

existing regulations provides that the Commissioner will immediately remove a country from the GVWP if she determines that the country poses a potential threat to the welfare, safety, or security of the United States, its territories, or commonwealths. As stated in the supplemental portion of this rule the Commissioner has made such a determination in the case of Burma. It would be contrary to the public interest to allow such a potential threat to continue for the prior notice and comment period normally required under 5 U.S.C. 553(b)(B) and (d)(3). The United States' law enforcement and national security concerns outweigh the interests of Burma nationals in having the nonimmigrant visa requirement waived under the GVWP.

The Service adopts this rule with a 7 day delayed effective date. The delayed effective date is to provide some flexibility for nationals of Burma who have already made plans to travel to Guam.

Burma nationals who have made travel plans in advance of 7 days, will still be able to travel to Guam as nonimmigrant visitors, but they will need to obtain an appropriate visa to do so.

#### Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. After January 10, 2001, Burmese nationals who wish to travel to Guam temporarily for legitimate business or pleasure purposes will still be permitted to visit Guam, if, prior to their journey, they acquire a nonimmigrant visa at a U.S. Embassy or consulate. This rule furthers the law enforcement and national security interests of the United States without significantly restricting legitimate travel to Guam. It does not affect small entities as that term is defined in 5 U.S.C. 601(6).

#### Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

#### Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

#### Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one-year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

#### Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

#### Executive Order 12988 Civil Justice Reform

This final rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

#### List of Subjects in 8 CFR Part 212

Administrative practice and procedure, Aliens, Immigration, Passports and visas, Reporting and recordkeeping requirements.

Accordingly, part 212 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

#### PART 212—DOCUMENTARY REQUIREMENTS; NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

1. The authority citation for part 212 is revised to read as follows:

**Authority:** 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1187, 1225, 1226, 1227; 8 CFR part 2.

#### § 212.1 [Amended]

2. Section 212.1 is amended by:  
a. Removing the country "Burma," from the first sentence in paragraph (e)(3)(i).

Dated: November 30, 2000.

**Mary Ann Wyrsh,**

*Acting Commissioner, Immigration and Naturalization Service.*

[FR Doc. 01-55 Filed 1-2-01; 8:45 am]

**BILLING CODE 4410-10-M**

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 9 CFR Part 2

[Docket No. 98-065-2]

#### Animal Welfare; Confiscation of Animals

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

**ACTION:** Final rule.

**SUMMARY:** We are amending the Animal Welfare Act regulations to allow us to place animals confiscated from situations detrimental to the animals' health and well-being with a person or facility that is not licensed by or registered with the Animal and Plant Health Inspection Service, Department of Agriculture, if the person or facility can offer a level of care equal to or exceeding that required by the regulations. The change will facilitate the relocation of confiscated animals and minimize the amount of time neglected, sick, or injured animals stay in unhealthy situations.

**EFFECTIVE DATE:** February 2, 2001.

**FOR FURTHER INFORMATION CONTACT:** Dr. Jerry DePoyster, Senior Veterinary Medical Officer, Animal Care, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737-1234; (301) 734-7586.

#### SUPPLEMENTARY INFORMATION:

#### Background

The Animal Welfare Act (AWA) (7 U.S.C. 2131 *et seq.*) authorizes the Secretary of Agriculture to promulgate standards and other requirements governing the humane handling, housing, care, treatment, and transportation of certain animals by dealers and other regulated businesses. 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 (referred to below as the regulations). Part 1 contains definitions for terms used in parts 2 and 3. Part 2 sets forth general requirements, and part 3 sets forth the standards for the humane handling, care, treatment, and transportation of covered animals by regulated entities.

In part 2, § 2.129 provides for the confiscation and destruction of animals. Paragraph (a) of § 2.129 provides that, if an animal being held by a dealer, exhibitor, intermediate handler, or carrier is found by APHIS to be suffering as a result of the failure of the dealer, exhibitor, intermediate handler, or carrier to comply with the regulations, APHIS will notify the dealer, exhibitor, intermediate handler, or carrier of the condition of the animal and request that the animal's suffering be alleviated or that the animal be euthanized. If the dealer, exhibitor, intermediate handler, or carrier refuses to comply with APHIS' request, an APHIS official may confiscate the animal for care, treatment, or disposal.

Prior to this final rule, § 2.129(c) provided that APHIS may place confiscated animals with a person or facility that is licensed by or registered with APHIS and that complies with the regulations and can provide proper care. Further, § 2.129(c) provided that the confiscated animals could be euthanized by APHIS or the receiving facility. Paragraph (c) also provided that the dealer, exhibitor, intermediate handler, or carrier from whom the animals were confiscated was responsible for all costs associated with the placement or euthanasia of the animals.

On May 28, 1999, we published a proposal in the **Federal Register** (64 FR 28940-28942, Docket No. 98-065-1) to amend § 2.129(c) to specifically allow APHIS to place confiscated animals with a person or facility that can offer a level of care equal to or exceeding that required by the regulations, even if the person or facility is not licensed by or registered with APHIS. We proposed this change to increase the options for APHIS when placing confiscated animals and, therefore, allow neglected, sick, or injured animals to be removed more quickly from situations detrimental to their health and well-being.

We solicited comments concerning our proposal for 60 days ending July 27, 1999. We received 19 comments by that date. The comments were from an association representing veterinarians, a State agriculture department, animal humane associations, an association of animal owners, and private citizens.

One commenter opposed the proposal. Thirteen commenters supported the proposal as written. The remaining commenters raised issues that are discussed below.

One commenter stated that the regulations should specify how APHIS will evaluate whether a person or facility that is not licensed by or registered with APHIS can offer an acceptable level of care. Another commenter stated that we should monitor and control facilities that are not licensed by or registered with APHIS to ensure that they are able to provide a level of care equal to or exceeding that required by the regulations.

We do not believe that evaluation criteria should be included in the regulations. Prior to the placement of a confiscated animal, we will, of course, look at the ability of the person or facility to provide adequate security, containment, and care of the animal. Because the circumstances of potential confiscations are variable and unpredictable as to the kinds and numbers of animals and their condition and needs, it would not be appropriate to limit our ability to act.

As to monitoring and controlling facilities that are not licensed by or registered with APHIS, we do not have the authority to apply the requirements of the AWA to persons or facilities that are not licensed by or registered with APHIS. However, we believe that our evaluation of the suitability of a person or facility, prior to the placement of the animals, will ensure that the person or facility can provide a level of care equal to or exceeding that required by the regulations. There are a limited number of persons and facilities that are licensed by or registered with APHIS and that are willing to accept confiscated animals. This change in our regulations will benefit confiscated animals by giving us more flexibility in relocating them.

One commenter stated that persons who accept confiscated animals should be licensed by a State or local government to provide care for animals, such as wildlife rehabilitators, and that facilities should be duly incorporated humane societies, societies for the protection of animals, or other legal entities established for similar purposes. An additional commenter suggested that we remove all references to "persons" and require facilities to be duly incorporated private organizations registered as charitable humane organizations under Federal and State law or operated by local governments for animal impoundment and control purposes.

Humane societies are obviously likely choices for the placement of confiscated animals. However, we do not believe that a person or facility needs to be licensed by or registered with a State or local government to provide a level of care equal to or exceeding that required by our regulations.

One commenter stated that APHIS should maintain a record of where confiscated animals are placed and require the receiving facility (licensed/registered or not) to notify APHIS when the facility transfers the animals or has them euthanized, especially in the case of wild and exotic animals.

We will maintain a record of where the animals are placed after they are confiscated. Persons and facilities that are licensed by or registered with APHIS are required to keep records of the animals on their premises, including animals that we place with them, in accordance with §§ 2.75 and 2.77.

We do not have the authority to impose requirements on persons or facilities that are not subject to the AWA, and we cannot require them to apprise us of the disposition of the animals. However, as stated in the proposal, we expect the types of unregistered or unlicensed facilities most likely to accept confiscated animals are animal shelters run by humane societies, and most animal shelters maintain records regarding the disposition of animals that were on their premises.

One commenter stated that we should stipulate that entities that accept confiscated animals may not place such animals in research situations, and, in the case of wild and exotic animals, that the entities must place them in facilities licensed by or registered with APHIS.

Most of the small number of confiscations that APHIS performs involve dog breeders, and because many of the confiscated animals are in poor health, they would not be good research subjects. However, when a person or facility accepts ownership of a confiscated animal, the person or facility is responsible for the disposition of the animal, including the future placement of the animal. If the person or facility is licensed by or registered with APHIS, future placement or disposition of the animal must be in accordance with the regulations. We believe that it is highly unlikely that any confiscated animal would eventually be used in research. The ability to place confiscated animals with humane societies and other institutions and persons not regulated under the AWA makes such a possibility even less likely.

In some cases, APHIS may place wild or exotic animals at animal sanctuaries. For instance, sanctuaries are being created for nonhuman primates and elephants because these animals are difficult to place, especially if they are in poor health or condition. The development of these sanctuaries will assist us in our efforts to place confiscated nonhuman primates and elephants.

One commenter stated that the regulations should require the dealer, exhibitor, intermediate handler, or carrier from whom the animal is confiscated to bear all of the initial medical costs and other expenses incurred by the facility that accepts the confiscated animal.

The regulations at § 2.129(d) require the dealer, exhibitor, intermediate handler, or carrier from whom the animals are confiscated to bear all costs incurred in performing the placement or euthanasia activities authorized in § 2.129. However, we have found that in most cases the neglect of the animals that we confiscate is directly due to the owner of the animals not having sufficient funds to properly care for the animals. In fact, at times, APHIS has assumed the associated costs for the care or euthanasia of confiscated animals when the dealer, exhibitor, intermediate handler, or carrier from whom the animals were confiscated was unable to pay these costs. Therefore, compensation for the initial medical costs and other expenses incurred by the person or facility that accepts the confiscated animal may not be possible in all cases. If a person or facility accepts a confiscated animal, the person or facility will be responsible for all future costs incurred for the animal that are not covered under § 2.129(d) by the person or facility from whom the animal was confiscated. APHIS will make the person or facility aware of that responsibility at the time that the person or facility agrees to accept the animal.

One commenter stated that if an animal is to be placed with an entity that is not licensed by or registered with APHIS, we should clarify who is liable for the actions of the confiscated animal, especially if the animal bites someone, so that the receiving entity is informed at the time of agreement to accept the animal.

The person or facility that accepts the confiscated animal will be liable for the actions of the animal regardless of whether the person or facility is licensed by or registered with APHIS.

One commenter stated that we should stipulate that an APHIS veterinarian will be involved in the decisionmaking process for approval of the placement of

confiscated animals or euthanasia of animals that are not or cannot be placed, and if an APHIS veterinarian is not available, the State animal health official will be included in the decisionmaking process.

At least one or more APHIS veterinarians will be involved in the decisionmaking process for the placement of confiscated animals or their euthanasia, and we do not consider it necessary to add such a stipulation to the regulations.

One commenter stated that, rather than confiscate the animals, we should allow the animals to remain in their original facilities because APHIS inspectors will have access to the facilities and will, therefore, be able to monitor the progress of the animals. This commenter added that APHIS cannot ensure that a facility offers a level of care that is equal to or exceeds that required by the regulations if the facility is not licensed or inspected by APHIS.

We do not share these fears of humane societies. In fact, we have had great success in the placement of animals with humane societies in potential confiscation situations where dealers voluntarily gave up the animals.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, without change.

One commenter stated that animals placed at humane societies would be cared for by personnel who are not equipped to handle the animals and that the proposal would subject animals to substandard care and/or euthanization. This commenter stated that private owners are more likely to locate suitable people for an animal that is not considered an ideal pet by the humane society.

We do not share these fears of humane societies. In fact, we have had great success in the placement of animals with humane societies in potential confiscation situations where dealers voluntarily gave up the animals.

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

This rule has been reviewed under Executive Order 12866. The 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.

We are amending the Animal Welfare Act regulations to allow APHIS to place animals confiscated from situations detrimental to the animals' health and well-being with a person or facility that is not licensed by or registered with

APHIS. The change will increase the options for APHIS when placing confiscated animals and will, therefore, facilitate the relocation of confiscated animals and minimize the amount of time neglected, sick, or injured animals stay in unhealthy situations.

Confiscation is a complicated and expensive procedure. Prior to this final rule, the regulations allowed APHIS to place confiscated animals with a person or facility licensed by or registered with APHIS. Finding a licensee or registrant with the capacity and ability to house and care for the animals' well-being is one of the major challenges in the confiscation process.

This rule will make the task of finding an adequate facility for confiscated animals faster and simpler, which will reduce APHIS' costs associated with locating a facility and the cost of the care APHIS must provide when adequate facilities cannot be located. At times, APHIS assumes the associated costs for care or euthanasia of confiscated animals when the dealer, exhibitor, intermediate handler, or carrier from whom the animals were confiscated is unable to pay these costs and APHIS cannot find a facility at which to place the animals.

The Regulatory Flexibility Act requires that agencies consider the potential economic effects of rules on small businesses, organizations, and governmental jurisdictions. Businesses and organizations potentially affected by this rule are those that are not licensed by or registered with APHIS but that can accommodate and provide adequate care for confiscated animals.

We expect that the types of facilities most likely to accept confiscated animals under this rule are animal shelters run by humane societies. The number of humane societies that are small entities under the Small Business Administration's (SBA) standards is unknown because information as to their size in terms of gross receipts and number of employees is not available. Humane societies are not-for-profit organizations where some of the employees work on a voluntary basis, and there is no way to determine their revenue. In addition, the costs incurred by humane societies are covered by membership donations. In the United States, there are at least 121 known regional humane societies in 35 States. Most of these are in California (at least 14); Texas and Illinois (at least 7 each); Florida, Georgia, and Minnesota (at least 6 each); Oregon, Virginia, Maryland, and Wisconsin (at least 5 each); and Colorado, Alabama, Ohio, Michigan, and Pennsylvania (at least 4 each). In addition, there are a number of shelters

run by other incorporated charitable organizations established for the purpose of preventing cruelty to animals.

One commenter stated that our analysis in the proposed rule of the potential economic effects of the rule contained an error. In the analysis, we stated that there are at least 121 known humane societies in 35 States. The commenter stated that there are over 3,000 incorporated, charitable organizations established for the purpose of preventing cruelty to animals and that these organizations exist in all 50 States and can have names such as humane society, society for the prevention of cruelty to animals, animal welfare league, or pet protection league. The commenter added that there are several thousand municipally operated animal shelters that are exempt from licensing requirements under the AWA and that are willing to house confiscated animals in special cases.

The number we provided in our analysis was the number of regional humane societies known to us and listed by State. We are aware that there are a number of organizations other than humane societies. We agree that if we had referred to all incorporated charitable organizations established for the purpose of preventing cruelty to animals, the number of organizations would be significantly larger than 121.

APHIS confiscates animals only once or twice a year. Adoption of this rule will expedite relocation of any confiscated animals. It is likely that the receiving facilities, as noted above, will be small entities. The regulations require that the dealer, exhibitor, intermediate handler, or carrier from whom the animals are confiscated bear all costs associated with performing the placement or euthanasia. If a facility accepts confiscated animals, that facility will be responsible for the future costs incurred for the care of those animals while at the facility. However, as noted, APHIS needs to place confiscated animals only once or twice a year, and the acceptance of confiscated animals is voluntary.

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. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. 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

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### 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 is revised to read as follows:

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

2. In § 2.129, paragraph (c) is revised and a new paragraph (d) is added to read as follows:

#### § 2.129 Confiscation and destruction of animals.

\* \* \* \* \*

(c) Confiscated animals may be:

(1) Placed, by sale or donation, with other licensees or registrants that comply with the standards and regulations and can provide proper care; or

(2) Placed with persons or facilities that can offer a level of care equal to or exceeding the standards and regulations, as determined by APHIS, even if the persons or facilities are not licensed by or registered with APHIS; or

(3) Euthanized.

(d) The dealer, exhibitor, intermediate handler, or carrier from whom the animals were confiscated must bear all costs incurred in performing the placement or euthanasia activities authorized by this section.

Done in Washington, DC, this 26th day of December 2000.

**Craig A. Reed,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 01–57 Filed 1–2–01; 8:45 am]

**BILLING CODE 3410–34–P**

#### DEPARTMENT OF AGRICULTURE

#### Animal and Plant Health Inspection Service

#### 9 CFR Part 3

[Docket No. 93–076–15]

RIN 0579–AA59

#### Animal Welfare; Marine Mammals

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

**ACTION:** Final rule.

**SUMMARY:** We are amending the Animal Welfare Act regulations concerning the humane handling, care, treatment, and transportation of marine mammals in captivity. These regulations were developed by the Marine Mammal Negotiated Rulemaking Advisory Committee and are necessary to ensure that the minimum standards for the humane handling, care, treatment, and transportation of marine mammals in captivity are based on current general, industry, and scientific knowledge and experience.

**EFFECTIVE DATE:** February 2, 2001.

**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 (the Act) (7 U.S.C. 2131 *et seq.*, enacted in 1966 and amended in 1970, 1976, 1985, and 1990) 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 intermediate handlers. Regulations established under the Act are contained in 9 CFR parts 1, 2, and 3.

The Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture established regulations under the Act in 1979 for the humane handling, care, treatment, and transportation of marine mammals used for research or exhibition purposes. These standards, contained in 9 CFR part 3, subpart E (referred to below as the regulations), were amended in 1984. During the 14 years since the standards were amended, advances have been made, new information has been developed, and new concepts have been implemented with regard to the handling, care, treatment, and