

*Miscellaneous**Appeals*

One commenter has expressed concern about "the absence of proposed procedures to provide the public with an opportunity to appeal APHIS decisions with which it disagrees." The appeal procedures, according to that commenter, should be made a part of the agency's NEPA procedures so that the public will not be forced "to seek judicial review as the first and only response to inadequate NEPA documents."

We do not believe that the agency's NEPA procedures should be the vehicle through which APHIS decisions may be appealed. These procedures are designed to complement the CEQ regulations and to ensure that the NEPA process aids this agency's decisionmaking and contributes to public understanding of APHIS' duties and functions at all levels of administrative action. It is through NEPA's public process that the best possible documentation will be prepared; turning that process into a form of adjudication will do nothing to enhance document quality.

Emergencies

The agency has been urged by one commenter to address "emergencies" in its NEPA procedures. It has been recommended that (1) the term "emergency" be defined as "a situation or occurrence of an extremely serious nature that has developed suddenly and unexpectedly and requires immediate action to address a serious threat to life or property," and (2) a provision be added to the procedures that would require the agency to consult with CEQ in emergency circumstances "as soon as possible about alternative arrangements for compliance with NEPA."

The CEQ regulations, which deal expressly with "emergency circumstances," have been (and will continue to be) complied with by APHIS as necessary. Duplicating the CEQ "emergency" regulations here would serve no useful purpose; indeed, we are discouraged from doing so.⁴

Compliance Issues

One commenter has expressed concern that Executive Order 12778 "moves all decision making and document preparation to the highest possible level—USDA national staff in Hyattsville" and that the executive order is at "odds with CEQA [California Environmental Quality Act], and leaves

[California citizens and officials] open to limitation under CEQA despite having met NEPA standards."

The notice of proposed rulemaking merely recited how these procedures are affected by Executive Order 12778, which we cannot disavow. But the fact is that APHIS has not centralized environmental decisionmaking; on the contrary, environmental decisionmaking at this agency is in the process of being decentralized. Furthermore, it is doubtful that California's CEQA would be found to be in "conflict" with this agency's procedures. Nevertheless, principles of federalism permit suits to be brought in State court under State law whether or not there is compliance with a counterpart Federal statute.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

These procedures satisfy the requirement to implement CEQ's NEPA regulations and have been designed to reduce to a minimum the regulatory burden on small entities and all other individuals and organizations, public and private.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that these procedures will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

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

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule (1) Preempts all State and local laws and regulations that are in conflict with these procedures; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

The National Environmental Policy Act

Implementation of these procedures will not significantly impact the quality of the human environment.

Paperwork Reduction Act

These procedures contain no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 372

Administrative practice and procedure, Environmental assessment, Environmental impact statement, and National Environmental Policy Act.

Accordingly, title 7, chapter III, of the Code of Federal Regulations is amended by adding a new part 372 to read as follows:

PART 372—NATIONAL ENVIRONMENTAL POLICY ACT IMPLEMENTING PROCEDURES*Sec.*

- 372.1 Purpose.
- 372.2 Designation of responsible APHIS official.
- 372.3 Information and assistance.
- 372.4 Definitions.
- 372.5 Classification of actions.
- 372.6 Early planning for applicants and non-APHIS entities.
- 372.7 Consultation.
- 372.8 Major planning and decision points and public involvement.
- 372.9 Processing and use of environmental documents.
- 372.10 Supplementing environmental impact statements.

Authority: 42 U.S.C. 4321 *et seq.*; 40 CFR parts 1500–1508; 7 CFR parts 1b, 2.17, 2.51, 371.2, 371.2(m), 371.13(d), and 371.14(b).

§ 372.1 Purpose.

These procedures implement section 102(2) of the National Environmental Policy Act by assuring early and adequate consideration of environmental factors in Animal and Plant Health Inspection Service planning and decisionmaking and by promoting the effective, efficient integration of all relevant environmental requirements under the National Environmental Policy Act. The goal of timely, relevant environmental analysis will be secured principally by adhering to the National Environmental Policy Act implementing regulations (40 CFR parts 1500–1508), especially provisions pertaining to timing (§ 1502.5), integration (§ 1502.25), and scope of analysis (§ 1508.25).

§ 372.2 Designation of responsible APHIS official.

The Administrator of APHIS, or an agency official to whom the Administrator may formally delegate the task, is responsible for overall review of APHIS' NEPA compliance.

⁴ See 40 CFR 1507.3 ("Such procedures shall not paraphrase these regulations").