

**SUMMARY:** The hourly rates for overtime or holiday work incurred under the mandatory egg products inspection service are changed to reflect salary increases for inspectors.

**EFFECTIVE DATE:** December 3, 1978.

**FOR FURTHER INFORMATION CONTACT:**

Ashley R. Gulich, Food Safety and Quality Service, United States Department of Agriculture, Room 3944 South Building, Washington, D.C. 20250, Phone: (202) 447-3506.

**SUPPLEMENTARY INFORMATION:** Under the mandatory egg products inspection program the first 40 hours of an inspector's charges are paid by the Federal Government. Users of the Service are charged only for work performed in overtime, on holidays, or on certain appeal inspections. The Egg Products Inspection Act (21 U.S.C. 1031 *et seq.*) requires that the costs of inspection for such services as overtime and holiday work be recovered from the users. Fees for these services have not been adjusted since November 1976. Since that time, there have been two general salary increases for Federal employees and some State employees, as well as increases in other costs to provide services. To recover costs for service, the hourly rates for overtime and holiday inspection work are increased from \$10.60 to \$12.00 per hour.

Therefore, pursuant to the authority of the Egg Products Inspection Act (21 U.S.C. 1031 *et seq.*) § 2859.126 and § 2859.128(a), (7 CFR Part 2859) are amended to read as follows:

**§ 2859.126 Overtime inspection service.**

When operations in an official plant require the services of inspection personnel beyond their regularly assigned tour of duty on any day, or on a day outside the established schedule, such services are considered as overtime work. The official plant shall give reasonable advance notice to the inspector of any overtime service necessary and shall pay the Service for such overtime at an hourly rate of \$12.00 to cover the cost thereof.

**§ 2859.128 Holiday inspection service.**

(a) When an official plant requires inspection service on a holiday or a day designated in lieu of a holiday, such service is considered holiday work. The official plant shall, in advance of such holiday work, request the inspector in charge to furnish inspection service during such period and shall pay the Service therefor at an hourly rate of \$12.00 to cover the cost thereof.

(84 Stat. 1633, 21 U.S.C. 1053)

It has been determined that in order to cover these increased costs of the services, the hourly fees charged in connection with the performance of the services must be increased as soon as practicable as provided herein. The need for the increase and the amount thereof are dependent upon facts within the knowledge of the Food Safety and Quality Service.

The Egg Products Inspection Act requires that fees recovered from users of the mandatory egg products inspection program for overtime and holiday work cover the costs for such services. Increased revenues are urgently needed to meet the costs of these services as presently being performed. Therefore, Sydney J. Butler has determined that this document represents an emergency situation requiring immediate program action without a notice and comment period. Further, these amendments have not been classified "significant" and an impact analysis is not required since the amendments are mandated by statute.

Accordingly, pursuant to the authority in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to these amendments are impracticable and contrary to the public interest and good cause is found for making these amendments effective before January 2, 1979.

Done at Washington, D.C. on: November 27, 1978.

SYDNEY J. BUTLER,  
*Acting Administrator,*  
*Food Safety and Quality Service.*

[FR Doc. 78-33680 Filed 11-30-78; 8:45 am]

**[3410-34-M]**

**Title 9—Animal and Animal Products**

**CHAPTER I—ANIMAL AND PLANT HEALTH INSPECTION SERVICE, DEPARTMENT OF AGRICULTURE**

**SUBCHAPTER A—ANIMAL WELFARE**

**PART 3—STANDARDS**

**Revision of Standards for the Transportation and the Handling, Care, and Treatment in Connection Therewith of Dogs, Cats, Rabbits, Hamsters, Guinea Pigs, Nonhuman Primates, and Certain Other Warm-blooded Animals**

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

**ACTION:** Final rule.

**SUMMARY:** This document amends the transportation standards govern-

ing certain live warmblooded animals under the Animal Welfare Act published in the FEDERAL REGISTER on June 21, 1977 (42 FR 31556-31571) and on May 16, 1978 (43 FR 21160-21167). The amendments contained herein concern changes in the allowable minimum and maximum air temperatures surrounding dogs, cats, guinea pigs, hamsters, rabbits, nonhuman primates and certain other warmblooded animals when transported in commerce. They also contain a new procedure for measuring the air temperature surrounding live animals being transported in commerce which replaces the "ambient temperature" provisions of the present transportation standards. In connection with such new procedure, the range of allowable air temperatures for animals being transported in commerce takes into consideration the differences between the air temperature occurring inside the animal shipping container and the air temperature surrounding such container. The revisions contained herein are the result of petition for reconsideration which were received by the Department and which made new facts and evidence available that appeared to warrant such action.

**DATE:** Effective date January 2, 1979.

**FOR FURTHER INFORMATION CONTACT:**

Dr. Dale F. Schwindaman, Senior Staff Veterinarian, Animal Care Staff, Veterinary Services, Animal and Plant Health Inspection Service, United States Department of Agriculture, Room 703, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782 (301) 436-8271.

**SUPPLEMENTARY INFORMATION:** On October 17, 1978, the Department published a notice of proposed rule-making containing changes and additions to Part 3 of Subchapter A, Chapter 1, Title 9 of the Code of Federal Regulations (42 F.R. 47964-47968) which provided for (1) a change in the minimum allowable air temperature from 7.2°C. (45°F.) to 1.7°C. (35°F.) for dogs, cats, hamsters, rabbits, and certain other warmblooded animals when transported in commerce, (2) a change in the maximum allowable air temperature from 35°C. (95°F.) to 29.5°C. (85°F.) for all warmblooded animals under the Animal Welfare Act when transported in commerce, and (3) a new procedure for measuring the air temperature surrounding live animals transported in commerce wherein the air temperature is measured and read outside the animal shipping container at a distance not to exceed .91 meters (3 feet) from the external walls of such container.

A total of 839 comments were received representing many interest groups, i.e., air carriers, pet shop

owners and operators, humane groups, pet animal dealers, veterinarians, hobby breeders, individual pet owners and concerned citizens. Many of the comments raised questions or provided information which warranted some changes in the proposed amendments to the standards. Certain editorial changes were also made for clarification.

#### DISCUSSION OF MAJOR PROPOSED ITEMS AND COMMENTS

##### METHOD FOR MEASURING THE AIR TEMPERATURE SURROUNDING LIVE ANIMALS TRANSPORTED IN COMMERCE

The present transportation standards (9 CFR 3.18, 3.42, 3.67, 3.92, and 3.118) cite a minimum and maximum ambient temperature within primary enclosures used to transport certain warmblooded animals. Criticism of these standards, because they require the insertion of a thermometer into the shipping container to measure the ambient temperature and may result in possible injury to contained animals, prompted the Department to propose a safer and more practical procedure for measuring the air temperature surrounding animals during transportation. Consequently, the Department proposed that the air temperature be measured and read outside the primary enclosure (shipping container) which contains the live animal at a distance not to exceed .91 meters (3 feet) from any one of the external walls of the primary enclosure and on a level paralleled to the bottom of such primary enclosure at a point which approximates half the distance between the top and bottom of such enclosure.

Carriers and several other persons commenting on the proposed method for measuring air temperature indicated their agreement with the proposal as being practical and easy for carrier personnel to accomplish, as well as being safe for the contained animals. On the other hand, two comments criticized the proposed method as far too subjective and less accurate in reflecting the actual temperature impacting the contained animals. It was indicated that the proposed method did not take into consideration factors such as direct sunlight, construction of the shipping container, etc., which could affect the temperature within a shipping container. However, the effect of all these interrelated factors has yet to be sufficiently evaluated relative to a warmblooded animal's physiological response to temperature extremes. In addition, inexpensive temperature measuring devices which would not require thrusting some part of such devices into the animal's shipping container are not readily available and there is a reluctance on the

part of carrier or intermediate handler employees to get too near an animal whose disposition toward strangers is unknown. The Department is therefore amending §§ 3.16, 3.40, 3.65, 3.90, and 3.116 to reflect the new method of measuring and reading the air temperature outside primary enclosures (shipping containers) containing live animals.

##### ALLOWABLE MAXIMUM AIR TEMPERATURE

In proposing to change the method of measuring the air temperature around warmblooded animals confined in shipping containers, the Department recognized that there is a difference between the air temperature which immediately surrounds an animal within a shipping container and the temperature of the air surrounding the outside of such container. Physiological data indicates that warmblooded animals adjust to their environment through an elaborately developed heat-regulating system to maintain a relatively constant body temperature. However, as the temperature of the surrounding air approaches the level of the animal's body temperature, the animal will experience discomfort and, after a period of time, death. Scientific data also indicates that as the temperature outside an animal shipping container rises, the differential between the temperature inside the shipping container and the temperature of the outside environment increases. Information also available to the Department indicates that when the air temperature which surrounds the animal shipping container within 3 feet of such container, reaches 29.5°C. (85°F.) the air temperature surrounding the animal inside the shipping container will reach approximately 35°C. (95°F.). Based on this information, the Department proposed that carriers and intermediate handlers not allow the air temperatures which surround the animal shipping container in animal holding areas of terminal facilities to exceed 20.5°C. (85°F.). Further, the Department proposed to require that auxiliary ventilation be used when the temperature reaches 23.9°C. (75°F.).

Comments from air carriers indicated that the existing allowable maximum air temperature standards, i.e., air temperature shall not exceed 29.5°C. (85°F.) for more than 4 hours and never exceed a maximum of 35°C. (95°F.), have not resulted in a hazardous or detrimental environment for animals maintained in carriers' animal holding areas. Furthermore, comments indicated that air carriers have not been advised by either shippers or the public of instances where the temperatures in carriers' facilities which contained live warmblooded animals have exceeded the present standards

for allowable maximum air temperatures. Several shippers of animals expressed the fear of air carriers refusing to accept animal shipments when the outside atmospheric temperature reaches 75°F. because the carriers would not have temperature controlled areas in their terminal facilities. The Department received no comments or information which refuted the basic available data indicating that subjection of warmblooded animals to temperatures higher than 95°F. is inhumane. It believes that the proposed standard for the allowable maximum temperature (29.5°C. or 85°F.) outside the shipping container is necessary considering the temperature which immediately surrounds the confined animal inside a shipping container. Therefore, it is provided herein that carriers and intermediate handlers shall not allow the air temperature which is measured and read outside the animal container or primary enclosure (within 0.91 meters (3 feet) of the external walls of such enclosure) to exceed 29.5°C. (85°F.) for all warmblooded animals covered by the Act. Further, it is also provided that auxiliary ventilation must be used when the temperature reaches 23.9°C. (75°F.).

##### ALLOWABLE MINIMUM AIR TEMPERATURE

The present transportation standards provide that the ambient air temperature and the temperature surrounding live warmblooded animals transported in commerce shall not be allowed to fall below 7.2°C. (45°F.). An exception is provided for USDA licensees or registrants and U.S. Government Departments, agencies, or instrumentalities wherein a certificate executed by a licensed veterinarian may be furnished to carriers or intermediate handlers indicating that an animal presented for transportation (with the exception of guinea pigs) is acclimated to air temperatures lower than 7.2°C. (45°F.). Many individuals, other than USDA licensees or registrants and representatives of the U.S. Government agencies, felt that their dogs and cats and certain other warmblooded animals were not adversely affected by air temperatures down to 35°F. Based on empirical information, as well as on a certain amount of scientific data, the Department proposed to provide for a minimum allowable air temperature of 1.7°C. (35°F.) surrounding dogs, cats, hamsters, rabbits, and certain other warmblooded animals, with the exception of guinea pigs and nonhuman primates, when transported in commerce.

A majority of individuals who submitted comments, many of whom are pet owners, vehemently objected to the lowering of the allowable minimum air temperature surrounding warmblooded animals, mostly basing

their objections on an anthropomorphic response, i.e., a human would be uncomfortable and eventually freeze in a 35°F. environment; therefore, animals will also be uncomfortable and eventually freeze under the same conditions. Other comments disagreed with the proposal because it lacked certain qualifying criteria, such as (1) restriction on the time an animal could be subjected to temperatures as low as 35°F., (2) consideration for the physical differences between animal breeds, e.g., long-haired animals versus short-haired animals, relative to their ability to adjust to colder environments, and (3) allowances for differences between the less developed thermoregulatory mechanisms of young animals and the well developed mechanisms of adult animals. Hobby breeders decried the discrimination of not being allowed to present a certificate of acclimation to lower temperatures to carriers when shipping long-haired, adult dogs or cats which are acclimated to colder temperatures.

The Department's proposed amendments to the standards for allowable minimum air temperatures apply to all dogs (*Canis familiaris*), all cats (*Felis catus*), and other warmblooded animals affected by the Act and do not give consideration to breed differences or age differences. There is no available scientific data which evaluates the individual ability of the many various breeds of dogs, cats, and other animals to tolerate various temperatures lower than 45°F. or which indicates the pathological effect of such low temperatures on the animals. In addition, those scientific experiments which have involved certain breeds of animals and the effect of temperature extremes utilized adult animals rather than young or immature ones. Consideration for these animal breed and age differences would create complicated requirements wherein carriers and intermediate handlers would have to recognize breeds of animals and differentiate animals by age. Such requirements would be impractical, if not impossible.

The Department feels that additional scientific evaluation of the effects of cold temperatures on those warmblooded animals covered by the Animal Welfare Act must be made and has already initiated action to derive this needed information. In the meantime, the proposed change of the allowable minimum air temperature from 7.2°C. (45°F.) to 1.7°C. (35°F.) shall not be implemented in this rulemaking.

The Department acknowledges the validity of the complaints from hobby breeders and individual pet owners who are presently not afforded the opportunity to present to carriers a certificate of acclimation to lower tem-

peratures when shipping an animal which is known to be so acclimated. The Department will therefore consider providing such an option to all pet owners through a certificate of acclimation to lower temperatures executed by an "accredited" veterinarian in future rulemaking. An "accredited" veterinarian is a licensed veterinarian who has been officially authorized by the Deputy administrator of the Department's Veterinary Services to perform certain functions in connection with programs and laws which the Department administers.

Accordingly, the standards (9 CFR 3.1 *et seq.*) are amended in the following respects:

1. The Table of Contents cited in Part 3—STANDARDS is amended by deleting §§ 3.18, 3.42, 3.67, 3.92, and 3.118.

§ 3.11 [Amended]

2. Section 3.11(c) of the standards (9 CFR 3.11(c)) is amended by deleting the section number 3.18 in the phrase, " \* \* \* prescribed in §§ 3.16 and 3.18." and inserting the section number "3.17" in its place.

3. Section 3.16 of the standards (9 CFR 3.16) is revised to read as follows:

§ 3.16 Terminal facilities.

Carriers and intermediate handlers shall not commingle live animal shipments with inanimate cargo. All animal holding areas of a terminal facility of any carrier or intermediate handler wherein live animal shipments are maintained shall be cleaned and sanitized in a manner prescribed in § 3.7 of the standards often enough to prevent an accumulation of debris or excreta, to minimize vermin infestation and to prevent a disease hazard. An effective program for the control of insects, ectoparasites, and avian and mammalian pests shall be established and maintained for all animal holding areas. Any animal holding area containing live dogs or cats shall be provided with fresh air by means of windows, doors, vents, or air conditioning and may be ventilated or air circulated by means of fans, blowers, or an air conditioning system so as to minimize drafts, odors, and moisture condensation. Auxiliary ventilation, such as exhaust fans and vents or fans or blowers or air conditioning shall be used for any animal holding area containing live dogs and cats when the air temperature within such animal holding area is 23.9°C. (75°F.) or higher. The air temperature around any live dog or cat in any animal holding area shall not be allowed to fall below 7.2°C. (45°F.) nor be allowed to exceed 29.5°C. (85°F.) at any time: *Provided, however,* That no live dog or cat shall be subjected to air temperatures around any such dog or cat in excess

of 23.9°C. (75°F.) for more than 4 hours at any time. To ascertain compliance with the provisions of this paragraph, the air temperature around any live dog or cat shall be measured and read outside the primary enclosure which contains such dog or cat at a distance not to exceed .91 meters (3 feet) from any one of the external walls of the primary enclosure and on a level parallel to the bottom of such primary enclosure at a point which approximates half the distance between the top and bottom of such primary enclosure.

§ 3.17 [Amended]

4. Section 3.17(a)(1) of the standards (9 CFR 3.17(a)(1)) is amended to read as follows:

(a) \* \* \* (1) *Shelter from sunlight.* When sunlight is likely to cause overheating or discomfort, sufficient shade shall be provided to protect the live dogs and cats from the direct rays of the sun and such live dogs or cats shall not be subjected to surrounding air temperatures which exceed 29.5°C. (85°F.), and which shall be measured and read in the manner prescribed in § 3.16 of this Part, for a period of more than 45 minutes. \* \* \*

5. Section 3.17(a)(3) of the standards (9 CFR 3.17(a)(3)) is amended to read as follows:

(a) \* \* \* (3) *Shelter from cold weather.* Transporting devices shall be covered to provide protection for live dogs and cats when the outdoor air temperature falls below 10°C. (50°F.), and such live dogs or cats shall not be subjected to surrounding air temperatures which fall below 7.2°C. (45°F.), and which shall be measured and read in the manner prescribed in § 3.16 of this Part, for a period of more than 45 minutes unless such dogs or cats are accompanied by a certificate of acclimation to lower temperatures as prescribed in § 3.11(c).

\* \* \* \* \*

§ 3.18 [Deleted]

6. Section 3.18 of the standards (9 CFR 3.18) is deleted.

§ 3.35 [Amended]

7. Section 3.35(c) of the standards (9 CFR 3.35(c)) is amended by deleting the section number "3.42" in the phrase, " \* \* \* prescribed in §§ 3.40 and 3.42." and inserting the section number "3.41." in its place.

8. Section 3.40 of the standards (9 CFR 3.40) is revised to read as follows:

§ 3.40 Terminal facilities.

Carriers and intermediate handlers shall not commingle live animal shipments with inanimate cargo. All animal holding areas of a terminal facility of any carrier or intermediate

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handler wherein live animal shipments are maintained shall be cleaned and sanitized in a manner prescribed in § 3.31 of the standards often enough to prevent an accumulation of debris or excreta, to minimize vermin infestation and to prevent a disease hazard. An effective program for the control of insects, ectoparasites, and avian and mammalian pests shall be established and maintained for all animal holding areas. Any animal holding area containing live guinea pigs or hamsters shall be provided with fresh air by means of windows, doors, vents, or air conditioning and may be ventilated or air circulated by means of fans, blowers, or an air conditioning system so as to minimize drafts, odors, and moisture condensation. Auxiliary ventilation, such as exhaust fans and vents or fans or blowers or air conditioning shall be used for any animal holding area containing live guinea pigs and hamsters when the air temperature within such animal holding area is 23.9°C. (75°F.) or higher. The air temperature around any live guinea pig or hamster in any animal holding area shall not be allowed to fall below 7.2°C. (45°F.) nor be allowed to exceed 29.5°C. (85°F.) at any time. To ascertain compliance with the provisions of this paragraph, the air temperature around any live guinea pig or hamster shall be measured and read outside the primary enclosure which contains such guinea pig or hamster at a distance not to exceed .91 meters (3 feet) from any one of the external walls of the primary enclosure and measured on a level parallel to the bottom of such primary enclosure at a point which approximates half the distance between the top and bottom of such primary enclosure.

## § 3.41 [Amended]

9. Section 3.41(a)(1) of the standards (9 CFR 3.41(a)(1)) is amended to read as follows:

(a) \* \* \* (1) *Shelter from sunlight.* When sunlight is likely to cause overheating or discomfort, sufficient shade shall be provided to protect the live guinea pigs and hamsters from the direct rays of the sun and such live guinea pigs or hamsters shall not be subjected to surrounding air temperatures which exceed 29.5°C. (85°F.), and which shall be measured and read in the manner prescribed in § 3.40 of this Part, for a period of more than 45 minutes. \* \* \*

10. Section 3.41(a)(3) of the standards (9 CFR 3.41(a)(3)) is amended to read as follows:

(a) \* \* \* (3) *Shelter from cold weather.* Transporting devices shall be covered to provide protection for live guinea pigs and hamsters when the outdoor air temperature falls below 10°C. (50°F.), and such live guinea pigs

or hamsters shall not be subjected to surrounding air temperatures which fall below 7.2°C. (45°F.), and which shall be measured and read in the manner prescribed in § 3.40 of this Part, for a period of more than 45 minutes.

## § 3.42 [Deleted]

11. Section 3.42 of the standards (9 CFR 3.42) is deleted.

## § 3.60 [Amended]

12. Section 3.60(c) of the standards (9 CFR 3.60(c)) is amended by deleting the section number "3.67" in the phrase, " \* \* \* prescribed in §§ 3.65 and 3.67" and inserting the section number "3.66" in its place.

13. Section 3.65 of the standards (9 CFR 3.65) is revised to read as follows:

## § 3.65 Terminal facilities.

Carriers and intermediate handlers shall not commingle live animal shipments with inanimate cargo. All animal holding areas of a terminal facility of any carrier or intermediate handler wherein live animal shipments are maintained shall be cleaned and sanitized in a manner prescribed in § 3.56 of the standards often enough to prevent an accumulation of debris or excreta, to minimize vermin infestation and to prevent a disease hazard. An effective program for the control of insects, ectoparasites, and avian and mammalian pests shall be established and maintained for all animal holding areas. Any animal holding area containing live rabbits shall be provided with fresh air by means of windows, doors, vents, or air conditioning and may be ventilated or air circulated by means of fans, blowers, or an air conditioning system so as to minimize drafts, odors, and moisture condensation. Auxiliary ventilation, such as exhaust fans and vents or fans or blowers or air conditioning shall be used for any animal holding area containing live rabbits when the air temperature within such animal holding area is 23.9°C. (75°F.) or higher. The air temperature around any live rabbit in any animal holding area shall not be allowed to fall below 7.2°C. (45°F.) nor be allowed to exceed 29.5°C. (85°F.) at any time. To ascertain compliance with the provisions of this paragraph, the air temperature around any live rabbit shall be measured and read outside the primary enclosure which contains such rabbit at a distance not to exceed .91 meters (3 feet) from any one of the external walls of the primary enclosure and on a level parallel to the bottom of such primary enclosure at a point which approximates half the distance between the top and bottom of such primary enclosure.

## § 3.66 [Amended]

14. Section 3.66(a)(1) of the standards (9 CFR 3.66(a)(1)) is amended to read as follows:

(a) \* \* \* (1) *Shelter from sunlight.* When sunlight is likely to cause overheating or discomfort, sufficient shade shall be provided to protect the live rabbits from the direct rays of the sun and such live rabbits shall not be subjected to surrounding air temperatures which exceed 29.5°C. (85°F.), and which shall be measured and read in the manner prescribed in § 3.65 of this Part, for a period of more than 45 minutes. \* \* \*

15. Section 3.66(a)(3) of the standards (9 CFR 3.66(a)(3)) is amended to read as follows:

(a) \* \* \* (3) *Shelter from cold weather.* Transporting devices shall be covered to provide protection for live rabbits when the outdoor air temperature falls below 10°C. (50°F.), and such live rabbits shall not be subjected to surrounding air temperatures which fall below 7.2°C. (45°F.), and which shall be measured and read in the manner prescribed in § 3.65 of this Part, for a period of more than 45 minutes unless such rabbits are accompanied by a certificate of acclimation to lower temperatures as prescribed in § 3.60(c).

## § 3.67 [Deleted]

16. Section 3.67 of the standards (9 CFR 3.67) is deleted.

## § 3.85 [Amended]

17. Section 3.85(c) of the standards (9 CFR 3.85(c)) is amended by deleting the section number "3.92" in the phrase, " \* \* \* prescribed in §§ 3.90 and 3.92." and inserting the section number "3.91" in its place.

18. Section 3.90 of the standards (9 CFR 3.90) is revised to read as follows:

## § 3.90 Terminal facilities

Carriers and intermediate handlers shall not commingle live animal shipments with inanimate cargo. All animal holding areas of a terminal facility of any carrier or intermediate handler wherein live animal shipments are maintained shall be cleaned and sanitized in a manner prescribed in § 3.81 of the standards often enough to prevent an accumulation of debris or excreta, to minimize vermin infestation and to prevent a disease hazard. An effective program for the control of insects, ectoparasites, and avian and mammalian pests shall be established and maintained for all animal holding areas. Any animal holding area containing live nonhuman primates shall be provided with fresh air by means of windows, doors, vents, or air conditioning and may be ventilated or air circu-

lated by means of fans, blowers, or an air conditioning system so as to minimize drafts, odors, and moisture condensation. Auxiliary ventilation, such as exhaust fans and vents or fans or blowers or air conditioning shall be used for any animal holding area containing live nonhuman primates when the air temperature within such animal holding area is 23.9°C. (75°F.) or higher. The air temperature around any live nonhuman primate in any animal holding area shall not be allowed to fall below 7.2°C. (45°F.) nor be allowed to exceed 29.5°C. (85°F.) at any time: *Provided, however,* that no live nonhuman primate shall be subjected to surrounding air temperatures which exceed 23.9°C. (75°F.) for more than 4 hours at any time. To ascertain compliance with the provisions of this paragraph, the air temperature around any live nonhuman primate shall be measured and read outside the primary enclosure which contains such nonhuman primate at a distance not to exceed .91 meters (3 feet) from any one of the external walls of the primary enclosure and on a level parallel to the bottom of such primary enclosure at a point which approximates half the distance between the top and bottom of such primary enclosure.

§ 3.91 [Amended]

19. Section 3.91(a)(1) of the standards (9 CFR 3.91(a)(1)) is amended to read as follows:

(a) \* \* \* (1) *Shelter from sunlight.* When sunlight is likely to cause overheating or discomfort, sufficient shade shall be provided to protect the live nonhuman primates from the direct rays of the sun and such live nonhuman primates shall not be subjected to surrounding air temperatures which exceed 29.5°C. (85°F.), and which shall be measured and read in the manner prescribed in § 3.90 of this Part, for a period of more than 45 minutes. \* \* \*

20. Section 3.91(a)(3) of the standards (9 CFR 3.91(a)(3)) is amended to read as follows:

(a) \* \* \* (3) *Shelter from cold weather.* Transporting devices shall be covered to provide protection for live nonhuman primates when the outdoor air temperature falls below 10°C. (50°F.) and such live nonhuman primates shall not be subjected to surrounding air temperatures which fall below 7.2°C. (45°F.), and which shall be measured and read in the manner prescribed in § 3.90 of this Part, for a period of more than 45 minutes unless such nonhuman primates are accompanied by a certificate of acclimation to lower temperatures as prescribed in § 3.85(c).

§ 3.92 [Deleted]

21. Section 3.92 of the standards (9 CFR 3.92) is deleted.

§ 3.111 [Amended]

22. Section 3.111(c) of the standards (9 CFR 3.111(c)) is amended by deleting the section number "3.118" in the phrase, " \* \* \* prescribed in §§ 3.116 and 3.118," and inserting the section number "3.117." in its place.

23. Section 3.116 of the standards (9 CFR 3.116) is revised to read as follows:

§ 3.116 Terminal facilities.

Carries and intermediate handlers shall not commingle live animal shipments with inanimate cargo. All animal holding areas of a terminal facility of any carrier or intermediate handler wherein live animal shipments are maintained shall be cleaned and sanitized in a manner prescribed in § 3.116 of the standards often enough to prevent an accumulation of debris or excreta, to minimize vermin infestation and to prevent a disease hazard. An effective program for the control of insects, ectoparasites, and avian and mammalian pests shall be established and maintained for all animal holding areas. Any animal holding area containing live animals shall be provided with fresh air by means of windows, doors vents, or air conditioning and may be ventilated or air circulated by means of fans, blowers, or an air conditioning system so as to minimize drafts, odors, and moisture condensation. Auxiliary ventilation, such as exhaust fans and vents or fans or blowers or air conditioning shall be used for any animal holding area containing live animals when the air temperature within such animal holding area is 23.9°C. (75°F.) or higher. The air temperature around any live animal in any animal holding area shall not be allowed to fall below 7.2°C. (45°F.) nor be allowed to exceed 29.5°C. (85°F.) at any time: *Provided, however,* That no live animal shall be subjected to surrounding air temperatures which exceed 23.9°C. (75°F.) for more than 4 hours at any time. To ascertain compliance with the provisions of this paragraph, the air temperature around any live animal shall be measured and read outside the primary enclosure which contains such animal at a distance not to exceed .91 meters (3 feet) from any one of the external walls of the primary enclosure and on a level parallel to the bottom of such primary enclosure at a point which approximates half the distance between the top and bottom of such primary enclosure.

§ 3.117 [Amended]

24. Section 3.117(a)(1) of the standards (9 CFR 3.117(a)(1)) is amended to read as follows:

(a) \* \* \* (1) *Shelter from sunlight.* When sunlight is likely to cause overheating or discomfort, sufficient shade shall be provided to protect the live animals from the direct rays of the sun and such live animals shall not be subjected to surrounding air temperatures which exceed 29.5°C. (85°F.), and which shall be measured and read in the manner prescribed in § 3.116 of this Part, for a period of more than 45 minutes. \* \* \*

25. Section 3.117(a)(3) of the standards (9 CFR 3.117(a)(3)) is amended to read as follows:

(a) \* \* \* (3) *Shelter from cold weather.* Transporting devices shall be covered to provide protection for live animals when the outdoor air temperature falls below 10°C. (50°F.) and such live animals shall not be subjected to surrounding air temperatures which fall below 7.2°C. (45°F.), and which shall be measured and read in the manner prescribed in § 3.116 of this Part, for a period of more than 45 minutes unless such animals are accompanied by a certificate of acclimation to lower temperatures as prescribed in § 3.111(c).

(Secs. 12 and 13, 90 Stat. 418 and 419, 7 U.S.C. 2142 and 2143; 37 FR 28477, 28646; 38 FR 19141.)

Accordingly, under the administrative procedure provisions in 5 U.S.C. 553, it is found upon such good cause that further notice and other public participation with respect to the revision are impracticable and unnecessary.

Done at Washington, D.C., this 29th day of November, 1978.

NOTE.—This rule has been reviewed under the USDA criteria established to implement E. O. 12044, "Improving Government Regulations", and has been designated "significant". An approved Final Impact Analysis Statement has been prepared and is available from the Animal Care Staff, Room 703, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, telephone Area Code (301) 436-8271.

E. A. SCHILF,  
Acting Deputy Administrator,  
Veterinary Services.

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