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Dated: February 14, 2000.

Eric M. Forman,

Acting Deputy Administrator, Fruit and Vegetable Programs.

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 2 and 3

[Docket No. 97-001-4]

RIN 0579-AA85

Animal Welfare; Draft Policy on Training and Handling of Potentially Dangerous Animals

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Draft policy statement and request for comments.

SUMMARY: We have developed a draft policy statement to provide guidance to exhibitors and other regulated entities on how to comply with the regulations regarding training and handling of potentially dangerous animals (e.g., lions, tigers, bears, and elephants). We are seeking public comment on the policy statement before we implement it.

DATES: We invite you to comment. We will consider all comments that we receive by April 18, 2000.

ADDRESSES: Please send your comment and three copies to: Docket No. 97-001-4 Regulatory Analysis and Development PPD, APHIS Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737-1238 Please state that your comment refers to Docket No. 97-001-4.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS rules, are available on the Internet at <http://www.aphis.usda.gov/ppd/rad/webrepor.html>.

FOR FURTHER INFORMATION CONTACT: Dr. Barbara Kohn, Senior Staff Veterinarian, AC, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737-1234; (301)734-7833.

SUPPLEMENTARY INFORMATION: 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, 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 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. The APHIS Animal Care program ensures compliance with the AWA regulations by conducting inspections of premises with regulated animals.

Regulations regarding training and handling of animals are found in 9 CFR part 2. Section 2.131 contains provisions for the humane training and handling of animals. In § 2.131, paragraph (a) 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. Paragraph (a) also prohibits physical abuse and deprivation of food or water as tools to train, work, or otherwise handle animals (except that short-term withholding of food or water is allowed as long as the animals receive their full dietary requirements each day). Paragraphs (b) and (c) of § 2.131 set forth humane conditions for public exhibition of animals, including providing that animals must be handled in a manner that minimizes risk to the animals and the public, be given rest periods, not be exposed to rough handling or extended periods of exhibition that would be inconsistent with their good health and well-being, and be under the supervision and control of knowledgeable handlers at all times.

Regulations regarding personnel qualifications for trainers and handlers are found in 9 CFR part 3, § 3.85, 3.108, and 3.132. These sections generally require that personnel have

adequate knowledge and experience to care for and handle the animals. Section 3.85 concerns nonhuman primates, § 3.108 concerns marine mammals, and § 3.132 concerns animals such as bears, big cats, and elephants.

The general public, regulated industries, and APHIS inspectors have requested that we provide more guidance on how to meet the requirements of the regulations as they pertain to potentially dangerous animals. On July 24, 1997 (62 FR 39802, Docket No. 97-001-1), we published a notice in the **Federal Register** requesting information concerning what practices are currently used for training and handling potentially dangerous animals and what training and experience levels trainers and handlers of such animals have. We requested this information to help us more thoroughly examine all issues pertaining to the training and handling of potentially dangerous animals. We received over 400 comments in response to the request for information. Some comments contained guidance or training manuals used by individual facilities in caring for and handling specific animals (elephants, big cats). Many comments supported efforts to clarify the existing regulations to help ensure the safe and humane handling of animals in exhibition.

Based on information received in the comments and our experience in enforcing the AWA and the regulations, we have developed a draft policy statement to provide more guidance to our inspectors and regulated entities as to what we consider acceptable under the regulations for the safe and humane handling and training of potentially dangerous animals. We intend this policy to be used by exhibitors of potentially dangerous animals as a basis for assessing the qualifications of their personnel and evaluating their training and handling procedures. We also intend that the policy statement place regulated entities on notice regarding APHIS' interpretation of the regulations.

This policy statement is not a comprehensive guide on training and handling potentially dangerous animals, nor is the policy intended to replace any existing regulations or any existing industry standards. We are unaware of any written standards recognized by the industry as a whole. However, individual facility guides and many books and articles exist that contain standards used by members of the industry for training and handling a variety of potentially dangerous animals, and adoption of this policy would not preclude use of those guides and information. We believe the

guidance provided in this draft policy is reflective of industry standards as they relate to the specific requirements in the AWA regulations and is based on our experience in enforcing the AWA.

Further, the draft policy addresses a wide array of situations and a variety of animals that have very different training and handling needs. We recognize, for example, that what works for a polar bear may not be applicable to a large cat. Likewise, what works for a permanent exhibit may not be applicable to a traveling one. We intend the draft policy to be used with this in mind, recognizing that certain situations may warrant alternative arrangements, but with the goal always being the safe and humane handling and training of the particular animal in question.

The policy appears at the end of this document.

The draft policy statement is divided into three sections: Personnel, Handling Techniques and Procedures, and Contingency Plans. It describes what levels of knowledge and experience handlers, trainers, and other personnel should have, what handling techniques and procedures are unacceptable or inadvisable under the regulations because they could result in harm to the animals or the public, and what contingency plans should cover in the event that an animal becomes aggressive.

We are seeking public comment on the content of the draft policy statement before we implement it. We will also be holding a public meeting at which the draft policy will be discussed further. The date and location of the public meeting will be announced in a separate notice in the **Federal Register**.

The draft policy is as follows:

Policy on Potentially Dangerous Animals; Personnel Requirements and Training and Handling Requirements

References

Animal Welfare Act, section 13
9 CFR part 2, subpart I, section 2.131
9 CFR part 3, subpart D, section 3.85
9 CFR part 3, subpart E, section 3.108
(for polar bears only)
9 CFR part 3, subpart F, section 3.132

History

This is a new policy statement.

Justification

Personnel and training and handling regulations currently in use under the Animal Welfare Act (AWA)(7 U.S.C. 2131 *et seq.*) are performance-based. The general public, regulated industries, and APHIS inspectors have requested over the past few years that we provide

more guidance to our inspectors and regulated entities on how to comply with these regulations. Recent incidents of injury and/or death to members of the public, handlers, and regulated animals have brought these issues to the forefront. The following draft policy statement has been developed to address these concerns and to assist regulated entities by providing more guidance on how to comply with the regulations. This policy statement is not intended to replace any existing regulations or any existing industry standards, and adoption of this policy does not preclude use of available industry guidance. The guidance provided in this policy is reflective of industry standards as they relate to the specific requirements in the AWA regulations and is based on our experience in enforcing the AWA. Further, this policy addresses a wide array of situations and a variety of animals that have very different training and handling needs. We intend the draft policy to be used with this in mind, recognizing that certain situations may warrant alternative arrangements, but with the goal always being the safe and humane handling and training of the particular animal in question in accordance with the requirements of the regulations.

Policy

This draft policy is divided into three sections: Personnel, Handling Techniques and Procedures, and Contingency Plans.

Section 1—Personnel

This section of the policy clarifies the requirements of §§ 2.131(c)(2) and (c)(3), 3.85, 3.108, and 3.132. In § 2.131, paragraph (c)(2) requires that, during periods of public contact (with any type of animal) a responsible, knowledgeable, and readily identifiable employee or attendant must be present at all times. Paragraph (c)(3) of § 2.131 requires that, during public exhibition, potentially dangerous animals must be under the direct control and supervision of a knowledgeable and experienced animal handler. Sections 3.85 (for nonhuman primates), 3.108 (for marine mammals), and 3.132 (for animals such as big cats, elephants, wolves, and bears) generally require that there be a sufficient number of adequately trained employees to maintain husbandry and care of the animals and that such practices be under the supervision of someone who has a background in care of that type of animal. The only marine mammals that APHIS considers “potentially dangerous” within the

context of this policy statement are polar bears.

The following guidelines apply to personnel (trainers, handlers, and attendants, whether volunteers or employees) who handle potentially dangerous animals, including, but not limited to, big cats, elephants, bears (including polar bears), and nonhuman primates. Questions or concerns regarding personnel qualifications should be referred to the appropriate Animal Care Regional Office for resolution.

What constitutes a sufficient number and adequate knowledge and experience for animal handlers must be measured in the context of the virtually infinite variety of public contact exhibitions. Sometimes the animals are allowed to interact physically with the public; an example would be photography sessions for the public with a lion cub. In other cases it is intended that the animal will only be observed from a safe distance although it is not physically confined as in a facility or structure; an example would be an elephant in a circus ring.

A handler should have demonstrable knowledge of and skill in currently accepted professional standards and techniques in animal training and handling and in the husbandry and care requirements of the species he or she is exhibiting. A handler should also be able to recognize normal and abnormal behavior and signs of behavioral distress for the species he or she is exhibiting. It is essential that the handler be experienced and able to apply this knowledge for the safe exhibition of the animal. Although it is difficult to quantify the necessary length of experience, APHIS will closely scrutinize situations where animals are placed under the care and control of a handler without at least 2 years experience involving the species being exhibited, including at least 1 year of experience handling that type of animal in public contact situations.

As required by the regulations, every facility must use a sufficient number of adequately trained employees or attendants for normal husbandry and care, and, during public contact, must use knowledgeable and experienced handlers. This is necessary to ensure the safety and well-being of the animals, facility personnel, and the public. To meet these requirements, a sufficient number of handlers relative to the number of potentially dangerous animals should be present whenever there is a public contact venue or high possibility of public contact. Although it is difficult to quantify the number of personnel which might be required, APHIS will closely scrutinize situations

where there are not at least two qualified handlers present. In addition, it may be necessary to have employees to guard against members of the public inappropriately approaching animals; these employees would need to be responsible but would not necessarily need much experience in handling dangerous animals. APHIS will closely scrutinize situations where attendants hired as day-labor or for the term of a performance at a particular location are employed for any of these purposes.

Section 2—Handling Techniques and Procedures

This section of the draft policy clarifies the requirements of—2.131(a)(1), (a)(2)(i), (b)(1), (b)(3), and (c)(1–3). Paragraph (a)(1) requires that handling of any animal must be done expeditiously and carefully so as to not cause trauma, overheating, excessive cooling, behavioral distress, physical harm, or discomfort. Paragraph (a)(2)(i) prohibits the use of physical abuse to train, work, or handle any animal. Paragraph (b)(1) requires that animals be handled during public exhibition so there is minimal risk of harm to the animal and the public, with sufficient distance and/or barriers between the animal and the public to assure the safety of both. Paragraph (b)(3) prohibits young or immature animals from being exposed to rough or excessive public handling or from being exhibited for periods of time that would be detrimental to their health or well-being. Paragraphs (c)(1) through (c)(3) provide that the length and conditions of exhibition for any animal must be consistent with the animal's health and well-being; a responsible, knowledgeable, and readily identifiable employee or attendant must be present at all times during public contact; and potentially dangerous animals must be under the direct control and supervision of a knowledgeable and experienced animal handler during public exhibition.

Potentially dangerous animals can become aggressive during public handling or exhibition and can cause serious harm to themselves, their handlers, and members of the public. These regulations are intended to ensure the safety and welfare of animals when they are being worked or trained and to minimize the risk of harm to animals, facility personnel, and the public during public exhibition.

We consider the following factors to be ones that may contribute to physical harm or behavioral stress or be inconsistent with the animal's good health and well-being. Other factors may also be harmful under the

regulations to the well-being of exhibited animals.

- Excessive environmental noise
- Excessive crowding around the animal
- Inappropriate age of the animal (too young or too old for the type of exhibition)
- Excessive repeated posing or repositioning of the animal
- Failure to maintain flight (escape) distance
- Lifting animals by their limbs
- Too many or too long interactive sessions
- Threatening or aggressive postures or movements by other animals or persons

This list is, of course, only representative of the virtually infinite variety of practices which may be harmful and prohibited.

Dangerous animals such as bears and big cats should not be walked or "paraded" among the public on a leash or tether unless the licensee can show that the handler (alone or with other handlers and attendants) has such physical control of the animal and the situation so as to prevent contact with the public. Animals with a history of aggressive or uncontrolled behavior should not be used for this purpose.

During any activity in which a member of the public rides a regulated animal (such as an elephant), an experienced handler must be in direct physical control of the animal. In these situations and others where the animal is restrained primarily by its training rather than by physical means, an animal with a prior history (including even a single incident) of aggressive and uncontrolled behavior should not be used.

Photo booths open to the general public should not use animals that cannot be physically restrained by the handler. APHIS will closely scrutinize situations involving animals which weigh more than 75 pounds or are over 4 months of age. Once again, an animal with a prior history (including even a single incident) of aggressive and uncontrolled behavior should not be used for this purpose.

Public contact venues must provide adequate safety barriers for members of the general viewing public. These may include physical barriers of sufficient strength and location to protect the public from unwanted contact with animals, sufficient space between animals and the public to afford the same protection, use of a sufficient number of trained attendants to prevent unwanted contact, and/or equivalent measures to assure the safety of the animals and the public.

Animals used in public contact venues should have sufficient training and exposure to a variety of people and environmental situations, for example, noise, crowds, and bright colors. This training should be accomplished under rigidly controlled circumstances that do not put people at risk. Once again, an animal with a prior history (including even a single incident) of aggressive and uncontrolled behavior should not be used for this purpose.

Exhibitors engaged in theatrical or entertainment activities (television programs, movies, stage productions, commercials, photo shoots, etc.) that use potentially dangerous animals where there is the potential for direct contact with actors or models should use only animals appropriately trained for the circumstances.

All fights (*i.e.*, movie, television, theatrical productions, etc.) between two or more animals should be simulated. Protected or staged fights, in which one or more animals are muzzled, are discouraged and would be closely scrutinized.

The following must also be considered in order to ensure that handling is done in a manner that does not cause trauma, behavioral stress, physical harm, or unnecessary discomfort, as required by § 2.131(a)(1), and because physical abuse to train, work, or handle animals is prohibited under § 2.131(a)(2)(i):

- Hot shots, shocking collars, or shocking belts should not be used for training or to handle the animals during exhibition and any such use will be closely scrutinized.
- An ankus may not be used in an abusive manner that causes wounds or other injuries.

We would be remiss if we did not note that macaques should not be used in situations where public contact is likely because they present a risk of serious and fatal disease transmission and because of other health and safety concerns (macaques carry diseases that are particularly harmful to humans).

Section 3—Contingency Plans

Section 2.131(b)(1) of the regulations requires that handling of animals during public exhibition must minimize the risk to animals and the public. We would be remiss if we did not emphasize the importance of contingency plans for addressing emergency situations and extended periods of travel. In the event that a potentially dangerous animal behaves in an aggressive or unexpected manner, contingency plans provide methods to prevent the animal from harming the trainer, handler, or members of the

public, which in turn minimizes the risk to the animal. A good contingency plan can prevent the need to take action resulting in injury to the animal in order to bring the animal under control.

We will closely scrutinize public exhibitions that do not employ meaningful contingency plans. All employees responsible for using emergency and recapture equipment should be trained in their use. Contingency plans should be available to employees at all traveling unit sites and home sites.

Contingency plans and related standard operating procedures should address, but not be limited to, the following:

- Procedures for handling and recapturing escaped animals, including, but not limited to, equipment to be used, people to be contacted, and the chain of command during such a crisis.

- Criteria for deciding when to use various restraint methods, and identification of the person who is responsible for making such a decision. The level of force used, up to and including lethal force, should be consistent with the situation.

- Protocols for euthanasia (for example, how the decision is made; when lethal force is required and when an animal needs to be euthanized for humane and/or safety reasons; methods to be used).

- Provisions concerning when to contact local law enforcement and/or animal control officials and who to contact.

Based on the species, venue, and type of activities undertaken, the availability and appropriate use of any or all of the following emergency equipment should be considered in a contingency plan:

- CO₂ Fire Extinguishers—These are a well-accepted means of breaking up fights between big cats and of breaking off an attack on a person. Operational CO₂ fire extinguishers, or an equivalent distraction, should be available whenever cats are in contact with the handlers or the public.

- High Pressure Hoses/Fire Hoses—These can be used in the same manner as CO₂ fire extinguishers.

- Pepper Sprays/Mace, etc.—The effectiveness may vary between species and individuals, but these may be a useful emergency tool.

- Darting Equipment—Consider use of darting equipment in contingency planning, although reliability, onset of tranquilization, and safety of the public need to be evaluated.

- Radios—Radios allow for quick communication to management and support personnel. Also, during public

contact exhibition, handlers and other personnel should carry radios.

- Capture Nets—These may be useful in controlling/capturing escaped or uncooperative animals.

- Cell Phones—Consider use whenever animals are moved off-site for demonstrations/exhibition.

- Crowd Control Fencing—This fencing (such as rolls of plastic fencing) can be used to keep the viewing public out of restricted areas.

Done in Washington, DC, this 14th day of February 2000.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00-3920 Filed 2-17-00; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00-AGL-03]

Proposed Modification of Class D Airspace; Rapid City, SD; Modification of Class D Airspace; Rapid City Ellsworth AFB, SD; and Modification of Class E Airspace; Rapid City, SD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class D airspace at Rapid City, SD, modify Class D airspace at Ellsworth AFB, SD, and modify Class E airspace at Rapid City, SD. An Area Navigation (RNAV) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 32 has been developed for Rapid City Regional Airport. Controlled airspace extending upward from the surface of the earth is needed to contain aircraft executing this approach. This action would increase the radius of the existing Class D and Class E airspace for Rapid City Regional Airport, and modify the legal description of the Class D airspace for Ellsworth AFB to include the formentioned modification.

DATES: Comments must be received on or before April 3, 2000.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Regional Counsel, AGL-7, Rules Docket No. 00-AGL-03, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines,

Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL-520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294-7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made:

"Comments to Airspace Docket No. 00-AGL-03." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the