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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Lemon Regulation 726]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of California-Arizona lemons that may be shipped to domestic markets during the period from July 15 through July 21, 1990. Consistent with program objectives, such action is needed to balance the supplies of fresh lemons with the demand for such lemons during the period specified. This action was recommended by the Lemon Administrative Committee (Committee), which is responsible for local administration of the lemon marketing order.

DATES: Regulation 726 (7 CFR part 910) is effective for the period from July 15 through July 21, 1990.

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture (Department), room 2524–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 475–3861.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order 910 (7 CFR part 910), as amended, regulating the handling of lemons grown in California and Arizona. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, hereinafter referred to as the Act.

This final rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities as well as larger ones.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 70 handlers of lemons grown in California and Arizona subject to regulation under the lemon marketing order and approximately 2,000 lemon producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona lemons may be classified as small entities.

The California-Arizona lemon industry is characterized by a large number of growers located over a wide area. The production area is divided into three districts which span California and Arizona. The largest proportion of lemon production is located in District 2, Southern California, which represented 57 percent of total production in 1988–89. District 3 is the desert area of California and Arizona and represented 31 percent of 1988–89 production. District 1 in Central California represented 12 percent. The Committee's estimate of 1989–90 production is 39,324 cars (one car equals 1,000 cartons at 38 pounds net weight each), as compared with 41,759 cars during the 1988–89 season.

The three basic outlets for California-Arizona lemons are the domestic fresh, export, and processing markets. The domestic (regulated) fresh market is a preferred market for California-Arizona lemons. The Committee estimates that about 42 percent of the 1989–90 crop of 39,324 cars will be utilized in fresh domestic channels (16,500 cars), compared with the 1988–89 total of 16,500 cars, about 41 percent of the total production of 41,759 cars in 1988–89. Fresh exports are projected at 22 percent of the total 1989–90 crop utilization compared with 19 percent in 1988–89. Processed and other uses would account for the residual 36 percent compared with 39 percent of the 1988–89 crop.

Volume regulations issued under the authority of the Act and Marketing Order No. 910 are intended to provide benefits to growers. Growers benefit from increased returns and improved market conditions. Reduced fluctuations in supplies and prices result from regulating shipping levels and contribute to a more stable market. The intent of regulation is to achieve a more even distribution of lemons in the market throughout the marketing season.

Based on the Committee's marketing policy, the crop and market information provided by the Committee, and other information available to the Department, the costs of implementing the regulations are expected to be more than offset by the potential benefits of regulation.

Reporting and recordkeeping requirements under the lemon marketing order are required by the Committee from handlers of lemons. However, handlers in turn may require individual growers to utilize certain reporting and recordkeeping practices to enable handlers to carry out their functions. Costs incurred by handlers in connection with recordkeeping and reporting requirements may be passed on to growers.

Major reasons for the use of volume regulations under this marketing order are to foster market stability and enhance grower revenue. Prices for lemons tend to be relatively inelastic at the grower level. Thus, even a small variation in shipments can have a great impact on prices and grower revenue. Under these circumstances, strong arguments can be advanced as to the benefits of regulation to growers, particularly smaller growers.

At the beginning of each marketing year, the Committee submits a marketing policy to the Department

which discusses, among other things, the potential use of volume and size regulations for the ensuing season. The Committee, in its 1989–90 season marketing policy, considered the use of volume regulation for the season. This marketing policy is available from the Committee or Ms. Rodriguez. The Department reviewed that policy with respect to administrative requirements and regulatory alternatives in order to determine if the use of volume regulations would be appropriate.

The Committee met publicly on July 10, 1990, in Los Angeles, California, to consider the current and prospective conditions of supply and demand unanimously recommended that 400,000 cartons is the quantity of lemons deemed advisable to be shipped to fresh domestic markets during the specified week. The marketing information and data provided to the Committee and used in its deliberations were compiled by the Committee's staff or presented by Committee members at the meeting. This information included, but was not limited to, price data for the previous week from Department market news reports and other sources, the preceding week's shipments and shipments to date, crop conditions, weather and transportation conditions, and a reevaluation of the prior week's recommendation in view of the above.

The Department reviewed the Committee's recommendation in light of the Committee's projections as set forth in its 1989–90 marketing policy. This recommended amount is 40,000 cartons above the estimated projections in the shipping schedule.

During the week ending on July 7, 1990, shipments of lemons to fresh domestic markets, including Canada, totaled 372,000 cartons compared with 369,000 cartons shipped during the week ending on July 8, 1989. Export shipments totaled 141,000 cartons compared with 150,000 cartons shipped during the week ending on July 8, 1989. Processing and other uses accounted for 246,000 cartons compared with 133,000 cartons shipped during the week ending on July 8, 1989.

Fresh domestic shipments to date this season total 15,537,000 cartons compared with 15,340,000 cartons shipped by this time last season. Export shipments total 7,247,000 cartons compared with 7,707,000 cartons shipped by this time last season. Processing and other use shipments total 11,976,000 cartons compared with 15,269,999 cartons shipped by this time last season.

For the week ending on June 30, 1990, regulated shipments of lemons to the fresh domestic market were 372,000 cartons on an adjusted allotment of 382,000 cartons which resulted in net undershipments of 10,000 cartons. Regulated shipments for the current week (July 8 through July 14, 1990) are estimated at 410,000 cartons on an adjusted allotment of 415,000 cartons. Thus, undershipments of 5,000 cartons could be carried over into the week ending on July 21, 1990.

The average f.o.b. shipping point price for the week ending on July 7, 1990, was $14.19 per carton based on a reported sales volume of 373,000 cartons compared with last week's average of $14.16 per carton on a reported sales volume of 423,000 cartons. The season average f.o.b. shipping point price to date is $13.51 per carton. The average f.o.b. shipping point price for the week ending on July 8, 1989, was $15.02 per carton; the season average f.o.b. shipping point price at this time last season was $12.19 per carton.

The National Agricultural Statistics Service indicates a 1989–90 California-Arizona lemon crop of about 38,800,000 cartons, three percent less than the 1988–89 utilized production total of 40,000,000 cartons. However, 1989–90 fresh domestic use may total 16,500,000 cartons, about equal to that in 1988–89, as indicated in the Committee's schedule of weekly shipments.

The Department's Market News Service reported that, as of July 10, demand for first-grade fruit ranging in size from 75 to 140 is good and the market is "steady" for all grades and sizes of lemons. At the meeting, most Committee members characterized demand as very good on all sizes and grades of lemons. Several Committee members commented on the continued high level of second grade and small-sized lemons in storage and the need to move that fruit in an orderly fashion. Committee members discussed different levels of volume regulation as well as open movement. The Committee unanimously recommended volume regulation for the period from July 15 through July 21, 1990.

Based upon fresh utilization levels indicated by the Committee and an econometric model developed by the Department, the 1989–90 season average fresh on-tree price is estimated at $8.64, 115 percent of the projected season average fresh on-tree parity equivalent price of $7.50 per carton. The 1988–89 season average fresh equivalent on-tree price for California-Arizona lemons was $7.27 per carton, 105 percent of the 1988–89 parity equivalent price.

Limiting the quantity of lemons that may be shipped during the period from July 15 through July 21, 1990, would be consistent with the provisions of the marketing order by tending to establish and maintain, in the interest of producers and consumers, an orderly flow of lemons to market.

Based on considerations of supply and market conditions, and the evaluation of alternatives to the implementation of this volume regulation, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities and that this action will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is further found and determined that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register**. This is because there is insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the Act.

In addition, market information needed for the formulation of the basis for this action was not available until July 10, 1990, and this action needs to be effective for the regulatory week which begins on July 15, 1990. Further, interested persons were given an opportunity to submit information and views on the regulation at an open meeting, and handlers were apprised of its provisions and effective time. It is necessary, therefore, in order to effectuate the declared purposes of the Act, to make this regulatory provision effective as specified.

List of subjects in 7 CFR Part 910

Lemons, Marketing agreements, and Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR part 910 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Note.—This section will not appear in the Code of Federal Regulations.

2. Section 910.726 is added to read as follows:

§ 910.726 Lemon Regulation 726.

The quantity of lemons grown in California and Arizona which may be handled during the period from July 15

through July 21, 1990, is established at 400,000 cartons.

Dated: July 11, 1990.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 90-16554 Filed 7-13-90; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR Part 3

[Docket No. 89-175]

RIN 0579-AA20

Animal Welfare; Guinea Pigs, Hamsters, and Rabbits

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations for the humane handling, care, treatment, and transportation of guinea pigs, hamsters, and rabbits by revising the space requirements for primary enclosures and reinstating requirements concerning the temperature and ventilation in cargo spaces in primary conveyances. These actions are necessary to ensure the humane handling of these animals in transport, to update the regulations, and, in accordance with the 1985 amendments to the Animal Welfare Act (7 U.S.C. 2131 *et seq.*), to make the regulations more consistent with other Federal regulations and guidelines concerning the handling, care, treatment, and transportation of these animals.

EFFECTIVE DATE: This rule shall become effective August 15, 1990.

FOR FURTHER INFORMATION CONTACT: Dr. Morley Cook, REAC, APHIS, USDA, Room 206, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-6491.

SUPPLEMENTARY INFORMATION:

Background

The Animal Welfare regulations (the regulations) are contained in title 9 of the Code of Federal Regulations, chapter 1, subchapter A, parts 1, 2, and 3. Part 1 provides definitions of the terms used in parts 2 and 3. Part 2 sets forth the administrative and institutional responsibilities of regulated persons under the Animal Welfare Act (7 U.S.C. 2131 *et seq.*) (the Act). Part 3 provides specifications for the humane handling, care, treatment, and transportation, by regulated entities, of animals covered by the Act.

Proposals to amend parts 1 and 2 of the regulations were published in the Federal Register on March 31, 1987 (52 FR 10292-10298 Docket. No. 84-027, and 52 FR 10298-10322, Docket No. 84-010, respectively). We solicited comments for a 60-day comment period, ending June 1, 1987. The comment period was twice extended, ending on August 27, 1987. We received 7,857 comments, many of which stated that it was difficult to comment upon the proposals to amend parts 1 and 2 independently of our proposal to amend the standards in part 3. In response to comments, we published revised proposals on parts 1 and 2, along with a proposed rule to amend Part 3, on March 15, 1989 (54 FR 10822-10835, Docket No. 88-013; 54 FR 10835-10897, Docket No. 88-014; and 54 FR 10897-10954, Docket No. 87-004, respectively).

We solicited comments on the interrelationship of parts 1 and 2 with part 3 for a 60-day period, ending May 15, 1989. Five thousand five hundred eighty-two comments, received or postmarked by that date, were considered in preparing final rules for parts 1 and 2. (Any that also pertained to part 3, subparts B or C, were also considered in preparing this final rule.) These final rules were published in the Federal Register on August 31, 1989 (54 FR 36112-36123, Docket No. 89-130, and 54 FR 36123-36163, Docket No. 89-131, respectively). We solicited comments on the proposal to amend part 3 for a 120-day period, ending July 13, 1989. Approximately 10,800 comments were received in time to be considered.

This final rule amends the regulations in subparts B and C of part 3, which contain standards for the humane handling, care, treatment, and transportation of guinea pigs and hamsters, and rabbits, respectively. Rulemaking pertaining to subparts A and D of part 3, which contain standards for the humane handling, care, treatment, and transportation of cats and dogs, and primates, respectively, is being undertaken separately.

Subparts B and C are amended in this final rule to revise the space requirements for primary enclosures; to reinstate requirements concerning the temperature and ventilation in cargo spaces in primary conveyances used to transport guinea pigs, hamsters, or rabbits; and to provide that any person who is subject to these regulations is responsible for complying with their requirements. These actions are necessary to ensure the humane handling of guinea pigs, hamsters, and rabbits in transport; to update the regulations; and, in accordance with the 1985 amendments to the Act, to make the regulations more consistent with other Federal regulations and guidelines concerning the handling, care, treatment, and transportation of these animals.

Public Comments

A relatively small number of the 10,800 comments we received on our proposal to amend part 3 of the regulations concerned subparts B and C, the standards for the humane handling, care, treatment, and transportation of guinea pigs and hamsters, and rabbits. We have considered all of these comments in preparing this final rule. Comments containing suggestions or objections to these amendments are discussed below. In addition to these comments, 156 comments supported the proposed amendments.

Primary Enclosures: Objections To Increased Space

A number of commenters objected, in general, to our proposed increases in floor space and interior cage height for guinea pigs, hamsters, and rabbits.

One hundred and ninety-eight members of the research or scientific community, 5 dealers, and 1 member of the general public said that the increase in height of primary enclosures for guinea pigs is of questionable value. Two hundred and twelve members of the research or scientific community, 9 dealers, and 3 members of the general public said the interior cage height for guinea pigs should remain unchanged.

One hundred and seventy-three members of the research or scientific community, 4 dealers, and 4 members of the general public said there is no scientific justification for increasing the height of primary enclosures for hamsters. One hundred and twelve researchers and 2 dealers said the interior cage height for hamsters should remain unchanged. In addition, 136 members of the research or scientific community maintained that increasing the required minimum floor space for hamsters would not benefit the hamsters' welfare.

Three hundred and five members of the research or scientific community, 2 dealers, and 3 members of the general public said that there is no scientific justification for increasing the height of primary enclosures for rabbits. Twenty members of the research or scientific community, 2 dealers, and 13 members of the general public said space requirements in primary enclosures for rabbits should remain unchanged.

As we noted in the proposed rule (54 FR 10911, March 15, 1989), the space requirements adopted in this rule reflect

our consultations with other Federal agencies.

The Animal Welfare Act directs the Secretary of Agriculture to—

> consult and cooperate with other Federal departments, agencies, or instrumentalities concerned with the welfare of animals used for research, experimentation or exhibition, or administration of statutes regulating the transportation in commerce or handling in connection therewith of any animals when establishing standards pursuant to section 2143 of this title and in carrying out the purposes of this chapter.
>
> (7 U.S.C. 2145(a))

In preparing these rules, we consulted with the Department of the Interior, U.S. Fish and Wildlife Service (USFWS), which regulates transportation of wild birds and animals into the United States. The Act also directs the Secretary of Agriculture to "consult with the Secretary of Health and Human Services prior to issuance of regulations" (7 U.S.C. 2145(a)). The Department of Health and Human Services, through the Public Health Service, The National Institutes of Health (NIH), currently issues guidelines on the care and use of animals studied in biomedical research. The guidelines cover dogs and cats, guinea pigs and hamsters, rabbits, and nonhuman primates. These NIH guidelines are in a document entitled "Guide for the Care and Use of Laboratory Animals" (NIH Guide or Guidelines). The NIH Guide is widely accepted by scientific institutions as a primary reference on animal care and use. While the Animal Welfare Act and regulations address a broader range of activities and facilities than the NIH Guide, Congress' intent in requiring consultation with the Department of Health and Human Services is to ensure that, whenever possible, the regulations and the NIH Guidelines are consistent:

> The Conferees expect the Secretary of Agriculture to have full responsibility for enforcement of the Animal Welfare Act. However, the Conferees also recognize that a portion of the nation's research facilities fall under regulation from more than one agency. While the legislative mandate of each agency is different, and they may regulate different aspects of animal care, it is hoped that the agencies continue an open communications to avoid conflicting regulations wherever possible or practice. [*sic*]
>
> (See Conference Report, *Congressional Record* of December 17, 1985, at page H12422.)

We have consulted extensively with NIH representatives concerning standards for the humane care, handling, treatment, and transportation of dogs and cats, guinea pigs and hamsters, rabbits, and nonhuman primates. We have reviewed our existing regulations and the NIH Guidelines. In addition, we have considered comments raised by member agencies of the Interagency Research Animal Committee, which is comprised of Federal agencies that conduct research using animals. We have also consulted with experts and professional organizations and have sought their recommendations on appropriate standards to accomplish our goal. We considered all of this information in proposing the revised space requirements for primary enclosures for guinea pigs, hamsters, and rabbits. These space requirements are substantially identical to the current NIH Guidelines. Based on all of the information available to us, we have determined that these space requirements are appropriate and adequate.

However, there may be circumstances under which alternative space requirements may be acceptable. Therefore, under §§ 3.28(c)(3) and 3.53(c)(3) of this final rule, innovative primary enclosures that do not precisely meet the space requirements of this final rule, but that do provide rabbits, guinea pigs, or hamsters with a sufficient volume of space and the opportunity to express species-typical behavior, may be used at research facilities when approved by the Institutional Animal Care and Use Committee, and by dealers and exhibitors when approved by the Administrator. It should be noted that "Administrator," as used in these regulations, is defined as "the Administrator of the Animal and Plant Health Inspection Service, U.S. Department of Agriculture, *or any other official of the Animal and Plant Health Inspection Service to whom authority has been delegated to act in his stead* [emphasis added]."

Most commenters opposing the proposed changes also said that the cost of complying with the increase in cage sizes would be prohibitive. Several commenters requested that we continue to allow use of existing cages that meet the current space requirements. We agree that there could be substantial costs involved in replacing cages to satisfy the new space requirements. To ease the financial burden of complying with the new space requirements, the amendments to §§ 3.28(c) and 3.53(c) that increase the minimum space in primary enclosures shall not apply to primary enclosures acquired before the effective date of this final rule. Primary enclosures acquired before that date and meeting the current space requirements may continue to be used until such time as they need to be replaced because of wear. While we belive that the new space requirements have certain advantages, our review of the rulemaking record and other available information leads us to the conclusion that a comparison of the advantages of increased cage sizes with the costs of compliance strongly suggests that it is appropriate to phase in the new cage size requirements.

Primary Enclosures; Other Comments

Four members of the research or scientific community said that a nursing dwarf hamster and her litter should be allowed to be housed with the father of the litter because male hamsters of this species engage in beneficial paternal behavior. The current regulations do not permit housing of a dwarf hamster and her litter with the father of the litter, or with any other hamsters. We did not propose any change to this provision. Our rationale is twofold: (1) In the absence of other hamsters that could disturb the nursing female and her litter, the incidence of cannibalism is substantially reduced or eliminated; and (2) fighting between male and female adults, which occurs because the female is generally only receptive to the male during the short period of estrus, is prevented.

Three members of the research or scientific community and 4 members of the general public said there should be no reduction in floor space for nursing guinea pigs and their litters. The proposed reduction in floor space for nursing guinea pigs and their litters was based on information supplied by the National Association for Biomedical Research (NABR), which, in May 1987, petitioned us to delete our requirement for additional space for breeder guinea pigs. The two studies cited by NABR in support of its petition were summarized in the proposed rule to amend Part 3. The results of these studies continue to provide a basis for changing our regulations concerning space requirements for breeder guinea pigs, including nursing guinea pigs with litters.

Three members of the general public said that the current limitations on the number of hamsters per primary enclosure should be maintained; and 21 members of the research or scientific community and 1 member of the general public said that we should specify the number of hamsters allowed per primary enclosure based on the weight of the animals. Our proposed rule made no change to § 3.36(d), which provides that not more than 50 live hamsters shall be transported in the same primary enclosure. This provision, coupled with

the requirements concerning cage size, is sufficient to ensure that hamsters have adequate space in primary enclosures used to transport them. We do not believe that specifying a set number of hamsters per primary enclosure, based on the weight of the animals, would serve any useful purpose.

Three members of the general public maintained that we should follow the Guidelines of the Royal Society and Universities Federation for Animal Welfare with respect to floor space for rabbits. These Guidelines recommend more floor space per rabbit than our proposal. Also, 6 members of the research or scientific community, 8 dealers, and 1,821 members of the general public said that rabbit cages need to be large enough to allow normal postural adjustment, including full extension of front and back legs. We have determined that the proposed space requirements for rabbits will provide sufficient room for rabbits to make normal postural adjustments. This includes full extension of front and back legs while lying down.

Temperature Requirements

Two members of the transportation industry objected to the proposed requirements concerning temperature and ventilation in cargo spaces on primary conveyances used to transport guinea pigs, hamsters, or rabbits. The commenters asserted that compliance with these requirements would be impossible because most aircraft in use today do not have mechanical ventilation or cooling systems in cargo compartments. We have made no changes to the proposed rule based on this comment. While many aircraft may not have mechanical ventilation or cooling systems in cargo compartments, data provided to the Federal Aviation Administration by airline manufacturers shows the ambient temperature range in most airline holds to range between 45 and 75 °F (7.2 and 23.9 °C).[1] Auxiliary ventilation would not be required unless the temperature reached 75 °F or higher.

Two members of the general public stated that certificates of acclimation to temperatures lower than 45 °F should not be issued for rabbits. We have made no changes to the proposed rule based on this comment. Except when a certificate of acclimation accompanies live rabbits, the cargo space containing the animals must be at temperatures no lower than 45 °F. While temperatures under 45 °F would not be suitable for most rabbits, some rabbits are acclimated to cooler temperatures and could be transported in these temperatures without distress. Certificates of acclimation must be issued by veterinarians accredited by the U.S. Department of Agriculture, who certify by that document that the animal is acclimated to temperatures lower than 45 °F.

One member of the research or scientific community said that hamsters can tolerate much colder temperatures than 45 °F, which is normally the minimum temperature permitted in cargo holds in which hamsters are transported. Some hamsters probably can tolerate temperatures below 45 °F. The regulations allow for this by providing that hamsters accompanied by a certificate of acclimation may be transported in cargo holds where the ambient temperature is below 45 °F.

Executive Order 12291 and Regulatory Flexibility Act

The animal welfare regulations are contained in title 9 of the Code of Federal Regulations, chapter 1, subchapter A, parts 1, 2, and 3. Part 1 provides definitions of the terms used in parts 2 and 3. Part 2 describes the administrative and institutional responsibilities of regulated entities. Part 3 contains requirements for the humane handling, care, treatment, and transportation of animals covered by the Animal Welfare Act.

This final rule amends the regulations in part 3, subparts B and C, which contain standards for the humane handling, care, treatment, and transportation of guinea pigs and hamsters, and rabbits, respectively. The amendments revise the space requirements for primary enclosures and reinstate temperature and ventilation requirements for cargo spaces in primary conveyances used to transport guinea pigs, hamsters, and rabbits.

The amendments to part 3, subparts B and C, were proposed in a document published in the **Federal Register** on March 15, 1989 (54 FR 10897–10954, Docket No. 87–004). This document also contained proposed amendments to part 3, subparts A and D, which contain standards for the humane handling, care, treatment, and transportation of cats and dogs, and nonhuman primates, respectively.

The Department has elected to finalize the amendments to subparts B and C separately. This decision is based on (1) the relatively small number of comments received on these amendments, as compared with the comments received on the proposed amendments to subparts A and D; and (2) the selection of an implementation plan that minimizes the economic impact of these amendments on regulated entities. As announced in a **Federal Register** notice published on April 2, 1990 (55 FR 12202–12203, Docket No. 90–007), the Department intends to publish a reproposal for subparts A and D. Parts 1 and 2 of the animal welfare regulations were amended by a final rule published in the **Federal Register** on August 31, 1989 (54 FR 36112–36163, Docket No. 89–130).

The Department is issuing this final rule for subparts B and C in conformance with Executive Order 12291, the Regulatory Flexibility Act, and Departmental Regulation 1512–1, which require analyses of the economic impact of regulations. Preliminary regulatory impact and regulatory flexibility analyses indicated that all of the proposed amendments to the animal welfare regulations (Parts 1, 2 and 3) taken together would constitute a "major rule" and would have a significant economic impact on a substantial number of small regulated entities.

With respect to the amendments to part 3, subparts B and C, however, the Department is promulgating the regulations in a manner that will minimize, if not eliminate, the economic impact on regulated entities. Specifically, the provisions in revised §§ 3.28 and 3.53 that increase the minimum space required for primary enclosures will not apply to primary enclosures acquired before the effective date of this final rule. Primary enclosures acquired before that date and meeting the current space requirements may continue to be used. Available information indicates that polycarbonate cages normally last from 3 to 6 years, and stainless steel cages over 25 years. Information from industry also indicates that most animal cage manufacturers have adopted size standards for guinea pig, hamster, and rabbit cages that are consistent with the new minimum size requirements in this final rule. Therefore, replacement cages meeting the new space requirements of this final rule will be readily available from commercial sources.

In addition, this final rule will allow use of alternative space arrangements under certain conditions. That is, innovative primary enclosures that do not precisely meet the space requirements of this final rule, but that do provide rabbits, guinea pigs, or hamsters with a sufficient volume of space and opportunity to express species-typical behavior, may be used at research facilities when approved by the

[1] For additional information, contact Dr. Morley Cook, REAC, APHIS, USDA, Room 206, 6505 Belcrest Road, Hyattsville, MD 20782.

Institutional Animal Care and Use Committee, and by dealers and exhibitors when approved by the Administrator.

These alternatives were developed in response to comments that said the cost of complying with the increase in cages sizes would be prohibitive. The Department believes that the adoption of these alternatives in part 3, subparts B and C, of the animal welfare regulations will minimize any costs to regulated entities which may result from these rules.

The Department does not anticipate any additional compliance costs to be incurred by small intermediate handlers or carriers because of amended temperature and ventilation requirements for cargo spaces in primary conveyances used to transport guinea pigs, hamsters, or rabbits.

The above discussion summarizes the Department's regulatory impact and flexibility analysis concerning the amendments to part 3, subparts B and C. The complete analysis is available for public inspection at USDA, Room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC., between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

In addition, the Administrator has determined that this rule 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.)

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), we have submitted the information collection provisions included in this final rule to the Office of Management and Budget (OMB) for approval. Your written comments will be considered if you submit them to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please submit a duplicate copy of your comments to the Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

List of Subjects in 9 CFR Part 3

Animal welfare, Humane animal handling, Pets, Transportation.

Accordingly, we are amending 9 CFR part 3, subparts B and C, as follows:

PART 3—STANDARDS

1. The authority citation for part 3 is revised to read as follows, and the authority citations following all the sections are removed.

Authority: 7 U.S.C. 2131–2156; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 3.28, the heading for paragraph (b) is revised and a new paragraph (c) is added to read as follows:

§ 3.28 Primary enclosures.

* * * * *

(b) *Space requirements for primary enclosures acquired before August 15, 1990.*

* * * * *

(c) *Space requirements for primary enclosures acquired on or after August 15, 1990*—(1) *Guinea pigs.* (i) Primary enclosures shall be constructed and maintained so as to provide sufficient space for each guinea pig contained therein to make normal postural adjustments with adequte freedom of movement.

(ii) The interior height of any primary enclosure used to confine guinea pigs shall be at least 7 inches (17.78 cm).

(iii) Each guinea pig shall be provided a minimum amount of floor space in any primary enclosure as follows:

Weight or stage of maturity	Minimum floor space	
	in²	cm²
Weaning to 350 grams	60	387.12
>350 grams	101	651.65
Nursing females with their litters	101	651.65

(2) *Hamsters.* (i) Primary enclosures shall be constructed and maintained so as to provide sufficient space for each hamster contained therein to make normal postural adjustments with adequate freedom of movement.

(ii) The interior height of any primary enclosure used to confine hamsters shall be at least 6 inches (15.24 cm).

(iii) Except as provided in paragraph (c)(2)(iv) of this section, each hamster shall be provided a minimum amount of floor space in any primary enclosure as follows:

Weight		Minimum floor space per hamster	
g	ozs	in²	cm²
<60	<2.1	10	64.52
60 to 80	2.1–2.8	13	83.88
80 to 100	2.8–3.5	16	103.23
>100	>3.5	19	122.59

(iv) A nursing female hamster, together with her litter, shall be housed in a primary enclosure that contains no other hamsters and that provides at least 121 square inches of floor space: Provided, however, That in the case of nursing female dwarf hamsters such floor space shall be at least 25 square inches.

(3) Innovative primary enclosures that do not precisely meet the space requirements of paragraph (c)(1) or (c)(2) of this section, but that do provide guinea pigs or hamsters with a sufficient volume of space and the opportunity to express species-typical behavior, may be used at research facilities when approved by the Institutional Animal Care and Use Committee, and by dealers and exhibitors when approved by the Administrator.

3. In § 3.36, the introductory text is revised to read as follows:

§ 3.36 Primary enclosures used to transport live guinea pigs and hamsters.

No person subject to the Animal Welfare regulations shall offer for transportation, or transport, in commerce any live guinea pig or hamster in a primary enclosure that does not conform to the following requirements:

* * * * *

4. In § 3.37, a new paragraph (g) is added to read as follows:

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

* * * * *

(g) The animal cargo space of primary conveyances used to transport guinea pigs or hamsters shall be mechanically sound and provide fresh air by means of windows, doors, vents, or air conditioning so as to minimize drafts, odors, and moisture condensation. Auxiliary ventilation, such as fans, blowers, or air conditioners, shall be used in any cargo space containing live guinea pigs or hamsters when the ambient temperature in the animal cargo space is 75 °F (23.9 °C) or higher. The ambient temperature within the animal cargo space shall not exceed 85 °F (29.5 °C) or fall below 45 °F (7.2 °C), except that the ambient temperature in the cargo space may be below 45 °F (7.2 °C) for hamsters if the hamsters are accompanied by a certificate of

acclimation to lower temperatures, as provided in § 3.35(c) of this part.

5. In § 3.40, the first two sentences are revised to read as follows:

§ 3.40 Terminal facilities.

No person subject to the Animal Welfare regulations shall commingle shipments of live guinea pigs or hamsters with inanimate cargo. All animal holding areas of a terminal facility where shipments of live guinea pigs or hamsters are maintained shall be cleaned and sanitized as prescribed in § 3.31 of the standards often enough to prevent an accumulation of debris or excreta, to minimize vermin infestation, and to prevent a disease hazard. * * *

6. In § 3.41, the introductory text in paragraph (a) is revised to read as follows:

§ 3.41 Handling.

(a) Any person who is subject to the Animal Welfare regulations and who moves live guinea pigs or hamsters from an animal holding area of a terminal facility to a primary conveyance or vice versa shall do so as quickly and efficiently as possible. Any person subject to the Animal Welfare Act and holding any live guinea pig or hamster in an animal holding area of a terminal facility or transporting any live guinea pig or hamster to or from a terminal facility shall provide the following: * * *

* * * * *

7. In § 3.53, the heading for paragraph (b) is revised and a new paragraph (c) is added to read as follows:

§ 3.53 Primary enclosures.

* * * * *

(b) *Space requirements for primary enclosures acquired before August 15, 1990.*

* * * * *

(c) *Space requirements for primary enclosures acquired on or after August 15, 1990.*

(1) Primary enclosures shall be constructed and maintained so as to provide sufficient space for the animal to make normal postural adjustments with adequate freedom of movement.

(2) Each rabbit housed in a primary enclosure shall be provided a minimum amount of floor space, exclusive of the space taken up by food and water receptacles, in accordance with the following table:

	Individual weights		Minimum floor space		Minimum interior height	
	kg	lbs	m^2	ft^2	cm	in
Individual rabbits (weaned)	<2	<4.4	0.14	1.5	35.56	14
	2–4	4.4–8.8	0.28	3.0	35.56	14
	4–5.4	8.8–11.9	0.37	4.0	35.56	14
	>5.4	>11.9	0.46	5.0	35.56	14

	Weight of nursing female		Minimum floor space/ female & litter		Minimum interior height	
	kg	lbs	m^2	ft^2	cm	in
Females with litters	<2	<4.4	0.37	4.0	35.56	14
	2–4	4.4–8.8	0.46	5.0	35.56	14
	4–5.4	8.8–11.9	0.56	6.0	35.56	14
	>5.4	>11.9	0.70	7.5	35.56	14

(3) Innovative primary enclosures that do not precisely meet the space requirements of paragraph (c)(2) of this section, but that do provide rabbits with a sufficient volume of space and the opportunity to express species-typical behavior, may be used at research facilities when approved by the Institutional Animal Care and Use Committee, and by dealers and exhibitors when approved by the Administrator.

8. In § 3.61, the introductory text is revised to read as follows:

§ 3.61 Primary enclosures used to transport live rabbits.

No person subject to the Animal Welfare regulations shall offer for transportation or transport in commerce any live rabbit in a primary enclosure that does not conform to the following requirements:

* * * * *

9. In § 3.62, a new paragraph (g) is added to read as follows:

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

* * * * *

(g) The animal cargo space of primary conveyances used to transport rabbits shall be mechanically sound and provide fresh air by means of windows, doors, vents, or air conditioning so as to minimize drafts, odors, and moisture condensation. Auxiliary ventilation, such as fans, blowers, or air conditioners, shall be used in any cargo space containing live rabbits when the ambient temperature in the animal cargo space is 75 °F (23.9 °C) or higher. The ambient temperature within the animal cargo space shall not exceed 85 °F (29.5 °C) or fall below 45 °F (7.2 °C), except that the ambient temperature in the cargo space may be below 45 °F (7.2 °C) if the rabbits are accompanied by a certificate of acclimation to lower temperatures, as provided in § 3.60(c) of this part.

10. In § 3.65 the first two sentences are revised to read as follows:

§ 3.65 Terminal facilities.

No person subject to the Animal Welfare regulations shall commingle shipments of live rabbits with inanimate cargo. All animal holding areas of a terminal facility where shipments of rabbits are maintained shall be cleaned and sanitized as prescribed in § 3.56 of the standards often enough to prevent an accumulation of debris or excreta, to minimize vermin infestation, and to prevent a disease hazard. * * *

11. In § 3.66, the introductory text in paragraph (a) is revised to read as follows:

§ 3.66 Handling.

(a) Any person who is subject to the Animal Welfare regulations and who moves live rabbits from an animal holding area of a terminal facility to a primary conveyance or vice versa shall do so as quickly and efficiently as possible. Any person subject to the Animal Welfare regulations and holding any live rabbit in an animal holding area of a terminal facility or transporting any

live rabbit to or from a terminal facility shall provide the following:

* * * * *

Done in Washington, DC, this 11th day of July 1990.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90-16489 Filed 7-13-90; 8:45 am]

BILLING CODE 3410-34-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 337

Unsafe and Unsound Banking Practices

AGENCY: Federal Deposit Insurance Corporation ("FDIC").

ACTION: Extension of effectiveness of interim rule.

SUMMARY: The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 prohibits an insured depository institution which does not meet applicable minimum capital requirements from accepting funds obtained through any deposit broker. The FDIC may waive the prohibition upon a finding that the acceptance of funds from a deposit broker does not constitute an unsafe or unsound practice with respect to the applicant. The FDIC adopted an interim rule on December 5, 1989, which set forth waiver-application procedures and outlined the circumstances under which a waiver may be granted, implemented a transition period, and clarified terms. The interim rule also requested the comments of interested parties. The interim rule was to remain in effect until June 12, 1990, unless rescinded, amended, modified, or replaced by the FDIC. In a document published June 7, 1990 in the Federal Register, the effectiveness of the interim rule was extended until August 11, 1990. 55 FR 23186 (June 7, 1990). However, the FDIC believes that it requires more time to consider the issues before adopting a final rule. For this reason, this amendment extends the period during which the interim rule remains in effect to November 9, 1990, unless rescinded, amended, modified, or replaced by the FDIC prior to that time.

DATES: This amendment is effective on July 16, 1990. The interim rule published at 54 FR 51012 (Dec. 12, 1989) will remain in effect until November 9, 1990, unless sooner rescinded, amended, modified, or replaced by the FDIC.

FOR FURTHER INFORMATION CONTACT: William G. Hrindac, Examination Specialist, Division of Supervision, (202) 898-6892, or Adrienne George, Attorney, Legal Division, (202) 898-3859, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in § 337.6(d) of the interim rule has been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 3064-0099. The information will be collected from undercapitalized insured depository institutions applying for a waiver from the prohibition on the acceptance or renewal of brokered deposits contained in section 29 of the Federal Deposit Insurance Act (12 U.S.C. 1831f).

The estimated annual reporting burden for the collection of information in this interim rule is summarized as follows:

Number of Respondents	370
Number of Responses Per Respondent	1
Total Annual Responses	370
Hours Per Response	6
Total Annual Burden Hours	2,220

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Assistant Executive Secretary (Administration), Room F-400, Federal Deposit Insurance Corporation, Washington, DC 20429, and to the Office of Management and Budget, Paperwork Reduction Project (3064-0099), Washington, DC 20503.

Regulatory Flexibility Act

The FDIC's Board of Directors hereby certifies that the interim rule will not have a significant economic impact on a substantial number of small entities because it largely tracks and clarifies strictures previously established by statute and affords a means by which undercapitalized insured depository institutions may avoid the application of those strictures by applying to the FDIC for a waiver. Moreover, it is anticipated that relatively few small entities will be impacted by the regulation since most insured depository institutions are adequately capitalized or, if undercapitalized, do not utilize brokered deposits. Finally, an entire grouping of undercapitalized institutions, namely, those in FDIC or Resolution Trust Corporation ("RTC") receivership or conservatorship, have effectively been excluded from the application of the regulation. Consequently, the provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603 and 604) are not applicable.

Reason for Adoption Without Prior Notice and Comment

Full notice and comment were provided for the interim rule. Because the sole substantive amendment being made to the interim rule is to extend the period during which the interim rule remains in effect to November 9, 1990, the FDIC Board of Directors has determined that the notice and public participation that are ordinarily required by the Administrative Procedure Act (5 U.S.C. 553) before a regulation may take effect would, in this case, be superfluous and that good cause exists for waiving the customary 30-day delayed effective date.

Background

Section 224 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA") added a new section 29 to the Federal Deposit Insurance ("FDI") Act. Section 29 of the FDI Act prohibits a "troubled" institution from accepting funds obtained, directly or indirectly, by or through any deposit broker for deposit into one or more deposit accounts. The term "deposit broker" means "(A) any person engaged in the business of placing deposits, or facilitating the placement of deposits, of third parties with insured depository institutions or the business of placing deposits with insured depository institutions for the purpose of selling interests in those deposits to third parties; and (B) an agent or trustee who establishes a deposit account to facilitate a business arrangement with an insured depository institution to use the proceeds of the account to fund a prearranged loan." FDI Act 29(f)(1). In addition, the term "deposit broker" includes "any insured depository institution, and any employee of any insured depository institution, which engages, directly or indirectly, in the solicitation of deposits by offering rates of interest (with respect to such deposits) which are significantly higher than the prevailing rates of interest on deposits offered by other insured depository institutions having the same type of charter in such depository institution's normal market area." FDI Act 29(f)(3). A "troubled" institution means any insured depository institution which does not