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Regulatory Analysis and Development
PPD, APHIS - Station 3A-03.8
4700 River Road Unit 118
Riverdale, MD 20737-1238

RE: Docket No. APHIS -2006-0159

To Whom It May Concern:

The American Physiological Society is pleased to offer comments on the proposed new rule to add contingency planning and personnel training requirements with respect to all animals regulated under the Animal Welfare Act. The proposed rule, described as an effort to apply lessons learned from the Federal response to Hurricane Katrina, is intended to “heighten the awareness of licensees and registrants regarding their responsibilities and help ensure a timely and appropriate response should an emergency or disaster occur.”

The APS concurs that all research facilities should undertake contingency planning for a variety of emergencies and disasters. However, we have serious concerns about how APHIS proposes to implement planning and training requirements. The APS supports the discussion of these concerns as eloquently expressed in the comments made by the National Association for Biomedical Research (NABR), the Council on Government Relations (COGR), and Charles River Laboratories.

The proposed rule would require research facilities, dealers, exhibitors, intermediate handlers, and carriers to “develop, document, and follow an appropriate plan to provide for the humane handling, treatment, transportation, housing, and care of their animals in the event of an emergency or disaster (one which could reasonably be anticipated and expected to be detrimental to the good health and well-being of the animals in their possession).”¹ According to the proposed rule, contingency plans should:

1. Identify situations that might require a contingency plan
2. Outline specific tasks that would be required
3. Identify the chain of command and who will execute each task in the plan
4. Explain how the necessary materials, resources and training will be provided

In its comments, NABR outlines a number of concerns that must be addressed before APHIS finalizes the proposal. The highlights of these concerns include:

¹ 73 Fed. Reg. 63089 (2008).

What constitutes an adequate contingency plan? APHIS acknowledged in its *Federal Register* notice that because of differences in individual circumstances among the various licensed and regulated facilities, it is “difficult to go into specific detail as to what elements must be included in all contingency plans.” However, this necessary vagueness means that there are no objective criteria either for the development of a plan or for APHIS inspectors to assess their adequacy.

How will the proposed rule distinguish between contingency planning for emergencies and natural disasters? It is one thing to plan for an emergency such as a power outage or equipment failure. It is something else again to plan for massive natural disasters such as hurricanes, flooding, wildfires, or earthquakes. NABR suggests that the rule should acknowledge the difference in kind and scale between these kinds of events: “Many unforeseen events can occur during a natural disaster and often circumstances change with little notice to decision makers.”

The training requirements proposed in the rule are excessively broad and overly burdensome. Training should be required only for employees with a designated role in carrying out the contingency plan.

Intermediate handlers and carriers should be excluded from the requirements of this rule. There is little benefit to be gained from imposing disaster planning requirements on these entities. Carriers have the option to stop service to areas subject to predictable disasters such as weather-related emergencies. On the other hand, there is little that these entities can do to avoid unpredictable disasters such as earthquakes. Meanwhile, other regulations already address other potential emergency situations unrelated to natural disasters. As noted by both NABR and Charles River, the net effect of this regulation could be that carriers become unwilling to provide transportation of regulated species.

The proposed rule should provide exemptions for entities already subject to state contingency planning requirements.

COGR also raises several important points. COGR notes that while most research institutions have “plans that address a variety of emergencies and/or threats to the staff facilities and animals,” such plans should not be an AWA requirement. COGR questions how APHIS inspectors can judge the adequacy of contingency plans based upon limited knowledge of facilities’ operations and institutions’ arrangements with first responders.

Both COGR and NABR point out that the phrase “situations the facility might experience” creates an impossible planning burden. COGR suggests that a more reasonable standard would be to make provisions for situations a facility would be “likely to experience” and notes that for many facilities, the list of likely threats also includes break-ins by animal rights extremists. COGR points out that making contingency plans an AWA requirement and having APHIS inspectors review them would result in public disclosure of sensitive information about emergency procedures. This creates the possibility that extremists might use this information in ways that might compromise an institution’s ability to protect the animals, staff and facilities.

COGR also believes that APHIS has underestimated the costs associated with the proposed rule. As COGR observed, while the costs of developing a plan may be minimal since many such plans already exist, “the costs for training will be significant going beyond the cost of conducting the training to include maintaining documentation of the training” – especially since this is a process that will have to be repeated annually if any changes are made to the plan.

Finally, COGR points out the complexity of the lessons to be learned from recent natural disasters: that man-made protections can fail; that effective response depends upon accurate and timely information; and that, in the final analysis, the first priority must be to minimize harm and injury to human beings. As COGR states in its comments, “Placing new, burdensome requirements in the regulations will not enhance the humane care, use and protection of animals in the face of natural disasters. Good information and time to execute a plan are the key elements to avoid catastrophic consequences.”

The APS urges USDA to keep these considerations in mind as it determines how to proceed with this regulation.

Sincerely,

A handwritten signature in black ink, appearing to read "Irving H. Zucker". The signature is written in a cursive style with a large, sweeping initial 'I'.

Irving H. Zucker, PhD
President