

import more than 50 percent of the volume of honey produced or imported by those voting in the referendum.

In accordance with the Paperwork Reduction Act of 1995 [Pub. L. 104-13], the referendum ballot has been approved by the Office of Management and Budget (OMB) and has been assigned OMB number 0581-0093. It is estimated that there are 8,300 producers, 510 producer-packers, and 350 importers who will be eligible to vote in the referendum. It will take an average of 15 minutes for each voter to read the voting instructions and complete the referendum ballot.

#### Referendum Order

It is hereby directed that a referendum be conducted among eligible producers, producer-packers, and importers to determine whether they favor the continuance of the Order. The representative period for establishing voter eligibility for the referendum shall be the period from January 1, 1994, through December 31, 1995. A referendum shall be conducted by mail ballot from August 1 through 30, 1996.

Section 13(d)(1) of the act provides that the Secretary shall conduct a referendum to determine if honey producers and importers favor the termination or suspension of the Order. Therefore, voters will vote on whether the program will continue. Section 13(d) also provides that the Secretary shall suspend or terminate the Order if termination or suspension is favored by a majority of the producers and importers voting in the referendum and that the producers and importers comprising this majority produce or import more than 50 percent of the volume of honey produced or imported by those voting in the referendum.

Richard Schultz and Martha B. Ransom, Research and Promotion Branch, Fruit and Vegetable Division, Agricultural Marketing Service, P.O. Box 96456, Department of Agriculture, Washington, DC 20090-6456, are designated as the referendum agents of the Secretary to conduct this referendum. The Procedure for the Conduct of Referenda in Connection with the Honey Research, Promotion, and Consumer Information Order [7 CFR 1240.200-1240.207] shall be used to conduct the referendum.

Ballots to be cast in the referendum, and any related material relevant to the referendum, will be mailed by the referendum agents to all known producers, producer-packers, and importers. Persons who have produced, produced and handled, or imported honey or honey products during the representative period are eligible to

vote. Persons who have received an exemption from assessment for the entire representative period are ineligible to vote. Any eligible producer, producer-packer, or importer who does not receive a ballot and related material should immediately contact the referendum agents.

#### List of Subjects in 7 CFR Part 1240

Advertising, Agricultural research, Honey, Imports, Reporting and recordkeeping requirements.

Authority: 7 U.S.C. 4601-4612.

Dated: June 26, 1996.

Kenneth C. Clayton,

*Acting Administrator.*

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BILLING CODE 3410-02-P

### Animal and Plant Health Inspection Service

#### 9 CFR Parts 1 and 3

[Docket No. 95-078-1]

RIN 0579-AA74

#### Humane Treatment of Dogs and Cats; Tethering and Temperature Requirements

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

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to amend the regulations for the humane treatment of dogs and cats under the Animal Welfare Act by removing the provisions for tethering dogs as a means of primary enclosure. We are also proposing to amend the regulations by revising the temperature requirements for indoor, sheltered, and mobile and traveling housing facilities, and for primary conveyances used in transportation, to require that the ambient temperature must never exceed 90 °F (32.2 °C) when dogs or cats are present. We are taking these actions because our experience in enforcing the Animal Welfare Act has led us to conclude that tethering dogs as a means of primary enclosure is not a humane practice. Also, temperatures exceeding 90 °F can be harmful to dogs and cats. These actions will help ensure that dogs and cats in facilities regulated under the Animal Welfare Act will be treated in a humane manner.

**DATES:** Consideration will be given only to comments received on or before September 3, 1996.

**ADDRESSES:** Please send an original and three copies of your comments to Docket No. 95-078-1, Regulatory Analysis and Development, PPD,

APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comments refer to Docket No. 95-078-1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690-2817 to facilitate entry into the comment reading room. **FOR FURTHER INFORMATION CONTACT:** Mr. Stephen Smith, Staff Animal Health Technician, REAC, APHIS, suite 6D02, 4700 River Road Unit 84, Riverdale, MD 20737-1234, (301) 734-4972.

#### SUPPLEMENTARY INFORMATION:

##### Background

Under the Animal Welfare Act (AWA)(7 U.S.C. 2131 *et seq.*) the Secretary of Agriculture is authorized to promulgate standards and other requirements governing the humane handling, housing, care, treatment, and transportation of certain animals by dealers, research facilities, exhibitors, and carriers and intermediate handlers. Regulations established under the Act are contained in 9 CFR parts 1, 2, and 3. Subpart A of 9 CFR part 3 (referred to below as the regulations) contains requirements concerning dogs and cats.

Recently, the Animal and Plant Health Inspection Service (APHIS) hosted public meetings in Kansas City and St. Louis, MO, and in Washington, DC, to gather information on the regulations in 9 CFR part 3, subpart A, that apply to the care of dogs and cats in the commercial pet trade. People attending the meetings included representatives of animal protection organizations and members of affected industries, such as dealers, research facilities, and commercial animal transporters.

Each meeting was divided into four workshops covering specific topic areas: (1) space requirements for primary enclosures, including room for exercise; (2) sanitation, materials, flooring, and construction of primary enclosures; (3) veterinary care and breeding frequency; and (4) transportation by land and air. APHIS has considered all of the recommendations and opinions expressed by participants of these workshops at each of the meetings, as well as APHIS' own experience in enforcing the Act, in developing this proposal on tethering and temperature requirements. There were many recommendations expressed in the workshops on issues closely related to what we are proposing in this

document, as well as recommendations on issues other than tethering and temperature requirements. APHIS is continuing to review and analyze all the recommendations received, and will initiate additional rulemaking for any changes deemed appropriate.

#### Tethering of Dogs

Currently, the regulations provide that dogs in outside housing facilities regulated under the AWA may be kept on tethers as a means of primary enclosure. Primary enclosure is defined in 9 CFR part 1 to mean:

(A)ny structure or device used to restrict an animal or animals to a limited amount of space, such as a room, pen, run, cage, compartment, pool, hutch, or tether. In the case of animals restrained by a tether (e.g., dogs on chains), it includes the shelter and the area within reach of the tether.

A dog whose primary enclosure is a tether would be attached to the tether almost all of the time, except when it is allowed off of the tether for exercise or other activities. The regulations require that a dog on a tether must have a shelter (such as a dog house or other structure) and the tether must allow the dog access to the shelter and to food and water containers. The housing area where the dog is tethered must be surrounded by a perimeter fence of sufficient height to keep out unwanted animals.

Our experience in enforcing the AWA has led us to conclude that continuous confinement of dogs by a tether is inhumane. A tether significantly restricts the dog's movement. A tether can also become tangled around or hooked on the dog's shelter structure or other objects, further restricting the dog's movement and potentially causing injury. We are proposing to remove the option for facilities to use tethering as a means of primary enclosure. We would remove all references to tethering from the definition of primary enclosure in 9 CFR part 1, and we would remove the provisions for tethering as a means of primary enclosure from the regulations in 9 CFR part 3. Facilities would still have a number of primary enclosure options available to them, such as a cage or a fenced-in run.

#### Temperature

The regulations for indoor housing facilities, sheltered housing facilities, and mobile or traveling housing facilities that are regulated under the AWA provide that the ambient temperature in the facilities may not exceed 85 °F (29.5 °C) for more than 4 consecutive hours when dogs or cats are present. The regulations also provide that when any person subject to the

AWA transports dogs or cats, the cargo spaces in primary conveyances (motor vehicle, rail, and marine) and the holding areas in the terminal facilities (such as at airports, rail stations, or maritime ports) may not exceed 85 °F (29.5 °C) for more than 4 consecutive hours when dogs or cats are present. The regulations for air transportation provide that cargo areas must be heated or cooled as necessary to maintain an ambient temperature that ensures the health and well-being of the dogs or cats held there.

The regulations do not specify a maximum temperature at which dogs or cats may be held for up to 4 hours. Because there is no maximum temperature restriction in the regulations, it is conceivable that a dog or cat could be exposed to extremely high temperatures for up to 4 hours. Temperatures exceeding 90 °F can be harmful to dogs and cats even if they are exposed to those temperatures for less than 4 hours.

In the case of air transportation, there is no maximum temperature specified to which dogs or cats can be exposed, even for over 4 hours. Although the regulations do state that any cargo area where dogs or cats are held must be cooled as necessary to maintain an ambient temperature that ensures the health and well-being of the dogs or cats held there, there have been incidents where dogs or cats were exposed to extremely high temperatures during air travel. Such exposure resulted in serious harm or, in some cases, death to those animals.

For these reasons, we are proposing to require that the ambient temperature in indoor housing facilities, sheltered housing facilities, mobile or traveling housing facilities, primary conveyances (motor vehicle, rail, air, and marine), and terminal facilities must never rise above 90 °F (32.2 °C) when dogs or cats are present.

Licensed dog and cat dealers and transporters of dogs and cats would have several alternative methods of complying with this proposal. They could install air conditioning or electric fans to cool the air inside the facilities and conveyances. Dog and cat dealers could also comply by establishing outdoor shelters, which are not subject to temperature requirements, or providing animals in sheltered housing facilities with outdoor runs where they are not already available. Outdoor shelters and runs provide the dogs and cats with access to fresh air, air movement (breezes and winds), shade (required by the regulations), and other climatic and environmental factors which help to alleviate suffering from

high temperatures. Also, humidity levels can become unbearable in enclosed facilities where the temperature exceeds 90 °F. Suffering from humidity levels outdoors, even when the temperature is above 90 °F, is usually mitigated by other climatic factors, as described above.

#### Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The 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.

In accordance with 5 U.S.C. 603, we have performed an Initial Regulatory Flexibility Analysis, which is set out below, regarding the impact of this rule on small entities. However, we do not currently have all the data necessary for a comprehensive analysis of the effects of this rule on small entities. Therefore, we are inviting comments concerning potential effects. In particular, we are interested in determining the number and size of licensed facilities that would have to make changes to comply with the proposed temperature requirements, and the kind of change those licensees would likely choose in order to comply (for example, installing air conditioning or constructing outdoor facilities).

Under the Animal Welfare Act (7 U.S.C. 2131 *et seq.*) the Secretary of Agriculture is authorized to promulgate standards and other requirements governing the humane handling, housing, care, treatment, and transportation of certain animals by dealers, research facilities, exhibitors, and carriers and intermediate handlers.

This proposed rule would eliminate the use of tethering as a means of primary enclosure for dogs, and would affect Class A and Class B licensed dog dealers. Over 95 percent of Class A and Class B licensed dog dealers are considered small businesses.

There is no information available on the actual number of Class A and Class B licensed dog dealers who use tethering as a means of primary enclosure. However, kennels and cages are currently the preferred means of primary enclosure, with tethering sometimes used as a temporary restraint. Tethering is no longer a generally accepted practice within the dog dealer industry, and some industry groups prohibit their members from using tethering as a means of permanent restraint. Therefore, we do not expect this proposal to have a significant impact on dog dealers, large or small, because tethering as a means of primary

enclosure is rarely, if ever, utilized by Class A and Class B licensed dog dealers.

This proposed rule would also revise the temperature requirements for indoor, sheltered, and mobile and traveling housing facilities, and for primary conveyances used in transportation, to state that the ambient temperature must never exceed 90 °F (32.2 °C) when dogs or cats are present. This temperature requirement would affect Class A and Class B licensed dog and cat dealers. Currently, the regulations state (except for air transportation) that the ambient temperature in a facility, holding area, or cargo space must not exceed 85 °F (29.5 °C) for more than 4 consecutive hours. The regulations for air transportation provide that cargo areas must be heated or cooled as necessary to maintain an ambient temperature that ensures the health and well-being of the dogs or cats held there.

There are currently a total of 4,325 licensed dog and cat dealers (over 95 percent of which are considered small businesses, as stated previously). We do not know precisely how many of these house only dogs and/or cats, but it is probably close to 90 percent or more. We expect that the additional temperature requirement would impact Class A and Class B licensed dog and cat dealers mainly in the States of Arkansas, Missouri, Kansas, Oklahoma, and Iowa. These are States in which there is a high concentration of Class A and Class B licensed dog and cat dealers (approximately 2,326 dealers), and in which the temperatures can be highly variable in the summer months, with many days reaching temperatures above 90 °F. In most cases, if a dealer has been able to comply with the requirement that the ambient temperature in the facility must not exceed 85 °F for more than 4 consecutive hours, they would likely be able to comply with this proposal without any additional expense. We estimate that at least 85 percent of potentially affected entities are already in compliance with the temperature requirements in this proposed rule.

However, if a dealer finds that he or she is not prepared to meet the new requirement, the cost of compliance would depend on what method the dealer chooses to cool the facility. For indoor and sheltered housing facilities, the alternatives would most likely include: (1) Installation of air conditioning. Installation of air conditioning could cost between \$1,000 and \$3,000 per unit, and operational expenditures for electricity could range between \$200 to \$500 per year; (2)

Installation of electric fans. Installation of electric fans could cost between \$300 and \$500 per unit, and operational expenditures for electricity could range between \$100 to \$300 per year; (3) Establishing outdoor shelters, which are not subject to temperature requirements. We estimate that it would cost \$17.00 to \$29.00 to establish an outdoor facility for a single medium-sized dog that would meet the minimum requirements of the regulations (based on 18 feet of chain-link fence at \$.40 to \$.50 per foot, a \$20 to \$30 commercial dog house, and \$10 to \$20 in labor); or (4) Providing dogs and cats in sheltered housing facilities with outdoor runs where they are not already available. We estimate that it would cost \$8.60 to \$22.50 to construct an outdoor run for a single medium-sized dog that would meet the minimum requirements of the regulations (based on 9 to 15 feet of chain-link fence at \$.40 to \$.50 per foot plus \$5.00 to \$15.00 in labor).

All these cost estimates could vary considerably depending on the number of animals housed in the facility, the quality of the materials used in construction, and the adaptability of existing structures. Because most dog and cat dealers are small businesses, the cost of installing air conditioning may comprise a significant portion of their overall operational expenses. It is anticipated that the affected dealers would choose the less costly alternatives of installing electric fans or establishing outdoor shelters or runs.

We do not expect that this proposal would impact transporters of dogs and cats. Most transporters (motor vehicle, rail, air, and marine) already have the capacity to provide adequate ventilation and/or air conditioning for animals in their cargo areas and holding facilities. The majority of dog and cat deaths from extremely high temperatures in cargo areas or holding facilities have been due to human error. This proposal would help ensure that transporters utilize their existing capacity to maintain a healthy temperature range for the animals they transport, and would not likely require transporters to install additional cooling systems.

The alternative to this proposed rule would be to make no changes to the temperature and tethering requirements in the regulations. After consideration, we rejected this alternative because we believe that tethering dogs as a means of primary enclosure is not a humane practice, and because temperatures exceeding 90 °F can be harmful to dogs and cats.

This proposed rule contains no paperwork or recordkeeping requirements.

#### Executive Order 12372

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

#### Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. The Act does not provide administrative procedures which must be exhausted prior to a judicial challenge to the provisions of this rule.

#### Paperwork Reduction Act

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

#### List of Subjects

##### 9 CFR Part 1

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

##### 9 CFR Part 3

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

Accordingly, 9 CFR parts 1 and 3 would be amended as follows:

#### PART 1—DEFINITION OF TERMS

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

Authority: 7 U.S.C. 2131–2159; 7 CFR 2.22, 2.80, and 371.2(g).

2. In § 1.1, the definition for *primary enclosure* would be revised to read as follows:

##### § 1.1 Definitions.

\* \* \* \* \*

*Primary enclosure* means any structure or device used to restrict an animal or animals to a limited amount of space, such as a room, pen, run, cage, compartment, pool, or hutch.

\* \* \* \* \*

#### PART 3—STANDARDS

3. The authority citation for part 3 would continue to read as follows:

Authority: 7 U.S.C. 2131–2156; 7 CFR 2.22, 2.80, and 371.2(d).

##### §§ 3.2, 3.3, and 3.5 [Amended]

4. In §§ 3.2, 3.3, and 3.5, paragraph (a) of each section would be amended by

adding a new identical sentence at the end of each paragraph to read as set forth below:

(a)\* \*\* The ambient temperature in the facility must never rise above 90 °F (32.2 °C) when dogs and cats are present.

\* \* \* \* \*

### § 3.6 [Amended]

5. Section 3.6 would be amended by removing paragraph (c)(2), and by redesignating paragraphs (c)(3) and (c)(4) as paragraphs (c)(2) and (c)(3), respectively.

6. In § 3.15, paragraphs (d) and (e) would be revised to read as follows:

#### § 3.15 Primary conveyances (motor vehicle, rail, air, and marine).

\* \* \* \* \*

(d) During air transportation, dogs and cats must be held in cargo areas that are heated and cooled as necessary to maintain an ambient temperature that ensures the health and well-being of the dogs or cats. The ambient temperature in the cargo areas must never rise above 90 °F (32.2 °C) when dogs or cats are present. The cargo areas must be pressurized when the primary conveyance used for air transportation is not on the ground, unless flying under 8,000 ft. Dogs and cats must have adequate air for breathing at all times when being transported.

(e) During surface transportation, the ambient temperature within any animal cargo space containing live dogs or cats must never rise above 90 °F (32.2 °C). Moreover, auxiliary ventilation, such as fans, blowers, or air conditioning, must be used when the ambient temperature within the animal cargo space reaches 85 °F (29.5 °C). The ambient temperature must not exceed 85 °F (29.5 °C) for more than 4 consecutive hours, nor fall below 45 °F (7.2 °C) for more than four consecutive hours.

\* \* \* \* \*

7. In § 3.18, paragraph (d) would be revised to read as follows:

#### § 3.18 Terminal facilities.

\* \* \* \* \*

(d) *Temperature.* The ambient temperature in an animal holding area containing live dogs or cats must not fall below 45 °F (7.2 °C) or rise above 85 °F (29.5 °C) for more than 4 consecutive hours at any time dogs or cats are present. The ambient temperature in the animal holding area must never rise above 90 °F (32.2 °C) when dogs or cats are present.

\* \* \* \* \*

Done in Washington, DC, this 27th day of June 1996.

Terry L. Medley

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

[FR Doc. 96-16871 Filed 7-1-96; 8:45 am]

BILLING CODE 3410-34-P

### 9 CFR Part 3

[Docket No. 95-100-1]

RIN 0579-AA78

#### Humane Treatment of Dogs and Cats; Wire Flooring

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

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to amend the requirements for the humane treatment of dogs and cats under the Animal Welfare Act to require that if the floor of a primary enclosure for dogs or cats is constructed of wire, the wire must be coated with a material such as plastic or fiberglass. Coated wire has a larger diameter than bare wire, and is therefore more comfortable on animals' feet. Coated wire is also not susceptible to rust, improving the floor's structural strength and making it easier to clean and sanitize than bare wire flooring. We believe that requiring coated wire to be used for wire floors in primary enclosures would improve comfort for dogs and cats housed in wire-floored enclosures, would help eliminate foot injuries, and would ensure that wire flooring for dogs and cats is clean and sanitary.

**DATES:** Consideration will be given only to comments received on or before September 3, 1996.

**ADDRESSES:** Please send an original and three copies of your comments to Docket No. 95-100-1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comments refer to Docket No. 95-100-1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690-2817 to facilitate entry into the comment reading room.

**FOR FURTHER INFORMATION CONTACT:** Mr. Stephen Smith, Staff Animal Health Technician, REAC, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737-1234, (301) 734-4972.

#### SUPPLEMENTARY INFORMATION:

##### Background

Under the Animal Welfare Act (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, housing, care, treatment, and transportation of certain animals by dealers, research facilities, exhibitors, and carriers and intermediate handlers. Regulations established under the Act are contained in 9 CFR parts 1, 2, and 3. Subpart A of 9 CFR part 3 (referred to below as the regulations) contains specific standards for the humane handling, care, treatment, and transportation of dogs and cats.

Recently, the Animal and Plant Health Inspection Service (APHIS) hosted public meetings in Kansas City and St. Louis, MO, and in Washington, DC, to gather information on the regulations in 9 CFR part 3, subpart A, that apply to the care of dogs and cats in the commercial pet trade. People attending the meetings included representatives of animal protection organizations and members of affected industries, such as dealers, research facilities, and commercial animal transporters.

Each meeting was divided into four workshops covering specific topic areas. One of the workshop topic areas concerned sanitation, materials, flooring, and construction of primary enclosures. APHIS has considered all of the recommendations and opinions expressed by participants of this workshop at each of the meetings, as well as APHIS' own experience in enforcing the Act, in developing this proposal on flooring in primary enclosures. There were many recommendations expressed in the workshops on issues other than flooring in primary enclosures. APHIS is continuing to review and analyze all the recommendations received, and will initiate additional rulemaking for any changes deemed appropriate.

Currently, the regulations require that primary enclosures for dogs and cats must, among other things, enable all surfaces in contact with the animals to be readily cleaned and sanitized, or be replaceable when worn or soiled. Primary enclosures must also "(h)ave floors that are constructed in a manner that protects the dogs' and cats' feet and legs from injury, and that, if of mesh or slatted construction, do not allow the dogs' and cats' feet to pass through any openings in the floor. If the floor of the primary enclosure is constructed of wire, a solid resting surface or surfaces that, in the aggregate, are large enough