

# Proposed Rules

Federal Register

Vol. 71, No. 82

Friday, April 28, 2006

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–2005–0118]

#### Shift Cage Requirements

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

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to amend the Animal Welfare Act regulations concerning the handling of animals to require that shift cages be used for handling certain species. One of the largest risk factors for animal escape and employee and animal injury occurs when it is necessary to move, or shift, certain animals between enclosures. Requiring shift cages for certain species would mitigate the risk of injuries to people and animals as well as ensure safe transport of animals between enclosures and exhibits.

**DATES:** We will consider all comments that we receive on or before June 27, 2006.

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

- Federal eRulemaking Portal: Go to <http://www.regulations.gov> and, in the lower "Search Regulations and Federal Actions" box, select "Animal and Plant Health Inspection Service" from the agency drop-down menu, then click on "Submit." In the Docket ID column, select APHIS–2005–0118 to submit or view public comments and to view supporting and related materials available electronically. Information on using [Regulations.gov](http://Regulations.gov), including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's "User Tips" link.

- Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. APHIS–2005–0118,

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–2005–0118.

**Reading Room:** 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.

**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 (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 intermediate handlers. The Secretary of Agriculture has delegated the responsibility of enforcing the Act to the Administrator of the Animal and Plant Health Inspection Service (APHIS). The regulations established under the Act are contained in title 9 of the Code of Federal Regulations (9 CFR), chapter I, subchapter A, parts 1, 2, and 3. Regulations regarding handling of animals are found in 9 CFR part 2.

Section 2.131 contains provisions for the humane handling of animals. In § 2.131, paragraph (b)(1) states that handling of all animals must be done as expeditiously and carefully as possible in a manner that does not cause trauma, overheating, excessive cooling, behavioral stress, physical harm, or unnecessary discomfort.

One of the largest risk factors for animal escape and employee and animal injury occurs when it is necessary to move, or shift, certain animals between

enclosures. An increasing number of reports of human and animal injuries that have occurred during the movement of certain animals between enclosures have led APHIS to focus on ways to mitigate such risks and promote safer conditions for animals, their handlers, and the public. Therefore, we are proposing to amend the regulations to add specific requirements for the handling of certain animals during their movement between enclosures.

Specifically, we propose to add a new paragraph (f) in § 2.131 that would require the use of shift cages for moving and transporting potentially dangerous animals, such as big cats (lions, tigers, pumas, jaguars, and cheetahs); all species of bears; great apes (gorillas, chimpanzees, orangutans) and other nonhuman primates; and wild or exotic canids. While shift cages may vary from facility to facility, the shift cages would have to work in such a manner as to safely and securely enclose the animal. Shift cages can be permanent, such as the connection between two enclosures that can be shut at both ends as can be found in zoos, or temporary, such as those used to transport animals. In either case, we would require that shift cages attach or be attachable to all enclosures or holding pens, cages, or secured areas used to hold and/or transport potentially dangerous animals in such a way that the animal cannot get through any gaps between the shift cage and the enclosure. In addition, the shift cages would have to allow handlers access to the animal's primary enclosure without posing a threat to the handler.

Proper maintenance of shift cages is vital in ensuring the safe handling of animals and the protection of their handlers. Equipment may rust, malfunction, incur damage, or otherwise compromise the security of the enclosure. Left unrepaired, such damage may allow an animal to escape or result in injury to an animal or handler.

Therefore, we would also require that the shift cage be structurally sound and maintained in good repair to protect the animals from injury and to contain the animals.

Improper handling of shift cages may result in the escape of a potentially dangerous animal or injury to the animal, handler, or a member of the public. For this reason, it is important that all personnel involved in moving or transporting potentially dangerous

animals understand how to correctly operate all components of the facility's shift cage or alternative system equipment. We would require that all personnel whose duties include a role in the movement or transportation of potentially dangerous animals be trained in the proper use of the equipment, and that written protocols for the safe transfer of animals be established by the facility.

Most accredited or well-run facilities already have systems in place for the movement of animals between enclosures. As such, this proposed rule would also allow for facilities to employ other methods as alternatives to shift cages, provided that those alternative methods afford the same degree of assurance against animal escapes and for the protection of employees and the public. If a facility wishes to employ an alternative measure, a description of that method would have to be submitted in writing to the appropriate Animal Care regional office and would have to receive written approval before the method could be used as an alternative.

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

This proposed 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.

In accordance with 5 U.S.C. 603, we have performed an initial regulatory flexibility analysis, which is set out below, regarding the economic effects of this rule on small entities.

We are proposing to amend the Animal Welfare Act regulations concerning handling of animals to require that shift cages be used for handling certain species. One of the largest risk factors for animal escape and employee and animal injury occurs when it is necessary to move, or shift, certain animals between enclosures. Requiring shift cages for certain species would mitigate the risk of injuries to people and animals as well as ensure safe transport of animals between enclosures and exhibits.

The primary goal of this proposed rule is to reduce the risk of animals escaping or harming other animals or humans. Specifically, the proposed regulation would require all enclosures that house these animals be connected to other enclosures or holding pens, cages, or secured areas by means of shift cages, and that these animals be moved using this safety apparatus. We believe this action is necessary to decrease the

risks of injury and/or death to animals and humans.

The proposed requirements would primarily affect exhibitors, especially small zoos and roadside exhibits. Also affected would be some breeders and dealers, as well as research facilities that use nonhuman primates and/or big cats. The majority of affected facilities would be considered small businesses by Small Business Administration (SBA) definitions. Entities with a likelihood of being impacted by this rule come under a variety of North American Industry Classification System (NAICS) industry groups, and in all of the code groups only a fraction of all firms actually engage in the regulated activity. We are unable to estimate the number of firms and businesses that may be affected, and we welcome public comment that would assist us in making this estimation. Specifically, we are interested in information regarding the number of establishments that could be affected, particularly ones classified within the industry groups identified here; the equipment, methods or procedures used by these entities when moving animals between enclosures; and the relative prevalence of the various types of equipment, methods, or procedures used.

NAICS code groups of particular interest are 712130 and 712190, which include zoos, wild animal parks, petting/roadside zoos, and nature parks. A small enterprise under this code is one having \$6 million or less in annual receipts. Also of interest are domestic breeders of these animals, which correspond to NAICS code 112990, with a small size standard of \$750,000 or less in annual receipts. Animal dealers and/or independent importers of these animals would fall under the catchall NAICS code 424990, with the size standard being 100 or fewer employees. For facilities that deal in research with the animal species in question, the most applicable NAICS code is 541710, and the size standard is 500 or fewer employees.<sup>1</sup> Again, while only a fraction of the firms in each industry code group engage in the regulated activity, all of these industries primarily comprise small entities.<sup>2</sup>

<sup>1</sup> Table of Size Standards based on NAICS 2002. Washington, DC: U.S. Small Business Administration, 2004.

<sup>2</sup> Based on information from the SBA, Office of Advocacy, and data provided by the U.S. Census Bureau, Statistics of U.S. Businesses, small operations comprise more than 70 percent of zoos and botanical gardens, more than 80 percent of nature parks and other similar institutions, more than 90 percent of animal dealers and/or independent importers, and more than 90 percent of research facilities that could potentially handle the animals of concern.

Compliance with the proposed rule would require the installation of shift cages, or similar apparatus, in the event that such equipment is not already in use. For those facilities that do not have such a mechanism in place, a one-time capital outlay would be required to install shift cage equipment and train their personnel in its use. The costs of shift cage installation would vary by facility based on what is present at the site and how much remodeling would be needed to meet the proposed requirements. We welcome comments from potentially affected entities and others on the cost of shift cage installation, as well as cost associated with training personnel.

Most accredited and/or well-run facilities already have systems in place for movement of animals between enclosures. The proposed rule would allow facilities to institute alternative procedures that provide the same degree of assurance against animal escapes and protection of the employees. In this event, facilities wishing to use alternative shift cage mechanisms would need to submit and have approved a written application to APHIS. The Agency welcomes information on possible alternatives to shift cages and the costs associated with these alternatives.

The alternative to the proposed rule would be to take no action. However, the Agency has concluded specific protocols need to be instituted and followed in handling animals safely while moving between enclosures for the protection of the animals and their handlers. As such, the alternative of taking no action would not be a viable option.

This proposed rule contains various recordkeeping and reporting requirements. These requirements are described in this document under the heading "Paperwork Reduction Act."

#### **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. This rule would 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

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–2005–0118. Please send a copy of your comments to: (1) Docket No. APHIS–2005–0118, 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.

We are proposing to require that the movement of certain animals between enclosures and transfers to other areas be accomplished using shift cages or approved alternatives. The proposed changes would protect the health and well-being of potentially dangerous animals and their handlers and care givers. All licensees and registrants holding and handling such animals would be required to use shift cages, either permanent structures secured to both enclosures or moveable structures, such as transport units like rolling cages that attach to the enclosures, and have a written protocol available to the handlers for the safe and proper use of the equipment. Alternative methods for the safe transfer between enclosures or exhibition areas could be used if a description of the protocol is submitted to the regional office in writing and if it is approved in writing by APHIS.

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 1.05769 hours per response.

*Respondents:* Exhibitors of potentially dangerous animals and a small percentage of animal dealers and breeders who handle potentially dangerous animals.

*Estimated Annual Number of Responses:* 2,600.

*Estimated Annual Number of Responses per Respondent:* 1.

*Estimated Annual Number of Responses:* 2,600.

*Estimated Total Annual Burden on Respondents:* 2,750 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) 734–7477.

### Government Paperwork Elimination Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. For information pertinent to GPEA compliance related to this proposed rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

### 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 would continue to read as follows:

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

2. In § 2.131, a new paragraph (f) would be added to read as follows:

### § 2.131 Handling requirements.

\* \* \* \* \*

(f)(1) All enclosures that house, at any time, potentially dangerous animals such as, but not limited to, big cats, bears, great apes, other nonhuman primates, and wild or exotic canids, must be attached to or be attachable to a shift cage (*i.e.*, an enclosure or holding pen, cage, or secured area that can be used to hold and/or transport a potentially dangerous animal), in such a manner as to prevent the animal from escaping through any gaps between the shift cage and the enclosure. Potentially dangerous animals must also be transported between enclosures and performance areas using shift cages.

(2) Shift cages must be kept in good working order to allow for the proper use of the equipment.

(3) All personnel whose duties include a role in the movement of potentially dangerous animals must be trained in the proper use of shift cages, and written protocols for the safe transfer of animals using shift cages must be established by the facility and followed by personnel involved in the movement of animals. Such protocols must be made available to APHIS upon request.

(4) APHIS will consider alternative methods for the safe transfer of animals between enclosures. A description of any such alternative method must be submitted in writing to the appropriate APHIS Animal Care regional office, and the alternative method must have written approval from APHIS before it may be used. APHIS will determine if the alternative method meets the intent and requirements of this section.

Done in Washington, DC, this 24th day of April 2006.

**Elizabeth E. Gaston,**

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

[FR Doc. E6–6421 Filed 4–27–06; 8:45 am]

BILLING CODE 3410–34–P