

(4) Calculate the CVS dilution factor (DF) by:

$$DF = \frac{\text{Raw Wet CO}_2 - \text{Background CO}_2}{\text{Dilute Wet CO}_2 - \text{Background CO}_2}$$

(5) Convert the dilute wet-basis HC and CO to dilute dry-basis values. An assumption that the percent of water by volume in the sample bag is 2 percent is acceptable. For example:

$$\text{dilute dry HC} = (\text{dilute wet HC}) / (1.00 - 0.02)$$

(6) Calculate the raw dry-basis HC and CO values by:

$$\text{raw dry HC} = (DF) (\text{dilute dry HC})$$

$$\text{raw dry CO} = (DF) (\text{dilute dry CO})$$

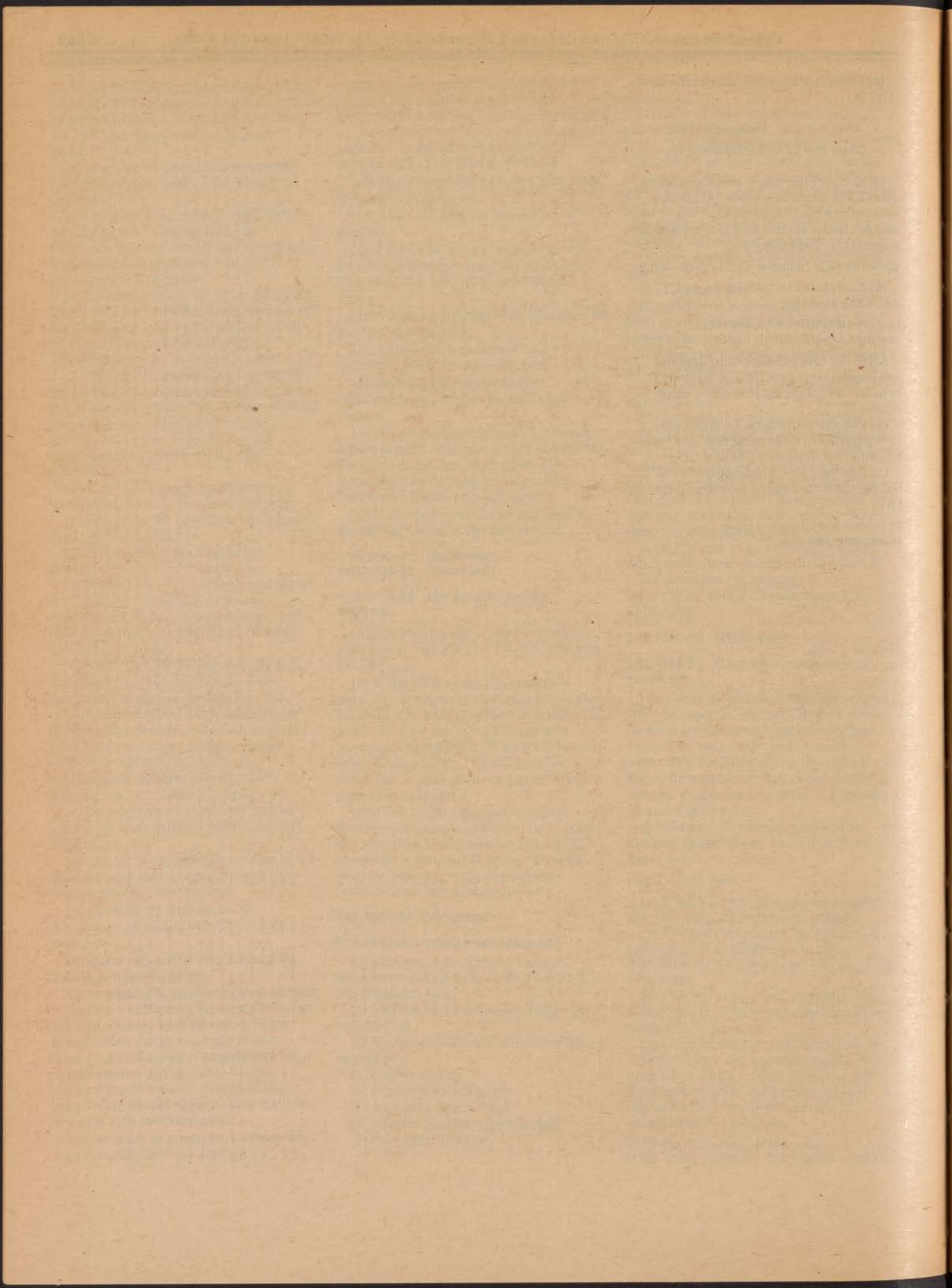
(d) If the raw exhaust sampling and analysis system specified in Subpart D is used, the following procedure shall apply:

(1) Use the procedure, as applicable, in Subpart D to determine raw wet-basis HC and raw dry-basis CO and CO₂.

(2) Use the calculations specified in Subpart D to determine raw dry-basis HC.

[FR Doc. 79-21369 Filed 7-11-79; 8:45 am]

BILLING CODE 6560-01-M



Endangered Species Federal Register

Thursday
July 12, 1979

Part IV

Endangered Species Scientific Authority

Exports of Appendix II Species;
Proposed Findings for 1979-1980 Season

ENDANGERED SPECIES SCIENTIFIC AUTHORITY

[50 CFR Part 810]

Exports of Appendix II Species: Bobcat, Lynx, River Otter, Alaskan Brown Bear, and Alaskan Gray Wolf—Proposed Export Findings for the 1979-80 Season

AGENCY: Endangered Species Scientific Authority.

ACTION: Proposed rulemaking.

SUMMARY: The Endangered Species Scientific Authority (ESSA) proposes findings on a state-by-state basis as to whether commercial export of bobcat, lynx, river otter taken in 1979-80 will not be detrimental to the survival of those species; and, proposes findings for each of these species as to whether such export will not be detrimental to the survival of similar species protected by the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Both findings must be positive before export can be allowed. Findings for export of brown bear and gray wolf from Alaska are proposed relative only to whether export will not be detrimental to other populations of the same species. These findings are meant to satisfy ESSA's responsibilities under Article IV, paragraph 2 of the CITES. Federal export permits may be issued only for pelts that were harvested in states for which ESSA has found no detriment and subject to specified conditions. The ESSA seeks public comment in order to base such determinations on the best available information.

DATES: Comments are due on or before September 10, 1979.

ADDRESS: Comments should be addressed to the Executive Secretary, Endangered Species Scientific Authority, 18th and C Streets, NW, Washington, DC 20240. Forthcoming comments and comments already received will be available for public inspection at room 536, 1717 H Street, NW, Washington, DC, 7:45 a.m. to 5:30 p.m., Mondays through Fridays except federal holidays.

FOR FURTHER INFORMATION CONTACT:

Biological findings

Dr. Peter C. Escherich, Staff Zoologist, Endangered Species Scientific Authority, 18th and C Streets, NW, Washington, DC 20240, 202/653-5948.

Export permits

Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, DC 20240, 703/235-1903.

SUPPLEMENTARY INFORMATION: The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and its implementing regulations, 50 CFR Part 23, control international trade in animal and plant species, subspecies or geographically separate populations included in any of three CITES Appendices. A list of species included in the appendices can be found at 50 CFR 23.23. Currently 52 nations are party to the CITES. The CITES is implemented in each Party country by one or more scientific authorities and one or more management authorities. The CITES appendices are distinct from the list of species issued under the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 et seq., 50 CFR 17.11.

All five species discussed in this notice are included in Appendix II. According to Article II, paragraph 2 of the CITES, Appendix II is to include:

(a) All species which although not necessarily now threatened with extinction may become so unless trade in specimens of such species is subject to strict regulation in order to avoid utilization incompatible with their survival; and

(b) Other species which must be subject to regulation in order that trade in specimens of certain species referred to in sub-paragraph (a) of this paragraph may be brought under effective control.

Although the CITES provides for the inclusion of species in Appendix II for two distinct purposes, Parties proposing additions in the past usually have not clearly identified the purpose of listing in their original proposals or in other supporting documents. At the second meeting of the Conference of the Parties (held in San Jose, Costa Rica in March 1979), the Parties recommended "that proposals for additions to Appendix II should make it clear whenever possible whether the proposal is made under Article II 2(a) or Article II 2(b) * * *" (Com. 2.13, also see Com. 2.12). This recommendation is intended to clarify the responsibility of the Parties' scientific authorities in making findings on applications to export or to import specimens of species protected by the CITES.

As discussed in our notice of April 30, 1979 (44 FR 25383), the Department of the Interior, as U.S. Management Authority (MA), may grant an export permit for a specimen of an Appendix II species, only after the ESSA has found

that the export "will not be detrimental to the survival of that species" (Article IV 2(a)). For specimens of species included in Appendix II under Article II 2(a), because of potential threat to their own survival, we propose to address the potential effect of exports of the listed species itself; for species included in Appendix II under Article II 2(b), to protect other species, we propose to address how such exports may affect the status of the species intended to be protected: those associated species included in Appendix II under Article II 2(a), or included in Appendix I.

In certain cases it may be necessary to include a species in Appendix II both because it may become threatened with extinction and because its trade must be regulated to effectively control trade in other species included because of biological jeopardy. In such cases the ESSA proposes to make two findings on detriment, one with respect to Article II 2(a) and the other with respect to Article II 2(b); both findings must be positive before exports are allowed.

Bobcat, Lynx, and River Otter

When a species was included in Appendix II as part of a higher taxon and the purpose for listing is not clear, the ESSA, for the present will treat the species as included in Appendix II under both Article II 2(a) and Article II 2(b). This treatment was established in ESSA's Advance Notice of Proposed Rulemaking published in the April 30, 1979 *Federal Register* (44 FR 25383). That notice requests comment on this policy, as does ESSA's proposed procedural regulations published at 44 FR 40598 July 11, 1979.

The above interpretation is consistent with the purpose for listing higher taxa. For example, the Berne Criteria for addition (Conf. 1.1, 5.11, 1976) state: "Genera should be listed if some of their species are threatened and identification of individual species within the genus is difficult. The same should apply to listing any smaller taxa within larger ones."

The bobcat (*Lynx rufus*) and lynx (*Lynx canadensis*) were added to Appendix II on February 4, 1977 as part of the Felidae. The proposal to include the Felidae in Appendix II was prepared by the United Kingdom of Great Britain and Northern Ireland. In this case the proposal stated that "all species must be considered as vulnerable" and that all "wild species not in Appendix I should be on Appendix II, so that the scale of their occurrence in trade can be monitored." The river otter was included in Appendix II on February 4, 1977, as part of the Lutrinae. The proposal was

prepared by Switzerland and stated, in part: "All otters are heavily exploited for their skins to the extent that they could become endangered. The skins of different species are difficult to distinguish from one another." No additional clarification was given as to why individual species of cats and otters were included in Appendix II. These statements support the interpretation that scientific authority findings on any species of these taxa should address potential threat to their own survival as well as the need to control trade in other species in the taxa.

Consequently, the ESSA intends to make separate findings on detriment with respect to Article II 2(a) and Article II 2(b) for export of specimens of bobcat, lynx, and river otter harvested in 1979-80. This approach differs from the past two seasons, when findings were limited to those conforming to listing under Article II 2(a). Both findings must be positive before exports are allowed.

Bears and Wolves

At the second meeting of the Conference of the Parties, the Parties agreed that the Alaskan and Canadian populations of brown bear, *Ursus arctos*, and wolf, *Canis lupus*, were to be treated as being included in Appendix II under Article II 2(b). After these agreements become effective on June 28, the ESSA will limit its review of export applications for Alaskan brown bear and gray wolf to the preparation of findings made with respect to Article II 2(b). When reviewing proposals to export these Alaskan specimens, the ESSA will only consider and will only make a finding on the probable impact that export of specimens from Alaska will have on the status of other populations of the same species.

Environmental Assessment

No Significant Impact

The ESSA has determined that the findings proposed below in this notice for bobcat, lynx, river otter, Alaskan brown bear, and Alaskan gray wolf taken in 1979-80 are not major Federal actions that would significantly affect the quality of the human environment within the meaning of section 102(2)(c) of the National Environmental Policy Act of 1969. Accordingly, an Environmental Impact Statement on this proposal will not be prepared.

Alternative Extremes

The ESSA potentially could adopt findings allowing export of bobcat, lynx, river otter, Alaskan brown bear, and

Alaskan gray wolf hides without any conditions imposed by the ESSA, or standards and conditions resulting in essentially no export. In our view, neither of these two extremes would constitute a major Federal action significantly affecting the quality of the human environment; consequently, the proposed intermediate standards, conditions and findings, and any similar final actions, would not have such an effect. For the bobcat, lynx, and river otter, the rationale for this analysis for findings under Article II 2(a) was discussed in the 1978 proposed finding published in the July 7 Federal Register (43 FR 29469).

Status

Information outlining the distribution, population estimates and trends, and reproduction of the bobcat, lynx, and river otter is reviewed in the same Federal Register notice, 43 FR 29469, under "Ecology". Data on the status of Alaskan brown bear and Alaskan gray wolf are summarized in the ESSA's general findings concerning exports of these species, communicated to the U.S. Management Authority on December 1, 1978, and available for public inspection at room 536, 1717 H Street, NW., Washington, DC, 7:45 a.m. to 5:30 p.m., Mondays through Fridays except Federal holidays.

Domestic and International Demand

Apparently most bobcat, lynx, and river otter pelts harvested in the United States are exported. For bobcat, in particular, there may be substantial domestic use, particularly in the South where pelts are less valuable. Informal estimates place exports at 80 to 90 percent for bobcat and lynx, 95 percent or more for river otter. The data for Alaskan brown bears and Alaskan gray wolves are insufficient to distinguish between domestic and international demand. However, about 58% of the brown bears taken in Alaska are shot by non-resident hunters, and many of these are foreign hunters seeking trophies (about 10% of the total take). Since 1971, the reported harvest for wolves has been relatively constant, averaging 1,130 per year, with a range from 970 to 1,335. Most animals are taken for fur, both for personal use and for sale. A small number are also shot by trophy hunters, mostly incidental to hunting for larger game.

Consequences of No Export

With respect to findings under Article II 2(a), the consequences of no export of bobcat, lynx and river otter are discussed in last year's proposed

rulemaking (43 FR 29469). This discussion may be summarized as follows:

- 1) Effective prohibition of export probably would reduce harvest of these species, particularly bobcat and lynx.
- 2) Pelt price may drop, depending on the demands of the domestic market.
- 3) To some extent, a decrease in harvest would result in increased populations of these species. This is less certain for Alaskan lynx populations which are known to have a cyclic population, and river otter for which there is little evidence of current population stress from harvest.
- 4) The environmental impacts of no export cannot be described with any confidence. While a decrease in harvest may result in some increase in abundance of these species, the effect on other species is uncertain. The ESSA has received no evidence that unexploited densities of these species would lead to a significant increase in the frequency of rabies or other disease. To some extent, increases may occur in bobcat depredation on domesticated animals, but the overall magnitude of this depredation probably would be minor.

In addition, it has been argued that export restrictions may reduce incentives for state and federal conservation programs of these species. This particularly may be true for the bobcat. Many recent state efforts to monitor and manage this species' harvest and to better establish its biological status may be attributed to federal controls on export.

With respect to findings under Article II 2(b), not approving export of these five species might benefit other species of cats and otters, and other populations of brown bear and gray wolf protected by the CITES. Not approving export would reduce the volume of specimens in international trade. The volume of these specimens in international trade is large, particularly the volume of bobcat, lynx, and river otter, and no export may make available more resources for controlling trade in specimens of other species of cats and otters, and other populations of brown bear and gray wolf. In addition, it is possible that not approving export might help alleviate harvest pressure on other protected species and populations—both by reducing the opportunities for illegally traded pelts to be traded as legally obtained bobcat, lynx, river otter, Alaskan brown bear, and Alaskan gray wolf, and by precluding any stimulus such trade may have on the overall market for protected taxa. On the other hand, the ESSA has little information on

possible incentives to trade specimens of other species or populations as specimens of bobcat, lynx, river otter, Alaskan brown bear or Alaskan gray wolf; and, not approving export might increase harvest pressure on other protected species or populations. It is uncertain to what extent any of these consequences might occur.

Consequences of Export Without Restriction by the ESSA

With respect to findings under Article II 2(a), the consequences of unrestricted export of bobcat, lynx and river otter also are discussed in last year's proposed rulemaking (43 FR 24669). Unrestricted export may result in the over harvest or extirpation of certain populations of these species. On the other hand, because of state harvest controls and domestic federal controls under the Lacey Act, there are certain assurances independent of the CITES that harvest will not be detrimental. Annual ESSA review of the biology and management of the three species reinforces these controls.

Commercial export of bobcat, lynx, river otter, may in some respects be better for these species than an export prohibition (see last year's proposed rulemaking (43 FR 29469)). Given the higher price for pelts in foreign markets, permitting export increases the economic value of these species in the United States. This increased value provides incentives for better state and federal management programs. In some states increased trapping activity contributes additional funds to management programs through the sale of licenses. In addition, increased value may generate public support for sound management programs.

A potential negative impact of allowing export without restriction is the effect that international commerce in pelts of bobcat, lynx, river otter, Alaskan brown bear, and Alaskan gray wolf may have on other species and populations protected by the CITES. The effect, if any, is essentially unknown at this time. ESSA findings in favor of unrestricted exports of these species from the United States may result in the introduction of a larger volume of pelts in international trade, and may result in less rigorous documentation of these pelts. Both of these factors may dilute efforts to effectively control trade in specimens of related species, or populations. The ESSA knows of no market incentives that would lead to extensive promotion of specimens of other protected species and populations as specimens of legally obtained bobcat, lynx, river otter, Alaskan brown bear, or

Alaskan gray wolf; however, specimens of these species can be confused with specimens of other species or populations. For example, river otter pelts are difficult to distinguish from the pelts of some other otters.

Consequently, enforcing trade restrictions for other cats, otters, bears and wolves is made more difficult if export of these species is permitted without certain specific conditions. For this reason, in part, we are proposing conditions requiring tagging of pelts of these specimens to help ensure they are not confused with specimens of other protected species or populations. Even if these conditions were not imposed, however, the implications of allowing or disallowing exports of these five species are so uncertain that we do not believe choosing one course or the other requires a step great enough to amount to a major federal action significantly affecting the quality of the human environment.

Guidelines for ESSA Findings on Export

Article II2(a)

For the bobcat, lynx, and river otter, the ESSA published guidelines in the April 10, 1978, *Federal Register* (43 FR 15097), and further amplified and discussed these guidelines on July 7, 1978 (43 FR 29469). These guidelines were originally developed for the 1978-79 season, but are considered equally applicable to the 1979-80 season (see 44 FR 25383, April 30, 1979).

These guidelines depend on analysis of both biological information and the management program adopted by the states. A Working Group on these species recommended minimum requirements for these (see 43 FR 11081, March 16, 1978):

Minimum Requirements for Biological Information

1. Population trend information * * * the method of determination to be a matter of state choice.
2. Information on total harvest of the species.
3. Information on distribution of harvest.
4. Habitat evaluation.

Minimum Requirements for a Management Program

1. There should be a controlled harvest * * * methods and seasons to be a matter of state choice.
2. All pelts should be registered and marked.
3. Harvest level objective should be determined annually.

As in previous years, not all states meet every one of the requirements, which were considered as minimums by the Working Group. The ESSA has approved export in the past from states when it was considered that other information might provide a reasonable basis for a finding of no detriment. This was done with the understanding that early stages of research and progress toward improved management might be inhibited or made more difficult were no export allowed at all. The progress in both these areas over the past two years has been encouraging, and we wish to recognize the efforts made by the states. Many of these changes are recorded in our tables of findings for last year and in the present proposal. There remains only one state, New Mexico, in which the wildlife department has not been granted regulatory authority over the bobcat, although the species was either unregulated or bountied in a large proportion of the states only a few years ago.

On the other hand, in spite of this progress, there are still a small number of states, such as Oregon, Arizona, and Georgia, which have provided little evidence that much is being done to assess objectively the impact of relatively large harvests and export. It is difficult for the ESSA to find that export from these states is not detrimental to those populations without more evidence of current population assessment, even though there may be general suggestions or large populations in those states. Another serious problem occurs, as in North Carolina, when no reliable system has been developed to restrict issuance of tags to pelts legally taken in the state. When pelt tags are made freely available, whether by mail or issuance to dealers, and there is no check on whether animals were taken in the state where the tags are issued, such issuance may be detrimental to populations in nearby states both because it takes away from those states information which may be necessary to sound management and because it may encourage the taking of animals at times or places where prohibited. It also raises serious questions over the issuing state's ability to assess accurately its own harvest.

The ESSA may be unable to make a finding of no detriment for those states without adequate control of tag issuance or for those states where there is little evidence of attempts to assess current population status, in spite of improvement in other areas. For the former problem, we will rely upon the Management Authority to work out a satisfactory program with these states

and to inform us of the results before these findings are finalized. In the latter case, we are hopeful that the states involved may have additional internal assessments or plans for these which have simply not been transmitted to the ESSA.

Application of these guidelines to brown bear and gray wolf from Alaska is not discussed because these populations are considered to have been included in Appendix II under Article II 2(b) only (see 44 FR 25480, May 1, 1979, and 44 FR 9689, February 14, 1979), and thus only a finding relative to that article is required of the ESSA.

Article II 2(b)

Findings under Article II 2(b) address the question of potential detriment to other associated species. As described in more detail in the April 30, 1979, Federal Register (44 FR 25383), two major concerns must be satisfied: (1) that specimens of the exported species must be sufficiently distinguishable from specimens of the similar species protected by the CITES to prevent a detrimental confusion in trade, and (2) that trade in the species concerned does not stimulate trade in similar protected species which would be detrimental to those species. Because the CITES defines "species" to include "any species, subspecies, or geographically separate population thereof" (Article I(a)), important units to consider are other populations or subspecies of the species under consideration as well as related species which are particularly difficult to distinguish. Each of the five species under consideration here has similar relatives in one or both of these categories which are included in the appendices, and which are the basis for the inclusion of the present species under Article II 2(b).

ESSA Proposed Findings Under Article II 2(a)

As discussed above, findings under Article II 2(a) are required for bobcat, lynx, and river otter. Recent information received for bobcat and river otter is summarized by state in the tables below, along with proposed findings and conditions under Article II 2(a). Information, findings, and conditions for lynx are summarized after the tables, for the five states with open seasons for that species. No findings are included here for brown bear and wolf from Alaska because of the agreement by the parties that only findings under Article II 2(b) are required. Data for prior years been summarized for the first three species in the Federal Register and will not be repeated here: August 30, 1977 (42

FR 43729), March 16, 1978 (43 FR 11081), July 7, 1978 (43 FR 29469), August 7, 1978 (43 FR 35013), August 16, 1978 (43 FR 36293), and September 1, 1978 (43 FR 39305). These notice should be consulted for background data relevant to the current proposed findings.

Approval of export by the ESSA in this section is not the only condition necessary for export. In the following section, findings are proposed relative to Article II 2(b) for each of the five species. For export, those findings must also be positive and any conditions met. In addition, an export permit must be obtained from the Federal Wildlife Permit Office (address above).

Descriptions of the table categories follow, along with explanations of abbreviations used.

Harvest Level Objective for 1979-80

As recommended by the Working Group, it is desirable to define a permissible, desirable, or projected level of harvest prior to setting regulations or controls on that harvest. Setting such an objective serves two functions: It clarifies the intent of those controls, which can aid in making decisions on the nature and level of controls to use, and it provides a standard by which the effect of those controls can later be measured. We cite here objectives which have been defined to us by the individual states. These are not quotas or limits, although certain states may have treated them as such, in various forms, in their own regulations (e.g. California and Massachusetts for bobcats). Where agencies have given us a number it is included here; qualitative objectives are indicated here by abbreviations:

M = Maintain: The state intends to maintain a harvest approximately equal to that in the previous season or to that in several recent seasons.

D = Decrease: The state intends to decrease harvest.

I = Increase: The state intends to increase harvest.

NS = None specified: The state has not identified to the ESSA a harvest level objective for 1979-80.

P = Totally protected: There is no open season for 1979-80. The species may be included in a state list of endangered wildlife, or there may be a temporary moratorium.

X = Not present: The species may never have occurred there, or may have been extirpated in historical times.

Reported Harvest, 1978-79

The state's reported harvest for the 1978-1979 trapping season. In certain cases (see abbreviations below), more than one reporting system was used, and the differing reports are given with

appropriate designations. Problems of comparing harvest reports made by different systems are discussed in the March 16, 1978, notice (43 FR 11081):

NC = Not compiled: State has not finished collection of harvest data. In most cases this is in progress, and the ESSA anticipates receiving these data soon.

TR = Trapper report: Mandatory report by trapper of each kill. In most cases this includes tagging of the pelt by a state official. This is generally considered the most reliable measure of harvest.

HR = Hunter report: Mandatory report by hunter (as for trapper).

DR = Dealer report: Mandatory report by fur dealers in state of all furs bought and sold. Such reports may be misleading when no distinction is made for skins originating in one state and sold in another. Multiple sales of the same pelt can also reduce accuracy of this method.

TS = Trapper survey; HS = Hunter survey; DS = Dealer survey: Voluntary survey or reports from a sample of trappers, hunters, or fur dealers. Results of these are commonly extrapolated, with a wide range of reliability, depending on attention to statistical limitations.

ADC = Animal damage control: Report of predator control operations.

VT = Voluntary tag: State provides tags, but does not require their application to all pelts taken. Because such tags are required for identification of legally taken and approved pelts on export, pelts bearing such tags apparently receive higher prices, producing an incentive for tagging. (See also tagging column.)

Tagging

The Working Group recommended that all pelts "be registered and marked." The ESSA and the MA have required as a condition of export that all pelts be clearly identified as to state of origin and season of taking. These recommendations and conditions have generally been met through the application of state supplied tags to pelts. State requirements and mechanisms for tagging vary widely and, as described above, may have effects on the state's own ability to gather data, on programs in nearby states, as well as on the degree to which tags may identify legally taken hides from the indicated states.

Abbreviations, as follows, are used to summarize the states' tagging programs. Dates following an abbreviation indicate, where known, the first year that program was applied:

MTA = Mandatory tag, applied by agent: All animals of that species taken or possessed must be tagged; a state agent applies the tag.

MSA = Mandatory tag for sale or transport of pelt, applied by agent: Only pelts to be sold or to enter interstate commerce must be tagged; a state agent applies tag. In some

cases, there may be a substantial kill not falling in these categories which is not included in such tagging.

VTA = Voluntary tag, applied by agent: Tags are applied by state agents, but are not required by the state for any particular category of pelt.

MTT = Mandatory tag for taking or possession, but issued to trapper, hunter, or dealer;

MST = Mandatory tag for taking or for sale or transport, but issued to trapper, hunter or dealer;

VTT = Voluntary tag, issued to trapper, hunter, or dealer: In these cases the state may have less control over which pelts are actually tagged.

NR = No return requirement: Where state issues tag to trapper, hunter, or dealer, there may be no requirement for return of unused tags or for accounting for those tags used.

Local Data and Management

The Working Group recommended that there be "information on distribution of harvest." In addition, the ESSA is required to consider in its finding the "species throughout its range * * *," and the CITES defines species to include subspecies and populations. Not all situations may require data on management more detailed than on a statewide level, especially in small states with little diversity in natural habitat. On the other hand, large states, especially those with considerable variety of habitat and uneven distribution of harvest effort, may find it essential to gather data in local units and to have different regulations for different parts of the state. These are indicated by the abbreviations below:

LH = Local harvest data: Harvest data is available by county or game management unit.

LR = Local research: Intensive research projects are being carried out in two or more diverse sites within the state, providing data which may be useful in differential management of local populations.

LS = Local surveys: Qualitative surveys of abundance have been carried out which suggest abundance by county or game management unit.

LM = Local management: Regulations or other measures which may affect local abundance or harvest are set differently for different areas within the state.

Recent Management Changes and Other Comments

Continued improvement in management regimes and research programs can have an important bearing on whether the ESSA can find that export will not be detrimental.

Findings and Conditions Proposed Under Article II(2)(a) for the 1979-80 Season.

The ESSA's proposed findings under Article II(2)(a) for pelts harvested during the coming fur season are given here. Final ESSA findings in favor of export of bobcat, lynx and river otter pelts require a positive finding both under Article II(2)(a) and Article II(2)(b).

These are proposed findings, and the ESSA anticipates changes as further information is received. Publication of final findings is planned for about September 14. The proposed findings and conditions are abbreviated as follows:

A = Approved: The ESSA proposes to find that export of specimens of this species will not be detrimental to its survival. The ESSA considers that expected harvest under the state's planned management regime will not be detrimental to the survival of the species in that state. As a condition to this finding, all pelts must be clearly identified as to state of origin and season of taking. The purpose of this condition is to provide a record of the harvest and to facilitate research efforts.

Q. ### = Quota: Exports from this state are approved for pelts taken during the 1979-1980 season, on the condition that exports are limited to the specified quota, and pelts are clearly identified to state and season.

NEA = No export approved: Explanation given in "comments" for the state.

NDR = No data received; IDR = Incomplete data received; no export approved: The ESSA does not have sufficient information to support a finding of no detriment. Data from the 1978-79 season and current management plans were not received by the ESSA in time for inclusion here, or are not complete. Proposed findings will be reconsidered if such data are received during the comment period. In most cases, these data are currently being prepared by state officials, and the ESSA expects to receive these soon.

P = Protected, or X = Not Present; no export approved: As in harvest objective column. A finding in favor of export for the 1979-1980 season would be inconsistent with current state conditions.

BILLING CODE 4310-55-M

BOBCAT

STATE	HARVEST OBJECTIVES 1979 - 1980	REPORTED HARVEST 1978 - 1979		TAGGING	LOCAL DATA & MGMT.	RECENT CHANGES AND COMMENTS	FINDINGS & CONDITIONS under Article II 2(a) for '79 - '80
		Number	How Reported				
Alabama	NS	1631 NC	VT TR	VTA'78	LH	Major study recently completed. Summary only available to date.	IDR
Alaska	X						X
Arizona	NS						NDR
Arkansas	3500 max	NC	TR,HR, DR	VTA'77 MTA'78	LH	'79 - '80 season reduced ten days. Fur takers permits to be required. Dealer report mandatory. Management goal: "Harvest approx. 10%...and/or to maintain a desired age structure." Age structure data being collected.	IDR
California	15,000	12,566	VT,HS, TS,ADC	MSA'77 MTA'78	LH,LR	'79 - '80: Season reduced by one month, or to be closed when 6,000 export tags are sold (state imposed quota). All pelts held must be tagged and data and specimens turned in. Field research in progress in several areas of state. Estimate only 25% of animals killed are pelted. Harvest per successful trapper relatively constant.	A
Colorado	3-4,000,M	NC	TR,DR, TS,HS	MTA'78	LH,LS	Age structure analysis in progress. Current status evaluated annually based on comparison of prey abundance, harvest success rates, and habitat suitability by management units.	IDR
Connecticut	P						P
Delaware	P						P
Florida	NS	1698	TR,HR	MST'78	LS	Research started on population assessment, reproduction, and habitat. Insufficient data available for setting harvest objective. '79: Tagging and dealer report requirements strengthened. Tags required for interstate shipment. Season reduced from year-round to three months.	A
Georgia	NS						NDR
Idaho	NS	1320	VT	VTA'78	LH,LS	Research in progress, including age structure. '79 - '80 season and regulations to be set in August when more data available.	IDR
Illinois	P						P
Indiana	P						P
Iowa	P						P
Kansas	2,000	822 1,166 +539 949	TR TS HS DR	MSA'78		'79 regulations not finalized.	IDR

BOBCAT

STATE	HARVEST OBJECTIVES 1979 - 1980	REPORTED HARVEST 1978 - 1979		TAGGING	LOCAL DATA & MGMT.	RECENT CHANGES AND COMMENTS	FINDINGS & CONDITIONS under Article II 2(a) for '79 - '80
		Number	How Reported				
Kentucky	P						P
Louisiana	NS	5,672 5,164	DR VT	VTT'78	LH,LM	Age structure and reproductive data being analyzed. Telemetry studies in progress. Scent post survey procedures being tested; started '78.	A
Maine	317 max.	280	TR	MTA'76	LH,LS,LM	Species plan updated regularly. Provision for closing local or statewide seasons early if allowable harvests exceeded.	A
Maryland	P					Surveys in progress.	P
Massachusetts	NS						NDR
Michigan	350-450	386	TR,HR	MTA'76	LH,LM	Status review, including age structure analysis, in progress. Trapping license sales stable. Coyote bounty to be eliminated 1980 -- expected to decrease bobcat take.	A
Minnesota	300	309	TR,HR	MTA'78	LH	Scent post and radio tracking studies in progress. Prey and bobcat population considered increasing.	A
Mississippi	NS						NDR
Missouri	P						P
Montana	1250	1126	TR,HR	MTA'77	LH	Age structure data being analyzed. Detailed research to start '79-80.	A
Nebraska	100-200	106	TR,HR	MTA'78 VTA'77	LH	Carcasses being collected, analyzed for reproduction and age structure. Trapper survey in progress.	A
Nevada	M	4,638	TR,HR	MTA'78	LH,LS	Harvest data, including effort, analyzed by county and mountain range. Local age structure analysis in progress on over 4,000 animals harvested. Tagging requires turn-in of lower jaw. May provide for differential local management if indicated by age analysis and local surveys. Statewide trap-days per animal has decreased and catch per trapper increased since 1977-78.	A
New Hampshire	P						P
New Jersey	P						P
New Mexico	NS						NDR
New York	M or I	159	TR,HR	MIT'77	LH,LM	Increased apparent harvest anticipated due to greater familiarity and compliance with tagging requirement. (Actual harvest expected to remain similar to previous.) Over 20% of take not by hunters or trappers. Age structure suggests long survival.	A

BOBCAT

STATE	HARVEST OBJECTIVES 1979 - 1980	REPORTED HARVEST 1978 - 1979		TAGGING	LOCAL DATA & MGMT.	RECENT CHANGES AND COMMENTS	FINDINGS & CONDITIONS under Article II 2(a) for '79 - '80
		Number	How Reported				
North Carolina	850	861	DR	VTT,NR '78		Extensive research planned. State sold 2,000 non-returnable tags at \$5 each, largely to dealers, but cannot account for 1139 of these. System provides no assurance that pelts tagged with North Carolina tags were taken in that state, and encourages their use on pelts from other states.	NEA
North Dakota	NS						NDR
Oklahoma	NS						NDR
Oregon	NS						NDR
Pennsylvania	P						P
Rhode Island	P						P
South Carolina	1000	NC	TR,HR,DR	MTT'78	LS	Current season data incomplete. New Fur Bearer Management Section set up. Will be carrying on detailed studies and making management recommendations.	IDR
South Dakota	NS						NDR
Tennessee	1000 max	684-900	DR,VT	VTA'77	LH,LS	Study carried out '72-'73. Data turned in at tagging. Scent post and telemetry studies planned.	A
Texas	NS						NDR
Utah	2000-2500	0		MTA'79		'79: Management transferred to Division of Wildlife Resources. Propose reopening season (closed since '76); regulations being drafted. Investigating population assessment methods. Estimate of minimum population ('77): 7181 - 8563.	IDR
Vermont	NS						NDR
Virginia	100-400	321	TR,HR,DR	MSA'78	LH,LS	Furbearer program being reviewed. Surveys and other research planned.	A
Washington	M	3,530	TR, HS	MSA'78	LH,LM,LR	Detailed studies in progress in both eastern and western parts of state.	A
West Virginia	630	588	TR,HR	MTA'77	LH	Limit of two. Carcass and age studies in progress.	A
Wisconsin	NS	223	TR,HR	MTA'73	LH,LS	"...Not certain ... whether or not a bobcat harvest season will be established for Wisconsin in 1979." Surveys in progress.	IDR
Wyoming	M or D	NC	VT	VTA'77		'79: Game and Fish Department given regulatory authority. Season reduced year-round to six months. Age structure analysis suggests improving status ('77-'78).	IDR
Navajo Nation	M, 50-200	126	ADC,TS,DS	VTA'77	LH	Trapper report to be required. Extensive research proposed. Most ADC take incidental to coyote trapping. Trap-nights per bobcat have increased since 1971.	A

RIVER OTTER

STATE	HARVEST OBJECTIVES 1979-1980	REPORTED HARVEST 1978 - 1979		TAGGING	LOCAL DATA & MGMT.	RECENT CHANGES & COMMENTS	FINDINGS & CONDITIONS UNDER ARTICLE II 2(a) FOR '79 - '80
		Number	How Reported				
Alabama	NS	882 NC	VT TR	VTA '78	LH	Continuing research on otters in the state. Reduced pelt price for beaver expected to reduce otter harvest.	IDR
Alaska	NS						NDR
Arizona	P						P
Arkansas	600	NC(est 500)	TR, DR	MTA '77	LH	'79 - '80: Season reduced 10 days; fur taker's permit to be required; dealer report mandatory. "Reports from the public indicate ... population is increasing..." Age structure not yet analyzed.	IDR
California	P						P
Colorado	P						P
Connecticut	63-74	74	TR	MTA '78	LH	"During last 8 years, observations, predation complaints, and field sign have increased [suggesting] otters are present in larger numbers than thought..."	A
Delaware	NS	45	VT	VTA '78		'79: Trapper reports to be required, new surveys of trappers and dealers started to "gauge population fluctuations."	A
Florida	NS	2112	TR, DR	MST '78	LS	Research started on population assessment, reproduction, and habitat. Insufficient data available for setting a harvest level objective. '79: Tagging and dealer report requirement strengthened, tags required for interstate shipment.	A
Georgia	NS						NDR
Idaho	P					Study in progress.	P
Illinois	P						P
Indiana	P						P
Iowa	P						P
Kansas	P						P
Kentucky	P						P
Louisiana	NS	9,745 9,463	DR VT	VIT '78	LH	Age structure & reproduction data being analyzed. Telemetry study planned.	A
Maine	909 max.	693	TR	MTA '75	LH,LS, LM	Species plan updated regularly. Studies being started on mark-recapture methods assessment and on relationship of harvest regulations and status.	A
Maryland	300 max.	262	TR	MIT	LH,LS	Major study completed, to be published soon.	A
Massachusetts	NS						NDR
Michigan	600-700	730	TR	MTA '40	LH,LM	Bag limit of one. Almost all taken incidental to beaver trapping.	A

RIVER OTTER

STATE	HARVEST OBJECTIVES 1979-1980	REPORTED HARVEST 1978 - 1979		TAGGING	LOCAL DATA & MGMT.	RECENT CHANGES & COMMENTS	FINDINGS & CONDITIONS UNDER ARTICLE II 2(a) FOR '79 - '80
		Number	How Reported				
Minnesota	750	707	TR	MTA '56-'62, '78	LH,LM	Season limit of three. Southern part of state closed. Survey methods being analyzed.	A
Mississippi	NS						NDR
Missouri	P						P
Montana	35	34	TR	MTA '77	LH	Carcass collection planned for '79-'80. "Limited survey...on 4 major river systems indicates a density of one otter per 14 kilometers." More intensive surveys planned.	A
Nebraska	P						P
Nevada	P						P
New Hampshire	NS						NDR
New Jersey	P						P
New Mexico	P						P
New York	400-500, or 650-700	677	TR	MIT '54	LH,LM	Harvest data not final. Models suggest slightly increasing population.	A
North Carolina	1,125	1,357	DR	VTT,NR '78		Extensive research planned. State sold 2,000 non-returnable tags @ \$5 each, largely to dealers, but cannot account for 643 of these. System not only provides no assurance that pelts with North Carolina tags were taken in that state, but encourages their use on pelts from other states.	NEA
North Dakota	P						P
Oklahoma	P						P
Oregon	NS						NDR
Pennsylvania	P						P
Rhode Island	P	25	TR,DR	MSA '77		Carcass analysis started. Furbearer project to start. No open season '79-80.	P
South Carolina	1000	NC	TR,DR	MIT '78	LS	Current season data incomplete. New Furbearer Management Section set up -- will be carrying out detailed studies and making management recommendations.	IDR
South Dakota	P						P
Tennessee	P						P
Texas	NS						NDR
Utah	P						P
Vermont	NS						NDR
Virginia	500-1000	813	TR,DR	MSA '72	LH, LM	Furbearer programs being reviewed. Surveys planned. Closed west of Blue Ridge	A

RIVER OTTER

STATE	HARVEST OBJECTIVES 1979-1980	REPORTED HARVEST 1978 - 1979		TAGGING	LOCAL DATA & MENT.	RECENT CHANGES & COMMENTS	FINDINGS & CONDITIONS UNDER ARTICLE II 2(a) FOR '79 - '80
		Number	How Reported				
Washington	M	722	TR	MSA '78	LH,LM	Eastern Wash. closed; other local closures & adjustments.	A
West Virginia	P,X						P
Wisconsin	NS	NC		MTA '55	LH,LM	Status study being started. Limit of two.	IDR
Wyoming	P						P
Navajo Nation	X						X

BILLING CODE 4310-55-C

Lynx

Only five states have open seasons for lynx, so their data are summarized here rather than in a complete table. Information for each state is given in the same order as used in the tables for bobcat and river otter. As for bobcat and river otter, the previous **Federal Register** notices should be consulted for further information concerning biology and management.

The following states protect lynx, although not all have resident populations: Colorado, Connecticut, Maine, Michigan, New Hampshire, Utah, Vermont, Wisconsin, and Wyoming.

The following states have a limited open season for lynx, tag all pelts, and have other restrictive regulations:

Alaska

Finding: NDR.

Idaho

Harvest objective: NS. Harvest (VT): 3. VTA '78. Finding: A.

Minnesota

Harvest objective: 50. Harvest (TR,HR): 28. MTA '77. Local: LH,LS. Species is included in surveys and research conducted for bobcat. Recent radiotracking study. Normal cycle of species suggests considerable increase expected within next three years. Finding: A.

Montana

Harvest objective: 35. Harvest (TR,HR): 23. MTA '77. Local: LH,LS. Age structure analysis in progress. Finding: A.

Washington

Harvest objective: NS. Harvest (TR): 6; (TS): 16. MSA '78. Local: LH. Finding: A.

ESSA Proposed Findings Under Article II(2)(b)

The ESSA proposes to find that export of specimens of bobcat and lynx will not be detrimental to the survival of other species of felids protected by the CITES.

The ESSA proposes to find that export of specimens of river otter will not be detrimental to the survival of other species of otters protected by the CITES.

The ESSA proposes to find that export of specimens of Alaskan brown bear will not be detrimental to the survival of other populations of this species.

The ESSA proposes to find that export of specimens of Alaskan gray wolf will not be detrimental to the survival of other populations of this species.

Conditions: The ESSA proposes the following conditions on these findings:

(1) Bobcat, lynx, and river otter pelts may only be exported if taken in states approved under Article II 2(a), subject to the conditions described under those findings, and must be tagged according to standards and conditions established by the MA. In 1978-79, the MA considered the following to be necessary standards and conditions:

Tags must:

- a. be made of metal or some other permanent material;
- b. be permanently attached to each skin, preferably by state personnel;
- c. accompany finished fur products to the port where the tags will be collected by USFWS officers. The tags are necessary to show source and tag numbers of pelts used in the manufacture of the product;
- d. be applied within a specified time of taking that is set by the state;
- e. show state of origin;
- f. show year of taking;
- g. show species; and
- h. be serially unique.

A sample of each type of state tag must be sent to the Federal Wildlife Permit office.

2. Specimens of brown bear and gray wolf may only be exported if legally taken in the State of Alaska and must be tagged according to the regulations of that state. A sample of each type of tag must be sent to the Federal Wildlife Permit Office.

Additional alternative conditions: The ESSA proposes to choose one of the following additional conditions for export of pelts of each of the species considered here. Choice of which condition to apply, if any, will be based on additional information to be received and evaluated relative to the international fur trade and to harvests in other countries.

3. Either

(a) There will be no restriction as to which countries may receive exported pelts.

or

(b) Pelts may be exported only to countries which are Parties to the CITES and which have not taken reservations for the species in trade or for species which that species was included in the appendices to protect.

or

(c) Pelts may be exported only to countries whose wildlife trade and wildlife trade regulation have been reviewed by the ESSA and found to provide assurances that contributing the U.S. pelts to their trade will not be detrimental to other species included in the appendices.

or

(d) Pelts may be exported only to countries which meet the condition (b) or (c) above.

Grounds for the Proposed Finding Under Article II 2(b).

General discussion.

As discussed in the guidelines above, and in the **Federal Register** of April 30, 1979 (44 FR 25383), the two primary issues to be dealt with here involve identification and possible stimulation of trade in similar species.

A fundamental presumption of all findings of the ESSA must be that the provisions of the CITES are being implemented and enforced effectively. To the degree that the ESSA can place confidence in the system provided for controlling trade, we can be correspondingly satisfied that existing procedures are adequate to ensure that specimens of one species will not be confused, intentionally or unintentionally, with specimens of other species.

Tagging of pelts helps provide assurance that specimens will be identified properly. Without tags, pelts would only be identified by paper documentation accompanying entire shipments. For such shipments, there would be many opportunities for confusing the identity of individual specimens. As most states already tag harvested pelts of these species, this condition would not result in significant additional burdens to state game agencies nor to the industry. For these reasons, and because tagging is useful as a vehicle for facilitating research, we believe this condition is very appropriate.

We have noted above the tagging procedures for the involved states, and anticipate that those, together with federal requirements, will be significant vehicles for carrying out the relevant responsibilities of the ESSA pursuant to Article IV 2(b). We expect the Management Authority to take care in ensuring that the standards and conditions for tagging are fulfilled, particularly because certain populations of these species are protected or may be threatened, and we know of no unequivocal way to distinguish between at least some specimens of these species taken from different parts of their distributions.

Beyond tagging, other conditions might be appropriate to better ensure adequate identification (see 44 FR 25383, April 30, 1979). For example, even small pieces of pelts could be identified by marking the entire reverse side of the pelt with identifying symbols. This

procedure was proposed by the U.S. Fish and Wildlife Service with respect to domestic trade controls for American alligators (43 FR 45513, October 2, 1978, proposed amendment 12 of § 17.42) and subsequently complemented by the ESSA with respect to our proposed findings under Article II 2(b) for this species relative to international trade (44 FR 31583, May 31, 1979). This procedure has been used to identify pelts of fur seals in trade. Applying this condition on one or more of these species, such as the river otter, could significantly reduce problems of identification; however, it is the judgment of the ESSA that available information concerning possible abuse of the trade in these species is insufficient to warrant this condition.

It has been suggested (see 44 FR 25383, April 30, 1979) that trade in these species should be restricted to countries which are parties to the CITES and which recognize the inclusion of these and related species in the appendices. Such an approach has been proposed for export of American alligator (44 FR 31583, May 31, 1979). In that case, a substantial proportion of the trade in other crocodilians, including several on Appendix I, is known to involve countries which either are not parties to CITES or which have taken specific reservations to Appendix I crocodilians. Trade in crocodilians is known to have been detrimental to several species, and it still occurs in volume for several that are endangered. In addition, the potential for confusing crocodilian products is great, particularly where small pieces are involved.

The present five furbearers present different cases. At present, most of the trade in these species is already with CITES Parties, and none of the major importing countries have taken reservations on these or related species. (Two exporting countries have taken such reservations: USSR for European otter and lynx, and Canada for brown bear.) U.S. Fish and Wildlife Service records indicate that the U.S. exported bobcat, lynx, or river otter in 1978 to 13 different countries, six of which are CITES Parties, and seven of which are not. The CITES countries received 85% of the exported pelts of these species, while 7% went to non-CITES countries, and unidentified countries received 8%. All known exports of brown bear and wolf went to CITES Parties. In contrast to crocodilians, evidence is much less clear that currently there is extensive potentially detrimental trade in the species most likely to be confused with the present ones. On the other hand, for some of these related species, even low

levels of trade might prove detrimental, and without adequate controls on trade by other countries it may be unwise to contribute further to such trade.

One suggestion for ensuring the adequacy of such controls has been a possible limitation of exports of one or more of these species to CITES Parties without reservations for either the species in question or the ones to be protected. Such countries have at least acknowledged formally a commitment to properly controlled trade, and are subject to review of their performance by the Secretariat and the other Parties. It has also been argued that such ratification does not guarantee that control mechanisms are actually effective, that there may be countries whose controls work well independent of their status relative to the CITES, and that review of such countries might prove a better guarantee than CITES ratification. A combination of these approaches could provide support for CITES controls, as well as allowing recognition of effective controls that may exist independent of them. The ESSA is still seeking further data on trade and trade controls which may prove helpful in resolving these questions, and consequently is proposing possible alternative conditions on exports for these species. As detailed below, the situation for each of these species is somewhat different, both as to the nature of trade, other species threatened, and similarity to other species. Consequently, the ESSA may find it appropriate to decide on different conditions for each species. Further analysis may demonstrate it unnecessary to restrict the countries to which we export, or it may demonstrate a need for one of the other three alternatives.

The species discussions below also address the question of stimulation of trade in other protected populations or species. A detailed study of this question would require considerably more data than are presently available. Comparison of relative volumes in trade, and of those being harvested elsewhere, however, are relevant to this question as well as to the preceding one.

Bobcat and Lynx.

These species are treated together here because of their similarity to each other. In fact, large light-colored bobcats, especially those of the subspecies *lynx rufus pallescens*, are called "lynx cats" in the trade. The most likely confusion would be with other populations of the same species, as well as the European lynx, *Lynx lynx*, in which some authorities include *Lynx*

candensis as a subspecies. The bobcat occurs primarily in the U.S., with populations extending into Canada and Mexico. As detailed above, export of these species is only allowed for pelts appropriately tagged by the state of origin, which can serve to identify any U.S.-exported skins of these species. In the last seven months of calendar 1977, the U.S. Management Authority reported a combined total export of these species of 14,254 pelts and 136 coats. Of these only 236 skins (2%) and seven coats went to countries not presently parties to CITES. An additional 1,302 skins (9%) and 24 coats were exported to unspecified countries, but we have no indication that these exports went to a larger proportion of non-CITES countries than did the known exports. More complete figures for all of calendar 1978 indicate that of a combined total of 25,531 pelts, 21,501 (84%) went to CITES Parties, 1,587 (6%) to non-CITES countries, and 2,443 (10%) to unidentified countries. Included in these figures are 1,731 lynx, of which 65% went to CITES Parties and 35% to non-CITES, but it is unclear whether that difference represents a long-term trend or the result of a small number of shipments. (Of 609 lynx exported to non-CITES countries, 480 were in a single shipment to Japan.) Thus, market conditions for these species generally provide for the majority of these pelts being shipped to CITES Parties. (For 1978, we have a total combined figure of 34,892 from the MA for the period Oct. 1, 1978 to May 31, 1979, which represents a partial fiscal year, and do not have reports by country yet. The apparently increasing numbers probably suggest improving compliance and reporting but may actually represent a larger proportion or number exported.)

The lynx is the more valuable of these two species, so there would be greater financial incentive to misidentify the more plentiful bobcat as lynx at the sales point. U.S. harvest of lynx is only a small part of the world market in that species. Between 1970 and 1977, U.S. harvest of this cyclic species varied from about 1,600 to 10,000 pelts, while Canada took from 13,000 to over 53,000 (Deems and Pursley, 1978. North American Furbearers: Report of Fur Resources Committee, International Association of Fish and Wildlife Agencies). Canadian Custom statistics for 1973-77 report most of these lynx exported; of those, between 11,000 and 21,000 have been exported annually to the U.S. Presumably many of these are re-exported from the U.S., but we do not have data reflecting such re-exports. In addition the USSR is known to harvest

large numbers of closely related *Lynx lynx*, although we do not have reliable statistics. The most likely populations of *Lynx lynx* which would be potentially threatened by exports of American cats could be those of Europe. Our best information is that most of these populations are closely regulated, with little poaching for the pelt trade.

There are other spotted cats with coats similar to bobcat and lynx, but few of these are in trade. Most spotted cats in trade, especially the more valuable ones, can be fairly readily identified based on color, spotting pattern, hair length, and, in some cases, size.

River Otter

The pelt of this species is one of the most difficult to distinguish from that of similar species. It has been widely reported that even experts have difficulty in identifying pelts of different *Lutra* species, especially if the nose and feet are removed from the pelt, as is commonly done. Trade has frequently been cited as an important factor in the decline of otter species, especially those from South America (e.g., Goodwin and Holloway, 1972, IUCN Red Data Book, Vol. 1, Mammalia). On the other hand, we have been unable to obtain quantitative data on this point to suggest its nature and extent; nor do we have any indications of the extent that labelling as North American river otter may be used to facilitate such trade.

As for the lynx, the U.S. is not the only contributor to otter trade. Canada, 1970-77, has had an average annual harvest between 15,000 and 20,000 (Deems and Pursley, 1978). This is comparable to the U.S. harvest until about 1976, but has consistently had higher average pelt values. On the other hand, Canadian Customs only reports total exports of this species from 1973-77 at 1,200 to 9,200. We do not have statistics available for the Soviet Union, but understand that country may have a considerable harvest of the closely related *Lutra lutra*, to which they have taken a reservation under the CITES. The U.S. Management Authority reported exports of *Lutra canadensis* in the last seven months of calendar 1977 totalling 3,019 skins and two coats. Of those, 681 skins (23%) went to non-CITES parties (Austria and Italy), and 1,119 (37%) went to unknown destinations. In calendar 1978, of 11,139 total exports of pelts, 9,628 (86%) went to CITES Parties, 901 (8%) to non-CITES, and 610 (5%) to unidentified countries. Again, the majority of exports appear to go to CITES parties. (As for the previous species, the MA has given us a

preliminary figure of 9,555 exported between Oct. 1, 1978 and May 31, 1979, but reports by country are not yet available.)

Tagging systems for otters taken in most states of the U.S. have been established for longer than those for bobcat and lynx, and their reliability is somewhat higher. Given this fact and the volume of other otters legitimately in trade, the ESSA is undecided as to whether it should restrict exports to certain countries. It should be made clear, however, that identification problems make this the most difficult to distinguish of the five species considered here, and the ESSA is seeking and will examine closely any data it may be provided which is relevant to this problem.

Brown Bear From Alaska.

This species provides a strong contrast to the other species being considered here. Alaskan law prohibits commercial sale of pelts, and very restrictive laws on taking make such use even less likely. As a result, almost all animals taken become trophies. Export of such specimens is almost exclusively by hunters from the Federal Republic of Germany, a Convention party whose hunters have gone to considerable time and expense to secure those trophies. Unlike the commercial fur trade, where large volumes of pelts may pass through a series of hands, accounting of these trophies is particularly close. Alaska requires licenses both of the hunter and his resident guide, registration of the animal taken, and notification of any shipment. Generally, the hide goes from the hunter or guide to a taxidermist and is then shipped directly to the original hunter at his residence. In spite of these controls, there is some potential for abuse. Four populations of *Ursus arctos* are included in Appendix I: The Mexican grizzly, the Italian population of brown bears, and two Asian subspecies. We know little about the status of the Asian subspecies, but the Mexican population is considered close to extinction if not already so, and the Italian population is probably ten or fewer individuals (Roth, 1974, Bears—Their Biology and Management, 3rd Int. Conf., IUCN). Any harvest from those populations would be severely threatening.

There is evidence of only limited commercial trade in this species. For example, the U.S.S.R. estimates a population of 70-100,000 brown bears, and an annual harvest of five to six thousand, of which only five to fifteen percent enter into commercial use (Vereschagin, 1974, in Bears, Their

Biology and Management, Third Int. Conf., IUCN).

Gray Wolf From Alaska

Although Alaska's control over gray wolf is less restrictive than that over brown bear, it does require close accounting of all pelts taken through a tagging and registration system, and also requires reports and marking of all hides shipped. In recent years the harvest has averaged 1,130 per year, with a range from 970 to 1,335. The MA reports only one pelt and 3 live animals exported in 1978, although actual exports may exceed these figures. We are aware that a significant but unknown number are used within the U.S. for domestic purposes.

Pelts of wolves from different areas may be difficult to distinguish, and there are certainly other wolf populations more threatened than Alaska's. On the other hand, restriction of Alaskan wolf exports may not significantly benefit other wolf populations. Canada's wolf harvest has recently been about 5-6,000 per year (Deems and Pursley, 1974), and the Soviet Union is known to take large numbers of wolves (8,800 in 1963) although not all of these enter commerce (Mech, 1970, The Wolf; and pers. comm.). There is no indication that this harvest is detrimental to these populations. Coyote fur (*Canis latrans*) is frequently substituted for wolf fur in garments, and that species is not in any danger of extinction. In 1976-77 the U.S. harvested over 320,000 coyotes (Deems and Pursley, 1978). Because coyote fur is less expensive and more readily available, as well as difficult to distinguish, it is frequently sold under trade names suggesting a kind of wolf. Canadian Customs report the export of "wolf, including coyote," and from 1973-1977 that country exported from 47,000 to 74,000 pelts of this combined category, of which 8,000 to 20,000 went to the U.S.

Proposed Regulations Promulgation

Accordingly, it is hereby proposed to amend Part 810, Chapter VIII, Title 50 of the Code of Federal Regulations. The current unlettered "Annex" to Part 810 would be deleted. Annex C, D, E, F, and G would be added and are proposed to read as follows (findings prior to 1979-80 are adopted from previous determinations):

Annex C—Bobcat (*Lynx rufus*)

States for which the ESSA has found that export of the indicated season's harvest will not be detrimental to the survival of the species.

1977-78 Harvest: Alabama (Quota 4,000), Arizona (Q 8,000), Arkansas (Q 3,000), California (Q 6,000), Colorado (Q 4,000), Florida (Q 3,500), Georgia (Q 4,000), Idaho (Q 1,475), Louisiana (Q 4,000), Maine (Q 500), Massachusetts (Q 50), Michigan (Q 350), Minnesota (Q 150), Mississippi (Q 4,000), Montana (Q 1,070), Nebraska (Q 400), Nevada (Q 2,225), New Mexico (Q 6,000), New York (Q 225), North Carolina (Q 800), North Dakota (Q 165), Oregon (Q 3,000), South Dakota (Q 500), Tennessee (Q 1,000), Texas (Q 10,000), Vermont (Q 200), Virginia (Q 1,500), Washington (Q 6,000), West Virginia (Q 500), Wisconsin (Q 300), Wyoming (Q 2,000), Navajo Nation (Q 500).

For further information: See 42 FR 43729, August 30, 1977; 43 FR 11081, March 16, 1978; and 43 FR 29469, July 7, 1978.

1978-1979 Harvest: Alabama, Arizona, Arkansas, California, Colorado, Florida, Georgia, Idaho, Kansas, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Mexico (Q 6,000), New York, North Carolina, North Dakota, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, Washington, West Virginia, Wisconsin, Wyoming (Q 2,000), and the Navajo Nation.

Condition on Findings: Pelts must be clearly identified as to state of origin and season of taking.

For further information: See 43 FR 11096, March 16, 1978; 43 FR 13913, April 3, 1978; 43 FR 15097, April 10, 1978; 43 FR 29469, July 7, 1978; 43 FR 35013, August 7, 1978; 43 FR 36293, August 16, 1978; and 43 FR 39305, September 1, 1978.

States for which the ESSA has found that export of the indicated season's harvest will not be detrimental to the survival of the species and to the survival of similar felid species included in the CITES appendices.

1979-1980 Harvest: California, Florida, Louisiana, Maine, Michigan, Minnesota, Montana, Nebraska, Nevada, New York, Tennessee, Virginia, Washington, West Virginia, Navajo Nation.

Conditions on findings: Pelts must be clearly identified as to state of origin and season of taking, including tagging according to standards and conditions established by the MA. (Additional condition will be chosen from alternative 3(a) to (d) of proposed finding under Article II 2(b).)

For further information: See 44 FR 25383, April 30, 1979; 44 FR 31583, May 31, 1979 (citations to subsequent Federal Register documents will be provided at a later date).

Annex D—River Otter (*Lutra canadensis*)

States for which the ESSA has found that export of the indicated season's harvest will not be detrimental to the survival of the species.

1977-1978 Harvest: Alabama (Quota 1,500), Alaska (open), Arkansas (Q 400), Connecticut (Q 100), Delaware (Q 60), Florida (Q 6,000), Georgia (Q 4,000), Louisiana (Q 7,500), Maine (Q 600), Maryland (Q 165), Massachusetts (Q 68), Michigan (Q 810), Minnesota (Q 700), Mississippi (Q 350), Montana (Q 36), New Hampshire (Q 200), New York (Q 700), North Carolina (Q 1,200), Oregon (Q 335), Rhode Island (Q 15), South Carolina (Q 650), Vermont (Q 50), Virginia (Q 585), Washington (Q 770), Wisconsin (Q 1,200).

For further information: See 42 FR 43729, August 30, 1977; 43 FR 11081, March 16, 1978; and 43 FR 29469, July 7, 1978.

1978-1979 Harvest: Alabama, Alaska, Arkansas, Connecticut, Delaware, Florida, Georgia, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Montana, New Hampshire, New York, North Carolina, Oregon, Rhode Island, South Carolina, Vermont, Virginia, Washington, Wisconsin.

Condition on Findings: Pelts must be clearly identified as to state of origin and season of taking.

For further information: See 43 FR 11096, March 16, 1978; 43 FR 13913, April 3, 1978; 43 FR 15097, April 10, 1978; 43 FR 29469, July 7, 1978; 43 FR 35013, August 7, 1978; 43 FR 36293, August 16, 1978; and 43 FR 39305, September 1, 1978.

States for which the ESSA has found that export of the indicated season's harvest will not be detrimental to the survival of the species and to the survival of similar otter species included in the CITES appendices.

1979-1980 Harvest: Connecticut, Delaware, Florida, Louisiana, Maine, Maryland, Michigan, Minnesota, Montana, New York, Virginia, Washington.

Conditions on findings: Pelts must be clearly identified as to state of origin and season of taking, including tagging according to standards and conditions established by the MA. (Additional condition will be chosen from alternative 3(a) to (d) of proposed finding under Article II 2(b).)

For further information: See 44 FR 25383, April 30, 1979; 44 FR 31583, May 31, 1979 (citations to subsequent Federal Register documents will be provided at a later date).

Annex E—Lynx (*Lynx canadensis*)

States for which the ESSA has found that export of the indicated season's harvest will not be detrimental to the survival of the species.

1977-1978 Harvest: Alaska (open), Idaho (Quota 25), Minnesota (Q 25), Montana (Q 200), Washington (Q 35).

Condition on Findings: Pelts must clearly be identified as to state of origin and season of taking.

For further information: See 43 FR 11096, March 16, 1978; 43 FR 13913, April 3, 1978; 43 FR 15097, April 10, 1978; 43 FR 29469, July 7, 1978; 43 FR 35013, August 7, 1978; 43 FR 36293, August 16, 1978; and 43 FR 39305, September 1, 1978.

States for which the ESSA has found that export of the indicated season's harvest will not be detrimental to the survival of the species and to the survival of similar felid species included in the CITES appendices.

1979-1980 Harvest: Idaho, Minnesota, Montana, Washington.

Condition on Findings: Pelts must be clearly identified as to state of origin and state of taking, including tagging according to standards and conditions established by the MA. (Additional condition will be chosen from alternative 3(a) to (d) of proposed finding under Article II 2(b).)

For further information: See 44 FR 25383, April 30, 1979; 44 FR 31583, May 31, 1979 (citations to subsequent Federal Register documents will be provided at a later date).

Annex F—Gray wolf (*Canis lupus*)

State for which the ESSA has found that export of the indicated season's harvest will not be detrimental to the survival of Alaskan gray wolf.

1977-78 Harvest: Alaska.

Condition on findings: Pelts must be tagged as required by the state of Alaska.

1978-79 Harvest: Alaska.

Condition on findings: Pelts must be tagged as required by the state of Alaska.

State for which the ESSA has found that export of the indicated season's harvest will not be detrimental to the survival of other wolf populations.

1979-80 Harvest: Alaska.

Condition on findings: Pelts must be tagged as required by the state of Alaska. (Additional condition will be chosen from alternative 3(a) to (d) of proposed finding under Article II 2(b).)

For further information: See 44 FR 25383, April 30, 1979; 44 FR 31583, May 31, 1979 (citations to subsequent Federal Register documents will be provided at a later date).

Register documents will be provided at a later date).

Annex G—Brown bear (*Ursus arctos*)

States for which the ESSA has found that export of the indicated season's harvest will not be detrimental to the survival of Alaskan brown bear.

1977-78 Harvest: Alaska.

Condition on findings: Pelts must be tagged as required by the state of Alaska.

1978-79 Harvest: Alaska.

Condition on findings: Pelts must be tagged as required by the state of Alaska.

State for which the ESSA has found that export of the indicated season's harvest will not be detrimental to the survival of other brown bear populations.

1979-80 Harvest: Alaska.

Condition on findings: Pelts must be tagged as required by the state of Alaska. (Additional condition will be chosen from alternative 3 (a) to (d) of proposed finding under Article II 2(b).)

For further information: See 44 FR 25383, April 30, 1979; 44 FR 31583, May 31, 1979 (citations to subsequent Federal Register documents will be provided at a later date).

Publication of these proposed findings has been approved by the members of the Endangered Species Scientific Authority.

Dated: July 6, 1979.

William Y. Brown,

Executive Secretary.

[FR Doc. 79-21430 Filed 7-11-79; 8:45 am]

BILLING CODE 4310-55-M

United States Federal Register

**Thursday
July 12, 1979**

Part V

Department of Housing and Urban Development

Office of the Secretary

Environmental Criteria and Standards

HOUSING AND URBAN DEVELOPMENT

24 CFR Part 51

[Docket No. R-79-595]

Environmental Criteria and Standards

AGENCY: Department of Housing and Urban Development.

ACTION: Final rule.

SUMMARY: This final rule adds a new Part 51, Environmental Criteria and Standards to Title 24 of the CFR. The rule sets forth Subparts A and B covering General Provisions and Noise Abatement and Control respectively.

EFFECTIVE DATE: August 13, 1979.

FOR FURTHER INFORMATION CONTACT: James F. Miller or Gretchen Van Hyning, Office of Environmental Quality, Room 7266, U.S. Department of Housing and Urban Development, 451 7th Street, SW., Washington, 20410 D.C. (202) 755-8909 (this is not a toll-free number).

SUPPLEMENTAL INFORMATION: A Notice of Proposed Rulemaking was published on December 27, 1978 (43 FR 60396) indicating that HUD proposed to add a new Part 51, Environmental Criteria and Standards, to Title 24 of the CFR. The proposed rule would include Subpart A, General Provisions, and Subpart B, Noise Abatement and Control. The Notice invited public comment until January 26, 1979.

Subpart B establishes Departmental standards, requirements, and guidelines on noise abatement and control, replacing and revising the noise policies, standards and procedures previously set forth in HUD Circular 1390.2, which is cancelled when this final rule becomes effective.

Subpart B converts the existing noise policy to regulation format and makes revision and improvements intended to make the policy more flexible and consistent with other Federal agencies' noise programs. Revisions to the current policy (1) bring into conformity, through the use of the day-night average sound level, separate standards and measurements for aircraft and non-aircraft noise; (2) afford Field Offices more flexibility in implementing the policy thus reducing the number of cases having to come into the Region and Headquarters Offices; (3) remove the dual exterior and interior standards, hence, if exterior noise levels are found to be acceptable, the interior noise will be considered acceptable using normal building techniques; and (4) allow easy use of already existing data, particularly

from FHWA and DOD. The standards apply primarily to HUD support for new residential construction in certain noise zones—as does the existing policy.

Overall, the comments indicated strong support for the revisions to the noise policy, particularly the use of the day-night average sound level descriptor and the acceptability thresholds used by the Department. The one topic which generated substantial discussion and a divergence of opinion was the methodology for describing "loud impulsive sounds."

The following discussion summarizes the significant comments and the changes that were made in the final rule.

1. Use of the Day-Night Average Sound Level (DNL) to Describe Noise.—Of the 18 responses, 15 commented on the proposed noise descriptor. Only two of these expressed reservations (one Federal agency and one industry group) about use of the day-night average sound level; these two comments were directed to use of a nighttime penalty in DNL. Both parties recommended substituting a computer based model which itself, among other things, incorporates a nighttime penalty. The same agency has also issued advisory materials containing noise metrics which include the nighttime correction.

The proposed methodology for describing noise has been widely used to relate individual and community reaction to aircraft and road traffic noise, to predict the likelihood and the severity of interference with speech and sleep, and to correlate hearing loss with noise exposure. The simple concept of average sound level must be somewhat refined to account for the fact, documented by most community response and public opinion surveys, that the same noise level is considered more disturbing or annoying during the nighttime than during daytime. Not only do the requirements for undisturbed sleep and relaxation make a lower nighttime noise level desirable, but the exterior background noise level in most communities drops during the night by 10 dB or more and reduced activity inside homes contributes to a general lowering of interior noise levels. Consequently, intrusive noises are more disturbing during the night. To assess nighttime noise events in a way that accounts for their increased potential for causing disturbances a weighting factor of 10 dB is applied to all nighttime noises; i.e., nighttime noises are treated as if they were 10 dB noisier than they actually are. The need for a nighttime correction has also received international consensus through the

International Organization for Standardization (ISO).

In view of the acceptance and support for the DNL descriptor, HUD is publishing the final rule using the DNL with the nighttime correction for application of the standards.

2. Proposed Standards.—Most responses indicated the appropriateness of the general goals and levels proposed by HUD. Two responses however indicated concern that noise transmitted within multifamily dwellings was not addressed. This problem is however covered in Section 51.101(a)(10); the relevant reference to the Minimum Property Standards for Multifamily Housing is Section 404 on Acoustic Control.

Several comments related to conversion of existing data to DNL. The conversion factors have been clarified in the final rule and the conversion indicates the measures "are approximately equal to" rather than the same. In the final rule one descriptor for aircraft noise was added—(Community Noise Equivalent Level, used in California) and one was deleted (Composite Noise Rating). The Composite Noise Rating methodology was developed in the early 1960's and is subject to error and is used only infrequently and therefore it has been dropped from the final rule (see Section 51.106).

Conversion of highway levels (Section 51.106) to DNL is discussed in the National Cooperative Highway Research Program Report No. 173 on "Highway Noise Generation and Control," published by the Transportation Research Board in 1976.

3. Analysis of Loud Impulsive Sounds.—Five responses were directed to the methodology for calculating "loud impulsive sounds." The method for characterizing noise from explosions or sonic booms proposed by HUD in Section 103(b) is consistent with the interim procedures of the Department of Defense. HUD recognizes that the subject is currently undergoing technical debate, but no alternative has emerged upon which the technical community has agreed. This method is likely to be applied mostly in rare instances where sites are proposed in the vicinity of artillery firing ranges or other similar activities. In view of the current debate the final rule has been amended, in the text and in the Appendix, to emphasize that this methodology is to be used on an *interim basis*. When a final procedure is adopted by all the concerned Federal agencies, HUD's rule will be changed to incorporate the agreed upon methodology.

4. *Noise Attenuation.*—It was recommended by one reviewer that noise attenuation be expressed in terms of total sound attenuation rather than the requirement for attenuation measures in addition to the attenuation provided by housing as commonly constructed in the area. The results are essentially the same and both approaches have been considered. It was determined that the suggested approach by the reviewer may overstate the requirements while HUD's policy is to state minimum requirements to provide adequate protection at minimum cost. The final rule was changed to indicate that the additional noise attenuation measures are minimum requirements.

5. *Other Comments.*—Several reviewers provided editorial and technical corrections which have been included in the final rule. Some comments were not relevant to the specific rule, while other suggested that the Department prepare documents setting forth the rationale for the HUD standards and provide guidance to local governments. This work is underway, and a revised "Noise Assessment Guidelines" document should be available by the time the rule becomes effective. A technical background report on the policy is also in preparation and will be available at a later date. Two reviewers also suggested that HUD develop a procedure for notifying purchasers of existing properties if noise levels exceed those of the established regulation. HUD does consider noise as a marketability factor in Section 51.101(a)(4) in determining the amount of insurance or other assistance that may be given but does not propose to include a specific additional notification procedure in the appraisal process.

Some reviewers suggested that HUD take a major role in Federal efforts to control noise. HUD is cooperating with the EPA, DOT and DOD in interagency noise programs; these other agencies have responsibility for controlling noise at the source. HUD's regulations are necessarily limited to programs administered by the Department; however, the standards and guidance material should assist local governmental agencies and others in formulating policies to achieve quieter urban environments.

OTHER INFORMATION: A Finding of Inapplicability with regard to Environmental Impact has been prepared in accordance with HUD's environmental procedures. Copies of the statement and findings are available for inspection and copying in the Office of

the Rules Docket Clerk, Room 5218, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410.

Accordingly, Title 24 of the CFR is amended by adding a new Part 51 to read as follows:

PART 51—ENVIRONMENTAL CRITERIA AND STANDARDS

Subpart A—General Provisions

- Sec.
- 51.1 Purpose.
- 51.2 Authority.
- 51.3 Responsibilities.
- 51.4 Program coverage.
- 51.5 Coordination with environmental clearance requirements.
- 51.6 [Reserved]

Subpart B—Noise Abatement and Control

- 51.100 Purpose and authority.
- 51.101 General policy.
- 51.102 Responsibilities.
- 51.103 Criteria and standards.
- 51.104 Special requirements.
- 51.105 Exceptions.
- 51.106 Implementation.

Appendix

Authority: Sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)).

Subpart A—General Provisions

§ 51.1 Purpose.

The Department of Housing and Urban Development is providing program Assistant Secretaries and administrators and field offices with environmental standards, criteria and guidelines for determining project acceptability and necessary mitigating measures to insure that activities assisted by the Department achieve the goal of a suitable living environment.

§ 51.2 Authority.

This Part implements the Department's responsibilities under the following statutes:

(a) The National Housing Act of 1934 (Pub. L. 73-479) which was enacted "to encourage improvements in housing standards and conditions, to provide a system of mutual mortgage insurance, and for other purposes," thus providing the basis for HUD's Minimum Property Standards (MPS) which have evolved as required by legislation over the past 44 years.

(b) The Housing Act of 1949 (Pub. L. 81-171) which sets forth the national goal of "a decent home and a suitable living environment for every American family," affirmed by the Housing and Urban Development Act of 1968 (Pub. L. 90-448).

(c) The Department of Housing and Urban Development Act of 1965 (Pub. L.

89-174) which provides that the Secretary may make such rules and regulations as may be necessary to carry out functions, powers, and duties, and sets forth, as a matter of national purpose, the sound development of the Nation's communities and metropolitan areas.

(d) The National Environmental Policy Act of 1969 (Pub. L. 91-190) which directs Federal agencies to develop procedures to carry out the purposes of the Act.

(e) Intergovernmental Cooperation Act of 1968 (Pub. L. 90-577) which, under Title IV, directs that Federal programs and projects serve the objectives of appropriate land use for housing, commercial, industrial, governmental, institutional, and other purposes to achieve sound and orderly development of all areas, both urban and rural.

§ 51.3 Responsibilities.

(a) *Assistant Secretary for Community Planning and Development.* The Assistant Secretary for Community Planning and Development shall be responsible for administering environmental regulations, and shall provide oversight, interpretation and guidance, and shall update the regulations as required. The Assistant Secretary shall also maintain liaison with other Federal agencies on matters of environmental policy implementation.

(b) *Assistant Secretary for Policy Development and Research.* The Assistant Secretary for Policy Development and Research shall undertake research and demonstration studies necessary for the technical development of environmental standards, criteria, and implementing techniques as a basis for the development and implementation of environmental regulations. The Assistant Secretary shall also maintain liaison with Federal agencies on related technical matters.

(c) *Other Assistant Secretaries, Administrators, and the General Counsel.* Other Assistant Secretaries, Administrators, and the General Counsel shall:

(1) Incorporate adopted environmental regulations by reference into program regulations, guidance documents, and administrative forms and procedures;

(2) Evaluate the effects of, and compliance with Departmental environmental regulations policy and report significant issues and problems to the Assistant Secretary for Community Planning and Development; and

(3) Identify program areas under their jurisdiction in which additional

environmental regulations are needed, and refer them to the Assistant Secretary for Community Planning and Development.

(d) *Regional Administrators, Area Office Managers and Service Office Supervisors.* Regional Administrators, Area Office Managers and Service Office Supervisors shall assure that adopted environmental regulations are implemented in relation to program decisions and recommendations. They shall also monitor projects to assure that mitigation measures are implemented.

§ 51.4 Program coverage.

Environmental standards shall apply to all HUD actions except where special provisions and exemptions are contained in each Subpart.

§ 51.5 Coordination with environmental clearance requirements.

Environmental standards shall be implemented prior to commitment in the decision-making process and, where environmental clearances are required, the decision points shall be identical. Compliance with HUD environmental standards shall be addressed in the environmental clearance process.

§ 51.6 [Reserved]

Subpart B—Noise Abatement and Control

§ 51.100 Purpose and authority.

(a) *Purpose.* The Department of Housing and Urban Development finds that noise is a major source of environmental pollution which represents a threat to the serenity and quality of life in population centers and that noise exposure may be a cause of adverse physiological and psychological effects as well as economic losses.

It is the purpose of this Subpart to:

(1) Call attention to the threat of noise pollution;

(2) Encourage the control of noise at its source in cooperation with other Federal departments and agencies;

(3) Encourage land use patterns for housing and other noise sensitive urban needs that will provide a suitable separation between them and major noise sources;

(4) Generally prohibit HUD support for new construction of noise sensitive uses on sites having unacceptable noise exposure;

(5) Provide policy on the use of structural and other noise attenuation measures where needed; and

(6) Provide policy to guide implementation of various HUD programs.

(b) *Authority.* Specific authorities for noise abatement and control are contained in:

(1) The Noise Control Act of 1972 (Pub. L. 92-574) which directs Federal agencies to administer their programs in ways which reduce noise pollution.

(2) The Quiet Communities Act of 1978 (Pub. L. 95-609) which amended Pub. L. 92-574.

(3) The General Services Administration, Federal Management Circular 75-2: *Compatible Land Uses at Federal Airfields* prescribes the Executive Branch's general policy with respect to achieving compatible land uses on either public or privately owned property at or in the vicinity of Federal airfields.

(4) Section 1113 of the Housing and Urban Development Act of 1965 (Pub. L. 89-117) directs the Secretary " * * * to determine feasible methods of reducing the economic loss and hardships suffered by homeowners as a result of the depreciation in the value of their properties following the construction of airports in the vicinity of their homes, including a study of feasible methods of insulating such homes from the noise of aircraft."

§ 51.101 General policy.

(a) It is HUD's general policy to provide minimum national standards applicable to HUD programs to protect citizens against excessive noise in their communities and places of residence.

(1) *Comprehensive planning assistance.* HUD requires that grantees give adequate consideration to noise exposures and sources of noise as an integral part of the urban environment in HUD assisted comprehensive planning, as follows:

(i) Particular emphasis shall be placed on the importance of compatible land use planning in relation to airports, highways and other sources of high noise.

(ii) Applicants shall take into consideration HUD environmental standards impacting the use of land as required in 24 CFR Part 600.

(iii) Environmental studies, including noise assessments, are allowable costs.

(2) *Community Development Block Grants.* Recipients of community development block grants under the Housing and Community Development Act of 1974 (Pub. L. 93-383), as amended by the Housing and Community Development Act of 1977 (Pub. L. 95-128), must take into consideration the noise criteria and standards in the environmental review process and consider ameliorative actions when noise sensitive land development is

proposed in noise exposed areas. Grant recipients shall address deviations from the standards in their environmental reviews as required in 24 CFR Part 58.

Where CDBG activities are planned in a noisy area, and HUD assistance is contemplated later for housing and/or other noise sensitive activities, the CDBG grantee risks denial of the HUD assistance unless the HUD standards are met. Environmental studies, including noise assessments, are allowable costs.

(3) *HUD support for new construction.* HUD assistance for the construction of new noise sensitive uses is prohibited generally for projects with Unacceptable noise exposures and is discouraged for projects with Normally Unacceptable noise exposure. (Standards of acceptability are contained in § 51.103(c).) This policy applies to all HUD programs providing assistance, subsidy or insurance for housing, college housing, mobile home parks, nursing homes, hospitals, and all programs providing assistance or insurance for land development, new communities, redevelopment or any other provision of facilities and services which are directed to making land available for housing or noise sensitive development. The policy does not apply to research demonstration projects which do not result in new construction or reconstruction, flood insurance, interstate land sales registration, or any action or emergency assistance under disaster assistance programs which are provided to save lives, protect property, protect public health and safety, remove debris and wreckage, or assistance provided that has the effect of restoring facilities substantially as they existed prior to the disaster.

(4) *HUD support for existing construction.* Noise exposure by itself will not result in the denial of HUD support for the resale and purchase of otherwise acceptable existing buildings. However, environmental noise is a marketability factor which HUD will consider in determining the amount of insurance or other assistance that may be given.

(5) *HUD support of modernization and rehabilitation.* For modernization projects located in all noise exposed areas, HUD shall encourage noise attenuation features in alterations. For major or substantial rehabilitation projects in the Normally Unacceptable and Unacceptable noise zones, HUD actively shall seek to have project sponsors incorporate noise attenuation features, given the extent and nature of the rehabilitation being undertaken and the level or exterior noise exposure. In

Unacceptable noise zones, HUD shall strongly encourage conversion of noise-exposed sites to land uses compatible with the high noise levels.

(6) *Research, guidance and publications.* HUD shall maintain a continuing program designed to provide new knowledge of noise abatement and control to public and private bodies, to develop improved methods for anticipating noise encroachment, to develop noise abatement measures through land use and building construction practices, and to foster better understanding of the consequences of noise. It shall be HUD's policy to issue guidance documents periodically to assist HUD personnel in assigning an acceptability category to projects in accordance with noise exposure standards, in evaluating noise attenuation measures, and in advising local agencies about noise abatement strategies. The guidance documents shall be updated periodically in accordance with advances in the state-of-the-art.

(7) *Construction equipment, building equipment and appliances.* HUD shall encourage the use of quieter construction equipment and methods in population centers, the use of quieter equipment and appliances in buildings, and the use of appropriate noise abatement techniques in the design of residential structures with potential noise problems.

(8) *Exterior noise goals.* It is a HUD goal that exterior noise levels do not exceed a day-night average sound level of 55 decibels. This level is recommended by the Environmental Protection Agency as a goal for outdoors in residential areas. The levels recommended by EPA are not standards and do not take into account cost or feasibility. For the purposes of this regulation and to meet other program objectives, sites with a day-night average sound level of 65 and below are acceptable and are allowable (see Standards in § 51.103(c)).

(9) *Interior noise goals.* It is a HUD goal that the interior auditory environment shall not exceed a day-night average sound level of 45 decibels. Attenuation measures to meet these interior goals shall be employed where feasible. Emphasis shall be given to noise sensitive interior spaces such as bedrooms. Minimum attenuation requirements are prescribed in § 51.104(a).

(10) *Acoustical privacy in multifamily buildings.* HUD shall require the use of building design and acoustical treatment to afford acoustical privacy in multifamily buildings pursuant to

requirements of the Minimum Property Standards.

§ 51.102 Responsibilities.

(a) *Authority to approve projects.* (1) Decisions on proposed projects with acceptable noise exposures shall be delegated to the program personnel within field offices, including projects where increased noise levels are considered acceptable because of non-acoustic benefits under § 51.105(a). Field office program personnel may also approve projects in normally unacceptable noise exposed areas where adequate sound attenuation is provided and where the project does not require an Environmental Impact Statement under § 51.104(b).

(2) Other approvals in normally unacceptable noise exposed areas require the concurrence of the Regional Administrator.

(3) Requests for approvals of projects or portions of projects with unacceptable noise exposures shall be referred through the Regional Office to the Assistant Secretary for Community Planning and Development for approval pursuant to § 51.104(b).

(4) In cases where the Regional Administrator determines that an important precedent or issue is involved, such cases shall be referred with recommendations to the Assistant Secretary for Community Planning and Development.

(b) *Surveillance of noise problem areas.* Appropriate field staff shall maintain surveillance of potential noise problem areas and advise local officials, developers, and planning groups of the unacceptability of sites because of noise exposure at the earliest possible time in the decision process. Every attempt shall be made to insure that applicants' site choices are consistent with the policy and standards contained herein.

(c) *Notice to applicants.* At the earliest possible stage, HUD program administrators shall:

(1) Determine the suitability of the acoustical environment of proposed projects;

(2) Notify applicants of any adverse or questionable situations; and

(3) Assure that prospective applicants are apprised of the standards contained herein so that future site choices will be consistent with these standards.

(d) *Technical assistance.* Technical assistance in the measurement, estimation, interpretation, or prediction of noise exposure is available from the Office of Community Planning and Development and the Office of Policy Development and Research. Field office questions shall be forwarded through

the Regional Office to the Assistant Secretary for Community Planning and Development or his designee.

(e) *Interdepartmental coordination.* Regional Administrators shall foster appropriate coordination between field offices and other departments and agencies, particularly the Environmental Protection Agency, the Department of Transportation, Department of Defense representatives, and the Veterans Administration. HUD staff shall utilize the acceptability standards in commenting on the prospective impacts of transportation facilities and other noise generators in the Environmental Impact Statement review process.

§ 51.103 Criteria and standards.

These standards apply to all programs as indicated in § 51.101.

(a) *Measure of external noise environments.* The magnitude of the external noise environment at a site is determined by the value of the day-night average sound level produced as the result of the accumulation of noise from all sources contributing to the external noise environment at the site. Day-night average sound level, abbreviated as DNL and symbolized as L_{dn} , is the 24-hour average sound level, in decibels, obtained after addition of 10 decibels to sound levels in the night from 10 p.m. to 7 a.m. Mathematical expressions for average sound level and day-night average sound level are stated in the Appendix.

(b) *Loud impulsive sounds.* On an interim basis, when loud impulsive sounds, such as explosions or sonic booms, are experienced at a site, the day-night average sound level produced by the loud impulsive sounds alone shall have 8 decibels added to it in assessing the acceptability of the site (see Appendix). Alternatively, the C-weighted day-night average sound level (L_{Cdn}) may be used without the 8 decibel addition, as indicated in Section 51.106(a)(3).

Methods for assessing the contribution of loud impulsive sounds to day-night average sound level at a site and mathematical expressions for determining whether a sound is classed as "loud impulsive" are provided in the Appendix.

(c) *Exterior standards.* The degree of acceptability of the noise environment at a site is determined by the sound levels external to buildings or other facilities containing noise sensitive uses. The standards shall usually apply at a location 2 meters (6.5 feet) from the building housing noise sensitive activities in the direction of the predominant noise source. Where the

building location is undetermined, the standards shall apply 2 meters (6.5 feet) from the building setback line nearest to the predominant noise source. The standards shall also apply at other locations where it is determined that quiet outdoor space is required in an area ancillary to the principal use on the site.

The noise environment inside a building is considered acceptable if (a) the noise environment external to the building complies with these standards, and (b) the building is constructed in a manner common to the area or, if of uncommon construction, has at least the equivalent noise attenuation characteristics.

Site Acceptability Standards

	Day-night average sound level (in decibels)	Special approvals and requirements
Acceptable	Not exceeding 65 dB(1)	None
Normally Unacceptable	Above 65 dB but not exceeding 75 dB	Special Approvals (2) Environmental Review (3) Attenuation (4)
Unacceptable	Above 75 dB	Special Approvals (2) Environmental Review (3) Attenuation (5)

Notes.—(1) Acceptable threshold may be shifted to 70 dB in special circumstances pursuant to Section 51.105(a).

(2) See Section 51.104(b) for requirements.

(3) See Section 51.104(b) for requirements.

(4) 5 dB additional attenuation required for sites above 65 dB but not exceeding 70 dB and 10 dB additional attenuation required for sites above 70 dB but not exceeding 75 dB. (See Section 51.104(a).)

(5) Attenuation measures to be submitted to the Assistant Secretary for CPD for approval on a case-by-case basis.

§ 51.104 Special requirements.

(a) *Noise attenuation.* Noise attenuation measures are those required in addition to attenuation provided by buildings as commonly constructed in the area, and requiring open windows for ventilation. Measures that reduce external noise at a site shall be used wherever practicable in preference to the incorporation of additional noise attenuation in buildings. Building designs and construction techniques that provide more noise attenuation than typical construction may be employed also to meet the noise attenuation requirements.

(1) *Normally Unacceptable noise zone.* Approvals in this zone require a minimum of 5 decibels additional sound attenuation for buildings having noise-sensitive uses if the day-night average sound level is greater than 65 decibels but does not exceed 70 decibels, or a minimum of 10 decibels of additional sound attenuation if the day-night average sound level is greater than 70 decibels but does not exceed 75 decibels.

(2) *Unacceptable noise zone.* Noise attenuation measures require the approval of the Assistant Secretary for Community Planning and Development. (See § 51.104(b)(2).)

(b) *Special Approvals and Environmental Review Requirements.* Environmental clearances shall be conducted pursuant to the requirements of HUD's Departmental Policies, Responsibilities and Procedures for Protection and Enhancement of

Environmental Quality (38 FR 19182 as amended) or other environmental regulations which may be issued by the Department. The Special Clearance and Environmental Impact Statement (EIS) threshold requirements are hereby modified for all projects proposed in the Normally Unacceptable and Unacceptable noise exposure zones as follows:

(1) *Normally Unacceptable noise zone.* (i) All projects located in the Normally Unacceptable Noise Zone require a Special Environmental Clearance except an EIS is required for a proposed project located in a largely undeveloped area, or where the HUD action is likely to encourage the establishment of incompatible land use in this noise zone.

(ii) When an EIS is required, the concurrence of the Regional Administrator is also required before a project can be approved. For the purposes of this paragraph, an area will be considered as largely undeveloped unless the area within a 2-mile radius of the project boundary is more than 50 percent developed for urban uses and infrastructure (particularly water and sewers) is available and has capacity to serve the project.

(iii) All other projects in the Normally Unacceptable zone require a Special Environmental Clearance, except where an EIS is required for other reasons pursuant to HUD environmental policies.

(2) *Unacceptable noise zone.* An EIS is required prior to the approval of

projects with unacceptable noise exposure. Projects in or partially in an Unacceptable Noise Zone shall be submitted through the Regional Administrator to the Assistant Secretary for Community Planning and Development for approval. The Assistant Secretary may waive the EIS requirement in cases where noise is the only environmental issue and no outdoor sensitive activity will take place on the site. In such cases, a Special Environmental Clearance is required.

§ 51.105 Exceptions.

(a) *Flexibility for non-acoustic benefits.* Where it is determined that program objectives cannot be achieved on sites meeting the acceptability standard of 65 decibels, the Acceptable Zone may be shifted to L_{dn} 70 on a case-by-case basis if all the following conditions are satisfied:

(1) The project does not require an Environmental Impact Statement under provisions of section 104(b)(1) and noise is the only environmental issue.

(2) The project has received a Special Environmental Clearance and has received the concurrence of the Environmental Clearance Officer.

(3) The project meets other program goals to provide housing in proximity to employment, public facilities and transportation.

(4) The project is in conformance with local goals and maintains the character of the neighborhood.

(5) The project sponsor has set forth reasons, acceptable to HUD, as to why the noise attenuation measures that would normally be required for new construction in the L_{dn} 65 to L_{dn} 70 zone cannot be met.

(6) Other sites which are not exposed to noise above L_{dn} 65 and which meet program objectives are generally not available.

The above factors shall be documented and made part of the project file.

§ 51.106 Implementation.

(a) *Use of available data.* HUD field staff shall make maximum use of noise data prepared by others when such data are determined to be current and adequately projected into the future and are in terms of the following:

(1) *Sites in the vicinity of airports.* The noise environment around airports is described sometimes in terms of Noise Exposure Forecasts, abbreviated as NEF or, in the State of California, as

Community Noise Equivalent Level, abbreviated as CNEL. The noise environment for sites in the vicinity of airports for which day-night average sound level data are not available may be evaluated from NEF or CNEL analyses using the following conversions to DNL:

$DNL \approx NEF + 35$

$DNL \approx CNEL$

(2) *Sites in the vicinity of highways.* Highway projects receiving Federal aid are subject to noise analyses under the procedures of the Federal Highway Administration.

Where such analyses are available they may be used to assess sites subject to the requirements of this standard. The Federal Highway Administration employs two alternate sound level descriptors: (a) The A-weighted sound level not exceeded more than 10 percent of the time for the highway design hour traffic flow, symbolized as L_{10} ; or (b) the equivalent sound level for the design hour, symbolized as L_{eq} . The day-night average sound level may be estimated from the design hour L_{10} or L_{eq} values by the following relationships, provided heavy trucks do not exceed 10 percent of the total traffic flow in vehicles per 24 hours and the traffic flow between 10 p.m. and 7 a.m. does not exceed 15 percent of the average daily traffic flow in vehicles per 24 hours:

$DNL \approx L_{10}$ (design hour)—3 decibels

$DNL \approx L_{eq}$ (design hour) decibels

Where the auto/truck mix and time of day relationships as stated in this Section do not exist, the HUD Noise Assessment Guidelines or other noise analysis shall be used.

(3) *Sites in the vicinity of installations producing loud impulsive sounds.* Certain Department of Defense installations produce loud impulsive sounds from artillery firing and bombing practice ranges. Noise analyses for these facilities sometimes encompass sites that may be subject to the requirements of this standard. Where such analyses are available they may be used on an interim basis to establish the acceptability of sites under this standard.

The Department of Defense uses day-night average sound level based on C-weighted sound level, symbolized L_{Cdn} , for the analysis of loud impulsive sounds. Where such analyses are provided, the 8 decibel addition specified in 51.103(b), is not required, and the same numerical values of day-night average sound level used on an interim basis to determine site

suitability for non-impulsive sounds apply to the L_{Cdn} .

(4) *Use of areawide acoustical data.* HUD encourages the preparation and use of areawide acoustical information, such as noise contours for airports. Where such new or revised contours become available for airports (civil or military) and military installations they shall first be referred to the Regional Office (Environmental Clearance Officer) for review, evaluation and decision on appropriateness for use by HUD. The Regional Office shall submit revised contours to the Assistant Secretary of Community Planning and Development for review, evaluation and decision whenever the area affected is changed by 20 percent or more, or whenever it is determined that the new contours will have a significant effect on HUD programs, or whenever the contours are not provided in a methodology acceptable under § 51.106(a)(1) or in other cases where the Regional Office determines that Headquarters review is warranted. For other areawide acoustical data, review is required only where existing areawide data are being utilized and where such data have been changed to reflect changes in the measurement methodology or underlying noise source assumptions. Requests for determination on usage of new or revised areawide data shall include the following:

(i) Maps showing old, if applicable, and new noise contours, along with brief description of data source and methodology.

(ii) Impact on existing and prospective urbanized areas and on development activity.

(iii) Impact on HUD-assisted projects currently in processing.

(iv) Impact on future HUD program activity. Where a field office has determined that immediate approval of new areawide data is necessary and warranted in limited geographic areas, the request for approval should state the circumstances warranting such approval. Actions on proposed projects shall not be undertaken while new areawide noise data are being considered for HUD use except where the proposed location is affected in the same manner under both the old and new noise data.

(b) *Site assessments.* Compliance with the standards contained in § 51.103(c) shall, where necessary, be determined using noise assessment guidelines, handbooks, technical documents and procedures issued by the Department.

(c) *Variations in site noise levels.* In many instances the noise environment will vary across a site, with portions of

the site being in an Acceptable noise environment and other portions in a Normally Unacceptable noise environment. The standards in § 51.103(c) shall apply to the portions of a building or buildings used for residential purposes and for ancillary noise sensitive open spaces.

(d) *Noise measurements.* Where noise assessments result in a finding that the site is borderline or questionable, or is controversial, noise measurements may be performed. Where it is determined that noise measurements are required, such measurements will be conducted in accordance with methods and measurement criteria established by the Department. Locations for noise measurements will depend on the location of noise sensitive uses that are nearest to the predominant noise source (see § 51.103(c)).

(e) *Projections of noise exposure.* In addition to assessing existing exposure, future conditions should be projected. To the extent possible, noise exposure shall be projected to be representative of conditions that are expected to exist at a time at least 10 years beyond the date of the project or action under review.

(f) *Reduction of site noise by use of berms and/or barriers.* If it is determined by adequate analysis that a berm and/or barrier will reduce noise at a housing site, and if the barrier is existing or there are assurances that it will be in place prior to occupancy, the environmental noise analysis for the site may reflect the benefits afforded by the berm and/or barrier.

In the environmental review process under § 51.104(b), the location height and design of the berm and/or barrier shall be evaluated to determine its effectiveness, and impact on design and aesthetic quality, circulation and other environmental factors.

Appendix—definition of acoustical quantities

1. *Sound Level.* The quantity in decibels measured with an instrument satisfying requirements of American National Standard Specification for Type 1 Sound Level Meters, S1.4-1971. Fast time-averaging and A-frequency weighting are to be used, unless others are specified. The sound level meter with the A-weighting is progressively less sensitive to sounds of frequency below 1,000 hertz (cycles per second), somewhat as is the ear. With fast time averaging the sound level meter responds particularly to recent sounds almost as quickly as does the ear in judging the loudness of a sound.

2. *Average Sound Level.* Average sound level, in decibels, is the level of the mean-square A-weighted sound pressure during the stated time period, with reference to the square of the standard reference sound pressure of 20 micropascals.

Day-night average sound level, abbreviated as DNL, and symbolized mathematically as L_{dn} is defined as:

$$L_{dn} = 10 \log_{10} \left[\frac{1}{86400} \left(\int_{0000}^{0700} 10^{[L_A(t)+10]/10} dt + \int_{0700}^{2200} 10^{L_A(t)/10} dt + \int_{2200}^{2400} 10^{[L_A(t)+10]/10} dt \right) \right]$$

Time t is in seconds, so the limits shown in hours and minutes are actually interpreted in seconds. $L_A(t)$ is the time varying value of A-weighted sound level, the quantity in decibels measured by an instrument satisfying requirements of American National Standard Specification for Type 1 Sound Level Meters S1.4-1971.

3. *Loud Impulsive Sounds.* When loud impulsive sounds such as sonic booms or explosions are anticipated contributors to the noise environment at a site, the contribution to day-night average sound level produced by the loud impulsive sounds shall have 8 decibels added to it in assessing the acceptability of a site.

A loud impulsive sound is defined for the purpose of this regulation as one for which:

(i) The sound is definable as a discrete event wherein the sound level increases to a maximum and then decreases in a total time

interval of approximately one second or less to the ambient background level that exists without the sound; and

(ii) The maximum sound level (obtained with slow averaging time and A-weighting of a Type 1 sound level meter whose characteristics comply with ANSI S1.4-1971) exceeds the sound level prior to the onset of the event by at least 6 decibels; and

(iii) The maximum sound level obtained with fast averaging time of a sound level meter exceeds the maximum value obtained with slow averaging time by at least 4 decibels.

Issued at Washington, D.C., on July 5, 1979.

Patricia Roberts Harris,
*Secretary of Housing and Urban
Development.*

[FR Doc. 79-21481 Filed 7-11-79; 8:45 am]

BILLING CODE 4210-01-M