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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 1, 2, and 3

[Docket No. 02-012-1]

RIN 0579-AB51

Animal Welfare; Transportation of Animals on Foreign Air Carriers

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Determination to regulate and request for comments.

SUMMARY: In this document, we are giving notice of, and requesting comment on, our intent to begin applying the Animal Welfare Act (AWA) regulations and standards for the humane transportation of animals in commerce to all foreign air carriers operating to or from any point within the United States, its territories, possessions, or the District of Columbia. While these AWA regulations and standards have been enforced on U.S. air carriers, foreign air carriers, as a matter of policy, have not been asked to comply with the regulations, although some have done so voluntarily. Our determination to begin regulating foreign air carriers will ensure that any animal covered by the AWA, whether coming into, traveling from point to point in, or leaving the United States, its territories, possessions, or the District of Columbia, will be provided the protection of the AWA regulations and standards. We intend to begin applying these AWA regulations and standards unless substantial issues bearing on the effects of this action are brought to our attention.

DATES: This determination to regulate will be effective on April 7, 2004, unless we receive comments raising substantial issues bearing on the effects of this

action by December 9, 2003 (*see* "Effective Date and Request for Comments" under **SUPPLEMENTARY INFORMATION**).

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02-012-1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. 02-012-1. If you use e-mail, address your comment to regulations@aphis.usda.gov. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 02-012-1" on the subject line.

You may read any comments that we receive 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.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at <http://www.aphis.usda.gov/ppd/rad/webrepor.html>.

FOR FURTHER INFORMATION CONTACT: Dr. Jerry DePoyster, Senior Veterinary Medical Officer, Animal Care, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737-1236; (301) 734-7586.

SUPPLEMENTARY INFORMATION:

Background

The Animal Welfare regulations contained in 9 CFR chapter I, subchapter A, part 3 (referred to below as "the regulations") provide standards for the humane handling, care, treatment, and transportation, by regulated entities, of animals covered by the Animal Welfare Act (AWA, 7 U.S.C. 2131 *et seq.*). 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. These subparts consist of the following: Subpart A—dogs and cats; subpart B—guinea pigs and hamsters; subpart C—rabbits; subpart D—nonhuman primates; subpart E—marine mammals; and subpart F—warmblooded animals other than dogs, cats, rabbits, hamsters, guinea pigs, nonhuman primates, and marine mammals. Transportation standards for dogs and cats are contained in §§ 3.13 through 3.19; for guinea pigs and hamsters, in §§ 3.35 through 3.41; for rabbits, in §§ 3.60 through 3.66; for nonhuman primates, in §§ 3.86 through 3.92; for marine mammals, in §§ 3.112 through 3.118; and for all other warmblooded animals, in §§ 3.136 through 3.142.

A carrier is defined in § 1.1 as "the operator of any airline, railroad, motor carrier, shipping line, or other enterprise which is engaged in the business of transporting animals for hire."

While the Animal Care unit of the U.S. Department of Agriculture's (USDA's) Animal and Plant Health Inspection Service (APHIS) currently enforces the AWA regulations and standards on U.S. air carriers, foreign air carriers (as defined in 49 U.S.C 40102) operating in the United States have not been regulated as a matter of policy. We believe that animals being transported by foreign air carriers operating to or from any point within the United States, its territories, possessions, or the District of Columbia should be afforded the same protection under the AWA as if they were being transported by U.S. air carriers. This determination to regulate gives notice that APHIS intends to begin applying the AWA transportation regulations and standards to all foreign air carriers operating to or from any point within the United States, its territories, possessions, or the District of Columbia.

There are approximately 517 foreign air carriers which hold currently effective economic authority from the U.S. Department of Transportation to conduct operations in foreign air transportation to and from the United States. In order to ensure the widest possible notice of our determination to begin applying AWA regulations and standards on foreign air carriers, we intend to mail these carriers copies of this notice. In this way, the airlines will

be informed that, beginning 180 days after the publication of this determination to regulate, they will be subject to the transportation regulations and standards of the AWA while in the United States, its territories, possessions, or the District of Columbia. Also, copies of this notice will be sent to trade organizations involved with air transportation of animals, such as the Animal Transportation Association, Air Transport Association, and International Air Transportation Association (IATA), with a request that copies be included in newsletters they send to their members. These organizations have been consulted with regard to this determination to regulate, and we have been coordinating with them on a regular basis.

Effective Date and Request for Comments

Although we have been consulting and coordinating with the trade organizations cited above and, by extension, their member airlines, we believe it is appropriate to provide an opportunity for affected entities to comment prior to this determination to regulate becoming effective. Therefore, we are soliciting comments on this determination to regulate for a period of 60 days. If, through the comments we receive, substantial issues bearing on the effects of this action are brought to our attention, we will publish a notice in the **Federal Register** prior to the effective date of this determination to regulate to inform the public as to what action we will be taking to address those issues. Conversely, if the comments we receive yield no substantial issues, we will publish a notice in the **Federal Register** confirming the effective date.

Effects of This Determination to Regulate

Within 180 days after publication of this notice, each foreign air carrier will need to complete an AWA registration form pursuant to § 2.25 of the AWA regulations, which may be obtained by calling the APHIS Animal Care Western Regional Office at (970) 494-7478 or the Eastern Regional Office at (919) 716-5532. Registered foreign air carriers will need to provide Animal Care with a U.S. business address or the address of an agent where the records required to be kept pursuant to the AWA regulations will be available for inspection. Animal Care inspectors will conduct unannounced inspections of the overall health and condition of the animals being transported, their enclosures, environmental factors, and required records upon the foreign air carrier's arrival within the United States, its

territories, possessions, or the District of Columbia. Carriers that violate the AWA by failing to meet the AWA transportation regulations and standards are subject to fines and/or penalties.

We believe that the 180-day delay in the effective date of applying AWA regulations and standards to the operations of foreign air carriers should allow adequate time for them to become familiar with the provisions of the AWA and the AWA transportation regulations and standards and to make any necessary changes in procedure. Many foreign air carriers are members of the IATA and may already be in compliance with most of the physical requirements of the regulations and standards of the AWA. The IATA regulations generally meet or exceed the intent of the AWA in ensuring the humane and safe transportation of animals, but diverge from the USDA regulations primarily in their recordkeeping requirements. Under this determination to regulate, where such divergences exist, the AWA regulations will take precedence.

This action will require foreign air carriers operating to or from any point within the United States, its territories, possessions, or the District of Columbia to meet certain requirements of the AWA transportation regulations and standards that are not contained in the IATA regulations. For example, various sections of the transportation standards in 9 CFR part 3 require that no live animals can be presented to a carrier more than 4 hours before the scheduled departure time of the flight on which the animal is to be transported. With prior arrangements, this time may be extended to 6 hours. The IATA regulations contain no such provision. Various sections of the transportation standards in 9 CFR part 3 also have specific primary enclosure requirements which differ from those of the IATA. Most often, the IATA space requirements for animals are consistent with the AWA requirements, but with at least one species—the guinea pig—the space requirements are not consistent with the AWA requirements. Various sections of the transportation standards in 9 CFR part 3 also have minimum and maximum temperature requirements for holding areas for animals in transit (usually 45 or 50 °F to 85 °F). The IATA regulations, in contrast, do not mandate minimum or maximum temperatures. Instead, guidelines are offered for acceptable temperature ranges for various species in transport.

In addition to the physical requirements, foreign air carriers operating to or from any point within the United States, its territories, possessions, or the District of Columbia,

will have to meet recordkeeping requirements set out in the AWA regulations. Records that foreign air carriers will have to keep and maintain include a copy of the consignor's written guarantee of payment for transportation for C.O.D. shipments, a shipping document, and an animal health certificate executed and issued by a licensed veterinarian. In addition, depending on the species, the AWA regulations may require that instructions for the administration of drugs, medication, other special care, food, and water, as well as other shipping documents, be attached to the outside of the animal's primary enclosure.

This determination to regulate will not necessitate any changes to the current AWA transportation regulations or standards but will increase Animal Care's inspection activities. The increased burden on Animal Care is not likely to be significant, however, because Animal Care inspectors already perform inspections at the airports that foreign air carriers use.

This determination to regulate will ensure that any animal covered by the AWA, whether coming into, traveling from point to point in, or leaving the United States, its territories, possessions, or the District of Columbia, will be provided the protection of the AWA regulations and standards.

Therefore, unless substantial issues bearing on the effects of this action are brought to our attention, APHIS intends to begin applying the AWA transportation regulations and standards to foreign air carriers operating to or from any point within the United States, its territories, possessions, or the District of Columbia 180 days from the date of publication in the **Federal Register** of this notice.

Executive Order 12866 and Regulatory Flexibility Act

This determination to regulate rule has been reviewed under Executive Order 12866. The determination to regulate 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.

This document gives notice that we intend to begin applying the AWA regulations and standards for the humane transportation of animals in commerce to all foreign air carriers operating to or from any point within the United States, its territories, possessions, or the District of Columbia.

For the reasons discussed earlier in this document, we do not expect that there will be any significant economic

effects on entities affected by this determination to regulate (*i.e.*, foreign air carriers and APHIS). We note that many foreign air carriers are members of the IATA and observe that organization's regulations regarding animal transport, which generally meet or exceed the intent of the AWA in ensuring the humane and safe transportation of animals. Thus, many foreign air carriers may already be in compliance with most of the physical requirements of the regulations and standards of the AWA. The primary aspect in which the IATA regulations diverge from the USDA regulations is in their recordkeeping requirements; as we note below under "Paperwork Reduction Act," we expect that the additional time that foreign air carriers will need to expend in order to comply with the reporting and recordkeeping requirements of the AWA regulations will be minimal. While the routine inspection of foreign air carriers will lead to an increased inspection burden on APHIS' Animal Care inspectors, that burden is not likely to be significant because those inspectors already perform inspections at the airports that foreign air carriers use.

As an alternative to this determination to regulate, we considered maintaining the status quo, *i.e.*, continuing with our policy of not applying the requirements of the regulations to foreign air carriers. While some foreign air carriers voluntarily comply with the regulations and many others observe the IATA's regulations regarding animal transport, such compliance or observance is not universal. To ensure that animals being transported to or from any point within the United States, its territories, possessions, or the District of Columbia are afforded consistent protection, regardless of whether they are being transported by foreign air carriers or U.S. air carriers, we have determined that it is necessary to begin applying the AWA transportation regulations and standards to all foreign air carriers operating to or from any point within the United States, its territories, possessions, or the District of Columbia.

We believe that the small additional costs associated with this determination to regulate will be outweighed by the benefits of ensuring that animals being transported by foreign air carriers operating to or from any point within the United States, its territories, possessions, or the District of Columbia are afforded the same protection under the AWA as if they were being transported by U.S. air carriers.

Under these circumstances, the Administrator of the Animal and Plant

Health Inspection Service has determined that this determination to regulate will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this determination to regulate have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments concerning the information collection or recordkeeping requirements included in this determination to regulate to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 02–012–1. Please send a copy of your comments to: (1) Docket No. 02–012–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue, SW., Washington, DC 20250.

Within 180 days after publication of this determination to regulate, every foreign air carrier operating to or from any point within the United States, its territories, possessions, or the District of Columbia will need to complete a registration form. Registered foreign air carriers will also be required to keep and maintain records required under the AWA regulations pertaining to animal transport. These records may include a copy of the consignor's written guarantee of payment for transportation for C.O.D. shipments; a shipping document; an animal health certificate executed and issued by a licensed veterinarian; and, if needed, an acclimation statement indicating that the animal being transported can withstand temperatures colder or warmer than the minimums or maximums specified in the regulations. In addition, depending on the species, the regulations may require that instructions for the administration of drugs, medication, other special care, food, and water, as well as other shipping documents, be attached to the outside of the animal's primary enclosure.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 0.162037 hours per response.

Respondents: Foreign air carriers transporting animals covered by the Animal Welfare Act.

Estimated annual number of respondents: 20.

Estimated annual number of responses per respondent: 54.

Estimated annual number of responses: 1,080.

Estimated total annual burden on respondents: 175 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

Government Paperwork Elimination Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. For information pertinent to GPEA compliance related to this interim rule, please contact

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

Done in Washington, DC, this 6th day of October, 2003.

Bill Hawks,

Under Secretary for Marketing and Regulatory Programs.

[FR Doc. 03–25788 Filed 10–9–03; 8:45 am]

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