Proposed Rules

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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 Parts 1 and 3

[Docket No. 93-076-2]

RIN 0579-AA59

Animal Welfare; Marine Mammals

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

SUMMARY: We are proposing to amend the Animal Welfare regulations to establish standards for "swim-with-thedolphin" interactive programs. These proposed standards would be promulgated under the authority of the Animal Welfare Act and appear to be necessary to ensure that the marine mammals used in these programs are handled and cared for in a humane manner.

DATES: Consideration will be given only to comments received on or before February 22, 1995.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD. APHIS. USDA. P.O. Drawer 810. Riverdale, MD 20738. Please state that your comments refer to Docket No. 93-076-2. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690-2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Barbara Kohn, Senior Staff Veterinarian, Animal Care Staff, Regulatory Enforcement and Animal Care, APHIS, USDA, P.O. Drawer 810, Riverdale, MD 20738. The telephone number for the agency contact will change when agency offices in Hyattsville, MD, move to Riverdale, MD, during February 1995. Telephone: (301) 436–7833 (Hyattsville); (301) 734–8699 (Riverdale).

SUPPLEMENTARY INFORMATION:

Background

Since 1979, the Departments of Commerce and the Interior have shared jurisdiction with the Department of Agriculture for regulating the care and transportation of captive marine mammals. Under the Animal Welfare Act (7 U.S.C. §§ 2131, et seq.) (AWA), authority was given by Congress to the Department of Agriculture to promulgate regulations and standards for the humane handling, care, treatment, and transportation of captive marine mammals by regulated entities. In 1979, the Department published a final rule in the Federal Register (44 FR 36868) which set forth the regulations and standards for captive marine mammals

The AWA regulations are contained in title 9 of the Code of Federal Regulations, chapter 1, subchapter A, parts 1, 2, and 3. Part 1 provides definitions of the terms used in parts 2 and 3. Part 2 sets forth the regulations and part 3 sets forth the standards for the humane handling, care, treatment, and transportation of covered animals by regulated entities. Subpart E of part 3 contains the standards applicable to marine mammals.

Under provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. §§ 1361 et seq.) (MMPA), the Departments of Commerce and the Interior have had the responsibility for regulating marine mammals in the wild. and those removed from the wild and held in captivity. Such authority is exercised through a permit system whereby permits to obtain new marine mammals or replacements from the wild are issued, provided that the applicants for such permits comply with provisions of these permits with respect to the handling and care of the animals. The National Marine Fisheries Service (NMFS), U.S. Department of Commerce, regulated "swim-with-the-dolphin" (SWTD) programs, by incorporating standards of care into the permits. In SWTD programs, members of the public participate in an orientation and education program regarding marine mammals, and then take part in an interactive swimming session with dolphins.

Recently, the regulation of SWTD programs has significantly changed. The April 30, 1994, amendments to the MMPA contain a requirement that holders of marine mammal permits issued by NMFS be licensed by USDA under the AWA. The NMFS permits have changed in that the special conditions concerning standards of care imposed on SWTD permit holders are no longer contained in the permits. Therefore, there are no specific standards in place for SWTD programs.

Although 9 CFR part 3, subpart E contains general standards, developed and enforced by APHIS, for the housing, care, treatment, and transportation of marine mammals, it contains no standards that apply specifically to SWTD programs. Specific APHIS standards for these programs, including exhibit design, veterinary care, personnel training, and recordkeeping, were to be addressed in APHIS's review and anticipated proposed revision of the regulations. As part of this anticipated revision of the regulations, APHIS published an advance notice of proposed rulemaking on July 23, 1993, (58 FR 39458) in which members of the public were invited to submit comments on appropriate specific standards for the care of marine mammals at facilities licensed by or registered with APHIS. The amendments to the MMPA, and the elimination of the MMPA requirement for NMFS to specify conditions for the care and transportation of captive marine mammals used in SWTD programs, has precipitated a need for specific APHIS standards regarding SWTD programs at this time. Therefore, we are proposing such standards to ensure the safety and health of captive marine mammals used in SWTD programs.

Program Animals

This rule proposes standards for SWTD in a new § 3.111. We are providing in proposed § 3.111(d) that only *Tursiops truncatus*, commonly referred to as bottlenose dolphins, may be used in SWTD programs. Industry experience has demonstrated that *Tursiops truncatus* can be adequately trained and conditioned to interact safely with humans. Similar information is not yet available regarding other species of cetaceans.