and by adding in its place the words ''the Arava Valley'.

e. In newly designated paragraph (b)(7), by removing the word ''Paran'' and by adding in its place the words ''the Arava Valley''.

9. Section 319.56–2w would be revised to read as follows:

§ 319.56–2w Administrative instruction; conditions governing the entry of papayas from Brazil and Costa Rica.

The Solo type of papaya may be imported into the continental United States, Alaska, Puerto Rico, and the U.S. Virgin Islands from the State of Espirito Santo, Brazil, and the provinces of Guanacaste, San Jose, and Puntarenas, Costa Rica, only under the following conditions:

(a) The papayas were grown and packed for shipment to the United States in the State of Espirito Santo, Brazil, or in the provinces of Guanacaste, San Jose, and Puntarenas, Costa Rica.

(b) Beginning at least 30 days before harvest began and continuing through the completion of harvest, all trees in the field where the papayas were grown were kept free of papayas that were ½ or more ripe (more than ¼ of the shell surface yellow), and all culled and fallen fruits were removed from the field at least twice a week.

(c) When packed, the papayas were less than ½ ripe (the shell surface was no more than ¼ yellow, surrounded by light green), and appeared to be free of all injurious insect pests.

(d) The papayas were packaged so as to prevent access by fruit flies and other injurious insect pests, and the package does not contain any other fruit, including papayas not qualified for importation into the United States.

(e) All activities described in paragraphs (a) through (d) of this section were carried out under the general supervision and direction of plant health officials of the national Ministry of Agriculture.

(f) Beginning at least 1 year before harvest begins and continuing through the completion of harvest, fruit fly traps were maintained in the field where the papayas were grown. The traps were placed at a rate of 1 trap per hectare and were checked for fruit flies at least once weekly by plant health officials of the national Ministry of Agriculture. Fifty percent of the traps were of the McPhail type, and fifty percent of the traps were of the Jackson type. The national Ministry of Agriculture kept records of fruit fly finds for each trap, updated the records each time the traps were checked, and made the records available to APHIS inspectors upon request. The records were maintained for at least 1 year.

(g) All shipments must be accompanied by a phytosanitary certificate issued by the national Ministry of Agriculture stating that the papayas were grown, packed, and shipped in accordance with the provisions of this section.

Done in Washington, DC, this 19th day of March 1997.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–7455 Filed 3–24–97; 8:45 am]

BILLING CODE 3410–34–P

9 CFR Parts 1 and 3

[Docket No. 97–018–1]

Animal Welfare; Petition for Rulemaking

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of petition and request for comments.

SUMMARY: We are notifying the public of our receipt of a petition for rulemaking, and we are soliciting public comment on that petition. The petition, sponsored by the Doris Day Animal League, requests that we amend the Animal Welfare regulations by redefining the term ''retail pet store'' and by including dealers of dogs intended for hunting, security, and breeding in the regulations.

DATES: Consideration will be given only to comments received on or before May 27, 1997.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 97–018–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 97–018–1. Anyone wishing to see copies of comments received, or the petition, including appendices, may do so by coming to 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. Please call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Bettye Walters, Veterinary Medical Officer, AC, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737–1234, (301) 734–7833.

SUPPLEMENTARY INFORMATION:

Background

Under the Animal Welfare Act (the Act) (7 U.S.C. 2131 *et seq.*), the Secretary of Agriculture is authorized to promulgate standards and other requirements governing the humane handling, housing, care, treatment, and transportation of certain animals by dealers, research facilities, exhibitors, and carriers and intermediate handlers. Regulations established under the Act are contained in 9 CFR parts 1, 2, and 3. 9 CFR part 1 contains definitions for terms used in 9 CFR parts 2 and 3. Subpart A of 9 CFR part 3 contains specific standards for the humane handling, care, treatment, and transportation of dogs and cats.

A petition for rulemaking, sponsored by the Doris Day Animal League, requests two changes to the regulations at 9 CFR parts 1 and 3. The requested changes are: (1) to redefine the term ''retail pet store'' in 9 CFR part 1; and (2) to regulate dealers of dogs intended for hunting, security, and breeding under the provisions applicable to other dealers of dogs in 9 CFR part 3. The petition is printed below. A brief description of the appendices referred to in the petition appears at the end of the petition.

Comments are invited on the proposed changes discussed in the petition. In particular, we are soliciting comments addressing the following questions:

1. Should the definition of ''retail pet store'' in 9 CFR part 1 be revised to read ''a non-residential business establishment used primarily for the sale of pets to the ultimate customer'?

2. Should dealers of dogs intended for hunting, security, and breeding be subject to the applicable regulations at 9 CFR part 3, subchapter A''?

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

Done in Washington, DC, this 19th day of March 1997.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

Petition Before the U.S. Department of Agriculture

Petition for Rulemaking and Collateral Relief; Doris Day Animal League, 227 Massachusetts Avenue, NE, Suite 100, Washington, DC 20002

June 22, 1995.

I. Introduction

Pursuant to the Administrative Procedure Act, 5 U.S.C. § 553(e), the Doris Day Animal League, a national animal protection organization, petitions the Department of Agriculture

to: (1) change the department policy of excluding from regulation hunting, security and breeding dog dealers, under the Animal Welfare Act (''Act''), 7 U.S.C. § 2131 *et seq.*; and, (2) amend regulations under the Act, that currently define the term ''retail pet store'' in the Act as all retail pet ''outlets.'' Doris Day Animal League proposes that the definition of ''retail pet store'' under USDA regulations be a ''non-residential business establishment used primarily for the sale of pets to the ultimate consumer.''

II. Nature of Petitioner's Interests

Petitioner, the Doris Day Animal League (DDAL), is a non-profit, charitable corporation with principal offices in Washington, D.C. The DDAL represents a membership and mailing constituency of more than 298,000 persons nationwide. The primary goal of DDAL is to promote humane care and treatment of all animals, including animals bred and raised in puppy mills for pets or hunting dogs.

Petitioner DDAL has used substantial resources in seeking to correct the deficiencies in the Animal Welfare Act,[1] regulations under the Act[2] and the enforcement of regulations promulgated pursuant to the Act. DDAL actively participated in the promulgation of regulations under the 1985 amendments to the Act and in monitoring the enforcement of the Act as it relates to Class ''A'' dealers. DDAL played a significant role in the development of Canadian regulations limiting the numbers of sick and diseased puppies entering Canada from U.S. Class ''A'' and Class ''B'' dealer operations, and has sent the Department of Agriculture over 75,000 petitions and postcards from our members requesting prompt action to reduce the abuses prevalent in the puppy breeding industry.

III. Statement of the Problem

A. Current USDA Regulations Defining ''Retail Pet Store'' as any ''Outlet'' are Overly Broad and Violate Both the Clear Language and the Spirit of the Animal Welfare Act

When Congress first enacted the Animal Welfare Act in 1966 it was intended to regulate only those entities that sold animals to laboratories and to reduce the incidence of pet theft.[3] The 1970 amendments expanded the coverage to include dealers of animals sold ''for use as pets . . .''[4] The Congressional amendment specifically excluded ''retail pet stores.''[5] The Department of Agriculture promulgated regulations interpreting the term ''retail pet store'' to include any retail ''outlet'' under the 1970 Amendments.[6] The arbitrary expansion of the ''retail pet store'' exemption called for in the statute to include any ''outlet'' selling to the consumer confounds any reasonable definition of ''store'' in the English language and undermines the clear intent of the statute. This expanded exclusion allows dozens if not hundreds of dog breeders to keep animals in inhumane conditions, without adequate veterinary care and completely protected from public view by simply raising and selling pets directly to the public.

Investigations have found some of these facilities to be operated in a manner that allows communicable diseases such as parvo and distemper to spread, and provides inadequate shelter and unhealthy sanitary conditions including fetid water, vermin infestation and fecal material in and around cages.

For example, a ''20/20'' television report highlighted a case in which a dog purchased from one of these facilities was found to have a staph infection, cot cicada, diarrhea, skin fungus, pyoderma parasites, tapeworms, hook worms, whip worms, an eye infection, a weak immune system and emodectic mange.[7] The facility involved was eventually prosecuted and closed down by local authorities.

A more recent case involves a breeder in Glendale, West Virginia. This breeder was given a six-month-old male Shih-Tzu as a co-owner in January of 1994. When he was returned to the other owners on October 19, 1994 he was emaciated and dehydrated and had severe flea infections, worms, was extremely matted, and needed stitches to close a wound. The co-owners had tried to solicit help from the local police to investigate complaints regarding odors emanating from the yard, but the police stated that they did not have the authority to act.[8] If the kennel were licensed under the Act, it would be open to inspections and the kennel would be mandated to correct deficiencies.

The agency's interpretation that the term ''store'' includes all ''outlets'' has allowed these and other equally deficient establishments to operate unchecked and for the dogs involved to suffer from inadequate housing, food and veterinary care. A ''store'' simply cannot be interpreted to encompass operations that breed, raise or sell puppies from a backyard, living room or barn. Therefore this interpretation by the agency constitutes an unreasonable and arbitrary interpretation of the clear and plain meaning of the statute and is therefore contrary to the law.

The agency may have been influenced in promulgating the regulation by the legislative history accompanying the 1970 amendments which states that the bill's purpose is to regulate ''more people who handle animals. It will, for example, bring into the regulatory framework of the Act for the first time . . . wholesale pet dealers (emphasis added).''[9] This explanation of the expansion of the coverage of the Act is clearly intended as an overview and not as a limit on the potential for regulation. The section states that it is intended as an ''example'' of the expansion of coverage and not a description of the universe of coverage.[10] It is reasonable for the author of the legislative history, in seeking to generally characterize a section that excludes retail dealers to state that the section includes wholesale dealers. It is not reasonable, however, for the agency to use this general description to limit coverage only to those entities clearly given as ''examples'' of intended coverage under the Act.

While it is true that a dealer operating as a breeder but selling to the public directly is not a wholesaler, it is also clear that he or she in most, if not all, cases is not a ''store.'' The Act does not exclude ''retail outlets'', it does not exclude ''all dealers except wholesalers.'' It only excludes establishments that are both (1) retail *and* (2) stores. Clearly, had Congress intended to limit coverage either to only include wholesalers or to expand the exclusion of retailers to all ''outlets,'' it could have done so. It did not.

It is not the intent of the petitioner to seek amendment of the statute to include the casual breeder who sells directly to the public; these breeders are excluded from coverage under the Act by the specific exclusion of individuals who derive no more that $500 gross income from the sale of animals each year.[11] Rather it is the intention of the petitioner to seek regulations that clearly include individuals making a substantial income from the sales of dozens of puppies each year for whom no protection currently exists by selling directly to the ultimate consumer.

B. The Current Policy of U.S.D.A. To Exclude the Dealers of ''Hunting, Breeding and Security Dogs'' From the Provisions of the Act Is in Direct Contravention of the Explicit Language of the Statute

The U.S.D.A. has repeatedly stated its ''policy'' of not regulating hunting dog dealers under the Animal Welfare Act.[12] However, this policy is in conflict with the clear language of the Animal Welfare Act and its supporting

legislative history. Just as the 1970 amendments expanded coverage of the Act to include animals sold for pets, Congress also intended to include under this category dogs sold for hunting, security or breeding purposes.

The Department did not include these animals under the Act's protection when implementing the 1970 amendments. Therefore, when Congress revisited the Act in 1976 to expand coverage to the transportation of animals by air and to ban animal fighting ventures, it also clarified its intention in the previous bill by including the following language:

(f) The term ''dealer'' means any person who, in commerce, for compensation or profit . . . buys or sells . . . (2) *any dog for hunting, security, or breeding purposes* . . .[13]

(g) The term ''animal'' means any live or dead dog . . . *With respect to a dog the term means all dogs including those used for hunting, security, or breeding purposes.*''[14]

The agency cites two sources for the basis of its exclusion of some dogs from the provisions of the Act.[15] The first is the legislative history related to the 1966 bill (referenced in letter as H.R. 13881). However, the 1966 bill only dealt with the sale of animals to medical research and not to any facet of the pet industry. Therefore, this provides no justification for this exclusion. The second source is the exclusion of ''retail pet store'' from the Act in the 1970 Amendments. Clearly Congress did not intend to exclude any retail operation, but rather retail stores. This is evidenced by Congress' attempts to correct the Department's misinterpretation of the exclusions under the 1970 amendments. Had Congress agreed with the agency's interpretation of the Act to expand the term ''store'' to include an ''outlet'' it would have been silent on the issue in the 1976 Amendments.

With regard to dogs used for hunting, security, or breeding, Congress made its intent extremely clear in 1976. In the legislative history related to the 1976 amendments, the House report recognized the Department's flawed interpretation of the 1970 Amendments which were intended to cover hunting, security and breeding dogs by stating that ''Contrary to the interpretation presently held by the Secretary of Agriculture, all dogs, including dogs used for hunting, security or breeding purposes, do fall within the protection of the Act.''[16]

The Department's later analysis that these dogs are not covered ''since hunting dogs are usually sold at the retail level'' flies in the face of the express wishes of Congress. Because hunting, security and breeding dogs are rarely if ever sold at a retail pet store but, even according to the agency, are sold at the retail level,[17] and, because Congress clearly indicated that the agency's interpretation that hunting dogs are to be excluded is wrong, the only logical interpretation of the Act is that ''retail level'' sales are intended to be included at least as they relate to hunting, security and breeding dogs. Also, because the exemption relates to dogs sold ''as pets'' and not to dogs used for hunting, breeding or security, it should have no application to establishments dealing in these animals.[18]

Because ''breeding dogs'' are included in Congress' clarification, and because no Class ''A'' dealer can operate without buying or selling breeding dogs, *all* Class ''A'' dealers should be covered under the provisions of the Act unless they are breeding in a ''retail store.''

IV. Petitioner's Request For Rulemaking

Petitioner requests that USDA change current policies that exclude dealers handling dogs used for hunting, security, or breeding purposes from the provisions of the Act and promulgate regulations that would change the definition of ''retail pet store'' to ''non-residential business establishment used primarily for the sale of pets to the ultimate consumer.''

V. The Regulatory Changes Sought Are Supported by the Clear Language of the Statute

In order to be valid, regulations must be consistent with the statute under which they are promulgated. *United States* v. *Larinoff,* 431 U.S. 864, 873 (1971).[19] The starting point for interpreting a statute is the language of the statute itself and, absent a clearly expressed legislative intent to the contrary, that language must ordinarily be regarded as conclusive. *Consumer Product Safety Comm.* v. *G.T.E. Sylvania, Inc.,* 447 U.S. 102 (1980).

Furthermore, an agency's interpretation of a statute is not entitled to deference when it goes beyond the meaning that the statute can bear. *MCI Telecommunications* v. *American Telephone and Telegraph Company,* 114 S. Ct. 2223, 2231 (1994).

The Animal Welfare Act calls for the exemption of ''retail pet stores'' from the provisions of the Act. The expansion of this exclusion to include any ''outlet'' is inconsistent with the plain language of the statute. Nothing suggests that Congress intended to limit coverage to wholesalers. Therefore, the exclusion from coverage for ''retail pet stores'' should be limited to those entities that clearly fall within this exemption. All other entities, including retail pet dealers, not operating as stores, should be covered and regulated.

The policy of the Department to exclude breeders of dogs for hunting, breeding or security purposes has an even shakier foundation. The statute expressly calls for the inclusion of these dealers. Yet, inexplicably, the Department has based its exclusion of these animals on its own flawed interpretation of the Act to exclude all retail outlets. In fact, the exclusion of dogs bred for hunting, breeding or security purposes is not only inconsistent with the statute, it is contrary to its express language. Dogs bred for hunting, security and breeding purposes fall within the clearly expressed legislative intent and therefore should be covered.

VI. The Regulatory Change Sought Would Further the Purpose of the Act

The purpose of the Animal Welfare Act is to establish humane treatment of dogs by animal dealers.[20] The Act establishes by law the humane ethic that animals should be accorded the basic creature comforts of adequate housing, ample food and water, reasonable handling, decent sanitation, sufficient ventilation, shelter from extremes of weather and temperature and adequate veterinary care.[21] The inclusion of all dealers who breed dogs, including those sold for hunting, breeding or security purposes, and with the limited exception of retail stores, will assure protection under the Act for more animals, and therefore, will further its purpose.

VII. Conclusion

For the reasons set forth, Petitioner requests that the U.S.D.A. make the requested changes in its rules and administrative policies.

Respectfully Submitted,

Holly E. Hazard,

Executive Director, Doris Day Animal League.

Appendices

Appendix 1: Letter from Dayne E. Vendal concerning purchase of a dog

Appendix 2: Statement and other documents from Stephen and Peggy Waltman concerning the care of a dog

Appendix 3: Letter to Holly Hazard, DDAL, from P.L. Allen, APHIS

Appendix 4: Letter to Sara Amundsen, DDAL, from Cheryl A. Oswalt, APHIS

Appendix 5: Letter to Holly Hazard, DDAL, and William Long, HSUS, from the law firm of Davis, Graham, and Stubbs

Endnotes

1. 7 U.S.C.A. 2131 *et seq.*

2. 9 CFR Sec. 1.1 *et seq.*
3. 2 U.S. Cong. & Admin. News '66, at 2636.
4. P.L. 91–579.
5. 7 U.S.C.A. 2132(f).
6. 9 CFR at 1.1.
7. *See* Appendix 1.
8. *See* Appendix 2.
9. 3 Cong. & Admin. News '70 , at 5104.
10. *Id*.
11. 7 U.S.C.A. 2132(f)(ii).
12. *See* letter to Ms. Holly Hazard from P.L. Allen, February 2, 1989 at Appendix 3. *See also,* letter to Ms. Sara Amundson from Cheryl Oswalt, October 14, 1992 at Appendix 4.
13. 7 U.S.C.A. 2132(f).
14. 7 U.S.C.A. 2132(g).
15. *See* letter to Holly Hazard from P.L. Allen, February 2, 1989 at Appendix 3.
16. 2 U.S. Cong. & Admin News '76, at 758–759.
17. *See* letter to Amundson at Appendix 4.
18. For a further analysis of this argument see letter to Ms. Holly Hazard and Mr. William Long from Mark D. Colley, Esq., Davis, Graham & Stubbs, L.L.C., June 9, 1995, at page 3 at Appendix 5 which is herein incorporated by reference.
19. *Id*. at page 1–2 at Appendix 5 which is herein incorporated by reference.
20. 2 U.S. Cong. & Admin. News '66, at 2635.
21. 3 U.S. Cong. & Admin. News '70, at 5104.

[FR Doc. 97–7454 Filed 3–24–97; 8:45 am]
BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–193–AD]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Model BAC 1–11 200 and 400 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain British Aerospace Model BAC 1–11 200 and 400 series airplanes. This proposal would require inspections of the main landing gear (MLG) A-frame attachment fittings to detect corrosion or cracking, and repair or replacement of cracked or corroded components with new components. This proposal is prompted by findings of corroded and cracked A-frame components of the MLG. The actions specified by the proposed AD are intended to prevent corrosion and cracking of MLG A-frame components, which could result in collapse of the MLG.

DATES: Comments must be received by May 5, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–193–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from British Aerospace, Airbus Limited, P.O. Box 77, Bristol BS99 7AR, England. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 96–NM–193–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–193–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain British Aerospace Model BAC 1–11 200 and 400 series airplanes. The CAA advises that, during regular inspections for corrosion, several cases of cracks were found in the main landing gear (MLG) A-frame attachment fittings of airplanes that had accumulated between 32,000 and 43,000 landings. Laboratory investigation of cracked components revealed that cracks occurred as a result of stress corrosion. The cracks initiated in the bores of the lugs and propagated to the outside radii. This condition, if not corrected, could result in collapse of the MLG.

Explanation of Relevant Service Information

British Aerospace has issued Alert Service Bulletin 53–A–PM6036, Issue 1, dated November 24, 1995, which describes procedures for repetitive detailed visual inspections of MLG A-frame attachment fittings to detect corrosion or cracking. The alert service bulletin also provides procedures for either repair or replacement of cracked or corroded components with new components. The CAA classified the alert service bulletin as mandatory in order to assure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Conclusions

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