

Rules and Regulations

Federal Register

Vol. 63, No. 13

Wednesday, January 21, 1998

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 1, 2, and 3

[Docket No. 97-024-1]

RIN 0579-AA89

Animal Welfare; Regulation of Pocket Pets

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Policy statement.

SUMMARY: This document gives notice that we are now regulating under the Animal Welfare Act the handling, care, and treatment at retail pet stores of small mammals commonly referred to as "pocket pets" and requiring any retail pet store that sells pocket pets to be licensed as a dealer under the Animal Welfare Act. This action is necessary because the Animal Welfare Act regulations require regulation of all persons who sell exotic or wild animals for research, exhibition, or for use as a pet, and we consider pocket pets to be exotic or wild animals for this purpose.

FOR FURTHER INFORMATION CONTACT: Dr. Bettye K. Walters, Staff Veterinarian, Animal Care, APHIS, USDA, 4700 River Road Unit 84, Riverdale, MD 20737-1234, (301) 734-7833.

SUPPLEMENTARY INFORMATION: The Animal Welfare Act (AWA)(7 U.S.C. 2131 *et seq.*) authorizes the Secretary of Agriculture to promulgate standards and other requirements governing the humane handling, housing, care, treatment, and transportation of certain animals by dealers and other regulated businesses. The Secretary of Agriculture has delegated the responsibility for

enforcing the AWA to the Administrator of the Animal and Plant Health Inspection Service (APHIS). Regulations established under the AWA are contained in 9 CFR parts 1, 2, and 3. APHIS regulates animal dealers by issuing them annual licenses and conducting unannounced inspections of their premises to check for compliance with the AWA standards and regulations.

In recent years, several species of small, generally nondangerous mammals, including hedgehogs, degus, spiny mice, prairie dogs, flying squirrels, and jerboas, have increasingly been sold at retail pet stores in the United States. These and other small mammalian species are collectively and commonly referred to as "pocket pets." However, none of these species, some of which are native to the United States and others of which are native to foreign countries, have been domesticated as pets in the United States in the sense that dogs, cats, and other common pet-type animals have been domesticated. Therefore, APHIS considers pocket pets to be exotic or wild animals under the AWA regulations, and any retail pet store that sells a pocket pet is subject to AWA regulation.

Several years ago, some retail pet stores across the United States started selling limited numbers of pocket pets on a sporadic basis. In general, retail pet stores are exempt from AWA regulation unless they sell animals to a research facility, an exhibitor, or a dealer. Our policy was not to regulate the retail pet stores that were selling pocket pets because the effort needed to identify and regulate these stores did not appear to be a prudent use of our AWA enforcement resources. However, we continued to reevaluate this policy as the popularity of pocket pets grew among U.S. consumers. Because many retail pet stores are now selling pocket pets on a regular basis, we now believe that it is feasible and necessary to identify and regulate these stores.

Therefore, we are giving notice that, in order to ensure the humane care and treatment of pocket pets in the commercial pet trade, we are now regulating the handling, care, treatment, and transportation provided to such

animals by retail pet stores and requiring that retail pet stores dealing in these animals be licensed under the AWA. The AWA licensing requirements for animal dealers are specified in 9 CFR part 2, subpart A, and the care standards for pocket pets are covered in 9 CFR part 3, subpart F. For information about becoming licensed as a dealer under the AWA, contact the person listed above under **FOR FURTHER INFORMATION CONTACT**.

Done in Washington, DC, this 13th day of January 1998.

Craig A. Reed,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98-1312 Filed 1-20-98; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 3

[Docket No. 95-100-2]

RIN 0579-AA78

Humane Treatment of Dogs and Cats; Wire Flooring

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations under the Animal Welfare Act regarding suspended flooring of mesh or slatted construction in primary enclosures for dogs and cats. We are requiring that such flooring made of metal strands be constructed either of metal strands greater than 1/8 of an inch in diameter or of metal strands equal to or less than 1/8 of an inch in diameter coated with a material such as plastic or fiberglass. We are also requiring that any primary enclosure with a suspended floor for a dog or cat be constructed so that the floor does not bend or sag between the supports. It is our experience that suspended flooring made of wire (by which we mean any metal strand that has a diameter equal

to or less than 1/8 of an inch) is uncomfortable on animals' feet and contributes to foot injuries and that suspended flooring made of coated wire or made of metal strands larger than wire causes fewer such problems. It is also our experience that suspended floors that bend and sag can cause psychological trauma for dogs who must try to balance on them. We believe that adding these requirements will improve comfort for dogs and cats housed in primary enclosures with suspended floors and will help eliminate foot injuries to these animals.

DATES: *Effective date:* February 20, 1998. *Compliance dates:* February 20, 1998 for primary enclosures constructed on or after that date and for floors installed or replaced on or after that date and January 21, 2000 for all other primary enclosures.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Smith, Staff Animal Health Technician, Animal Care, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737-1234, (301) 734-4972.

SUPPLEMENTARY INFORMATION:

Background

Under the Animal Welfare Act (AWA) (7 U.S.C. 2131 et seq.), the Secretary of Agriculture is authorized to promulgate standards and other requirements governing the humane handling, housing, care, treatment, and transportation of certain animals by dealers, research facilities, exhibitors, and carriers and intermediate handlers. The Secretary of Agriculture has delegated the responsibility for enforcing the AWA to the Animal and Plant Health Inspection Service (APHIS). Regulations established under the AWA are contained in 9 CFR parts 1, 2, and 3. Subpart A of 9 CFR part 3 (referred to below as the regulations) contains specific standards for the humane handling, care, treatment, and transportation of dogs and cats.

The standards for primary enclosures for dogs and cats are found in § 3.6. The regulations require that, among other things, all surfaces in contact with the animals must be able to be readily cleaned and sanitized or replaced when worn or soiled. Primary enclosures must also "(h)ave floors that are constructed in a manner that protects the dogs' and cats' feet and legs from injury, and that, if of mesh or slatted construction, do not allow the dogs' and cats' feet to pass through any openings in the floor. If the floor of the primary enclosure is constructed of wire, a solid resting surface or surfaces that, in the aggregate, are large enough to hold all the occupants of the primary enclosure at

the same time comfortably must be provided."

On July 2, 1996, we published in the **Federal Register** (61 FR 34389-34391, Docket No. 95-100-1) a proposal to amend the regulations to require that, if the floor of a primary enclosure for a dog or cat is constructed of wire, the wire must be coated with a material, such as plastic or fiberglass, that can be cleaned and sanitized readily. We further proposed to require that the coated wire must have a well-rounded surface and must be of a large enough diameter so that it is comfortable on the animals' feet and protects the animals' feet from injury, and that it must be strong enough that the floor does not sag or bend between structural supports. We believed that these requirements would improve comfort for dogs and cats housed in wire-floored enclosures, would help eliminate foot injuries for such animals, and would ensure that wire flooring for dogs and cats is clean and sanitary.

We solicited comments concerning our proposal for 60 days ending September 3, 1996. We received 51 comments by that date. They were from dog breeders, humane organizations, veterinarians, trade associations, and a Federal government agency, among others. Thirty-seven comments opposed the proposal, seven favored the proposal, and seven did not explicitly favor or oppose the proposal but asked for some clarifications. The comments are discussed below by topic.

The proposed rule referenced three public meetings APHIS held in 1996 to gather information on the requirements in 9 CFR part 3, subpart A, that apply to the care of dogs and cats in the commercial pet trade. At those meetings, we met with members of affected industries, such as dealers, research facilities, and commercial animal transporters, and animal protection organizations. Each of the three meetings was divided into four workshops covering specific topic areas. One of the workshops covered sanitation, materials, flooring, and construction of primary enclosures. Several commenters on the proposal stated that, by issuing the proposed rule, APHIS had ignored input received from the public meetings because a common opinion expressed at those meetings was that APHIS should not issue new rules regarding primary enclosures for dogs and cats but instead concentrate on enforcing the current regulations. We have considered that recommendation and all of the others we received at the public meetings, and further rulemaking may result from our continued analysis of the input we obtained at those

meetings. However, we believe that, with regard to suspended flooring made of mesh or slatted construction, a more specific standard is necessary to make it clear how such flooring should be constructed in order to protect the dogs and cats from injury. This specificity will make it easier for APHIS inspectors to ensure consistency in judging the soundness of such floors and for regulated individuals to comply with the regulations.

Many commenters requested a more specific definition of wire. They wanted to know if we consider expanded metal, welded rods, and other types of metal flooring of mesh or slatted construction to be wire; many commenters stated that galvanized expanded metal works well for flooring in primary enclosures for dogs and cats. Some commenters requested that the regulations specify a certain width of diameter (gauge) to differentiate between wire and other types of metal strands, such as rods.

We agree that we need to be more specific about what we consider wire, and we regret any confusion that was caused by this lack of specificity in the proposed rule. Moreover, we agree that certain types of suspended flooring made of metal strands in a mesh or slatted configuration are not harmful to dogs and cats and do not need to be coated with a material such as plastic or fiberglass to ensure the animals' comfort and safety. We do not want to place an unnecessary burden on the regulated industry by establishing a requirement that would cause AWA licensees and registrants to replace types of suspended floors that are not known to cause harm to dogs and cats.

We do not consider any flooring material that is inflexible, such as expanded metal, to be wire. Floors made of inflexible metal strands do not bend and sag and, therefore, provide an even resting surface for the animals. Moreover, floors made of inflexible metal strands cause fewer foot problems than floors made of flexible strands, such as wire, because, to be inflexible, the strands must be of a substantial diameter. We agree with the commenters who stated that we need to be more specific regarding acceptable diameters of metal strands used in flooring for dogs and cats. The diameter of the metal strands plays a significant role in regard to ensuring the comfort and safety for the animals because strands of a relatively large diameter are less likely to cause injuries and discomfort to the animals than strands with very narrow diameters. Animals housed on floors made of metal strands of a relatively large diameter are less likely to suffer from interdigital cysts

and lesions caused by the digits of the animals' paws passing around the individual strands.

In this final rule, we are requiring that metal strands used in flooring be coated if the metal strands have a diameter equal to or less than $\frac{1}{8}$ of an inch (9 gauge). We chose $\frac{1}{8}$ of an inch as the defining measurement, in part, because that measurement is used by the metalworking industry as the point of demarcation between welded wire and welded rods. In addition, many cage manufacturers currently use metal strands with diameters greater than $\frac{1}{8}$ of an inch in cage production. Therefore, cages made with floors of such metal strands are easily available to consumers. Such cages are sturdy, and the floors are less likely to break easily from rust or from the weight of the animal than cages made of metal strands with a diameter of $\frac{1}{8}$ of an inch or less (hereafter in this document referred to as wire).

We are making changes in other areas of the regulations to be consistent with this use of the word "wire." The word "wire" appears in reference to flooring in §§ 3.6(a)(2)(x), 3.11(a), and 3.14(a)(9) and refers to metal strands in general. We are amending these sections to remove the word "wire" from them.

Several commenters questioned APHIS' justification for the proposal and asked if APHIS has scientific evidence to show that wire flooring is harmful to dogs and cats.

We are not aware of any scientific research that has been done regarding the inadequacy of wire flooring in providing for the comfort and well-being of dogs and cats. As stated in the proposed rule, this belief is based on our own experience in AWA enforcement. Because APHIS has been enforcing the AWA for over 30 years, our field staff of Animal Care inspectors has extensive experience in monitoring the well-being of dogs and cats raised for breeding. The idea to prohibit bare wire flooring in primary enclosures for dogs and cats originated within the Animal Care staff. APHIS veterinarians have been concerned for some time that bare wire flooring often causes discomfort for dogs and cats, provides inadequate support for them, and has the potential to cause lesions and sores on the animals' feet. This perception was confirmed in a recent survey of Animal Care inspectors. The responses indicated that, in the year preceding the survey, the 39 inspectors who responded to the survey were aware of a total of 238 animals that were injured as the result of being housed on bare wire flooring. A majority of the survey respondents indicated that bare wire

flooring often sags or bends, creating an uncomfortable resting place for animals, and causes lesions or sores to animals' feet; the majority of respondents further indicated that coated wire flooring does not cause these problems.

One commenter said that not enough information was provided in the proposal to explain why the current standards for flooring are ineffective for protecting the animals or how requiring coated wire will correct the inadequacy.

While the current regulations regarding primary enclosures for dogs and cats require that the floors be constructed in a manner that protects the dogs' and cats' feet and legs from injury, the regulations do not address the issue of basic comfort for the animals. In enforcing the AWA, APHIS is charged with, among other things, promulgating standards to govern the humane care and treatment of animals covered by the law. Therefore, in carrying out the AWA, we believe that we are responsible for establishing minimum levels of comfort for regulated animals. We have come to believe that, while wire flooring may not actually cause injury to all dogs and cats housed on it, such flooring is generally uncomfortable for these animals. Coated wire provides a stronger mesh and a more inflexible surface than bare wire. Because many dogs acquire foot lesions and suffer psychological trauma from trying to balance on wire floors, which often sag and bend, we believe that it is necessary to change the existing regulations concerning flooring for dogs and cats to prohibit bare wire flooring.

Some commenters stated that coated or bare wire of the same diameter and mesh size are likely to be equal in terms of comfort under foot. We disagree. Our inspectors have found that coated wire generally causes fewer lesions on animals' feet than bare wire.

Other commenters suggested that we require a certain width of the mesh at a size small enough to prevent foot and leg injuries. We do not believe that it is necessary to specify a mesh width for wire flooring. The regulations currently specify that, if the floor of the primary enclosure is of mesh or slatted construction, the floor may not allow the dogs' and cats' feet to pass through any openings in the floor. We believe that this requirement is specific enough to ensure that the mesh is of a sufficient size to prevent foot and leg injuries from passage through the floor.

Some commenters questioned the quality of wire coatings currently available on the commercial market. Others stated that, once cracks develop in the coating of coated wire, germs can accumulate in the cracks, and the wire

under the coating can rust badly as such wire is often not galvanized.

We have found that high-quality coated wire is readily available to consumers through kennel magazines and building supply stores and can be purchased in bulk rolls. According to our inspectors, most licensees are already using coated wire or some other acceptable type of mesh or slatted flooring, such as galvanized expanded metal. Some commenters who currently use coated wire stated that they think coated wire makes an excellent floor for both comfort and cleanliness and that they have never experienced problems with flooring made of coated wire. In our experience, coated wire is generally easier to keep clean than bare wire because it provides a smoother surface. Bare wire is prone to rust, which creates a rough surface that is hard to clean. When a coated wire floor becomes cracked to the point that rust develops, the floor should be replaced.

Many commenters expressed concern about the length of time a plastic or fiberglass coating would remain on wire used for flooring for dogs and cats. Some commenters stated that dogs chew on coated wire, destroying the coating. The commenters wanted to know whether they would be in violation of the regulations if their dogs chewed off the coating and whether they would be required to replace the flooring as soon as it was damaged from being chewed. Other commenters expressed concern that dogs could become ill from ingesting the coating material.

Breeders who experience extensive problems with dogs chewing on coated wire are probably not providing enough physical or psychological stimulation for their dogs and should perhaps provide them with diversions such as pet chews or toys. While we recognize that the possibility exists for dogs to become ill from ingesting the coating material, we have not been made aware of such incidents from the many licensees who already use coated wire flooring. We believe that it is unlikely that the relatively small amounts of coating that an animal would ingest before human intervention occurred would seriously harm the animal. We will expect breeders whose dogs chew on the coating of coated wire floors to replace the flooring when an APHIS inspector determines that the flooring is too worn for further use. However, breeders who have chronic difficulties with dogs chewing on flooring made of coated wire have the option of using flooring made of metal strands that are of a diameter greater than $\frac{1}{8}$ of an inch or any of the many other types of acceptable flooring.

Two commenters recommended that APHIS prohibit the use of any type of flooring of mesh or slatted construction in primary enclosures for dogs and cats and instead require the use of solid flooring made of such materials as impervious concrete or stainless steel. We have found that, for animals raised in the commercial pet breeding industry, primary enclosures with flooring that allows the passage of excrement are generally kept cleaner than primary enclosures with solid flooring surfaces. We believe that the commercial pet breeding industry has demonstrated that animals can successfully be raised on suspended flooring of mesh or slatted construction. AWA licensees may certainly choose to use primary enclosures with floors made of solid surfaces, but we do not believe that it is necessary to require the use of such floors at this time.

One commenter requested that we allow uncoated wire to be used in the flooring of primary enclosures of dogs and cats in research projects in which fecal collection is required, to prevent any interference with the research as a result of the adherence of fecal material to coated wire flooring. Researchers in this situation may use flooring made of metal strands of a diameter greater than 1/8 of an inch. If a researcher can prove that, for the purposes of the research, the dog or cat needs to be housed on bare wire flooring, the researcher may request approval through the laboratory's Institutional Animal Care and Use Committee in accordance with 9 CFR part 2.38(k)(1) for an exemption to the flooring requirements.

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. In addition, one of the commenters had recommendations regarding reclassification of animal dealers, primary enclosures, exercise requirements, and air transit of animals. 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 indicated that we should extend the proposed regulation to cover dogs and cats in the care of show breeders, pounds, humane societies, groomers, and boarding kennels. 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 in these circumstances.

As stated in the proposal, we will have two compliance dates for this final rule. We are requiring that any new primary enclosures constructed on or after 30 days from the date of publication of this final rule in the **Federal Register**, and any floors installed on or after that date, will have to comply with the final rule. Other existing enclosures must be brought into compliance within 2 years. Although several commenters stated that the 2-year compliance period was reasonable, some thought that this timeframe was too long, and one thought that it was too short. Several commenters thought that the rule change should include a "grandfather clause" to allow the use of existing flooring in primary enclosures until it wears out. One commenter proposed that the 2-year compliance period apply "also to those which are able to demonstrate that wire flooring was installed within 90 days of final publication in a manner consistent with current requirements" to prevent facilities that have new construction under way at the time of final rule publication from having to destroy partially completed facilities. We have considered these comments, but we are not making any change to the proposed phase-in of compliance dates. We believe that the two timeframes discussed above provide ample time for licensees and registrants who have primary enclosures with wire flooring to convert the flooring to any of the many acceptable types.

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 significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

In accordance with 5 U.S.C. 604, we have prepared a Final Regulatory Flexibility Analysis, which is set out below, regarding the economic impact of this rule on small entities. The discussion also serves as our cost-benefit analysis under Executive Order 12866.

APHIS administers the Animal Welfare Act (AWA), which requires that minimum standards of care and treatment be established for certain animals bred for commercial sale, used

in research, transported commercially, or exhibited to the public. Dogs and cats are covered under the AWA.

In the July 2, 1996, **Federal Register**, APHIS proposed (61 FR 34389-34391) that, if the floor of a primary enclosure for dogs or cats covered by the AWA is constructed of wire, the wire must be coated with a material such as plastic or fiberglass. APHIS further proposed that the coated wire: (1) have a well-rounded surface and be large enough in diameter so that it is comfortable on the animals' feet and protects the animals' feet from injury; and (2) be strong enough so that the floor does not sag or bend between the structural supports. The proposed rule suggested two effective dates: The first would have required that all new construction and replacements be in compliance 30 days after publication of the final rule; the second would have required that all regulated facilities be in compliance no later than 2 years after publication of the final rule.

The proposal was in response to concern that wire flooring is inadequate in providing for the comfort and well-being of dogs and cats. In developing the proposal, APHIS considered its own experience in enforcing the AWA, as well as the recommendations and opinions expressed by participants at three public meetings hosted by the agency in 1996 to gather information on the regulations that cover the care of cats and dogs in the commercial trade. The current AWA standards do not specifically preclude wire flooring for housing dogs and cats, and the proposal pointed out a number of problems with such flooring. Bare wire can be uncomfortable on the animals' feet because of its narrow diameter. Bare wire is prone to rust, which not only affects the structural integrity of the primary enclosure but can also cause foot injuries because rusty wire is abrasive. Bare wire is difficult to clean and sanitize thoroughly because rust makes the wire semiporous in places. Finally, bare wire flooring often sags or bends between structural supports, creating an uncomfortable resting surface. The proposed rule change was intended to eliminate or mitigate these problems.

APHIS received 51 comments on the proposal. Thirty-seven commenters opposed the proposal, seven favored it, and seven did not indicate a preference. Many of those opposed to the proposal argued that it was not adequately justified, both in terms of any hard evidence (e.g., inspection reports, documented cases) and in terms of the insufficiency of the current regulations. The U.S. Small Business Administration (SBA) commented that, prior to issuing

a final rule, APHIS should better articulate the scope of the problem and should consider the possibility of viable alternatives.

The final rule is essentially a refined version of the proposed rule. The proposed rule did not define wire, and many commenters requested clarification as to what APHIS considers to be wire. Under the final rule, APHIS defines wire as flexible metal strands $\frac{1}{8}$ of an inch or less in diameter. The rule change is needed because the current regulations do not specifically preclude wire flooring, a documented source of injuries and discomfort. The commenters' arguments that the rule is not needed are not persuasive. Many commenters argued that the rule was not justified with any scientific evidence. That argument is correct, to the extent that the published proposal did not include any hard evidence supporting the rule change. However, the absence of hard evidence does not mean that the rule is not needed or that it was initiated without adequate forethought. APHIS proposed the rule change only after carefully considering the views of persons within and outside the agency.

In early 1997 (following the receipt of public comment), APHIS conducted a survey of its field inspectors. The inspectors, many of whom are licensed veterinarians, have extensive experience in monitoring the well-being of dogs and cats raised for breeding. Of the 39 inspectors responding to the survey, over half had more than 21 percent of their facilities having dogs and cats; one-third of the respondents had more than 50 percent of their facilities having dogs and cats.

The survey results document the problems with wire flooring that were identified in the proposal. The survey revealed that, during the past year alone, the inspectors were aware of 238 animal injuries that resulted from wire flooring at facilities under their inspection. The number of reported injuries would no doubt have been even higher if inspections were conducted on a more frequent basis. (Inspectors visit each facility on an average of only 1.46 times per year.)

Of the five most common types of flooring used in suspended enclosures for dogs and cats (coated wire, molded plastic, expanded metal, metal rods, and bare metal wire), the inspectors ranked bare wire last in terms of what is best for the animals; coated wire was ranked second. Molded-plastic flooring was ranked first, but that type of flooring has been rejected as a viable alternative because of its cost. The advantages of

molded-plastic flooring are not justified by its additional cost.

Some commenters agreed with the intent of the rule but disagreed with the proposed solution. They maintained that any type of mesh flooring is inadequate and that APHIS should instead require flooring made of impervious concrete, Teflon, stainless steel, or fiberglass. APHIS agrees that these materials can make excellent flooring surfaces for dogs and cats, if a concerted effort is made to keep them clean. However, APHIS inspectors have found that animals raised in primary enclosures with suspended flooring that allows the passage of fecal material are often kept in cleaner conditions than animals raised on flooring made of solid surfaces. Therefore, to protect the health of AWA-regulated animals by helping to ensure the cleanliness of their enclosures, APHIS will continue to allow dogs and cats to be raised in enclosures with suspended floors that allow the passage of fecal material.

Many commenters argued against the rule on the grounds that the current standards are already sufficient; they stated that those standards merely need to be enforced uniformly. However, enforcement activity, regardless of how diligent or aggressive, will never solve the injury and discomfort problems if the regulations continue to allow for the use of the material that causes the problems in the first place. Likewise, one commenter suggested that the injuries might be due more to neglect than to wire flooring and that an increase in the caretaker-to-animal ratio might be a better solution than requiring coated wire. However, the injuries and discomfort caused by wire flooring are not directly related to the level of supervision provided. Even if the caretaker-to-animal ratio were increased, the animals would still experience problems on floors made of bare wire.

Over half of the surveyed inspectors disagreed that the current regulations on wire flooring are sufficient.

Furthermore, any corrective action taken as a result of enforcement activity is likely to produce the very same results that this rule change is intended to achieve, i.e., the replacement of bare metal strands that are $\frac{1}{8}$ of an inch or less in diameter with an acceptable flooring material. From a regulatory standpoint, there seem to be only two solutions: Have regulated entities replace the unacceptable flooring in existing enclosures or have them purchase new or used enclosures with acceptable flooring already built in. The rule change allows regulated entities the option of choosing either solution,

thereby minimizing the rule's economic impact.

Finally, many commenters were concerned about the proposed rule's lack of specificity. They pointed out that the term "wire" was not clearly defined, an important consideration as not all metal strands used in flooring are harmful to animals. That concern is a reasonable one and, for that reason, the final rule defines wire as flexible metal strands that are $\frac{1}{8}$ of an inch or less in diameter. This modification was made to distinguish between metal strands that can be harmful to animals and inflexible metal strands, such as rods, that are not. This modification will allow APHIS inspectors to be consistent when judging the soundness of suspended floors of mesh or slatted construction. This modification will also make it easier for regulated individuals and organizations to comply with the new rule and significantly reduce the rule's impact.

Small Entity Impact

The Regulatory Flexibility Act requires that agencies consider the economic impact of rule changes on small entities. In its initial regulatory flexibility analysis, APHIS stated that the proposed rule change would affect all breeders, dealers, research facilities, and exhibitors of dogs and cats that are licensed or registered under the AWA and that house their animals in primary enclosures with wire floors. However, APHIS stated that it could not at that time make a definitive finding as to the proposed rule's impact because certain critical information was not available. For example, the total number of licensees and registrants was known, but the number who housed dogs and cats on wire flooring was not available. Nor was information available on the number of animals involved. For that reason, APHIS sought comments on the proposed rule's potential effects. APHIS specifically sought comment on the number of licensees and registrants who would have to replace wire flooring as a result of the proposed rule and the average number of animals these licensees house.

Unfortunately, the commenters furnished little or no new information on the rule's overall impact on small entities. Several commenters stated that it would be too costly to implement, but none provided details to support that statement. One commenter stated that it would cost \$27,949 (labor and materials) to replace his galvanized expanded metal with coated wire (the commenter further stated the cost would be \$42,949, or \$15,000 more in additional labor costs, if the commenter

could not "rent, borrow, or buy" two winches). However, galvanized expanded metal would not have to be replaced under the rule, so that cost estimate is not relevant. In any event, the commenter provided no details as to how the dollar amount was arrived at, including information on the square footage of the flooring to be replaced.

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.

The economic impact of the rule change cannot be determined with certainty because critical information, such as the number of licensees and registrants who currently house dogs and cats on wire flooring is not available. However, based on information furnished by APHIS and the industry, discussed below, the economic impact is not expected to be significant.

For the overwhelming bulk of research facilities, the final rule will have virtually no economic impact because the use of wire flooring of any diameter size for dogs and cats in those facilities is rare.¹ Nor will the rule significantly affect regulated exhibitors because few use dogs and cats as exhibit animals. Registered carriers and intermediate handlers will also be

¹ Members of the National Association for Biomedical Research (NABR) account for between 50 and 60 percent of all dogs used in research. Barbara Rich of NABR said that members' use of bare wire flooring is rare. Steve Smith (APHIS) indicated that use of bare wire flooring by non-NABR research facilities is also rare.

largely unaffected because the enclosures they use to transport animals are not considered to be the animals' "primary" enclosures.

As a group, dealers (breeders and brokers) of dogs stand to be affected most by the rule change. However, even the impact on dog dealers should be minimal. (The impact on AWA-licensed cat dealers is likely to be negligible because most raise their animals on solid flooring surfaces in primary enclosures containing litter boxes, which are required by the regulations. Moreover, the percentage of licensed dealers who deal in cats is extremely small; the vast majority of licensed dealers deal in dogs.)

It is estimated that there are approximately 2,000 Class A dog breeders in the United States, who produce about 175,000 dogs annually—an average of 90 dogs per breeder.² To support the production of 90 dogs annually, each breeder would need about 16 separate enclosures—13 to accommodate the mothers and their newborns and 3 to accommodate the fathers. (This calculation assumes that: (1) newborns are housed with their mothers before being sold; (2) each mother produces about 7 newborns annually; (3) fathers are housed separately from the mothers and the newborns; and (4) the ratio of mothers to fathers at each facility is 4 to 1.) The 16 enclosures, in turn, would translate into a total of 156 square feet of needed floor space, assuming all mothers and fathers are medium-sized. (Floor space requirements for primary enclosures vary depending on the size of the animals; large dogs on average require 13 square feet of floor space, but small dogs require only 6.5 square feet. Medium-sized dogs are assumed to need 9.75 square feet, an average of the large and small dog requirements.)

Based on a recent quote, the material cost for a 200-square-foot roll of 14-gauge vinyl-coated galvanized wire is \$148.60. The same roll without the vinyl coating costs \$78.70.³ The cost difference, therefore, is \$69.90, or \$0.35 per square foot. Based on the average floor space of 156 square feet, the maximum additional cost per breeder for the coated wire would be \$55 (156 × \$0.35). The maximum additional cost

² Per N. Marshall Myers (Pet Industry Joint Advisory Council).

³ These material quotes were obtained by Steve Smith (APHIS). In the initial analysis, APHIS stated that the market price of both bare and coated wire varies, depending on the quality and diameter width of the material. APHIS asserted that bare wire of the type most often used as flooring sells for approximately \$1.50 per square foot and that coated wire (that meets the other standards) sells for between \$2.25 and \$5.00 per square foot.

for all 2,000 dog breeders would be \$110,000 (2,000 × \$55). These cost figures represent a worst-case scenario because they assume that each breeder would have to replace all 156 square feet of floor space under the new rule. Such a scenario is unlikely because not all flooring used by dealers in housing for dogs is wire.

It is estimated that there are approximately 75 Class B dog brokers in the United States and that these brokers purchase/sell about 315,000 dogs annually—an average of 4,200 dogs per broker.⁴ To support the purchase/sale of 4,200 dogs annually, each broker would need about 27 separate enclosures. (This calculation assumes that: (1) the brokers have custody of each dog for 1 week; and (2) the dogs are housed three to an enclosure.) The 27 enclosures, in turn, would translate into a total of 176 square feet of needed floor space, assuming that all dogs are small-sized. (Most dogs in the custody of brokers are puppies, and small dogs require only 6.5 square feet of floor space.) Based on the average floor space of 176 square feet, the maximum additional cost per broker for the coated wire would be \$62 (176 × \$0.35). The maximum additional cost for all 75 dog brokers would be \$4,650 (75 × \$62). Again, these cost figures represent a worst-case scenario because they assume that each broker would have to replace all 176 square feet of floor space under the new rule. Such a scenario is unlikely.

Small entities should not experience any additional labor costs as a result of the rule. Regulated entities have 2 years to bring existing flooring into compliance. By that time, it is likely that all bare wire flooring will have been replaced anyway, due to its limited useful life. The rule, therefore, should not force regulated entities into premature replacement of existing flooring. Because of that, and because the labor cost to replace wire flooring should be the same regardless of whether the wire is coated or uncoated, the rule should have no impact on small entities' labor costs.

On average, therefore, it would cost each breeder only about \$55 to switch from bare wire to coated wire. This amount is relatively insignificant; it represents less than 1 percent of the per-firm average gross receipts for all firms in SIC 0752, which includes breeders. The average cost of \$62 for each broker would also be relatively insignificant—less than 1 percent of the per-establishment average sales for all establishments in SIC 5199, which

⁴ Per N. Marshall Myers (Pet Industry Joint Advisory Council).

includes brokers. The rule would have a carryover cost effect because each subsequent replacement would require coated wire or some other acceptable material, such as galvanized expanded metal. However, the increased cost of coated wire would be made up, at least partially, over time because coated wire will provide longer use.

This rule contains no reporting or recordkeeping requirements.

Executive Order 12372

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

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. The Act does not provide administrative procedures which must be exhausted prior to a judicial challenge to the provisions of this rule.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

List of Subjects in 9 CFR Part 3

Animal welfare, Marine mammals, Pets, Reporting and recordkeeping requirements, Research, Transportation. Accordingly, 9 CFR part 3 is amended as follows:

PART 3—STANDARDS

1. The authority citation for part 3 continues to read as follows:
Authority: 7 U.S.C. 2131–2159; 7 CFR 2.22, 2.80, and 371.2(d).
2. Section 3.6 is amended as follows:
 - a. In paragraph (a)(2)(x), the words “constructed of wire” are removed, and the words “of mesh or slatted construction” are added in their place, and the word “and” at the end of the paragraph is removed.
 - b. In paragraph (a)(2)(xi), the period at the end of the paragraph is removed, and “; and” is added in its place.
 - c. A new paragraph (a)(2)(xii) is added to read as follows:

§ 3.6 Primary enclosures.
* * * * *

- (a) * * *
- (2) * * *
- (xii) Primary enclosures constructed on or after February 20, 1998 and floors replaced on or after that date, must comply with the requirements in this paragraph (a)(2). On or after January 21, 2000, all primary enclosures must be in compliance with the requirements in this paragraph (a)(2). If the suspended floor of a primary enclosure is constructed of metal strands, the strands must either be greater than 1/8 of an inch in diameter (9 gauge) or coated with a material such as plastic or fiberglass. The suspended floor of any primary enclosure must be strong enough so that the floor does not sag or bend between the structural supports.
* * * * *

§ 3.11 [Amended]

3. In § 3.11(a), the word “wire” is removed from the last sentence, and the word “mesh” is added in its place.

§ 3.14 [Amended]

4. In § 3.14(a)(9), the word “wire” is removed each time it appears.
Done in Washington, DC, this 13th day of January 1998.

Craig A. Reed,
Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–1311 Filed 1–20–98; 8:45 am]
BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM–139, Special Conditions No. 25–ANM–135]

Special Conditions: Ilyushin Aviation Complex Model II–96T Airplane

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Ilyushin Aviation Complex Model II–96T airplane. This airplane will have novel and unusual design features when compared to the state of technology envisioned in the airworthiness standards of part 25 of the Federal Aviation Regulations (FAR). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that provided by the airworthiness standards of part 25.

EFFECTIVE DATE: February 20, 1998.

FOR FURTHER INFORMATION CONTACT: Norm Martenson, FAA, International Office, ANM–116, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone (425) 227–2196.

SUPPLEMENTARY INFORMATION:

Background

Ilyushin Aviation Complex, 45 Leningradsky Prospect, Moscow, 125190, Russia, has applied for Russian type certification of their Model II–96T airplane by the Aviation Register (AR) of the Interstate Aviation Committee in accordance with existing AR standards. The AR is authorized to perform airworthiness certification functions on behalf of the Commonwealth of Independent States, including the Russian government. In addition, Ilyushin applied for U.S. type certification of the Model II–96T on February 16, 1993.

Section 21.29 of 14 CFR part 21 of the Federal Aviation Regulations (FAR) prescribes a reciprocal bilateral agreement between the U.S. and exporting country as a requirement for consideration of U.S. design or airworthiness approval of an imported aeronautical product. Such agreements are known as bilateral aviation safety agreements (BASA). Although the U.S. does not presently have a BASA with Russia providing reciprocal acceptance of transport category airplanes, the FAA is working with the AR and Russian government officials to conclude an agreement of this nature. FAA Advisory Circular (AC) 21–23, Airworthiness Certification of Civil Aircraft, Engines, Propellers, and Related Products Imported to the United States, provides further guidance in this regard.

A BASA with Russia may be concluded following successful completion of an assessment by the FAA and the AR of each other’s technical competence and regulatory capability for performing airworthiness certification functions. The scope of the agreement is defined by each authority in Implementation Procedures. FAA type certification of the Model II–96T transport airplane is therefore conditional upon successful implementation of a BASA with Russia, providing acceptance of transport category airplanes.

One of the key elements of any BASA assessment program is the shadow certification program. Under the Russian shadow certification program, FAA specialists are “shadowing” their AR counterpart specialists during AR certification of an example of the