

Notices

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This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 98-116-2]

Animal Welfare; Farm Animals Used for Nonagricultural Purposes

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are adopting two guides: The "Guide for the Care and Use of Agricultural Animals in Agricultural Research and Teaching," published by the Federation of Animal Science Societies, and the "Guide for the Care and Use of Laboratory Animals," published by the Institute of Laboratory Animal Resources. We are adopting these guides to assist regulated entities in meeting the standards in the regulations as they apply to the handling, care, treatment, and transportation of farm animals used for nonagricultural purposes (primarily research and exhibition). The recommendations in these guides represent the most current thinking on appropriate practices for the handling, care, treatment, and transportation of farm animals for nonagricultural purposes.

EFFECTIVE DATE: March 6, 2000.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Watkins, Animal Care, APHIS, USDA, 4700 River Road Unit 84, Riverdale, MD 20737-1234; (301) 734-4981.

SUPPLEMENTARY INFORMATION:

Background

The Animal Welfare Act (AWA) (7 U.S.C. 2131 *et seq.*) authorizes the Secretary of Agriculture to promulgate standards governing the humane handling, care, treatment, and transportation of certain animals by dealers, exhibitors, and other regulated

entities. The Secretary of Agriculture has delegated the responsibility for enforcing the AWA to the Administrator of the Animal and Plant Health Inspection Service (APHIS). Regulations established under the AWA are contained in 9 CFR parts 1, 2, and 3. The APHIS Animal Care program ensures compliance with the AWA regulations by conducting inspections of premises with regulated animals.

APHIS is responsible for regulating the humane handling, care, treatment, and transportation of farm animals when they are used for nonagricultural purposes, such as for research or exhibition. APHIS inspects regulated entities that use farm animals under the regulations in 9 CFR part 3, subpart F.

On March 3, 1999, we published a notice in the **Federal Register** (64 FR 10268-10269, Docket No. 98-116-1) stating that we were considering adopting two guides: The "Guide for the Care and Use of Agricultural Animals in Agricultural Research and Teaching" (the Ag Guide), published by the Federation of Animal Science Societies, and the "Guide for the Care and Use of Laboratory Animals" (the ILAR Guide), published by the Institute of Laboratory Animal Resources. We believed the guides would help regulated entities understand how to meet the standards in the regulations pertaining to the humane handling, care, treatment, and transportation of farm animals when they are used for nonagricultural purposes. We requested public comment on whether to adopt these two guides.

We solicited comments for 60 days ending May 3, 1999. We received 23 comments by that date. They were from veterinarians and veterinary associations, research facilities, animal welfare organizations, a biomedical research association, and a zoo and aquarium association.

Several commenters supported our adoption of these two guides. Three commenters specified that our adoption of these guides would help maximize the similarities between AWA standards and the Public Health Service Policy on the Humane Care and Use of Laboratory Animals. Several commenters had questions about how regulated entities would be expected to use the guides, and other commenters had criticisms about the content of the guides. The comments are discussed below by topic.

Several commenters wanted clarification on how APHIS would use the guides during inspections. One commenter asked if recommendations in the guides would become APHIS inspection standards that must be met. Another commenter asked how APHIS would decide which parts of the guide are to be followed and which are not.

We stated in the March 3 notice that our adoption of these guides would be intended only as guidance and that it would not create or confer any rights for or on any person and would not operate to bind APHIS or the public. In practical terms, this means that these guides will not replace the regulations in subpart F as the standards that regulated entities are expected to meet. During inspections, APHIS inspectors will review the care of farm animals for compliance with the regulations in subpart F. We will not require regulated entities to comply with recommendations in the guides.

However, we do believe that these guides represent the most current thinking on appropriate practices for the handling, care, treatment, and transportation of farm animals used for nonagricultural purposes. Because the regulations in subpart F are not species specific, we believe that would be helpful for regulated entities to consult guidance in order to adequately meet the regulations. For example, the regulations require that animals be fed a diet sufficient to maintain the animals in good health, consistent with the age, species, condition, size, and type of animal in question. We expect that regulated entities would find it helpful to consult some guidance to determine what diet would be appropriate for sheep, for example, in order to meet this requirement. By adopting the Ag Guide and the ILAR Guide, we are giving notice that we consider the recommendations in these two guides to be authorities on the care of farm animals as they relate to the requirements in the regulations. If a regulated entity is seeking guidance on meeting the regulations, we would suggest they start with these two guides. If regulated entities prefer, they may use other guidance, as long as the practices they ultimately adopt meet the requirements of the regulations.

We stated in the March 3 notice that the ILAR Guide and the Ag Guide contain recommendations concerning

animals and areas that are not covered under the regulations and that those portions of the guides that do not relate to the regulations would not be used for our program purposes. For example, both guides contain recommendations on occupational safety and health programs for facility employees. Our regulations do not address these issues.

One commenter asked whether APHIS would provide notice when the guides are revised and allow comments on adopting the revisions.

Most recently, the guides have been updated approximately every 10 years. The current ILAR Guide was published in 1996, replacing the previous 1985 edition. The current Ag Guide was published in 1999, replacing the previous 1988 edition. When these guides are updated, we will review the changes and make a determination at that time.

We stated in the March 3 notice that the Ag Guide could be used when farm animals are maintained in a traditional agricultural setting and the ILAR Guide could be used when farm animals are maintained in a laboratory setting. One commenter said that, since the ILAR Guide does not specifically address farm animals, its adoption would result in no improvement for farm animals in laboratory settings. The commenter suggested that we adopt both guides for both agricultural and laboratory settings.

The ILAR Guide is not species-specific, in general. However, it does state that its recommendations are applicable to farm animals, and it provides species-specific recommendations for farm animals in a few instances. In most cases, we believe that when farm animals are kept in a laboratory setting, the ILAR Guide is the appropriate guide to consult. The Ag Guide is written to address farm animals kept in agricultural settings. However, there may be elements of the Ag Guide that would be helpful to facilities that house farm animals in laboratories, and facilities could consult both guides.

One commenter said that we should create our own guide on farm animals after review of the Ag Guide, the ILAR Guide, and other available guides. One commenter suggested two other guides that we should adopt. Several commenters said that we should promulgate standards specific to farm animals instead of adopting guidance.

We considered these options prior to choosing to adopt the Ag Guide and the ILAR Guide. We have chosen to adopt guidance at this time, instead of promulgating regulations. We have determined that these guides represent the most current and complete scientific information available on the humane

care of farm animals used for nonagricultural purposes, and we do not believe that creating our own guides would be an improvement over what these two guides already offer. Adoption of these guides does not prevent us from promulgating standards specific to farm animals at a later date.

One commenter said that the Ag Guide and the ILAR Guide are dense documents, requiring significant time and effort to understand, and that students and nonscientist caretakers may find them difficult to apply for this reason. Another commenter said that some aspects of the Ag Guide are ambiguous, making them difficult to apply.

We do not intend that every employee of a regulated facility must regularly consult these guides. Regulated entities may use these guides at their own discretion, depending on their needs and resources. We anticipate that many facilities already use or will choose to use these guides in formulating operating procedures for their facilities. In this case, the guides themselves may not need to be consulted in depth by students and nonscientist caretakers.

In some sections, the Ag Guide uses language such as "may" and references other publications to support its statements. Understanding of the care and use of farm animals in research is constantly evolving. Nevertheless, we believe the Ag Guide presents the most complete and current information available.

One commenter said that neither guide provides appropriate guidance for the care of farm animals used in exhibition. Another commenter, who supported adoption of the guides, said that flexibility would be necessary in their use to address the needs of traveling exhibitors.

Both guides are specifically written as guidance for researchers. We believe elements of the Ag Guide, in particular, would also be useful for exhibitors. Even for traveling exhibitors, the Ag Guide offers recommendations on transportation of farm animals that we believe are appropriate. However, we recognize that exhibitors have special needs and different goals than researchers and would apply these guides only as appropriate.

One commenter questioned our use of the term "nonagricultural," and asserted that the application of biotechnology to traditional agricultural species does not automatically make the use of these animals nonagricultural.

We are unclear as to how the commenter is defining "nonagricultural." Our use of the term stems from the definition of "animal" in

the AWA, which defines what animals we are authorized to regulate. The term "animal" means any live or dead warmblooded animal, but it excludes "horses not used for research purposes and other farm animals, such as, but not limited to livestock or poultry, used or intended for use as food or fiber, or livestock or poultry used or intended for improving animal nutrition, breeding, management, or production efficiency, or for improving the quality of food or fiber." We consider use of an animal for food or fiber, for improving animal nutrition, breeding, management, or production efficiency, or for improving the quality of food or fiber to be agricultural, and we are not authorized to regulate these activities under the AWA.

The commenter also suggested that animals kept in an agricultural setting should not be subject to APHIS oversight, regardless of use. However, the AWA authorizes APHIS to regulate animals used or intended for use in research, testing, experimentation, or exhibition purposes or as a pet, regardless of whether the animal is maintained in a laboratory setting or a typical farm-type setting.

We received numerous comments critical of the Ag Guide in particular. Several commenters said that the Ag Guide is heavily influenced by standard agricultural commercial practices, endorses management practices designed for maximum agricultural production, and does not reflect the most current thinking on humane treatment of farm animals used for nonagricultural purposes. A few commenters further said that the Ag Guide would be unsuitable guidance for nonagricultural researchers because practices discussed in the guide would be stressful on the animals, resulting in unreliable research results.

We disagree with the commenters and continue to believe that the Ag Guide represents the most current and complete scientific information available on appropriate practices for the handling, care, treatment, and transportation of farm animals used for nonagricultural purposes when they are maintained in an agricultural setting.

One commenter said there are discrepancies between our regulations and the recommendations in the Ag Guide. For example, the commenter said § 3.128 requires that enclosures provide sufficient space for each animal to make normal postural and social adjustments, but the Ag Guide includes recommendations on the use of farrowing crates for sows, which restrict the sows' movements.

Adoption of the Ag Guide will not reduce any of the requirements in the current regulations, nor will any recommendations in the guide supersede the requirements of the regulations. Regarding the example given above, there may be times when it is scientifically justified under a research protocol to restrict an animal's space. Such exceptions to the regulatory requirements can be made with approval by a research facility's Institutional Animal Care and Use Committee. In other cases, regulated entities will be expected to comply with the requirements of the regulations, regardless of any recommendations in the Ag Guide or any other reference material.

One commenter criticized the use of the phrase "professional judgment" throughout the Ag Guide and said the guide's use of the word "must" is too limited.

The Ag Guide is a guide, not a regulation. Our adoption of these guides is intended only to offer guidance to regulated entities.

One commenter said the Ag Guide's recommendations on feeding and watering during transportation are inadequate.

The regulations in § 3.139 contain food and water requirements for farm animals during transportation. The regulations require that animals be offered potable water within 4 hours prior to being transported and that they be provided with potable water at least every 12 hours after transportation is initiated. The regulations also require, with a few exceptions, that all animals be fed at least once in every 24-hour period. We find nothing in the Ag Guide in contradiction of these requirements. Nevertheless, the requirements of the regulations are the requirements that must be met by regulated entities, and nothing in the guide can be used to allow less stringent requirements than those in the regulations.

Several commenters were concerned with the Ag Guide's acceptance of certain practices that may cause discomfort or some pain; for example, beak trimming, comb trimming, dehorning, and tail docking.

The examples given by commenters are established standard animal husbandry practices. Employment of these practices is changing, and there is increased consideration among regulated entities regarding the use of local anesthetics and the development of methods that minimize discomfort for the animals. The Ag Guide encourages methods, including anesthesia and recommendations on optimum ages for

these procedures, to minimize pain and discomfort in the animals.

One commenter was concerned that the public was never given an opportunity to provide comments on the current edition of the Ag Guide prior to its being finalized.

The Ag Guide is not published by APHIS and, therefore, we have no control over whether the public is able to comment on its content prior to it being finalized. We have, however, given the public opportunity to comment on our adoption of the content of the Ag Guide.

In our notice, we said that any institution that receives funding from the National Institutes of Health (NIH) or that is accredited by an organization such as the Association for Assessment and Accreditation of Laboratory Animal Care International (AAALAC International) must use the Ag Guide and the ILAR Guide. One commenter said that this is incorrect. The commenter said that NIH and AAALAC International both mandate the use of the ILAR Guide, but that NIH does not mandate use of the Ag Guide, and AAALAC International uses the Ag Guide selectively.

The commenter is correct in pointing out that the Ag Guide is cited as a resource by both organizations, but its use is not mandated as a requirement for receiving funding. We wish to correct our inadvertent misstatement. We should note that AAALAC International referenced the previous version of the Ag Guide only selectively, but has adopted the revised (1999) version of the Ag Guide as a reference in its entirety.

One commenter said that APHIS should inspect AAALAC International-accredited research facilities between AAALAC International inspections in order to reduce the inspection frequency for such facilities. The commenter said the facilities could assure APHIS annually that they remain fully accredited and submit the date of the last AAALAC International inspection.

This comment is not relevant to the adoption of the ILAR Guide and the Ag Guide. Nevertheless, we offer the following response. AAALAC International conducts site visits of accredited facilities at approximately 3-year intervals. The AWA mandates that we inspect research facilities at least once each year. APHIS' inspections are unannounced to ensure we are able to view the facility as it is normally operated. At this time, we believe any effort to coordinate our inspections with the inspections of another institution may compromise our ability to conduct inspections unannounced.

Based on the rationale given in the March 3 notice and in this document, we are adopting the Ag Guide and the ILAR Guide to assist regulated entities in meeting the standards in the regulations as they apply to the handling, care, treatment, and transportation of farm animals used for nonagricultural purposes.

Done in Washington, DC, this 27th day of January 2000.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00-2382 Filed 2-2-00; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 99-069-1]

Public Meeting; Animal Care

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: The Animal and Plant Health Inspection Service plans to hold a public meeting to discuss issues related to the humane care and treatment of exhibition animals regulated under the Animal Welfare Act.

DATES: The public meeting will be held on Tuesday, March 7, 2000, beginning at 8:30 a.m. and ending at 5p.m. On-site registration and sign-in for preregistered participants will take place from 7 a.m. to 8:30 a.m.

ADDRESSES: The public meeting will be held at the USDA Conference Center, 4700 River Road, Riverdale, MD.

FOR FURTHER INFORMATION CONTACT: Animal Care, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737-1234; (301) 734-7833.

SUPPLEMENTARY INFORMATION: The Animal and Plant Health Inspection Service (APHIS) will hold a public meeting in Riverdale, MD, on March 7, 2000, to exchange information with the public about the humane care and treatment of exhibition animals regulated under the Animal Welfare Act. The meeting will include a general session followed by four workshops to run concurrently. The workshops will be offered twice, based on the public's response, to allow for increased participation. The tentative agenda for the public meeting is as follows:

8:30 a.m.-10 a.m.—General Session
10 a.m.-10:30 a.m.—Break
10:30 a.m.-12:30 p.m.—Workshops
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