

day period and is being reimbursed with one honorarium payment, this shall be considered one activity. However, if the alien is providing different activities at different branches of an organization and the different campuses are paying the alien separate honorarium payments for the visits, each visit to each branch or campus shall be considered a separate visit and be calculated against the maximum of five allowed activities within the 6-month period.

(3) An institution may not use the honorarium provisions of section 212(q) of the Act as a vehicle to circumvent the otherwise prescribed nonimmigrant petition process. Institutions desiring to employ nonimmigrant aliens must comply with section 274A of the Act and all other applicable provisions of the Act and the Service regulations at 8 CFR part 274a that govern an alien's ability to legally accept employment in the United States.

(d) *Documentation.* Any alien applying for admission to the United States as a B-1 visitor for business or as a WB visitor, stating the intent to participate in an academic activity for which an honorarium payment will be awarded, will be required to be in possession of the letter of invitation that the institution sponsoring the activity has issued to the alien. At a minimum, an invitation letter should clearly specify the honorarium-related event or activity, as well as the date(s) and location of the event. The letter of invitation must be produced for inspection if requested by an inspecting Service officer at the United States port-of-entry where the alien is applying for admission.

(e) *Applicability of employment requirements.* A nonimmigrant visitor for business or pleasure who accepts honoraria as provided in this section will not be considered as engaging in employment or providing contract services since doing so impedes the ability of the Service to properly administer section 212(q) of the Act.

(f) *Violation(s) of status.* (1) A nonimmigrant visitor for business or pleasure who collects honoraria in excess of the limitations noted in paragraph (c) of this section is in violation of his or her nonimmigrant status and amenable to removal under section 237(a)(1)(C)(i) of the Act.

(2) It is not a violation of status for an alien who has been admitted as a nonimmigrant visitor for pleasure to accept honoraria under section 212(q) of the Act for the alien's participation in academic activities, if the institution invited the alien's participation after the alien's admission. It is, however, a misrepresentation of a material fact for

an alien who is coming to the United States to participate in pre-arranged academic activities for which the alien will accept honoraria to seek and obtain admission as a nonimmigrant visitor for pleasure, rather than as a nonimmigrant visitor for business.

(3) It is not a violation of status for a B-1 alien to participate in more than one academic activity at more than one organization during a single admission. However, the academic activities must comport with the limitations noted in section 212(q) of the Act.

Dated: May 21, 2002.

James W. Ziglar,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 02-13433 Filed 5-29-02; 8:45 am]

BILLING CODE 4410-10-P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 1 and 3

[Docket No. 93-076-17]

Animal Welfare; Marine Mammals

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Advance notice of proposed rulemaking and request for comments.

SUMMARY: We are considering amendments to the Animal Welfare regulations concerning the marine mammal standards for which consensus language was not developed during negotiated rulemaking we conducted in 1995 and 1996, as well as the standards for interactive programs such as swim-with-the-dolphin programs. We are soliciting comments regarding appropriate changes or additions to the present standards.

DATES: We will consider all comments we receive that are postmarked, delivered, or e-mailed by July 29, 2002.

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. 93-076-17, 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. 93-076-17. 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. 93-076-17" on the subject line.

You may read any comments that we receive on this docket 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. Barbara Kohn, Senior Staff Veterinarian, Animal Care, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737-1228; (301) 734-7833.

SUPPLEMENTARY INFORMATION:

Background

The Animal Welfare Act (the Act) (7 U.S.C. 2131 *et seq.*) authorizes the Secretary of Agriculture to promulgate standards and other requirements governing the humane handling, care, treatment, and transportation of certain animals by dealers, research facilities, exhibitors, carriers, and other regulated entities. The Secretary of Agriculture has delegated the responsibility for enforcing the Act to the Administrator of the Animal and Plant Health Inspection Service (APHIS). Regulations established under the Act are contained in 9 CFR parts 1, 2, and 3.

Under the Act, APHIS established regulations in 1979 for the humane handling, care, treatment, and transportation of marine mammals used for research or exhibition purposes. These regulations are found in 9 CFR part 3, subpart E, "Specifications for the Humane Handling, Care, Treatment, and Transportation of Marine Mammals" (§§ 3.100 through 3.118). Some sections of these standards have not been substantively amended since 1984.

Marine Mammal Regulations

In 1995, we established a Marine Mammal Negotiated Rulemaking Advisory Committee (the Committee) to advise the Department on revisions to the marine mammal regulations. The Committee met for three sessions between 1995 and 1996. Under the rules governing the negotiated rulemaking process, and in accordance with the organization protocols established by

the Committee, APHIS agreed to publish as a proposed rule any consensus language developed during the meetings unless substantive changes were made as a result of authority exercised by another Federal Government entity. The Committee developed consensus language for changes to 13 of the 18 sections that comprise the regulations and for 1 paragraph in a 14th section.

On February 23, 1999, we published a proposed rule in the **Federal Register** (64 FR 8735–8755, Docket No. 93–076–11) that contained the language developed by the Committee for those sections of the regulations for which consensus had been reached. The rule was made final, with some changes, on January 3, 2001 (66 FR 239–257, Docket No. 93–076–15) and became effective on April 3, 2001 (66 FR 8744, Docket No. 93–076–16).

Remaining Issues

Although consensus language was developed by the Committee for 13 of the 18 sections of the regulations in their entirety, and for 1 paragraph of another section, the Committee conducted extensive discussions on all sections of the regulations. No consensus language was developed for four sections of the standards—§ 3.100 on variances and implementation dates; § 3.102 on indoor facilities; § 3.103 on outdoor facilities; and § 3.106 on water quality. Consensus language was developed for general space requirements in § 3.104, but not on the specific space requirements for particular marine mammals. The Committee agreed that APHIS would develop and promulgate a proposed rule to address those parts of the regulations for which consensus language was not developed.

Interactive Programs

On January 23, 1995 (60 FR 4383–4389, Docket No. 93–076–2), we published in the **Federal Register** a proposed rule to establish standards for swim-with-the-dolphin (SWTD) programs in a new § 3.111. After reviewing the comments, we published a final rule in the **Federal Register** on September 4, 1998 (63 FR 47128–47151, Docket No. 93–076–10), that made final some of the proposed provisions, along with changes we made based on the comments received. The final rule became effective October 5, 1998.

Following publication of the final rule, a number of parties affected by the rule contacted us and asserted that they did not fully understand issues raised in the proposed and final rules regarding wading programs, encounter programs, and other interactive programs.

Specifically, these regulated parties stated that it had not been clear to them that we intended the provisions of the rule to apply to shallow-water interactive programs. Shallow-water interactive programs are programs in which members of the public enter the primary enclosure of a cetacean to interact with the animal, and in which the participants remain primarily stationary and nonbuoyant. The regulated parties stated that, because of this misunderstanding, they had not been able to participate fully in the rulemaking process.

In response to these concerns, on October 14, 1998 (63 FR 55012, Docket No. 93–076–12), we announced that, as of the effective date of the September 4, 1998, final rule, and until further notice, we would not apply the standards relating to space for the interactive area and human participant/attendant ratio to shallow-water interactive programs. Subsequently, on April 2, 1999 (64 FR 15918–15920, Docket No. 93–076–13), we suspended enforcement of all of the regulations and standards concerning SWTD programs.

Request for Comments

Since advances continue to be made, new information developed, and new concepts implemented with regard to the handling, care, treatment, and transportation of marine mammals in captivity, we are now reviewing the standards to determine what amendments, if any, are necessary. Specifically, we are requesting comments regarding the standards for which the Committee did not develop consensus language (§§ 3.100, 3.102, and 3.103; the specific space requirements for particular marine mammals in § 3.104; and § 3.106) and for the standards for SWTD programs in § 3.111.

In particular, we invite responses to the following questions:

1. Should maximum temperature ranges for air and water be established for each species? If so, what should these temperature ranges be? Please submit any scientific data available to support maximum and/or minimum temperature ranges for each species.
2. Should noise thresholds be established for each species? If so, please submit specific scientific data to support any proposed noise thresholds as well as specific methodologies for measuring sound levels.
3. What components should we consider when determining space requirements for each species (e.g., surface area, volume, length, width, depth)? Has a method or system been developed by any marine mammal

facility or other entity to address space requirements? If so, please describe it.

4. Should we revise the representative average adult lengths used in the tables? If so, why? Please submit any scientific data that supports revising the representative average adult lengths used in the tables.

5. Should we establish minimum depths for each species? If so, what should these depths be? Please submit any supporting scientific data for each species.

6. Which is more important, minimum width or longest straight-line swimming distance? Should we require any specific straight-line swimming distance?

7. Interactive programs are programs in which members of the public enter the primary enclosure of a marine mammal in order to interact with the animal. There are a wide range of interactive programs currently available to the public (e.g., wading, swimming, snorkeling, or scuba diving with marine mammals; sitting on a dock, ledge, or similar arrangement while the marine mammal approaches; “trainer for the day” and/or immersion experiences; and therapeutic sessions). Are there any interactive activities not listed here? If so, please provide a detailed description of the activity.

8. How should the interactive activities described above be regulated? What, if any, paragraphs in § 3.111 should be amended? How? Are there any other specific standards needed for interactive programs?

9. Do you have any other specific concerns or recommendations for the sections mentioned above?

We welcome all comments on the issues outlined above and encourage the submission of ideas on the specific standards for the humane handling, care, treatment, and transportation of marine mammals in captivity found in §§ 3.100, 3.102, 3.103, 3.104, 3.106, and 3.111. We also invite data on the costs and benefits associated with any recommendations. We will consider all comments and recommendations we receive regarding changes to the current regulations and will initiate rulemaking for any changes deemed appropriate.

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

Done in Washington, DC, this 23rd day of May 2002.

Bill Hawks,

Under Secretary for Marketing and Regulatory Programs.

[FR Doc. 02–13528 Filed 5–29–02; 8:45 am]

BILLING CODE 3410–34–P