

# Proposed Rules

Federal Register

Vol. 74, No. 189

Thursday, October 1, 2009

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 9 CFR Part 2

[Docket No. APHIS–2006–0023]

RIN 0579–AD03

#### Submission of Itineraries

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

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to amend the Animal Welfare Act regulations to include more specific requirements in the regulations concerning the submission of itineraries by any person who is subject to the Animal Welfare Act regulations and who intends to exhibit any animal at any location other than the person's approved site(s). We believe APHIS' inspectors' access to animals, facilities, and records for unannounced inspections when animals are exhibited at a location other than at a regulated person's approved site(s) is necessary to improve compliance with the regulations and the Animal Welfare Act.

**DATES:** We will consider all comments that we receive on or before November 30, 2009.

**ADDRESSES:** You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2006-0023> to submit or view comments and to view supporting and related materials available electronically.

- *Postal Mail/Commercial Delivery:* Please send two copies of your comment to Docket No. APHIS–2006–0023, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2006–0023.

*Reading Room:* You may read any comments that we receive on this docket on Regulations.gov or 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.

*Other Information:* Additional information about APHIS and its programs is available on the Internet at <http://www.aphis.usda.gov>.

**FOR FURTHER INFORMATION CONTACT:** Dr. Barbara Kohn, Senior Staff Veterinarian, Animal Care, APHIS, 4700 River Road, Unit 84, Riverdale, MD 20737–1234; (301) 734–7833.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Animal Welfare Act (AWA) (7 U.S.C. 2131–2159) authorizes the Secretary of Agriculture to promulgate rules and standards and other requirements governing the humane handling, housing, 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 and standards 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 and standards by conducting unannounced inspections of premises with regulated animals.

The regulations contained in 9 CFR part 2 establish certain responsibilities of regulated persons under the AWA. These responsibilities include requirements for the licensing and registration of dealers, exhibitors, and research facilities, and standards for veterinary care, identification of animals, and recordkeeping.

Currently, APHIS requires licensees or registrants who intend to exhibit animals away from their approved sites to submit itineraries pursuant to §§ 2.126 and 2.125 of the regulations. Section 2.126, regarding access and inspection of records and property, provides that each dealer, exhibitor,

intermediate handler, or carrier shall, during business hours, allow APHIS officials to enter its place of business, examine and make copies of records required by the AWA and the regulations, inspect the facilities, property, and animals, and document conditions and areas of noncompliance. Section 2.125 provides that each dealer, exhibitor, operator of an auction sale, intermediate handler, and carrier shall furnish to any APHIS official any information concerning their business which the APHIS official may request in connection with the enforcement of the provisions of the AWA and the regulations and standards. Such information shall be furnished within a reasonable time and as may be specified in the request for information.

To improve compliance with the regulations and the AWA, we are proposing to amend the AWA regulations to include more specific requirements concerning itineraries by any person subject to the AWA regulations who intends to exhibit any regulated animal at any location other than the person's approved site(s). Such itineraries shall be received by the Animal Care Regional Director no fewer than 2 days in advance of any travel. Such itineraries may be submitted by, for example, overnight mail, facsimile, regular mail, e-mail, or other method, but must be received within the specified timeframe.

By including more specific requirements for submission of itineraries, we would ensure that Animal Care inspectors have access to animals, facilities, and records for unannounced inspections when animals are exhibited at a location other than at an approved site(s). By including more specific requirements concerning itineraries, we would be able to better fulfill our obligations under the AWA without having to divert limited resources to locating noncompliant exhibitors.

In order for licensees and registrants to comply with the requirement of readily available access to the premises and animals by the APHIS inspector, we must be kept apprised of their location. This proposed action would ensure that APHIS inspectors have access to their facilities for unannounced inspections.

Accordingly, we propose to amend the regulations to add a new paragraph (c) to § 2.126 regarding access to and

inspection of records and property to specifically require the submission of itineraries by any person who is subject to the AWA and regulations.

#### **Executive Order 12866 and Regulatory Flexibility Act**

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

APHIS is responsible for enforcing the AWA by promulgating regulations and standards and other requirements governing the humane handling, housing, care, treatment, and transportation of certain animals by dealers, exhibitors, and other regulated entities. APHIS' Animal Care program ensures compliance with the AWA and the regulations and standards issued thereunder by conducting unannounced inspections of premises with regulated animals.

The proposed rule would require that any person who is subject to the AWA regulations and who intends to exhibit any animal at any location other than the person's approved site(s) submit an itinerary.

According to APHIS' Animal Care Program, there were no fewer than 202 regulated persons exhibiting animals at locations other than their approved site(s) in the United States in 2009. These persons (including, for example, carnivals, circuses, animal acts, traveling educational exhibits, and petting zoos) are classified under North American Industry Classification System (NAICS) code 712130, "Zoos and Botanical Gardens."

Under the Small Business Administration's criteria, an entity in NAICS 712130 is considered small if it has annual receipts of not more than \$7.0 million. While we do not know the number of regulated persons who travel that are small entities, it can be assumed that some or many are small businesses. We do not expect that these businesses, regardless of their size, would be significantly affected by the proposed requirements because the current regulations require a regulated person who travels to furnish APHIS with information concerning the location of his or her business and, thus, to submit an itinerary. Because most exhibitors and dealers who travel have been submitting itineraries in a timely manner in accordance with the proposed regulations, they would not be affected.

APHIS anticipates that the only economic effects associated with this proposed rule would be related to the costs incurred by licensees and

registrants in connection with the preparation and submission of the itinerary itself. Itineraries may be submitted by mail, overnight mail, facsimile, e-mail, or any other method as long as they are received within the required timeframe. We believe that the actual transmittal costs associated with the proposed notification requirements would be minimal. There would be some personnel costs associated with the time spent producing and addressing a written itinerary, but we expect that the time needed to prepare the document (if one had not already been prepared for other business purposes) would also be minimal.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

#### **Executive Order 12372**

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

#### **Executive Order 12988**

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. The AWA does not provide administrative procedures which must be exhausted prior to a judicial challenge to the provisions of this rule.

#### **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 proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments 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. APHIS-2006-0023. Please send a copy of your comments to: (1) Docket No. APHIS-2006-0023, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 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. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

To ensure that APHIS inspectors have access to the animals and facilities of any person subject to the Animal Welfare regulations who intends to exhibit any animal at any location other than the person's approved site(s), we are proposing to amend the regulations regarding access and inspection of records and property to specifically require such persons to submit itineraries to the Animal Care Regional Director. We would require that any person who intends to exhibit any animal at any location other than the person's approved site(s) submit the following information:

- The name of the person who intends to exhibit the animal and transport the animal for exhibition purposes, including any business name and current AWA license or registration number and, in the event that any animal is leased, borrowed, loaned, or under some similar arrangement, the name of the person who owns such animal;

- The name, identification number or identifying characteristics, species (common or scientific name), sex and age of each animal; and

- The names, dates, and locations (with addresses) where the animals will travel, be housed, and be exhibited, including all anticipated dates and locations (with addresses) for any stops and layovers.

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 0.25 hours per response.

*Respondents:* Any person exhibiting any animal, or that allows any animal to

be exhibited, at any location other than their designated primary facility.

*Estimated annual number of respondents:* 300.

*Estimated annual number of responses per respondent:* 8.66.

*Estimated annual number of responses:* 2,600.

*Estimated total annual burden on respondents:* 650 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) 851-2908.

### E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this proposed rule, please contact Mrs. Celeste Sickles, APHIS Information Collection Coordinator, at (301) 851-2908.

### List of Subjects in 9 CFR Part 2

Animal welfare, Pets, Reporting and recordkeeping requirements, Research.

Accordingly, we propose to amend 9 CFR part 2 as follows:

### PART 2—REGULATIONS

1. The authority citation for part 2 continues to read as follows:

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

2. In § 2.126, the section heading is revised and a new paragraph (c) is added to read as follows:

#### **§ 2.126 Access and inspection of records and property; submission of itineraries.**

\* \* \* \* \*

(c) Any person who is subject to the Animal Welfare regulations and who intends to exhibit any animal at any location other than the person's approved site(s) (including, but not limited to, circuses, traveling educational exhibits, animal acts, and petting zoos) shall submit a written itinerary to the Animal Care Regional Director. The itinerary shall be received by the Animal Care Regional Director no fewer than 2 days in advance of any travel and shall contain complete and accurate information concerning the whereabouts of any animal(s) intended

for exhibition at any location other than the person(s) approved site(s).

(1) The itinerary shall include the following:

(i) The name(s) of the person(s) who intends to exhibit the animal(s) and transport the animal(s) for exhibition purposes, including any business name(s) and current AWA license or registration number(s) and, in the event that any animal is leased, borrowed, loaned, or under some similar arrangement, the name of the person who owns such animal;

(ii) The name, identification number or identifying characteristics, species (common or scientific name), sex and age of each animal; and

(iii) The names, dates, and locations (with addresses), where the animals will travel, be housed, and be exhibited, including all anticipated dates and locations (with addresses) for any stops and layovers.

(2) The itinerary shall be promptly revised, as necessary, to account for any changes.

Done in Washington, DC, this 25th day of September 2009.

**Kevin Shea,**

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

[FR Doc. E9-23679 Filed 9-30-09; 8:45 am]

**BILLING CODE 3410-34-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 15 CFR Part 922

[Docket No. 0907301210-91239-01]

RIN 0648-AX83

#### **Gulf of the Farallones and Monterey Bay National Marine Sanctuaries Regulations on Introduced Species**

**AGENCY:** Office of National Marine Sanctuaries (ONMS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

**ACTION:** Notice of proposed rulemaking; request for public comments.

**SUMMARY:** The National Oceanic and Atmospheric Administration (NOAA) is proposing to revise its regulations on the introduction of introduced species into the Gulf of the Farallones and Monterey Bay national marine sanctuaries (GFNMS and MBNMS, respectively). This action is being taken in response to a letter received by the Governor of California on December 23, 2008. The Governor certified that the

terms of designation to regulate introduced species in these sanctuaries were unacceptable in State waters of the sanctuaries. In response to the Governor's letter, NOAA is proposing to modify its regulations to except all State-permitted aquaculture activities in the two sanctuaries.

**DATES:** Comments must be received by November 16, 2009.

**ADDRESSES:** You may submit comments by any of the following methods:

- *Electronic submission (preferred method):* <http://www.regulations.gov> (search for docket # NOAA-NOS-2009-0105).

- *Mail:* John Armor, Office of National Marine Sanctuaries, 1305 East-West Highway, Silver Spring, Maryland 20910.

*Instructions:* All comments received are a part of the public record and will be generally posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information. NOAA will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

**FOR FURTHER INFORMATION CONTACT:** John Armor, Office of National Marine Sanctuaries, 1305 East-West Highway, Silver Spring, MD 20910, or by phone at 301-713-3125.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

##### *A. GFNMS and MBNMS Background*

NOAA established the GFNMS in 1981 to protect and preserve a unique and fragile ecological community, including the largest seabird colony in the contiguous United States and diverse and abundant marine mammals. The GFNMS lies off the coast of California, to the west and north of San Francisco, and is composed of 1,279 square statute miles (966 square nautical miles) of offshore waters and submerged lands thereunder. The sanctuary boundary extends out to and around the Farallon Islands and nearshore waters (up to the mean high water line) from Bodega Head to Rocky Point in Marin. For more information about the GFNMS, see <http://farallones.noaa.gov>.

NOAA established the MBNMS in 1992 for the purposes of protecting and managing the conservation, ecological,