(1992). APHIS' procedures supplant the APHIS Guidelines Concerning Implementation of NEPA Procedures originally published in the **Federal Register** on August 28, 1979 (44 FR 50381–50384) and corrections as published in the **Federal Register** on August 31, 1979 (44 FR 51272–51274).

On June 3, 1994, we published in the Federal Register (59 FR 28814–28821, Docket No. 93-165-1) proposed procedures implementing CEQ's NEPA regulations. Comments on the proposed procedures were required to be received on or before July 18, 1994. During the comment period, we received a request from the Association of Natural Biocontrol Producers that we extend the comment period. The comment stated that additional time was necessary to allow interested parties to evaluate fully and respond to the proposed procedures. In response to this comment, we published a notice in the Federal Register on July 22, 1994 (59 FR 37442, Docket No. 93–165–2), reopening and extending the comment period until August 2, 1994.

We received seven comments by August 2, 1994, from the following commenters: American Veterinary Medical Association; Asgrow Seed Company; Association of Natural Biocontrol Producers; Environmental Defense Fund; State of California, Department of Food and Agriculture; The Humane Society of the United States; and the Office of the Secretary of the U.S. Department of the Interior. We carefully considered all of the comments we received. Noteworthy issues that were raised in commentswhether or not they prompted changes to the proposed procedures—are developed below either under the appropriate section headings or, if they do not fit within a section heading, under the "miscellaneous" heading that follows. Sections 372.1 through 372.3 and 372.7 through 372.10 were not addressed in comments and, except where language was modified to improve clarity or eliminate, insofar as possible, "jargon," remain as originally proposed.

Discussion of Issues

Definitions (Section 372.4)

One commenter, concerned that some language in the procedures is too species-specific, has suggested that APHIS broaden significantly its definition of "environment." The term "environment" is not defined in these procedures. CEQ's regulations provide that the term "human environment' shall be interpreted comprehensively to include the natural and physical

environment and the relationship of people with that environment." ¹ In evaluating impacts of agency proposals and exploring alternatives under NEPA, we are guided by CEQ's interpretation of the term "human environment." In certain cases, limiting language is used in these procedures, not to circumscribe the scope of required NEPA analysis, but in recognition of program jurisdictional constraints. In no case is language employed to limit APHIS' environmental responsibilities.

Classification of Actions (Section 372.5)

One commenter has criticized the failure of this section to distinguish consistently between specific criteria for and identification of classes of action. He has also urged that examples and classes of action be presented with much greater specificity. We agree and have rewritten this section (the substance of which has not been changed) in an attempt to accommodate those concerns and for general clarification.

Categorically Excluded Actions

One commenter has asked who will make the decisions regarding what is or is not categorically excluded. The decision in the first instance belongs to program personnel who should be greatly assisted in that effort through the rewrite of this section.

Another commenter is "concerned about the possibility that APHIS may, under the language now proposed, consider the seizure or removal of wild animals from a population for such purposes as disease testing as actions which are categorically excluded." The fact is that such seizures or removals, which are generally very limited in scope and humanely pursued, would seldom have the potential to affect significantly the quality of the human environment.²

One commenter has inquired whether small-scale field tests of genetically engineered plants is included as a categorically excluded action under paragraph (c)(2), which provides an exclusion for "[a]ctivities that are carried out in laboratories, facilities, or other areas designed to eliminate the potential for harmful environmental effects." In fact, the environmental assessment process has been undertaken

for hundreds of permits that have been issued to conduct small-scale (or "confined," as expressed in current biotechnology literature) field tests of genetically engineered plants. In every case a finding of no significant impact was reached, reason enough to conclude that such tests ought to be categorically excluded. To eliminate any confusion, this action (including "notifications," which are little more than logical extensions) will be described separately as an example of categorical exclusions under a retitled paragraph (c)(3). We emphasize, in response to concerns raised by another commenter on this subject, that this categorical exclusion applies only to confined field tests; unconfined testing would not qualify for categorical exclusion.

Two other commenters maintain that the movement and release of at least some nonindigenous species also would qualify for categorical exclusion under the same exclusion theory as small-scale field tests of genetically engineered plants. We agree that categorical exclusion of some nonindigenous species activities-movement to and from "containment," as well as the release into a State's environment of pure cultures of organisms that are either native or are established introductions—is appropriate. These actions also will be described separately as examples of categorical exclusions under paragraph (c)(3).

Finally, the substance of paragraph (c)(3) of the proposed procedures is provided as an example under paragraph (c)(1) of these final procedures. The substance of paragraph (c)(5) of the proposed procedures appears in these final procedures as paragraph (c)(3), which has been retitled "Licensing and permitting" and expanded to include activities described in the preceding two paragraphs.

Early Planning for Applicants and Non-APHIS Entities (Section 372.6)

One commenter has complained that the failure to develop "the necessary environmental data needs" leaves potential applicants in the dark. This situation, according to the commenter, could lead to imposition of inconsistent and burdensome requirements. Data requirements have indeed been developed for some agency programs.³ Other programs are in the process of incorporating such requirements into their guidance.

^{1 40} CFR 1508.14.

² If the animals to be tested were listed as endangered or threatened by the Federal Government or otherwise protected (by treaty, for example), then categorical exclusion would clearly not be appropriate. In that case, the environmental assessment or environmental impact statement process (as well as any other required consultation or process) would be undertaken.

³ See for example, 7 CFR 340.4 (data requirements for applications seeking authorization to introduce genetically engineered organisms into the environment).