

persons served by the project have been unemployed for at least six months at the time of project entry. The performance ranges and the points assigned to each range are as follows:

- (1) 50 percent to 59 percent—5 points.
- (2) 60 percent to 75 percent—10 points.
- (3) 76 percent or more—15 points.

(c) *Cost per placement.* (8–25 points)

The average cost per placement of persons served by the project does not exceed \$1600.00. The performance ranges and the points assigned to each range are as follows:

- (1) \$1351 to \$1600—8 points.
- (2) \$1000 to \$1350—17 points.
- (3) Less than \$1000—25 points.

(d) *Projected cost per placement.* (5–15 points) The actual average cost per placement of persons served by the project does not exceed 140 percent of the projected average cost per placement in the grantee's application. The performance ranges and the points assigned to each range are as follows:

- (1) 126 percent to 140 percent—5 points.
- (2) 111 percent to 125 percent—10 points.
- (3) 110 percent or less—15 points.

(e) *Placement rate.* (8–25 points) A minimum of 40 percent of persons served by the project are placed in competitive employment. The performance ranges and the points assigned to each range are as follows:

- (1) 40 percent to 49 percent—8 points.
- (2) 50 percent to 69 percent—17 points.
- (3) 70 percent or more—25 points.

(f) *Projected placement rate.* (5–15 points) The actual number of persons served by the project that are placed into competitive employment is at least 50 percent of the number of persons that the grantee, in the grant application, projected would be placed. The performance ranges and the points assigned to each range are as follows:

- (1) 50 percent to 74 percent—5 points.
- (2) 75 percent to 94 percent—10 points.
- (3) 95 percent or more—15 points.

(g) *Change in earnings.* (7–20 points)

The earnings of persons served by the project who are placed into competitive employment have increased by an average of at least \$75.00 a week over earnings at project entry. The performance ranges and the points assigned to each range are as follows:

- (1) \$75 to \$124—7 points.
- (2) \$125 to \$199—14 points.
- (3) \$200 or more—20 points.

(h) *Percent placed who have severe disabilities.* (3–10 points) At least 50 percent of persons served by the project who are placed into competitive employment are persons who have severe disabilities. The performance ranges and the points assigned to each range are as follows:

- (1) 50 percent to 59 percent—3 points.
- (2) 60 percent to 75 percent—7 points.
- (3) 76 percent or more—10 points.

(i) *Percent unemployed placed.* (5–15 points) At least 50 percent of persons served by the project who are placed into competitive employment are persons who were unemployed for at least six months at the time of project entry. The performance ranges and the points assigned to each range are as follows:

- (1) 50 percent to 59 percent—5 points.
- (2) 60 percent to 75 percent—10 points.
- (3) 76 percent or more—15 points.

(j) *Summary chart of weights and performance ranges.* The following composite chart shows the weights assigned to the performance ranges for each compliance indicator.

Indicator	Performance ranges:		
	Range (1)	Range (2)	Range (3)
Persons with severe disabilities served.....	3	7	10
Unemployed served.....	5	10	15
Cost per placement.....	8	17	25
Projected cost per placement.....	5	10	15
Placement rate.....	8	17	25

Indicator	Performance ranges:		
	Range (1)	Range (2)	Range (3)
Projected placement rate.....	5	10	15
Change in earnings.....	7	14	20
Percent placed who have severe disabilities.....	3	7	10
Percent unemployed placed.....	5	10	15
Total possible score.....	49	102	150

(Authority: Section 621(f)(1) of the Act; 29 U.S.C. 795g(f)(1))

6. An appendix is added to part 379 to read as follows:

Appendix to Part 379—Evaluation Standards

Standard 1: The primary objective of the project shall be to assist individuals with disabilities to obtain competitive employment. The activities carried out by the project shall support the accomplishment of this objective.

Standard 2: The project shall serve individuals with disabilities that impair their capacity to obtain competitive employment. In selecting persons to receive services, priority shall be given to individuals with severe disabilities.

Standard 3: The project shall ensure the provision of services that will assist in the placement of persons with disabilities.

Standard 4: Funds shall be used to achieve the project's primary objective at minimum cost to the federal government.

Standard 5: The project's advisory council shall provide policy guidance and assistance in the conduct of the project.

Standard 6: Working relationships, including partnerships, shall be established with agencies and organizations in order to expand the project's capacity to meet its objectives.

Standard 7: The project shall obtain positive results in assisting individuals with disabilities to obtain competitive employment.

[FR Doc. 89-20466 Filed 8-30-89; 8:45am]

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Federal Register

Thursday
August 31, 1989

Part III

Department of Labor

Mine Safety and Health Administration

30 CFR Part 75

Safety Standards for Roof, Face and Rib
Support; Proposed Rule and Notice of
Hearing

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

RIN 1219-AA63

Safety Standards for Roof, Face and Rib Support

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Proposed rule and notice of hearing.

SUMMARY: This proposed rule would revise two sections of the Mine Safety and Health Administration's (MSHA) underground roof support safety standards which were promulgated on January 27, 1988. These two standards, which address the quality of roof bolts and the removal of permanent roof supports, were challenged in the D.C. Circuit Court of Appeals. This proposal is being initiated because of the opinion of the Court in that case which would vacate the affected sections on February 15, 1990.

DATES: Written comments must be submitted on or before October 6, 1989.

A public hearing will be held at the Lexington Hilton Inn, 1938 Stanton Way, Lexington, Kentucky 40511 on October 19, 1989, beginning at 9 a.m. Requests to make oral presentations for the record should be submitted at least 5 days prior to the hearing. However, immediately before the hearing begins, any unallotted time will be made available to persons making late requests.

ADDRESS: Send written comments and requests to make oral presentations at the hearing to the Mine Safety and Health Administration, Office of Standards, Regulations and Variances, Room 631, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, phone (703) 235-1910.

SUPPLEMENTARY INFORMATION:**I. Background and Discussion of Proposed Rule**

MSHA is proposing revisions of two standards that were promulgated on January 27, 1988 (53 FR 2354). These safety standards address roof support in underground coal mines. These revisions are proposed under 30 U.S.C. 811.

On January 27, 1988 (53 FR 2354), MSHA published final rules revising its safety standards for roof, face and rib support in underground coal mines. This

proposal affects existing 30 CFR 75.204 (a) and (b), which set out requirements for roof bolts, and 30 CFR 75.213, which sets out requirements for roof support removal.

On March 10, 1989, the U.S. Court of Appeals for the District of Columbia Circuit decided the case of *United Mine Workers of America (UMWA) v. Elizabeth H. Dole*, 870 F.2d 662. The Court held that MSHA's preamble discussion of two specific standards challenged by the UMWA did not fully address whether the new standards provided the same or greater level of safety protection as the prior standards. Therefore, the Court held the two standards invalid. On May 17, 1989, the Court of Appeals issued an order which will vacate 30 CFR 75.204 (a) and (b), and 75.213 on February 15, 1990.

In accordance with the May 17, 1989 court order, the Agency is proposing revisions that address the issues raised in litigation and take into account MSHA's statutory mandate contained in 30 U.S.C. 811(a)(9) which requires that new mandatory standards not reduce the protection provided to miners by existing mandatory standards. The relevant prior rules that should be used for purposes of comparison with these proposed rules are 30 CFR 75.200-6, 75.200-7(a)(1), 75.200-14, 75.204 and 75.204-1 (1987). The provisions of these prior rules are described elsewhere in this preamble.

The purpose of the public hearing is to receive relevant comment and to answer questions concerning the proposal. The hearing will be conducted in an informal manner by a panel of MSHA officials. Although formal rules of evidence will not apply, the presiding official may exercise discretion in excluding irrelevant or unduly repetitious material and questions.

The hearing will begin with an opening statement from MSHA. The public will then be given an opportunity to make oral presentations. During these presentations, the hearing panel will be available to answer relevant questions. At the discretion of the presiding official, speakers may be limited to a maximum of 20 minutes for their presentations. Time will be made available at the end of each hearing for rebuttal statements. A verbatim transcript of the proceeding will be taken and made a part of the rulemaking record. Copies of the hearing transcript will be available for review by the public.

MSHA will also accept additional written comments and other appropriate data from any interested party, including those not presenting oral statements. Written comments and data

submitted to MSHA will be included in the rulemaking record. To allow for the submission of any post-hearing comments, the record will remain open until October 30, 1989.

Section-by-Section Discussion**Section 75.204 Roof Bolting**

Paragraphs (a) and (b) of this standard address the quality of roof bolts and accessories that are installed in underground coal mines. Paragraphs (c) through (g) are not included in this rulemaking and were not at issue in the litigation.

The proposal has been updated to reflect technological advancements in the development of roof bolts and would provide improved protection to miners when compared to the prior rule. The proposal also updates the existing standard by referencing the most recent revision of the American Society for Testing Materials (ASTM) standard which was published in 1988.

Paragraph (a) would require the operator to obtain a certification from the manufacturer that roof bolts and accessories addressed in ASTM F432-88, "Standard Specification for Roof and Rock Bolts and Accessories," were manufactured in accordance with the ASTM standard. The certification would verify that the roof bolts and accessories were manufactured and tested in accordance with the ASTM standards. The ASTM standard for roof bolts and accessories is a consensus standard used throughout the United States for the design of such materials.

Requiring that the operator obtain a certification from the manufacturer would eliminate the concern that mine operators would need to have the same knowledge of ASTM standards as manufacturers. The proposal would require operators to have available for inspection a certification from the manufacturer that the roof bolts and accessories used at the mine meet the ASTM specifications. This approach is consistent with the industry practice of manufacturers routinely furnishing such certification to the mine operator when requested to do so in a contract or purchase order. In addition, ASTM F432-88 specifies that the manufacturer is to provide such a certification upon request. Interested persons may obtain ASTM F432-88 from the publisher, American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103. It may also be examined at any Coal Mine Safety and Health district or subdistrict office.

The prior rule, 30 CFR 75.200-7(a) (1987), stated that roof bolt assemblies should meet American National Standards Institute's (ANSI), "Specifications for Roof Bolting Materials in Coal Mines." This rule, which was published in 1970, referred to the ANSI document in existence at that time. The 1988 ASTM standard which is referenced in the proposed rule is a more comprehensive and updated document which reflects advances in roof bolt technology. Examples of such improvements are: A grade rating system for bearing plates; a color coding scheme used to identify the length of bolts; increased strength specifications for threaded parts; increased coverage of roof bolt accessories, i.e., hardened washers, reinforcement bars, and couplings; upgrade of the quality of steel used and specifications for chemical requirements of materials used in the manufacture of roof bolts and accessories; and standard test methods for manufacturers to assure that bolts and accessories meet performance specifications. As a result, the proposal would provide additional safety for miners, as compared to the prior rule.

Paragraph (b) of the proposal would allow the use of roof bolts and accessories not addressed in ASTM F432-88, provided that they are effective. The effectiveness of such bolts or accessories would be required to be demonstrated by their successful use in an area of a coal mine with similar strata opening dimensions and roof stresses, or by their effective use under controlled conditions in a representative area of the affected mine. Testing would be conducted in an area with conditions that are representative of those where the materials are expected to be used. Until testing demonstrates the effectiveness of the bolts or accessories proposed to be used, access to the area would be controlled to permit entry only by those persons necessary for the testing process.

MSHA proposed to add the phrase "approved by the District Manager" to clarify that all new roof bolts and accessories not addressed by the ASTM standard be approved for use through the roof control plan before they are permitted to be used as roof support at a mine. The prior rule, 30 CFR 75.200-12 (1987), called for test areas for new support materials but did not set out the performance that these materials would be required to meet. The proposal would improve the prior rule by specifying the performance of bolts and accessories that must be demonstrated before approval is granted.

Section 75.213 Roof Support Removal

This standard, which is derived from prior rules 30 CFR 75.204, 75.204-1 and 75.200-14, would set forth requirements for removing permanent roof supports. It would require taking certain precautions to minimize the hazards involved in the removal of roof supports and identify circumstances under which roof supports cannot be removed.

The proposed requirements would differ from the prior rules, which provided that operators who intend to recover roof supports include a plan for such recovery in the mine's approved roof control plan. Under the proposal, the criteria provisions in 30 CFR 75.200-14 (1987), which were considered by the District Manager when approving roof support recovery plans, would no longer be implemented through roof control plans. Instead, roof support removal would be separately addressed in the proposed standard. As a result, roof control plans would be less cumbersome and complex.

Paragraph (a) specifies that the removal of permanent roof supports be done either by persons experienced in this work or by persons under the supervision of a person, designated by the operator, who is experienced in removing roof supports. In addition the proposal would require persons performing roof support removal to have at least one year of underground mining experience. With this experience, miners performing roof support removal could be expected to be aware of the general hazards associated with underground mining.

The prior rule, 30 CFR 75.200-14(a) (1987), provided that "Recovery should only be done under the direct supervision of a mine foreman, assistant mine foreman, or section foreman." The prior rule also provided that experienced miners be assigned to recovery work but did not specify the amount of experience required. Under the prior rule, persons with a supervisory title could supervise roof support removal, even if they had no experience with this type of work. The proposal focuses directly on the support removal experience of the supervisor and the persons who perform roof support removal.

Paragraph (b) would require a person designated by the operator to examine roof conditions in the area where permanent supports are to be removed and specify which supports should be removed. The proposal would require these tasks to be completed before roof support removal is started. Testing roof conditions in these areas would

determine whether it is safe to remove the supports.

Paragraph (c)(1) would require at least one row of temporary supports on not more than 5-foot centers or equivalent support to be installed prior to the removal of permanent supports. These supports would be required to be installed across the opening within 4 feet of the supports to be removed. If one row of temporary supports is not sufficient to assure safe removal, the standard would require additional supports to be installed across the opening.

The prior rule provided for two rows of temporary supports on not more than 4-foot centers wherever supports were to be removed. The proposal would recognize that supports on centers up to 5 feet can effectively prevent a roof fall from extending beyond where supports are being removed. This is consistent with MSHA's experience in applying previous criteria through the plan approval process. Likewise, the proposal retains the prior rule's compliance responsibility to install more support when conditions so require. For example, when one crossbar or a row of supports is being removed, one row of temporary supports is, in many mines, sufficient to prevent a roof fall from extending beyond the location where the supports are being removed. On the other hand, when multiple supports are being removed, two or more rows of supports may be necessary to control the roof. Likewise, where roof conditions are unstable, temporary supports may need to be closer together. This approach is consistent with MSHA's experience in approving plans for removing permanent roof supports.

Paragraph (c)(2) of the proposal would require a temporary support installed in accordance with § 75.213 to be installed as close as practicable to each roof bolt prior to its removal. This proposed requirement is consistent with the prior rule.

Paragraph (d) addresses the removal of temporary supports installed in accordance with § 75.213. The proposal would prohibit the removal of temporary supports unless they are removed from a location under permanent supports that have not been disturbed. In addition, two rows of temporary supports would be required to be maintained between the miners and the supports being removed. This provision is consistent with the prior rule, except that the prior rule provided for temporary supports to be placed on 4-foot centers. MSHA's experience with criteria applied in roof control plans has been that installation of temporary supports on a maximum of

5-foot centers has provided effective protection for miners during the removal of temporary supports. However, the District Manager could require, through the plan approval process, that temporary supports be set closer together depending on particular mining conditions.

Paragraph (e) would specify that each entrance to an area where roof supports have been removed be posted with a readily visible warning or a physical barrier installed to impede travel into the area. The prior rule provided for a barricade to be installed when recovery is completed or suspended for more than 3 days. The purpose of this standard is to provide a warning to persons approaching an area where the roof is hazardous. The Agency believes that this can be accomplished by either a visible warning or a physical barrier.

Paragraph (f) outlines the conditions under which removal of permanent roof supports is prohibited. Removal would be prohibited where roof bolt torque or tension measurements or the condition of conventional roof supports indicate excessive loading, where roof fractures are present, where there is any other indication that the roof is structurally weak, or where pillar recovery has been conducted. In these areas, any disturbance of the roof support may trigger a roof fall.

An exception is recognized by the proposal which would allow the removal of conventional supports if the persons involved in such removal are in a remote location under supported roof. For example, conventional supports could be removed through the use of cables pulled from a safe distance. The removal of conventional supports is sometimes necessary to induce roof falls, thereby reducing roof pressures from over-riding into active workings. However, the standard would prohibit the removal of roof bolts where any of the four conditions listed above are encountered.

The proposed exception for conventional supports was not specifically recognized in the prior rule. However, in the context of the mine plan approval process, this practice has been permitted and proved to be an effective measure for the protection of miners.

Paragraph (g) specifies that the provisions of this section do not apply when removing conventional support for starting crosscuts and pillar splits or lifts. Removal of supports in these situations does not present the same hazards. In addition, these situations are addressed by 30 CFR 75.202(c) and are required to be addressed in the roof control plan. However, the standard would require that roof conditions be

determined before the supports are removed.

II. Executive Order 12291 and the Regulatory Flexibility Act

This proposed rule addresses two provisions published on January 27, 1988. MSHA has determined that the rule would not result in major cost increases nor have an incremental effect of \$100 million or more on the economy. The Agency also determined that the proposed rule will not have a significant impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

III. Paperwork Reduction Act

There are no information collection requirements contained in this proposal.

List of Subjects in 30 CFR Part 75

Mine safety and health, Underground mining, Roof, Face and rib support.

Dated: August 25, 1989.

David C. O'Neal,
Assistant Secretary for Mine Safety and Health.

Therefore, part 75, subchapter O, chapter I, title 30 of the Code of Federal Regulations is proposed to be amended under 30 U.S.C. 811 as follows:

PART 75—MANDATORY SAFETY STANDARDS—UNDERGROUND COAL MINES

1. The authority citation to 30 CFR part 75 continues to read as follows:

Authority: 30 U.S.C. 811, 957, and 961.

2. Section 75.204 (a) and (b) are revised to read as follows:

§ 75.204 Roof bolting.

(a) For roof bolts and accessories addressed in ASTM F432-88, "Standard Specification for Roof and Rock Bolts and Accessories", the mine operator shall—

(1) Obtain a manufacturer's certification that the material was manufactured and tested in accordance with the specifications of ASTM F432-88; and

(2) Make this certification available to an authorized representative of the Secretary.

(b) Roof bolts and accessories not addressed in ASTM F432-88 may be used, provided that the use of such materials is approved by the District Manager based on—

(1) Demonstrations which show that the materials have successfully supported the roof in an area of a coal mine with similar strata, opening dimensions and roof stresses; or

(2) Tests that show the materials to be effective for supporting the roof in an area of the affected mine that has strata, opening dimensions and roof stresses similar to the area where the roof bolts are to be used. During the test process, access to the test area shall be limited to persons necessary to conduct the test.

* * * * *

3. Section 75.213 is revised to read as follows:

§ 75.213 Roof support removal.

(a)(1) All persons who perform the work of removing permanent roof supports shall be experienced in this work, or they shall be supervised by a person experienced in removing roof supports who is designated by the mine operator.

(2) Only persons with at least one year of underground mining experience shall perform permanent roof support removal work.

(b) Prior to the removal of permanent roof supports, a person designated by the mine operator shall examine the roof conditions in the area where the supports are to be removed and designate each support to be removed.

(c)(1) Prior to the removal of permanent supports, a row of temporary supports on no more than 5-foot centers or equivalent support shall be installed across the opening within 4 feet of the supports being removed. Additional supports shall be installed where necessary to assure safe removal.

(2) Prior to the removal of roof bolts, temporary support shall be installed as close as practicable to each roof bolt being removed.

(d) Temporary supports installed in accordance with this section shall not be removed unless—

(1) Removal is done remotely from under roof where the permanent supports have not been disturbed; and

(2) At least two rows of temporary supports, set across the opening on no more than 5-foot centers, are maintained between the miners and the unsupported area.

(e) Each entrance to an area where supports have been removed shall be posted with a readily visible warning or a physical barrier shall be installed to impede travel into the area.

(f) Except when conventional supports are removed by persons who are in a remote location under supported roof, permanent support shall not be removed where—

(1) Roof bolt torque or tension measurements or the condition of conventional support indicate excessive loading;

(2) Roof fractures are present;

(3) There is any other indication that the roof is structurally weak; or

(4) Pillar recovery has been conducted.

(g) Except for paragraph (b) of this section, the provisions of this section do not apply to removal of conventional supports for starting crosscuts and pillar splits or lifts.

[FR Doc. 89-20463 Filed 8-30-89; 8:45 am]

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United States Federal Register

Thursday
August 31, 1989

Part IV

Department of Agriculture

Animal and Plant Health Inspection
Service

9 CFR Parts 1, 2, and 3
Animal Welfare; Final Rules

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 1

[Docket No 89-130]

RIN 0579-AA18

Animal Welfare; Definition of Terms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending part 1 of the Animal Welfare Act regulations in order to update, clarify, and expand the list of definitions of terms used in parts 2 and 3 of the regulations. These changes are necessary to assist the public in complying with the Animal Welfare regulations and to facilitate enforcement. Many of these changes are required by the amendments to the Animal Welfare Act (7 U.S.C. 2131, *et seq.*), enacted on December 23, 1985, and complement the final rule amending part 2 of the regulations. They also complement the standards set forth in part 3 of the regulations.

DATES: This final rule shall become effective October 30, 1989; however, the portions of the rule which concern or relate to information collection and recordkeeping will become effective October 30, 1989, upon approval by the Office of Management and Budget (OMB). The information collection requirements of this final rule have been submitted to OMB for review and approval. The Department has requested that OMB conclude its review no later than October 30, 1989. If any portion is disapproved, notice of disapproval will be published in the Federal Register prior to that date.

FOR FURTHER INFORMATION CONTACT: Dr. Dale F. Schwindaman, REAC, APHIS, USDA, Room 206, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-6491.

SUPPLEMENTARY INFORMATION:**Background**

This final rule amends 9 CFR part 1, entitled "Definition of Terms" which provides the definitions for the terms used in the regulations in 9 CFR part 2, and the standards in 9 CFR part 3 for the humane handling, care, treatment, and transportation of regulated animals used for research or exhibition purposes, sold as pets, or transported in commerce. The Definitions, Regulations, and Standards (the regulations) are established pursuant to the authority in the Animal Welfare Act, as amended (7 U.S.C. 2131,

et seq.) (the Act). This law requires the Secretary to promulgate regulations and standards governing the humane handling, housing, care, treatment, and transportation of certain animals by dealers, research facilities, exhibitors, operators of auction sales, carriers, and intermediate handlers. The standards and regulations must include minimum requirements with respect to handling, housing, feeding, sanitation, veterinary care, and other matters specified in section 13 of the Act (7 U.S.C. 2143). The definitions contained in this final rule provide specific meanings for many important terms used in the regulations and standards.

Proposed Rules

In two documents published in the Federal Register, on March 31, 1987 (52 FR 10292-10298 and 52 FR 10298-10322, respectively), we proposed to revise parts 1 and 2 of the Animal Welfare regulations to comply with the 1985 amendments to the Act, and to expand, clarify, and revise the current regulations. At that time, we did not publish a proposed rule to amend the standards set forth in part 3 of the regulations.

We solicited comments concerning the proposals for a 60-day period ending June 1, 1987. The comment period was twice extended and ended on August 27, 1987. A total of 7,857 comments were timely received and considered. Many of the comments we received stated that it was difficult to comment upon the proposals to amend parts 1 and 2 of the regulations independently of our proposal to amend the standards in part 3. We have maintained that upon their publication as final rules, parts 1 and 2 of the regulations can be fully implemented with the existing standards in part 3. In response to the comments, we decided to respond to the points raised by the commenters, and to publish revised proposals to amend parts 1 and 2 along with our proposed rule to amend part 3, to assist the public in reviewing the proposed standards in part 3 and to afford the public an opportunity to comment on the interrelationship of the definitions and regulations in parts 1 and 2 with the proposed standards in part 3. Accordingly, on March 15, 1989, we published in the Federal Register three documents: Docket no. 88-013, a proposed rule to amend part 1—"Definition of Terms," (54 FR 10822-10835); docket no. 88-014, a proposed rule to amend part 2—"Regulations," (54 FR 10835-10897); and docket no. 87-004, a proposed rule to amend subparts A through D of part 3—"Standards," (54 FR 10897-10954).

The revised proposals published in March, 1989, were prepared with the benefit of the public's comments and reflected our thinking at that time of how best to carry out our statutory mandate and animal welfare objectives. Throughout this rule-making process, however, we have continued our consideration of alternative means to implement the complex regulatory scheme required by the Animal Welfare Act, as amended, and addressed by the commenters in response to our initial proposal. To fully address these issues, we continued our consultation in accordance with the requirements of the Act (7 U.S.C. 2145), with the U.S. Department of Health and Human Services (HHS) and members of the Interagency Research Animal Committee (IRAC), a committee comprising representatives of Federal agencies concerned with animal welfare. Together, we explored and evaluated different means of accomplishing our regulatory objectives. This final rule reflects our consideration of the comments we received in response to our initial proposal and those addressing the interrelationship of the definitions in part 1 with the regulations proposed for part 2 and the standards proposed for part 3. It also reflects our consultation with other Federal agencies. We believe parts 1 and 2 can now be readily implemented while we continue to review the public's comments and consider alternatives concerning the standards that should be included in part 3.

Public Comments

The revised proposal published March 15, 1989, solicited comments on the narrow issue of the interrelationship of the definitions and regulations in parts 1 and 2 of 9 CFR, chapter 1, subchapter A, with the standards we proposed in part 3, for the reasons explained above. Comments were solicited for a 60-day period, ending May 15, 1989. Comments that were postmarked or received by that date were considered in preparing this final rule. We solicited comments on the standards of part 3 for a 120-day period, ending July 13, 1989. Comments that were not timely for consideration in preparing final rules for parts 1 and 2 will be considered if they address the proposed standards or the regulations in general.

We received 5,582 comments that were timely for consideration in preparing final rules for parts 1 and 2. Many comments concerned the Animal Welfare regulations generally or conceptually. We considered those comments in preparing the final rules

because they address the Department's regulatory approach as a unit, and thereby implicate the interrelationship of parts 1, 2, and 3. Our response to those comments is set forth in the supplementary information accompanying the final rule to amend part 2, docket no. 89-131, published elsewhere in this issue of the *Federal Register*.

On the basis of the comments we received and our consultation with HHS and members of the IRAC, we determined that certain changes to the revised proposal are necessary and that certain terms should be added to clarify parts 2 and 3 of the regulations. Certain changes are also necessary to conform part 1 with the revisions we are making in the final rule to amend part 2 (see docket no. 89-131, published elsewhere in this issue of the *Federal Register*). We discuss below, in alphabetical order, each of the terms that is revised, replaced, or added as a result of the comments we received and our consultation with HHS and members of the IRAC. We also discuss those comments we received addressing the interrelationship of terms contained in part 1 with the proposals to amend parts 2 and 3 for which we have determined that no revision of the final rule is necessary. Comments addressing the interrelationship of the revised proposal to amend part 2—"Regulations" with the proposed standards in part 3 are addressed in companion docket no. 89-131, published elsewhere in this issue of the *Federal Register*. Comments on the regulatory impact analysis and the regulatory flexibility analysis prepared by the Department in accordance with Executive Order 12291 and the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), respectively, are also addressed in that document.

General

We received 480 comments (478 from members of the general public and 2 from members of the research or scientific community) expressing general support for the revised proposals to amend parts 1 and 2 and stating that the definitions in part 1 apply appropriately to part 3.

We are making two changes in the final rule for part 1 to reflect an internal agency reorganization within the Animal and Plant Health Inspection Service (APHIS) which created the Regulatory Enforcement and Animal Care organization unit (REAC). REAC is charged with responsibility for administering and enforcing the Animal Welfare Act and regulations for APHIS. Accordingly, the term "Deputy Administrator" is revised to mean "the

Deputy Administrator for Regulatory Enforcement and Animal Care (REAC) or any other official to whom authority has been delegated to act in his stead." The term "Area Veterinarian in Charge" is replaced with "APHIS, REAC Sector Supervisor", however, the definition remains unchanged in the regulations. This change in designation reflects the Agency's internal reorganization and is nonsubstantive.

Animal; Exotic Animal; Wild Animal

Fifteen commenters (9 members of the general public and 6 members of the research or scientific community) stated that all animals should be regulated under the Act, including rats and mice, and 6 members of the research or scientific community commented that rats and mice should not be excluded from the regulations. In contrast, 10 members of the research or scientific community stated that all rodents should be excluded from the regulations.

As we stated in the supplementary information accompanying the revised proposal, we do have the authority to regulate rats and mice, though we have never included laboratory-bred rats and mice in the regulations (54 FR 10823). Wild rats and mice are covered by the regulations. We received numerous comments in response to the March 1987 proposal suggesting that we include rats and mice, and we are considering doing so. Development of regulations and standards applicable to rats and mice would be a lengthy endeavor, and we do not believe it is appropriate to delay promulgation of these final rules while we proceed with our consideration of this issue.

The statutory definition of "animal" specifically includes guinea pigs and hamsters, and we do not have the authority to remove these rodents from the regulations (7 U.S.C. 2132(g)). In order to clarify that rats and mice are the only rodents not covered by the regulations, we are revising the definition of "animal" in the final rule by specifying that the term excludes rats of the genus *Rattus* and mice of the genus *Mus* that have been bred for use in research. Rodents of other genera, such as kangaroo rats, are included within the definition.

We received 241 comments (67 from members of the general public, 172 from members of the research or scientific community, and 2 from dealers) requesting that we clarify when farm animals are covered by the regulations. One member of the general public and 3 members of the research or scientific community commented that the existing standards of 9 CFR part 3, subpart F, "Specifications for the Humane

Handling, Care, Treatment and Transportation of Warmblooded Animals Other Than Dogs, Cats, Rabbits, Hamsters, Guinea Pigs, Nonhuman Primates, and Marine Mammals," should be applied to farm animals used or bred for biomedical research. In accordance with the Act, we have the authority to regulate farm animals when used for biomedical research and testing purposes. We do not have the authority to regulate farm animals under the Animal Welfare regulations when used or intended for use as food or fiber, or when used or intended for use in agricultural research, such as, improving animal nutrition, breeding, management, or production efficiency, or for improving the quality of food or fiber (7 U.S.C. 2132(g)). We are considering exercising our authority to enforce the regulations with respect to farm animals. If we determine to pursue this matter further, we will publish an advance notice of proposed rulemaking in the *Federal Register* soliciting public comments on whether the Agency should exercise this authority, and if so, what regulations and standards should apply.

Four members of the research or scientific community requested clarification as to whether the term "animal" includes free-living wild animals that are used in research. As set forth in the revised proposal, the term "animal" includes any warmblooded animal, other than those specifically excepted, that is being used, or is intended for use for research, teaching, testing, or experimentation (54 FR 10823-10824). Under the final rule amending part 2 (docket no. 89-131, published elsewhere in this issue of the *Federal Register*), research involving animals that are studied in their natural habitat without any invasive procedure and without harming or materially altering their behavior, is exempt from the Committee review and inspection requirements of 9 CFR part 2, subpart C.

One exhibitor opposed breaking down non-domestic animals into "wild animals" and "exotic animals". Both wild and exotic animals, as defined in the revised proposal, are covered by the regulations. We are including definitions of wild animals and exotic animals in the final rule to make it clear that certain exotic animals, now considered by many people to be domestic animals, are covered by the regulations. We are not revising these terms on the basis of this comment.

We received 236 comments (66 from members of the general public, 168 from members of the research or scientific community, and 2 from dealers)

expressing agreement with the definition of "exotic animal" as set forth in the revised proposal. We had revised the definition from that initially proposed to exclude those animals specifically included in the definition of "animal", in response to the numerous comments we received. One member of the research or scientific community objected that the revised definition conflicts with the term "animal" when an exotic animal is used for exhibition purposes. The term "exotic animal", as well as "wild animal", is included in the regulations to make clear that all warmblooded animals (other than those specifically excluded) are covered by the regulations when used for research, teaching, testing, experimentation, exhibition, or as a pet. When the Act was first enacted in 1966, the term "animal" was defined as meaning "live dogs, cats, monkeys (nonhuman primate mammals), guinea pigs, hamsters, and rabbits." In 1970, Congress amended the Act to include other warm-blooded animals. By defining "exotic animal" as any animal not identified in the definition of "animal" that is of foreign origin or not native to the United States, the regulations make clear that exotic animals are covered by the regulations in addition to dogs, cats, nonhuman primates, guinea pigs, hamsters, and rabbits. The definition of "exotic animal" excludes the animals specifically identified in the Act because many species of these animals are now commonly found in the United States. Though originally of foreign origin, they are not considered to be exotic.

Animal Care and Use Procedure

We received 237 comments (66 from members of the general public, 169 from members of the research or scientific community, and 2 from dealers) stating that there is no need for an animal care and use procedure, and therefore the term should be deleted. We added the term "animal care and use procedure" or "ACUP" in the revised proposal in lieu of "protocol" to avoid any misunderstanding or implication that APHIS intends to become involved in the evaluation of the design, outlines, guidelines, and scientific merit of proposed research. The term "animal care and use procedure" was selected because it is descriptive of the areas with which we are concerned under the regulations, namely, how the research will treat or affect an animal, the condition of an animal, and the circumstances under which an animal is maintained.

As we describe in greater detail in the final rule to amend part 2 (docket no. 89-131, published elsewhere in this issue

of the Federal Register), we have made certain changes in the regulations affecting research facilities in order to harmonize our requirements with those of the Public Health Service Policy on Humane Care and Use of Laboratory Animals (PHS Policy), wherever it is consistent with our statutory mandate to do so. As part of our harmonization efforts, we are replacing the term "animal care and use procedure" with the PHS Policy term, "activity." The term "activity" is defined to mean "those elements of research, testing, or teaching procedures that involve that care and use of animals." We consider this to be a nonsubstantive change.

Attending Veterinarian

Under the revised proposal, the term "attending veterinarian" would mean "a person who has graduated from a veterinary school accredited by the American Veterinary Medical Association's Council on Education, or has a certificate issued by the American Veterinary Medical Association's Education Commission for Foreign Veterinary Graduates, or has received equivalent formal education as determined by the Administrator; has received training and/or experience in the care and management of the species being attended; and who has direct or delegated authority for activities involving animals at a facility subject to the jurisdiction of the Secretary."

Two members of the research or scientific community objected to the requirement that the attending veterinarian have formal education in veterinary medicine. Rather, they felt that requiring equivalent formal education would be sufficient. We disagree with the commenters. Training in the sciences generally, or in medical or biological areas, would not ensure sufficient knowledge in the health, well-being, and care of animals. Veterinary medicine involves specialized knowledge and expertise that would not otherwise be acquired through non-veterinary training and education. Furthermore, we do not believe it would be practical for the Administrator to determine, on a case-by-case basis, whether someone is qualified to function as a veterinarian. Therefore, we are not making any change to this requirement in the final rule. The Administrator will consider equivalent formal education in veterinary medicine, as set forth in the revised proposal, so as not to exclude those graduates of foreign veterinary programs who do not have a certificate from the AVMA's Education Commission for Foreign Veterinary Graduates (see 54 FR 10824-10825).

We received 55 comments (5 from members of the general public, 14 from members of the research or scientific community, 2 from exhibitors, and 34 from dealers) stating that the requirement that the attending veterinarian have experience in the care and management of the species being attended would limit the pool of qualified veterinarians, and that experience with similar species should be sufficient. We disagree for the reasons set forth in the supplementary information accompanying the revised proposal (54 FR 10825). It is not our objective to severely limit the number of veterinarians who would be qualified to serve as attending veterinarians, and we do not believe that requiring some degree of familiarity with the animal being attended will do so. We proposed this requirement because different species have different requirements and needs that must be fulfilled in order to promote their health and well-being. For these reasons, we require that the attending veterinarian have training or experience in the care and management of the different species of animals being attended.

Two hundred fifty-five commenters (70 members of the general public, 183 members of the research or scientific community, and 2 dealers) objected to the requirement that attending veterinarians be responsible for "activities involving animals", as set forth in the revised proposal, rather than just the health of the animals. Under these regulations, the attending veterinarian is responsible for overseeing the care and use of animals and for ensuring that adequate veterinary care is provided. These responsibilities extend beyond the general health of an animal. They include personnel training and guidance in animal care matters, such as proper use of pain-relieving drugs, adequate pre-procedural and post-procedural care, and animal behavior and well-being. We are making no changes to the definition of "attending veterinarian" on the basis of these comments.

Commerce

Thirty-eight commenters (1 member of the general public, 2 members of the research or scientific community, 2 exhibitors, and 33 dealers) objected to Federal regulation of intrastate commerce. Twenty-two commenters (2 exhibitors and 20 dealers) objected to considering gifts or donations of animals as affecting commerce, and therefore requiring that the recipient be licensed as an exhibitor. Under the definition of "exhibitor" in this final rule, any person

exhibiting any animals which were purchased in commerce or the intended distribution of which affects commerce, or will affect commerce, to the public for compensation is an exhibitor and must be licensed. The proposed definition of "commerce" is taken directly from the statute. Congress has defined "commerce" in the Act to mean "trade, traffic, transportation, or other commerce: (1) Between a place in a State and any place outside of such State, or between points within the same State but through any place outside thereof, or within any territory, possession, or the District of Columbia; (2) which affects trade, traffic, transportation, or other commerce described in paragraph (1). * * * (7 U.S.C. 2132(c)). Animals received through donation or as a gift must be acquired and transported, and therefore, such gifts or donations affect commerce. The definition remains as proposed.

Committee

Two hundred thirty-six commenters stated that a research facility should be able to identify the Committee by whatever name it chooses. One member of the research or scientific community noted that the definition of "Committee" is appropriately addressed in part 2 and therefore need not be defined in part 1. As we stated in the supplementary information accompanying the revised proposal, we are not concerned with the name assigned to the Committee by a research facility. Rather, we are concerned that each research facility establish an administrative body in accordance with the definition of "Committee", as set forth in part 1, that is authorized to carry out the duties and responsibilities assigned to it under the Act and the regulations. We refer to this body as the Institutional Animal Care and Use Committee to describe its areas of concern and for consistency with the PHS Policy, which similarly requires establishment of an Institutional Animal Care and Use Committee. The PHS Policy also notes that the term, Institutional Animal Care and Use Committee, is intended as a generic term for a committee whose function is to ensure appropriate and humane animal care and use. We are not making any changes in the final rule on the basis of the comments. We are making a change to allow a Doctor of Veterinary Medicine (DVM) to serve on the Committee instead of the attending veterinarian, if the research facility has more than one DVM, in accordance with the final rule to amend part 2 (*see* docket no. 89-131, published elsewhere in this issue of the Federal Register).

Euthanasia

We are revising the definition of "euthanasia" based upon the comments we received and our ongoing discussions with members of the IRAC. In the revised proposal, the term "euthanasia" was defined as "the humane destruction of an animal accomplished by a method which produces instantaneous unconsciousness and immediate death without evidence of pain or distress, or a method that utilizes anesthesia produced by an agent which causes painless loss of consciousness and subsequent death." Thirty-five commenters (1 member of the general public, 7 members of the research or scientific community, 2 exhibitors, and 25 dealers) requested clarification of the word "immediate" as it appears in the proposed definition. Twenty-nine members of the research or scientific community stated that the definition should be consistent with the recommendations of the American Veterinary Medical Association Panel on Euthanasia. Two commenters (1 member of the general public and 1 member of the research or scientific community) suggested that the term be defined as "a quiet painless death", and 255 commenters (70 members of the general public, 183 members of the research or scientific community, and 2 dealers) suggested that the term be defined as "the humane destruction of an animal accomplished by a method which produces unconsciousness and death without evidence of pain or distress or a method that utilizes anesthesia produced by an agent which causes painless loss of consciousness and subsequent death." One commenter from the general public and 3 members of the research or scientific community suggested using the word "killed" in place of "destruction" in the definition.

Based upon these comments and our consultation with IRAC members, we have determined that the proposed definition of "euthanasia" is unnecessarily restrictive. Methods of euthanizing animals exist which induce rapidly occurring unconsciousness followed by subsequent death without evidence of pain or distress. The report of the AVMA Panel on Euthanasia lists numerous methods which, based upon information the Panel deems reliable, may be considered painless. We are therefore revising the definition to mean the humane destruction of an animal accomplished by a method that produces rapid unconsciousness and subsequent death without evidence of pain or distress, or a method that utilizes anesthesia produced by an agent

that causes painless loss of consciousness and subsequent death. Methods of euthanasia that are consistent with this definition may be used. We believe that the definition as revised in the final rule fully addresses the commenters' concerns.

Housing Facility

The definition of "housing facility" in the revised proposal remained as originally proposed and has prompted concern among the commenters and members of the IRAC. The proposed definition would include any land, premises, shed, barn, building, trailer, or other structure or area housing or intended to house animals. Members of the IRAC stated that the proposed definition would be difficult to apply in field settings where animals are studied in their natural habitat. The National Science Foundation, a Federal agency that funds research conducted in field settings, expressed concern that it would not be feasible for research facilities to comply with many of the standards proposed in part 3 for housing facilities in such environments. In addition, 238 commenters (66 members of the general public, 170 members of the research or scientific community, and 2 dealers) requested clarification as to whether native habitats of free-living animals would be covered by the definition. Four members of the research or scientific community suggested that the definition be revised to exclude all field study sites where animals are not restrained for more than 12 hours before being released. Five members of the research or scientific community suggested that the definition exclude areas where animals are held for less than 24 hours. We also received four comments from the research or scientific community which stated that the proposed definition should be revised to clearly include all animal study areas. Two commenters, also from the research or scientific community, stated that animal study areas should only include survival surgery areas.

Upon further consideration of these suggestions, and for the reasons set forth in the supplementary information accompanying the final rule to amend part 2 (docket no. 89-131, published elsewhere in this issue of the Federal Register) we agree that a distinction should be made between research that is conducted under captive conditions and that which is conducted in the wild. A further distinction must also be made between studies conducted in the field on the basis of whether or not it involves an invasive procedure or change in the animals' behavior as part

of the study. The final rules differentiate between studies of animals in their natural habitat which involve an invasive procedure, such as implanting a transponder, or which harm or alter the behavior of the animals, and field studies. Field studies are defined in this final rule to mean "any study conducted on free-living wild animals in their natural habitat, which does not involve an invasive procedure, and which does not harm or materially alter the behavior of the animals under study." Wildlife census studies and purely behavioral studies would be within the definition. Under part 2, subpart C of the final rule, field studies are exempt from Committee review and inspection.

Under § 2.31(c)(2) of the final rule, Committee inspection of a research facility's animal facilities as an agent of the research facility, including animal study areas, may not include animal areas involving free-living wild animals in their natural habitat. Such studies and areas must be maintained in compliance with the Animal Welfare regulations and standards, however.

We are also adding a definition of the term "study area" in response to the comments we received and to conform part 1 with the revised regulations set forth in the final rule to amend part 2. The term is defined as "any building, room, area, enclosure, or other containment outside of a core facility or centrally designated or managed area in which animals are housed for more than 12 hours." A study area is a type of housing facility. "Satellite facilities" under the PHS Policy are study areas, as that term is defined in this final rule. It also includes buildings or temporary structures set up at field sites where animals are maintained for more than 12 hours. We are not limiting the term to areas where survival surgery is conducted, contrary to the suggestion of two commenters, since the need to ensure animal welfare is not limited to surgical procedures.

Indoor Housing Facility

We received 236 comments (66 from members of the general public, 168 from members of the research or scientific community, and 2 from dealers) stating that the proposed requirement that an indoor housing facility be capable of maintaining humidity levels between 30 to 70 percent should be removed. Three commenters (1 member of the general public and 2 members of the research or scientific community) stated that the humidity control requirement should be clarified, and 1 member of the general public and 3 members of the research or scientific community stated that the humidity range provided in the

definition should be revised to be between 40–60 percent.

Based upon our experience in administering the Act and the regulations, we believe an indoor housing facility must be capable of controlling the environment, including the temperature and humidity level, in which an animal is maintained in order to promote its health and well-being. The humidity level provided in the definition is consistent with the NIH Guide for the Care and Use of Laboratory Animals, and is appropriate for most warm-blooded animals. We believe this to be a reasonable requirement to impose upon persons who maintain animals in indoor housing facilities and that it is necessary for the welfare of the animals.

Institutional Official

We are adding a definition of the term "institutional official." In our revised proposal, we referred to the Chief Executive Officer of a research facility or a responsible institutional official with authority to bind the facility. We are replacing these terms with the single term "institutional official" in the final rule to amend part 2, to simplify the regulations and to make them consistent with the terminology used in the PHS Policy. We consider this to be a nonsubstantive change. Neither of the terms used in the revised proposal were defined in our proposals to amend part 1. We are adding a definition to facilitate understanding and compliance with the regulations. Under the final rule, "institutional official" means the individual at a research facility who is authorized to legally commit on behalf of the research facility that the requirements of 9 CFR parts 1, 2, and 3 will be met.

Isolation

Two members of the research or scientific community commented that the proposed definition of "isolation" would not be appropriate for open-sea floating pens for marine mammals. Use of such pens is generally not appropriate for the temporary isolation of marine mammals under part 3, subpart E for purposes of medical treatment or training. No change is made in the regulations on the basis of this comment.

Major Operative Experiment

We received 269 comments (74 from members of the general public, 193 from members of the research or scientific community, and 2 from dealers) objecting to the proposed definition of the term, "major operative experiment." The 1985 amendments to the Act

prohibit the use of an animal in more than one major operative experiment from which it is allowed to recover, except under certain limited circumstances (7 U.S.C. 2143(a)(3) (D) and (E)). We are broadening this prohibition in the final rule to amend part 2 to apply to any major operative procedure, since an experiment could encompass a vast number of procedures.

In the supplementary information accompanying the revised proposal, we stated that the potential for causing physical disability would be sufficient to consider an experiment to be within the proposed definition, and that we were not concerned with the intended effect of the principal investigator in performing the experiment. Upon further consideration of the comments we received, we have determined that determining whether a procedure is a major operative procedure can best be done retrospectively, rather than prospectively, and that doing so will satisfy the Act's prohibition against using the animal in a second major operative experiment. It is clear from a research proposal whether the research will involve surgical intervention that penetrates and exposes a body cavity. However, the permanent effects of a procedure can best be determined afterward. After a procedure is performed, the principal investigator and the Committee can determine whether it has produced a permanent impairment of the animal's physical or physiological functions. If it has, the animal cannot be used again for survival surgical purposes or for procedures generally considered to result in permanent impairment of the animal's functions. As four commenters stated, (1 member of the general public and 3 members of the research or scientific community) non-surgical procedures such as impact tests and severe burn studies are invasive and can result in permanent impairment. We are revising the definition in the final rule to mean "any surgical intervention that penetrates and exposes a body cavity or any procedure which produces permanent impairment of physical or physiological functions." The term "disability" is replaced in the definition with the term "impairment" to include any reduction in the animal's range or ability of functions.

Mobile or Traveling Housing Facility

Four commenters (1 member of the general public and 3 members of the research or scientific community) endorsed inclusion of an explicit definition of "mobile or traveling housing facility" in part 1. The

standards with which these facilities must comply when used to house dogs, cats, and nonhuman primates are contained in the proposal to amend part 3. (See docket no. 87-004, published in the Federal Register on March 15, 1989, 54 FR 10897-10954). We are considering comments on the proposed standards.

Outdoor Housing Facility

One dealer commented that the term "outdoor housing facility" should be revised to accommodate different types of outdoor primate housing enclosures and their temperature requirements. Specific housing facility requirements for nonhuman primates were proposed in docket no. 87-004, published in the Federal Register on March 15, 1989 for public comment (54 FR 10897-10954). Temperature requirements for indoor, outdoor, sheltered, and mobile housing facilities are addressed in that document. Some animals, such as dogs and cats can tolerate lower temperatures than nonhuman primates, and different species of nonhuman primates have different temperature requirements. Therefore, we do not believe it is appropriate to include specific requirements in the definition. Accordingly, no change is made in the final rule on the basis of this comment.

Painful Procedure

We received 240 comments (66 from members of the general public, 172 from members of the research or scientific community, and 2 from dealers) urging us to adopt the PHS Policy definition of a "painful procedure." As we stated in the supplementary information accompanying the revised proposal, the proposed definition is similar to and consistent with the PHS Policy, and we do not believe that any modification is needed.

Eleven commenters (2 members of the general public and 9 members of the research or scientific community) stated that the different species' perception of pain should be taken into consideration and that the attending veterinarian is qualified to determine whether a procedure should be considered painful. Under the Act, involvement by the attending veterinarian in planning a painful procedure is essential because of his or her expertise. To this extent, the commenters' view is incorporated in the regulations. One of the principal concerns of Congress underlying the 1985 amendments to the Act is the need to minimize pain and distress. In order to fulfill Congress's intent, we believe it is appropriate to define "painful procedure" in terms of human standards of pain, as does the PHS Policy, to ensure that all potentially painful

practices are accorded the protections of the Act, such as those set forth in sections 13(a)(3)(C) and 13(b)(3)(A). (7 U.S.C. 2143 (a)(3)(C) and 2143(b)(3)(A)). Four commenters (1 member of the general public and 3 members of the research or scientific community) endorsed using human standards of pain in defining the term.

Twenty-two members of the research or scientific community commented that when pain is relieved through anesthesia, a procedure should not be considered painful. The 1985 amendments to the Act refer repeatedly to the use of pain-relieving drugs and anesthetics in conducting painful procedures and practices (See, e.g., 7 U.S.C. 2143(a)(3)(C)(ii) and 2143(e)(3)(B)). Therefore, under the Act, a procedure in which pain is relieved is still considered to be a painful procedure, and the provisions of the Act which address the conduct of painful procedures apply. We are not adopting the commenters' suggestion.

Pet Animal

We received 19 comments (2 from members of the general public, 3 from members of the research or scientific community, 2 from exhibitors, and 13 from dealers) stating that the definition of "pet animal" should include wild and exotic animals when they are used or sold as pets. These are specifically excluded, as explained in the supplementary information accompanying the revised proposal (54 FR 10829). Congress has exempted retail pet stores from the definition of "dealer" unless they sell animals to a research facility (7 U.S.C. 2132(f)(2)(i)) and therefore, they are not required to be licensed under the Act. We believe that Congress intended to limit this exclusion from the licensing requirements of the Act, and that only animals commonly sold as pets can properly be considered pet animals. In this manner, dealers would not be able to avoid the licensing requirements of the regulations by calling themselves retail pet stores. Excluding wild and exotic animals from the definition of pet animal is consistent with the Act and the definition of "retail pet store" included in this final rule. Accordingly, retail pet stores that sell exotic animals must be licensed under 9 CFR part 2, subpart A. We are not making any change in the definition of pet animal on the basis of this comment.

Positive Physical Contact

One member of the general public and 5 members of the research or scientific community commented that "positive physical contact" should be redefined to mean contact which is beneficial to the

animal in the opinion of the attending veterinarian. We agree that attending veterinarians will be involved in assessing positive physical contact, as part of their responsibility for ensuring adequate veterinary care and providing for the animals' health and well-being. We are not making any changes to the definition in the final rule, however, so that all persons involved in the care and use of animals have a proper understanding of the term and their responsibilities under the regulations.

Primary Enclosure

Fourteen members of the research or scientific community stated that the term "primary enclosure" should be redefined to exclude any temporary enclosure used for less than 24 hours. We do not agree that it is appropriate to do so. Minimum requirements for the design, construction, and sanitation of primary enclosures and primary enclosures used for transporting animals are set forth in part 3 of the regulations. We are proposing to revise these requirements in accordance with the 1985 amendments to the Act and our experience in enforcing the Act. (See docket no. 87-004 published March 15, 1989, 54 FR 10897-10954). Based upon our experience, we believe that the same requirements are appropriate for any primary enclosure in which an animal is maintained, regardless of whether it is used on a short-term or long-term basis. Accordingly, we not making any changes in the definition of primary enclosure.

Principal Investigator

Four commenters from the research or scientific community suggested that the definition of "principal investigator" be revised to include proposed activities intended for use in teaching. Research conducted to instruct others is research nonetheless, and proposals to use animals in the course of teaching are the responsibility of the principal investigator. The proposed definition is consistent with the definition of research facility, which, in accordance with the Act, is defined to mean "any school * * * institution, organization, or person that uses or intends to use live animals in research, tests, or experiments * * *" (final rule § 1.1). There is no separate reference to teaching. We are making one change in the definition to include any person associated with the research facility because it is common practice for persons who are not employees to be involved in research activities at such facilities. For these reasons, we do not

believe that any change in the definition is necessary in the final rule.

Research Facility

Three commenters from the research or scientific community suggested revising the definition of "research facility" to mean, in the case of a corporation, any administrative unit reasonably designated by the corporation. We do not agree with the commenters proposed change. Under the registration requirements applicable to research facilities in the final rule, the corporation must register as the research facility, or a subsidiary of a corporation must register as the research facility unless it is under the direct control of the parent corporation. In developing the final rule to amend part 2 of the regulations (see docket no. 89-131, published elsewhere in this issue of the *Federal Register*), we determined that it is the responsibility of the research facility to ensure compliance with the regulations. We did so to ensure that animal welfare concerns are addressed at the highest level of corporate or administrative responsibility. In this manner, we are assured of an entity's commitment to promoting animal welfare and that it will take appropriate measures to require compliance by all employees. We do not consider it appropriate or advisable to reduce the level at which this responsibility rests.

Suggestions for Additional Definitions

A number of commenters stated that other terms used in the revised proposal to amend part 2 and the proposal to amend part 3 of the regulations, published in the *Federal Register* on March 15, 1989 (54 FR 10835-10897 and 10897-10954, respectively) should be defined for purposes of clarity. We do not believe it is necessary or appropriate to define these terms. In some cases, we believe it is sufficient to rely on ordinary usage and dictionary definitions. In others, we believe that the changes made to the regulations in the final rule to amend part 2 will resolve the commenters' concerns. (See docket no. 89-131, published elsewhere in this issue of the *Federal Register*). For the reasons set forth below, we are not adding any terms to the final rule to amend part 1 on the basis of these comments.

One dealer commented that the words "verbal abuse" in § 2.4 of the revised proposal, "Non-interference with APHIS officials" are not clearly defined. We believe that ordinary understanding of those words will suffice and that they need not be defined in the regulations.

One member of the general public stated that "survival surgery" as the term is used in part 2, should be defined. We believe that this term is commonly understood to mean any surgery from which the subject is reasonably expected to recover, and that no further definition is necessary.

One member of the research or scientific community suggested that we provide a definition of the term "natural environment" as used in § 2.35(b)(1)(iii) of the revised proposal to clarify whether outdoor environments altered by man would be considered natural environments. The final rule is revised to provide an exception from the requirement for Committee inspection for studies of free-living wild animals in their natural habitat (final rule § 2.31(c)(2)). We are also exempting field studies from the Committee review and inspection requirements of 9 CFR part 2, subpart C, and have defined that term to mean any study conducted on free-living wild animals in their natural habitat which does not involve an invasive procedure and which does not harm or materially alter the behavior of the animals. The term "natural habitat" necessarily excludes human intervention, and we do not believe further clarification is required.

We received 241 comments (67 from members of the general public, 172 from members of the research or scientific community, and 2 from dealers) suggesting that we provide a definition of the term "animal area" as used in the revised proposal to amend part 2 (docket no. 88-014, published in the *Federal Register* on March 15, 1989, 54 FR 10835-10897). The revisions made in the final rule obviate the need to define the term. The term "animal area" is used in the final regulations only with regard to free-living wild animals living in their natural habitat. We believe that common understanding of the term when used in this context is sufficient, and that further clarification is unnecessary.

Eight commenters (1 member of the general public, 4 members of the research or scientific community, and 3 dealers) stated that we should include a definition of the term "compatible group". It is used in the proposed rule to amend part 3—"Standards" in describing the social grouping requirements proposed for dogs, cats, and nonhuman primates (docket no. 87-004, published in the *Federal Register* on March 15, 1989, 54 FR 10897-10954). We believe that this term is commonly understood to refer to animals that co-exist peaceably and with a sense of well-being, without exhibiting

aggressive or hostile behavior towards the other animals. Certain species behave hostilely towards others, or exhibit aggressive behavior which would be detrimental to the other animals. Within species, some animals may exhibit this type of behavior and would be a source of harmful stress to fellow members of the same species. These animals would not be considered compatible. We believe that the common understanding of this term is appropriate when applied to the proposed standards and that further definition is not necessary. We are not making any changes in the regulations on the basis of these comments.

Seven commenters (2 members of the general public, 4 members of the research or scientific community, and 1 dealer) requested that we define "full-spectrum lighting". Under the proposed rule to amend part 3—"Standards", full-spectrum lighting is required if artificial light is used to illuminate indoor, sheltered, and mobile housing facilities used to house nonhuman primates, and indoor and mobile housing facilities used to house dogs and cats (docket no. 87-004, published in the *Federal Register* on March 15, 1989, 54 FR 10897-10954). Under this proposed requirement, if artificial lighting is used it must provide a wide range of wavelengths, such as infra-red and ultraviolet, so that it approximates natural sunlight. We do not believe that further clarification is necessary while we consider the comments received and develop regulations addressing the lighting requirements to be included in part 3.

We received 238 comments (68 from members of the general public, 168 from members of the research or scientific community, and 2 from dealers) stating that the terms "exercise" for dogs and "psychological well-being" of nonhuman primates must be defined in the final rules before research facilities can develop procedures and systems which satisfy the regulations. Two members of the general public and 1 member of the research or scientific community stated that "socialization" of dogs should be defined in part 1, and 44 commenters (3 members of the general public, 40 members of the research or scientific community, and 1 dealer) stated that "psychological well-being" of nonhuman primates should be defined. Requirements for exercise for dogs and for an environment that is adequate to promote the psychological well-being of nonhuman primates are statutorily mandated by the 1985 amendments to the Act. Congress directed the Secretary of Agriculture to promulgate minimum requirements that would fulfill these

needs. We proposed minimum requirements in docket no. 87-004, published in the *Federal Register* on March 15, 1989, 54 FR 10897-10954, based upon our own expertise and the recommendations of advisory committees that we formed to address the Congressional directives. We are considering the comments we received concerning the proposal and are continuing to consult with HHS and members of the IRAC in formulating means of fulfilling our objectives. Through these efforts, we are re-evaluating our proposal and are continuing to explore alternative regulatory solutions that satisfy our mandate from Congress. We do not believe that it is necessary to provide definitions of these terms. Rather, by developing appropriate standards, we believe that upon promulgation of a final rule to amend part 3, all regulated entities will have adequate guidance in complying with the Act. Accordingly, we are not making any changes in the regulations on the basis of these comments.

One dealer suggested that we define "quarantine period" as it is used in the proposal to amend part 3—"Standards", subpart D, as any isolation period imposed by Federal, State, or local laws. The commenter further stated that the appropriate quarantine period for newly-imported nonhuman primates should be 90-120 days, subject to extension at the direction of the attending veterinarian. Quarantine requirements are imposed by Federal, State, and local law, as noted in the proposed regulations (proposed § 3.80(c)(2)(v)(A)). Further definition of the term "quarantine period" is therefore unwarranted.

Another dealer suggested that we define "quarantine" as it relates to cage size and exercise requirements for nonhuman primates that are caught in the wild and those that are bred in captivity. Cage size requirements for animals maintained under quarantine by dealers are set forth in the proposed rules (proposed § 3.80(c)(2)(v)(A)), and there is no requirement in the proposed regulations for release by dealers of quarantined animals for exercise. We do not believe that defining the term "quarantine" is necessary.

Statutory Authority for This Proposed Rule

This final rule is issued pursuant to the Animal Welfare Act (Act), as amended, 7 U.S.C. 2131-2157. Congress recently added significantly to the Secretary's responsibilities under the Act by amendments in the Food Security Act of 1985, Public Law No. 99-198,

approved December 23, 1985. The declared policy of the Act is to ensure that animals intended for use in research facilities, as pets, or for exhibition purposes are provided humane care and treatment; to assure the humane treatment of animals during transportation; and to prevent the sale of stolen animals.

The Act mandates that the Secretary of Agriculture promulgate regulations and standards to govern the humane handling, care, treatment, and transportation of animals by dealers, exhibitors, research facilities, carriers, and intermediate handlers. To accomplish this, the Secretary must define certain key words used in the regulations and standards so that persons subject to the Act, regulations, and standards can comply with their requirements.

The Act itself defines some of the terms which appear in this rule. The Act also authorizes the Secretary to promulgate such rules, including additional definitions, as he deems necessary to effectuate the purposes of the Act.

Executive Order 12291 and Regulatory Flexibility Act

This final rule contains new and revised definitions of terms that complement regulatory changes for parts 2 and 3 of the Animal Welfare Regulations. The general intent is to update, clarify, and expand the list of relevant definitions as required by the amendments to the Act. The Department has determined that no economic impacts would result from this action. Therefore, this final rule is not a "major rule" for the purposes of Executive Order 12291, under the criteria therein. In addition, the Administrator hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities. It is anticipated that the economic impacts would result from final rules for part 2, "Animal Welfare Regulations," and part 3, "Standards." The regulatory impact analysis for part 2 of the regulations is included in the final rule for part 2, "Animal Welfare Regulations."

Executive Order 12372

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

Paperwork Reduction Act

The information collection and recordkeeping provisions that are included in the final rules amending 9 CFR parts 1 and 2 have been submitted for approval to the Office of Management and Budget (OMB), in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) under control number 0579-0036, and upon approval, will become effective upon October 30, 1989. The Department has requested that OMB conclude its review no later than October 30, 1989.

The public reporting burden for this collection of information is estimated to average 0.96 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The public recordkeeping burden is estimated to average 4.0 annual hours per recordkeeper.

Send written comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Agriculture, Clearance Officer, OIRM, Room 404W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB Control No. 0579-0036), Washington, DC 20503.

List of Subjects in 9 CFR Part 1

Animal welfare, Animal housing, Dealers, Exhibitors, Research facilities, Humane animal handling.

We are amending 9 CFR part 1 as follows:

PART 1—DEFINITION OF TERMS

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

Authority: 7 U.S.C. 2131-2157; 7 CFR 2.17, 2.51, and 371.2(g).

2. Section 1.1 is revised to read as follows:

§ 1.1 Definitions.

For the purposes of this subchapter, unless the context otherwise requires, the following terms shall have the meanings assigned to them in this section. The singular form shall also signify the plural and the masculine form shall also signify the feminine. Words undefined in the following paragraphs shall have the meaning attributed to them in general usage as reflected by definitions in a standard dictionary.

Act means the Act of August 24, 1966 (Pub. L. 89-544), (commonly known as the Laboratory Animal Welfare Act), as amended by the Act of December 24, 1970 (Pub. L. 91-579), (the Animal Welfare Act of 1970), the Act of April 22, 1976 (Pub. L. 94-279), (the Animal Welfare Act of 1976), and the Act of December 23, 1985 (Pub. L. 99-198), (the Food Security Act of 1985), and as it may be subsequently amended.

Activity means, for purposes of part 2, subpart C of this subchapter, those elements of research, testing, or teaching procedures that involve the care and use of animals.

Administrative unit means the organizational or management unit at the departmental level of a research facility.

Administrator means the Administrator of the Animal and Plant Health Inspection Service, U.S. Department of Agriculture, or any other official of the Animal and Plant Health Inspection Service to whom authority has been delegated to act in his stead.

Ambient temperature means the air temperature surrounding the animal.

Animal means any live or dead dog, cat, nonhuman primate, guinea pig, hamster, rabbit, or any other warmblooded animal, which is being used, or is intended for use for research, teaching, testing, experimentation, or exhibition purposes, or as a pet. This term excludes: Birds, rats of the genus *Rattus* and mice of the genus *Mus* bred for use in research, and horses and other farm animals, such as, but not limited to livestock or poultry, used or intended for use as food or fiber, or livestock or poultry used or intended for use for improving animal nutrition, breeding, management, or production efficiency, or for improving the quality of food or fiber. With respect to a dog, the term means all dogs including those used for hunting, security, or breeding purposes.

Animal act means any performance of animals where such animals are trained to perform some behavior or action or are part of a show, performance, or exhibition.

APHIS means the Animal and Plant Health Inspection Service, United States Department of Agriculture.

APHIS official means any person employed by the Department who is authorized to perform a function under the Act and the regulations in 9 CFR parts 1, 2, and 3.

APHIS, REAC Sector Supervisor means a veterinarian or his designee, employed by APHIS, who is assigned by the Administrator to supervise and perform the official work of APHIS in a given State or States. As used in part 2 of this subchapter, the APHIS, REAC

Sector Supervisor shall be deemed to be the person in charge of the official work of APHIS in the State in which the dealer, exhibitor, research facility, intermediate handler, carrier, or operator of an auction sale has his principal place of business.

Attending veterinarian means a person who has graduated from a veterinary school accredited by the American Veterinary Medical Association's Council on Education, or has a certificate issued by the American Veterinary Medical Association's Education Commission for Foreign Veterinary Graduates, or has received equivalent formal education as determined by the Administrator; has received training and/or experience in the care and management of the species being attended; and who has direct or delegated authority for activities involving animals at a facility subject to the jurisdiction of the Secretary.

Business hours means a reasonable number of hours between 7 a.m. and 7 p.m., Monday through Friday, except for legal Federal holidays, each week of the year, during which inspections by APHIS may be made.

Business year means the 12-month period during which business is conducted, and may be either on a calendar or fiscal-year basis.

Carrier means the operator of any airline, railroad, motor carrier, shipping line, or other enterprise which is engaged in the business of transporting any animals for hire.

Cat means any live or dead cat (*Felis catus*) or any cat-hybrid cross.

Class "A" licensee (breeder) means a person subject to the licensing requirements under part 2 and meeting the definition of a "dealer" (§ 1.1), and whose business involving animals consists only of animals that are bred and raised on the premises in a closed or stable colony and those animals acquired for the sole purpose of maintaining or enhancing the breeding colony.

Class "B" licensee means a person subject to the licensing requirements under part 2 and meeting the definition of a "dealer" (§ 1.1), and whose business includes the purchase and/or resale of any animal. This term includes brokers, and operators of an auction sale, as such individuals negotiate or arrange for the purchase, sale, or transport of animals in commerce. Such individuals do not usually take actual physical possession or control of the animals, and do not usually hold animals in any facilities. A class "B" licensee may also exhibit animals as a minor part of the business.

Class "C" licensee (exhibitor) means a person subject to the licensing requirements under part 2 and meeting the definition of an "exhibitor" (§ 1.1), and whose business involves the showing or displaying of animals to the public. A class "C" licensee may buy and sell animals as a minor part of the business in order to maintain or add to his animal collection.

Commerce means trade, traffic, transportation, or other commerce:

(1) Between a place in a State and any place outside of such State, including any foreign country, or between points within the same State but through any place outside thereof, or within any territory, possession, or the District of Columbia; or

(2) Which affects the commerce described in this part.

Committee means the Institutional Animal Care and Use Committee (IACUC) established under section 13(b) of the Act. It shall consist of at least three (3) members, one of whom is the attending veterinarian of the research facility and one of whom is not affiliated in any way with the facility other than as a member of the committee, however, if the research facility has more than one Doctor of Veterinary Medicine (DVM), another DVM with delegated program responsibility may serve. The research facility shall establish the Committee for the purpose of evaluating the care, treatment, housing, and use of animals, and for certifying compliance with the Act by the research facility.

Dealer means any person who, in commerce, for compensation or profit, delivers for transportation, or transports, except as a carrier, buys, or sells, or negotiates the purchase or sale of: Any dog or other animal whether alive or dead (including unborn animals, organs, limbs, blood, serum, or other parts) for research, teaching, testing, experimentation, exhibition, or for use as a pet; or any dog for hunting, security, or breeding purposes. This term does not include: A retail pet store, as defined in this section, unless such store sells any animals to a research facility, an exhibitor, or a dealer (wholesale); or any person who does not sell, or negotiate the purchase or sale of any wild or exotic animal, dog, or cat and who derives no more than \$500 gross income from the sale of animals other than wild or exotic animals, dogs, or cats, during any calendar year.

Department means the U.S. Department of Agriculture.

Deputy Administrator means the Deputy Administrator for Regulatory Enforcement and Animal Care (REAC) or any other official of REAC to whom

authority has been delegated to act in his stead.

Dog means any live or dead dog (*Canis familiaris*) or any dog-hybrid cross.

Dwarf hamster means any species of hamster such as the Chinese and Armenian species whose adult body size is substantially less than that attained by the Syrian or Golden species of hamsters.

Endangered species means those species defined in the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and as it may be subsequently amended.

Euthanasia means the humane destruction of an animal accomplished by a method that produces rapid unconsciousness and subsequent death without evidence of pain or distress, or a method that utilizes anesthesia produced by an agent that causes painless loss of consciousness and subsequent death.

Exhibitor means any person (public or private) exhibiting any animals, which were purchased in commerce or the intended distribution of which affects commerce, or will affect commerce, to the public for compensation, as determined by the Secretary. This term includes carnivals, circuses, animal acts, zoos, and educational exhibits, exhibiting such animals whether operated for profit or not. This term excludes retail pet stores, horse and dog races, organizations sponsoring and all persons participating in State and county fairs, livestock shows, rodeos, field trials, coursing events, purebred dog and cat shows and any other fairs or exhibitions intended to advance agricultural arts and sciences as may be determined by the Secretary.

Exotic animal means any animal not identified in the definition of "animal" provided in this part that is native to a foreign country or of foreign origin or character, is not native to the United States, or was introduced from abroad. This term specifically includes animals such as, but not limited to, lions, tigers, leopards, elephants, camels, antelope, anteaters, kangaroos, and water buffalo, and species of foreign domestic cattle, such as Ankole, Gayal, and Yak.

Farm animal means any domestic species of cattle, sheep, swine, goats, llamas, or horses, which are normally and have historically been kept and raised on farms in the United States, and used or intended for use as food or fiber, or for improving animal nutrition, breeding, management, or production efficiency, or for improving the quality of food or fiber. This term also includes animals such as rabbits, mink, and chinchilla, when they are used solely for purposes of meat or fur, and animals

such as horses and llamas when used solely as work and pack animals.

Federal agency means an Executive agency as such term is defined in section 105 of title 5, United States Code, and with respect to any research facility means the agency from which the research facility receives a Federal award for the conduct of research, experimentation, or testing involving the use of animals.

Federal award means any mechanism (including a grant, award, loan, contract, or cooperative agreement) under which Federal funds are used to support the conduct of research, experimentation, or testing, involving the use of animals. The permit system established under the authorities of the Endangered Species Act, the Marine Mammal Protection Act, and the Migratory Bird Treaty Act, are not considered to be Federal awards under the Animal Welfare Act.

Federal research facility means each department, agency, or instrumentality of the United States which uses live animals for research or experimentation.

Field study means any study conducted on free-living wild animals in their natural habitat, which does not involve an invasive procedure, and which does not harm or materially alter the behavior of the animals under study.

Handling means petting, feeding, watering, cleaning, manipulating, loading, crating, shifting, transferring, immobilizing, restraining, treating, training, working and moving, or any similar activity with respect to any animal.

Housing facility means any land, premises, shed, barn, building, trailer, or other structure or area housing or intended to house animals.

Hybrid cross means an animal resulting from the crossbreeding between two different species or types of animals. Crosses between wild animal species, such as lions and tigers, are considered to be wild animals. Crosses between wild animal species and domestic animals, such as dogs and wolves or buffalo and domestic cattle, are considered to be domestic animals.

Impervious surface means a surface that does not permit the absorption of fluids. Such surfaces are those that can be thoroughly and repeatedly cleaned and disinfected, will not retain odors, and from which fluids bead up and run off or can be removed without their being absorbed into the surface material.

Indoor housing facility means any structure or building with environmental controls housing or intended to house animals and meeting the following three requirements:

(1) It must be capable of controlling the temperature within the building or structure within the limits set forth for that species of animal, of maintaining humidity levels of 30 to 70 percent and of rapidly eliminating odors from within the building; and

(2) It must be an enclosure created by the continuous connection of a roof, floor, and walls (a shed or barn set on top of the ground does not have a continuous connection between the walls and the ground unless a foundation and floor are provided); and

(3) It must have at least one door for entry and exit that can be opened and closed (any windows or openings which provide natural light must be covered with a transparent material such as glass or hard plastic).

Intermediate handler means any person, including a department, agency, or instrumentality of the United States or of any State or local government (other than a dealer, research facility, exhibitor, any person excluded from the definition of a dealer, research facility, or exhibitor, an operator of an auction sale, or a carrier), who is engaged in any business in which he receives custody of animals in connection with their transportation in commerce.

Inspector means any person employed by the Department who is authorized to perform a function under the Act and the regulations in 9 CFR parts 1, 2, and 3.

Institutional official means the individual at a research facility who is authorized to legally commit on behalf of the research facility that the requirements of 9 CFR parts 1, 2, and 3 will be met.

Isolation in regard to marine mammals means the physical separation of animals to prevent contact and a separate, noncommon, water circulation and filtration system for the isolated animals.

Licensed veterinarian means a person who has graduated from an accredited school of veterinary medicine or has received equivalent formal education as determined by the Administrator, and who has a valid license to practice veterinary medicine in some State.

Licensee means any person licensed according to the provisions of the Act and the regulations in part 2 of this subchapter.

Major operative procedure means any surgical intervention that penetrates and exposes a body cavity or any procedure which produces permanent impairment of physical or physiological functions.

Minimum horizontal dimension (MHD) means the diameter of a circular pool of water, or in the case of a square, rectangle, oblong, or other shape pool.

the diameter of the largest circle that can be inserted within the confines of such a pool of water.

Mobile or traveling housing facility means a transporting vehicle such as a truck, trailer, or railway car, used to house animals while traveling for exhibition or public education purposes.

Nonconditioned animals means animals which have not been subjected to special care and treatment for sufficient time to stabilize, and where necessary, to improve their health.

Nonhuman primate means any nonhuman member of the highest order of mammals including prosimians, monkeys, and apes.

Operator of an auction sale means any person who is engaged in operating an auction at which animals are purchased or sold in commerce.

Outdoor housing facility means any structure, building, land, or premise, housing or intended to house animals, which does not meet the definition of any other type of housing facility provided in the regulations, and in which temperatures cannot be controlled within set limits.

Painful procedure as applied to any animal means any procedure that would reasonably be expected to cause more than slight or momentary pain or distress in a human being to which that procedure was applied, that is, pain in excess of that caused by injections or other minor procedures.

Paralytic drug means a drug which causes partial or complete loss of muscle contraction and which has no anesthetic or analgesic properties, so that the animal cannot move, but is completely aware of its surroundings and can feel pain.

Person means any individual, partnership, firm, joint stock company, corporation, association, trust, estate, or other legal entity.

Pet animal means any animal that has commonly been kept as a pet in family households in the United States, such as dogs, cats, guinea pigs, rabbits, and hamsters. This term excludes exotic animals and wild animals.

Positive physical contact means petting, stroking, or other touching, which is beneficial to the well-being of the animal.

Primary conveyance means the main method of transportation used to convey an animal from origin to destination, such as a motor vehicle, plane, ship, or train.

Primary enclosure means any structure or device used to restrict an animal or animals to a limited amount of space, such as a room, pen, run, cage, compartment, pool, hutch, or tether. In the case of animals restrained by a

tether (e.g., dogs on chains), it includes the shelter and the area within reach of the tether.

Principal investigator means an employee of a research facility, or other person associated with a research facility, responsible for a proposal to conduct research and for the design and implementation of research involving animals.

Quorum means a majority of the Committee members.

Random source means dogs and cats obtained from animal pounds or shelters, auction sales, or from any person who did not breed and raise them on his or her premises.

Registrant means any research facility, carrier, intermediate handler, or exhibitor not required to be licensed under section 3 of the Act, registered pursuant to the provisions of the Act and the regulations in part 2 of this subchapter.

Research facility means any school (except an elementary or secondary school), institution, organization, or person that uses or intends to use live animals in research, tests, or experiments, and that (1) purchases or transports live animals in commerce, or (2) receives funds under a grant, award, loan, or contract from a department, agency, or instrumentality of the United States for the purpose of carrying out research, tests, or experiments:

Provided, That the Administrator may exempt, by regulation, any such school, institution, organization, or person that does not use or intend to use live dogs or cats, except those schools, institutions, organizations, or persons, which use substantial numbers (as determined by the Administrator) of live animals the principal function of which schools, institutions, organizations, or persons, is biomedical research or testing, when in the judgment of the Administrator, any such exemption does not vitiate the purpose of the Act.

Retail pet store means any outlet where only the following animals are sold or offered for sale, at retail, for use as pets: Dogs, cats, rabbits, guinea pigs, hamsters, gerbils, rats, mice, gophers, chinchilla, domestic ferrets, domestic farm animals, birds, and coldblooded species. Such definition excludes—

(1) Establishments or persons who deal in dogs used for hunting, security, or breeding purposes;

(2) Establishments or persons exhibiting, selling, or offering to exhibit or sell any wild or exotic or other nonpet species of warmblooded animals (except birds), such as skunks, raccoons, nonhuman primates, squirrels, ocelots, foxes, coyotes, etc.;

(3) Any establishment or person selling warmblooded animals (except birds, and laboratory rats and mice) for research or exhibition purposes; and

(4) Any establishment wholesaling any animals (except birds, rats and mice).

(5) Any establishment exhibiting pet animals in a room that is separate from or adjacent to the retail pet store, or in an outside area, or anywhere off the retail pet store premises.

Sanitize means to make physically clean and to remove and destroy, to the maximum degree that is practical, agents injurious to health.

Secretary means the Secretary of Agriculture of the United States or his representative who shall be an employee of the Department.

Sheltered housing facility means a housing facility which provides the animals with shelter; protection from the elements; and protection from temperature extremes at all times. A sheltered housing facility may consist of runs or pens totally enclosed in a barn or building, or of connecting inside/outside runs or pens with the inside pens in a totally enclosed building.

Standards means the requirements with respect to the humane housing, exhibition, handling, care, treatment, temperature, and transportation of animals by dealers, exhibitors research facilities, carriers, intermediate handlers, and operators of auction sales as set forth in part 3 of this subchapter.

State means a State of the United States, the District of Columbia, Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, or any other territory or possession of the United States.

Study area means any building room, area, enclosure, or other containment outside of a core facility or centrally designated or managed area in which animals are housed for more than 12 hours.

Transporting device means an interim vehicle or device, other than man, used to transport an animal between the primary conveyance and the terminal facility or in and around the terminal facility of a carrier or intermediate handler.

Transporting vehicle means any truck, car, trailer, airplane, ship, or railroad car used for transporting animals.

Weaned means that an animal has become accustomed to take solid food and has so done, without nursing, for a period of at least 5 days.

Wild animal means any animal which is now or historically has been found in the wild, or in the wild state, within the boundaries of the United States, its

territories, or possessions. This term includes, but is not limited to, animals such as: Deer, skunk, opossum, raccoon, mink, armadillo, coyote, squirrel, fox, wolf.

Wild state means living in its original, natural condition; not domesticated.

Zoo means any park, building, cage, enclosure, or other structure or premise in which a live animal or animals are kept for public exhibition or viewing, regardless of compensation.

Done in Washington, DC, this 25th day of August, 1989.

A. Strating,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-20425 Filed 8-30-89; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF AGRICULTURE

9 CFR Parts 2 and 3

[Docket No. 89-131]

RIN 0579-AA18

Animal Welfare

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the Animal Welfare regulations contained in 9 CFR part 2, to comply with and implement the amendments to the Animal Welfare Act (7 U.S.C. 2131, *et seq.*) ("Act") contained in Pub. L. 99-198, "The Food Security Act of 1985," enacted December 23, 1985, and to reflect our experience in administering the regulations. In addition to rewriting the regulations to facilitate compliance by making them easier to understand, we are adding a new subpart which pertains exclusively to research facilities, and which consolidates all of the regulations in part 2 applicable to research facilities. The revised regulations also provide requirements for registration and licensing under the Act, adequate veterinary care, handling, holding facilities, identification of animals, and recordkeeping. The revised regulations are necessary to clarify the responsibilities of regulated persons under the Act, as amended, and to promote animal welfare.

DATES: This final rule shall become effective October 30, 1989; however, the portions of the rule which concern or relate to information collection and recordkeeping will become effective October 30, 1989, upon approval by the Office of Management and Budget (OMB). The information collection requirements of this final rule have been

submitted to OMB for review and approval. The Department has requested that OMB conclude its review no later than October 30, 1989. If any portion is disapproved, notice of disapproval will be published in the Federal Register prior to that date.

FOR FURTHER INFORMATION CONTACT:

Dr. Dale F. Schwindaman, REAC, APHIS, USDA, Room 206, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-6491.

SUPPLEMENTARY INFORMATION:

Background

This final rule revises the regulations contained in 9 CFR 2.1 through 2.130. It is the result of an intensive effort that began in 1985 when Congress amended the Animal Welfare Act (7 U.S.C. 2131, *et seq.*) (the Act) in Public Law 99-198, "The Food Security Act of 1985," and directed the Secretary of Agriculture to promulgate regulations governing the humane handling, care, treatment, and transportation of animals by dealers, research facilities, and exhibitors, including requirements for exercise of dogs and a physical environment adequate to promote the psychological well-being of nonhuman primates. The final rule reflects APHIS's many years of experience in enforcing the Act and the Animal Welfare regulations. We considered many thousands of public comments in deciding upon the content of the final rule. Our ongoing consultation with the U.S. Department of Health and Human Services, as well as other Federal agencies concerned with animal welfare, also contributed significantly to determining how best to fulfill our statutory mandate.

Due to the length and complexity of this document, it is broken down into general headings and specific subheadings where appropriate, to assist the reader. The supplementary information begins with a brief history of this rule-making. Next we describe the changes we have made in the final rule, both in form and in content. These changes are based upon our reconsideration of the proposed regulations in light of the comments we received and our consultation with other Federal agencies. Part 2 has been reorganized, in part, in this final rule, so that all requirements imposed upon research facilities are contained in one subpart of the regulations. We then discuss, in detail, how the requirements imposed upon research facilities under the final rule differ substantively from the two previous proposals, and how they do not. We also describe other changes we are making to part 2 based upon our reconsideration of those

provisions. Our response to the comments we received in response to the March 15, 1989 revised proposal follows. Lastly, we address the concerns raised in the public comment letters and by Federal agencies regarding our economic assessments of the cost of implementing the proposed regulations.

Proposed Rules

The Animal Welfare regulations are contained in Title 9 of the Code of Federal Regulations, chapter I, subchapter A—Animal Welfare, parts 1, 2, and 3 (the regulations). Part 1 provides definitions of the terms used in parts 2 and 3. Part 2 sets forth the administrative and institutional responsibilities of regulated persons under the Act, and part 3 provides specifications for the humane handling, care, treatment, and transportation of animals covered by the Act by regulated entities.

In two documents published in the Federal Register, on March 31, 1987 (52 FR 10292-10298 and 52 FR 10298-10322, respectively), we proposed to revise parts 1 and 2 of the Animal Welfare regulations. In addition to the definitions of terms, the proposed amendments pertained to licensing of dealers and exhibitors, and registration of intermediate handlers, research facilities, and carriers. The proposed regulations also set forth requirements applicable to all regulated entities for recordkeeping and identification of animals, holding periods and facilities, inspections, adequate veterinary care, and requirements for Institutional Animal Care and Use Committees as agents of the research facilities. These changes were proposed under the authority of the Animal Welfare Act, as amended by Congress in 1985. At that time, we did not publish a proposed rule to amend part 3—"Standards" of the regulations.

We solicited comments concerning the proposal for a 60-day period ending June 1, 1987. The comment period was twice extended and ended on August 27, 1987. A total of 7,857 comments were timely received and considered. Many of the comments we received stated that it was difficult to comment upon the proposals to amend parts 1 and 2 of the regulations independently of our proposal to amend the standards in part 3. We have maintained that upon their publication as final rules, parts 1 and 2 of the regulations can be fully implemented with the existing standards in part 3. In response to the comments, we decided to publish revised proposals to amend parts 1 and 2 along with our proposed rule to amend part 3, to assist