

County line; then north along the Orange/Lake County line to the point of beginning.

Done in Washington, DC, this 7th day of August 1997.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97-21369 Filed 8-12-97; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 1 and 3

[Docket No. 95-078-2]

RIN 0579-AA74

Humane Treatment of Dogs; Tethering

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations for the humane treatment of dogs under the Animal Welfare Act by removing the provisions for tethering dogs as a means of primary enclosure. Our experience in enforcing the Animal Welfare Act has led us to conclude that permanently tethering a dog as a means of primary enclosure is not a humane practice that is in the animal's best interests. Temporarily tethering a dog due to health or other reasons would be permitted if the licensee obtains the approval of the Animal and Plant Health Inspection Service. This action will help ensure that dogs in facilities regulated under the Animal Welfare Act will be treated in a manner that is consistent with the animals' best interests.

EFFECTIVE DATE: September 12, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Smith, Staff Animal Health Technician, Animal Care, APHIS, suite 6D02, 4700 River Road Unit 84, Riverdale, MD 20737-1234, (301) 734-4972, or e-mail: snsmith@aphis.usda.gov.

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.

On July 2, 1996, we published in the **Federal Register** (61 FR 34386-34389, Docket No. 95-078-1) a proposal to amend the regulations by removing the option for facilities to use tethering as a means of primary enclosure. In the same document, we proposed 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 solicited comments concerning our proposal for 60 days ending September 3, 1996. We received 54 comments by that date. Many of the comments we received on the proposed rule expressed concerns with the proposal to revise the temperature requirements. This final rule concerns only the part of the proposal to remove tethering as a means of primary enclosure. We are still reviewing the issues concerning the effects of temperature on dogs and cats. If we take any further action regarding temperature, we will publish the appropriate document in the **Federal Register**.

Thirty-three of the comments received on the proposed rule addressed the part of the proposal to remove tethering as a means of primary enclosure. These comments were from dog breeders, humane organizations, a veterinarian, pet industry associations, an animal feed industry association, pharmaceutical companies, a medical research association, a Federal government agency, and other interested individuals. Nine of the comments supported the proposal; 14 comments opposed the proposal; 1 comment did not oppose the proposal, but had recommendations concerning the proposal's Initial Regulatory Flexibility Analysis; and 9 comments expressed neither support nor opposition, but stated that the provisions of the proposal should be extended to apply to anyone who owns dogs, instead of only to licensed breeders and dealers. The comments are discussed below by topic.

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. We proposed to remove this provision. Several commenters who supported the proposed rule stated that, while they believe tethering should not be used as a primary enclosure, there are situations when tethering is useful

for short intervals. For example, the commenter said an owner may put a dog on a tether while cleaning its pen, to isolate the dog for health reasons, or to restrain an aggressive dog. The commenters recommended that we state explicitly in the regulations that tethering is prohibited as a means of primary enclosure, and clarify in the regulations when tethering would be permissible.

We agree that it would be more clear to specifically state in the regulations that permanent tethering is prohibited as a means of primary enclosure. Therefore, we are adding a new paragraph (c)(4) to § 3.6 of the regulations to state that tethers are prohibited for use as primary enclosures. However, we realize that there may be times when it would be appropriate, and in the dog's best interests, to put a dog on a tether temporarily, ranging from a few minutes while the dog's pen is cleaned to several days to isolate an animal for health reasons. If we stated in the regulations when tethering would be permitted, we would invariably fail to include some circumstance. Further, while tethering may be appropriate for one dog under a specific circumstance, it may not be appropriate for another dog under the same circumstance. Therefore, we are also adding a provision in new paragraph (c)(4) to state that a licensee must obtain the approval of the Animal and Plant Health Inspection Service (APHIS) to temporarily tether a dog at the licensee's facility. This safeguard will give APHIS the opportunity to evaluate on a case-by-case basis the appropriateness of temporarily tethering a dog in order to ensure that any temporary tethering of a dog is in the animal's best interests.

A licensee may obtain verbal approval from an APHIS inspector to temporarily tether a dog for a period of 3 days or less. If a licensee intends to regularly tether a dog for periods of less than 3 days in order to conduct a regular activity (for example, a licensee intends to tether a dog every day for 20 minutes while the dog's primary enclosure is being cleaned), the licensee will only have to obtain verbal approval for such tethering one time. If a licensee intends to temporarily tether a dog for a period to exceed 3 days, the licensee must obtain written approval from the APHIS Animal Care Regional Office for the region in which the licensee operates.

One commenter asked us to specify that, if an inspector finds a dog to be temporarily tethered, the inspector should ask the licensee to show him or her the dog's primary enclosure. The

purpose of this would be to verify that the tethering arrangement is not permanent and that the dog has a primary enclosure. We are not making any changes to the proposed rule in response to this comment. We assure the commenter that, in conducting inspections of licensed facilities, each inspector will verify that each animal's primary enclosure complies with the regulations. If a dog is tethered at the time of an inspection, the inspector will verify that the licensee has APHIS approval and that the dog has a primary enclosure that is in compliance with the regulations.

Many commenters stated that they believe tethering is humane and should be allowed as a means of primary enclosure. One commenter specified that if the tether is equipped with a swivel on the end, it is safe and does not encumber the movement of the dog. Other commenters said the proposal did not present any scientific data to support the claim that tethering is inhumane.

We are not making any changes to the proposal based on these comments. As we stated in the proposed rule, we do not have any data on the frequency of injuries due to tethers. However, our experience has led us to conclude that permanently tethering dogs as a means of primary enclosure is not a humane practice that is in the animals' best interests. Further, permanent 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. A dog attached to a tether is significantly restricted in its 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 do not believe that a flexible tether, a tether with a swivel on the end, or other such devices would significantly improve the safety of a tether. Such devices may improve the mobility of the dog, but the possibility would still remain over time for the tether to become tangled around objects within the dog's range.

We reiterate that we are prohibiting permanent tethering as a means of primary enclosure. It is possible that most injuries from tethers are, in part, due to a dog being unsupervised for long periods of time while on the tether. Prohibiting the use of a permanent tether as a means of primary enclosure for dogs will minimize the likelihood that a dog would be left unsupervised for extended periods of time while on a tether, thus reducing the likelihood of

injury. We are not prohibiting the use of temporary tethering for restraining a dog for short periods of time if the licensee obtains the approval of APHIS.

One commenter said that our proposal would be in conflict with the requirements of some cities that dogs be tethered. The commenter is correct that many cities require dogs to be on a leash or tethered when they are not enclosed by some other means. These laws are necessary so that the public is protected from aggressive dogs and to prevent dogs from roaming freely. However, we know of no city that requires dogs to be tethered as a means of primary enclosure. Further, our rule prohibiting the use of a permanent tether as primary enclosure would apply only to persons regulated under the AWA (dog breeders, dealers, exhibitors, carriers, intermediate handlers, and research facilities). Individual dog owners would not be affected by this rule, and could continue to tether their dogs if they believe it is appropriate, and if it is not restricted by local regulations. A facility regulated under the AWA would still be permitted to temporarily tether dogs if the facility obtains the approval of APHIS.

A few commenters said that tethering is used to train hunting dogs and should be allowed for this purpose. At the present time, the breeding or training of hunting dogs is not a regulated activity. Therefore, the activities of hunting dog breeders and trainers would not be affected by this rule. If we determine that standards should be promulgated for the care of hunting dogs by breeders, we will publish a proposal in the **Federal Register**.

One commenter requested that tethering be permitted with the recommendation of a veterinarian. We would like to emphasize that we are only prohibiting the use of permanent tethering as a means of primary enclosure. Temporarily tethering a dog due to health or other reasons would be permitted under this rule if the licensee obtains the approval of APHIS.

Several commenters said that if tethering is harmful to dogs housed by licensed breeders and dealers, then it is harmful to all dogs. The commenters said that we should extend the regulation to prohibit tethering of dogs housed by humane societies, pounds, individual pet owners, and hunting breed producers. While we agree with commenters that all dogs should be treated in a humane manner, we are not making any changes to the rule in response to these comments. The AWA authorizes our agency 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 AWA does not authorize us to promulgate standards for the care of animals by humane societies, pounds, or individual pet owners. Requirements for the care of animals owned by individuals, and for the enforcement of animal control laws, are under State or local authority. Further, as stated previously in this document, the breeding or training of hunting dogs is not a regulated activity at the present time. If we determine that standards should be promulgated for the care of hunting dogs by breeders, we will publish a proposal in the **Federal Register**.

One commenter recommended several additional amendments to the regulations concerning primary enclosures. The recommendations include requiring that all dogs have an indoor housing facility and an outdoor run, revising the formula for calculating the required enclosure size, adopting stricter sanitation requirements, requiring that psychological enrichments such as toys and human companionship be provided to dogs housed in licensed facilities, and adding additional exercise requirements. This comment requests amendments that are outside the scope of the proposed regulation. However, we will consider the comment as a request for additional rulemaking. If we decide to make any changes to the regulations in response to this request, we will publish a proposed rule in the **Federal Register**.

One comment addressed the Initial Regulatory Flexibility Analysis that appeared in the proposed rule. We have addressed this comment as part of the Final Regulatory Flexibility Analysis that appears later in this document.

Therefore, based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposal as a final rule with the changes discussed in this document.

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 document makes final part of a proposed rule published in the **Federal Register** on July 2, 1996 (61 FR 34386-34389, Docket no. 95-078-1). As part of the proposed rule document, we performed an Initial Regulatory

Flexibility Analysis, in which we invited comments concerning potential economic effects of the proposed rule. We received one comment on the proposed rule that addressed our Initial Regulatory Flexibility Analysis. This comment is discussed below. However, the comment did not specifically offer information on the potential economic effects that prohibiting tethering as a means of primary enclosure would have on small entities. Therefore, we have based this Final Regulatory Flexibility Analysis on the data available to us.

The part of the proposed rule we are making final will eliminate permanent tethering as a means of primary enclosure for dogs in facilities licensed or registered under the Animal Welfare Act. We are taking this action because our experience in enforcing the Animal Welfare Act has led us to conclude that permanently tethering a dog as a means of primary enclosure is not a humane practice that is in the animal's best interests.

The comment we received on the Initial Regulatory Flexibility Analysis said that the analysis falls short of what needs to be included in a Regulatory Flexibility Analysis. Specifically, the commenter said that the analysis should discuss other alternatives to the proposal, such as requiring a flexible tether; should show evidence of a consultative process with the affected industry; should address how frequently inspectors find dogs to be injured as a result of tethering; and should explore whether or not most injuries are due more to neglect than to a tether. We have made no changes to the proposed rule based on this comment. However, we have tried to address the commenters concerns in this final analysis.

As we stated in the Initial Regulatory Flexibility Analysis, 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. Neither do we have any data on the frequency of injuries due to tethers. However, our inspectors report that permanently tethering a dog as a means of primary enclosure is rare among licensed dealers. Kennels and cages are currently the preferred means of primary enclosure, with tethering sometimes used as a temporary restraint. In addition, permanent 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.

It is also the experience of APHIS inspectors that, when used as a means

of primary enclosure, permanent tethering is not a humane practice that is in the animal's best interests. A dog permanently attached to a tether is significantly restricted in its 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. It is possible that most injuries from tethers are, in part, due to a dog being unsupervised for long periods of time while on the tether. Prohibiting the use of a permanent tether as a means of primary enclosure for dogs will minimize the likelihood that a dog would be left unsupervised for extended periods of time while on a tether, thus reducing the likelihood of injury.

One comment that we have already addressed in the "Background" section of this final rule suggests an alternative to the proposal, and we have considered this suggestion. The suggested alternative was to allow tethering as primary enclosure if the tether is equipped with a swivel. We do not believe that a tether with a swivel on the end, a flexible tether, or other such devices would significantly improve the safety of a permanent tether. Such devices may improve the mobility of the dog, but the possibility would still remain for the tether to become tangled around objects within the dog's range, especially over extended periods of time.

This rule will primarily affect Class A and Class B licensed dog dealers. As stated previously in this analysis, there is no information available on the actual number of Class A and Class B licensed dog dealers who use permanent tethering as a means of primary enclosure. Over 95 percent of Class A and Class B licensed dog dealers are considered small businesses. We do not expect the elimination of permanent tethering as a means of primary enclosure to have a significant impact on dog dealers, large or small, because permanent tethering as a means of primary enclosure is rarely, if ever, utilized by Class A and Class B licensed dog dealers. We also do not expect the elimination of permanent tethering as a means of primary enclosure to have a significant impact on exhibitors, carriers, intermediate handlers, or research facilities because permanent tethering is practically never used by these regulated entities.

This rule contains a reporting and recordkeeping requirement. Specifically, this rule requires licensees to obtain approval from APHIS before they may temporarily tether a dog.

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

The proposed rule that preceded this final rule contained no information collection or recordkeeping requirements. However, this final rule contains an information collection requirement that was not included in the proposed rule. Specifically, this final rule requires licensees to obtain approval from APHIS before they may temporarily tether a dog.

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 final rule have been submitted for approval to the Office of Management and Budget (OMB). When OMB notifies us of its decision, we will publish a document in the **Federal Register** providing notice of the assigned OMB control number or, if approval is denied, providing notice of what action we plan to take.

Estimate of burden: Public reporting burden for this collection of information is estimated to average .5 hours per response.

Respondents: 10.

Estimated number of responses per respondent: 2.0.

Estimated total annual burden on respondents: 10 hours.

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 are amended as follows:

PART 1—DEFINITION OF TERMS

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

Authority: 7 U.S.C. 2131–2159; 7 CFR 222, 2.80, and 371.2(g).

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

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

4. Section 3.6 is amended by removing paragraph (c)(2), by redesignating paragraphs (c)(3) and (c)(4) as paragraphs (c)(2) and (c)(3), respectively, and by adding a new paragraph (c)(4) to read as follows:

§ 3.6 Primary enclosures.

* * * * *

(c) * * *

(4) *Prohibited means of primary enclosure.* Permanent tethering of dogs is prohibited for use as primary enclosure. Temporary tethering of dogs is prohibited for use as primary enclosure unless approval is obtained from APHIS.

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Done in Washington, DC, this 7th day of August 1997.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–21370 Filed 8–12–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. 97–ACE–8]

Amendment to Class E Airspace, Storm Lake, IA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This rule amends the Class E airspace area at Storm Lake Municipal Airport, Storm Lake, IA. The effect of

this rule is to provide additional controlled airspace for aircraft arriving and departing the Storm Lake Municipal Airport.

EFFECTIVE DATE: 0901 UTC September 11, 1997.

FOR FURTHER INFORMATION CONTACT:

Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone number: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on May 21, 1997 (62 FR 27688). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that useless a written adverse comment, or a written notice of intent to submit such an adverse comment, was received within the comment period, the regulation would become effective on September 11, 1997. No adverse comments were received, and thus this notice confirms that this final rule will become effective on that date.

Issued in Kansas City, MO on July 11, 1997.

Christopher R. Blum,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 97–21407 Filed 8–12–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. 97–ACE–15]

Amendment to Class E Airspace, Aurora, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the Class E airspace area at Aurora Memorial Municipal Airport, Aurora, MO. The Federal Aviation Administration has developed a Standard Instrument Approach Procedure (SIAP) based on the Global Positioning System (GPS) which has made this change necessary. The intended effect of this rule is to provide additional controlled airspace for aircraft executing the SIAP at Aurora Memorial Municipal Airport.

DATES: Effective date: 0901 UTC, October 31, 1997.

Comment date: Comments must be received on or before September 12, 1997.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Docket Number 97–ACE–15, 601 East 12th St., Kansas City, MO 64106.

The official docket may be examined in the Office of the Assistant Chief Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT:

Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA has developed Standard Instrument Approach Procedures (SIAP) utilizing the Global Positioning System (GPS) at Aurora Memorial Municipal Airport, Aurora, MO. The amendment to Class E airspace at Aurora, MO will provide additional controlled airspace to segregate aircraft operating under Visual Flight Rules (VFR) from aircraft operating under Instrument Flight Rules (IFR) procedures while arriving or departing the airport. The area will be depicted on appropriate aeronautical charts thereby enabling pilots to either circumnavigate the area, continue to operate under VFR to and from the airport, or otherwise comply with IFR procedures. Class E airspace areas extending from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the