

# Proposed Rules

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

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 9 CFR Parts 1 and 2

[Docket No. 91-035]

RIN 0579-AA42

#### Random Source Dogs and Cats

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to amend the regulations under the Animal Welfare Act to require that dogs and cats acquired by (1) pounds and shelters owned and operated by States, counties, and cities, (2) private entities established for the purpose of caring for animals, such as humane societies or contract pounds or shelters, and (3) research facilities licensed by the Department of Agriculture, must be held and cared for at those establishments for at least 5 days before being sold to a dealer. We are also proposing to amend the regulations to require that dealers provide a valid certification to anyone acquiring random source dogs and cats from them. These proposed amendments are being made pursuant to the recent amendment of the Animal Welfare Act, which was enacted to prohibit the use of stolen pets in research and to provide owners the opportunity to locate their animals.

**DATES:** Consideration will be given only to comments received on or before December 16, 1991.

**ADDRESSES:** To help ensure that your written comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 91-035. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence

Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** Dr. R.L. Crawford, Director, Animal Care Staff, Regulatory Enforcement and Animal Care, APHIS, USDA, room 565, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7833.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Animal Welfare regulations (the regulations) are contained in title 9 of the Code of Federal Regulations, chapter 1, subchapter A, parts 1, 2, and 3. Part 1 provides definitions of the terms used in parts 2 and 3. Part 2 sets forth the administrative and institutional responsibilities of regulated persons under the Animal Welfare Act (7 U.S.C. 2131, *et seq.*) (the Act). Part 3 provides specifications for the humane handling, care, treatment, and transportation, by regulated persons, of animals covered under the Act.

In this document, we are proposing to add new provisions to 9 CFR part 2, Subpart I, regarding the length of time certain pounds, shelters, and research facilities must hold dogs and cats, in accordance with the Act. We are also proposing to add to 9 CFR part 2, Subpart I, provisions requiring certification to accompany random source dogs and cats sold, provided, or made available by dealers to any individual or entity.

Under the Act, the Department is required to promulgate regulations and standards governing the humane handling, housing, care, treatment, and transportation of certain animals by dealers, research facilities, exhibitors, carriers, and intermediate handlers. Such standards and regulations must include minimum requirements with respect to handling, housing, feeding, sanitation, veterinary care, the use of pain relieving drugs, exercise for dogs, recordkeeping, and other matters specified in section 13 of the Act (7 U.S.C. 2143).

In its 1990 amendments to the Act, Congress addressed the issue of stolen dogs and cats that may ultimately be used in research. Congress took a two-pronged approach, amending the Act to add requirements concerning the length of time dogs and cats must be held at specified facilities, and certification for animals transferred by dealers to any

individual or entity. We discuss these amendments separately in this supplementary information.

##### Holding Period

Congress amended the Act to provide that any dog or cat acquired by (1) a State, county, or city owned and operated pound or shelter, (2) a private entity established for the purpose of caring for animals, such as a humane society, or other organization that is under contract with a State, county, or city, that operates as a pound or shelter, and that releases animals on a voluntary basis, or (3) a research facility which is licensed by the Department as a dealer, must be held and provided care for at least 5 days before being sold to a dealer. The intent of this amendment is to provide a reasonable period of time for a dog or cat to be either recovered by its original owner or adopted by other individuals (but not transferred to the adopting parties until the holding period is complete), before the dog or cat is sold to a dealer. In order to promote this recovery or adoption, we are proposing to add new §§ 2.133(a)(1) through (a)(3) to subpart I of part 2 of the regulations, to provide that before the entities described above sell dogs or cats to a dealer, they must hold and care for those animals for not less than 5 full days, not including the day of acquisition, and excluding time in transit. We are proposing further to require that this holding period must include a Saturday, in order to provide owners and other individuals the opportunity to recover or adopt such animals on a weekend. Requiring that a Saturday be included in the holding period would be consistent with Congressional intent, as expressed in the legislative history of the amendments to the Act.

##### Certification

Also included in the 1990 amendments to the Act were requirements for certification to accompany random source dogs and cats that are sold, provided, or otherwise made available by dealers to any individual or entity. (Random source dogs and cats are defined in 9 CFR part 1 as being those obtained from animal pounds or shelters, auction sales, or from any person who did not breed and raise them on his or her premises.) The intent of the 1990 amendments was to prevent

stolen animals from being entered in sales channels. In accordance with these amendments to the Act, we are proposing that specific information, discussed below, must accompany the dog or cat in question.

We are proposing to include the requirements for certification in 9 CFR part 2, subpart I, in paragraphs (b) through (d) of new § 2.133. In this new section, we are proposing to include the provision that a dealer shall not sell, provide, or make available to any individual or entity a random source dog or cat unless the dealer provides the recipient of the dog or cat with certification that indicates that the holding period discussed in this Supplementary Information under the heading "Holding Period" has been met.

The proposed certification would also be required to include the name, address, and USDA license number of the dealer making the certification and the USDA license or registration number of the recipient of the dog or cat if such recipient is licensed or registered. The certification must be signed by both the dealer making it and by the recipient. The certification would be required to include a description of each dog or cat being transferred, including the official Department-approved identification number of the animal. It would also be required to include the name and address of the person, pound, or shelter from which each dog or cat was acquired by the dealer, and an assertion that the person, pound, or shelter was notified that the dog or cat might be used for research or educational purposes. Additionally, the certification would be required to include the date the dealer acquired each dog or cat. Including the date of acquisition would facilitate our tracking reports of stolen animals, and would help us determine whether an animal acquired by a dealer might possibly be an animal reported stolen. In case where the dog or cat was acquired from a pound or shelter, the certification would have to include a statement by the pound or shelter that it met the required holding period. The statement by the pound or shelter would be required to at least describe the animals by their official USDA identification tag numbers, as supplied by the dealer. (Dealers are already required to affix the identification tags to the dogs or cats at the time of acquisition.) The statement could be incorporated within the certification if the dealer makes the certification at the time that the animals are acquired or it could be made separately and attached to the certification later. If made separately, it would be required to

include the same information describing each animal as is required in the certification. A photocopy of the statement would be regarded as a duplicate original. This is necessary because the dealer might not dispose of all of the animals at the same time or to the same person.

The amendments require that "(t)he original certification . . . shall accompany the shipment of a dog or cat to be sold, provided, or otherwise made available by the dealer, and shall be kept and maintained by the research facility for at least one year for enforcement purposes." The purpose of requiring that the original certification accompany the shipment is to facilitate the tracking of random source dogs and cats from their initial acquisition until their acquisition by a research facility. In the simplest case, a dealer would acquire random source dogs or cats from a pound and would sell all of the animals to a research facility in a single transaction. But if the animals were to pass through more than one dealer, each subsequent dealer would be required to make an additional original certification which must accompany shipment. The additional certification would be attached to the prior certification and would not have to describe the animals except by their official identification tag numbers. If a subsequent dealer disposes of only some of the animals covered by a certification, a photocopy of the previous certification (including the initial original certification and any additional certifications) would serve as a duplicate original.

Each dealer who provides or receives a certification would be required to keep a copy and make it available for APHIS inspection for at least 1 year after disposition of the animal. Each research facility which receives a certification would have to keep and make available for APHIS inspection the original of the certification for at least 1 year after disposition of the animal.

We are also proposing that in instances where a research facility transfers a dog or cat to another facility, a copy of the certification, if such certification exists, would be required to accompany the animal transferred. The research facility to which the animal is transferred would be required to keep, maintain, and make available for APHIS inspection a copy of the certification for at least 1 year after disposition of the animal.

#### Definition

Definitions of certain terms used in the regulations are included in 9 CFR part 1. In order to clarify the meaning of "pound or shelter" as used in this

proposal, we are proposing to add a definition of "pound or shelter" to the definitions in part 1. A pound or shelter would be defined to mean a facility that accepts and/or seizes animals for the purpose of caring for them, placing them through adoption, or carrying out law enforcement, whether or not the facility is operated for profit.

#### Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this proposed rule would have an effect on the economy of less than \$100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

#### Initial Regulatory Flexibility Analysis

In accordance with 5 U.S.C. 603, we have performed an initial Regulatory Flexibility Analysis regarding the potential impact of this proposed rule on small entities.

#### Holding Period

Under this proposed rule, municipally owned and operated pounds and shelters, humane societies and contract pounds or shelters, and research facilities that sell random source dogs and cats would have to comply with a holding period. Sales of dogs and cats from pounds and shelters are currently prohibited in the following 12 States: Connecticut, Delaware, Hawaii, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont. Pounds and shelters in these 12 States would, therefore, be unaffected by the proposed regulations. Individual shelters in the remaining 38 States that choose not to make such sales would also be unaffected. Under part 2, subpart C, § 2.38(j) of the Animal Welfare regulations, research facilities are already required to hold for 5 full days dogs or cats that they acquire from sources other than dealers, exhibitors, and exempt persons. The only change from the current regulations in this regard would be the addition of the

requirement that the dogs and cats be held over at least one Saturday.

The total number of pounds and shelters in the United States is estimated by the Humane Society of the United States to be between 3,000 and 5,000. For purposes of the Regulatory Flexibility Act, all of these pounds and shelters would be considered small. For this analysis, it was assumed that approximately 2,200 to 3,800 pounds and shelters in the United States sell dogs and cats to dealers. It is estimated that as many as 80,000 dogs and 50,000 cats may be sold or provided to dealers from these shelters each year. These 2,200 to 3,800 pounds and shelters would be affected by the proposed regulations. The extent of the impact of the proposed regulation on these pounds and shelters would depend on whether the pound or shelter holds dogs and cats at least 5 days, including a Saturday, before selling them to a dealer.

Holding periods for pounds and shelters are currently prescribed by State or local governments and by shelter operators. While it was known that at least one State, Minnesota, requires dogs and cats to be held for 5 days before they can be sold, specific information for other State and local governments was not available. A 3-day average holding period was assumed for this analysis. Therefore, the proposed regulation would require pounds and shelters to hold and care for each dog or cat for an additional 2 to 4 days, in order to hold each animal for 5 days including a Saturday. The daily cost for labor and materials to feed, water, and clean up after each dog or cat was estimated at \$7. The increased cost to each affected pound or shelter for each dog or cat is, therefore, estimated at approximately \$14 to \$28. The increased annual cost for each affected shelter is estimated at approximately \$500 to \$1,700.

The cost increases projected to arise from this proposed regulation would ultimately be borne by taxpayers. Pounds and shelters, whether government owned and operated or contracted for by State, county, or city governments, are providing a public service. As the cost of this public service rises, either taxes would have to be raised or money will have to be taken from other programs.

#### Certification Requirements

Under this proposed rule, any dealer selling, providing, or making available to any person a random source dog or cat would be required to provide the recipient of the dog or cat with certain certification, as discussed in the supplementary information of this document under the heading,

"Certification." These proposed requirements overlap the current provisions of part 2 of the Animal Welfare regulations. Under the current regulations, dealers are required to enclose a record with each shipment of any dog or cat. This record must contain the following:

1. The name and address of the person to whom a dog or cat was sold or given and that person's license or registration number if he or she is licensed or registered under the Act;
2. The official USDA tag number or tattoo assigned to a dog or cat; and
3. A description of the dog or cat.

Dealers are also currently required to maintain records of the following information for each dog or cat:

1. The name and address of the person from whom a dog or cat was purchased or otherwise acquired whether or not the person is required to be licensed or registered under the Act;
2. The USDA license or registration number of the person if he or she is licensed or registered under the Act;
3. The vehicle license number and state, and the driver's license number and state, and state of the person, if he or she is not licensed or registered under the Act;
4. The date a dog or cat was acquired or disposed of, including by euthanasia;
5. The method of transportation including the name of the initial carrier or intermediate handler or, if a privately owned vehicle is used to transport a dog or cat, the name of the owner of the privately owned vehicle; and
6. The date and method of disposition of a dog or cat, e.g., sale, death, euthanasia, or donation.

Because, as noted above, the proposed certification requirements are comprised in large measure of the information already required, the reporting requirements of this proposed regulation are not expected to increase dealers' costs.

#### Comments on the Initial Regulatory Flexibility Analysis

We encourage the submission of written comments on our Initial Regulatory Flexibility Analysis, as well as on any other aspect of this proposed rule. Comments should be submitted as indicated under "DATES" and "ADDRESSES."

#### Executive Order 12372.

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

#### Paperwork Reduction Act

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the information collection provisions that are included in this proposed rule will be submitted for approval to the Office of Management and Budget (OMB). Your written comments will be considered if you submit them to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. You should submit a duplicate copy of your comments to: (1) Chief, Regulatory Analysis and Development Staff, PPD, APHIS, USDA, room 606, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, and (2) Clearance Officer, OIRM, USDA, room 404-W, 14th Street and Independence Avenue, SW., Washington, DC 20250.

#### List of Subjects

##### 9 CFR Part 1

Animal welfare, Animal housing, Dealers, Exhibitors, Research facilities, Humane animal handling.

##### 9 CFR Part 2

Adequate veterinary care, Identification of animals, Institutional animal care and use committees, Licensing, Miscellaneous, Records, Registration.

Accordingly, 9 CFR Parts 1 and 2 would be amended as follows:

#### PART 1—DEFINITION OF TERMS

1. The authority citation for Part 1 would continue to read as follows:

Authority: 7 U.S.C. 2131-2157; 7 CFR 2.17, 2.51, and 371.2(g).

2. Section 1.1 would be amended by adding, in alphabetical order, a definition of "Pound or shelter" to read as follows:

##### § 1.1 Definitions.

\* \* \* \* \*

*Pound or shelter* means a facility that accepts and/or seizes animals for the purpose of caring for them, placing them through adoption, or carrying out law enforcement, whether or not the facility is operated for profit.

\* \* \* \* \*

#### PART 2—REGULATIONS

1. The authority citation for part 2 would continue to read as follows:

Authority: 7 U.S.C. 2131-2157; 7 CFR 2.17, 2.51, and 371.2(g).

2. In subpart C, § 2.38, a new paragraph (k)(4) would be added to read as follows:

**§ 2.38 Miscellaneous.**

(k) \* \* \*

(4) Each research facility shall comply with the regulations set forth in § 2.133 of subpart I of this part.

3. Part 2, subpart I, would be amended by adding a new § 2.133 to read as follows:

**§ 2.133 Certification for random source dogs and cats.**

(a) Each of the entities listed in paragraphs (a)(1) through (a)(3) of this section that acquire any live dog or cat shall, before selling the dog or cat to a dealer, hold and care for the dog or cat for a period of not less than 5 full days after acquiring the animal, not including the date of acquisition and excluding time in transit. This holding period shall include at least one Saturday. The provisions of this paragraph apply to:

(1) Each pound or shelter owned and operated by a State, county, or city;

(2) Each private pound or shelter established for the purpose of caring for animals, such as a humane society, or other organization that is under contract with a State, county, or city, that operates as a pound or shelter, and that releases animals on a voluntary basis; and

(3) Each research facility licensed by the Department as a dealer.

(b) A dealer shall not sell, provide, or make available to any person a random source dog or cat unless the dealer provides the recipient of the dog or cat with certification that contains the following information:

(1) The name, address, Department license number, and signature of the dealer;

(2) The name, address, Department license or registration number, if such number exists, and signature of the recipient of the dog or cat;

(3) A description of each dog or cat being sold, provided, or made available that shall include:

- (i) The species and breed or type;
- (ii) The sex;
- (iii) The date of birth or, if unknown, then the approximate age;
- (iv) The color and any distinctive markings; and
- (v) The official Department-approved identification number of the animal.

However, if the certification is attached to a certificate provided by a prior dealer which contains the required description, then only the official identification numbers are required;

(4) The name and address of the person, pound, or shelter from which the dog or cat was acquired by the dealer, and an assurance that the person, pound, or shelter was notified that the cat or dog might be used for research or educational purposes;

(5) The date the dealer acquired the dog or cat from the person, pound, or shelter referred to in paragraph (b)(4) of this section; and

(6) If the dealer acquired the dog or cat from a pound or shelter, a signed statement by the pound or shelter that it met the requirements of paragraph (a) of this section. This statement must at least describe the animals by their official USDA identification numbers. It may be incorporated within the certification if the dealer makes the certification at the time that the animals are acquired from the pound or shelter or it may be made separately and attached to the certification later. If made separately, it must include the same information describing each animal as is required in the certification. A photocopy of the statement will be regarded as a duplicate original.

(c) The original certification required under paragraph (b) of this section shall accompany the shipment of a dog or cat to be sold, provided, or otherwise made available by the dealer.

(d) A dealer who acquires a dog or cat from another dealer must obtain from that dealer the certification required by paragraph (b) of this section and must attach that certification (including any previously attached certification) to the certification which he or she provides pursuant to paragraph (b) of this section (a photocopy of the original certification will be deemed a duplicate original if the dealer does not dispose of all of the animals in a single transaction).

(e) A dealer who provides or receives a certification required under paragraph (b) of this section shall keep, maintain, and make available for APHIS inspection a copy of the certification for at least 1 year following disposition of the animal.

(f) A research facility which acquires any random source dog or cat from a dealer must obtain the certification required under paragraph (b) of this section and shall keep, maintain, and make available for APHIS inspection the original for at least 1 year following disposition of the animal.

(g) In instances where a research facility transfers a random source dog or cat acquired from a dealer to another research facility, a copy of the certification required by paragraph (b) of this section must accompany the animal transferred. The research facility to which the dog or cat is transferred

shall keep, maintain, and make available for APHIS inspection the copy of the certification for at least 1 year following disposition of the animal.

Done in Washington, DC, this 12 day of November 1991.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91-27517 Filed 11-14-91; 8:45 am]

BILLING CODE 3410-34-M

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

[Docket No. 91-CE-55-AD]

**Airworthiness Directives; Air Tractor Inc. AT-300 and AT-400 Series Airplanes**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This notice proposes to adopt a new airworthiness directive (AD) that would be applicable to certain Air Tractor Inc. AT-300 and AT-400 series airplanes. The proposed action would require initial and repetitive inspections of the wing spar caps for corrosion and repair or replacement if found corroded. Three reports of badly corroded wing spar caps on the affected airplanes have been received. The actions specified by this AD are intended to prevent failure of the wing structure that could result in loss of control of the airplane.

**DATES:** Comments must be received on or before January 23, 1992.

**ADDRESSES:** Air Tractor Inc. Service Letter No. 90, dated May 6, 1991, that is discussed in this AD may be obtained from Air Tractor Inc., P.O. Box 485, Olney, Texas 76374; Telephone (817) 564-5616. This information also may be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91-CE-55-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

**FOR FURTHER INFORMATION CONTACT:** Mr. Bob D. May, Aerospace Engineer, Airplane Certification Office, FAA, Southwest Region, 4400 Blue Mound