

# Proposed Rules

Federal Register

Vol. 73, No. 2

Thursday, January 3, 2008

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 9 CFR Parts 2 and 3

[Docket No. 99–014–2]

RIN 0579–AC41

#### Animal Welfare; Climatic and Environmental Conditions for Transportation of Warmblooded Animals Other Than Marine Mammals

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Proposed rule; withdrawal and reproposal.

**SUMMARY:** We are proposing to amend the Animal Welfare Act regulations regarding transportation of live animals other than marine mammals by removing the current ambient temperature requirements for various stages in the transportation of those animals. We would replace those requirements with a single performance standard under which the animals would be transported under climatic and environmental conditions that are appropriate for their welfare. The regulations currently require that ambient temperatures be maintained within certain ranges during transportation, but animals may be transported at ambient temperatures below the minimum temperatures if their consignor provides a certificate signed by a veterinarian certifying that the animals are acclimated to temperatures lower than the minimum temperature. This proposal would make acclimation certificates for live animals other than marine mammals unnecessary. This proposal replaces a previously published proposed rule, which we are withdrawing as part of this document, that would have required that the acclimation certificate for a dog or cat be signed by the owner of the dog or cat being transported rather than by a veterinarian. This proposal does not address marine

mammals due to their unique requirements for care and handling. These changes would remove potentially confusing temperature requirements and acclimation certificate provisions from the regulations governing the transportation of animals other than marine mammals and focus those regulations on ensuring that climatic and environmental conditions are maintained appropriately during transportation of those animals.

**DATES:** We will consider all comments that we receive on or before March 3, 2008.

**ADDRESSES:** You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2006-0150> to submit or view comments and to view supporting and related materials available electronically.

- *Postal Mail/Commercial Delivery:* Please send two copies of your comment to Docket No. 99–014–2, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 99–014–2.

*Reading Room:* You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

*Other Information:* Additional information about APHIS and its programs is available on the Internet at <http://www.aphis.usda.gov>.

**FOR FURTHER INFORMATION CONTACT:** Dr. Jerry D. DePoyster, Veterinary Medical Officer, Animal Care, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737–1234; (301) 734–7586.

#### SUPPLEMENTARY INFORMATION:

##### Background

Under the Animal Welfare Act (AWA) (7 U.S.C. 2131 *et seq.*), the Secretary of Agriculture is authorized to promulgate regulations and standards governing the humane handling, housing, care, treatment, and transportation of certain

animals by dealers, research facilities, exhibitors, and carriers and intermediate handlers. The Secretary has delegated the responsibility for enforcing the AWA to the U.S. Department of Agriculture's (USDA) Animal and Plant Health Inspection Service (APHIS). Regulations and standards established under the AWA are contained in 9 CFR parts 1, 2, and 3 (referred to below as the regulations). Parts 1 and 2 contain definitions and general requirements, and part 3 contains specific standards for the care of animals.

The regulations in part 3 are divided into six subparts, designated as subparts A through F, each of which contains facility and operating standards, animal health and husbandry standards, and transportation standards for a specific category of animals. Respectively, these categories of animals are: Dogs and cats (Subpart A); guinea pigs and hamsters (Subpart B); rabbits (Subpart C); nonhuman primates (Subpart D); marine mammals (Subpart E); and warmblooded animals other than those addressed in the previous subparts (Subpart F).

In each of these subparts, the final seven sections contain standards for the transportation of the type of animals addressed in the subpart. These transportation standards are very similar across the subparts, although some details of their requirements differ.

Each of the subparts specifies a range of ambient temperatures to which live animals may be exposed during transportation. For example, § 3.18 of subpart A contains minimum requirements for terminal facilities used in the transportation of dogs and cats. Among other things, § 3.18 requires that the ambient temperature in an animal holding area containing dogs and cats must not fall below 45 °F (7.2 °C) or rise above 85 °F (29.5 °C) for more than 4 consecutive hours at any time dogs or cats are present. Section 3.19 of subpart A contains minimum requirements for handling dogs and cats when they are moved within, to, or from an animal holding area of a terminal facility or a primary conveyance when being transported. Among other things, § 3.19 requires that dogs or cats must not be exposed to an ambient temperature below 45 °F (7.2 °C) or above 85 °F (29.5 °C) for a period of more than 45 minutes.

Section 3.13, paragraph (e), requires that carriers and intermediate handlers must not accept a dog or cat for transport in commerce unless their animal holding area meets the minimum temperature requirements provided in §§ 3.18 and 3.19, or unless the consigner provides them with a certificate signed by a veterinarian certifying that the animal is acclimated to temperatures lower than those required in §§ 3.18 and 3.19. Such a certificate is commonly referred to as an acclimation certificate.

Also related to climatic conditions, § 2.131 of the regulations contains requirements for the handling of animals that apply to all animals. Paragraph (e) of this section requires that whenever climatic conditions present a threat to an animal's health or well-being, appropriate measures must be taken to alleviate the impact of those conditions. This requirement is in addition to, not in place of, the specific temperature requirements in 9 CFR part 3.

#### *The June 1999 Proposed Rule Regarding Acclimation Certificates*

On June 7, 1999, we published in the **Federal Register** (64 FR 30527–30529, Docket No. 99–014–1) a proposal to amend the regulations by requiring that acclimation certificates be signed by the owner of the dog or cat rather than by a veterinarian. We proposed this change because veterinarians are often asked to sign certificates of acclimation for dogs and cats that they have seen only for routine examinations or if the animals are ill. It is difficult for a veterinarian to determine if a dog or cat has been acclimated to a specific temperature based on a veterinary examination. Therefore, we determined that it was inappropriate to place responsibility for such certification on veterinarians.

We solicited comments concerning our proposal for 60 days ending August 6, 1999. We received a total of 19 comments by that date. They were from animal welfare organizations, veterinary medical associations, a federation of dog sports associations, and private citizens. The comments we received have led us to withdraw the June 1999 proposed rule and issue this reproposal. This reproposal would remove the current ambient temperature requirements for various stages in the transportation of dogs and cats, as well as all other live animals other than marine mammals. It would replace those requirements with a performance standard under which those animals must be transported under climatic conditions that are not detrimental to the animals' welfare. The comments are described below.

Of the 19 commenters, six commenters, all veterinary medical associations, strongly supported the proposal. These commenters stated that, under the current regulations, veterinarians are requested to issue acclimation certificates without being able to ensure the accuracy of the certificates, due to unfamiliarity with the animal to be transported under the acclimation certificate. Often, these commenters said, the veterinarian asked to issue the certificate has never before seen the animal for which the certificate is requested. Veterinarians who are unfamiliar with a dog or cat for which an acclimation certificate is requested must either deny certification due to their lack of knowledge about the animal or issue a certificate that is worded to reflect uncertainty about its appropriateness. The commenters stated that this could result in the veterinarian being exposed to liability if the animal being transported under an acclimation certificate suffers harm in transit. These commenters agreed that the owner of a dog or cat that is to be transported is likely to have the most knowledge about whether the animal is acclimated to temperatures below 45 °F (7.2 °C).

One commenter supported the proposal but stated that it was unclear to many regulated parties how the acclimation certificate is used and to what stages of the transportation of dogs and cats it applies. The commenter also expressed doubt that the requirements of the acclimation certificate were consistently enforced. This commenter urged that we reexamine the regulations to address other issues relating to the transportation of dogs and cats.

The other 12 commenters opposed the proposed rule. Noting that the analysis under the heading "Executive Order 12866 and Regulatory Flexibility Act" in the proposed rule stated that licensed dealers transport animals more often than other dog and cat owners, these commenters were concerned that licensed dealers might have an interest in falsely certifying the animals they transport as being acclimated to ambient temperatures lower than 45 °F (7.2 °C) in order to reduce the cost of transporting the animals. Some of these commenters also expressed concern that individual dog and cat owners might lack the knowledge necessary to evaluate whether their dogs or cats are acclimated to low temperatures.

One of the commenters opposed to the proposal stated that the availability of the acclimation certificate, regardless of whether it is signed by a veterinarian or by the owner of the animal, has the potential to weaken the effectiveness of the temperature requirements in §§ 3.18

and 3.19. This commenter suggested that we eliminate the acclimation certificate entirely and add to our current temperature requirements a performance standard stating that "at no time may an animal be exposed to a combination of temperature, humidity, and time that would pose a threat to the animal's health and well-being." The commenter's proposed language was drawn from paragraph (e) of § 2.131, which was quoted earlier in this document and which applies to the handling of all animals.

We agree with the commenters that there may be some confusion about the purpose and applicability of acclimation certificates. In addition, we agree that the acclimation certificate would not be necessary if a single performance standard for maintaining climatic and environmental conditions were in place instead of the temperature requirement.

Other considerations also indicate that a single performance standard may be preferable to the specific requirements for ambient temperature ranges currently in the regulations. A specific case arises in the regulations governing the transportation of dogs and cats. Besides the temperature requirements in §§ 3.18 and 3.19, which have been described previously in this document, § 3.15 requires that, during surface transportation, the ambient temperature may not exceed 85 °F (29.5 °C) or fall below 45 °F (7.2 °C) for more than 4 consecutive hours. While the time limits in §§ 3.15, 3.18, and 3.19 regarding exposure to temperatures outside the prescribed ranges provide some flexibility to carriers and intermediate handlers transporting dogs and cats, they could also result in dogs and cats being exposed to ambient temperatures outside the prescribed ranges during transport for lengthy periods. This is because the temperature requirements apply to different stages of transportation for dogs and cats, and each change in a stage of transportation allows for an additional period during which temperatures outside the prescribed range can be maintained without violating the regulations.

The regulations divide the transportation of dogs and cats into stages for regulatory purposes: Transportation in a primary conveyance; transportation from a terminal facility into a primary conveyance, from a primary conveyance into a terminal facility, or from a primary conveyance to another primary conveyance; and holding time in a terminal facility. A typical itinerary for the transportation of a dog or cat thus might include time at a terminal facility awaiting departure, time for

transportation from that terminal facility into a surface transportation primary conveyance, time in the primary conveyance, time for transportation from the primary conveyance to a destination terminal facility, and time at the destination terminal facility awaiting pick-up.

Under the current regulations, dogs and cats may be exposed to ambient temperatures above 85 °F (29.5 °C) or below 45 °F (7.2 °C) for up to 4 consecutive hours at a terminal facility, for up to 45 minutes during transportation between a terminal facility and a primary conveyance, and for up to 4 consecutive hours in a primary surface transportation conveyance. Dogs or cats following the typical itinerary described in the previous paragraph could conceivably be exposed to temperatures outside the prescribed ranges for up to 13.5 hours (4 hours each at the initial terminal facility, the primary conveyance, and the final terminal facility, and 45 minutes for two stages of transportation between the primary conveyance and the terminal facilities) without violating the specific ambient temperature requirements in the regulations.

The temperature requirements in §§ 3.15, 3.18, and 3.19 are in addition to, not in place of, other temperature requirements in 9 CFR parts 2 and 3, such as the requirements in § 2.131(e); therefore, if prolonged exposure to temperatures above 85 °F (29.5 °C) or below 45 °F (7.2 °C) was detrimental to the welfare of a dog or cat, the persons transporting that dog or cat would be required to take measures to avoid a situation like the one described above. We work with carriers and intermediate handlers to ensure that they are aware of all the requirements related to climatic and environmental conditions that apply to the transportation of animals. If we suspect that climatic or environmental conditions have not been properly maintained, an inspector will observe the animal for clinical signs of exposure to adverse conditions, examine the enclosure, and record the ambient temperature.

However, exposure to temperatures outside the prescribed ranges for the periods permitted under the current regulations for transportation of dogs and cats could adversely affect animal welfare, contrary to the regulations in § 2.131(e). The other regulations governing the transportation of live animals in part 3 also contain similar provisions allowing the ambient temperature to rise above or fall below prescribed limits for periods of time.

The regulations should ensure that live animals are transported in climatic

and environmental conditions that provide for their continued welfare during transportation. A performance standard that replaces the specific temperature requirements and sets out the various factors in climatic and environmental conditions that need to be addressed and the hazards of transportation in suboptimal climatic and environmental conditions that must be avoided would provide for more flexibility while ensuring that live animals are transported in conditions that promote their welfare.

Accordingly, for the reasons discussed above, we are proposing to remove the provisions for an acclimation certificate from the regulations governing the transportation of all live animals, except marine mammals, in part 3. (Marine mammals have unique requirements for climatic and environmental conditions, and we believe the more specific standards that currently apply to them under subpart E of 9 CFR part 3 are necessary to ensure their welfare.) We are also proposing to remove from the regulations all the requirements that the ambient temperature be maintained within a specific temperature range for live animals other than marine mammals and replace those requirements with a single performance standard for maintaining climatic and environmental conditions that promote the welfare of live animals during their transportation. The new performance standard is described below.

*Proposed Performance Standard for Climatic and Environmental Conditions During Transportation of Live Animals Other Than Marine Mammals*

We would add the proposed performance standard to the regulations in 9 CFR part 2 by adding a new paragraph (f) in § 2.131 that is specific to climatic and environmental conditions during transportation of live animals other than marine mammals.

Paragraph (f)(1) of the proposed performance standard would state that transportation of all live animals shall be done in a manner that does not cause overheating, excessive cooling, or adverse environmental conditions that could cause unnecessary discomfort or stress. When climatic or environmental conditions, including temperature, humidity, exposure, ventilation, pressurization, time, or other environmental condition, or any combination thereof, present a threat to the health or well-being of a live animal, appropriate measures would have to be taken immediately to alleviate the impact of those conditions. The different climatic and environmental

factors prevailing during a journey would always have to be considered when arranging for the transportation of and when transporting live animals. Corrections may include, but would not be limited to:

- The temperature and humidity level of any enclosure used during transportation of live animals would have to be controlled by adequate ventilation or any other means necessary;
- Appropriate care would have to be taken to ensure that live animals are not subjected to drafts;
- Appropriate care would have to be taken to ensure that live animals are not exposed to direct heat, such as placement in direct sunlight or near a hot radiator;
- Appropriate care would have to be taken to ensure that live animals are not exposed to direct sources of cold, and;
- During prolonged air transit stops in local climatic conditions that could produce excess heat for live animals held in aircraft compartments, the aircraft doors would have to be opened and if necessary ground equipment would have to be used to control the condition of the air within compartments containing live animals.

Proposed paragraph (f)(2) of the performance standard provides examples of factors to consider when meeting the requirements of proposed paragraph (f)(1). Paragraph (f)(2) would state that, in order to determine what climatic and environmental conditions are appropriate for a warmblooded animal, factors such as, but not limited to, the animal's age, type or breed, physiological state, last feeding, and acclimation would have to be considered when such information is available.

*Proposed Changes to 9 CFR Part 3*

As part of adding the new performance standard in § 2.131(f), we would amend references to specific standards for climatic and environmental conditions in each of the six subparts in 9 CFR part 3, except the marine mammals subpart, to refer to § 2.131(f). We would also add new sections at the end of each of the six subparts in 9 CFR part 3, except the marine mammals subpart, that would state that climatic and environmental conditions for the transport of the animals in question would have to be maintained in accordance with the requirements of § 2.131(f). The new sections would be added to the regulations as §§ 3.20 (dogs and cats), 3.42 (guinea pigs and hamsters), 3.67 (rabbits), 3.93 (nonhuman primates), and 3.143 (warmblooded animals other

than dogs, cats, rabbits, hamsters, guinea pigs, nonhuman primates, and marine mammals). Each of the sections would be titled "Climatic and environmental conditions during transportation."

The transportation requirements in the subparts of 9 CFR part 3 are structured similarly, with identical section titles addressing various aspects of the transportation of live animals. The changes we are proposing for the regulations governing the transportation of the various types of live animals other than marine mammals are similar as well. We will discuss the changes we are proposing in general terms and cite the paragraphs we are proposing to change below. A complete list of the changes we are proposing to make in 9 CFR part 3 can be found in the regulatory text at the end of this document.

- *Consignments to carriers and intermediate handlers.* These sections currently contain provisions stating that carriers and intermediate handlers must not accept a live animal for transport in commerce unless their animal holding area can maintain a required temperature range or unless the animal being transported is being transported with an acclimation certificate. We would replace these provisions with a statement that carriers and intermediate handlers must not accept a live animal for transport in commerce unless their animal holding area can maintain climatic and environmental conditions in accordance with the proposed performance standard in § 2.131(f). This change would be made in §§ 3.13(e), 3.35(c), 3.60(c), 3.86(e), and 3.136(c).

- *Primary conveyances (motor vehicle, rail, air, and marine).* These sections currently contain various requirements related to maintaining climatic conditions while in transit in a primary conveyance. For example, the regulations in § 3.15(d) require that, during air transportation, dogs and cats must be held in cargo areas that are heated or cooled as necessary to maintain an ambient temperature that ensures the health and well-being of the dogs or cats. Paragraph (e) in § 3.15 contains temperature requirements for surface transportation. The regulations for rabbits in § 3.62(g) contain requirements for the use of auxiliary fans and for the maintenance of ambient temperatures. All these requirements (and other, similar requirements) would be replaced with provisions requiring that, during transportation, climatic and environmental conditions in the animal cargo area must be maintained in accordance with the proposed performance standard in § 2.131(f). This

change would be made in §§ 3.15(d) and (e), 3.37(g), 3.62(g), and 3.88(d) and (e).

- *Care in transit.* These sections require, among other things, that persons transporting live animals in commerce must observe the animals periodically to ensure that the ambient temperature is within the limits prescribed elsewhere in the relevant subpart. We are proposing to require instead that such persons ensure that climatic and environmental conditions are being maintained in accordance with the proposed performance standard in § 2.131(f). This change would be made in §§ 3.17, 3.39(a), 3.64(a), 3.90, and 3.140.

- *Terminal facilities.* These sections contain ambient temperature requirements for the animal holding areas at terminal facilities. We would replace these requirements with requirements that the climatic and environmental conditions in animal holding areas be maintained in accordance with the proposed performance standard in § 2.131(f). This change would be made in §§ 3.18(d), 3.40, 3.65, 3.91(d), and 3.141.

- *Handling.* In all these sections, paragraph (a) contains various requirements relating to the handling of live animals as they are moved within, to, or from the animal holding area of a terminal facility or a primary conveyance. We are proposing to remove all the requirements relating to maintaining an ambient temperature and replace them with a new paragraph (a)(3) that would require that climatic and environmental conditions be maintained in accordance with the proposed performance standard in § 2.131(f). However, we would retain the specific requirements that live animals be sheltered from the direct rays of the sun and that protection be provided to allow the live animals to remain dry during rain, snow, and other precipitation. These would be found in paragraphs (a)(1) and (a)(2), respectively. This change would be made in §§ 3.19, 3.41, 3.66, 3.92, and 3.141.

#### *Miscellaneous*

We also propose to correct typographical errors in §§ 3.35, 3.36, 3.64, and 3.137.

#### **Executive Order 12866 and Regulatory Flexibility Act**

This proposed 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.

We have prepared an economic analysis for this proposed rule. It provides a cost-benefit analysis, as required by Executive Order 12866, as well as an initial regulatory flexibility analysis that considers the potential economic effects of this proposed rule on small entities, as required by the Regulatory Flexibility Act. The economic analysis is summarized below. Copies of the full economic analysis are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** or on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov).

APHIS has promulgated minimum standards for the humane transportation, in commerce, of live dogs, cats, guinea pigs, hamsters, rabbits, nonhuman primates, marine mammals, and certain other warmblooded animals. Among other things, the standards govern the animals' exposure to temperature extremes during the various stages of transportation (e.g., while in animal holding areas of terminals, while in primary conveyances). The current regulations generally prescribe ambient temperature ranges, usually from a low of 45 °F to a high of 85 °F. Animals may be exposed to lower temperatures as long as the consignor provides a certificate, signed by a veterinarian, certifying that the animal has been acclimated to temperatures outside the prescribed range. Some animals, including dogs and cats, may also be exposed to temperatures outside the prescribed temperature range for specified time periods.

The proposed rule would remove the current ambient temperature requirements for all covered animals except marine mammals and replace those requirements with a single performance standard under which the animals would have to be transported under climatic and environmental conditions that are not detrimental to their welfare. The proposal would also remove the current provisions relating to acclimation certificates for live animals other than marine mammals, since those certificates would no longer be necessary.

The proposed changes are intended to ensure that the affected animals are transported in climatic conditions that are not detrimental to their welfare while allowing for variations as to what climatic conditions are suitable for individual animals.

The proposed rule has the potential to have an economic impact on carriers and intermediate handlers that accept the affected animals for transport in

commerce. Consignors and practicing veterinarians would no longer have to provide acclimation certificates, and therefore the rule would relieve them from having to fulfill a requirement. Veterinarians would forego the fees that they might otherwise charge consignors-owners for certifications, but any such fees are likely to be insignificant, when judged against the veterinarians' overall revenues from all sources.

From an economic standpoint, the proposal has the potential to impact carriers and intermediate handlers—large and small—because compliance may require that they modify the climatic conditions to which they currently expose animals. However, based on our experience enforcing the regulations, it appears that, for most carriers and handlers, a modification of existing climatic conditions would not be necessary, since those conditions appear to be appropriate already. In addition, the proposed rule would afford carriers and intermediate handlers some flexibility in providing appropriate climatic conditions for each animal they transport. Within the overall carrier and handler category, the airline and to a lesser extent motor freight line industries are most likely to include entities affected by the proposed rule.

It is likely that the rule may affect an unknown number of small entities. Although we believe that the proposal would not have a significant economic impact on a substantial number of small entities, hard data to support that conclusion is not available. Accordingly, we have prepared this initial regulatory flexibility analysis so that the public may have the opportunity to offer comments on expected effects of the proposed rule on 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 proposed 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 proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Further, this proposed rule would reduce information collection or recordkeeping requirements in 9 CFR part 3.

#### Lists of Subjects

##### 9 CFR Part 2

Animal welfare, Pets, Reporting and recordkeeping requirements, Research.

##### 9 CFR Part 3

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

Accordingly, we are proposing to amend 9 CFR parts 2 and 3 as follows:

#### PART 2—REGULATIONS

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

**Authority:** 7 U.S.C. 2131–2159; 7 CFR 2.22, 2.80, and 371.7.

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

##### § 2.131 Handling of animals.

\* \* \* \* \*

(f)(1) Transportation of all live animals shall be done in a manner that does not cause overheating, excessive cooling, or adverse environmental conditions that could cause unnecessary discomfort or stress. When climatic or environmental conditions, including temperature, humidity, exposure, ventilation, pressurization, time, or other environmental conditions, or any combination thereof, present a threat to the health or well-being of a live animal, appropriate measures shall be taken immediately to alleviate the impact of those conditions. The different climatic and environmental factors prevailing during a journey shall be considered when arranging for the transportation of and when transporting live animals. Corrections may include, but would not be limited to:

- (i) The temperature and humidity level of any enclosure used during transportation of live animals must be controlled by adequate ventilation or any other means necessary;
- (ii) Appropriate care must be taken to ensure that live animals are not subjected to drafts;
- (iii) Appropriate care must be taken to ensure that live animals are not exposed to direct heat, such as placement in direct sunlight or near a hot radiator;
- (iv) Appropriate care must be taken to ensure that live animals are not exposed to direct sources of cold; and

(v) During prolonged air transit stops in local climatic conditions that could produce excessive heat for live animals held in aircraft compartments, the aircraft doors shall be opened and if necessary ground equipment shall be used to control the condition of the air within compartments containing live animals.

(2) In order to determine what climatic and environmental conditions are appropriate for a live animal, factors such as, but not limited to, the animal's age, type or breed, physiological state, last feeding, and acclimation shall be considered when such information is available.

#### PART 3—STANDARDS

3. 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 371.7.

4. In § 3.13, paragraph (e) is revised to read as set forth below.

##### § 3.13 Consignments to carriers and intermediate handlers.

\* \* \* \* \*

(e) Carriers and intermediate handlers shall not accept a dog or cat for transport in commerce unless their animal holding area can maintain climatic and environmental conditions in accordance with the requirements of § 2.131(f).

\* \* \* \* \*

5. Section 3.15 is amended as follows:

a. By revising paragraph (d) to read as set forth below.

b. By removing paragraph (e) and redesignating paragraphs (f), (g), and (h) as paragraphs (e), (f), and (g), respectively.

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

\* \* \* \* \*

(d) During transportation, the climatic and environmental conditions in the animal cargo area shall be maintained in accordance with § 2.131(f).

\* \* \* \* \*

##### § 3.17 [Amended]

6. Section 3.17 is amended as follows:

a. In paragraph (a), by removing the words “the ambient temperature is within the limits provided in § 3.15(e)” and adding the words “climatic and environmental conditions are being maintained in accordance with the requirements of § 2.131(f)” in their place.

b. In paragraph (b), by removing the words “the animal cargo area meets the heating and cooling requirements of § 3.15(d)” and adding the words

“climatic and environmental conditions are being maintained in the animal cargo area in accordance with the requirements of § 2.131(f)” in their place.

7. Section 3.18 is amended as follows:  
a. In paragraph (c), by removing the last sentence.

b. By revising paragraph (d) to read as set forth below.

**§ 3.18 Terminal facilities.**

\* \* \* \* \*

(d) Climatic and environmental conditions. The climatic and environmental conditions in an animal holding area containing dogs and cats shall be maintained in accordance with the requirements of § 2.131(f).

\* \* \* \* \*

8. In § 3.19, paragraph (a) is revised to read as follows:

**§ 3.19 Handling.**

(a) Any person subject to the Animal Welfare regulations (9 CFR parts 1, 2, and 3) who moves (including loading and unloading) dogs or cats within, to, or from the animal holding area of a terminal facility or a primary conveyance shall do so as quickly and efficiently as possible and shall provide the following during movement of the dog or cat:

(1) *Shelter from sunlight and extreme heat.* Sufficient shade shall be provided to protect the dog or cat from the direct rays of the sun.

(2) *Shelter from rain and snow.* Sufficient protection shall be provided to allow the dogs and cats to remain dry during rain, snow, and other precipitation.

(3) *Climatic and environmental conditions.* Climatic and environmental conditions during movement shall be maintained in accordance with the requirements of § 2.131(f).

\* \* \* \* \*

9. A new § 3.20 is added to read as follows:

**§ 3.20 Climatic and environmental conditions during transportation.**

Climatic and environmental conditions during transportation of dogs and cats shall be maintained in accordance with the requirements of § 2.131(f) of this subchapter.

10. Section 3.35 is amended as follows:

a. In paragraph (a), by removing the word “government” and adding the word “government” in its place.

b. By revising paragraph (c) to read as set forth below.

**§ 3.35 Consignments to carriers and intermediate handlers.**

\* \* \* \* \*

(c) Carriers and intermediate handlers shall not accept a live guinea pig or hamster for transport in commerce unless their animal holding area can maintain climatic and environmental conditions in accordance with the requirements of § 2.131(f).

\* \* \* \* \*

**§ 3.36 [Amended]**

11. In § 3.36, paragraph (b) is amended by removing the word “transported” and adding the word “transported” in its place.

12. In § 3.37, paragraph (g) is amended by removing the second and third sentences and adding a new second sentence to read as follows:

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

\* \* \* \* \*

(g) \* \* \* During transportation, the climatic and environmental conditions in the animal cargo area shall be maintained in accordance with the requirements of § 2.131(f).

**§ 3.39 [Amended]**

13. In § 3.39, paragraph (a) is amended as follows:

a. In the first sentence, by removing the words “their ambient temperatures are within the prescribed limits,” and adding the words “climatic and environmental conditions are being maintained in accordance with the requirements of § 2.131(f),” in their place.

b. In the third sentence, by removing the words “their ambient temperatures are within the prescribed limits,” and adding the words “climatic and environmental conditions are being maintained in accordance with the requirements of § 2.131(f), and” in their place.

14. Section 3.40 is amended by removing the fifth, sixth, and seventh sentences and adding a new fifth sentence to read as follows:

**§ 3.40 Terminal facilities.**

\* \* \* Climatic and environmental conditions in the animal holding area shall be maintained in accordance with the requirements of § 2.131(f).

15. In § 3.41, paragraph (a) is revised to read as follows:

**§ 3.41 Handling.**

(a) Any person subject to the Animal Welfare regulations (9 CFR parts 1, 2, and 3) who moves (including loading and unloading) live guinea pigs or hamsters within, to, or from the animal holding area of a terminal facility or a primary conveyance shall do so as quickly and efficiently as possible and shall provide the following during

movement of the live guinea pig or hamster:

(1) *Shelter from sunlight and extreme heat.* Sufficient shade shall be provided to protect the live guinea pigs and hamsters from the direct rays of the sun.

(2) *Shelter from rain and snow.* Sufficient protection shall be provided to allow the live guinea pigs and hamsters to remain dry during rain, snow, and other precipitation.

(3) *Climatic and environmental conditions.* Climatic and environmental conditions during movement shall be maintained in accordance with the requirements of § 2.131(f).

\* \* \* \* \*

16. A new § 3.42 is added to read as follows:

**§ 3.42 Climatic and environmental conditions during transportation.**

Climatic and environmental conditions during transportation of live guinea pigs and hamsters shall be maintained in accordance with the requirements of § 2.131(f) of this subchapter.

17. Section 3.60 is amended by revising paragraph (c) to read as set forth below:

**§ 3.60 Consignments to carriers and intermediate handlers.**

\* \* \* \* \*

(c) Carriers and intermediate handlers shall not accept a live rabbit for transport in commerce unless their animal holding area can maintain climatic and environmental conditions in accordance with the requirements of § 2.131(f).

\* \* \* \* \*

18. In § 3.62, paragraph (g) is amended by removing the second and third sentences and adding a new second sentence to read as follows:

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

\* \* \* \* \*

(g) \* \* \* During transportation, the climatic and environmental conditions in the animal cargo area shall be maintained in accordance with the requirements of § 2.131(f).

**§ 3.64 [Amended]**

19. In § 3.64, paragraph (a) is amended as follows:

a. In the first sentence, by removing the word “th” and adding the word “the” in its place; by removing the words “their ambient temperatures are within the prescribed limits,” and adding the words “climatic and environmental conditions are being maintained in accordance with the requirements of § 2.131(f),” in their

place; and by removing the word “distress” and adding the word “distress” in its place.

b. In the third sentence, by removing the words “their ambient temperatures are within the prescribed limits,” and adding the words “climatic and environmental conditions are being maintained in accordance with the requirements of § 2.131(f), and” in their place.

20. Section 3.65 is amended by removing the fifth, sixth, and seventh sentences and adding a new fifth sentence to read as follows:

**§ 3.65 Terminal facilities.**

\* \* \* Climatic and environmental conditions in the animal holding area shall be maintained in accordance with the requirements of § 2.131(f).

21. In § 3.66, paragraph (a) is revised to read as follows:

**§ 3.66 Handling.**

(a) Any person subject to the Animal Welfare regulations (9 CFR parts 1, 2, and 3) who moves (including loading and unloading) live rabbits within, to, or from the animal holding area of a terminal facility or a primary conveyance shall do so as quickly and efficiently as possible and shall provide the following during movement of the live rabbits:

(1) *Shelter from sunlight and extreme heat.* Sufficient shade shall be provided to protect the live rabbits from the direct rays of the sun.

(2) *Shelter from rain and snow.* Sufficient protection shall be provided to allow the live rabbits to remain dry during rain, snow, and other precipitation.

(3) *Climatic and environmental conditions.* Climatic and environmental conditions during movement shall be maintained in accordance with the requirements of § 2.131(f).

\* \* \* \* \*  
22. A new § 3.67 is added to read as follows:

**§ 3.67 Climatic and environmental conditions during transportation.**

Climatic and environmental conditions during transportation of live rabbits shall be maintained in accordance with the requirements of § 2.131(f) of this subchapter.

23. Section 3.86 is amended by revising paragraph (e) to read as set forth below:

**§ 3.86 Consignments to carriers and intermediate handlers.**

\* \* \* \* \*

(e) Carriers and intermediate handlers shall not accept a nonhuman primate for

transport in commerce unless their animal holding area can maintain climatic and environmental conditions in accordance with the requirements of § 2.131(f).

\* \* \* \* \*

24. Section 3.88 is amended as follows:

a. By revising paragraph (d) to read as follows.

b. By removing paragraph (e) and redesignating paragraphs (f) through (i) as paragraphs (e) through (h), respectively.

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

\* \* \* \* \*

(d) During transportation, the climatic conditions in the animal cargo area shall be maintained in accordance with the requirements of § 2.131(f).

\* \* \* \* \*

25. In § 3.90, paragraphs (a) and (b) are amended by removing the words “the ambient temperature is within the limits provided in § 3.88(d) of this subpart” and adding the words “climatic and environmental conditions are being maintained in accordance with the requirements of § 2.131(f)” in their place.

26. Section 3.91 is amended as follows:

a. In paragraph (c), by removing the last sentence.

b. By revising paragraph (d) to read as set forth below.

**§ 3.91 Terminal facilities.**

\* \* \* \* \*

(d) *Climatic and environmental conditions.* The climatic and environmental conditions in an animal holding area containing nonhuman primates shall be maintained in accordance with the requirements of § 2.131(f).

\* \* \* \* \*

27. In § 3.92, paragraph (a) is revised to read as follows:

**§ 3.92 Handling.**

(a) Any person subject to the Animal Welfare regulations (9 CFR parts 1, 2, and 3) who moves (including loading and unloading) nonhuman primates within, to, or from the animal holding area of a terminal facility or a primary conveyance shall do so as quickly and efficiently as possible and shall provide the following during movement of the nonhuman primates:

(1) *Shelter from sunlight and extreme heat.* Sufficient shade shall be provided to protect the nonhuman primates from the direct rays of the sun.

(2) *Shelter from rain and snow.* Sufficient protection shall be provided

to allow the nonhuman primates to remain dry during rain, snow, and other precipitation.

(3) *Climatic and environmental conditions.* Climatic and environmental conditions during movement shall be maintained in accordance with the requirements of § 2.131(f).

\* \* \* \* \*

28. A new § 3.93 is added to read as follows:

**§ 3.93 Climatic and environmental conditions during transportation.**

Climatic and environmental conditions during transportation of nonhuman primates shall be maintained in accordance with the requirements of § 2.131(f) of this subchapter.

29. Section 3.136 is amended by revising paragraph (c) to read as follows:

**§ 3.136 Consignments to carriers and intermediate handlers.**

\* \* \* \* \*

(c) Carriers and intermediate handlers shall not accept a live animal for transport in commerce unless their animal holding area can maintain climatic and environmental conditions in accordance with the requirements of § 2.131(f).

\* \* \* \* \*

**§ 3.137 [Amended]**

30. In § 3.137, paragraph (a)(3) is amended by removing the word “openings” and adding the word “openings” in its place.

**§ 3.140 [Amended]**

31. In § 3.140, paragraph (a) is amended as follows:

a. In the first sentence, by removing the words “their ambient temperatures are within the prescribed limits,” and adding the words “climatic and environmental conditions are being maintained in accordance with the requirements of § 2.131(f),” in their place.

b. In the third sentence, by removing the words “their ambient temperatures are within the prescribed limits,” and adding the words “climatic and environmental conditions are being maintained in accordance with the requirements of § 2.131(f), and” in their place.

32. Section 3.141 is amended by removing the fifth, sixth, and seventh sentences and adding a new fifth sentence to read as follows:

**§ 3.141 Terminal facilities.**

\* \* \* Climatic and environmental conditions in the animal holding area shall be maintained in accordance with the requirements of § 2.131(f).

33. In § 3.142, paragraph (a) is revised to read as follows:

### § 3.142 Handling.

(a) Any person subject to the Animal Welfare regulations (9 CFR parts 1, 2, and 3) who moves (including loading and unloading) live animals within, to, or from the animal holding area of a terminal facility or a primary conveyance shall do so as quickly and efficiently as possible and shall provide the following during movement of the live animals:

(1) *Shelter from sunlight and extreme heat.* Sufficient shade shall be provided to protect the live animals from the direct rays of the sun.

(2) *Shelter from rain and snow.* Sufficient protection shall be provided to allow the live animals to remain dry during rain, snow, and other precipitation.

(3) *Climatic and environmental conditions.* Climatic and environmental conditions during movement shall be maintained in accordance with the requirements of § 2.131(f).

\* \* \* \* \*

34. A new § 3.143 is added to read as follows:

### § 3.143 Climatic and environmental conditions during transportation.

Climatic and environmental conditions during transportation of live animals shall be maintained in accordance with the requirements of § 2.131(f) of this subchapter.

Done in Washington, DC, this 26th day of December 2007.

**Kevin Shea,**

*Acting Under Secretary for Marketing and Regulatory Programs.*

[FR Doc. E7-25530 Filed 1-2-08; 8:45 am]

BILLING CODE 3410-34-P

## FEDERAL DEPOSIT INSURANCE CORPORATION

### 12 CFR Part 361

RIN 3064-AD23

### Minority and Women Outreach Program Contracting

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This proposal would amend existing FDIC regulations regarding the FDIC's contracting activities under its Minority and Women Outreach Program (MWOP). These are relatively minor amendments designed to eliminate several provisions rendered obsolete by significant reductions in FDIC

contracting activities and decreases in FDIC staff to monitor the contracting activities of Minority and Women-Owned Businesses (MWOBs).

**DATES:** Comments must be received on or before March 3, 2008.

**ADDRESSES:** You may submit comments by any of the following methods:

- *Agency Web site:* <http://www.fdic.gov/regulations/laws/federal/propose.html>. Follow instructions for submitting comments on the Agency Web site.

- *E-mail:* [Comments@FDIC.gov](mailto:Comments@FDIC.gov). Include "Part 361—Minority and Women Outreach Program Contracting" in the subject line of the message.

- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

- *Hand Delivery/Courier:* Guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

*Public Inspection:* All comments received will be posted without change to <http://www.fdic.gov/regulations/laws/federal> including any personal information provided. Comments may be inspected and photocopied in the FDIC Public Information Center, 3501 North Fairfax Drive, Room E-1002, Arlington, VA 22226, between 9 a.m. and 5 p.m. on business days. Paper copies of public comments may be ordered from the Public Information Center by telephone at (877) 275-3342 or (703) 562-2200.

#### FOR FURTHER INFORMATION CONTACT:

Robert P. Elcan, Chief, Minority & Women Outreach Program Section, Office of Diversity and Economic Opportunity, at [RElcan@fdic.gov](mailto:RElcan@fdic.gov) or (703) 562-6070; or Trisha M. Bursey, Assistant Director, Division of Administration, Acquisition Services Branch, Policy and Operations Section, at [TBursey@fdic.gov](mailto:TBursey@fdic.gov) or (703) 562-2212; or Chris J. Conanan, Counsel, Legal Division, Corporate Operations Branch, Corporate and Legal Operations Section, Contracting and Internal Review Unit, at [CConanan@fdic.gov](mailto:CConanan@fdic.gov) or (703) 562-2335.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Section 1216 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 provides that the FDIC shall "prescribe regulations to establish and oversee a minority outreach program[s] \* \* \* to ensure inclusion, to the maximum extent possible, of minorities and women, and

entities owned by minorities and women \* \* \* in all contracts entered into by the agency \* \* \*." 12 U.S.C. 1833e(c). Since 1992, the FDIC has promulgated Outreach Regulations implementing this statutory directive and has used various approaches to ensure the maximum inclusion of MWOBs in contracts entered into by the agency, including, among other things, formal solicitations and a focus on Small Disadvantaged Businesses (SDBs). The MWOP is administered by the FDIC's Office of Diversity and Economic Opportunity (ODEO); however, actual contracts are awarded by the FDIC through the Acquisition Services Branch, Division of Administration.

Nonetheless, since promulgation of the Outreach Regulations, and amendments made in 1995 and 2000, FDIC contracting activities have significantly declined, which has resulted in fewer contract awards to MWOBs. Consequently, FDIC staff involved in MWOB registration, monitoring, and data collection has been significantly reduced, and the provisions in the Outreach Regulations that correspond to these staff activities have not been operational for several years. For these reasons, the FDIC proposes elimination of obsolete regulatory provisions. Specifically, the FDIC proposes to eliminate current regulatory provisions that call for registration of MWOBs; quarterly MWOB data reports from Offices or Divisions within the FDIC to ODEO; and the designation of MWOP coordinators within FDIC Offices or Divisions.

##### II. Request for Comments

The FDIC welcomes comments on all aspects of this proposal.

##### III. Solicitation of Comments on Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act, Pub. L. 106-102, sec. 722, 113 Stat. 1338, 1471 (Nov. 12, 1999), requires the federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. We invite your comments on how to make this proposal easier to understand. For example:

- Have we organized the material to suit your needs? If not, how could this material be better organized?

- Are the requirements in the proposed regulation clearly stated? If not, how could the regulation be more clearly stated?

- Does the proposed regulation contain language or jargon that is not clear? If so, which language requires clarification?