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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 1, 2, and 3

[Docket No. APHIS-2017-0062]

RIN 0579-AE35

Animal Welfare; Amendments to Licensing Provisions and to Requirements for Dogs

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the licensing requirements in the Animal Welfare Act (AWA) regulations to promote compliance, reduce licensing fees, and strengthen safeguards that prevent individuals and businesses with a history of noncompliance from obtaining a license or working with regulated animals. This action will reduce regulatory burden with respect to licensing and help ensure licensees' sustained compliance with the AWA, thus promoting animal welfare. We have also revised the veterinary care and watering standards for regulated dogs to better align the regulations with the humane care and treatment standards set by the Animal Welfare Act.

DATES: Effective [Insert date 180 days after date of publication in the Federal Register].

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SUPPLEMENTARY INFORMATION:

Background

Under the Animal Welfare Act (AWA or the Act, 7 U.S.C. 2131 *et seq.*), the Secretary of Agriculture is authorized to promulgate standards and other requirements governing the humane handling, care, treatment, and transportation of certain animals by dealers, exhibitors, operators of auction sales, research facilities, and carriers and intermediate handlers. The Secretary has delegated responsibility for administering the AWA to the Administrator of the U.S. Department of Agriculture's (USDA's) Animal and Plant Health Inspection Service (APHIS). Within APHIS, the responsibility for administering the AWA has been delegated to the Deputy Administrator for Animal Care. Definitions, regulations, and standards established under the AWA are contained in 9 CFR parts 1, 2, and 3 (referred to below as the regulations). Part 1 contains definitions for terms used in parts 2 and 3. Part 2 provides administrative requirements and sets forth institutional responsibilities for regulated parties, including licensing requirements for dealers, exhibitors, and operators of auction sales. Dealers, exhibitors, and operators of auction sales are required to comply in all respects with the regulations and standards (§ 2.100(a)) and to allow APHIS officials access to their place of business, facilities, animals, and records to inspect for compliance (§ 2.126). Part 3 provides standards for the humane handling, care, treatment, and transportation of covered animals. Part 3 consists of subparts A through E, which contain specific standards for dogs and cats, guinea pigs and hamsters, rabbits, nonhuman primates, and marine mammals, respectively, and subpart F, which sets forth general standards for warmblooded animals not otherwise specified in that part.

Under the current regulations, an applicant for an initial license is required to submit an application form, an application fee, and an annual license fee to Animal Care (§ 2.1(c)), acknowledge receipt of a copy of the regulations and agree to comply with them by signing the application form (§ 2.2(a)), and demonstrate compliance with the AWA regulations and

standards, before APHIS can issue a license (§ 2.3(a)). Once a person receives a license, the licensee may renew his or her license annually by submitting an annual renewal form and license fee (§ 2.1(d)(1)).

On March 22, 2019, we published in the *Federal Register* (84 FR 10721-10735, Docket No. APHIS-2017-0062) a proposal to revise the AWA licensing requirements to promote compliance, reduce licensing fees and burdens, and strengthen existing safeguards that prevent individuals and businesses who are unfit to hold a license (such as any individual whose license has been suspended or revoked or who has a history of noncompliance) from obtaining a license or from buying, selling, transporting, exhibiting, or delivering for transportation regulated animals. We also proposed revisions to the animal health and husbandry standards of part 3, subpart A, to ensure the adequate care and treatment of regulated dogs. Prior to the proposed rule, we published an advance notice of proposed rulemaking (ANPR) in the *Federal Register* on August 24, 2017, (82 FR 40077–40078, Docket No. APHIS–2017–0062), in which we solicited comments from the public regarding potential revisions to the AWA regulations.

We solicited comments on the proposed rule for 60 days ending May 21, 2019. On May 28, 2019, we published in the *Federal Register* (84 FR 24403, Docket No. APHIS-2017-0062) a document<sup>1</sup> announcing a reopening of the comment period for an additional 15 days, to June 5, 2019, to allow interested persons additional time to prepare and submit comments.

We received approximately 110,600 comments on the proposed rule via courier, U.S. mail, and Regulations.gov. Of this total, 4,619 unique comments were received via Regulations.gov, along with approximately 600 unique paper comments delivered to APHIS.

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<sup>1</sup>To view the ANPR, proposed rule, supporting documents, and the comments we received, go to <http://www.regulations.gov/#!docketDetail;D=APHIS-2017-0062>.

Through Regulations.gov we also received 25,400 comments in 629 distinct sets of duplicate or near-duplicate comments. An additional 79,978 comments we received consisted of one of three electronic form letters drafted by a national animal welfare organization and endorsed by its supporters, some of whom added their views to the letter. We received comments from members of Congress, animal welfare organizations, animal rescue and sheltering organizations, licensed animal dealers, breeders, and exhibitors, kennel clubs, zoos and aquariums, theme parks, animal reserves, veterinarians and veterinary organizations, and members of the public. Issues raised by commenters are discussed below by topic. We address the issues in the order that they pertain to the regulatory text of the proposed rule.

### Definitions

We proposed to amend § 1.1, “Definitions,” by removing the term *AC Regional Director*, as Animal Care is no longer organized under regions and regional directors. We proposed replacing references to the AC Regional Director with Animal Care Deputy Administrator and regional offices with the appropriate Animal Care office.

One commenter opposed replacing many tasks that have historically been under the oversight of each Regional Director and stated that placing them under the oversight of the Deputy Administrator would be contrary to APHIS’ own strategic plan. A few commenters stated that this proposed change suggests that APHIS is attempting to install an unqualified third party lacking in veterinary experience and credentials.

We disagree with the commenters. The Deputy Administrator of Animal Care has been delegated the authority by the Administrator of APHIS to direct activities to ensure compliance

with, and enforcement of, the AWA.<sup>2</sup> The replacement of the term *AC Regional Director* with *Deputy Administrator* reflects the current organizational structure of Animal Care and not a change in the authority of the Deputy Administrator. The Deputy Administrator of Animal Care is not required to have veterinary experience or credentials in order to be qualified.

### Business Hours

We proposed to revise the definition of *business hours* in § 1.1 of the regulations so that the term no longer limits inspection times to “Monday through Friday, except for legal Federal holidays.” We changed the definition to mean “a reasonable number of hours between 7 a.m. and 7 p.m. each week of the year, during which inspections by APHIS may be made.” We made this change to accommodate persons who are employed in other types of work and are not usually available for inspections during the day on Monday through Friday.

One commenter disagreed with our proposed change to *business hours*, stating that it is unclear what USDA means by “reasonable.” The commenter considered “reasonable” to be a minimum of 30 hours a week and not just weekends, and noted that not being present at the facility is a tactic on which licensees have often relied to avoid inspections.

The AWA authorizes USDA personnel to have access, at all reasonable times, to the places of business and the facilities, animals, and records of dealers, exhibitors, research facilities, carriers, and intermediate handlers.<sup>3</sup> As discussed in the proposed rule, we have observed a number of licensees who are not available for a reasonable number of hours between 7 a.m. and 7 p.m. Monday through Friday because they are employed full-time elsewhere during the weekdays or because they operate at reduced hours on weekdays to allow customers to visit

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<sup>2</sup> See 7 CFR 371.7.

<sup>3</sup> 7 U.S.C. 2146(a).

their business on the weekends. We are therefore making the change as proposed to reflect these business practices and to ensure that such licensees are able to make their place of business and facilities, animals, and records available for inspection at all reasonable times as required by the Act. APHIS will continue to coordinate with licensees and registrants who do not maintain regular public business hours to establish optimal times for inspection.

A commenter stated that removing the business hour designation from Monday through Friday may negatively impact larger zoos and aquariums, as weekend staffs at these businesses are usually smaller than during the week.

A licensee or registrant that is available a reasonable number of hours only Monday through Friday would still meet the definition of *business hours* for the purpose of inspections. It is not our intent to require that licensees and registrants be available for a reasonable number of hours on every day of the week, but rather a reasonable number of hours collectively during the course of a week. Therefore, we are making no changes to the rule in response to this comment.

## Additional Definitions

Several commenters asked that we add definitions to § 1.1, including a definition of “affirmative demonstration of compliance,” to be defined as the demonstration of compliance with the Act, the regulations, and standards as documented on inspection reports created as part of the application or inspection process for the current period of licensure. In making this request, a few commenters suggested that without such a definition, APHIS hinders licensing by subjectively interpreting what constitutes compliance. Some persons commenting on the ANPR had also asked that we provide such a definition.

We are making no changes to the rule in response to these comments. The rule already specifies that a license applicant must demonstrate that his or her location and any animals, facilities, vehicles, equipment, and other locations used or intended for use in the business comply with the AWA and the regulations. How APHIS inspectors document noncompliances is immaterial to whether the applicant demonstrates compliance.

Several commenters asked that we add a definition for “breeding female” to § 1.1. Some commenters also asked that we define “puppy mill” in the regulations.

We are making no changes to the rule in response to these comments. However, we note that USDA has explained its thinking on the meaning of the term “breeding female” in a previous rulemaking: “While we recognize that breeders have several reasons for not breeding an intact female, for the purposes of enforcement, APHIS has to assume that a female that is capable of breeding may be bred. However, in determining whether an animal is capable of breeding, an APHIS inspector will take into consideration a variety of factors, including the

animal's age, health, and fitness for breeding.”<sup>4</sup> As for the term “puppy mill,” we do not use the term, nor will we define it, as it does not appear in the Act or in our regulations.

### Licensing Requirements

In § 2.1, we proposed changes to the information required to be submitted in the licensing application, including requiring applicants to indicate the maximum number of animals on hand at any one time, types of animals anticipated to be held or exhibited, information demonstrating that applicants have adequate knowledge of and experience with the animals, and disclosure of any previous animal welfare pleas of no contest or findings of violations. We proposed these changes to help strengthen compliance with the AWA regulations.

### Required Information on Application

A few commenters recommended that the license form furnished by the Deputy Administrator in § 2.1(a)(1) be applicable to a person renewing a license as well as a person seeking a license.

We are making no changes in response to this comment because this rulemaking removes the license renewal process from the regulations.

A commenter requested that we add a planned business hours section to the license application form to assist inspectors in gaining entry to operation on first contact. The commenter stated that APHIS inspection reports indicate that inspectors frequently have been unable to enter a facility on arrival due to no one being onsite, which removes the benefit of the unannounced inspection. The commenter asked if more could be done to ensure the unannounced inspection occurs on the first attempt.

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<sup>4</sup> 78 FR 57227 (Sept. 18, 2013); <https://www.federalregister.gov/documents/2013/09/18/2013-22616/animal-welfare-retail-pet-stores-and-licensing-exemptions>.

We do not believe requiring licensees to put their business hours on the application to be helpful to the inspectors, nor is it necessary for conducting unannounced inspections or scheduling prelicense inspections. We define business hours for inspections to be a reasonable number of hours between 7 a.m. and 7 p.m. each week of the year to provide additional flexibility for inspectors to gain entry on the first contact. As noted above, we have observed that a number of licensees are employed full-time elsewhere during the weekdays or operate at reduced hours on weekdays. We have additional communication tools to ensure the licensee is available for unannounced inspections. If a licensee or registrant is chronically unavailable for unannounced inspections, we take steps to remedy the situation, including attempting inspections at different times and days of the week. If necessary, we will coordinate with the person to establish an optimal inspection time range that includes multiple blocks of days of the week and multiple blocks of time in which they are available for an unannounced inspection. We will also pursue enforcement and other remedial actions if necessary. Accordingly, we are making no changes to the rule in response to this comment.

A commenter recommended that, in order to ensure that disclosure requirements have the intended impact, APHIS should include warning language on the license application that clearly informs applicants of the consequences of providing false information, including penalty of perjury.

We agree with the commenter. Sections 2.11 and 2.12 of the regulations state that a license applicant who has made false or fraudulent statements or provided false or fraudulent records to USDA may have their application denied or their license terminated, if already issued. We will include this information on the new license application form.

A commenter supported our proposed action to remove the “intention” to operate as an exhibitor from § 2.1(a) to make it more difficult for persons to obtain licenses solely for the purpose of circumventing State laws restricting the private possession and sale of exotic and wild animals (by only intending to exhibit but not actually exhibiting them). The commenter stated, however, that APHIS should take even greater steps to prevent this circumvention from occurring by asking applicants about insurance coverage, business advertising, and exhibition travel schedules on the application form in order to identify licensees keeping exotic animals only as pets.

We acknowledge the commenter’s concerns but are making no changes to the rule. Should we have concerns that a person is holding an AWA license to circumvent State laws restricting the private possession and sale of exotic and wild animals, we have the authority under § 2.125 of the regulations to request information concerning the business to assess whether the person is engaging in activities for which a license is required.

On the other hand, a commenter opposing the rule said that APHIS’ attempt to prevent persons from circumventing State law to keep exotic and wild animals violates statutes enforced by the Federal Trade Commission, and that the Federal Government is not allowed to circumvent State laws.

We disagree with the commenter. This change in the regulations supports, rather than circumvents, State laws. The AWA authorizes and encourages APHIS to cooperate with State and other officials in carrying out the purposes of the AWA and any State, local, or municipal legislation or ordinance on the same subject. Finally, the regulations in §§ 2.11 and 2.12 have long stipulated that any license applicant or holder who is violating or circumventing State law may be subject to the denial or termination of a license.

A commenter asked APHIS to require that any applicant operating under the name of a business disclose the business name in addition to their legal name, and to issue the license under the business name. The commenter also asked us to require disclosure of not only the names of the individual and business applying for a license, but also the names of all business associates and relatives involved in the business at the time of application and after. Finally, a few commenters requested that APHIS add a new field on the application form and require disclosure of any names under which the business formerly operated.

We are making no changes to the rule in response to this comment. The license application form requires that applicants provide any previous USDA license number(s) and any active license numbers in which the applicant has an interest. In addition, the applicant must report any partners or officers, all business names, and locations. Should we require additional information, we have the authority under § 2.125 of the AWA regulations to request information concerning the business.

In proposed § 2.1(a)(1)(v), we required that license applicants disclose the anticipated type of animals to be owned, held, maintained, sold, or exhibited during the period of licensure and whether these include exotic or wild animals. If exotic or wild animals are included, we required that applicants provide information and records demonstrating they have adequate knowledge of and experience with those animals.

A commenter stated that it is unclear why only applicants intending to hold exotic or wild animals need to demonstrate knowledge and experience in caring for those animals. The commenter stated that all applicants should be required to demonstrate knowledge and experience with any species they intend to obtain.

We agree with the commenter. In establishing regulatory standards of care<sup>5</sup> for all covered animals--wild, exotic, or otherwise--APHIS requires that all licensees demonstrate knowledge and experience sufficient to caring for their animals, regardless of species, and we note there are many ways that applicants can demonstrate this. For this reason, we are amending the proposed rule by removing the additional information and records requirement in paragraph (a)(1)(v).

In § 2.1(a)(1)(vii), we proposed requiring license applicants to disclose any plea of no contest or finding of violation of Federal, State, or local laws or regulations pertaining to animal cruelty or the transportation, ownership, neglect, or welfare of animals. A substantial number of commenters agreed with this provision. We noted in the preamble to the proposed rule that the current regulations already set forth provisions for the denial of a license for persons with animal cruelty convictions and certain other violations of Federal, State, or local laws pertaining to animals, and that this rule further supports this existing licensing restriction by requiring disclosure of such violations on the license application.

A commenter agreed with this provision and recommended that we also require disclosure of animal- or consumer-based legal violations (such as illegal import or export of animals or animal parts or products) and any licensing denial, revocation, or similar actions taken by any State, Federal, or local authority for activity relating to animal husbandry or sales. The commenter also stated that any animal cruelty conviction or plea, whether incurred during the preceding 3 years or otherwise, should disqualify an applicant from obtaining a license. The commenter asked that we include these provisions in § 2.11.

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<sup>5</sup> The statutory bases for these standards are located in section 2143 of the AWA, paragraphs (a)(1) and (a)(4).

Another commenter supporting disclosure of pleas or convictions of animal cruelty in proposed § 2.1(a)(1)(vii) stated that local cruelty laws vary widely from one jurisdiction to another and that some offenses, such as failure to license an animal or certain tethering violations, do not bear directly on animal welfare or constitute cruelty. For this reason, the commenter suggested that the proposed language for disclosing pleas and violations be amended to include only activities like those covered under the Act.

Under § 2.11(a)(5), APHIS will not issue a license to any applicant who has pled or been found to have violated any Federal, State, or local laws or regulations pertaining to animal cruelty within 3 years of application, or after 3 years if the Administrator determines that the circumstances render the applicant unfit to be licensed. We will apply this provision if the applicant meets these conditions. Likewise, under § 2.11(a)(7), APHIS will not issue a license to any applicant who pled or has been found to have violated any Federal, State, or local laws or regulations pertaining to the transportation, ownership, neglect, or welfare of animals, or is otherwise unfit to be licensed and the Administrator determines that the issuance of a license would be contrary to the purposes of the Act. In order to make this determination, we require the disclosure of all such pleas and violations as required under § 2.1(a)(1)(vii). Accordingly, we do not consider it necessary to make changes based on this comment.

#### Locations, Numbers, and Types of Animals

The current regulations do not require a licensee to demonstrate compliance when making changes to his or her animals or locations, including noteworthy changes to the numbers or types of animals used in regulated activity. This allows a licensee to acquire substantially more or different types of animals than what he or she had when the license was originally issued. Therefore, we proposed in revised § 2.1(b)(1) to require licensees to notify Animal Care

no fewer than 90 days before making any changes to the name, address, substantial control, or ownership of the business or operation, locations, activities, and number or type of animals described in § 2.1(b)(2). After the licensee demonstrates compliance under the changes and fulfills all other regulatory requirements, APHIS would issue a new license with a new certificate number.

A substantial number of commenters supported this proposed requirement. Among them, one commenter stated that APHIS should also review patterns of small changes not considered noteworthy but which could have significant cumulative impact on animal welfare.

We are making no changes in response to that comment. With respect to evaluating facilities, we note and consider any change, regardless of size, that may have an impact on animal welfare.

On the other hand, some commenters opposed the proposed requirement for new licenses for facilities that change their operations or the type or number of animals they display, claiming that the requirement is overly broad and burdensome and would require facilities that make even minor changes to their facilities or collections of animals to seek new licenses. Many of these commenters supported requiring licensees to notify APHIS of a change in regulated activities only if the change has an actual demonstrable impact on the normal operating procedures of the licensee. Similarly, a commenter representing a zoological park stated that the additional regulation of obtaining a new license when making a noteworthy change is excessive, as the USDA license is for the functioning of the entire zoo and not for one small part of a facility that may have a noncompliant issue. Another commenter stated that slight changes to regulated activities should need no review, and specifically cited riding and feeding animals, and animals used in circus and movie work.

We are making no changes in response to the comments. In developing the list of conditions in § 2.1(b) that trigger the need for a new license, we considered several factors, including the complexity of care the animals require, the varying regulations and standards for different types of animals, and the number of animals at facilities. Our focus is on requiring facilities to demonstrate compliance when acquiring animals subject to different standards or that have special husbandry and care needs, or when expanding the size of their animal collection significantly from the time of licensure. We believe this demonstration is important for ensuring that such facilities maintain compliance with the AWA during their period of licensure.

Several commenters stated that the proposal to require a new license whenever a facility makes any change in substantial control or ownership is vague and overly broad. One such commenter asked that we state more clearly when a new license is needed under this type of change.

We appreciate the opportunity to clarify the proposed rule in response to these comments. Licenses are issued to specific persons, which is defined in the AWA regulations to mean, “individual, partnership, firm, joint stock company, corporation, association, trust, estate, or other legal entity.” If the ownership of a licensed facility changes (i.e., if a new “person” or group of persons assumes ownership<sup>6</sup>), the new owner would need to obtain a license.

A new license is also required if the ownership structure is modified such that it changes who has substantial control of the business. For example, the business’ ownership model may change from an individual to a partnership or corporation, or vice versa. If a business is sold to another party, or if the licensee passes away and a new owner (including relatives) takes

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<sup>6</sup>New ownership as described here typically involves the facility being associated with a different Internal Revenue Service-issued Employer Identification Number (EIN). An EIN cannot be transferred to another owner.

possession, a new license is required. Licenses are issued specific to certain activities (such as exhibition), so a new license would be required if, for example, a breeder wants to begin operating as an exhibitor. Because licenses are site-specific, any change in location of the animals also requires a new license. APHIS will provide additional guidance on this topic to include examples that indicate when a new AWA license is needed.

A few commenters expressed the view that requiring a new license whenever a facility undergoes a change in management is an unnecessary intrusion into a licensee's business activities. One such commenter said that if any management changes to a facility are necessary, the Agency should confine its role to simply requiring advance notice of such changes and allow the facility to keep its existing license.

While a change in ownership would require a new license under the proposed regulations, changes in operational management of a facility typically would not. Accordingly, we are revising proposed § 2.1(b)(1) to exclude changes in management as requiring a new license. Similarly, a licensee that changes only the name of the business would not require a new license, unless the name change is associated with a change in ownership.

Some commenters expressed concerns about the minimum 90-day notice that must be given to APHIS before any change is made to the business or operation as required in § 2.1(b)(1). The commenters' concerns focused on situations where changes to the facility would need to be made in a shorter period due to unexpected circumstances such as the death of an owner or damages to the facility that affect the welfare of the animals held by the licensee.

We acknowledge that unexpected situations (such as natural disasters) can arise and note that we have the discretion to suspend enforcement in such situations.

In § 2.1(b)(1), we proposed that any person who intends to exhibit any animal at any location other than the person's approved site must provide that information on their application in accordance with proposed § 2.1(a)(1)(iii) and submit written itineraries in accordance with § 2.126. We noted that if the application did not provide such information, then a new application would have to be submitted and a new license obtained before exhibiting at locations other than the approved site.

A commenter operating as an exhibitor asked us to explain how to complete the license application with respect to the location of animals. The commenter asked whether licensees should indicate on the application that they exhibit at offsite locations and then follow up with itinerary filings, or whether each exhibition location would need to be listed and approved upon application for the license. The commenter stated that it is unfair to require licensees to know their entire traveling itinerary for up to a year in advance, much less 3 years.

We appreciate the opportunity to clarify how this requirement will be implemented. The applicant will need only to specify on the application that they intend to exhibit at off-site locations, and then follow up with submission of itineraries in accordance with § 2.126.

### Changes to Number of Animals Used in Regulated Activities

We proposed in § 2.1(b)(2) that licenses will authorize increments of 50 animals on hand at any single point in time during the period of licensure, and that licensees must obtain a new license before any change resulting in more than the authorized number of animals on hand at any single point in time. Licensees falling below de minimis are still licensed and subject to the regulations unless they choose to terminate their license. If they terminate their license then later exceed the de minimis level and continue to conduct regulated activity, they would need to reapply for a license.

Several commenters suggested that when licensed exhibitors obtain more animals, they should have to seek APHIS approval for the additional animals regardless of number.

We are making no changes to the rule in response to this comment. In deciding on the range of the number of animals we considered several factors, including the impact on compliance and the burdens associated with obtaining a new license. We do not believe that a new license is necessarily required every time a facility acquires an additional animal.

A commenter recommended that APHIS base the authorized number of animals on a relative change in size rather than on a flat threshold of 50 animals. The commenter added that this determination should be made by observing the actual number of animals present during the prelicense inspection rather than on the licensee's reporting.

We are making no changes to the rule based on this comment. The rule requires applicants to provide the anticipated maximum number of animals on hand at any one time during the period of licensure. This number may not match the number of animals on hand during the prelicense inspection (although the number of animals on hand during the prelicense inspection should not exceed the maximum number reported on the application). During the

prelicense inspection, APHIS will determine whether the animals, facilities, vehicles, equipment, and locations are in compliance, taking into account the anticipated maximum number of animals on hand.

Another commenter said that our proposal to authorize increments of 50 animals is arbitrary and does not serve its intended purpose. The commenter added that an increase of 50 in one species might require very little change in facilities and resources, whereas an increase of only a few of another species might completely change the nature of the operations. The commenter recommended that APHIS not provide licenses for increments of 50 animals, but should instead provide licenses based on the anticipated maximum number of animals possessed during the 3-year period of licensure.

We are making no changes to the rule in response to this comment. The purpose of this requirement is to ensure a licensee's facilities are compliant with the AWA regulations and standards for the anticipated number and type of animals to be held or used during the period of licensure. Not all facilities will have a static inventory of animals or have all of their animals on-site for the entire period of licensure. For example, a dog breeding facility may have a large number of animals over the course of 3 years, but a small number of animals on hand at any single point in time. The facility would need to demonstrate compliance for the maximum anticipated number of animals on hand at any single point in time during the period of licensure.

A commenter stated that APHIS should clarify the requirements for disclosure of the anticipated number of animals to account for potential offspring (whether or not there is an intention to breed), in order to account for fraudulent disclosures. The commenter cited the example of an applicant who has 50 dogs, 40 of which are unaltered females, who claims no intention to breed those dogs yet could have them produce 40 separate litters of puppies. On the

other hand, several commenters stated that not all breeding females are used for breeding. One such commenter stated it is important to define the term "breeding female" in a clear and reasonable manner, adding that just because a female dog is not spayed does not mean she is a breeding female.

We note that the prelicense demonstration of compliance would take into account the breed of dog, the number of breeding female dogs, the projected litter size, and the facility's business model for selling and placing puppies and adult dogs who are no longer used for breeding purposes. For the purposes of enforcement, APHIS assumes that a female dog that is capable of breeding may be bred. If a person uses animals for purposes counter to what the license allows, including breeding dogs that were indicated during the inspection to be no longer used for breeding, we will investigate such instances and take appropriate action.

A commenter stated that APHIS is forcing people to circumvent the burdens being placed on them by the Agency and asked, by way of example, if there is anything that would prohibit his spouse or child from keeping 200 more animals outside the perimeter of his licensed facility.

We note in response that this rulemaking will actually relieve paperwork burden and reduce fees for many licensees. To answer the commenter's question, we reply that the licensee, or any other person using or maintaining animals in such a manner that he or she requires a license, is subject to the AWA regulations and any prohibitions applicable to the situation described.

#### Changes to Types of Animals Used in Regulated Activities

Proposed § 2.1(b)(2) provides that licenses will authorize specific numbers and types of animals. Section 2.1(b)(2)(ii) specifically authorizes licenses for using animals that are subject to subparts A through F in part 3. However, with respect to licenses for using animals subject to

subparts D and F, licenses will separately authorize the use of each of the following groups of animals: (1) Group 5 and 6 nonhuman primates, (2) big cats or large felids, (3) wolves, (4) bears, and (5) mega-herbivores. We noted that these groups of animals would be separately authorized because they are potentially dangerous and have unique care needs. We also included a provision requiring licensees to obtain a new license before using any animals beyond those animals authorized for use under the existing license for activities for which a license is required. We proposed these changes based on our experience with administering and enforcing the AWA, noting that licensees sometimes struggle to achieve and maintain compliance after making noteworthy changes to the numbers or types of animals used in regulated activity.

A commenter suggested that APHIS should make it more clear in proposed § 2.1(b)(2)(ii) of the regulations that if a licensee wishes to obtain any new species, he or she is required to obtain a new license.

We note in § 2.1(b)(1) that licensees are required to notify Animal Care no fewer than 90 days, and obtain a new license, before making any change in the number or type of animals described in paragraph (b)(2).

A commenter supported the proposed requirement for a new license for dangerous and exotic animals with unique care needs, but requested more information as to what animals we would include under such a license beyond obvious ones such as elephants, big cats, and bears. The commenter noted, for instance, that servals are potentially dangerous.

On the other hand, several commenters opposed the proposal to require a new license for each new species acquired, and one such commenter recommended that APHIS set up several classes of animals based on level of risk and complexity of care. The commenter offered as an example a class for domestic and farm animals, a class for small exotics, and a class for large

exotics. Under this arrangement, the commenter suggested, a licensee could acquire any animal from the animal class they are licensed for, or any lesser class, without having to reapply for a new license.

We agree that there are other potentially dangerous animals that fall under the general standards in subpart F of part 3 that should be separately authorized. Accordingly, we are revising our proposed groups of animals that require separate authorization as follows: (1) Group 5 (baboons and nonbrachiating species larger than 33 pounds) and 6 (great apes over 55 pounds and brachiating species) nonhuman primates; (2) exotic and wild felids (including but not limited to lions, tigers, leopards, cheetahs, jaguars, cougars, lynx, servals, bobcats, and caracals, and any hybrid cross thereof); (3) hyenas and/or exotic and wild canids (including but not limited to wolves, coyotes, foxes, and jackals); (4) bears, and (5) mega-herbivores (elephants, rhinoceroses, hippopotamuses, and giraffes).

A commenter recommended that we include Category E, marine mammals, under the considerations for licensing along with large primates, large carnivores, and mega-herbivores. The commenter added that a facility that passes a prelicense inspection to house sea lions is not automatically prepared to handle orcas, for example. This and other commenters also noted that as polar bears are considered a marine mammal and bears are listed as a Category F animal requiring special considerations, Category E should be listed under the considerations for licensing so that polar bears do not fall into a regulatory loophole.

We acknowledge the commenters' concerns but are making no changes to the rule on this topic. As a practical matter, marine mammals are already highly regulated animals with respect to their welfare and species-specific needs. In addition to protection under the AWA, all species of marine mammals are protected under the Marine Mammal Protection Act (MMPA), and some

are also protected under the Endangered Species Act and the Convention on International Trade in Endangered Species of Wild Fauna and Flora. These animals include whales, dolphins, porpoises, seals, sea lions, walruses, polar bears, sea and marine otters, dugongs, and manatees. Polar bears are provided additional protection under the International Agreement on the Conservation of Polar Bears, an agreement between the United States, Canada, Denmark, Norway, and Russia, which is implemented in the United States by the provisions of the MMPA.

One commenter asked if a new license is needed for adding other cetaceans if the facility already has one kind of cetacean.

If the species of cetacean being added is different from the species authorized under the existing license, a new license would be required in accordance with proposed § 2.1(b)(2)(ii).

Another commenter asked about the impact of the proposed licensing requirement for changes to numbers and types of animals on the practice of rescuing and rehabilitating stranded marine mammals.

Unless the rescued marine mammals are exhibited (see the definition of *exhibitor* in § 1.1) by the rescue or rehabilitation facility, there is no impact on such facilities. The animals are regulated under the MMPA by the National Oceanic and Atmospheric Administration or the U.S. Fish and Wildlife Service, depending on the species involved.

A commenter asked APHIS to require more specificity from licensees regarding the types of animal they plan on keeping. The commenter stated that the categories of animals in part 3 are typed too broadly for APHIS to ascertain whether an applicant can properly care for particular animals and suggested that APHIS instead require disclosure by species rather than type.

We appreciate the opportunity to make clear that applicants would need to specify the anticipated species or common names of animals owned, held, maintained, sold, or exhibited during the period of licensure.

One commenter stated that licensees acquiring nondomestic animals should be required to indicate the type, weight, and risk factor of the animal and that APHIS should confirm that a suitable secure enclosure is available to house the new animal. The commenter also recommended that the animals have an assigned veterinary clinic.

We are making no changes to the rule in response to this comment. During prelicense inspections, Animal Care inspectors assess facility compliance with the AWA regulations, which require animals to be in good health and have adequate space. Each facility is also required to have an attending veterinarian with knowledge of and experience with the animals at that facility and a program of veterinary care for those animals.

A commenter stated that if a licensee has acquired animals that they are incapable of caring for, this possibility should be addressed more frequently than every 3 years. The commenter also questioned why a licensee with an excellent compliance history needs to reapply for a license every 3 years and reasoned that a simple renewal would be appropriate for such facilities and consistent with APHIS' risk-based approach. Another commenter asked APHIS to reconsider its proposal to require new licenses and prelicense inspections for zoological facilities in good standing that make changes to the species or number of animals they display. The commenter stated that APHIS' policy objectives can easily be achieved during the already existing inspection process.

We are making no changes to the rule in response to these comments. If a facility is in compliance, the process for applying for a new license will be simple, with less paperwork and

reduced fees by comparison with the current license renewal process. Similarly, facilities that wish to add animals to their collection under a new license class will be able to do so easily by completing an application form, paying the applicable fees, and demonstrating compliance with the AWA regulations. During this time, the facility can continue to use the animals authorized by their existing license for regulated activity with no disruption to business.

One commenter opposing the rule stated that the number of animals a licensee owns is not regulated under the AWA and therefore should not be considered in the regulations.

USDA's authority to set criteria for licensing comes from section 2133 of the Act, which directs the Secretary to issue licenses to dealers and exhibitors upon application and payment of the applicable fees, provided that the applicant has demonstrated compliance with the AWA regulations. The number and type of animals that an applicant intends to use for regulated purposes has a direct bearing on compliance with the AWA regulations. Moreover, section 2133 authorizes USDA to prescribe the "form and manner" of applications.

## License Fees

In the ANPR, we asked for comment on what fees would be reasonable to assess for licenses. We received a wide range of responses, including those from commenters who suggested raising fees as a way to discourage dog breeding, as well as those from other commenters who asked that we eliminate licensing fees entirely to relieve burden on small businesses. Many commenters suggested sliding scales based on business size and complexity that would allow APHIS to recover its inspection costs. After reviewing these comments on the ANPR, we decided to propose amending paragraph § 2.1(c)(2) of the regulations by requiring a flat license fee of \$120.

Several commenters responded to our proposed changes to the license fees. A commenter said that the USDA has not raised licensing fees in 30 years and that lowering the fees would be arbitrary, capricious, and in violation of several statutory requirements. The commenter also stated that current license fees do not cover the cost of issuing the license, thus causing taxpayers to subsidize the costs, and asked us not to reduce the fees. Another commenter stated that fees should be raised to keep pace with inflation and account for the Agency's enforcement burdens. The commenter provided data to illustrate that annual rates should be doubled to compensate for inflation and stated that the lowest fee to be paid every 3 years, when adjusted for inflation, would be \$180, with the highest being \$4,515 for the largest facilities. Another commenter stated that the proposed flat fee of \$120 is contrary to the Act because it is inequitable. The commenter cites a passage in the Act stating that fees for licenses "shall be adjusted on an equitable basis taking into consideration the type and nature of the operations to be licensed," and notes that a facility that receives \$1,000,000 in annual income paying the same fee as a facility that receives \$10,000 annually is not an equitable fee because it

is neither “adjusted” nor considers the type and nature of the operations as required by the statute. The commenter stated that USDA should instead scale fees based on the numbers of animals and the complexity involved in caring for and inspecting the animals. Finally, a commenter stated that APHIS is not meeting the requirements of the Independent Offices Appropriations Act,<sup>7</sup> which provides that Federal agencies may set fees that are based on costs to the Government and the value of the permit to the recipient, among other factors.

We appreciate the many comments we received on license fees but are making no changes to the proposed fee. Under the AWA, the Secretary shall charge, assess, and cause to be collected reasonable fees for licenses issued. Such fees shall be adjusted on an equitable basis taking into consideration the type and nature of the operations to be licensed and shall be deposited and covered into the Treasury as miscellaneous receipts. These fees are not user fees and are not used to cover the cost of licensing, inspection, enforcement, or other APHIS services. Also, the Independent Offices Appropriations Act does not apply to AWA licensing fees, because USDA was granted specific statutory authority to assess them.<sup>8</sup>

As discussed in the proposed rule, we took into account the type and nature of operations to be licensed and conducted a formal economic analysis. One alternative to a flat fee that we considered was to establish scaled fees, similar to those in the current regulations. However, we found it difficult to do so in an equitable way. For example, some dealers and exhibitors with small numbers of animals may derive significant income from their regulated activities, while other dealers and exhibitors with large numbers of animals may derive more modest incomes from their activities, based on the types of animals, location of their business, business model,

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<sup>7</sup> 31 U.S.C. 9701

<sup>8</sup> 7 U.S.C. 2153

and a variety of other factors. Accordingly, we are establishing the flat fee of \$120 for licensure, which represents a fee that is comparable to, or in many cases reduced from, existing fees for licensure. In addition to being an equitable fee for licenses that considers the type and nature of the operations to be licensed, the fee structure allows for more efficient and streamlined business processes for Animal Care and simplifies the calculation of licensing fees for applicants.

A lesser number of commenters asked that we consider lowering or eliminating license fees, with many noting that any type of fee places an unfair burden on smaller dog breeding facilities.

We disagree with these commenters. While the current regulations require an annual license application and fees ranging from \$40 to \$760 annually, this rule only requires an application and a flat \$120 fee every 3 years, which would be equivalent to the current lowest fee of \$40 (if applied annually over 3 years). Accordingly, we do not believe that the licensing component of this rule places additional or undue burdens on license holders or applicants and will in fact reduce paperwork burdens on them, as well as reduce licensing fees for many of them. For these reasons, we are making no changes to the rule in response to this comment.

#### License Denial and Suspension

In proposed § 2.1(d), we reassigned an existing provision from § 2.1(e) stating that any failure to comply with the Act, regulations, or standards would be grounds for denial, suspension, or revocation of a license as provided in the AWA.

A few commenters recommended revising § 2.1(d)(1) to read, "A licensee who has a record of affirmative demonstration of compliance and is thus eligible for renewal must submit to the appropriate Animal Care regional office a completed application form and the required

license fee indicated in § 2.1(a)(2) by certified check, cashier's check, personal check, money order, or credit card.”

We are making no changes to the rule in response to this comment. We have revised § 2.1(d). Licenses are no longer renewable, and compliance as a condition of licensure is already made clear in other sections.

#### Demonstration of Compliance

Although an applicant for a license renewal currently must also certify, to the best of his or her knowledge and belief, that he or she is in compliance with all regulations and standards, we noted in the proposed rule that the regulations do not require the applicant to actually demonstrate compliance during an inspection before APHIS renews his or her license.

Demonstration of compliance as a condition of licensure was supported by a majority of persons commenting on the ANPR and proposed rule. As noted above, many commenters also expressed support for APHIS to require a new license whenever noteworthy changes are made to a facility, its management, or its operation, or to the number, type, or location of animals used in regulated activities.

A substantial number of commenters asked APHIS to stop “rubber stamping” licenses without requiring compliance with the regulations.

We disagree with this characterization and note that § 2.3 currently requires that license applicants demonstrate compliance with the AWA regulations during an inspection before APHIS will issue a new license to them. APHIS also conducts regular inspections of licensed facilities under a risk-based inspection system that calls for frequent and in-depth inspections at facilities with a higher risk of animal welfare concerns, and fewer at those that are consistently in

compliance. As we noted above, the proposed changes eliminate the annual license renewal and require instead passing a prelicense compliance inspection to obtain a new license every 3 years.

Many commenters called for a “zero tolerance” approach to AWA violations found during prelicensing inspections, regardless of the degree of the infraction.

Both current and proposed § 2.3 require that applicants demonstrate compliance with the AWA and the regulations before any new license is issued. An applicant failing the first inspection may request up to two more inspections to demonstrate compliance. If the first inspection reveals noncompliant issues, APHIS will advise the applicant of existing deficiencies and the corrective measures that must be completed to come into compliance. In the subsequent inspection, we verify that the applicant has taken any and all prescribed corrective measures. Under this approach, APHIS will not issue licenses to applicants with uncorrected deficiencies. Accordingly, we see no need to make changes in response to these commenters.

A commenter asked that the USDA put safeguards in place to ensure that it does not continue renewing licenses from facilities that it knows or should know are not in compliance with the AWA. Citing a lawsuit filed by the commenter’s organization against the USDA, the commenter stated that it would be arbitrary and capricious for the agency to renew the license of a facility despite having “smoking gun” evidence of noncompliance at that facility.

We are making no changes in response to this comment because this rule removes the license renewal process from the regulations. Licensees will have to demonstrate compliance with the AWA before being issued a license.

A commenter stated that the proposal is deficient in that it still allows a licensee with a history of noncompliances to obtain a new license every 3 years as long as they pass the prelicense inspection by the third try. The commenter urged APHIS to amend its regulations to

ensure that facilities with a history of substantial noncompliance, during either the prelicense or license periods, are not issued new licenses and are prohibited from re-applying for new licenses for a period of at least 3 years.

We are making no changes to the rule in response to this comment. Under this final rule, licenses are valid for 3 years and applicants must demonstrate compliance before obtaining a license. If a previous licensee with a history of repeat noncompliances wishes to obtain a new license, they would need to demonstrate compliance with the AWA regulations before we will issue a license to them. Separate from these requirements, APHIS also has the authority under the Act to deny and terminate licenses when a person is unfit to hold a license and to pursue civil penalties and other sanctions for violations after the person is given notice and the opportunity for a hearing.

Several commenters recommended that APHIS consider creating and using a sliding scale or a tiered system of noncompliances for greater fairness and accuracy when determining a facility's compliance with the regulations.

Licensed facilities are expected to comply with the AWA regulations and standards. USDA conducts regular inspections of licensed facilities under a risk-based inspection system that calls for frequent and in-depth inspections at facilities with a higher risk of animal welfare concerns, and fewer at those that are consistently in compliance. USDA currently identifies the seriousness of each noncompliance to determine the appropriate follow-up action. We are therefore making no changes in response to the recommendation.

One commenter expressed concern that forcing wildlife facilities with a history of compliance to apply for a license on equal footing with new applicants fails to recognize the experience of many wildlife professionals and achievements of superior facilities.

The purpose of this rule is to ensure that licensees are compliant with the AWA regulations. Although an applicant for a license renewal under the existing regulations must certify, to the best of his or her knowledge and belief, that he or she is in compliance with all regulations and standards, those regulations did not require the applicant to demonstrate compliance before APHIS renewed the license. Based on our knowledge and experience with administering and enforcing the AWA and regulations, we are concerned that even experienced licensees may sometimes struggle to achieve and maintain compliance after making noteworthy changes to their animals used in regulated activity. In addition, we have observed licensees who have been licensed for many years struggle with compliance because they did not have adequate programs for maintaining compliance at aging facilities. For these reasons, we believe that revisions to the regulations set forth in this final rule are necessary to ensure that dealers, exhibitors, and operators of auction sales demonstrate compliance with the AWA regulations.

Several commenters said that USDA is adding terminology to the regulations that is not defined in the Act and allows for broad interpretation by Agency employees. These terms include "demonstrate", "unfit", "affirmatively", and "sustained compliance". One commenter said that Agency inspectors interpret these terms unfairly to find instances of noncompliance to the detriment of the licensee, resulting in more violations and subsequently more elimination of licensees.

We disagree with the commenters. The terms "demonstrate" and "unfit" have been in the AWA regulations for decades, and the terms "affirmatively" and "sustained compliance" do not appear in the regulations; they are simply used as descriptive terms in this rulemaking to help the reader understand the Agency's intent. "Demonstrated" appears in the Act at 7 U.S.C. 2133.

Similarly, a commenter stated that inspections of zoos are not conducted to note those things that meet or exceed compliance. The commenter said that any decision about licensing status made about a facility based only on noncompliant issues is biased and does not consider the state of the zoo overall, which likely exceeds compliance.

We are making no changes in response to this comment. The AWA directs USDA to only issue licenses to dealers and exhibitors that have demonstrated compliance with the AWA regulations. Although certain aspects of a facility may meet or exceed those requirements, we are not authorized to issue licenses to dealers and exhibitors who are not in full compliance with the AWA regulations.

On the other hand, a commenter stated that APHIS should increase the frequency and rigor of inspections by examining the full operation for noncompliant issues and not limit inspections in any way. The commenter noted that in the Animal Care Inspection Guide, APHIS distinguishes between full or complete inspections on one hand, and focused or limited inspections on the other. The commenter added that APHIS should ensure that all prelicense inspections are full rather than focused to ensure that licenses are not issued to facilities that fail to meet AWA standards as required by 7 U.S.C. 2133.

We are making no changes to the rule in response to this comment. During prelicense inspections, USDA conducts full and complete inspections of applicant locations, animals, facilities, vehicles, and equipment to assess compliance with the AWA and regulations. This process is not changing under this final rule.

Several commenters supporting the proposal disagreed with APHIS' use of "teachable moments," which, according to commenters, are minor noncompliances discovered during inspections that APHIS does not document on inspection reports. One such commenter said that

USDA has implemented a variety of problematic practices, including not recording noncompliant items on any publicly available reports. Another commenter claimed that teachable moments were developed to protect regulated entities from public scrutiny for their noncompliance and for this reason licensing decisions are arbitrary and capricious if based on documented inspection reports only. The commenter concluded that the USDA should determine whether an applicant has demonstrated compliance based on the full administrative record at the time of the licensing application.

We are making no changes to the rule in response to these comments because what APHIS inspectors decide to document as noncompliances during an inspection is outside the scope of this rulemaking. Furthermore, APHIS inspectors do not use teachable moments for pre-license inspections or new site approval inspections. As noted above, USDA conducts full inspections of applicant locations, animals, facilities, records, vehicles, and equipment to assess compliance and applicants must demonstrate compliance with the Act and regulations before a license will be issued.

A few commenters stated that prelicensing inspections should be conducted without prior notification of the facility to be inspected. One such commenter expressed concern that announced inspections may result in the inspector having higher expectations for a facility and not properly exercising inspector discretion as referenced in the inspection guide. Another commenter noted that unannounced inspections are common in other industries such as restaurants.

We proposed no changes to the requirement that prelicense inspections must be scheduled during business hours and at other times mutually agreeable to the applicant and APHIS. In addition to determining if an applicant is in compliance with the AWA and

regulations, we wish to note that interaction with APHIS staff during the prelicense inspection is the best time for applicants to learn more about complying with the regulations. Also, scheduled prelicense inspections allow applicants to prepare files for review and make personnel available for prelicense inspections.

Several commenters opposed or questioned the need for a prelicense compliance inspection. One commenter stated that APHIS already ensures compliance through random inspections as often as every 3 months for some facilities, once a year for others, and every 2 to 3 years for others. The commenter added that for the small number of facilities that are not in compliance, APHIS already has the authority to secure compliance through a wide range of enforcement tools. The commenter stated that conducting prelicense inspections on top of its existing random inspections for its thousands of licensees is a waste of limited resources and will strain the Agency's inspection capacity. One commenter noted that if he is found to be in non-compliance, he is typically provided a certain number of days to correct the problem, after which his premises are re-inspected to confirm that the problem has been resolved. The commenter asked why these reinspections do not qualify as a demonstration of compliance.

Other comments opposed the prelicense compliance inspection on grounds that it is unfair to facilities with good histories of compliance. A commenter suggested that businesses with a continuous record of compliance should receive fewer and fewer inspections over time. Other commenters cited a 2018 Animal Care Impact Report showing that high numbers of licensed sites have remained in compliance and that there is no significant burden posed by renewing licenses annually. Another commenter representing a marine mammal park stated that APHIS has reported that 91 percent of the facilities accredited by the Alliance of Marine Mammal Parks and Aquariums were in compliance with the AWA in 2018. Another commenter

noted that compliance is checked through random inspections and that the current methods are successful at ensuring a zoological facility's compliance with the AWA standards.

As we have noted previously, the existing regulations did not require an applicant for a license renewal to demonstrate compliance before renewing his or her license. The existing regulations also did not require a licensee to demonstrate compliance when making any changes to his or her animals or facilities, including noteworthy changes in the number or type of animals used in regulated activity. However, based on our experience with administering and enforcing the Act and regulations, we are concerned that licensees may struggle to achieve and maintain compliance after making such noteworthy changes to their animals used in regulated activity. In addition, we have observed licensees who have been licensed for many years may have difficulties with compliance because they did not have adequate programs for maintaining compliance at aging facilities. For these reasons, we consider prelicense compliance inspections important to ensuring animal welfare under the AWA and regulations and are adopting the changes as we proposed them.

A commenter recommended that a neutral review team, consisting of local or State veterinarians, should be included as part of the inspection process and review the conditions of both the animals and animal housing.

We are making no changes to the rule in response to this comment. The AWA already authorizes the USDA to cooperate with officials in various States and subdivisions as necessary.<sup>9</sup>

#### Reinspections

In proposed § 2.3(b), we retained the existing provision that an applicant who fails the first inspection may request up to two reinspections to demonstrate compliance, but shortened

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<sup>9</sup> 7 U.S.C. 2145(b).

the timeframe in which the applicant must request the second inspection, and if applicable, the third inspection, to 60 days following the first inspection, instead of the existing 90-day deadline.

Many commenters stated that license applicants should receive two, not three, chances to demonstrate compliance with the law during prelicense inspections. Several commenters went further, stating that two opportunities is excessive with respect to existing license holders who should have no uncertainties about what the law requires. Another commenter stated that the public comments on the ANPR and the proposed rule indicate that licensees are taking advantage of the Agency's lenience, using both prelicense and routine inspections as a means to learn the animal husbandry standards prescribed by the AWA gradually, at the cost of both the animals and taxpayers. The commenter recommended that we provide only two prelicense inspection opportunities, stating that this would lessen the time and cost burdens on the Agency and compel licensees to be more responsive to addressing documented noncompliances. Some commenters asked us to not provide any second chances to persons whose facilities are not in compliance at the initial inspection.

Our review of Animal Care records indicates that few applicants actually require three prelicensing inspections to demonstrate compliance, but even those applicants that require three prelicensing inspections usually complete the process within 90 days. We encourage applicants to establish contact and dialogue with their inspector prior to requesting a prelicensing inspection to make sure the facility is in compliance. The AWA regulations have long provided for three prelicense inspections, and it will not increase our regulatory burden to maintain the availability of these inspections. Therefore, we are making no changes based on these comments.

Another commenter expressed concern that there is no deadline for APHIS to perform its first prelicense inspection once it receives an application for a new license. The commenter

noted that this lag could cause the license application process to stretch out indefinitely even if the facility cannot demonstrate compliance with the AWA.

Applicants for licenses have a strong incentive to complete the prelicense inspection process quickly so they can obtain a license and engage in regulated activity. Applicants who fail their first prelicense inspection must request their second inspection, and if applicable, the third inspection, within 60 days following the first inspection. Based on our decades of experience in conducting prelicensing inspections, we do not anticipate the kind of delays envisioned by the commenter.

To ensure that applicants can take full advantage of the three prelicensing inspections to demonstrate compliance with the regulations and standards, we stated in the preamble of the proposed rule that we would encourage current licensees to apply 4 months prior to the expiration of their license.

A commenter requested that we require, instead of “encourage,” reapplication filing 4 months prior to current license expiration to allow for a period of up to three inspections within 60 days and judicial appeal processing of denials.

We are making no changes to the rule in response to this comment. By encouraging rather than requiring reapplication 4 months prior to license expiration, we are providing flexibility to licensees without changing the requirements for the inspection and appeal processes.

We proposed in § 2.3(c) that should applicants fail to demonstrate compliance during the third prelicense inspection, they can appeal the findings of such inspection to the Deputy Administrator within 7 days of receiving the report. Should APHIS reject an appeal, we would notify the applicant of the Agency's denial of the license application. Within 30 days of

receiving such notice, an applicant may request a hearing to contest the Agency's denial of the license application. (Comments on hearings are addressed under § 2.11 below.)

Citing animal welfare concerns, a substantial number of commenters disagreed with the provision to allow applicants and license holders to request a hearing if APHIS rejects an appeal for the third failed inspection.

We are making no changes based on the comments we received on this topic. As we noted in the proposed rule, we included this provision to afford due process protections for current licensees.

A commenter recommended that the last sentence of § 2.3(d) be changed to state, “No license will be issued until an affirmative demonstration of compliance has been documented that the applicant’s animals, premises, facilities, vehicles, equipment, locations, and records are in compliance with all applicable requirements in the Act and the regulations and standards in this subchapter.”

We are making no changes to the rule in response to this comment. The regulations already require that applicants affirmatively demonstrate compliance before a license will be issued by APHIS.

### Forfeiture of Application Fee

We proposed in § 2.3(d) that if an applicant fails inspection or fails to request reinspections within the 60-day period noted in § 2.3(b), or if an applicant fails to submit an appeal of the third inspection report, the applicant will forfeit the application fee and cannot reapply for a license for 6 months from the date of the failed third inspection or the expiration of the time to request a third inspection.

One commenter noted that this section indicates the failing applicant will forfeit the application fee, but the rest of the document indicates that there will no longer be an application fee, only a license fee. The commenter asked us to clarify the application process with regard to fees, particularly whether the applicant pays the license fee at the time of application.

In the proposed rule, we referred to forfeiture of the application fee for failure to pass the preclicensing inspection or to request a reinspection within 60 days. However, as we had removed the application fee requirement from § 2.1(c), our reference to it was an oversight. We intended to refer to forfeiture of the license fee and will revise the section accordingly. The applicant pays the license fee at the time of application but forfeits the license fee if he or she fails the inspections, fails to request reinspections within the 60-day period, or fails to submit a timely appeal of the third preclicensing inspection report.

One commenter noted that proposed § 2.3(d) does not require applicants to complete the inspection appeal process before reapplying for a license, nor does it require that they request all three preclicensing inspections. On the other hand, the commenter noted that under proposed § 2.11(b), applicants who have pursued all three preclicensing inspections and appeals but are still denied a license may not be granted a license within 1 year of their denial. The commenter stated that if an applicant intentionally fails to request additional preclicensing inspections and an

appeal, that applicant may reapply for a license 6 months sooner than a person who after several efforts to remedy his or her noncompliances was denied. The commenter said that this discrepancy would encourage persons with significant noncompliances to forfeit the license fee and reapply 6 months later, instead of going through the appeals process and working with APHIS to address their violations. For this reason, the commenter recommended that APHIS change the waiting period for reapplying for a license in § 2.3(d) from 6 months to 1 year from the date of the failed third inspection or expiration of the time to request a third inspection.

We appreciate the commenter's recommendation but are making no changes to the rule in response. Every applicant reapplying for a license must demonstrate compliance with the Act and regulations before a license is issued.

#### Duration and Expiration of License

In the ANPR, we invited and received a range of responses on whether we should propose to establish a firm expiration date for licenses (3 years, 5 years) and if so, what should that date be and why. We noted in the proposed rule that a large number of commenters agreed with the example given in the ANPR to have licenses expire with the expectation that the issuance of a new license would be contingent upon affirmative demonstrations of compliance with AWA regulations.

In the proposed rule, we included in § 2.5(a) the provision that licenses will be valid and effective for a period of 3 years unless certain circumstances arise. Consistent with the current regulations, a license would not be valid if it has been revoked or suspended, or if the license is voluntarily terminated upon request of the licensee.

A large number of commenters agreed with our proposed action to eliminate annual license renewals and to require persons to apply for a new license every 3 years. However, many

other commenters with animal welfare concerns considered a 3-year license term to be too long, particularly for dog breeders, arguing that 1 or 2 years would be more appropriate. One commenter stated that a longer expiration window only works to assist the chronically noncompliant facilities in escaping consequences for their violations. Several commenters stated that we should inspect premises housing dangerous and exotic animals annually to verify compliance, and that once every 3 years is insufficient for these premises. Another commenter opposing a licensing period of 3 years stated that such an approach would allow a facility to fall out of compliance between prelicense inspections, resulting in dangerous conditions for all animals at the facility while the licensee continues to have applications approved based on a show of compliance every 3 years. The commenter asked APHIS to amend its regulations to ensure that facilities with a history of substantial noncompliance, during either the prelicense or license periods, are not issued new licenses and are prohibited from re-applying for new licenses for a period of at least 3 years.

We are making no changes to the rule in response to these comments. In addition to requiring that applicants demonstrate compliance before obtaining a 3-year license, APHIS routinely conducts unannounced inspections of licensees, as well as complaint-based inspections and inspections in which frequency is based on determination of risk. If an APHIS inspector identifies noncompliances during these inspections, we may take a number of actions in response to promote compliance, including offering enhanced compliance support, issuing official warnings and other regulatory correspondence, and pursuing penalties and other sanctions after notice and the opportunity for a hearing.

Many commenters opposed to the proposal stated that APHIS lacks the authority under the AWA to set an expiration date on a license and that the proposed rule is only an attempt to

bring about license removals. A commenter asked how APHIS can justify making someone start over in an application process for a license for the same facility and animals, even though the facility is in compliance and has been for several years. Similarly, other commenters stated that placing a permanent expiration date on current licenses, then requiring licensees to go through the entire initial licensing procedure upon expiration would be time-consuming and duplicative. Several of these commenters noted that there are current and successful license renewal processes already in place.

As we noted in the proposed rule, all licenses currently have expiration dates—they expire 1 year after issuance, and may be renewed annually. This rule extends the period of licensure to 3 years but requires a license application and demonstration of compliance prior to the issuance of a new license. We also noted that the proposed rule is consistent with section 2133 of the Act, which prohibits the issuance of a license until the dealer or exhibitor has demonstrated that his facilities comply with the standards promulgated by the Secretary pursuant to section 2143 of the Act. Section 2133 of the Act also gives the Secretary the authority to issue licenses to dealers and exhibitors upon application in such form and manner as he may prescribe, which includes the authority to set expiration dates for those licenses.

Some commenters opposing the rule stated that setting a permanent expiration date on a license and requiring exhibitors to reapply 4 months in advance would cause serious hardships for traveling exhibitors. One commenter said that exhibitors would be forced to be at their home location in order to have a prelicense inspection, and that depending upon their renewal date would incur costly travel expenses to return home or to not book exhibits for up to 4 months to accommodate this process.

We are not making any changes to the rule in response to this comment. Although we encourage applicants to take full advantage of the prelicense inspection process by applying 4 months prior to the expiration date of their license, it is not required, nor do we anticipate that most applicants will need the full time to complete the process. A review of Animal Care records indicates that few applicants require three prelicensing inspections to complete the process, but even those applicants that require three prelicensing inspections usually complete the process within 90 days. Finally, we also note that prelicense inspections are scheduled at times that are mutually agreeable to applicants and APHIS.

Some commenters representing zoos and aquariums stated that the proposal to require exhibitors to apply for a new license every 3 years would drastically increase litigation costs borne by these businesses. One such commenter said that by proposing to switch from a system of annual renewals to a new license requirement, APHIS is enabling litigation from activist groups that disagree with the conclusions of APHIS inspectors regarding prelicense inspections and AWA compliance, resulting in substantial legal costs for both APHIS and exhibitors. The commenter added that APHIS' rulemaking proposal is unnecessary because, as the Federal courts have held, APHIS already has ample authority under the AWA to bring enforcement actions against licensees whose compliance performance slips.

As the commenter notes, APHIS has authority under the AWA to enforce the regulations on licensees in noncompliance and will do so as warranted. However, we disagree with the commenter and consider the proposed changes to licensing to be necessary because the existing regulations do not require an applicant for a license renewal to demonstrate compliance before renewing his or her license, nor do they require a licensee to demonstrate compliance when making any changes to his or her animals. APHIS has observed licensees who have been

licensed for many years struggle with compliance because they did not have adequate programs for maintaining compliance at aging facilities. We determined that in order to reduce risks to animal welfare and the public, licensees should be required to demonstrate compliance and obtain a new license to ensure that aging facilities remain in compliance. For applicants who have a history of compliance, they should be able to confidently demonstrate compliance during the initial prelicense inspection, generating a record that will be defensible in any subsequent litigation. In addition, APHIS already conducts prelicensing inspections for new applicants and risk-based inspections for current licensees, and neither our process for evaluating compliance nor our goal of ensuring compliance with the regulations has changed as a result of the proposal. Substantial changes in litigation rates or outcomes are not anticipated. Therefore, we are making no changes to the rule in response to these comments and are adopting the changes as proposed.

Some commenters representing marine mammal exhibition facilities stated that such facilities are permanently situated and require an extensive financial commitment to develop and maintain, and that they are inspected and approved by APHIS prior to animals ever residing in them. One commenter noted that the consequences of a denial of a new license for an existing licensee over what may be a minor noncompliant item could be devastating and far-reaching. The commenters asked that we reconsider our proposed requirement for new licenses.

We are making no changes in response to this comment. As noted above, we encourage applicants to initiate the application process 4 months prior to the expiration date of their license to allow them the opportunity to take full advantage of the prelicense inspection process. If a noncompliance--especially a minor noncompliance, as raised by the commenters--is discovered during the initial prelicense inspection, the applicant will have two more opportunities to correct

the deficiency, demonstrate compliance, and obtain a license, thus ensuring continuity of their business operations.

A commenter asked whether the proposed changes would require new licenses more often as a facility ages.

No, the period of licensure will be 3 years for all licensees in compliance, regardless of the age of the facility.

Proposed § 2.5(a) states that licenses will be valid and effective for 3 years, with several exceptions. One exception, in § 2.5(a)(1), is if the license has been “revoked or suspended pursuant to section 19 of the Act.” A commenter suggested that we add “or these regulations” to the end of this exception.

We are making no changes to the rule in response to this comment. The provisions of the rule regarding license suspensions and revocations are authorized by section 19 of the Act and its implementing regulations.

In the proposed rule, we removed and reserved § 2.6, which contained license provisions. We received a comment about the implications of removing these provisions from the regulations. The commenter noted that § 2.6 includes the statement that people meeting the requirements for more than one class of license are licensed for their predominant business. The removed section also includes a requirement for both lessors and lessees to be licensed. The commenter stated that if this section is deleted, that information needs to be addressed elsewhere in the regulations.

We are not making any changes to the rule in response to this comment. The definitions *Class “A” licensee (breeder)*, *Class “B” licensee*, and *Class “C” licensee (exhibitor)* specify which category of license a person should apply for based on their business activities. Lessors

and lessees that meet the definition of *dealer*, and do not fall under one of the exemptions from the licensing requirements, continue to require a license under the AWA regulations.

### Temporary Licenses

We received numerous comments in both the ANPR and the proposed rule on the issuance of temporary licenses for those licensees who may suffer a lapse in licensure during the relicensing process. We proposed in § 2.5(a)(3)(i) to include flexibilities for issuing temporary licenses to licensees with histories of compliance to ensure they have ample time to apply for licenses and demonstrate compliance prior to the expiration of an existing license.

Substantial numbers of commenters opposed our proposal to grant temporary licenses on grounds that they give licensees in noncompliance additional time to operate. One such commenter stated that the Act is clear that USDA cannot provide for temporary licenses unless it has a process through which the facility demonstrates compliance with the AWA. The commenter stated that the proposed rule presumably tries to account for this problem by authorizing temporary licenses for facilities showing a “history of compliance” for the prior licensing period. However, the commenter said that this “history of compliance” standard is inadequate because facilities are not required to be inspected every year, and noted that the most recent inspection report may be over 2 years old by the time the licensee applies for a new license. Similarly, another commenter stated that allowing an applicant to remain in business based solely on prior inspection reports is an abuse of discretion.

We disagree with the commenters and note that we base determinations of compliance not only on the history of compliance but on actual inspections. We employ a risk-based inspection system that calls for more frequent inspections at facilities with a higher risk of

animal welfare concerns and fewer inspections at those that consistently demonstrate compliance.

Several commenters opposed to temporary licensing said that USDA lacks statutory authority to issue temporary licenses.

The AWA authorizes USDA to issue licenses to dealers and exhibitors upon application in such form and manner as he may prescribe and upon payment of applicable fees, provided that no such license shall be issued until the dealer or exhibitor has demonstrated compliance with the AWA regulations. Under this rule, the Deputy Administrator of Animal Care may issue a temporary license that automatically expires after 120 days to an applicant whose immediately preceding 3-year license has expired if the applicant submits the appropriate application form before the expiration date of the preceding license and has had a history of compliance with the AWA and regulations during the preceding period of licensure. These requirements are authorized by the AWA and fall within USDA's authority to issue licenses.

Another commenter expressed concern that a temporary license would be perceived as an indicator that the facility under temporary licensure is somehow inferior with respect to animal welfare, and that this could have negative consequences from a business perspective.

Only licensees with extended histories of compliance with the AWA are eligible for a temporary license. APHIS makes no distinction between a 3-year license certificate number and a temporary license certificate number.

Several licensees who commented on the rule expressed concern that their license could expire before APHIS is able to inspect their facility to verify compliance for a new license. One such commenter stated that it is unreasonable to believe that APHIS will issue every license prior to expiration and asked what would happen in such a case.

We have considered the implications of issuing new licenses to licensees as their licenses expire and how to best address the concerns expressed by commenters. Accordingly, we have adjusted the effective date of the rule for the licensing provisions and will conduct a gradual, phased-in implementation based on license expiration dates for current licensees. We believe this approach will ensure that adequate resources are continuously available to conduct prelicense and routine inspections under the AWA. In the event that the licensee submits a timely application and has no noncompliances documented in any inspection report during the preceding period of licensure, and APHIS does not conduct the prelicense inspection before a lapse in licensure, we have the ability to issue a temporary license to that applicant.

One commenter asked if breeders with lapsed licenses would be prohibited from selling puppies until the inspection for a new license is completed, noting that such a lapse in operations could result in them having puppies that are too old to sell to brokers and pet stores.

A person without a valid license is prohibited from selling puppies or engaging in any other activities regulated under the Act until they obtain a valid license. As mentioned above, persons with an existing license are encouraged to apply for a new license up to 4 months prior to the expiration of their license so they can take full advantage of the prelicense inspection process. The Deputy Administrator would issue a temporary license as long as the applicant meets the criteria of submitting the application for a new license before the preceding license expires and there are no noncompliances cited during the period of the preceding licensure. A temporary license, valid for up to 120 days, would be issued.

A commenter suggested that APHIS consider multiple preceding periods of licensure for purposes of granting temporary conditional licenses in order to strengthen the possibility that the Agency is reviewing an accurate picture of a facility's compliance.

We are making no changes to the rule in response to this comment. We believe that a licensee that maintains compliance with the regulations for a 3-year period of licensure should be eligible for a temporary license in the event of an inadvertent lapse in licensure. We note that the temporary licenses are of limited duration and the person would need to demonstrate compliance before obtaining a new 3-year license.

One commenter stated that for licensees with a history of compliance there is no need for developing new regulations for a temporary license process when the current regulation for renewal could be amended to accommodate licensees with a history of compliance.

We are making no changes in response to the rule in response to this comment. As discussed above, the existing regulations did not require an applicant for a license renewal to demonstrate compliance before renewing his or her license. The existing regulations also did not require a licensee to demonstrate compliance when the licensee makes any subsequent changes to his or her animals or facilities, including noteworthy changes in the number or type of animals used in regulated activity. In addition, we have observed licensees who have been licensed for many years struggle with compliance because they did not have adequate programs for maintaining compliance at aging facilities. For these reasons, amending the current renewal process to accommodate certain licensees would not achieve the purpose of demonstrating compliance as a condition of licensure.

One commenter suggested that a license extension could be allowed in the case of a natural disaster, or when a licensee has submitted the required paperwork at least 3 months in advance of expiration and whose past inspections documented no noncompliances.

We agree that a temporary license may be issued to an applicant whose immediately preceding 3-year license has expired if the person submitted the application form before the

expiration date of a preceding license and the applicant had no noncompliance with the AWA and regulations documented in an inspection report during the preceding period of licensure. We do not limit the causes for the inadvertent lapse, and one such cause could be a natural disaster.

A commenter asked whether “an” should actually be “any” in § 2.5(a)(3)(i)(B). The commenter pointed out that the way the proposed provision is worded, if an applicant had one inspection report with no instances of noncompliance, he or she would qualify, even if he or she had two others with critical noncompliances.

We agree with this comment and have corrected the wording accordingly.

The same commenter observed that in proposed § 2.5(a)(4), there “will not be a refund of the license fee if a license is denied, terminated, suspended, or revoked prior to its expiration date,” but noted that this language refers to a license fee, not an application fee. The commenter suggested adding “or” after “denied” in that sentence, explaining that a license cannot be denied prior to its expiration date because there is no expiration date (i.e., no license to expire) if the license is denied.

We agree that adding “or” after “denied” will clarify the sentence and have made that change in this final rule. As noted above, this final rule removes the application fee, so we are making no other changes in response to this comment.

### Suspensions and Revocations

In the ANPR, we asked for comment on whether persons whose license has been suspended or revoked should be prohibited from engaging in other activities involving animals regulated under the AWA, such as working for other AWA-regulated entities or using other individual names or business entities to apply for a license. We also asked for comment on whether such prohibitions should extend to officers, agents, and employees of persons with

suspended or revoked licenses. A majority of persons commenting on the ANPR expressed strong support for the suggested regulatory provision for license applicants to disclose incidences of violations and convictions involving animal-related laws. Persons commenting on the proposed rule also supported disclosure of violations and “no contest” pleas as a requirement.

We proposed in § 2.9 that any person who has been or is an officer, agent, or employee of a licensee whose license has been suspended or revoked and who was responsible for or participated in the activity upon which the suspension or revocation was based will not be licensed, or registered as a carrier, intermediate, handler, exhibitor, or research facility within the period during which the order of suspension or revocation is in effect.

A commenter stated that additional language is required to address the cited licensees’ family members who may not fall under the legal definition of employee, agent, or officer.

We are making no changes to the rule in response to this comment. Family members who are authorized to act on behalf of the licensee and who are responsible for or participated in the activity upon which the suspension or revocation was based would fall within the meaning of an “agent” and be subject to this provision.

A commenter representing an animal welfare advocacy organization suggested that the Welfare of Our Friends Act, or WOOF Act, which would amend the AWA to prohibit the issuance of licenses to immediate family members and business partners of animal dealers who had their licenses revoked, provides clear and unambiguous language that should be used in this proposed provision.

The WOOF Act is proposed legislation and has not been enacted. The authority for this final rule is the AWA. We note that § 2.9 already covers immediate family members and business partners of animal dealers who may have been officers, agents, or employees of the

licensee. If these persons have not participated in the activity upon which the order of revocation or suspension was based, APHIS has no grounds to deny them a license. Therefore, we believe that the proposed rule language is sufficient and are making no changes to the rule in response to this comment.

One commenter supported this provision but recommended carving out exceptions for those with specialized skills but may not have been directly involved in prior violations of the AWA, when their talents are needed due to lack of other qualified individuals.

We are making no changes to the rule in response to this comment. If a person was not responsible for or did not participate in the activity upon which the suspension or revocation was based, this provision would not apply to them.

A commenter agreed with the proposed provision in § 2.9 to deny licenses to officers, agents, and employees of a licensee whose license has been suspended or revoked and who was responsible for or participated in the activity upon which the suspension or revocation was based. The commenter said that APHIS has the authority to interpret what constitutes “participation,” such that if an officer, agent, or employee somehow promoted, aided in, or acted in furtherance of the adverse activity, without actually participating in the violation, APHIS may still prevent that person from getting their own license when appropriate. To underscore this point, the commenter encouraged APHIS to strengthen § 2.9 by assessing each participant’s non-eligible period on a case-by-case basis and based on their personal history, with the possibility of that non-eligible period for that person extending past the original licensee’s period of suspension or revocation.

We are making no changes to the rule in response to the comment. Periods of suspension and revocation are assessed by USDA administrative law judges after notice and opportunity for

a hearing, or through a settlement agreement. We do note that revocation is permanent, so the period of revocation is a person's lifetime. Accordingly, there is no longer period of time that could be assessed for the revocation of a license. In addition, APHIS is authorized to deny a new license when an applicant has been determined to be unfit by the Secretary as stated in § 2.11(a)(5) of the amended regulations.

A commenter stated that APHIS must ensure that existing licensees cannot add, as an additional location on that license, a facility or site associated with a revoked or suspended license, and that a licensee who seeks to do so should not be found eligible for a new license.

We are making no changes to the rule in response to this comment. As noted above, licenses are issued to specific persons, and are issued for specific activities, animals, and approved sites. Under proposed § 2.1(b)(1), if an existing licensee in good standing seeks to acquire an additional location, he or she would first need to notify APHIS-Animal Care no fewer than 90 days before the change and obtain a new license. We note that seeking to add a location associated with a license revocation or suspension is not in itself grounds for denying a license to a person seeking such a location, but rather depends on the specific terms of a suspension or revocation associated with a location. These terms are contained in orders issued by administrative law judges or settlement agreements entered into by APHIS and involved persons.

A commenter opposing the rule stated that this provision violates the Equal Employment Opportunity Act, as the government cannot prevent employers from hiring who they wish to employ.

We are making no changes to the rule in response to this comment. The Equal Employment Opportunity Act is the act which gives the Equal Employment Opportunity Commission authority to sue in Federal courts when it finds reasonable cause to believe that

there has been employment discrimination based on race, color, religion, sex, or national origin. This rule in no way discriminates based on these factors.

#### Licensees whose Licenses Have Been Suspended or Revoked

In the proposed rule, we revised § 2.10 to strengthen prohibitions against licensees whose licenses have been suspended or revoked from engaging in AWA-regulated activities.

Several commenters asked that APHIS prevent persons with histories of noncompliance from playing a “shell game” of applying for new licenses under different names or businesses.

We are making no changes to the rule in response to this comment. Licenses are issued to specific persons for specific premises. If a person (for example, a corporation) dissolves and forms a new legal entity, the person must apply for a new license. We believe this commenter is concerned about a licensee with a suspended or revoked license applying for a new license under a new name in order to work around sanctions and resume operations. However, a person may be held liable for violations and subject to penalties and other sanctions, even if they no longer hold a license, or hold a license in a different name.

Section 2.10(c) states that persons with suspended or revoked licenses shall not buy, sell, transport, exhibit, or deliver for transportation, any animals during the period of suspension or revocation. A few commenters recommended that we add “maintain” to the list of prohibited actions.

The maintenance of animals on the property of a licensee whose license is suspended or revoked depends on the specific terms of a suspension or revocation. These terms are contained in orders issued by administrative law judges or settlement agreements entered into by APHIS and involved persons. We are therefore making no changes to the rule in response to this comment.

## Denial of License Application

In the proposed rule, we discussed responses to the ANPR from many commenters expressing support for streamlining procedures for denying, terminating, and summarily suspending a license. In proposed § 2.11(a), we added several grounds for denying a license to an applicant, including failure to comply with the Act or regulations, license suspension or revocation, a no contest plea or violation of laws or regulations pertaining to animal cruelty, or false statements to USDA pertaining to animal welfare. A license may also be denied if the Administrator determines that circumstances render the applicant unfit to be licensed or if issuance of a license would be contrary to the purposes of the AWA.

A commenter stated he does not support streamlining the procedures for denying a license application, terminating a license, and summarily suspending a license. The commenter asked if there is an official definition for "streamlining" and whether it actually involves revoking a license without due process.

The AWA and this final rule provide ample due process to persons whose license has been denied, terminated, summarily suspended, and revoked. For example, a person whose license has been revoked was provided with the opportunity for a hearing. Therefore, we are making no changes to the rule in response to this comment.

A commenter proposed that APHIS should automatically deny licenses to applicants who have three or more direct or critical violations during the prior 3-year period, or have five or more repeat violations during the prior 3-year period, as defined in the Animal Welfare Inspection Guide. The commenter stated that whatever standard APHIS adopts, it should result in automatic denial of license applications from facilities that have accumulated dozens of repeat violations that affect animal welfare over the last 3-year period. The commenter additionally

suggested that if a State license was denied or rescinded then the USDA license should be denied or rescinded as well.

We believe the commenter is referring to noncompliances rather than violations, as noncompliances are based on the observations and professional judgments of inspectors. Section 2.11(a)(7) does provide grounds for denying a license if an applicant is determined to be unfit to be licensed and the Administrator determines that the issuance of a license would be contrary to the purposes of the Act. However, we realize that not every noncompliance occurring during a previous period of licensure makes a person unfit to hold a license. For this reason, we are making no changes to the rule based on these comments.

In proposed § 2.11(a)(5), we conformed with the proposed 3-year period of licensure the length of time during which an applicant shall be denied a license due to a *nolo contendere* (no contest) plea or finding of a violation of any Federal, State, or local laws or regulations pertaining to animal cruelty. We also continued to retain the proviso that a license may also be denied for such violations after 3 years if the Administrator determines that the circumstances render the applicant unfit to be licensed.

A commenter said that the proposal does not go far enough to prevent convicted animal abusers from continuing to abuse animals and recommended that we deny an application if the applicant or licensee has been convicted of an animal welfare related law during the previous 10 years.

We are making no changes to the rule in response to this comment because proposed § 2.11(a)(5) already provides APHIS with the authority to deny a license if the applicant has been found to have violated animal cruelty laws within 3 years of application, as well as after 3 years if the Administrator determines the circumstances render the applicant unfit to be licensed.

## Appeal of License Denial

We proposed in § 2.11(b) to allow an applicant without a license whose initial application has been denied to request a hearing for the purpose of showing why the application for license should not be denied. Should the denial be upheld, we proposed that the applicant may again apply for a license 1 year from the date of the final order denying the application. We also proposed allowing an applicant who holds a valid license at the time he or she submitted the application that has been denied, and who submitted a timely appeal of the inspection findings from the third prelicense inspection as indicated in § 2.3, to request an expedited hearing before a USDA Administrative Law Judge, with the license remaining in effect until an initial decision is rendered. We noted in the proposal that this provision is intended to afford adequate due process protections to current license holders, while maintaining proper regard for the policy of Congress to ensure the humane care and treatment of animals covered under the Act.

A commenter noted that the USDA's administrative law judge system is overburdened and can take years to resolve AWA matters, and suggested that the USDA not provide hearings for the denial of license applications but adopt informal hearing standards similar to those for license suspension and revocation. The commenter added that informal hearings would further the purposes of the AWA and reduce regulatory burdens. Other commenters stated that the provision to allow licensees whose applications have been denied to seek a hearing will only prolong animal suffering and delay justice, and added that the law does not require that they receive a hearing. One such commenter stated that the AWA does not call for a hearing "on the record" and contains no other language that would trigger the Administrative Procedure Act's formal adjudication requirements. Other commenters stated that licensees already have many

opportunities to challenge and correct findings of noncompliance without having to resort to a hearing.

We are making no changes to the rule in response to these comments. As noted above, we believe the provisions will provide due process protections, and are actually similar to those for license termination, suspension, and revocation, which also require notice and the opportunity for a hearing before a license can be terminated, suspended, or revoked.

A commenter asked APHIS to revise the language in 9 CFR part 4, “Rules of Practice Governing Proceedings Under the Animal Welfare Act,” to reflect the full authority given to the Secretary by the AWA and develop and implement a process for promptly providing a notice and opportunity for a hearing so additional suspensions can be instituted more quickly. The commenter noted that while the Act provides the Secretary with the authority to temporarily suspend a license for up to 21 days and after notice and opportunity for a hearing to suspend the license for an additional period, the current language in part 4, subpart B, of the regulations only refers to a temporary 21-day suspension and not to the possibility of extending that suspension. The commenter also asked us to review our stipulation process under “Subpart B--Supplemental Rules of Practice,” to determine whether agreed upon license forfeitures would help ensure compliance and animal welfare.

We appreciate the commenter’s request but are making no changes in response. We proposed no changes to the regulations in part 4 or to the USDA’s Rules of Practice governing administrative enforcement proceedings. Therefore, this comment falls outside the scope of this rulemaking.

A commenter stated that the last line of proposed § 2.1(b)(2)(ii), which states that “a licensee must obtain a new license before using any animal beyond those animals authorized under the existing license,” needs to be clarified.

We agree with the commenter that this provision could more clearly communicate our intent, which is that licensees who wish to use animals not authorized on their license will need to obtain a new license before additional types or numbers of animals may be used for regulated purposes. Accordingly, we are amending the last line of § 2.1(b)(2)(ii) to read “A licensee must obtain a new license before using any animal beyond those types or numbers of animals authorized under the existing license.” Similarly, we are amending proposed § 2.1(b)(1) to clarify that licenses are issued for specific types and numbers of animals.

One commenter stated that the right of appeal for persons in noncompliance with the AWA regulations is based on an erroneous interpretation of the law and the Constitution. The commenter questioned our statement in the proposed rule that allowing licensees whose renewal applications are denied for failure to demonstrate compliance to keep their licenses pending a formal hearing affords “constitutionally mandated due process protections.”

As we noted in the proposed rule, the right to a hearing is intended to afford due process protections to current license holders, while ensuring the humane care and treatment of covered animals in accordance with the AWA. By providing licensees with the opportunity to appeal a noncompliance documented on an inspection report, we are able to consider facts that may not have been available to the inspector at the time of inspection and therefore to ensure that the USDA has all available information.

Several commenters asked that we revoke the license of a person during any ongoing appeals process. One such commenter stated that animals should not be permitted to remain with

their custodian when that person has violated health and care requirements, and should be sent to a sanctuary instead.

We are making no changes to the rule in response to this comment, as a license can only be revoked after notice and opportunity for a hearing. A license remains in effect until its expiration date or a final decision is rendered by an administrative law judge. We do note that USDA has separate authority to confiscate animals that are in a state of suffering, after notifying the licensee and providing him or her the opportunity to correct the condition.

#### Termination of License

Proposed § 2.12 states that, after a hearing, a license may be terminated at any time for any reason that a license application may be denied pursuant to § 2.11. We proposed to remove a reference to the license renewal process in the current regulations because the renewal option no longer exists.

A commenter expressed concern that under proposed § 2.12, a teachable moment reported as an instance of noncompliance could result in license termination. The commenter added that although there are judicial safeguards in the process, terminating a license under those circumstances would be a gross miscarriage of justice. Instead, the commenter recommended amending §§ 2.1(d) and 2.12 to specifically exempt minor instances of noncompliance as the basis of a license revocation unless they are repeated.

Section 2.11(a)(7) provides grounds for denying a license if an applicant is determined to be unfit to be licensed and the Administrator determines that the issuance of a license would be contrary to the purposes of the Act. However, as the commenter notes, APHIS inspectors do engage in teachable moments with licensees, in which inspectors point out minor noncompliances and explain how they can be corrected. Current and proposed procedures do not

require termination of a license for these minor noncompliances. For this reason, we see no need to change the regulations as requested by the commenter.

### Appeal of Inspection Report

In proposed § 2.13, we noted that any licensee or registrant may appeal inspection findings in an inspection report to the Deputy Administrator within 21 days of the date the licensee or registrant received the inspection report.

One commenter, while not opposed to this provision, suggested that when a licensee's inspection appeal is successful, the public has the right to know the nature of the disputed violation and that an appeal was undertaken. Accordingly, the commenter stated that APHIS should include assurances that we will publicly disclose that the findings in an inspection report have been appealed. Additionally, the commenter stated that all inspection reports that are corrected based on appeals must be properly labeled as such and shared with the public.

We are making no changes to the rule in response to this comment because it falls outside the scope of this rulemaking. Separate Federal laws govern the release of information and documents to the public that are controlled by the U.S. Government, such as the Freedom of Information Act (FOIA).

Another commenter observed that § 2.13 provides a right to a licensee or applicant to appeal the individual findings within an inspection report distinct from an applicant's ability to appeal a denial of their license. The commenter expressed concern that some applicants may perceive these rights not separately but as an additional step within the appeals process, allowing them to appeal inspection findings and delay the license denial process. The commenter suggested that APHIS add language to § 2.13 stating that, "Under no circumstances shall this

section be interpreted as tolling the period of time by which a licensee or license applicant must seek an appeal or request further prelicense inspections.”

We are making no changes to the rule in response to this comment. The procedures for appealing an inspection report and requesting a hearing in connection with the denial of a license are distinctly separate processes.

#### Publication of Licensee Information

We proposed to amend § 2.38, “Miscellaneous,” by eliminating the statement in paragraph (c) that we will publish lists of research facilities in the *Federal Register* and replacing it with the statement that we will publish such lists on the APHIS website instead.

A few commenters agreed with our proposal to publish the lists of research facilities online but suggested that APHIS emphasize in the regulations that the lists will be available on its website.

We believe the rule is sufficiently clear that the lists will be published on APHIS’ website and that copies of the lists can also be obtained upon request from the Deputy Administrator. Therefore, we are making no changes to the rule in response to this comment.

One commenter disagreed with our proposal to remove the statement that APHIS will publish lists of research facilities in the *Federal Register* and stated that APHIS is making it difficult to locate the lists.

It is not APHIS’ intent to make the lists difficult to locate. Indeed, we believe making the lists available on our website<sup>10</sup> makes them easier to find. As is currently the case, interested parties may continue to request the list from the Deputy Administrator.

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<sup>10</sup> <https://www.aphis.usda.gov/aphis/ourfocus/animalwelfare>.

We also proposed to amend § 2.127, “Publication of names of persons subject to the provisions of this part,” by replacing “names” in the section heading with “lists,” and by removing the statement that the list will be published in the *Federal Register*. We are making these changes to reflect current business practices of publishing information on public websites for ease of access as well as our practice of maintaining and updating a list of registered research facilities on the APHIS website.<sup>11</sup>

Substantial numbers of commenters expressed concern about Agency transparency with respect to making the names of licensees, breeders, and research facilities available to the public, and many asked that we ensure that licensee records are available for public review. Some commenters opposed the proposed change to § 2.127, which would strike “names” and replace it with “lists.” One such commenter stated that the term “lists” is ambiguous and does not express how, if at all, the Agency intends to identify registrants or licensees.

As noted above, APHIS maintains a list of licensees and registrants on its website. By replacing the word “names” with “lists,” we are making clear that the list may include additional information beyond just the name of the licensee and registrant, such as the city and State where they are located and the type of license or registration that person holds. We are therefore making no changes to the rule in response to this comment.

One commenter stated that the final rule should expressly state what licensee information the USDA will share with the public. Another commenter requested that APHIS continue to publish identifying information for all persons licensed or registered under the AWA, including the following: Certificate/customer type, legal name, doing business as (DBA) name, city, and State, and to affirm this in § 2.127.

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<sup>11</sup> <https://www.aphis.usda.gov/aphis/ourfocus/animalwelfare>.

APHIS is undertaking this change to reflect both current business practices of publishing information using public websites for ease of access, and the Agency's practice of maintaining and regularly updating a list of registered research facilities on the APHIS website. Currently, APHIS lists the legal name of the licensee or registrant, any DBA name associated with that person, the city and State where they are located, and the type of license or registration the person holds. Therefore, we are making no changes in response to these comments.

A commenter asked APHIS to include in its publication a disclosure requirement for all "formerly known as" names associated with an existing licensee or registrant to ensure full transparency. The commenter, representing an animal welfare organization, added that it is necessary to have access to unredacted inspection reports so the organization can follow up on complaints and incidents and determine whether APHIS has identified specific animal care deficiencies at such locations.

We are making no changes to the rule in response to this comment. We publish the list of licensees and registrants so that the public can know who currently holds a license or registration under the AWA. Whether a person previously held a license, and what name they held that license under, is immaterial to this purpose. Members of the public can request inspection reports under FOIA by submitting a request online at:

[https://www.aphis.usda.gov/aphis/resources/foia/ct\\_how\\_to\\_submit\\_a\\_foia\\_request](https://www.aphis.usda.gov/aphis/resources/foia/ct_how_to_submit_a_foia_request). All releases of information are subject to applicable FOIA laws and appropriate handling of protected personal information. APHIS releases information that meets all appropriate FOIA and protected personal information restrictions.

A commenter asked that we use and retain a permanent identifying number for each regulated entity regardless of issuance of a new or subsequent license. The commenter stated

that use of an assigned number not publicly linked to any other identifying information will mitigate any concerns the USDA has about maintaining privacy interests. The commenter stated that this number should be included on all publicly released AWA-related records in order to allow public monitoring of the USDA's implementation of the Act, including the ability to track whether the USDA is following its own inspection and enforcement policies.

This comment pertains to APHIS' internal business processes and is outside the scope of this rulemaking. Therefore, we are making no changes to the rule in response to this comment.

A commenter asked the USDA to stop redacting licensee identities and withholding records about enforcement actions and adjudication proceedings. The commenter said that the public cannot determine whether USDA is complying with the licensing requirements if it redacts licensee information from inspection reports. Another commenter stated that APHIS needs to ensure that the additional licensee information required by the rule will be made public in accordance with the precedent the Agency itself persuaded the D.C. Circuit to establish in *Jurewicz v. U.S. Department of Agriculture*, 714 F. 3d 1326 (2014).

Public access to records held and maintained by the U.S. Government is outside the scope of this rulemaking, but all released records meet all applicable FOIA and personally identifiable information restrictions. Therefore, we are making no changes to the rule in response to this comment.

## Importation of Live Dogs

We proposed to amend the regulations for importing live dogs in §§ 2.150 through 2.153 in order to harmonize the regulations with the AWA and emphasize that dogs intended for resale for research purposes, or dogs intended for resale following veterinary treatment, must be imported under a permit and accompanying certifications.

Several commenters stated, without providing specifics, that APHIS should restrict importation of dogs because imported dogs carry exotic diseases.

We are making no changes to the rule in response to this comment. APHIS does restrict the importation of dogs for resale purposes to ensure they are in good health, vaccinated, and meet the minimum age requirement established in the AWA.

One commenter stated that the proposed changes will increase the vulnerability of live dogs imported for the purposes of experimentation. Specifically, the commenter stated that removal of the word “research” from §§ 2.150(a) and 2.151(a) would exempt from import permit requirements those research entities with foreign sites that import their own live dogs into the United States, without reselling them, for the purpose of research. The commenter cited instances of research companies obtaining animals from other countries with weak records of animal welfare and stated that, under our proposed changes, they could import dogs from their facilities in other countries to use in their testing facilities in the United States without securing a permit from the USDA or preparing certifications. Similarly, a commenter stated that APHIS has provided no reasoning for why this recordkeeping requirement is proposed to be removed for dogs imported for research or veterinary treatment without subsequent sale and noted that it is important that all dogs imported for research or veterinary treatment are accompanied by a permit and certificate of veterinary health to prevent the spread of disease.

We are making no changes to the rule in response to these comments. These changes will harmonize the regulations with the Act and make clear that dogs intended for resale for research purposes, or dogs intended for resale following veterinary treatment, are imported with an import permit and accompanying certifications, except as provided in § 2.151(b).

### Animal Health and Husbandry Standards

#### Watering

We indicated in the proposed rule that we were considering adding various provisions pertaining to the care of dogs in part 3, particularly in relation to housing and access to water. We noted that the current regulations require dogs that do not have continual access to water must be offered water not less than twice daily for at least 1 hour each time. While lack of continual access to water is generally not a risk to healthy dogs, lack of access to water may exacerbate health problems when other stresses are present, such as high heat or illness. We considered amending the AWA regulations to account for specific watering needs for certain dogs, short of requiring that all dogs have 24-hour access to potable water for their well-being. However, in examining the issues and accounting for the animal health and well-being factors involved, we determined that the most prudent approach would be to include such a provision requiring all dogs to have 24-hour access to water. We therefore proposed to amend § 3.10 to add a provision that requires dogs to have continual access to potable water, unless restricted by the attending veterinarian.<sup>12</sup>

A commenter agreed with ensuring dogs have regular access to water but noted that we stated in the proposed rule that a lack of continual access to water is generally not a risk to

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<sup>12</sup> In the proposed rule, we used the term “continual” access to water to mean constant, uninterrupted access to potable water for dogs at all times. However, we are substituting the more accurate term “continuous” to mean the same thing in this final rule.

healthy dogs. The commenter noted that regulated facilities vary by type, size, and the number of animals they maintain. For this reason, the commenter stated that APHIS should allow for some flexibility in how licensees, particularly smaller ones, make water available to their animals while still ensuring they are providing appropriate care.

The rule requires that potable water be continuously available to dogs, unless restricted by the attending veterinarian. The rule does not prescribe how the water is made continuously available. With respect to flexibility in how water is made available to dogs, facilities may use a variety of watering methods to comply with this requirement. Most facilities at which the dogs have 24-hour access to water use a plumbed automatic watering system. Automatic watering systems can be connected either to a central water supply line or a holding tank, which then supplies a valve-tipped access point through a pump or gravity-fed system. Facilities that do not have an automatic watering system may use water-holding tanks filled by hand. Water may also need to be hand-carried to outdoor areas that house dogs.

Another commenter said that there are no data or veterinary care requirements described to support this change for healthy dogs. The commenter noted that healthy animals will play with water bowls and spill water, and that the lack of continuous access to water in those cases should not be an instance of noncompliance if the dog is adequately hydrated. The commenter added that the health and welfare of animals is directly related to their degree of hydration, not to the frequency or duration of access to water, and that the requirement for continuous access to water for all is therefore an arbitrary regulation based on ease of enforcement rather than sound veterinary judgment. The commenter concluded that a better approach would be to keep the current standard but modify it to require that dogs be adequately hydrated and have access to water depending on conditions.

We are making no change to the rule in response to this comment. The rule as proposed will provide dogs with continuous access to water so that the dogs can adequately hydrate themselves. We believe this standard will be easier for facilities to follow and for APHIS to enforce than the condition-dependent alternative proposed by the commenter and will ensure the health and well-being of the dogs.

Several commenters associated with research institutions did not consider the change to the watering requirements to be necessary or practical. One commenter stated that, according to his organization's records, for the past 5 years there have been 6,613 inspections of research facilities resulting in 2,029 noncompliant items documented, of which only 3 were for noncompliance with the regulations in § 3.10. Another commenter requested that the Agency document the actual need for these expenditures before developing a final rule requiring 24-hour access to water.

The commenter correctly points out that a small fraction of inspections of regulated facilities result in citations related to inadequate watering, although the number cited is lower than the actual number for all facilities (there were 11 such citations in FY 2016 and 2017 alone; in 2017, there were 12,243 active sites). Lack of continuous access to drinkable water is generally not a risk to healthy dogs, but lack of access can escalate in dogs the health consequences of other stress factors. We note that the number of citations issued for lack of water access does not reflect the totality of problems that are either caused or exacerbated by lack of access to clean drinkable water. Ensuring this access will directly benefit those dogs that would otherwise have insufficient access to drinkable water.

Moreover, we also proposed specific veterinary care requirements for dogs. We expect that these specific requirements will strengthen arrangements between licensees and registrants

and their attending veterinarians and enhance preventative and ongoing care for dogs.

Accordingly, we are making no changes to the rule in response to this comment.

Other commenters questioned how water can be provided continuously when dogs are being removed from pens for training or cleaning, or during transport, and noted that there have already been guidelines available for providing adequate water supply for dogs. Another commenter noted that requiring 24 hour access to water contradicts the current regulations, which allow for the offering of water to dogs before, during, and after transport to be determined under a watering and feeding plan, which may not necessarily allow for 24 hour access. To resolve this contradiction, the commenter recommended that APHIS add an exception to § 3.10(a) that states, “except during transport, in which the dog must be offered water in accordance with the standards set forth in § 3.14.”

The transport watering requirements, which do not require 24 hour access, are actually detailed in § 3.16 (redesignated as § 3.17), and not in § 3.14 as the commenter indicated. However, we agree with the substance of the comment and will amend § 3.10(a) to refer to the transportation requirements in redesignated § 3.17.

#### Veterinary Care for Dogs

We proposed to amend the veterinary care requirements for dogs in § 3.13. The changes would expand existing regulations in subpart D requiring dealers and exhibitors to establish and maintain an adequate program of veterinary care for regulated animals. The expanded care requirements include regularly scheduled veterinary visits, an annual hands-on examination, and husbandry requirements to help ensure healthy eyes, skin, nails, hair, and teeth.

We proposed in a new § 3.13(a)(1) to require regularly scheduled visits by the attending veterinarian, not less than once every 12 months, to all premises where animals are kept to assess

veterinary care and other aspects of care and use. This requirement is expected to be completed no later than 1 year after the effective date.

Substantial numbers of commenters supported this requirement. One commenter supported the proposal but expressed concern about the level of oversight required by the attending veterinarian in § 3.13(a), noting that it places significant responsibility and burden on the attending veterinarian to draft policies tailored to all aspects of the animals' lives, despite the veterinarian only being required to visit the facility once a year. To ensure that the animals at each facility receive consistent and adequate veterinary care, the commenter asked that we adopt objective standards for medical, preventative, and grooming care to minimize inconsistent approaches to care among attending veterinarians. Furthermore, the commenter recommended that APHIS add to the regulations the requirement that the program of veterinary care be drafted and developed "in accordance with the recommendations of a recognized and objective veterinary association like the American Veterinary Medical Association." Other commenters recommended that APHIS include additional requirements as part of the scheduled visit, including pain assessment and body condition scoring; an oral examination; special exams for breeding dogs; and administration of medications for intestinal parasites, heartworm, fleas, and ticks. A commenter also recommended that dogs receive preventative dental care, and that specialized procedures such as euthanasia and surgery only be practiced by licensed veterinarians using widely accepted techniques.

Some commenters opposed the requirement for scheduling regular veterinary visits. One such commenter stated that the imposition of a prescriptive program of veterinary care is not consistent with APHIS' stated purpose to reduce regulatory burden on licensees because the program of veterinary care should be individually tailored to meet the needs of the animals being

maintained in each facility. Other commenters representing research organizations opposed the proposed change and urged APHIS instead to consider stronger enforcement of its existing standards regarding veterinary care, noting that their organizations are rarely cited for veterinary care violations.

We believe the requirement for regular veterinary visits provides an appropriate level of specificity to ensure an adequate and balanced program of veterinary care for dogs, and allows for professional, individual judgment on the part of the attending veterinarian. Annual hands-on physical exams by the attending veterinarian allow for the evaluation of factors that could affect the dogs' health, well-being, and ability to reproduce. A required husbandry program will help ensure the overall health of adult dogs and puppies, thereby preventing avoidable disease and injury. Required medical records will help facilities keep track of incidents, treatments and progress of care, and allow facilities to track individual health trends and the frequency of illnesses and injuries for the kennel as a whole. For these reasons, we are making no changes to the rule in response to the commenters.

A commenter asked that standards for breeding, socialization, and exercise be added to the regulations, as the lack of concrete requirements may result in inconsistent levels of oversight among attending veterinarians and foster uncertainty as to whether a licensee will follow a veterinarian's recommendations for addressing standards of care. Similarly, another commenter stated that the veterinary care plan should be required to include current exercise and human interaction and require greater life enrichment for animals in the companion pet industry, as well as placement strategies for dogs after breeding age is passed and a cap on the age of maturity for breeding.

The regulations pertaining to exercise of dogs are contained in § 3.8 of the regulations. Because we did not propose any changes to these regulations or propose any standards for breeding or socialization of dogs, this comment falls outside the scope of this rulemaking.

A commenter stated that this section should be strengthened to require veterinary care for animals, not only for the obvious humane reasons, but also so that unsuspecting consumers are not saddled with unexpected health problems after purchase.

USDA is authorized under the AWA to issue standards governing the humane handling, care, treatment, and transportation of animals. We lack authority to promulgate regulations pertaining to consumer protection.

A commenter stated that APHIS should require that the veterinarian signing the program of veterinary care be in good standing with the applicable State's veterinary board and has experience working with the species at issue.

We are making no changes to the rule in response to this comment. The AWA authorizes USDA to require licensees to comply with the Act, but not veterinarians. We note that § 2.40(a)(2) of the regulations requires licensees to ensure that the attending veterinarian has appropriate authority to ensure the provision of adequate veterinary care and to oversee the adequacy of other aspects of animal care and use. The appropriate authority may include but is not limited to ensuring that the veterinarian is in good standing with the applicable State veterinary licensing board. We also note that the definition of *attending veterinarian* specifies that the veterinarian “has received training and/or experience in the care and management of the species being attended.”

We also proposed in a new § 3.13(a)(2) to require that each dealer, exhibitor, and research facility follow an appropriate program of veterinary care for dogs that is documented

and signed by an attending veterinarian, and includes annual physical head-to-tail examinations for adult dogs by the attending veterinarian. We proposed that these annual examinations be required in addition to existing requirements that provide for regularly scheduled visits by the attending veterinarian to premises where animals are kept.

A substantial number of commenters supported the proposal to require an annual head-to-tail examination of each adult dog at a facility. One commenter recommended that we also require hands-on veterinary examinations for any dog showing visible signs of pain or distress, emaciated body condition, or other symptoms of potentially severe illness or injury.

The requirements in proposed § 3.13 are in addition to the existing requirements in subpart D, which already require programs of adequate veterinary care that include the use of appropriate methods to diagnose and treat diseases and injuries and direct and frequent communication of problems to the attending veterinarian. We believe the regulations sufficiently address the attending veterinarians', licensees', and registrants' responsibilities for sick animals and are making no changes to the rule as a result of this comment.

Some commenters stated that the proposed veterinary examination requirement would cause financial hardship on small breeders and noted that many stakeholders do not live near an affordable veterinarian.

We note that § 2.40 of the regulations already requires dealers and exhibitors to employ an attending veterinarian under formal arrangements and to have programs of adequate veterinary care.

A commenter stated that it is unclear why the attending veterinarian would need to conduct an annual physical head-to-tail examination of every dog for what are husbandry issues, when the licensee is already required to observe every animal on a daily basis.

We are making no changes to the rule in response to this comment. A physical examination of a dog by a veterinarian may discover health issues that a licensee may overlook, as the veterinarian has more extensive knowledge and expertise.

Several commenters stated that it is not clear why APHIS does not already have the authority under the current language in § 2.40 to assure that such care is provided. The commenter noted that § 2.40 currently requires that for licensees with a part-time or consulting attending veterinarian there be a regular schedule of visits and a written program of veterinary care. The commenter said that if APHIS finds that the number of visits and written program is not providing adequate care, the facility should be cited and given a specific timeline to come into compliance.

Under the current regulations in § 2.40, although a written program of veterinary care is required for part-time or consulting veterinarians, it is not required for full-time attending veterinarians. Similarly, although the veterinarian must conduct regularly scheduled visits, there is no requirement for a physical, head-to-tail annual examination for dogs. This rule requires that dealers, exhibitors, and research facilities keep and maintain a written program of veterinary care for dogs, regardless of their arrangement with their attending veterinarian, and require annual veterinary exams for dogs in addition to the existing veterinary care requirements that provide for regularly scheduled visits of the attending veterinarian to premises where animals are kept to ensure the adequacy of animal care.

Some commenters opposed a required annual head-to-tail examination for adult dogs on grounds that their animals already receive adequate care. A few research organizations stated that the proposed requirement for the head-to-tail examination will yield no additional benefit and result in more regulatory burden. They suggested that APHIS focus specifically on those

individuals and businesses having a history of noncompliance and prevent them from obtaining a license or working with regulated animals, while allowing research institutions with strong adherence to Federal requirements and excellent veterinary care to perform their duties following current accepted practices.

APHIS believes that physical head-to-tail examinations and regularly scheduled visits by attending veterinarians to the premises where animals are kept are necessary to ensure adequate animal care and use, regardless of the facility's compliance history. To address the commenters' concerns, facilities that maintain high levels of veterinary care likely meet or exceed the veterinary care requirements in this rule, meaning that such facilities likely would not need to make any changes to their practices. Therefore, we are making no changes to the rule in response to this comment.

With respect to the hands-on exam, one commenter asked if APHIS had considered facilities that exhibit wolf-dogs (an animal that falls under USDA dog regulations), noting that most rescued wolf-dogs are not able to be handled safely for this type of exam.

In § 1.1 of the regulations, dog-hybrid crosses are considered dogs under the definition of *dog*. Licensees and registrants with dog-hybrid crosses must comply with all applicable provisions of the AWA regulations. Licensees and registrants should work closely with their attending veterinarian to determine appropriate safe handling practices for dogs (including hybrid crosses) for hands-on examinations.

The commenter also suggested that we require licensed veterinary certification that the breeding animal is free from detectable health or congenital problems which can be identified using accepted medical tests appropriate for problems seen by breed, and is certified healthy to breed.

We acknowledge the commenter's concern about breeding and breed-specific problems but are making no changes in response. The veterinary exam can determine whether a dog is generally in good health, but any additional testing to detect breed-specific issues would not be a requirement, but rather a decision by the dog owner.

We also included in proposed § 3.13(a)(3) a requirement for vaccinations for rabies, parvovirus, distemper, and other dangerous diseases of dogs.

One commenter opposed to the vaccination requirements in the proposed rule stated that the wording "contagious and deadly" used in the proposed regulation could be interpreted to mean that a disease must be both contagious and deadly for a vaccination to be required. The commenter noted that vaccinations are not always innocuous and should not be given unless they are needed.

We appreciate the opportunity to clarify our intent with respect to the wording "contagious and deadly." We agree that vaccinations are required for diseases that are contagious, or deadly, or both, and are amending § 3.13(a)(3) accordingly.

Other commenters opposed to the vaccination requirement expressed a concern that the proposed changes, which include specific vaccination requirements, would lead to over-vaccinating of animals. A few commenters stated that APHIS, through this rulemaking, is requiring them to excessively vaccinate their animals at the expense of their dogs being poisoned or having seizures. Another commenter opposed to the proposal said that mandatory vaccinations will result in the deaths of millions of dogs.

We are making no changes to the vaccination requirement in response to these comments. Vaccinations are a scientifically proven and critical component in ensuring the health and well-being of dogs. The regulations require vaccinations for contagious and deadly diseases of dogs,

which expressly includes but is not limited to rabies, parvovirus, and distemper, in accordance with a schedule approved by the attending veterinarian. We note that there are exceptions to this requirement for research protocols approved by the Institutional Animal Care and Use Committee (IACUC) at research facilities.

A commenter noted that the rule allows exemptions from required vaccinations for research facilities, but not for dealers, and requested that the exemption also be available to dealers who provide dogs with higher health status requirements (i.e., unvaccinated dogs) for veterinary health research purposes, providing the animals are housed in barrier facilities suitable to protect their health and well-being.

We noted that vaccinations would not be a requirement if contraindicated for health reasons for the individual animal or unless otherwise required by a research protocol approved by the IACUC at research facilities. Therefore, we are making no changes to the rule in response to this comment.

We proposed also that the veterinary exam address husbandry issues for hair coat, toenails, teeth, skin, eyes, and ears.

A commenter representing a research organization recommended the development of clear, objective criteria to standardize what constitutes adequate care and subsequently non-compliance regarding prevention and treatment procedures for skin, nails, teeth, eyes, ears, and hair coat. The commenter expressed concern that USDA inspectors may cite noncompliance for the occurrence of early signs of clinical conditions that are considered mild and not in need of immediate treatment. The commenter asked that guidelines be developed and made available to inspectors and regulated facilities in the form of additions to the Animal Welfare Inspection

Guide, rather than in the proposed changes to the regulations, and that they include examples of appropriate written prevention and treatment plans.

The rule requires a written program of veterinary care that includes preventative care and treatment to ensure healthy and unmatted hair coats, properly trimmed nails, and clean and healthy eyes, ears, skin, and teeth, unless otherwise required by a research protocol approved by the IACUC at research facilities. An adequate plan would address these systems and provide sufficient guidelines on when and how the veterinarian will need to be consulted on certain conditions. Therefore, we are making no changes to the rule in response to this comment.

We proposed in revised § 3.13(b) to require licensees to keep and maintain veterinary medical records and to make them available for inspection by APHIS.

A few commenters stated that keeping a medical record of every dog daily would increase their recordkeeping burden.

The rule does not require a daily medical record for every dog. Rather, the rule requires facilities to keep track of incidents, treatments, and progress of care, and to track individual health trends and frequency of illnesses and injuries for the kennel as a whole.

Regarding the proposed requirement to maintain animal medical records, a commenter questioned whether the language in section 2140 of the AWA gives the Secretary the authority to require such records. The commenter stated that under the Principles of Veterinary Medical Ethics, a veterinarian has a duty to maintain the necessary records to provide appropriate care, but does not agree that the AWA requires them to be maintained.

Under section 2140 of the AWA, “[d]ealers and exhibitors shall make and retain for such reasonable period of time as the Secretary may prescribe, such records with respect to the purchase, sale, transportation, identification, and previous ownership of animals as the Secretary

may prescribe.” This section has similar language for research facilities to maintain such records with respect to live dogs and cats. However, section 2151 grants the Secretary the authority “to promulgate such rules, regulations, and orders as he may deem necessary in order to effectuate the purposes of this Act.” Moreover, the rule places the requirement to maintain the medical records on the facility, not on the veterinarian.

A commenter noted that § 3.13(b)(1), which allows medical records for all dogs kept in a group (or herd) to be preserved on a single record (without individual identifying marks noted for each dog), will likely negate the positive impact of this section as it will fail to give inspectors a means of ensuring that all dogs have received adequate care. The commenter explained that the justifications for allowing group records for animals like cattle, sheep, and deer, do not exist in the case of dogs, and that licensees and attending veterinarians should be able to safely and productively identify each dog. Accordingly, the commenter recommended that we remove the “group” provision in paragraph (b)(1).

We disagree with this comment and are making no changes in response. This rule will allow routine husbandry, such as vaccinations, preventive medical procedures, and treatment that are performed on a group of dogs to be kept on a single record. All animals on the record will have received the treatment or care if they are listed on the record. Therefore, we are making no changes to the rule based on this comment.

#### Other Comments

One commenter stated that USDA should develop and make available an implementation plan.

The plan for implementing the rule includes a 3-year schedule for converting the current 1-year licenses to a 3-year new license based on the expiration day and month listed on the

license. Prior to the license expiration date, USDA will notify current licensees of the month and date on which their license will need to be converted to the 3-year license and licensees will need to submit an application for the new license. Until the license is converted to the 3-year schedule, the licensee must pay a \$40 license fee and renew the current license for 1 year. After the effective date of the rule, new applicants that demonstrate compliance with the AWA, regulations, and standards will be issued a 3-year license. We believe this approach will ensure that adequate resources are continuously available to conduct prelicense and routine inspections under the AWA.

A few commenters stated that USDA should require online education classes on compliance that need to be completed by the licensee between licensing or annually.

We agree that applicants, licensees, and registrants need to learn about the AWA regulations and how to achieve and maintain compliance with them. APHIS provides a variety of learning opportunities, including online modules and in person trainings, and plans to continue these after the publication of this rule.

Some commenters expressed concerns that APHIS is understaffed and therefore unable to conduct inspections for compliance under the existing regulations, let alone new ones.

We affirm that APHIS has adequate resources for conducting inspections to ensure compliance with the AWA. We employ a risk-based inspection system that calls for more frequent inspections at facilities with a higher risk of animal welfare concerns and fewer inspections at those that are consistently in compliance.

Some commenters objected to allowing members of the public to comment on the rule, particularly animal welfare advocates, stating that the general public lacks any technical expertise that can be offered on these issues. One such commenter representing a wild animal

preserve stated that only individuals who own animals as their business should be voting on changes in regulations with USDA.

The Administrative Procedure Act, which applies to all agencies of the Federal government, provides the general procedures for various types of rulemaking. For informal rulemakings such as this one, agencies are required to provide the public with adequate notice of a proposed rule followed by a meaningful opportunity to comment on the rule's content. Accordingly, we are not authorized to limit the opportunity to comment to only certain individuals or businesses. We also note that comments do not constitute "votes."

Some commenters stated that licensees were not consulted in the development of these changes: A commenter stated that "those authoring these proposed amendments did not solicit the input of seasoned and respected licensees prior to doing so."

On August 24, 2017, we published an ANPR to solicit input from licensees and all other members of the public on potential revisions to the licensing requirements under the AWA regulations.<sup>13</sup> We received over 47,000 comments in response to the ANPR, including comments from licensees. After carefully reviewing those comments, we published a proposed rule for public comment, to which we received over 100,000 comments from licensees and other members of the public. We believe that we have adequately solicited input from licensees before publishing this final rule, and are accordingly making no changes in response to this comment.

Several thousand commenters asked USDA to end the practice of keeping dogs in stacked cages with wire flooring, to ban cage stacking, and to require facilities to provide animals with more cage and living space. A letter signed by several members of Congress

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<sup>13</sup> 82 FR 40077 (Aug. 24, 2017) and 82 FR 48938 (Oct. 23, 2017); <https://www.federalregister.gov/documents/2017/10/23/2017-22940/animal-welfare-procedures-for-applying-for-licenses-and-renewals>.

supported the rule but also called for the elimination of wire flooring in dog enclosures, as well as a prohibition on stacking cages and an increase in space requirements for dogs. An animal welfare organization commented that APHIS' failure to address wire flooring in the proposed rule is unacceptable and APHIS should add a requirement that all primary enclosures in commercial breeding facilities have solid floors, or flooring that is slatted if the slats are at least 3.5 inches in width with no more than half-inch gaps between slats.

We acknowledge the concerns of the public and members of Congress on this subject. However, we are making no changes in response to these comments because enclosure flooring and space requirements are outside the scope of this rulemaking.

A few commenters stated that the proposed rule change is contrary to the intent of reducing burden as mandated by the 21st Century Cures Act, which requires the National Institutes of Health, the U.S. Department of Agriculture, and the Food and Drug Administration to complete a review of applicable regulations and policies for the care and use of laboratory animals and make revisions as appropriate, to reduce administrative burden on investigators, while maintaining the integrity and credibility of research findings and protection of research animals.

The changes to the licensing requirements do not apply to research facilities. In addition, the amendments to the veterinary care and watering standards are necessary to ensure the humane treatment and care of dogs, and are not the kind of inconsistent, overlapping, or unnecessarily duplicative regulations that are targeted for review by section 2034 of the 21st Century Cures Act.

Several commenters, without providing specifics, disagreed with the rule in that it imposes economic and recordkeeping burdens on breeders. One commenter generally stated that

the proposed changes are unfair to zoos and will burden APHIS with paperwork, enforcement, and legal challenges.

We believe that changes to the licensing fees would not be unfair to zoos, but could result in significant savings for many exhibitors. Under existing licensing fees, exhibitors pay between \$30 and \$300 per year, with an additional \$10 per year renewal application or new application fee. The licensees need to submit the renewal application each year. Under the proposed and final rule, each licensee pays only \$40 per year (\$120 for a 3 year license) and has to apply for the license only once every 3 years. This saves each licensee anywhere from \$0 dollars (no change in cost) to \$780 for an exhibitor with over 500 animals over the course of the 3 year licensing period. The new rule also saves the licensee two-thirds of the time filling out and filing the paperwork for the license over the 3 year period.

We anticipate an increase in animal welfare due to the requirement that licensees must apply for a license every 3 years and demonstrate compliance with the regulations and standards. Based on our knowledge and experience with administering and enforcing the AWA and regulations, we are concerned that even experienced licensees may struggle to achieve and maintain compliance after making noteworthy changes to their animals used in regulated activity. In addition, we have observed licensees who have been licensed for many years struggle with compliance because they did not have adequate programs for maintaining compliance at aging facilities. For these reasons, we believe that revisions to the regulations set forth in this final rule are necessary to ensure that dealers, exhibitors, and operators of auction sales demonstrate compliance with the AWA regulations.

We received many other comments that made general statements about the rule or addressed subjects that are outside the scope of this rulemaking.

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

#### Executive Orders 12866, 13563, 13771 and Regulatory Flexibility Act

This final rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget. This final rule is an Executive Order 13771 regulatory action. Details on the estimated costs of this final rule can be found in the rule's economic analysis.

We have prepared an economic analysis for this rule. The economic analysis provides a cost-benefit analysis, as required by Executive Orders 12866 and 13563, which direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The economic analysis also provides a final regulatory flexibility analysis that examines the potential economic effects of this rule on small entities, as required by the Regulatory Flexibility Act. The economic analysis is summarized below. Copies of the full analysis are available on the Regulations.gov website (see footnote 1 in this document for a link to Regulations.gov) or by contacting the person listed under FOR FURTHER INFORMATION CONTACT.

APHIS is making revisions to the licensing requirements to promote compliance with the AWA, as well as to strengthen existing safeguards that prevent individuals and businesses that are unfit to hold a license from obtaining a license or from working with regulated animals. Licensees will be required to renew their certification of regulatory compliance and pay the

associated license fee once every 3 years rather than every year. In addition, the fee will be changed to a flat rate rather than a set of tiered rates. This action will promote AWA compliance by requiring that regulated businesses affirmatively demonstrate regulatory compliance when applying for or renewing a license. It will reduce the license fee for most regulated entities and will reduce the compliance paperwork burden for all licensees.

APHIS is also amending the veterinary care requirements for dogs that are under the care of entities covered by the AWA. Facilities with dogs will be required to have an expanded Program of Veterinary Care (PVC) that includes annual, hands-on veterinary exams for adult dogs by the attending veterinarian and addresses husbandry issues for hair coat, toenails, teeth, skin, eyes, and ears. Facilities will also be required to create and maintain medical records of preventive health care measures and the treatment of ill and injured dogs.

The expanded PVC will guide the facilities in practicing a minimum level of acceptable husbandry and in maintaining records of preventive care and the treatment of ill or injured dogs. Annual hands-on physical exams by the attending veterinarian will allow for evaluation of factors that could affect the dogs' health, well-being, and ability to reproduce. Health problems that are detected early could receive timely and appropriate veterinary care. A required husbandry program will help ensure the overall health of adult dogs and puppies, thereby preventing avoidable disease, illness, and injury. Required medical records will help facilities keep track of incidents, treatments, and progress of care. They also will enable facilities to track individual health trends and the frequency of illnesses and injuries for the kennel as a whole.

This rule will also amend the AWA standard for dogs with respect to access to clean, drinkable water. The current regulations state that if potable water is not continuously available to a facility's dogs, it must be offered as often as necessary to ensure the animals' health and

well-being, and not less than twice daily for at least 1 hour each time, unless restricted by the attending veterinarian. The standard will require that facilities make potable water continuously available.

All businesses covered under the AWA will be affected by the licensing requirements, including animal dealers, exhibitors, retail pet stores, brokers, and breeders. The number of these entities varies from year to year, but has tended to be around 6,000 in recent years. Based on reported revenue data and Small Business Administration (SBA) small-entity standards, the majority of the entities affected by this rule can be considered small. About one-half of these businesses are licensees and registrants with dogs, including about 2,240 dog breeder facilities.

The licensing requirements will result in annual cost savings expected to range from about \$627,000 to \$2,106,300. The veterinary care requirements for facilities having dogs will result in annual costs ranging from about \$726,200 to about \$1,390,200, and the water access requirement for these facilities will result in annual costs ranging from about \$1,020,800 to \$2,460,000. Net costs, as shown in table A, are therefore expected to range from annual cost savings of \$359,300 (the higher licensing cost savings estimate plus the lower veterinary care and water access cost estimates) to annual costs of \$3,223,200 (the lower licensing cost savings estimate plus the higher veterinary care and water access cost estimates).

Table A: Estimated net costs of the rule, 2016 dollars

	Low Estimate	High Estimate
Licensing cost savings	(\$2,106,300)	(\$627,000)
Veterinary care costs	\$726,200	\$1,390,200
Water access costs	\$1,020,800	\$2,460,000
Net costs	(\$359,300)	\$3,223,200

Based on the costs in the table and in accordance with guidance on complying with Executive Order 13771, the single primary estimate of the costs of this rule is \$1,432,000, the mid-point estimate of net costs annualized in perpetuity using a 7 percent discount rate.

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 2 CFR chapter IV.)

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. The Act does not provide administrative procedures which must be exhausted prior to a judicial challenge to the provisions of this rule.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, *Consultation and Coordination with Indian Tribal Governments*. Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or

proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

The USDA's Office of Tribal Relations (OTR) has assessed the impact of this rule on Indian Tribes and concluded that this rule does not have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. OTR has determined that Tribal consultation under Executive Order 13175 is not required at this time. If consultation is requested, OTR will work with the APHIS to ensure quality consultation is provided.

## Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

## Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), some of the information collection requirements included in this final rule have been approved under Office of Management and Budget (OMB) control number 0579-0036 and some of the information collection requirements were filed under OMB comment-filed number 0579-0470, which has been submitted to OMB for approval. When OMB notifies us of its decision, if approval is denied, we will publish a document in the *Federal Register* providing notice of what action we plan to take.

## E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this rule, please contact Mr. Joseph Moxey, APHIS' Information Collection Coordinator, at (301) 851-2483.

## List of Subjects

### 9 CFR Parts 1 and 2

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

9 CFR Part 3

Animal welfare, Marine mammals, Pets, Reporting and recordkeeping requirements, Research, Transportation.

Accordingly, we are amending 9 CFR parts 1, 2, and 3 as follows:

PART 1—DEFINITION OF TERMS

1. The authority citation for part 1 continues to read as follows:

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

2. Section 1.1 is amended by removing the definition for *AC Regional Director* and revising the definition for *Business hours* to read as follows:

§ 1.1 Definitions.

\* \* \* \* \*

*Business hours* means a reasonable number of hours between 7 a.m. and 7 p.m. each week of the year, during which inspections by APHIS may be made.

\* \* \* \* \*

PART 2—REGULATIONS

3. The authority citation for part 2 continues to read as follows:

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

4. Section 2.1 is amended as follows:

- a. By revising paragraphs (a)(1) and (2), (b), and (c);
- b. By removing paragraph (d) and redesignating paragraph (e) as paragraph (d); and
- c. By revising newly redesignated paragraph (d) and the OMB citation at the end of the section.

The revisions read as follows:

§ 2.1 Requirements and application.

(a)(1) No person shall operate as a dealer, exhibitor, or operator of an auction sale, without a valid license, except persons who are exempt from the licensing requirements under paragraph (a)(3) of this section. A person must be 18 years of age or older to obtain a license. A person seeking a license shall apply on a form which will be furnished by the Deputy Administrator. The applicant shall provide the information requested on the application form, including, but not limited to:

- (i) The name of the person applying for the license;
- (ii) A valid mailing address through which the applicant can be reached at all times;
- (iii) Valid addresses for all locations, facilities, premises, or sites where animals, animal facilities, equipment, and records are held, kept, or maintained;
- (iv) The anticipated maximum number of animals on hand at any one time during the period of licensure;
- (v) The anticipated type of animals described in paragraph (b)(2)(ii) of this section to be owned, held, maintained, sold, or exhibited, including those animals leased, during the period of licensure;
- (vi) If the person is seeking a license as an exhibitor, whether the person intends to exhibit any animal at any location other than the person's location(s) listed pursuant to paragraph (a)(1)(iii) of this section; and
- (vii) Disclosure of any plea of *nolo contendere* (no contest) or finding of violation of Federal, State, or local laws or regulations pertaining to animal cruelty or the transportation, ownership, neglect, or welfare of animals.

(2) The completed application form, along with a \$120 license fee, shall be submitted to the appropriate Animal Care office.

\* \* \* \* \*

(b)(1) No person shall have more than one license. Licenses are issued to specific persons, and are issued for specific activities, types and numbers of animals, and approved sites. A new license must be obtained upon change of ownership, location, activities, or animals. A licensee shall notify Animal Care no fewer than 90 days and obtain a new license before any change in the name, address, substantial control or ownership of his business or operation, locations, activities, and number or type of animals described in paragraph (b)(2) of this section. Any person who is subject to the regulations in this subchapter and who intends to exhibit any animal at any location other than the person's approved site must provide that information on their application form in accordance with paragraph (a) of this section and submit written itineraries in accordance with § 2.126.

(2) Licenses authorize a specific number and specific type(s) of animals, as follows:

(i) Licenses authorize increments of 50 animals on hand at any single point in time during the period of licensure. A licensee must obtain a new license before any change resulting in more than the authorized number of animals on hand at any single point in time during the period of licensure.

(ii) Licenses authorize the use of animals subject to subparts A through F in part 3 of this subchapter, except that, for animals subject to subparts D and F, licenses must specifically authorize the use of each of the following groups of animals: Group 5 (baboons and nonbrachiating species larger than 33 pounds) and Group 6 (great apes over 55 pounds and brachiating species) nonhuman primates; exotic and wild felids (including but not limited to

lions, tigers, leopards, cheetahs, jaguars, cougars, lynx, servals, bobcats, and caracals, and any hybrid cross thereof); hyenas and/or exotic and wild canids (including but not limited to wolves, coyotes, foxes, and jackals); bears; and mega-herbivores (including but not limited to elephants, rhinoceroses, hippopotamuses, and giraffes). A licensee must obtain a new license before using any animal beyond those types or numbers of animals authorized under the existing license.

(c) A license will be issued to any applicant, except as provided in §§ 2.9 through 2.11, when:

(1) The applicant has met the requirements of this section and §§ 2.2 and 2.3; and

(2) The applicant has paid a \$120 license fee to the appropriate Animal Care office. The applicant may pay the fee by certified check, cashier's check, personal check, money order, or credit card. An applicant whose check is returned by a bank will be charged a fee of \$20 for each returned check. If an applicant's check is returned, subsequent fees must be paid by certified check, cashier's check, money order, or credit card.

(d) The failure of any person to comply with any provision of the Act, or any of the provisions of the regulations or standards in this subchapter, shall constitute grounds for denial of a license or for its suspension or revocation by the Secretary, as provided in the Act.

(Approved by the Office of Management and Budget under control numbers 0579-0036 and 0579-0470)

5. Section 2.2 is revised to read as follows:

§ 2.2 Acknowledgement of regulations and standards.

Animal Care will supply a copy of the Act and the regulations and standards in this subchapter to an applicant upon request. Signing the application form is an acknowledgement

that the applicant has reviewed the Act and the regulations and standards and agrees to comply with them.

(Approved by the Office of Management and Budget under control numbers 0579-0036 and 0579-0470)

6. Section 2.3 is revised to read as follows:

§ 2.3 Demonstration of compliance with standards and regulations.

(a) Each applicant for a license must demonstrate that his or her location(s) and any animals, facilities, vehicles, equipment, or other locations used or intended for use in the business comply with the Act and the regulations and standards set forth in parts 2 and 3 of this subchapter. Each applicant must make his or her animals, locations, facilities, vehicles, equipment, and records available for inspection during business hours and at other times mutually agreeable to the applicant and APHIS, to ascertain the applicant's compliance with the Act and the regulations and standards.

(b) Each applicant for a license must be inspected by APHIS and demonstrate compliance with the Act and the regulations and standards, as required in paragraph (a) of this section, before APHIS will issue a license. If the first inspection reveals that the applicant's animals, premises, facilities, vehicles, equipment, locations, or records do not meet the applicable requirements of this subchapter, APHIS will advise the applicant of existing deficiencies and the corrective measures that must be completed to come into compliance with the regulations and standards. An applicant who fails the first inspection may request up to two more inspections by APHIS to demonstrate his or her compliance with the Act and the regulations and standards. The applicant must request the second inspection, and if applicable, the third inspection, within 60 days following the first inspection.

(c) Any applicant who fails the third and final prelicense inspection may appeal all or part of the inspection findings to the Deputy Administrator. To appeal, the applicant must send a written statement contesting the inspection finding(s) and include any documentation or other information in support of the appeal. To receive consideration, the appeal must be received by the Deputy Administrator within 7 days of the date the applicant received the third prelicense inspection report. Within 7 days of receiving a timely appeal, the Deputy Administrator will issue a written response to notify the applicant whether APHIS will issue a license or deny the application.

(d) If an applicant fails inspection or fails to request reinspections within the 60-day period, or fails to submit a timely appeal of the third prelicense inspection report as described in paragraph (c) of this section, the applicant cannot reapply for a license for a period of 6 months from the date of the failed third inspection or the expiration of the time to request a third inspection. No license will be issued until the applicant pays the license fee and demonstrates upon inspection that the animals, premises, facilities, vehicles, equipment, locations, and records are in compliance with all applicable requirements in the Act and the regulations and standards in this subchapter.

(Approved by the Office of Management and Budget under control number 0579-0036)

7. Section 2.5 is revised to read as follows:

§ 2.5 Duration of license and termination of license.

(a) A license issued under this part shall be valid and effective for 3 years unless:

(1) The license has been revoked or suspended pursuant to section 19 of the Act or terminated pursuant to § 2.12.

(2) The license is voluntarily terminated upon request of the licensee, in writing, to the Deputy Administrator.

(3) The license has expired, except that:

(i) The Deputy Administrator may issue a temporary license, which automatically expires after 120 days, to an applicant whose immediately preceding 3-year license has expired, if:

(A) The applicant submits the appropriate application form before the expiration date of a preceding license; and

(B) The applicant had no noncompliances with the Act and the regulations and standards in parts 2 and 3 of this subchapter documented in any inspection report during the preceding period of licensure.

(ii) For expedited hearings occurring under § 2.11(b)(2), a license will remain valid and effective until the administrative law judge issues his or her initial decision. Should the administrative law judge's initial decision affirm the denial of the license application, the applicant's license shall terminate immediately.

(4) There will not be a refund of the license fee if a license is denied, or terminated, suspended, or revoked prior to its expiration date.

(b) Any person who seeks the reinstatement of a license that has expired or been terminated must follow the procedure applicable to new applicants for a license set forth in § 2.1.

(c) A license which is invalid under this part shall be surrendered to the Deputy Administrator. If the license cannot be found, the licensee shall provide a written statement so stating to the Deputy Administrator.

§§ 2.6 through 2.8 [Removed and Reserved]

8. Sections 2.6 through 2.8 are removed and reserved.

9. Section 2.9 is revised to read as follows:

§ 2.9 Officers, agents, and employees of licensees whose licenses have been suspended or revoked.

Any person who has been or is an officer, agent, or employee of a licensee whose license has been suspended or revoked and who was responsible for or participated in the activity upon which the order of suspension or revocation was based will not be licensed, or registered as a carrier, intermediate handler, dealer, exhibitor, or research facility, within the period during which the order of suspension or revocation is in effect.

10. Section 2.10 is revised to read as follows:

§ 2.10 Licensees whose licenses have been suspended or revoked.

(a) Any person whose license or registration has been suspended for any reason shall not be licensed, or registered, in his or her own name or in any other manner, within the period during which the order of suspension is in effect. No partnership, firm, corporation, or other legal entity in which any such person has a substantial interest, financial or otherwise, will be licensed or registered during that period. Any person whose license has been suspended for any reason may apply to the Deputy Administrator, in writing, for reinstatement of his or her license or registration.

(b) Any person whose license has been revoked shall not be licensed or registered, in his or her own name or in any other manner, and no partnership, firm, corporation, or other legal entity in which any such person has a substantial interest, financial or otherwise, will be licensed or registered.

(c) Any person whose license has been suspended or revoked shall not buy, sell, transport, exhibit, or deliver for transportation, any animal during the period of suspension or

revocation, under any circumstances, whether on his or her behalf or on the behalf of another licensee or registrant.

11. Section 2.11 is revised to read as follows:

§ 2.11 Denial of license application.

(a) A license will not be issued to any applicant who:

(1) Has not complied with the requirements of §§ 2.1 through 2.4 and has not paid the fees indicated in § 2.1;

(2) Is not in compliance with the Act or any of the regulations or standards in this subchapter;

(3) Has had a license revoked or whose license is suspended, as set forth in § 2.1(d);

(4) Was an officer, agent, or employee of a licensee whose license has been suspended or revoked and who was responsible for or participated in the activity upon which the order of suspension or revocation was based, as set forth in § 2.9;

(5) Has pled *nolo contendere* (no contest) or has been found to have violated any Federal, State, or local laws or regulations pertaining to animal cruelty within 3 years of application, or after 3 years if the Administrator determines that the circumstances render the applicant unfit to be licensed;

(6) Is or would be operating in violation or circumvention of any Federal, State, or local laws; or

(7) Has made any false or fraudulent statements or provided any false or fraudulent records to the Department or other government agencies, or has pled *nolo contendere* (no contest) or has been found to have violated any Federal, State, or local laws or regulations pertaining to the transportation, ownership, neglect, or welfare of animals, or is otherwise unfit to

be licensed and the Administrator determines that the issuance of a license would be contrary to the purposes of the Act.

(b)(1) An applicant whose initial license application has been denied may request a hearing in accordance with the applicable rules of practice in 7 CFR part 1 for the purpose of showing why the application for license should not be denied. The denial of an initial license application shall remain in effect until the final decision has been rendered. Should the license denial be upheld, the applicant may again apply for a license 1 year from the date of the final order denying the application, unless the order provides otherwise.

(2) An applicant who submitted a timely appeal of a third prelicense inspection as described in § 2.3(c), and whose appeal results in the denial of the license application, may request an expedited hearing if the applicant held a valid license when he or she submitted the license application that has been denied and the Deputy Administrator received such license application no fewer than 90 days prior to the expiration of the valid license. If the applicant meets the criteria in this paragraph (b)(2), and notwithstanding the timeframes of the proceedings set forth in the applicable rules of practice (7 CFR 1.130 through 1.151):

(i) The applicant must submit the request for an expedited hearing within 30 days of receiving notice from the Deputy Administrator that the license application has been denied;

(ii) The administrative law judge shall set the expedited hearing so that it occurs within 30 days of receiving a timely request for expedited hearing as described in paragraph (b)(2)(i) of this section; and

(iii) The administrative law judge must issue an initial decision no later than 30 days after the expedited hearing.

(iv) The applicant's license will remain valid until the administrative law judge issues his or her initial decision. Should the administrative law judge's initial decision affirm the denial of the license application, the applicant's license shall terminate immediately.

(c) No partnership, firm, corporation, or other legal entity in which a person whose license application has been denied has a substantial interest, financial or otherwise, will be licensed within 1 year of the license denial.

(d) No license will be issued under circumstances that the Administrator determines would circumvent any order, stipulation, or settlement agreement suspending, revoking, terminating, or denying a license or disqualifying a person from engaging in activities under the Act.

12. Section 2.12 is revised to read as follows:

§ 2.12 Termination of a license.

A license may be terminated at any time for any reason that a license application may be denied pursuant to § 2.11 after a hearing in accordance with the applicable rules of practice in 7 CFR part 1.

13. Section 2.13 is added to read as follows:

§ 2.13 Appeal of inspection report.

Except as otherwise provided in § 2.3(c), any licensee or registrant may appeal all or part of the inspection findings in an inspection report to the Deputy Administrator. To appeal, the licensee or registrant must send a written statement contesting the inspection finding(s) and include any documentation or other information in support of the appeal. To receive consideration, the appeal must be received by the Deputy Administrator within 21 days of the date the licensee or registrant received the inspection report that is the subject of the appeal.

§ 2.25 [Amended]

14. In § 2.25, paragraph (a) is amended by removing the words “AC Regional Director” each time they appear and adding the words “Deputy Administrator” in their place.

§ 2.26 [Amended]

15. Section 2.26 is amended by removing the words “AC Regional Director” and adding the words “Deputy Administrator” in their place.

§ 2.27 [Amended]

16. Section 2.27 is amended by removing the words “AC Regional Director” each time they appear and adding the words “Deputy Administrator” in their place.

§ 2.30 [Amended]

17. Section 2.30 is amended by removing the words “AC Regional Director” each time they appear and adding the words “Deputy Administrator” in their place.

§ 2.35 [Amended]

18. In § 2.35, the OMB citation at the end of the section is amended by removing the number “0579-0254” and adding the number “0579-0036” in its place.

§ 2.36 [Amended]

19. In § 2.36, paragraph (a) is amended by removing the words “AC Regional Director” and adding the words “Deputy Administrator” in their place.

20. Section 2.38 is amended as follows:

a. By revising paragraph (c);

b. In paragraph (g)(1) introductory text, by removing the period between the words “acquired” and “sold” and adding a comma in its place;

c. In paragraph (g)(7), footnote 1, by removing the words “AC Regional Director” and adding the words “Deputy Administrator” in their place; and

d. In paragraph (i) introductory text, by removing the words “AC Regional Director” and adding the words “Deputy Administrator” in their place.

The revision reads as follows:

§ 2.38 Miscellaneous.

\* \* \* \* \*

(c) *Publication of lists of research facilities subject to the provisions of this part.* APHIS will publish on its website lists of research facilities registered in accordance with the provisions of this subpart. The lists may also be obtained upon request from the Deputy Administrator.

\* \* \* \* \*

§ 2.52 [Amended]

21. In § 2.52, footnote 4 is amended by removing the words “AC Regional Director” and adding the words “Deputy Administrator” in their place.

§ 2.75 [Amended]

22. In § 2.75, paragraphs (a)(3) and (b)(2) are amended by removing the citation “§ 2.79” and adding the citation “§ 2.78” in its place.

§ 2.77 [Amended]

23. In § 2.77, paragraph (b) is amended by removing the citation “§ 2.79” and adding the citation “§ 2.78” in its place.

§ 2.102 [Amended]

24. In § 2.102, paragraphs (a) and (b) introductory text are amended by removing the words “AC Regional Director” and adding the words “Deputy Administrator” in their place.

§ 2.126 [Amended]

25. In § 2.126, paragraph (c) is amended by removing the words “AC Regional Director” each time they appear and adding the words “Deputy Administrator” in their place.

26. Section 2.127 is revised to read as follows:

§ 2.127 Publication of lists of persons subject to the provisions of this part.

APHIS will publish on its website lists of persons licensed or registered in accordance with the provisions of this part. The lists may also be obtained upon request from the Deputy Administrator.

§ 2.132 [Amended]

27. In § 2.132, the OMB citation at the end of the section is amended by removing the number “0579-0254” and adding the number “0579-0036” in its place.

§ 2.150 [Amended]

28. Section 2.150 is amended as follows:

a. By removing the words “continental United States or Hawaii” each time they appear and adding the word “States” in their place;

b. In paragraph (a), by removing the words “, research, or veterinary treatment”; and

c. In paragraph (c)(8), by adding the words “resale for” immediately before the words “research purposes”.

§ 2.151 [Amended]

29. Section 2.151 is amended as follows:

a. By removing the words “continental United States or Hawaii” each time they appear and adding the word “States” in their place;

b. In paragraph (a) introductory text, by removing the words “, research, or veterinary treatment”;

c. In paragraph (b)(1), by adding the words “resale for” immediately before the words “use in research, tests, or experiments at a research facility”; and

d. In paragraph (b)(2) introductory text, by adding the words “and subsequent resale” immediately after the words “for veterinary treatment by a licensed veterinarian”.

§ 2.152 [Amended]

30. Section 2.152 is amended by removing the words “continental United States or Hawaii” and adding the word “States” in their place.

§ 2.153 [Amended]

31. Section 2.153 is amended as follows:

a. By removing the words “continental United States or Hawaii” both times they appear and adding the word “States” in their place; and

b. By adding the words “or the Act” immediately after the words “this subpart”.

PART 3—STANDARDS

32. The authority citation for part 3 continues to read as follows:

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

§ 3.6 [Amended]

33. In § 3.6, paragraphs (b)(5) and (c)(3) are amended by removing the citations “§ 3.14 of this subpart” and “§ 3.14(a)(6) of this subpart” and adding the citations “§ 3.15” and “§ 3.15(a)(6)” in their places, respectively.

34. Section 3.10 is revised to read as follows:

§ 3.10 Watering.

(a) Potable water must be continuously available to the dogs, unless restricted by the attending veterinarian or except as provided in § 3.17(a).

(b) If potable water is not continuously available to the cats, it must be offered to the cats as often as necessary to ensure their health and well-being, but not less than twice daily for at least 1 hour each time, unless restricted by the attending veterinarian.

(c) Water receptacles must be kept clean and sanitized in accordance with § 3.11(b) and before being used to water a different dog or cat or a different social grouping of dogs or cats.

§§ 3.13 through 3.19 [Redesignated as §§ 3.14 through 3.20]

35. Sections 3.13 through 3.19 are redesignated as §§ 3.14 through 3.20, respectively.

36. New § 3.13 is added to read as follows:

§ 3.13 Veterinary care for dogs.

(a) Each dealer, exhibitor, and research facility must follow an appropriate program of veterinary care for dogs that is developed, documented in writing, and signed by the attending veterinarian. Dealers, exhibitors, and research facilities must keep and maintain the written program and make it available for APHIS inspection. The written program of veterinary care must address the requirements for adequate veterinary care for every dealer and exhibitor in

§ 2.40 of this subchapter and every research facility in § 2.33 of this subchapter, and must also include:

(1) Regularly scheduled visits, not less than once every 12 months, by the attending veterinarian to all premises where animals are kept, to assess and ensure the adequacy of veterinary care and other aspects of animal care and use;

(2) A complete physical examination from head to tail of each dog by the attending veterinarian not less than once every 12 months;

(3) Vaccinations for contagious and/or deadly diseases of dogs (including rabies, parvovirus and distemper) and sampling and treatment of parasites and other pests (including fleas, worms, coccidia, giardia, and heartworm) in accordance with a schedule approved by the attending veterinarian, unless otherwise required by a research protocol approved by the Committee at research facilities; and

(4) Preventative care and treatment to ensure healthy and unmatted hair coats, properly trimmed nails, and clean and healthy eyes, ears, skin, and teeth, unless otherwise required by a research protocol approved by the Committee at research facilities.

(b) Dealers, exhibitors, and research facilities must keep copies of medical records for dogs and make the records available for APHIS inspection. These records must include:

(1) The identity of the animal, including identifying marks, tattoos, or tags on the animal and the animal's breed, sex, and age; *Provided*, however, that routine husbandry, such as vaccinations, preventive medical procedures, or treatments, performed on all animals in a group (or herd), may be kept on a single record;

(2) If a problem is identified (such as a disease, injury, or illness), the date and a description of the problem, examination findings, test results, plan for treatment and care, and treatment procedures performed, when appropriate;

(3) The names of all vaccines and treatments administered and the dates of administration; and

(4) The dates and findings/results of all screening, routine, or other required or recommended test or examination.

(c) Medical records for dogs shall be kept for the following periods:

(1) The medical records for dogs shall be kept and maintained by the research facility for the duration of the research activity and for an additional 3 years after the dog is euthanized or disposed of, and for any period in excess of 3 years as necessary to comply with any applicable Federal, State, or local law.

(2) The medical records for dogs shall be kept and maintained by the dealer or exhibitor for at least 1 year after the dog is euthanized or disposed of and for any period in excess of 1 year as necessary to comply with any applicable Federal, State, or local law.

(3) Whenever the Administrator notifies a research facility, dealer, or exhibitor in writing that specified records shall be retained pending completion of an investigation or proceeding under the Act, the research facility, dealer, or exhibitor shall hold those records until their disposition is authorized by the Administrator.

(Approved by the Office of Management and Budget under control number 0579-0470)

§ 3.14 [Amended]

37. Newly redesignated § 3.14 is amended as follows:

a. In paragraph (c) introductory text, by removing the citation “§ 3.16 of this subpart” and adding the citation “§ 3.17” in its place;

b. In paragraph (d), by removing the citation “§ 3.14 of this subpart” and adding the citation “§ 3.15” in its place; and

c. In paragraph (e) introductory text:

i. In the first sentence, by removing the citation “§§ 3.18 and 3.19 of this subpart” both times it appears and adding the citation “§§ 3.19 and 3.20” in its place; and

ii. In the second sentence, by removing the citations “§ 3.18” and “§ 3.19” and adding the citations “§ 3.19” and “§ 3.20” in their place, respectively.

#### § 3.15 [Amended]

38. In newly redesignated § 3.15, paragraph (h) is amended by removing the citation “§ 3.13(c)” and adding the citation “§ 3.14(c)” in its place.

#### § 3.17 [Amended]

39. In newly redesignated § 3.17, paragraph (a) is amended by removing the citation “§ 3.13(c) of this subpart” both times it appears and adding the citation “§ 3.14(c)” in its place.

40. Newly redesignated § 3.18 is amended as follows:

a. In paragraph (a), by removing the citation “§ 3.15(e)” and adding the citation “§ 3.16(e)” in its place;

b. In paragraph (b), by removing the citation “§ 3.15(d)” and adding the citation “§ 3.16(d)” in its place; and

c. In paragraph (d), by adding a paragraph heading and removing the citations “§ 3.14(b) of this subpart” and “§ 3.6 or § 3.14 of this subpart” and adding the citations “§ 3.15(b)” and “§ 3.6 or § 3.15” in their places, respectively.

The addition reads as follows:

§ 3.18 Care in transit.

\* \* \* \* \*

(d) *Removal during transportation in commerce prohibited.* \* \* \*

\* \* \* \* \*

§ 3.19 [Amended]

41. In newly redesignated § 3.19, paragraph (f) is amended by removing the citation “§ 3.13(f) of this subpart” and adding the citation “§ 3.14(f)” in its place.

§ 3.20 [Amended]

42. Newly redesignated § 3.20 is amended as follows:

a. In paragraph (a)(1), by removing the citation “§ 3.18(d) of this subpart” and adding the citation “§ 3.19(d)” in its place; and

b. In paragraph (a)(3), by removing the citations “§ 3.13(e)” and “§ 3.18(d) of this subpart” and adding the citations “§ 3.14(e)” and “§ 3.19(d)” in their places, respectively.

§ 3.61 [Amended]

43. Section 3.61 is amended as follows:

a. In paragraph (b), by removing the word “specie” and adding the word “species” in its place; and

b. In paragraph (f), by removing the word “works” and adding the word “words” in its place.

44. Section 3.78 is amended by revising the section heading to read as follows:

§ 3.78 Outdoor housing facilities.

\* \* \* \* \*

§ 3.110 [Amended]

45. In § 3.110, paragraph (a) is amended by removing the words “it is determined that”.

§ 3.111 [Amended]

46. Section 3.111 is amended by removing the word “regional” in footnote 14.

Done in Washington, DC, this 9th day of April 2020.

Lorren Walker,

Acting Under Secretary for Marketing and Regulatory Programs.

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