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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 9 CFR Part 3

[Docket No. 98-044-2]

#### Animal Welfare; Solid Resting Surfaces for Dogs and Cats

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

**SUMMARY:** We are adopting as a final rule, without change, an interim rule that amended the regulations under the Animal Welfare Act pertaining to primary enclosures for dogs and cats by removing the requirement that primary enclosures with flooring made of mesh or slatted construction include a solid resting surface. The interim rule became effective on July 14, 1998. The requirement we removed was erroneously added in a final rule that amended the requirements for primary enclosures for dogs and cats to prohibit bare wire flooring in such enclosures. As stated in the subsequent interim rule, we do not believe that it is necessary for primary enclosures with acceptable flooring of mesh or slatted construction to include a solid resting surface. Therefore, this action finalizes the removal of an unnecessary and unintended requirement.

**EFFECTIVE DATE:** This final rule, which makes no changes to the July 14, 1998, interim rule, is effective May 20, 1999.

**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

In an interim rule published in the **Federal Register** on July 13, 1998 (63 FR

37480-37482, Docket No. 98-044-1), and effective July 14, 1998, we amended the Animal Welfare Act (AWA) regulations in 9 CFR part 3 (referred to below as the regulations) pertaining to primary enclosures for dogs and cats by removing the requirement that primary enclosures with suspended flooring made of mesh or slatted construction include a solid resting surface. This requirement was erroneously added in a final rule published on January 21, 1998 (63 FR 3017-3023, Docket No. 95-100-2, effective February 20, 1998). That final rule amended the requirements for primary enclosures for dogs and cats to prohibit flooring made of wire (i.e., uncoated metal strands 1/8 of an inch or less in diameter). The January 21 final rule also added a requirement that the suspended floor of any primary enclosure for a dog or cat must be strong enough so that the floor does not sag or bend.

Prior to the effective date of the January 21 final rule, primary enclosures for dogs and cats with suspended flooring made of wire were required to include a solid resting surface, and primary enclosures with suspended flooring of mesh or slatted construction using materials other than wire were not. As a result of an error in the final rule, all primary enclosures for dogs and cats with suspended flooring of mesh or slatted construction were required to include a solid resting surface. One of the purposes of requiring a solid resting surface in enclosures with suspended flooring made of wire was to provide a relatively level resting surface for the animals because suspended wire floors tend to sag and bend. We did not believe that it was necessary for primary enclosures of mesh or slatted construction not made of wire to include a solid resting surface. Therefore, we published the interim rule to remove the requirement that primary enclosures with suspended flooring of mesh or slatted construction include a solid resting surface.

Comments on the interim rule were required to be received on or before September 11, 1998. We received 17 comments by that date. They were from dog breeders, members of the public, and animal welfare organizations. The comments were split evenly in support of or opposition to the interim rule and are discussed below.

Several commenters expressed the general opinion that it is inhumane to have an animal living on mesh or slatted flooring because such flooring is uncomfortable for the animals. The commenters stated that the openings in the floor can cause sores on the animals' paws and that the claws can get caught. One commenter stated that a solid resting surface in such enclosures benefits the animals by adding to their physical comfort and enhancing their psychological well-being by reducing stress. One commenter stated that solid resting surfaces are especially beneficial to breeding females and their litters to provide a place for the pups to nurse and sleep as a group and an area where they can walk "without any worry that their feet will slide through or their toes will catch." Two commenters expressed the opinion that toy breed dogs housed on mesh or slatted floors should have resting boards, as the size of these dogs puts them in particular danger of catching a foot in the mesh or slats of the floor. Another commenter stated that large breeds of dogs housed on mesh or slatted flooring should have a solid resting surface, but the commenter did not provide a reason. One commenter stated that, before finalizing the interim rule, research should be done to determine how comfortable flooring of mesh or slatted construction is for dogs and cats, perhaps by providing dogs and cats kept on such floors with access to a solid resting surface and observing where they choose to rest. The commenter further stated that, before the public can provide meaningful comments, our agency needs to describe the types of mesh and slats that are allowed and how much of a gap may separate each strand or slat.

In response to the comments about the degree of comfort provided by solid resting surfaces and the need for research on this issue, we are unaware of any relevant scientific data. Our Agency bases our regulations on scientific data whenever possible. However, in promulgating regulations under the AWA, scientific data is often not available, and we must rely on the knowledge we have gained from our considerable experience in AWA enforcement. We know from more than 30 years of administering the AWA that dogs and cats raised in enclosures with suspended floors of mesh or slatted

construction can be healthy and show no ill effects. Our experience has also shown that, in warm weather, many dogs and cats seem to prefer to rest on mesh and slatted flooring rather than on a solid resting surface, presumably because of the additional airflow that mesh and slatted flooring allows.

In regard to the comments about injuries to the feet of dogs and cats housed in primary enclosures with suspended flooring of mesh or slatted construction, we believe that the current regulations pertaining to primary enclosures for dogs and cats adequately address this issue. In § 3.6, paragraph (a)(2)(x) states that, among other things, the enclosures must "(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." We believe that these performance-based regulations adequately describe the types of mesh or slats and sizes of gaps in suspended floors of mesh or slatted construction that are acceptable to us. We further believe that these regulations are specific enough to prohibit the use of flooring materials that could cause foot and leg injuries. Our inspectors report that most AWA-licensed dog and cat breeders use high-quality coated wire or galvanized expanded metal in primary enclosures with suspended flooring.

In regard to the comment concerning the use of solid resting surfaces in primary enclosures containing breeding females and their litters, the requirements just cited in § 3.6 (a)(2)(x) apply to puppies and kittens as well. Moreover, our inspectors have found that many dog breeders place a tublike container in these enclosures to contain the puppies but allow the mother to exit and enter.

One commenter urged that the use of resting surfaces made of wood be prohibited because, being porous, they become damp and hard to disinfect and dogs chew on them, which can cause injury.

We believe that the current regulations pertaining to primary enclosures for dogs and cats are adequate to ensure that wooden resting surfaces do not become a source of injury or pose a sanitation hazard for dogs and cats. In § 3.6, paragraph (a)(1) states that primary enclosures must be designed and constructed of suitable materials so that they are structurally sound and that primary enclosures must be kept in good repair. Paragraph (a)(2) of § 3.6 states that primary enclosures must be constructed and maintained so that they (1) have no sharp points or

edges that could injure the dogs and cats, (2) protect the dogs and cats from injury, and (3) enable all surfaces in contact with the dogs and cats to be readily cleaned and sanitized or be replaced when worn or soiled.

Many commenters in support of the interim rule stated that solid resting surfaces affect the health of puppies and kittens by creating a dirtier environment for them as a result of the accumulation of fecal matter. One commenter stated that, in the commenter's experience, most dogs in primary enclosures with suspended flooring of mesh or slatted construction that include a solid resting surface will defecate on the resting surface, thereby defeating the purpose of using mesh or slatted flooring. (However, one commenter in opposition to the interim rule stated that, in the commenters experience, most caged animals will not defecate on their resting surfaces because the surfaces usually serve as their sleeping areas.) One commenter stated that the requirement for a solid resting surface created an unnecessary and unusual burden on animal caretakers by making it necessary to clean the solid surfaces continually to avoid any potential for bacterial infections. A commenter in support of the interim rule suggested to regulated entities concerned about keeping solid resting surfaces clean and sanitary because of problems associated with the animals' waste that "allowing animals sufficient exercise time outside of their cages would reduce the amount of waste an animal would pass in its cage."

In our experience with AWA enforcement, we have found that solid resting surfaces in primary enclosures with suspended flooring for dogs and cats often become areas where excreta collects. In the AWA regulations pertaining to the care of dogs and cats, 3.11(a) requires that "[e]xcreta and food waste must be removed from primary enclosures for dogs and cats daily and from under primary enclosures as often as necessary to prevent an excessive accumulation of feces and food waste, to prevent soiling of the dogs or cats contained in the primary enclosures, and to reduce disease hazards, insects, pests and odors." Even regulated entities who comply with the regulations and clean their dog and cat primary enclosures daily cannot ensure that solid resting surfaces are clean at all times. When excreta collect on solid resting surfaces, they become breeding grounds for bacteria and viruses that can cause serious infections and diseases in dogs and cats. In regard to the suggestion of allowing animals sufficient exercise time outside the

primary enclosures, § 3.8 of the regulations requires that regulated entities develop, document, and follow a plan to provide dogs with the opportunity to exercise. While we certainly encourage regulated parties to provide their dogs with as much exercise time as possible, regulated parties would still have to deal with removal of animal waste because § 3.11 of the regulations requires removal of waste from outside runs and pens as well as the entire premises.

Several commenters expressed concern that the interim rule was promulgated solely to save regulated entities the time and money involved in cleaning the solid resting surfaces. Some commenters stated that the requirement for a clean solid resting surface is not overly burdensome and that the cost estimates provided in the interim rule for cleaning such surfaces are too high. One commenter further stated that flooring of mesh or slatted construction allows only some animal waste to fall through, so regulated entities are already making an investment in regularly cleaning the cages, and another commenter stated that the additional cost of cleaning solid resting surfaces would be minimal.

In accordance with Federal law, our agency analyzed the potential economic effects of our rule on small entities. We created the cost estimate in the interim rule for cleaning solid resting surfaces based on certain assumptions. We believe that it is not unrealistic to assume that it takes 5 minutes to clean each solid resting surface, that labor is paid at a rate of \$6 per hour, and that each resting surface is cleaned once per day. Based on these assumptions, we estimated that a dog breeder with 120 enclosures would incur an annual cost of \$21,900 for cleaning solid resting surfaces. The commenter did not provide any specific basis for any revisions to this analysis. In the absence of any clear evidence that solid resting surfaces in primary enclosures with suspended flooring of mesh or slatted construction are necessary for the protection of dogs and cats covered by the AWA, we do not believe the costs associated with purchasing and cleaning the solid resting surfaces would be justified.

Many commenters expressed the opinion that the decision to include a solid resting surface in primary enclosures for dogs and cats should be left up to the person responsible for caring for the dogs and cats because professional animal caretakers know what is best for their animals and will provide for their needs.

In keeping with Federal regulatory reform initiatives, we strive to promulgate performance-based rather than engineering-based requirements whenever possible and to work with regulated entities to help them gain and maintain compliance with the AWA. We believe that the decision of whether to include solid resting surfaces in the primary enclosures of dogs and cats can best be determined by the AWA licensees themselves.

Therefore, for the reasons given in the interim rule and in this document, we are adopting the interim rule 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 not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

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

The Regulatory Flexibility Act requires that agencies consider the economic impact of rules on small entities. This rule will primarily affect animal dealers and research facilities licensed or registered under the AWA. The exact number of entities affected by the rule is unknown because the number of AWA licensees and registrants who house dogs and cats in primary enclosures that have suspended floors of mesh or slatted construction is unknown. However, it is estimated that roughly half of the 4,265 licensed dealers and many of the 2,506 registered research facilities will be affected.<sup>1</sup> The

rule's impact on regulated exhibitors is insignificant because most do not exhibit dogs and cats. Registered carriers and intermediate handlers are also largely unaffected because they only transport animals so they do not maintain "primary" enclosures for regulated animals.

The number of dealers and research facilities that are considered small entities under U.S. Small Business Administration (SBA) standards is unknown because information as to their size (in terms of gross receipts or number of employees) is not available. However, it is reasonable to assume that most are small in size, based on composite data for providers of the same and similar services in the United States. In 1992, the per-firm average gross receipts for all 6,804 firms in SIC (Standard Industrial Classification) 0752, which includes dog and cat breeders, was \$115,290, well below the SBA's small entity threshold of \$5 million. Similarly, the 1992 per-establishment average employment for all 3,826 U.S. establishments in SIC 8731, which includes research facilities, was 29, well below the SBA's small entity threshold of 500 employees. It is very likely, therefore, that small entities will be the principal beneficiaries of the rule.

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

Resting surfaces are usually cleaned by hosing them down. They are cleaned outside the enclosures, to prevent the

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

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

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

#### **Executive Order 12372**

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

#### **Executive Order 12988**

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

#### **Paperwork Reduction Act**

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

#### **List of Subjects in 9 CFR Part 3**

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

#### **PART 3—STANDARDS**

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR 3 and that was published at 63 FR 37480–37482 on July 13, 1998.

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

<sup>1</sup> In FY96, 10,366 facilities were licensed or registered under the AWA. Of those facilities, 4,265 were licensed dealers, 2,422 were licensed exhibitors, and 3,679 were registrants. The dealers are subdivided into two classes. Class A dealers (3,043) breed animals, and Class B dealers (1,222) serve as animal brokers. The registrants comprise

research facilities (2,506), carriers and intermediate handlers (1,142), and exhibitors (31). As used here, the term "facilities" represents sites, the physical location where animals are housed. Some licensees and registrants have more than one site.

Done in Washington, DC, this 15th day of April 1999.

**Joan M. Arnoldi,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 99-9847 Filed 4-19-99; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 98-SW-48-AD; Amendment 39-11137; AD 99-09-05]

RIN 2120-AA64

#### **Airworthiness Directives; Bell Helicopter Textron Canada (BHTC) Model 230 Helicopters**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that is applicable to BHTC Model 230 helicopters. This action requires initial and repetitive visual inspections and verification of the torque of the bolts on the main rotor hub. This amendment is prompted by a report of fatigue cracks around the bolt holes of the main rotor pitch horn (pitch horn) and a cracked main rotor flapping bearing assembly (flapping bearing assembly) on a similar model helicopter. This condition, if not corrected, could result in fretting-induced fatigue cracking of the flapping bearing assembly and around the bolt holes of the pitch horn, loss of the rotor system, and subsequent loss of control of the helicopter.

**DATES:** Effective May 5, 1999.

Comments for inclusion in the Rules Docket must be received on or before June 21, 1999.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 98-SW-48-AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

**FOR FURTHER INFORMATION CONTACT:** Harry Edmiston, Aerospace Engineer, Rotorcraft Certification Office, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222-5158, fax (817) 222-5783.

**SUPPLEMENTARY INFORMATION:** Transport Canada, which is the airworthiness authority for Canada, recently notified the FAA that an unsafe condition may

exist on BHTC Model 230 helicopters. Transport Canada advises that fatigue cracks at the bolt holes of the pitch horn and in the flapping bearing assembly can lead to loss of control of the helicopter.

BHTC issued Alert Service Bulletin No. 230-98-13, dated April 23, 1998 (ASB), which specifies inspecting the main rotor hub in the areas between the pitch horn and main rotor grip tangs (grip tangs) and between the flapping bearing assembly and the main rotor yoke assembly for fretting. The ASB also specifies torque verification procedures for the main rotor grip retaining bolts and the flapping bearing assembly retaining bolts. Transport Canada classified this ASB as mandatory and issued Transport Canada AD CF-98-17, dated July 15, 1998, to ensure the continued airworthiness of these helicopters in Canada.

This helicopter model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

The FAA estimates that 17 helicopters will be affected by this AD, that it will take approximately 1 work hour to accomplish the inspection and retorquing of bolts, if necessary, and that the average labor rate is \$60 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$3,060 per year, assuming three inspections and retorquing per year and assuming that no parts will need to be replaced.

Since an unsafe condition has been identified that is likely to exist or develop on other BHTC Model 230 helicopters of the same type design registered in the United States, this AD is being issued to prevent fretting induced fatigue cracking of the flapping bearing assembly and around the bolt holes of the pitch horn, loss of the rotor system, and subsequent loss of control of the helicopter. This AD requires recurring inspections of the main rotor hub in the areas between the pitch horn and grip tangs and between the flapping bearing assembly and the main rotor yoke assembly for fretting. If fretting is found on any part, replacing that part

with an airworthy part is required. This AD also requires verifying the torque on the main rotor grip retaining bolts and the flapping bearing assembly retaining bolts. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability of the helicopter. Therefore, a visual inspection of the main rotor hub between the pitch horn and grip tangs and the flapping bearing assembly and the main rotor yoke assembly for fretting is required. A torque check of the main rotor grip retaining bolts and the flapping bearing assembly retaining bolts is also required. These actions are required within 10 hours TIS and this AD must be issued immediately.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

#### **Comments Invited**

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped