 hours immediately preceding the beginning of its transportation in commerce and at least once every 12 hours thereafter. This time period applies to dealers, exhibitors, and research facilities, including federal research facilities, who transport dogs and cats in their own primary conveyance, starting from the time the dog or cat was last offered potable water before being transported in commerce. This time period applies to carriers and intermediate handlers starting from the date and time stated on the certificate provided under § 3.13(d). Consignors who are subject to the Animal Welfare regulations must certify that each dog and cat was offered potable water within 4 hours before being transported in commerce, and must certify the date and time the water was offered, in accordance with § 3.13(d).

(c) Any dealer, research facility, including a federal research facility, or exhibitor offering any dog or cat to a carrier or intermediate handler for transportation in commerce must securely attach to the outside of the primary enclosure used for transporting the dog or cat, written instructions for the in-transit food and water requirements for the dogs and cats contained in the enclosure. The instructions must be attached in a manner that makes them easily noticed, detached and returned to the enclosure.

(d) Food and water receptacles must be securely attached inside the primary enclosure and placed so that the receptacles can be filled from outside the enclosure without opening the door. Food and water containers must be designed, constructed, and installed so that a dog or cat cannot leave the primary enclosure through the food or water opening.

§ 3.17 Care in transit.

(a) Surface transportation (ground and water). Any person subject to the Animal Welfare regulations transporting dogs or cats in commerce must ensure that the operator of the conveyance, or a person accompanying the operator, observes the dogs or cats as often as circumstance allow, but not less than once every 4 hours, to make sure they have sufficient air for normal breathing, that the ambient temperature is within the limits provided in § 3.15(e), and that all applicable standards of this subpart are being complied with. The regulated person must ensure that the operator or person accompanying the operator determines whether any of the dogs or cats are in obvious physical distress and obtains any veterinary care needed for the dogs or cats at the closest available veterinary facility.

(b) Air transportation. During air transportation of dogs or cats, it is the responsibility of the carrier to observe the dogs or cats as frequently as circumstance allow, but not less than once every 4 hours if the animal cargo area is accessible during flight. If the animal cargo area is not accessible during flight, the carrier must observe the dogs or cats whenever they are loaded and unloaded and whenever the animal cargo space is otherwise accessible to make sure they have sufficient air for normal breathing, that the animal cargo area meets the heating and cooling requirements of § 3.15(d), and that all other applicable standards of this subpart are being complied with. The carrier must determine whether any of the dogs or cats are in obvious physical distress, and arrange for any needed veterinary care as soon as possible.

(c) If a dog or cat is obviously ill, injured, or in physical distress, it must not be transported in commerce, except to receive veterinary care for the condition.

(d) 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 the dog or cat reaches its final destination, or until the consignee takes physical delivery of the animal if the animal is consigned for transportation.

§ 3.18 Terminal facilities.

(a) *Placement.* Any person subject to the Animal Welfare regulations must not commingle shipments of dogs or cats with inanimate cargo in animal holding areas of terminal facilities.

(b) *Cleaning, sanitization, and pest control.* All animal holding areas of terminal facilities must be cleaned and sanitized in a manner prescribed in § 3.10(b)(3) of this subpart, as often as necessary to prevent an accumulation of debris or excreta and to minimize vermin infestation and disease hazards. Terminal facilities must follow an effective program in all animal holding areas for the control of insects, ectoparasites, and birds and mammals that are pests to dogs and cats.

(c) *Ventilation.* Air, preferably fresh air, 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 75° F (23.9° C) or higher.

(d) *Temperature.* The ambient temperature in an animal holding area containing dogs or cats must not fall below 45° F (7.2° C) or rise above 75° F (23.9° C) for more than four consecutive hours at any time dogs or cats are present. The ambient temperature must not fall below 35° F (1.7° C) or rise above 85° F (29.5° C) at any time dogs or cats are present. The ambient temperature must be measured in the animal holding area by the carrier, intermediate handler, or a person transporting dogs or cats who is subject to the Animal Welfare regulations, 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 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 can hold dogs and cats in animal holding areas of terminal facilities upon arrival is the same as that provided in § 3.13(g).

§ 3.19 Handling

(a) Any person subject to the Animal Welfare regulations 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 dog and cat to remain dry during rain, snow, and other precipitation.

(3) *Shelter from cold temperatures.* Transporting devices on which live dogs or cats are placed to move them must be covered to protect the animals when the outdoor temperature falls below 50° F (10° C). The dogs or cats must not be exposed to an ambient temperature below 45° F (7.2° C) for a period of more than 45 minutes, unless they are accompanied by a certificate of acclimation to lower temperatures as provided in § 3.13(f). The temperature must be measured in the manner provided in § 3.18(d) of this subpart.

(b) Any person handling a primary enclosure containing a dog or cat must use care and must avoid causing physical or emotional distress to the dog or cat.

(1) A primary enclosure containing a live dog or cat must not be placed on unattended conveyor belts, or on elevated conveyor belts, such as baggage claim conveyor belts and inclined conveyor ramps that lead to baggage claim areas, at any time; except that a primary enclosure may be placed on inclined conveyor ramps used to load and unload aircraft if an attendant is present at each end of the conveyor belt.

(2) A primary enclosure containing a dog or cat must not be tossed, dropped, or needlessly tilted, and must not be stacked in a manner that may reasonably be expected to result in its falling. They must be handled and positioned in the manner that written instructions and arrows on the outside of the primary enclosure indicate.

(c) The regulations in this section apply to movement of a dog or cat from primary conveyance to primary conveyance, within a primary conveyance or terminal facility, and to or from a terminal facility or a primary conveyance.

3. In § 3.28, paragraph (b)(2) (i) and (ii) and (b)(3) (i) and (iii) would be revised to read as follows:

§ 3.28 Primary enclosures.

* * * * *

(b) * * *

(2) * * *

(i) The interior height of any primary enclosure used to confine guinea pigs must be at least 7 inches (17.78 cm).

(ii) Each guinea pig must be provided a minimum amount of floor space in any primary enclosure as follows:

Weight or stage of maturity	Minimum floor space per hamster	
	in²	cm²
Weaning to 350 grams	60	387.12
>350 grams or nursing females with their litters	101	651.65

(3) * * *

(i) The interior height of any primary enclosure used to confine hamsters must be at least 6 inches (15.24 cm).

* * * * *

(iii) Except as provided in paragraph (b)(3)(ii) of this section, each hamster must be provided a minimum amount of floor space in any primary enclosure as follows:

Weight		Minimum floor space per hamster	
g	ozs	in²	cm²
60	2.1	10	64.52
60 to 80	2.1–2.8	13	83.88
80 to 100	2.8–3.5	16	103.23
> 100	> 3.5	19	122.59

4. In § 3.36, the introductory text would be revised to read as follows:

§ 3.36 Primary enclosures used to transport live guinea pigs and hamsters.

No person subject to the Animal Welfare regulations is allowed to offer for transportation, or transport, in commerce any live guinea pig or hamster in a primary enclosure that does not conform to the following requirements.

* * * * *

5. In § 3.37, a new paragraph (g) would be added to read as follows:

§ 3.37 Primary conveyances (motor vehicle, rail, air, and marine).

* * * * *

(g) The animal cargo space of primary conveyances used to transport guinea pigs or hamsters must be mechanically sound and provide fresh air by means of windows, doors, vents, or air conditioning so as to minimize drafts, odors, and moisture condensation. Auxiliary ventilation, such as fans, blowers, or air conditioners, must be used in any cargo space containing live guinea pigs or hamsters when the ambient temperature in the animal cargo space is 75° F (23.9° C) or higher. The ambient temperature within the animal cargo space must not be allowed to exceedd 85° F (29.5° C) or to fall below 45° F (7.2° C), except that the ambient temperature in the cargo space may be below 45° F (7.2° C) for hamsters if the hamsters are accompanied by a certificate of acclimation to lower temperatures, as provided in § 3.35(c) of this part.

6. In § 3.40, the first two sentences would be revised to read as follows:

§ 3.40 Terminal facilities.

No person subject to the Animal Welfare regulations is allowed to commingle shipments of live guinea pigs or hamsters with inanimate cargo. All animal holding areas of a terminal facility where shipments of live guinea pigs or hamsters are maintained must be cleaned and sanitized as prescribed in § 3.31 of the standards often enough to prevent an accumulation of debris or excreta, to minimize vermin infestation, and to prevent a disease hazard. * * *

7. In § 3.41 paragraph (a) introductory text would be revised to read as follows:

§ 3.41 Handling.

(a) Any person who is subject to the Animal Welfare Regulations and who moves live guinea pigs or hamsters from an animal holding area of a terminal facility to a primary conveyance and vice versa must do so as quickly and efficiently as possible. Any person subject to the Animal Welfare Act and holding any live guinea pig or hamster in an animal holding area of a terminal facility or transporting any live guinea pig or hamster to or from a terminal facility must provide the following:

* * * * *

8. In § 3.53, the table in paragraph (b) would be revised to read as follows:

§ 3.53 Primary enclosures.

* * * * *

(b) * * *

	Individual weights		Minimum floor space		Minimum interior height	
	kg	lbs	m^2	ft^2	cm	in
Individual rabbits (weaned)	2	4.4	0.14	1.5	35.56	14
	2–4	4.4–8.8	0.28	3.0	35.56	14
	4–5.4	8.8–11.9	0.37	4.0	35.56	14
	>5.4	>11.9	0.46	5.0	35.56	14

	Weight of nursing female		Minimum floor space/ female & litter		Minimum interior height	
	kg	lbs	m^2	ft^2	cm	in
Females with litters	2	4.4	0.37	4.0	35.56	14
	2–4	4.4–8.8	0.46	5.0	35.56	14
	4–5.4	8.8–11.9	0.56	6.0	35.56	14
	>5.4	>11.9	0.70	7.0	35.56	14

9. In § 3.61, the introductory paragraph would be revised to read as follows:

§ 3.61 Primary enclosures used to transport live rabbits.

No person subject to the Animal Welfare regulations is allowed to offer for transportation or to transport in commerce any live rabbit in a primary enclosure that does not conform to the following requirements.

* * * * *

10. In § 3.62, a new paragraph (g) would be added to read as follows:

§ 3.62 Primary conveyances (motor vehicle, rail, air, and marine).

* * * * *

(g) The animal cargo space of primary conveyances used to transport rabbits must be mechanically sound and provide fresh air by means of windows, doors, vents, or air conditioning so as to mimimize drafts, odors, and mositure condensation. Auxiliary ventilation, such as fans, blowers, or air conditioners, must be used in any cargo space containing live rabbits when the ambient temperature in the animal cargo space is 75 °F (23.9 °C) or higher. The ambient temperature within the animal cargo space must not be allowed to exceed 85 °F (29.5 °C) or to fall below 45° (7.2 °C), except that the ambient temperature in the cargo space may be below 45°F (7.2 °C) if the rabbits are accompanied by a certificate of acclimation to lower temperatures, as described in § 3.60(c) of this part.

11. In § 3.65 the first two sentences would be revised to read as follows:

§ 3.65 Terminal facilities.

No person subject to the Animal Welfare regulations may commingle shipments of live rabbits with inanimate cargo. All animal holding areas of a terminal facility where shipments of rabbits are maintained must be cleaned and sanitized as prescribed in § 3.56 of the standards often enough to prevent an accumulation of debris or excreta, to minimize vermin infestation, and to prevent a disease hazard. * * *

12. In § 3.66, paragraph (a) would be revised to read as follows:

§ 3.66 Handling.

(a) Any person who is subject to the Animal Welfare regulations and who moves live rabbits from an animal holding area of a terminal facility to a primary conveyance and vice versa must do so as quickly and efficiently as possible. Any person subject to the Animal Welfare regulations and holding any live rabbit in an animal holding area of a terminal facility or transporting any live rabbit to or from a terminal facility must provide the following:

* * * * *

13. Subpart D, consisting of §§ 3.75 through 3.93, would be revised to read as follows:

Subpart D—Specifications for the Humane Handling, Care, Treatment, and Transportation of Nonhuman Primates

Facilities and Operating Standards

Sec.

3.75 Housing facilities, general.
3.76 Indoor housing facilities.
3.77 Sheltered housing facilities.
3.78 Outdoor housing facilities.
3.79 Mobile or traveling housing facilities.
3.80 Primary enclosure.
3.81 Additional requirements for research facilities.

Animal Health and Husbandry Standards

3.82 Feeding.
3.83 Watering.
3.84 Cleaning, sanitization, housekeeping, and pest control.
3.85 Employees.
3.86 Social grouping and separation.

Sec.

Transportation Standards

3.87 Consignments to carriers and intermediate handlers.
3.88 Primary enclosures used to transport nonhuman primates.
3.89 Primary conveyances (motor vehicle, rail, air, and marine).
3.90 Food and water requirements.
3.91 Care in transit.
3.92 Terminal facilities.
3.93 Handling.

Subpart D—Specifications for the Humane Handling, Care, Treatment, and Transportation of Nonhuman Primates.[1]

Facilities and Operating Standards

§ 3.75 Housing facilities, general.

(a) *Structure; construction.* Housing facilities for nonhuman primates must 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

[1] Nonhuman primates include a great diversity of forms, ranging from the marmoset weighing only a few ounces, to the adult gorilla weighing hundreds of pounds, and including 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 the 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.

restrict other animals and unauthorized humans from entering.

(b) *Condition and site.* Housing facilities and areas used for storing animal food or bedding must be free of any accumulation of trash, waste material, junk, weeds, and other discarded materials. Animal areas inside of housing facilities must be kept neat and free of clutter, including equipment, furniture, or stored material, but may contain materials actually used and necessary for cleaning the area, such as brooms, mops, mop buckets, trash containers, and fixtures necessary for proper husbandry practices, such as tables, cabinets, and sinks. 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 unauthorized humans, and animals the size of dogs, skunks, and raccoons, are prevented from entering it.

(c) *Surfaces.*—(1) *General requirements.* The surfaces of housing facilities—including perches, shelves, swings, boxes, houses, dens, and other furniture-type fixtures or objects within the facility—must be constructed in a manner and made of materials that allow them to be readily cleaned and sanitized, or removed or replaced when worn or soiled. Furniture-type fixtures or objects must be sturdily constructed and must be strong enough to provide for the safe activity and welfare of nonhuman primates. Outdoor floors may be made of dirt, 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 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 cleaned daily and sanitized at least once every two weeks and as often as necessary to prevent any accumulation of excreta or disease hazards, unless the species housed in the facility engage in scent marking. If the species scent mark, the surfaces must be sanitized at regular intervals determined in accordance with generally accepted professional and husbandry practices and they must be spot cleaned daily. Floors made of dirt, sand, gravel, grass, or other similar material, and planted enclosures must be raked and spot-cleaned daily. 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 daily 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) 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 mechanically pressurized 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 leakproof containers that protect 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. Perishable food must be refrigerated, 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 a nonhuman primate must not be stored in animal areas, or in food storage or preparation areas.

(f) *Drainage and waste disposal.* Housing facility operators must provide daily (or more often as necessary) removal and disposal of animal and food wastes, bedding, dead animals, debris, garbage, water, and any other fluids and wastes. 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 for 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. Puddles of water in animal areas must be promptly mopped up or drained 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, 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 temperate.* Indoor housing facilities must be sufficiently heated and cooled when necessary to protect nonhuman primates from cold and hot temperatures and to provide for their health, comfort and well-being. The ambient temperature in the facility must not fall below 50 °F (10 °C) and must not rise above 85 °F (29.5 °C) when nonhuman primates are present. Within this range, the ambient temperature 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.

(b) *Ventilation.* Indoor housing facilities must be sufficiently ventilated at all times when nonhuman primates are present to provide for their health, comfort, and well-being and to minimize odors, drafts, ammonia levels, and moisture condensation. Air, preferably fresh air, must be provided by windows, doors, vents, fans, or air conditioning. The relative humidity must be maintained between 30 percent and 70 percent. Within this range, the relative humidity maintained must be at a level that ensures the health and well-being of

the species housed, 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. A regular daily lighting cycle of at least 8 consecutive hours of light and at least 8 consecutive hours of darkness must be provided, by either natural or artificial light. If only artificial light, such as fluorescent light, is provided, it must provide full-spectrum illumination. 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 cold and hot temperatures and to provide for their health, comfort and well-being. The ambient temperature in the sheltered part of the facility must not fall below 50 °F (10 °C) and must not rise above 85 °F (29.5 °C). Within this range, the ambient temperature 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.

(b) *Ventilation.* The sheltered part of sheltered animal facilities must be sufficiently ventilated at all times to provide for the health, comfort, and well-being of nonhuman primates and to minimize odors, drafts, ammonia levels, and moisture condensation. Air, preferably fresh air, must be provided by windows, doors, vents, fans, or air conditioning. The relative humidity maintained in the sheltered part of the facility must be between 30 percent and 70 percent. Within this range, the relative humidity maintained must be at a level that ensures the health and well-being of the species housed, 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. A regular daily lighting cycle of at least 8 consecutive hours of light and at least 8 consecutive hours of darkness must be provided, by either natural or artificial light. If only artificial light, such as fluorescent light, is provided, it must provide full-spectrum illumination. 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. It 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 all the nonhuman primates housed in the facility at the same time. If aggressive or dominant animals are housed in the facility with other animals there must be multiple shelters.

(f) *Perimeter fence.* The outdoor area of a sheltered housing facility must be enclosed by a fence that is at least 6 feet high. The fence must be constructed so that it protects nonhuman primates by preventing unauthorized humans, and animals the size of dogs, skunks, and raccoons, from going through it or under it and having contact with the nonhuman primates. It must be at least 3 feet from the outside wall or fence of the primary enclosure. A perimeter fence is not required if:

(1) the outside walls of the primary enclosure are made of a sturdy, durable material such as concrete, wood, plastic, metal, or glass, and are high enough and constructed in a manner that prevents contact with or entry by humans and animals that are outside the sheltered housing facility; or

(2) the housing facility is surrounded by a natural barrier that restricts the nonhuman primates to the housing facility and protects them from contact with unauthorized humans and animals that are outside the sheltered housing facility, and the Administrator gives written permission.

(g) *Public barriers.* Fixed public exhibits housing nonhuman primates, such as zoos, must have a barrier between the primary enclosure and the public at any time the public is present that prevents physical contact between the public and the nonhuman primates. Nonhuman primates used in trained animal acts or in uncaged public exhibits must be under the direct control and supervision of an experienced handler or trainer at all times when the public is present. Trained nonhuman primates may be permitted physical contact with the public, as allowed under § 2.131, but only if they are under the direct control and supervision of an experienced handler or trainer at all times during the contact.

§ 3.78 Outdoor housing facilities

(a) *Acclimation.* Only nonhuman primates that are acclimated to the prevailing temperature and humidity at the outdoor housing facility during the time of year they are at the facility, and that can tolerate the range of temperatures and climatic conditions known to occur at the facility at that time of year without stress or discomfort, may be kept in outdoor facilities.

(b) *Shelter from the elements.* Outdoor housing facilities for nonhuman primates must provide adequate shelter from the elements at all times. It must provide protection from the sun, rain, snow, wind, and cold, and from any weather conditions that may occur. The shelter must provide heat to the primates to prevent the ambient temperature from falling below 50 °F (10 °C).

(c) *Capacity; multiple shelters.* The shelter must be sufficiently large to comfortably provide protection for all the nonhuman primates housed in the facility at the same time. If aggressive or dominant animals are housed in the facility with other animals there must be multiple shelters.

(d) *Perimeter fence.* An outdoor housing facility must be enclosed by a fence that is at least 6 feet high. The fence must be constructed so that it protects nonhuman primates by preventing unauthorized humans, and animals the size of dogs, skunks, and raccons, from going through it or under it and having contact with the nonhuman primates. It must be at least 3 feet from the outside wall or fence of the primary enclosure. A perimeter fence is not required if:

(1) the outside walls of the primary enclosure are made of a sturdy, durable material such as concrete, wood, plastic, metal, or glass, and are high enough and constructed in a manner that prevents contact with or entry by humans and animals that are outside the housing facility; or

(2) the housing facility is surrounded by a natural barrier that restricts the nonhuman primates to the housing facility and protects them from contact with unauthorized humans and animals that are outside the housing facility, and the Administrator gives written permission.

(e) *Public barriers.* Fixed public exhibits housing nonhuman primates, such as zoos, must have a barrier between the primary enclosure and the public at any time the public is present, in order to prevent physical contact between the public and the nonhuman primates. Nonhuman primates used in

trained animal acts or in uncaged public exhibits must be under the direct control and supervision of an experienced handler or trainer at all times when the public is present. Trained nonhuman primates may be allowed physical contact with the public, but only if they are under the direct control and supervision of an experienced handler or trainer at all times during the contact.

§ 3.79 Mobile or traveling housing facilities.

(a) *Heating, cooling, and temperature.* Mobile or traveling housing facilities must be sufficiently heated and cooled when necessary to protect nonhuman primates from cold and hot temperatures and to provide for their health, comfort and well-being. The ambient temperature in the traveling housing facility must not fall below 50 °F (10 °C) and must not rise above 95 °F (35 °C) when nonhuman primates are present. Within this range, the ambient temperature 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. 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.

(b) *Ventilation.* Traveling housing facilities must be sufficiently ventilated at all times when nonhuman primates are present to provide for the health, comfort, and well-being of nonhuman primates and to minimize odors, drafts, ammonia levels, moisture condensation, and exhaust fumes. Air, preferably fresh air, must be provided by means of windows, doors, vents, fans, or air conditioning. The relative humidity 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.

(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. A regular daily lighting cycle of at least 8 consecutive hours of light and at least 8 consecutive hours of darkness must be provided, by either natural or artificial light. If only artificial light, such as fluorescent light, is provided, it must provide full-spectrum illumination. Primary enclosures must be placed in the housing facility so as to protect the nonhuman primates from excessive light.

(d) *Public barriers.* There must be a barrier between a mobile or traveling housing facility and the public at any time the public is present, in order to prevent physical contact between the nonhuman primates and the public. Nonhuman primates used in traveling exhibits, trained animal acts, or in uncaged public exhibits must be under the direct control and supervision of an experienced handler or trainer at all times when the public is present. Trained nonhuman primates may be allowed physical contact with the public, but only if they are under the direct control and supervision of an experienced handler or trainer at all times during the contact.

§ 3.80 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, and unauthorized release of the nonhuman primates;

(iv) Keep predators and unauthorized individuals from entering the enclosure or having physical contact with the nonhuman primates;

(v) Enable the nonhuman primates to remain dry and clean;

(vi) Provide shelter and protection from extreme temperatures and weather conditions that may be uncomfortable or hazardous to the species of nonhuman primate contained;

(vii) Provide sufficient shade to shelter all the nonhuman primates housed in the primary enclosure at one time;

(viii) Provide the nonhuman primates with easy and convenient access to clean food and water;

(ix) Enable all surfaces in contact with nonhuman primates to be readily cleaned and sanitized in accordance with § 3.84(b)(3), or replaced when worn or soiled;

(x) Have floors that are constructed in a manner that protects the nonhuman primates from injuring themselves or from having their appendages caught; and

(xi) Provide sufficient space for the nonhuman primates to make normal postural adjustments with freedom of movement.

(b) *Social grouping.* Nonhuman primates must be housed in primary enclosures with compatible members of the same species or with compatible members of other nonhuman primate species, in pairs, family groups, or other compatible social groupings, unless the attending veterinarian determines that doing so would endanger the health, safety, and well-being of the nonhuman primates. Compatibility of nonhuman primates must be determined in accordance with generally accepted professional practices and actual observation 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, and well-being. If, in accordance with these regulations, this contact is not provided, the isolated individually housed nonhuman primates must have positive physical contact or other interaction with their keeper or other familiar and knowledgeable person for at least one hour each day.

(c) *Minimum space and physical environment requirements.* Primary enclosures must meet the applicable minimum space and physical environment requirements provided in this subpart. These minimum space requirements must be met even if perches, swings, ledges, or other suspended fixtures are placed in the enclosure.

(1) Research facilities; federal research facilities.

(i) The minimum space that must be provided to *each* nonhuman primate, whether housed individually or with other nonhuman primates, is determined by the typical weight of animals of its species, except for brachiating species,[2] in accordance with the following table:[3]

[2] The different species of nonhuman primates are divided into seven weight groups for determining minimum space requirements, except that all brachiating species of any weight are grouped together since they require additional space to engage in species-typical behavior. The grouping provided is based upon the typical weight for various species and not on changes associated with obesity, aging, or pregnancy. These conditions will not be considered in determining a nonhuman primate's weight group unless the animal is obviously unable to make normal postural adjustments and movements within the primary enclosure. Different species of prosimians vary in weight and should be grouped with their appropriate weight group. They have not been included in the weight table since different species typically fall into different weight groups. Infants and juveniles of certain species are substantially lower in weight than adults of those species and require the minimum space requirements of lighter weight species unless the animal is obviously unable to make normal postural adjustments and movements within the primary enclosure.

[3] The following are examples of the kinds of nonhuman primates typically included in each group:

Group 1—marmosets, tamarins, and infants (up to 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 up to 88.0 lbs. (40 kg.] and brachiating species.

Group 7—great apes >88.0 lbs. (40 kg.).

Group	Weight		Floor Area/Animal		Height	
	lbs.	(kg.)	ft.^{2}	(m^2)	in.	(cm.)
1	2.2	(1)	1.6	(0.15)	20	(50.8)
2	2.2–6.6	(1–3)	3.0	(0.28)	30	(76.2)
3	6.6–20.0	(3–10)	4.3	(0.40)	30	(76.2)
4	20.0–33.0	(10–15)	6.0	(0.56)	32	(81.28)
5	33.0–55.0	(15–25)	8.0	(0.74)	36	(91.44)
6	55.0–88.0	(25–40)	25.1	(2.33)	84	(213.36)
7	>88.0	(>40)	50.0	(4.65)	84	(213.36)

(ii) Primary enclosures not precisely meeting the floor area and height requirements provided in paragraph (c)(1)(i) of this section but that do provide nonhuman primates with a sufficient volume of space and the opportunity to express species-typical behavior, such as primate pole housing, may be used with written permission from the Administrator. An application for permission must demonstrate in written and photographic detail why the primary enclosure should be allowed. Nonhuman primates housed in these types of primary enclosures that are also designed and constructed in a manner that provides for their psychological well-being by allowing exercise and social interaction may be excused from the release period required in § 3.81(a)(3) if it is sufficiently justified in the application. The Administrator may deny the application if he or she determines that granting it will be detrimental to the health and psychological well-being of the nonhuman primates to be housed in the primary enclosure. The Administrator will advise the research facility of his or her decision in writing.

(iii) Environmental enrichments must be provided in accordance with § 3.81.

(2) *Dealers.* (i) Individual nonhuman primates that are not part of an established pair, family, or other social group may be housed individually if the

attending veterinarian determines that it is necessary for their health, safety, and well-being. Except as provided in paragraph (c)(2)(v) of this section, the minimum space that must be provided to each nonhuman primate housed individually is twice the minimum floor area and twice the minimum height (up to a maximum height of 84 inches) that research facilities are required to provide in accordance with paragraph (c)(1) of this section.

(ii) Except when nonhuman primates must be individually housed for the purposes set forth in paragraph (c)(2)(v) of this section, established pairs, families, or other social groups of nonhuman primates must be maintained together in a primary enclosure. Primary enclosures used to house nonhuman primates in pairs, families, and other social groups must satisfy the minimum space requirements provided in paragraph (c)(1) of this section, in accordance with the requirements of paragraph (d) of this section for housing more than 1 nonhuman primate in a primary enclosure.

(iii) Dealers must enrich the environment in primary enclosures to promote the psychological well-being of nonhuman primates. This can be done by, among other things:

(A) Providing items such as perches, swings, mirrors, or other cage complexities that enable nonhuman primates to engage in activities typical of their age and species;

(B) Providing playthings and manipulative objects; and

(C) Using foraging or task-oriented feeding methods.

(iv) Multiple enrichments of the environment must be provided for each animal housed in a primary enclosure. The nature of the enrichments provided must be appropriate for the species of nonhuman primates housed in the enclosure.

(v) Dealers may meet the minimum space requirements required of research facilities in paragraph (c)(1) of this section, instead of the space requirements provided in paragraph (c)(2)(i) of this section, in the following instances:

(A) When holding a nonhuman primate for required federal, state, or local quarantine periods;

(B) When a nonhuman primate is receiving veterinary care as directed by the attending veterinarian; or

(C) While transporting a nonhuman primate to or from an auction sale and while holding it at the sale.

(3) *Exhibitors.* Nonhuman primates are grouped by species into the following 7 groups for purposes of determining the minimum space and environment requirements that exhibitors must provides:

Nonhuman Primate Group	Type	Example
1	Prosimian Primates	Tarsiers, Galagos, Pottos, Lorises, Lemurs, Mouse Lemurs Avahis, Indris, Sifakas, and Aye-ayes
2	Marmosets and Tamarins	Marmosets, Tamarins, and Callimico
3	Other New World Monkeys	Howler Monkeys, Owl Monkeys, Spider Monkeys, Woolly Spider Monkeys, Uakaris, Titi Monkeys, Capuchins, Saki Monkeys, Woolly Monkeys, and Squirrel Monkeys
4	Langurs and Colobines	Proboscis Monkey, Langur, Colobus Monkey
5	Other Old World Monkeys	Baboons, Drills, Mandrills, Macaques, Guenons, Mangabeys, Talapoins, Patas Monkeys and Swamp Monkeys
6	Lesser Apes	Gibbons and Siamang
7	Great Apes	Orangutans, Chimpanzees, Gorillas

The minimum space and environmental enrichments that must be provided to each grouping of nonhuman primates housed in a primary enclosure must be appropriate for the species housed, as provided in this paragraph, and in accordance with the following chart:

Nonhuman Primate Group	Species/Type	Minimum No. Primates Per Enclosure	Minimum Primary Enclosure Size (Length, Width, Height)	Shelter Dens/Nest Boxes	Enclosure Furnishings or Equipment
Prosimians	Tarsiers	Pair	1m L × 1m W × 2m H (3.28ft) × (3.28ft) × (6.56ft).	12.7cm L × 12.7 cm W × 12.7cm H (5.0in) × (5.0in) × (5.0in) for each adult in upper half of exhibit.	1, 2, 3
	Loris & Galago: Smaller species.	Pair or family group	1.5cm L × 1.5cm W × 1.5cm H (4.92ft) × (4.92ft) × (4.92ft).	12.7cm L × 12.7cm W × 12.7cm H (5in) × (5in) × (5in) for each adult in upper half of exhibit.	1, 3
	Larger species		3m L × 3m W × 3m H (9.84ft) × (9.84ft) × (9.84ft).	76.2cm L × 47.2cm W × 47.7cm H (30in) × (18.6in) × (18.8in).	
	Lemurs	Pair	1.52m L × 1.52m W × 1.83m H (4.98ft) × (4.98ft) × (6.0ft).	0.46m L × 0.46m W × 0.46m H (1.5ft) × (1.5ft) × (1.5ft) for each adult and in upper half of exhibit.	1, 2

Nonhuman Primate Group	Species/Type	Minimum No. Primates Per Enclosure	Minimum Primary Enclosure Size (Length, Width, Height)	Shelter Dens/Nest Boxes	Enclosure Furnishings or Equipment
	Mouse Lemurs	Pair	1.22m L × 1.22m W × 1.22m H	10.,16cm L × 10.16cm W × 10.16cm H.	1
			(4.0ft) × (4.0ft) × (4.0ft)	(4.0in) × (4.0in) × (4.0in) for each adult and in upper half of exhibit..	
	Indris	Pair or family group	5m L × 5m W × 5m H	One shelter for all.	1, 2, 4
	Avahis		(167.4ft) × (16.4ft) × (16.4ft)		
	Sifakas				
	Aye-Ayes	Pair	4m L × 3m W × 3m H	76.2cm L × 47.7cm W × 47.7cm H	4, 7
			(13.12ft) × (9.8ft) × (9.8ft)	(2.5ft) × (1.5ft) × (1.5ft) for each adult and in upper half of exhibit..	
Marmosets	Smaller < 500g	Pair	0.91m L × 0.91m W × 1.83m H	One shelter for all.	1, 2, 5
Tamarins			(3ft) × (3ft) × (6ft)	*Note:* Minimum temperature of 70°F.	
Callimico	Larger > 500g		1.22m L × 2.44m W × 2.44m H		
			(4ft) × (8ft) × (8ft)		
Other New World Monkeys.	Titis, Owl, & Squirrel	Pair	2m L × 2m W × 2m H (6.56ft) × (6.56ft) × (6.56ft).	One shelter for all.	1, 2, 5, 6
		Up to 6	2.5m L × 2.5m W × 2.5m H (8.2ft) × (8.2ft) × (8.2ft).	*Note:* Sakis, Titis, & Owls are Monogamous..	
	Capuchin	Pair	2.5m L × 2m W × 2m H		
	Ukaris		(8.2ft) × (8.2ft) × (8.2ft)		
	Sakis	Up to 5	4m L × 2.5m W × 2.5m H (13.12ft) × (8.2ft) × (8.2ft).		
	Howler	Pair	3m L × 3m × 3m H		
	Wooly		(9.84ft) × (9.84ft) × (9.84ft)		
	Spider	Over 2	3.5m L × 3.5m W × 3.5m H (11.5ft) × (11.5ft) × (11.5f).		
Langurs, Colobines.	Proboscis, Langur, Colobus.	Pair or family group	Width, length, and height are to be at least 3 times the length from tip of nose to tip of tail for the largest animal.	Two boxes, each one at least 1½ times the length from tip of nose to tip of tail. *Note:* Temperature range should be 70–85°F..	1, 2, 6
Other Old Monkeys (Cercopithecids).	Baboons, Drills, Mandrills, Macaques Guenons, Mangabeys, Talapoins, Patas & Swamp Monkeys.	Pair or family group	Area=54 times the head and body length of the largest adult. Height=8ft minimum (2.44m).	Sufficient shelter for all.	1, 2, 3, 7
Lesser Apes	Gibbons	Pair	4.27m L × 4.27m W × 3.05m H (14ft) × (14ft) × (10ft).	One shelter for all.	1, 2, 8
	Siamangs		4.27m L × 5.48m W × 3.05m H (14ft × (18ft) × (10ft).	*Note:* These species are arboreal brachiators, are monogamous, and are strongly territorial..	
Greater Apes	Pygmy Chimpanzees	Pair	4.27m L × 4.27m W × 3.05m H (14ft) × (14ft) × (10ft).	Shelter for all by individual or group.	7, 9, 10, 11
	Chimpanzee	One	4.27m L ×4.27m W × 3.05m H		
	Gorilla		(14ft) × (14ft) × (10ft)		
	Orangutan	Pair	8.54m L × 8.54m W × 3.05m H (28ft) × (28ft) × (10ft) Space should be divided into separate areas or shift cages be available.		

1. Vertical and horizontal branches/poles of suitable size for the species.
2. Elevated perches/resting shelves of sufficient size to hold all primates.
3. Elevated pathways of tree branches/poles/or other material suitable for the species.
4. Multidirectional pathways of branches/poles/or other material of suitable size for the species.
5. Elevated feed and water stations.
6. Visual barriers.
7. Nontoxic hay/straw/leaves/branches/browse for foraging or nesting.
8. Three to four horizontal branches/poles about 2 feet apart throughout exhibit at heights that are greater than the body length of the animal when arms and legs are fully extended.
9. Climbing structures and elevated platforms at least 1 meter (3.28ft) apart and at varying heights.
10. Ropes anchored at each end which are taut enought to prevent being wrapped around an arm or leg.
11. Objects to manipulate such as tires, plastic drums, or "boomer" balls.

(4) *Mobile or traveling animal act exhibitors.* (i) Primary enclosures used to house nonhuman primates that participate daily in acts, shows, or training periods outside of their enclosure must satisfy the minimum space requirements provided in paragraph (c)(1) of this section for research facilities. No enhancements of the primary enclosure environment are required.

(ii) Primary enclosures used to house up to 3 nonhuman primates that are permanently contained in their primary enclosure must provide at least three times the floor space and twice the minimum height (up to a maximum height of 84 inches) required in paragraph (c)(1) of this section for research facilities. The minimum space provided must be increased in accordance with paragraph (d) of this section for each additional 1–3 nonhuman primates housed together in the primary enclosure. The environment in the primary enclosure must be enriched to promote the psychological well-being of the nonhuman primates in a manner that allows them to engage in activities that are typical for their age and species. The environment must be enriched by providing items such as perches, swings, mirrors, or other increased cage complexities; providing playthings or manipulative objects; and by using foraging or task-oriented feeding methods.

(d) Except for nonhuman primates housed by exhibitors in accordance with

paragraphs (c)(3), and as provided in paragraphs (c)(2)(ii) [dealers] and (c)(4)(ii) [mobile or traveling animal act exhibitor] of this section, 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 requirements that must be provided for *each* nonhuman primate housed in the enclosure and double the minimum height requirement for the largest nonhuman primate housed in the enclosure [up to a maximum height of 84 inches).[4]

(e) *Variance from minimum space requirements.*—(1) *Definition.* For the purposes of this subpart, "variance" means the written permission from the Administrator that is required to operate as a licensee or registrant under the Animal Welfare Act without fully complying with the minimum space requirements provided in this subpart. A variance may be limited in scope both as to time and to the primary enclosures covered by it, and will specify the portions of a registrant's or licensee's facilities covered by the variance.

(2) *Who may apply; eligibility.* Registrants and licensees that maintain or handle nonhuman primates, or that have nonhuman primates on the premises or under their control or supervision, and that do not comply with one or more of the minimum space requirements provided in this subpart may apply to the Administrator for a variance. Any housing facilities under construction or in the design and preliminary construction stages on the effective date of these regulations must comply with these standards and are not eligible for a variance, unless the registrant or licensee demonstrates to the Administrator that construction is so nearly complete that a variance is necessary for the registrant or licensee to fully comply with the minimum space requirements.

[4] An example of how to determine the minimum space that must be provided for two nonhuman primates housed together in one primary enclosure would be: Assume a squirrel monkey (Group 2 of paragraph (1)) is housed with a baboon (Group 5 of paragraph (1)). The minimum floor area required would be the Group 2 minimum floor area (3.0 sq. ft.) plus the Group 5 minimum floor area (8.0 sq. ft.), or 11 square feet. The minimum height required would be double the Group 5 minimum height (36 in. ht. × 2—72 in. ht.), since the minimum height required for the largest nonhuman primate housed in the enclosure is doubled.

Assume a second squirrel monkey is added to the same primary enclosure. An additional Group 2 minimum floor area (3.0 sq. ft.) would be added to determine the total minimum floor area space requirement for that primary enclosure. (11 sq. ft. + 3 sq. ft.—14 sq. ft.) The minimum height would not be increased.

(3) *When to apply.* Eligible registrants and licensees requiring a variance in accordance with paragraph (e)(2) must apply to the Administrator within 60 days of the effective date of these regulations.

(4) *Application.* An application for a variance must be in writing and must list in detail each of the minimum space requirements that cannot be complied with, the amount of time necessary for the applicant to come into compliance with the minimum space requirements, the specific reasons why the variance is being requested, the species and number of nonhuman primates that will be affected by the variance, and the estimated cost of compliance. A statement from the attending veterinarian concerning the age and health status of the nonhuman primates affected by the variance and addressing whether the granting of a variance would be detrimental to the affected nonhuman primates must accompany the application. The Administrator may grant the application if he or she determines that it is justified or deny it if he or she determines that it is not justified under the circumstances, or that granting it would be detrimental to the health and psychological well-being of the nonhuman primates affected by the variance. The grant or denial will be in writing. The Administrator may require a report to be submitted by an outside expert to help determine whether a variance would be detrimental to the health and psychological well-being of the nonhuman primates affected. The cost of the report must be paid by the applicant. The applicant may request that the Administrator reconsider his or her decision to deny an application by writing to the Administrator within ten (10) days after the applicant has received the denial. The applicant must explain, in writing, why he or she believes the variance should have been granted. The Administrator will notify the applicant in writing of the final decision as promptly as circumstances allow.

(5) *Duration and extension.* An initial variance may be granted, at the sole discretion of the Administrator, for the period of time the Administrator determines is necessary for the applicant to comply with the minimum space requirements, based upon the facts presented in the application, up to a maximum time of 2 years. The Administrator may grant a single extension of up to 1 year upon written request, if the Administrator determines that it is justified due to unforeseen situations that prevent the registrant or licensee from fully complying during the initial variance period. A written request for an extension must be received by the Administrator at least 60 days before the expiration date of the initial variance. No more than 1 extension will be granted. The grant or denial of an application for an extension will be in writing. The applicant may request that the Administrator reconsider his or her decision to deny an application for extension by writing to the Administrator within ten (10) days after the applicant has received the denial. The applicant must explain, in writing, why he or she believes the extension should have been granted. The Administrator will notify the applicant in writing of the final decision as promptly as circumstances allow. Until a final determination is made, the extension will not be in effect. If the extension is granted on reconsideration, it will be retroactive to the termination date of the initial variance.

(6) *Revocation.* A variance may be revoked by the Administrator at any time if he or she determines that it was obtained in bad faith, that the purpose for which the variance was granted is not being carried out, or that it is detrimental to the health and psychological well-being of the nonhuman primates affected. Revocation of a variance will be in writing and effective upon receipt.

§ 3.81 Additional requirements for research facilities

(a) Research facilities, including federal research facilities, must comply with the following requirements in order to promote the psychological well-being of nonhuman primates:

(1) The physical environment in primary enclosures must be enriched by providing means of expressing species-typical activities. Examples of environmental enrichments include providing perches, swings, mirrors, and other increased cage complexities; providing toys or objects to manipulate; and using foraging or task-oriented feeding methods.

(2) Nonhuman primates must be housed in social groupings in accordance with § 3.80(b).

(3) An individually housed nonhuman primate must be released for a minimum of four hours of exercise and social interaction per week into an area that is at least three times the area and twice the height (up to a maximum height of 84 inches) required for that species in § 3.80(c)(1). Individually housed nonhuman primates may be placed with compatible species for their exercise periods. Nonhuman primates that are

not housed individually and those that are housed individually in a primary enclosure that provides at least twice the volume required for that species in § 3.80(c)(1) do not have to be released for an exercise period.

(4) Research facilities must consult with the attending veterinarian with regard to the following individually housed nonhuman primates and must provide additional environmental enrichments, exercise, and social interaction, in accordance with the instructions of the attending veterinarian:

(i) Infants and juveniles;

(ii) Adults used in research for which the animal care and use procedure does not provide much activity;

(iii) Those that show signs of being in psychological distress through behavior or appearance.

(b) Primate chairs. Nonhuman primates must not be placed in chairs unless it is required by an animal care and use procedure and the Committee approves of it for a particular animal. If the use of chairs is approved for a nonhuman primate, it must be released daily for exercise for at least one continuous hour during the period it is placed in a chair, unless continuous restraint in a chair is required by an animal care and use procedure and approved by the Committee. If continuous restraint is approved for a nonhuman primate it must be released for exercise for at least one hour before it is restrained and for at least one hour after the period of restraint.

(c) Records. Documentation of the release of each nonhuman primate for exercise and social interaction and of additional environmental enrichments that must be provided under paragraph (a)(4) of this section must be kept by the attending veterinarian and is subject to APHIS inspection, and in the case of federal research facilities, to inspection by officials of any federal funding agency.

(d) Exemptions. The attending veterinarian may exempt a particular nonhuman primate from the exercise and social release period required for it under paragraphs (a)(3) and (b) of this section, or restrict its participation in the period, if he or she determines that it is necessary to do so for its health, condition, or psychological well-being due to the physical or psychological condition of the animal. The exemption or restriction must be recorded by the attending veterinarian and the documentation is subject to APHIS inspection, and in the case of federal research facilities, to inspection by officials of any federal funding agency. The attending veterinarian must review the grant of exemption or restriction and observe the animal at least every 30 days to determine whether it is still necessary. All exemptions and restrictions must be included in the Annual Report of the research facility.

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 diet must consist of varied food items. The food must be clean, uncontaminated, wholesome, and palatable to the animals. It must be of sufficient quantity and have sufficient nutritive value to maintain the normal condition and weight of the animal and to meet its normal daily nutrition and vitamin requirements.

(b) The method of feeding nonhuman primates must be varied daily in order to promote their psychological well-being, such as by using task-oriented feeding and allowing them to forage for food.

(c) 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.

(d) 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.

(e) 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, and caking or wetting of food placed in self-feeders.

§ 3.83 Watering.

Potable water must be provided in sufficient quantity to every nonhuman primate housed at the facility. If potable water is not continually available to the nonhuman primates, it must be offered to them at least twice daily for periods of not less than 1 hour each time, unless the attending veterinarian requires otherwise in order to provide adequate veterinary care to the animal. Water receptacles must be kept clean and free of waste of any kind, and must be sanitized in accordance with the methods provided in § 3.84(b)(3) of this subpart at least once every 2 weeks. Used water receptacles must be sanitized before they can be used to provide water to a different nonhuman primate or social grouping of nonhuman primates.

§ 3.84 Cleaning, sanitization, housekeeping, and pest control.

(a) Cleaning of primary enclosures. Excreta and food waste must be removed at least daily from inside each primary enclosure and from underneath it, and more frequently if necessary, to prevent accumulation of feces and food waste, to prevent the nonhuman primates from becoming soiled, and to reduce disease hazards, insects, pests, and odors. When a steam, hosing, flushing, or other method involving water is used to clean the primary enclosures, nonhuman primates must be removed during the cleaning to prevent them from being involuntarily wetted or injured. Pans underneath primary enclosures with grill-type floors must also be cleaned at least daily, and as often as necessary to prevent accumulation of feces and food waste, and to reduce disease hazards, pests, insects, and odors. Primary enclosures with hard surfaces must be cleaned every day. Dirt floors and planted areas in primary enclosures must be raked and spot cleaned every day. Perches, bars, and shelves must be kept clean and replaced when worn. If the species of nonhuman primates housed in the primary enclosure engages in scent marking, 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.

(2) Primary enclosures must be sanitized at least once every 2 weeks and as often as necessary to prevent any 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; or

(iii) Washing all soiled surfaces with a detergent solution to remove all organic material and mineral buildup, followed by a safe and effective disinfectant rinse, and then 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, grass, or planted areas, must be sanitized by removing the contaminated materials necessary to prevent odors, diseases, pest, insects, and vermin infestation.

(c) Housekeeping for premises. Premises where housing facilities are located, including buildings and surrounding grounds, must be kept clean and in good repair in order to protect the nonhuman primates from injury, to facilitate the husbandry practices required in this subpart, and to reduce or eliminate breeding and living areas for rodents, pests, and vermin. Premises must be kept free of accumulations of trash, junk, waste, and discarded matter. Weeds, grass, and bushes must be controlled so as to facilitate cleaning of the premises and pest control.

(d) Pest control. An effective program for control of insects, external parasites affecting nonhuman primates, and birds and mammals that are pests, must be established and maintained so as to promote the health and well-being of the animals and reduce contamination by pests in animal areas.

§ 3.85 Employees.

Every person subject to the Animal Welfare regulations 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 animals, must be supervised by an animal caretaker 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.

§ 3.86 Social grouping and separation.

(a) Nonhuman primates housed in the same primary enclosure must be grouped with compatible members of the same or other nonhuman primate species, or with other compatible animal species, with the following restrictions:

(1) If a nonhuman primate exhibits vicious or overly aggressive behavior it must be housed separately;

(2) Nonhuman primates under quarantine or treatment for a communicable disease must be housed separately from other nonhuman primates and susceptible species of animals to minimize the risk of spread of the disease; and

(3) Nonhuman primates may not be housed with other species of primates or animals unless they are compatible, do not compete for food and shelter, and are not hazardous to the health and well-being of each other;

(b) Families must be housed together and compatible groups must remain constant.

Transportation Standards

§ 3.87 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, phone number, and telex number, if applicable, of the consignee.

(c) Carriers and intermediate handlers must not accept a nonhuman primate for transport in commerce unless written instructions concerning in transit food and water requirements for each nonhuman primate in the shipment are securely attached to the outside of its primary enclosure in a manner that makes them easily noticed and read.

(d) Carriers and intermediate handlers must not accept a nonhuman primate for transport in commerce unless the consignor certifies in writing to the carrier or intermediate handler that the nonhuman primate was offered food during the 12 hours and water during the 4 hours before delivery to the carrier or intermediate handler, and specifies the date and time the nonhuman primate was last offered food and water. A copy of the certification must accompany the nonhuman primate to its destination and must include the following information for each nonhuman primate:

(1) The consignor's name and address;

(2) The species of nonhuman primate;

(3) A statement by the consignor certifying that each nonhuman primate continued in the primary enclosure was offered food during the 12 hours and water during the 4 hours before delivery to the carrier or intermediate handler, and the date and time food and water was last offered; and

(4) The consignor's signature and the date and time the certification was signed.

(e) Carriers and intermediate handlers must not accept a nonhuman primate for transport in commerce unless the primary enclosure meets the requirements of § 3.88 of this subpart, or the consignor certifies in writing to the carrier or intermediate handler that the primary enclosure meets the requirements of § 3.88 of this subpart. Even if the consignor provides this certification, a carrier or intermediate handler must not accept a nonhuman primate for transport if the primary enclosure is obviously defective or damaged and cannot reasonably be expected to safely and comfortably contain the nonhuman primate without suffering or injury. A copy of the certification must accompany the nonhuman primate to its destination and must include the following information for each primary enclosure:

(1) The 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 the consignor certifying that each primary enclosure in the shipment meets the USDA standards for primary enclosures contained in § 3.88 of this subpart; and

(5) The consignor's signature and the date the certification was signed.

(f) Carriers and intermediate handlers must not accept a nonhuman primate for transport in commerce unless their holding area and cargo facilities meet the minimum temperature requirements provided in §§ 3.91 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 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 (f)(3) 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 45 °F (7.2 °C), but not lower than a minimum temperature specified on the certificate based on the generally and professionally accepted temperature range for the nonhuman primate considering its age, condition, and species; and

(5) The veterinarian's signature and the date the certification was signed.

(g) When a primary enclosure containing a nonhuman primate has arrived at the animal holding area of a terminal facility after transport, the carrier or intermediate handler must attempt to notify the consignee upon arrival and at least once in every 6-hour period after arrival. The time, date, and method of each attempted notification and the actual notification of the consignee, and the name of the person who notifies or attempts to notify the consignee must be written on the carrier's or intermediate handler's copy of the shipping document and on the copy that accompanies the primary enclosure. If the consignee cannot be notified within 24 hours after the nonhuman primate has arrived at the terminal facility, the carrier or intermediate handler must return the animal to the consignor or to whomever the consigner designates. If the consignee is notified of the arrival and does not take physical delivery of the nonhuman primate within 48 hours after arrival of the nonhuman primate, the carrier or intermediate handler must return the animal to the consignor or to whomever the consignor designates. The carrier or intermediate handler must continue to provide proper care, feeding, and housing to the nonhuman primate, and maintain the nonhuman primate in accordance with generally accepted professional and husbandry practices until the consignee accepts delivery of the nonhuman primate or until it is returned to the consignor or to whomever the consignor designates. The carrier or intermediate handler must obligate the consignor to reimburse the carrier or intermediate handler for the cost of return transportation and care.

§ 3.88 Primary enclosures used to transport nonhuman primates.

Any person subject to the Animal Welfare regulations 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, to handlers, 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 provide to the nonhuman primate in accordance with paragraph (c) of this section;

(9) Ventilation openings are covered with bars, wire mesh, or smooth expanded methal 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 absorbe and cover excreta. The litter must be of a suitably absorbent material that is safe and nontoxic to the nonhumane 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 moveable, 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 30 percent of the total surface areas of the 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 of every wall must be at least 20 percent of the total surface area of the 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 convered with bars, wire mesh, or smooth expanded metal having air spaces.

(d) *Compatibility.* (1) Only one live nonhumane primate can 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 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," "Do Not Tip," and "This Side Up," in letters at least 1 inch (2.5 cm.) high, and with arrows or other markings to indicate the correct upright position of the primary enclosure. Permanently affixed primary enclosures must be clearly marked in English with the words "Wild Animals" or "Live Animals," in the same manner.

(g) *Accompanying documents and records.* Shipping documents that must accompany shipments of nonhuman primates may be held by the operator of the primary conveyance, for surface transportation only, or must be securely attached in a readily accessible manner to the outside of any primary enclosure that is part of the shipment, in a manner that allows them to be detached for examination and securely reattached, such as in a pocket or sleeve. Instructions for food and water and for administration of drugs, medication, and other special care must be attached to each primary enclosure in a manner that makes them easy to notice, to detach for examination, and to reattach securely.

§ 3.89 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 allow 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 heath 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 the other animals, see them or smell them.

(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, unless proper precaution is taken to prevent the injury or inhumane conditions.

§ 3.90 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. These time periods apply to dealers, exhibitors, and research facilities, including federal research facilities, who transport nonhuman primates in their own primary conveyances, starting from the time the nonhuman primate was last offered food before transportation was begun. These time periods apply to carriers and intermediate handlers starting from the date and time stated on the certification provided under § 3.87(d). Each nonhuman primate must be offered food within 12 hours before being transported in commerce. Consignors who are subject to the Animal Welfare regulations must certify that each nonhuman primate was offered food within the 12 hours preceding delivery of the nonhuman primate to a carrier or intermediate handler for transportation in commerce, and must certify the date and time of the feeding, in accordance with § 3.87(d).

(b) Each nonhuman primate must be offered potable water during the 4 hours immediately preceding the beginning of its transportation in commerce, and every 12 hours thereafter. This time period applies to dealers, exhibitors, and research facilities, including federal research facilities, who transport nonhuman primates in their own primary conveyances, starting from the time the nonhuman primate was last offered potable water before being transported in commerce. This time period applies to carriers and intermediate handlers starting from the date and time stated on the certification provided under § 3.87(d). Consignors who are subject to the Animal Welfare regulations must certify that each nonhuman primate was offered potable water within 4 hours before being transported in commerce, and must certify the date and time the water was offered, in accordance with § 3.87(d).

(c) Any dealer, exhibitor, or research facility, including a federal research facility, offering a nonhuman primate to a carrier or intermediate handler for transportation in commerce must securely attach to the outside of the primary enclosure used for transporting the nonhuman primate, written instructions for the in-transit food and

[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.

water requirements of the nonhuman primate(s) contained in the enclosure. The instructions must be attached in a manner that makes them easily noticed, detached and returned to the enclosure.

(d) Food and water receptacles must be securely attached inside the primary enclosure and placed so that the receptacles can be filled from outside of the enclosure without opening the door. Food and water receptacles must be designed, constructed, and installed so that a nonhuman primate cannot leave the primary enclosure through the food or water opening.

§ 3.91 Care in transit.

(a) Surface transportation (ground and water). Any person subject to the Animal Welfare regulations 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 § 3.89(d), 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 § 3.89(d), 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 § 3.88 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.

(e) The transportation regulations contained in this subpart must be complied with until the nonhuman primate reaches its final destination, or until the consignee takes physical delivery of the animal if the animal is consigned for transportation.

§ 3.92 Terminal facilities.

(a) *Placement.* Any persons subject to the Animal Welfare regulations 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.* Air, preferably fresh air, 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 75 °F (23.9 °C) or higher.

(d) *Temperature.* The ambient temperature in an animal holding area containing nonhuman primates must not fall below 45 °F (7.2 °C) or rise above 85 °F (29.5 °C) at any time nonhuman primates are present. The ambient temperature must not rise above 75 °F (23.9 °C) for more than four consecutive hours at any time nonhuman primates are present. The ambient temperature must be measured in the animal holding area by the carrier, intermediate handler, or a person transporting nonhuman primates who is subject to the Animal Welfare regulations, out side 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 holding a nonhuman primate in an animal holding area of a terminal facility must provide the following:

(1) Shelter from sunlight and extreme heat. Shade must be provided that is sufficient to protect the nonhuman primate from the direct rays of the sun.

(2) Shelter from rain or snow. Sufficient protection must be provided to allow nonhuman primates to remain dry during rain, snow, and other precipitation.

(f) *Duration.* The length of time any person subject to the Animal Welfare regulations can hold a nonhuman primate in an animal holding area of a terminal facility upon arrival is the same as that provided in § 3.87(g).

§ 3.93 Handling.

(a) Any person subject to the Animal Welfare regulations 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 primates 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 temperature must be measured in the manner provided in § 3.92(d) of this subpart.

(2) *Shelter from rain or snow.* Suffcient 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 § 3.87(f). The temperature must be measured in the manner provided in § 3.92(d) of this subpart.

(b) Any person handling a primary enclosure containing a nonhuman primate must use care and must avoid causing physical or emotional distress to the nonhuman primate.

(1) A primary enclosure containing a nonhuman primate must not be placed on unattended conveyor belts or on elevated conveyor belts, such as baggage claim conveyor belts and inclined conveyor ramps that lead to baggage claim areas, at any time; except that a primary enclosure may be placed on inclined conveyor ramps used to load and unload aircraft if an attendant is present at each end of the conveyor belt.

(2) A primary enclosure containing a nonhuman primate must not be tossed, dropped, or needlessly tilted, and must not be stacked in a manner that may reasonably be expected to result in its falling. They must be handled and positioned in the manner that written instructions and arrows on the outside of the primary enclosure indicate.

(c) The regulations in this section apply to movement of a nonhuman primate from primary conveyance to primary conveyance, within a primary conveyance or terminal facility, and to or from a terminal facility or a primary conveyance.

Done in Washington, DC, this 7th day of March 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-5613 Filed 3-9-89; 2:09 pm]

BILLING CODE 3410-34-M

federal register

Wednesday
March 15, 1989

Part IV

Department of Health and Human Services

National Institutes of Health

Recombinant DNA Research and Advisory Committee Meeting; Request for Public Comment and Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Recombinant DNA Advisory Committee Points To Consider Subcommittee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the Recombinant DNA Advisory Committee—Points to Consider Subcommittee at the National Institutes of Health, Building 31, Conference Room 10, Bethesda, Maryland 20892, on March 31, 1989, from approximately 9:00 a.m. to adjournment at approximately 5:00 p.m. to discuss recommendations for updating the "Points to Consider in the Design and Submission of Human Somatic-Cell Gene Therapy Protocols" which was adopted by the Recombinant DNA Advisory Committee on September 29, 1986. This meeting will be open to the public. Attendance by the public will be limited to space available.

Following this notice is a request for public comment on the "Points to Consider in the Design and Submission of Human Somatic-Cell Gene Therapy Protocols."

Further information can be obtained from Ms. Rachel E. Levinson, Executive Secretary, Office of Recombinant DNA Activities, Office of Science Policy and Legislation, National Institutes of Health, Building 31, Room B1C34, Bethesda, Maryland 20892, telephone (301) 496–9838.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined to be not cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

Dated: March 8, 1989.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 89–5799 Filed 3–14–89; 8:45 am]

BILLING CODE 4140–01–M

Recombinant DNA Research; Request for Public Comment on "Points to Consider in the Design and Submission of Human Somatic-Cell Gene Therapy Protocols"

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Request for public comment.

SUMMARY: This notice publishes for public comment "Points to Consider in the Design and Submission of Human Somatic-Cell Gene Therapy Protocols" which was adopted by the National Institutes of Health (NIH) Recombinant DNA Advisory Committee (RAC) on September 29, 1986.

DATE: Comments must be received by March 24, 1989.

ADDRESS: Written comments and recommendations should be submitted to the Office of Recombinant DNA Activities, Office of Science Policy and Legislation, National Institutes of Health, Building 31, Room B1C34, Bethesda, Maryland 20892. All comments received in timely response to this notice will be considered and will be available for public inspection in the above office on weekdays between the hours of 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Further information can be obtained from Ms. Rachel E. Levinson, Executive Secretary, Points to Consider Subcommittee, Office of Recombinant DNA Activities, Office of Science Policy and Legislation, National Institutes of Health, Building 31, Room B1C34, Bethesda, Maryland 20892, telephone (301) 496–9838.

SUPPLEMENTARY INFORMATION: The Recombinant DNA Advisory Committee (RAC) adopted the "Points to Consider in the Design and Submission of Human Somatic-Cell Gene Therapy Protocols" on September 29, 1986, which was prepared by the Human Gene Therapy Subcommittee.

At the January 30, 1989, meeting, RAC endorsed a proposal to form a subcommittee to update and report to the Human Gene Therapy Subcommittee and the RAC any recommendations to amend the "Points to Consider." A Points to Consider Subcommittee was formed and will meet on March 31, 1989, at the National Institutes of Health, Building 31, Conference Room 10, Bethesda, Maryland 20892, from approximately 9:00 a.m. to adjournment to discuss recommendations for updating the "Points to Consider." Any comments received by March 24, 1989, will be circulated to the Subcommittee at its meeting on March 31, 1989, and to the Human Gene Therapy Subcommittee and the RAC at its next meeting.

National Institutes of Health—Points to Consider in the Design and Submission of Human Somatic-Cell Gene Therapy Protocols.

Human Gene Therapy Subcommittee
NIH Recombinant DNA Advisory Committee

Outline

NATIONAL INSTITUTES OF HEALTH—POINTS TO CONSIDER IN THE DESIGN AND SUBMISSION OF HUMAN SOMATIC-CELL GENE THERAPY PROTOCOLS

Applicability

These "Points to Consider" apply only to research conducted at or sponsored by an institution that receives any support for recombinant DNA research from the National Institutes of Health

(NIH). This includes research performed by NIH directly.

Introduction

(1) Experiments in which recombinant DNA (See Footnote 1) is introduced into cells of a human subject with the intent of stably modifying the subject's genome are covered by Section III–A–4 of the NIH Guidelines for Research Involving Recombinant DNA Molecules (49 **Federal Register** 46266). Section III–A–4 requires such experiments to be reviewed by the NIH Recombinant DNA Advisory Committee (RAC) and approved by the NIH. RAC consideration of each proposal will be on a case-by-case basis and will follow publication of a precis of the proposal in the **Federal Register**, an opportunity for public comment, and a review of the proposal by the working group of the RAC. RAC recommendations on each proposal will be forwarded to the NIH Director for a decision which will then be published in the **Federal Register**. In accordance with Section IV–C–1–b of the NIH Guidelines, the NIH Director may approve proposals only if he finds that they present "no significant risk to health or the environment."

(2) In general, it is expected that somatic-cell gene therapy protocols will not present a risk to the environment as the recombinant DNA is expected to be confined to the human subject. Nevertheless, Section I–B–4–b of the "Points to Consider" document asks the researchers to address specifically this point.

(3) This document is intended to provide guidance in preparing proposals for NIH consideration under Section III–A–4 of the NIH Guidelines for Research Involving Recombinant DNA Molecules. Not every point mentioned in the "Points to Consider" document will necessarily require attention in every proposal. The document will be considered for revision as experience in evaluating proposals accumulates and as new scientific developments occur. This review will be carried out at least annually.

(4) A proposal will be considered by the RAC only after the protocol has been approved by the local Institutional Biosafety Committee (IBC) and by the local Institutional Review Board (IRB) in accordance with Department of Health and Human Services (DHHS) Regulations for the Protection of Human Subjects (45 Code of Federal Regulations, Part 46). If a proposal involves children, special attention should be paid to subpart D of these DHHS regulations. The IRB and IBC may, at their discretion, condition their approval on further specific deliberation by the RAC and its working group. Consideration of gene therapy proposals by the RAC may proceed simultaneously with review by any other involved federal agencies (See Footnote 2) provided that the RAC is notified of the simultaneous review. Meetings of the committee will be open to the public except where trade secrets or proprietary information would be disclosed. The committee would prefer that the first proposals submitted for RAC review contain no proprietary information or trade secrets, enabling all aspects of the review to be open to the public. The public review of these protocols will serve to inform the public not only on the technical aspects of the proposals but also on the meaning and significance of the research.

(5) The clinical application of recombinant DNA techniques to human gene therapy raises two general kinds of questions: (1) the questions usually discussed by IRBs in their review of any proposed research involving human subjects; and (2) broader social issues. The first type of question is addressed principally in Part I of this document. Several of the broader social issues surrounding human gene therapy are discussed later in this Introduction and in Part II below.

(6) Following the Introduction, this document is divided into four parts. Part I deals with the short-term risks and benefits of the proposed research to the patient (See Footnote 3) and to other people, as well as with issues of fairness in the selection of patients, informed consent, and privacy and confidentiality. In Part II, investigators are requested to address special issues pertaining to the free flow of information about clinical trials of gene therapy. These issues lie outside the usual purview of IRBs and reflect general public concerns about biomedical research. Part III summarizes other requested documentation that will assist the RAC and its working group in their review of gene therapy proposals. Part IV specifies reporting requirements.

(7) A distinction should be drawn between making genetic changes in somatic cells and in germ line cells. The purpose of somatic cell gene therapy is to treat an individual patient, e.g., by inserting a properly functioning gene into a patient's bone marrow cells in vitro and then reintroducing the cells into the patient's body. In germ line alterations, a specific attempt is made to introduce genetic changes into the germ (reproductive) cells of an individual, with the aim of changing the set of genes passed on to the individual's offspring. The RAC and its working group will not at present entertain proposals for germ line alterations but will consider for approval protocols involving somatic-cell gene therapy.

(8) The acceptability of human somatic-cell gene therapy has been addressed in several recent public documents as well as in numerous academic studies. The November 1982 report of the President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research, Splicing Life, resulted from a two-year process of public deliberations and hearings; upon release of that report, a House subcommittee held three days of public hearings with witnesses from a wide range of fields from the biomedical and social sciences to theology, philosophy, and law. In December 1984, the Office of Technology Assessment released a background paper, Human Gene Therapy, which brought these earlier documents up-to-date. As the latter report concluded:

"Civic, religious, scientific, and medical groups have all accepted, in principle, the appropriateness of gene therapy of somatic cells in humans for specific genetic diseases. Somatic cell gene therapy is seen as an extension of present methods of therapy that might be preferable to other technologies."

(9) Concurring with this judgment, the RAC and its working group are prepared to consider for approval somatic-cell therapy protocols, provided that the design of such experiments offers adequate assurance that their consequences will not go beyond their purpose, which is the same as the traditional purpose of all clinical investigations, namely, to benefit the health and well-being of the individual being treated while at the same time gathering generalizable knowledge.

(10) Two possible undesirable consequences of somatic-cell therapy would be unintentional (1) vertical transmission of genetic changes from an individual to his or her offspring or (2) horizontal transmission of viral infection to other persons with whom the individual comes in contact. Accordingly, this document requests information that will enable the RAC and its working group to assess the likelihood that the proposed somatic-cell gene therapy will inadvertently affect reproductive cells or lead to infection of other people (e.g., treatment personnel or relatives).

(11) In recognition of the social concern that surrounds the general discussion of human gene therapy, the working group will continue to consider the possible long-range effects of applying knowledge gained from these

and related experiments. While research in molecular biology could lead to the development of techniques for germ line intervention or for the use of genetic means to enhance human capabilities rather than to correct defects in patients, the working group does not believe that these effects will follow immediately or inevitably from experiments with somatic-cell gene therapy. The working group will cooperate with other groups in assessing the possible long-term consequences of somatic-cell gene therapy and related laboratory and animal experiments in order to define appropriate human applications of this emerging technology.

(12) Responses to the questions raised in these "Points to Consider" should be provided in the form of either written answers or references to specific sections of the protocol or its appendices.

I. Description of Proposal

A. Objectives and Rationale of the Proposed Research

State concisely the overall objectives and rationale of the proposed study. Please provide information on the following specific points:

1. Why is the disease selected for treatment by means of gene therapy a good candidate for such treatment?

2. Describe the natural history and range of expression of the disease selected for treatment. What objective and/or quantitative measures of disease activity are available? In your view, are the usual effects of the disease predictable enough to allow for meaningful assessment of the results of gene therapy?

3. Is the protocol designed to prevent all manifestations of the disease, to halt the progression of the disease after symptoms have begun to appear, or to reverse manifestations of the disease in seriously ill victims?

4. What alternative therapies exist? In what groups of patients are these therapies effective? What are their relative advantages and disadvantages as compared with the proposed gene therapy?

B. Research Design, Anticipated Risks and Benefits

1. Structure and Characteristics of the Biological System

Provide a full description of the methods and reagents to be employed for gene delivery and the rationale for their use. The following are specific points to be addressed:

a. What is the structure of the cloned DNA that will be used?

(1) Describe the gene (genomic or cDNA), the bacterial plasmid or phage vector, and the delivery vector (if any). Provide complete nucleotide sequence analysis or a detailed restriction enzyme map of the total construct.

(2) What regulatory elements does the construct contain (e.g., promoters, enhancers, polyadenylation sites, replication origins, etc.)?

(3) Describe the steps used to derive the DNA construct.

b. What is the structure of the material that will be administered to the patient?

(1) Describe the preparation, structure, and composition of the materials that will be given to the patient or used to treat the patient's cells.

(a) If DNA, what is the purity (both in terms of being a single DNA species and in terms of other contaminants)? What tests have been used and what is the sensitivity of the tests?

(b) If a virus, how is it prepared from the DNA construct? In what cell is the virus grown (any special features)? What medium and serum are used? How is the virus purified? What is its structure and purity? What steps are being taken (and assays used with their sensitivity) to detect and eliminate any contaminating materials (for example, VL30 RNA, other nucleic acids, or proteins) or contaminating viruses or other organisms in the cells or serum used for preparation of the virus stock?

(c) If co-cultivation is employed, what kinds of cells are being used for co-cultivation? What steps are being taken (and assays used with their sensitivity) to detect and eliminate any contaminating materials? Specifically, what tests are being done to assess the material to be returned to the patient for the presence of live or killed donor cells or other non-vector materials (for example, VL30 sequences) originating from those cells?

(d) If methods other than those covered by (a)–(c) are used to introduce new genetic information into target cells, what steps are being taken to detect and eliminate any contaminating materials? What are possible sources of contamination? What is the sensitivity of tests used to monitor contamination?

(2) Describe any other material to be used in preparation of the material to be administered to the patient. For example, if a viral vector is proposed, what is the nature of the helper virus or cell line? If carrier particles are to be used, what is the nature of these?

2. Preclinical Studies, Including Risk-Assessment Studies

Describe the experimental basis (derived from tests in cultured cells and animals) for claims about the efficacy and safety of the proposed system for gene delivery.

a. Laboratory Studies of the Delivery System. (1) What cells are the intended recipients of gene therapy? If recipient cells are to be treated in vitro and returned to the patient, how will the cells be characterized before and after treatment? What is the theoretical and practical basis for assuming that only the treated cells will act as recipients?

(2) Is the delivery system efficient? What percentage of the target cells contain the added DNA?

(3) How is the structure of the added DNA sequences monitored and what is the sensitivity of the analysis? Is the added DNA extrachromosomal or integrated? Is the added DNA unrearranged?

(4) How many copies are present per cell? How stable is the added DNA both in terms of its continued presence and its structural stability?

b. Laboratory Studies of Gene Expression. Is the added gene expressed? To what extent is expression only from the desired gene (and not from the surrounding DNA)? In what percentage of cells does expression from the added DNA occur? Is the product biologically active? What percentage of normal activity results from the inserted gene? Is the gene expressed in cells other than the target cells? If so, to what extent?

c. *Laboratory Studies Pertaining to the Safety of the Delivery/Expression System.* (1) If a retroviral system is used:

(a) What cell types have been infected with the retroviral vector preparation? Which cells, if any, produce infectious particles?

(b) How stable are the retroviral vector and the resulting provirus against loss, rearrangement, recombination, or mutation? What information is available on how much rearrangement or recombination with endogenous or other viral sequences is likely to occur in the patient's cells? What steps have been taken in designing the vector to minimize instability or variation? What laboratory studies have been performed to check for stability, and what is the sensitivity of the analyses?

(c) What laboratory evidence is available concerning potential harmful effects of the treatment, e.g., development of neoplasia, harmful mutations, regeneration of infectious particles, or immune responses? What steps have been taken in designing the vector to minimize pathogenicity? What laboratory studies have been performed to check for pathogenicity, and what is the sensitivity of the analyses?

(d) Is there evidence from animal studies that vector DNA has entered untreated cells, particularly germ line cells? What is the sensitivity of the analyses?

(e) Has a protocol similar to the one proposed for a clinical trial been carried out in non-human primates and/or other animals? What were the results? Specifically, is there any evidence that the retroviral vector has recombined with any endogenous or other viral sequences in the animals?

(2) If a non-retroviral delivery system is used: What animal studies have been done to determine if there are pathological or other undesirable consequences of the protocol (including insertion of DNA into cells other than those treated, particularly germ line cells)? How long have the animals been studied after treatment? What tests have been used and what is their sensitivity?

3. Clinical procedures, including patient monitoring.

Describe the treatment that will be administered to patients and the diagnostic methods that will be used to monitor the success or failure of the treatment. If previous clinical studies using similar methods have been performed by yourself or others, indicate their relevance to the proposed study.

a. Will cells (e.g., bone marrow cells) be removed from patients and treated in vitro in preparation for gene therapy? If so, what kinds of cells will be removed from the patients, how many, how often, and at what intervals?

b. Will patients be treated to eliminate or reduce the number of cells containing malfunctioning genes (e.g., through radiation or chemotherapy) prior to gene therapy?

c. What treated cells (or vector/DNA combination) will be given to patients in the attempt to administer gene therapy? How will the treated cells be administered? What volume of cells will be used? Will there be single or multiple treatments? If so, over what period of time?

d. What are the clinical endpoints of the study? Are there objective and quantitative measurements to assess the natural history of the disease? Will such measurements be used in following your patients? How will patients be monitored to assess specific effects of the treatment on the disease? What is the sensitivity of the analyses? How frequently will follow-up studies be done? How long will patient follow-up continue?

e. What are the major potential beneficial and adverse effects of treatment that you anticipate? What measures will be taken in an attempt to control or reverse these adverse effects if they occur? Compare the probability and magnitude of potential adverse effects on patients with the probability and magnitude of deleterious consequences from the disease if gene therapy is not performed.

f. If a treated patient dies, what special studies will be performed as part of the autopsy?

4. Public-health considerations.

Describe any potential benefits and hazards of the proposed therapy to persons other than the patients being treated. Specifically:

a. On what basis are potential public health benefits or hazards postulated?

b. Is there a significant likelihood that the added DNA will spread from the patient to other persons or to the environment?

c. What precautions will be taken against such spread (e.g., to patients sharing a room, health-care workers, or family members)?

d. What measures will be undertaken to mitigate the risks, if any, to public health?

5. Qualifications of Investigators, Adequacy of Laboratory and Clinical Facilities

Indicate the relevant training and experience of the personnel who will be involved in the preclinical studies and clinical administration of gene therapy. In addition, please describe the laboratory and clinical facilities where the proposed study will be performed.

a. What professional personnel (medical and nonmedical) will be involved in the proposed study? What are their specific qualifications and experience with respect to the disease to be treated and with respect to the techniques employed in molecular biology? Please provide curricula vitae (see Section III–E).

b. At what hospital or clinic will the treatment be given? Which facilities of the hospital or clinic will be especially important for the proposed study? Will patients occupy regular hospital beds or clinical research center beds? Where will patients reside during the follow-up period?

C. Selection of patients

Estimate the number of patients to be involved in the proposed study of gene therapy. Describe recruitment procedures and patient eligibility requirements, paying particular attention to whether these procedures and requirements are fair and equitable.

1. How many patients do you plan to involve in the proposed study?

2. How many eligible patients do you anticipate being able to identify each year?

3. What recruitment procedures do you plan to use?

4. What selection criteria do you plan to employ? What are the exclusion and inclusion criteria for the study?

5. How will patients be selected if it is not possible to include all who desire to participate?

D. Informed consent

Indicate how patients will be informed about the proposed study and how their consent will be solicited. The consent procedure should adhere to the requirements of DHHS regulations for the protection of human subjects (45 Code of Federal Regulations, Part 46). If the study involves pediatric or mentally handicapped patients, describe procedures for seeking the permission of parents or guardians and, where applicable, the assent of each patient. Areas of special concern highlighted below include potential adverse effects, financial costs, privacy, and long-term follow-up.

1. How will the major points covered in Sections I–A through I–C of this document be disclosed to potential participants in this study and/or parents or guardians in language that is understandable to them?

2. How will the innovative character and the theoretically-possible adverse effects of gene therapy be discussed with patients and/or parents or guardians? How will the potential adverse effects be compared with the consequences of the disease? What will be said to convey that some of these adverse effects, if they occur, could be irreversible?

3. What explanation of the financial costs of gene therapy and any available alternative therapies will be provided to patients and/or parents or guardians?

4. How will patients and/or their parents or guardians be informed that the innovative character of gene therapy may lead to great interest by the media in the research and in treated patients?

5. How will patients and/or their parents or guardians be informed:

a. That some of the procedures performed in the study may be irreversible?

b. That following the performance of such procedures it would not be medically advisable for patients to withdraw from the study?

c. That a willingness to cooperate in long-term follow-up (for at least three to five years) will be a precondition for participation in the study?

d. That a willingness to permit an autopsy to be performed in the event of a patient's death following treatment is also a precondition for a patient's participation in the study? (This stipulation is included because an accurate determination of the precise cause of a patient's death would be of vital importance to all future gene therapy patients.)

E. Privacy and Confidentiality

Indicate what measures will be taken to protect the privacy of gene therapy patients and their families as well as to maintain the confidentiality of research data.

1. What provisions will be made to honor the wishes of individual patients (and the parents or guardians of pediatric or mentally handicapped patients) as to whether, when, or how the identity of patients is publicly disclosed?

2. What provision will be made to maintain the confidentiality of research data, at least in cases where data could be linked to individual patients?

II. Special Issues

Although the following issues are beyond the normal purview of local IRBs, the RAC and its working group request that investigators respond to questions A and B below.

A. What steps will be taken, consistent with point I–E above, to ensure that accurate information is made available to the public with respect to such public concerns as may arise from the proposed study?

B. Do you or your funding sources intend to protect under patent or trade secret laws either the products or the procedures developed in the proposed study? If so, what steps will be taken to permit as full communication as possible among investigators and clinicians concerning research methods and results?

III. Requested Documentation

In addition to responses to the questions raised in these "Points to Consider," please submit the following materials:

A. Your protocol as approved by your local IRB and IBC. The consent form, which must have IRB approval, should be submitted to the NIH only on request.

B. Local IRB and IBC minutes and recommendations that pertain to your protocol.

C. A one-page scientific abstract of the gene therapy protocol.

D. A one-page description of the proposed experiment in nontechnical language.

E. Curricula vitae for professional personnel.

F. An indication of other Federal agencies to which the protocol is being submitted for review.

G. Any other material which you believe will aid in the review.

IV. Reporting Requirements

A. Serious adverse effects of treatment should be reported immediately to both your local IRB and the NIH Office for Protection from Research Risks, and a written report should be filed with both groups. A copy of the report should also be forwarded to the NIH Office of Recombinant DNA Activities (ORDA).

B. Reports regarding the general progress of patients should be filed at six-month intervals with both your local IRB and ORDA. These twice-yearly reports should continue for a sufficient period of time to allow observation of all major effects (at least three to five years). In the event of a patient's death, the autopsy report should be submitted to the IRB and ORDA.

Footnotes

1. Section III–A–4 applies both to recombinant DNA and to DNA or RNA derived from recombinant DNA.

2. The Food and Drug Administration (FDA) has jurisdiction over drug products intended for use in clinical trials of human somatic-cell gene therapy. For general information on FDA's policies and regulatory requirements, please see the **Federal Register**, Volume 51, pages 23309–23313, 1986.

3. The term "patient" and its variants are used in the text as a shorthand designation for "patient-subject."

Adopted by Recombinant DNA Advisory Committee, September 29, 1986.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592) requires a statement concerning the official government programs contained in the *Catalog of Federal Domestic Assistance*. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined to be not cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the *Catalog of Federal Domestic Assistance* are affected.

Dated: March 6, 1989.

Jay Moskowitz,

Associate Director for Science Policy and Legislation.

[FR Doc. 89–5800 Filed 3–14–89; 8:45 am]

BILLING CODE 4140–01–M

federal register

Wednesday
March 15, 1989

Part V

Environmental Protection Agency

40 CFR Part 180
Tolerance Processing Fees; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-30072F; FRL-3535-7]

Tolerance Processing Fees

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule increases fees charged for processing tolerance petitions for pesticides under the Federal Food, Drug, and Cosmetic Act (FFDCA). The change in fees reflects a 4.1 percent increase in pay for civilian Federal General Schedule (GS) employees in 1989.

EFFECTIVE DATE: April 14, 1989.

FOR FURTHER INFORMATION CONTACT:
By mail:
Ken Wetzel, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.
Office location and telephone number:
Rm. 1002-E, CM#2, 1921 Jefferson Davis Highway, Arlington, VA (703-557-1128)

SUPPLEMENTARY INFORMATION: The EPA is charged with administration of section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA). Section 408 authorizes the Agency to establish tolerance levels and exemptions from the requirements for tolerances for raw agricultural commodities. Section 408(o) requires that the Agency collect fees as will, in the aggregate, be sufficient to cover the costs of processing petitions for pesticide products, i.e., that the tolerance process be as self-supporting as possible.

The current fee schedule for tolerance petitions (40 CFR 180.33) was published in the **Federal Register** on June 15, 1988 (53 FR 22299) and became effective on July 15, 1988. At that time the fees were increased 2 percent in accordance with a provision in the regulation that provides for automatic annual adjustments to the fees based on annual percentage changes in Federal salaries. The specific language in the regulation is contained in paragraph (o) of § 180.33 and reads in part as follows:

(o) This fee schedule will be changed annually by the same percentage as the percent change in the Federal General Schedule (GS) pay scale * * * When automatic adjustments are made based on the GS pay scale, the new fee schedule will be published in the **Federal Register** as a final rule to become effective thirty days or more after publication, as specified in the rule.

The pay raise in 1989 for Federal General Schedule employees is 4.1 percent; therefore, the tolerance petition fees are being increased 4.1 percent. The entire fee schedule, § 180.33, is presented for the reader's convenience. (All fees have been rounded to the nearest $25.00.)

List of Subjects in 40 CFR Part 180

Administrative practice and procedures, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 3, 1989.

Douglas D. Campt,

Acting Assistant Administrator, Office of Pesticides and Toxic Substances.

Therefore, 40 CFR 180 is amended as follows:

Authority: 21 U.S.C. 346a and 371.

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.33 is revised to read as follows:

§ 180.33 Fees.

(a) Each petition or request for the establishment of a new tolerance or a tolerance higher than already established shall be accompanied by a fee of $48,225, plus $1,200 for each raw agricultural commodity more than nine on which the establishment of a tolerance is requested, except as provided in paragraphs (b), (d), and (h) of this section.

(b) Each petition or request for the establishment of a tolerance at a lower numerical level or levels than a tolerance already established for the same pesticide chemical, or for the establishment of a tolerance on additional raw agricultural commodities at the same numerical level as a tolerance already established for the same pesticide chemical, shall be accompanied by a fee of $11,025 plus $775 for each raw agricultural commodity on which a tolerance is requested.

(c) Each petition or request for an exemption from the requirement of a tolerance or repeal of an exemption shall be accompanied by a fee of $8,875.

(d) Each petition or request for a temporary tolerance or a temporary exemption from the requirement of a tolerance shall be accompanied by a fee of $19,250 except as provided in paragraph (e) of this section. A petition or request to renew or extend such temporary tolerance or temporary exemption shall be accompanied by a fee of $2,725.

(e) A petition or request for a temporary tolerance for a pesticide chemical which has a tolerance for other uses at the same numerical level or a higher numerical level shall be accompanied by a fee of $9,625 plus $775 for each raw agricultural commodity on which the temporary tolerance is sought.

(f) Each petition or request for repeal of a tolerance shall be accompanied by a fee of $6,025. Such fee is not required when, in connection with the change sought under this paragraph, a petition or request is filed for the establishment of new tolerances to take the place of those sought to be repealed and a fee is paid as required by paragraph (a) of this section.

(g) If a petition or a request is not accepted for processing because it is technically incomplete, the fee, less $1,200 for handling and initial review, shall be returned. If a petition is withdrawn by the petitioner after initial processing, but before significant Agency scientific review has begun, the fee, less $1,200 for handling and initial review, shall be returned. If an unacceptable or withdrawn petition is resubmitted, it shall be accompanied by the fee that would be required if it were being submitted for the first time.

(h) Each petition or request for a crop group tolerance, regardless of the number of raw agricultural commodities involved, shall be accompanied by a fee equal to the fee required by the analogous category for a single tolerance that is not a crop group tolerance, i.e., paragraphs (a) through (f) of this section, without a charge for each commodity where that would otherwise apply.

(i) Objections under section 408(d)(5) of the Act shall be accompanied by a filing fee of $2,425.

(j)(1) In the event of a referral of a petition or proposal under this section to an advisory committee, the costs shall be borne by the person who requests the referral of the data to the advisory committee.

(2) Costs of the advisory committee shall include compensation for experts as provided in § 180.11(c) and the expenses of the secretariat, including the costs of duplicating petitions and other related material referred to the committee.

(3) An advance deposit shall be made in the amount of $24,050 to cover the costs of the advisory committee. Further advance deposits of $24,050 each shall be made upon request of the Administrator when necessary to prevent arrears in the payment of such

costs. Any deposits in excess of actual expenses will be refunded to the depositor.

(k) The person who files a petition for judicial review of an order under section 408(d)(5) or (e) of the Act shall pay the costs of preparing the record on which the order is based unless the person has no financial interest in the petition for judicial review.

(l) No fee under this section will be imposed on the Inter-Regional Research Project Number 4 (IR–4 Program).

(m) The Administrator may waive or refund part or all of any fee imposed by this section if the Administrator determines in his or her sole discretion that such a waiver or refund will promote the public interest or that payment of the fee would work an unreasonable hardship on the person on whom the fee is imposed. A request for waiver or refund of a fee shall be submitted in writing to the Environmental Protection Agency, Office of Pesticide Programs, Registration Division (TS–767C), Washington, DC 20460. A fee of $1,200 shall accompany every request for a waiver or refund, except that the fee under this sentence shall not be imposed on any person who has no financial interest in any action requested by such person under paragraphs (a) through (k) of this section. The fee for requesting a waiver or refund shall be refunded if the request is granted.

(n) All deposits and fees required by the regulations in this part shall be paid by money order, bank draft, or certified check drawn to the order of the Environmental Protection Agency. All deposits and fees shall be forwarded to the Environmental Protection Agency, Headquarters Accounting Operations Branch, Office of Pesticide Programs (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. The payments should be specifically labeled "Tolerance Petition Fees" and should be accompanied only by a copy of the letter or petition requesting the tolerance. The actual letter or petition, along with supporting data, shall be forwarded within 30 days of payment to the Environmental Protection Agency, Office of Pesticide Programs, Registration Division, Washington, DC 20460. A petition will not be accepted for processing until the required fees have been submitted. A petition for which a waiver of fees has been requested will not be accepted for processing until the fee has been waived or, if the waiver has been denied, the proper fee is submitted after notice of denial. A request for waiver or refund will not be accepted after scientific review has begun on a petition.

(o) This fee schedule will be changed annually by the same percentage as the percent change in the Federal General Schedule (GS) pay scale. In addition, processing costs and fees will periodically be reviewed and changes will be made to the schedule as necessary. When automatic adjustments are made based on the GS pay scale, the new fee schedule will be published in the **Federal Register** as a Final Rule to become effective 30 days or more after publication, as specified in the rule. When changes are made based on periodic reviews, the changes will be subject to public comment.

[FR Doc. 89–5868 Filed 3–14–89; 8:45 am]
BILLING CODE 6560–50–M

federal register

Wednesday,
March 15, 1989

Part VI

Department of Education

34 CFR Part 237

Christa McAuliffe Fellowship Program; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 237

Christa McAuliffe Fellowship Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations for the Christa McAuliffe Fellowship Program. This program is authorized by Title V, Part D, Subpart 2 of the Higher Education Act of 1965, as amended by the Higher Education Amendments of 1986. These regulations: (1) Establish a minimum fellowship amount; (2) clarify the redistribution method employed by the Department if States do not comply with certain requirements set by the Department or if any unused funds are returned by the States; (3) clarify the terms and conditions that apply to recipients of the fellowship awards; and (4) provide that awards will not be made in States that fail to meet applicable filing deadlines.

EFFECTIVE DATE: The regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Ramon Ruiz, Acting Division Director, Division of Discretionary Grants, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202. Telephone (202) 732-4059.

SUPPLEMENTARY INFORMATION:

On November 15, 1988, the Secretary published a notice of proposed rulemaking for the Christa McAuliffe Fellowship Program in the **Federal Register** (53 FR 46072-46073).

The Christa McAuliffe Fellowship Program is authorized by Title V, Part D, Subpart 2 of the Higher Education Act of 1965. It establishes a national fellowship program for outstanding full-time public and private school teachers. Christa McAuliffe fellows may use awards for projects approved by the Secretary to improve their knowledge or skills and the education of their students, including (1) sabbaticals for study or research directly associated with the objectives of the statute, or their own academic improvement, (2) consultation with or assistance to other school systems, (3) development of special innovative programs, or (4) model teacher programs and staff development.

The statute provides that a fellowship is to be awarded to an eligible teacher in each congressional district in each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, the Northern Mariana Islands, and the Republic of Palau. The eligibility of the individual entities within the former Trust Territory is governed by the 1986 Compact of Free Association.

The maximum amount of a fellowship may not exceed the national average salary of public school teachers in the most recent year for which satisfactory data are available, as determined by the Secretary. If the appropriation for a fiscal year is not sufficient to provide this number of fellowships at the maximum amount, the Secretary publishes an alternative distribution that will permit fellowship awards at the maximum level and that is geographically equitable. The Secretary sends a notice of determinations to each statewide panel that has been established to select recipients.

Public Comment

In the NPRM, the Secretary invited comments on the proposed regulations. The Secretary did not receive any comments. Except for minor technical revisions, the Secretary has made no changes in these regulations since publication of the NPRM.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Paperwork Reduction Act of 1980

These regulations have been examined under the Paperwork Reduction Act of 1980 and have been found to contain no information collection requirements.

List of Subjects in 34 CFR Part 237

Education, Elementary and secondary education, Scholarships and fellowships, Teachers.

Dated: February 27, 1989.

Lauro F. Cavazos,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number 84.190, Christa McAuliffe Fellowship Program)

PART 237—[AMENDED]

The Secretary amends Part 237 of Title 34 of the Code of Federal Regulations as follows:

1. The authority citation for Part 237 continues to read as follows:

Authority: 20 U.S.C. 1113–1113e, unless otherwise noted.

2. Section 237.3 is amended by revising paragraph (a)(8), adding a new paragraph (c), and revising the authority citation to read as follows:

§ 237.3 How are awards distributed?

(a) * * *

(8) The Trust Territory of the Pacific Islands (Republic of Palau).

* * * * *

(c)(1) If a State fails to meet the applicable filing deadlines for fellowship recommendations established under this program, the Secretary does not make awards in that State.

(2) In redistributing any returned or unused funds from a State, the Secretary takes into consideration, but is not limited to, the following factors:

(i) The amount of funds available for redistribution.

(ii) The number of States that request additional funds.

(iii) The number of States that are willing to match fellowship funds.

(iv) The requirements in § 237.4(b) relating to minimum awards.

(Authority: 20 U.S.C. 1113b(a))

3. Section 237.4 is revised to read as follows:

§ 237.4 In what amounts are fellowships awarded?

(a) *Maximum award.* A fellowship awarded under this part may not exceed the national average salary of public school teachers in the most recent year for which satisfactory data are available, as determined by the Secretary. The Secretary urges statewide panels to award fellowships in the maximum amount.

(b) *Minimum award.* Except as provided in paragraph (c) of this section, a fellowship awarded under this part may not be less than half the national average salary of public school teachers in the most recent year for which satisfactory data are available, as determined by the Secretary.

(c) *Partial award.* If, after awarding one or more fellowships that meet the requirements of paragraphs (a) and (b) of this section, a State has insufficient funds for a maximum or minimum award, the State may make one partial award that may be less than the minimum award.

(Authority: 20 U.S.C. 1113b(a)(2))

4. Section 237.33 is revised to read as follows:

§ 237.33 What is the service requirement for a fellowship?

(a) Except as provided in paragraph (b) of this section, a fellow must return to a teaching position in the fellow's current LEA, private school, or private school system for at least two years following the completion of the fellowship.

(b) In the case of extenuating circumstances (for example, temporary disability), a fellow has a five-year period in which to fulfill the two-year teaching requirement in paragraph (a) of this section.

(Authority: 20 U.S.C. 1113b(a)(2), 1113d)

[FR Doc. 89-6030 Filed 3-14-89; 8:45 am]
BILLING CODE 4000-01-M

federal register

Wednesday
March 15, 1989

Part VII

United States Information Agency

Culturally Significant Objects Imported for Exhibition; Determination; Notice

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "On the Art of Fixing a Shadow: 150 Years of Photography" (see list [1]) imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the National Gallery of Art in Washington, DC, beginning on or about May 7, 1989, to on or about July 30, 1989, at The Art Institute of Chicago in Chicago, Illinois, beginning on or about September 16, 1989, to on or about November 26, 1989, and at the Los Angeles County Museum of Art in Los Angeles, California, beginning on or about December 21, 1989, to on or about February 25, 1990, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

Richard H. Swan,

Acting General Counsel.

Date: March 13, 1989.

[FR Doc. 89–6237 Filed 3–14–89; 10:45 am]

BILLING CODE 8230–01–M

[1] A copy of this list may be obtained by contacting Mr. R. Wallace Stuart of the Office of the General Counsel of USIA. The telephone number is 202–485–7979, and the address is Room 700, U.S. Information Agency, 301 4th Street SW., Washington, DC 20547.

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