

subject to the prior approval, and under the supervision of, the Florida Lime Administrative Committee.

(3) The limitations set forth in paragraph (a)(2) of this section shall not apply to master containers of individual packages, including individual bags of limes: *Provided*, That the markings or labels, if any, on such packages do not conflict with the markings or labels on the master container.

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PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

4. Section 915.305, is revised to read as follows:

§ 915.305 Florida Avocado Container Regulation 5.

(a) No handler shall handle any avocados for the fresh market from the production area to any point outside thereof in containers having a capacity of more than 4 pounds of avocados unless the containers meet the requirements specified in this section: *Provided*, That the containers authorized in this section shall not be used for handling avocados for commercial processing into products pursuant to § 915.55(c). All avocados shall be packed in containers of 33, 31, 24, 12, and 8.5 pounds designated net weights and shall conform to all other applicable requirements of this section:

(1) Containers shall not contain less than 33 pounds net weight of avocados, except that for avocados of unnamed varieties, which are avocados that have not been given varietal names, and for Booth 1, Fuchs, Trapp varieties, such weight shall be not less than 31 pounds with respect to each lot of such containers, not to exceed 10 percent, by count, of the individual containers in the lot may fail to meet the applicable specified weight but no container in such lot may contain a net weight of avocados exceeding 2 pounds less than the specified net weight, and each avocado in such container in a lot shall weigh at least 16 ounces, except that not to exceed 10 percent, by count, of the fruit in the lot may fail to meet such weight requirement but not more than double such tolerance shall be permitted for an individual container in the lot; or

(2) Containers shall not contain less than 24 pounds net weight of avocados: *Provided*, That not to exceed 5 percent, by count, of such containers in any lot may fail to meet such weight requirement. All avocados packed at this designated net weight shall be placed in two layers and the net weight of all avocados in any such container

shall not be less than 24 pounds:

Provided, That the requirement as to placing avocados in two layers only shall not apply to such container if each of the avocados therein weighs 14 ounces or less; or

(3) Containers shall not contain less than 12 pounds net weight of avocados: *Provided*, That not to exceed 5 percent, by count, of such containers in any lot may fail to meet such weight requirement. All avocados packed at this designated net weight shall be placed in one layer only and the net weight of all avocados in any such container shall not be less than 12 pounds; or

(4) Containers shall not contain less than 8.5 pounds net weight of avocados: *Provided*, That not to exceed 5 percent, by count, of such containers in any lot may fail to meet such weight requirement. All avocados packed at this designated net weight shall be placed in one layer only and the net weight of all avocados in any such container shall not be less than 8.5 pounds. Such containers shall be for export shipments only.

(5) Such other types and sizes of containers as may be approved by the Avocado Administrative Committee, with the approval of the Secretary, for testing in connection with a research project conducted by or in cooperation with said committee: *Provided*, That the handling of each lot of avocados in such test containers shall be subject to prior approval, and under the supervision of, the Avocado Administrative Committee.

(b) The limitations set forth in paragraph (a) of this section shall not apply to master containers for individual packages of avocados: *Provided*, That the markings or labels, if any, on the individual packages within such master containers do not conflict with the markings or labels on the master container.

5. In § 915.306, paragraph (a)(6) is revised to read as follows:

§ 915.306 Florida avocado grade, pack, and container marking regulation.

(a) * * *

(6) Such avocados when handled in containers authorized under § 915.305, except for those to export destinations, are marked once with the grade of fruit in letters and numbers at least one inch in height on the top or one side of the container, not to include the bottom, effective each fiscal year from the first Monday after July 15 until the first Monday after January 1.

* * * * *

Dated: July 7, 1998.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 3

[Docket No. 98-044-1]

Animal Welfare; Primary Enclosures for Dogs and Cats

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the regulations under the Animal Welfare Act pertaining to primary enclosures for dogs and cats by removing the requirement that primary enclosures with flooring made of mesh or slatted construction include a solid resting surface. This requirement was erroneously added in a recent final rule that amended the requirements for primary enclosures for dogs and cats to prohibit bare wire flooring in such enclosures. However, we do not believe that it is necessary for primary enclosures with acceptable flooring of mesh or slatted construction to include a solid resting surface. Therefore, this action relieves an unnecessary and unintended requirement.

DATES: Interim rule effective July 14, 1998. Consideration will be given only to comments received on or before September 11, 1998.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 98-044-1, 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. 98-044-1. 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, Animal Care, AC, APHIS, 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. The Secretary of Agriculture has delegated the responsibility for enforcing the AWA to the Animal and Plant Health Inspection Service. Regulations established under the AWA 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.

On January 21, 1998, we published in the **Federal Register** a final rule (63 FR 3017-3023, Docket No. 95-100-2, effective February 20, 1998) that amended the regulations pertaining to primary enclosures for dogs and cats. The final rule added two new requirements: (1) If a primary enclosure has a suspended floor made of metal strands, the strands must be greater than $\frac{1}{8}$ of an inch in diameter or coated with a material such as plastic or fiberglass, and (2) any kind of suspended floor in a primary enclosure must be strong enough so that the floor does not bend or sag between the structural supports. In essence, the final rule prohibited the use of bare wire (meaning uncoated metal strands having a diameter of $\frac{1}{8}$ of an inch or less) in suspended flooring of primary enclosures for dogs and cats. We made these changes because we determined that bare wire flooring is uncomfortable for the feet of dogs and cats and contributes to foot injuries and that suspended flooring made of coated wire or of metal strands larger in diameter than wire causes fewer such problems. We have also found that many dogs acquire foot lesions and suffer psychological trauma from trying to balance on suspended floors that sag and bend. The rule was effective February 20, 1998, but had two compliance dates: For primary enclosures constructed on or after February 20, 1998, and for floors installed or replaced on or after that date, the compliance date was February 20, 1998; for all other primary enclosures, the compliance date is January 21, 2000.

In the final rule, we removed the word "wire" in reference to flooring material in dog and cat primary enclosures from every section in the

regulations where the word appeared. We made these changes because, as stated previously in this document and in the preamble to the final rule, we consider wire to be metal strands $\frac{1}{8}$ of inch or less in diameter, and the final rule effectively prohibited the use of wire in flooring of primary enclosures for dogs and cats, unless the wire is coated with a material such as plastic or fiberglass.

One section of the regulations where the word "wire" appeared is § 3.6(a)(2), which specifies requirements for the construction and maintenance of primary enclosures for dogs and cats. Prior to publication of the final rule, § 3.6(a)(2)(x) provided, among other things: "If the floor of the primary enclosure is constructed of wire, a solid resting surface or surfaces that, in the aggregate, are large enough to hold all the occupants of the primary enclosure at the same time comfortably must be provided." The solid resting surface was necessary to provide relief to animals housed in primary enclosures with bare wire flooring.

The final rule removed the words "constructed of wire" from this sentence and replaced them with the words "of mesh or slatted construction." We made this change in error. By changing the words "constructed of wire" in § 3.6(a)(2)(x) to "of mesh or slatted construction," we unintentionally promulgated a new requirement.

Dog and cat primary enclosures with suspended floors of mesh or slatted construction (other than those constructed of bare wire) were not previously required to include a solid resting surface. As a result of the change to § 3.6(a)(2)(x) in our final rule, all primary enclosures with suspended flooring of mesh or slatted construction are required to include a solid resting surface. We do not believe that this requirement is necessary. Because suspended floors of mesh or slatted construction, except for those made of bare wire, are relatively safe and comfortable for dogs and cats, we do not believe that a separate solid resting surface in primary enclosures with suspended flooring of acceptable materials is necessary to ensure the animals' comfort and safety. Moreover, we have found that some regulated parties find it difficult to keep solid resting surfaces in primary enclosures for dogs and cats clean and sanitary because of problems associated with the animals' waste.

Because bare wire floors are now prohibited in primary enclosures, and because we believe that other types of mesh or slatted floors are safe and

comfortable for dogs and cats, we are amending § 3.6(a)(2)(x) to remove the requirement that a solid resting surface or surfaces must be provided in primary enclosures with floors of mesh or slatted construction. As a result, solid resting surfaces are not required in primary enclosures with any kind of suspended flooring. However, this interim rule does not prohibit the inclusion of solid resting surfaces in dog and cat primary enclosures with suspended flooring. Regulated parties who can maintain solid resting surfaces in dog and cat primary enclosures and wish to provide such surfaces for their animals may do so.

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. Immediate action is warranted to relieve unnecessary restrictions on regulated parties. Prior to publication of a final rule in the January 21, 1998, **Federal Register** (63 FR 3017-3023, Docket No. 95-100-2), primary enclosures with suspended floors of mesh or slatted construction (other than those made of bare wire) were not required to include solid resting surfaces for the enclosed dogs or cats. In that final rule, we unintentionally added a requirement that dog and cat primary enclosures with such flooring include a solid resting surface. We do not believe that this requirement is necessary to ensure the safety and well-being of dogs and cats covered by the Animal Welfare Act. Therefore, we are publishing this action, which relieves an unnecessary requirement that was promulgated in error, as an interim rule.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make this action effective one day after publication in the **Federal Register**. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for

the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This rule removes a requirement under the Animal Welfare Act (AWA) regulations that primary enclosures used for dogs and cats and having suspended flooring of mesh or slatted construction include solid resting surfaces. Promulgated in error, this requirement has placed an unnecessary and unintentional burden on regulated entities. As explained below, this rule will benefit entities who house dogs and cats in primary enclosures that have suspended flooring of mesh or slatted construction. These regulated entities will avoid the cost of purchasing the resting surfaces, as well as the cost of cleaning those surfaces following installation. However, the rule does not preclude regulated entities who wish to provide such surfaces for their animals from doing so.

The Regulatory Flexibility Act requires that agencies consider the economic impact of rules on small entities. This rule will primarily affect animal dealers and research facilities licensed or registered under the AWA. The exact number of entities affected by the rule is unknown because the number of AWA licensees and registrants who house dogs and cats in primary enclosures that have suspended floors of mesh or slatted construction is unknown. However, it is estimated that roughly half of the 4,265 licensed dealers and many of the 2,506 registered research facilities will be affected.¹ The rule's impact on regulated exhibitors is insignificant because most do not exhibit dogs and cats. Registered carriers and intermediate handlers are also largely unaffected because they only transport animals so they do not maintain "primary" enclosures for regulated animals.

The number of dealers and research facilities that are considered small entities under U.S. Small Business Administration (SBA) standards is unknown because information as to their size (in terms of gross receipts or number of employees) is not available. However, it is reasonable to assume that most are small in size, based on composite data for providers of the same

and similar services in the United States. In 1992, the per-firm average gross receipts for all 6,804 firms in SIC (Standard Industrial Classification) 0752, which includes dog and cat breeders, was \$115,290, well below the SBA's small entity threshold of \$5 million. Similarly, the 1992 per-establishment average employment for all 3,826 U.S. establishments in SIC 8731, which includes research facilities, was 29, well below the SBA's small entity threshold of 500 employees. It is very likely, therefore, that small entities will be the principal beneficiaries of the rule.

Solid resting surfaces used in dog and cat primary enclosures are made of a variety of materials, including fiberglass, galvanized metal, or wood, but the most common material used is rubber matting. The average cost of such surfaces is minimal—about \$5 per enclosure. The resting surfaces are usually not affixed to the enclosures; they are simply placed on top of the suspended flooring, so as to allow for easy removal and cleaning. For that reason, there is virtually no labor cost associated with the installation of such surfaces. Thus, if a breeder had to install resting surfaces in 120 enclosures, the total cost would be about \$600. However, solid resting surfaces have to be replaced over time. The replacement rate is unknown and depends on the type of material used. Those resting surfaces made of fiberglass or galvanized metal, for example, have to be replaced less frequently than those made of wood. As a result of the rule, affected entities will avoid this ongoing replacement cost.

Resting surfaces are usually cleaned by hosing them down. They are cleaned outside the enclosures, to prevent the animals from getting wet. Cleaning resting surfaces can be a costly undertaking, largely because it is labor intensive. For a dog breeder with 120 enclosures, for example, the annual cost is conservatively estimated at \$21,900 per year. This estimate assumes that: (1) Each resting surface is cleaned once each day; (2) it takes 5 minutes to clean each resting surface; and (3) labor is paid at a rate of \$6 per hour.

The impact of the rule on individual entities will vary, depending on the number of enclosures maintained. However, the impact of the rule on all regulated entities will be beneficial.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will 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 final 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

This 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 in 9 CFR Part 3

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

Accordingly, 9 CFR part 3 is amended as follows:

PART 3—STANDARDS

1. 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 371.2(d).

2. Section 3.6(a)(2)(x) is revised to read as follows:

§ 3.6 Primary enclosures.

* * * * *

(a) * * *

(2) * * *

(x) Have 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; and

* * * * *

Done in Washington, DC, this 8th day of July 1998.

Charles P. Schwalbe,

Acting Administrator, Animal and Plant Health Inspection Service.

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¹ In FY96, 10,366 facilities were licensed or registered under the AWA. Of those facilities, 4,265 were licensed dealers, 2,422 were licensed exhibitors, and 3,679 were registrants. The dealers are subdivided into two classes. Class A dealers (3,043) breed animals, and Class B dealers (1,222) serve as animal brokers. The registrants comprise research facilities (2,506), carriers and intermediate handlers (1,142), and exhibitors (31). As used here, the term *facilities* represents sites, the physical location where animals are housed. Some licensees and registrants have more than one site.