

# Notices

**Federal Register**

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This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Forms Under Review by Office of Management and Budget

April 28, 1995.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) Who will be required or asked to report; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404-W Admin. Bldg., Washington, D.C. 20250, (202) 690-2118.

### Revision

- Foreign Agricultural Service Application for Supplementary Dairy Product Import Licenses—Addendum FAS 924A  
Individuals or households; Business or other for profit; 1,560 responses; 920 hours  
Richard Warsack, (202) 720-9439
- Agricultural Marketing Service Meat Market News  
Individuals or households; Business or other for-profit; Farms; State, Local or Tribal Government; 195,000 responses; 3,250 hours  
Jimmy A. Beard, (202) 720-6231

- Agricultural Marketing Service Cotton Classification and Market News Service  
CN-59  
Business or other for-profit; 2,494 responses; 237 hours  
Elvis W. Morris, (901) 384-3000

### Extension

- Animal and Plant Health Inspection Service APHIS Exit Survey  
Individuals or households; 300 responses; 75 hours  
Richard F. Fraser, (301) 734-5747
- Foreign Agricultural Service Regulations—Financing Commercial Sales of Agricultural Commodities Under Title I, P.L. 480—Recordkeeping and Reporting Requirements  
Business or other for-profit; 252 responses; 528 hours  
James Chase, (202) 720-5780.  
Donald E. Hulcher,  
*Deputy Departmental Clearance Officer.*  
[FR Doc. 95-10949 Filed 5-3-95; 8:45 am]  
BILLING CODE 3410-01-M

### Office of the Secretary

#### Agricultural Biotechnology Research Advisory Committee Meeting

In accordance with the Federal Advisory Committee Act of October 1972 (Pub. L. 92-463, 86 Stat. 770-776), the U.S. Department of Agriculture (USDA), Research, Education, and Economics, announces the following advisory committee meeting:

*Name:* Agricultural Biotechnology Research Advisory Committee.

*Date:* June 26, 1995.

*Time:* 9:00 a.m. to approximately 5:00 p.m.  
*Place:* Club Room, Westpark Hotel, 1900 North Fort Myer Driver, Arlington (Rosslyn), Virginia 22209.

*Type of Meeting:* This meeting is open to the public. Persons may participate in the meeting as time and space permit. Members of the public wishing to speak at the meeting may be given such an opportunity at the discretion of the Chair.

*Comments:* The public may file written comments before or after the meeting with the contact person specified below.

*Purpose:* To review matters pertaining to agricultural biotechnology research and to develop advice for the Secretary through the Under Secretary for Research, Education, and Economics with respect to policies, programs, operations and activities associated with the conduct of agricultural biotechnology research.

The items to be considered at this meeting include performance standards for research with genetically modified aquatic organisms.

*Contact Persons:* Dr. Alvin L. Young, Director, or Dr. Daniel D. Jones, Deputy Director, Office of Agricultural Biotechnology, Cooperative State Research, Education, and Extension Service, Department of Agriculture, Room 3868, South Building, 14th and Independence Avenue SW., Washington, D.C. 20250-0904, phone (202) 720-5853.

Done at Washington, D.C., this 17th day of April, 1995.

**Floyd P. Horn,**

*Acting Under Secretary, Research, Education, and Economics.*

[FR Doc. 95-11041 Filed 5-3-95; 8:45 am]

BILLING CODE 3410-22-M

### Forest Service

[RIN 059-AB47]

#### Animal Damage Management

AGENCY: Forest Service, USDA.

ACTION: Notice; adoption of final policy.

**SUMMARY:** The Forest Service is adopting a revised policy for animal damage management on National Forest System lands. This action incorporates the tenets of a 1993 Memorandum of Understanding between the Animal and Plant Health Inspection Service (APHIS) and the Forest Service. The policy clarifies the role and responsibility of the Forest Service in coordinating with the APHIS—Animal Damage Control program on APHIS-sponsored animal damage management plans and in cooperating with APHIS to manage wild vertebrates causing damage on National Forest System lands under the Animal Damage Control Act of 1931, as amended. This final policy also outlines the procedures for settling differences between the two agencies and clarifies agency responsibility for National Environmental Policy Act (NEPA) compliance.

**EFFECTIVE DATE:** This policy is effective May 4, 1995.

#### FOR FURTHER INFORMATION CONTACT:

Tom Darden, Wildlife Program Leader, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090-6090, (202) 205-1205.

## SUPPLEMENTARY INFORMATION:

**Background**

On June 13, 1994, the Forest Service published a proposed revision of its animal damage management direction in Forest Service Manual Chapter 2650 [59 FR 30334]. The proposed policy clarified the role of the Forest Service, and Animal and Plant Health Inspection Service (APHIS) in NEPA compliance for animal damage management activities on National Forest System lands.

The Forest Service cooperates with APHIS under the Animal Damage Control Act of 1931, as amended (7 U.S.C. 426-426c), which, in part, authorizes animal damage management activities on National Forest System lands. In cooperation with the Forest Service and States, APHIS carries out animal damage management activities on some National Forest System lands, mostly to minimize livestock losses from predation by coyotes, black bears, and other predators. Under other authorities (e.g., Multiple-Use, Sustained-Yield Act of 1960 [16 U.S.C. 528(note), 528-531]), the Forest Service conducts activities to control animal damage caused by small mammals and other animals to National Forest System resources, such as damage to timber stands and roads by beavers.

The Secretary of Agriculture has assigned APHIS the lead responsibility for animal damage management activities (7 CFR 2.51(a)(41)). The principal change proposed to existing Forest Service Manual policy (FSM 2650) is the designation of APHIS as the lead agency for preparing environmental documentation on those animal damage management activities conducted by APHIS that would be carried out on National Forest System lands. The Forest Service will be a cooperating agency in preparing and reviewing environmental analysis and documentation of actions proposed by APHIS that would occur on or affect National Forest System lands. In that role, the Forest Service would provide any mitigation measures needed to ensure that animal damage management activities performed by APHIS are compatible with direction established in the Forest Land and Resource Management Plan.

The proposed policy would bring the Forest Service Manual direction into conformance with the Memorandum of Understanding (MOU) between APHIS and the Forest Service, signed June 18, 1993. Notice of availability of the MOU was published in the **Federal Register** on July 13, 1993 (58 FR 37704).

The 1993 MOU clarified the role of each Forest Supervisor in cooperating with APHIS and the States to ensure that animal damage management activities performed by APHIS are compatible with direction provided in forest plans. The MOU also clarified that APHIS, in cooperation with the Forest Service, develops annual work plans for animal damage management activities on National Forest System lands. These plans address control areas, specific control techniques, emergency control procedures, timeframes, and other limitations and restrictions on the implementation of ADM decisions based on NEPA analysis. The MOU recognizes APHIS annual work plans as establishing the guidelines for predator control actions initiated by APHIS on National Forest System lands.

**Response to Public Comments Animal Damage Management Policy**

The public comment period on the proposed policy closed August 12, 1994. The Forest Service received 58 letters from individuals, organizations, six State agencies, and one federal agency.

Of the 58 letters submitted, two (2) letters expressed support for the proposed policy. Four (4) letters expressed support if specific changes were made to the policy. Two (2) letters requested that all animal damage management be abolished. One (1) letter expressed support for only non-lethal methods of animal damage management. Forty six (46) letters expressed opposition to the policy changes for a variety of reasons.

The 58 letters were from 11 Western, six Eastern, two Southern and two Midwestern states. Of the 58 letters, 30 were written by individuals who identifies no affiliation with any group or organization. Twenty-one (21) letters represented a variety of organizations, including: animal rights or welfare organizations (11 letters); environmental action organizations (3 letters); organizations concerned with biodiversity (3 letters); wilderness organizations (3 letters); an organization of state agencies (1 letter). Six letters were from State agencies with responsibility for fish and wildlife management. One letter was from a federal agency. A summary of major comments received and the agency response to them follow.

**1. Role of States**

*Comment:* Of the 50 States, six responded individually and comments were generally favorable. Six State fish and wildlife agencies and the International Association of Fish and

Wildlife Agencies, representing all the 50 States, generally concurred with the proposed policy. Two State agencies, however, requested (1) that a statement be included that any animal damage management activities on National Forest System (NFS) lands by any individual or agency must be done in accordance with State law; and (2) section 2651.2 be revised to require not only cooperation but also consultation with the State Fish and Wildlife agencies to control damage caused by game animals and furbearers through hunting or trapping, where practical.

*Response:* While "cooperation" requires "consultation", the Forest Service has no substantive concern with revising section 2651.2 to include "consultation" and has adopted the proposed suggestion.

The Forest Service, historically, has viewed the regulation of hunting and fishing as the responsibility of the States. This is recognized in agency direction and FS cooperative agreements with State fish and wildlife agencies. This policy does not infringe or modify that approach. Since 1897, under the federal statutes governing National Forests, general civil and criminal jurisdiction of States has extended to federal lands reserved as National Forests. 16 U.S.C. 480. Over the years, State wildlife and game laws have therefore controlled hunting and fishing in these reservations. Beginning in 1960, when Congress enacted modern, multiple-use provisions for forest resources, it carefully preserved the States' role in managing the wildlife resources in National Forests:

It is the policy of Congress that the national forests are established and shall be administered for (multiple use). \* \* \* Nothing herein shall be construed as affecting the jurisdiction of the several States with respect to wildlife and fish on the national forests (16 U.S.C. 528). More recently, Congress reiterated the States' role over wildlife, hunting, and fishing on national forest land in the Federal Land Management Policy Act of 1976: (N)othing in this Act shall be construed as authorizing the Secretary concerned to require federal permits to hunt and fish on \* \* \* lands in the National Forest System \* \* \* or as enlarging or diminishing the responsibility or the authority of the States for management of fish and resident wildlife (43 U.S.C. 1732 (b)).

Thus, consistent with the statutory context, the Forest Service is strongly encouraged to rely on State regulation of hunting on National Forest System Lands; and the Forest Service is not expected to intervene, absent some overriding federal concern. See, e.g., *Hunt v. United States*, 278 U.S. 96

(1928). The new FSM 2650 is consistent with this approach.

## 2. Loss of Administrative Appeal Opportunity

*Comment:* While recognizing that APHIS is subject to the National Environmental Policy Act (NEPA), many reviewers opposed designating APHIS as the lead agency for NEPA compliance. Respondents emphasized that APHIS, unlike the Forest Service, has no administrative appeal process for NEPA decision documents. Several reviewers stated that the loss of this administrative process is very significant to them, leaving only the option of challenging animal damage management decisions in court.

*Response:* While those interested in ADM activities carried out by APHIS on NFS lands have enjoyed an appeal opportunity until now, this is not a "right." The only reason APHIS-ADC proposals affecting NFS lands have been subject to appeal under Forest Service procedures until now is that, prior to the 1993 MOU, the Forest Service has assumed lead agency responsibility for NEPA analysis and disclosure. Since APHIS will not assume these NEPA compliance duties, those interested and affected by an APHIS-initiated ADM proposal will no longer be able to use Forest Service appeals procedures, since the Forest Service will not be the proponent or deciding agency.

It is true that APHIS has no formal appeal process, but APHIS must consider all issues and concerns presented to them by the public during the NEPA process and comment period. A final decision must address those concerns raised during public comment periods. Given the protections of NEPA procedures and the availability of judicial review, the Forest Service does not believe the loss of ADM appeal opportunity is sufficient grounds for revising the final policy.

## 3. APHIS NEPA Experience and Procedures

*Comment:* Many of the reviewers who objected to transferring NEPA compliance from the Forest Service to APHIS asserted that APHIS has no formalized NEPA procedures.

*Response:* This comment is not accurate and provides no compelling reason for the Forest Service and APHIS to revise the terms of the MOU. APHIS follows Council on Environmental Quality (CEQ) NEPA Regulations (40 CFR parts 1500-1508, et. seq.), the USDA NEPA procedures (7 CFR part 1b), and the APHIS NEPA Implementing Procedures (60 FR 6000-6005, Feb. 1, 1995) effective March 3, 1995, in

meeting its NEPA compliance obligations.

*Comment:* Twenty-six respondents, including a government agency, expressed concerns about differences between APHIS and Forest Service NEPA procedures, and differences in quality of analyses. They thought that APHIS lacked sufficient experience in writing environmental documents.

*Response:* While APHIS and Forest Service NEPA procedures, and ultimately, NEPA documents, may be identical, they must be prepared in accordance with the Council on Environmental Quality (CEQ) regulations. Where APHIS requests NEPA analysis assistance or help with developing NEPA compliance procedures, the Forest Service will cooperate with APHIS personnel. The MOU and final policy provide the basis for such a partnership. Similarly, as the Forest Service or another agency reviews NEPA documents prepared by APHIS, each agency can note any issues related to quality of analyses and suggest improvement. Additionally, in its leadership and training roles, the Council on Environmental Quality has had opportunity to work with APHIS as it devised formal NEPA implementing procedures. CEQ will have additional opportunities as APHIS implements these procedures and prepares NEPA documents on animal damage management activities.

## 4. Abdication of Forest Service Responsibility

*Comment:* Eleven of the response letters claimed that the Forest Service is "abdicating its responsibility" or "turning over all decisionmaking procedures" to APHIS and that as a result the Forest Service will not be able to "adequately critique and challenge Animal Damage Control proposals and data." These respondents all expressed concern that the Forest Service would no longer take an active role in managing these activities. Additionally, another agency asked "if APHIS would have the lead in ensuring compliance with forest land and resource management plans on NFS lands? To what extent might APHIS predator control policies conflict with such plans, and which governs in the event of a conflict, and who decides?"

*Response:* There are two assertions underlying these comments: (1) that the Forest Service has all [ultimate] authority for ADM activities and (2) that the Forest Service is abdicating its responsibilities for ADM on National Forest System lands (NFS). Neither of these assertions is accurate. The legal authorities of each agency are

recognized in the Memorandum of Understanding (MOU) between APHIS and the Forest Service, signed in June 1993.

Under the final policy and the MOU, tools and procedures for animal damage management activities on NFS lands are to be used "according to a plan developed in compliance with National Environmental Policy Act (NEPA), National Forest Management Act (NFMA); and Animal Damage Control Act." This plan is the Wildlife Damage Management (WDM) Plan, developed by APHIS/ADC in cooperation with the land management agencies, including the Forest Service. The plan is assessed through NEPA documents that cover an entire forest or larger area and is developed under APHIS/ADC leadership. An annual work plan implements the WDM plans, which APHIS-ADC prepares to analyze impacts in logical geographic areas to assess damage caused by wildlife and alternative strategies to manage the damage, regardless of land ownership status. These assessments include NEPA analysis and consider the concerns of all affected interests. The WDM plans are completed as necessary, or when new or changed conditions occur, prior to specific ADM actions. The Forest Service also cooperates with APHIS-ADC in development and review of these WDM plans. The 1993 Memorandum of Understanding states that:

APHIS-ADC is the agency with the authority and expertise under the Animal Damage Control Act of March 2, 1931, as amended; and pursuant to The Rural Development, Agriculture, and Related Agencies Appropriation Act of 1988 for providing ADM services. This includes maintaining technical expertise in the science of animal damage management, control tools and techniques, conducting ADM research, conducting management programs, and NEPA compliance on activities related to predator control [that APHIS-ADC conducts].

This approach in the MOU is based on the Secretary of Agriculture's longstanding assignment of ADM activities to APHIS. Additionally, the Memorandum of Understanding states that both the Forest Service and APHIS agree to:

Ensure interagency coordination and concurrence on the effects of predator control activities on National Forest resources before NEPA decisions on predator control are signed.

The Secretary has delegated National Forest System forest planning authorities in the Chief of the Forest Service, including the responsibility to ensure that Forest Service authorized

activities are not in conflict with forest plans. The MOU allows the Forest Service to ensure consistency of ADM activities with Forest Plans, agency regulations, and policy.

It is impossible to speculate whether, or to what degree, if any, APHIS Animal Damage Management activities might conflict with Forest Plans. If there is any conflict, the Forest Service will identify and APHIS will adopt these measures necessary to ensure consistency with the goals and objectives in the Forest Plans. The MOU formalizes the two agency's intent to work closely and cooperate on all activities.

Finally, the Memorandum of Understanding also calls for annual meetings at the State and regional levels to evaluate and coordinate ADM activities. Therefore, on its face, the 1993 MOU recognizes the Forest Service duty to regulate use of NFS lands and ensures that the Forest Service plans a cooperative role in reviewing and commenting on proposed actions and associated NEPA documents prior to APHIS making a decision for predator ADM activities.

If conflicting interpretations arise, the Forest Service will make the final determination of whether the proposed activity conforms to a standard or guideline in a forest plan. A fundamental principle of APHIS' ADM program is its commitment to comply with landowner/manager's restrictions as to where animal damage management activities can and cannot be conducted.

##### 5. Animal Damage Management in Wilderness

*Comment:* Three respondents expressed concerns about ADM activities in wilderness areas, stating that this "is counter to the meaning and intent of a wilderness area."

*Response:* All ADM activities on NFS lands must be carried out in a manner consistent with the Wilderness Act and subsequent amendments establishing wilderness areas within the NFS system.

##### 6. Compatibility With Ecosystem Management

*Comment:* Nine reviewers stated that Animal Damage Management is incompatible with the Forest Service's ecosystem management approach on NFS lands.

*Response:* There is nothing inherent in Animal Damage Management that is incompatible with ecosystem management. Under the final policy and the 1993 MOU, APHIS will consult with the Forest Service concerning any and all effects of APHIS ADM actions on NFS lands. The 1993 MOU states that both agencies agree to:

Conduct ADM on NFS lands in accordance with the APHIS-ADC Policies, USDA policy on fish and wildlife and consistent with Forest Land and Resource Management Plans" and to "[e]nsure interagency coordination and concurrence on the effects of predator control activities on National Forest resources before NEPA decisions on predator control are signed."

*Comment:* In addition, another agency stated that the Forest Service recently signed a MOU with the Fish and Wildlife Service (FWS), Bureau of Land Management (BLM), National Park Service (NPS), and National Marine Fisheries Service (NMFS), "\* \* \* which encourages an ecosystem approach to addressing endangered species. How will FS ensure that it meets this commitment where APHIS is the lead agency?"

*Response:* The Forest Service's cooperative role will ensure that ADM activities are consistent with broader goals and mandates such as ecosystem management. APHIS will coordinate with the Forest Service concerning any and all effects of their actions on Forest Service lands including the Forest Service's ecosystem management approach.

##### 7. Inadequate Opportunity for Public Comment

*Comment:* Ten reviewers stated that designating APHIS as the lead agency for NEPA compliance for Animal Damage Management was completed with inadequate opportunity for comment.

*Response:* Intradepartmental agreements have always been considered a routine business operation of the agency. Such agreements are the mechanisms by which USDA agencies reach agreement on responsibilities and procedures to be followed when programs and activities involve more than one USDA agency. The Forest Service places intradepartmental agreements into Title 1500 of the Forest Service Manual to ensure that agency personnel across the country have access to them in carrying out day-to-day management activities. The Forest Service interprets such intra-agency agreements to be of the same nature as administrative support activities such as personnel, procurement, service contracting and other routine business practices. As such, the Agency was not legally required to give notice of and opportunity to comment on the agreement, pursuant to 36 CFR part 216. However, the Forest Service did give notice of the new agreement on July 13, 1993, at 58 FR 37704 and notice that copies were available upon request. Subsequently, the agency decided to

give notice of revisions to its Animal Damage Management policy arising from implementation of the 1993 MOU. The notice was published in a **Federal Register** Notice on June 13, 1994, at 59 FR 30334 and provided a 60-day comment period. Thus, the public has been given adequate notice of and adequate opportunity to comment on the proposed policy.

##### 8. Legality of Animal Damage Management Activities on NFS Lands and of Transfer of NEPA Responsibilities

*Comment:* Thirty-five respondents stated that it is "illegal" for APHIS/ADC to conduct animal damage management on NFS lands or for the Forest Service to "transfer" NEPA planning responsibilities to APHIS. These respondents contend that, in doing so, the Forest Service violates the Endangered Species Act, National Forest Management Act, Multiple-Use Sustained Yield Act, Wilderness Act, and the Animal Damage Control Act. Additionally, another agency asked if the Forest Service role as stated in FSM 2651.1 is consistent with APHIS approach so that ESA obligations are met.

*Response:* The MOU serves to reemphasize the authority that APHIS and the State agencies already have for ADM activities on National Forest System lands. Under the Animal Damage Control Act of 1931, as amended, the Secretary of Agriculture is authorized to control predators and other wild animals causing damage on NFS lands. The Secretary has delegated this authority to APHIS at 7 CFR 2.51(a)(41). Animal damage management for predators has never been a Forest Service responsibility. APHIS is the authorized action agency and has had, and continues to have, responsibility for its ADM activities. Therefore, it is completely lawful for APHIS to conduct animal damage management on NFS land. It is also appropriate for APHIS to be the lead agency in preparing environmental documentation of APHIS-sponsored ADM activities on NFS lands.

However, the policy, at FSM 2651.1, explicitly recognizes the responsibility of Forest Supervisors in cooperating with APHIS to complete necessary site-specific environmental analysis and documentation of actions proposed by APHIS and in providing mitigation measures to ensure that animal damage management activities performed by APHIS are compatible with direction provided in forest plans.

As the lead agency (40 CFR 1508.16) for completing environmental

documentation of APHIS-sponsored ADM activities on NFS lands, APHIS will also be responsible for completion of all Endangered Species Act-mandated interagency consultations (16 U.S.C. 1536.7; FSM 2671.4). Presently, APHIS operates under the programmatic biological opinion issued by the U.S. Fish and Wildlife Service for the Animal Damage Control Program on July 28, 1992 and will consult with the U.S. Fish and Wildlife Service both formally and informally, as appropriate, under Section 7 of the Endangered Species Act, on future actions including those on NFS lands.

As to consistency of approaches to ensure Endangered Species Act (ESA) compliance, under the MOU, the FS and APHIS will cooperate in ESA compliance. In addition to changes based on public comment, the Forest Service, after consideration of the potential for joint responsibility under the ESA, developed additional policy to assure consistent application of protection for threatened and endangered species.

In the final amendment this language appears in section 2650.3, paragraph (5) and reads as follows:

Additionally, the lead agency responsible for completing environmental documentation is responsible for completion of all Endangered Species Act-mandated interagency consultations. However, the Forest Service will be a cooperating agency with APHIS during consultation under the Endangered Species Act where actions involve National Forest System resources or authorities.

Nothing in the Forest Service policy relieves APHIS of any of its current responsibilities to consult with the FWS nor does it violate any Forest Service policies.

#### 9. Clarification of Each Agency's Roles

*Comment:* Another government agency asserted that "the Forest Service and APHIS must clarify their precise roles in preparation of environmental impact analyses and documentation for animal damage management activities on National Forest System lands \* \* \*."

*Response:* The roles have been clarified in the 1993 MOU and proposed FSM 2650.6. The Forest Service and APHIS have agreed that APHIS will ensure NEPA compliance and be the lead agency for all actions that APHIS initiates and carries out on NFS lands. Predator control to reduce livestock loss is an example of an action carried out by APHIS. If the Forest Service carries out the action, such as reducing bear or beaver damage to tree regeneration, the

Forest Service will be the lead agency for NEPA compliance.

APHIS has not and will not work on any Forest Service administered land without proper NEPA compliance. The Forest Service will cooperate in each effort by APHIS. Disagreements on any specific points are handled through annual meetings or during the development of work plans or NEPA documents, as appropriate. The MOU describes the specific framework for meetings and states that disagreements will be elevated to appropriate levels for resolution.

*Comment:* Twenty-five reviewers noted their view that APHIS "cannot comply with forest plans;" and ten others questioned whether APHIS "fails to comply with the Endangered Species Act, National Environmental Policy Act, National Forest Management Act, Wilderness Act, Administrative Procedures Act, and numerous other State and Federal laws".

*Response:* The Department does not agree. The statement that APHIS "cannot comply with forest plans" reflects a misunderstanding of law and authority. Under the 1993 MOU, APHIS consults with the Forest Service to assure that any ADC plans and actions are consistent with the standards and guidelines in the applicable forest plan. As already stated under comments on "Forest Service Abdication of Responsibility", the Forest Service retains the ability to assure that ADM plans and actions are consistent with forest plan requirements.

#### 10. NEPA Analysis and Disclosure on Proposed Policy

*Comment:* Seventeen respondents asserted that the Forest Service must "complete an Environmental Impact Statement (EIS) to analyze the impact of this transfer." Six stated that an Environmental Assessment (EA) is needed.

*Response:* The Forest Service disagrees. Section 31.1b of Forest Service Handbook 1909.15 (57 FR 43180; September 18, 1992) excludes "rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions." Based on consideration of the comments received on the proposed policy, and the nature and scope of the proposed policy, the Forest Service has determined that this policy falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or environmental impact statement.

#### 11. Use of Pesticides in Animal Damage Management

*Comment:* Two respondents were concerned about the use of pesticides on NFS lands stating that the Forest Service does not "understand the public's biological concerns about the use of pesticides and the effects on wildlife" and "that no one is responsible for overseeing of tracking sodium cyanide in M-44s".

*Response:* By law and regulation, both APHIS and the Forest Service allow only certified individuals to administer pesticides being used on NFS lands for animal damage management activities. APHIS reports their use of pesticides annually to the Environmental Protection Agency (EPA). The Forest Service also annually reports pesticide use. Use of sodium cyanide present in M-44s would appear in APHIS reports.

#### Conclusion

Having carefully considered the comments received in response to the June 13, 1994, notice of proposed policy and having reconsidered the 1993 Animal Damage Management MOU between the Forest Service and APHIS, the Forest Service is adopting the revised Animal Damage Management policy as proposed, except for the revisions noted in the response to public comments and several minor technical revisions. The agency believes the policy is fully responsive to the agency's legal and management obligations. The policy implements the 1993 Memorandum of Understanding which recognizes APHIS as the lead for NEPA compliance where APHIS is the action proposing agency. APHIS has entered into a similar agreement with the Bureau of Land Management of the U.S. Department of Interior, thus providing a fully coordinated, streamlined and consistent approach to NEPA compliance across all land ownerships on federally-funded animal damage management activities to be undertaken by APHIS. This partnership with APHIS will achieve efficiencies through both economies of scale and integrated NEPA documentation. The full text of the directive as it will appear in the Forest Service Manual is set out at the end of this notice.

#### Environmental Impact

This policy provides administrative instructions to Forest Service field offices on the procedures and processes to follow in order to coordinate with APHIS on animal damage management activities and implements the terms of the 1993 Memorandum of Understanding between the Forest

Service and APHIS. As noted in the response to comments, section 31.1b(2) of Forest Service Handbook 1909.15 (57 FR 43180, Sept. 18, 1992) excludes from documentation in an environmental assessment or impact statement "rules, regulations, or policies to establish Servicewide administrative procedures, program processes, or instructions." Accordingly, the agency's assessment is that this policy falls within this category of action and that no extraordinary circumstances exist which would require preparation of an environmental assessment or environmental impact statement. This decision is further documented in a Decision Memo available from the Forest Service through the Wildlife Program Leader whose address is provided as a contact for further information at the beginning of this notice.

#### Controlling Paperwork Burden on the Public

This policy will not result in additional paperwork. Therefore, the review provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507) and implementing regulations at 5 CFR Part 1320 do not apply.

#### Regulatory Impact

This policy has been reviewed under USDA procedures and Executive Order 12866 on Regulatory Planning and Review. It has been determined that this is a significant policy.

Dated: April 5, 1995.

David G. Unger,  
Associate Chief.

#### FSM 2600—Wildlife, Fish, and Sensitive Plant Habitat Management

##### Chapter 2650—Animal Damage Management

(Note: The Forest Service organizes its directive system by alpha-numeric codes and subject headings. Only those sections of the Forest Service Manual that are the subject of this notice are set out here. The audience for this direction is Forest Service employees charged with coordinating with the Animal and Plant Health Inspection Service—Animal Damage Control Unit on animal damage management activities on National Forest System lands.)

The Forest Service and Animal and Plant Health Inspection Service (APHIS)—Animal Damage Control program along with the states, cooperate under the Animal Damage Control Act of 1931, as amended, to manage animal damage on National Forest System lands. These activities include actions to provide wildlife damage management through direct control, as well as technical assistance to achieve desired management objectives. APHIS carries

out animal damage management activities on National Forest System lands, mostly to minimize livestock losses from predation by coyotes, black bears, and other predators. The Forest Service conducts activities to control animal damage caused by small mammals and other animals to National Forest System resources, such as timber stands and roads.

*2650.1—Authority.* In addition to the authorities listed in FSM 2601, the following authorities govern animal damage management activities on National Forest System lands:

1. *The Animal Damage Control Act of March 2, 1931*, as amended, (7 U.S.C. 426–426c) authorizes the Secretary of Agriculture to provide animal damage management services, to maintain technical expertise for evaluating and recommending animal damage management techniques, and to perform animal damage research. The Secretary has delegated this authority to the Animal and Plant Health Inspection Service (APHIS) and the Animal Damage Control program in APHIS is specifically responsible for ADM activities.

2. *The Federal Insecticide, Fungicide, and Rodenticide Act* limits the use of pesticides to those that are properly registered in accordance with federal and state requirements for animal damage management and that conform to policies on pesticide-use management and coordination (FSM 2150). (61 stat. 63, as amended; 7 U.S.C. 136 (note), 136, 136b, 136i–m, 136p)

3. *Executive Order 12342, January 24, 1982*, permits the use of chemical toxicants registered by the Environmental Protection Agency for predator damage control on federal lands.

4. *Department of Agriculture Regulation (DR) 9500–4 (FSM 2601.2)* requires Department of Agriculture programs to include measures to alleviate damage by plant and animal pests; develop new techniques and methodologies through management and research programs to limit damage to agriculture or forestry production; and apply integrated pest management practices, where feasible, in carrying out these responsibilities.

5. *A Memorandum of Understanding (MOU) between APHIS and the Forest Service, June 18, 1993*, outlines the cooperative approach to animal damage management on National Forest System lands. Both agencies have a joint responsibility for limiting damage caused by wildlife. In this MOU, APHIS and state agencies are recognized as having the authority and expertise to conduct predator control on National

Forest System lands, to determine livestock losses, and to determine methodology for animal damage management. Under the MOU, APHIS is named the lead agency in preparing environmental documentation for predator control and other animal damage management activities initiated by APHIS on National Forest System lands.

Also, under the MOU, the Forest Service agrees to:

a. Cooperate to ensure that the animal damage management plans developed by APHIS will provide for protection of National Forest System resources and;

b. Cooperate with APHIS in the development of work plans to ensure consistency with forest land and resource management plans. See FSM 1543.14 for the full text of the MOU.

*2650.2—Objective.* The objective of animal damage management activities is to protect National Forest System resources, to protect activities taking place on National Forest System lands, and to reduce threats to human health and safety.

*2650.3—Policy.* National Forest System resources must be adequately protected during animal damage management activities authorized by the states and conducted by the states or Animal and Plant Health Inspection Service (APHIS)—Animal Damage Control program. This policy in no way defines or limits the authority of States to regulate the taking of predators according to State and other applicable Federal laws.

When the Forest Service conducts animal damage management activities, such as controlling small mammal populations on plantations, the agency must comply fully with state and federal laws. In carrying out animal damage management activities, Forest Service employees shall—

1. Rely upon APHIS or the state agencies to provide the expertise and conduct predator control on National Forest System lands, to determine livestock losses, and to determine methodology for animal damage management.

2. Conduct non-predator animal damage management, such as controlling small mammal populations on plantations, and necessary environmental analysis and disclosure on National Forest System lands consistent with forest plans.

3. Coordinate with the Bureau of Land Management (BLM) and other federal and state agencies to improve effectiveness of control program activities conducted on National Forest System and other public lands.

4. Use an integrated approach to the prevention of animal damage and management of animal damage control programs. Consider a full range of methods, including physical barriers, repellents, habitat manipulation, biological controls, silvicultural methods (for example, fertilizing to improve soil fertility), pesticides, and hunting and trapping. Use licensed hunting, fishing, and trapping as a control technique where practicable.

5. Follow direction in FSM 2670, Threatened, Endangered, and Sensitive Plants and Animals, to determine whether proposed control measures conducted by the Forest Service are likely to have an effect on federally proposed, threatened, endangered, or sensitive species.

Additionally, the lead agency responsible for completing environmental documentation is also responsible for completion of all Endangered Species Act-mandated interagency consultations. However, the Forest Service will be a cooperating agency with APHIS during consultation under the Endangered Species Act where actions involve National Forest System resources or authorities.

*2650.4—Responsibility.*

*2650.41—Deputy Chief for National Forest System.* The Deputy Chief for the National Forest System is responsible for resolving any difficulties arising between Regions and the Animal and Plant Health Inspection Service (APHIS)—Animal Damage Control program that cannot be resolved by Regional Foresters under the Memorandum of Understanding (FSM 1543.14).

*2650.42—Regional Foresters.* Regional Foresters are responsible for:

1. Reviewing and approving all proposed pesticide uses for animal damage management on National Forest System lands (FSM 2151). Regional Foresters may redelegate this authority to Forest Supervisors, except that only Regional Foresters may approve animal damage management in wilderness (FSM 2323).

2. Establishing or amending existing Memorandums of Understanding between the Region and appropriate State and other federal agencies regarding animal damage management.

3. Reviewing all proposed Forest Service animal damage management activities within areas occupied by and habitat of federally proposed or listed threatened or endangered species and Regional Forester approved sensitive species. Regional Foresters may redelegate this authority to Forest Supervisors.

4. Meeting with or designating a representative to meet with State or regional representatives, such as the APHIS Regional Director, as needed to coordinate animal damage management operations.

5. Resolving any difficulties arising among APHIS personnel and Forest Supervisors under the Memorandum of Understanding (FSM 1543.14), or referring unresolved issues to the Deputy Chief, National Forest System, for resolution.

*2650.43—Forest Supervisors.* Forest Supervisors are responsible for:

1. Ensuring appropriate environmental analysis requirements are met for proposed non-predator control activities conducted by the Forest Service and ensuring consistency with forest plan direction.

2. Recommending changes in state hunting, fishing, or trapping regulations to accommodate animal damage management activities on National Forest System lands (FSM 2640).

3. Meeting with APHIS personnel and responsible state agencies to cooperate where proposed predator control is needed to ensure coordination of Forest Service resources or activities on National Forest Systems lands.

4. Cooperating with APHIS in preparation of environmental documentation for predator control or other animal damage management activities conducted by APHIS on National Forest System lands (40 CFR 1508.15).

5. As necessary, referring any difficulties arising from activities with APHIS under the Memorandum of Understanding (FSM 1543.14) for resolution by the Regional Forester.

6. When needed, requesting training from APHIS in animal damage management techniques.

7. Ensuring that licensing and certification of Forest Service personnel performing animal damage management activities comply with applicable federal and state regulations and that certified pesticide applicators use or supervise the use of restricted-use pesticides on National Forest Systems Lands (FSM 2150).

*2650.6—Cooperation in Animal Damage Management Activities.* Both the Forest Service and Animal and Plant Health Inspection Service (APHIS)—Animal Damage Control program have a responsibility for limiting damage caused by wildlife, consistent with other wildlife values and resource management objectives. APHIS responsibilities are generally directed toward the management and control of animals causing damage to livestock, agriculture, wildlife, and human health

and safety. Trapping or shooting coyotes to prevent losses of sheep or cattle are examples of these activities.

Forest Service animal damage management activities are related to the management of National Forest System resources. Examples of Forest Service initiated activities include, but are not limited to, removing beavers that are damaging roads, reducing bear damage to tree regeneration and controlling mice and pocket gophers to protect seedlings. Pursuant to the delegation of authority to APHIS at section 2.51 (a)(41) of Title 7 of the code of Federal Regulations (7 CFR 2.51 (a)(41)), the 1993 Memorandum of Understanding between the Forest Service and APHIS for animal damage management activities (FSM 1543.14), the role of APHIS is as follows:

1. Evaluate animal damage management needs and conduct predator control in cooperation with the Forest Service, state agencies, and permittees.

2. Serve as lead agency for preparing environmental documentation on animal damage management activities initiated by APHIS on National Forest System lands.

3. Develop and update animal damage management work plans in cooperation with the Forest Service and appropriate state and federal agencies, and interested publics to ensure compliance with forest plans.

4. Inform the Forest Service about animal damage management requests, management activities, and results on a timely basis.

5. Provide the Forest Service with technical information on recommended animal damage management tools and techniques.

6. Conduct animal damage management training sessions for Forest Service personnel, when requested.

*2651—WILDLIFE AND FISH DAMAGE MANAGEMENT.*

*2651.1—Threatened and Endangered Species.* Follow specific species control plans for federally listed species (for example, grizzly bear and wolf) cleared through consultation with the Fish and Wildlife Service and National Marine Fisheries Service.

*2651.2—Game and Furbearers.* Control damage caused by game animals and furbearers through hunting or trapping, where practicable, in cooperation and consultation with the State fish and wildlife agencies, and APHIS, where appropriate.

*2651.3—Nongame Species.* Control damage caused by nongame species on National Forest System lands in close cooperation with the State fish and

wildlife agencies, or other involved state or federal agencies.

**2651.4—Birds.** Nonlethal repellents, frightening devices, pesticides, or physical barriers may be used to prevent or reduce resource damage or hazards, where birds damage reforestation or other resources, or where they create health hazards. Obtain permits from the Fish and Wildlife Service for any lethal control of species protected under the Migratory Bird Treaty Act. Consult the Fish and Wildlife Service for permit requirements and procedures.

**2651.5—Fish and Aquatic Animals.** States or other responsible agencies have the authority to control undesirable fish and aquatic animals in National Forest System waters. The Forest Service is responsible for coordinating with the responsible agencies to develop a work plan to ensure control activities are consistent with direction provided in forest plans. Control activities conducted by the Forest Service must meet appropriate environmental analysis requirements and be consistent with forest plan direction.

**2651.6—Wildlife and Fish Damage Management in Wilderness Areas.** Follow direction in FSM 2151, FSM 2323, and FSM 4063 for management of wildlife or fish damage in wilderness and Research Natural Areas. Animal damage management is permitted in wilderness only when it was used prior to wilderness designation; when it conforms with direction in FSM 2323.33 on resource management in wilderness; and when it is needed for the recovery of federally listed threatened or endangered species.

**2652—REPORTS.** Report pesticide uses annually following direction in FSM 2158.

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### **Tongass Land Management Plan Revision, Tongass National Forest, Alaska**

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to prepare a revised supplement to the draft environmental impact statement.

**SUMMARY:** The Forest Service will prepare a revised supplement to the draft environmental impact statement on a proposal to revise the Tongass Land Management Plan. This is a revision of the supplement published in August 1991.

**DATES:** Formal comments are not being solicited at this time. A revised supplement to the draft environment

impact statement is scheduled to be filed with the Environmental Protection Agency in November 1995, at which time a formal comment period will begin.

**FOR FURTHER INFORMATION CONTACT:** Gary Lidholm, Public Affairs Officer, Tongass Revision Team, 8465 Old Dairy Road, Juneau, AK 99801. Telephone (907) 586-8726.

**SUPPLEMENTARY INFORMATION:** The original notice of intent for the Tongass Land Management Plan revision was published September 10, 1987 (52 FR 34264, \*34265). A draft environmental impact statement was available for public review and comment from July 1990 to January 1991, and a supplement to that draft was available from September to December 1991. Release of a final environmental impact statement was delayed pending completion of additional studies. Based on the results of these studies, other new information, and the lapse of time since public review of the supplement, the Forest Service has decided to issue another draft document, the revised supplement, for public review.

The issues identified in the August 1991 supplement to the draft environmental impact statement have been updated. The focus for the revised supplement will be on the following specific issues: providing for species viability consistent with the provisions of NFMA and the Endangered Species Act; evaluating recommendations for additional fisheries habitat protection; cave and karst management; ensuring conformance with ecosystem management principles; and the socio-economic effects of alternative actions. The alternatives described in the 1991 supplement will be the basis for formulating alternatives to deal with these issues.

A partnership approach with the agency's Pacific Northwest Research Station (PNW) will be an important vehicle to bring science to bear on the issues. PNW will be involved along with the Alaska Region of the Forest Service at every phase of the project. Other federal agencies are being asked to cooperate in the planning process, including the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the Environmental Protection Agency. In addition, the skills and expertise of Alaska State agencies and Alaska tribal governments will be sought.

A revised supplement to the draft environment impact statement is anticipated to be filed with the Environmental Protection Agency in November 1995, and a final

environmental impact statement is projected for June 1996.

The responsible official is Phil Janik, Regional Forester, Alaska Region, P.O. Box 21628, Juneau, AK 99801.

A 90-day public comment period on the revised supplement to the draft environmental impact statement will begin on the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**. An extensive scoping process has already taken place with respect to the proposed TLMP revision. No further formal scoping process is scheduled as part of the preparation of the revised supplement to the draft environmental impact statement. Public meetings are expected and will be announced.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements (or, in this case, the revised supplement to the draft) must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553 (1978). Also, objections that could be raised at the draft (or revised supplement to the draft) environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon v. Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 90 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

The revised supplement is preceded by two other draft documents (the 1990 draft and 1991 supplement referred to earlier). Reviewers should note that comments on either of these two previous documents are still valid, and will be considered along with all comments received on the revised supplement in reaching a final decision. Participation in any of the three comments periods satisfies the intent of the previous discussion, provided that the reviewer's position and/or concerns have been raised.

To assist the Forest Service in identifying and considering issues and