

PARTS 912-913—[REMOVED]

3. Under the authority of 7 U.S.C. 1621-1627, parts 912 and 913 are removed.

PART 929—[AMENDED]

4. The authority citation for 7 CFR part 929 continues to read as follows:

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

§ 929.16 [Removed]

5. In part 929, § 929.16 is removed.

PART 982—[AMENDED]

6. The authority citation for 7 CFR part 982 continues to read as follows:

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

§§ 982.432 and 982.457 [Removed]

7. In part 982, §§ 982.432 and 982.457 are removed.

PART 989—[AMENDED]

8. The authority citation for 7 CFR Part 989 continues to read as follows:

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

§§ 989.6 and 989.211 [Removed]

9. In part 989, §§ 989.6 and 989.211 are removed.

Dated: February 20, 1998.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98-5545 Filed 3-3-98; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF AGRICULTURE**Animal and Plant Health Inspection Service****9 CFR Parts 2 and 3**

[Docket No. 95-078-3]

RIN 0579-AA74

Humane Treatment of Dogs and Cats; Temperature Requirements

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations for the humane treatment of animals under the Animal Welfare Act by revising certain requirements pertaining to climatic conditions. We are clarifying the current temperature requirements for dogs and cats in indoor, sheltered, and mobile and traveling housing facilities, in primary conveyances used for transportation, and in the animal holding areas of terminal facilities. We are also requiring

that any animal covered by the Animal Welfare Act shall never be exposed to combinations of temperature, humidity, and time that would adversely affect the animal's health and well-being, taking into consideration the animal's health status, age, breed, or any other pertinent factor. When climatic conditions present a threat to an animal's health or well-being, appropriate measures must be taken to alleviate the impact of those conditions. This action will help ensure that animals protected by the Animal Welfare Act are maintained in climatic conditions conducive to the animals' health and well-being.

EFFECTIVE DATE: April 3, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Smith, Staff Animal Health Technician, REAC, APHIS, suite 6D02, 4700 River Road Unit 84, Riverdale, MD 20737-1234, (301) 734-4972, 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. The Secretary has delegated the responsibility for enforcing the AWA to the U.S. Department of Agriculture's (USDA) Animal and Plant Health Inspection Service (APHIS). Regulations established under the AWA are contained in 9 CFR parts 1, 2, and 3. Parts 1 and 2 contain definitions and general requirements, and part 3 contains specific standards for the care of animals. Subpart A of 9 CFR part 3 contains requirements specifically pertaining to 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 in subpart A of 9 CFR part 3 by removing the option for facilities to use tethering as a means of primary enclosure for dogs and revising the temperature requirements for indoor, sheltered, and mobile and traveling housing facilities, for primary conveyances used in transportation, and for the animal holding areas of terminal facilities to require that the ambient temperature must never exceed 90 °F (32.2 °C) when dogs or cats are present. This proposal was based, in part, on the recommendations and opinions expressed at three public meetings our agency hosted in 1996 to gather information on the regulations that

apply to the care of dogs and cats in the commercial pet trade. In addition, our experience in AWA enforcement led us to conclude that continuous confinement of dogs by tethers is inhumane and that a maximum temperature restriction was needed for the care of dogs and cats in certain circumstances because there have been incidents in which dogs or cats exposed to extremely high temperatures during air travel died or were seriously harmed.

We solicited comments concerning our proposal for 60 days ending September 3, 1996. We received 54 comments by that date. After reviewing the comments, we decided to publish a final rule regarding tethering and reconsider the temperature requirements. The final rule regarding tethering (62 FR 43272-43275, Docket No. 95-078-2) was published August 13, 1997. Therefore, this document concerns only the part of the proposal concerning temperature requirements for dogs and cats.

Forty-two of the 54 comments received on the proposed rule addressed the proposed temperature requirements for dogs and cats. These comments were from dog dealers; associations representing the pets, transportation, animal feed, and biomedical research industries; pharmaceutical companies; humane organizations; a Federal government agency; a veterinarian; and other interested individuals. A few of the comments generally supported the proposal; the majority generally opposed it. Comments on the proposed rule itself are discussed below; comments on the potential economic effects of the proposed rule and on the Initial Regulatory Flexibility Analysis that was included in the proposed rule are discussed in the section of this document that pertains to Executive Order 12866 and the Regulatory Flexibility Act.

The issue raised by the most number of commenters was that the proposal appeared to be unfounded and that any proposed change to the AWA temperature requirements should be based on hard data supporting the need for the proposed change. This concern was expressed both by commenters who were opposed and commenters who were unopposed to the proposed rule. Several commenters mentioned the need for APHIS to consider two sources of relevant information: the recommendations regarding temperature requirements made at the three public meetings hosted by our agency in 1996 and from a study commissioned by our agency and the Federal Aviation Administration (FAA) regarding the

climatic conditions in cargo holds of various aircraft commonly used to transport animals.

One commenter disagreed with the suggestion that we had insufficient data upon which to base the proposed rule. The commenter stated that Congress has been concerned about the safety of animals being transported by the airlines since 1976 and that, at one of the APHIS public meetings, several humane organizations reported receiving frequent complaints from the public regarding animal deaths during air transit. Conversely, another commenter stated that, while a few participants at the public meetings suggested that there have been numerous such incidents of animal deaths, no evidence was produced, and many participants did not agree with these assertions. One commenter requested documented evidence of such incidents, and we have provided information directly to the commenter regarding the cases APHIS has had against the major airlines in recent years.

We are not aware of any scientific research that has been done that shows that the health and well-being of dogs and cats is seriously compromised at temperatures exceeding 90 °F. In fact, we believe that such a finding is unlikely because of the varying tolerances dogs and cats have to temperature extremes at different ages, the wide variety of dog breeds that have been developed over centuries for different purposes, including acclimation to different climates, and a host of other variables. As stated in the proposed rule, our belief that temperatures exceeding 90 °F can be harmful to dogs and cats was based on our experience in AWA enforcement and on the information gathered from the three public meetings. (We have not received the final report of the study on cargo holds commissioned by our agency and the FAA.) Despite a lack of hard data regarding a specific safe maximum temperature, our experience in regulating the care of dogs and cats and available information led us to believe that the current AWA temperature requirements were not adequate to ensure the well-being of dogs and cats in the commercial pet trade and that a maximum temperature limit was needed.

The majority of the commenters were opposed to the establishment of a 90-°F limit for the care of dogs and cats in indoor and sheltered housing facilities and in primary conveyances used for transportation. Their numerous reasons included the following: That the proposed 90-°F limit would be

unnecessarily restrictive because animals can adjust to temperature changes; that there is a lack of evidence that exposure of healthy adult dogs to temperatures in excess of 90 °F for limited periods of time is inhumane if the dogs are provided adequate ventilation and are shielded from the sun; and that the 90-°F limit was too high in that it would be insufficient for safeguarding the health and lives of dogs and cats in the circumstances covered in the proposal. Two commenters stated that the limit should be 85 °F, and one commenter thought the limit should be 80 °F. Several commenters stated that, by itself, temperature is a poor indicator of comfort or stress and that other factors, such as humidity, airflow, length of exposure, and breed, hair coat, age, weight, health status, and acclimation of the animal, need to be considered in evaluating whether an animal is being exposed to significantly stressful conditions.

A couple of commenters stated that care and treatment issues such as appropriate temperature levels cannot be effectively regulated by a single standard and should be left up to responsible veterinary evaluation and discretion. A few dealers stated that the proposed rule was unnecessary because people in the pet profession know how to care for animals and have a financial stake in ensuring their well-being. Several commenters stated that the current regulations pertaining to temperature requirements are sufficient for ensuring the health and well-being of dogs and cats, if the regulations are properly enforced. One commenter indicated that APHIS should not change the regulations pertaining to dog and cat dealers and instead should concentrate on enforcing temperature requirements for dogs and cats in transit by airlines.

Several commenters took issue with the lack of flexibility in the proposed rule in that, as written, temperatures must "never" rise above 90 °F when dogs or cats are present. The commenters stated that a power failure occurring on a hot day could cause the temperature to rise above that level even in facilities with air conditioning, and then those facilities would be out of compliance with the proposed requirement. In addition, several commenters stated that this lack of flexibility would make it practically impossible at certain times of the year in most U.S. airport cities for pets to be shipped on aircraft because it is not feasible to assume that animals in air transit would "never" be exposed to temperatures exceeding 90 °F. Many commenters expressed concern that the

lack of flexibility in the proposed rule could cause the airlines to establish an embargo on shipping animals. One commenter suggested that, if an upper temperature limit is to be established, it would be better to give a time limit for the animals to be exposed to that temperature rather than mandate that the temperature shall "never" exceed that level when dogs or cats are present.

We have carefully considered all of these comments and have decided that many of the concerns expressed have merit. We agree with the commenters that factors such as humidity and length of exposure, and age, breed, health status, and acclimation of the animal must all be considered in establishing a safe temperature range for a particular animal. Moreover, we agree that a prohibition on allowing dogs and cats in the circumstances covered by the proposal to be exposed to temperatures exceeding 90 °F for even a minimal amount of time under extenuating circumstances is neither feasible nor necessary; while many dogs or cats in the circumstances covered by the proposal might suffer at temperatures exceeding 90 °F for an extended period of time, few dogs or cats would not be able to withstand such temperatures for a limited period.

We have decided that setting a maximum temperature limit—whether it be 90 °F or any other temperature—for the care of dogs and cats in the circumstances described in the proposed rule would not achieve our goals for establishing a sound temperature policy for these animals and would place an unnecessary burden on the regulated industry. Moreover, establishing a single maximum temperature that could be used to ensure the health and well-being of all dogs and cats covered by the AWA in indoor, sheltered, and mobile or traveling housing facilities, in primary conveyances used for transportation, and in the animal holding areas of terminal facilities, and still be realistic for the industry to achieve, would be very difficult because too many variables are involved.

Instead, after carefully reviewing the comments received and further analyzing the current temperature requirements for dogs and cats in 9 CFR parts 2 and 3, we have decided that we basically agree with the commenters who stated that the current regulations are sufficient to protect the health and well-being of dogs and cats in the commercial pet trade. The incidents mentioned in the proposed rule in which animals died or were seriously harmed after having been exposed to extremely high temperatures during air

travel were the result of human error—not a lack of adequate governing regulations. All such cases of animal neglect have been successfully prosecuted based on the current regulations. However, we agree with opinions expressed at the public meetings on the care of dogs and cats in the commercial pet trade that the regulations pertaining to temperature requirements could and should be clarified and improved.

The current regulations for the care of dogs and cats in indoor, sheltered, and mobile or traveling housing facilities, in primary conveyances used for transportation, and in the animal holding areas of terminal facilities state that, among other things, the ambient temperature must not fall below 45 °F or rise above 85 °F for more than 4 consecutive hours when dogs or cats are present (9 CFR 3.2(a), 3.3(a), 3.5(a), and 3.15(e)). (For primary conveyances used for transportation, this requirement applies only during surface transportation.) The current regulations regarding the handling of dogs or cats to or from a primary conveyance or a terminal facility state that, among other things, the dogs or cats must not be exposed to an ambient temperature above 85 °F (29.5 °C) for a period of more than 45 minutes. We are concerned that some regulated parties have assumed that compliance with these temperature requirements is all that is required to ensure compliance with the AWA temperature requirements for dogs and cats in the circumstances just described. However, 9 CFR parts 2 and 3 include several other temperature and handling requirements that are also applicable to these animals.

Additional temperature requirements in 9 CFR parts 2 and 3 pertaining to dogs and cats in the circumstances covered by the proposed rule state that “dogs and cats must be sufficiently heated and cooled when necessary to protect [them] from temperature extremes and to provide for their health and well-being” (§§ 3.2(a), 3.3(a), and 3.5(a)), “[d]uring air transportation, dogs and cats must be held in cargo areas that are heated or cooled as necessary to maintain an ambient temperature that ensures the health and well-being of the dogs and cats” (§ 3.15(d)), “[d]uring surface transportation, auxiliary ventilation, such as fans, blowers or air conditioning, must be used in any animal cargo space containing live dogs or cats when the ambient temperature within the animal cargo space reaches 85 °F (29.5 °C)” (§ 3.15(e)), and “handling of all animals shall be done . . . in a manner that does not cause

trauma, overheating, excessive cooling, behavioral stress, physical harm, or unnecessary discomfort” (§§ 2.38(f)(1) and 2.131(a)(1)).

The regulations that state that the ambient temperature must never rise above 85 °F for more than 4 consecutive hours (commonly referred to as the “4-hour rule”), or more than 45 minutes in the case of dogs or cats being transported to or from a primary conveyance or terminal facility, do not override these additional temperature requirements. Consequently, a person responsible for the care of an animal that died from exposure to high temperatures might have been in compliance with the “4-hour rule” but would have been in violation of the other temperature and handling requirements in 9 CFR parts 2 and 3 by not ensuring that the animals were cooled as necessary to provide for their well-being. In other words, the AWA regulations require that an individual responsible for a dog or cat’s care must take measures to ensure the animal’s well-being regardless of whether the temperature is 85 °F or some temperature in excess of 85 °F. While some dogs and cats can easily withstand temperatures exceeding 85 °F for relatively long periods of time, other dogs and cats could be in danger at such temperatures for a relatively short period, especially with high humidity levels. Therefore, in this final rule, we are clarifying that the “4-hour rule” does not preclude the need to comply with the other temperature and handling requirements in 9 CFR parts 2 and 3. We are adding to §§ 3.2(a), 3.3(a), 3.5(a), 3.15(e), 3.18(d), and 3.19(a)(1) and (3) the following sentence: “The preceding requirements are in addition to, not in place of, all other requirements pertaining to climatic conditions in parts 2 and 3 of this chapter.”

In addition, because we agree with the many commenters who stated that humidity is an important factor in determining an animal’s ability to withstand heat, we are also adding a new regulation regarding humidity levels that will apply to all animals covered by the AWA and making some minor changes to part 3 regarding humidity as it affects dogs and cats in the commercial pet trade. It is generally recognized that high temperatures with low humidity are less dangerous and more comfortable for humans and animals than high temperatures and high humidity. As stated above, individual animals can withstand high temperatures or high temperatures combined with high humidity for different lengths of time. Therefore, we

are adding to the handling regulations in § 2.131 new requirements that pertain to climatic conditions. The new regulations specify that, when climatic conditions, such as extreme temperatures and humidity levels, present a threat to an animal’s health or well-being, appropriate measures must be taken to alleviate the impact of those conditions. Moreover, at no time may an animal be exposed to a combination of temperature, humidity, and time that would present a threat to the animal’s health and well-being, taking into consideration such factors as the animal’s health status, age, breed, and temperature acclimation.

We believe these changes to the regulations are more realistic for the commercial pet and transportation industries to achieve than the proposed 90-°F limit and actually better convey our goals for a sound temperature policy for dogs, cats, and other animals covered by the AWA.

Other Comments on the Proposed Rule

Several commenters stated that applying the proposed requirement to indoor and sheltered primary enclosures but not to outdoor primary enclosures is contradictory and discriminatory. One commenter agreed that the proposed temperature requirement should not apply to outdoor facilities but stated that the proposed rule should also not apply to animals in sheltered facilities with unobstructed access to an outdoor run. A couple of commenters expressed concern that the proposal implied that the USDA endorses outdoor facilities for dogs and cats over indoor facilities because one of the alternatives listed in the proposal for dog and cat dealers to gain compliance with the proposed requirement was for them to establish outdoor shelters.

We did not mean to imply that we believe outdoor primary facilities for dogs and cats are preferable to indoor facilities. In regard to preventing stress from high temperatures, we continue to believe that outdoor shelters and runs provide dogs and cats with access to fresh air, air movement (breezes and winds), shade (required by the regulations), and other climatic and environmental factors that help to alleviate stress from high temperatures. Therefore, we believe that temperatures in excess of 85 °F are more comfortable outdoors than indoors, if auxiliary ventilation is not provided indoors. We do not recommend the use of outdoor facilities over indoor facilities for dogs and cats.

Two commenters said that USDA should expand the proposed rule to deal with minimum temperatures as well as

maximum temperatures and should disallow animals in the circumstances covered by the proposed rule to ever be exposed to temperatures below 50 °F. One commenter further stated that infant animals in the circumstances covered by the proposed rule should never be subjected to temperatures less than 65 °F.

The current temperature requirements that apply to indoor housing facilities state, among other things, that "[w]hen dogs or cats are present, the ambient temperature in the facility must not fall below 50 °F (10 °C) for dogs and cats not acclimated to lower temperatures, for those breeds that cannot tolerate lower temperatures without stress or discomfort (such as short-haired breeds), and for sick, aged, young, or infirm dogs and cats, except as approved by the attending veterinarian. Dry bedding, solid resting boards, or other methods of conserving body heat must be provided when temperatures are below 50 °F (10 °C). The ambient temperature must not fall below 45 °F (7.2 °C) for more than 4 consecutive hours when dogs or cats are present * * *." (§ 3.2(a)). These temperature requirements are the same as those for sheltered and mobile or traveling housing facilities. The temperature requirements for primary conveyances and terminal facilities state, among other things, that the ambient temperature may not fall below 45 °F (7.2 °C) for a period of more than 4 hours when dogs or cats are present. The temperature requirements regarding transporting dogs or cats to or from terminal facilities and primary conveyances state, among other things, that the ambient temperature must not fall below 45 °F (7.2 °C) for a period of more than 45 minutes, unless the animal is accompanied by a certificate of acclimation to lower temperatures as provided in § 3.13(e).

The sentence described previously that is being added through this final rule to several sections in 9 CFR part 3 to clarify that the "4-hour rule" does not preempt the other temperature and handling requirements also pertains to minimum temperatures. We believe that the current temperature requirements regarding specific minimum temperature levels, in conjunction with the current AWA regulations that pertain to temperature in general and the changes resulting from this final rule, are sufficient to protect dogs and cats in the circumstances covered by the proposal from adverse exposure to cold temperatures.

One commenter questioned whether there is evidence that airlines routinely have monitored or will monitor the

temperatures in cargo holds and how APHIS would monitor the temperature of cargo holds during flight. Another commenter stated that airlines should be required to ascertain current temperatures at all transfer points and destinations for animals being transported and not permit shipment if the temperatures are outside the requirements.

For the airlines or any other regulated entity to ensure compliance with the AWA temperature requirements for dogs and cats, monitoring the animals they are transporting is more important than taking temperature readings. As such, the current requirements pertaining to air transportation of dogs and cats state, among other things, that "[d]uring air transportation of dogs or cats, it is the responsibility of the carrier to observe the dogs or cats as frequently as circumstances allow, but not less than once every 4 hours if the animal cargo area is accessible during flight. If the animal cargo area is not accessible during flight, the carrier must observe the dogs or cats whenever they are loaded and unloaded and whenever the animal cargo space is otherwise accessible to make sure they have sufficient air for normal breathing, that the animal cargo area meets the heating and cooling requirements of § 3.15(d), and that all other applicable standards of this subpart are being complied with * * *." (9 CFR 3.17(b)).

We believe that these current requirements, in conjunction with the AWA regulations discussed previously that pertain to temperature in general, as well as the new requirement being added to 9 CFR part 2 through this final rule, are sufficient to ensure the health and well-being of animals during air transport. In regard to requiring the airlines to ascertain temperatures at transfer points and refusing to transport animals if the temperatures are outside the appropriate range, the airlines can and do refuse to ship animals if there is any question as to whether an individual animal could be transported safely. However, we do not agree that obtaining temperatures at transfer points prior to departure is necessary. The outside temperature at an airport is irrelevant if efforts are made to keep the animals sufficiently heated or cooled to ensure their well-being while in the cargo hold of the airplane on the tarmac and while the animals are being transported to or from the airplane or terminal facility.

One commenter stated in regard to § 3.15(d) that, "if it is required that the passenger cabin of an airplane be pressurized at 8,000 feet and less, then the cargo hold in which animals are

transported must also be pressurized." We have made no change in response to this comment because aircraft cargo holds that contain animals are pressurized the same as passenger cabins.

One commenter suggested that the proposed rule could benefit from a definition of the term "terminal facilities" in 9 CFR, part 1. We believe that this term is self-explanatory, and, consequently, have made no change to the regulations in response to this comment.

One commenter stated that USDA should mandate that airlines (1) advise passengers who have lost an animal on a flight that they should file a complaint with USDA, and (2) advise USDA themselves of such incidents. The commenter maintained that the data obtained from such reporting would better enable USDA to learn precisely which aircraft and which cargo holds present the greatest risks to animals. Another commenter further stated that carriers and intermediate handlers should be required to notify APHIS within 24 hours of the death of an animal being transported and should be required to maintain an annual report on the transportation of companion animals to include (1) the total number of animals shipped, and (2) the total number of injuries, fatalities, and losses. The commenter had additional recommendations regarding establishing requirements under the AWA intended to ensure the safety of animals in air transit.

We believe that the statistics the commenters recommended we obtain could be informative but question the true value of having such data. Specifically, we question whether having it would necessarily improve our enforcement of the AWA and whether any benefit gained from such data would be worth the paperwork burden that would be placed on the regulated industry and the information collection burden that would be placed upon our agency. However, we are considering these suggestions as well as the other recommendations made by the commenter pertaining to air transport of animals. In addition, we are engaged in a public information campaign regarding the APHIS Animal Care program, and one of the areas of emphasis is USDA's role in regulating the air transport of animals. We have developed a brochure, "Traveling With Your Pet," that is being distributed to, among others, travel agencies, veterinarians, and any member of the public who requests it. Animal Care has also established a home page on the

World Wide Web that includes information on safe pet travel.

A few commenters indicated that we should extend the proposed regulation to cover dogs and cats housed by humane societies, pounds, and individual pet owners. While we agree that all dogs and cats should be treated in a humane manner, the AWA does not authorize us to promulgate standards for the care of animals by humane societies, pounds, or individual pet owners, unless they are acting as dealers or exhibitors.

Two commenters made comments and recommendations regarding AWA enforcement, the AWA regulations pertaining to veterinary care provided to regulated animals, and the breeding frequency for female animals in the commercial pet trade. Although these comments are outside the scope of the proposed regulation, we are taking them into consideration. If we decide to make any changes to the AWA regulations in response to these comments, we will publish a proposed rule in the **Federal Register**.

One commenter expressed concerns about the format of the three public meetings APHIS held in 1996 to gather information on the regulations pertaining to the care of dogs and cats in the commercial pet trade. Specifically, the commenter stated, "If APHIS is going to use the workshop format to justify specific rulemaking, rather than merely as a mechanism for gather[ing] opinions, it must develop a mechanism to assure that reasonable standards of accountability are imposed on workshop participants, so that workshop input can be properly evaluated and not be overly influenced by aggressive and excessively vocal interest groups." The commenter was particularly concerned that participants who claimed there have been numerous incidents of injury and death of dogs and cats during air transport did not produce supporting evidence, "and it was clear that the majority of participants in the air transport session did not concur with these allegations."

Our agency held the three public meetings in 1996 to gather information from interested and affected parties. We believe the workshop format was useful for eliciting information. We have considered and continue to consider the wide range of opinions expressed at those meetings, and further rulemaking may result. We did not use the input obtained from the public meetings to "justify" our proposed rule; as stated previously, the proposed rule was based on information gathered at the meetings as well as on our own experience in AWA enforcement.

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

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

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). The proposed rule would have amended the regulations under the Animal Welfare Act by removing the option for facilities to use tethering as a means of primary enclosure for dogs and revising the temperature requirements for indoor, sheltered, and mobile and traveling housing facilities, for primary conveyances used in transportation, and for the animal holding areas of terminal facilities to require that the ambient temperature must never exceed 90 °F (32.2 °C) when dogs or cats are present. 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.

This document pertains only to the part of the proposed rule concerning the temperature requirements. We received several comments from members of the potentially affected industries concerning the likely economic effects of the proposed temperature requirements and one comment from the U.S. Small Business Administration (SBA) that stated the Initial Regulatory Flexibility Analysis fell short of what is required by the Regulatory Flexibility Act. The SBA further stated that APHIS should better indicate the scope of the problem before issuing a final rule and consider other alternatives than just the rule as proposed or no change to the regulations.

In fiscal year 1995, 10,108 facilities were licensed or registered under the AWA. Of that number, 4,325 were licensed dealers, 2,304 were licensed exhibitors, and 3,479 were registrants. The dealers are subdivided into two classes. Class A dealers (3,056) breed animals, and Class B dealers (1,269) serve as animal brokers. The registrants comprise research facilities (2,688), carriers and intermediate handlers (756), and exhibitors (35).

It is not known how many of the licensees and registrants are considered small entities under SBA standards,

since 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, 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 0752 (which includes breeders) was \$115,290, well below the SBA's small-entity threshold of \$5.0 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.

Animal dealers commented on both the potential direct and indirect economic effects of the proposed rule on their businesses. Several commenters stated that the estimated cost of compliance in the Initial Regulatory Flexibility Analysis was too low and that implementing the proposal would be much more burdensome and costly than the analysis showed. Two research firms commented that, in most parts of the United States, air conditioning is the only means of ensuring that the temperature in an enclosed building never rises above 90 °F. One firm then estimated that installation of air conditioning at the firm's research facility would cost \$350,000, additional annual utility costs would be \$37,340, and an additional \$400,000 would be required for a generator to prevent cessation of air conditioning during a power outage. The other research firm stated that the cost of installing and operating air conditioning "would jeopardize our ability to operate profitably and may result in a substantial increase in cost to our pharmaceutical clients." One dealer indicated that the estimated cost for additional electricity needed for air conditioning was too low, and another dealer questioned whether the cost of a standby generating system is within an affordable price range for a small kennel.

Some animal dealers expressed concern that the airlines might stop transporting animals instead of trying to comply with additional USDA animal care and handling requirements. The commenters were especially concerned that many small dealers cannot afford the costs of transporting their animals by surface transportation. They further stated that, if the airlines end air transport of animals, then small dealers would be put out of business and the wholesale pet industry would either become obsolete or the domain of a few large dealers. One commenter stated

that small dealers provide diversity in the commercial pet business.

A commenter representing the airline industry expressed similar concerns. The commenter stated that, if the proposed rule was finalized, it would "have a destructive and costly effect on individual pet owners, owners of assistance dogs, the pet trade, breeders of dogs and cats, and the dog and cat show competition industry" because "airlines simply will not be able to carry pet animals from a large number of airport cities for large portions of each year."

We recognize and agree with many of the concerns just described. However, we believe that all of these concerns are relevant to the proposed rule only. The final rule should not cause economic hardship for the regulated industries because it serves to clarify the current regulations and adds no new requirements that would add a financial burden. The final rule clarifies that the standards in subpart A of 9 CFR part 3 that state that the ambient temperature must not fall below 45 °F or rise above 85 °F for more than 4 consecutive hours when dogs or cats are present do not override the other requirements pertaining to climatic conditions and handling in 9 CFR parts 2 and 3. In addition, the final rule adds a new requirement to 9 CFR part 2 that applies to climatic conditions for all animals covered by the AWA. Under the new rule, when climatic conditions, such as extreme temperatures and humidity levels, present a threat to an animal's health or well-being, appropriate measures must be taken to alleviate the impact of those conditions. Moreover, at no time may an animal be exposed to a combination of temperature, humidity, and time that would present a threat to the animal's health and well-being, taking into consideration such factors as the animal's health status, age, breed, and temperature acclimation. Because the AWA regulations have always required regulated parties to take appropriate measures to ensure the health and well-being of their animals, these requirements basically serve to clarify existing requirements.

In regard to the comment letter from the SBA, APHIS Animal Care officials agreed that more specific information was needed regarding the scope of the problem, so APHIS headquarters surveyed the Animal Care field staff on the issue of temperature requirements for dogs and cats. The respondents included 38 animal care inspectors and 1 supervisory animal care specialist. The survey responses indicate that, in the facilities inspected by the respondents in the past 5 years, 2,516

dogs and cats have been severely affected, and 108 dogs and cats have died, as the result of exposure to excessive temperatures. In regard to the SBA's comment that other viable alternatives than just the rule as proposed or no change to the regulations need to be considered, APHIS is taking an entirely different approach to the proposal in the final rule.

There are no reporting or recordkeeping requirements associated with this rule.

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

9 CFR Part 2

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 2 and 3 are amended as follows:

PART 2—REGULATIONS

1. The authority citation for part 2 continues to read as follows:

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

2. In § 2.131, a new paragraph (d) is added to read as follows:

§ 2.131 Handling of animals.

* * * * *

(d) When climatic conditions present a threat to an animal's health or well-

being, appropriate measures must be taken to alleviate the impact of those conditions. An animal may never be subjected to any combination of temperature, humidity, and time that is detrimental to the animal's health or well-being, taking into consideration such factors as the animal's age, species, breed, overall health status, and acclimation.

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. In § 3.2, paragraph (a) is amended as follows:

a. In the first sentence, by adding the words "or humidity" after the word "temperature".

b. At the end of the paragraph, by adding a new sentence to read as set forth below.

§ 3.2 Indoor housing facilities.

(a) * * * The preceding requirements are in addition to, not in place of, all other requirements pertaining to climatic conditions in parts 2 and 3 of this chapter.

* * * * *

5. In § 3.3, paragraph (a) is amended as follows:

a. In the first sentence, by adding the words "or humidity" after the word "temperature".

b. At the end of the paragraph, by adding a new sentence to read as set forth below.

§ 3.3 Sheltered housing facilities.

(a) * * * The preceding requirements are in addition to, not in place of, all other requirements pertaining to climatic conditions in parts 2 and 3 of this chapter.

* * * * *

6. In § 3.5, paragraph (a) is amended as follows:

a. In the first sentence, by adding the words "or humidity" after the word "temperature".

b. At the end of the paragraph, by adding a new sentence to read as set forth below.

§ 3.5 Mobile or traveling housing facilities.

(a) * * * The preceding requirements are in addition to, not in place of, all other requirements pertaining to climatic conditions in parts 2 and 3 of this chapter.

* * * * *

7. Section 3.15 is amended as follows:

a. In paragraph (d), the first sentence, by adding the words "and humidity" after the word "temperature".

b. In paragraph (e), at the end of the paragraph by adding a new sentence to read as set forth below.

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

* * * * *

(e) * * * The preceding requirements are in addition to, not in place of, all other requirements pertaining to climatic conditions in parts 2 and 3 of this chapter.

* * * * *

6. In § 3.18, paragraph (d) is amended by adding at the end of the paragraph a new sentence to read as follows:

§ 3.18 Terminal facilities.

* * * * *

(d) * * * The preceding requirements are in addition to, not in place of, all other requirements pertaining to climatic conditions in parts 2 and 3 of this chapter.

* * * * *

7. In § 3.19, paragraphs (a)(1) and (3) are amended by adding at the end of both paragraphs a new sentence to read as follows:

§ 3.19 Handling.

(a) * * *

(1) * * * The preceding requirements are in addition to, not in place of, all other requirements pertaining to climatic conditions in parts 2 and 3 of this chapter.

* * * * *

(3) * * * The preceding requirements are in addition to, not in place of, all other requirements pertaining to climatic conditions in parts 2 and 3 of this chapter.

* * * * *

Done in Washington, DC, this 26th day of February 1998.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98-5538 Filed 3-3-98; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF ENERGY

10 CFR Part 600

48 CFR Parts 915, 927, 952, and 970

RIN 1991-AB33

Assistance Regulations; Acquisition Regulations; Revisions to Rights in Data Regulations

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) is amending its Financial

Assistance and Acquisition Regulations to effect changes to its rights in technical data regulations to reflect a greater reliance upon the rights in technical data coverage in the Federal Acquisition Regulation and to recognize the requirements relating to technology transfer activities at certain DOE laboratories.

EFFECTIVE DATE: This rule is effective April 3, 1998.

FOR FURTHER INFORMATION CONTACT:

Robert M. Webb, U.S. Department of Energy, Office of Procurement and Assistance Management, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 586-8264.

Judson Hightower, U.S. Department of Energy, Office of Assistant General Counsel for Technology, Transfer and Intellectual Property, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 586-2813.

SUPPLEMENTARY INFORMATION:

I. Background.

II. Discussion of Comments.

III. Procedural Requirements.

A. Review Under Executive Order 12866.

B. Review Under Executive Order 12988.

C. Review Under the Regulatory Flexibility Act.

D. Review Under the Paperwork Reduction Act.

E. Review Under the National Environmental Policy Act.

F. Review Under Executive Order 12612.

G. Review Under Small Business Regulatory Enforcement Fairness Act of 1996.

H. Review Under the Unfunded Mandate Reform Act of 1995.

I. Background

This final rule promulgates regulations published for comment on March 31, 1997, at 62 FR 15138. These new regulations delete the coverage of rights in technical data, including regulations, solicitation provisions, and contract clauses currently in the Department of Energy Acquisition Regulation (DEAR). The new coverage relies substantially on the rights in technical data regulations, provisions, and clauses in the Federal Acquisition Regulation (FAR), except where other coverage is appropriate to fulfill DOE's statutory duties to disseminate data produced in its research, development and demonstration programs. Coverage in Subpart 970.27 of the DEAR has been written to reflect the considerations relating to and use of two alternate rights in technical data clauses in DOE's management and operating contracts. Finally, these regulations relocate material on the handling of proposal

data by non-Federal evaluators and reflects the effect on their selection of section 6002 of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103-355).

This final rule supersedes Acquisition Letters No. 87-5, 88-1, and 91-7.

II. Discussion of Comments

Eleven commenters responded to the proposed rule. Five of the commenters were DOE management and operating contractors; two others were universities; two were trade associations, and the remaining two were DOE employees. The comments have been considered and disposed of as described below.

Material from 10 CFR Part 600 has been added at the outset of the presentation of the regulatory changes of this final rule though those changes were not part of the proposed rule. DOE has a practice of inviting public comment on significant policies that are added to a final rule that were not within scope of the notice of proposed rulemaking. DOE has decided not to reopen the comment period in this case, because the changes to 10 CFR Part 600 are not significant. DOE's financial assistance policies on rights in technical data have always followed the policies applicable to procurement. There is no reason to think that the changes made by today's final rule should be altered for financial assistance. These changes to 10 CFR Part 600 merely correct references to the Rights in Data-General clause to conform to the Department of Energy Acquisition Regulation coverage of this final rule and call for the use of paragraph (d)(3) that appears in the DEAR in lieu of the one that has appeared at 600.27(b)(2)(i)(C).

In the time since the publication of the proposed rule, Part 15 of the Federal Acquisition Regulation has been rewritten and material that had been at 15.413-2 dealing with the handling of proposal data and the use of non-Federal evaluators was deleted. The proposed rule contained alterations, for DOE's purposes, to paragraphs (e) and (f) of the FAR coverage as it then existed. We believe that the FAR material that was deleted has value to DOE contracting officers, and, as a result, this final rule publishes the substance of the former FAR and proposed DEAR provisions dealing with the handling of proposal data and use of non-Federal evaluators in DOE procurements at subsection 915.207-70.

One commenter suggested that DOE should identify the employers of non-Federal evaluators. We did not make a change. The notice of use of non-Federal evaluators is sufficient to allow