

BILLING CODE: 3410-34-P

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: Final rule.

SUMMARY: We are amending 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 when travel will extend overnight. APHIS inspectors need 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 to improve compliance with the regulations and the Animal Welfare Act.

EFFECTIVE DATE: [Insert date 30 days after date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Dr. Barbara Kohn, Senior Staff Veterinarian, Animal Care, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737-1234; (301) 851-3751.

## SUPPLEMENTARY INFORMATION:

### Background

### Executive Summary

#### I. Purpose of the Regulatory Action

The rule will facilitate enforcement of the Animal Welfare Act regulations for traveling exhibitors and thereby help to ensure the humane handling, housing, treatment, and transportation of the animals in their care.

#### II. Summary of the Major Provisions of the Regulatory Action in Question

This rule will require the advance 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 when travel will extend overnight.

#### III. Costs and Benefits

Costs of the rule for exhibitors are expected to be small. The estimated time needed to prepare and submit an itinerary once arrangements have been made is about 15 minutes. Many traveling animal exhibitors are already submitting itineraries in a timely manner in accordance with existing Agency policy when a regulated animal is exhibited away from its approved site for 4 days or more. This rule is expected to cost the estimated affected 425 exhibitors a total of about \$15,375 per year to prepare and submit itineraries.

The rule is expected to eliminate costs APHIS incurs in attempting to inspect animals that are not at locations where APHIS expected them to be, and to reduce some costs associated with responding to inquiries and complaints about traveling exhibitors alleged to have violated Animal Welfare Act regulations and standards. Money saved on these activities can be put toward inspections and other activities that will benefit animal welfare.

## The Final Rule

The Animal Welfare Act (Act) (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 Act to the Administrator of the U.S. Department of Agriculture's Animal and Plant Health Inspection Service (APHIS). Regulations and standards established under the Act are contained in title 9 of the Code of Federal Regulations (CFR), parts 1, 2, and 3. The APHIS Animal Care (AC) program ensures compliance with the Act 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 Act. 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.

On October 1, 2009, we published in the Federal Register (74 FR 50738-50740, Docket No. APHIS-2006-0023) a proposal<sup>1</sup> to amend the regulations to include more specific requirements in the regulations concerning the submission of itineraries by any person who is subject to the Act regulations and who intends to exhibit any animal at any location other than the person's approved site. We proposed to require that such itineraries be submitted to the AC Regional Director no fewer than 2 days in advance of any travel.

We proposed that the itinerary include:

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<sup>1</sup> To view the proposed rule and the comments we received, go to <http://www.regulations.gov/#!docketDetail;D=APHIS-2006-0023>.

- The name and license or registration number under the Act of the person who will exhibit the animals, and if any animals are leased, borrowed, loaned, or under some similar arrangement, the name of the person who owns the animals;
- The name, identification number or identifying characteristics, species (common or scientific name), sex and age of each animal; and
- The names, dates, and locations where the animals will travel, be housed, and be exhibited, including all anticipated dates and locations for any stops and layovers.

We proposed to require that the itinerary be revised as necessary and the AC Regional Director notified of any changes.

We explained that our reason for proposing to require such itineraries to be submitted no fewer than 2 days before the start of travel was to ensure that AC inspectors have advance notice of the locations where animals will be exhibited so that they can make unannounced inspections to ensure compliance with regulations and standards for animal welfare.

We solicited comments concerning our proposal for 60 days ending November 30, 2009. We received 790 comments by that date. They were from animal welfare organizations, exhibitor and trade associations, exhibitors, and private citizens. We have considered all issues raised by the commenters and discuss below those issues that were within the scope of the proposed rule.

A large number of commenters supported the proposed rule as written. Among the reasons provided for their support, commenters stated that the proposed provisions would make it easier for APHIS to monitor adherence to the regulations and that the rule would have little impact on the majority of exhibitors who already submit itineraries in a timely manner. One commenter expressed the hope that the proposed provisions would allow APHIS to ensure that

animals are afforded the minimum space requirements for primary enclosures when not in actual transport and to better monitor the time animals spend in an exercise pen or its equivalent.

Issue: Some commenters stated that the proposed rule is unnecessary because exhibitors already submit itineraries in accordance with a policy that APHIS implemented in 1997, titled “Policy 2,” which states:

Exhibitors who are in continuous travel status shall update their itinerary as often as necessary to ensure AC [Animal Care] knows their whereabouts at all times.

Circuses, petting zoos, and acts with an established route shall notify AC in advance of departing their home facility and update travel information as needed.

Exhibitors who take animals from their facilities from time to time shall notify AC when any animal is gone more than four (4) consecutive days. Upon request, a licensee shall provide an itinerary of absences of less than four (4) days.

Providing notification ensures the opportunity for access for an unannounced inspection, eliminates unnecessary AC visits when a licensee has been inspected recently, and minimizes resources needed to locate the exhibitor.

The itinerary should provide the following:

1. Dates away from the home facility
2. City and State for all stops
3. Site name or location of all stops

Similar information must be provided for all periods of “lay-over” while traveling.

Response: Federal regulations are codified in the CFR and carry the force of law. The regulations that APHIS has promulgated in accordance with the Act are set forth in 9 CFR parts 1 through 4. Additionally, we sometimes issue policy statements to provide the guidance to the public regarding our interpretation of what is necessary for regulated entities to meet the requirements of the regulations. Policy 2 was issued for guidance regarding the requirements of the regulations in § 2.126, which specify that APHIS must have access to regulated facilities in order to conduct inspections that effectively enforce the Act. Although regulated entities are subject to the Act no matter where their animals might be located, the regulations in § 2.126 have not included specific provisions on what APHIS considers necessary for effective enforcement of the regulations when animals have temporarily been moved from an approved site. Although Policy 2 has been useful in conveying APHIS' intent and expectations in such situations, we consider it necessary to codify in § 2.126 more specific responsibilities of a regulated entity.

Issue: A number of commenters stated that if APHIS does replace Policy 2 with regulations in the CFR, the regulations should be consistent with Policy 2 in requiring itineraries to be submitted only if the animals are away from the approved site for 4 days or more. Commenters stated that exhibitors sometimes take animals offsite for several short engagements during the same week or even the same day. Commenters expressed concern that being required to submit an itinerary for every movement from the approved site would impose a large and unnecessary paperwork burden on both exhibitors and APHIS. One commenter recommended that if APHIS concludes there is a need for additional reporting of offsite engagements, the regulations require that all exhibitors who move animals offsite for more than 48 hours notify APHIS of their route, exhibit locations, and anticipated time of return. One commenter recommended that, instead of requiring reporting of all travel from an approved site, APHIS

require that exhibitors have on file with APHIS current contact information for the person in charge of the traveling unit. Another commenter recommended that, instead of requiring that all travel from a home facility be reported, APHIS should require that regulated facilities keep in their own records information identifying the animals taken offsite, the location to which the animals have been taken, the date and time of travel, and the date and time when the animals were returned to the facility. The commenter stated that such information would enable APHIS inspectors to know the location of animals that are taken from the approved site for short periods of time.

Response: Based on our experience enforcing the regulations, we consider 4 days too long a time for APHIS to be unaware of the location of animals covered by the Act. As we stated in our October 2009 proposed rule, we need to ensure that AC inspectors have advance notice of the locations where animals will be exhibited so that they can make unannounced inspections to ensure compliance with regulations and standards for animal welfare. Knowing which exhibitor showed animals at a particular location on a particular date will also help AC inspectors follow up on complaints that APHIS receives about alleged violations of the regulations and standards by traveling exhibitors. Such complaints are often received after an exhibitor has left a location, and the person submitting the complaint often does not know the name of the exhibitor. However, based on the information supplied by commenters, we agree that the benefit of APHIS' knowing the location of animals that are taken offsite for exhibition for less than a day may not be commensurate with the reporting that would be required under the proposed provisions. Therefore, in this final rule, we are providing that the reporting requirement under new § 2.126(c) applies only if animals are absent from the approved site overnight.

Issue: One commenter stated that if a complaint were filed while an animal were offsite for less than 4 days, the animal would likely be returned to its approved site before an inspector could reach the offsite location.

Response: We are making no changes based on the comment. Complaints regarding potential violations of the Act are made at various times in relation to the incident or observation. Some are made several weeks or months later. In order for APHIS to effectively follow up on any information received, it is imperative that the Agency know the location of the licensee or registrant and animals at the time of the incident or observation that prompted the complaint.

Issue: As noted above, the proposed rule would have required that itineraries submitted by exhibitors be received by the AC Regional Director no fewer than 2 days in advance of any travel to another location for exhibition, regardless of the length of time. A number of commenters expressed concern that having to give such advance notice would prohibit some exhibitors from accepting certain engagements and requested that the regulations provide for situations where 2 days' notice is not practical. Commenters stated that many requests for animal exhibits, including those for educational purposes, occur within 2 days of the requested exhibit date and that some requests are received on the day of the requested exhibition. Conversely, one commenter recommended that the regulations require that a detailed itinerary be submitted to APHIS no less than 2 months before travel. Another commenter stated that engagements accepted with little advance notice may be subject to less careful planning than those scheduled ahead of time, making it more important for APHIS to ensure that the regulations and the standards of the Act are met.

Response: We expect that some of the concerns expressed by the commenters will be addressed by the change we are making to the proposed provisions that will exempt exhibitors



from the submission requirement if the animals are taken offsite for exhibition and returned the same day. Movements of animals offsite for exhibition for longer periods of time requires preparation with regard to logistics such as housing, security, food, water, employees, and public barriers and perimeter fences. Such arrangements are typically made well in advance of travel. AC needs the itineraries before the travel begins to ensure that inspectors know where the animals will be on specific dates so that they can make unannounced inspections at the travel sites. Requiring itineraries to be submitted at least 48 hours in advance will give AC sufficient notice and will be close enough to the time of travel for travel plans and logistics to be firm in most instances. Nevertheless, we recognize the need for some flexibility regarding this requirement. If an exhibitor does accept an engagement for which travel will begin with less than 48 hours' notice, the exhibitor must contact the APHIS AC Regional Director immediately in writing with the information listed in § 2.126(c). Facsimiles or e-mails are acceptable. We expect such notifications on shortened notice to be infrequent, however, and exhibitors who repeatedly provide less than 48 hours' notice will be subject to increased scrutiny under the Act. We do not consider it practical to set a specific threshold for what constitutes "repeatedly," due to the wide range of number of submissions by exhibitors. Whereas some exhibitors make only several submissions a year that cover multiple pre-scheduled exhibitions, others submit more numerous submissions on a job-by-job basis. If APHIS considers an exhibitor to be submitting itineraries with less than 48 hours' notice with a high frequency, we may monitor the exhibitor more closely.

Issue: Several commenters stated that the information on itineraries submitted in a timely fashion frequently becomes outdated by the time the animals actually begin their travel. Commenters stated that, due to factors such as illness, behavior, client requests, or shedding,

animals listed on the itinerary sometimes cannot travel. Additionally, said some commenters, illness or scheduling conflicts may require that staff members other than those listed on the itinerary travel with the animals. The commenters expressed concern that having to report all such last-minute changes to APHIS would become unduly burdensome for exhibitors.

Response: Although exhibitors are free to submit itineraries well in advance of intended travel, this rule only requires submission of an itinerary no less than 2 days before the travel. Although we recognize that even during that amount of time, it may sometimes become necessary to change the plans indicated on the itinerary, based on our experience dealing with the regulated industry, we do not expect such changes to happen frequently enough that reporting them to APHIS will create an undue burden on exhibitors. Requirements for notifying APHIS of itinerary changes are discussed below.

Issue: Some commenters expressed concern that the proposed rule included a requirement that an itinerary include all anticipated dates and locations (with addresses) for any stops and layovers, and that the itinerary be promptly revised, as necessary, to account for any changes. Commenters stated that it would be unreasonably burdensome on the exhibitor and APHIS to require notification of every minor deviation from a previously filed itinerary. One commenter asked whether APHIS is contemplating requiring specific information regarding rest stops and meal breaks. Commenters stated that a variety of factors determine where and when exhibitors stop on the road for animal care checks and that events that delay or interrupt travel sometimes occur with little or no advance warning. The commenters gave as examples problems with weather, mechanical breakdowns, road conditions, uncooperative animals, and delays from a home facility or stop/layover. Other factors cited included access to water spigots and adequate parking. One commenter stated that train travel is sometimes interrupted due to track

or equipment issues or for crew changes, the filling of water tanks, or to allow other traffic to proceed. During longer delays, stated the commenter, animals might be offloaded for exercise and cleaning of railcars.

Response: It is not the intent of this final rule, nor is it the intent of Policy 2 and § 2.126 of the regulations, to require that APHIS be advised regarding every minute of a journey. The required itinerary must indicate where the licensee or registrant and animals will be on which dates. If there is an anticipated layover of a length of time sufficient to allow/require removal of the animals from the transport enclosures, that layover should be indicated on the itinerary. Unanticipated delays of such length must be reported to the appropriate APHIS AC Regional Director the next APHIS business day.<sup>2</sup>

Issue: As noted above, the proposed rule included the requirement that the information on a submitted itinerary be promptly revised to account for any changes. Several commenters asked what APHIS' intent is regarding the term "promptly," whether APHIS personnel would be available to receive notification of changes that occur overnight, and what process APHIS had in mind for editing an itinerary.

Response: This final rule requires notification of itinerary changes in written form. Emails and facsimile notifications can be sent at any hour. We are providing in this final rule that, if initial notification in an emergency is made other than by email or facsimile, it must be followed up with written documentation at the earliest possible time. For changes that occur after normal business hours, the change must be conveyed to the appropriate APHIS AC Regional Director no later than the following APHIS business day.<sup>3</sup>

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<sup>2</sup> APHIS Regional offices are available each weekday, except on Federal holidays, from 8 a.m. to 5 p.m.

<sup>3</sup> See footnote 2.

Issue: A number of commenters expressed concern that if detailed information about their stops became public knowledge, it could compromise the safety of animals and caretakers. The commenters stated that such information could be used by special interest groups to plan disruptions or conduct acts of violence against exhibitors. Other commenters stated that having advance notice of an exhibitor's itinerary would give competitors an advantage in competing for business. The commenters stated that itineraries should be made available only to APHIS and its inspectors.

Response: We are cognizant of the concerns of persons subject to the Act regarding the release of itinerary information. We note, however, that the type of information required in this rule is already required in accordance with Policy 2 and § 2.126 of the regulations and we are not aware of any problems that have been caused by it to date. Further, a number of licensees and registrants already inform the public of their exhibit dates and locations through Web sites and other means. A person seeking information submitted to APHIS would need to request such information under the Freedom of Information Act, which exempts from release commercial or financial information that is privileged or confidential.

Issue: One commenter recommended that loans for a stated period of time between Association of Zoos and Aquariums (AZA) member zoos and aquariums for exhibit or breeding be exempt from the provisions of the proposal.

Response: We agree that movements of animals from one zoological facility to another for the purposes described by the commenter are of a different nature than the types of movement contemplated by § 2.126(c). Such transfers, which are generally made on a long-term basis, do not fall under the intent or requirements of this final rule. When one zoological facility loans an animal to another zoological facility for purposes such as exhibit or breeding, the

facilities generally enter into a legal agreement that transfers responsibility for the animal to the recipient facility for the loan period. The recipient facility is responsible for meeting the requirements of the Act with regard to that animal during the duration of the loan period.

Issue: One commenter stated that there is no need to apply the regulation as proposed to zoos. The commenter stated that the clear intent of Policy 2 and § 2.126 of the regulations is to ensure that true traveling exhibitors such as carnivals, circuses, animal acts, traveling educational exhibits, and petting zoos are available for inspection. The commenter stated that because zoos are not traveling exhibitors, there is no need to apply the proposed requirements to them.

Response: We agree that zoos are generally not considered traveling exhibitors. As indicated above, those licensees and registrants who take animals offsite and return them the same day will not need to submit an itinerary to APHIS for those movements. However, APHIS needs to know the location of animals moved from zoos overnight for exhibition, just as the Agency needs to know the whereabouts of animals taken offsite overnight for exhibition by other exhibitors. With the exception discussed above for loans between zoological facilities, the provisions of § 2.126(c) will apply to zoological facilities, just as Policy 2 has applied to permanent facilities such as zoos.

Issue: The proposed rule included the requirement that an itinerary contain the following information:

- 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 Act 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;

- 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.

Several commenters stated the required information is duplicative of information the exhibitor is already required to file. Several commenters stated that all animals already must be accompanied by a valid, current health certification, which indicates the animal's age, sex, species, and identification number where applicable. One commenter stated that the proposed requirements would be duplicative of information the exhibitor already files each year as part of its license renewal. The commenter stated that the information already submitted includes a complete list of cities and precise engagement dates and venues.

Response: We are making no changes based on these comments. This rule requires information beyond that collected by other programs and agencies regarding the movement of animals. The information provided in a health certificate does not encompass all the information required under Policy 2 and the more specific requirements of § 2.126 of this rule. Additionally, it is important that this information be submitted and distributed to our field inspectors in a timely manner. Having to rely on incomplete information collected by other parties would not allow efficient and effective use of APHIS resources. We do not expect that there will be a significant increase in reporting requirements for exhibitors who already comply with the regulations and Policy 2. Exhibitors who submit a yearly itinerary that does not change would not need to submit further itineraries under this rule. However, any changes to that yearly submission would need to be reported to APHIS.

Issue: As part of the proposed rule, in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), APHIS provided an estimate of the public reporting burden for the collection of information that would occur under the provisions of the proposal. We estimated that the number of respondents who would provide information to APHIS if the proposed rule were made final would be 300, and that each respondent would provide an average of 8.66 responses per year, for a total of approximately 2,600 responses per year. We estimated that each response would take an average of 0.25 hours to complete.

One commenter, a representative of the AZA, estimated that because many AZA-accredited zoos and aquariums conduct offsite outreach programs at locations such as schools and nursing homes, the AZA's 221 accredited zoos and aquariums alone would make a total of at least 50,000 to 70,000 submissions annually. Another commenter stated that adjustments to itineraries would require more than 15 minutes each.

Response: Based on comments we received from the public and upon review of our estimate of potential reporting burden for this rule, we agree that submissions by permanently based zoological facilities were underrepresented in our estimate. However, we disagree with the commenter who estimated that AZA-accredited zoos and aquariums would submit at least 50,000 to 70,000 itineraries annually. To arrive at that total, each zoo would need to submit from 225 to 320 itineraries per year, which we consider unlikely, particularly in light of the change we are making in this rule that will not require submission of itineraries for trips that do not extend overnight.

We have revised our estimates of the number of exhibitors who will be affected by this rule. Our original estimate that 300 exhibitors would be affected by the rule was based on the number of active licensees that had inspections at traveling sites. We have increased that

number by 125, based on our estimate that approximately 6 percent of nontraveling exhibitors may occasionally take animals away from their facility overnight for exhibition. We further estimate that those 425 exhibitors would provide a total of about 4,100 responses each year. We derived this number through discussion with AC regional offices and after looking at the size and histories of traveling exhibitors. For example, large circuses usually have itineraries planned a year or more in advance. Some smaller exhibitors may not know their schedules until a week before a performance. Thus, we estimated that about 100 of the affected exhibitors would submit itineraries about twice a year (200 submissions), and that the remainder would submit itineraries monthly (3,900 submissions). We continue to consider our estimate of 0.25 hours per response to be reasonable. In each case where animals are to be moved, the facility or promoter would already have arranged the necessary booking and trip logistics. The 0.25 hours represents the time needed to type or write out the itinerary and send it by email or facsimile to APHIS.

Issue: Several commenters stated that APHIS did not make clear in its proposal why the Agency considers the proposed regulations to be necessary. One commenter requested that APHIS indicate the types of problems its inspectors are experiencing. One commenter stated that, in place of the expanded requirements, APHIS should work with regulated entities to develop methods of ensuring that APHIS maintains reasonable access to facilities and animals. One commenter questioned why APHIS has decided to take on the extra burden of requiring itinerary submissions for all traveling exhibits.

Response: As we stated in our October 2009 proposed rule, AC inspectors need to know the location and dates of traveling exhibits in advance of the travel so that they can conduct unannounced inspections of the animals at those sites. Currently, if an exhibitor has not provided AC with an accurate itinerary in advance of travel, an inspector may arrive at a facility



only to find that some or all of the animals are elsewhere. Additionally, if AC receives a complaint about an alleged violation of the regulations and standards by an exhibitor at a certain location on a certain date, having a record of the itineraries will enable us to determine which exhibitor and which animals were at the location on that date so that we can look into the complaint. Currently, if there is no itinerary on file for an exhibition at a location and date cited in a complaint, and the exhibitor is not identified, APHIS must conduct an investigation to try to determine which exhibitor was there, which can be difficult and time consuming, and sometimes unsuccessful. We anticipate that this rule will enable APHIS to make more efficient use of its personnel. While we welcome recommendations from regulated entities on how to ensure that APHIS has reasonable access, we consider this rule a reasonable way to achieve that end.

Issue: Several commenters stated that the administrative burden on APHIS could be reduced by applying the proposed provisions to those exhibitors who have shown a reason to be of concern to APHIS and waiving the requirements for exhibitors who have demonstrated to APHIS that they provide their animals with quality care. One commenter stated that perhaps APHIS should limit the itinerary requirements to offsite exhibit of big cats.

Response: We are making no changes based on the comments. We do not expect an undue administrative burden on APHIS due to this rule. The intent of this rule is to ensure that APHIS has access to all regulated animals for inspections and enforcement activities at all times. Application of the rule to selected licensees and registrants could be construed as arbitrary and capricious enforcement of the regulations.

Issue: Several commenters recommended that the proposal be changed to require automated delivery of itineraries to APHIS. One commenter stated that submission of an

itinerary by email would take about 15 minutes and would address the problem of paper copies of itineraries becoming outdated before APHIS receives them.

Response: While we agree that there are advantages to submitting itineraries electronically, we are not requiring submission by that means. Some persons subject to the Act may not have access to that technology, especially while traveling. Because paper copies will need to arrive at APHIS no later than 2 days before the scheduled travel, in the great majority of cases we do not expect them to be out of date by the time the travel begins. As noted above, in those cases where changes need to be made to itineraries at the last minute, those changes will need to be submitted to APHIS in some expedited fashion (e.g., by phone, facsimile, or email), followed by a written submission if the change is not initially in writing.

Issue: One commenter asked how APHIS intends to inform newly affected parties of any updates to the regulations.

Response: Exhibitors will be notified of the regulatory changes in a variety of ways. All proposed and final rules are made available to the public in the Federal Register. Additionally, a press release will be issued when this rule is published and an announcement will be posted to APHIS' Web site. APHIS inspectors will also discuss the rule with licensees and registrants during inspections of regulated facilities.

Issue: One commenter asked what types of animals will be covered by this rule.

Response: This rule applies to all animals covered by the Act that are exhibited anywhere other than the person's approved site.

Issue: One commenter questioned whether the proposed provisions were within APHIS' authority.

Response: Section 2151 of the Act authorizes the Secretary to promulgate such rules, regulations, and orders as the Secretary may deem necessary to govern the humane handling, housing, care, treatment, and transportation of certain animals by dealers, exhibitors, and other regulated entities. Section 2146 of the Act provides that the Secretary shall, at all reasonable times, have access to the places of business and the facilities, animals, and those records required to be kept pursuant to the Act. The Secretary has delegated the responsibility for enforcing the Act to the APHIS Administrator. This final rule merely adds more specific requirements to § 2.126 of the Animal Welfare Act regulations.

#### Miscellaneous

In this final rule, we are making several nonsubstantive editorial changes to what appeared in the proposed rule. Instead of making joint references to the singular and plural as, e.g., “animal(s),” we are using the singular to signify also the plural. This is consistent with the style used in the definitions in § 1.1 of the regulations. In the regulatory text of this rule, when referring to the AC Regional Director, we use the term “AC Regional Director,” which is consistent with usage elsewhere in the regulations.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes discussed in this document.

#### Executive Orders 12866 and 13563 and Regulatory Flexibility Act

This final rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

We have prepared an economic analysis for this rule. The economic analysis provides a cost-benefit analysis, as required by Executive Orders 12866 and 13563, which direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to

select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The economic analysis also examines the potential economic effects of this rule on small entities, as required by the Regulatory Flexibility Act. The economic analysis is summarized below. Copies of the full analysis are available by contacting the person listed under FOR FURTHER INFORMATION CONTACT or on the Regulations.gov Web site (see ADDRESSES above for instructions for accessing Regulations.gov).

APHIS is amending the Animal Welfare Act (AWA) regulations to require a person who intends to exhibit regulated animals at any location other than the person's approved site to submit an itinerary at least 2 days in advance when travel extends overnight. In those instances when exhibitors are offered engagements with less than 2 days' notice, APHIS will accept itineraries less than 48 hours in advance of travel.

The rule will facilitate enforcement of the AWA regulations for traveling exhibitors, and thereby help to ensure the humane handling, housing, treatment, and transportation of the animals in their care.

Costs of the rule for exhibitors are expected to be small. The AC program has estimated that preparation and submission of an itinerary takes about 15 minutes. Many traveling animal exhibitors are already submitting itineraries in a timely manner in accordance with existing Agency policy when a regulated animal is exhibited away from its approved site for 4 days or more.

The time required to prepare the estimated 4,100 itineraries that will be required because of this rule is expected to cost the approximately 425 affected exhibitors a total of \$15,375 per year.

Most of the traveling exhibitors affected by the rule are small entities. Regardless of size, we do not expect the exhibitors to be significantly affected.

The rule is expected eliminate costs APHIS incurs in attempting to inspect animals that are not at locations where APHIS expected them to be, and to reduce some costs associated with responding to inquiries and complaints about traveling exhibitors alleged to have violated Animal Welfare regulations and standards. Money saved on these activities can be put toward inspections and other activities that will benefit animal welfare.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will 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 final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. The Act 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 the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579-0361.

## 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 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 are amending 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) and OMB citation at the end of the section are 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 (including, but not

limited to, circuses, traveling educational exhibits, animal acts, and petting zoos), except for travel that does not extend overnight, shall submit a written itinerary to the AC Regional Director. The itinerary shall be received by the AC 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 intended for exhibition at any location other than the person's approved site. If the exhibitor accepts an engagement for which travel will begin with less than 48 hours' notice, the exhibitor shall immediately contact the AC Regional Director in writing with the required information. APHIS expects such situations to occur infrequently, and exhibitors who repeatedly provide less than 48 hours' notice will, after notice by APHIS, be subject to increased scrutiny under the Act.

(1) The itinerary shall include the following:

(i) The name of the person who intends to exhibit the animal and transport the animal for exhibition purposes, including any business name and current Act 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;

(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 that allow or require removal of the animals from the transport enclosures.

Unanticipated delays of such length shall be reported to the AC Regional Director the next APHIS business day. APHIS Regional offices are available each weekday, except on Federal holidays, from 8 a.m. to 5 p.m.

(2) The itinerary shall be revised as necessary, and the AC Regional Director shall be notified of any changes. If initial notification of a change due to an emergency is made by a means other than email or facsimile, it shall be followed by written documentation at the earliest possible time. For changes that occur after normal APHIS business hours, the change shall be conveyed to the AC Regional Director no later than the following APHIS business day. APHIS Regional offices are available each weekday, except on Federal holidays, from 8 a.m. to 5 p.m. (Approved by the Office of Management and Budget under control number 0579-0361)

Done in Washington, DC, this \_\_\_\_\_ day of \_\_\_\_\_ .

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Under Secretary for Marketing and Regulatory Programs.

I:\PPD\RAD\Dockets\2008\06-023-2\12-29-10\3-29-11, changes made in response to OGC comments; 4/19/11, change made per 2<sup>nd</sup> OGC review; 5/9/11, OMB control # added to preamble, reg text, and amendatory text; 6/2/11: 12866 text changed to indicate availability of a separate economic analysis; 6/24/11, summary of economic analysis changed to remove outdated figure; 7/8/11, edit made to summary of economic analysis per OBPA recommendation. 8/31/11: Econ summary updated to reflect new econ analysis. 1/9/12: 12866 statement updated with new introductory boilerplate. 5/24/12: Chgs made in response to OMB comments. 6/28/12 – cah 7/24/12: minor edits during pre-publication check-cah Note: Docket 12-095-1 notifies the public we are seeking an extension of approval of the proposed info collection; Drew had indicated we could increase the numbers in the collection the next time we renewed following publication of the final rule.