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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