

Proposed Rules

Federal Register

Vol. 65, No. 151

Friday, August 4, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 305 and 319

[Docket No. 98-030-2]

RIN 0579-AA97

Irradiation Phytosanitary Treatment of Imported Fruits and Vegetables

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of reopening and extension of comment period.

SUMMARY: We are reopening and extending the comment period for our proposed rule that would establish regulations providing for use of irradiation as a phytosanitary treatment for fruits and vegetables imported into the United States. This action will allow interested persons additional time to prepare and submit comments.

DATES: We invite you to comment on Docket No. 98-030-1. We will consider all comments that we receive by August 21, 2000.

ADDRESSES: Please send your comment and three copies to: Docket No. 98-030-1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737-1238.

Please state that your comment refers to Docket No. 98-030-1.

You may also file comments on this docket electronically, and review comments filed electronically, at the World Wide Web site <http://comments.aphis.usda.gov>.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

APHIS documents published in the *Federal Register*, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at <http://www.aphis.usda.gov/ppd/rad/webrepor.html>.

FOR FURTHER INFORMATION CONTACT: For general program and phytosanitary issues, contact Donna L. West, Import Specialist, Phytosanitary Issues Management, PPQ, APHIS, 4700 River Road Unit 140, Riverdale MD 20737-1236; (301) 734-6799. For technical irradiation issues, contact Dr. Arnold Foudin, Assistant Director, Scientific Services, PPQ, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737-1237; (301) 734-7710.

SUPPLEMENTARY INFORMATION:

Background

On May 26, 2000, we published in the *Federal Register* (65 FR 34113-34125, Docket No. 98-030-1) a proposal to establish regulations providing for use of irradiation as a phytosanitary treatment for fruits and vegetables imported into the United States. The irradiation treatment would provide protection against fruit flies and the mango seed weevil. This proposal would provide an alternative to the currently approved treatments (various fumigation, cold, and heat treatments, and systems approaches employing techniques such as greenhouse growing) against fruit flies and the mango seed weevil in fruits and vegetables.

Comments on the proposed rule were required to be received on or before July 25, 2000. Several commenters have requested that we extend the comment period on Docket No. 98-030-1 to allow additional time for members of the public to review the proposed rule and to submit comments. While we believe that the original comment period allowed sufficient time for public review, there was a temporary malfunction in the E-Comments Web application (<http://comments.aphis.usda.gov>) established to receive electronically submitted comments on this proposed rule. This prevented the application from accepting comments over a period of approximately 10 days. To compensate for this disruption of service, we are reopening and extending the comment period on Docket No. 98-030-1 until

August 21, 2000. This action will allow interested persons additional time to prepare and submit comments.

Done at Washington, DC, this 27th day of July 2000.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00-19724 Filed 8-3-00; 8:45 am]

BILLING CODE 3410-34-U

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 1 and 2

[Docket No. 97-121-1]

RIN 0579-AA94

Animal Welfare; Inspection, Licensing, and Procurement of Animals

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the Animal Welfare Act regulations to revise and clarify the exemptions from the licensing requirements, the procedures for license applications and renewals, and restrictions upon the acquisition of dogs and cats and other animals. We believe these actions are necessary to help ensure compliance with the regulations and the Animal Welfare Act.

DATES: We invite you to comment on this docket. We will consider all comments that we receive by October 3, 2000.

ADDRESSES: Please send your comment and three copies to: Docket No. 97-121-1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737-1238.

Please state that your comment refers to Docket No. 97-121-1.

Comments sent to the above location that specifically pertain to the information collection requirements of this action should also be sent to the locations specified in the section of this document under the heading "Paperwork Reduction Act."

You may read any comments that we receive on this docket in our reading room. The reading room is located in

room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

APHIS documents published in the *Federal Register*, and related information, including the names of organizations and individuals who have commented on APHIS rules, are available on the Internet at <http://www.aphis.usda.gov/ppd/rad/webrepor.html>.

FOR FURTHER INFORMATION CONTACT: Dr. Barbara Kohn, Staff Veterinarian, Animal Care, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737-1234; (301) 734-7833.

SUPPLEMENTARY INFORMATION:

Background

The Animal Welfare Act (the Act) (7 U.S.C. 2131 *et seq.*) authorizes the Secretary of Agriculture to promulgate standards and other requirements governing the humane handling, housing, care, treatment, and transportation of certain animals by dealers, research facilities, exhibitors, carriers, and intermediate handlers. The Secretary of Agriculture has delegated the responsibility of enforcing the Act to the Administrator of the Animal and Plant Health Inspection Service (APHIS). The regulations established under the Act are contained in title 9 of the Code of Federal Regulations (9 CFR), chapter I, subchapter A, parts 1, 2, and 3. Part 1 defines various terms used in part 2. Part 2 (referred to below as the regulations) generally provides administrative requirements and sets forth institutional responsibilities of regulated persons under the Act. These administrative requirements and institutional responsibilities include the requirements for the licensing and registration of dealers, exhibitors, and research facilities, and standards for veterinary care, identification of animals, and recordkeeping.

We are proposing to amend the regulations to revise and clarify the exemptions from the licensing requirements, the procedures for license applications and renewals, and restrictions upon the acquisition of dogs and cats and other animals. Each of these changes is discussed in detail in this document.

Exemptions From Licensing Requirements

We are proposing to amend § 2.1 of the regulations to clarify our licensing

requirements. This section requires a person to have a license to operate as a dealer, exhibitor, or operator of an auction sale. In § 2.1, paragraph (a)(3) provides exceptions to this requirement. One exception, in § 2.1(a)(3)(iii), is that any person who maintains a total of three or fewer breeding female dogs and/or cats and sells only the offspring of these dogs and cats for pets or exhibition does not have to obtain a license. The dogs and cats must have been born and raised on the premises, and the person must not otherwise be required to obtain a license.

The intent of § 2.1(a)(3)(iii) of the regulations is to exempt these de minimis operations. However, some individuals have contended that they are not required to have a license even when they keep more than three breeding female dogs and/or cats on the same premises as long as no single member of the household owns more than three. When several members of the same household (or other persons acting in concert) are each maintaining three female breeding dogs or cats on the same premises, the activities are no longer de minimis. To clarify the regulations, we are proposing to amend § 2.1(a)(3)(iii) to exempt from licensing any person who maintains a total of three or fewer breeding female dogs and/or cats on his or her premises, if no more than three breeding female dogs and/or cats are maintained on the premises, regardless of ownership; and who sells only the offspring of these dogs and/or cats, which were born and raised on his or her premises, for pets or exhibition, and is not otherwise required to obtain a license.

We are also proposing to amend § 2.1(a)(3)(iii) to include in the exemption from licensing persons who maintain three or fewer breeding female small exotic or wild mammals on a single premises. Recently, we have begun to regulate the handling, care, and treatment of small exotic or wild mammals commonly known as pocket pets. Pocket pets include hedgehogs, degus, spiny mice, prairie dogs, flying squirrels, jerboas, and other small mammalian species. We do not believe that the risk associated with the maintenance of three or fewer breeding female small exotic or wild mammals on a single premises warrants our inspection of the premises or requires the issuance of a license.

Currently, § 2.1(a)(3)(iv) of the regulations exempts from licensing any person who sells fewer than 25 dogs and/or cats per year for research, teaching, or testing purposes or to any research facility. The dogs and/or cats must have been born and raised on the

person's premises, and the person must not otherwise be required to obtain a license. We are proposing to add that this exemption will apply only if fewer than 25 dogs and/or cats are sold per year from the premises or by members of the same household or other persons acting in concert, regardless of ownership. The sale of any dog or cat not born and raised on the premises for research purposes would continue to require a license.

Voluntary Licenses

We are proposing to remove § 2.1(b) from the regulations. In § 2.1, paragraph (b) provides that a person who is exempt from licensing under § 2.1(a)(3)(iv) may apply for a voluntary license. Our records show that the option for obtaining a voluntary license has rarely been exercised and that there are currently no voluntary licensees. We do not believe that it is necessary or appropriate to continue to offer this service because the unnecessary inspections divert resources from other areas. We are also proposing to remove the provisions in § 2.1(e)(1) of the regulations for renewal of a voluntary license. Because we are proposing to remove paragraph (b) of § 2.1, we are also proposing to redesignate paragraphs (c), (d), (e), and (f) as paragraphs (b), (c), (d), and (e), respectively. In conjunction with these changes, § 2.1(a)(1) would be revised to provide that any person "operating or intending to operate" as a dealer, exhibitor, or operator of an auction sale must have a valid license.

Payment of Fees

In § 2.1, paragraphs (d)(2), (e)(1), and (e)(2) (redesignated as (c)(2), (d)(1), and (d)(2) in this proposal) provide that a license will not be issued until payment has cleared normal banking procedures. We are proposing to remove this provision. The U.S. Department of Agriculture (the Department) cannot control the speed at which payments will clear a financial institution and does not want to needlessly hold the issuance of a license. If payment is received as required in the regulations, we believe the Animal Care (AC) regional office should proceed with the issuance of the license if the applicant and the premises are in compliance with the regulations and standards. This would not only be more convenient for the applicant but would relieve the regional offices of the need to track each check to learn when it has cleared. If a check is returned unpaid by the financial institution, the license would be terminated in accordance with § 2.5(a)(4). The fee for a returned check

would also be increased from \$15 to \$20, which is consistent with the fee for returned checks in other agency programs.

In § 2.1, paragraphs (d)(2) and (e)(1) (redesignated as (c)(2) and (d)(1) in this proposal) require payment of license fees, but do not state when the license fee is due to avoid the termination of a license. Section 2.5 specifies that the license fee is due on or before the date of expiration of the license. To help facilitate the renewal of licenses and to encourage prompt payment of the applicable license fees, we are proposing to add this due date to § 2.1, in redesignated paragraphs (c)(2) and (d)(1).

Also, we are proposing to amend §§ 2.1(d)(2), 2.1(e)(1), 2.5(b), and 2.6(a) to require that fees be submitted to the appropriate AC regional office instead of the AC Regional Director (§ 2.1(d)(2) and (e)(1) are redesignated in this proposal as (c)(2) and (d)(1)). We are proposing this change because we believe that it is more appropriate to address the fees to an office rather than an official within the office.

Regulations and Standards Supplied to License Renewal Applicants

We are proposing to amend § 2.2 of the regulations, which concerns acknowledgment of regulations and standards by applicants for licenses and renewal of licenses. Currently, § 2.2(b) states that APHIS will supply a copy of the applicable regulations and standards to an applicant for license renewal with each request for a license renewal. Paragraph (b) also provides that, before a license will be renewed, the applicant for license renewal must acknowledge receipt of the regulations and standards and certify by signing the application form that, to the best of the applicant's knowledge and belief, he or she is in compliance with the regulations and standards and agrees to continue to comply with the regulations and standards.

We have found that most licensees do not need a new copy of the regulations and standards each year. The current text of the regulations and standards is readily available on the Internet (for example, through the APHIS home page at www.usda.aphis.gov) and copies are available from Animal Care inspectors. If we discontinue the practice of sending additional copies to licensees at the time of application for renewal, we could significantly reduce our costs for printing and postage without adversely affecting the program. Also, the applicant's signature on the application form certifies that the applicant is in compliance with the regulations and

standards and will continue to comply with them.

Therefore, we are proposing to remove the provision in § 2.2(b) that APHIS will supply a copy of the regulations and standards with each request for a license renewal.

APHIS would continue to supply a copy of the regulations and standards to: (1) Initial license applicants as provided in § 2.2(a); (2) carriers, intermediate handlers, and exhibitors as provided in § 2.26; and (3) research facilities as provided in § 2.30(b). Of course, copies will continue to be provided upon request.

Prelicense Inspections

We are proposing to amend § 2.3 of the regulations, which requires applicants for licenses and renewal of licenses to demonstrate compliance with the regulations and standards.

In accordance with § 2.3(b), an applicant for an initial license must demonstrate during a prelicense inspection that he or she is in compliance with the regulations and standards. If the applicant's premises, animals, facilities, vehicles, equipment, other premises, or records do not meet the regulations and standards, APHIS will advise the applicant of the deficiencies and the corrective measures that must be addressed to comply with the regulations and standards prior to the issuance of a license. APHIS will perform up to two additional prelicense inspections, based on the schedule of the inspecting official, to verify whether the applicant is in compliance. If the applicant fails the third inspection, he or she forfeits the application fee and cannot reapply for a license for 6 months following the third inspection.

This proposed rule would provide that an applicant who fails the first inspection would be responsible for requesting the second inspection, and, if necessary, a third inspection, within 90 days from the date of the initial inspection. It is necessary that there be a time limit on the application process so that applications are not permanently pending and applicants are encouraged to proceed in a timely manner. We have found that many applicants demonstrate compliance with the regulations and standards at the initial prelicense inspection and that a third prelicense inspection is uncommon. The vast majority of applicants either successfully complete the licensing process within 90 days from their initial inspection or change their plans and drop their applications.

Notification of Expiration of a License

We are proposing to amend the regulations in § 2.5, regarding duration and termination of license.

Currently, § 2.5(b) provides that APHIS will notify a licensee by certified mail at least 60 days prior to the expiration date of the license. We do not believe that the use of certified mail is necessary. AC regional offices would still send notification to licensees prior to the expiration date of their licenses.

In addition, § 2.5(b) currently provides that a license will terminate on its anniversary date if an applicant fails to comply with the annual reporting requirements or fails to pay the required license fees prior to the expiration date of the license. However, in many cases, the expiration date and anniversary date of a license are not the same. This has led to confusion among licensees and administrative difficulties in AC regional offices. Therefore, we are proposing to remove the reference in § 2.5(b) to an anniversary date. Instead, we propose that a license will terminate on its expiration date if an applicant fails to comply with the annual reporting requirements, or if the appropriate AC regional office has not received the required fee for license renewal on or before the expiration date of the license.

Application and Annual License Fees

We are proposing to amend the regulations at § 2.6, which set out annual license fees. Currently, the regulations at § 2.1 require a \$10 application fee for a license, license renewal, or changed class of license. Section 2.6 requires the payment of an annual license fee. A separate check or money order is required for each fee.

Upon review of the process for collecting fees for license renewals, we found that handling two forms of payment per applicant or licensee burdens the administrative resources in AC regional offices. It would seem to be equally inconvenient for licensees. To decrease the number of checks handled by the AC regional offices, we are proposing to combine the \$10 application fee for license renewals (or for change of license class) with the annual license fee. This change would mean that persons already licensed would need to submit only one check or money order annually.

We are not proposing to combine the \$10 application fee for an initial license with the annual license fee. At times, individuals apply for a license but never further pursue obtaining a license. If we required new applicants to submit the \$10 application fee combined with the

appropriate annual license fee, we would have to refund the annual license fee if the individual decided not to pursue obtaining a license. This would cause the agency an undue amount of paperwork and employee hours. Therefore, we would continue to require initial license applicants to submit two checks or forms of payment.

To reflect the combination of the \$10 application fee for license renewals or change of license class with the annual license fee, we would amend tables 1 and 2 in § 2.6(c) to show a \$10 increase in license fees for persons already licensed. We would also remove references to application fees in §§ 2.1, 2.5, and 2.6 where the references apply to persons seeking a license renewal or change of license class.

Denial of Initial License Application

We are proposing to amend § 2.11 of the regulations, concerning denial of an initial license application. The current regulations provide that a license will not be issued to any applicant who: (1) Has not complied with the requirements of §§ 2.1, 2.2, 2.3, and 2.4 and has not paid the fees indicated in § 2.6; (2) is not in compliance with any of the regulations or standards in subchapter A; (3) has had a license revoked or whose license is suspended; (4) has been fined, sentenced to jail or pled *nolo contendere* (no contest) under State or local cruelty to animal laws within 1 year of application; or (5) has made false or fraudulent statements, or provided any false or fraudulent records to the Department.

We have found that these restrictions do not cover all of the circumstances that make an applicant unsuitable for a license. Specifically, the regulations do not provide for the denial of a license if an applicant has violated Federal, State, or local laws or regulations, other than those described above.

For example, the Lacey Act (18 U.S.C. 42; 16 U.S.C. 3371–3378), among other things, provides authority to the Secretary of the Interior to ensure the humane treatment of wildlife shipped to the United States and designate wildlife species that are considered injurious to humans and prohibit their importation into the United States. Based on the current regulations, if a license applicant has violated the Lacey Act, he or she would still be eligible for a license issued by the Department.

An applicant who has violated local or State laws pertaining to animal cruelty or welfare may not be eligible for a State license as a dealer. However, based on the current regulations, if the applicant has not been fined, sentenced to jail, or pled *nolo contendere*, the

applicant could still be eligible for a license issued by the Department.

We believe that persons who have violated any Federal, State, or local laws or regulations pertaining to animal cruelty, negligence, transportation, ownership, neglect, or animal welfare would be unfit for a license under our regulations. Therefore, we propose to remove the provisions in § 2.11(a)(4) and (a)(5) and provide instead that a license will not be issued if the applicant pled *nolo contendere* or has been found to have violated any Federal, State, or local laws or regulations pertaining to animal cruelty within 1 year of application, or at any time if the Administrator determines that the circumstances render the applicant unfit to be licensed. Also, a license would not be issued if the applicant is or would be operating in violation or circumvention of any Federal, State, or local laws. Further, a license could be denied if the applicant has pled *nolo contendere* or has been found to have violated any Federal, State, or local laws or regulations pertaining to the transportation, ownership, neglect, or welfare of animals, has made false or fraudulent statements or provided false or fraudulent records to any government agency including the Department, or if the applicant is otherwise unfit to be licensed, and the Administrator determines that the issuance of a license would be contrary to the purposes of the Act.

Also, we are proposing to amend § 2.11(b). In § 2.11, paragraph (b) provides that an applicant whose license application has been denied may request a hearing for the purpose of showing why his or her application should not be denied. The license denial is in effect until a final decision is issued. If the license denial is upheld, the applicant may reapply for a license 1 year from the date of the final order that denied the application. We are proposing to provide that an applicant may reapply for a license 1 year from the date of the final order denying the application, unless the order provides otherwise. In some cases, an order requiring an applicant to wait beyond a 1-year period before reapplying for a license may be appropriate. In fact, based on the circumstances leading to the denial of an application, an applicant may be found to be unsuitable for holding a license at any time. In other cases it may be appropriate to allow an applicant to reapply in a shorter period of time or when a specific defect has been corrected.

Also, we are proposing to add a new § 2.11(d) to the regulations to

encompass circumstances that are not included in the changes to § 2.11(a) proposed previously in this document. New § 2.11(d) would provide that a license will not be issued under circumstances that the Administrator determines could circumvent any order suspending, revoking, terminating, or denying a license under the Act. For the same reasons, we are also proposing to revise § 2.10(a), regarding licensees whose licenses have been suspended or revoked, to provide that a license will not be renewed during the period of suspension.

Termination of a License

We are proposing to add a new § 2.12 to the regulations to prescribe conditions that could result in APHIS terminating a license. Although § 2.5 refers to termination of license, the regulations do not list the circumstances that would result in the termination of a license. New § 2.12 would state that a license may be terminated for any of the same reasons that an initial license application may be denied pursuant to § 2.11 after a hearing in accordance with the applicable rules of practice. A hearing would provide an opportunity for the applicant to present his or her case as to why the license should not be terminated.

Access to Premises Provided by a Responsible Adult

We are proposing to amend § 2.126 of the regulations, concerning access and inspection of records and property. Currently, § 2.126(a) requires that each dealer, exhibitor, intermediate handler, or carrier must, during business hours, allow APHIS officials: (1) To enter the place of business; (2) to examine the records required to be kept by the Act and the regulations in part 2; (3) to make copies of the records; (4) to inspect and photograph the facilities, property, and animals, as necessary to enforce the provisions of the Act and the regulations and the standards in subchapter A; and (5) to document, by the taking of photographs and other means, the conditions and areas of noncompliance. In § 2.126, paragraph (b) requires that facilities for proper examination of records and inspection of the property or animals must be provided to APHIS officials by the licensee.

APHIS conducts unannounced inspections of licensed facilities, and APHIS officials have encountered occasions when a licensee was not present or available upon their arrival. In a few of these cases, an adolescent was the only individual present to provide access to the premises.

However, during an inspection, APHIS officials must be able to ask questions and advise licensees of existing deficiencies and corrective measures that must be completed to come into compliance with the regulations and standards. APHIS officials must be able to convey this information to a responsible adult.

Therefore, we are proposing to revise paragraph (b) in § 2.126 to add a provision that a responsible adult shall be made available to accompany the officials during the inspection process.

Handling of Exotic or Wild Animals

We are proposing to amend § 2.131 of the regulations, regarding the handling of animals. Section 2.131 prescribes general requirements for the humane handling of animals during training and public exhibition. These requirements are intended to protect the animals and the public from harm.

Many exotic or wild animals used in exhibition are potentially dangerous, and all have special handling, veterinary care, and husbandry requirements. To properly maintain, handle, and train these animals, licensees should have adequate experience and knowledge of the species that they maintain on their premises. The current regulations require that a responsible and knowledgeable employee be present at all times during public contact and that dangerous animals be under the direct control and supervision of a knowledgeable and experienced handler during public exhibition. We are proposing to add a new requirement to § 2.131 that all licensees who maintain potentially dangerous animals must demonstrate adequate experience and knowledge of the species that they maintain. This requirement would appear in a new paragraph (a), and we would redesignate current paragraphs (a), (b), and (c) as paragraphs (b), (c), and (d), respectively.

Procurement of Animals by Dealers

We are proposing to amend § 2.132 of the regulations, concerning procurement of random source dogs and cats, to provide clarification regarding the procurement of animals by Class B dealers. As set forth in § 2.132(a), Class B dealers may obtain live random source dogs and cats only from the following sources: Other dealers who are licensed under the Act and in accordance with the regulations in part 2; State, county, or city owned and operated animal pounds or shelters; and legal entities organized and operated under the laws of the State in which the

entity is located as an animal pound or shelter.

Paragraph (b) specifies that a Class B dealer may not obtain live random source dogs and cats from individuals who have not bred and raised the animals on their own premises. This provision is unnecessary and potentially confusing because paragraph (a) already specifies the only permissible sources. Similarly, paragraph (c) is unnecessary. Paragraph (c) provides that nonrandom source dogs and cats may be obtained from persons who have bred and raised the animals on their own premises. It is not necessary to specify this because it is not otherwise prohibited.

Accordingly, we propose to remove paragraphs (b) and (c) of § 2.132 and redesignate paragraphs (d) and (e) as (b) and (c).

In § 2.132, current paragraph (d), which would be redesignated as (b), provides that no person may obtain live random source dogs and cats by use of false pretenses, misrepresentation, or deception. We believe that this prohibition should not be restricted to random source dogs and cats. Accordingly, we are proposing to remove the term "random source" and add a reference to other animals. We are also proposing to make the same change in § 2.38(k)(2), relating to acquisitions by research facilities.

In § 2.132, current paragraph (e), which would be redesignated as (c), concerns the acquisition of dogs and cats from private or contract animal pounds and shelters. The reference to "random source" dogs and cats acquired from private or contract pounds and shelters is unnecessary because all dogs and cats acquired from a pound or shelter are necessarily random source animals. Accordingly, the reference to "random source" animals would be removed.

Also, we have found that some dealers have knowingly obtained animals from persons who are required to hold a valid and effective license and do not. Therefore, we are proposing to add a new paragraph (d) to § 2.132 to prohibit a Class B dealer or exhibitor from knowingly obtaining dogs, cats, and other animals from persons who are required to hold a current, valid, and unsuspended license and do not. The new paragraph would also require that, when dogs or cats are acquired from persons who are not licensed, a certification must be obtained from the person specifying that he or she is within one of the exemptions to the license requirements (*i.e.*, that the dogs or cats were born and raised on their premises and that, for animals for research purposes, they have sold fewer

than 25 that year; or, for use as pets, that they maintain no more than three breeding females). We believe this would help prevent licensed dealers from supporting the operations of unlicensed dealers who are acting in violation of the Animal Welfare Act. We would also add a similar provision for acquisitions by research facilities in § 2.35.

Miscellaneous

We are proposing to update the definition of Administrator in § 1.1 to make it consistent with the definition found in other parts of 9 CFR, chapter I.

Section 2.4 currently provides that licensees or applicants for a license shall not "interfere with, threaten, abuse (including verbally abuse), or harass any APHIS official in the course of carrying out his or her duties." This proscription should also extend to registrants as well as licensees and applicants.

Accordingly, the provision would be added to § 2.25 for registrants in general and to § 2.30 for research facilities.

The regulations currently require dealers, exhibitors, operators of auction sales, brokers, and research facilities who acquire animals from persons who are not licensed to record the driver's license number of the person. As written, the regulations do not allow the acquisition of animals from persons without a driver's license. Nevertheless, from time to time, animals are acquired from persons who do not have a driver's license. These infrequent occurrences have not been addressed consistently and the requirement has sometimes been overlooked where it could not be met. In order to reduce the burden on both buyers and sellers of animals and to achieve the purpose of the recordkeeping requirement, we propose to add provisions allowing the use of officially issued and numbered photographic identification cards for nondrivers. This change would be made in §§ 2.35(b)(3), 2.75(a)(1)(iii), 2.75(b)(1)(iii), and 2.76(a)(4).

Some of the forms referenced in 9 CFR part 2 are identified with Veterinary Services (VS) form numbers. Most of the VS forms have been replaced by forms that are identified with an APHIS form number; therefore, we are proposing to remove the VS form numbers that appear in §§ 2.5, 2.35, 2.38, 2.75, 2.78, and 2.102.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive

Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with 5 U.S.C. 603, we have performed an initial regulatory flexibility analysis, which is set out below, regarding the economic effects of this rule on small entities. This discussion also serves as our cost-benefit analysis.

Under the Animal Welfare Act (7 U.S.C. 2131 *et seq.*), the Secretary of Agriculture is authorized to promulgate standards and other requirements governing the humane handling, housing, care, treatment, and transportation of certain animals by dealers, research facilities, exhibitors, carriers, and intermediate handlers.

This proposed rule would amend the Animal Welfare Act regulations in 9 CFR part 2 to revise and clarify the exemptions from the licensing requirements, the procedures for license applications and renewals, and restrictions upon the acquisition of dogs and cats and other animals.

Class A and B dealers, Class C exhibitors, registered exhibitors, research facilities, and individuals who are exempt from licensing are the entities that would be affected by this proposed rule. A Class A dealer breeds and raises animals to be sold for research, teaching, testing, experimentation, exhibition, or for use as a pet. A Class B dealer is a person, including a broker and operator of an auction sale, whose business includes the purchase and/or resale of any animal. A Class C exhibitor or registered exhibitor is a person, including an animal act, carnival, circus, and public and roadside zoo, who shows or displays animals to the public. Research facilities include schools, institutions, organizations, or persons who use live animals in research, tests, or experiments.

The Number of Breeding Females

The regulations exempt from licensing any person who maintains a total of three or fewer breeding female dogs and/or cats and sells only the offspring of these dogs and/or cats for pets or exhibition. This proposed rule would extend this exemption from licensing to any person who maintains a total of three or fewer breeding female small exotic or wild mammals and sells only the offspring of these small exotic or wild mammals for pets or exhibition. This proposed rule would also clarify that the exemption applies only if a total of three or fewer breeding female dogs, cats, and/or small exotic or wild mammals, such as hedgehogs, degus, spiny mice, and prairie dogs, are

maintained on a single premises, regardless of who owns the animals.

Unlicensed individuals in this category primarily sell the offspring of their animals to pet stores and private citizens and their number and the quantity of their sales are unknown. However, we expect that any affected individuals would be considered small entities. The entities affected would either have to obtain a license if more than three breeding females are on a premises or decrease the number of breeding females on the premises to three or fewer. Entities who choose to obtain a license as a result of this proposed rule would have to pay the associated fees. The regulations require an application fee of \$10 and an annual license fee.

Because APHIS has only recently begun to require licenses for breeders of small exotic or wild mammals, only a small number of breeders who have become licensed would no longer need those licenses. For that small number, there would be cost savings in the amount of the annual license fee that would no longer be required.

Dogs and Cats Sold Per Year From a Premises

The regulations exempt from licensing any person who sells fewer than 25 dogs and/or cats per year for research, teaching, or testing purposes if the dogs and cats were born and raised on the person's premises. This proposed rule would clarify that this exemption would apply only if fewer than 25 dogs and/or cats are sold per year from the premises, regardless of who owns the dogs or cats.

This change would potentially affect three groups of entities: (1) Persons who are currently exempt from licensing because they sell fewer than 25 dogs and/or cats for research, teaching, or testing purposes, or to any research facility; (2) licensed Class B dealers who acquire dogs and/or cats from persons exempt from licensing; and (3) the research and education industries.

In fiscal year 1997, approximately 325 persons who sold dogs and/or cats for research, teaching, or testing purposes, or to any research facility, were exempt from licensing because they sold fewer than 25 dogs and/or cats. It is unknown how many premises will be affected by the clarification that the exemption from licensing applies to the premises and not to individuals. However, if this proposed rule becomes effective, individuals on affected premises would have to obtain a license, reduce their business, or discontinue business. At this time, we do not have enough information to predict the choices

individuals will make among these alternatives.

In fiscal year 1997, persons exempt from licensing because they sold fewer than 25 dogs and/or cats for research, teaching, or testing purposes, or to any research facility, provided an estimated 4,524 dogs and 1,202 cats to the research, testing, and teaching industries.¹ These exempt persons received an average of \$50 for a dog and \$25 for a cat. Based on these values, we estimate that the total revenue of the exempted individuals was \$256,250.

Class B dealers would be the next group potentially affected by this proposed rule. Nearly all dogs and cats supplied for use in the research industry by persons exempt from licensing were sold to the research industry through Class B dealers. Class B dealers obtain dogs and cats for sale to registered research facilities from pounds, Class A dealers, other Class B dealers, and persons exempt from licensing. In 1997, there were 1,047 Class B dealers; however, we estimate that approximately 37 of them supplied dogs and cats for research purposes. These Class B dealers obtained 5,726 dogs and cats, which is approximately one-third of the dogs and cats they provided for research, from persons exempt from licensing. The effect of this proposed rule on Class B dealers would depend on the number of persons currently exempt from licensing who would apply for a license or reduce the number of animals they sell from their premises. If the clarification that the exemption applies to the premises, regardless of ownership, causes a significant decrease in the number of dogs and cats available from these individuals, Class B dealers could lose a primary source of dogs and cats and would have to depend on other sources (i.e., Class A dealers, pounds, or shelters) to obtain dogs and cats. Class B dealers most likely would not acquire animals from Class A dealers because of the higher cost. Class A dealers who sell directly to research facilities charge \$300 to \$500 per dog and slightly less per cat. Pounds and shelters may not be able to supply Class B dealers with the number of dogs and/or cats they need to

¹ In fiscal year 1997, a total of 75,429 dogs and 26,091 cats from all sources were used in registered research facilities. According to the National Association for Biomedical Research, less than one-half of these dogs and cats were random source. Dogs and cats supplied by individuals exempt from licensing are random source and are supplied to research almost exclusively through Class B dealers. In fiscal year 1997, Class B dealers supplied approximately 36 percent of random source dogs and 23 percent of random source cats used in research. Class B dealers obtained approximately one-third of their animals from exempt sources.

maintain their current levels of operation.

The effect of this proposed rule on research facilities will primarily depend on the rule's effect on Class B dealers. Of the 101,520 dogs and cats used in research in fiscal year 1997, less than one-half were random source. Class B dealers supplied approximately 36 percent of the random source dogs and 23 percent of the random source cats used in research. Approximately one-third of these animals were obtained by the Class B dealers from persons exempt from licensing. Laws in many areas make Class B dealers the only viable source of these animals. Any increase in costs for the dogs and cats obtained by Class B dealers would likely be passed on to the research facilities that purchase the animals.

Clarification of the Regulations and Changes to Administrative Procedures

This proposed rule would make a number of changes to clarify the regulations and correct deficiencies we have found in enforcing the regulations. We are also proposing amendments to a number of administrative procedures to make them more efficient. In addition, this proposed rule would require certification at the time of purchase or acquisition of certain animals. These changes would not have a significant economic effect on affected entities because the changes should not alter the day-to-day operations for entities that are currently in compliance with the Act.

Small Entities

The Regulatory Flexibility Act requires that we specifically consider the economic effects of the proposed rule on small entities. As stated previously, the entities likely to be affected by this proposed rule are Class A and B dealers, Class C exhibitors, registered exhibitors, research facilities, and individuals who are exempt from licensing.

The Small Business Administration (SBA) has established size criteria by Standard Industrial Classification (SIC) for determining which economic entities meet the definition of a small entity.

According to the SBA, Class A dealers with less than \$0.5 million in annual receipts are considered small. According to the 1997 Census of Agriculture, there were 10,045 dog and cat establishments in the category of all other annual production, which included Class A dealers. These dog and cat establishments had an average of \$101,624 in annual receipts in 1997, which is well below the standard for a

small entity. Class B dealers are categorized in the SIC as part of wholesale trade, other nondurable goods. According to SBA standards, if an entity in this category employs fewer than 100 employees, the entity is considered small. According to the 1997 Economic Census, the average wholesaler in other nondurable goods had just over six employees, which is far below the standard to be considered a small entity. We believe that the majority of the 37 Class B dealers potentially affected by the rule changes may be considered small. There are over 2,000 exhibitors licensed by or registered with APHIS. Under the SBA standards, an animal exhibitor is considered small if the entity has less than \$5 million in annual receipts. According to the 1997 Economic Census, the average circus (including animal acts and sideshows) had about \$3.3 million in annual receipts, the average zoo and botanical garden had \$3.6 million in annual receipts, and the average nature park had \$0.5 million in annual receipts. In 1998, there were 1,227 active animal research facilities. The SBA standard for a small research or testing facility is one with less than \$5 million in annual receipts, except for commercial physical and biological research, for which the standard is fewer than 500 employees. According to the 1997 Economic Census, the average noncommercial research and development entity in the life sciences had \$3.3 million in annual receipts, the average testing laboratory had \$1.2 million in annual receipts, and the average commercial research and development entity in the life sciences had just over 20 employees. Therefore, the average entity in each of these categories would be considered small.

We do not have enough information to conclude the number of entities that this proposed rule would affect, particularly the proposed changes pertaining to the number of breeding females maintained on the same premises, regardless of ownership, and the number of dogs and/or cats that can be sold from a premises, regardless of ownership. However, most, if not all, affected entities are likely to be considered small based on SBA size standards.

We are inviting comments concerning potential effects of this rule on small entities. In particular, we are interested in determining the number of individuals who would be affected by the proposed changes in exemptions from the licensing requirements, which would limit the exemptions to three breeding female dogs and/or cats on a single premises, regardless of

ownership, or to the sale of fewer than 25 dogs and/or cats for research from a single premises, regardless of ownership.

An alternative to this proposed rule would be to make no change to the Animal Welfare regulations. After consideration, we rejected this alternative because we believe that the proposed changes to the requirements are necessary to help ensure compliance with the intent and content of the regulations and the Animal Welfare Act.

This proposed rule contains information collection requirements. The requirement related to requesting reinspection will take an estimated 0.083 hours per response and involve an estimated 350 respondents. The requirement related to certification will take an estimated 0.083 hours per response and involve an estimated 150 respondents. Therefore, the effect is expected to be minimal. These requirements are described in this document under the heading "Paperwork Reduction Act."

In addition, we have not identified any relevant Federal rules that are currently in effect that duplicate, overlap, or conflict with this rule.

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 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. The Act does not provide administrative procedures which must be exhausted prior to a judicial challenge to the provisions of this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 97-121-1. Also, please send a copy of your comments to: (1) Docket No. 97-121-1, Regulatory

Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737-1238, and (2) Clearance Officer, OCIO, USDA, room 404-W, 14th Street and Independence Avenue SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

We are proposing to require applicants who do not pass the initial prelicensing inspection to request reinspection, and, if necessary, a third inspection, within 90 days following the first inspection to demonstrate that the premises, animals, facilities, vehicles, equipment, other premises, and records are in compliance with the regulations and standards. We are also proposing to require dealers, exhibitors, and research facilities that acquire dogs or cats from individuals who are not licensed to obtain a certification from the seller that the animals were born and raised on their premises and that they are eligible for an exemption from the licensing requirements.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection requirement. We need these comments to help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses).

Estimate of burden: The public reporting burden for applicants for the collection of information relating to requesting reinspection is estimated to average 0.083 hours per response. (The estimated annual number of respondents is 350.) The public reporting burden for dealers, exhibitors, and research facilities for the collection of information relating to certification of exemption from licensing is estimated to average 0.083 hours per response. (The estimated annual number of respondents is 150.)

Respondents: Applicants, dealers, exhibitors, and research facilities.

Estimated annual number of respondents: 500.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 500.

Estimated total annual burden on respondents: 41 hours.

(Due to rounding, the total annual burden hours may not equal the product of the annual number of responses multiplied by the average reporting burden per response.)

Copies of this information collection can be obtained from: Clearance Officer, OCIO, USDA, room 404-W, 14th Street and Independence Avenue SW., Washington, DC 20250.

List of Subjects

9 CFR Part 1

Animal welfare, Pets, Reporting and recordkeeping requirements, Research.

9 CFR Part 2

Animal welfare, Pets, Reporting and recordkeeping requirements, Research. Accordingly, we propose to amend 9 CFR parts 1 and 2 as follows:

PART 1—DEFINITION OF TERMS

1. The authority citation for part 1 would be revised to read as follows:

Authority: 7 U.S.C. 2131-2159; 7 CFR 2.22, 2.80, and 371.7.

2. In § 1.1, the definition of *Administrator* would be revised to read as follows:

§ 1.1 Definitions.

* * * * *

Administrator. The Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

* * * * *

PART 2—REGULATIONS

3. The authority citation for part 2 would be revised to read as follows:

Authority: 7 U.S.C. 2131-2159; 7 CFR 2.22, 2.80, and 371.7.

4. Section 2.1 would be amended as follows:

a. In paragraph (a)(1), the first sentence, by removing the word "desiring" and adding in its place the word "intending".

b. In paragraph (a)(2), the last sentence, by removing the reference to "paragraph (d)" and adding in its place a reference to "paragraph (c)".

c. By revising paragraphs (a)(3)(iii) and (a)(3)(iv).

d. By removing paragraph (b) and redesignating paragraphs (c), (d), (e), and (f) as paragraphs (b), (c), (d), and (e), respectively, and by revising newly redesignated paragraphs (c) and (d).

§ 2.1 Requirements and application.

(a) * * *

(3) * * *

(iii) Any person who maintains a total of three (3) or fewer breeding female dogs, cats, and/or small exotic or wild mammals such as hedgehogs, degus, spiny mice, prairie dogs, flying squirrels, and jerboas, and who sells only the offspring of these dogs, cats, or small exotic or wild mammals, which were born and raised on his or her premises, for pets or exhibition, and is not otherwise required to obtain a license. This exemption does not extend to any person residing in a household that collectively maintains a total of more than three breeding female dogs, cats, and/or small exotic or wild mammals, regardless of ownership, nor to any person maintaining breeding female dogs, cats, and/or small exotic or wild mammals on premises on which more than three breeding female dogs, cats, and/or small exotic or wild mammals are maintained, nor to any person acting in concert with others where they collectively maintain a total of more than three breeding female dogs, cats, and/or small exotic or wild mammals regardless of ownership;

(iv) Any person who sells fewer than 25 dogs and/or cats per year, which were born and raised on his or her premises, for research, teaching, or testing purposes or to any research facility and is not otherwise required to obtain a license. This exemption does not extend to any person residing in a household that collectively sells 25 or more dogs and/or cats, regardless of ownership, nor to any person acting in concert with others where they collectively sell 25 or more dogs and/or cats, regardless of ownership. The sale of any dog or cat not born and raised on the premises for research purposes requires a license;

* * * * *

(c) A license will be issued to any applicant, except as provided in §§ 2.10 and 2.11, when:

(1) The applicant has met the requirements of this section and §§ 2.2 and 2.3; and

(2) The applicant has paid the application fee of \$10 and the annual license fee indicated in § 2.6 to the appropriate Animal Care regional office for an initial license, and, in the case of a license renewal, the annual license fee has been received by the appropriate

Animal Care regional office on or before the expiration date of the license.

(d)(1) A licensee who wishes a renewal must submit to the appropriate Animal Care regional office a completed application form and the annual license fee indicated in § 2.6 by certified check, cashier's check, personal check, or money order. The application form and the annual license fee must be received by the appropriate Animal Care regional office on or before the expiration date of the license. An applicant whose check is returned by the bank will be charged a fee of \$20 for each returned check. A returned check will be deemed nonpayment of fee and will result in the denial of the license. If an applicant's check is returned, subsequent fees must be paid by certified check, cashier's check, or money order.

(2) A license fee indicated in § 2.6 must also be paid if an applicant is applying for a changed class of license. The applicant may pay the fee by certified check, cashier's check, personal check, or money order. An applicant whose check is returned by a bank will be charged a fee of \$20 for each returned check. If an applicant's check is returned, subsequent fees must be paid by certified check, cashier's check, or money order.

* * * * *

5. In § 2.2, paragraph (b) would be revised to read as follows:

§ 2.2 Acknowledgment of regulations and standards.

* * * * *

(b) *Application for license renewal.* APHIS will renew a license after the applicant certifies by signing the application form that, to the best of the applicant's knowledge and belief, he or she is in compliance with the regulations and standards and agrees to continue to comply with the regulations and standards. APHIS will supply a copy of the applicable regulations and standards to the applicant upon request.

6. In § 2.3, paragraph (b) would be revised to read as follows:

§ 2.3 Demonstration of compliance with standards and regulations.

* * * * *

(b) Each applicant for an initial license must be inspected by APHIS and demonstrate compliance with the regulations and standards, as required in paragraph (a) of this section, before APHIS will issue a license. If the first inspection reveals that the applicant's animals, premises, facilities, vehicles, equipment, other premises, or records do not meet the requirements of this subchapter, APHIS will advise the applicant of existing deficiencies and the corrective measures that must be completed to come into compliance with the regulations and standards. An applicant who fails the first inspection will have two additional chances to demonstrate his or her compliance with the regulations and standards through a second inspection by APHIS. The applicant must request the second inspection, and if applicable, the third inspection, within 90 days following the first inspection. If the applicant fails inspection or fails to request re-inspections within the 90-day period, he or she will forfeit the application fee and cannot reapply for a license for a period of 6 months from the date of the failed third inspection or the expiration of the time to request a third inspection. Issuance of a license will be denied until the applicant demonstrates upon inspection that the animals, premises, facilities, vehicles, equipment, other premises, and records are in compliance with all regulations and standards in this subchapter.

7. In § 2.5, paragraphs (a)(4) and (b) would be revised to read as follows:

§ 2.5 Duration of license and termination of license.

(a) * * *

(4) The annual license fee has not been paid to the appropriate Animal Care regional office as required; *provided, however*, that a grace period of 30 days is provided subject to the payment of a late payment fee of \$25.00

and, if applicable, any fee for a check that has been returned unpaid. There will not be a refund of the annual license fee if a license is terminated prior to its expiration date.

(b) Any person who is licensed must file an application for a license renewal and an annual report form (APHIS Form 7003), as required by § 2.7 of this part, and pay the required annual license fee. The required annual license fee must be received in the appropriate Animal Care regional office on or before the expiration date of the license or the license will expire and automatically terminate. Failure to comply with the annual reporting requirements or pay the required annual license fee on or before the expiration date of the license will result in automatic termination of the license.

* * * * *

8. In § 2.6, paragraphs (a) and (c) would be revised to read as follows:

§ 2.6 Annual license fees.

(a) For an initial license, the applicant must submit a \$10 application fee in addition to the initial license fee prescribed in this section. Licensees applying for license renewal or changed class of license must submit only the license fee prescribed in this section. The license fee for an initial license, license renewal, or changed class of license is determined from table 1 or 2 in paragraph (c) of this section. Paragraph (b) of this section indicates the method used to calculate the license fee. All initial license and changed class of license fees must be submitted to the appropriate Animal Care regional office, and, in the case of license renewals, all fees must be received by the appropriate Animal Care regional office on or before the expiration date of the license.

* * * * *

(c) The license fee shall be computed in accordance with the following tables:

TABLE 1.—DEALERS, BROKERS AND OPERATORS OF AN AUCTION SALE CLASS "A" AND "B" LICENSE

| Over | But not over | Initial license fee | Annual or changed class of license fee |
|---------------|--------------|---------------------|--|
| \$0 | \$500 | \$30 | \$40 |
| 500 | 2,000 | 60 | 70 |
| 2,000 | 10,000 | 120 | 130 |
| 10,000 | 25,000 | 225 | 235 |
| 25,000 | 50,000 | 350 | 360 |
| 50,000 | 100,000 | 475 | 485 |
| 100,000 | | 750 | 760 |

TABLE 2.—EXHIBITORS—CLASS “C”
LICENSE

| Number of animals | Initial license fee | Annual or changed class of license fee |
|-------------------|---------------------|--|
| 1 to 5 | \$30 | \$40 |
| 6 to 25 | 75 | 85 |
| 26 to 50 | 175 | 185 |
| 51 to 500 | 225 | 235 |
| 501 and up | 300 | 310 |

* * * * *

9. In § 2.10, paragraph (a) would be amended by adding a new sentence at the end of the paragraph to read as follows:

§ 2.10 Licensees whose licenses have been suspended or revoked.

(a) * * * No license will be renewed during the period that it is suspended.

* * * * *

10. Section 2.11 would be amended as follows:

- a. By revising paragraphs (a)(4) and (a)(5), and by adding a new paragraph (a)(6).
- b. By revising paragraph (b).
- c. By adding a new paragraph (d).

§ 2.11 Denial of initial license application.

(a) * * *

(4) Has pled nolo contendere (no contest) or has been found to have violated any Federal, State, or local laws or regulations pertaining to animal cruelty within 1 year of application, or after 1 year if the Administrator determines that the circumstances render the applicant unfit to be licensed;

(5) Is or would be operating in violation or circumvention of any Federal, State, or local laws; or

(6) Has made any false or fraudulent statements or provided any false or fraudulent records to the Department or other government agencies, or has pled nolo contendere (no contest) or has been found to have violated any Federal, State, or local laws or regulations pertaining to the transportation, ownership, neglect, or welfare of animals, or is otherwise unfit to be licensed and the Administrator determines that the issuance of a license would be contrary to the purposes of the Act.

(b) An applicant whose license application has been denied may request a hearing in accordance with the applicable rules of practice for the purpose of showing why the application for license should not be denied. The license denial shall remain in effect until the final legal decision has been rendered. Should the license denial be

upheld, the applicant may again apply for a license 1 year from the date of the final order denying the application, unless the order provides otherwise.

* * * * *

(d) No license will be issued under circumstances that the Administrator determines would circumvent any order suspending, revoking, terminating, or denying a license under the Act.

11. A new § 2.12 would be added to read as follows:

§ 2.12 Termination of a license.

A license may be terminated for any reason that an initial license application may be denied pursuant to § 2.11 after a hearing in accordance with the applicable rules of practice.

12. Section 2.25 would be amended by adding a new paragraph (c) to read as follows:

§ 2.25 Requirements and procedures.

* * * * *

(c) No registrant or person required to be registered shall interfere with, threaten, abuse (including verbally abuse), or harass any APHIS official who is in the course of carrying out his or her duties.

13. Section 2.30 would be amended by adding a new paragraph (d) to read as follows:

§ 2.30 Registration.

* * * * *

(d) No research facility shall interfere with, threaten, abuse (including verbally abuse), or harass any APHIS official who is in the course of carrying out his or her duties.

14. Section 2.35 would be amended as follows:

a. In paragraph (b), by removing the period at the end of paragraph (b)(7) and adding in its place a semicolon, and by adding a new paragraph (b)(8).

b. In paragraph (b)(3), by adding the words “(or photographic identification card for nondrivers issued by a State)” after the words “driver’s license number”.

c. In paragraph (d)(1), by removing the words “/VS Form 18–1” after “APHIS Form 7001” and removing the words “/VS Form 18–5” after “APHIS Form 7005”.

d. In paragraph (d)(2), by removing the words “/VS Form 18–1” after “APHIS Form 7001” and removing the words “/VS Form 18–6” after “APHIS Form 7006”.

§ 2.35 Recordkeeping requirements.

* * * * *

(b) * * *

(8) If dogs or cats are acquired from any person not licensed or registered

under the Act and not a pound or shelter, the research facility must obtain a certification that the animals were born and raised on the person’s premises and that the person has sold fewer than 25 dogs and/or cats that year.

* * * * *

15. Section 2.38 would be amended as follows:

a. In paragraph (h)(3), by removing the words “/VS Form 18–1” after “APHIS Form 7001”.

b. In paragraph (i)(3), by removing the words “/VS Form 18–9” after the words “APHIS Form 7009”.

c. By revising paragraph (k)(2).

§ 2.38 Miscellaneous.

* * * * *

(k) * * *

(2) No person shall obtain live dogs or cats by use of false pretenses, misrepresentation, or deception.

* * * * *

§ 2.75 [Amended]

16. Section 2.75 would be amended as follows:

a. In paragraphs (a)(2) and (a)(2)(i), by removing the words “/VS Form 18–5” after “APHIS Form 7005” each time they appear and by removing the words “/VS Form 18–6” after “APHIS Form 7006” each time they appear.

b. In paragraph (a)(3), by removing the words “/VS Form 18–1” after “APHIS Form 7001”.

c. In paragraph (b)(2) by removing the words “/VS Form 18–19” after “APHIS Form 7019” and by removing the words “/VS Form 18–20” after “APHIS Form 7020”.

d. In paragraphs (a)(1)(iii) and (b)(1)(iii) by adding the phrase “(or photographic identification card for nondrivers issued by a State)” immediately following the words “driver’s license”.

§ 2.76 [Amended]

17. In § 2.76, paragraph (a)(4) would be amended by adding the phrase “(or photographic identification card for nondrivers issued by a State)” immediately following the words “driver’s license”.

§ 2.78 [Amended]

18. In § 2.78, paragraph (d) would be amended by removing the words “/VS Form 18–1” after “APHIS Form 7001”.

§ 2.102 [Amended]

19. In § 2.102, paragraph (a)(3) would be amended by removing the words “/VS Form 18–9” after “APHIS Form 7009”.

20. In § 2.126, paragraph (b) would be revised to read as follows:

§ 2.126 Access and inspection of records and property.

* * * *

(b) The use of a room, table, or other facilities necessary for the proper examination of the records and inspection of the property or animals must be extended to APHIS officials by the dealer, exhibitor, intermediate handler or carrier, and a responsible adult shall be made available to accompany APHIS officials during the inspection process.

21. In § 2.131, paragraphs (a), (b), (c), and (d) would be redesignated as paragraphs (b), (c), (d), and (e), respectively, and a new paragraph (a) would be added to read as follows:

§ 2.131 Handling of animals.

(a) All licensees who maintain wild or exotic animals must demonstrate adequate experience and knowledge of the species they maintain.

* * * *

22. Section 2.132 would be amended as follows:

a. By revising the section heading.

b. By removing paragraphs (b) and (c), and redesignating paragraphs (d) and (e) as paragraphs (b) and (c), respectively, and by revising newly redesignated paragraph (b).

c. In newly designated paragraph (c)(3), by removing the words "random source."

d. By adding a new paragraph (d).

§ 2.132 Procurement of dogs, cats, and other animals; dealers.

* * * *

(b) No person shall obtain live dogs, cats, or other animals by use of false pretenses, misrepresentation, or deception.

* * * *

(d) No dealer or exhibitor shall knowingly obtain any dog, cat, or other animal from any person who is required to be licensed but who does not hold a current, valid, and unsuspended license. No dealer or exhibitor shall knowingly obtain any dog or cat from any person who is not licensed, other than a pound or shelter, without obtaining a certification that the animals were born and raised on that person's premises and, if the animals are for research purposes, that the person has sold fewer than 25 dogs and/or cats that year, or, if the animals are for use as pets, that the person does not maintain more than three breeding female dogs and/or cats.

Done in Washington, DC, this 27th day of July 2000.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00-19725 Filed 8-3-00; 8:45 am]

BILLING CODE 3410-34-U

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-43085; File No. S7-17-00]

RIN 3235-AH96

Firm Quote and Trade-Through Disclosure Rules for Options

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission ("SEC" or "Commission") is proposing to amend Rule 11Ac1-1 under the Securities Exchange Act of 1934 ("Exchange Act"), to require options exchanges and options market makers to publish firm quotes. The Commission also is proposing new Rule 11Ac1-7 under the Exchange Act to require a broker-dealer to disclose on its customer's confirmation statement when the customer's order for listed options was executed at a price inferior to a better published quote and what that better quote was, unless the transaction was effected on a market that is a participant in an intermarket options linkage plan approved by the Commission.

DATES: Comments should be submitted on or before September 18, 2000.

ADDRESSES: All comments should be submitted in triplicate and addressed to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549-0609. Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7-17-00; this file number should be included on the subject line if E-mail is used. Comment letters will be available for inspection and copying in the Commission's Public Reference Room at the same address. Electronically submitted comment letters will be posted on the Commission's Internet web site (<http://www.sec.gov>).

FOR FURTHER INFORMATION CONTACT: Deborah Flynn, Senior Special Counsel, at (202) 942-0075, Kelly Riley, Attorney, at (202) 942-0752, John

Roeser, Attorney, at (202) 942-0762, Terri Evans, Special Counsel, at (202) 942-4162, and Heather Traeger, Attorney, at (202) 942-0763, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549-1001.

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