

# Rules and Regulations

Federal Register

Vol. 68, No. 50

Friday, March 14, 2003

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 9 CFR Part 1

[Docket No. 99-087-3]

#### Licensing and Inspection Requirements for Dealers of Dogs Intended for Hunting, Breeding, or Security Purposes

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

**ACTION:** Final rule.

**SUMMARY:** We are amending the animal welfare regulations to reflect our policy of regulating only wholesale dealers, and not retail dealers, of dogs intended for hunting, breeding, or security purposes. We currently regulate these wholesale dealers under the same regulations in place for wholesale dealers of other dogs. This action makes the regulations consistent with our policy and, therefore, clarifies licensing and inspection requirements for affected dealers of dogs intended for hunting, breeding, or security purposes.

**EFFECTIVE DATE:** April 14, 2003.

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

#### 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 parts 2 and 3. Part 2 contains general requirements for regulated parties, and part 3 contains specific requirements for the care and handling of certain animals. Subpart A of part 3 contains the requirements applicable to cats and dogs.

Under section 4 of the AWA (7 U.S.C. 2134), a dealer may not sell an animal as a pet or for exhibition unless he or she first obtains a license from the Secretary. Section 4 also requires a dealer to have a license to buy from or sell to another dealer (*i.e.*, at the wholesale level). Because dogs sold for hunting, breeding, or security purposes are not sold to research facilities, or for use as pets or for exhibition, dealers in these dogs do not need a license to buy or sell them unless they do so at the wholesale level.

Section 13 of the AWA (7 U.S.C. 2143) directs the Secretary to promulgate standards of care with which regulated dealers must comply. Because section 4 of the AWA requires the regulation only of wholesale dealers of hunting, breeding, and security dogs, retail dealers of such dogs are not subject to the standards promulgated under section 13 of the AWA.

In accordance with the AWA, on July 19, 1999, we published in the **Federal Register** (64 FR 38546-38548, Docket No. 97-018-4) a decision and a policy statement that notified the public that, among other things, we had established a policy to license and inspect wholesale dealers of dogs intended primarily for hunting, breeding, or security purposes. This means that we currently regulate these dealers under the same regulations in place for wholesale dealers of other dogs. We instituted this policy to help ensure the humane handling, care, and treatment of hunting, breeding, and security dogs.

Because the regulations at § 2.1 require that all dealers of dogs must be licensed and inspected, we published in the **Federal Register** on December 4, 2000 (65 FR 75635-75637, Docket No. 99-087-1), a proposal to amend the regulations to reflect the intent of the

AWA and our policy of regulating only wholesale dealers of dogs intended for hunting, breeding, or security purposes. Specifically, we proposed to amend the definition of *dealer* in § 1.1 to make it clear that, with respect to dealers of hunting, breeding, and security dogs, the term applies only to wholesale dealers of these dogs.

We solicited comments concerning our proposal for 60 days ending February 2, 2001. We extended the deadline for comments until April 3, 2001, in a document published in the **Federal Register** on January 22, 2001 (66 FR 6491-6492, Docket No. 99-087-2). We received 28,485 comments by April 3, 2001, the closing date of the extended comment period. The comments, which were primarily form letters or variations of form letters, were from dog breeders, animal welfare advocates (both individuals and organizations), dog owners and fanciers, representatives of State and local governments, and members and representatives of kennel clubs or specific dog breed associations. These comments are discussed below.

Several thousand commenters suggested that all breeders of dogs that can be considered hunting, breeding, or security dogs should be regulated at not only the wholesale level, but at the retail level as well. Many of these commenters also suggested that our policy and proposal were contrary to the intent of the AWA.

In response, it is important to note that we proposed this action in order to bring our regulations into accord with our policy of regulating only wholesale dealers of dogs intended for hunting, breeding, or security purposes. Our policy statement, discussed previously, clarified that we regulate only wholesale dealers of dogs intended for hunting, breeding, or security purposes. Again, this continuity-creating action helps ensure the humane handling, care, and treatment of hunting, breeding, and security dogs.

As described above, the regulations at § 2.1 require that all dealers of dogs must be licensed and inspected. Currently, then, because our definition of *dealer* in § 1.1 can be extended or interpreted to include both wholesale and retail dealers of hunting, breeding, and security dogs, our regulations have been inconsistent with our published policy. As stated previously and in the

proposed rule, the change will be reflected in the definition of *dealer* in § 1.1.

We do not believe that modifying the definition of *dealer* to reflect our policy is contrary to the intent of the AWA because the Act does not make retail dealers of dogs intended for hunting, breeding, or security purposes subject to Federal licensing and regulation. We believe it is important to modify the definition of *dealer* in order to make explicit the provisions of the Act. It is important to note that our change is consistent with congressional revisions of the AWA in which Congress did not alter our definition of *retail pet store*. Therefore, we are confident that the proposed rule and this final rule reflect Congress' original and continuing intent that, with respect to dealers of hunting, breeding, and security dogs, the definition of *dealer* focus solely on dealers who sell on the wholesale level.

We also believe that our implementation of the AWA has significantly improved the well-being of animals owned by the wholesale dealers we regulate, as well as that of animals owned by retail dealers. It is likely that many retail outlets have improved the living standards of their animals in order to meet the standards of their wholesale counterparts.

Further, we have determined that retail dealers, especially those who sell from their homes, are already subject to a degree of self-regulation and oversight by persons who purchase animals from the retailers' homes, as well as by breed and registry organizations, which require their registrants to meet certain guidelines related to the health and genetic makeup of animals bred and to the education of the registrants. Typically, wholesale dealers do not have the same amount of oversight from the public.

Other commenters suggested that unregulated retail dealers of purebred dogs have no regard for hereditary diseases they propagate. These commenters indicated that unsuspecting customers who purchase diseased animals have no means for Federal recourse. Many of these same commenters noted that retail dealers who are humane would welcome licensing and inspection requirements.

In response, retail dealers of pets are not unregulated. Many State and local laws and ordinances are in place to monitor and respond to allegations of inhumane treatment and inadequate housing for animals owned by private retail dealers.

Another large group of commenters supported most of the proposal, but requested that we further modify the

definition of "dealer" in § 1.1 to include establishments referred to as "puppy mills." These commenters indicated that retail dealers should remain excluded from the definition of "dealer," but suggested that we need to regulate high-volume dealers.

Although there is no standard, fully encompassing definition for the term "puppy mill," most people use it to refer to high-volume breeding establishments that sell dogs at the wholesale level and sell few, if any, dogs directly to the public. Therefore, as wholesale dealers, the sellers in question are subject to licensing and inspection requirements.

We are not making any changes to the rule as a result of these comments because we have determined that this rule will make our regulations more consistent with our policy to regulate only wholesale dealers of dogs intended for hunting, breeding, or security purposes, and will, therefore, clarify licensing and inspection requirements for affected dealers of these dogs.

We received a total of 1,238 comments expressing support for our proposal. The vast majority of these comments came from self-identified hobby breeders who indicated they were registered with kennel clubs or other breed registry organizations.

Many of these commenters indicated that their breeding dog was a family pet and their hobby breeding establishment was a home-based business. Most commenters shared the concern that additional regulation of retail dealers would require them to become registered dealers and to adhere to licensing and inspection requirements. Those who expressed this concern were adamantly opposed to paying licensing fees for their hobby breeding establishments and having their private homes inspected. Many suggested that such requirements would be cumbersome, if not impossible, to enforce.

In response, we are charged with enforcing the provisions of the AWA which require the regulation only of wholesale dealers of hunting, breeding, or security dogs.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, without change.

#### **Executive Order 12866 and Regulatory Flexibility Act**

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with 5 U.S.C. 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 final rule amends the regulations to reflect our policy of regulating only wholesale dealers of dogs intended for hunting, breeding, or security purposes. As such, this action does not result in any change to our operations. We currently help ensure the humane handling, care, and treatment of hunting, breeding, and security dogs through the licensing and inspection of wholesale dealers of these dogs; we regulate these dealers under the same regulations in place for wholesale dealers of other types of dogs.

We have used all available data to estimate the potential economic effects of changing the definition of *dealer* in § 1.1 to reflect our policy of regulating wholesale dealers of hunting, breeding, or security dogs. However, specific data concerning the number of small entities that will be affected by this rule is not available. In our proposed rule, we invited comments. However, none of the comments we received specifically addressed potential economic effects.

To comply with our current policy and the regulations, wholesale dealers of dogs intended for hunting, breeding, or security purposes incur costs for licensing, as well as other expenses. The costs of licensing for affected dealers include an annual application fee of \$10 and an annual class "A" license fee based on 50 percent of total gross sales or compensation from leased animals. License fee amounts are determined according to ranges shown in Table 1 of 9 CFR part 2, § 2.6.

Among other costs incurred by wholesale dealers of hunting, breeding, and security dogs are expenses related to veterinary care, tagging or tattoo marking for animal identification, recordkeeping, health certification of dogs commercially transported, and maintenance of appropriate facilities and operating standards (*see* 9 CFR part 3, subpart A). It is reasonable to assume, however, that these responsibilities are met by affected dealers simply as a matter of good business practice. When dealers satisfy the facilities and operating standards of the regulations by, for example, providing a safe and healthy environment (including appropriate heating, cooling and ventilation of the dogs' housing to adequate feeding and exercising programs), those dealers are contributing to their dogs' eventual sale value. As another example, records of transactions can only further a wholesale dealer's business success.

Therefore, it is in a dealer's financial interest to promote the health and well-being of his or her dogs in accordance with the regulations. However, if any wholesale dealers of hunting, breeding, or security dogs were not in compliance with the regulations in 9 CFR parts 2 and 3 prior to our policy announcement on July 19, 1999, they will likely have incurred expenses related to meeting these requirements. We do not have information on the number of such dealers or what their expenses might be.

The purpose of this rule is actually to remove requirements covering dealers who sell hunting, breeding, or security dogs at the retail level. Those dealers will experience no economic effects from this action since we have never enforced those provisions.

The Regulatory Flexibility Act requires that agencies consider the economic effects of rules on small entities. The Small Business Administration determines the criteria by which entities are classified as "small," using the North American Industry Classification System (NAICS) categories. Wholesale dealers of hunting, breeding, or security dogs are included within NAICS category 112990, "All Other Animal Production." Small entities in this category are ones with annual receipts of \$750,000 or less. Although data is not available on the number of wholesale dealers of hunting, breeding, or security dogs, or their incomes, we presume the majority are small entities.

While a substantial number of affected dealers may be small entities, we expect the effect of this rule on these dealers will be insignificant because licensing and inspection fees will remain the same. This action simply makes our regulations consistent with our policy and, therefore, clarifies licensing and inspection requirements for affected dealers of dogs intended for hunting, breeding, and security purposes.

This rule contains various recordkeeping requirements, which were described in our proposed rule, and which have been approved by the Office of Management and Budget (See "Paperwork Reduction Act" below).

#### Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under

No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

#### Executive Order 12988

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

#### Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579-0169.

#### 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 Part 1

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

Accordingly, we are amending 9 CFR Part 1 as follows:

#### PART 1—DEFINITION OF TERMS

1. The authority citation of 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 for *dealer* is revised to read as follows:

##### § 1.1 Definitions.

\* \* \* \* \*

*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: Any dog or other animal whether alive or dead (including unborn animals, organs, limbs, blood, serum, or other parts) for research, teaching, testing, experimentation, exhibition, or for use as a pet; or any dog at the wholesale

level for hunting, security, or breeding purposes. This term does not include: A retail pet store, as defined in this section, unless such store sells any animal to a research facility, an exhibitor, or a dealer (wholesale); any retail outlet where dogs are sold for hunting, breeding, or security purposes; or any person who does not sell or negotiate the purchase or sale of any wild or exotic animal, dog, or cat and who derives no more than \$500 gross income from the sale of animals other than wild or exotic animals, dogs, or cats during any calendar year.

\* \* \* \* \*

Done in Washington, DC, this 10th day of March, 2003.

**Peter Fernandez,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 03-6161 Filed 3-13-03; 8:45 am]

BILLING CODE 3410-34-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 2002-NM-218-AD; Amendment 39-13084; AD 2003-05-08]

RIN 2120-AA64

#### Airworthiness Directives; Dornier Model 328-100 and -300 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Dornier Model 328-100 and -300 series airplanes, that requires replacement of certain flight data recorder (FDR) and cockpit voice recorder (CVR) impact switches with certain new impact switches. This action is necessary to prevent the loss of data recorded on the FDR and CVR, which, in the event of an accident, could result in the inability to retrieve data from the FDR and CVR during the accident investigation. This loss of data could hinder the identification of the unsafe condition which caused the accident, and prevent the FAA from developing and mandating actions to prevent additional accidents caused by that same unsafe condition.

**DATES:** Effective April 18, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 18, 2003.