

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Office of the Secretary

#### 7 CFR Part 1

[Docket No. 04–102–1]

#### Rules of Practice for Certain Adjudicatory Proceedings Under the Animal Welfare Act Regulations

**AGENCY:** Office of the Secretary, USDA.

**ACTION:** Final rule.

**SUMMARY:** We are amending the administrative regulations of the Office of the Secretary of Agriculture to provide that the rules of practice contained in those regulations shall be applicable to all adjudicatory proceedings under the license denial and termination provisions of the Animal Welfare Act (AWA) regulations. The AWA regulations provide that a person whose license application has been denied or whose license has been terminated may request a hearing in accordance with the applicable rules of practice for the purpose of showing why the application for license should not be denied or the license should not be terminated. This final rule is necessary to clarify the rules of practice that will apply to such hearings.

**EFFECTIVE DATE:** May 12, 2005.

**FOR FURTHER INFORMATION CONTACT:** Dr. Barbara Kohn, Senior Staff Veterinarian, Animal Care, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737–1234; (301) 734–7833.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Animal Welfare Act (AWA) (7 U.S.C. 2131 *et seq.*) authorizes the Secretary of Agriculture to promulgate standards and other requirements governing the humane handling, housing, care, treatment, and transportation of certain animals by

dealers, research facilities, exhibitors, carriers, and intermediate handlers. The Secretary of Agriculture has delegated the responsibility of enforcing the AWA to the Administrator of the Animal and Plant Health Inspection Service. The regulations established under the AWA are contained in title 9 of the Code of Federal Regulations (9 CFR), chapter I, subchapter A, parts 1, 2, and 3. Part 2 (referred to below as the regulations) generally provides administrative requirements and sets forth institutional responsibilities of regulated persons under the AWA. These administrative requirements and institutional responsibilities include the requirements for the licensing and registration of dealers, exhibitors, and research facilities, and standards for veterinary care, identification of animals, and recordkeeping. The provisions pertaining to licensing are contained in “Subpart A—Licensing,” §§ 2.1 through 2.12.

Under the regulations in § 2.1(a)(1), any person operating or intending to operate as a dealer, exhibitor, or operator of an auction sale, except persons who are exempted from the licensing requirements under § 2.1(a)(3) of the regulations, must have a valid license. The regulations in § 2.11(a) provide that a license will not be issued to any applicant who:

- Has not complied with the requirements of §§ 2.1, 2.2, 2.3, and 2.4 and has not paid the fees indicated in § 2.6;
- Is not in compliance with any of the regulations or standards in 9 CFR chapter I, subchapter A;
- Has had a license revoked or whose license is suspended, as set forth in § 2.10;
- Has pled *nolo contendere* (no contest) or has been found to have violated any Federal, State, or local laws or regulations pertaining to animal cruelty within 1 year of application, or after 1 year if the Administrator determines that the circumstances render the applicant unfit to be licensed;
- Is or would be operating in violation or circumvention of any Federal, State, or local laws; or
- 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 AWA.

Under paragraph (b) of § 2.11, an applicant whose license application has been denied may request a hearing in accordance with the applicable rules of practice for the purpose of showing why the application for license should not be denied. The license denial shall remain in effect until the final legal decision has been rendered. Should the license denial be upheld, the applicant may again apply for a license 1 year from the date of the final order denying the application, unless the order provides otherwise.

Similarly, § 2.12 provides that a license may be terminated during the license renewal process or at any other time for any reason that an initial license application may be denied pursuant to § 2.11 after a hearing in accordance with the applicable rules of practice.

Although § 2.11(b) and § 2.12 refer to “the applicable rules of practice,” the regulations do not specify which rules of practice actually apply. In order to clarify this point, we are amending the administrative regulations of the Office of the Secretary in 7 CFR part 1, subpart H, “Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes” (7 CFR 1.130 through 1.151). Specifically, we are amending § 1.131, “Scope and applicability of this subpart,” to provide that the rules of practice contained in subpart H shall be applicable to all adjudicatory proceedings under the license denial and termination provisions of §§ 2.11 and 2.12.

This rule relates to internal agency management. Therefore, this rule is exempt from the provisions of Executive Orders 12866 and 12988. Moreover, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required for this rule, and it may be made effective less than 30 days after publication in the **Federal Register**. In addition, under 5 U.S.C. 804, this rule is not subject to congressional review under the Small Business Regulatory Enforcement

Fairness Act of 1996, Pub. L. 104-121. Finally, this action is not a rule as defined by 5 U.S.C. 601 *et seq.*, the Regulatory Flexibility Act, and thus is exempt from the provisions of that Act.

#### Paperwork Reduction Act

This rule contains no information collections or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### List of Subjects in 7 CFR Part 1

Administrative practice and procedure, Agriculture, Antitrust, Blind, Claims, Concessions, Cooperatives, Equal access to justice, Federal buildings and facilities, Freedom of information, Lawyers, Privacy.

■ Accordingly, we are amending 7 CFR part 1 as follows:

#### PART 1—ADMINISTRATIVE REGULATIONS

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

**Authority:** 5 U.S.C. 301, unless otherwise noted.

#### Subpart H—Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes

■ 2. In § 1.131, paragraph (b) is amended as follows:

■ a. In paragraph (b)(3), by removing the word “and”.

■ b. By redesignating paragraph (b)(4) as paragraph (b)(5) and by adding a new paragraph (b)(4) to read as set forth below.

#### § 1.131 Scope and applicability of this subpart.

\* \* \* \* \*

(b) \* \* \*

(4) Adjudicatory proceedings under the regulations promulgated under the Animal Welfare Act (7 U.S.C. 2131 *et seq.*) for the denial of an initial license application (9 CFR 2.11) or the termination of a license during the license renewal process or at any other time (9 CFR 2.12); and

\* \* \* \* \*

Done in Washington, DC, this 5th day of May, 2005.

**Mike Johanns,**

*Secretary of Agriculture.*

[FR Doc. 05-9444 Filed 5-11-05; 8:45 am]

BILLING CODE 3410-34-P

#### NUCLEAR REGULATORY COMMISSION

#### 10 CFR Part 72

RIN 3150-AH64

#### List of Approved Spent Fuel Storage Casks: HI-STORM 100 Revision; Withdrawal of Direct Final Rule

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Direct final rule; withdrawal.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is withdrawing a direct final rule that would have revised the Holtec International HI-STORM 100 cask system listing within the “List of Approved Spent Fuel Storage Casks” to include Amendment No. 2 to the Certificate of Compliance. The NRC is taking this action because it has received significant adverse comments in response to an identical proposed rule which was concurrently published with the direct final rule.

**FOR FURTHER INFORMATION CONTACT:** Jayne M. McCausland, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415-6219 (e-mail: [jmm2@nrc.gov](mailto:jmm2@nrc.gov)).

**SUPPLEMENTARY INFORMATION:** On February 28, 2005 (70 FR 9504), the NRC published in the **Federal Register** a direct final rule amending its regulations in 10 CFR 72.214 to revise the Holtec International HI-STORM 100 cask system listing within the “List of Approved Spent Fuel Storage Casks” to include Amendment No. 2 to the Certificate of Compliance. Amendment No. 2 modifies the present cask system design to include changes to materials used in construction, changes to the types of fuel that can be loaded, changes to shielding and confinement methodologies and assumptions, revisions to various temperature limits, changes in allowable fuel enrichments, and other changes to reflect current NRC staff guidance and use of industry codes. The direct final rule was to become effective on May 16, 2005. The NRC also concurrently published an identical proposed rule on February 28, 2005 (70 FR 9550).

In the February 28, 2005, direct final rule, NRC stated that if any significant adverse comments were received, a notice of timely withdrawal of the direct final rule would be published in the **Federal Register**. As a result, the direct final rule would not take effect.

The NRC received significant adverse comment on the direct final rule; therefore, the NRC is withdrawing the

direct final rule. As stated in the February 28, 2005, direct final rule, NRC will address the comments received on the February 28, 2005, companion proposed rule in a subsequent final rule. The NRC will not initiate a second comment period on this action.

Dated at Rockville, Maryland, this 5th day of May, 2005.

For the Nuclear Regulatory Commission.

**William Borchardt,**

*Acting Executive Director for Operations.*

[FR Doc. 05-9448 Filed 5-11-05; 8:45 am]

BILLING CODE 7590-01-P

#### DEPARTMENT OF TRANSPORTATION

#### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2005-20379; Directorate Identifier 2004-NM-174-AD; Amendment 39-14078; AD 2005-10-01]

RIN 2120-AA64

#### Airworthiness Directives; Airbus Model A310 Series Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for all Airbus Model A310 series airplanes. This AD requires measuring the clearance between the compensator and the guide assembly of probe no. 1 on the outboard fuel tanks, and performing corrective actions if necessary. This AD is prompted by the results of fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent interference between the compensator and the guide assembly of probe no. 1, which could create an ignition source that could result in a fire or explosion.

**DATES:** This AD becomes effective June 16, 2005.

The incorporation by reference of a certain publication listed in the AD is approved by the Director of the Federal Register as of June 16, 2005.

**ADDRESSES:** For service information identified in this AD, contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France.

**Docket:** The AD docket contains the proposed AD, comments, and any final disposition. You can examine the AD docket on the Internet at <http://dms.dot.gov>, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The