

the 30th day after publication of this notice in the **Federal Register**.

All written submissions made pursuant to this notice will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b)).

#### Statement of Consideration

The proposed rule would suspend certain portions of the pool plant and producer definitions of the Eastern Colorado order. The proposed suspension would make it easier for handlers to qualify milk for pooling under the order.

The proposed suspension was requested by Mid-America Dairyman, Inc. (Mid-Am), a cooperative association that has pooled milk of dairy farmers on the Eastern Colorado order for several years. Mid-Am has requested the suspension to prevent the uneconomic and inefficient movement of milk for the sole purpose of pooling the milk of producers historically associated with the Eastern Colorado order.

Mid-Am requests, for the months of September 1997 through February 1998, that the limit on the period of automatic pool plant status for a supply plant that met pool shipping standards during the previous September through February period be suspended. This provision has been suspended annually for several years. Mid-Am also requests the suspension of the touch-base and diversion limitation requirements during the months of September 1997 through August 1998. These requirements have been suspended since September 1985.

These provisions have been suspended previously in order to maintain the pool status of producers who have historically supplied the fluid needs of Eastern Colorado distributing plants. Mid-Am asserts that they have made a commitment to meet the fluid requirements of fluid distributing plants if the suspension request is granted. Without the suspension action, Mid-Am contends that it will be necessary to ship milk from distant areas to Denver area bottling plants. This will displace locally produced milk that would then have to be shipped from the Denver area to surplus handling plants.

In addition, Mid-Am maintains that ample supplies of locally produced milk will be available to meet fluid needs without requiring that each producer's milk be received at least three times each month at a pool distributing plant or by restricting the amount of milk that can be diverted to nonpool plants.

#### List of Subjects in 7 CFR Part 1137

Milk marketing orders.

The authority citation for 7 CFR Part 1137 continues to read as follows:

**Authority:** 7 U.S.C. 601-674.

Dated: April 30, 1997.

**Aggie Thompson,**

*Acting Director, Dairy Division.*

[FR Doc. 97-11745 Filed 5-5-97; 8:45 am]

BILLING CODE 3410-02-P

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 9 CFR Part 3

[Docket No. 95-029-1]

#### Animal Welfare; Perimeter Fence Requirements

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

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to amend the Animal Welfare regulations to require that a perimeter fence be placed around the outdoor areas of sheltered housing facilities and outdoor housing facilities for marine mammals and certain other regulated animals. Although it has been our policy that such fences should be in place around sheltered and outdoor housing facilities for such animals, there have been no provisions in the regulations specifically requiring their use. Adding the perimeter fence requirement to the regulations for these additional categories of animals would serve to protect the safety of the animals and provide for their well being.

**DATES:** Consideration will be given only to comments received on or before July 7, 1997.

**ADDRESSES:** Please send an original and three copies of your comments to Docket No. 95-029-1, 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. 95-029-1. 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:** Dr. Barbara Kohn, Staff Veterinarian, Animal Care, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737-1234; (301) 734-7833.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Animal Welfare regulations contained in 9 CFR chapter 1, subchapter A, part 3 (referred to below as "the regulations") provide specifications for the humane handling, care, treatment, and transportation, by regulated entities, of animals covered by the Animal Welfare Act (7 U.S.C. 2131, *et seq.*) (The Act). The regulations in part 3 are divided into six subparts, designated as subparts A through F, each of which contains facility and operating standards, animal health and husbandry standards, and transportation standards for a specific category of animals. These categories are: (A) cats and dogs, (B) guinea pigs and hamsters, (C) rabbits, (D) nonhuman primates, (E) marine mammals, and (F) animals other than cats, dogs, guinea pigs, hamsters, rabbits, nonhuman primates, and marine mammals.

Each of these subparts contains regulations regarding outdoor housing facilities, and subparts A and D contain regulations regarding sheltered housing facilities. However, only subpart D (nonhuman primates) includes a requirement for a perimeter fence surrounding outdoor housing facilities and sheltered housing facilities. Although perimeter fences are not required by the regulations for animals other than nonhuman primates, most facilities do have perimeter fences in place. It has been the policy of the Animal and Plant Health Inspection Service (APHIS) that perimeter fences should be in place at outdoor and sheltered housing facilities for animals other than nonhuman primates, but, as noted above, only the regulations in subpart D require perimeter fences. We now believe that it is necessary to include perimeter fence requirements in subparts E and F in order to protect the safety of marine mammals and certain other animals and to provide for their well-being. We will not be amending subpart A (cats and dogs) or subpart C (rabbits) at this time as most dogs, cats, and rabbits are currently maintained in enclosed kennels or indoors, with the exception of tethered dogs. Tethered dogs are already required to have a perimeter fence. No amendment is needed in subpart B (guinea pigs and hamsters) because outdoor housing for hamsters is prohibited, and any outdoor housing for guinea pigs must be approved in advance by APHIS.

Therefore, we are proposing to amend §§ 3.103 and 3.127 to require that a perimeter fence be placed around the outdoor areas of sheltered housing facilities and outdoor housing facilities

for marine mammals and animals other than cats, dogs, guinea pigs, hamsters, rabbits, nonhuman primates, and marine mammals. With the exception of the proposed 8-foot-fence requirement explained in the following paragraphs, the proposed requirements would serve the same purpose as those currently found in §§ 3.77 and 3.78 for nonhuman primates.

For marine mammals, we propose that the perimeter fence be high enough to reasonably be expected to keep animals and unauthorized persons out of the containment area. If the facility is a sea pen facility, this would mean that a perimeter fence high enough to reasonably be expected to keep animals and unauthorized persons from gaining access to the sea pen from the surrounding land would be installed to encompass the land portion of the facility (from one end of sea pen-shoreline contact, around the land based portion of the facility, to the other end of sea pen-shoreline contact). The perimeter fence would help prevent injury of marine mammals by other animals or persons and would afford the marine mammals protection from exposure to diseases. We believe that for most marine mammals, a perimeter fence should be at least 6 feet high to reasonably be expected to prevent entry of animals and unauthorized persons, and protect against disease exposure. However, in the case of polar bears, we believe that the perimeter fence should be at least 8 feet high to provide an added measure of security for the protection of the bears and the protection of the public. Polar bears are categorized as dangerous animals and will likely attack if provoked. Should the bears escape from captivity, they would be subject to potentially dangerous, or lethal, recapture and control methods. It is in the interest of the welfare of the animal to be contained within the facility, rather than tracked and possibly killed if it escapes from containment. Therefore, we believe that a perimeter fence measuring at least 8 feet in height would act as a secondary containment system and would reduce the possibility that a polar bear would escape from the containment area and be harmed in its recapture or control.

Except for potentially dangerous animals, we propose to require that the perimeter fence for animals other than cats, dogs, guinea pigs, hamsters, rabbits, nonhuman primates, and marine mammals be high enough to reasonably be expected to keep animals and unauthorized persons out of the containment area. For the purposes of this regulation, potentially dangerous

animals include, but are not limited to, large felines (e.g., lions, tigers, leopards, cougars, bobcats, etc.), bears, wolves, elephants, and rhinoceros. This provision would protect the animals from injury by other species and would prevent the animals' exposure to diseases carried by other species. However, as in the case of polar bears, we propose that for potentially dangerous animals covered by the regulations in subpart F, the perimeter fence be a minimum of 8 feet in height to provide an added measure of security for the protection of the animals and the protection of the public. As with polar bears, it is in the interest of the welfare of the animal to be contained within the facility, rather than tracked and possibly killed if it escapes from containment. Therefore, we believe that a perimeter fence measuring at least 8 feet in height would act as a secondary containment system and would reduce the possibility that a potentially dangerous animal would escape from the containment area and be harmed in its recapture or control.

However, we recognize that conditions at a particular facility may allow for the use of a shorter perimeter fence for marine mammals or animals other than cats, dogs, guinea pigs, hamsters, rabbits, nonhuman primates, and marine mammals. The shorter fence would have to be approved by the Administrator. Approval by the Administrator of a shorter perimeter fence would only be given if the alternative security measures offered by the facility would provide the same or better degree of protection from access by animals and unauthorized persons, disease exposure, and animal escape, if applicable.

We are also proposing to require that the perimeter fence be constructed so that it prevents animals the size of dogs, skunks, and raccoons, as well as unauthorized persons, from going through or under the fence. The perimeter fence could be slatted, latticed, or of other similar design, as long as it is designed and constructed in a manner that restricts unauthorized animals and persons from entering the facility or having contact with the animals in the facility and can function as a secondary containment system for the animals in the facility. This provision would help prevent an animal's injury and exposure to disease from unauthorized animals, and would minimize the need to employ potentially harmful or fatal recapture techniques.

We are proposing to require that the perimeter fence be set far enough away from the outside wall or fence of the

primary enclosure to prevent physical contact between animals inside the enclosure and animals and persons outside the perimeter fence. Sufficient space—i.e., at least 3 feet—would also provide enough room to clean and maintain the space between the perimeter fence and the primary enclosure. This provision would offer a "safety zone" for the animals in the facility by ensuring that animals or persons outside of the perimeter fence cannot reach into the enclosure to poke, bite, or otherwise harm a contained animal or expose a contained animal to disease.

However, we recognize that conditions at a particular facility may allow for less space between the perimeter fence and the outside wall or fence of the primary enclosure for marine mammals or animals other than cats, dogs, guinea pigs, hamsters, rabbits, nonhuman primates, and marine mammals. A fence located less than 3 feet away from the outside wall of the primary enclosure would have to be approved by the Administrator. Approval by the Administrator would only be given if the alternative spacing offered by the facility would provide the same or better degree of protection from physical contact between the animals inside the enclosure and animals and persons outside the perimeter fence and would provide the same or better degree of protection from possible escape of a housed animal.

There may be cases in which the conditions at a facility are such that a perimeter fence is not necessary to keep animals and unauthorized persons from entering the facility or from having physical contact with animals in the facility. Therefore, the proposed regulations state that a perimeter fence is not required if the outside walls of the primary enclosure are made of sturdy, durable material, which may include certain types of concrete, wood, plastic, metal, or glass, and are high enough and constructed in a manner that restricts contact with or entry by animals and unauthorized persons that are outside the facility, and the Administrator gives written approval.

Similarly, a perimeter fence would not be required if the facility is surrounded by an effective (i.e., impenetrable) natural barrier that keeps the animals in the facility and protects them from contact with animals and unauthorized persons that are outside of the facility. As a means of ensuring that the natural barrier is inspected and found to be adequate, the operator of the facility would have to obtain written permission from the Administrator to

use a natural barrier instead of a perimeter fence.

We believe that the proposed requirements for perimeter fences would serve to protect the safety of marine mammals and animals other than cats, dogs, guinea pigs, hamsters, rabbits, nonhuman primates, and marine mammals in facilities and would provide for the well-being of such animals.

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

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

This proposed rule would amend the Animal Welfare regulations by requiring that a perimeter fence be placed around the outdoor areas of sheltered housing facilities and outdoor housing facilities for marine mammals and animals other than cats, dogs, guinea pigs, hamsters, rabbits, nonhuman primates, and marine mammals.

Class A and B dealers, Class C exhibitors, registered exhibitors, and research facilities are the entities that would be affected by the proposed perimeter fence requirement. Class A dealers breed and raise animals to sell for research, teaching, or exhibition; Class B dealers include brokers and operators of auctions sales for animals; and Class C licensees and registered exhibitors include exhibitors such as animal acts, carnivals, circuses, and public and roadside zoos. Research facilities include schools, institutions, organizations, or persons who use live animals in research, tests, or experiments.

In 1995, there were 4,325 licensed dealers, 1,968 regulated exhibitors, and 1,300 registered research facilities. According to the Small Business Administration (SBA) size standards, more than 50 percent of zoos are considered large businesses. There are no SBA standards for animal dealers; the number of animals handled and gross sales vary greatly with the type of animals bought and sold by a dealer. Class A and B dealers may deal in exotic animals for private owners and for public exhibition, as well as in animals for biomedical research. There are no uniform SBA standards for research facilities, as the standards are categorized for type of research activities undertaken and/or number of employees. The type of research activities undertaken, type and number of animals used, number of employees,

and operating budget (funding levels, income, etc.) vary greatly from facility to facility.

A 50-yard roll of a 6-foot-high chain link fence would cost approximately \$60 to \$70, and a 50-yard roll of an 8-foot-high fence would cost approximately \$80 to \$100. There is some flexibility as to the type of fence a facility could use, so certain facilities may have a perimeter fence of less expensive material, such as a tightly woven wire. In addition, a fence that is not tall enough to meet the proposed 6-foot or 8-foot height requirement could be modified to meet the standard rather than replaced if a 6- or 8-foot-high fence was necessary for the facility. The size of a perimeter fence for a dealer, exhibitor, or research facility would depend on the size of the facility and type of housing provided, but for almost all facilities, we estimate that perimeter fences represent less than 5 percent of total expenses for the facility.

There are several reasons the impact of the proposed requirement on small businesses would be limited. First, most licensed dealers and regulated exhibitors already meet the proposed perimeter fence requirement. Most research facilities do not utilize sheltered and/or outdoor housing facilities (it is estimated that greater than 90 percent of research facilities are solely indoor facilities), and all research facilities utilizing outdoor housing for nonhuman primates are already required to provide perimeter fencing in accordance with the regulations in subpart D. Second, fencing costs represent only a small portion of a facility's operational costs. Finally, the fencing requirements are relatively flexible and provide for alternatives where appropriate.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

#### **Executive Order 12372**

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

#### **Executive Order 12988**

This proposed rule has been reviewed under Executive Order 12988, 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**

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 95-029-1. Please send a copy of your comments to: (1) Docket No. 95-029-1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737-1238, and (2) Clearance Officer, OIRM, USDA, room 404-W, 14th Street and Independence Avenue SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

This proposed rule would amend the Animal Welfare regulations to require that a perimeter fence be placed around the outdoor areas of sheltered housing facilities and outdoor housing facilities for marine mammals and certain other regulated animals. The proposed rule would provide the opportunity for a facility to request approval from the Administrator to have a shorter perimeter fence or other measures, if that facility already provides the same or better degree of protection from access by animals and unauthorized persons, disease exposure, and animal escape. In order to adequately evaluate and track such requests, the facility must make the request in writing. Facilities not in compliance with the rule must come into compliance or request approval from the Administrator for a shorter fence or other measures. Requests for approval from the Administrator would usually be a one time request. We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection. We need this outside input to help us:

- (1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;
- (2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the

validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses).

*Estimate of burden:* Public reporting burden for this collection of information is estimated to average 2 hours per response.

*Respondents:* Dealers, exhibitors, and research facilities.

*Estimated number of respondents:* 164.

*Estimated number of responses per respondent:* 1.

*Estimated total annual burden on respondents:* 328 hours.

Copies of this information collection can be obtained from: Clearance Officer, OIRM, USDA, room 404-W, 14th Street and Independence Avenue, SW., Washington, DC 20250.

**List of Subjects in 9 CFR Part 3**

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

Accordingly, 9 CFR part 3 would be amended as follows:

**PART 3—STANDARDS**

1. The authority citation for part 3 would be revised to read as follows:

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

2. Section 3.103 would be amended by adding a new paragraph (c) to read as follows:

**§ 3.103 Facilities, outdoor.**

\* \* \* \* \*

(c) *Perimeter fence.* On and after [date 6 months after effective date of final rule] an outdoor facility must be enclosed by a fence that is of sufficient height to keep animals and unauthorized persons out. Fences less than 8 feet high for polar bears or less than 6 feet high for other marine mammals must be approved by the Administrator. The fence must be constructed so that it protects marine mammals by restricting animals and unauthorized persons from going through it or under it and having contact with the marine mammals, and so that it can function as a secondary containment system for the animals in the facility when appropriate. It must be of sufficient distance from the outside

wall or fence of the primary enclosure to prevent physical contact between animals inside the enclosure and animals or persons outside the perimeter fence. Such fences less than 3 feet in distance from the primary enclosure must be approved by the Administrator. For facilities with sea pens, the perimeter fence must prevent access by animals and unauthorized persons to the sea pen from the surrounding land, and would be required to encompass the land portion of the facility from one end of sea pen-shoreline contact to the other end of sea pen-shoreline contact. A perimeter fence is not required if:

(1) The outside walls of the primary enclosure are made of sturdy, durable material, which may include certain types of concrete, wood, plastic, metal, or glass, and are high enough and constructed in a manner that restricts contact with or entry by animals and unauthorized persons that are outside the outdoor facility, and the Administrator gives written approval; or

(2) The outdoor facility is surrounded by an impenetrable natural barrier that restricts the marine mammals to the facility and protects them from contact with animals and unauthorized persons that are outside the facility, and the Administrator gives written approval.

3. Section 3.127 would be amended by adding a new paragraph (d) to read as follows:

**§ 3.127 Facilities, outdoor.**

\* \* \* \* \*

(d) *Perimeter fence.* On or after [date 6 months after effective date of final rule] an outdoor facility must be enclosed by a fence that is of sufficient height to keep animals and unauthorized persons out. Fences less than 8 feet high for potentially dangerous animals, such as, but not limited to, large felines (e.g., lions, tigers, leopards, cougars, bobcats, etc.), bears, wolves, rhinoceros, and elephants, or less than 6 feet high for other animals must be approved by the Administrator. The fence must be constructed so that it protects the animals in the facility by restricting animals and unauthorized persons from going through it or under it and having contact with the animals in the facility, and so that it can function as a secondary containment system for the animals in the facility. It must be of sufficient distance from the outside wall or fence of the primary enclosure to prevent physical contact between animals inside the enclosure and animals or persons outside the perimeter fence. Such fences less than 3 feet in distance from the primary

enclosure must be approved by the Administrator. A perimeter fence is not required if:

(1) The outside walls of the primary enclosure are made of sturdy, durable material, which may include certain types of concrete, wood, plastic, metal, or glass, and are high enough and constructed in a manner that restricts contact with or entry by animals and unauthorized persons that are outside the outdoor facility, and the Administrator gives written approval; or

(2) The outdoor facility is surrounded by an impenetrable natural barrier that restricts the animals in the facility to the facility and protects them from contact with animals and unauthorized persons that are outside the facility, and the Administrator gives written approval.

Done in Washington, DC, this 30th day of April 1997.

**Donald W. Luchsinger,**

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

[FR Doc. 97–11723 Filed 5–5–97; 8:45 am]

BILLING CODE 3410–34–P

**CONSUMER PRODUCT SAFETY COMMISSION**

**16 CFR Part 1015**

**Procedures for Disclosure or Production of Information Under the Freedom of Information Act; Amendments**

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Proposed amendments to rule.

**SUMMARY:** The Electronic Freedom of Information Act Amendments of 1996, which amend the Freedom of Information Act, are designed to make government documents more accessible to the public in electronic form. The amendments are also intended to expedite and streamline the process by which agencies disclose information generally. In this notice, the Commission proposes amendments to its Freedom of Information Act regulations to comply with the requirements of the new statute.

**DATES:** Comments concerning this proposal must be received in the Office of the Secretary no later than July 7, 1997. The amendments are proposed to become effective 30 days after their publication in the **Federal Register** in final form.

**ADDRESSES:** Mail comments concerning this proposal to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or