

Title 9—Animals and Animal Products
CHAPTER I—ANIMAL AND PLANT HEALTH
INSPECTION SERVICE, DEPARTMENT
OF AGRICULTURE

SUBCHAPTER A—ANIMAL WELFARE

PART 1—DEFINITION OF TERMS

PART 2—REGULATIONS

Health Certification, C.O.D., Minimum Age, Recordkeeping, Annual Reports Required of Research Facilities, and Certain Other Governmental Instrumentalities, and Other Requirements for Certain Animals

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Animal and Plant Health Inspection Service (APHIS) is amending the regulations under the Animal Welfare Act concerning health certification, minimum age, and C.O.D. shipments of certain animals transported in commerce. APHIS is also amending the regulations under the Animal Welfare Act concerning recordkeeping requirements, annual reports required of certain facilities, departments, agencies and instrumentalities which use animals in research, and the definitions contained in the regulations. Such amendments to the regulations are authorized by the Animal Welfare Act or required by the Animal Welfare Act Amendments of 1976, to assure the humane care, treatment and transportation of certain animals.

EFFECTIVE DATE: September 15, 1977.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: On March 15, 1977, APHIS published proposed new and revised regulations under the Animal Welfare Act (42 FR 14126). This rule amends Parts 1 and 2 of Subchapter A, Chapter I, Title 9, Code of Federal Regulations to (1) require persons required to be licensed or registered under the Act and Federal, State and local governmental agencies or instrumentalities to provide a health certificate by a licensed veterinarian for live dogs, cats, or nonhuman primates presented to any carrier or intermediate handler for transportation in commerce, (2) require a minimum age of eight (8) weeks be established for dogs and cats presented by any person to any carrier or intermediate handler for transportation, in commerce, except to registered research facilities, (3) require all C.O.D. type arrangements for shipping animals in commerce by any intermediate handler or carrier to be prohibited unless, the consignor guarantees in writing, payment of all transportation costs, includ-

ing any return transportation and any other incidental or out-of-pocket expense for any animals shipped in commerce by any intermediate handler or carrier, (4) change recordkeeping requirements for dealers, exhibitors, research facilities, and operators of auction sales to allow the flexibility of using their systems of recordkeeping, (5) to change and clarify the annual reporting requirements for research facilities and certain governmental instrumentalities and the responsibilities of the institutional committee and attending veterinarian, (6) amend definitions in the regulations to conform with the Animal Welfare Act Amendments of 1976, (7) add certain new definitions, and (8) rearrange the definitions in an appropriate order of associated subjects.

A total of 59 comments were received within the comment period in response to the proposed changes. Many of the comments received raised questions or made suggestions which because of their validity warranted a number of changes from the proposed regulations.

DISCUSSION OF COMMENTS

HEALTH CERTIFICATES

APHIS proposed health certification for certain live dogs, cats, and nonhuman primates which are delivered to an intermediate handler or carrier for transportation in commerce by any dealer, research facility, exhibitor, operator of an auction sale or any department, agency, or instrumentality of the United States or any State or local government. Several comments were received as to why all persons were not required to provide a health certificate for live dogs, cats, and nonhuman primates presented for transportation in commerce. Section 10 of the Animal Welfare Act Amendments of 1976 (Pub. L. 94-279) which added dealers, inter alia, a new subsection (b) to section 13 of the Act (7 U.S.C. 2143) only requires dealers, research facilities, exhibitors, operators of auction sales and departments, agencies or instrumentalities of the United States or of any State or local governments to provide health certificates issued by a licensed veterinarian. The certificate must be provided by such parties with the delivery of any live dog, cat, or additional kinds or classes of animals designated by the Secretary, to any intermediate handler or carrier for transportation in commerce. Such section gives the Secretary authority to name additional kinds and classes of animals which require health certification, but no authority to require such health certification from other than those persons named.

APHIS proposed a form for the required health certification and identified such form as the USDA Individual Health Certificate and Identification Form (VS Form 18-1). A majority of the comments received criticized the proposed VS Form 18-1 because it was limited to the health certification of only one animal at a time and would create additional costs for shipment of certain animals by carriers or intermediate han-

dlers. This inflationary cost was attributed to the additional time required of a licensed veterinarian to complete and execute a health certification form for each animal presented to a carrier or intermediate handler for transportation in commerce. Carriers also complained that such an individual health certificate would increase the quantity of paperwork processed and filed and would create additional labor and overhead costs.

APHIS believes it important to offer forms which may be used at a minimal cost for health certification as well as for identification of animals and recordkeeping by persons subject to the Act. Therefore, APHIS will offer two new forms for the required health certification which may also be used for recordkeeping purposes. The forms are the USDA Individual Health Certificate and Identification Form (VS Form 18-1) and the USDA Multianimal Health Certificate and Identification Form (VS Form 18-2).

C.O.D.

APHIS proposed that no C.O.D. type arrangement be used in the transportation of animals by intermediate handlers or carriers in commerce unless the consignor guarantees, in writing, the payment of all transportation costs, including any return transportation and any other incidental or out-of-pocket expenses involved for the care, feeding and storage or housing of the animal if the consignee fails to accept delivery of the shipment within 48 hours of notification of the arrival of the animal. It was further proposed that the intermediate handler or carrier must return to the consignor, or to his designee, any C.O.D. animal shipment not claimed within 48 hours after notice to the consignee of the animal's arrival at destination.

Several comments were received which viewed the 48 hours claim period for C.O.D. shipments of animals as excessive. However, the provisions of the Animal Welfare Act Amendments of 1976 (Pub. L. 94-279) concerning C.O.D. shipments specifically provide for a period of 48 hours after notice to the consignee of the arrival of an animal, for the consignee to claim the animal. APHIS therefore, cannot provide for less than a 48 hour claim period.

A maximum period of 24 hours was proposed for consignee notification of C.O.D. animal shipments. It was also proposed that the intermediate handler or carrier at destination be required to attempt to notify the consignee of a C.O.D. animal shipment at least every 6 hours after their arrival at destination for a maximum period of 24 hours. Thereafter, if the consignee cannot be located, the animal or animals involved would be required to be returned to the consignor or such other person designated by the consignor.

Comments received have indicated some confusion as to the meaning of the term "at destination", used in connection with C.O.D. live animal shipments as it relates to the carrier or intermediate handler initiating the consignee notifica-

tion procedure. To clarify this problem, the phrase "at the animal holding area of the terminal cargo facility" has been substituted for the phrase "at destination" in § 2.80(b) of the regulations. This change clarifies the point in time at which the 24-hour notification period of the consignee shall begin following the arrival of C.O.D. animal shipments.

One commenter also suggested that a record of attempted consignee notifications relative to C.O.D. live animal shipments be required. The language of the proposed regulations does not clearly reflect the intent of APHIS with respect to this matter. However, it is the intent that such records of notification and attempts to notify consignees be made and kept. Without such information, it would be virtually impossible to establish whether or not compliance with the provision has occurred. Therefore, the regulations are amended specifically to require records of attempted notifications of and the final notification to consignees of C.O.D. shipments of animals.

Furthermore, comments regarding § 280(b) of the proposed regulations, indicate a need to clarify the phrase, "form accompanying the C.O.D. shipment." Therefore, the words "shipping document" are being substituted for the word "form." The term "shipping document," which is the airbill, waybill, or other similar document, specifically designates the form on which the time, date, method, and identity of the person attempting notification and the final notification, if accomplished, to the consignee shall be recorded. Such information shall also appear on the copy of the shipping document retained by the carrier or intermediate handler at destination.

Several comments were received which expressed a desire for more immediate initiation of notification to the consignee of the arrival of C.O.D. live animal shipments so as to expedite pickup of the animal. They argued that such a procedure would minimize lengthy storage of such animals at destination. APHIS recognizes the validity of these comments; however, the regulations in indicating that the carrier or intermediate handler shall attempt to notify the consignee at least once every 6 hours does allow immediate notification to occur. Available information indicates that carriers and intermediate handlers, in a very competitive effort to provide the best service available to the customer, notify the consignee of live animal shipments as soon as possible, usually in far less than 6 hours. In the absence of information which would indicate that past notification practices of the carriers and intermediate handlers has been cause for animal suffering, the APHIS finds no basis to change the notification requirements for C.O.D. shipments.

RECORDKEEPING

The Amendments to the Act deleted the requirements that records be maintained on forms supplied by the Secretary, and the proposed regulations require that records for dealers, exhibi-

tors, research facilities and operators of auction sales be kept by one of three alternative methods: The first would be to utilize records created and used by such dealer, exhibitor, research facility, or operator of an auction sale unless they do not contain the information required by the regulations; the second would allow any such person who handles dogs and cats to continue using current forms which are supplied by the Secretary; and the third would provide for the use of new forms which are also being developed for health certification.

It was proposed that specific information, similar to that required on VS Form 18-5 and 18-6, revised, for dogs and cats, and similar to that required on VS Forms 18-19 and 18-20 for animals other than dogs and cats, must be maintained by dealers, exhibitors, research facilities, and operators of auction sales. One comment was received indicating confusion about requisite information relative to birth dates of dogs and cats, as required in proposed §§ 2.75(a)(1)(ii) and 2.75(a)(1)(iv)(C), as opposed to the approximate age of such animals. It appears that the date of birth of some animals may not be known; in such instances a statement of the approximate age of the animal will be sufficient. Accordingly, reference to the dates of birth in § 2.75(a)(1)(ii) is deleted and the term "if known" is added in § 2.75(a)(1)(iv)(C) to follow the phrase "the date of birth."

An additional comment was received regarding the making, keeping and maintenance of records and information by dealers, exhibitors, and research facilities concerning each dog or cat purchased or otherwise acquired or sold or otherwise disposed of, as related specifically to identifying the method of transportation utilized to transport such dog or cat (reference §§ 2.75(a)(1)(v) and 2.76(b)(1)). Since the expeditious transportation of dogs and cats in commerce may require the use of several different carriers and intermediate handlers, unknown to the shipper at the time of consignment of such animals, commenters argued that the dealer, exhibitor, or research facility should only be required to identify the initial carrier or intermediate handler to whom the shipment was consigned. Comments received also indicate a need to clarify the requirements for identification of privately owned conveyances used by dealers, exhibitors, and research facilities to transport dogs and cats. APHIS recognizes these arguments as sound and will require in §§ 2.75(a)(1)(v) and 2.76(b)(3) that only the initial carrier or intermediate handler to whom a shipment of animals is consigned be named, and that if a privately owned conveyance is used to transport animals, that only the name of the owner of the vehicle need be indicated.

USDA licensees and registrants commented that the required disclosure of the name and address of the person from whom dogs or cats or other animals were purchased or otherwise ac-

quired on the copy of the record which accompanies the shipment of such animal sold or otherwise disposed of by a dealer, exhibitor, or research facility is unlawful disclosure of proprietary information.

Such disclosure reveals the sources of animals to competitors and the purchaser; thus allowing the customer to circumvent the USDA licensee or registrant and deal directly with the source of such animals. The Department has access to a licensee's or registrant's records to obtain such information and agrees that disclosure of the source of dogs and cats or other animals to a purchaser is not necessary to effectuate the purposes of the Act. Sections 2.75(a)(4), 2.75(b)(3), 2.76(d) and 2.77(b) therefore, include a provision which does not require that the source and date of acquisition of dogs, cats, or other animals appear on the copy of a record accompanying shipments of animals.

DISPOSITION OF RECORDS

Comments from dealers and air carriers were critical of the proposed requirement in § 2.81(a) that dealers, research facilities, exhibitors, operators of auction sales, carriers and intermediate handlers be required to keep and maintain records in connection with the requirements of the regulations and standards for a period of 2 years. The criticism is based on the undue burden created by the quantity of records accumulated and the cost involved in maintaining such quantities of accumulated records, e.g. storage equipment and space.

APHIS recognizes the validity of these arguments and also now believes that the need for keeping records in excess of one year for purposes of documenting alleged violation cases has generally proven to be unnecessary. Therefore, the regulations require records, documents, or other papers to be maintained and kept for only one year unless the Deputy Administrator notifies in writing, the person subject to the Act that specified records be retained in excess of one year pending completion of an investigation or proceeding under the Act.

MINIMUM AGE REQUIREMENTS

Many comments were received concerning the proposal that any live dog or cat delivered by any person (including private owners) to any carrier or intermediate handler for transportation in commerce shall be at least eight weeks of age and have been weaned for a period of at least five days. There was no disagreement with the meaning requirement of the proposal.

Many commenters urged the Department to increase the minimum age requirement for puppies to ten weeks and in some instances, up to twelve weeks. Some people based such comments on data which purported to show that physical and psychological stress applied to a puppy around eight weeks of age may have long lasting effects on the temperament of the dog. However, scientific data also indicates that a puppy's familiari-

zation with the environment and association with man occurs between five and eight weeks of age and that this conditioning to the normal environment determines the animal's ability to function in its adult environment. No scientific information or data is currently available which shows that the normal stress resulting from the shipment of an eight week old puppy adversely affects its temperament, either as a puppy or an adult dog.

The other comments received urging a higher minimum age requirement for puppies were based upon the opinion of that the population explosion of dogs could be curbed if puppies were not allowed to be transported from the producer to pet shops during the "cute and desirable" age which generally is less than ten to twelve weeks of age. The fact that the problem of overpopulation of dogs may be curbed if puppies were not allowed to be transported to pet shops during their "cute and desirable age" is not within the Secretary's discretion under the Act, and, therefore, such comments cannot be considered in establishing the minimum age requirement.

Some commenters argued that minimum age requirements should be established on the basis of the individual breed of dog's maturity capability, e.g., larger breeds of dogs such as Saint Bernards and others could be transported at an earlier age (six weeks), while small breeds of dogs such as the Chihuahua and others should not be subjected to transportation in commerce before ten weeks of age. However, there is insufficient information and data available upon which to categorize all breeds of dogs in such a scheme and it would not take into consideration unrecognized breeds of dogs, cross breed, and dogs of varied and unknown heredity.

One commenter suggested that certain breeds of dogs can be shipped in commerce at six weeks of age if the expected adult weight will be twenty pounds or more; therefore, no puppies will be shipped under eight weeks of age unless they weigh two and one-half pounds, each. Minimum age requirements which would be based on breed identification, age, and weight would appear to create a very complicated situation requiring the receiving employee of the carrier or intermediate handler accepting dogs for transportation in commerce to be able to recognize breeds, ascertain ages, and compute individual animal weights. The administrative and enforcement problems of such a system, both to the Department and to carriers and intermediate handlers, militate against its adoption.

Available information also indicates that major producers of puppies already observe the eight week minimum age requirement within their industry and that many States have regulations which prohibit dogs and cats less than eight weeks of age from entering their States.

Although there was a divergence of opinions expressed regarding the minimum age requirement for dogs, there

was a general consensus of opinion that eight weeks is an acceptable minimum age for transportation of cats by a carrier or intermediate handler.

While APHIS has decided to adopt an eight week minimum age requirement for dogs and cats delivered to any carrier or intermediate handler for transportation in commerce at this time, we will consider amending such minimum age requirements as additional information and data becomes available.

ANNUAL REPORT OF RESEARCH

The proposed regulations would require that each segment of a research facility or department, agency, or instrumentality of the United States using or intending to use live animals in research, testing, or experimentation under an attending veterinarian or institutional committee submit an annual report. One comment was received which indicated that consolidation of individual unit reports by a research facility or department, agency or instrumentality of the United States would provide a single point of contact at which data from widely separated units of the facility could be assembled and consolidated for submission of one annual report.

While this procedure may have its benefits, APHIS has learned from past experience that such benefits are far exceeded by its detriments. Such a consolidated annual report requires certification by an attending veterinarian or institutional committee. No one veterinarian or institutional committee is likely to have the requisite personal knowledge of all of the research, testing or experimentation conducted by each such individual unit of the facility and the care and treatment of the animals used, including whether or not appropriate anesthetics, analgesics, and tranquilizing drugs were used, to make such certification. Therefore, the certification of such a consolidated annual report would have to be done on the assumption that such procedures as required were followed or upon the assurances of others who may or may not have such knowledge or be qualified to make such determinations, that such required procedures were followed. In either case, there would be no way for APHIS to ascertain whether or not there was actual compliance with the Act, regulations, and standards at each individual unit of a facility, nor whether such report actually covered all such individual units of a facility.

Furthermore, requiring the actual attending veterinarian or institutional committee of each individual unit to sign the annual report covering such unit assures that their recommendations as to the appropriate care and treatment required for such animals at each such unit will be followed since the failure to do so will mean that such attending veterinarian or institutional committee cannot certify the annual report for such unit as required.

No other comments were received with respect to any other matter contained in the proposal.

Accordingly, Parts 1 and 2 of Subchapter A, Chapter 1, Title 9, of the Code of Federal Regulations are amended in the following respects:

1. § 1.1 is amended to read as follows:

§ 1.1 Definitions.

For the purpose of this subchapter, the following terms shall be construed, respectively, to mean:

(a) "Act" means the Act of August 24, 1966 (Pub. L. 89-544), commonly known as the Laboratory Animal Welfare Act, as amended by the Act of December 24, 1970 (Pub. L. 91-579), the Animal Welfare Act of 1970, and the Act of April 22, 1976 (Pub. L. 94-279), the Animal Welfare Act Amendments of 1976.

(b) "Department" means the U.S. Department of Agriculture.

(c) "Secretary" means the Secretary of Agriculture of the United States or his representative who shall be an employee of the Department.

(d) "Administrator" means Administrator of the Animal and Plant Health Inspection Service, U.S. Department of Agriculture, or any other official of the Animal and Plant Health Inspection Service to whom authority has heretofore been delegated or to whom authority may hereafter be delegated, to act in his stead.

(e) "Veterinary Services" means the office of the Animal and Plant Health Inspection Service to which is assigned responsibility for the performance of functions under the Act.

(f) "Deputy Administrator" means the Deputy Administrator for Veterinary Services or any other official of Veterinary Services to whom authority has heretofore been delegated or to whom authority may hereafter be delegated, to act in his stead.

(g) "Veterinarian in Charge" means a veterinarian of Veterinary Services who is assigned by the Deputy Administrator to supervise and perform the official work of Veterinary Services in a given State or States. As used in Part 2 of this subchapter, the Veterinarian in Charge shall be deemed to be the one in charge of the official work of Veterinary Services in the State in which the dealer, exhibitor, research facility, intermediate handler, carrier, or operator of an auction sale has his principal place of business.³

(h) "Veterinary Services representative" means any inspector or other person employed full time by the Department who is responsible for the performance of the function involved.

(i) "Licensed veterinarian" means a doctor of veterinary medicine who has a valid license to practice veterinary medicine in any State.

(j) "State" means a State of the United States, the District of Columbia, Commonwealth of Puerto Rico, the Vir-

³ The name and address of the Veterinarian in Charge in the State concerned can be obtained by writing to the Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Federal Building, Hyattsville, MD 20782.

gin Islands, Guam, American Samoa, or any other territory or possession of the United States.

(k) "Person" means any individual, partnership, firm, joint stock company, corporation, association, trust, estate, or other legal entity.

(l) "Dog" means any live or dead dog (*Canis familiaris*).

(m) "Cat" means any live or dead cat (*Felis catus*).

(n) "Animal" means any live or dead dog, cat, monkey (nonhuman primate mammal), guinea pig, hamster, rabbit, or any other warmblooded animal, which is domesticated or raised in captivity or which normally can be found in the wild state, and is being used, or is intended for use, for research, testing, experimentation, or exhibition purposes, or as a pet. Such term excludes birds, aquatic animals, rats and mice, and horses and other farm animals, such as, but not limited to, livestock or poultry, used or intended for use as food or fiber, or livestock, or poultry used or intended for use for improving animal nutrition, breeding, management, or production efficiency, or for improving the quality of food or fiber. With respect to a dog, the term means all dogs, including those used for hunting, security, or breeding purposes.

(o) "Farm animal" means any warm-blooded animal (other than a dog, cat, monkey (nonhuman primate mammal), guinea pig, hamster, or rabbit) normally raised on farms in the United States and used or intended for use as food or fiber.

(p) "Wild state" means living in its original, natural condition; not domesticated.

(q) "Nonhuman primate" means any nonhuman member of the highest order of mammals, including prosimians, monkeys, and apes.

(r) "Commerce" means trade, traffic, transportation, or other commerce—(1) between a place in a State and any place outside of such State, or between points within the same State but through any place outside thereof, or within any territory, possession, or the District of Columbia; or (2) which affects trade, traffic, transportation, or other commerce described in (1).

(s) "Research facility" means any school (except an elementary or secondary school), institution, organization, or person that uses or intends to use live animals in research, tests, or experiments, and that: (1) purchases or transports live animals in commerce, or (2) receive funds under a grant, award, loan, or contract from a department, agency, or instrumentality of the United States for the purpose of carrying out research, tests, or experiments. *Provided, however,* That a "research facility" shall not include any such school, institution, organization, or person that does not use or intend to use live dogs or cats and which is exempted by the Administrator, upon application to him in specific cases and upon his determination that such exemption does not vitiate the purpose

of the Act, except that the Administrator will not exempt any school, institution, organization, or person that uses substantial numbers of live animals—the principal function of which school, institution, organization, or person is biomedical research or testing."

(t) "Dealer" means any person who, in commerce, for compensation or profit, delivers for transportation, or transports, except as a carrier, buys, or sells, or negotiates the purchase or sale of, (1) any dog or other animal whether alive or dead for research, teaching, exhibition, or use as a pet, or (2) any dog for hunting, security, or breeding purposes, except that this term does not include—

(i) A retail pet store except such store which sells any animals to a research facility, an exhibitor, or a dealer; or

(ii) Any person who does not sell or negotiate the purchase or sale of any wild animal, dog, or cat, and who derives no more than \$500 gross income from the sale of other animals during any calendar year.

(u) "Retail pet store" means any retail outlet where animals are sold only as pets at retail. Those species from the wild state (e.g. primates, anteaters, and ocelots) and which as adults in captivity require special conditions to provide safety in handling to either humans or the subject animals shall not be considered as pet animals.

(v) "Operator of an auction sale" means any person who is engaged in operating an auction at which animals are purchased or sold, in commerce.

(w) "Exhibitor" means any person (public or private) exhibiting any animals, which were purchased in commerce or the intended distribution of which affects commerce, or will affect commerce, to the public for compensation, as determined by the Secretary in specific instances, and such term includes carnivals, circuses, animal acts, and zoos exhibiting such animals whether operated for profit or not; but such term excludes retail pet stores, organizations sponsoring and all persons participating in State and county fairs, livestock shows, rodeos, purebred dog and cat shows, and any other fairs or exhibitions intended to advance agricultural arts and sciences, as may be determined by the Secretary in specific instances.

(x) "Licensee" means any person licensed pursuant to the provisions of the Act and the regulations in Part 2 of this subchapter.

(y) "Class 'A' dealer" means a dealer whose business involving animals includes only those animals that he breeds and raises as a closed or stable colony and those animals that he acquires for the sole purpose of maintaining or enhancing his breeding colony.

³ A list of such exempted schools, institutions, organizations, or persons shall be published periodically by Veterinary Services in the FEDERAL REGISTER. Such lists may also be obtained upon request from the Veterinarian in Charge.

(z) "Class 'B' dealer" means any dealer who does not meet the definition of a Class "A" dealer.

(aa) "Class 'C' licensee" means any exhibitor subject to the licensing requirements.

(bb) "Intermediate handler" means any person, including a department, agency, or instrumentality of the United States or of any State or local government (other than a dealer, research facility, exhibitor, or any person excluded from the definition of a dealer, research facility, exhibitor, an operator of an auction sale, or a carrier) who is engaged in any business in which he receives custody of animals in connection with their transportation in commerce.

(cc) "Carrier" means the operator of any airline, railroad, motor carrier, shipping line, or other enterprise which is engaged in the business of transporting any animals for hire.

(dd) "Registrant" means any research facility, carrier, intermediate handler, or exhibitor registered pursuant to the provisions of the Act and the regulations in Part 2 of this subchapter.

(ee) "Attending veterinarian" means a person who has graduated from a veterinary school accredited by the American Veterinary Medical Association's Council on Education or has a certificate issued by the American Veterinary Medical Association's Education Commission for Foreign Veterinary Graduates and who is responsible for evaluating the type and amount of anesthetic, analgesics, and tranquilizing drugs used on animals during actual research, testing, or experimentation where appropriate to relieve all unnecessary pain and distress in the subject animals.

(ff) "Standards" means the requirements with respect to the humane handling, care, treatment, and transportation of animals by dealers, exhibitors, research facilities, carriers, intermediate handlers, and operators of auction sales as set forth in Part 3 of this subchapter.

(gg) "Primary enclosure" means any structure used to immediately restrict an animal or animals to a limited amount of space, such as a room, pen, run, cage, compartment, or hutch.

(hh) "Housing facility" means any room, building, or area used to contain a primary enclosure or enclosures.

(ii) "Sanitize" means to make physically clean and to remove and destroy, to the maximum degree that is practical, agents injurious to health.

(jj) "Ambient temperature" means the temperature surrounding the animal.

(kk) "Euthanasia" means the humane destruction of an animal accomplished by a method which produces instantaneous unconsciousness and immediate death without visible evidence of pain or distress, or a method that utilizes anesthesia produced by an agent which causes painless loss of consciousness, and death following such loss of consciousness.

(ll) "Nonconditioned animals" means animals which have not been subjected to special care and treatment for sufficient time to stabilize and, where neces-

sary, to improve their health to make them more suitable for research purposes.

(mm) "Weaned" means that an animal has become accustomed to take solid food, and has so done, without nursing, for a period of at least five (5) days.

(nn) "Dwarf hamster" means any species of hamster, such as the Chinese and Armenian species, whose adult body size is substantially less than that attained by the Syrian or Golden species of hamsters.

(oo) "Handling" means petting, feeding, manipulation, crating, shifting, transferring, immobilizing, restraining, treating, training, working or performing any similar activity with respect to any animal.

(pp) "Business year" means a 12-month period during which business is conducted, either on a calendar or fiscal year basis.

2. The Table of Contents cited in Part 2—Regulations is amended to read as follows:

Sec.	
2.1	Application.
2.2	Acknowledgement of standards.
2.3	Demonstration of compliance with standards.
2.4	Issuance of licenses.
2.5	Duration of license.
2.6	Annual fees; and termination of licenses.
2.7	Annual report by licensees.
2.8	Notification of change of name, address, control, or ownership of business.
2.9	Officers, agents, and employees of licensees whose licenses have been suspended or revoked.
2.10	Licensees whose licenses have been suspended or revoked.
2.11	Denial of license.
	REGISTRATION
2.25	Requirements and procedures.
2.26	Acknowledgement of standards.
2.27	Notification of change of operation.
2.28	Annual report of research facilities.
	IDENTIFICATION OF ANIMALS
2.50	Time and method of identification.
2.51	Form of official tag.
2.52	How to obtain tags.
2.53	Use of tags.
2.54	Lost tags.
2.55	Removal of tag.
	RECORDS
2.75	Records, dealers (except operators of auction sales) and exhibitors.
2.76	Records, research facilities.
2.77	Records, operators of auction sales.
2.78	Records, carriers and intermediate handlers.
2.79	Health certification and identification.
2.80	C.O.D. shipments.
2.81	Records, disposition.
	COMPLIANCE WITH STANDARDS AND HOLDING PERIOD
2.100	Compliance with standards.
2.101	Holding period.
	MISCELLANEOUS
2.125	Information as to business: Furnishing of by dealers, exhibitors, operators of auction sales, and research facilities.

Sec.	
2.126	Access and inspection of records and property.
2.127	Publication of names of persons subject to the provisions of this part.
2.128	Inspection for missing animals.
2.129	Confiscation and destruction of animals.
2.130	Minimum age requirements.

Authority: The provisions of this Part 2 issued under secs. 3, 5, 6, 10, 11, 12, 13, 14, 16, 17, 21; 80 Stat. 351, 352, 353, 84 Stat. 1561, 1562, 1563, 1864; 99 Stat. 418, 419, 420, 423; 7 U.S.C. 2133, 2135, 2136, 2140, 2141, 2142, 2143, 2144, 2146, 2147, 2151.

3. Throughout Part 2 of the regulations (9 CFR, Part 2) wherever the term "affecting commerce" appears, the term "in commerce" is substituted in lieu thereof.

4. Section 2.25 (9 CFR 2.25) is amended to read as follows:

§ 2.25 Requirements and procedures.

Each research facility, carrier, and intermediate handler and each exhibitor, not required to be licensed under section 3 of the Act and the regulations of this subchapter, shall register with the Secretary by completing and filing a properly executed form which will be furnished, upon request, by the Veterinarian in Charge. Such registration form shall be filed with the Veterinarian in Charge for the State in which the registrant has his principal place of business. Where a school or department of a university or college uses or intends to use animals for research, tests, or experiments, the university or college rather than the school or department will generally be considered the research facility and be required to register with the Secretary. In any situation in which a school or department of a university or college is a separate legal entity and its operations and administration are independent of those of the university or college, upon a proper showing thereof to the Secretary, the school or department will be registered rather than the university or college. A subsidiary of a business corporation, rather than a parent corporation, will be registered as a research facility or exhibitor unless the subsidiary is under such direct control of the parent corporation that to effectuate the purposes of the Act, the Secretary determines that it is necessary that the parent corporation be registered.

5. Section 2.28 (9 CFR 2.28) is amended to read as follows:

§ 2.28 Annual report of research facilities.

(a) The reporting facility shall be that segment of the research facility, or that department, agency, or instrumentality of the United States, that uses or intends to use live animals in research, tests, or experiments and for which an attending veterinarian has responsibility. Each reporting facility shall submit on or before December 1 of each calendar year to the Veterinarian in Charge for the State where the reporting facility is located, an annual report signed by a legally responsible official covering the previous Fed-

eral fiscal year of October 1 through September 30. Such report shall show that professionally acceptable standards governing the care, treatment, and use of animals, including appropriate use of anesthetic, analgesic, and tranquilizing drugs, during actual research, testing, or experimentation, were followed by the research facility, department, agency, or instrumentality of the United States. Such report shall include:

(1) The location of the facility or facilities where animals were used in actual research, testing, or experimentation;

(2) The common names and approximate numbers of animals upon which research, experiments, or tests were conducted involving no pain, distress, or use of pain relieving drugs: *Provided, however*, That routine procedures (e.g., injections, tattooing, and blood sampling) do not need to be reported;

(3) The common names and approximate numbers of animals upon which experiments or tests were conducted involving accompanying pain or distress to the animals and for which appropriate anesthetic, analgesic, or tranquilizing drugs were used: *Provided, however*, That routine procedures (e.g., injections, tattooing, and blood sampling) do not need to be reported;

(4) The common names and approximate numbers of animals upon which experiments or tests were conducted involving accompanying pain or distress to the animals and for which the use of appropriate anesthetic, analgesic, or tranquilizing drugs would adversely affect the procedures, results, or interpretation of the research, experiments, or tests and a brief statement explaining the reasons for the same: *Provided, however*, That routine procedures (e.g., injections, tattooing, and blood sampling) do not need to be reported; and

(5) Certification by the attending veterinarian of the research facility, or the department, agency, or instrumentality of the United States having laboratory animal facilities, or by an institutional committee of at least three members, one of whom is a Doctor of Veterinary Medicine, established for the purpose of evaluating the care, treatment, and use of all warmblooded animals held or used for research, testing, or experimentation, that the type and amount of anesthetic, analgesic, and tranquilizing drugs used on animals during actual research, testing, or experimentation was appropriate to relieve pain and distress for the subject animals.

6. In § 2.50(f) subparagraph (3) is amended by deleting the words "a form" and substituting the phrase "or a record, as required by § 2.75," therefor, and deleting footnote 2.

7. In § 2.52 the reference to footnote 3 and footnote 3 is redesignated as footnote 2.

8. § 2.75 (9 CFR 2.75) is amended to read as follows:

§ 2.75 Records, dealers, and exhibitors.

(a) (1) Every dealer and exhibitor shall make, keep, and maintain systems

of records or forms which fully and correctly disclose the following information concerning each dog or cat purchased or otherwise acquired, owned, held, or otherwise in his possession or under his control, including any offspring born of such animal while in his possession or under his control, transported, or sold, or otherwise disposed of:

(i) The name and address of the person, whether or not required to be licensed or registered under the Act, from whom such dog or cat was purchased or otherwise acquired, and his license number, if licensed under the Act, and when sold or otherwise disposed of, the person to whom sold or otherwise disposed of, and his license number, if licensed under the Act;

(ii) The dates of acquisition and disposition of such dog or cat;

(iii) The official USDA tag number or tattoo assigned to such dog or cat pursuant to §§ 2.50 and 2.54;

(iv) A description of each dog or cat which shall include:

- (A) The species;
- (B) The sex;
- (C) The date of birth (if known) or approximate age;
- (D) The color and any distinctive markings; and
- (E) The breed or type.

(v) The method of transportation including the name of the initial commercial carrier or intermediate handler or if a privately owned conveyance is used to transport the dog or cat, the name of the owner of such privately owned conveyance.

(vi) The date and method of disposition of such dog or cat, e.g., sale, death, euthanasia, or donation.

(2) Record of Dogs and Cats on Hand (VS Form 18-5) and Record of Disposition of Dogs and Cats (VS Form 18-6) are forms which may be used by dealers and exhibitors upon which to make, keep, and maintain the information required by paragraph (a) (1) hereof concerning dogs and cats except as provided in § 2.79.

(3) The USDA Individual Health Certificate and Identification Form (VS Form 18-1) and the USDA Multianimal Health Certificate and Identification Form (VS Form 18-2) are forms which may be used by dealers and exhibitors upon which to make, keep, and maintain the information required by paragraph (a) (1) of this section and § 2.79.

(4) One copy of the record containing the information required by paragraph (a) (1) of this section shall accompany each shipment of any dog or cat purchased or otherwise acquired by a dealer or exhibitor. One copy of the record containing the information required by paragraph (a) (1) of this section shall accompany each shipment of any dog or cat sold or otherwise disposed of by a dealer or exhibitor: *Provided, however*, That information which indicates the source and date of acquisition of such dog or cat is not required to appear on the copy of the record accompanying the shipment. One copy of the record containing the information required by

paragraph (a) (1) of this section shall be retained by the dealer or exhibitor.

(b) (1) Every dealer and exhibitor shall make, keep, and maintain systems of records or forms which fully and correctly disclose the following information concerning animals other than dogs and cats, purchased or otherwise acquired, owned, held, or otherwise in his possession or under his control, including any offspring born of such animals while in his possession or under his control, transported, or sold or otherwise disposed of:

(1) The name and address of the person, whether or not required to be licensed or registered under the Act, from whom such animals other than dogs or cats, were purchased or otherwise acquired, and his license number, if licensed under the Act, and when sold or otherwise disposed of, the person to whom sold or otherwise disposed of, and his license number, if licensed under the Act;

(ii) The species of such animals other than dogs and cats, and

(iii) The number of such animals other than dogs and cats.

(2) Record of Animals on Hand (Other Than Dogs and Cats) (VS Form 18-19) and Record of Acquisition, Disposition, or Transport of Animals (Other Than Dogs and Cats) (VS Form 18-20) are forms which may be used by dealers, and exhibitors upon which to keep and maintain the information required by paragraph (b) (1) hereof concerning animals other than dogs and cats except as provided in § 2.79.

(3) One copy of the record containing the information required by paragraph (b) (1) of this section shall accompany each shipment of any animal other than a dog or cat purchased or otherwise acquired by a dealer or exhibitor. One copy of the record containing the information required by paragraph (b) (1) of this section shall accompany each shipment of any animal other than a dog or cat sold or otherwise disposed of by a dealer or exhibitor: *Provided, however*, That information which indicates the source and date of acquisition of any animal other than a dog or cat is not required to appear on the copy of the record accompanying the shipment. One copy of the record containing the information required by paragraph (b) (1) of this section shall be retained by the dealer or exhibitor.

9. § 2.76 (9 CFR 2.76) is amended to read as follows:

§ 2.76 Records, research facilities.

(a) Every research facility shall make, keep, and maintain systems of records or forms which fully and correctly disclose the following information concerning each live dog or cat purchased or otherwise acquired, owned, held, or otherwise in its possession or under its control, including any offspring born of such live dog or cat while in its possession or under its control:

(1) The name and address of the person, whether or not required to be licensed or registered under the Act, from whom such live dog or cat was pur-

chased or otherwise acquired and his license number, if licensed under the Act;

(2) The date of acquisition of each live dog or cat;

(3) The official USDA tag number or tattoo assigned to each live dog or cat pursuant to §§ 2.50 and 2.54;

(4) A description of each live dog or cat which shall include:

- (i) The species;
- (ii) The sex;
- (iii) Date of birth (if known) or approximate age;
- (iv) The color and any distinctive markings; and
- (v) The breed or type.

(5) Any identification number or mark assigned to each live dog or cat by such research facility.

(b) In addition to the information required to be kept and maintained by every research facility concerning each live dog or cat, pursuant to paragraph (a) of this section, every research facility transporting, selling, or otherwise disposing of any live dog or cat to another person, shall make, keep, and maintain systems of records or forms which fully and correctly disclose the following information:

(1) The name and address of the receiver to whom such live dog or cat is transported, sold or otherwise disposed of;

(2) The date of such transportation, sale or other disposition, and

(3) The method of transportation including the name of the initial commercial carrier or intermediate handler or if a privately owned conveyance is used to transport the dog or cat, the name of the owner of such privately owned conveyance.

(c) The USDA Individual Health Certificate and Identification Form (VS Form 18-1), the USDA Multianimal Health Certificate and Identification Form (VS Form 18-2), and Record of Dogs and Cats on Hand (VS Form 18-5) are forms which may be used by research facilities upon which to keep and maintain the information required by paragraph (a) of this section. The USDA Individual Health Certificate and Identification Form (VS Form 1), the USDA Multianimal Health Certificate and Identification Form (VS Form 18-2), and Record of Disposition of Dogs and Cats (VS Form 18-6) are forms which may be used by research facilities upon which to keep and maintain the information required by paragraph (b) of this section.

(d) One copy of the record containing the information required by paragraphs (a) and (b) of this section shall accompany each shipment of any live dog or cat sold, or otherwise disposed of by a research facility: *Provided, however*, That information which indicates the source and date of acquisition of any dog or cat is not required to appear on the copy of the record accompanying the shipment. One copy of the record containing the information required by paragraph (a) and (b) of this section shall be retained by the research facility.

10. Section 2.77 (9 CFR 2.77) is amended to read as follows:

§ 2.77 Records, operators of auction sales.

(a) Every operator of an auction sale shall make, keep, and maintain systems of records or forms which fully and correctly disclose the following information concerning each animal consigned for auction, whether or not a fee or commission is charged:

(1) The name and address of the person who owned or consigned the animal for sale and his USDA license number, if licensed under the Act;

(2) The date of the consignment;

(3) The official USDA tag number or tattoo assigned to the animal pursuant to sections 2.50 and 2.54;

(4) A description of the animal which shall include:

(i) The species of the animal;

(ii) The sex of the animal;

(iii) The color and any distinctive markings on the animal;

(iv) The breed or type of the animals, if a dog or cat.

(5) The auction sales number assigned to the animal;

(6) The name and address of the buyer of the animal and his license number, if licensed under the Act.

(b) One copy of the record containing the information required by paragraph (a) of this section shall be given to the consignor of each animal, one copy of the record shall be given to the purchaser of each animal: *Provided, however,* That information which indicates the source and date of consignment of any animal is not required to appear on the copy of the record given to the purchaser of any animal. One copy of the record containing the information required by paragraph (a) of this section shall be retained by the operator of such auction sale for each animal sold by the auction sale.

11. Section 2.78 is amended to read as follows:

§ 2.78 Records, carriers and intermediate handlers.

(a) In connection with all live animals accepted for shipment on a C.O.D. basis or other arrangement or practice under which the cost of such animal or the cost of the transportation of such animal is to be paid and collected upon delivery of the animal to the consignee, the accepting carrier or intermediate handler, if any, shall keep and maintain a copy of the guarantee in writing of the consignor of such shipment for the payment of transportation charged for any animal not claimed, as provided in § 2.80, including, where necessary, both the return transportation charges and an amount sufficient to reimburse the carrier for out-of-pocket expenses incurred for the care, feeding, and storage of such animal. The carrier or intermediate handler at destination shall also keep and maintain a copy of the shipping document containing the time, date, and method of each attempted notification and the final notification to the

consignee and the name of the person notifying the consignee, as provided in § 2.80.

(b) In connection with all live dogs, cats, or nonhuman primates delivered for transportation, in commerce, to any carrier or intermediate handler, by any dealer, research facility, exhibitor, operator of an auction sale, or department, agency, or instrumentality of the United States or of any State or local government, the accepting carrier or intermediate handler shall keep and maintain a copy of the health certification completed as required by § 2.79, tendered with each such live dog, cat, or nonhuman primate.

12. Section 2.79 (9 CFR 2.79) is amended to read as follows:

§ 2.79 Health certification and identification.

(a) No dealer, research facility, exhibitor, operator of an auction sale, or department, agency, or instrumentality of the United States or of any State or local government shall deliver to any intermediate handler or carrier for transportation, in commerce, any dog, cat, or nonhuman primate unless such dog, cat, or nonhuman primate shall be accompanied by a health certificate executed and issued by a licensed veterinarian. Such health certificate shall state that (1) the licensed veterinarian inspected such dog, cat, or nonhuman primate on a specified date which shall not be more than 10 days prior to the delivery of such dog, cat, or nonhuman primate for transportation, in commerce, and (2) when so inspected that such dog, cat, or nonhuman primate appeared to the licensed veterinarian to be free of any infectious disease or physical abnormality which would endanger the animal or animals or other animals or endanger public health.

(b) No intermediate handler or carrier to whom any live dog, cat, or nonhuman primate is delivered for transportation, in commerce, by any dealer, research facility, exhibitor, operator of an auction sale, or department, agency, or instrumentality of the United States or any State or local government shall receive such live dog, cat, or nonhuman primate for transportation, in commerce, unless and until it is accompanied by a health certificate issued by a licensed veterinarian pursuant to paragraph (a) of this section.

(c) The USDA Individual Health Certificate and Identification Form (VS Form 18-1) and the USDA Multianimal Health Certificate and Identification Form (VS Form 18-2) are forms which may be used for health certification by a licensed veterinarian as required by this section.

13. A new § 2.80 (9 CFR 2.80) is added to read as follows:

§ 2.80 C.O.D. shipments.

(a) No carrier or intermediate handler shall accept any animal for transportation, in commerce, upon any C.O.D. or other basis where the cost of the animal or the cost for any such transportation

or any other incidental or out-of-pocket expense is to be paid and collected upon delivery of such animal to the consignee, unless the consignor guarantees in writing the payment of all transportation, including any return transportation, if such shipment is unclaimed or the consignee cannot be notified in accordance with paragraphs (b) and (c) of this section, including reimbursing the carrier or intermediate handler for all out-of-pocket expenses incurred for the care, feeding, and storage or housing of such animal.

(b) Any carrier or intermediate handler receiving any animal at destination on a C.O.D. or other basis where the cost of the animal or the cost for any transportation or other incidental or out-of-pocket expense is to be paid and collected upon delivery of such animal to the consignee shall attempt to notify such consignee for period of 24 hours after arrival of the animal at the animal holding area of the terminal cargo facility, at least once every 6 hours during that period. The time, date, and method of each attempted notification and the final notification to the consignee and the name of the person notifying the consignee shall be recorded by the carrier or intermediate handler on the shipping document and a copy thereof, accompanying the C.O.D. shipment. If the consignee cannot be notified of the C.O.D. shipment within 24 hours after arrival of the shipment, the carrier or intermediate handler shall return the animal to the consignor, or to whomever the consignor has designated, on the next practical available transportation, in accordance with the written agreement required in paragraph (a) of this section and so notify the consignor.

Any carrier or intermediate handler which has notified a consignee of the arrival of a C.O.D. or other shipment of an animal, where the cost of the animal, or the cost for any transportation, or other incidental or out-of-pocket expense is to be paid and collected upon delivery of such animal to the consignee, which is not claimed by such consignee within 48 hours from the time of such notification, shall return the animal to the consignor, or to whomever the consignor has designated, on the next practical available transportation, in accordance with the written agreement required in paragraph (a) of this section and so notify the consignor.

(c) It shall be the responsibility of any carrier or intermediate handler to provide proper care, feeding, and storage or housing for any animal accepted for transportation, in commerce, under a C.O.D. or other arrangement where the cost of the animal or the cost for any transportation or other incidental or out-of-pocket expense is to be paid and collected upon delivery of such animal until the consignee accepts shipment at destination or until returned to the consignor or his designee should the consignee fail to accept delivery of the animal or the consignee could not be notified as prescribed in paragraph (b) of this section.

(d) Nothing in this section shall be construed as prohibiting any carrier or intermediate handler from requiring any additional guarantee than that required in paragraph (a) of this section for the payment of the cost of any transportation or out-of-pocket or other incidental expenses incurred in the transportation of any animal in commerce.

14. A new § 2.81 is added to read as follows:

§ 2.81 Records, disposition.

(a) No dealer, exhibitor, operator of an auction sale, research facility, carrier, or intermediate handler shall, within a period of one year from the making thereof, destroy or dispose of, without the consent in writing of the Deputy Administrator, any books, records, documents, or other papers required to be kept and maintained under this part.

(b) The records required to be kept and maintained under this part shall be held for such period in excess of the period specified in paragraph (a) of this section as necessary to comply with any other Federal, State, or local law. When-

ever the Deputy Administrator notifies a dealer, exhibitor, operator of an auction sale, research facility, carrier, or intermediate handler in writing that specified records shall be retained pending completion of an investigation or proceeding under the Act, such dealer, exhibitor, operator of an auction sale, research facility, carrier, or intermediate handler shall hold such records until their disposition is authorized by the Deputy Administrator.

15. A new § 2.130 is added to read as follows:

§ 2.130 Minimum age requirements.

No dog or cat shall be delivered by any person to any carrier or intermediate handler for transportation, in commerce, except to a registered research facility, unless such dog or cat is at least eight (8) weeks of age and has been weaned.

* * * * *

(Secs. 3, 5, 6, 10, 11, 12, 13, 14, 16, 17, 21; 80 Stat. 351, 352, 353, 84 Stat. 1561, 1562, 1563, 1564, 90 Stat. 418, 419, 420, 423 (7 U.S.C. 2133, 2135, 2136, 2140, 2141, 2142, 2143, 2144, 2146, 2147, 2151); 37 FR 28464, 38 FR 19141.)

It does not appear that further public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Accordingly, under the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that further notice and other public procedure with respect to these amendments are impracticable and unnecessary.

The reporting and recordkeeping requirements of these regulations have been approved by the Office of Management and Budget as required by the Federal Reports Act of 1942.

Done at Washington, D.C., this 9th day of June 1977.

NOTE.—The Animal and Plant Health Inspection Service has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

PIERRE A. CHALOUX,
Acting Deputy Administrator,
Veterinary Services.

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