

agency may make a written request that the Director review the determination. Any such request may be made by the head of an agency only, or by a person acting in such capacity, but not by any subordinate officer of such agency.

(b) *Notification of parties.* The Director promptly shall notify all parties of receipt of a request for review.

(c) *Determination of Director.* (1) The Director will conduct a review of the determination of the Hearing Officer using the agency record, the hearing record, the request for review, and such other arguments or information as may be accepted by the Director. Based on such review, the Director will issue a final determination notice that upholds, reverses, or modifies the determination of the Hearing Officer. The Director's determination upon review of a Hearing Officer's decision shall be considered to be the final determination under this part and shall not be appealable.

However, if the Director determines that the hearing record is inadequate, the Director may remind all or a portion of the determination to the Hearing Officer for further proceedings to complete the hearing record or, at the option of the Director, to hold a new hearing.

(2) The Director will complete the review and either issue a final determination or remand the determination not later than—

(i) 10 business days after receipt of the request for review, in the case of a request by the head of an agency; or

(ii) 30 business days after receipt of the request for review, in the case of a request by an appellant.

(3) In any case or any category of cases, the Director may delegate his or her authority to conduct a review under this section to any Deputy or Associate Directors of the Division. In any case in which such review is conducted by a Deputy or Associate Director under authority delegated by the Director, the Deputy or Associate Director's determination shall be considered to be the determination of the Director under this part and shall be final and not appealable.

(d) *Equitable relief.* In reaching a decision on an appeal, the Director shall have the authority to grant equitable relief under this part in the same manner and to the same extent as such authority is provided an agency under applicable laws and regulations.

#### § 11.9 Bases for determinations.

(a) The Hearing Officers and the Director are not bound by previous findings of facts by the agency in making a determination.

(b) In making a determination on the appeal, Hearing Officers and the

Director shall ensure that the decision is consistent with the laws and regulations of the agency, and with the generally applicable interpretations of such laws and regulations.

(c) All determinations of the Hearing Officers and the Director must be based on information from the case record, laws applicable to the matter at issue, and applicable regulations published in the **Federal Register** and in effect on the date of the adverse decision or the date on which the acts that gave rise to the adverse decision occurred, whichever date is appropriate under the applicable agency program laws and regulations.

#### § 11.10 Effective date and implementation of final determinations of the Division.

(a) On the return of a case to an agency pursuant to the final determination of the Division, the head of the agency shall implement the final determination not later than 30 days after the effective date of the notice of the final determination.

(b) A final determination will be effective as of the date of filing of an application, the date of the transaction or event in question, or the date of the original adverse decision, whichever is applicable under the applicable agency program statutes or regulations.

#### § 11.11 Judicial review.

(a) A final determination of the Division shall be reviewable and enforceable by any United States District Court of competent jurisdiction in accordance with chapter 7 of title 5, United States Code.

(b) An appellant may not seek judicial review of any agency adverse decision appealable under this part without receiving a final determination from the Division pursuant to the procedures of this part.

#### § 11.12 Filing of appeals and computation of time.

(a) An appeal, a request for Director review, or any other document will be considered "filed" when delivered in writing to the Division, when postmarked, or when a complete facsimile copy is received by the Division.

(b) Whenever the final date for any requirement of this part falls on a Saturday, Sunday, Federal holiday, or other day on which the Division is not open for the transaction of business during normal working hours, the time for filing will be extended to the close of business on the next working day.

(c) The time for filing an appeal, a request for Director review, or any other document, with the Division expires at 5:00 p.m. Eastern Standard Time or

Eastern Daylight Savings time as applicable on the last day on which such filing may be made.

Done at Washington, D.C., this 12 day of May, 1995.

**Dan Glickman,**

*Secretary of Agriculture.*

[FR Doc. 95-12261 Filed 5-19-95; 8:45 am]

BILLING CODE 3410-01-M

## Animal and Plant Health Inspection Service

### 9 CFR Part 3

[Docket No. 93-076-3]

#### Marine Mammal Negotiated Rulemaking Advisory Committee; Establishment

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice of intent to establish a committee.

**SUMMARY:** The Department of Agriculture announces its intent to establish an advisory committee to develop a recommended rulemaking proposal to revise the regulations governing the handling, care, treatment, and transportation of marine mammals in captivity. This committee, called the Marine Mammal Negotiated Rulemaking Advisory Committee, will be comprised of representatives with a definable stake in the outcome of the proposed rule.

**DATES:** Consideration will be given only to comments received on or before June 21, 1995.

**ADDRESSES:** Please send an original and three copies of your comments to Docket No. 93-076-3, Animal and Plant Health Inspection Service, Policy and Programs Development, Regulatory Analysis and Development, 4700 River Road Unit 118, Riverdale, MD 20737-1228. Please state that your comments refer to Docket No. 93-076-3.

Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690-2817 to facilitate entry into the comment reading room.

#### FOR FURTHER INFORMATION CONTACT:

Dr. Barbara Kohn, Senior Staff Veterinarian, Animal and Plant Health Inspection Service, Regulatory Enforcement and Animal Care, Animal Care, 4700 River Road Unit 84, Riverdale, MD 20737-1228, (301) 734-8699.

## SUPPLEMENTARY INFORMATION:

**Background**

We are announcing our intent to establish an advisory committee to develop a recommended rulemaking proposal to revise the regulations governing the handling, care, treatment and transportation of marine mammals in captivity.

Under the Animal Welfare Act (the Act) (7 U.S.C. 2131 *et seq.*), the Secretary of Agriculture is authorized to promulgate standards and other requirements governing the human handling, housing, care, treatment, and transportation of certain animals by dealers, research facilities, exhibitors, and carriers and intermediate handlers. Regulations established under the Act are contained in 9 CFR parts 1, 2, and 3.

Under the Act, the Department established regulations in 1979 for the human handling, care, treatment, and transportation of marine mammals used for research or exhibition purposes. These standards were amended in 1984. During the 9 years since the standards were amended, advances have been made, new information has been developed, and new concepts have been implemented with regard to the housing and care of marine mammals.

On July 23, 1993, we published in the **Federal Register** (58 FR 39458, Docket No. 93-076-1) an advance notice of proposed rulemaking that solicited comments on appropriate revisions or additions to the standards for the humane care and transportation of marine mammals used for exhibition or research.

The comments we received in response to our advance notice suggest that it would be highly desirable to involve all interested parties in developing appropriate regulatory standards. We believe consensus among interested parties is attainable and that we should proceed with negotiated rulemaking in developing such standards.

**Negotiated Rulemaking**

Negotiated rulemaking is a consensus-based approach to the promulgation of agency rules. It is considered to be an effective tool for developing regulatory solutions to problems that affect diverse, and often competing, interests among the regulated public. By participating in this effort, interested parties have more direct input into the substance of a proposed rule than they would through the usual form of notice-and-comment rulemaking, where a regulatory agency works more independently to develop a proposed rule. In negotiated rulemaking, the participating parties

agree to work together until consensus is reached on the content of the proposed rule, which is then published for public comment. In this manner, negotiated rulemaking enables an agency to avoid many of the obstacles that might be raised in a usual notice-and-comment proposed rulemaking, and expedites the promulgation and implementation of a final rule.

We therefore intend to establish a Marine Mammal Negotiated Rulemaking Advisory Committee (Committee), chartered under the Federal Advisory Committee Act (Pub. L. 92-463). The Committee will advise the Department on the content of regulations to revise and update the standards for the handling, care, treatment, and transportation of marine mammals in captivity.

The establishment of this Committee is necessary and in the public interest in connection with the duties and responsibilities of the Administrator of the Animal and Plant Health Inspection Service (APHIS) in ensuring the humane care of marine mammals held in captivity by researchers and exhibitors. These duties and responsibilities include the promulgation of regulations. The Committee is intended to serve as a public forum in which interested parties can discuss and resolve the issues involved in developing revised standards for the care of marine mammals in captivity. We believe that this process will allow APHIS to develop effective regulations for the care of these animals.

**Key Issues for Negotiation**

We anticipate that the Committee will need to address the following issues in formulating a proposal:

- \* Space requirements;
- \* Transportation of marine mammals;
- \* "Swim-with-the-dolphins" programs;
- \* Noise levels;
- \* Water temperatures;
- \* Recordkeeping requirements;
- \* Water quality parameters to be monitored;
- \* Separation/isolation;
- \* Feeding;
- \* Training; and
- \* Stranding: When does rehabilitation end and captivity begin?

**Guidelines**

The following guidelines will apply to this negotiated rulemaking, subject to appropriate changes made as a result of comments received on this notice or as determined necessary during the negotiation process:

1. *Facilitator.* APHIS will use a facilitator. The facilitator, a neutral third party, will not be involved in the

substantive development of the regulation. The facilitator's role will be to chair negotiating sessions, to act as a mediator, to help the negotiations proceed smoothly, and to help the participants define and reach consensus.

2. *Good faith negotiation.* Because participants must be willing to negotiate in good faith, each organization must authorize a senior official to represent its interest and to negotiate on its behalf. The issue of keeping or holding animals in captivity will not be addressed by the Committee. The Committee will address only issues relating to the care and maintenance of captive marine mammals.

3. *Administrative support and meetings.* APHIS will provide staff support for the Committee. Meetings will be held in the Washington, DC, metropolitan area.

4. *Consensus.* The goal of the negotiating process is consensus. Generally, consensus means that each interest concurs in the result.

5. *Record of meeting.* In accordance with the Federal Advisory Committee Act, APHIS will keep a record of all Committee meetings. The record will be placed in the administrative record for this rulemaking, and be made available for public inspection upon request. Meetings will be open to the public.

6. *Committee procedures.* Under the general guidance and direction of the facilitator and subject to applicable legal requirements, the members of the Committee will establish detailed procedures for the conduct of their Committee meetings.

7. *Schedule.* The time and location of Committee meetings will be announced in the **Federal Register**.

8. *Participants.* The Committee will consist of no more than 25 members and a facilitator. Participation by more than 25 persons could make it difficult to conduct effective negotiations. One purpose of this notice is to help determine whether regulations concerning the care of marine mammals in captivity would substantially affect interests not adequately represented by the proposed participants listed in this notice. We do not believe that each potentially affected organization or individual must have its own representative on the Committee. However, we firmly believe that each interest must be adequately represented. Equal opportunity practices, consistent with U.S. Department of Agriculture policies, will be followed in all appointments to the Committee.

APHIS has tentatively identified the following interests and parties as potential participants on the Marine

Mammal Negotiated Rulemaking Advisory Committee:  
*Representing Facility Owners and Managers*

American Zoo and Aquarium Association  
 Alliance of Marine Mammal Parks  
 International Association of Amusement Parks and Attractions  
 Marine Mammal Coalition  
 United States Navy  
*Related Industry Groups*

Coalition of Animal Welfare Institute, Society for Animal Protective Legislation, and numerous other organizations  
 Center for Marine Conservation  
 Humane Society of the United States  
*Representing Those Who Work with Captive Marine Mammals in Various Capacities*

American Association of Zoo Veterinarians  
 International Association for Aquatic Animal Medicine  
 International Marine Animal Trainers Association  
 Society for Marine Mammology  
*Federal Government*

Marine Mammal Commission  
 Animal and Plant Health Inspection Service, USDA

Comments on this tentative list of participants are invited, as are suggestions for other potential participants. Please keep in mind that it is not necessary that every concerned organization be represented, as long as every significant interest is represented. Negotiation sessions will be open to the public. Individuals and organizations without designated representatives on the Committee may attend sessions and communicate informally with members of the Committee.

Done in Washington, DC, this 17th day of March.

**Wardell C. Townsend,**

*Assistant Secretary for Administration.*

[FR Doc. 95-12434 Filed 5-19-95; 8:45 am]

BILLING CODE 3410-34-M

## DEPARTMENT OF ENERGY

### Office of Energy Efficiency and Renewable Energy

#### 10 CFR Part 430

#### Energy Efficiency Standards Test Procedures, Labeling, and Certification Reporting for Certain Commercial and Industrial Electric Motors

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Notice of public meeting.

**SUMMARY:** The Department of Energy (DOE) will hold an informal public meeting to discuss issues and gather information related to energy efficiency standards, test procedures, labeling, and compliance certification for 1 through 200 horsepower electric motors that are manufactured alone or as a component of another piece of equipment. All persons are hereby given notice of the opportunity to attend this public meeting and to submit written statements.

**DATES:** The public meeting will be held on Friday, June 2, 1995. Written statements, in quadruplicate, must be received by June 30, 1995.

**ADDRESSES:** Written statements should be labeled "Test Procedures and Efficiency Certification for Electric Motors," and submitted to: Ms. Sandy Cooper, Office of Energy Efficiency and Renewable Energy, Mail Station EE-431, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. Telephone: (202) 586-7574; Telefax: (202) 586-4617.

The meeting will begin at 9:30 a.m., and will be held at the U.S. Department of Energy, Forrestal Building, Room 1E-245, 1000 Independence Avenue SW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Anthony Balducci, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE-431, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-8459

James Raba, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE-431, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-8654

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC-72, Forrestal Building, 1000 Independence Avenue

SW., Washington, DC 20585, (202) 586-9507.

#### SUPPLEMENTARY INFORMATION:

##### 1. Authority

Part 3 of Title IV of the National Energy Conservation Policy Act of 1978 (NECPA), Pub. L. 95-619, amends the Energy Policy and Conservation Act of 1975 (EPCA) to add "Energy Efficiency of Industrial Equipment," which includes electric motors. The most recent amendment to EPCA, the Energy Policy Act of 1992 (EPAct), Pub. L. 102-486, promulgates definitions related to electric motors in section 122(a), 106 Stat. 2807, test procedures for motor efficiency in section 122(b), 106 Stat. 2809, labeling for electric motors in section 122(c), 106 Stat. 2809, standards for nominal full-load efficiency in section 122(d), 106 Stat. 2814, and certification of compliance by manufacturers in section 122(e), 106 Stat. 2817.

Section 122(a)(3) of the EPAct (EPCA, section 340(13)(A), 42 U.S.C. 6311 (13)(A)), defines "electric motor" as any motor which is "general purpose T-frame, single-speed, foot-mounting, polyphase squirrel-cage induction of the National Electrical Manufacturers Association (NEMA) Designs A and B, continuous-rated, operating on 230/460 volts and constant 60 Hertz line power, as defined in NEMA Standards Publication MG1-1987." Section 122(d) of the EPAct (EPCA, section 342(b)(1), 42 U.S.C. section 6313(b)(1)), prescribes standards for electric motors that are 1 through 200 horsepower, and "manufactured (alone or as a component of another piece of equipment)," except for "definite purpose motors, special purpose motors, and those motors exempted by the Secretary."

Section 122(b)(1) of the EPAct (EPCA, section 343(a)(5)(A), 42 U.S.C. 6314 (a)(5)(A)), requires that testing procedures for motor efficiency shall be the test procedures specified in NEMA Standards Publication MG1-1987, and the Institute of Electrical and Electronics Engineers (IEEE) Standard 112 Test Method B for motor efficiency, as in effect on October 24, 1992. Section 122(b)(1), EPCA section 343(a)(5)(B) and (C), provide for amendment of the testing procedures if the test procedures in the NEMA and IEEE standards are revised.

Section 122(c)(4) of the EPAct (EPCA, section 344(d), 42 U.S.C. 6315(d)) directs the Secretary, after consultation with the Federal Trade Commission, see EPCA section 344(f), 42 U.S.C. 6315(f), to prescribe rules requiring motor