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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 1

[Docket No. 98-106-3]

RIN 0579-AB69

Animal Welfare; Definition of Animal

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the Animal Welfare Act (AWA) regulations to reflect an amendment to the Act's definition of the term *animal*. The Farm Security and Rural Investment Act of 2002 amended the definition of *animal* to specifically exclude birds, rats of the genus *Rattus*, and mice of the genus *Mus*, bred for use in research. While the definition of *animal* in the regulations has excluded rats of the genus *Rattus* and mice of the genus *Mus* bred for use in research, that definition has also excluded all birds (*i.e.*, not just those birds bred for use in research). To make the definition of *animal* in the regulations consistent with the definition of *animal* in the AWA, this final rule amends the regulations by narrowing the scope of the exclusion for birds to only those birds bred for use in research. This final rule is intended only to make the definition of *animal* in the regulations consistent with the definition of *animal* in AWA. In the Proposed Rules section of today's **Federal Register**, we are publishing an advance notice of proposed rulemaking in which we solicit comments from the public to aid in the development of regulations and standards for birds not specifically bred for use in research. In addition, our advance notice of proposed rulemaking also requests public comment on issues related to the humane handling, care,

treatment, and transportation of rats and mice covered by the AWA.

DATES: This rule is effective June 5, 2004.

FOR FURTHER INFORMATION CONTACT: Dr. Jerry DePoyster, Senior Veterinary Medical Officer, Animal Care, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737-1234; (301) 734-7586.

SUPPLEMENTARY INFORMATION:

Background

Under the Animal Welfare Act (AWA) (7 U.S.C. 2131 *et seq.*), the Secretary of Agriculture is authorized to promulgate standards and other requirements governing the humane handling, care, treatment, and transportation of certain animals by dealers, research facilities, exhibitors, operators of auction sales, and carriers and intermediate handlers. Within the U.S. Department of Agriculture, responsibility for administering the AWA has been delegated to the Administrator of the Animal and Plant Health Inspection Service (APHIS). Within APHIS, the responsibility for administering the AWA has been delegated to the Deputy Administrator for Animal Care. Regulations established under the AWA are contained in the Code of Federal Regulations (CFR) in 9 CFR parts 1, 2, and 3. Part 1 contains definitions for terms used in parts 2 and 3; part 2 provides administrative requirements and sets forth institutional responsibilities for regulated parties; and part 3 contains specifications for the humane handling, care, treatment, and transportation of animals covered by the AWA. Currently, part 3 consists of subparts A through E, which contain standards for specific animals, and subpart F, which sets forth general standards for warmblooded animals not otherwise specified in that part.

Definition of Animal

Under Section 2(g) of the AWA (7 U.S.C. 2132(g)), the term *animal* includes, with certain exceptions, any live or dead dog, cat, monkey (nonhuman primate mammal), guinea pig, hamster, rabbit, or such other warmblooded animal, as the Secretary may determine is being used, or is intended for use for research, teaching, testing, experimentation, or exhibition purposes, or as a pet. The Farm Security and Rural Investment Act of 2002 (Pub. L. 107-171, signed into law on May 13,

2002), included provisions that amended the definition of *animal* in the AWA by specifically excluding birds, rats of the genus *Rattus*, and mice of the genus *Mus*, bred for use in research. In this document, we are amending the definition of *animal* in the regulations to be consistent with the definition of *animal* in the AWA.

Prior to the effective date of this final rule, the definition of *animal* in 9 CFR 1.1 excluded rats of the genus *Rattus* and mice of the genus *Mus* bred for use in research, as well as all birds (*i.e.*, not just those birds bred for use in research). As a result, this final rule will narrow the scope of the exclusion for birds to only those birds bred for use in research. This final rule is intended only to make the definition of *animal* in the regulations consistent with the definition of *animal* in the AWA.

Advance Notice of Proposed Rulemaking

We are currently considering several changes to the regulations to help promote the humane handling, care, treatment, and transportation of birds, rats, and mice not specifically excluded from coverage under the AWA. In the Proposed Rules section of today's **Federal Register** (APHIS Docket No. 98-106-4), we are publishing an advance notice of proposed rulemaking in which we solicit public comment to aid in the development of regulations and standards for birds not bred for use in research. In addition, our advance notice of proposed rulemaking also requests responses to help determine if we should continue to regulate rats and mice, except for rats of the genus *Rattus* and mice of the genus *Mus* bred for use in research, under the general standards in subpart F of part 3 or if we should establish specific standards for them. Finally, our advance notice of proposed rulemaking solicits data and information from the public concerning the potential economic effects on entities that may be affected if we were to establish specific standards for those birds, rats, and mice.

Neither this final rule nor the advance notice of proposed rulemaking published in the Proposed Rules section of today's **Federal Register** will immediately result in any change in our Animal Care program. We will continue to cover rats and mice, except for rats of the genus *Rattus* and mice of the

genus *Mus* bred for use in research, under the regulations and standards in part 2 and subpart F of part 3. When we determine how to regulate birds not bred for use in research and what, if any, specific standards should be established for covered rats and mice, we will publish a proposed rule for public comment in the **Federal Register**. Any changes to our Animal Care program that may result from such a proposal will be addressed in that document.

Effective Date

We are taking this action to update our regulations to reflect an amendment to the definition of *animal* that has already occurred in the Animal Welfare Act. This final rule is intended only to make the definition of *animal* in the regulations consistent with the definition of *animal* in the AWA. In the Proposed Rules section of today's **Federal Register**, we are publishing an advance notice of proposed rulemaking in which we solicit comments from the public to aid in the development of regulations and standards for birds not specifically bred for use in research.

Accordingly, pursuant to the administrative procedure provisions in 5 U.S.C. 553, we find upon good cause that prior notice and other public procedure with respect to this rule are unnecessary. We also find good cause for making this rule effective less than 30 days after publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

This final rule amends the regulations to reflect an amendment to the Act's definition of the term *animal*. The Farm Security and Rural Investment Act of 2002 amended the definition of *animal* to specifically exclude birds, rats of the genus *Rattus*, and mice of the genus *Mus*, bred for use in research. While the definition of *animal* in the regulations has excluded rats of the genus *Rattus* and mice of the genus *Mus* bred for use in research, that definition has also excluded all birds (*i.e.*, not just those birds bred for use in research). Therefore, this final rule will narrow the scope of the exclusion for birds to only those birds bred for use in research.

Until a determination is made concerning how to regulate the care and use of birds not specifically bred for use in research, this amendment to the

regulations' definition of *animal* will not have any economic effects on any entities, large or small. Therefore, there are no entities that are affected by this rule at this time. Given the absence of economic effects associated with this rule, there are likewise no costs or benefits associated with this rule.

As noted earlier, in the Proposed Rules section of today's **Federal Register**, we are publishing an advance notice of proposed rulemaking in which we solicit public comment to aid in the development of regulations and standards for birds not bred for use in research. In addition, our advance notice of proposed rulemaking also requests responses to help determine if we should continue to regulate rats and mice covered by the AWA under the general standards in subpart F of part 3 or if we should establish specific standards for them. When we determine how to regulate the handling, treatment, care, and transportation of birds not specifically bred for use in research and what, if any, specific standards should be established for covered rats and mice, we will publish a proposed rule for public comment in the **Federal Register**. Any economic effects that may result from such a proposal will be addressed in that document.

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

Executive Order 12372

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

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule will 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

This final rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 1

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

■ Accordingly, we are amending 9 CFR part 1 as follows:

PART 1—DEFINITIONS OF TERMS

■ 1. The authority citation for part 1 continues 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 *animal* is revised to read as follows:

1.1 Definitions.

* * * * *

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

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Done in Washington, DC, this 1st day of June 2004.

Bill Hawks,

Under Secretary for Marketing and Regulatory Programs.

[FR Doc. 04-12693 Filed 6-3-04; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000-NM-110-AD; Amendment 39-13653; AD 2004-11-07]

RIN 2120-AA64

Airworthiness Directives; McDonnell Douglas Model DC-9-81 (MD-81), DC-9-82 (MD-82), DC-9-83 (MD-83), DC-9-87 (MD-87), and MD-88 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD),