

# Rules and Regulations

Federal Register

Vol. 69, No. 66

Tuesday, April 6, 2004

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 984

#### Walnuts Grown in California

##### CFR Correction

■ In Title 7 of the Code of Federal Regulations, parts 900 to 999, revised as of Jan. 1, 2004, on page 566, part 984 is corrected by reinstating the subpart heading and § 984.437 as follows:

#### Subpart—Administrative Rules and Regulations

##### § 984.437 Methods for proposing names of additional candidates to be included on walnut growers' nomination ballots.

(a) Whenever the grower member position specified in § 984.35(a)(4) is assigned to growers who marketed their walnuts through independent handlers, any ten or more such growers who marketed an aggregate of 500 or more tons of walnuts through those handlers during the marketing year preceding the year in which Board nominations are held, may petition the Board to include on the nomination ballot the name of an eligible candidate for this position, and the name of an eligible candidate to serve as his alternate. The names of the eligible candidates proposed pursuant to this paragraph shall be included on the ballot together with the names of any incumbents who are willing to continue serving on the Board.

(b) Any ten or more growers eligible to serve in the grower member positions specified in § 984.35(a) (5) and (6) and who marketed an aggregate of 500 or more tons of walnuts through independent handlers during the marketing year preceding the year in which Board nominations are held, may petition the Board to include on the nomination ballot for a district the name of an eligible candidate for the

applicable position, and the name of an eligible candidate to serve as his alternate. The names of the eligible candidates proposed pursuant to this paragraph shall be included on the ballot together with the names of any incumbents who are willing to continue serving on the Board.

(c) Petitions made pursuant to paragraphs (a) and (b) of this section shall be on forms supplied by the Board and filed no later than April 1 of the nomination year.

[41 FR 54476, Dec. 14, 1976]

[FR Doc. 04-55505 Filed 4-5-04; 8:45 am]

BILLING CODE 1505-01-D

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 9 CFR Parts 1, 2, and 3

[Docket No. 02-012-2]

RIN 0579-AB51

#### Animal Welfare; Transportation of Animals on Foreign Air Carriers

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

**ACTION:** Determination to regulate; confirmation of effective date.

**SUMMARY:** On October 10, 2003, the Animal and Plant Health Inspection Service published a determination to regulate. The determination to regulate notified the public of our intention 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 to 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. In this document, we are responding to several issues raised in comments submitted by the public regarding our determination to regulate and are confirming the effective date specified in that document.

**EFFECTIVE DATE:** The effective date of the determination to regulate is confirmed as April 7, 2004.

**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."

On October 10, 2003, we published in the **Federal Register** (68 FR 58575-58577, Docket No. 02-012-1) a determination to regulate and request for comments indicating that we intended 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 was intended to 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. In that October 2003 document, we stated that our determination to regulate would become effective on April 7, 2004, unless substantial issues bearing on the effects of this action were brought to our attention.

We solicited comments for 60 days ending December 9, 2003. We received 15 comments by that date. They were from a zoo association, an animal welfare organization, a purebred dog association, and individuals. Most of the commenters favored our determination to regulate. One commenter, however, did raise several issues bearing on the effects of our action. These issues are discussed below.

The commenter questioned whether we had the legal authority for extending the AWA regulations and standards for the humane transport of animals in commerce to and from the United States. The commenter characterized our determination to regulate as an extension of our jurisdiction.

The AWA, in section 2132, defines "commerce," in part, as trade, transportation, or other commerce between a place in a State and any place outside of such State, or between points within the same State but through any place outside thereof, or within any territory, possession, or the District of Columbia. The AWA regulations in 9 CFR 1.1 contain a similar definition of "commerce," but one that specifically includes commerce between a place in a State and a foreign country. Clearly, a foreign carrier transporting animals within the United States falls under these definitions of commerce and, therefore, may be regulated by the USDA under the provisions of the AWA.

The commenter also raised questions regarding which program of the Animal and Plant Health Inspection Service (APHIS) has jurisdiction in matters pertaining to the regulation of animals in transit. The commenter suggested that by regulating the movement of animals into and out of the United States, the Animal Care unit would, in

effect, be regulating the importation and exportation of animals, a task that normally comes under the purview of APHIS' Veterinary Services program. In the view of the commenter, such duplication of responsibility is unwarranted, especially during a period of increased fiscal constraints.

We do not agree with the commenter's assertion that our determination to regulate will entail a duplication of responsibility by Animal Care and Veterinary Services. Imports and exports of various animals and animal products are regulated by APHIS's National Center for Import and Export (NCIE), a unit of the Veterinary Services program. NCIE's mission, as stated on the NCIE Web site, is to work with other Federal agencies, States, foreign governments, industry and professional groups, and others to enhance international trade and cooperation while preventing the introduction into the United States of dangerous and costly pests and diseases. Animal Care, on the other hand, sees its mission as providing leadership in establishing, disseminating, and enforcing acceptable standards of humane animal care and treatment. Thus, while NCIE's animal movement regulations are geared toward preventing the spread of animal diseases, those promulgated by Animal Care aim to ensure that animals are treated humanely while in transit.

The commenter also argued that extending our enforcement of the AWA regulations to foreign air carriers may result in jurisdictional overlap with the U.S. Fish and Wildlife Service (USFWS), which has the responsibility under the Lacey Act to ensure that humane and healthful shipping standards are maintained for animals in transit. Our October 2003 determination to regulate, the commenter noted, did not discuss how we will coordinate our expanded activities with the activities of the USFWS.

Animal Care acknowledges that, as a result of our determination to regulate, there may be a potential for some jurisdictional overlap between Animal Care and the USFWS in regard to regulating the air transport of warmblooded animals, including traditional zoo animals. Such overlap will be limited, however, to the air transport of warmblooded wildlife into the United States. While Animal Care regulates warmblooded animals, including dogs and cats and other domesticated animals, under the AWA, the USFWS regulates both warmblooded and non-warmblooded wildlife.

Animal Care and the USFWS have had overlapping jurisdiction over animals on domestic carriers under the

AWA and the Lacey Act since the 1976 amendments to the AWA. Animal Care and the USFWS have established lines of communication to address issues that may arise. Whatever overlap has existed has not resulted in problems in ensuring the humane treatment of animals on U.S. domestic carriers or on the several major foreign carriers that have voluntarily registered themselves with APHIS and agreed to be subject to the AWA regulations, nor have there been complaints from the public or from agency personnel. Given this history, APHIS believes that extending enforcement of the AWA regulations to all foreign carriers operating within the United States, its territories, possessions, or the District of Columbia should not result in enforcement problems or interagency conflict.

The commenter also questioned the need for our determination to regulate on the grounds that the requirements of the International Air Transport Association (IATA) already apply to most, if not all, air carriers. The commenter further argued that rather than extending our enforcement of the regulations to foreign carriers, we should focus on bringing the AWA standards and regulations more into line with those of IATA. The commenter viewed IATA's species-specific requirements for crates and temperature ranges as preferable to what he characterized as our "one-size-fits-all" regulatory approach.

The IATA requirements are applicable throughout much of the world and would likely provide an effective means of ensuring the welfare of animals in transit if universally enforced. The USFWS has incorporated IATA container requirements for live animals into its regulations, "Standards for the Humane and Healthful Transport of Wild Mammals and Birds to the United States (50 CFR part 14, subpart J). However, IATA requirements are not otherwise Federal regulations and do not have the force of law. Except as provided by the USFWS regulations, adherence to IATA requirements is strictly voluntary and airlines are not subject to sanctions for noncompliance. The USDA regulations are mandatory for animals covered by the AWA, which, as noted, include warmblooded animals not covered by USFWS regulations, and violators may face civil or criminal penalties. We believe, therefore, that the AWA regulations offer such animals in transit more protection against mistreatment or neglect than do the IATA requirements.

The final concern expressed by this commenter was that APHIS' Animal Care unit does not have the fiscal or

human resources to adequately inspect foreign air carriers for AWA compliance. We believe that by being able to conduct inspections and to impose penalties and/or fines on any air carrier that does not comply with the AWA regulations for animals in transit, we can encourage most air carriers to place greater emphasis on ensuring that animals are transported humanely.

Therefore, for the reasons given in our earlier determination to regulate and in this document, we are confirming April 7, 2004, as the date 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.

#### Paperwork Reduction Act

In accordance with 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 approved by the Office of Management and Budget (OMB) under OMB control number 0579-0247.

#### 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 determination to regulate, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734-7477.

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

Done in Washington, DC, this 1st day of April, 2004.

**Peter Fernandez,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 04-7738 Filed 4-5-04; 8:45 am]

**BILLING CODE 3410-34-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 2002-SW-45-AD; Amendment 39-13471; AD 2004-03-27]

RIN 2120-AA64

#### Airworthiness Directives; Eurocopter France Model AS332C, L, and L1 Helicopters; Correction

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; correction.

**SUMMARY:** This document corrects Airworthiness Directive (AD) 2004-03-27 for the Eurocopter France Model AS332C, L, and L1 helicopters that was published in the *Federal Register* on February 13, 2004 (69 FR 7113). The AD contains an incorrect AD number. In all other respects, the original document remains the same.

**DATES:** Effective March 19, 2004.

#### FOR FURTHER INFORMATION CONTACT:

Uday Garadi, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Safety Management Group, Fort Worth, Texas 76193-0110, telephone (817) 222-5123, fax (817) 222-5961.

**SUPPLEMENTARY INFORMATION:** The FAA issued a final rule AD 2004-03-27, on January 30, 2004 (69 FR 7113, February 13, 2004). The following correction is needed:

The AD number on page 7114 is incorrectly listed as 2002-SW-45-AD, which is the AD Docket Number; the correct AD number is 2004-03-27. Therefore, the AD number needs correcting.

Since no other part of the regulatory information has been revised, the final rule is not being republished.

#### Correction of the Publication

■ Accordingly, the publication on February 13, 2004 of the final rule (AD 2004-03-27), which was the subject of FR Doc. 04-2782, is corrected as follows:

#### § 39.13 [Corrected]

■ On page 7114, in the second column, the AD number listed as "2002-SW-45-AD" that appears in bold text just before "Eurocopter France," the manufacturer name, is corrected to read "2004-03-27."

Issued in Fort Worth, Texas, on March 29, 2004.

**David A. Downey,**

*Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 04-7618 Filed 4-5-04; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 2001-NM-226-AD; Amendment 39-13556; AD 2004-07-12]

RIN 2120-AA64

#### Airworthiness Directives; McDonnell Douglas Model MD-90-30 Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD-90-30 airplanes. For some airplanes, this action requires replacing one 3-phase limiter block assembly, 6 current limiters, and hardware for 9 electrical cables with new parts. For other airplanes, this action requires inspecting 6 current limiters and 3 spare current limiters and replacing any defective current limiters with new current limiters. This action is necessary to prevent overheating of the terminal studs on the 3-phase limiter blocks and associated current limiters, which could cause a fire in the airplane. This action is intended to address the identified unsafe condition.

**DATES:** Effective May 11, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 11, 2004.

**ADDRESSES:** The service information referenced in this AD may be obtained from Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1-L5A (D800-0024). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.