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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 1 and 2

[Docket No. 97–121–3]

RIN 0579–AA94

Animal Welfare; Inspection, Licensing, and Procurement of Animals

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the Animal Welfare Act regulations to revise and clarify the exemptions from the licensing requirements, the procedures for applying for licenses and renewals, and the restrictions upon the acquisition of dogs, cats, and other animals. These actions are necessary to help ensure compliance with the regulations and the Animal Welfare Act.

DATES: *Effective Date:* August 13, 2004.

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 (AWA) (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 AWA to the Administrator of the Animal and Plant Health Inspection Service (APHIS). The regulations established under the AWA 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 AWA. 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.

On August 4, 2000, we published in the **Federal Register** (65 FR 47908–47918, Docket No. 97–121–1) a proposal to amend the regulations by revising and clarifying the exemptions from the licensing requirements, the procedures for applying for licenses and renewals, and restrictions upon the acquisition of dogs, cats and other animals.

We solicited comments concerning our proposal for 60 days ending on October 3, 2000. At the request of several commenters, we extended the comment period to November 20, 2000 (65 FR 62650, Docket No. 97–121–2). We received 395 comments by that date. They were from private citizens, professional organizations, licensees, and Congressional representatives.

General Comments

A number of commenters offered general support for the proposed rule and APHIS' efforts to strengthen the licensing and renewal requirements. Many felt that these changes would help to improve conditions for the animals.

Several commenters stated that the AWA is unconstitutional and that the Government should stay out of their private lives. Several commenters also stated that changes in the regulations are unnecessary and that we merely need to enforce the requirements already in place. We disagree. The United States Department of Agriculture (USDA) has a duty to implement and enforce the AWA. APHIS believes that the proposed changes will improve the implementation of the AWA.

Several commenters stated that APHIS should not take on additional regulatory responsibilities until it is determined that there is sufficient manpower and budget to support the activity. One commenter expressed concern that APHIS had not considered how many additional entities would

need to be licensed with the proposed regulation of small exotic or wild mammals. The commenter wondered if APHIS has the resources to handle these additional entities. We do not believe that implementing the changes we proposed will increase our workload under the AWA.

One commenter stated that many people were not aware of the proposed rule, especially if they did not have access to the Internet, and several commenters requested a second extension of the comment period. As evidenced by the number and diversity of comments we received, we believe that we provided adequate notice and opportunity for comment.

One commenter requested a personal reply. APHIS' policy is not to respond directly to individual commenters, but to take all comments into consideration and address them in another document published in the **Federal Register**, in this case, a final rule.

Some commenters expressed concern that the proposed rule would put dog and cat dealers out of business, and they questioned why we regulate dogs and cats at all. The AWA specifically covers dogs and cats. APHIS does not believe that the proposed changes impose significant burdens.

Several commenters argued that dogs and cats should not be used in research, and that budget issues for researchers should not be dictating regulations. The AWA specifically prohibits the USDA from dictating what research is done (7 U.S.C. 2143). If research is done using species covered by the AWA, the research facility must comply with the AWA and regulations.

One commenter questioned why the proposed rule focused on dogs and cats when it had "started out aimed at dangerous animals." Although we did propose changes to § 2.131 related to experience and knowledge required by licensees who maintain wild or exotic animals, the focus of the proposed rule was not on dangerous animals. Rather, the proposed rule was designed to revise and clarify the exemptions from the licensing requirements, the procedures for applying for licenses and renewals, and the restrictions upon the acquisition of dogs, cats, and other animals.

Based on the large number of inquiries concerning the scope and intent of the proposed rule, we wish to

clarify that the AWA and the regulations regulate the wholesale pet industry, not the retail pet industry. Sales by retail pet stores are not regulated. The term "retail pet store" is defined in § 1.1 of the regulations as "any outlet where only the following animals are sold or offered for sale, at retail, for use as pets: Dogs, cats, rabbits, guinea pigs, hamsters, gerbils, rats, mice, gophers, chinchilla, domestic ferrets, domestic farm animals, birds, and cold-blooded species. Such definition excludes—(1) Establishments or persons who deal in dogs used for hunting, security, or breeding purposes; (2) establishments or persons exhibiting, selling, or offering to exhibit or sell any wild or exotic or other nonpet species of warmblooded animals (except birds), such as skunks, raccoons, nonhuman primates, squirrels, ocelots, foxes, coyotes, *etc.*; (3) any establishment or person selling warmblooded animals (except birds, and laboratory rats and mice) for research or exhibition purposes; and (4) any establishment wholesaling any animals (except birds, rats and mice). (5) Any establishment exhibiting pet animals in a room that is separate from or adjacent to the retail pet store, or in an outside area, or anywhere off the retail pet store premises."

Requirements and Application—Exemptions From Licensing

Many commenters addressed the proposed amendments to § 2.1(a)(3)(iii) and (iv), which concern exemptions from licensing requirements.

In § 2.1, proposed paragraph (a)(3)(iii) exempts from licensing any person who maintains a total of three 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.

Several commenters requested that we define "small exotic or wild mammal." Some commenters requested a specific list of animals which would be considered small or exotic wild animals, and one commenter suggested that we identify general qualifications, such as adult size, to define these animals. One commenter expressed concern that these terms would create a loophole in the regulations.

We listed in proposed § 2.1(a)(3)(iii) some animals that we consider to be included in the term "small exotic or wild mammal." This list merely identifies the types of animals normally

considered to be in this category; it is not intended to be an exhaustive list. Including an exhaustive list would be difficult and counterproductive, since additions or deletions from such a list in the regulations would require rulemaking, and we cannot predict what animals may be marketed as pets in the future. Accordingly, we are making no changes based on these comments.

Another commenter requested that we define "breeding female." The commenter questioned whether an animal capable of reproducing would be considered the same way as a pregnant animal. For purposes of the AWA, "animal" is defined in § 1.1 as including any warm-blooded animal (not exempted elsewhere) that is used or intended for use in regulated activities. Consequently, if an animal is being kept to produce offspring for sale into the wholesale pet trade, for research, or for teaching or exhibition purposes, that animal will be considered covered under § 2.1(a)(3)(iii), even if it is not pregnant or being bred during the current breeding cycle. This prevents a person from rotating animals in the breeding program to avoid licensing requirements. For these reasons, we are making no change based on this comment.

One commenter suggested that APHIS exempt from licensing any person who maintains a total of five or fewer breeding female small exotic or wild mammals (commonly known as pocket pets). We proposed to amend § 2.1(a)(3)(iii) to include in the exemption from licensing persons who maintain three or fewer breeding female pocket pets on a single premises because we do not believe that the risk associated with their maintenance warrants our inspection of the premises or requires the issuance of a license. We believe that the same provisions should apply to small exotic and wild animals as apply to dogs and cats. Therefore, we are making no change based on this comment.

One commenter stated that legitimate breeders need more than three breeding females on the premises and that the proposed regulations harass and tax legitimate breeders, rather than regulating "puppy mills."

The exemption for three or fewer breeding females is designed to exempt *de minimis* activities. Given that the average litter size for most dogs and cats is 3 to 8 offspring and each animal may have 1 to 2 litters per year, we believe that wholesale dealers who maintain more than three breeding females on their premises need to be licensed and inspected.

The current § 2.1(a)(3)(iv) exempts from licensing 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. The proposed rule did not create the exemption but merely clarified it so that persons acting in concert could not evade the limitation.

A number of commenters argued that the limit for exemption from licensing should be reduced to three or fewer. Similar changes have been suggested in the past. However, since most dogs and cats have an average litter size of more than three animals, we believe such a provision would be unduly limiting. Individuals would be prohibited from selling even one litter a year for regulated purposes unless they were licensed under the AWA. Thus, a limit of three or fewer animals would not be a practical or enforceable requirement. The threshold of 25 dogs or cats for licensure has been a regulatory provision for over 15 years. In addition, one commenter argued that there is a disparity in the parameters used to determine activity thresholds for licensure, with no direct correlation between the provisions for 25 or fewer dogs or cats sold per year, 3 or fewer breeding females, and the \$500 gross income from the sale of domestic animals for regulated purposes (see § 2.1(a)(3)). We disagree. All of these provisions are designed to exempt *de minimis* activities. The exemption for 25 or fewer dogs or cats sold per year is directly related to the exemption for 3 or fewer breeding females since the average litter size for most dogs and cats is 3 to 8 offspring and each animal may have 1 to 2 litters per year (see § 2.1(a)(3)(i) and (iii)). Furthermore, the exemption for the sale of any animal except wild or exotic animals, dogs, or cats is limited to \$500 gross income per year (see § 2.1(a)(3)(ii)). For these reasons, we are making no changes based on this comment.

In § 2.1, proposed paragraph (a)(3)(iii) states that the exemption from licensing 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. Similarly, proposed paragraph (a)(3)(iv) states that the exemption from licensing 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.

One commenter expressed concern about the phrase "acting in concert" in proposed §§ 2.1(a)(3)(iii) and 2.1(a)(3)(iv). Specifically, the commenter was concerned that breeders with partial ownership in a number of breeding animals would be considered to be "acting in concert" with their partners and, therefore, would not be exempt from licensing.

The proposed changes to §§ 2.1(a)(3)(iii) and 2.1(a)(3)(iv) are designed to close a loophole in the regulations. 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. However, when several members of the same household (or other persons acting in concert) are maintaining breeding female dogs or cats on the same premises such that the number of breeding females in total is more than three, we believe that the activities are no longer *de minimis* and the dealers need to be licensed. For similar reasons, we believe that dealers need to be licensed if 25 or more dogs and/or cats are sold for research, teaching, or testing purposes per year from the premises or by members of the same household or other persons acting in concert, regardless of ownership. For these reasons, we are making no changes based on this comment.

Currently, § 2.1(b) provides that a person who is exempt from licensing under § 2.1(a)(3)(iv) may apply for a voluntary license. Since this option has rarely been exercised, we proposed to eliminate this provision. We received several comments on this issue. All of the commenters supported our proposal to eliminate voluntary licenses.

Requirements and Application— Payment of Fees

Currently, § 2.1, paragraphs (d)(2), (e)(1), and (e)(2) (redesignated as (c)(2), (d)(1), and (d)(2) in this final rule) provide that a license will not be issued until payment has cleared normal banking procedures. We proposed to remove this provision. Commenters generally supported the issuance of a

license when the fee is paid, rather than when a check clears. One commenter supported proposed § 2.1(d)(1) as long as it was understood that a returned or bounced check would result in denial of the license or renewal. We note that a returned check for a license or renewal will result in denial of the license or renewal.

Several commenters also supported proposed provisions to submit fees for licenses to the appropriate Animal Care (AC) regional office, rather than the AC Regional Director, and to specify that the license fee is due on or before the date of expiration of the license.

One commenter recommended that we allow fees for licenses and renewals to be paid by credit card. We currently allow fees to be paid with major credit cards. To clarify the available payment options, in this final rule, § 2.1(d)(1) and § 2.1(d)(2) provide that payment of fees for licenses and renewal of licenses, as well as for changes in class of license, can be made using a credit card, in addition to personal check, certified check, cashier's check, and money order. Regional offices can be contacted for details on these transactions.

Acknowledgment of Regulations and Standards

We proposed to amend § 2.2(b) to remove the provision stating that APHIS will supply copies of the regulations and standards to licensees as part of the license renewal process. We believed that most parties did not want or need these yearly copies. However, comments on this issue were split. Several commenters supported this provision as long as all regulated parties were notified of the changes in the rules, while other commenters thought that we needed to continue providing copies of the regulations and standards as part of the license renewal process.

Currently, regional offices inform all licensees and registrants of all applicable regulatory changes. In addition, all AWA regulations and standards are available on the Internet at <http://www.aphis.usda.gov/ac>. To accommodate licensees and registrants who wish to continue to receive yearly copies of the regulations and standards, copies of the regulations and standards will be available from the regional offices upon request. We do not, however, plan to automatically send copies of this material each year. Therefore, we are making no changes to § 2.2(b) based on these comments.

Demonstration of Compliance With Standards and Regulations

In § 2.3, proposed paragraph (b) states that each applicant for an initial license

must be inspected by APHIS and demonstrate compliance with the regulations and standards 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 9 CFR Chapter 1, subchapter A, 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 reinspections 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.

One commenter suggested that APHIS should ensure that new licenses are not issued without careful scrutiny of the facility. The commenter asserted that a research facility, that identified itself as a pet shop, was issued a license.

Before an initial license is issued, an applicant must be inspected by APHIS and demonstrate compliance with the regulations and standards. During the inspection, APHIS ascertains the nature of the operation and determines if the applicant needs to be licensed or registered. Under § 2.30, a research facility must be registered, not licensed.

Several commenters stated that we should allow only two preclicensing inspections per application while others stated the entire preclicensing period should be only 60 days in length. Most other commenters supported a time limit on the preclicensing process, although one commenter felt the timeframe should be extended to 6 months.

A review of Animal Care records indicates that few applicants require three preclicensing inspections to complete the process, but even those applicants that require three preclicensing inspections usually complete the process within 90 days.

We encourage applicants to establish contact and dialogue with their inspector prior to requesting a preclicensing inspection to make sure the facility is in compliance. It will not increase our regulatory burden to maintain the availability of three

prelicensing inspections. Additionally, the 90-day period will allow for most instances when inclement weather may delay completion of required alterations to a facility. Therefore, we are making no change based on these comments.

Several commenters suggested that anyone who failed to complete or pass the prelicensing inspection process within the proposed timeframe should be required to wait 1 year, rather than 6 months, to reapply. The commenters provided no explanation to support the longer waiting period. To date, we have not experienced any significant enforcement problems related to the 6-month waiting period. Therefore, we are making no change based on these comments.

One commenter requested that APHIS clarify § 2.3(b) to indicate the application termination and waiting period if the applicant never requests reinspection. In § 2.3, proposed paragraph (b) states that if the applicant fails inspection or fails to request reinspections 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. We believe that proposed § 2.3(b) adequately describes the process for demonstrating compliance with the standards and regulations, and additional clarification is not necessary. Accordingly, we are making no change based on this comment.

Duration of License and Termination of License

Currently, § 2.5(a) provides that a license shall be valid and effective unless the license has been revoked or suspended pursuant to section 19 of the AWA, the license is voluntarily terminated upon request of the licensee, the license has expired or been terminated under the regulations, or the applicant has failed to pay the annual license fee.

One commenter recommended amending § 2.5(a) to provide that a license may be denied to a person who has not paid a monetary penalty assessed for AWA violations. Such a change would be impractical given due process considerations and provisions for monetary penalties to be deferred, suspended, or subject to a payment plan. Accordingly, we are making no change based on this comment.

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 proposed to eliminate this notification by certified mail.

Several commenters requested that license renewal notices continue to be delivered via certified mail. These commenters were concerned that the notices would be lost in regular mail and noted that the cost of certified mail was not prohibitive. Another commenter stated that delivery of license renewal notices via regular mail was fine, but recommended that a second notice be sent as a backup in case the first notice was never delivered.

We do not believe that using regular mail decreases our ability to communicate with licensees. All licensees rely on regular mail to run their businesses and all licensees are required to notify Animal Care of any change in address. Furthermore, expiration dates are printed on all license certificates and provide additional notice to the licensee. Therefore, we are making no change based on these comments.

Current § 2.5(c) provides that licensees must accept delivery of registered mail or certified mail notice and provide the AC Regional Director notice of their address in accordance with § 2.1. However, since we proposed to eliminate notification by certified mail, this provision is no longer necessary and should have been removed in the proposed rule. Therefore, we are removing § 2.5(c) in this final rule and redesignating paragraphs (d) through (f) as paragraphs (c) through (e), respectively.

Several commenters stated that the provisions in proposed §§ 2.1(d) and 2.5 related to payment of fees were confusing. The commenters noted that proposed § 2.1(d)(1) provides that a returned check will be deemed nonpayment of fee and will result in the denial of the license; proposed § 2.5(a)(4) provides that a license shall be valid and effective unless the annual license has not been paid, *provided, however*, that a grace period of 30 days is provided subject to the payment of a late payment fee of \$25 and, if applicable, any fee for a check that has been returned unpaid; and proposed § 2.5(b) provides that a license will expire and automatically terminate if the annual license fee is not received by the appropriate AC regional office on or before the expiration date of the license. One commenter recommended removing the grace period from the regulations.

We agree that the grace period provided for in proposed § 2.5(a)(4) is confusing in light of the language in proposed § 2.5(b), which provides that a license will be automatically terminated if the annual license fee is not received on or before the expiration date of the

license. Initially, we had contemplated proposing a grace period for late payment of fees, and provisions for a grace period appeared in early drafts of the proposed rule. However, after further review, we elected not to propose a grace period for late payment of fees and the inclusion of the grace period provision in proposed § 2.5(a)(4) was an oversight. For this reason, we are removing the grace period provision in § 2.5(a)(4) in this final rule.

Application and Annual License Fees

We proposed to amend the regulations at § 2.6, which set out annual license fees, to combine the \$10 application fee for license renewals (or change of license class) with the annual license fee so that persons already licensed would need to submit only one check or money order annually. All commenters on this issue supported the proposed changes.

Licensees Whose Licenses Have Been Suspended or Revoked

Currently, § 2.10(a) provides that any person whose license has been suspended for any reason shall not be licensed in his or her own name or in any other manner within the period during which the order of suspension is in effect. Furthermore, no partnership, firm, corporation, or other legal entity in which any such person has a substantial interest, financial or otherwise, will be licensed during that period. We proposed to amend § 2.10(a) by providing that no license will be renewed during the period that it is suspended.

One commenter wondered whether, under § 2.10, a license not renewed during a suspension of licensure is automatically terminated. The commenter stated a license should be terminated if the expiration date occurs during a period of suspension. A license suspension is not intended to be a license termination or denial. If a license expires during a suspension, the licensee must follow the renewal process when the suspension is lifted, and a decision will be made at that time about whether the license should be renewed. However, to clarify this issue, § 2.10(a) in this final rule states that renewal of a license may be initiated during a suspension in accordance with §§ 2.2(b) and 2.12.

Denial of Initial License Application

Currently, § 2.11(a) provides 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 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 proposed to amend § 2.11(a) by revising paragraphs (a)(4) and (a)(5) and adding a new paragraph (a)(6). These proposed paragraphs provided that a license will not be issued if the applicant: (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 purpose of the Act.

A number of commenters recommended stricter conditions for licensure. To protect both animals and USDA inspectors, several commenters recommended permanent denial of a license to any convicted felon or the equivalent, or anyone convicted of animal cruelty. One commenter recommended that any person who violated any animal-related laws be denied a license and not be allowed to assist or participate with other persons to conduct regulated activities. Another commenter recommended that no corporation whose officer(s) were convicted of a felony should be licensed under the AWA. One commenter suggested we deny a license to any person that an animal registry body (e.g., American Kennel Club) finds in violation of its rules. Some commenters stated that individuals convicted of animal cruelty felonies or gross misdemeanors should be denied a license.

The changes we proposed to § 2.11(a) give the Administrator the broad discretion to deny a license to applicants who have pled *nolo*

contendere to or have been found in violation of any Federal, State, or local laws or regulations pertaining to animal cruelty, or to transportation, ownership, neglect, or welfare of animals. Further, the proposed changes would authorize the Administrator to deny a license to anyone who has made false or fraudulent statements or provides false or fraudulent records to the Department or other government agencies, 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 AWA. We do not believe that automatically excluding a convicted felon or someone convicted of a gross misdemeanor is necessary or appropriate. Similarly, we do not believe that automatically excluding someone who has violated an animal registry body's rules is necessary or appropriate. Furthermore, with regard to the commenters' concern for the safety of APHIS inspectors, we note that no inspector is required to inspect a premises alone. If an APHIS inspector has safety concerns, he or she may be accompanied by local law enforcement or other APHIS personnel. Therefore, we are making no changes in response to these comments.

One commenter suggested that any conviction for animal cruelty, not just those in the last year, should be considered when determining license eligibility. We note that proposed § 2.11(a)(4) provides that a license will not be issued to any applicant who has pled *nolo contendere* to or has been found in violation of 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*. Thus, we are making no changes based on this comment.

Several commenters stated that license eligibility should not be based on past convictions because everyone deserves a second chance. The intent of the AWA is to provide for the humane care and treatment of all animals covered by the Act, and prior convictions for animal cruelty are germane to deciding the appropriateness of licensure. Accordingly, we are making no change in response to these comments.

One commenter expressed concern that stipulation agreements would be considered *nolo contendere* pleas and, therefore, require automatic denial of a license or renewal of a license. This is not our intent. The provisions of any stipulation or consent decision document will specify the length of any

revocation or suspension, if applicable to the agreement. The length of any such suspension or revocation will be adhered to during any application process. Such agreements will not be considered *nolo contendere* pleas that require automatic denial of licensure. Licenses will not be renewed during any period of suspension or revocation. Under these circumstances, we are making no changes in response to this comment.

One commenter stated that APHIS should be clear that the proposed conditions for licensure in § 2.11 also apply to judicial orders (i.e., a judicial order in which a person has to forfeit animals and/or is prohibited from owning animals in the future). In proposed § 2.11(a)(4), we provided that a license will not be issued if the applicant is unfit to be licensed and the Administrator determines that the issuance of a license would be contrary to the purposes of the AWA. Furthermore, in proposed § 2.11(d), we provided that no license will be issued under circumstances that the Administrator determines would circumvent any order suspending, revoking, terminating, or denying a license under the AWA. These provisions would apply to judicial orders, including the judicial order described by the commenter. Therefore, we are making no change based on this comment.

A number of commenters were concerned about the use of the term "unfit" in § 2.11(a). Several commenters requested that we define "unfit," perhaps with a list of what makes a person unfit to hold a license. Several commenters requested that we delete this term altogether. Other commenters questioned our authority to judge an individual and determine them to be "unfit."

We are not making any changes based on these comments. The Administrator will assess the suitability, or "fitness," of an applicant to provide for the humane care and treatment of animals as required by the AWA and regulations. Listing all possible reasons for this determination is not possible and any attempt to do so would remove necessary flexibility in decisionmaking. We note that any person denied a license can request a hearing to appeal the decision.

One commenter expressed concern that proposed § 2.11(a)(6) did not include the same 1-year disqualification from becoming licensed as § 2.11(a)(4). Another commenter stated that § 2.11(a)(6) was overly broad because violations of laws pertaining to "ownership" could refer to leash-law

violations, barking ordinance violations, etc. We realize that not every violation of law related to animals should disqualify a person from becoming licensed. That is why proposed § 2.11(a)(6) calls for a determination that the issuance of a license would be contrary to the purposes of the AWA. For this reason, we are making no change based on these comments.

We proposed in § 2.11(b) that an applicant whose license application has been denied may request a hearing, and that 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.

Several commenters recommended that a person denied a license be prevented from applying for another license for 1 year. Some commenters suggested even longer waiting periods before an applicant could reapply for a license. Requiring a time limit of 1 year before an application can be resubmitted has proven to be a reasonable time. We have not found a need to extend this period. After waiting a year, the applicant must go through the entire licensing process again, meeting all requirements. The applicant is again subject to all the provisions of § 2.11. There is no guarantee of a license being issued after the 1-year wait. Accordingly, we are making no changes based on these comments.

Several commenters suggested replacing the phrase “unless the order provides otherwise” with the phrase “unless the order provides for a longer period of time” because an applicant should not be able to reapply for a license less than 1 year from the date of the denial. The language in proposed § 2.11(b) is sufficient to indicate that an applicant whose license application has been denied may reapply for a license 1 year from the date of the final order denying the application, unless the hearing judge orders an extended period of license denial. While we recognize the commenters’ concerns, a hearing judge may find that a shorter period of time is appropriate in a particular case. Therefore, we are making no change based on this comment.

Termination of a License

In § 2.12, we proposed that 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.

One commenter suggested that all licenses for Class B dealers be revoked at the first sign of any AWA violation and the animals should be seized without prior notice or trial. The commenter also suggested that no appeals should be allowed for revocation of a license and that no family member of an individual whose license has been revoked should be granted a license.

These recommendations would violate the principles of due process if implemented; therefore, we are making no change based on this comment. However, we note that we can prevent licensure of some persons if it is evident that such a licensure would circumvent provisions of the AWA and/or a revocation order (see § 2.11(d) in this final rule).

One commenter stated that we should not change § 2.12, allowing for individual decisions to be made on a case-by-case basis. Another commenter stated that using the phrase “or at any time” gives us too much power to make denials permanent, perhaps disregarding the sincere commitment of a person to change. This commenter’s main concern was that APHIS has too much power to make denials permanent.

APHIS continues to look at cases on an individual basis, as warranted. The language in proposed § 2.12 allows APHIS to more effectively enforce the AWA by allowing consideration of all salient factors during the licensing process. It should be remembered that anyone denied a license is entitled to appeal the decision at a hearing. This process protects applicants whose license applications have been denied. For these reasons, we are making no changes based on these comments.

Several commenters requested that we clarify that a license renewal may be denied for the same reasons as an initial license application may be denied (*i.e.*, a license terminated for the same reasons as an initial license application may be denied). One commenter requested that we clarify that a person’s license would be revoked if the person were found guilty of violating animal cruelty laws. Another commenter suggested that convictions for breaking wildlife laws should also be included. Another commenter recommended that a license be terminated pending a hearing in order to encourage compliance with the regulations and provide an incentive to expedite hearings.

These recommendations are already addressed by proposed § 2.12, which provides that a license may be terminated, after a hearing, for any

reason that an initial license application may be denied pursuant to § 2.11. Therefore, we are making no changes based on these comments.

Several commenters suggested adding criteria for renewal of licenses in § 2.12. One commenter suggested that licenses should not be renewed if there were any AWA violations within the last 3 years and the facility had not been inspected within the last year. Another commenter suggested that no license should be renewed unless the facility was inspected and found compliant just prior to the renewal date.

Enforcement of the AWA is based on random, unannounced inspections to determine compliance. In addition, APHIS uses a risk-based assessment to determine minimum inspection frequency. After inspection, all licensees are given an appropriate amount of time to correct any problems and become compliant. This cooperative system has been more effective than enforcement actions for each citation. Furthermore, a significant number of citations are for conditions that do not directly or immediately impact the health and well-being of the animals. It is unrealistic and counterproductive to make license renewal contingent on not having any citations. Accordingly, we are making no changes based on these comments.

Several commenters supported the provisions for termination of licensing but expressed concern over the care of animals at facilities where such terminations were implemented. One commenter suggested that we perform additional inspections pending a termination hearing. Since we already take steps to ensure the humane care of animals in these circumstances (*e.g.*, inspect and monitor animals and assist owners with placement of the animals), we are making no change based on these comments.

Access to Premises Provided by a Responsible Adult

Section 2.126 sets forth the requirements concerning access and inspection of records and property. We proposed to amend § 2.126(b) to add a provision that a responsible adult must be made available to accompany officials during the inspection process.

Some commenters interpreted proposed § 2.126(b) to mean that an adult needed to be at the facility at all times. They stated that this would pose an undue burden and cost on the operation. Several commenters suggested that, based on the assumption that proposed § 2.126(b) would require an adult onsite at all times, the inspector notify the licensee of the

inspection date or the licensee be required to inform the inspector of his/her availability on a given day. In contrast, one commenter stated that a responsible adult should be onsite at all times that animals were present. Some commenters stated that only the owner should accompany the APHIS inspector, while other commenters stated that the responsible adult listed on the application should accompany the inspector.

We intended that a responsible adult be made available to accompany the APHIS inspector. This would not require that the adult be onsite at all times. The current regulations require that the licensee make the facility available for inspection during business hours, which is defined in § 1.1 of the regulations to mean a reasonable number of hours between 7 a.m. and 7 p.m., Monday through Friday. Therefore, we are making no change based on these comments.

Several commenters requested that we define "responsible adult." It is the responsibility of the licensee to accommodate APHIS inspections, and if the owner(s) are not available, it is their responsibility to designate an adult to represent their interests with respect to the inspection. We believe that common usage of the term "responsible" in relation to the licensed business is sufficient to define "responsible adult." Therefore, we are making no change based on these comments.

One commenter stated that APHIS inspectors should inspect the premises unaccompanied if no responsible adult is available. Another commenter noted that this would constitute an illegal search of the premises. We do not perform unaccompanied inspections for many reasons, including the safety of the inspector. Therefore, we are making no change based on these comments.

Two commenters argued that no pictures should be taken during an inspection without the owner's permission. We did not propose to amend § 2.126(a)(4) and (5), which state that APHIS inspectors may inspect and photograph the facilities, property, and animals and may document, by the taking of photographs and other means, conditions and areas of noncompliance. Taking photographs during routine inspections is sometimes necessary to document any noncompliant items and conditions. Accordingly, we are making no change based on these comments.

Handling of Animals

We proposed adding a new requirement to § 2.131 that all licensees who maintain wild or exotic animals must demonstrate adequate experience

and knowledge of the species that they maintain. In the proposed rule, these animals were described as "potentially dangerous."

One commenter stated that some of the terminology in § 2.131 was ambiguous; specifically, the commenter wondered if the proposed requirement related to all wild or exotic animals or only to potentially dangerous animals. The commenter suggested that, if the proposed requirement related to potentially dangerous animals, APHIS should use the phrase "inherently dangerous animals" instead of "potentially dangerous animals." The commenter noted that many species of animals can be regarded as potentially dangerous, but there are some species which pose an inherent threat.

Proposed § 2.131 is intended to apply to all wild or exotic animals, which include, but are not limited to, "potentially dangerous animals." Therefore, we are making no change based on this comment.

Most commenters supported the intent of proposed § 2.131 but requested more information as to what constitutes "adequate experience and knowledge." Commenters suggested that "adequate experience and knowledge" was equivalent to a minimum of 4 years of working with the species involved or 1,000 hours of hands-on experience with the species. One commenter said experience and knowledge of comparable species should be applicable to any requirement.

We believe that this performance based standard will provide us with sufficient discretion to analyze each unique situation. Therefore, we are making no change based on these comments. However, we note that APHIS is currently examining this issue and will initiate rulemaking for any changes deemed appropriate.

A commenter suggested that § 2.131 should apply to registrants as well as licensees. The commenter noted that some registrants may also maintain wild or exotic animals.

We do not believe it is necessary for proposed § 2.131 to apply to registrants as well as licensees. Research facilities are already required to have an Institutional Animal Care and Use Committee that is qualified through experience and expertise to assess the facility's animal program. For this reason, we are making no change based on this comment.

One commenter requested that we clarify who must have this experience (e.g., the licensee, trainer, handler, caretaker, staff, etc.) while another commenter recommended that APHIS clarify how the cumulative knowledge

and experience of an institution's staff will be acknowledged.

Institutions and corporations can only have knowledge and experience through the persons they employ or retain. We do not believe that it would be practical to attempt to specify how a licensee would possess and demonstrate adequate experience and knowledge. Accordingly, we are making no change based on these comments.

One commenter noted that there may be instances where it would be impractical or impossible for an individual to obtain experience with a particular species of animal (e.g., when a zoo receives a species never before kept in captivity). The commenter recommended that APHIS consider the experience and knowledge of comparable species when determining if a person has adequate experience and knowledge of the species they maintain.

In cases where it has been impractical or impossible for an individual to obtain experience and knowledge of a particular species, APHIS has historically considered the individual's experience and knowledge of comparable species. The Administrator will continue to make determinations regarding adequate experience and knowledge on a case-by-case basis. Accordingly, we are not making a change based on this comment.

A commenter asked for clarification as to how the handling requirements in the proposed rule related to the recently published amendments to the marine mammal regulations (66 FR 239–257, Docket No. 93–076–15) and the draft policy on training and handling of potentially dangerous animals (65 FR 8318–8321, Docket No. 97–001–4). The commenter expressed concern about APHIS applying the proposed handling requirements to exhibitors maintaining marine mammals since APHIS has previously treated marine mammals as "wild animals."

This final rule and the marine mammal final rule address different aspects of AWA enforcement. This final rule relates to inspection, licensing, and procurement of animals, while the marine mammal final rule addresses the specific handling, care, and transportation needs of marine mammals. This final rule and the marine mammal final rule complement each other to ensure the humane care and treatment of animals covered by the AWA. As for the draft policy, APHIS will not be publishing or implementing a final policy statement on training and handling potentially dangerous animals because we have determined that any clarification of the regulations should be

accomplished through rulemaking (69 FR 30601, Docket No. 97-001-5).

One commenter asserted that all photographic shoots and animal rides should be banned. It is beyond the scope of our authority to ban photographic sessions and animal rides. Therefore, we are making no change in response to this comment.

Procurement of Animals by Dealers

Currently, § 2.132 of the regulations concerns the procurement of random source dogs and cats by Class B dealers. We proposed several changes to § 2.132 of the regulations to clarify these provisions.

One commenter wanted us to include Class A dealers in proposed § 2.132. Class A dealers breed and raise the animals they sell on their own premises. The proposal does include Class A dealers.

One commenter suggested that we hold research facilities responsible for acquisitions from unlicensed persons and hold dealers responsible for purchases from "bunchers." Although "bunchers" are not defined under the AWA, the term is commonly considered to mean parties that collect, gather, or aggregate animals from other sources for dealers. Dealers are already responsible for the actions of their employees and agents, however described. The proposed rule would prohibit dealers from acquiring animals through "bunchers" who are operating as unlicensed dealers. Therefore, we are making no change based on this comment.

One commenter recommended that we retain the previous § 2.132(b), which defined random source animals. The definition of "random source" animals may be found in § 1.1 of the regulations. Therefore, we are making no change based on this comment.

We proposed in § 2.132(d) that 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 the 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.

Several commenters supported this proposal, but recommended that we ensure that identification numbers or driver's license numbers are recorded on the certification statement and any other paperwork. Several commenters suggested that additional information be recorded, such as the animal

descriptions/characteristics, phone number of seller, full name and address of seller. Other commenters suggested that, in addition to the certification statement, APHIS should require additional documentation (*e.g.*, veterinary records, pictures, *etc.*) to verify ownership.

As noted previously, we believe that the requirements in part 2 of the regulations are adequate for purposes of the AWA to establish ownership of animals. The name, address, and driver's license number of the seller are currently recorded on the acquisition/disposition records of the dealer, exhibitor, or research facility. It would be redundant to require such information on the certification statement. Furthermore, the information required in this final rule would be sufficient to initiate any formal investigations needed involving the dealers and/or the suppliers. For these reasons, we are making no changes based on these comments.

One commenter wanted to make sure that the certification statement required in § 2.35 was the same as in § 2.132. Another commenter stated that the certification requirements in § 2.35 should be the same as those found in § 2.133. The information requirements of §§ 2.35, 2.132, and 2.133 are consistent and appropriate for the intended buyers and sellers. Therefore, we are making no changes based on these comments.

One commenter stated that the current acquisition requirements in part 2 are unacceptable and negligent. The commenter suggested that APHIS attend each auction and cross-reference the names of persons observed selling animals with the forms submitted to APHIS for at least 1 year. It is not feasible for APHIS to attend every auction and cross-reference the names of persons observed selling animals with the forms submitted to APHIS. As previously noted, the current recordkeeping requirements, supplemented by the requirements in this rule, are designed to ensure that animals are legally acquired and can be traced back to their previous owners if necessary. Accordingly, we are making no change based on this comment.

Recordkeeping

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. We proposed to add provisions in §§ 2.35(b)(3), 2.75(a)(1)(iii), 2.75(b)(1)(iii), and 2.76(a)(4) to allow the

use of officially issued photographic identification cards for nondrivers in lieu of a driver's license. Many commenters supported the proposal to allow the use of officially issued photographic identification cards in lieu of a driver's license.

Miscellaneous

We proposed a number of minor changes to the regulations to reflect current APHIS form numbers, change references from Veterinary Services to Animal Care, correct grammar, and replace "sector" references with appropriate references to AC regional offices. We received one comment in support of these proposals. No negative comments were received. Therefore, we are making no changes in this final rule to the following sections: §§ 2.35, 2.38, 2.75, 2.76, 2.78, and 2.102.

We proposed in § 2.38(k)(2), compliance with standards and prohibitions, that no person shall obtain live dogs or cats by use of false pretenses, misrepresentation, or deception. Several commenters supported or strongly agreed with this provision. Accordingly, we are making no changes in response to these comments.

One commenter requested that the USDA exempt research facilities from having to be licensed as dealers if they buy, sell, trade, *etc.*, animals incidental to research. We note that research facilities are not required to be licensed as dealers if they are buying animals, receiving or placing animals as donations, or trading animals with other research facilities. However, if a research facility is selling animals to other research facilities, pet stores, or for exhibition purposes, the research facility must be licensed as a dealer.

Several commenters stated that health certificates for animals should be used to validate ownership and help prevent the spread of disease. We believe that the requirements in part 2 of the regulations for documenting ownership are adequate for purposes of the AWA to establish ownership of animals. A related comment proposed that all animals used in research be certified as to who bred and raised them, that they were voluntarily provided to the dealer, and that the original owners agreed to their use in research. However, we believe such certificates are unnecessary because the changes to § 2.132, combined with the holding periods and other requirements of section 2158 of the AWA and § 2.101 of the regulations, provide sufficient safeguards. Accordingly, we are making no changes based on these comments.

One commenter requested that we amend the licensing requirements to eliminate all Class B dealers. Class B dealers may acquire and sell animals. There are currently fewer than 30 Class B dealers who purchase and sell random source animals. The majority of Class B dealers do not engage in random source animal activities. Elimination of random source activity would require an amendment to the AWA and is beyond the scope of this rule.

One commenter suggested that APHIS establish a definition for *de minimis* activity so that any retail pet store selling fewer than 50 pocket pets per year that would not otherwise be required to be licensed would be exempt from regulation. The commenter maintained that the regulations unreasonably burden small businesses that are already subject to State and local regulations. The regulations provide that, unless exempt under § 2.1, anyone selling any wild, exotic, or nonpet animals retail must have a license (§ 2.1(a)(3)(i)). While there may be multiple regulatory agencies affecting some businesses, these regulations cover persons who sell wild and exotic animals, which include pocket pets, under the AWA. Therefore, we are making no change based on this comment.

One commenter asked about the identity of the "Administrator." The Administrator is defined in § 1.1 of the regulations and refers to the Administrator of APHIS or any other official of APHIS authorized to act for the Administrator of APHIS. Thus, although the term "Administrator" is used in our regulations, reporting and recordkeeping documents are generally submitted to the regional offices. All questions concerning where documents should be submitted can be directed to the appropriate regional office.

One commenter stated that the Animal Care Annual Report to Congress on the enforcement of the AWA uses the terms "violation" and "alleged violation" interchangeably and cautioned us to make sure the terms are clear and consistent in §§ 2.11 and 2.12. The term "alleged violation" is not used in either section, only the phrases "operating in violation" and "found to have violated."

Another commenter requested a "no trespassing-disease control" regulation. However, such an activity is beyond the scope of the AWA and this rulemaking.

One commenter suggested that enforcing existing temperature regulations would help control "puppy mills." That issue is beyond the scope of this rulemaking.

One commenter stated that the proposed rule contained no discussion of the paperwork burden or economic burden associated with the proposed changes. Those issues were discussed under the headings "Paperwork Reduction Act" and "Executive Order 12866 and Regulatory Flexibility Act," respectively.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes discussed in this document.

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.

In accordance with 5 U.S.C. 604, we have performed a final 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. A discussion of the comments received concerning the proposal is set forth in the sections analyzing the regulatory provisions.

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

This rule will amend the Animal Welfare Act regulations in 9 CFR part 2 to revise and clarify the exemptions from the licensing requirements, the procedures for applying for licenses 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 currently 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 entry into the wholesale pet trade. 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.

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 rule will 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 rule will 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. The number of currently unlicensed individuals who will have to become licensed as a result of this rule is also unknown, although they are likely to be considered small entities. Those affected will either have to obtain a license and pay the associated fee,¹ or reduce the number of breeding females on their premises to three or fewer. It is necessary that these individuals be regulated in order to ensure the welfare of the animals in these establishments.

The extension of the licensing exemption to small exotic or wild mammals should have little impact. With the extension of this exemption, some breeders who are now licensed would no longer need to be licensed. However, because APHIS has only recently begun to require licenses for breeders of small exotic or wild mammals at all, only a small number of breeders would be affected. For that small number, there will 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 rule will clarify that this exemption would apply

¹ There is an application fee of \$10 and an annual license renewal fee that is based on the annual commissions or fees of the dealer, but not less than \$30.

only if fewer than 25 dogs and/or cats are sold per year from the premises, regardless of who owns the dogs or cats. In addition to the existing requirement for dealers and research facilities to record information about an unlicensed seller, such as driver's license number and State, the rule will require the dealer or facility to obtain certification from the unlicensed seller that he/she is not required to be licensed or registered with APHIS.

These changes would potentially affect four groups of entities: (1) Persons who are currently exempt from the licensing requirements; (2) licensed Class B dealers who acquire dogs and/or cats from persons exempt from licensing; (3) the research, testing, and education industries; and (4) Class C exhibitors who acquire dogs and/or cats from persons exempt from licensing.

It is estimated that in fiscal year (FY) 2002 approximately 6,200 dogs and cats² used in the research, testing, and teaching industries were obtained from persons exempt from licensing. In FY 2002, there were at least 248 exempt individuals who sold dogs and/or cats to Class B dealers. These exempt persons received, on average, \$50 for a dog and \$25 for a cat. Based on these values, the total revenue of all exempted individuals in FY 2002 is estimated to have been \$271,000. This rule will have little impact on these individuals. The required certification can be provided quickly and easily.

Class B dealers are the second group potentially affected by this 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. The number of Class B dealers is limited and has been declining in recent years. We estimate that there were 18 Class B dealers supplying dogs and cats to research in 2002. In 2002, those 18 Class B dealers obtained approximately 6,200 dogs and cats from

² Estimates are based on the following: In FY 2002 a total of 68,253 dogs and 24,222 cats from all sources were used in registered research facilities. According to the National Association for Biomedical Research, about 30 percent of these dogs and cats are "random source"—those not bred exclusively for research. Dogs and cats supplied by exempt individuals are random source, and are supplied to research almost exclusively through Class B dealers. Class B dealers supplied approximately two-thirds of the random source dogs and cats used in research. Class B dealers supplied approximately two-thirds of the random source dogs and cats used in research. Class B dealers obtained approximately one-third of their animals from exempt sources.

individuals who were exempt from licensing. This represents about a third of the dogs and cats Class B dealers provided to research.

The impact of this rule on Class B dealers should be small. This rule requires little added time or effort on the part of the dealer. Obtaining certification will take very little time and will be added to the information the dealer is already collecting on unlicensed sellers. Class B dealers could lose a primary source of animals due to the clarification that the exemption applies to the premises, regardless of ownership, or if Class B dealers choose to avoid collecting the required certifications. If this should occur, Class B dealers would have to turn to other sources (*i.e.*, licensed 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 B dealers usually pay a person exempt from licensing approximately \$50 for a dog and \$25 for a cat. 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 maintain their current levels of operation. Nearly all of the dogs and cats supplied by persons exempt from licensing for use in the research industry were sold to the research industry through Class B dealers.

The impact of this rule on research facilities will primarily depend on the rule's impact on Class B dealers. According to researchers, animals bred specifically for research are not suitable for all studies. Of the 92,475 dogs and cats used in research in FY 2002, about 30 percent were random source animals, with about two-thirds of those obtained from Class B dealers.³ 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.

The impact of this rule on Class C exhibitors should be very small. This rule will require that exhibitors obtain a certification from unlicensed sellers that they are not required to be licensed or registered by APHIS, a small addition to the information the exhibitors must already collect. In addition, of the more than 2,000 licensed exhibitors, we are unaware of any which obtain dogs and/or cats from unlicensed individuals.

³ Foundation for Biomedical Research.

Clarification of the Regulations and Changes to Administrative Procedures

This rule will make a number of changes to clarify the regulations and correct deficiencies we have found in enforcing the regulations. This rule will also amend a number of administrative procedures to make them more efficient. For instance, individuals applying for license renewal or change in license class will now be able to combine the license fee and application fee in a single form of payment. This rule should have little impact on licensees and should reduce APHIS' administrative burden.

Other changes, such as the additional criteria for denial of an initial license and termination of a license, make it easier to prevent individuals who are unfit to hold licenses. 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.

Impact on Small Entities

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

We have used all available data to estimate the potential economic effects of the amendments to 9 CFR part 2 on small entities. However, some of the data we believe would be helpful in making this determination has not been available. Specifically, data are not available on the number of individuals who would be affected by the changes in exemptions from the licensing requirements. In our proposed rule, we asked the public to provide such data. However, none of the comments we received addressed this economic issue.

The Small Business Administration (SBA) has established size criteria by the North American Industry Classification System (NAICS) for determining which economic entities meet the definition of a small entity.

According to the SBA, Class A dealers (NAICS 1129, other animal production⁴) with less than \$0.75 million in annual receipts are considered small. According to the 1997 Census of Agriculture, more than 99 percent⁵ of

⁴ Establishments primarily engaged in raising animals and insects (except cattle, hogs and pigs, poultry, sheep and goats, animal aquaculture) for sale or product production.

⁵ Other animal production is combined with animal aquaculture (NAICS 1125) in the Census

farms in other animal production would be considered small. The number of unlicensed individuals who will have to become licensed because they collectively maintain more than three breeding females in the same household, or collectively sell 25 or more dogs and/or cats, is unknown. Most of these unlicensed individuals would likely be small. However, these individuals will have to take the appropriate steps to meet the exemptions listed in § 2.1 or they will have to become licensed.

Class B dealers (NAICS 422990, other miscellaneous nondurable goods merchant wholesalers) are considered to be small if the entity employs 100 or fewer persons. According to the 1997 Census of Agriculture, more than 99 percent of these entities may be considered small. This rule will merely require Class B dealers to obtain a certification statement from unlicensed sellers, which is a small additional information collection requirement.

According to the SBA, Class C and registered exhibitors (NAICS 712130, zoos and botanical gardens, and NAICS 712190, nature parks and other similar institutions) are considered to be small if the entity has receipts of less than \$5 million. According to the 1997 Economic Census, about 93 percent of these entities are considered small. There are over 2,500 exhibitors licensed by or registered with APHIS. However, we are unaware of any exhibitors who obtain dogs and/or cats from unlicensed individuals. Exhibitors who would deal with unlicensed individuals for dogs and/or cats would likely be small. However, this rule should have little impact on these exhibitors.

In 2002, there were more than 1,100 active animal research facilities in the United States. The SBA standard for a small research or testing facility is one with fewer than 500 employees (NAICS 5417102, research and development in life sciences). According to the 1997 Economic Census, at least 94 percent of the facilities in this category meet the standard to be considered small. However, these facilities should be affected by this rule in only minor ways. The new requirement for a certification statement from unlicensed sellers should not affect these facilities because they do not acquire random source dogs and cats from unlicensed sources.

In conclusion, we believe that the benefits of this rule, enhanced compliance with the AWA regulations, exceed the costs. While costs for some may increase—for example, the cost of

random source animals used in research could increase because they become harder to obtain—we believe that the overall costs of this rule will be relatively small. License fees are relatively low, certifications can be provided quickly and easily, and information collection is a small addition to that already being collected. In addition, other changes should not alter the day-to-day operations of entities that are currently in compliance with the regulations. The primary benefit of the rule is enhanced animal welfare in keeping with the requirements of the AWA. Another benefit is a more competitive marketplace with clearer regulatory expectations.

An alternative to this rule would be to make no change to the animal welfare regulations. After consideration, we rejected this alternative because we believe this rule is necessary to ensure compliance with the regulations and the Animal Welfare Act.

This rule contains information collection requirements, which have been approved by the Office of Management and Budget (see “Paperwork Reduction Act” below). The effect of these information collection requirements is expected to be minimal, with the reporting burden for requesting reinspection and for certification of exemption from licensing both estimated to be 0.083 hours per response. The total estimated number of respondents is 500 and includes applicants, dealers, exhibitors, and research facilities.

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 Catalogue 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. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging 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 or recordkeeping requirements included in this final rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579–0254.

Government Paperwork Elimination Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. For information pertinent to GPEA compliance related to this rule, please contact Mrs. Celeste Sickles, APHIS’ Information Collection Coordinator, at (301) 734–7477.

List of Subjects in 9 CFR Parts 1 and 2

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

■ Accordingly, we are amending 9 CFR parts 1 and 2 as follows:

PART 1—DEFINITION 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 *Administrator* is 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 continues to read as follows:

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

■ 4. Section 2.1 is 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) to read as set forth below.

■ 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) to read as set forth below.
■ e. By adding, at the end of the section, the following: “(Approved by the Office of Management and Budget under control number 0579–0254)”.

§ 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, money order, or credit card. 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, money order, or credit card. 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. Section 2.2 is amended as follows:

■ a. By revising paragraph (b) to read as set forth below.

■ b. By adding, at the end of the section, the following: “(Approved by the Office of Management and Budget under control number 0579–0254)”.

§ 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. Section 2.3 is amended as follows:

■ a. By revising paragraph (b) to read as set forth below.

■ b. By adding, at the end of the section, the following: “(Approved by the Office of Management and Budget under control number 0579–0254)”.

§ 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 reinspections 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. Section § 2.5 is amended as follows:

■ a. By revising paragraphs (a)(4) and (b) to read as set forth below.

■ b. By removing paragraph (c) and redesignating paragraphs (d), (e), and (f) as paragraphs (c), (d), and (e), respectively.

§ 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. 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) are 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) is amended by adding two new sentences 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.

Renewal of the license may be initiated during the suspension in accordance with §§ 2.2(b) and 2.12.

■ 10. Section 2.11 is amended as follows:

■ a. By revising paragraphs (a)(4) and (a)(5), and by adding a new paragraph (a)(6) to read as set forth below.

■ b. By revising paragraph (b) to read as set forth below.

■ c. By adding a new paragraph (d) to read as set forth below.

§ 2.11 Denial of initial license application.

(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 is added to read as follows:

§ 2.12 Termination of a license.

A license may be terminated during the license renewal process or at any other time 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 is 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 is 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 is 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) to read as set forth below.

■ b. In paragraph (b)(3), by removing the word “state” each time it appears and adding the word “State” in its place, and 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”.

■ e. By adding, at the end of the section, the following: “(Approved by the Office of Management and Budget under control number 0579–0254)”.

§ 2.35 Recordkeeping requirements.

(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 is 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) to read as set forth below.

§ 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 is 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 removing the word “state” each time it appears and adding the word “State” in its place, and by adding the phrase “(or photographic identification card for nondrivers issued by a State)” immediately following the words “driver’s license number”.

§ 2.76 [Amended]

■ 17. In § 2.76, paragraph (a)(4) is amended by removing the word “state” each time it appears and adding the word “State” in its place, and by adding the phrase “(or photographic identification card for nondrivers issued by a State)” immediately following the words “driver’s license number”.

§ 2.78 [Amended]

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

§ 2.102 [Amended]

- 19. In § 2.102, paragraph (a)(3) is amended by removing the words “/VS Form 18–9” after “APHIS Form 7009”.
- 20. In § 2.126, paragraph (b) is 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) are redesignated as paragraphs (b), (c), (d), and (e), respectively, and a new paragraph (a) is 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 is amended as follows:

- a. By revising the section heading.
- b. By removing paragraphs (b) and (c), redesignating paragraphs (d) and (e) as paragraphs (b) and (c), respectively, and by revising newly redesignated paragraph (b) to read as set forth below.
- c. In newly designated paragraph (c)(3), by removing the words “random source”.
- d. By adding a new paragraph (d) to read as set forth below.
- e. By adding, at the end of the section, the following: “(Approved by the Office of Management and Budget under control number 0579–0254)”.

§ 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 7th day of July, 2004.

Bill Hawks,

Under Secretary for Marketing and Regulatory Programs.

[FR Doc. 04–15878 Filed 7–13–04; 8:45 am]

BILLING CODE 3410–34–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1275

[Notice: 04–081]

RIN 2700–AC50

Investigation of Research Misconduct

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The National Aeronautics and Space Administration (NASA) is issuing a final rule to implement the “Federal Policy on Research Misconduct” (the Federal Policy) issued by the Executive Office of the President’s Office of Science and Technology Policy on December 6, 2000. This rule will assist NASA in addressing allegations of research misconduct.

DATES: This rule is effective July 14, 2004.

FOR FURTHER INFORMATION CONTACT: Mayra N. Montrose, Office of the NASA Chief Scientist, at (202) 358–1492 (voice), (202) 358–3931 (fax).

SUPPLEMENTARY INFORMATION:

Background

The objective of the Federal Policy is to create a uniform policy framework for Federal agencies for the handling of allegations of misconduct in Federally funded or supported research. Within this framework, each Federal agency funding or supporting research is expected to fashion its own regulations to accommodate the various types of research transactions in which it is engaged.

In keeping with these objectives, on July 25, 2003, we published in the **Federal Register** Vol. 18, No. 143, pg. 43982, a proposed rule creating a new research misconduct policy and a request for public comment regarding the proposed action. The NASA rule incorporates key aspects of the Federal policy, including the definition of research misconduct as fabrication, falsification or plagiarism, and the definitions of each of these sub-components; the requirements for a finding of research misconduct; and the four-stage process for determining and