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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/ral/webrepo.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, 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,
possession, 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,
possession, 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,
possession, 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, possession, 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

**Bill Hawks,**
Under Secretary for Marketing and
Regulatory Programs.

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